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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

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DOCKET NUMBER: BC-2024-01512

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His record be corrected to show he made a timely election for former spouse coverage under the Survivor Benefit Plan (SBP).

APPLICANT'S CONTENTIONS

He and his former spouse divorced in 2017 and neither of them were aware they had to submit a Reserve Component Survivor Benefit Plan (RCSBP) or SBP change request form within 12 months of divorce. When he applied for retired pay, he submitted his divorce decree and listed his former spouse as his beneficiary on DD Form 2656, *Data for Payment of Retired Personnel*. He is not being charged for SBP, and his former spouse is not listed. Their divorce decree requires she be listed as his SBP beneficiary.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air National Guard lieutenant colonel (O-5).

On 11 Aug 98, according to a Certificate of Marriage, provided by the applicant, he married his former spouse.

On 17 Mar 17, the applicant and his former spouse divorced. The divorce decree, provided by the applicant, required the applicant to provide RCSBP coverage for his former spouse. As of 10 Mar 18, the applicant had not filed a change to his RCSBP election under 10 U.S.C. § 1448(b)(3)(A)(iii), nor had his former spouse filed a deemed election under 10 U.S.C. § 1450(f)(3)(C).

On 13 Dec 21, ARPC/DPTT sent the applicant the standard Notification of Eligibility (NOE) 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.

On 8 Jan 23, according to DD Form 2656, the applicant elected Option C, *Previously elected or defaulted to immediate RCSBP Coverage*. Block 40, *Former Spouse Information*, reflects his former spouse and indicates that she has not remarried.

On 24 Apr 23, according to Reserve Order Work-Product, dated 19 May 23, the applicant was authorized retired pay and placed on the USAF Retired List.

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On 24 May 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 (Former Spouse); SBP Marital Status Affidavit (Retiree).

On 18 Jul 24, the applicant returned the completed affidavits. The applicant states that he is not currently married, and his former spouse indicated that she also is not currently married.

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. § 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 the Defense Finance and Accounting Service (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 granting the application. The applicant's military personnel record has been reviewed by Headquarters Air Reserve Personnel Center's (ARPC) Retirements Team. His record shows no proof he received his NOE and never made an RCSBP election. The SBP is administered pursuant to 10 U.S.C., Subchapter II, Chapter 73. SBP pays a monthly benefit to designated survivors of an eligible service member or retiree. SBP, and the associated RCSBP program, allows service members and retirees to ensure their designated beneficiaries continue to receive an annuity in place of their retired pay after their own death. 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 23 Oct 10, the applicant completed 20 satisfactory years of service; however, ARPC does not have record of the applicant's DD Form 2656-5, *Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate*, PS 3811, *Domestic Return Receipt*, or ARPC Form 123, *Reserve Component Survivor Benefit Plan Election Certificate* to confirm selection of RCSBP.

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 3 Mar 25 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 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. There is no evidence the applicant received the NOE and RCSBP information to make an informed decision. Therefore, his election for former spouse SBP coverage selected at retirement should be accepted. Therefore, the Board recommends correcting the applicant's records as indicated below.
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 pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show that:

- a. On 14 Mar 17, he submitted an election for former spouse coverage under the Reserve Component Survivor Benefit Plan, based on the previous full level of retired pay, naming FORMER SPOUSE as the eligible beneficiary.
- b. Approval should be contingent upon recovery of Survivor Benefit Plan premiums. If applicable, the monthly survivor benefit annuity will be applied to the premium debt until the total amount of premiums owed is recovered.

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-2024-01512 in Executive Session on 10 Apr 25:

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 23 Apr 24.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, ARPC/DPTT, dated 8 Dec 24.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 3 Mar 25.

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.

6/4/2025

X

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Board Operations Manager, AFBCMR

Signed by: USAF

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