

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01892

XXXXXXXXXXXXXXXXXXXX

COUNSEL: NONE

XXXXXXXXXXXXXXXXXXXX

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

Her husband was not married at the time of his retirement; thus, he elected child[ren] only coverage. She and her husband were married in Aug 20XX and had extensive discussions about him not being able to change his SBP election. He understood from his SBP briefing that the only opportunity to elect SBP was at the time of retirement and since he did not elect spouse coverage at that time, she could not be covered. After he passed away, she learned from the Casualty Assistance Representative his SBP election could have been changed at the time of marriage. If her husband had known he could change his election upon marriage, he definitely would have changed his election from child[ren] only coverage to spouse coverage.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 14 Feb 08, according to DD Form 2656, *Data for Payment of Retired Personnel*, the service member indicated his marital status as "single" and elected Option C, *I elect coverage for child[ren] only*, based on full retired pay.

On 1 Jun 08, according to Special Order XX-XXXXXX, dated 22 Jan 08, the service member retired from the Regular Air Force.

On 2 Aug XX, according to a Certificate of Marriage, provided by the applicant, the service member and the applicant were married.

On 10 Apr XX according to a Certificate of Death, provided by the applicant, the service member passed away.

On 14 Aug 23, the Board sent the applicant the following standard form 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 15 Aug 23, the applicant returned the completed affidavit indicating that she is not currently married.

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 denying the application. Survivors of military retirees may continue to receive a portion of the sponsor's retired pay only if the member was a participant in SBP. The law contains no automatic enrollment provision for the first spouse acquired after retirement unless spouse coverage had been previously elected, then suspended due to the death or divorce of the previous spouse. SBP is similar to a commercial insurance program in that it requires the member to enroll and pay associated premiums to provide an annuity to survivors. Title 10 United States Code, Section 1448(a)(5) allows a member, who is unmarried at retirement, to elect coverage for the first spouse acquired after retiring. However, the election must be submitted before the first anniversary of that marriage. If a member fails to make an election before the first anniversary, SBP coverage for that person or another person of that category may be elected only during a congressionally authorized open enrollment period applicable to that specific circumstance. The open enrollment periods follow the guidance of the law as it pertains to who may be eligible for coverage at that time. It is not assumed that each open season will have the same eligibility requirements.

Department of Defense (DoD) Person Search records reflect the member was not married at his retirement (1 Jun 08); however, he had dependent children for which he elected child[ren] only coverage as reflected on his DD Form 2656. By law, a member who, is not married at retirement but marries at a later date, must notify the Defense Finance and Accounting Service (DFAS) in writing or complete DD Form 2656-6, *Survivor Benefit Plan Change of Election*, for the first spouse within one year of that marriage. DoD Person Search records reflect the member married his first spouse after retirement on 8 Apr XX. Although the couple later divorced on 10 May XX, she would have been the eligible spouse to be covered after the member retired. The member and the applicant were married on 2 Aug XX; therefore, as the second spouse after retirement, the applicant is not legally eligible for SBP. In neither marriage did the member contact DFAS and elect SBP coverage. Additionally, the member was briefed on the options and effects of SBP including details of spouse coverage found in section E (2) of the SBP Record of Individual Personnel (RIP). The SBP RIP was signed by the member on 14 Feb 08 acknowledging he understood the details of SBP.

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 7 Dec 23 for comment (Exhibit D) but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed. The Board notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence.
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 not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DPFC and finds a preponderance of the evidence does not substantiate the applicant's contentions. By law, a member who is not married at retirement but marries at a later date may elect coverage for the first spouse after retirement, if the election is made within one year of that marriage. According to

DoD records, the applicant is the decedent's second spouse after retirement, and by law, not legally eligible for SBP. Therefore, the Board recommends against correcting the decedent'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 DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2023-01892 in Executive Session on 30 May 24:

, 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 31 May 23.
Exhibit B: Documentary Evidence, including relevant excerpts from official records.
Exhibit C: Advisory, AFPC/DPFC, dated 20 Nov 23.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 7 Dec 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.

X

Board Operations Manager, AFBCMR