

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2011-04704  
COUNSEL: NONE  
HEARING DESIRED: YES

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APPLICANT REQUESTS THAT:

Her former spouse's (decedent) records be corrected to reflect he made a timely election for former spouse coverage under the Survivor Benefit Plan (SBP).

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APPLICANT CONTENDS THAT:

She and the decedent agreed that she would be the irrevocable SBP beneficiary as reflected in their divorce decree. She was not aware the decedent revoked this benefit.

In support of her request the applicant provides copies of her separation agreement and divorce decree.

Her complete submission, with attachments, is at Exhibit A.

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STATEMENT OF FACTS:

According to the information provided by the Air Force office of primary responsibility (OPR), the applicant and the decedent were married on 1 Sep 1979 and divorced on 8 Jul 1999. In the Separation Agreement, incorporated in the divorce decree, the decedent agreed to name the applicant as the irrevocable beneficiary of the SBP. However, there is no evidence the Defense Finance and Accounting Service - Cleveland (DFAS-CL) received a request from the applicant deeming that an SBP election be made on her behalf during the first year following the date of their divorce

The remaining relevant facts pertaining to this application are contained in the letter prepared by the appropriate office at Exhibit B.

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AIR FORCE EVALUATION:

AFPC/DPSIAR does not provide a recommendation because it involves two potential SBP beneficiaries. They do note that Defense Enrollment Eligibility Reporting System (DEERS) records show the decedent's spouse at the time of his death is currently receiving the SBP monthly annuity. The decedent married his surviving spouse on 26 Jul 1999 and he retired on 1 Apr 2003. Prior to retiring, he was counseled on the options and effects of the SBP by a SBP counselor. He elected spouse and child SBP coverage based on a reduced level of retired pay, and his wife concurred in his election.

The complete DPSIAR evaluation is at Exhibit B.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

On 19 Jan 2012, the applicant requested additional time to provide supplementary evidence in support of her request and her case was administratively closed.

On 30 Jun 2012 the applicant, requested her application be reopened. She states that for almost 20 years, she dedicated her life to supporting the decedent's Air Force career. She chose to forego a career to support the decedent because he said the retirement benefits would sustain them both. She did not begin a professional career outside of the home until 1994 and completed an under graduate degree in 2007. They separated after 18 years of marriage and their divorce was finalized on 8 Jul 1999.

When the separation agreement was drafted, he agreed that she would be deemed the irrevocable SBP beneficiary. He pushed for the divorce to be completed prior to their 20 year anniversary because he did not want her to have benefits.

In May 2003, the month after he retired, the decedent drafted a note, using a calculation he said would be the applicant's portion of the community property. He said he would later send her confirmation of what she was entitled to. However, when asked for the confirmation, he told her he owed the Air Force money, therefore, his Leave and Earnings Statement did not accurately reflect his pay. In her naiveté, she agreed that he would send a monthly check, as opposed to direct deposit as stipulated in the divorce decree.

Within the year the decedent and his wife moved and she did not have contact with him. She continued to receive monthly checks for \$640.57 in the mail without a return address. The checks began arriving later and later each month.

In Jan 2007 she contacted a veteran's group and found that she could petition the Air Force for lost community property payments. She learned he withheld over \$225.00 per month for four years. She also became aware he did not abide by their separation agreement and divorce decree to make a deemed election to establish her as the irrevocable SBP beneficiary.

It was upon his death in Aug 2011 that she learned his second wife was receiving the SBP payments. His dishonesty and animosity towards her was the reason he did not abide by the court order. She is appealing to the Board to honor his initial agreement and court order and respect the sacrifices she made for nearly 20 years to support his military career.

Her complete response, with attachments, is at Exhibit F.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant did not respond. However, the widow responded and states her deceased husband felt the SBP was for the care and benefit of his minor children and therefore when they married, he named her and the minor child by his former wife as beneficiaries to insure the minor was cared for should he pass away. That child aged out of eligibility in 2007.

The widow's complete response is at Exhibit H.

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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 an error or injustice. We took notice of the applicant's complete submission in judging the merits of the case, including her response to the Air Force advisory. However, the applicant has not demonstrated that extraordinary circumstances exist that are required for this Board to grant relief in cases of competing SBP beneficiaries. We do not take issue with the applicant's assertion that the decedent agreed to name her as the irrevocable beneficiary of the SBP. Nevertheless, in violation of the Court's order, he failed to convert the coverage to former spouse coverage within one year of their divorce as required by law. Moreover, the applicant also failed to execute a deemed election for coverage within the one year timeframe. In the absence of evidence that there was a "deemed election" by the applicant within one year

after the divorce, the Board assumes the decedent's current spouse gained entitlement to the benefit by operation of law. Since the applicant has failed to demonstrate that extraordinary circumstances exist that would justify correction of the record by this Board, we can only grant the relief sought if the applicant provides proof of a timely election or the decedent's widow provides notarized consent relinquishing her entitlement to the benefit. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the requested relief.

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 issue(s) involved. Therefore, the request for a hearing is not favorably considered.

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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.

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The following members of the Board considered this application in Executive Session on 12 Feb 2013, under the provisions of AFI 36-2603:

- , Panel Chair
- , Member
- , Member

The following documentary evidence was considered in AFBCMR BC-2011-04704:

- Exhibit A. DD Form 149, dated 22 Nov 2011, w/atchs.
- Exhibit B. Letter, AFPC/DPSIAR, dated 15 Feb 2012
- Exhibit C. Letter, SAF/MRBR, dated 29 Feb 2012.
- Exhibit D. Letter, Applicant, 22 Mar 2012.
- Exhibit E. Letter, SAF/MRBR, 14 Jun 2012.
- Exhibit F. Letter, Applicant, 30 Jun 2012, w/atchs.
- Exhibit G. Letters, AFBCMR, dated 2 Jan 2013, w/atchs.
- Exhibit H. Letter, Widow, dated 25 Jan 2013.

Panel Chair