

**UNITED STATES AIR FORCE  
BOARD FOR CORRECTION OF MILITARY RECORDS**

**ADDENDUM TO RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2015-00509

*Work-Product*

**COUNSEL:**

*Work-Product*

*Work-Product*

**HEARING REQUESTED:** NO

**APPLICANT’S REQUEST**

The Board reconsider her request to change the deceased service member’s record to show he made a timely election for former spouse coverage under the Survivor Benefit Plan (SBP).

**RESUME OF THE CASE**

The applicant is the former spouse of a retired Air Force technical sergeant (E-6).

On 17 Apr 17, according to [State] Superior Court the original divorce decree dated 14 Apr 14 was amended to include the following stipulation “[Applicant] shall be entitled to “former spouse” coverage under [Decedent’s] Survivor Benefit Plan through his retirement from the United States Air Force, based on his full retired pay, and [Decedent] is hereby directed to establish and maintain such former spouse coverage.”

On 25 Jan 19, the Board considered and denied the applicant’s request and concurred with AFPC/DPFFF (Air Force SBP/Retiree Services Program Manager) finding the evidence presented did not demonstrate material error or injustice to justify relief. Specifically, following their divorce on 14 Apr 14, the original divorce decree, awarded the member as his separate property, his military retirement and the applicant was awarded her separate property, her retirement. The original divorce decree did not address the SBP.

For an accounting of the applicant’s original request and the rationale of the earlier decision, see the AFBCMR Letter and Record of Proceedings at Exhibit H.

On 31 Jul 20, the applicant requested reconsideration of her request. She again contends the divorce court ordered that she was to be the SBP beneficiary of the service member as his former spouse. Neither her attorney at the time, nor anyone else informed her that she had to make an election for SBP and register with the Defense Finance and Accounting Service within one year of the order providing for SBP. They had a 17-year long marriage, and she supported him in his Air Force career.

Counsel cites the following Air Force Board for Correction of Military Record (AFBCMR) cases where the military record was corrected to reflect a timely election for conversion from spouse to former spouse coverage due to a prior court order.

BC-2011-00202: The applicant’s original divorce decree ordered the service member to designate the applicant as the irrevocable deemed beneficiary for his SBP.

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BC-2012-01862: A Qualified Domestic Relations Order (QDRO), named the former spouse as beneficiary of the service member's SBP. The service member failed to submit the proper documentation within the required timeframe. Nevertheless, the QDRO and final divorce decree ordered him to do so and there was enough evidence to support the applicant's request.

BC-2014-00338: The final divorce decree was not executed by both parties. Although the service member did not sign the final divorce decree, the Board concluded the 30 years of SBP payments with the former spouse named as beneficiary make it more likely than not the deceased service member intended for the former spouse to receive the benefit. In support of her reconsideration request, the applicant submitted the following new evidence: (1) Affidavit [Applicant]; (2) Affidavit [Friend].

The applicant's complete submission is at Exhibit I.

**APPLICABLE AUTHORITY/GUIDANCE**

Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, Chapter 4, paragraph 4.2.2.3 "Regardless of the recommendation provided (e.g., grant or deny), the advisory opinion shall include instructions on specific corrective action to be taken if the Board recommends relief be granted."

Department of Defense 7000.14-R, *Financial Management Regulation (DoD FMR)*, Volume 7B, Chapter 43, paragraph 4.4.3.4 "If a member dies before making an election, a former spouse's request, which is otherwise qualified, must be honored even if the date of the request is after the date of the member's death. However, if the request for a court order was initiated with the court after the member's death, the order will not be honored."

**AIR FORCE EVALUATION**

AFPC/DPFFF (SBP Program Manager) recommends denying the application. A person's eligibility to receive a spouse SBP annuity terminates upon divorce; however, the law provides two mechanisms for changing spouse coverage to former spouse coverage. One of the following actions must be taken within the first year following divorce: (1) the retiree may file an election change, or (2) 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 the member agreed, or the court ordered the member, to establish former spouse coverage. If neither the member nor the former spouse requests the election change during the one-year eligibility period, former spouse coverage may not be established thereafter. Even though a member fails to notify the Defense Finance and Accounting Service of the divorce and continues to pay SBP premiums afterwards, the former spouse is not eligible for annuity payments upon the member's death.

The DoD Personnel records search reflect the service member and applicant were married on 7 Jun 97, and he elected spouse only SBP coverage based on full retired pay prior to his 1 Sep 13 retirement. The two later divorced on 14 Apr 14, and in the divorce decree, the member was awarded as his separate property, his military retirement, and the applicant, was awarded as her separate property, her retirement, and it remained silent on SBP; therefore, there was no award of the benefit. The member died on 18 Nov 14 and his death certificate reflects he has no surviving spouse. The applicant with her attorney, petitioned a [State] court to amend the parties divorce decree awarding her SBP and was granted on 17 Apr 17. This action took place three years after the member's death. Therefore, this is not a valid amendment as the member was not afforded the right to appear before the court for either agreement or to contest the request of his former spouse. This would serve as an injustice for any member who passed away and no longer has the right to

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state their specific desires beyond what a court ordered divorce decree that was previously agreed upon. Additionally, the cases cited by counsel were cases where the divorce decree awarded the spouse coverage in the original divorce decrees and was not a court ordered amendment obtained after the member was deceased. Therefore, the cases cannot be used as proof of an Air Force previous record of approval request as they do not have the same facts involved.

The complete advisory opinion is at Exhibit K.

**APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to counsel on 30 Mar 23 for comment (Exhibit L), and counsel replied on 24 Apr 23. In his response, counsel contends the following:

The applicant has done exactly what the Air Force Personnel Center and the Board recommended and is now being faulted for doing so. The applicant employed a [State] attorney to assist her in carrying out the instructions of the Board in obtaining a court order designating her for SBP coverage. The statement contained in the memorandum "the correction should be contingent upon the applicant providing an amended divorce decree awarding her former spouse SBP."

The Office of Primary Responsibility recommendation at the end of the memorandum says, "there is no evidence of Air Force error or injustice in this case and no basis in law to approve the request; therefore, we recommend the request be denied." The absence of a legal remedy is precisely why Congress created the statute which authorizes each military department to convene a Board to remove injustices and correct errors.

In support of the applicant's rebuttal, counsel submitted the following new evidence: (1) Letter of Administration; (2) Acknowledgment and Consent; (3) Request for Oral Argument Motion.

Counsel's complete submission is at Exhibit M.

**FINDINGS AND CONCLUSION**

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board remains unconvinced the evidence presented demonstrates an error or injustice. Counsel cites AFBCMR cases BC-2011-00202, BC-2012-01862, and BC-2014-00338, which he contends are similar to the applicant's case. However, in the cited cases the military record was corrected to reflect a timely election for conversion from spouse to former spouse coverage due to a prior court order and none of the mentioned cases involved amending legal documents after the death of the service member. In this current case, the applicant petitioned and was awarded SBP by the state court in 2017, almost three years after the death of the applicant's former spouse in 2014. Therefore, according to DoD FMR, Volume 7B, Chapter 43, paragraph 4.4.3.4, if the request for a court order was initiated with the court after the member's death, the order will not be honored. As such, the court's action to award the applicant SBP following the death of the service member is not a valid amendment to the divorce decree. Accordingly the Board concurs with the rationale and recommendation of AFPC/DPFFF and finds a preponderance of the evidence does not substantiate the applicant's contentions.

Counsel also asserts the applicant has done exactly what the Air Force Personnel Center and the Board recommended and is now being faulted for doing so. In this regard, counsel states the applicant employed an attorney to assist her in carrying out the instructions of the Board in

obtaining a court order designating her for SBP coverage. These instructions are seemingly contained in the Air Force evaluation dated 30 Jun 15, prepared by AFPC/DPFFF (Air Force SBP/Retiree Services Program Manager), in which they recommended the Board deny the applicant's request. Despite their recommendation to deny relief, according to DAFI 36-2603, Chapter 4, paragraph 4.2.2.3, the advisory opinion shall include instructions on specific corrective action to be taken if the Board recommends relief be granted. Therefore, if the Board can grant lawful relief, the recommended language will be used. As such, the Air Force evaluation included the required <sup>1</sup>Proposed Directive Language. Nevertheless, the Board concurred with the recommendation of AFPC/DPFFF and denied relief. In view of the forgoing, the Board recommends against correcting the applicant's record.

**RECOMMENDATION**

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

**CERTIFICATION**

The following quorum of the Board, as defined in DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2015-00509 in Executive Session on 15 Jun 23:

*Work-Product*, Panel Chair  
*Work-Product*, Panel Member  
*Work-Product*, Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit H: Record of Proceedings, w/ Exhibits A-G, dated 5 Feb 19.
- Exhibit I: Recon Request, DD Form 149, w/atchs, dated 31 Jul 20.
- Exhibit J: Documentary Evidence.
- Exhibit K: Advisory, AFPC/DPFFF, dated 28 Mar 23.
- Exhibit L: Notification of Advisory, dated 30 Mar 23.
- Exhibit M: Counsel's Response, dated 24 Apr 23.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

8/24/2023

X *Work-Product*

Board Operations Manager, AFBCMR  
Signed by: *Work-Product*

<sup>1</sup> If the Board's decision is to grant relief, the member's record should be corrected to reflect SBP coverage be deemed on the applicant's behalf, and former spouse coverage based on full retired pay be established effective 15 Apr 14. Correction should be contingent upon the applicant providing an amended divorce decree awarding her former spouse SBP coverage.