

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00252

COUNSEL: NONE

HEARING DESIRED: YES

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APPLICANT REQUESTS THAT:

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

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APPLICANT CONTENDS THAT:

At the time of his divorce he was not advised that he needed to designate his former spouse as his SBP beneficiary.

In support of his request, the applicant provides a copy of his Divorce Agreement.

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

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STATEMENT OF FACTS:

The applicant after becoming eligible to receive retired pay except for attaining age 60, elected on 19 Sep 88, spouse only coverage under the Reserve Component Survivor Benefit Plan (RCSBP), Option C, Immediate Annuity (surviving spouse will receive the annuity payments immediately upon the death of the service member). The applicant retired on 8 Jul 04 and began receiving retired pay.

The applicant divorced on 27 May 09 and in the Divorce Agreement he agreed to maintain his former spouse as the sole and irrevocable beneficiary for the SBP annuity.

The remaining relevant facts pertaining to this application are contained in the letter prepared by the appropriate offices of the Air Force, which are attached at Exhibit B.

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AIR FORCE EVALUATION:

AFRC/DPSIAR recommends granting the requested relief. Although the applicant failed to submit a valid election for former spouse coverage within the first year following his divorce; he also did not request the spouse coverage be terminated following their divorce, which is indicative of his intent to maintain his former spouse as the eligible SBP beneficiary.

The complete AFPC/DPSIAR evaluation is at Exhibit C.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 27 Mar 12, for review and comment within 30 days. As of this date, no response has been received by this office.

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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 error or injustice. After a thorough review of the applicant's complete submission and the evidence of record, we believe the applicant has been the victim of an error or injustice. In this respect, we note the comments by the Air Force office of primary responsibility (OPR) indicating that while there is no evidence the applicant or his former spouse submitted a valid former spouse election within one year of their divorce, SBP premiums continued to be deducted from the applicant's retired pay and official records continue to reflect the former spouse as the eligible spouse beneficiary. Considering these facts and that denial of the applicant's request would deprive the former spouse of an asset awarded by the court, we believe it is in the interest of justice to grant the requested relief. Therefore, we concur with the findings and recommendation of the Air Force office of primary responsibility and recommend the former service member's records be corrected to the extent 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 issue(s)

involved. Therefore, the request for a hearing is not favorably considered.

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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 28 May 09, he elected former spouse coverage under the Survivor Benefit Plan (SBP), naming \_\_\_\_\_ as the former spouse beneficiary based on full retired pay.

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The following members of the Board considered AFBCMR Docket Number BC-2012-00252 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 was considered:

- Exhibit A. DD Form 149, dated 18 Jan 12, w/atchs.
- Exhibit B. Letter, AFPC/DPSIAR, dated 1 Mar 12.
- Exhibit C. Letter, SAF/MRBR, dated 27 Mar 12.

Panel Chair