



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

Office of the Assistant Secretary

AFBCMR 96-02221

NOV 04 1997

MEMORANDUM FOR THE CHIEF OF STAFF

Under the authority of Section 1552, Title 10, United States Code, Air Force Instruction **36-2603**, and having assured compliance with the provisions of the above regulation, the decision of the Air Force Board for Correction of Military Records is announced, and it is directed that:

The pertinent military records of the Department of the **Air Force** relating to [REDACTED], be corrected to show that on **31 January 1980**, he elected spouse coverage under the Survivor Benefit Plan based on full retired pay.

A handwritten signature in cursive script that reads "Raymond H. Weller".

RAYMOND H. WELLER
Chief Examiner
Air Force Board for Correction
of Military Records



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MEMORANDUM OF CONSIDERATION OF APPLICATION BEFORE THE AFBCMR

SUBJECT: [REDACTED] SSAN: [REDACTED]

Having carefully reviewed this application, we agree with the recommendation of the Air Force and adopt the rationale expressed as the basis for our decision that the applicant has been the victim of either an error or an injustice. Therefore, under the authority delegated in AFI 36-2603, the applicant's records will be corrected as set forth in the accompanying Memorandum for the Chief of Staff signed by the Executive Director of the Board or his designee.


Panel Chair

Attachment:
Ltr, HQ AFPC/DPPT, dtd 6 Oct 97



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE PERSONNEL CENTER
RANDOLPH AIR FORCE BASE TEXAS



26 OCT 1997

MEMORANDUM FOR AFBCMR

FROM: HQ AFPC/DPPTR
550 C Street West Ste 11
Randolph AFB TX 78150-4713

SUBJECT: Application for Correction of Military Records

Reference: [REDACTED]

Requested Correction: The applicant, widow of the above-named retired member, is requesting corrective action that would entitle her to a Survivor Benefit Plan (SBP) annuity.

Basis for Request: The applicant swears, under penalty of perjury, that she was not notified of her husband's SBP decision.

Backaround: Public Law (PL) 92-425, which established the SBP, required the spouse be notified when a member declined or elected less than maximum spouse coverage.

Facts: Documents provided by the applicant establish that she and the member were married on 14 Aug 60. Defense Finance and Accounting Service (DFAS) records indicate that the member declined SBP coverage prior to his 1 Feb 80 retirement. The member's election form has not been located and there is no evidence that the required notice was or was not sent to the applicant. The member died on 26 May 96.

Discussion: The U. S. Court of Claims has consistently ruled that widows who are not given notice of their sponsor's election are entitled to full SBP coverage-Barber v. U.S., 676 F.2d 651 (Cl. Ct. 1982; Dean v. U.S., 10 Cl. Ct. 563 (1986); and Kelly v. U.S., 826 F.2d 1049 (Fed Cir. 1987). In all these cases the facts were essentially the same as they are in this case. There was no record the required notice was given to the applicant. After the death of the retiree, the widow provided a sworn statement that she was not counseled, advised, or aware her husband did not elect SBP coverage on her behalf.

Recommendation: We recommend the decedent's records be corrected to show on 31 Jan 80 he elected spouse SBP coverage based on full retired pay. Approval should be contingent upon recovery of premiums the decedent would have paid had he made the election at that time.

PAT PEEK, DAFC
Chief, Retiree Services Branch
Directorate of Pers Program Management

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ADDENDUM TO
RECORD OF PROCEEDINGS

The following members of the Air Force Board for Correction of Military Records considered this case in Executive Session on 28 October 1997, in accordance with AFI 36-2603 and 10 USC 1552.

Mr. Vaughn E. Schlunz, Panel Chairman

Mr. Joseph G. Diamond, Member

Mr. Patrick R. Wheeler, Member