

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02046

XXXXXXXXXXXXX (DECEASED)

COUNSEL: NONE

XXXXXXXXXXXXX (APPLICANT)

HEARING REQUESTED: NO

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), based on full gross retired pay.

APPLICANT'S CONTENTIONS

Her husband served his country for 30 years and she (his widow) receives a monthly annuity of \$389.91. At retirement, he signed all the dotted lines. Nothing was totally explained, there was no consulting, nor was she present to sign off on anything. Now, however, both members are counseled. The only thing her husband understood was that he signed up for five percent "just to have his foot in the door." The correction should be made because it is the right thing to do. It was earned. That is the reason both the member and spouse are counseled now and must sign off on everything. Evidently, she is not the first person to bring attention to the matter.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is the surviving spouse of a retired Air Force chief master sergeant (E-9).

On 30 June 1963, according to a Certificate of Marriage, provided by the applicant, the service member and the applicant were married.

On 1 February 1986, according to Special Order XX-XXXXXX, dated 22 February 1985, the service member retired from the Regular Air Force.

On 15 October 2021, according to a Certificate of Death, provided by the applicant, the service member passed away.

On 14 January 2022, according to a letter provided by the applicant, the Defense Finance and Accounting Service (DFAS) notified the applicant they received notification from the Department of Veterans Affairs (DVA) regarding approval of her monthly Dependency and Indemnity Compensation (DIC) payments. As a result, an adjustment to her SBP account was required. SBP was established by Public Law 92-425 on 21 September 1972, which includes a provision that requires any SBP monthly payment an annuitant receives be reduced by any spouse DIC paid by the DVA. In addition, Public Law 116-92 Section 622 authorized a phased elimination of the DIC offset and by 1 January 2023, SBP annuities would no longer be offset by the amount of DIC from the DVA. She was no longer eligible for an SBP annuity, and the law entitled her to a refund of all SBP spouse premiums paid, minus federal tax withholdings.

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/DPFC (Casualty Matters Division) recommends denying the application, indicating there is no evidence of an error or injustice and no basis in the law to grant the request. Members are required to make an SBP decision prior to retiring. SBP can be elected for eligible dependents based on a member's full gross retired pay or a reduced amount with the minimum base amount set at \$300. The SBP annuity paid is 55 percent of the base amount chosen by the service member. All premiums withheld from the member's pay is 6.5 percent of the base amount requested by the member at retirement. Public Law 99-145 established the requirement that a spouse's written concurrence be obtained if a member, who retires on or after 1 March 1986, elects less than full SBP spouse coverage (Title 10, United States Code, Section 1448 (a)(3)). When a member fails to elect SBP coverage for an eligible spouse, coverage cannot be established thereafter except during a congressionally mandated open enrollment period.

The Defense Enrollment Eligibility Reporting System records reflect the service member and applicant were married at the time of his retirement on 1 February 1986, and remained married until his death. DFAS records reflect the service member elected SBP coverage for his spouse and children at a reduced base amount and paid the associated premium costs. At the time the service member retired, there was no law in place requiring spouse concurrence. Additionally, there were three SBP Open Seasons (1992 to 1993; 1999 to 2000; and 2005 to 2006) that presented the opportunity for the service member to update his coverage to full maximum base amount with paid retroactive premiums. However, there is no evidence the service member requested an update during any of those opportunities. Therefore, when the service member passed away, the applicant was eligible for SBP coverage based on the reduced amount plus cost-of-living allowance (COLA) increases. Furthermore, at the time of the service member's death, there was an SBP-DIC offset in which the DIC was greater than the SBP amount, and the applicant received a full refund of premiums previously paid. There is no longer an SBP-DIC offset. The applicant has not produced documentation to show the service member paid into SBP at the full maximum rate or his desire to change the base coverage amount. The law is clear in that the base amount elected by the member will be the basis for the annuity paid to the surviving spouse.

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 2 May 24 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 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. Prior to retirement, the service member made a valid election for SBP coverage at a reduced amount, and spouse concurrence was not required. On three occasions during SBP Open Seasons between 1992 to 2006, the service member could have elected to increase his coverage to the full maximum amount but failed to do so. Therefore, the Board recommends against correcting the decedent's records.

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 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-2023-02046 in Executive Session on 19 Jul 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 10 Jun 24.
Exhibit B: Documentary Evidence, including relevant excerpts from official records.
Exhibit C: Advisory, AFPC/DPFC, dated 1 May 24.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 2 May 24.

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.

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Board Operations Manager, AFBCMR