

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00140

COUNSEL:

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

His records be corrected to reflect he elected his former spouse as beneficiary of his Survivor Benefit Program (SBP) based upon full retirement pay.

APPLICANT CONTENDS THAT:

His initial SBP coverage was at the maximum level, but was adjusted to a reduced amount without his consent. As soon as his SBP was adjusted to the reduced level four months after his retirement, he requested that Defense Finance and Accounting Service (DFAS) change it back to the maximum level. On 14 Oct 11, the Court entered an order clarifying the issue of who would pay for the coverage and ordering the coverage to stay at the maximum level.

In support of his request, the applicant provides certified copies of his final divorce decree and clarification order from the court.

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

STATEMENT OF FACTS:

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

AIR FORCE EVALUATION:

HQ AFPC/DPSIAR recommends approval, contingent upon recoupment of all applicable premiums. Air Force policy requires the local SBP counselor to provide a one-on-one briefing to all retiring members and their spouses prior to the effective date of the

member's retirement. These briefings provide detailed information on the options and effects of the SBP, including an estimate of the costs and annuity values determined by several "base amount" options. The base amount for SBP coverage may be any dollar amount between the minimum (\$300) and maximum (gross retired pay level) levels of coverage. Public Law 99-145 required the spouse of a married member to concur in any SBP election that does not provide the maximum level of protection for the spouse, unless the member elects former spouse (FS-SBP).

The applicant and his former spouse were married on , and divorced on . The court ordered the applicant to provide SBP coverage on the former spouse's behalf, but did not specify a base amount of coverage. The member retired effective 11 Jun 11, and at the time of his retirement had remarried and was properly briefed by the SBP counselor on 14 Jan 11. Notwithstanding the applicant's statement, the official copy of his DD Form 2656, *Data for Payment of Retired Personnel*, maintained at the Air Force Personnel Center (AFPC) reflects he initiated his election option selecting former spouse coverage and he wrote "300" as his desired base amount. On 16 Oct 11, the court issued an order clarifying a prior order, but that document fails to state that "maximum" or "gross retired pay" be established as the base amount.

During the summer months, when many members are retiring, DFAS-Cleveland (DFAS-CL) regularly establishes SBP spouse coverage for these new accounts at the maximum level ("automatic") vice reviewing the DD Forms 2656. Historical entries from the DFAS-CL retired pay system reflect that on 12 Oct 11, the applicant's SBP coverage was changed from spouse coverage based on full retired pay to FS-SBP coverage based on \$300. In addition, the member received a refund of SBP premiums (\$1,247). Effective 1 Dec 11, the monthly costs are \$7.77 (gross, before Federal Income Tax). Had the applicant elected the maximum level of SBP coverage, the monthly premiums would be approximately \$523 and the annuity amount would be \$4,400. While there is no evidence of Air Force error or injustice in this case, and no clear indication from the court as to the intended base amount, to deny the member's request would be to deny the former spouse an asset the court seems to award her.

The complete HQ AFPC/DPSIAR evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 8 Mar 12 for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit D).

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. We took notice of the applicant's complete submission in judging the merits of the case and agree with the opinion and recommendation of the Air Force office of primary responsibility and adopt its rationale as the basis for our conclusion that relief should be granted. Although we find no evidence of an error on the part of the Air Force, based upon the direction in two court orders and the applicant's stated intent, we believe his former spouse should be designated as the eligible beneficiary for his SBP annuity based on full retired pay. Therefore, we believe the applicant's records should 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.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show that on 24 January 2011, he elected former-spouse coverage under the Survivor Benefit Plan (SBP) based on full retirement pay effective 1 June 2011, naming his former spouse, VIOLET M. BROOKS, as the former-spouse beneficiary.

The following members of the Board considered AFBCMR Docket Number BC-2012-00140 in Executive Session on 25 Oct 12, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

All members voted to correct the records as recommended. The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-00140 was considered:

- Exhibit A. DD Form 149, dated 3 Jan 12, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPSIAR, dated 23 Feb 12.
- Exhibit D. Letter, SAF/MRBR, dated 8 Mar 12.

Panel Chair