

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

[REDACTED]  
[REDACTED]

DOCKET NUMBER: 98-00762

NOV 13 1998

COUNSEL: NONE

HEARING DESIRED: YES

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APPLICANT REQUESTS THAT:

Her deceased husband's record be changed so that she is entitled to Survivor Benefit Plan (SBP) annuity.

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APPLICANT CONTENDS THAT:

She signed documents with the understanding that she was signing up for the SBP, which apparently was changed without her knowledge.

In support of her appeal, the applicant provided a personal statement, Election Statement For Former Spouse Coverage, DD Form 1882 (Survivor Benefit Plan Election Change - Former Spouse), DD Form 2293 (Application For Former Spouse Payments From Retired Pay), and other documentation.

Applicant's complete submission is attached at Exhibit A.

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STATEMENT OF FACTS:

The applicant and the member were married on 28 September 1969.

The decedent declined SBP coverage prior to his 1 August 1994 retirement. The applicant signed the election form in the presence of the counselor at [REDACTED] AFB, concurring in the decedent's election.

On 9 April 1997, the applicant and member divorced.

The member died on 26 October 1997.

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AIR FORCE EVALUATION:

The Chief, Retiree Services Branch, Directorate of Personnel Program Management, HQ AFPC/DPPTTR, reviewed this application and states that the decedent's pay record contains no evidence to support the applicant's claim that the SBP election was changed. All records indicate the member declined SBP coverage and the petitioner concurred in his election. It is each person's responsibility to ensure they understand the implication of any document they sign. In their view, the applicant's unsubstantiated claims do not negate the effect her signing the concurrence. Further, the court's action to award the SBP is unenforceable since the member did not elect spouse coverage when he retired. The law does not permit former spouse coverage after divorce if the member was married at the time of retirement, but declined spouse coverage. Therefore, they recommend denial of applicant's request.

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

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the advisory opinion and states that she was deceived and did not know military law. She states that she trusted her spouse for 28 years of marriage during his 25 years of military duty. In February 1995 the physical abuse occurred, which was the result of an adulteress affair her husband had and the courts agreed. The court awarded the divorce based on the grounds of adultery, and requested that her husband make sure that SBP was available to her. She also states she was not advised by any counselor, nor military documents which should have been given to all spouse's of retired military in advance, so they will know the truth. She feels that she served her country just as well as her husband, and is entitled to the benefits as awarded by the courts due to the circumstances of the divorce.

Applicant's complete response is attached at Exhibit E.

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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 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.

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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.

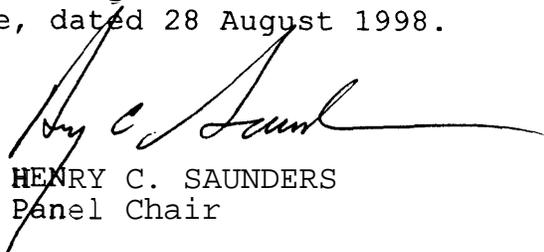
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The following members of the Board considered this application in Executive Session on 27 October 1998, under the provisions of AFI 36-2603:

Mr. Henry C. Saunders, Panel Chair  
Ms. Ann Heidig, Member  
Mrs. Barbara A. Westgate, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 11 March 1998, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPPT, dated 11 August 1998.
- Exhibit D. Letter, MIBR, dated 24 August 1998.
- Exhibit E. Applicant's Response, dated 28 August 1998.



HENRY C. SAUNDERS  
Panel Chair