

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01796
COUNSEL: NONE
HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

Her deceased spouse's record be changed to show he elected to participate in the Survivor Benefit Plan (SBP).

APPLICANT CONTENDS THAT:

When her late spouse retired from active duty he did not involve her with military matters nor did he discuss his decision to decline the SBP. She does not recall receiving a notice from the Air Force regarding survivor benefits.

In support of the applicant's appeal, she provides a copy of a marriage certificate, death certificate, and an affidavit.

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

STATEMENT OF FACTS:

The applicant and the decedent were married on 11 November 1954. He declined SBP coverage prior to his 1 June 1974 retirement. Neither the decedent's election form nor evidence that the required notice was or was not sent to the applicant could be located.

The decedent died on 24 March 2012.

AIR FORCE EVALUATION:

DPSIAR recommends approval. DPSIAR states the U.S. Court of Claims has consistently ruled that widows who are not given notice of their sponsor's election are entitled to full SBP coverage. There is no record the required notice was given to the applicant. After the death of the retired member, the

applicant provided a sworn statement that she did not receive notification that her husband had declined SBP coverage.

The DPSIAR complete evaluation is at Exhibit B.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

On 19 June 2012, a copy of the Air Force evaluation was forwarded to the applicant for review and response within 30 days (Exhibit C). 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 timely filed.
3. Sufficient relevant evidence has been presented to demonstrate the existence of an injustice. After thoroughly reviewing the circumstances of this case, it is our opinion that favorable consideration of the applicant's request is warranted. We are aware of the United States Court of Federal Claims rulings in cases where surviving spouses, who are not given proper notice of their spouse's declination of SBP coverage, are entitled to full SBP coverage. We note the Air Force has indicated there is no record the applicant was provided with the required notification. Since there is no evidence the applicant was properly advised of her spouse's decision not to elect coverage, as required by the applicable statute, there is no dispute concerning her entitlement to survivor benefits under the criteria set forth in Accordingly, we recommend the records be corrected as indicated below.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that on 1 June 1974, he elected spouse coverage under the Survivor Benefit Plan (SBP) based on full retired pay, naming as the spouse beneficiary.

The following members of the Board considered AFBCMR Docket Number BC-2012-01796 in Executive Session on 19 December 2012, under the provisions of AFI 36-2603:

All members voted to correct the records, as recommended. The following documentary was considered:

- Exhibit A. DD Form 149, dated 3 April 2012, w/atchs.
- Exhibit B. Letter, AFPC/DPSIAR, dated 12 June 2012.
- Exhibit C. Letter, SAF/MRBR, dated 19 June 2012.