RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2010-02727

 JEFFREY R. SKARMAN COUNSEL: NONE

 (DECEASED) HEARING DESIRED: YES

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APPLICANT REQUESTS THAT:

Her deceased husband’s records be corrected to reflect that she made timely notification of his death so she may receive benefits under the Reserve Component Survivor Benefit Plan (RCSBP).

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APPLICANT CONTENDS THAT:

She was misinformed regarding her entitlement as a beneficiary under the RCSBP. She was repeatedly advised to initiate her claim for benefits when her deceased husband would have been 60 years old. She was never told she was entitled to an immediate annuity.

In support of her request, the applicant provides copies of her husband’s death certificate and AF Form 74, *Communication Status Notice/Request*, related to his RCSBP Election Certificate.

The applicant’s complete submission, with attachments, is at Exhibit A.

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STATEMENT OF FACTS:

The decedent’s military personnel records indicate he served in the Air National Guard (ANG) in the grade of master sergeant (E-7) and, on 8 Jun 89, made an election of Option C, Immediate Annuity for Spouse, effective 16 May 90, based on full retired pay. The decedent passed away on 26 Jan 03.

The remaining relevant facts pertaining to this application are contained in the letter prepared by the appropriate office of the Air Force, which is attached at Exhibit C.

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AIR FORCE EVALUATION:

ARPC/DPP recommends denial, indicating the applicant needed to file her claim for benefits within six years of her husband’s death. The decedent passed away on 26 Jan 03. However, ARPC received a call reporting the death of the former member on 2 Jun 10. The applicant states she was misinformed by the member’s ANG unit to wait until his 60th birthday (16 Jun 10) to file a claim for benefits. According to the Defense Finance and Accounting Service (DFAS), the applicant needed to file her claim within six years of the date the claim first accrued in accordance with the Barring Statute of Title 31, USC, Section 3702 (b), which limits the time for filing of claims against the United States to six years. Because the decedent was eligible for retired pay when he would have turned 60, the applicant is eligible for medical and dental benefits through the TRICARE program, and may also be eligible for benefits through the Department of Veterans Affairs (DVA).

A complete copy of the ARPC/DPP evaluation is at Exhibit C.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 17 Sep 10 for review and response within 30 days. As of this date, no response has been received by this office (Exhibit D).

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THE BOARD CONCLUDES THAT:

1.  The applicant has exhausted all remedies provided by existing law or regulations.

2.  The application was timely filed.

3.  Sufficient relevant evidence has been presented to demonstrate the existence of an injustice. The applicant contends that she was misinformed regarding her entitlement as a beneficiary under the Reserve Component Survivor Benefit Plan (RCSBP). After a thorough review of the evidence presented, we believe applicant has suffered an injustice and corrective action is warranted. In this respect, we find it highly unlikely she would knowingly forgo her entitlement to this important benefit for over seven years. Therefore, based on the preponderance of the evidence presented, we believe the applicant, a non-military member, took action she understood to be adequate and that her delay in claiming her benefits was not the result of her own negligence, but rather likely the result of being misinformed regarding her rights and responsibilities under the RCSBP. Therefore, we recommend the decedent’s records be corrected as indicated below.

4.  The applicant’s case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

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THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to the deceased service member be corrected to show that on 27 January 2003, his widow, the APPLICANT, submitted a claim for a survivor benefit annuity.

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The following members of the Board considered AFBCMR Docket Number BC-2010-02727 in Executive Session on 1 Mar 11, under the provisions of AFI 36-2603:

 Mr. XXXXXXXXXX, Panel Chair

 Mr. XXXXXXXXXX, Member

 Ms. XXXXXXXXXX, Member

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

 Exhibit A. DD Form 149, dated 9 Jun 10 and 11 Aug 10,

 w/atchs.

 Exhibit B. Decedent’s Master Personnel Records.

 Exhibit C. Letter, ARPC/DPP, dated 30 Aug 10, w/atchs.

 Exhibit D. Letter, SAF/MRBR, dated 17 Sep 10.

 XXXXXXXXXX

 Panel Chair