

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-02001
COUNSEL: NONE
HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

Her late husband's records be corrected to reflect that he made an election for spouse coverage with option C, which denotes "immediate annuity" under the Reserve Component Survivor Benefit Plan (RCSBP).

APPLICANT CONTENDS THAT:

In Feb 96, her deceased husband updated his military records, to include his Servicemembers' Group Life Insurance (SGLI), and emergency data, as well as all civilian documentation and declaration of survivor benefits; however, there was an error in not updating the RCSBP election form.

In support of her request, the applicant provides copies of her husband's death certificate, their marriage license, DD Form 93, *Record of Emergency Data*, and a Report of Individual Personnel (RIP).

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

STATEMENT OF FACTS:

On 22 Dec 95, the deceased member and the applicant were married.

The remaining relevant facts pertaining to this application are contained in the letter prepared by the appropriate office of the Air Force, which is attached at Exhibit B.

AIR FORCE EVALUATION:

HQ ARPC/DPTT recommends denial. On 15 Jun 91, the deceased member was notified of his eligibility to participate in the RCSBP; however, he did not make an election at that time and therefore, was automatically enrolled in Option "A", "Decline to make an election until age 60." The deceased member did not

notify ARPC of his marriage or request to update his election as dictated by Title 10 United States Code (USC), 1448(a)(5)(B) which states, "any such election must be written, signed by the person making the election, and received by the Secretary concerned within one year after the date of the event."

From 1 Mar 99 to 29 Feb 00 and from 1 Oct 05 to 30 Sep 06, Congress declared these timeframes as SBP open-enrollment seasons. Members, who had previously elected less than full coverage or no coverage for their spouse/children, were afforded the opportunity to change their election to cover their families. During these timeframes DPTT records and system reflects the deceased member did not elect to participate in the RCSBP.

Due to the fact that her deceased husband was eligible for retired pay at age 60, the applicant is eligible for an ID card, Base Exchange and Commissary privileges. In addition, she is eligible to apply for medical and dental benefits through the TRICARE program and may be eligible for benefits through the Department of Veterans Affairs (DVA).

The complete DPTT evaluation, with attachments, is at Exhibit B.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant states the PS Form 3811, *Domestic Return Receipt* does not bear her deceased husband's signature certifying receipt of the election information package. She questions how her deceased husband was notified of the two opportunities to make a survivor benefit election. She understands that under the current law, the failure to make an election, if married, will result an option C automatically being selected.

To deny her his pension would cause severe financial hardship. For the past five months, she has struggled with the death of her husband. She has a mortgage; so to remain in the home would be impossible without sufficient funds. Denying a military spouse her husband's pension has far greater implications than financial hardship; it speaks of a country who, upon her deceased husband's death, fundamentally declares his service null and void.

The applicant's complete response, with attachment, is at attachment 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. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. While the applicant states the PS Form 3811 does not bear her deceased husband's signature certifying receipt of the election information package and questions how he was notified of the two opportunities to make a survivor benefit program (SBP) election. We note the PS Form 3811 does not bear her deceased husband's signature; however, it was mailed to the former member's address; bears the name of the person delivered to and the date of delivery as required. In addition, there is no evidence the former member established SBP coverage in her behalf, prior to his 2010 retirement. Therefore we agree with the opinion and recommendation of the Air Force office of primary responsibility (OPR) and adopt its rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. In view of the above and in the absence of evidence to the contrary, we find no basis to recommend the relief sought. The applicant must realize that RCSBP and SBP are much like commercial life insurance plans, in that a member pays premiums in order to secure a portion of their retirement to ensure benefits are paid to their surviving spouse. Further, although the law currently provides automatic coverage for a spouse if the member fails to provide coverage or the spouse does not agree with the decision, no such provisions existed at the time of the member's eligibility to enroll in the program.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

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-2012-02001 in Executive Session on 19 Dec 12, under the provisions of AFI 36-2603:

Panel Chair

Member

Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-02001 was considered:

- Exhibit A. DD Form 149, dated 1 May 12, w/atchs.
- Exhibit B. Letter, ARPC/DPTT, dated 3 Jul 12, w/atchs.
- Exhibit C. Letter, SAF/MRBR, dated 16 Jul 12.
- Exhibit D. Letter, Applicant, 10 Aug 12, w/atc.

Panel Chair