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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02414

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COUNSEL: Work-Product

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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 former spouse coverage under the Survivor Benefit Plan (SBP).

### APPLICANT'S CONTENTIONS

Counsel, on behalf of the applicant, contends her claim for SBP annuity as the surviving former spouse was disallowed by the Defense Finance and Accounting Service (DFAS) due to an administrative error in service member's SBP election. There were also errors on his Retiree Account Statements, which indicate his former spouse [applicant] was covered under SBP after their divorce. DFAS deducted a portion of the service member's retired pay for payment (alimony) to the applicant as his former spouse, as well as SBP premiums for spouse coverage. This conflict is documented in the service member's Retiree Account Statements issued by DFAS several years after the couple divorced.

In addition, the service member's pay statement, effective 3 Dec 13, includes a comment indicating there were no further charges for SBP as he was "paid up." In an email addressed to his and the applicant's son, dated 13 Feb 14, he stated, "A couple of months ago, after 30+ years I finally paid off the SBP account, it is "paid up" insurance. Your mother is the beneficiary. If I predecease her she must file for it." The service member never remarried, and his pay statements continued to identify the applicant (former spouse) as the SBP beneficiary through the date of his death.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is the former spouse of a deceased retired Air Force lieutenant colonel (O-5).

On 26 Jun 77, the service member and the applicant were married.

On 1 Apr 82, according to Special Order Work-Product dated 5 Oct 81, the service member retired from the Regular Air Force.

On 6 Oct 03, the service member and his former spouse divorced.

On 8 Dec 20, according to a Certificate of Death, provided by the applicant, the service member passed away.

On 6 Feb 23, the Board sent the applicant the following standard forms, 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 (Former Spouse); SBP Release of Benefits Affidavit (Arrears of Pay).

On 8 Feb 23, the applicant signed a notarized affidavit, which states she is not currently married, did not marry before age 55, and that her former spouse had not remarried.

On 19 and 27 Feb 23, according to notarized affidavits, the couple's son and daughters swore/affirmed they are the decedent's legal heirs and relinquish any competing interests they may have in the Arrears of Pay in favor of their mother, the applicant and former spouse.

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**

AFPC/DPFFF (SBP Program) recommends 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 within the first year following divorce: (1) the retiree may file a voluntary or court-ordered change, or (2) the former spouse may request the retiree be deemed to have made such a change on his or her behalf in accordance with court-ordered award of SBP. 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. Even though a member fails to notify DFAS of the divorce and continues to pay SBP premiums afterwards, the former spouse is not eligible for annuity payments upon the member's death. Additionally, any over payment of premiums will be paid to the member's named beneficiary for unpaid compensation and any arrears of pay owed to the member. If there is no named beneficiary, it is designated as by law. By law is as follows: spouse; children; parents; sister/brother; and so forth.

The Department of Defense person search records reflect the service member and applicant were married 26 Jun 77 prior to his 1 Apr 82 retirement. On 6 Oct 03, the couple divorced and there is no mention in the divorce decree of SBP being awarded to the applicant. The service member had one year after divorce to make a voluntary election to change SBP coverage from spouse to former spouse, which did not occur. However, the service member continued to pay for spouse coverage under SBP until it reached the paid-up provision. On 13 Feb 14, the service member sent an email to his son informing him of the paid-up provision and instructions on how his mother [former spouse/applicant], would receive the SBP annuity upon his death. At the time of his passing 8 Dec 20, he had not remarried. Additionally, there is a competing claimant, the couple's son, who is by law the beneficiary of the overpayment of premiums, which will be included in the unpaid compensation and arrears of pay. Their son submitted a signed affidavit relinquishing his right to the overpayment of premiums in favor of his mother receiving 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 1 Aug 23 for comment (Exhibit D) but has received no response.

## **FINDINGS AND CONCLUSION**

1. The application was not timely filed, but it is in the interest of justice to excuse the delay.
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. While the decedent failed to make a voluntary election change from spouse to former spouse SBP coverage within one year of divorce, he continued to pay SBP premiums until all premiums were "paid up." In addition, in an email to his son the decedent acknowledged the paid up provision and his intent to provide the SBP annuity to his former spouse [applicant]. The decedent's legal heirs signed affidavits relinquishing any competing interests in favor of their mother [applicant] receiving the SBP annuity. 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 MEMBER be corrected to show that:

- a. On 7 Oct 03, he submitted a timely and effective election for former spouse coverage under SBP, based on full retired pay, naming APPLICANT as the eligible beneficiary.
- b. On 9 Dec 20, APPLICANT made a timely and effective claim for former spouse survivor benefit annuity.

### 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-2022-02414 in Executive Session on 14 Dec 23:

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Panel Chair

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Panel Member

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Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 26 Aug 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, AFPC/DPFFF, w/atchs, dated 17 Jul 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 1 Aug 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.

1/14/2025

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**AFBCMR Docket Number BC-2022-02414**

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