



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03145

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His election of benefits under the Reserve Component Survivor Benefit Plan (RCSBP) be changed. Specifically, change former spouse full coverage to a reduced amount.

APPLICANT'S CONTENTIONS

His marriage ended on 6 Jul 18 by De Facto Termination Agreement and he reached 20 years of military service on 8 Aug 18. His RCSBP election should be corrected to comply with the Military Retired Pay Division Order (MRPDO), dated 6 May 20, to reflect the required \$300 minimum RCSBP. Both he and his former spouse agreed upon the terms. Defense Finance and Accounting Service (DFAS) verified receipt of the order on 22 Jun 20, and a copy was also sent to myPers. DFAS set up his RCSBP in 2022 at the full amount and will not correct it to comply with the court order.

He was erroneously discharged from the Air National Guard on 8 Feb 21 with 2 years, 5 months, and 29 days of service. On 28 Feb 21, he sought assistance from the AFBCMR and on 6 Dec 21, he sought assistance from The Adjutant General (TAG) to correct his transfer to the Retired Reserve. He was provided copies of four documents by TAG which he had never seen, including a 20-year letter (without attachments), dated 7 Jan 22, and a copy of a Special Order stating he had been honorably discharged. His unit never provided him the routine 20-year letter with DD Form 2656-1, *SBP Election Statement for Former Spouse Coverage*.

On 29 Jan 22, because he was not getting any help with his retirement application and he was less than 6 months from age 60, he filed DD Form 2656, *Data for Payment of Retired Personnel*, without filing DD Form 2656-1, *SBP Election Statement for Former Spouse Coverage*, and marked Option A, *Previously declined to make an election until eligible to receive retired pay*, with explanation, "I have no contact with [former spouse], and do not know her current whereabouts. [...] Inasmuch as [former spouse] sent DFAS copies of the Divorce Decree and Military Retired Pay Division Order within four (4) months[. ..] it appears the completion of DD Form 2656-1 is not necessary." His application was rejected on 16 Feb 22 for reason, "you are not affiliated with the military at this time," due to his Reserve wing mishandling his transfer to the Retired Reserve. If his first DD Form 2656 submitted on 29 Jan 22 had been accepted and processed, his SBP benefit would not have been set at the full amount. It was never his intention to "enrich" his former spouse beyond the \$300 minimum SBP required by the MRPDO.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

AFBCMR Docket Number BC-2023-03145

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The applicant is a retired Air Force Reserve chief master sergeant (E-9).

On 6 Apr 85, the applicant and his former spouse married.

On 9 Aug 02, the applicant enlisted into the Air National Guard.

On 6 Jul 18, according to documentation provided by the applicant, the applicant and his former spouse filed for divorce, and on 11 Feb 20, the divorce was final. The order indicated the applicant “shall timely elect his former spouse as a beneficiary under the SBP in an amount necessary to secure the former spouse’s assigned benefits.”

On 6 May 20, according to documentation provided by the applicant, a MRPDO directed the applicant to change his RCSBP coverage from spouse to former spouse and he “shall elect a reduced base amount equal to 37.25% of his disposable retired pay.”

On 8 Feb 21, according to Special Order **Work-Product**, dated 24 Feb 21, the applicant was honorably discharged from the Air National Guard.

On 7 Jan 22, ARPC/DPTT sent the applicant the standard Notification of Eligibility (NOE) for Reserve retired pay (20-year letter) informing him he had 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 normally at age 60. In addition, he was eligible to participate in the RCSBP.

On 28 Feb 22, the applicant applied to the Board and requested his honorable discharge be corrected to reflect Retired Reserve, effective 8 Feb 21 (BC-2022-00761). On 6 Dec 22, the Board determined the applicant was miscounseled regarding his expired term of service and was notified of the correct date without ample time to submit a retirement application. The Board directed his discharge be void and he instead be transferred to the Retired Reserve List with all associated benefits and entitlements (Exhibit F).

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

APPLICABLE AUTHORITY

10 U.S.C. § 1448(a)(2)(B). “Participants in the plan. The Plan applies to the following persons, who shall be participants in the Plan: Reserve-component annuity participants. A person who (i) is eligible to participate in the Plan under paragraph (1)(B), and (ii) is married or has a dependent child when he is notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve component retired pay, unless the person elects (with his spouse's concurrence, if required under paragraph (3)) not to participate in the Plan before the end of the 90-day period beginning on the date on which he receives that notification.”

DoD 7000.14-R, *Financial Management Regulation*, Volume 7B, Chapter 540401. “Any member who is notified of his or her completion of the years of service required for retired pay eligibility for non-regular retirement may elect to participate in RCSBP before the end of the 90-day period. A member who is married or has a dependent child, and who receives notice of eligibility for retired pay, after 1 Jan 01, is automatically an immediate participant in RCSBP unless the member elects (with spousal concurrence, if required) not to participate or to defer the decision or delay coverage before the end of the 90-day period.”

DoD 7000.14-R, Volume 7B, paragraph 540402. “A member electing to participate must designate an immediate election, a deferred election, or indicate a decision to delay the election until reaching retirement age. These are described as Options A, B, or C.”

10 U.S.C. § 1448(a)(3)(B). “A married person who is eligible to provide a Reserve-component annuity may not without the concurrence of the person’s spouse elect (i) not to participate in the Plan; (ii) to designate under subsection (e)(2) the effective date for commencement of annuity payments under the Plan in the event that the member dies before becoming 60 years of age to be the 60th anniversary of the member’s birth (rather than the day after the date of the member’s death); (iii) to provide an annuity for the person’s spouse at less than the maximum level; or (iv) to provide an annuity for a dependent child but not for the person’s spouse.”

10 U.S.C. § 1450(f)(3)(C). If a court has ordered a service member to elect former spouse SBP, then a former spouse can submit his or her own request to DFAS for former spouse SBP coverage. This is known as a “deemed election request.” There is a time limit: “An election may not be deemed to have been made unless the Secretary concerned receives a request from the former spouse of the person within one year of the date of the court order or filing involved.”

AIR FORCE EVALUATION

ARPC/DPTT (Transition Division) recommends denying the application. The applicant did not make an election within the 90-day time frame following notification of eligibility as prescribed by law and is ineligible to change his election or level of coverage outside of the eligible timeframe.

On 8 Aug 18, the applicant completed 20 satisfactory years of service however, the RCSBP NOE takes approximately 120 days for members to receive as there is a delay in the point credit summary to reflect the 20 satisfactory years in record. The applicant logged into the virtual military personnel flight (vMPF) on 13 Feb 19 confirming he received his RCSBP NOE. He did not return the required DD Form 2656-5, *RCSBP Election Certificate*, with his desire to decline coverage in the 90-day time frame as prescribed by law. The applicant was automatically enrolled based on his eligible beneficiaries, which resulted in option C, *I elect to provide an immediate annuity beginning on the day after date of my death, whether before or after age 60, with Spouse Only coverage, and full retired pay level of coverage.*

On 11 Feb 20, the applicant and former spouse filed for divorce. On 6 May 20, Qualified Domestic Relations Order required the applicant to elect former spouse coverage at a reduced base amount. The DFAS Office of General Counsel confirmed the former spouse completed DD Form 2656-10, *SBP/RCSBP Request for Deemed Election*, dated 5 May 20.

In preparation for commencement of retired pay the applicant completed DD Form 2656 on 27 Jun 22 in conjunction with his retirement application. At the time of completion, the applicant selected he was previously under Option C for RCSBP. Reserve and Guard members who have a previous RCSBP election of Option C cannot make a new election on the DD Form 2656. The DD Form 2656 is not a change of election form.

Since the applicant was automatically enrolled in RCSBP at the full base amount, the applicant cannot later reduce his base amount upon converting to former spouse coverage whether by a deemed or voluntary former spouse election per DoDI 1332.42 paragraph 5.2(a)(3) and paragraph 5.3(b)(3), 30 Dec 20. It was proper for DFAS to establish coverage at the full base amount consistent with the level of coverage elected when the applicant first became eligible to participate.

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 7 Feb 24 for comment (Exhibit D), and the applicant replied on 10 Mar 24. In his response, the applicant contended there are discrepancies and inaccuracies within the ARPC/DPTT advisory opinion. First, he and his former spouse filed for divorce in Jul 18 and not in Feb 20; this is the date both parties signed the divorce agreement. The MRPDO states the divorce occurred on 6 Jul 18 for the purpose of calculating the former spouse's benefit assigned. Additionally, he was advised by his attorney and not permitted by the court to make any changes, including insurance, retirement, survivor benefits, etc., during the divorce process. He could not make an election during the timeframe the DD Form 2656-5 was supposed to be submitted because he did not know if the court would mandate he provide his former spouse with SBP benefits and, if so, the amount the court may determine. He relied on the courts and advice of several DFAS and wing personnel representatives. He also submitted several DD Forms 2656 from early 2020 through mid-2022 along with the court order and all submissions were rejected and lacked explanation. The applicant asserts because the divorce was ongoing during the election period, there should have been no elections until after the divorce was settled, per DoDI 1332.42 paragraph 5.3b.

The applicant's complete response is at Exhibit E.

FINDINGS AND CONCLUSION

1. The application was timely filed.
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 ARPC/DPTT and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant contends he should not have been required to make an SBP election during his divorce proceedings and by the advice of his counsel; however, the Board disagrees. By law, participants must designate an immediate election, a deferred election, or indicate a decision to delay the election until reaching retirement age within 90 days of receiving their NOE to receive non-regular retired pay and eligibility for RCSBP. The applicant failed to make a timely election within the 90-day timeframe as required by law. Accordingly, he was automatically enrolled in RCSBP and not authorized to change the level of coverage. 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 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-2023-03145 in Executive Session on 27 Jun 24:

Work-Product, Panel Chair

Work-Product, Panel Member

Work-Product, Panel Member

AFBCMR Docket Number BC-2023-03145

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 21 Aug 23 and 27 May 24.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, ARPC/DPTT, w/atchs, dated 18 Jan 24.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 7 Feb 24.
- Exhibit E: Applicant's Response, w/atchs, 10 Mar 24.
- Exhibit F: AFBCMR Case File BC-2022-00761, dated 6 Dec 22.

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.

4/27/2025

X 

Board Operations Manager, AFBCMR

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