

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:
XXXXXXX

DOCKET NUMBER: BC-2012-00146
COUNSEL: NONE
HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His records be changed to show that he made an election for spouse and child coverage based on full retired pay effective 1 Dec 2011 under the Survivor Benefit Plan (SBP).

APPLICANT CONTENDS THAT:

After assessing his financial situation, he and his wife did not think they could afford to pay SBP premiums and canceled it before his retirement date began. He now regrets cancelling the SBP and needs to reenroll.

In support of his request, the applicant provides a copy of his DD Form 214, *Certificate of Release or Discharge from Active Duty*.

The applicant's complete submission, with attachment, is at Exhibit A.

STATEMENT OF FACTS:

A member, who is married at retirement and fails to provide coverage for an eligible spouse, may not provide coverage in the future, unless Congress authorizes an open enrollment period. Public Law (PL) 99-145, dated 8 Nov 1985, required the spouse of a member retiring on or after 1 Mar 1986, to concur in SBP elections that provide less than maximum spouse coverage. If the spouse does not concur in the election, coverage will be established on the spouse's behalf by operation of law. A retiring member may change his SBP election up to the date of separation.

According to the information provided by the Air Force office of primary responsibility, the applicant and his wife are married and have dependent children. On 8 Jun 2011, he and his wife were briefed on the options and effects of the SBP. The member elected spouse and child SBP coverage based on full retired pay on 16 Jun 2011. However, on 30 Nov 2011, one day prior to his 1 Dec 2011 retirement, he changed his election to decline SBP coverage and his wife concurred with his election.

AIR FORCE EVALUATION:

AFPC/DPSIAR recommends denial. DPSIAR states there is no indication the member was improperly counseled prior to his retirement. He had ample opportunity to investigate SBP alternatives and options prior to retiring. He exercised his right to change his SBP election before he retired and his wife concurred in his decision to decline SBP coverage. It was the applicant's responsibility to elect the SBP coverage that best suited his family's future security. His spouse's properly notarized signature on section XII of the DD Form 2656, *Data for Payment of Retired Personnel*, indicates her acknowledgement of his decision to decline SBP coverage and the election would be irrevocable. It would be inequitable to those members who chose to participate when eligible, to provide an additional opportunity for this member to change his SBP election.

The complete DPSIAR evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

On 14 Mar 2012, a copy of the Air Force evaluation was forwarded to the applicant for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit D).

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
3. Insufficient relevant evidence has been presented to demonstrate the existence of 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 office of primary responsibility and adopt its rationale as the basis for our conclusion the applicant has not been the victim of an error or injustice. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of 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 25 Oct 2012, under the provisions of AFI 36-2603:

XXXXXXX, Panel Chair
XXXXXXX, Member
XXXXXXX, Member

The following documentary evidence was considered in AFBCMR BC-2012-00146:

Exhibit A. DD Form 149, undated, w/atch.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Letter, AFPC/DPSIAR, dated 14 Mar 2012.
Exhibit D Letter, SAF/MRBR, dated 29 Aug 2012.

XXXXXXX
Panel Chair