

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01942

XXXXXXXXXXXX
(SERVICE MEMBER)

COUNSEL: NONE

XXXXXXXXXXXX
(APPLICANT)

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her deceased father's official military personnel records be amended to:

- a. Authorize payment of Unpaid Pay and Allowance (UPPA) and Basic Allowance for Housing (BAH) to the applicant.
- b. Authorize death gratuity already paid to the applicant.
- c. Authorize payment of UPPA and BAH to the applicant's brother (deceased service member's son, XXXXXXXX). **(The applicant is not the legal representative for XXXXX; must be adjudicated under separate application).**
- d. Authorize payment of death gratuity to XXXXXXXX. **(The applicant is not the legal representative for XXXXXXXX; must be adjudicated under separate application).**

APPLICANT'S CONTENTIONS

She was recently informed her claim was denied due to not filing timely, in accordance with the Barring Act. The Barring Act aside, it was her understanding she and XXXXXXXX would be due the following amounts:

- Applicant: Total UPPA: \$3,721.97 and BAH: \$6,642.00.

As advised by the Casualty Assistance Representative (CAR), she applied for and was paid the \$50,000 death gratuity in Jul 21, and was later informed she should not have received any death gratuity based on the Barring Act. She requests no portion of the death gratuity be recouped.

She was as initially informed by the CAR, she could apply for benefits no sooner than her 18th birthdays, if legal guardianship was not in place sooner. In addition, his guardian was informed the applications must be submitted within six years of her 18th birthday to prevent loss of benefits, in accordance with the Barring Act. Due to the cost of obtaining guardianship, his guardian determined it was best to wait until his 18th birthday to apply for death benefits.

Soon after her 18th birthday, she met with the CAR who assisted her with applying for her benefits, as previously planned. As mentioned above, she was informed her claim was denied due to the Barring Act. The CAR explained the guidance that was in place was a misinterpretation of the Barring Act; specifically, benefits should have been applied for within six years of her father's death and not within six years of her 18th birthday. Her brother received a similar denial after he submitted his application following his 18th birthday.

She does not believe it is right to not provide her with death benefits based on a misinterpretation of the Barring Act and what was advised by her government representative. She applied soon after she turned 18 years old, as advised, and her brother did the same. Additionally, the \$50,000

death gratuity should not be recouped from her because she followed the guidance provided, and in a timely manner.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is the daughter of a deceased Air Force staff sergeant (E-5).

According to a *Certificate of Live Birth*, provided by the applicant, the service member is listed as the applicant's father.

On 8 Jan 14, according to DD Form 93, *Record of Emergency Data*, the service member named his spouse as beneficiary for UPPA and death gratuity.

On 13 Dec 14, according to AF Form 348, *Line of Duty Determination*, the service member died as a result of a motor vehicle accident. The recommended finding was "in the line of duty." Unfortunately, the service member's spouse died in the same accident.

On 12 Jul 21, according to Standard Form 1174, *Claim for Unpaid Compensation of Deceased Member of the Uniformed Service*, provided by the applicant, she applied for UPPA and BAH.

On 25 May 22, according to DD Form 1300, *Report of Casualty (Corrected Final)*, the service member died as a result of an accident on 13 Dec 14 while off duty and in an active duty status. His deceased spouse was listed as beneficiary for UPPA and death gratuity, and the applicant was listed as primary next-of-kin.

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

AIR FORCE EVALUATION

AFPC/DPFCS recommends granting the application. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice. The Air Force Casualty Assistance Program improperly advised the beneficiaries, based on guidance and training provided by the Defense Finance and Accounting Service (DFAS), which caused the late submission for the claims.

UPPA, BAH, and death gratuity are payable by DFAS to surviving beneficiaries, typically to spouse and children. The applicant was informed by the CAR her claims for UPPA, BAH, and death gratuity were denied due to not being filed in a timely manner in accordance with the Barring Act. The Barring Act states: "Title 31 U.S. Code 3702 (b) (1) Authority to settle claims, governs the time limitations to file for death gratuity, unpaid pay and allowances, and basic allowance for housing, known as the Barring Act. The Barring Act states the claim(s) must be received by the official responsible under subsection (a) for settling the claim or by the agency that conducts the activity from which the claim arises within six years after the claim accrues."

The applicant stated the guardian for her and her brother, was initially informed by the local CAR they could apply for the death benefits no sooner than their 18th birthdays, if legal guardianship was not in place sooner. The guardian was also informed by the CAR the applications must be submitted within six years of her 18th birthdays to prevent loss of benefits. There has been a longstanding guidance and application by DFAS as to how services' casualty representatives were to advise and apply for survivor benefits, especially for children awaiting age of majority (age 18). Additionally, the high cost of obtaining legal guardianship compelled

the guardian to determine it was in her best interest to wait until her 18th birthday to apply for benefits; hence, the delay in filing her claims.

As instructed, the applicant met with the CAR shortly after her 18th birthday, who then assisted her with applying for benefits. She was paid the death gratuity of \$50,000 but was later informed her claim for UPPA and BAH was denied by DFAS. DFAS denied the claims based on a new interpretation of the Barring Act received by the Office of General Counsel (OGC), which did not occur until Apr 22. Within the OGC advisory, they stated DFAS's previous execution of the Barring Act was incorrect and advised DFAS to stop any previous practices; and they should not pay beneficiaries still awaiting payment at age 18 who did not previously submit a claim within six years of the service member's death. The CAR explained this new guidance and informed the applicant her brother would receive the same denial from DFAS for his applications submitted in Oct 22, following his 18th birthday.

The applicant believes she is the victim of an error and/or injustice by the Air Force due to the misinterpretation of the Barring Act and should not be penalized. Further, the applicant stated she applied for benefits as previously instructed by the CAR, and her brother did the same in Oct 22. In addition, the applicant believes the \$50,000 death gratuity she was paid should not be recouped because she followed the guidance provided in a timely manner. She also believes her brother should be entitled to his portion of the death gratuity benefit.

The applicant believes she is entitled to the following amounts owed:

Applicant: UPPA (\$3,721.97); BAH (\$6,642.00); Death Gratuity (\$0); Total Owed: \$10,363.97.

The Air Force incorrectly briefed the applicant's guardian due to DFAS's longstanding misinterpretation and training of services' casualty personnel regarding application of the Barring Act. Although inadvertent, she was still misinformed and missed the six-year suspense to file for benefits, not by her own doing. This office recommends UPPA and BAH be granted and the death gratuity paid to the applicant not be recouped.

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 27 Sep 23 for comment (Exhibit D) but has received no response.

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. While the applicant's petition to the Board also addresses her brother's claim, she is not identified as his legal representative; therefore, only her claim was adjudicated. The Board concurs with the rationale and recommendation of AFPC/DPFCS and finds a preponderance of the evidence substantiates the applicant's contentions. The Air Force incorrectly briefed the applicant's guardian due to DFAS's longstanding misinterpretation and training of services' casualty personnel regarding the application of the Barring Act. Although inadvertent, the deceased service member's beneficiaries were still misinformed and the applicant missed the six-year suspense to file for benefits, not by her own doing. In fact, the applicant timely filed her

claim according to the erroneous guidance she received, demonstrating her intent to comply with timelines provided. Therefore, the Board recommends correcting the service member's records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to the SERVICE MEMBER be corrected to show on 13 Dec 15, the APPLICANT submitted a timely and effective claim for Unpaid Pay and Allowance (UPPA); Basic Allowance for Housing (BAH); and death gratuity.

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-2023-01942 in Executive Session on 9 Apr 24:

, Panel Chair
, Panel Member
, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 16 Mar 23.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory opinion, AFPC/DPFCS, atchs, dated 28 Jul 23.
Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 27 Sep 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