

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-02486

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

The decedent's record be corrected to show that he elected spouse only coverage under the Survivor Benefit Plan (SBP)

APPLICANT CONTENDS THAT:

Neither she nor her husband was aware of the requirement to notify the Defense Accounting and Finance Service (DFAS) of their marriage and their desire to participate in the SBP annuity. Had they known, they would have sent the appropriate documentation to DFAS. It seems unfair that she is automatically ineligible to apply for SBP since her husband never participated in the program. He never met the eligibility criteria to do so and he never declined coverage.

In support of her appeal, the applicant provides the former member's death certificate, DD Form 2656-7, *Verification of Survivor Annuity*, W-4P, *Withholding Certificate for Pension or Annuity Payments* and a direct deposit form.

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

STATEMENT OF FACTS:

The decedent is a former member of the Air Force who retired on 1 July 2006.

AIR FORCE EVALUATION:

AFPC/DPSIAR recommends denial. An unmarried member who elects child only coverage, or declines SPB at retirement may provide coverage for the first spouse acquired following retirement. The election must be submitted before the first anniversary of the marriage. If the member fails to elect SBP coverage for an

eligible beneficiary within the time prescribed by law, coverage may be provided only in the event Congress authorizes open enrollment.

The Defense Enrollment Eligibility Reporting System (DEERS) reflects the decedent was divorced and declined SPB coverage prior to his 1 July 2006 retirement. He and the applicant married on 31 December 2007. There is no evidence the decedent advised DFAS of his change in marital status within the first year of his marriage. He failed to submit a valid request to elect SBP coverage on the applicant's behalf within the time prescribed by law. He died on 16 May 2012; there is no provision in the law to posthumously establish SPB coverage on the applicant's behalf.

It is the member's right and responsibility to elect SBP coverage for a spouse acquired after retirement. *The Afterburner, News for USAF Retired Personnel*, published after the applicant's marriage contained regular reminders for members concerning required actions to provide SBP coverage following changes in marital and family status. These issues of the *Afterburner* were mailed to the correspondence address the decedent provided the finance center.

There is no evidence of an error or injustice and no basis in the law to provide relief in this case. Should the Board recommend granting the applicant's request, approval should be contingent upon recoument of all applicable premiums.

The complete DPSIAR 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 26 July 2012, for review and comment within 30 days (Exhibit C). 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 timely filed.
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 the case; however, we agree with the opinion and the recommendation of the Air Force office of primary responsibility

and adopt its rationale as the basis for our conclusion that the decedent failed to make a clear election to participate in the SBP within the one year time period as prescribed by law. Regrettably, we find no basis to grant the relief sought in the 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-2012-02486 in Executive Session on 12 February 2013, under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 30 May 12, w/atchs.
- Exhibit B. Letter, AFPC/DPSIAR, dated 16 Jul 1S.
- Exhibit C. Letter, SAF/MRBR, dated 16 Jul 12.

Panel Chair