

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01338

COUNSEL: NONE

HEARING DESIRED: Not Indicated

APPLICANT REQUESTS THAT:

Her former husband and deceased military member's Survivor Benefit Plan (SBP) coverage be changed to properly reflect their daughter as being incapable of self-support prior to age 18.

APPLICANT CONTENDS THAT:

She had no idea, until the death of the member, that SBP coverage was dropped at the child's 21st birthday.

In support of her appeal, the applicant provides copies of the deceased former member's death certificate, the child's birth certificate, and documentation related to the guardianship of the child.

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

STATEMENT OF FACTS:

The deceased former member elected child only SBP coverage prior to his 1 Apr 89 retirement and the applicant concurred in his election. The member did not indicate that their daughter (DOB: 1 Dec 86) was incapable of self-support. Consequently, upon his death on 5 Feb 11, the Defense Finance and Accounting Service (DFAS) updated his records to reflect he no longer had an eligible child effective Jul 09.

The laws controlling the SBP permits life-time eligibility for a child who is incapable of self-support if the disability occurred before the child attained age 18, or if the condition occurs between the ages of 18 and 22 if the child is a full-time student. The marriage of the child at any time terminates a handicapped child's eligibility for SBP payments.

AIR FORCE EVALUATION:

AFPC/DPSIAR states is it reasonable to presume the member would have properly indicated the child as disabled, making that fact a matter of record, if he understood the impact on her life-long eligibility to received SBP annuity payments. Therefore, in order to preclude an injustice, granting the applicant's request would be appropriate, contingent upon receiving medical documentation as to the date of her initial diagnosis and a notarized statement in which the applicant affirms the child has never married.

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 4 Jun 12 for review and comment within 30 days. As of this date, no response has been received by this office.

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 error or injustice. After a thorough review of the evidence of record and the applicant's submission, we believe a preponderance of the evidence supports corrective action. We note AFPC/DPSIAR's comment concerning the child's initial diagnosis and current marital status, however, we believe the evidence submitted by the applicant to this Board is sufficient to establish the applicant's child, born 1 Dec 86, was incapable of self-support prior to age 18. Therefore, we recommend the deceased former member's record be corrected as indicated below.
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THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to the deceased former member be corrected to show that on 1 April 1989, he elected child only coverage under the Survivor Benefit Plan (SBP) based on full retired pay, with life-time eligibility for his child, born 1 December 1986.

The following members of the Board considered AFBCMR Docket Number BC-2012-01338 in Executive Session 27 Nov 12, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 28 Feb 12, w/atchs.
- Exhibit B. Letter, AFPC/DPSIAR, dated 21 May 12.
- Exhibit C. Letter, SAF/MRBR, dated 4 Jun 12.

Panel Chair