

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00128  
COUNSEL: NONE  
HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

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

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APPLICANT CONTENDS THAT:

Her former spouse did not take all necessary actions to change SBP coverage to name her as the former spouse beneficiary following their divorce. He did not abide by the court order and did not inform her of the requirement.

In support of her request the applicant provides a personal statement and a copy of the Final Judgment of Dissolution of Marriage and Conveyance of Real Property.

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

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STATEMENT OF FACTS:

According to the information provided by the Air Force office of primary responsibility, the member and the applicant were married on 22 Dec 1978. He elected spouse and child coverage based on a reduced level of retired pay prior to his 1 Sep 2001 retirement. Their divorce was finalized on 30 May 2007. The divorce decree ordered the member to take all necessary actions to change the applicant to a "former spouse beneficiary." Neither party submitted a valid election for former spouse coverage within the first year as required by law. The Defense Enrollment Eligibility Reporting System (DEERS) records show the member remarried on 16 Oct 2009; however, there is no evidence he requested she become the eligible spouse beneficiary and the marriage terminated on 15 Feb 2011. The youngest child lost eligibility in Sep 2011 due to age. Premiums continued to be deducted from the member's retired pay until Oct 2011, when DFAS-CL retroactively suspended spouse coverage and issued the member a refund of overpaid premiums.

A person's eligibility to receive a spouse SBP annuity terminates upon divorce. However, the law provides two mechanisms for changing spouse coverage to former spouse coverage. Both must be exercised within the first year following divorce: (1) the retiree may file an election change, or (2) 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 the member agreed, or the court ordered the member, to establish former spouse coverage. If neither the member nor the former spouse requests the election change during the one year eligibility period, former spouse coverage may not be established thereafter. Even though a member fails to notify the Defense Finance and Accounting Service-Cleveland Center (DFAS-CL) of the divorce and continues to pay SBP premiums afterwards, the former spouse is not eligible for annuity payments upon the member's death.

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AIR FORCE EVALUATION:

HQ AFPC/DPSIAR recommends approval. DPSIAR states there is no evidence of Air Force error in this case; however, in the interest of justice and absent a competing claimant, DPSIAR recommends the member's record be corrected to show he elected SBP former spouse coverage based on the previous reduced level of retired pay effective 31 May 2007, naming his former spouse as beneficiary. Approval should be contingent upon recovery of appropriate retroactive costs.

The complete DPSIAR evaluation is at Exhibit B.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

On 8 Mar 2012, a copy of the Air Force evaluation was forwarded to the member for review and comment within 30 days. To date, a response has not been received (Exhibit C).

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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 not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
3. Sufficient relevant evidence has been presented to demonstrate the existence of an injustice. There is no evidence of Air Force error; however, to preclude an injustice, we agree with AFPC/DPSIAR's recommendation that the member's records should be corrected to reflect that he made a valid election based on the reduced level of retired pay effective 31 May 2007, naming his former spouse as the eligible beneficiary. Accordingly, we recommend the applicant's records be corrected as set forth below.

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THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, , be corrected to show that on 31 May 2007, he elected former spouse coverage under the survivor benefit plan (SBP), based on a reduced level of retired pay, naming his former spouse as the eligible beneficiary. Approval should be contingent upon the recovery of applicable premiums.

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The following members of the Board considered this application in Executive Session on 25 Oct 2012, under the provisions of AFI 36-2603:

Panel Chair  
Member  
Member

The following documentary evidence was considered in AFBCMR BC-2012-00128:

- Exhibit A. DD Form 149, dated 9 Jan 2012, w/atchs.
- Exhibit B. Letter, AFPC/DPSIAR, dated 24 Feb 2012.
- Exhibit C. Letter, SAF/MRBR, dated 8 Mar 2012.

Panel Chair