



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

DEC 17 1998

Office of the Assistant Secretary

AFBCMR 98-01151

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 1 [REDACTED] '3, he elected former spouse coverage under the Survivor Benefit Plan, naming [REDACTED] as the former spouse beneficiary based on full retirement pay.

A handwritten signature in black ink, appearing to read "Raymond H. Weller".

RAYMOND H. WELLER
Examiner

Air Force Board for Correction
of Military Records



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

DEC 17 1998

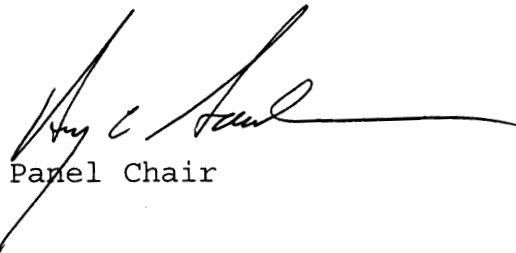
Office of the Assistant Secretary

AFBCMR 98-01151

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 Chair

Attachment:
Ltr, AFPC/DPPTR, dtd 14 Sept 98



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

14 SEP 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

Reference: [REDACTED]

Requested Correction: The applicant, former spouse 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 neither the member nor she made the formal election necessary to reinstate her entitlement to survivor benefits.

Backaround: A spouse's eligibility to receive an SBP 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 applicant and retiree were married and the member elected spouse and child coverage, immediate annuity, under the Reserve Component SBP (RCSBP) when he completed his service obligation (30 Sep 83). The decedent turned age 60 on 24 Jul 91 and began to receive retired pay. The parties divorced 17 Dec 93 and the divorce decree was silent on the issue of SBP. However, the applicant was awarded SBP by a 29 Mar 94 amendment. The retiree married [REDACTED] on 12 Feb 94, but took no affirmative action to make her the beneficiary for the SBP. Absent a valid election for former spouse coverage, [REDACTED] became the eligible spouse beneficiary by operation of law on 13 Feb 95. The member died 11 Jun 96 and his widow is currently receiving the SBP payments. There is no evidence the decedent nor the applicant took the required action to change the coverage, and SBP premiums continued to be deducted from the member's retired pay during the period he had no eligible spouse beneficiary.

Discussion: The decedent did not request coverage for the applicant be terminated, her birthdate (31 Dec 30) is listed as the beneficiary on the finance record, and he did not request coverage be established on his wife's behalf, all indicative of his willingness to maintain coverage for his former spouse. To deny her request would be to deny her an asset awarded her by the court.

Recommendation: Although there is no evidence of Air Force error, to preclude a possible injustice, we recommend that the member's record be corrected to reflect that on 18 Dec 93, he elected former spouse coverage, naming [REDACTED] as the former spouse beneficiary. Approval should be contingent upon recoupment of appropriate premiums.

Pat PEEK

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