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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01585

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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 spouse coverage under the Survivor Benefit Plan (SBP).

APPLICANT'S CONTENTIONS

Her husband was given incorrect information at the time of his retirement. He repeatedly informed her that all required paperwork had been completed and authorized her to receive survivor benefits. He was only 38 years old when he retired and still had four children living at home. He wanted to be certain his spouse would receive monthly income from the Air Force based on the information and the guidance from the individual who processed his forms for survivor benefits. It was confirmed to him that all actions were complete for his spouse to receive survivor benefits.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is the spouse of a deceased retired Air Force technical sergeant (E-6).

On 4 Sep 65 according to a Certificate of Marriage, provided by the applicant, the service member and the applicant were married.

On 1 Oct 84, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, dated 30 Sep 84, the service member retired from the Regular Air Force.

On 2 Mar 14, according to a Certificate of Death, provided by the applicant, the service member passed away.

On 5 Jul 22, the Board sent the applicant the following standard form, 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 (Deceased Retiree).

On 19 Jul 22, the applicant signed the SBP Marital Status Affidavit (Deceased Retiree) confirming she was married to the decedent at the time of his retirement and death, and she had not remarried.

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

AFBCMR Docket Number BC-2022-01585

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AIR FORCE EVALUATION

AFPC/DPFFF (SBP Program Manager) recommends denying the application. Members are required to make an SBP decision prior to retiring. Public Law (PL) 99-145, 8 Nov 85, established the requirement that a spouse's written concurrence be obtained if a member, who retires on or after 1 Mar 86, elects less than full spouse SBP coverage (10 U.S.C. § 1448 (a)(3)). When a member fails to elect SBP coverage for an eligible spouse, coverage cannot be established thereafter except during a Congressionally mandated open enrollment period. **Work-Product** and **Work-Product** established open enrollment periods (1 Apr 92 to 31 Mar 93, 1 Mar 99 to 29 Feb 00 and 1 Oct 05 to 30 Sep 06), that allowed members, who previously declined spouse coverage or had less than maximum level of SBP coverage, an opportunity to elect to participate or increase their coverage up to a base amount of their gross retired pay.

The Defense Enrollment Eligibility Reporting System reflects the member and applicant were married at the time of his 1 Oct 84 retirement and remained married until the day of his passing, 2 Mar 14. At the time of the member's retirement there was no requirement for a spouse to concur when the SBP is declined. Defense Finance and Accounting Service records reflect that the member declined SBP coverage prior to his retirement. The records also reflect there were no SBP associated premium costs paid by the member. Additionally, there is no evidence that the member submitted an election to cover his spouse during any of the aforementioned open enrollment periods available to him after his retirement. SBP is similar to commercial life insurance in that an individual must elect to participate during the opportunities provided by the law and pay the associated premiums to have 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 20 Sep 22 for comment (Exhibit D), and the applicant replied on 12 Oct 22. In her response, the applicant contended her husband never declined SBP. Her spouse never submitted an election to cover her during any of the aforementioned open enrollment periods because he had total clarification from the Airman when out-processing that he had completed the form correctly and that the requirement for SBP was complete. Her spouse being given incorrect information at the time he completed the form for SBP should not be held against her, the Air Force was in error. The form for SBP was completed with the guidance of the Airman with the understanding that her spouse had completed the form for SBP correctly. Her spouse was positive that he had lawfully and legally authorized his spouse to receive SBP. Please reconsider and correct this error and injustice.

The applicant's complete response is at Exhibit E.

FINDINGS AND CONCLUSION

1. The application was not 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 not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DPFFF and finds a preponderance of the evidence does not substantiate the applicant's contentions. There is insufficient evidence the decedent elected SBP coverage for his spouse upon his retirement or during any of the three Congressionally mandated open enrollment periods. Therefore, the Board recommends against correcting the decedent's records. 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 (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. The Board does not find it in the interest of justice to waive the three-year filing requirement and finds the application untimely.

RECOMMENDATION

The Board recommends informing the applicant the application was not timely filed; it would not be in the interest of justice to excuse the delay; 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, paragraph 2.1, considered Docket Number BC-2022-01585 in Executive Session on 18 May 23:

- 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 14 May 20.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, AFPC/DPFFF, dated 20 Sep 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 29 Sep 22.
- Exhibit E: Applicant’s Response, w/atchs, 12 Oct 22.

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.

12/13/2024

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Board Operations Manager, AFBCMR
Signed by: Work-Product