

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01572
COUNSEL: NONE
HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

Her late husband's record be corrected to terminate the former spouse coverage under the Survivor Benefit Plan (SBP).

APPLICANT CONTENDS THAT:

Her late husband paid SBP premiums for his former spouse's SBP coverage from January 1996 to June 2004, even though the former spouse remarried in September 2003 before her 55th birthday.

In support of her appeal, the applicant provides a personal statement, and copies of a *Afterburner* news article, decedent's request to the Defense Finance and Accounting Service (DFAS) to terminate his former spouse's SBP benefits and start full coverage on his current spouse, marriage certificate, divorce decree, court documents concerning changing SBP benefits, and a death certificate .

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

STATEMENT OF FACTS:

The member (decedent) and his former spouse married on 20 December 1980, and divorced on 2 June 1995. However, the decedent did not provide a certified copy of the divorce decree to DFAS. The applicant and the decedent married on 19 August 1995. The decedent retired effective 1 January 1996, and elected former spouse and child SBP coverage based on full retired pay. The decedent's petition to terminate his former spouse's entitlement to a portion of his retired pay and former spouse SBP coverage because she had remarried was granted by the court on 8 March 2004. On 24 March 2004, the decedent sent a written request to DFAS to implement these adjustments, and to start full SBP coverage on the applicant's behalf. DFAS stopped his former spouse's division of the decedent's retired pay, but suspended - not terminated - her SBP coverage because Title 10, United States Code, Section 1450(b)(3), restores a former spouse's eligibility

when the disqualifying marriage ends. The decedent died on 5 January 2012.

AIR FORCE EVALUATION:

AFPC/DPSIAR does not provide a recommendation per AFBCMR direction because the appeal involves two potential SBP beneficiaries.

The complete DFAS 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 25 June 2012, for review and comment within 30 days (Exhibit C). As of this date, this office has received no response.

SAF/MRB LEGAL ADVISOR EVALUATION:

The SAF/MRB Legal Advisor recommends denial. The SAF/MRB Legal Advisor states that although this case seems to be different from the standard competing spouse case because the former spouse remarried before age 55, the controlling opinion from SAF/GC still applies. Under Title 10 United States Code, Section 1450(b)(3), if a former spouse who married before age 55 later becomes unmarried due to death, annulment, or divorce, payment of the suspended annuity to that former spouse resumes. Therefore, since the former spouse remains as a potential SBP beneficiary under the law, it would be inconsistent with the SAF/GC guidance to take away the former spouse's potential SBP benefit out of a desire to reach an equitable outcome for the applicant.

The complete BCMR Legal Advisor's evaluation, with attachment, is at Exhibit D.

APPLICANT'S REVIEW OF SAF/MRB LEGAL ADVISOR'S EVALUATIONS:

A copy of the SAF/MRB Legal Advisor's evaluation was forwarded to the applicant on 4 December 2012, for review and comment within 30 days (Exhibit E). 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. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. We took notice of the applicant's complete submission in judging the merits of this case; however, we agree with the opinion and recommendation of BCMR Legal Advisor and adopt his rationale as the basis for our decision that 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 the former spouse's remarriage before her 55th birthday, we note that the former spouse remains a potential beneficiary under the law and it would be inconsistent with pertinent legal guidance to take away her potential SBP benefit, absent a notarized statement from her, relinquishing all rights to any future, potential benefit. Accordingly, 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-2012-01572 in Executive Session on 29 January 2013, under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

The following documentary evidence was considered in connection with AFBCMR Docket Number BC-2012-01572:

- Exhibit A. DD Form 149, dated 3 Apr 12, w/atchs.
- Exhibit B. Letter, AFPC/DPSIAR, dated 14 Jun 12.
- Exhibit C. Letter, SAF/MRBR, dated 25 Jun 12.
- Exhibit D. Letter, SAF/MRB Legal Advisor, dated 15 Nov 12, w/atch.
- Exhibit E. Letter, AFBCMR, dated 4 Dec 12, w/atch.

Panel Chair