

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00130

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

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

APPLICANT CONTENDS THAT:

She nor her former spouse's attorneys were aware of or informed them of the requirement to submit an election for former spouse coverage within one year following their divorce.

In support of her request, the applicant provides a copy of her divorce decree.

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

STATEMENT OF FACTS:

The service member and applicant were married. On 5 Jan 09, the service member with the assistance of a personnelist at the Air National Guard (ANG) unit completed an election for SBP spouse coverage. The parties divorced on 26 Jan 09. The service member failed to change the SBP spouse coverage to former spouse coverage prior to his 1 Feb 09 retirement. There is no evidence the Defense Finance and Accounting Service - Cleveland (DFAS-CL) was notified of the change in service member's marital status and honored his election to establish spouse coverage. There is no evidence the applicant submitted an election for former spouse coverage within a year following the divorce.

On 19 Sep 12, the Board staff requested the applicant provide documentary evidence of her current marital status. The applicant provided a notarized statement indicating she has not remarried and is unaware of her former spouse's current marital status.

On 1 Oct 12, the Board staff requested the former service member provide documentary evidence of his current marital status. As of this date, no response has been received by this office.

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 B.

AIR FORCE EVALUATION:

AFPC/DPSIAR notes there is no evidence of an Air Force error and absent evidence of a competing spouse recommends the election for spouse coverage be voided and former spouse coverage be established on the applicant's behalf.

The complete AFPC/DPSIAR evaluation is at Exhibit B.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to applicant on 29 Feb 12 for review and comment within 30 days (Exhibit C). As of this date, no response has been received by this office.

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. We note, the Air Force office of primary responsibility recommended that relief be granted absent evidence of a competing spouse. Although, the applicant has provided evidence in the form of a notarized statement indicating she has not remarried, we have not received evidence of whether the former service member has remarried. As such, at this time, we must deny the requested relief as the potential exists for there to be a competing spouse. This Board has long been advised by legal counsel that it should not, except in the most extraordinary of circumstances, award a benefit to an applicant when it involves taking or depriving another of the benefit. Should the applicant be able to provide conclusive evidence there is no competing spouse, we would be willing to review her request again. However, based on

the above, we find no basis to recommend granting the relief sought in this application.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of a material 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-2012-00130 in Executive Session on 25 Oct 12, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 9 Jan 12, w/atchs.
- Exhibit B. Letter, AFPC/DPSIAR, dated 9 Feb 12.
- Exhibit C. Letter, SAF/MRBR, dated 29 Feb 12.
- Exhibit D. Letter, AFBCMR, dated 19 Sep 12, w/atcch.
- Exhibit E. Letter, Applicant, dated 27 Sep 12.
- Exhibit F. Letter, AFBCMR, dated 1 Oct 12.

Panel Chair