



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 26 January 1996, he elected under the Survivor Benefit Plan (SBP) to change his coverage from "spouse coverage" to "former spouse as beneficiary, based on a reduced level of retired pay."

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

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



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WASHINGTON, DC

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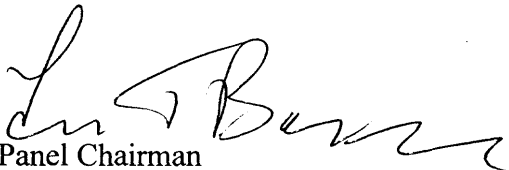
'AFBCMR 97-01672

NOV 05 1997

MEMORANDUM OF CONSIDERATION OF APPLICATION BEFORE THE AFBCMR

SUBJECT: [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/DPPTR, dtd 22 Sep 97



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



22 SEP 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

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

Basis for Request: The applicant claims he was unaware that any changes were required on the SBP election since the current beneficiary and his former spouse are the same person.

Background: A spouse's eligibility as an SBP beneficiary terminates upon divorce. However, the law provides two mechanisms for changing spouse coverage 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 that the court ordered the member, to establish former spouse coverage. If neither the member nor the former spouse requests the election change during the one-year eligibility period, former spouse coverage may not be established thereafter. Even though a member fails to notify the Defense Finance and Accounting Service (DFAS) of the divorce and continues to pay SBP premiums afterwards, the former spouse is not eligible for annuity payments upon the member's death.

Facts: The member elected spouse only SBP coverage, reduced annuity, prior to his 1 Oct 94 retirement and his wife concurred in his election. They divorced on 25 Jan 96 and the divorce decree required SBP coverage be continued; however, neither the applicant nor his former spouse submitted a valid election change during the required time limit. Neither the member nor the former spouse has remarried and SBP premiums continue to be deducted from his retired pay.

Discussion: Although neither party submitted an election during the required time limit, there is no evidence the applicant requested coverage for his former spouse

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be terminated, indicative of his intent to maintain her as the eligible **SBP** beneficiary. To deny this request would be to deny his former spouse an asset awarded to her by the court.

Recommendation: Although there is no evidence of Air Force error, to preclude a possible injustice, we recommend the member's record be corrected to reflect that on 26 Jan 96 he elected to change SBP spouse coverage to former spouse coverage based on a reduced level of retired pay, naming [REDACTED] as beneficiary. Approval should be contingent upon recoupment of any applicable premiums.

Pat PEEK

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

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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