

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-02105

[REDACTED]
[REDACTED]
COUNSEL: None

JAN 23 1998

HEARING DESIRED: No

Applicant requests she be allowed to receive an annuity under the Reserve Component Survivor Benefit Plan (RCSBP). Applicant's submission is at Exhibit A.

The appropriate Air Force office evaluated applicant's request and provided an advisory opinion to the Board recommending the application be denied (Exhibit C). The advisory opinion was forwarded to the applicant for review and response (Exhibit D). As of this date, no response has been received by this office.

After careful consideration of applicant's request and the available evidence of record, we find insufficient evidence of error or injustice to warrant corrective action. Since the member was not married to the applicant for a period of at least one year prior to the service member's death as stipulated by Title 10, United States Code, Section 1448, the Board is without the authority to grant applicant's request. The facts and opinions stated in the advisory opinion appear to be based on the evidence of record and have not been rebutted by applicant. Absent persuasive evidence applicant was denied rights to which entitled, appropriate regulations were not followed, or appropriate standards were not applied, we find no basis to disturb the existing record.

Accordingly, applicant's request is denied.

The Board staff is directed to inform applicant of this decision. Applicant should also be informed that this decision is final and will only be reconsidered upon the presentation of new relevant evidence which was not reasonably available at the time the application was filed.

Members of the Board Ms. Martha Maust, Mr. Joseph G. Diamond, and Mr. Kenneth L. Reinertson considered this application on 22 January 1998 in accordance with the provisions of Air Force Instruction 36-2603, and the governing statute, 10, U.S.C. 1552.


MARTHA MAUST
Panel Chair

Exhibits:

- A. Applicant's DD Form 149
- B. Available Master Personnel Records
- C. Advisory Opinion
- D. AFBCMR Ltr Forwarding Advisory Opinion



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR RESERVE PERSONNEL CENTER

24 SEP 1997

MEMORANDUM FOR AFBCMR

FROM: HQ ARPC/DR
6760 E Irvington Place #3000
Denver CO 80280-3000

SUBJECT: Application for Correction of Military Records, [REDACTED]

1. We have re-examined the case submitted to the AFBCMR by the applicant and reverse our previous recommendation. The applicant was led to believe she would be eligible to receive an annuity to begin on her late spouse's 60th birthday and actually received a letter to this effect; however, it does not preempt the statutes of Title 10, United States Code, Section 1448.

2. There is no provision of law which allows RCSBP annuity to be paid to a surviving spouse if the length of the marriage was not for a period of at least one year prior to the service member's death. In view of the above, we recommend the applicant's request be denied.

3. Action officer is [REDACTED], DSN [REDACTED]. He can also be reached by fax at [REDACTED] or by e-mail at [REDACTED].

Ann C. Shippy
ANN C. SHIPPY, Major, USAF
Deputy Director of Customer Assistance

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DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR RESERVE PERSONNEL CENTER

28 AUG 1997

MEMORANDUM FOR- AFBCMR

FROM: HQ ARPC/DR
6760 E Irvington Pl #3000
Denver CO 80280-3000

SUBJECT: Application for Correction of Military Records

1. The requested correction cannot be accomplished administratively at this headquarters.
2. The applicant is requesting that she be allowed to receive an annuity under the Reserve Component Survivor Benefit Plan (RCSBP).
3. The following is an analysis of the circumstances surrounding the case:
 - a. On 15 Jul 85, a letter from the member, dated 24 Jun 85, requesting a change of his beneficiary **was** received by **the** Air Reserve Personnel Center (ARPC).
 - b. The member and the applicant were married on 8 Jun 85. The member died on 17 Mar 86, less than one year from the date of marriage.
 - c. The applicant states that on numerous occasions, she **was** led to believe that she would be eligible to receive an annuity to begin on her late spouse's 60th birthday. **A** letter from the ARPC dated 28 Oct 86, informed the applicant that she would **receive** this annuity.
4. The requirement that a widow of a retired member is not eligible to receive an annuity under the Survivor Benefit Plan if she was married to the member less than one year immediately preceding his death is clearly established by Title 10, United States Code, Section 1448.

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5. Recommendation: Although the applicant is ineligible according to law, we feel that an injustice has occurred. Therefore, recommend the applicant's request be approved. If the decision is to grant the relief sought, the applicant should be deemed eligible for receipt of the annuity.

6. Action officer is Mr. [REDACTED]. He can also be reached by fax at DSN [REDACTED] and by e-mail at [REDACTED].

Signed

DAVID M. GALLOP
Director of Customer Assistance

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