

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-02652
COUNSEL: NONE
HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

He be allowed to withdraw from the Reserve Component Survivor Benefit Plan (RCSBP).

APPLICANT CONTENDS THAT:

He was informed that he could change his RCSBP election on the day of his retirement.

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

STATEMENT OF FACTS:

On 1 February 2006, the applicant made an RCSBP election of immediate annuity full coverage for his spouse on Department of Defense (DD) Form 2656-9, *Survivor Benefit Plan (SBP) and RCSBP Open Enrollment Election*. The form was properly signed in Section IX, *Certification*. It contains the statement "I understand this election is irrevocable, except as described in the instructions and that the election is void if I do not live for 24 months from the effective date of the election."

On 24 January 2012, the applicant completed DD Form 2656, *Data for Payment of Retired Personnel*, when he applied for retired pay. In Section IX - Survivor Benefit Plan (SBP) Election, he marked the box to participate in the SBP program. However, this election was not necessary because he had a previous RCSBP election in place. Section XI, *Certification*, on the DD Form 2656 states that the member can terminate SBP participation, with his spouse's written concurrence, within one year after the second anniversary of commencement of retired pay. By law, Title 10, USC, Section 1448(a)(4), an RCSBP election cannot be revoked.

The applicant was transferred to the USAF Retired List under the provisions of Title 10, United States Code (USC), Section 12731, effective 21 May 2012, his 60th birthday. He has been receiving retired pay since that date.

AIR FORCE EVALUATION:

ARPC/DPTT recommends denial. DPTT indicates the applicant made a valid RCSBP election on the DD Form 2656-9 and certified with his signature that this was an irrevocable decision. His spouse has had full coverage since 1 February 2006 and, if the applicant had died, she would have received a survivor benefit annuity under this program.

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

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 20 August 2012, for review and comment within 30 days (Exhibit C). As of this date, this office has received no response.

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 an error or an 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.
4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

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 AFBCMR Docket Number BC-2012-02652 in Executive Session on 12 February 2013, under the provisions of AFI 36-2603:

_____, Panel Chair
_____, Member
_____, Member

The following documentary evidence was considered in connection with AFBCMR Docket Number BC-2012-02652:

- Exhibit A. DD Form 149, dated 18 Jun 12, w/atck.
- Exhibit B. Letter, ARPC/DPTT, dated 7 Aug 12, w/atcks.
- Exhibit C. Letter, SAF/MRBR, dated 20 Aug 12.

Panel Chair