

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 98-01709

NOV 13 1998

COUNSEL: None

HEARING DESIRED: No

APPLICANT REQUESTS THAT:

Her deceased husband's records be corrected to show he made a spouse only election in the Reserve Component Survivor Benefit Plan (RCSBP).

APPLICANT CONTENDS THAT:

Her deceased husband planned to take his Air Force retirement at age 60. He also planned for her (his wife) to receive survivor benefit if he died before her after age 60. However, his untimely death at age 57 did not allow for the final papers to be added to his file which would have been completed at age 59 and before age 60. This information is known now but not known in 1995. She received a DD Form 149 from Senator [REDACTED]'s office and she went through her husband's papers and discovered the Survivor Benefit Plan (SBP) election certificate. Had she known about the DD Form 149 in the beginning, she could have gone through her husband's papers and submitted the form a long time ago.

Applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

The deceased member's RCSBP election package was mailed to his home address: [REDACTED] on 8 September 1981. There is no record of an election being received by HQ Air Reserve Personnel Center (ARPC).

On 4 December 1981, the ARPC Retirement Branch (ARPC/DPAAR) notified the spouse of the deceased member that he had not made an RCSBP election and informed her that if it was not received by 11 September 1981, RCSBP coverage would not be in effect.

On 28 December 1981, ARPC/DPAAR notified the spouse of the deceased member that an RCSBP election had not been received by the deadline and informed her that RCSBP coverage was not in effect and no further election could be made until the member reached age 60.

During the 1 April 1992 through 31 March 1993 RCSBP open enrollment, HQ ARPC, using an open season master listing, notified eligible members of an opportunity to change their RCSBP election. Again there is no record of an election being received by the ARPC.

Title 10, United States Code, Section 1448(a)(2)(B) established the requirement that a member submit the RCSBP election within 90 days of receipt.

The deceased member would have been eligible to participate in the SBP on 7 August 1997, when he reached age 60. He died on 14 March 1995 at age 57.

AIR FORCE EVALUATION:

The Deputy Director of Customer Assistance, HQ ARPC/DR, reviewed this application and states that the member had two opportunities to participate in the RCSBP and the information sent to him on both occasions was sufficient to make a RCSBP election. They recommend relief be denied.

A complete copy of the evaluation is attached at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the advisory opinion and states that not until she initiated the request for her deceased husband's survivor benefits, did she realize how very little she understood about the military retirement system. She never signed an agreement waiving her survivor benefits. In addition, she thought that her husband chose not to accept his retirement immediately, but rather chose to start receiving it at age 60. She did not know that it was the law that forbade his receiving it until age 60. Her husband kept very extensive records on his military status. She has several cartons full of old orders, records, etc., which she didn't understand so she never fully went through them. She did not know what to look for anyway. With the help of two retired air national guard friends of her husband, who knew of her plight, they finally sat down last month and started the arduous task of going through his records. They

came across the enclosed SBP Election Certificates. Why there are three she does not know. She does know that the evidence points to the fact that he 'fully intended to make the election to cover her. In fact, he may have made that election. The enclosed copies point in that direction. They were married a few days short of 34 years. In his over 20 years of serving his country, she supported him and her country fully. She was not in the military nor did she fly airplanes, but just like him, she served her country and was very much a part of the military.

Applicant's complete response, with attachments, is attached at Exhibit E.

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. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. We took notice of the applicant's complete submission in judging the merits of the case; however, we agree with the opinion and recommendation of the Air Force and adopt their rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. Therefore, in the absence of evidence to the contrary, we find no compelling basis to recommend granting the relief sought in this application.

THE BOARD DETERMINES THAT:

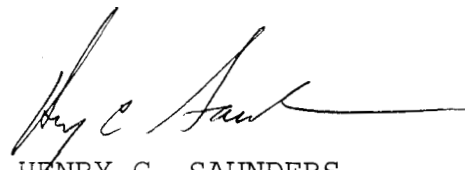
The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 27 October 1998, under the provisions of AFI 36-2603:

Mr. Henry C. Saunders, Panel Chair
Ms. Ann L. Heidig, Member
Mrs. Barbara A. Westgate, Member
Ms. Gloria J. Williams, Examiner (without vote)

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 12 June 1998, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, ARPC/DR, dated 22 July 1998 w/atchs.
- Exhibit D. Letter, AFBCMR, dated 13 August 1998.
- Exhibit E. Applicant's Response, dated 4 September 1998 w/atchs.



HENRY C. SAUNDERS
Panel Chair



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR RESERVE PERSONNEL CENTER

22 JUL 1998

MEMORANDUM FOR AFBCMR

FROM: HQARPCDR
6760 E Irvington Place #3000
Denver CO 80280-3000

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

1. The requested action cannot be accomplished administratively at this headquarters.
2. The applicant is requesting that her spouse's record be corrected to show he made a spouse only election in the Reserve Component Survivor Benefit Plan (RCSBP) when he was first eligible.
3. The following is an analysis of the circumstances surrounding the case:

a. The member's RCSBP election package was mailed to his home address: [REDACTED]
[REDACTED] 8 Sep 81 [REDACTED] There is no record of an election being received by HQ Air Reserve Personnel Center (ARPC).

b. On 4 Dec 81, the ARPC Retirement Branch (ARPCDPAAR) notified the applicant that her spouse had not made an RCSBP election and informed her that if it was not received by 11 Dec 81, RCSBP coverage would not be in effect [REDACTED]

c. On 28 Dec 81, the ARPC Retirement Branch (ARPCDPAAR) notified the applicant that an RCSBP election had not been received by the deadline and informed her that RCSBP coverage was not in effect and no further election could be made until the member reached age 60 [REDACTED]

d. During the 1 Apr 92 through 31 Mar 93 RCSBP open enrollment, HQ ARPC, using an open season master listing, notified eligible members of an opportunity to change their RCSBP election. This information was sent to the member's home address: [REDACTED]
[REDACTED] his home address as it appeared on the master listing [REDACTED] Again, there is no record of an election being received by the ARPC.

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e. The member had two opportunities to participate in the RCSBP and the information sent to him on both occasions was sufficient to make a RCSBP election.

f. The requirement that a member submit the RCSBP election within 90 days of receipt is clearly established by Title 10, United States Code, Section 1448(a)(2)(B). The member would have been eligible to participate in the Survivor Benefit Plan on 7 Aug 97, when he reached age 60.

g. The member died on 14 Mar 95 at age 57.

4. Recommendation: Recommend the applicant's request be denied. If the decision is to grant the relief sought, the member's record should be corrected to show that he elected full, deferred coverage for spouse only (Option BA) under the RCSBP, effective 10 Dec 81.

5. Action officer is Mr. Marvin Silva, HQ ARPC/DRSE, DSN 926-6438. He can also be reached by fax at DSN 926-6255 or e-mail msilva@arpcmail.den.disa.mil.

SIGNED

A" C. SHIPPY, Major, USAF
Deputy Director of Customer Assistance

[REDACTED]

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