

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01680

Work-Product

COUNSEL: Work-Product

Work-Product

HEARING REQUESTED: Work-...

APPLICANT’S REQUEST

The deceased service member’s record be corrected to show he made a timely election for former spouse coverage under the Survivor Benefit Plan (SBP).

APPLICANT’S CONTENTIONS

Her former spouse retired in 1993 and paid SBP premiums until his death. In May 1998 after they divorced, their divorce decree was sent to the Defense Finance and Accounting Service (DFAS) for child support withholding, but the SBP designation was not updated. Prior to his death, he provided her with his Retiree Account Statement which shows SBP spouse coverage with her (applicant) date of birth. Neither she nor her former spouse was aware the SBP designation needed to be changed or that additional paperwork was required. A records error should not disqualify her from receiving the annuity he maintained for 29 years.

The applicant’s complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is the former spouse of a retired deceased Air Force master sergeant (E-7).

On 12 July 1982, according to a Certificate of Marriage, provided by the applicant, the service member and the applicant were married.

On 1 January 1994 according to Special Order Work-Product dated 27 February 1993 the service member retired from the Regular Air Force.

On 27 April 1998, the service member and applicant divorced. The divorce decree required the service member to provide SBP coverage for his former spouse.

On 12 March 2023, according to a Certificate of Death, provided by the applicant, the service member passed away.

On 17 November 2023, 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 Release of Benefits Affidavit Arrears of Pay (AOP).

On 4 December 2023, the applicant returned the completed affidavits. The service member's children indicated they would relinquish any competing interest they may have in the AOP in favor of the service member's former spouse.

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

APPLICABLE AUTHORITY

10 U.S.C. § 1448(b)(3)(A)(iii). "An election to convert spouse coverage to former spouse coverage, "must be written, signed by the person making the election, and received by the Secretary concerned within one year after the date of the decree of divorce, dissolution, or annulment."

10 U.S.C. § 1450(f) (3) (C). If a court has ordered a service member to elect former spouse SBP, then a former spouse can submit his or her own request to Defense Finance Accounting Service (DFAS) for former spouse SBP coverage. This is known as a "deemed election request." There is a time limit: "An election may not be deemed to have been made ... unless the Secretary concerned receives a request from the former spouse of the person within one year of the date of the court order or filing involved."

AIR FORCE EVALUATION

AFPC/DPFC (Casualty Matters Division) recommends denying the application, indicating there is no evidence of an error or injustice or any basis in law to approve the request. The Department of Defense Person Search records reflect the service member and the applicant were married prior to his retirement on 1 January 1994. They elected spouse and child SBP coverage based on full gross pay. The couple later divorced on 27 April 1998. In their divorce decree, the applicant was awarded SBP former spouse coverage, and the decree also contained instructions for the service member to sign all necessary forms to assure the applicant receive SBP benefits entitled to her as a former spouse. However, neither party informed DFAS to change the coverage from spouse to former spouse within the one-year period required by law. Although the service member continued to have premiums deducted from his retired pay, there is no evidence to justify providing the applicant an additional opportunity to change the category of coverage.

The service member was not married at the time of his death; however, by law of legal precedence his two children are the beneficiaries of any arrears of pay and unpaid compensation owed. Although the service member's children have submitted signed affidavits relinquishing their rights to the arrears of pay, there is no sufficient cause to correct the failure to make the proper designation. A correction of record would be an additional cost from the government that would exceed the amount of premiums paid into SBP. The law requires service members and former spouses to make the appropriate notifications after a divorce or other qualifying life changes. Retiree Account Statements only reflect the SBP coverage and beneficiaries known by DFAS. In this instance, there was no notification to change spouse to former spouse. Therefore, this documentation is not supportive evidence.

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 11 March 2024 for comment (Exhibit D), and the applicant replied on 18 March 2024. In her response, the applicant contends the lack of notification and guidance from DFAS, or any relevant Air Force entity deprived them

of the opportunity to comply with procedural mandates they did not know existed. The divorce decree mandated the decedent ensure the applicant's entitlement to SBP benefits as his former spouse, reflecting a court-sanctioned agreement to secure her financial support. Their failure to complete certain forms in a timely manner stems from a lack of awareness and guidance regarding procedural requirements. DFAS received the divorce decree which included a child support order in which they acted on and made monthly payments. However, failure by DFAS to make notification that additional forms were needed to effectuate the decree's financial terms indicates a systemic error in process and communication. The decedent's consistent SBP premium payments demonstrate his commitment to honor their agreement outlined in the divorce decree. Denying her request disregards the decedent's intent to meet his legal obligations and personal commitments.

The policy limiting recovery of overpayments to five to six, regardless of the date of divorce is an injustice. This arbitrary limitation disregards financial agreements and their intended long-term effects, and undermines the enforceability of legally binding divorce agreements. Penalizing her for an administrative error is unjust, especially since the decedent continued paying SBP premiums, affirming his intent to comply. The Board has the discretion to act with fairness and justice. Acknowledging the relinquishment of arrears of pay by the decedent's children further supports realigning benefits to honor the original intent of the divorce decree to provide for the applicant.

The applicant's complete response is at Exhibit E.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all other available administrative remedies before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is the victim of an error or injustice. While the Board notes the recommendation of AFPC/DPFC against correcting the record, the Board finds a preponderance of the evidence substantiates the applicant's contentions. In this respect, the Board took notice of the divorce decree awarding former spouse SBP coverage, the decedent's records continuing to show the former spouse as the eligible SBP beneficiary, albeit as spouse instead of former spouse, and determined these factors are indicative of the decedent's intent to maintain SBP coverage for his former spouse. Furthermore, the decedent's children signed affidavits relinquishing their right to the AOP in favor of the applicant receiving the decedent's SBP annuity. As such, the Board finds it appropriate to enforce the parties' court-ordered agreement to provide former spouse coverage. To deny the request would be to deny the former spouse an asset awarded to her by the court. Therefore, in the interest of justice, the Board recommends correcting the decedent'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 28 April 1998, he submitted a timely and effective election for former spouse coverage under SBP, based on the previous full level of retired pay, naming APPLICANT as the eligible beneficiary.

b. On 13 March 2023, APPLICANT submitted a timely and effective claim for survivor benefit annuity.

c. Approval is contingent upon recovery of SBP premiums. If applicable, the monthly survivor benefit annuity will be applied to the premium debt until the total amount of premiums owed is recovered.

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-2023-01680 in Executive Session on 19 July 2024:

- 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 23 May 2023.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, AFPC/DPFC, dated 11 March 2024.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 11 March 2024.
- Exhibit E: Applicant’s Response, 18 March 2024.

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.

10/29/2025

X **Work-Product**

Board Operations Manager, AFBCMR
Signed by: USAF