

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

Work-Product

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01087

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: Work...

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APPLICANT'S REQUEST

He be reimbursed all Survivor Benefit Plan (SBP) premiums withheld from his retired pay.

APPLICANT'S CONTENTIONS

Upon retirement, he completed DD Form 2656, *Data for Payment of Retired Personnel*, and elected not to participate in SBP. He is no longer married to the person named on the original election. His divorce was final in 2010, and his dependents are all grown-up. He contacted the Defense Finance and Accounting Service (DFAS) and completed the required forms for opting out of SBP according to their instructions but has not yet been refunded the withholdings as promised when he first completed the DD Form 2656. Being retired, he is on a fixed income and needs his entire pension for living expenses.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 4 June 1994, the applicant and his former spouse were married.

On 4 February 2008, ARPC/DPPR sent the applicant the standard Notification of Eligibility for retired pay (20-year letter) informing him that 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 Reserve Component Survivor Benefit Plan (RCSBP).

On 10 August 2008, according to DD Form 2656-5, *Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate*, the applicant elected Option C, *(Immediate Annuity) I elect to provide an immediate annuity beginning on the day after date of my death, whether before or after age 60, for spouse only.*

On 18 January 2012, according to a Judgement of Dissolution of Marriage, provided by the applicant, the applicant and his former spouse divorced.

On 21 July 2012, according to a Marriage License, provided by the applicant, the applicant married his current spouse.

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On 1 March 2020, according to Reserve Order *Work-Product*, dated 11 March 2020, the applicant was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 28 December 2022, according to Reserve Order *Work-Product*, dated 17 March 2023, the applicant was authorized retired pay and placed on the USAF Retired List.

On 25 January 2023, according to DD Form 2656, the applicant elected Option A, *Previously declined to make an election until eligible to receive retired pay*, and Option G, *I elect not to participate in SBP*, and his spouse concurred with the election. Subsequently, the applicant submitted a corrected copy of page 4 of the DD Form 2656, changing his election to Option C, *Previously elected or defaulted to immediate RCSBP coverage*.

On 31 October 2023, according to the *Survivor Benefit Plan (SBP) and Reserve Component Survivor Benefit Plan (RCSBP) Open Season Election to Discontinue Participation* Form, provided by the applicant, the applicant requested to discontinue participation in SBP, and his spouse concurred with the election.

On 2 December 2023, DFAS erroneously notified the applicant they received his request to discontinue SBP coverage during the 2023 SBP Open Season, but he was not eligible to discontinue the Plan as he was not enrolled in SBP as of 22 December 2022.

On 12 December 2023, DFAS notified the applicant his request to discontinue SBP received on 4 November 2023 was valid and would be processed with an effective date of 1 December 2023.

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

APPLICABLE AUTHORITY

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 December 2022 and ended on 1 January 2024. The SBP Open Season allowed for retirees receiving retired pay, eligible members, or former members awaiting retired pay who were not enrolled in SBP or RCSBP as of 22 December 2022 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).

The SBP Open Season also allows eligible members and former members who were enrolled in SBP or RCSBP as of 22 December 2022 to permanently discontinue their SBP coverage. The law generally requires the covered beneficiaries to concur in writing with the election to discontinue. Previously paid premiums will not be refunded.

AIR FORCE EVALUATION

ARPC/DPTT (Transition Division) recommends partially granting the application. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice based on the DFAS Letter of Discontinuation for SBP. 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 (MilPDS). 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. § 12731.

On 17 November 2007, the applicant completed 20 satisfactory years of service and on 10 August 2008, he signed DD Form 2656-5, electing Option C for full coverage for spouse only. According to DD Form 2656, Section X, Block 35, states “you must indicate your previous election in Item 35a through 35c before proceeding to Item 36. If you previously elected Option B or Option C, do not enter an election in Item 36.” The applicant indicated on his first submission he elected Option A but provided a “corrected” copy of page 4 of DD Form 2656, indicating Option C was elected. Item 35c states “do not make an election in Item 36, 37, or 39, you have already elected coverage.” Once a member has made the election for Option C for RCSBP, they are automatically enrolled in Option C under SBP.

At the time of the applicant’s divorce on 18 January 2012, if he wanted to change his RCSBP coverage due to a life changing event, he would have needed to submit DD Form 2656-6, *Survivor Benefit Plan Election Change Certificate*, within one year of the event. When a member divorces, they are automatically placed in “suspended coverage” status starting the date of the divorce (18 January 2012). His original RCSBP election was for “spouse only;” therefore it would not have extended to his children. Having remarried 21 July 2012, this automatically activates the applicant’s previous spouse only coverage beginning on the date of marriage (21 July 2012). Failure to submit DD Form 2656-6 on either occasion resulted in continued coverage.

In accordance with the “SBP Open Season” as prescribed in the National Defense Authorization Act for Fiscal Year 2023, the applicant elected to terminate participation in SBP and communicated directly with DFAS. Based on the documentation provided by the applicant, he received a letter from DFAS stating they received his request to discontinue SBP coverage effective 1 December 2023. The applicant should not be responsible for SBP premiums after 30 November 2023. However, he is still responsible for RCSBP premiums incurred for coverage received at enrollment through 28 December 2022 when he became eligible to receive retired pay and changed from RCSBP to SBP, except for the period of 18 January 2012 until 20 July 2012 while he was unmarried with no insurable interest and RCSBP coverage should have been suspended.

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 24 January 2025 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 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 substantiates the applicant’s contentions, in part. In August 2008, the applicant enrolled in RCSBP Option C (Immediate Annuity) for spouse only coverage. In January 2012, the applicant and his spouse divorced, and he remarried approximately six months later. At that time, the applicant was eligible to make a change of election, but failed to notify ARPC or DFAS of the life changing events; therefore, coverage continued. At retirement, the applicant elected not to participate in SBP, but his spouse only coverage under RCSBP automatically converted to the same coverage under SBP and he was not eligible to make a change of election. Nevertheless, the applicant’s coverage under RCSBP should have been suspended during the period in which he was not married and had no eligible beneficiary. In addition, the applicant requested to discontinue SBP coverage during the 2023 SBP Open Season and, on 4 November 2023, DFAS approved the request with an effective date of 1 December 2023. Therefore, the Board recommends correcting the applicant’s records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show that:

- a. He be authorized reimbursement of RCSBP premiums withheld from his retired pay during the period in which he was not married, from 18 January 2012 through 21 July 2012.
- b. He be authorized reimbursement of SBP premiums withheld from his retired pay after an effective date of termination of 1 December 2023.

However, regarding the remainder of the applicant’s request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

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-2024-01087 in Executive Session on 29 May 2025:

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

All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 26 March 2024.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, ARPC/DPTT, dated 22 January 2025.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 24 January 2025.

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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.

11/24/2025

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Board Operations Manager, AFBCMR
Signed by: USAF

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