



DEPARTMENT OF THE AIR FORCE
WASHINGTON, D. C.

Office of the Assistant Secretary

AFBCMR 96-03563

NOV 0 5 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 30 April 1995, he elected "former spouse and child coverage" under the Survivor Benefit Plan (SBP), naming [REDACTED] as beneficiary, based on full retired pay.

A handwritten signature in cursive script that reads "Donna Pittenger".

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 96-03294

NOV 05 1997

MEMORANDUM OF CONSIDERATION OF APPLICATION BEFORE THE AFBCMR

1 [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.

A handwritten signature in black ink, appearing to be "K. J. [unclear]", written over a horizontal line.

Panel Chairman

Attachment:
Ltr, AFPC/DPPTR, dtd 8 Oct 97



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



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MEMORANDUM FOR AFBCMR

FROM: HQ AFPC/DPPTTR
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 establish former spouse and child coverage under the Survivor Benefit Plan (SBP).

Basis for Request: The applicant claims he was ordered to cover his former spouse under the SBP as part of her community property interest and does not want to be held in contempt of court.

Backaround: The law controlling the SBP allows a member to make an election for former spouse coverage at retirement. The election may be made voluntarily, to comply with the provisions of a divorce decree or to honor an agreement not incorporated by the court order.

Facts: The member married [REDACTED] on 2 Jun 73 and they were divorced on 24 Apr 95. The court order terminating their marriage was silent on the matter of the SBP; however, the attachment to the judgment states that "remaining issues ... may be determined in a trial ...". The member elected child only coverage based on full retired pay prior to his 1 May 95 retirement. He married [REDACTED] on 21 Oct 95 and sent the Defense Finance and Accounting Service - Cleveland Center (DFAS-CL) a copy of their marriage certificate, but did not request she be added to his SBP coverage. Nevertheless, DFAS-CL erroneously established [REDACTED] as the eligible spouse beneficiary effective 21 Oct 96 (the first anniversary of their marriage). On 17 Apr 96 the member's former spouse petitioned the court and a Further Judgment on Reserved Issues was issued, ordering him to maintain former spouse SBP coverage. On 29 Apr 97, the DFAS-CL removed the erroneously established spouse coverage, child only coverage was reestablished retroactive to the date of retirement, and premiums deducted for his wife's coverage were refunded to the member.

Discussion: The member's application states he "nominated of (sic) my wife and myself as beneficiaries in the Survivor's Benefit Program (sic)" when he declared his intention to retire. However, the DD Form 2656, Data for Payment of Retired Personnel, clearly shows he did not report any data pertaining to his former spouse and elected child only coverage. Because the member's divorce decree did not address the SBP, there was no requirement for him to elect former spouse coverage, but he could have done so voluntarily. It is our opinion that the 17 Apr 96 court order is not enforceable because it was issued after the member was already retired. However, the record can be corrected to show he elected former spouse and

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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