

JUN 25 1998

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-02021

COUNSEL: [REDACTED]

HEARING DESIRED: No

APPLICANT REQUESTS:

Corrective action that would entitle her to an annuity under her late former husband's Survivor Benefit Plan (SBP).

APPLICANT CONTENDS THAT:

Applicant states that in accordance with her divorce settlement, her late former husband agreed to take all necessary action to provide her with guaranteed survivorship benefits to his government pension payable to her on a monthly basis in the event of his death. However, he never made this correction.

In support of her request, applicant submits a copy of her divorce settlement and decree, a copy of the member's death certificate, and other documentation relating to her appeal.

Applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

Applicant and the service member were married on 1 Dec 72.

On 2 Mar 90, the member elected child only SBP coverage based on full retired pay prior to his 1 Jul 90 retirement in the grade of master sergeant. Defense Finance and Accounting Service (DFAS) records show that the applicant concurred in the election. The applicant and member divorced on 16 Oct 90 and the court order required the member to take all necessary action to provide SBP coverage for his former spouse. The member died on 22 Apr 96 at which time his youngest son began to receive the full annuity.

AIR FORCE EVALUATION:

The Chief, Retiree Services Branch, AFPC/DPPT, reviewed this application and states that the member did not elect spouse coverage at retirement. Consequently, he was not eligible to obtain coverage on the applicant's behalf. Although he could have elected former spouse coverage for the applicant during the open enrollment period authorized by Public Law (PL) 101-189 (1 Apr 92 - 31 Mar 93), there is no record that the member returned an election form. There is no evidence of Air Force error in this case and no basis in law to grant relief. Therefore, they recommend denial of the request.

A complete copy of the Air Force evaluation is attached at Exhibit B.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A complete copy of the Air Force evaluation was forwarded to applicant and counsel on 29 Dec 97 for review and response within 30 days. As of this date, no response has been received by this office.

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 probable 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 recommendation of the Air Force and adopt their rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. Therefore, in the absence of evidence to the contrary, we find no compelling 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 probable 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 this application in Executive Session on 21 May 1998, under the provisions of Air Force Instruction 36-2603:

Mr. Henry C. Saunders, Panel Chair
Mrs. Barbara A. Westgate, Member
Ms. Ann L. Heidig, Member
Mrs. Joyce Earley, Examiner (without vote)

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 13 Jun 97, w/atchs.
- Exhibit B. Letter, AFPC/DPPTR, dated 11 Dec 97.
- Exhibit C. Letter, AFBCMR, dated 29 Dec 97.



HENRY C. SAUNDERS
Panel Chair