

RECORD OF PROCEEDINGS

IN THE MATTER OF:

XXXXXX (DECEASED MEMBER)

XXXXXX (APPLICANT)

DOCKET NUMBER: BC-2022-01767

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her Dependency and Indemnity Compensation claim form be corrected to show she made a timely election for Dependency and Indemnity Compensation.

APPLICANT'S CONTENTIONS

Due to a lack of communication between the losing and gaining base Casualty Assistance Representative, her Dependency and Indemnity Compensation claim form was not submitted. She was unaware the claim form had to be completed and submitted to the Department of Veterans Affairs by the Casualty Assistance Representative within 12 months of her husband's death to qualify for retroactive back pay for the Dependency and Indemnity Compensation benefit.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is the spouse of a deceased Air Force major (O-4).

On 13 Apr 20, AF Form 899, *Request and Authorization for Permanent Change of Station – Military*, was published and indicated the member and dependents were reassigned to [Air Force Base], with a Report Not Later Than Date of 31 Jul 20.

On 1 Aug 20, according to DD Form 1300, *Report of Casualty*, dated 29 Mar 21, the member was declared deceased.

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

AIR FORCE EVALUATION

AFPC/DPFCS (Casualty Matters) recommends granting the application. Dependency and Indemnity Compensation is payable by the Department of Veterans Affairs to: surviving spouses; unmarried children under age 18; disabled children; children between the ages of 18 and 23, if attending a Department of Veterans Affairs approved school; and low-income parents of members who die from a disease or injury incurred or aggravated while on active duty or active duty training, an injury incurred or aggravated in the line of duty while on inactive duty training, or a disability otherwise compensable under laws administered by Department of Veterans Affairs. The member was assigned to [Air Force Base] at the time of his death, which was found "In the Line of Duty." He is survived by his spouse and two children.

Title 38 Code of Federal Regulations, Section 3.400(c)(1), governs the time limitations to file the Dependency and Indemnity Compensation claim and states when the claim must be received by the Department of Veterans Affairs; "First day of the month fixed by the Secretary concerned as the date of actual or presumed death, if claim is received within [one] year after the date the initial report of actual death or finding of presumed death was made." Dependency and Indemnity Compensation is not paid if the Department of Veterans Affairs determines the member's own misconduct contributed to the death. Dependency and Indemnity Compensation paid to a surviving spouse is not based on the member's military pay grade. The amount paid for a spouse with one or more children of the deceased is increased for each child. This benefit allows for retroactive pay at the date the claim application is received by the Department of Veterans Affairs following the Service member's death.

Due to an imminent Permanent Change of Station, the applicant and her children departed [Air Force Base] enroute to the new duty station. They were visiting family enroute to their new duty station when the member was tragically killed on 1 Aug 20. The applicant and the children were notified of the member's death by the losing base's Casualty Assistance Representative. Following the member's funeral services, the applicant and her two children continued enroute to their new base.

In accordance with Department of the Air Force Instruction (DAFI) 36-3002, *Casualty Services*, the Department of the Air Force's Casualty Assistance Program is designed to brief eligible survivors on their benefits, secure signatures on the applicable claim forms, and submit the claims to the paying agencies. In this case, the losing base's Casualty Assistance Representative provided initial casualty assistance to the applicant on 3 Aug 20 and prior to her departure from [State] and arrival at the gaining base. However, neither the losing base's Casualty Assistance Representative, nor gaining base's Casualty Assistance Representative secured a Dependency and Indemnity Compensation election claim form (VA Form 21P-534) prior to 24 Mar 22, with an effective date of eligibility of 1 Apr 22. The lapse in communication between the two Casualty Assistance Representatives, which was exacerbated in the gaining base having a vacancy in the Casualty Assistance Representative position, as well as the losing base's Casualty Assistance Representative not following-up to ensure a seamless transition in support, resulted in the Dependency and Indemnity Compensation claim not being filed on the applicant's behalf. This lapse resulted in the injustice and loss of Dependency and Indemnity Compensation benefits due to the applicant and the children, which was not the applicant's fault.

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 10 Mar 23, 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. The lapse in communication between the two Casualty Assistance Representatives resulted in the Dependency and Indemnity Compensation claim not being filed on the applicant's behalf. This lapse, which was not the applicant's fault, resulted in the loss of Dependency and

Indemnity Compensation benefits owed to the applicant and her children. Therefore, the Board concurs with the rationale and recommendation of AFPC/DPFCS and finds a preponderance of the evidence substantiates the applicant's contentions. Accordingly, 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 to show the claim for Dependency and Indemnity Compensation was signed by APPLICANT on 3 Aug 20, entitling her to all Dependency and Indemnity Compensation benefits if deemed payable by the Department of Veterans Affairs Benefits Administration.

CERTIFICATION

The following quorum of the Board, as defined in DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-01767 in Executive Session on 15 Jun 23:

, Panel Chair
, Panel Member
, Panel Member

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

Exhibit A: Application, DD Form 149, dated 29 Aug 22.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory opinion, AFPC/DPFCS, w/atchs, dated 9 Mar 23.
Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 10 Mar 23.

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.

Board Operations Manager, AFBCMR