

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2024-02891

XXXXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

His record be changed to show he made a timely election to decline participation in the Survivor Benefit Plan (SBP), and he be refunded all premiums deducted from his retired pay.

### APPLICANT'S CONTENTIONS

He opted not to participate in SBP, but due to an administrative error premiums are being unjustly deducted from his retired pay.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a retired Air Force chief master sergeant (E-9).

On 17 Dec 19, according to DD Form 2656, *Data for Payment of Retired Personnel*, the applicant elected Option G, *I Elect Not to Participate in SBP*, and his spouse concurred with the decision with notarized signature, dated 26 Nov 19. The DD Form 2656, *Section XI, Part V-Spouse SBP Concurrence*, states the date of the spouse's signature must not be before the date of the member's signature, or on or after the date of retirement and must be notarized.

On 1 May 20, according to Special Order XX-XXXXXX, dated 16 Aug 19, the applicant retired from the Regular Air Force.

On 17 Jul 24, according to DFAS's congressional response, dated 24 Jul 24, provided by the applicant, DFAS indicated the applicant's SBP election was updated to reflect "no beneficiary" effective the date of divorce, 8 Feb 23. In addition, DFAS stated SBP premiums collected for the period the applicant did not have an eligible beneficiary were refunded to the applicant and advised him to petition the AFBCMR to change his coverage to reflect his declination elected at retirement.

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

### APPLICABLE AUTHORITY

Public Law 99-45, dated 8 Nov 85, established the requirement that a spouse's written concurrence be obtained if a member, who retires on or after 1 Mar 86, elects less than full spouse coverage.

### AIR FORCE EVALUATION

AFPC/DPFC (Casualty Matters Division) recommends granting the application. Department of Defense records show the applicant was married at the time of his retirement. The applicant attended his SBP briefing and completed DD Form 2656. The intended election was to decline coverage with spousal concurrence; however, the spouse and notary signed the form prior to the applicant completing his election with his and the SBP counselor's signature and date, causing the Defense Finance and Accounting Service (DFAS) to deem the election invalid and establish automatic spouse coverage, required by law. The Air Force SBP Program Manager has authority to administratively correct records in justifiable situations such as this one, within one year of the member's official retirement date. There is no evidence the SBP Office was made aware of the administrative error within the allowable timeframe.

Subsequently, the applicant and his spouse divorced, and he submitted DD Form 2656-6, *Survivor Benefit Plan Election Change Certificate*, along with a copy of the divorce decree to DFAS. The applicant's SBP spouse coverage was suspended, and his retired pay record updated to reflect no beneficiary (no former spouse coverage elected, nor a deemed election submitted). DFAS refunded premiums collected after the effective date of divorce from 1 Mar 23 through 30 Jun 23.

The applicant declined SBP coverage with spousal concurrence but was automatically enrolled, effective 1 May 20, due to an administrative error. Therefore, they recommend the applicant's declination be accepted and he be reimbursed all paid SBP premiums.

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 30 Oct 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 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 substantiates the applicant's contentions. Prior to retirement, the applicant elected to decline participation in SBP, and his spouse concurred with the decision. However, due to an administrative error on the election form, DFAS established automatic coverage as required by law. In Feb 23, the couple divorced, and in Jul 24, DFAS suspended the applicant's SBP coverage and refunded premiums collected after the effective date of divorce from 1 Mar 23 through 30 Jun 23. However, the applicant's automatic enrollment was based on an administrative error for which he was not aware. There is no evidence DFAS notified the applicant or the SBP Office of the administrative error at the time the document was submitted, nor is there evidence they provided an opportunity to correct the error to allow acceptance of the applicant's election. 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 30 Apr 20, he submitted a timely and effective election not to participate in SBP, and his spouse concurred with the decision.

b. He be authorized SBP premiums deducted from his retired pay from 1 May 20 through 28 Feb 23.

## **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-2024-02891 in Executive Session on 29 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 30 Jul 24.

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

Exhibit C: Advisory, AFPC/DPFC, dated 29 Oct 24.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 30 Oct 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**

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Board Operations Manager, AFBCMR