



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

OCT 28 1988

Office of the Assistant Secretary

AFBCMR 98-01422

MEMORANDUM FOR THE CHIEF OF STAFF

Under the authority of Section 1552, Title 10, United States Code and 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 27 December 1988, he changed his Survivor Benefit Plan (SBP) election from spouse coverage to former spouse coverage based on reduced retired pay, naming [REDACTED] as the former spouse beneficiary.


JOHN J. D'ORAZIO
Chief Examiner

Air Force Board for Correction
of Military Records



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MEMORANDUM OF CONSIDERATION OF APPLICATION BEFORE THE AFBCMR

SUBJECT: [REDACTED]

Having carefully reviewed this application, we agree with the recommendation of the Air Force Office of primary responsibility 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 Sep 2, 1998,
w/Atch



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

MEMORANDUM FOR AFBCMR

2 SEP 1988

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

SUBJECT: Application for Correction of Military Records

Requested Correction: The applicant is requesting corrective action to show he filed a timely election for former spouse coverage under the Survivor Benefit Plan (SBP) to comply with his divorce decree.

Basis for Request: The applicant claims he was told when he retired that SBP for his former spouse couldn't be changed, even if he remarried.

Background: A spouse loses eligibility to receive an SBP annuity upon divorce. However, the law provides two mechanisms for changing spouse to former spouse coverage. Both must be exercised within one year after divorce: the retiree may file an election change, or the former spouse may request the retiree be deemed to have made such a change on his or her behalf. In the latter case, the former spouse must provide legal documentation that the member agreed, or the court ordered the member, to establish former spouse coverage. If neither the member nor former spouse requests the election change during the one-year eligibility period, former spouse coverage may not be established thereafter. Thus, even though a member may not have notified the Defense Finance and Accounting Service (DFAS) of the divorce and continued to pay premiums for spouse coverage after the divorce, the former spouse is not eligible for annuity payments upon the member's death.

Facts: The member elected spouse and child SBP coverage based on reduced level of coverage prior to his 1 Jan 75 retirement. The parties divorced on 26 Dec 88 and the final divorce decree required SBP coverage be continued. Monthly premiums continued to be deducted from his pay; however, his record erroneously reflected his former spouse as the spouse beneficiary.

Discussion: Although neither the applicant, nor the former spouse made an election change request during the required time limit, there is no evidence the member requested coverage for his former spouse be terminated, indicative of his intent to maintain her as the eligible SBP beneficiary. To deny the request would be to deny his former spouse an asset awarded to her by the court.

Recommendation: Although there is no evidence of Air Force error, to preclude a possible injustice, we recommend the member's record be corrected to reflect that on 27 Dec 88 he elected to change SBP spouse coverage to former spouse coverage based on the previous reduced level of retired pay, naming [REDACTED] as the eligible former spouse beneficiary. Approval should be contingent upon recoupment of all applicable premiums.

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

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