

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

00728 1998

IN THE MATTER OF:

DOCKET NUMBER: 98-00823

[REDACTED] JNSEI . NE

[REDACTED] HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

Applicant is the widow of a former service member, who requests her late husband's records be corrected to show that he made a timely election to voluntarily elect Survivor Benefit Plan (SBP) former spouse coverage.

APPLICANT CONTENDS THAT:

Her deceased former spouse never changed the beneficiary and it still reflects her name, date of birth and social security number. Her deceased former spouse always indicated that she was to receive the SBP annuity. Even after he remarried, he did not change his election and continued to tell her she would receive the SBP.

In support of her request, applicant submits a copy of the former member's death certificate, his DD Form 214, a retirement order, final divorce decree, a copy of the applicant's birth certificate and a copy of the applicant's military ID card.

Applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

The relevant facts pertaining to this application, extracted from the applicant's military records, are contained in the letter prepared by the appropriate office of the Air Force, Office of Primary Responsibility (OPR). Accordingly, there is no need to recite these facts in this Record of Proceedings.

AIR FORCE EVALUATION:

The Chief, Retiree Services Branch, AFPC/DPPTR, reviewed this application and states that at the time of the applicant's divorce there was no provision under the SBP law to continue coverage to a former spouse. Under Public Law (PL) 99-145, the deceased former service member could have designated his former spouse as the beneficiary. However, there is no indication that

he requested information or submitted any documentation to establish coverage on the petitioner's behalf. The spouse of the decedent applied for the benefit upon his death and has been receiving SBP annuities since that time. There is no evidence of an Air Force error or injustice, or basis in law to waive the six-year statute of limitations for filing a claim for SBP benefits. Therefore, they recommend denial of the request.

A complete copy of the 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 on 24 August 1998 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. After a thorough review of the evidence of record and applicant's submission, we are not persuaded that her former deceased spouse's military records should be corrected to reflect that he made a timely election to voluntarily elect Survivor Benefit Plan (SBP) former spouse coverage. Her contentions are duly noted; however, we do not find these uncorroborated assertions, in and by themselves, sufficiently persuasive to override the rationale provided by the Air Force. We therefore agree with the recommendations of the Air Force and adopt the rationale expressed as the basis for our decision that the applicant has failed to sustain her burden that she has suffered either an error or an injustice. Therefore, we find no compelling basis to recommend granting the relief sought.
4. The documentation provided with this case was sufficient to give the Board a clear understanding of the issues involved and a personal appearance, with or without counsel, would not have materially added to that understanding. Therefore, the request for a hearing is not favorably considered.

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 27 October 1998, under the provisions of AFR 36-2603:

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

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 20 Mar 98, w/atchs.
Exhibit B. Letter, AFPC/DPPTR, dated 11 Aug 98.
Exhibit C. Letter, AFBCMR, dated 24 Aug 98.


HENRY C. SAUNDERS
Panel Chairman



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

11 AUG 1998

MEMORANDUM FOR AFBCMR

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

SUBJECT: Application for Correction of Military Records

Reference: [REDACTED]

Requested Correction: The applicant, former spouse of the above-named retiree, is requesting corrective action to show the member made a timely election to voluntarily elect Survivor Benefit Plan (SBP) former spouse coverage.

Basis for Request: The applicant claims the member never took action to change the designated beneficiary for his SBP and he continued to tell her she would receive the SBP.

Background: A spouse's coverage is not automatically converted following divorce. Public Law (PL) 98-94 (24 Sep 83) was the first legislation that allowed a retiree to voluntarily provide SBP coverage on a former spouse's behalf, but required an election under the "insurable interest" option be made within the first year following the divorce. If the member failed to do so, former coverage could not be later established unless Congress authorized an open enrollment. PL 99-145 (8 Nov 85) permitted participants to elect former spouse coverage with the same cost and benefit factors as spouse coverage.

Facts: The applicant and the member were married on 23 Dec 55. The member retired effective 1 Jul 74, and elected reduced SBP coverage on the applicant's behalf. The applicant and member divorced on 11 Jan 80. The member remarried on 4 May 85 and died on 12 Dec 88.

Discussion: At the time of the member's divorce there was no provision under the SBP law to continue coverage to a former spouse. Under PL 99-145, the member could have designated his former spouse as the beneficiary. However, there is no indication that he requested information or submitted any documentation to establish coverage on the petitioner's behalf. The spouse of the decedent applied for the benefit upon his death and has been receiving SBP annuities since that time.

Recommendation: There is no evidence of an Air Force error or injustice, or basis in law to waive the six year statute of limitations for filing a claim for SBP benefits;

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Recommendation: There is no evidence of an Air Force error or injustice, or basis in law to waive the six year statute of limitations for filing a claim for SBP benefits; therefore, we recommend the request be denied. However, if the Board's decision is to grant relief, the applicant's military record should be corrected to reflect that on 1 Mar 86 he changed SBP coverage from spouse to former spouse coverage, naming Opal B. Renfro **as** the former spouse beneficiary. It is appropriate to use 1 Mar 86 as the starting date for former spouse coverage as that is the first date a retiree was permitted to elect former spouse coverage with the same cost and benefits associated with spouse coverage. Approval should be contingent upon recoupment of any applicable premiums.



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

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