

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01101
COUNSEL: NONE
HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

Her former spouse's records be corrected to establish former spouse coverage under the Survivor Benefit Plan (SBP).

APPLICANT CONTENDS THAT:

She called the military retirement pay office to request her Form 1099 for her taxes, and was informed that she is listed as the "spouse" not "former spouse," and this needs to be changed for her SBP benefits.

In support of her request, the applicant provides a copy of her divorce decree.

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

STATEMENT OF FACTS:

Defense Enrollment Eligibility Reporting System (DEERS) records show the applicant and her former spouse were married on 16 Jun 71, and he elected spouse and child SBP coverage based on a reduced level of retired pay prior to his 1 Sep 93 retirement. The parties divorced on 8 Sep 95, and the divorce decree awarded the applicant 50 percent of the member's military retirement, but did not specifically refer to the SBP. There is no evidence the member submitted a valid election to voluntarily change spouse to former spouse coverage within the first year following their divorce as the law requires. The DEERS records show the member married his current spouse on 22 Nov 95, but he did not notify the Defense Finance and Accounting Service - Cleveland Center (DFAS-CL) of the change in his marital status or request spouse coverage be established on her behalf. Nevertheless, his current spouse became the eligible SBP beneficiary by operation of the law on the first anniversary of their marriage. DFAS-CL records erroneously reflect the applicant's name and date of birth (20 Oct 49) as the eligible spouse beneficiary and SBP premiums continue to be deducted from the member's retired pay.

AIR FORCE EVALUATION:

AFPC/DPSIAR indicates that since the request involves two potential SBP beneficiaries, no recommendation is provided.

The complete DPSIAR evaluation is at Exhibit B.

APPLICANT'S REVIEW OF THE AIR FORCE EVALUATION:

On 7 May 12, a copy of the Air Force evaluation was forwarded to the applicant and the former member for review and comment within 30 days. To date, a response has not been received (Exhibit C & D).

ADDITIONAL AIR FORCE EVALUATION:

On 19 Sep 12, the applicant and the former member were provided an advisory 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. They were given 30 days to review and comment on this opinion (Exhibit E & F).

APPLICANT'S REVIEW OF THE ADDITIONAL AIR FORCE EVALUATION:

Her former spouse served for 22 years, and she served alongside him. In the early 1990's her husband was stationed in Iraq. When her husband returned from his tour in Iraq he was a different person, both mentally and physically, and it splintered their lives. He suffered from Post Traumatic Stress Disorder (PTSD), which at that time, was something not commonly discussed or understood by the general public. A couple of years after his return from Iraq, her husband took an early retirement and moved their family to Mexico. In 1994, her husband left her and her 14 year old daughter alone in a foreign country with no financial help. She managed to save enough money to move her and her daughter back to the United States. She found an attorney that was able to help her get the financial support from her divorce. However, her attorney never instructed her or advised her on

changing her status. It was only brought to her attention recently when she called to get papers for filing her taxes.

Her ex-husband is now remarried. Her ex-husband's physical ailments, incarceration, and complaints were surely recorded and documented with the Air Force while they were married.

The applicant's complete response is at Exhibit G.

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 error or injustice. We took notice of the applicant's complete submission in judging the merits of the case; however, we are not persuaded the applicant has sustained her burden of establishing the existence of either an error or injustice in the record. In this regard, neither the former service member nor the applicant submitted a valid election within the one-year period required by law to establish former spouse coverage. Because of this, by operation of law the former service member's current spouse became the legal beneficiary of his SBP. We are not unsympathetic to her dilemma; however, only in the most unique of circumstances would the Board make a ruling in a case that involves two claimants to a benefit that only one of them can receive. In view of the foregoing, and 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 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 Docket Number BC-2012-01101 in Executive Session on 27 Nov 12, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence pertaining to Docket Number BC-2012-01101 was considered:

- Exhibit A. DD Form 149, dated 21 Mar 12, w/atchs.
- Exhibit B. Letter, AFPC/DPSIAR, dated 30 Apr 12.
- Exhibit C. Letter, SAF/MRBR, dated 7 May 12.
- Exhibit D. Letter, SAF/MRBR, dated 7 Mar 12.
- Exhibit E. Letter, AFBCMR, dated 19 Sep 12, w/atch.
- Exhibit F. Letter, AFBCMR, dated 19 Sep 12, w/atch.
- Exhibit G. Applicant's Rebuttal, dated 19 Oct 12.

Panel Chair