

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01541
COUNSEL: NONE
HEARING DESIRED: NOT INDICATED

APPLICANT REQUESTS THAT:

Her former spouse's record be corrected to show he elected "former spouse" coverage based on full retired pay under the Survivor Benefit Plan (SBP).

APPLICANT CONTENDS THAT:

She was the beneficiary of her former husband's SBP policy, and was to remain as such under a legal court agreement. She consulted her lawyer about the legality of this agreement and was assured of its validity as agreements made in court are binding.

In support of her appeal, the applicant provides a personal statement, her former's husband's death certificate, and their divorce decree.

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 elected spouse and child coverage based on full retired pay under the SBP prior to his 1 February 1975 retirement. Effective December 1992, there were no longer any eligible children. There is no evidence the decedent submitted an election to voluntarily change spouse coverage to former spouse coverage within the first year following their divorce.

The Defense Enrollment Eligibility Reporting System (DEERS) reflects the member and Patricia married on 20 May 2001. The member advised the Defense Finance and Accounting Service (DFAS) of his marriage, and DFAS updated his record. The decedent's SBP coverage was established on Patricia's behalf on the first anniversary of their marriage. Monthly premiums continued to be deducted from the member's retired pay when he became "paid-up." DEERS reflects Patricia died on 23 July 2009, and the member died

on 4 May 2010. There is no indication he remarried before his death.

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:

AFPC/DPSIAR indicates that absent a certified copy of the final divorce decree and/or qualified domestic relations order (QDRO), they have no basis to make a recommendation. DPSIAR requested the applicant provide a certified copy of the final divorce decree and/or the QDRO, which she claimed awarded SBP coverage to her following divorce. The applicant responded that the court documents she provided with her request are the only final paper issued to her. Nevertheless, the submitted document is not the final divorce decree.

In the event the applicant provides the requested documents which prove the court awarded SBP coverage to her, absence 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 XXXXXXXXXXXXXXX as the former spouse beneficiary, effective the date following the date the divorce decree was finalized. 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 14 August 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 timely filed.
3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or an injustice. We took notice of the applicant's complete submission in judging the

merits of the case; however, we conclude the applicant has not been the victim of an error or injustice. Although the applicant claims she is entitled to SBP benefits as a result of their legal court agreement, the evidence presented is insufficient to validate this assertion. Additionally, we took note of the handwritten note on the court order verifying her entitlement to SBP; however, this does not constitute a legal entitlement. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that 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-2012-01541 in Executive Session on 27 November 2012, under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

The following documentary evidence was considered in connection with AFBCMR Docket Number BC-2012-01541:

- Exhibit A. DD Form 149, dated 10 Mar 12, w/atchs.
- Exhibit B. Letter, ARPC/DPSIAR, dated 11 Jun 12.
- Exhibit C. Letter, SAF/MRBR, dated 14 Aug 12.

Panel Chair