

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01209

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His records be corrected to reflect he elected his former spouse as the beneficiary of his Survivor Benefit Plan (SBP).

APPLICANT CONTENDS THAT:

He failed to change his SBP beneficiary from spouse to former spouse when his divorce was granted as his divorce degree ordered.

In support of his request, the applicant provides copies of his Decree of Dissolution of Marriage, Court Order Regarding United States Air Force Retirement Benefit, and Acceptable Domestic Relations Order Regarding Arizona State Retirement Plan for Participating Plan Member.

The applicant's 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 Air Force office of primary responsibility (OPR), which is attached at Exhibit C. Therefore, there is no need to recite these facts in this record of proceedings.

AIR FORCE EVALUATION:

AFPC/DPSIAR recommends approval. A person's eligibility to receive a spouse SBP annuity terminates upon divorce. However, the law provides two mechanisms for changing spouse coverage to former spouse coverage. One of the following actions must be exercised within the first year following the divorce: (1) the retiree may file an election change, or (2) the former spouse

may request the retiree be deemed to have made such a change on his or her behalf. In the latter case, the former spouse must provide legal documentation showing the member agreed, or that the court ordered the member to establish former spouse coverage. If neither the member nor the spouse requests the election change during the one-year eligibility period, former spouse coverage may not be established thereafter. Even though a member fails to notify the Defense Finance and Accounting Service-Cleveland (DFAS-CL) of the divorce and continues to pay SBP premiums afterward, the former spouse is not eligible for annuity payments upon the member's death.

On 26 Nov 55, the applicant and his former spouse were married. Prior to his 1 Mar 74 retirement, the applicant elected spouse and child SBP coverage based on a reduced level of retired pay. On 26 Aug 96, the parties' marriage was dissolved and the divorce decree did not address the SBP. There is no evidence the applicant submitted a valid election to voluntarily change spouse to former spouse SBP coverage within the first year following their divorce as the law requires. DFAS-CL records continue to reflect the former spouse's name and date of birth as the eligible spouse beneficiary. Premiums were deducted from the member's retired pay until 1 Oct 08, when the paid-up provision became effective. Neither party remarried and, accordingly, there is no competing claimant. Despite the applicant's failure to submit a valid former spouse election change, he did not request SBP coverage for his former spouse to be terminated following their divorce, indicating his intent for her to remain eligible as the SBP beneficiary. There is no evidence of an error; however, to preclude an injustice, we recommend the member's records be corrected as stated below.

The complete AFPC/DPSIAR evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

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

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 injustice. We took notice of the applicant's complete submission in judging the merits of the case and agree with the opinion and recommendation of the Air Force office of primary responsibility and adopt its rationale as the basis for our conclusion that relief should be granted. Although we find no evidence of an error on the part of the Air Force, we believe that it is in the interest of justice to provide the requested relief. Therefore, we recommend the applicant's record be corrected as indicated below.

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 27 August 1996, he elected former-spouse coverage under the Survivor Benefit Plan (SBP) at the previous reduced level of retired pay, naming his former spouse as the beneficiary.

The following members of the Board considered AFBCMR Docket Number BC-2012-01209 in Executive Session on 27 Nov 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 30 Mar 12, w/atch.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPSIAR, dated 10 May 12.
- Exhibit D. Letter, SAF/MRBR, dated 30 May 12.

Panel Chair