

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01799

XXXXXXXXXXXX (DECEASED MEMBER)

COUNSEL: NONE

(AKA) XXXXXXXXXXXX

XXXXXXXXXXXX (APPLICANT)

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The deceased service member's record be changed to show she made a timely election for spouse coverage under the Survivor Benefit Plan (SBP).

APPLICANT'S CONTENTIONS

The decedent was attempting to correct her SBP circa summer of 2020. The decedent had named her youngest daughter as her SBP beneficiary in 2009 when she was medically discharged from the Air National Guard while on Title 10 orders. The applicant and decedent married on 22 Oct 14, with neither knowing to change the beneficiary from the daughter to the applicant within one year of marriage. The decedent subsequently learned of this requirement and worked with the SOCOM Care Coalition to apply for a correction. The applicant found email correspondence from the decedent's case worker addressing this action. The decedent was diagnosed with cancer and had many treatments during this time period. The applicant believes the medications and procedures were too much for the decedent to bear and maintain the conscious effort needed to correct her SBP. The applicant will provide documentation to the Board that shows what the decedent endured and the effort she made to correct her records. The decedent always told the applicant not to be concerned financially as the SBP would help pay the mortgage in case she was to pass. He never knew the benefit was not fully transferred to him.

The applicant is requesting this change because it was the decedent's intent for him to have the SBP from her retirement to pay the mortgage and property taxes for their home. Since the decedent's cancer diagnosis and subsequent death, they have lost nearly one half of their planned household income. They lost the decedent's nursing income when she fell sick with cancer for the last year and since her death, have lost her military retirement. They bought, remodeled, and expanded the family home bought by the applicant's father in 1962. With their combined income, they had the ability to finance the project and join their two families together in 2014, under a new life. He has since learned the SBP never changed over and will stay with her daughter for only four years if she is a full-time student. Losing the decedent's benefits levies a serious risk to the applicant's ability to continue to pay off the remodeling costs and make the monthly payments for the house and property. He is requesting the SBP be corrected to allow him to effectively fund the house they built together, keep his family legacy home intact, and continue to care for and house their family.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is the surviving spouse of a retired Air National Guard captain (O-3).

On 11 May 09, according to DD Form 2656, *Data for Payment of Retired Personnel*, the decedent was unmarried and elected Option C (Coverage for Child[ren] Only) based on full retired pay.

On 7 Jul 09, according to Special Order No. XXXXX, dated 23 Apr 09, the service member was permanently disability retired in the rank of captain with compensable percentage for physical disability of 100 percent.

On 22 Oct 14, according to a Certificate of Marriage, provided by the applicant, he married the decedent.

On 29 May 22, according to a Certificate of Death, provided by the applicant, the service member passed away.

On 14 Oct 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 18 Oct 22, the applicant returned the completed affidavit.

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

AIR FORCE EVALUATION

ARPC/DPTT recommends denying the application. The decedent did not make a new election within the 12-month timeframe following marriage prescribed by law. In accordance with DoDI 1332.42, *Survivor Benefit Plan*, paragraph 4.4., a covered participant who did not have a spouse, or a court order to provide former spouse coverage, when they were initially eligible to make an election to participate in RCSBP, who later marries, may elect within one year of marriage to cover their new spouse. If the previous election was for child RCSBP coverage, the member may elect to add spouse coverage, resulting in spouse and child coverage, with a recalculation of the premium effective as of the date of the first anniversary of the marriage.

The decedent received an SBP briefing and signed certification confirming the briefing on 11 May 09. Additionally, in preparation for commencement of retired pay, she completed the DD Form 2656 electing child only coverage. According to DFAS, the decedent did not submit a change of election within 12 months after the date of marriage to the applicant.

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 18 Nov 22 for comment (Exhibit D), and the applicant replied on 28 Dec 22. In his response, the applicant states this has been a very challenging and difficult year and he had no knowledge of the requirement to make changes to the decedent's SBP within one-year of their marriage. He can only imagine the difficulty the decedent had in functioning during that period. She was diagnosed with her second round of cancer near the time of the one-year cut off. She was overwhelmed by cancer and its effects for most of the last 10 years of her life. He believes it is understandable that one could have forgotten, or not even known, the requirement to change a beneficiary on a military form. The decedent was not even in the environment to help jog her memory, nor was she around people that could help her. It was not until the summer of 2020, during her third round of cancer,

that she was prompted by the Care Coalition to attempt a submission to correct the SBP record from child to spouse coverage.

The decedent's condition was much worse in 2020 than in 2014-2015. She was completely consumed by the service-connected cancer and fighting for her life and could not follow up to file the paperwork requesting the SBP change. He knows the decedent intended this change as they spoke about giving the children her insurance money if/when she passed because she knew the applicant would receive SBP. She said she was making the change, and all would be well. She started the process but was never able to follow through.

He had no idea she did not finish the papers to change the benefit and he was working on the assumption that she had completed the task. It was only in the last eight month that he realized how much she was impacted by the cancer. He lost his wife's military retirement and civilian nursing income due to illness cause by service to their country. They had not planned for this shortfall, and both were expecting the applicant would have the retirement percentage to care for the children and home. Their children, home, and ability to move forward have been significantly impacted by the decedent's passing. This financial aspect, if corrected, will help the decedent's dream and desire to have her home and family cared for, even in death.

The applicant's complete response is at Exhibit E.

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, to include the applicant's rebuttal, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of ARPC/DPTT and finds a preponderance of the evidence does not substantiate the applicant's contentions. The decedent did not submit an election to change her beneficiary to add spouse coverage within the one-year timeframe following marriage as required by DoDI 1332.42. 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-2022-01799 in Executive Session on 20 Apr 23:

, Panel Chair
, Panel Member
, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 4 Jul 22.

Exhibit B: Documentary Evidence, including relevant excerpts from official records.

Exhibit C: Advisory, ARPC/DPTT, dated 7 Nov 22.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 18 Nov 22.

Exhibit E: Applicant's Response, dated 28 Dec 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.

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Board Operations Manager, AFBCMR