

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:
(MEMBER)
(APPLICANT)

DOCKET NUMBER: BC-2012-01099
COUNSEL: NONE
HEARING DESIRED: NOT INDICATED

APPLICANT REQUESTS THAT:

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

APPLICANT CONTENDS THAT:

Her divorce decree awarded her the opportunity for SBP or life insurance.

Her former spouse did not fulfill his obligation for the life insurance; therefore, he was supposed to initiate paperwork for her to become the SBP beneficiary.

In support of her request, the applicant provides a personal statement, copies of her Decree of Dissolution of Marriage, letters from her insurance company, and various other documents associated with her request.

Her 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 appropriate office of the Air Force Office of Primary Responsibility (OPR). Accordingly, there is no need to recite these facts in this Record of Proceedings.

AIR FORCE EVALUATION:

AFPC/DPSIAR recommends approval. DPSIAR states the applicant provided a copy of a letter from her insurance company stating that because the member failed to comply with the underwriter's request for additional information, no policy was placed in force. Upon learning insurance coverage was not purchased, she attempted to establish her claim to SBP coverage. Unfortunately, the time provided by the laws controlling the SBP

during which a former spouse may deem an SBP election had expired. Since the member's current spouse concurred in the election for child only SBP coverage, she is not a competing claimant. To deny the applicant's request would be to deny her a benefit awarded to her by the court.

There is no evidence of Air Force error in this case; however, in the interest of justice and absent a competing claimant, DPSIAR recommends the member's record be corrected to show that his former spouse submitted a valid request that former spouse SBP coverage based on full retired pay was deemed on her behalf effective 1 Jun 2008. Correction should be contingent upon recovery of appropriate retroactive costs.

The complete DPSIAR evaluation, with attachments, is at Exhibit B.

MEMBER'S REVIEW OF AIR FORCE EVALUATION:

His former spouse made no attempt to initiate a deemed election for SBP within the first 12 months as instructions dictate. Their divorce decree states, "The Respondent shall have the right to waive her interest in said SBP and shall be permitted to obtain other insurance coverage on the Petitioner's life." She said she would obtain other insurance prior to his retirement due to the out of pocket cost to her.

She exercised her right and waived her interest for SBP. In Aug 2009, he completed the life insurance application and provided all "release of information" forms required by the insurance company. He was not aware he was required to provide additional information to the underwriters until he received the DPSIAR advisory dated, 19 Apr 2012. In late 2009, his insurance agent informed him of problems obtaining medical information through the military medical system and the Veterans Administration.

The Board is not the legal or moral place to take action in this matter. The divorce decree and the ruling of the judge are quite clear on who will maintain jurisdiction to enforce this matter.

His former spouse did not exhaust all administrative remedies, nor did she file within three years. She should have notified him of any problems, contacted other insurance companies, or filed contempt of court proceedings. Furthermore, this "civil matter" dictates "due process"; which starts at the civil court level.

The divorce decree states the cost of SBP will be paid by his former spouse; however, he would end up paying for it and, in turn, it would be very difficult to receive repayment for the monthly premiums from his former spouse.

The Board taking action before a judicial ruling and due process by the court which has retained jurisdiction in this case would be an injustice and violate his rights.

The member's complete response, with attachments, is at Exhibit D.

APPLICANT'S REVIEW OF THE AIR FORCE EVALUATION:

On 20 Dec 2012, a copy of the Air Force evaluation was forwarded to the applicant for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit E).

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 OPR recommends approval, stating to deny the applicant's request would deny her a benefit awarded to her by the court. However, we note the former member takes issue with the OPR's recommendation, noting the divorce decree states the cost of SBP will be paid by the applicant. However, correcting the record in the matter recommended by the OPR will actually result in the former member paying the SBP, rather than the applicant, which would be inconsistent with the divorce decree. In cases involving competing interests, this Board has been advised by USAF/JAA that this Board should not consider such cases unless a court of competent jurisdiction has ruled in the case or remands the case to the Board to make a determination. In view of the above and in the absence of evidence to the contrary, we find basis to recommend granting the relief sought in this application.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that 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 this application in Executive Session on 16 Jan 2013 AND 29 Jan 2013, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered in AFBCMR BC-2012-01099:

- Exhibit A. DD Form 149, dated 24 Mar 2012, w/atchs.
- Exhibit B. Letter, AFPC/DPSIAR, dated 19 Apr 2012.
- Exhibit C. Letter, SAF/MRBR, dated 1 May 2012.
- Exhibit D. Letter, Member, dated 3 May 2012, w/atchs.
- Exhibit E. Letter, SAF/MRBC, dated 20 Dec 2012.

Panel Chair