

JUN 25 1998

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-00619

COUNSEL: None

HEARING DESIRED: No

APPLICANT REQUESTS:

Corrective action to terminate Survivor Benefit Plan (SBP) spouse and child coverage.

APPLICANT CONTENDS THAT:

His SBP costs are in error. He elected child only coverage at retirement and he wants all SBP coverage cancelled.

In support of his appeal, the applicant provided a statement from his spouse who concurs with his request, a copy of DD Form 2656 (Data For Payment of Retired Personnel), a copy of the SBP Notification Brief Report of Individual Person (RIP), an Information Sheet on Projected Retiree for SBP, receipts for certified mail, and a memo for record.

Applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

The Air Force indicated the applicant elected reduced spouse and child coverage prior to his 1 Jan 97 retirement. The SBP counselor at [REDACTED] AFB, Nevada, provided verification that the applicant's wife did not attend the 4 Sep 96 SBP pre-retirement briefing. The counselor sent her a certified letter explaining the options and effects of the SBP along with the election form in order to acquire her concurrence/nonconcurrence. The return receipt shows she received the package on 25 Oct 96; however, she did not provide her concurrence in the election. The counselor forwarded the hold-back copy of the election without the spouse's concurrence statement to the Defense Finance and Accounting Service - Cleveland Center (DFAS-CL). Because the election for reduced coverage was invalid, full spouse and child coverage was established by DFAS-CL.

AIR FORCE EVALUATION:

The Chief, Retiree Services Branch, AFPC/DPPTR, reviewed this application and indicated that the statute controlling the SBP holds that an election may not be revoked after the member becomes entitled to retired pay. Section 1448(a)(3), Title 10, United States Code (USC), requires that, prior to the member's effective date of retirement, the spouse of a married member must concur in any election that provides less than full spouse SBP coverage. The applicant's election form clearly shows he elected reduced spouse and child coverage, refuting his claim that he elected child only coverage. He also signed the SBP RIP which states that failure to obtain the spouse's concurrence would result in maximum SBP coverage being established. There is no basis in the law to terminate applicant's coverage as long as his beneficiaries remain eligible. Approval of this request would provide the applicant an opportunity not afforded other retirees and is not justified. There is no evidence of error or injustice in this case and DPPTR recommends the requested relief be denied.

A complete copy of the Air Force evaluation is attached at Exhibit B.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to applicant on 22 Sep 97 for review and response. As of this date, no response has been received by this office.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. We took notice of the applicant's complete submission in judging the merits of the case; however, we agree with the opinion and recommendation of the Air Force and adopt their rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. Therefore, in the absence of evidence to the contrary, we find no compelling basis to recommend granting the relief sought in this application.
4. However, we note that Public Law (PL) 105-85 (effective 17 May 1998) provides an opportunity for retirees to terminate participation in the SBP beginning on the second anniversary of

their receipt of retired pay. For further information, applicant should contact the Retiree Services Branch (AFPC/DPPTR) at 1-800-531-7502.

THE BOARD DETERMINES THAT:

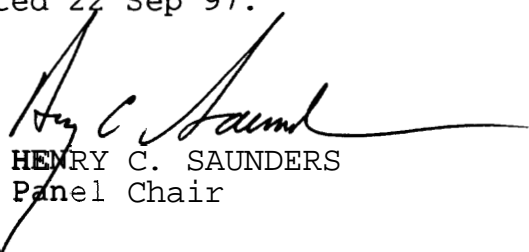
The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 21 May 98, under the provisions of Air Force Instruction 36-2603:

Mr. Henry C. Saunders, Panel Chair
Mrs. Barbara A. Westgate, Member
Ms. Ann L. Heidig, Member
Mrs. Joyce Earley, Examiner (without vote)

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 15 Feb 97, w/atchs.
Exhibit B. Letter, AFPC/DPPTR, dated 8 Sep 97.
Exhibit C. Letter, AFBCMR, dated 22 Sep 97.



HENRY C. SAUNDERS
Panel Chair