

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01351

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

Her ex-spouse's record be corrected to show he elected "former spouse" coverage under the Survivor Benefit Plan (SBP).

APPLICANT CONTENDS THAT:

Her ex-husband kept her as the SBP beneficiary after their divorce, as reflected by his hand-written note on his 2 January 2002 Retiree Account Statement (RAS) upon which her date of birth, monthly SBP premium and annuity amount are shown, confirming the decedent intended for her to be his SBP beneficiary.

In support of her appeal, the applicant provides copies of her late husband's Certificate of Death, their Divorce Decree, an SBP Election change, and their Certificate of Marriage.

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

STATEMENT OF FACTS:

The decedent is a former member of the Regular Air Force who retired effective 1 August 1962 in the grade of major (O-4).

The remaining relevant facts are contained in the letter prepared by the Air Force office of primary responsibility (OPR) at Exhibit B.

AIR FORCE EVALUATION:

ARPC/DPSIAR recommends approval. DPSIAR states that it appears the decedent was previously married, and then retired effective 1 August 1962. He declined SBP coverage during the Plan's

initial open enrollment. The Defense Enrollment Eligibility Reporting System (DEERS) reflects the applicant and the member married on 8 April 1982, and the member elected spouse and child coverage based on full retired pay during the one-year open enrollment (1 October 1981 to 30 September 1982) authorized by Public Law 97-35 (13 August 1981). The parties divorced on 10 October 2005, and the qualified domestic relations order, incorporated by the divorce decree, awarded SBP to the applicant. There is no evidence either party submitted an election to change spouse coverage to former spouse coverage within the first year following their divorce. The information maintained in the retired pay system reflected the applicant's date of birth (15 June 1936) as the eligible spouse beneficiary. Monthly premiums continued to be deducted from the member's retired pay until his death on 1 November 2011. There is no indication either party remarried.

DPSIDAR states that there is no evidence of Air Force error in this case; however, in the absence of a competing claimant and to prevent a possible injustice, they recommend the decedent's record be corrected to reflect he elected former spouse coverage based on full retired pay, naming APPLICANT as the former spouse beneficiary, effective 11 January 2005. Approval should be contingent upon recovery of appropriate retroactive costs.

The complete DPSIAR evaluation is at Exhibit B.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 19 June 2012, for review and comment within 30 days (Exhibit C). As of this date, this office has received no response.

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 error or injustice. After thoroughly reviewing the evidence in this case, we are persuaded it was the applicant's intent to provide his ex-spouse with an SBP annuity. In this respect, we note the decedent elected spouse and child coverage based on full retired pay during the SBP open season enrollment authorized by Public Law 97-35.

Although the decedent and applicant divorced on 10 October 2005, the qualified domestic order, incorporated by the divorce decree, awarded SBP to the applicant. We believe that since SBP premiums continued to be deducted from the member's retired pay until his death on 1 November 2011 it would be an injustice for the applicant to be denied the SBP benefits. Therefore, we recommend the member's records 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 DECEASED FORMER MEMBER be corrected to show that on 11 January 2006, he elected former spouse coverage based on full retired pay under the Survivor Benefit Program, naming APPLICANT as the former spouse beneficiary.

The following members of the Board considered AFBCMR Docket Number BC-2012-01351 in Executive Session on 27 November 2012, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

All members voted to correct the record as recommended. The following documentary evidence for AFBCMR Docket Number BC-2012-01351 was considered:

- Exhibit A. DD Form 149, dated 4 Aug 10, w/atchs.
- Exhibit B. Letter, AFPC/DPSIAR, dated 22 May 12.
- Exhibit C. Letter, SAF/MRBR, dated 19 Jun 12.

Panel Chair