

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2020-02131

XXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

His record be corrected to show he made a timely election for former spouse coverage under the Survivor Benefit Plan (SBP).

### APPLICANT'S CONTENTIONS

SBP coverage for his former spouse was terminated following their divorce and he was not notified he was required to request former spouse coverage within the time frame required to make the change.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a retired Air Force major (O-4).

On 6 March 2012, according to DD Form 2656, *Data for Payment of Retired Personnel*, the applicant elected Option B, *Coverage for Spouse and Child[ren]*, based on full retired pay.

On 1 July 2012, according to Special Orders Work-Product, dated 21 February 2012, the applicant retired from the Regular Air Force.

On 9 July 2018, the applicant and his former spouse divorced. The divorce decree required the applicant to provide SBP coverage for his former spouse. As of 9 July 2019, the applicant had not filed a change to his SBP election under Title 10 United States Code, Section 1448(b)(3)(A)(iii) (10 U.S.C. § 1448(b)(3)(A)(iii)), nor had his former spouse filed a deemed election under 10 U.S.C. § 1450(f)(3)(C).

On 18 August 2020, 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 Marital Status Affidavit (Retiree); SBP Release of Benefits Affidavit (Arrears of Pay).

On 9 December 2020, according to DD Form 2656-1, *Survivor Benefit Plan (SBP) Election Statement for Former Spouse*, the applicant certified he and his former spouse divorced on 9 July 2018, and changed his SBP election to "former spouse." His former spouse certified the form on 28 November 2020.

On 15 January 2021, the applicant returned all required completed affidavits.

For more information, see the excerpt of the applicant'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/DPFFF recommends denying the application. A person’s eligibility as an SBP spouse beneficiary terminates upon divorce. Title 10 U.S.C. §1448(b) (3) and §1450(f) (3) (A) provides two mechanisms for changing spouse coverage to former spouse coverage. Both must be exercised 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 that the member agreed, or that 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 Services 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 applicant was married, with dependent children, and elected Spouse and Children coverage prior to his 1 July 2012 retirement. Defense Enrollment Eligibility Reporting System records reflect the parties divorced on 9 July 2018 and the divorce decree required the applicant to make the necessary election and execute paperwork to effectuate SBP coverage for his former spouse in a timely manner. There is no evidence either party submitted a valid election to change to former spouse SBP coverage within the first year following their divorce [9 July 2019] as the law requires. DFAS records continued to reflect Spouse and Child coverage until the applicant called inquiring on the coverage and was advised that since a DD Form 2656-1, *Survivor Benefit Plan Election Statement for Former Spouse Coverage*, was not received within the one-year eligibility period, spouse coverage was terminated and a refund of premiums collected since the 9 July 2018 date of divorce was being processed.

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 29 January 2021, for comment (Exhibit D), but has received no response.

## **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. While the Board notes the recommendation of AFPC/DPFFF against correcting the record, the Board finds a preponderance of the evidence substantiates the applicant’s contentions.

In this respect, the Board determined the applicant did his due diligence in his attempts to comply with the divorce decree and establish SBP coverage for his former spouse. Specifically, the evidence indicates the applicant and his former spouse immediately contacted DFAS following their divorce and made multiple earnest attempts to work with DFAS to provide the necessary documents in order to comply with their divorce decree. Following more than a year of challenges, DFAS acknowledged they received documents for former spouse retired pay, which would begin in September 2019. The applicant assumed SBP was included in this acknowledgment since SBP premiums continued to be deducted from his retired pay. He did not become aware additional SBP documents were required until several months after the July 2019 deadline. Based on the foregoing, 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 APPLICANT be corrected to show that:

a. On 10 July 2018, he submitted a timely and effective election for former spouse coverage under the Survivor Benefit Plan, based on full retired pay, naming FORMER SPOUSE as the eligible beneficiary.

b. Approval should be contingent upon recovery of Survivor Benefit Plan 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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2020-02131 in Executive Session on 22 July 2021:

- , Panel Chair
- , Panel Member
- , Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 11 May 2020.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, AFPC/DPFFF, dated 29 January 2021.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 29 January 2021.

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.

**X**

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Board Operations Manager, AFBCMR