

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2011-05023  
COUNSEL: NONE  
HEARING DESIRED: NOT INDICATED

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APPLICANT REQUESTS THAT:

Her deceased husband's records be corrected to show he made a timely election for spouse coverage under the Survivor Benefit Plan (SBP).

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APPLICANT CONTENDS THAT:

Her husband devoted his entire adult life to the United States Air Force and retired as a major after 20 years. In all aspects, he was meticulous and never left anything to chance. This was evident in his position as a Flight Manager for over 20 years.

If he had been informed of the qualifications for a spouse to receive full benefits and pension due him, we would have been married within the requirements the Air Force has set forth.

Their plans were to legally marry in the spring of 2012. However, they were married on 3 Jan 2011. Her husband was confident that his stellar career with the Air Force would ensure that she, as his spouse, would receive the best possible care and benefits. It is evident to her that with his exit interview from the military, he was never informed of the one year requirement, especially since he'd been out of the military for over 20 years.

They were older when they met and did not see the need or urgency to get married. They were committed to each other and their friends and family also recognized them as a married couple. In fact he would introduce her as his wife. He believed and told her, as well as family and friends that everything was in order and she would be taken care of.

For one year he battled Stage IV cancer. They were told he had a 99 percent chance of survival and they were encouraged by this news. He endured two brain surgeries. In Nov 2010 he had a seizure that hospitalized him. On 17 Dec 2010, they were told he had only a few months to live.

If they were aware that they had to be married for one year to be eligible for the SBP, they would have married the year before when they were told he had Stage IV cancer.

In support of her request, the applicant provides letters of support regarding their marriage, a copy of their marriage license, an "Order on Petition to Recognize a Relationship as a Marriage," dated 6 Dec 2011, and retirement orders.

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

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STATEMENT OF FACTS:

Survivors of military retirees may continue to receive a portion of the sponsor's retired pay only if the member was a participant in the SBP. The law contains no automatic enrollment provision for a spouse acquired after retirement unless spouse coverage was previously elected, then suspended due to the death or divorce of the previous spouse. The SBP is similar to a commercial insurance program in that it requires the member to enroll and pay associated premiums in order to provide an annuity to survivors.

A member, who is unmarried at retirement, may elect coverage for the first spouse acquired after retiring. However, the election must be made before the first anniversary of that marriage. If a member fails to make an election before the first anniversary, SBP coverage for that person or another person of that category may be elected only if Congress authorizes an open enrollment period.

Title 10, United States Code, Section 1447 (7A) defines a widow to be the surviving wife of a person "who was married to him for at least one year immediately before his death." In order for a spouse, who married a member after his/her retirement, to be considered eligible for the SBP annuity, the post-retirement marriage must endure for one full year from the date of marriage. In the event the new spouse becomes a parent of a child born of that marriage, if born sooner than one year after the date of the marriage, the spouse's eligibility begins on the date of the child's birth.

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AIR FORCE EVALUATION:

HQ AFPC/DPSIAR recommends denial. DPSIAR states, the records reflect the member was unmarried and elected child only coverage based on full retired pay prior to his 1 Aug 1988 retirement. The youngest child lost eligibility in Jul 2008 due to age. The member and the applicant married on 3 Jan 2011 and he died on 25 Jan 2011, eleven months before the end of their first year of marriage.

The applicant's request contains a copy of the "Order on Petition to Recognize a Relationship as a Marriage," which was approved by the District Court of Utah on 2 Dec 2011. However, the court order does not specify the date the relationship was considered a marriage.

The applicant was not married to the member for one full year prior to his death and there is no provision in the law permitting waiver of this criterion, absent the birth of a child before the first anniversary of the marriage. It would be contrary to the letter and intent of the law, as well as inequitable to other survivors similarly situated, to approve the applicant's request. However, if the Board's decision is to grant relief, the decedent's record should be corrected to show he married his widow prior to 24 Jan 2010 and immediately added spouse coverage to previously established child only coverage based on full retired pay.

The complete DPSIAR evaluation is at Exhibit B.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

She petitioned the court to amend the "Order on Petition to Recognize a Relationship as a Marriage," to specify a date the relationship was considered a marriage. The amended order reflects a date of Jan 2009.

This provides proof that they were married at least one full year prior to his death.

Her complete response, with attachment, is at 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 timely filed.
3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. The applicant's contentions are duly noted; however, after thoroughly reviewing the evidence of record, we find no basis to correct the member's record to show he made a timely election for spouse coverage under SBP. Although the applicant provides evidence that recognizes their relationship as a marriage, the law requires a member to be married for one full year before the widow is eligible for SBP payments, assuming the member elected

spouse coverage, which in this instance, he did not. Therefore, we agree with the opinion and recommendation of the Air Force office of primary responsibility and adopt the rationale expressed as the basis for our conclusion the applicant has not been the victim of an error or injustice. While the applicant's circumstances are regrettable, in the absence of evidence to the contrary, we find no basis to grant the requested relief.

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THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of 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.

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The following members of the Board considered this application in Executive Session on 21 Sep 2012, under the provisions of AFI 36-2603:

- , Panel Chair
- , Member
- , Member

The following documentary evidence was considered in AFBCMR BC-2011-05023:

- Exhibit A. DD Form 149, dated 30 Nov 2011, w/atchs.
- Exhibit B. Letter, AFPC/DPSIAR, dated 3 Feb 2012.
- Exhibit C. Letter, SAF/MRBR, dated 1 Mar 2012.
- Exhibit D. Rebuttal, Applicant, dated 22 Mar 2012, w/atc.

Panel Chair