

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00755

XXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

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

The military failed to process his request in a timely manner due to personnel and process issues. After he remarried, he attempted to transfer SBP benefits to his new wife well in advance of the annual deadline. He attempted multiple times to work with the program manager and obtain status information but received no response. When he finally went to the office in-person to speak with someone directly, he was told the individual no longer worked there and he had to start the process over. He did as he was directed but was later told he exceeded the deadline for filing the change. He only became aware of this shortcoming when he called the Defense Finance and Accounting Service (DFAS) to inquire about the status of his request and was told it was denied due to exceeding the time limit. The individual dealing with his request was either a single point of failure or her management failed to redistribute her workload so it could be completed in a timely manner. He should not be held accountable for something he had no control over.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force Reserve lieutenant colonel (O-5) receiving retired pay.

On 27 Mar 17, according to a divorce decree provided by the applicant, the applicant and his former spouse divorced. The divorce decree does not require the applicant to provide former spouse SBP coverage.

On 20 Nov 19, the applicant signed DD Form 2656, *Data for Payment of Retired Personnel*, indicating his retirement date as 20 Dec 19. Block 17, *Marital Status*, reflects *Single*. Block 29, *Spouse*, reflects N/A (not applicable), and Block 32, *Dependent Children* is blank.

On 4 Apr 21, according to verification by the Air Force Personnel Center SBP Program Manager (AFPC/DPFC), the applicant married his current spouse.

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)(5): *Participation by person marrying after retirement, etc.* A person who is not married and has no dependent child upon becoming eligible to participate in the Plan but who later marries or acquires a dependent child may elect to participate in the Plan. Such an election must be written, signed by the person making the election, and received by the Secretary concerned within one year after the date on which that person marries or acquires that dependent child.

Fiscal Year 2023 National Defense Authorization Act (FY23 NDAA). Congress provided for an SBP Open Season in the FY23 NDAA. The SBP Open Season began on 23 Dec 22 and ended on 1 Jan 24. The SBP Open Season allows for retirees receiving retired pay, eligible members, or former members awaiting retired pay who were not enrolled in SBP or RCSBP 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 (or enrolled at another earlier date, depending on the member's family circumstances).

AIR FORCE EVALUATION

AFPC/DPFC (SBP Program Manager) recommends denying the application. A member who is unmarried at retirement may elect coverage for the first spouse acquired after retirement; however, the election must be made before the first anniversary of the marriage. If a member fails to make an election before then, they may not provide SBP coverage for that spouse or any future spouses unless Congress authorizes an open enrollment period.

The applicant retired under Title 10 United States Code, Section 12731, which allows Air National Guard and Air Force Reserve members to receive retired pay at age 60. Prior to his retirement, the applicant was married and later divorced on 27 Mar 17. According to the divorce decree, his former spouse was awarded a division of his retired pay; however, SBP was not awarded. At the time of his retirement in Dec 19, the applicant was unmarried with no dependent children. On 4 Apr 21, he remarried. He contacted the local base for assistance with electing SBP coverage for his spouse. The email documentation shows communication between the base SBP counselors and the applicant indicating that on 8 Mar 22 a DD Form 2656-6, *Survivor Benefit Plan Election Change Certificate*, was sent to the applicant to complete to establish SBP spouse coverage. On 25 Jul 23, the applicant responded apologizing for the long delay and stated he would complete the action in the coming week. However, he was well beyond the one-year period allowed to make an SBP election for his spouse. There is no evidence the applicant submitted the documents directly to DFAS prior to his submission on 10 Aug 23 via askDFAS. The new SBP counselor assisted the applicant in submitting the required documents to DFAS for final determination. Nevertheless, the member is responsible for submitting documents within the required timeframe.

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 20 Aug 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 applicant contends the SBP counselor failed to submit his election for SBP coverage for his new spouse in a timely manner; however, evidence shows the applicant failed to submit the election form to the SBP office or DFAS within one-year of the date of marriage as required by law. Therefore, the Board recommends against correcting the applicant'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.

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-2024-00755 in Executive Session on 19 Dec 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 23 Feb 24.
Exhibit B: Documentary Evidence, including relevant excerpts from official records.
Exhibit C: Advisory, AFPC/DPFC, dated 25 Mar 24.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 20 Aug 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.

X

Board Operations Manager, AFBCMR