

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NO: 97-03355

AUG 21

COUNSEL: NONE

HEARING DESIRED: NO

[REDACTED]

Applicant requests that her late husband's records be corrected to reflect that he elected coverage for her under the Survivor Benefit Plan (SBP). 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). Applicant has provided a response (Exhibit E).


The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.

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. The facts and opinions stated in the advisory opinion appear to be based on the evidence of record and have not been adequately 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 Mr. Thomas S. Markiewicz, Mr. Henry Romo Jr., and Mr. Walter J. Hosey, considered this application on 19 August 1998, in accordance with the provisions of Air Force Instruction 36-2603, and the governing statute, 10, U.S.C. 1552.


THOMAS S. MARKIEWICZ
Panel Chair

Exhibits:

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



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

16 MAR 1998

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

Requested Correction: The applicant, widow of the above-named retired member, is requesting corrective action that would entitle her to a Survivor Benefit Plan (SBP) annuity.

Basis for Request: The applicant claims she was never informed she did or did not have survivor benefits, and that the decedent was never notified of any open seasons.

Background:

a. Public Law (PL) 87-381, Retired Serviceman's Family Protection Plan (RSFPP), was in effect when the member retired. Members were briefed and required to make their **RSFPP** elections before completing 18 years of service. No spouse notification was required. The RSFPP has several unattractive features and **less** than 15 percent of members retired during its existence enrolled.

b. Public Law (PL) 92-425, which established the SBP on 21 Sep 72, authorized an 18-month enrollment period for retired members to elect **SBP** coverage. PLs 97-35 and 101-189 later authorized two additional open enrollment periods: 1 Oct 81 - 30 Sep 82 and 1 Apr 92 - 31 Mar 93, respectively. During all open enrollment periods, members were advised by direct mail of their eligibility to make an election. The enrollment packets, as well as the Afterburner, USAF News For Retired Personnel, published during those timeframes, were sent by direct mail to the member's correspondence address maintained by the finance center and contained points of contact for members to use to gain additional information.

c. There were no provisions in the laws during these open enrollment periods requiring the Services to notify spouses of retired members if the member did not enroll. Federal Appeals Court decision—Appeal 85-927, Helen Passaro v. U.S.—held that the notice provision does not apply to a service member already entitled to retired or retainer pay on 21 Sep 72.

Facts: Defense Enrollment Eligibility Reporting System (DEERS) records indicate the decedent and applicant were married on 15 Jan 44. The member did not enroll in the RSFPP prior to his 1 Aug 69 retirement. There is no evidence he returned an election form during any of the three SBP open enrollment periods. He died on 15 Aug 97.

Discussion: Microfiche records verify SBP enrollment packets and newsletters mailed to the decedent during the 81-82 and 92-93 open enrollment periods (copies enclosed in case)

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