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**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

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RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03789

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COUNSEL: Work-Product

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HEARING REQUESTED: Work-...

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APPLICANT'S REQUEST

The deceased service member's election of benefits under the Reserve Component Survivor Benefit Plan (RCSBP) be changed. Specifically, to elect Option C (*Immediate Annuity*).

APPLICANT'S CONTENTIONS

She did not concur with the RCSBP election certificate dated 29 Nov 00, which she was told required spousal consent at the time of execution. She needs this changed so that she can be granted the pension her husband earned.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is the surviving spouse of an Air Reserve major (O-4) who died while awaiting retired pay at age 60.

On 15 Aug 00, ARPC/DPTT sent the deceased service member the standard Notification of Eligibility for retired pay (20-year letter) informing him he has completed the required years under the provisions of Title 10 United States Code, Section 12731 (10 U.S.C. § 12731), and entitled to retired pay upon application prior to age 60. In addition, he was eligible to participate in the RCSBP and should receive detailed RCSBP information by certified mail within 30 days. The RCSBP information included instructions to reply within 90 days of receipt.

According to ARPC Form 123, *Reserve Component Survivor Benefit Plan Election Certificate*, dated 29 Nov 00, the service member elected Option A, *Decline to Make an Election Until Age 60*.

On 5 Jun 06, according to Reserve Order Work-Product, dated Work-Product the service member was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 6 May 87, according to a Certificate of Marriage, provided by the applicant, the service member married his spouse.

On 17 Feb 17, according to a Certificate of Death, provided by the applicant, the service member passed away.

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On 22 Feb 24, the Board sent the applicant the following standard forms, in order to establish whether there are persons with competing interests in the case or who should receive notice of the requested correction to the record: SBP-Marital Status Affidavit (Deceased Retiree).

On 3 Apr 24, the applicant returned the signed affidavit.

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

AIR FORCE EVALUATION

ARPC/DPTT (Transitions) recommends denying the application. Although the Air Force provided the member's spouse with incorrect information on 27 Apr 17, the member is ineligible to change their election or level of coverage because they did not make an election within the required 90-day timeframe as prescribed by law. All Reserve Component Service members who are eligible to participate in RCSBP, but who fail to make an election in the prescribed time will, by law, automatically have full, immediate RCSBP coverage for their dependent spouse and/or children, based upon dependents in the member's record in the Military Personnel Data System. The prescribed time limit for RCSBP election is before the end of the 90th day after the service member receives notification of having completed the years of service to be eligible for non-regular retirement in accordance with 10, U.S.C., Section 12731.

Before 1 Jan 01, Reserve members eligible for retirement did not need spousal consent to choose less than maximum Reserve Component Survivor Benefit Plan (RCSBP) coverage for their spouse. Those notified of eligibility under 10 U.S.C., Chapter 1223 had 90 days to make an election; otherwise, they were automatically enrolled in Option A, deferring election until age 60. The member completed 20 satisfactory years on 7 May 00, and submitted ARPC Form 123 on 29 Nov 00, chose Option A, but missed the 90-day deadline. Under the regulations at the time, this automatic coverage remained in effect. A life-changing event was the only circumstance under which the member could change coverage. According to 10 U.S.C., Subsection 1448(A)(4)(B), an election under this provision was irrevocable if not revoked within the 90-day period.

On 3 Dec 05, the member completed AF IMT 131, *Application to Transfer to the Retired Reserve*, for transfer to the Retired Reserve, which did not include sections on RCSBP or SBP. The member passed away on 17 Feb 17, and his spouse contacted ARPC after his death. ARPC provided incorrect information about the law on 27 Apr 17. Prior to 1 Jan 01, Reserve and Guard members could decline RCSBP coverage without spousal consent and were automatically enrolled in Option A if no election was made. The National Defense Authorization Act of 2001 later amended 10 U.S.C. 1448 to require spousal consent for RCSBP elections if a member received their notice of eligibility on or after 1 Jan 01. Members making no election were then automatically enrolled in Option C coverage for their spouse or dependent child.

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 26 Jun 24, for comment (Exhibit D), but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.

2. The applicant exhausted all other available administrative remedies 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 ARPC/DPTT and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board notes that before 1 January 2001, Reserve members eligible for retirement did not need spousal consent to choose less than maximum RCSBP coverage for their spouse. Upon notification of eligibility under 10 U.S.C., Chapter 1223 the member had 90 days to make an election. The member missed the 90-day deadline. He submitted the ARPC Form 123 on 29 November 2000, choosing Option A, deferring election until age 60. Under the regulations at the time, the automatic coverage remained in effect. Therefore, the Board recommends against correcting the member'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 Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2023-03789 in Executive Session on 24 Oct 24:

Work-Product, Panel Chair
Work-Product, Panel Member
Work-Product, Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 14 Nov 23.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, ARPC/DPTT, dated 21 Jun 24.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 26 Jun 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.

9/28/2025

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Associate Director, AFBCMR

Signed by: USAF