

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-02265
COUNSEL: NONE
HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

Her former spouse's record be changed to show he elected former spouse coverage under the Survivor Benefit Plan (SBP).

APPLICANT CONTENDS THAT:

Her former spouse indicated verbally and in writing that he applied for spousal survivor benefits coverage per the direction of their divorce decree. It is also indicated on his Retirement Account Statement.

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

STATEMENT OF FACTS:

The Defense Enrollment Eligibility Reporting System (DEERS) reflects the decedent married his second spouse on 20 December 1995 and divorced on 3 June 2003.

The applicant was also provided an advisory (Exhibit C) prepared by SAF/GCM on similar cases considered by the Board. The Board has been advised that it can consider cases involving potential claims by more than one spouse or former spouse if there is evidence that the member or former spouse timely notified the Government within one year after the divorce was final, or if there are extraordinary circumstances that would justify correction of the record. For example, extraordinary circumstances might exist if the current spouse signs a notarized affidavit saying she waives her potential claim to the survivor benefits in favor of complying with the member's obligations under the divorce agreement.

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

AIR FORCE EVALUATION:

AFPC/DPSIAR makes no recommendation. DPSIAR states the service member and the applicant's divorce decree ordered the service member to take all necessary steps to continue his participation in the SBP, including electing coverage within one year from the date of the judgment. There is no evidence either party submitted a valid former spouse election during the first year following their divorce. DFAS-CL's SBP records continued to reflect the applicant's name and date of birth (15 February 1938) as the eligible spouse beneficiary.

The former service member's wives became the eligible spouse beneficiary on the first anniversary of their marriage, even though the service member did not notify the finance center of his multiple changes in marital status. SBP premiums were deducted from the service member's retired pay until his 9 February 2012 death. The widow applied for and is currently receiving SBP monthly payments of \$343 (gross).

The DPSIAR complete evaluation is at Exhibit B.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

On 31 October 2012 and 17 January 2013, the evaluation was forwarded to the applicant for review and comment within 30 days (Exhibit D & F). 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 an error or injustice. The applicant has not demonstrated that extraordinary circumstances exist as required for this Board to grant relief in cases of competing SBP beneficiaries. We took notice of the applicant's complete submission in judging the merits of the case. While we note the divorce decree awarded the former spouse continued coverage under SBP, neither the applicant nor the former spouse made a deemed election within one year as required by law. Since it appears the applicant's third spouse gained entitlement to the benefit by operation of law, and there has been no showing of extraordinary circumstances, we are precluded from granting the

former spouse the SBP benefit. Therefore, unless proof of a timely election of former spouse coverage is provided or the third spouse relinquishes her entitlement, we find no basis to grant the applicant's request.

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 the evidence presented did not demonstrate the existence of an error or injustice; the application was denied without a personal appearance; and 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-2012-02265 in Executive Session on 6 March 2013, under the provisions of AFI 36-2603:

The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-02265 was considered:

- Exhibit A. DD Form 149, dated 22 May 2012, w/atchs.
- Exhibit B. Letter, AFPC/DPSIAR, dated 26 June 2012.
- Exhibit C. Letter, SAF/GCM, dated 17 April 2007.
- Exhibit D. Letter, Applicant, dated 31 October 2012.
- Exhibit E. Letter, Counsel, dated 12 November 2012.
- Exhibit F. Letter, AFBCMR, dated 17 January 2013.