

immediately eligible as a potential SBP beneficiary. It is incumbent upon a member to properly advise Defense Enrollment Eligibility Reporting System (DEERS) and Defense Finance and Accounting System-Cleveland (DFAS-CL) when a new child is acquired. However, despite a member's failure to make timely notification, the laws controlling the SBP provide automatic, immediate protection for the child. The deceased member was married, had dependent children, and elected spouse and child coverage based on full retired pay prior to his 1 Nov 81 retirement. The deceased member and his previous spouse divorced on 23 Sep 82, and the spouse's portion of his SBP coverage was suspended. The deceased and the applicant married on 21 Mar 87, and he properly notified DFAS-CL to resume spouse coverage. Subsequently, the applicant and the deceased member had three children, but there is no evidence the deceased advised DFAS-CL of the birth of these three children. Nevertheless, each child became eligible as a contingent SBP beneficiary upon birth. Since the deceased member failed to notify DFAS-CL, the additional monthly premium for their coverage was not deducted from his retired pay. The member's failure to properly advise DFAS-CL of the children's birth does not negate their eligibility as contingent SBP beneficiaries. The applicant is less than age 55; therefore, in the event she remarries, the eligible children would equally share the SBP annuity payment. While there is no evidence of an Air Force error, in the interest of justice, the applicant's request should be approved, contingent upon recoupment of applicable premiums.

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. Although we find no evidence of an error on the part of the Air Force, after careful

consideration of the evidence of record and the merits of the case we agree with the opinion and recommendation of the Air Force office of primary responsibility and adopt its rationale as the basis for our conclusion the applicant has been the victim of an injustice. Therefore, we believe the applicant's records should be corrected to the extent 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 their birth dates he notified the Defense Finance and Accounting Service-Cleveland of the births of his three children: James on 20 April 1998, Jessica on 26 June 2000, and Charles on 5 August 2002.

The following members of the Board considered AFBCMR Docket Number BC-2012-01309 in Executive Session on 19 Dec 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 1 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.

Panel Chair