

[REDACTED]

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

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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2021-00816

**COUNSEL:** [REDACTED]

**HEARING REQUESTED:** [REDACTED]

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**APPLICANT'S REQUEST**

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

**APPLICANT'S CONTENTIONS**

He divorced his former spouse on 15 November 2015, and according to their separation agreement and court order, his former spouse was to be designated as the beneficiary of his SBP. They both had one year to change the designation to "former spouse," but failed to do so. Neither of them were aware of this requirement until receiving a recent letter from the Defense Finance and Accounting Service (DFAS). In 2020, his former spouse held him in contempt for not having her designated as the SBP beneficiary, of which he was unaware until she brought it up. He attempted to change it using DD Form 2565-1, *Survivor Benefit Plan (SBP) Election Statement for Former Spouse Coverage* but recently received a letter from DFAS denying his request. Now, following a recent court order, he is ordered to attempt to resolve this matter by naming his former spouse as the SBP beneficiary. His former spouse submitted a DD Form 149, *Application for Correction of Military Record Under the Provisions of Title 10 U.S.C. Section 1552*, on 19 July 2022 requesting the same action. She submitted additional documentation to corroborate her request.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a retired Air Force master sergeant (E-7).

On 11 October 1991, according to the Petition of Dissolution of Marriage, provided by the former spouse, the applicant and former spouse married.

On 18 April 2012, according to DD Form 2656, *Data for Retired Pay*, the applicant elected Option B (*Coverage for Spouse and Child[ren]*) based on full retired pay.

On 31 July 2012, according to Special Order [REDACTED] dated [REDACTED], the applicant retired from the Regular Air Force.

According to the Separation Agreement dated 30 September 2015, the applicant and former spouse agreed the applicant would pay and maintain SBP through his Air Force retirement until their youngest child's (CMB) 19<sup>th</sup> birthday, 2 February 2023. At that point, the applicant and former spouse agreed to maintain individual policies.

On 15 November 2015, according to the DD Form 149, the applicant and former spouse divorced.

On 28 May 2016, the applicant married his current spouse.

On 10 December 2020, based on the applicant's inquiry concerning his divorce decree and SBP portion of his retirement, DFAS advised the applicant of his current SBP status and how that status was established based on them not receiving an SBP election or receiving an invalid SBP election. The court order granting former spouse coverage did not specify spouse and child coverage however, it did state "until CMB turns 19". Therefore, a request to deem former spouse coverage would have been invalid and a modified order should have been submitted by the former spouse within the one-year period.

On 6 February 2023, 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 (Retiree); SBP Marital Status Affidavit (Former Spouse); SBP Marital Status Affidavit (Retiree); SBP Release of Benefits Affidavit (Current Spouse); SBP Release of Benefits Affidavit (Arrears of Pay). Board staff has not received a response from the applicant.

On 23 March 2023, the former spouse submitted a signed undated DD Form 2656-1 stating that she had not remarried.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisories at Exhibit C and Exhibit E.

#### **APPLICABLE AUTHORITY**

SAF/GCM (Secretary of the Air Force General Counsel) Legal Opinion, dated 18 Oct 06. The Secretary of the Air Force General Counsel's office has advised the Board to exercise prudence when correcting a record that may be unfavorable to a person other than the applicant. This is called a competing interest. While there is no strict statutory prohibition, there is a strong presumption that no record correction should be made if the result would be unfavorable to another person eligible to seek relief from the Board. For this reason, in Survivor Benefit Plan cases, the Board insists on receiving affidavits or notarized statements of consent from all parties, including the current spouse, the former spouse, eligible children, and the service member. In the absence of such affidavits, the Board typically denies relief.

The complete SAF/GCM guidance is at Exhibit B.

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 Survivor Benefit Plan, then a former spouse can submit his or her own request to the Defense Finance and Accounting Service for former spouse Survivor Benefit Plan 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."

[REDACTED]

## **AIR FORCE EVALUATION**

On 15 July 2021, AFPC/DPFFF (Airman and Family Sustainment Branch) recommended granting the applicant's request, noting no evidence of an Air Force error. However, to prevent an injustice, they suggested enforcing the parties' court-ordered agreement. Eligibility as an SBP spouse beneficiary cease upon divorce. 10 U.S.C. § 1448(b)(3) and § 1450(f)(3)(A) outline two methods for changing spouse coverage to former spouse coverage, both within the first year following divorce. If neither party requests the change during this period, former spouse coverage cannot be established thereafter. Even if the member fails to notify DFAS of the divorce and continues SBP premium payments, the former spouse is ineligible for annuity payments upon the member's death.

The applicant, who retired on 1 August 2012, was married with dependent children and elected spouse and child coverage for his SBP. After the parties divorced on 15 November 2015, the divorce decree obligated the applicant to maintain SBP coverage for his former spouse. However, neither party submitted the necessary paperwork to change the coverage within the required one-year timeframe following their divorce. The applicant claimed he was not aware of these requirements until receiving notifications in November 2019 and March 2020 regarding contempt citations for not making a timely designation. He later attempted to correct the oversight by submitting the required forms to the DFAS. However, DFAS determined that his original SBP election form was either invalid or not received, and thus his account defaulted to maximum spouse-only coverage. Since a valid request for former spouse coverage was not received within the eligibility period, the former spouse coverage cannot be established. The applicant remarried in 2016, and his account continues to reflect spouse-only coverage.

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 19 July 2021, for comment (Exhibit D), but has received no response.

## **ADDITIONAL AIR FORCE EVALUATION**

On 6 November 2023, AFPC/DPFFF recommended denying the applicant's request based on at the time of his retirement on 1 August 2012, he elected spouse and child SBP coverage. Despite his subsequent divorce on 4 February 2016 [sic], neither party notified DFAS to change the election to former spouse coverage within the required one-year period. Although the divorce decree did not explicitly award SBP to the former spouse, it mandated maintenance of the current SBP election until their child reached age 19, which occurred on 2 February 2023, and the applicant fulfilled this obligation. Additionally, the applicant remarried on 28 May 2016, and his current spouse became the eligible beneficiary of the SBP on 28 May 2017. However, neither the applicant nor his current spouse returned completed affidavits relinquishing the current spouse's rights as the beneficiary. Due to the presence of a competing claimant, the current spouse, no recommendation was made. The request could be reconsidered if both the applicant and his current spouse provide affidavits, relinquishing the rights to the SBP.

The complete advisory opinion is at Exhibit E.

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

[REDACTED]

The Board sent a copy of the advisory opinion to the applicant on 7 November 2023, for comment (Exhibit F), but has received no response.

## FINDINGS AND CONCLUSION

1. The application was not timely filed. The Board also 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 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. The Board does not find it in the interest of justice to waive the three-year filing requirement.
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 not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DPFFF to deny the applicant's request and finds a preponderance of the evidence does not substantiate the applicant's contentions. Despite the divorce decree obligating the applicant to maintain SBP coverage for his former spouse until their child turned 19, an obligation he fulfilled, a competing claim from the current spouse exists. The Secretary of the Air Force General Counsel's office has advised the Board to be cautious when correcting records that may negatively impact someone other than the applicant. The request could be re-evaluated if both the applicant and his current spouse submit affidavits relinquishing their rights to the SBP benefits. 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 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-2021-00816 in Executive Session on 27 June 2024:

[REDACTED], Panel Chair  
[REDACTED], Panel Member  
[REDACTED], Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 17 December 2020.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, AFPC/DPFFF, dated 15 July 2021.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 19 July 2021.
- Exhibit E: Advisory, AFPC/DPFFF, dated 6 November 2023.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 7 November 2023



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.

9/23/2025

X



Associate Director, AFBCMR

Signed by: USAF

