

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00454

COUNSEL: NONE

HEARING DESIRED: YES

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APPLICANT REQUESTS THAT:

Her former spouse's record be changed to show he elected former spouse coverage under the Survivor Benefit Plan (SBP).

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APPLICANT CONTENDS THAT:

Her former spouse had a legal obligation to continue payment through the SBP based upon their divorce decree.

In support of the applicant's appeal, she provides a personal statement, a copy of a marriage certificate, death certificate, divorce decree, and other documentation.

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

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STATEMENT OF FACTS:

The applicant and the decedent married on 20 August 1963 and divorced on 20 March 1991.

The Defense Enrollment Eligibility Reporting System (DEERS) reflects the decedent married his second spouse on 5 December 1992 and divorced on 3 June 1993.

The decedent married his third spouse on 17 January 1997.

The decedent died on 16 November 2011.

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AIR FORCE EVALUATION:

AFPC/DPSIAR makes no recommendation. DPSIAR states the applicant provided a copy of the service member's AF Form 694, Data for Payment of Retired Air Force Personnel, also used to obtain the member's SBP election. This document and microfiche records from the Air Force Accounting and Finance Center (AFAFC) reflect the

service member failed to make an SBP election prior to his 1 April 1990 retirement. To comply with federal law, AFAFC established spouse coverage based on full retired pay under the SBP, updated the applicant's date of birth as the eligible spouse beneficiary and began deducting premiums from the service member's retired pay. The applicant's divorce decree ordered the former service member to maintain the applicant as the irrevocable beneficiary under his "Military Survivorship Benefit Plan." SBP premiums were no longer deducted from the service member's retired pay following AFAFC receipt of their divorce decree. His third spouse became the eligible spouse beneficiary on the first anniversary of their marriage, even though the service member did not notify the finance center of his remarriage. There is no indication she applied for payment of the SBP annuity.

The DPSIAR complete evaluation is at Exhibit B.

The applicant was provided an advisory (Exhibit C) prepared by SAF/GCM on similar cases considered by the Board. The Board has been advised that it can consider cases involving potential claims by more than one spouse or former spouse if there is evidence that the member or former spouse timely notified the Government within one year after the divorce was final, or if there are extraordinary circumstances that would justify correction of the record. For example, extraordinary circumstances might exist if the current spouse signs a notarized affidavit saying she waives her potential claim to the survivor benefits in favor of complying with the member's obligations under the divorce agreement.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant states she never signed or received anything regarding SBP. She thought according to her divorce decree she was protected financially. While waiting for this decision she has been living off of her savings to pay bills. If she had any idea that her SBP was not filed 21 years ago, she would not have retired. She is in financial distress.

The applicant's complete response is at Exhibit E.

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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. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. The applicant has not demonstrated that extraordinary circumstances exist as required for this Board to grant relief in cases of competing SBP beneficiaries. We took notice of the applicant's complete submission in judging the merits of the case. While we note the divorce decree awarded the applicant continued coverage under SBP, neither she nor the former member made a deemed election within one year as required by law. Since it appears the former service member's third spouse gained entitlement to the benefit by operation of law, and there has been no showing of extraordinary circumstances, we are precluded from granting the applicant the SBP benefit. Therefore, unless proof of a timely election of former spouse coverage is provided or the third spouse relinquishes her entitlement, we find no basis to grant the applicant's request.

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.

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THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of an 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-2012-00454 in Executive Session on 27 November 2012, under the provisions of AFI 36-2603:

The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-00454 was considered:

- Exhibit A. DD Form 149, dated 2 February 2012, w/atchs.
- Exhibit B. Letter, AFPC/DPSIAR, dated 12 March 2012.
- Exhibit C. Letter, SAF/GCM, dated 18 October 2006.
- Exhibit D. Letter, AFBCMR, dated 13 November 2012.
- Exhibit E. Letter, Applicant, dated 23 November 2012.