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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2024-00446

COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The deceased service member's record be changed to show he made a valid election for spouse coverage under the Survivor Benefit Plan (SBP) during the 2023 SBP Open Season.

APPLICANT'S CONTENTIONS

Her husband expressed his intent to enroll in SBP during open season by completing the Letter of Intent (LOI) on 20 Mar 23. When he died on 26 Mar 23, three months into the open season, there was not yet an enrollment form published. His intent was clear, and he should not be disqualified from enrollment based solely on the administrative delay of necessary processing forms.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is the surviving spouse of a deceased retired Air Force lieutenant colonel (O-5).

On 17 May 11, according to DD Form 2656, *Data for Payment of Retired Personnel*, the service member elected Option G, *I elect not to participate in SBP*, and the applicant concurred with the decision.

On 1 Sep 11, according to Special Order Work-Product dated 14 Sep 11, the service member retired from the Regular Air Force.

On 20 Mar 23, the service member completed an LOI, provided by the applicant, expressing his intent to enroll in SBP coverage during the 2023 SBP Open Season.

On 26 Mar 23, according to a Certificate of Death, provided by the applicant, the service member passed away.

In a letter addressed to the service member dated 5 Apr 23, provided by the applicant, the Defense Finance and Accounting Service (DFAS) indicated the LOI was received on 29 Mar 23. The service member was in the process of gathering information about SBP but had yet to make an official election prior to his death.

In a letter addressed to the service member dated 17 Jul 23, provided by the applicant, DFAS stated the service member was found to not be eligible to enroll in SBP coverage during the open season

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Controlled by: SAF/MRB

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Limited Dissemination Control: N/A

POC: SAF.MRBC.Workflow@us.af.mil

due to the following reason: “SBP Open Season Enrollment is not effective until we receive a valid SBP Open Season Enrollment form. The applicant did not complete SBP Open Season Enrollment form before he passed. If you do not agree with this decision, you can reach out to SBP Board of Corrections.”

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

AIR FORCE EVALUATION

AFPC/DPFC (Casualty Sustainment) recommends denying the application. At retirement, the member and spouse, if applicable, are briefed on the options and effects of the SBP for their current dependent status and for future dependents as applicable. 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 married at retirement and has eligible children can elect one of the following categories of SBP coverage: (1) Spouse and child; (2) Spouse only, child excluded; (3) Child only, spouse excluded; or (4) Decline. However, when electing a category of coverage that does not cover the spouse with the maximum benefit, that spouse must provide notarized concurrence. Furthermore, once the member is retired with an election that does not cover that spouse, SBP coverage is not allowable, unless Congress authorizes an open enrollment period.

Congress provided for an SBP Open Season in the 2023 National Defense Authorization Act: Public Law 117-263 (23 Dec 22). The 2023 SBP Open Season, which began on 23 Dec 22 and ended 1 Jan 24. The SBP Open Season allowed for retirees receiving retired pay who are currently not enrolled in SBP as of 22 Dec 22, to enroll. For a member who enrolls during the SBP Open Season, the law generally requires that the member will be responsible to pay retroactive SBP premium costs that would have been paid if the member had enrolled at retirement.

The Office of the Assistant Secretary of Defense (Manpower and Reserve Affairs) published guidance (hereinafter “implementing guidance”) implementing Public Law 117-263. The implementing guidance specifies a three step enrollment process: Step 1, the interested member completes and submits a Letter of Intent (LOI) to enroll; Step 2, DFAS sends an estimate of the costs of enrollment; and Step 3, after considering the costs, if the member wants to officially enroll, the member submits an SBP Open Season Enrollment Form (specifying a plan for payment of the costs). The implementing guidance further specifies that “The open season enrollment is not effective until the SBP Open Season Enrollment Form is received by the appropriate agency.” Open enrollment periods are directed by Congress and can only be implemented as the law directs and are not by nature, designed to correct a member’s voluntary election at retirement. Nevertheless, the law does not allow a spouse to make an SBP election on behalf of a retired service member.

The DoD Person Search records in the Defense Enrollment Eligibility Reporting System reflect the service member was married with dependent children at the time of his 1 Sep 11 retirement. He elected to decline SBP coverage, with his spouse’s concurrence. On 17 May 11, the service member completed DD Form 2656, with his spouse’s notarized concurrence dated 18 May 11, making a valid election for declination. The documents were sent to DFAS and the election to decline spouse and child coverage was established, which meant no premium costs were withheld. SBP provides opportunities to participate, in accordance with law, and pay the associated premiums to have coverage. On 20 Mar 23, the service member completed an LOI to enroll during the SBP Open Season. He died on 26 Mar 23. DFAS (unaware of his death) provided an estimate

of the buy-in costs on 5 Apr 23. His surviving spouse contacted DFAS stating that she intends to fulfill his open season enrollment request (and asked for a buy-in cost breakdown). In this case, the service member did not complete an SBP Open Season Enrollment Form electing coverage before he died. There is no evidence he was aware of the costs he would incur if he made an open season election. There is no way to know what choice he would have made if he had been aware of the costs. The service member had an earlier opportunity to enroll in the SBP on 1 Sep 11 when he retired, and although his circumstances may have changed, the laws and regulations governing the open season elections are specific and DFAS is bound by them. DFAS must observe the conditions defined by Congress and the implementing guidance for open season elections. Furthermore, since the service member did not take advantage of the first opportunity to elect coverage for his spouse it would be inequitable to those members who chose to participate within the allowable times of eligibility. The option to elect SBP coverage is for retiring military members and the law does not allow a spouse to elect to participate on behalf of a service member. Setting a precedent authorizing a spouse to make an election on behalf of a deceased service member is not a decision that can be justifiably recommended. Although the applicant contends the election form was not available at the time the LOI was completed, all documents were available for use before and on 9 Mar 23.

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 10 May 24 for comment (Exhibit D) but has received no response.

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 AFPC/DPFC and finds a preponderance of the evidence does not substantiate the applicant's contentions. The 2023 SBP Open Season allowed for retirees receiving retired pay who were not enrolled in SBP as of 22 Dec 22, to enroll and pay associated costs. According to the implementation guidance, open enrollment is not effective until the SBP Open Season Enrollment Form is received by the appropriate agency. While the service member may have submitted an LOI for the open enrollment, unfortunately, he passed away prior to completing the enrollment process. There is no provision of the law which allows a spouse to elect to participate in the open enrollment period on behalf of a service member. Therefore, the Board recommends against correcting the decedent's records.
4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

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.

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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-2024-00446 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: Applications, DD Form 149, w/atchs, dated 17 Aug 23 and 18 Oct 23.

Exhibit B: Documentary Evidence, including relevant excerpts from official records.

Exhibit C: Advisory, AFPC/DPFC, dated 3 May 24.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 10 May 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.

9/19/2025

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Board Operations Manager, AFBCMR
Signed by: USAF

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