

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-03495

XXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

His record be changed to show he made a timely election for spouse coverage under the Survivor Benefit Plan (SBP).

### APPLICANT'S CONTENTIONS

When he retired in 2001, his wife had recently passed away and he elected child[ren] only SBP coverage. His children are all married and have aged out of eligibility for SBP. He remarried in XXXX and attempted to add coverage for his wife during the 2023 SBP Open Season. However, the Defense Finance and Accounting Service (DFAS) denied his request and stated they were only accepting retirees who never had SBP coverage.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a retired Air Force master sergeant (E-7).

On 12 Feb 01, according to DD Form 2656, *Data for Payment of Retired Personnel*, the applicant elected Option C, *Coverage for Child[ren] Only*, based on full retired pay. Item 14, *Marital Status*, reflects a selection of *Single*.

On 1 May 01, according to Special Order XX-XXXXXX, dated 27 Oct 00, the applicant retired from the Regular Air Force.

On XX Aug XX, according to documentation provided by the applicant, he married his current spouse.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit C.

### AIR FORCE EVALUATION

AFPC/DPFC (SBP Program) recommends denying the application. SBP, by law, provides opportunities to participate and pay associated premiums for coverage. At retirement, service members and their spouse, if applicable, are briefed on the options and effects of SBP based on their eligible dependents at that time and for possible future dependents. It is the responsibility of each retiree to take timely and appropriate action to ensure their eligible beneficiaries are properly designated for military benefits. A member who is not married at retirement, but has eligible children can cover those eligible children at that time. However, if/when the member later marries after retirement, the law requires an election for SBP coverage for that spouse before the one-year anniversary of the marriage. To make an election, the member must notify DFAS in writing or submit a completed DD Form 2656-6, *Survivor Benefit Plan Election Change Certificate*, with supporting documents. After the one-year allowable period has passed, an election for coverage

for that spouse or any future spouse is not allowed unless Congress authorizes an open enrollment period specific to category changes.

Public Law 108-375, dated 28 Oct 04, established an open enrollment period from 1 Oct 05 through 30 Sep 06 and allowed members who declined spouse coverage, or had less than maximum level SBP coverage, an opportunity to elect new coverage, change a category of coverage, or increase coverage up to a base amount of their gross retired pay. Public Law 117-263 established an open enrollment period beginning 23 Dec 22 and ending 1 Jan 24. This open enrollment period targeted retired service members who, as of 23 Dec 22, were not participating in SBP and desired to enroll in the Plan, or for members participating as of that same date to disenroll. The open enrollment period did not allow participating members with suspended coverage to change their category of coverage. Although the category is suspended, those members are still considered participants in the Plan.

At the time of his 1 May 01 retirement, the applicant was not married, but had dependent children and elected child[ren] only SBP coverage, based on full retired pay. The applicant married his current wife on XX Aug XX and had one year (XX Aug XX) to elect additional SBP coverage but failed to do so. On XX Mar XX, the last child lost eligibility and his child[ren] only SBP coverage was suspended. The election for child[ren] only coverage remains in suspended “participating” status in the event the applicant acquires another eligible beneficiary specific to that category.

There is no evidence of an Air Force error or injustice in this case and no basis in the law to grant the request. The applicant failed to elect spousal coverage within one year of the date of marriage as required. By law, his suspended participating status made him ineligible for a change of election during the 2023 SBP Open Season (which ended 1 Jan 24).

The complete advisory opinion is at Exhibit C.

## **APPLICANT’S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 11 Mar 24 for comment (Exhibit D) but has received no response.

## **FINDINGS AND CONCLUSION**

1. The application was timely not filed. The Board notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DPFC and finds a preponderance of the evidence does not substantiate the applicant’s contentions. The applicant failed to make a timely election for spouse coverage within one year of marriage, and by law, he was ineligible to enroll in spouse SBP coverage during the 2023 SBP Open Season. Therefore, the Board recommends against correcting the applicant’s records.

## **RECOMMENDATION**

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

## CERTIFICATION

The following quorum of the Board, as defined in DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2023-03495 in Executive Session on 27 Jun 24:

, Panel Chair  
, Panel Member  
, Panel Member

All members voted against correcting the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 10 Oct 23.  
Exhibit B: Documentary Evidence, including relevant excerpts from official records.  
Exhibit C: Advisory, AFPC/DPFC, dated 11 Mar 24.  
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 11 Mar 24.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

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Board Operations Manager, AFBCMR