

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2024-02481

XXXXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

His participation in the Survivor Benefit Plan (SBP) be terminated and he be refunded premiums unjustly deducted from his retired pay.

### APPLICANT'S CONTENTIONS

On 14 May 19, he and his wife went to a local base and completed DD Form 2656-2, *Survivor Benefit Plan (SBP) Termination Request*, to terminate SBP, but premiums are still being deducted from his retired pay. He recently contacted the Defense Finance and Accounting Service (DFAS) and learned he and his wife signed the form two days too early. Due to the error, DFAS was unable to process his election request, but he was never notified of an error with the paperwork.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a retired Air Force colonel (O-6).

On 18 Mar 02, 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. In addition, he was eligible to participate in the Reserve Component Survivor Benefit Plan (RCSBP) and should receive detailed RCSBP information by certified mail within 30 days.

On 8 Apr 02, according to ARPC Form 123, *Reserve Component Survivor Benefit Plan Election Certificate*, dated 9 May 02, the applicant elected Option C, *Immediate Annuity*, for spouse only, based on full retired pay.

On 11 Sep 09, according to Reserve Order XX-XXXX, dated 11 Sep 09, the applicant was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired List.

On 14 May 19, according to DD Form 2656-2, provided by the applicant, the applicant elected to discontinue participation in SBP, his spouse concurred with the decision and an SBP counselor certified the election. The DD Form 2656-2 indicates the applicant retired on XX XXX XX and was authorized retired pay on that date.

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

### APPLICABLE AUTHORITY

DoD 7000.14-R, *Financial Management Regulation*, Volume 7B, Chapter 54, paragraph 540213.  
Reserve Component Premium: When a Reserve member participates in RCSBP after first

becoming eligible based on 20 qualifying years of satisfactory service, coverage for the member's survivors commences but premiums are not paid until the member first becomes entitled to retired pay (usually age 60). At that time, reductions in the member's retired pay are made that are specifically related only to RCSBP coverage that was already provided while the member awaited the requisite age of entitlement to retired pay. These reductions are the Reserve Component Premiums.

10 U.S.C. § 1448a(a)), states a participant in SBP may, subject to the provisions of this section, elect to discontinue participation in the Plan at any time during the one-year period beginning on the second anniversary of the date on which payment of retired pay to the participant commences. Previously paid premiums will not be refunded, and participation in the Plan may not be resumed except through a qualified election.

### **AIR FORCE EVALUATION**

ARPC/DPTT (Transition Division) recommends denying the application. Based on the documentation provided and analysis of the facts, there is no evidence of an error or injustice on the part of ARPC. SBP is administered pursuant to 10 U.S.C., Subchapter II, Chapter 73 and pays a monthly benefit to designated survivors of an eligible service member or retiree. SBP, and the associated RCSBP, 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. 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 6 Sep 01, 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 reflecting the 20 satisfactory years in their record. The applicant signed ARPC Form 123 on 8 Apr 02, confirming receipt of his RCSBP NOE and willingly elected the RCSBP Option C. ARPC does not have a record of the applicant's DD Form 2656, *Data for Payment of Retired Personnel*, to confirm his SBP selection. Nevertheless, the DD Form 2656 cannot be used to change an election.

A service member may terminate SBP participation between the 25th and 36th month of being in retired pay status by contacting DFAS-Cleveland. This window of opportunity is for cancellation only and does not allow the retiree to start an election they previously declined. If applicable, spousal concurrence is required.

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 Jan 25 for comment (Exhibit D) but has received no response.

### **FINDINGS AND CONCLUSION**

1. The application was not timely filed, but it is in the interest of justice to excuse the delay.
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. While the Board notes the recommendation of ARPC/DPTT against correcting the record, the Board finds a preponderance of the evidence substantiates the applicant's contentions. The applicant made a valid RCSBP election opting for an Immediate Annuity for spouse only coverage, effective 8 Apr 02. Upon retirement and eligibility for retired pay (XX XXX XX), his RCSBP coverage was converted to SBP coverage. On 14 May 19, the applicant completed DD Form 2656-2 to terminate participation in SBP, and his wife concurred with the election. However, the election form was signed and dated two days prior to the beginning of the one year period authorized for termination. Due to the administrative error, DFAS was unable to process the termination request. Because the applicant was never notified of the erroneous date, nor provided an opportunity to correct the issue, his termination request should be honored; however, the applicant must pay premiums for the prior RCSBP and SBP coverage he received. Based on the evidence presented, the Board was convinced the applicant attempted to terminate his SBP coverage, with the required consent of his spouse, during the period allowed by law. 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. On 17 May 19, he elected to terminate participation in SBP, and his spouse concurred with the decision.

b. He be authorized reimbursement of SBP premiums withheld from his retired pay after termination, effective 17 May 19.

### **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-2024-02481 in Executive Session on 30 May 25:

, Panel Chair  
, Panel Member  
, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 15 Jun 24.  
Exhibit B: Documentary Evidence, including relevant excerpts from official records.  
Exhibit C: Advisory, ARPC/DPTT, dated 20 Nov 24.  
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 24 Jan 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.

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Board Operations Manager, AFBCMR