

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00689

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His minor son be reflected as the beneficiary on his Reserve Component Survivor Benefit Plan (RCSBP) at the full retired pay level.

APPLICANT CONTENDS THAT:

When he retired in 1997 he was single and had no minor dependents and had no reason to make an RCSBP election. Therefore, he had no knowledge of the RCSBP program. In 2002, he called HQ Air Reserve Personnel Center (ARPC), well within one year of his new marriage, to obtain a copy of his DD Form 214, *Certificate of Release or Discharge from Active Duty*, update his records and sign his wife and stepdaughter up for appropriate benefits. At no time did the technician mention or explain RCSBP procedures or offer to send application documents and he assumed he had taken the appropriate steps to ensure his retirement would automatically transfer to his spouse upon his death.

While going through his divorce, he again contacted ARPC to ascertain procedures to ensure his minor son, born 15 June 2007, receive his retirement annuity in the event of his death. The ARPC Technician explained the RCSBP program and informed him, (inaccurately), that although his son was ineligible for RCSBP benefit at that time, he (the applicant) would be able to list him as his beneficiary upon his divorce which is considered a "significant life event." His divorce was finalized on 18 January 2012.

The ARPC Entitlements Section indicated his son was not currently entitled to the RCSBP benefit because he did not originally identify his spouse as the RCSBP beneficiary within one year of their marriage which voids divorce as a "significant life event" for the purposes of changing his election to reflect his son as the RCSBP beneficiary. He made several calls to ARPC to obtain documents and verify procedures and explained his situation to each customer service technician he spoke to but he was not informed that his son was ineligible until he faxed the DD Form 2656-6, *Survivor Benefit Plan Election Change*

Certificate, to the Entitlements Section then called to verify its receipt on 8 February 2012.

He served his country honorably on active duty for more than 13 years and as an Air Force Reserve member for an additional 7 years. He made a good faith effort to ensure his dependents received the retirement benefits his service provided. He received inadequate and inaccurate information and guidance which has resulted in the current situation. He respectfully requests this injustice be corrected to ensure his 4-year-old son is properly taken care of in the event of his death.

In support of his request, the applicant provides copies of his correspondence documents with ARPC as well as a copy of his DD Form 2656-6.

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

STATEMENT OF FACTS:

Information submitted by the applicant reflects he retired from the Air Force Reserves on 29 May 1997 in the grade of Captain, (O-3).

AIR FORCE EVALUATION:

HQ ARPC/DPTT recommends denial. DPTT states the applicant was notified of his eligibility to participate in the RCSBP program on 11 September 1997 via certified mail. The package was sent to the applicant's address at that time and the applicant signed the receipt for the notification package on 24 September 1997. The applicant made no election at that time and effective 23 December, 1997, as prescribed by Title 10 USC, Section 1448; he was automatically enrolled in Option A, "Decline to make an election until age 60." The applicant's records reflected no dependents at that time.

In 2002, when the applicant married his spouse and acquired a stepdaughter he stated that he contacted ARPC about updating his dependents information for RCSBP benefits within one year of his marriage as required by law. He also stated he wrote a letter to confirm the conversation with ARPC personnel about his request. ARPC has no record of receiving this document. The applicant acknowledged that he was not informed about providing his marriage certificate nor completing the required paperwork to designate his eligible dependents for RCSBP coverage but he believed his spouse and stepdaughter were covered under the RCSBP program at that time.

ARPC was not notified of the birth of his son within one year of the event as required by law. According to Title 10 USC, Section 1448, (3) (A) (iii), any such election must be written, signed, by the person making the election, and received by the Secretary concerned within one year after the date of the event. On 18 January 2012, the applicant submitted his divorce decree and a DD Form 2656-6 to ARPC. The DD Form 2656-6 reflected a change of RCSBP election to full and immediate coverage for child only. The applicant was informed that his election was invalid because of his automatic election declining participation until age 60. He stated that he was consistently misinformed by ARPC personnel about updating his RCSBP election based on his life changing events. As prescribed by law Title 10 USC, 1448(a)(5)(A)(B), "a person who is not married and has no dependent child upon becoming eligible to participate in the Plan but who later marries or acquires a dependent child may elect to participate in the Plan within one year after the date of the event."

The complete ARPC/DPTT evaluation, with attachments, is at Exhibit B.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant states while he has no additional evidence to provide, he respectfully disagrees with the ARPC analysis which relies heavily on rules that may be familiar to ARPC personnel, but are somewhat arcane to those who are no longer closely associated with the Reserve Personnel system. When he retired in 1997 he had no dependents and therefore, had no need to memorize the various requirements associated with the RCSBP program.

The applicant reiterates his contention that he contacted ARPC within a year of his marriage. He acknowledges that ARPC's analysis that he did not report his son's birth in 2007 is valid. However, based on his conversation with the ARPC technician in 2002, he believed his son was not eligible for any benefits except Base Exchange and Commissary privileges which were not really pertinent for an infant. He believed that in the event of his death his, then, wife would receive his retired pay to assist with his son's upbringing.

The events leading up to the current situation occurred 5, 10, and 13 years after he retired and he therefore relied heavily on the ARPC Customer Service Personnel to help him navigate a system that was not a daily presence in his life. In hindsight he should have asked more questions and verified the information he received, but it is clear that he made a sincere effort and unfortunately received inaccurate and incomplete guidance. He urges the Board to please consider this as his AFBCMR application is reviewed. He hopes to utilize his retirement

benefits and see his young son well into adulthood. However, if anything should happen to him before then, this single benefit provided to his young son would be the greatest gift he could give him and it would be a fitting culmination of his 20 years of military service.

The applicant's complete response, with attachment, is at 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 warranting corrective action regarding the applicant's election of Survivor Benefit Plan, child-only coverage. 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 that the applicant has not been the victim of an error or injustice. While the applicant's circumstance is regrettable, we are not persuaded by the evidence provided that the applicant exercised due diligence regarding RCSBP coverage for his dependent son. 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 BC-2012-00689 in Executive Session on 25 October 2012, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149 dated 10 February 2012, w/atchs.
- Exhibit B. Letter, ARPC/DPTT, dated 23 March 2012, w/atchs.
- Exhibit C. Letter, SAF/MRBR, dated 30 March 2012.
- Exhibit D. Letter, Applicant, dated 13 April 2012, w/atch.

Panel Chair