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

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2014-05059-3

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COUNSEL: NONE

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HEARING REQUESTED: NO

APPLICANT'S REQUEST

The Board reconsider her request to change her former spouse's Survivor Benefit Plan (SBP) election from "spouse to former spouse."

RESUME OF THE CASE

The applicant is the former spouse of a retired Air Force chief master sergeant (E-9).

In this case, the applicant and deceased former member married on 6 Oct 73, and he elected spouse only coverage based on a reduced level of retired pay prior to his 1 Apr 97 retirement. The parties divorced on 21 Jan 03 and the divorce decree awarded the applicant "all survivorship benefits available; including annuity, for which the defendant is ordered to pay if any survivorship benefit involves any cost."

On 21 Jan 16, the Board considered and denied her request to change her former spouse's SBP election from "spouse to former spouse," finding that since she was not the Arrears of Pay (AOP) beneficiary, correcting the record in the manner requested would deprive her former spouse's heir(s) of a legal entitlement. In addition, the applicant was advised that if her former spouse's heir(s) were to provide a notarized statement relinquishing their right to the refunded premiums or complete a SBP-AOP affidavit, the Board would be willing to reconsider her request, based on new evidence.

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 F.

On 19 Sep 19, the Board considered and denied her request for reconsideration to change her former spouse's SBP election from "spouse to former spouse," finding that since she was not the Arrears of Pay (AOP) beneficiary, correcting the record in the manner requested would deprive her former spouse's heir(s) of a legal entitlement. Due to the applicant's contention her former spouse was not functioning mentally, because he was extremely depressed from their divorce and subsequently diagnosed with leukemia, the Board obtained an advisory opinion from the AFBCMR Psychological Advisor who found insufficient evidence the deceased service member suffered from a condition preventing him from changing his SBP beneficiary. According to the timeline, the deceased service member and the applicant had 11 years from the time they divorced until his death to make the desired correction. The Board determined the case file,

AFBCMR Docket Number BC-2014-05059-3

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including the applicant’s submission, did not establish the deceased service member suffered from a condition severe enough to have prevented him from making the correction. Again, the Board advised the applicant that if her former spouse’s heir(s) were to provide a notarized statement relinquishing their right to the refunded premiums, the Board would be willing to reconsider her request, based on new evidence.

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 K.

On 11 May 23, the applicant requested reconsideration of her request. In support of her reconsideration request, the applicant submitted the following new evidence: (1) Birth Certificate (SMP); (2) Birth Certificate (KMP); (3) Relinquishment of Rights to SBP Premiums (SMP); and Relinquishment of Rights to SBP Premiums (KMP-A).

The applicant’s complete submission is at Exhibit L.

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 concludes the applicant is the victim of an error or injustice. The Board finds the applicant has provided sufficient evidence to change the deceased service member’s SBP election from “spouse” to “former spouse”. Specifically, the applicant provided copies of notarized statements from her former spouse’s AOPs relinquishing their right to the refunded premiums. Therefore, the Board recommends correcting the applicant’s records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to the deceased service member be corrected to show on 22 Jan 03, the deceased service member submitted a valid election for former spouse coverage based on the previous level of reduced retired pay, naming his former spouse as the eligible beneficiary. Approval should be contingent upon recovery of any applicable premiums. If applicable, the monthly survivor benefit annuity will be applied to the premium debt until the total amount of premiums owed is recovered.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2014-05059-3 in Executive Session on 9 May 24:

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

All members voted to correct the record. The panel considered the following:

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Exhibit K: Record of Proceedings, w/ Exhibits A - J, dated 19 Sep 19.
Exhibit L: Application, DD Form 149, w/atchs, dated 11 May 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.

5/13/2024

X *Work-Product*

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Board Operations Manager, AFBCMR
Signed by: USAF

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