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# UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2019-03050

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**COUNSEL:** NONE

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**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

The deceased service member's record be changed to show he made a timely election for former spouse coverage under the Survivor Benefit Plan (SBP).

### APPLICANT'S CONTENTIONS

When their divorce was finalized, the decedent was told he had to pay the car payment until the divorce decree was filed with the Air Force. He stopped making payments immediately and she lost her vehicle. She did not receive payment from his retirement for a year, due to him not filing the paperwork. His lawyer kept making excuses as to why they could not go back to court for a year so she could not file for his annuity. He lied to the court, stating the military was stalling the paperwork. She called the local base the first of every month for 11 months, asking how she would go about filing the paperwork and they told her every month the decedent had to do it. She decided that she had enough and called legal, who told her that she in fact could file the paperwork and how to do it. She received benefits for one year until he passed away. She lost everything with the divorce due to misinformation from the military, a lawyer who did not know or understand military life, a former spouse who used her mental instability to his advantage, and finally his death. She should receive the annuity they paid into while they were married, and all the benefits she lost.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is the surviving former spouse of a deceased retired Air Force master sergeant (E- 7).

On 11 Mar 03, according to DD Form 2656, *Data for Payment of Retired Personnel*, the service member elected SBP coverage for his then spouse and children, based on full retired pay.

On 1 Sep 03, according to Special Order Number **Work-Product** dated 24 Dec 02, the service member retired from the Regular Air Force.

On 15 Jan 10, according to a divorce decree provided by the applicant, she and the service member divorced.

On 27 Jan 13, according to a Certificate of Death, provided by the applicant, the service member passed away.

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Controlled by: SAF/MRB

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Limited Dissemination Control: N/A

POC: [SAF.MRBC.Workflow@us.af.mil](mailto:SAF.MRBC.Workflow@us.af.mil)

On 20 Aug 19, the Board sent the applicant the following standard forms, in order to establish whether there are persons with competing interests in the case or who should receive notice of the requested correction to the record: SBP Marital Status Affidavit (Former Spouse); SBP Release of Benefits Affidavit (Arrears of Pay). On 29 Jan 25, the applicant returned the notarized affidavits. The service member's son swore/affirmed he is the service member's legal heir and relinquishes any competing interest he may have in the Arrears of Pay in favor of his mother, the applicant and former spouse.

For more information, see the excerpt of the service member's record at Exhibit B and the advisory at Exhibit C.

### **APPLICABLE AUTHORITY**

10 U.S.C. § 1448(b)(3)(A)(iii). "An election to convert spouse coverage to former spouse coverage, "must be written, signed by the person making the election, and received by the Secretary concerned within one year after the date of the decree of divorce, dissolution, or annulment."

10 U.S.C. § 1450(f)(3)(C). If a court has ordered a service member to elect former spouse SBP, then a former spouse can submit his or her own request to DFAS for former spouse SBP coverage. This is known as a "deemed election request." There is a time limit: "An election may not be deemed to have been made ... unless the Secretary concerned receives a request from the former spouse of the person within one year of the date of the court order or filing involved."

### **AIR FORCE EVALUATION**

AFPC/DPFC (Casualty Matters Division) 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 using *DD Form 2656-6 SBP Change Certificate & DD Form 2656-1 Former Spouse Election Certificate*, or (2) the former spouse may request the retiree be deemed, *DD Form 2656-10 SBP Former Spouse Request for Deemed Election*, 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 (DFAS) of the divorce and continues to pay SBP premiums afterwards, the former spouse is not eligible for annuity payments upon the member's death. In the case where a court order does not award SBP to a former spouse the member can voluntarily elect coverage for the former spouse. However, if neither a court order nor a voluntary election for former spouse is provided the former spouse is not eligible for the benefit.

DoD Person Search via Defense Enrollment Eligibility Reporting System (DEERS) reflects the decedent, and his former spouse were married at the time of his 1 Sep 03 retirement. The parties divorced on 15 Jan 10, and the former spouse was awarded a portion of the decedent's retirement pay but there is no such award for SBP. The divorce decree is silent in reference to SBP being a benefit for the former spouse; therefore, the decedent was not required to provide former spouse SBP coverage. There is no evidence the decedent notified DFAS to voluntarily elect former spouse coverage and no deemed election could be submitted on behalf of or by his former spouse because she was not entitled to the benefit. When the divorce decree does not show an award of SBP to a

former spouse and no voluntary election is made the former spouse does not have any claim to an SBP annuity. The only option that could have rectified the situation is the decedent and former spouse would have had to agree on the SBP terms and have the original divorce decree amended to reflect the change; however, this did not take place prior to the decedent’s death and is no longer an option. The SBP cannot be voluntarily changed without the member’s consent.

The complete advisory opinion is at Exhibit C.

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

The Board sent a copy of the advisory opinion to the applicant on 13 May 24 for comment (Exhibit D) but has received no response.

**FINDINGS AND CONCLUSION**

1. The application was not timely filed. The Board notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*.
2. The applicant exhausted all other available administrative remedies before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DPFC and finds a preponderance of the evidence does not substantiate the applicant’s contentions. There is no evidence the decedent made a voluntary election for former spouse coverage, nor is there evidence of court-ordered former spouse coverage. Therefore, the board recommends against correcting the applicant’s records.

**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, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2019-03050 in Executive Session on 6 Nov 25:

- 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 A: Application, DD Form 149, w/atchs, dated 29 May 19.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.

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Exhibit C: Advisory, AFPC/DPFC, dated 10 May 24.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 13 May 24.

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.

12/5/2025

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Board Operations Manager, AFBCMR

Signed by: USAF

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