

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2011-05066
COUNSEL:
HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

Her former spouse's record be changed to show he elected former spouse coverage under the Survivor Benefit Plan (SBP).

APPLICANT CONTENDS THAT:

She was awarded the SBP in her divorce decree.

In support of the applicant's appeal, she provides a personal statement, DD Form 214, *Armed Forces of the United States Report of Transfer or Discharge*, copy of a divorce decree, and a letter from the Defense Finance and Accounting Service.

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

STATEMENT OF FACTS:

Prior to the service member's 1 August 1969 retirement he elected child only coverage under the Retired Serviceman's Family Protection Plan (RSFPP). The member declined SBP during the plan's initial open enrollment (21 September 1972 to 20 March 1974).

Records contained in the Defense Enrollment Eligibility Reporting System (DEERS) reflect the applicant and the member married on 15 December 1979, and he elected spouse only SBP coverage based on full retired pay during the open enrollment authorized by Public Law (PL) 97-35 (1 Oct 81 to 30 Sep 82).

The parties divorced 22 November 2000.

The applicant remarried on 16 August 2006.

AIR FORCE EVALUATION:

AFPC/DPSIAR makes no recommendation. DPSIAR states the divorce decree ordered the former service member to maintain the applicant as beneficiary of the SBP. There is no evidence the applicant submitted a request for an SBP election to be deemed on her behalf within the first year following their divorce. Monthly premiums continued to be deducted from the member's retired pay until December 2002 when his coverage was suspended. DEERS records reflect the member remarried on 16 August 2006, and by operation of law, his current spouse became his eligible SBP spouse beneficiary on the first anniversary of their marriage.

The DPSIAR complete evaluation is at Exhibit B.

The applicant and service member were provided an advisory (Exhibit C) prepared by SAF/GCM on similar cases considered by the Board. The Board has been advised that it can consider cases involving potential claims by more than one spouse or former spouse if there is evidence that the member or former spouse timely notified the Government within one year after the divorce was final, or if there are extraordinary circumstances that would justify correction of the record. For example, extraordinary circumstances might exist if the current spouse signs a notarized affidavit saying she waives her potential claim to the survivor benefits in favor of complying with the member's obligations under the divorce agreement.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the evaluation and states she was never informed that she had to take action regarding the filing of additional documentation in order to receive benefits. She was not represented in her divorce and did not know about the filing requirements. The Martial Settlement Agreement should be enforced.

The applicant's response is 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 an error or injustice. The applicant has not demonstrated that extraordinary circumstances exist as required for this Board to grant relief in cases of competing SBP beneficiaries. We took notice of the applicant's complete submission in judging the merits of the case. While we note the divorce decree awarded the applicant continued coverage under SBP, neither she nor the former member made a deemed election within one year as required by law. Since it appears the former service member's second spouse gained entitlement to the benefit by operation of law, and there has been no showing of extraordinary circumstances, we are precluded from granting the applicant the SBP benefit. Therefore, unless proof of a timely election of former spouse coverage is provided, the second spouse relinquishes her entitlement or the former member executes the appropriate steps required to remove his second spouse as beneficiary, we find no basis to grant the applicant's request.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of an error or injustice; the application was denied without a personal appearance; and 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 AFBCMR Docket Number BC-2011-05066 in Executive Session on 21 September 2012 and 9 October 2012, under the provisions of AFI 36-2603:

The following documentary evidence pertaining to AFBCMR Docket Number BC-2011-05066 was considered:

- Exhibit A. DD Form 149, dated 16 December 2011, w/atchs.
- Exhibit B. Letter, AFPC/DPSIAR, dated 7 February 2012.
- Exhibit C. Letter, SAF/GMC dated 18 October 2006.
- Exhibit D. Letters, SAF/MRBR, dated 1 March 2012 and AFBCMR, dated 22 June 2012.
- Exhibit E. Letter, Applicant, dated 27 March 2012.
- Exhibit F. Letter, AFBCMR, dated 20 September 2012.