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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-2022-01065-3

Work-Product (DECEASED) **COUNSEL:** NONE

Work-Product (APPLICANT) **HEARING REQUESTED:** YES

APPLICANT’S REQUEST

The Board correct the deceased service member’s record to reflect he made a Survivor Benefit Plan (SBP) election for full spouse and child(ren) coverage, instead of child(ren) only coverage.

RESUME OF THE CASE

The applicant is the former spouse of the deceased service member retired in the grade of major (O-4).

The deceased service member was honorably discharged on 30 Nov 11 for nonselection for promotion to the grade of lieutenant colonel (O-5).

On 11 Jun 19, the applicant and the former service member divorced.

On 2 Mar 22, the former service member, through counsel, requested he be considered by a special board (SB) for selective continuation by the CY11A Major Selective Continuation Board, he receive back pay, entitlements and other damages and he be reimbursed attorney fees. He was honorably discharged on 30 Nov 11 in the grade of O-4 due to his nonselection for promotion to the grade of O-5. He was discharged with 15 years, 6 months and 15 days of active duty service. On 9 Apr 20, the Court of Appeals for the Federal Circuit (CoAFC) opined in *Baude v. United States* the Secretary of the Air Force (SecAF) violated DoDI 1320.08, *Continuation of Commissioned Officers on Active Duty and on the Reserve Action Status List*, when the SecAF issued a Memorandum of Instruction (MOI) narrowing the selective continuation window. On 3 Nov 22, the Board found the applicant was similarly situated as the plaintiff in *Baude v. United States* and granted SB consideration for the CY11A Major Selective Continuation Board. However, the Board denied the applicant’s remaining requests finding the requests were not ripe for adjudication pending the applicant’s selection and acceptance for continuation. Moreover, the Board noted it was without authority to reimburse attorney fees in accordance with DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. As directed by SAF/MRB, the former service member was considered by an SB for continuation in the grade of O-4 and he was selected for continuation.

On 12 Apr 24, counsel requested reconsideration that the former service member be reinstated on active duty, he be retired from active duty and he receive any other benefits and entitlements due to him. The AFBCMR noted the DD Form 149 dated 25 Apr 24 reflected a signature other than the applicant's signature. Upon request, counsel provided a copy of the state issued death certificate showing the former service member died on 2 Aug 22. The applicant in the reconsideration case was the former service member's brother, who was the court appointed executor of the former service member's estate and next of kin. Counsel also provided a divorce decree, which showed the former service member and his spouse divorced on 11 Jun 19 and birth certificates for his children. Due to the applicant being discharged, there was no SBP election for spouse or children coverage under 10 U.S.C. § 1450. AFPC/DPFC (Casualty Matters) recommended approval for the deceased former service member's record to reflect coverage for child(ren) only at full gross pay. At the time of his death, his three children were his only eligible beneficiaries. The Board concurred with the rationale and recommendations of AFPC/DPMSR, DFAS and AFPC/DPFC and corrected the former service member's record to reflect the following:

- a. He was not discharged from active duty on 30 Nov 11, but on that date he continued to serve on active duty until 30 Jun 16.
- b. He was retired from active duty in the grade of O-4, effective 1 Jul 16.
- c. On 30 Jun 16, he submitted a timely and effective election for child(ren) only coverage under the SBP, based on the previous full level of retired pay, naming his eligible child(ren) as the eligible beneficiaries.
- d. Approval is contingent upon recovery of SBP premiums. If applicable, the monthly survivor benefit annuity will be applied to the premium debt until the total amount of premiums owed is recovered.

For an accounting of the original request and the rationale of the earlier decision, see the AFBCMR Letter and Record of Proceedings at Exhibit N.

On 15 Apr 25, the applicant, the former spouse, requested reconsideration the deceased service member's record be corrected to show he elected full spouse and child(ren) coverage in accordance with AFMAN 36-3006, *Survivor Benefit Plan (SBP) (Active, Guard, Reserve and Retired)*, Attachment 3. Her concurrence was never obtained for the SBP election in accordance with law. She requests a mandatory SBP briefing and she does not concur with the SBP child(ren) only election and wants full SBP for spouse and child(ren) election by operation law.

As the legal spouse at the time of the former service member's retirement, she is entitled to a mandatory SBP briefing and spouse concurrence in accordance with AFMAN 36-3006, Attachment 3, Spouse Concurrence. The law requires the spouse's concurrence. She requests a spouse concurrence by law from the Board. She was legally married at the time of the former service member's retirement. She should be eligible for SBP coverage based on the number of years they were married. She is a disabled veteran with disabilities and to be afforded the benefits and pay allowances.

In support of her request, the applicant provides a personal statement, marriage certificate, divorce decree and extract of AFMAN 36-3006, Attachment 3, Survivor Benefit Plan (SBP) Fact Sheet for Spouses of Retiring Air Force Personnel, Spouse Concurrence, which states, the law requires written concurrence if the service member declines coverage, elects to provide reduced coverage or to provide an annuity to a child but not to the spouse.

The applicant's complete submission is at Exhibit O.

AIR FORCE EVALUATION

AFPC/DPFC recommends denial. The child(ren) only SBP annuity was properly established. The former service member was retroactively retired effective 1 Jul 16, making him eligible for SBP election. The former service member passed away on 2 Aug 22 prior to the directive taking effect and he was unable to make an SBP election and there is no documentation of his intent to provide SBP for his former spouse. Per their divorce decree, the applicant and the former service member were divorced at the time the retroactive retirement was given and at the time of his death, his three children were his only eligible beneficiaries. Therefore, an election was made for child(ren) only SBP coverage on behalf of the former service member.

According to the divorce decree dated 11 Jun 19, the applicant was not awarded SBP coverage. In the divorce, both the applicant and the former service member waived any rights to receive benefits from one another's past, present or future employment, which would include the retroactive retirement and any retirement benefits associated with it. Therefore, the applicant is ineligible for any spouse/former spouse SBP annuity payments. The applicant wants the records to reflect spouse and child coverage, this would still make her ineligible as she was not his spouse when he passed and SBP coverage would have been issued to the children as contingent beneficiaries.

The SBP is a congressionally mandated program designed to provide continued financial support to designated eligible beneficiaries following the death of a retired service member. Under the SBP, a person's eligibility to receive an SBP spouse annuity ends upon divorce. However, the law provides two mechanisms to change spouse coverage to former spouse coverage within one year following divorce: (1) The retiree may file a change of election using DD Form 2656-1, *Former Spouse Election Certificate*, or (2) Deemed election by former spouse, the former spouse may submit a request for the retiree to be deemed to have made the election change on their behalf using DD Form 2656-10, *SBP Former Spouse Request for Deemed Election*. This request must include legal documentation, such as an official court order or agreement, proving that the service member agreed or was mandated to establish former spouse coverage. As there is no award of SBP in the divorce decree and no record of the former service member voluntarily electing former spouse coverage after the divorce, these options were nullified. The stipulation is governed by 10 U.S.C. § 1448(b), which outlines the conditions and procedures for establishing or changing SBP coverage following a divorce. There is no stipulation for eligible for SBP coverage based on number of years the former spouse and service member were married if not awarded in a divorce decree.

The complete advisory opinion is at Exhibit Q.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 25 Nov 25 for comment (Exhibit R) but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.
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. The Board does not dispute the applicant and the former service member were legally married on 1 Jun 16. However, the deceased former service member's records were not corrected until 6 Feb 25 to show he was continued and retired on 1 Jun 16. At the time of his discharge on 30 Nov 11, the former service member was not eligible to enroll in SBP; therefore, there is no SBP election. The applicant and the former service member then divorced on 11 Jun 19. At the time of his death on 2 Aug 22, his children were his only dependents (eligible beneficiaries under SBP). Moreover, even if the former service member's records reflected SBP spouse and child(ren) coverage, the applicant, by law, would not be eligible for the spouse SBP benefit as they were divorced at the time of his death. It is reasonable the divorce decree would not include language directing former spouse SBP coverage since the former service member was not eligible to enroll in the program at the time. However, the Board notes the divorce decree dated 11 Jun 19 includes stipulations that both parties waived any right to one another's past, present or future benefits. This would include the SBP benefit. Therefore, the Board recommends against correcting the applicant's records.
4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

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-2022-01065-3 in Executive Session on 30 Jan 26:

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Panel Chair

Work-Product

, Panel Member

AFBCMR Docket Number BC-2022-01065-3

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Work-Product, Panel Member

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

- Exhibit N: Record of Proceedings, w/Exhibits, dated 9 Mar 23.
- Exhibit O: Application, DD Form 149, w/atchs, dated 15 Apr 25.
- Exhibit P: Documentary evidence, including relevant excerpts from official records.
- Exhibit Q: Advisory Opinion, AFPC/DPFC, dated 7 Nov 25.
- Exhibit R: Notification of Advisory, SAF/MRBC to Applicant, dated 25 Nov 25.

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.

3/6/2026

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Board Operations Manager, AFBCMR

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