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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-2022-02095

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**COUNSEL:** Work-Product

**HEARING REQUESTED:** Wor...

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**APPLICANT'S REQUEST**

Discontinue former spouse Survivor Benefit Plan (SBP) coverage and reimbursement of premiums paid since 9 Sep 11.

**APPLICANT'S CONTENTIONS**

His former spouse has refused SBP coverage and does not want to remain on the SBP account as the beneficiary.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a retired Air Force staff sergeant (E-5).

According to DD Form 2656, *Data for Payment of Retired Personnel*, dated 9 Sep 99, the applicant elected Option B, *Coverage for Spouse and Child[ren]*, based on full retired pay and his spouse concurred with the decision.

On 1 Dec 99, according to Special Order Work-Product, dated 5 Feb 99, the applicant retired from the Regular Air Force.

On 9 Sep 11, according to a divorce decree provided by the applicant, the applicant and his former spouse divorced. The divorce decree required the applicant to provide SBP coverage for his former spouse.

On 10 Mar 21, according to vacate order provided by the applicant, he petitioned the court and was granted former spouse SBP coverage be vacated effective 10 Mar 21.

On 25 Apr 23, according to amended vacate order provided by the applicant, he petitioned the court and was granted former spouse SBP coverage be vacated effective 9 Sep 11 to present. All premiums paid from 9 Sep 11 to present shall be refunded minus payments that were already refunded from 10 Mar 21 to present.

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

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## AIR FORCE EVALUATION

AFPC/DPFFF (SBP Program) recommends partially granting the application. A person's eligibility to receive a spouse SBP annuity terminates upon divorce; however, the law provides two mechanisms for changing spouse coverage to former spouse coverage. One of the following actions must be taken within the first year following divorce: (1) the retiree may file an election change, or (2) the former spouse may request the retiree be deemed to have made such a change on his or her behalf. In the latter case, the former spouse must provide legal documentation the member agreed, or the court ordered the member, to establish former spouse coverage. If neither the member nor the former spouse requests the election change during the one-year eligibility period, former spouse coverage may not be established thereafter. The former spouse coverage cannot be arbitrarily changed unless the parties obtain an amended court order removing the previously awarded SBP coverage for the former spouse. Additionally, the law states when there is an amended court order to vacate a previous award of former spouse coverage the coverage can only be changed to cover a new/current spouse. If there is no spouse, then the former spouse coverage is irrevocable unless the former spouse dies or remarries.

The applicant retired 1 Dec 99 while married to his former spouse and elected SBP coverage. The parties later divorced on 9 Sep 11, and the former spouse was awarded the continuation of SBP. She deemed her election in Aug 12, prior to the one-year allowable timeframe. On 10 Mar 21, the parties acquired a court order that vacated the former spouse SBP coverage. On 28 Sep 21 the former spouse provided a notarized affidavit to the Defense Finance and Accounting Service (DFAS- CL) requesting to terminate former spouse coverage. On 14 Jun 22, DFAS-CL provided a letter to the applicant of their decision to deny the request to remove the former spouse, stating the law does not permit them to change the former spouse coverage where there is no new spouse to be covered.

There is no evidence of an Air Force error in this case however, it would be appropriate to grant partial relief with enforcing the court order to vacate the previously awarded former spouse SBP removing the former spouse as named beneficiary as of 10 Mar 21. Approval should include repayment of premiums paid from the date of the court order, 10 Mar 21 until present. All premiums prior to that date would not be refundable as the former spouse was covered under SBP and was an eligible beneficiary of the SBP annuity.

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 24 Feb 23, for comment (Exhibit D), and the applicant replied on 10 Mar 23. In his response, the applicant contends all premium payments made from 9 Sep 11 until present be refunded with a modified vacate court order, retroactive from 9 Sep 11 to date minus any payments which were already refunded from 10 Mar 21 to present. 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, the Board concludes the applicant is 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 substantiates the applicant's contentions in part. Specifically, the

applicant believes he should be reimbursed all paid SBP premiums since 9 Sep 11. However, the court order issued to vacate the previously awarded former spouse SBP coverage, removing the former spouse as named beneficiary did not occur until 10 Mar 21. Therefore, SBP premiums should not be refundable as the former spouse was covered under SBP and was an eligible beneficiary of the SBP annuity during the requested period. Notwithstanding, the vacate order dated 10 Mar 21 is sufficient to justify discontinuing former spouse SBP coverage and reimbursement of premiums paid from 10 Mar 21 to present. Therefore, 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 APPLICANT be corrected to show that:

a. On 10 Mar 21, he submitted a timely and effective election to remove FORMER SPOUSE as the former spouse SBP beneficiary.

b. All premiums paid from 10 Mar 21 until present shall be reimbursed.

## 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-2022-02095 in Executive Session on 16 Nov 23:

Work-Product Panel Chair  
Work-Product Panel Member  
Work-Product Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 6 Jul 22.

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

Exhibit C: Advisory, AFPC/DPFFF, dated 22 Feb 23.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 24 Feb 23.

Exhibit E: Applicant's Response, 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.

12/7/2023

X

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Board Operations Manager, AFBCMR

Signed by: Work-Product

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