

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00429

COUNSEL: NONE

HEARING DESIRED: NOT INDICATED

APPLICANT REQUESTS THAT:

She be reimbursed for all premiums she has paid under the Survivor Benefit Plan (SBP) during the period September 1994 through May 2011.

APPLICANT CONTENDS THAT:

She never was appropriately counseled regarding the tenets of the SBP program and should be refunded all premiums she has paid. She was divorced in 1995 and did not elect to restart the SBP coverage when she remarried in 2004. She was never informed that she would be charged SBP premiums from her retired pay or that she could not disenroll from the program. She was not aware that she was enrolling in SBP when she elected her beneficiaries and that once enrolled, she could not cancel or make changes.

In support of her request, the applicant provides an expanded statement, a copy of her divorce decree, DFAS-CL 7220, *Retiree Account Statements*, DD Form 2894, *Designation of Beneficiary Information*.

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

STATEMENT OF FACTS:

The applicant is a retired Air Force master sergeant (MSgt).

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 recommends denial, indicating there is no evidence of an error or injustice. The Defense Enrollment Eligibility Reporting System (DEERS) reflects she and were married on 17 April 1999, and divorced on . DPSIAR requested DFAS-CL to provide a copy of the applicant's DD Form 2656, however, DPSIAR has not received the document; therefore, they cannot confirm if the applicant submitted the form or the form was invalid. In any case, DFAS-CL established spouse coverage based on full retired pay to comply with Public Law (PL) 99-145, which requires DFAS-CL to establish such coverage and begin deducting spouse premiums from the service member's retired pay when the service member fails to complete a valid election for less than the maximum level of spouse coverage. DEERS further reflects the applicant and Robert married on 17 November 2004 and SBP premiums commenced on the first anniversary of their marriage in accordance with PL 99-145. While PL 99-145 permits members such as the applicant to not re-instate spouse coverage when they remarry, to effect such an election, the member must submit a request to not resume SBP spouse coverage to DFAS-CL before the first anniversary of the new marriage. Absent such an election, the law requires coverage to be established on the first anniversary of the marriage. The parties divorced on the applicant's SBP spouse coverage was suspended, effective that date.

Title 10 USC Section 1452(f) holds that a participant is not entitled to any refund of SBP premiums that were correctly deducted. Therefore, the applicant's request for a refund of all premiums is without merit.

The complete AFPC/DPSIAR evaluation is at Exhibit B.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

She was not provided or informed on the law and requirements of SBP. She was not aware the SBP premiums would resume on the first anniversary of the marriage or that her adult children were not eligible to receive the annuity although they were named the beneficiaries for retired pay. Had she been informed or provided the information on the requirements of the law pertaining to SBP she would have been able to make a timely decision to have the SBP premiums terminated.

The applicant's complete response, with an attachment, is at 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. Insufficient relevant evidence has been presented to demonstrate the existence of an error or an injustice. The applicant contends that she was not appropriately counseled on requirements of the Survivor Benefit Plan. We took notice of her complete submission, to include the rebuttal response, in judging the merits of the case; however, we agree with the opinion and the recommendation of the Air Force office of primary responsibility and adopt its rationale as the basis for our decision the applicant is not the victim of an error or injustice. Other than her own assertions, the applicant has provided no evidence whatsoever that she was miscounseled regarding her rights and obligations under the Survivor Benefit Plan (SBP). Therefore, in the absence of evidence to the contrary, 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 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-2012-00429 in Executive Session on 19 December 2012, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-01848 was considered:

Exhibit A. DD Form 149, dated 13 January 2012, w/atchs.

Exhibit B. Letter, AFPC/DPSIAR, dated 8 May 2012.

Exhibit C. Letter, SAF/MRBR, dated 18 May 2012.

Exhibit D. Letter, Applicant, dated 30 August 2012, w/atch.

Panel Chair