

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01307

(DECEASED)  
(EX SPOUSE)

COUNSEL: NONE

HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

Former Spouse coverage be established for her under the Survivor Benefit Plan (SBP).

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APPLICANT CONTENDS THAT:

Her ex-husband, the deceased, always intended for her to receive his Survivor Benefits. When they divorced in 2004, after over 42 years of marriage, he made sure her SBP rights were addressed in the divorce decree, and told her he would notify Defense Finance and Accounting Services (DFAS). He faxed a 3 May 05 letter to DFAS for that purpose. Until she received a copy of this letter, she was not aware the divorce decree alone was not sufficient to establish her rights, and even then she did not know her ex-husband's notification letter was two months late.

In support of her request, the applicant provides copies of her marriage license, divorce decree, her ex-husband's death certificate, and notification letter to DFAS.

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

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STATEMENT OF FACTS:

The deceased and the former spouse (applicant) were married on 8 Aug 62, and he elected spouse and child SBP coverage based on full retired pay prior to his 1 Jan 80 retirement.

On 3 Mar 04, the parties divorced and the deceased and his second spouse married on 19 Nov 05.

On 19 Nov 11, the applicant's ex-spouse (the deceased) died.

On 6 Mar 12, DFAS refunded the applicant \$2,942.19 for SBP premiums removed from his retired pay for the period 20 Nov 05 through 29 Feb 11.

The remaining 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.

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AIR FORCE EVALUATION:

AFPC/DPSIAR does not make a recommendation, as is the policy in cases with two potential beneficiaries. 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 DFAS-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.

The parties divorced on 3 Mar 04, and their divorce decree ordered the deceased to make the necessary election in a timely manner to effectuate the applicant as this SBP beneficiary. There is no evidence either party submitted a valid election to change spouse coverage to former spouse coverage within the first year following their divorce. The DFAS-CL SBP record continued to reflect the applicant's name and date of birth (10 Aug 44) as the eligible spouse beneficiary. SBP premiums were deducted from the deceased's retired pay until Mar 11, when he was "paid up" as authorized by Public Law 105-261 (17 Oct 98). The Defense Enrollment Eligibility Reporting System (DEERS) reflects the deceased and his second spouse married on 19 Nov 05, and she became the eligible spouse beneficiary on the first anniversary of their marriage, even though the deceased did not notify the finance center of his remarriage. The applicant remarried on 7 Oct 06; however, she was over the age of 55 at that time, thus, her marriage does not affect her eligibility to receive SBP payments. The deceased died on 19 Nov 11, but there is no indication the second spouse has applied for payment of the SBP annuity.

The complete AFPC/DPSIAR evaluation is at Exhibit C.

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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).

A copy of the SAF/GCM legal opinion regarding SBP, dated 18 Oct 06, was forwarded to the applicant on 31 Oct 12 for review and comment within 30 days. As of this date, no response has been received by this office (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 error or injustice. We took notice of the applicant's complete submission in judging the merits of the case; however, we believe the applicant has failed to establish that she suffered either an error or injustice. Neither the applicant nor the deceased submitted a valid election within the one-year period after their divorce as required by law to establish former spouse coverage. Although the AFBMCR has the authority, it should not rule on a dispute between two claimants to a benefit that only one of them can receive. However, should the applicant provide a notarized statement from the deceased former member's widow relinquishing her entitlement to the SBP proceeds, the Board may be willing to reconsider the applicant's appeal on the basis of new evidence. Therefore, in view of the foregoing, we find no basis to recommend granting the relief sought in this application.

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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-2012-01307 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 2 Apr 12, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPSIAR, dated 17 May 12.
- Exhibit D. Letter, SAF/MRBR, dated 30 May 12.
- Exhibit E. Letter, AFBCMR, dated 31 Oct 12, w/atch.

Panel Chair