

JUL 27 1996

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-03182

COUNSEL: Eugene D. Bernstein

HEARING DESIRED: No

APPLICANT'S REQUESTS THAT:

His records be corrected to show he filed a timely election for former spouse coverage under the Survivor Benefit Plan (SBP) to comply with his divorce decree and coverage was converted to his wife when his former spouse remarried.

APPLICANT CONTENDS THAT:

The reasons the applicant believes the records to be in error or unjust and the evidence submitted in support of the appeal are at Exhibit A.

STATEMENT OF FACTS:

The relevant facts pertaining to this application, extracted from the applicant's military records, are contained in the letter prepared by the appropriate office of the Air Force. Accordingly, there is no need to recite these facts in this Record of Proceedings.

AIR FORCE EVALUATION:

The Chief, Retiree Services Branch, HQ AFPC/DPPT, reviewed the application and states that changing spouse coverage to former spouse coverage must be exercised within the first year following divorce. Court-ordered former spouse coverage may be terminated if the member obtains an amended court order that removes the requirement to provide former spouse coverage in order to provide coverage for a spouse. Former spouse coverage is suspended if the former spouse remarries before age 55 and costs cease effective the first day of the month after the month of remarriage. Eligibility and premiums are reinstated effective the first day of the month after the date the former spouse's remarriage terminates. If the member dies while the former spouse

is ineligible, entitlement is re-instated in the event the disqualifying marriage subsequently terminates. Applicant was married and elected spouse and child coverage, maximum annuity, prior to his 1 October 1987 retirement. Although divorced on 27 June 1988 and the divorce decree required SBP coverage be continued, neither party submitted a valid election change during the first year following the divorce. Applicant remarried on 21 July 1990. On 24 July 1995, the former spouse obtained a Qualified Domestic Relations Order requiring the applicant to comply with the provision of the original decree that included the former spouse must be maintained as the SBP beneficiary. The former spouse remarried on 29 July 1995 (prior to attaining age 55). In December 1997, DFAS suspended spouse coverage retroactive to the date of divorce, established the applicant's current spouse as the eligible beneficiary effective 21 July 1991, and refunded premiums of approximately \$3,200. To preclude a possible injustice, the author recommends partial relief and indicates how the record should be corrected to accomplish this.

A complete copy of the Air Force evaluation is at Exhibit B.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A complete copy of the Air Force evaluation was forwarded to the applicant on 19 March 1998, for review and response within 30 days. As of this date, no response has been received by this office.

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. Sufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice to warrant partial relief. As indicated by the Air Force, although the applicant made no election change during the required one-year time limit following his divorce, there is no evidence that he requested DFAS terminate his former spouse's coverage. The Air Force indicates the applicant is aware that, should his request be approved, his former spouse's remarriage will not terminate coverage but will only suspend her eligibility for the SBP and his pay will be readjusted. The Air Force also advises that he agrees to repay the applicable premiums. We agree that to deny the applicant's request for former spouse coverage would be to deny his former spouse an asset awarded her by the court. However, as indicated by the Air Force, there is no basis in law

permitting spouse coverage on his present wife's behalf absent an amendment to the court order which would remove the requirement that the former spouse be maintained as the eligible SBP former spouse beneficiary. Therefore, in order to preclude a possible injustice to applicant's former spouse, we agree with the Air Force's suggested partial relief and recommend the applicant's records be corrected to the extent indicated below.

THE BOARD RECOMMENDS THAT:

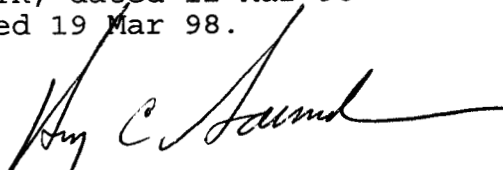
The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that on 28 June 1988, he elected, under the Survivor Benefit Plan, to change his "spouse and child coverage" to "former spouse and child coverage" based on full retired pay, naming [REDACTED] as the former spouse beneficiary; and former-spouse coverage was suspended effective 1 August 1995 following her remarriage.

The following members of the Board considered this application in Executive Session on 22 June 1998, under the provisions of AFI 36-2603:

Mr. Henry C. Saunders, Panel Chair
Mrs. Barbara A. Westgate, Member
Ms. Ann L. Heidig, Member

All members voted to correct the records, as recommended. The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 15 Oct 97, w/atchs.
- Exhibit B. Letter, HQ AFPC/DPPTR, dated 12 Mar 98
- Exhibit C. Letter, AFBCMR, dated 19 Mar 98.


HENRY C. SAUNDERS
Panel Chair



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

172 MAR 1998

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

[REDACTED]

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

Basis for Request: The applicant claims he was unaware of the requirement to change the SBP beneficiary from spouse to former spouse.

Background:

a. A spouse beneficiary loses eligibility to receive an annuity following 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.

b. Court-ordered former spouse coverage may be terminated if the member obtains an amended court order that removes the requirement to provide former spouse coverage in order to provide coverage for a spouse. Former spouse coverage is suspended if the former spouse remarries before age 55, and costs cease effective the first day of the month after the month of remarriage. Eligibility and premiums are reinstated effective the first day of the month after the date the former spouse's remarriage terminates. If the member dies while the former spouse is ineligible, entitlement is re-instated in the event the disqualifying marriage subsequently terminates.

Facts: The member was married and elected spouse and child coverage, maximum annuity, prior to his 1 Oct 87 retirement. The parties divorced 27 Jun 88 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. The member

remarried 21 Jul 90. On 24 Jul 95, the former spouse obtained a Qualified Domestic Relations Order requiring the applicant to comply with the provision of the original decree that included the former spouse must be maintained as the SBP beneficiary. The former spouse remarried on 29 Jul 95 (prior to attaining age 55). In Dec 95, the DFAS - Cleveland Center (DFAS-CL) suspended spouse coverage retroactive to the date of divorce, established the member's current spouse as the eligible beneficiary effective 21 Jul 91, and issued the applicant a refund of premiums (subject to the six-year statute of limitations - approximately \$3,200).

Discussion: Although the member made ~~no election~~ change during the required one-year time limit following divorce, there is no evidence that he requested DFAS terminate his former spouse's coverage. The applicant is aware that if his request is approved, his former spouse's remarriage will not terminate coverage, but will suspend her eligibility for the SBP and his pay will be readjusted. The member agrees to repay any premium debt. To deny the applicant's request for former spouse coverage would be to deny his former spouse an asset awarded her by the court. However, there is no basis in law to permit spouse coverage to be established on Maureen's behalf absent an amendment to the court order removing the requirement that Helen be maintained as the eligible SBP former spouse beneficiary.

Recommendation: Although there is no evidence of Air Force error, to preclude a possible injustice, we recommend partial relief: the member's record should be corrected to reflect that on 28 Jun 88 he elected to change SBP spouse and child coverage to former spouse and child coverage based on full retired pay, naming [REDACTED] as the eligible former spouse beneficiary, and former spouse coverage was suspended effective 1 Aug 95 following her remarriage. Approval should be contingent upon recoupment of any applicable premiums.



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



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

JUL 27 1996


Office of the Assistant Secretary

AFBCMR 97-03182

MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Air Force Board for Correction of Military Records and under the authority of Section 1552, Title 10, United States Code (70A Stat 116), 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 June 1988, he elected, under the Survivor Benefit Plan, to change his "spouse and child coverage" to "former spouse and child coverage" based on full retired pay, naming [REDACTED] the former spouse beneficiary; and former spouse coverage was suspended effective 1 August 1995 following her remarriage.


JOE G. LINEBERGER
Director
Air Force Review Boards Agency