



DEPARTMENT OF THE AIR FORCE
WASHINGTON, D. C.

Office of the Assistant Secretary

AFBCMR 96-03563

NOV 05 1997

MEMORANDUM FOR THE CHIEF OF STAFF

Under the authority of Section 1552, Title 10, United States Code, Air Force Instruction 36-2603, and having assured compliance with the provisions of the above regulation, the decision of the Air Force Board for Correction of Military Records is announced, and it is directed that:

The pertinent military records of the Department of the Air Force relating to [REDACTED] be corrected to show that on 28 January 1994, he elected under the Survivor Benefit Plan (SBP) to change his coverage from "spouse coverage" to "former spouse and child coverage." naming [REDACTED] as former spouse beneficiary, based on full retired pay.

A handwritten signature in cursive script, reading "Donna Pittenger", is positioned above the typed name.

DONNA PITTENGER
Chief Examiner
Air Force Board for Correction
of Military Records



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

Office of the Assistant Secretary

AFBCMR 94-04473

NOV 05 1997

MEMORANDUM OF CONSIDERATION OF APPLICATION BEFORE THE AFBCMR

JEC . [REDACTED]

Having carefully reviewed this application, we agree with the recommendation of the Air Force and adopt the rationale expressed as the basis for our decision that the applicant has been the victim of either an error or an injustice. Therefore, under the authority delegated in AFI 36-2603, the applicant's records will be corrected as set forth in the accompanying Memorandum for the Chief of Staff signed by the Executive Director of the Board or his designee.


Panel Chairman

Attachment:
Ltr, AFPC/DPPTTR, dtd 3 Oct 97



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE PERSONNEL CENTER
RANDOLPH AIR FORCE BASE TEXAS

U.S. AIR FORCE



3 OCT 1997

MEMORANDUM FOR AFBCMR

FROM: HQ AFPC/DPPTR
550 C Street West Ste 11
Randolph AFB TX 78150-4713

SUBJECT: Application for Correction of Military Records

Reference: [REDACTED]

Requested Correction: The applicant is requesting corrective action to show he filed a timely election for former spouse and child coverage under the Survivor Benefit Plan (SBP) to comply with his divorce decree.

Basis for Request: The applicant claims he wrongfully expected the Defense Finance and Accounting Service-Cleveland Center (DFAS-CL) to automatically act when his divorce decree was received and though SBP coverage would be established on behalf of his former spouse.

Background:

a. A spouse's eligibility as a SBP beneficiary terminates upon divorce. However, the law provides two mechanisms for changing spouse to former spouse coverage. Both must be exercised within the first year following divorce: the retiree may file an election change, or the former spouse may request the retiree be deemed to have made such a change on his or her behalf. In the latter case, the former spouse must provide legal documentation that the member agreed, or the court ordered the member, to establish former spouse coverage. If neither the member nor former spouse requests the election change during the one-year eligibility period, former spouse coverage may not be established thereafter. Thus, even though a member may not have notified the DFAS of his divorce and continued to pay premiums for spouse coverage after the divorce, the former spouse is not eligible for annuity payments upon the member's death.

b. Spouse only coverage, maximum annuity, is established when a mamed member declines coverage and fails to obtain the spouse's concurrence in the election prior to the effective date of retirement.

Facts: The applicant was mamed and had eligible children prior to his 1 Dec 93 retirement. He elected to decline coverage on 25 Jun 93, but failed to obtain his wife's concurrence. The DFAS-CL established coverage for his wife based on full retired pay and erroneously added the children as contingent beneficiaries. The parties divorced on 27 Jan 94, premiums for the spouse's portion of the coverage were suspended, and costs for the child's portion continued to be deducted. Neither party submitted a valid election for former spouse coverage within the required time.

9404473

Discussion: The petitioner submitted this request for correction after **DFAS-CL** advised him of the requirements for establishing former spouse coverage. Although the member did not elect coverage on his children's behalf when he retired, the law permits a retiree to add them as contingent beneficiaries in conjunction with an election for former spouse coverage. He has provided a statement of his willingness to repay all past due premiums and to deny the request would be to deny the former spouse an asset awarded her by the court.

Recommendation: Although there is no evidence of Air Force **error** in this case, to preclude a possible injustice, we recommend **the member's record** be corrected to reflect on 28 Jan 94 he elected to change from **SBP spouse only coverage** to former spouse and child coverage based on full retired pay, naming [REDACTED] as the former spouse beneficiary. Approval should be contingent upon recovery of appropriate costs.



PAT PEEK, DAFC
Chief, Retiree Services Branch
Directorate of Pers Program Mgt

9404473

ADDENDUM TO
RECORD OF PROCEEDINGS

The following members of the Air Force Board for Correction of Military Records considered this case in Executive Session on 4 November 1997, in accordance with AFI 36-2603 and 10 USC 1552.

Mr. LeRoy T. Baseman, Panel Chairman

Mr. Joseph G. Diamond, Member

Mr. David W. Mulgrew, Member