



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

JUL 20 1998

Office of the Assistant Secretary

AFBCMR 98-00427

MEMORANDUM OF CONSIDERATION OF APPLICATION BEFORE THE AFBCMR

SUBJECT: [REDACTED]

Having carefully reviewed this application, we agree with the recommendation of the Air Staff 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 read "Ray C. [unclear]".

Panel Chair

Attachment:
Ltr, AFPC/DPPT, dtd 2 Jun 98



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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 15 November 1995 he elected under the Survivor Benefit Plan to change his coverage from "spouse coverage" to "former spouse coverage," naming [REDACTED] as former spouse beneficiary, based on a reduced annuity.

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
HEADQUARTERS AIR FORCE PERSONNEL CENTER
RANDOLPH AIR FORCE BASE TEXAS

2 JUN 1995

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 show he elected former spouse coverage, reduced annuity under the Survivor Benefit Plan (SBP) to comply with the court order.

Basis for Request: The applicant claims the proper paper work was not filed by the divorce lawyer to provide SBP for his former spouse.

Background: A spouse's eligibility to receive an annuity terminates upon divorce. However, the law provides two mechanisms for changing spouse 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 the court ordered the member, to establish former spouse coverage. If neither the member nor former spouse requests the election change within the one-year eligibility period, former spouse coverage may not be established thereafter. Even though SBP premiums continue to be deducted from the member's retired pay following divorce, the former spouse is not entitled to receive the annuity in the event of the member's death.

Facts: The member elected spouse only coverage based on a reduced level of retired pay prior to his 1 Mar 90 retirement. The parties divorced on 14 Nov 95 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. Premiums continued to be deducted from his retired pay until Mar 97 when the Defense Finance and Accounting Service - Cleveland Center (DFAS-CL) updated his records, suspended SBP costs, and refunded the premiums retroactive to the date of divorce.

Discussion: Even though the member did not make a valid former spouse election change, there is no evidence he requested coverage for her be terminated. To

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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 on 15 Nov 95 he elected former spouse coverage based on the previous level of retired pay, naming [REDACTED] as beneficiary. Approval should be contingent upon recoupment of any applicable premiums.



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

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