

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2020-01265-2

XXXXXXXXXXXXX (MEMBER)

COUNSEL: NONE

XXXXXXXXXXXXX (APPLICANT)

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The Board reconsider her request to grant an exception to the Uniformed Services Former Spouses' Protection Act (USFSPA) to "receive full military benefits," qualifying for lifetime medical benefits as a former spouse.

RESUME OF THE CASE

The applicant is the former spouse of the retired military member.

On 14 July 2021, the Board considered and denied her request she be granted an exception to the USFSPA allowing her to receive full military benefits, qualifying for lifetime medical benefits as a divorced spouse. The Board concurred with the recommendation of AFPC/DP3SA finding the preponderance of the evidence did not substantiate the applicant's contentions.

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 6 April 2022, the applicant requested reconsideration of her request to grant an exception to the USFSPA to "receive full military benefits," qualifying her for lifetime medical benefits as a divorced spouse. She again contends through no fault of her own, her marriage during her ex-husband's military service fell 13 days short of the 20 years of marriage required to qualify her for lifetime medical benefits as a divorced spouse. When her husband (former service member) decided to retire, he did not know about the USFSPA 20/20/20 rule, and no one informed him about this rule. She reiterates the Board granted relief to cases similar to her case finding the facts supported a finding of injustice. In support of her reconsideration request, she submitted a detailed request/affidavit, copies of cited cases (AFBCMR Docket #BC-2007-01195 and BC-2012-02667), a copy of her original case BC-2020-01265 and a letter from her former spouse who states had he been aware of the USFSPA 20/20/20 rule when he retired, he would have changed his retirement so she would qualify.

The applicant cites the following AFBCMR cases as precedent to grant her request.

BC-2012-02667. The applicant requested his record be changed so his former spouse would qualify for entitlements under the 20/20/20 rule. He was married to his former spouse for 34 years and contended had he known of the 20/20/20 rule prior to his retirement he would have extended two months to meet the last portion of the "20" year requirement. Contrary to ARPC/DPTT's recommendation, the Board recommended granting the request based on an injustice. The Board believed the applicant would have extended two months so his former spouse would qualify for the entitlement. *In this current case, the applicant's former spouse provides a letter indicating he was not presented any information about the 20/20/20 rule. Had he known about the importance of this rule, he would not have retired on 1 September 1998, instead of 1 August 1998.*

BC-2007-01195. The applicant requested her former spouse's record be changed so she would qualify for entitlements under the 20/20/20 rule. The applicant and her former spouse were married for 37 years and divorced 18 years after his retirement. Contrary to AFPC/DPSOOR's recommendation, the Board recommended the applicant's request be granted based on an injustice. The Board determined that since the applicant and her former spouse divorced 18 years after his retirement, they did not realize 4 days were missing in a full 20-year overlap of his full Air Force career. *In this current case, the applicant and her former spouse were married for over 40 years and divorced 19 years, 11 months and 19 days later, which is 13 days short of the last portion of the "20" year requirement.*

The applicant's complete submission is at Exhibit G.

APPLICABLE AUTHORITY/GUIDANCE

The Uniformed Services Former Spouses' Protection Act is specific regarding the qualifications when a divorce occurs as outlined in DoDM 1000.13, *DoD Identification (ID) Cards: Benefits for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals*, Enclosure 12, paragraph 1: 20/20/20 Former Spouses. Unremarried former spouses of a uniformed services member or retired member, married to the member or retired member for a period of at least 20 years, during which period the member or retired member performed at least 20 years of service that is creditable in determining the member's or retired member's eligibility for retired or retainer pay, or equivalent pay pursuant to sections 1408 and 1072(2)(F) of Reference (e), and the period of the marriage and the service overlapped by at least 20 years are eligible for benefits as shown in Tables 23 and 24 [Civilian Health Care, direct care at Military Treatment Facilities, Commissary, MWR and Exchange privileges]. The benefit eligibility period begins on qualifying date of divorce from the uniformed services member.

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 injustice. The Board is aware of the statutory requirements of the 20/20/20 rule. However, since the applicant and her former spouse were married on 13 August 1978, the former spouse retired on 1 August 1998, and they were not divorced until 5 March 2019, almost 20 years later, they did not realize 13 days were missing in a full 20-year overlap of the former service member's full Air Force career. The applicant's former spouse provided a letter of support indicating had he been aware prior to his retirement he was 13 days short of the 20 years required to entitle his former spouse to receive full military benefits, qualifying for lifetime medical benefits, he would have remained on active duty for one month to ensure she would be entitled to these benefits. Furthermore, at least two similarly situated applicants who met previous Boards were granted relief based on an injustice. Therefore, changing the marriage date would ensure compliance of the 20/20/20 program and afford the applicant relief to alleviate an injustice. The correction will be limited in scope so it will only affect the Air Force records for the sole purpose of affording the requested relief and will have no impact on the civil records. In view of the forgoing, 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 MEMBER be corrected (as an exception to policy) to show that:

a. He was married on 31 July 1978; the last 20 years of the marriage overlapped with his total years of active service; this correction is of limited scope so as to only affect his Air Force records for the sole purpose of affording the relief to remedy the injustice in this case; and that this correction will have no impact on his civil records.

b. Effective 5 March 2019, APPLICANT qualified for 20/20/20 former spouse coverage under the Uniformed Services Former Spouses' Protection Act.

CERTIFICATION

The following quorum of the Board, as defined in Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2020-01265-2 in Executive Session on 19 January 2023:

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

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

Exhibit F: Record of Proceedings, w/ Exhibits A-E, dated 14 July 2021.

Exhibit G: Application, DD Form 149, w/atchs, dated 6 April 2022.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

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Board Operations Manager, AFBCMR