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

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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-03022

Work-Product

**COUNSEL:**

Work-Product

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**HEARING REQUESTED:**

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**APPLICANT'S REQUEST**

1. The marriage records of the service member be changed to reflect their marriage effective 1 June 1999.
2. The service member elected spousal coverage for the applicant for his already established Survivor Benefit Plan (SBP) within one year of their 1 June 1999 marriage.
3. The service member's record be changed to show his widow made a timely election for SBP annuity.

**APPLICANT'S CONTENTIONS**

At the time of the service member's death, she was unaware of additional benefits available from Defense Finance and Accounting Service (DFAS) due to the annuity claim not being sent to her. Her daughter-in-law did some research and found she is entitled to her deceased spouse's benefits.

Counsel and her daughter-in-law on behalf of the applicant contends the service member retired from the Air Force in May 1989 as a technical sergeant after 20 years of honorable service, becoming entitled to retired pay. At the time of his retirement, he was married to DW, for whom he opted for SBP coverage, paying premiums until her death on 22 February 1998.

The following year, the service member began living with the applicant as husband and wife, starting 1 June 1999. Their relationship was characterized by the applicant using the service member's last name, both parties referring to themselves as "husband" and "wife," and establishing a marital residence. Furthermore, the service member designated the applicant as his medical power of attorney (in 2000), made her the beneficiary of multiple life insurance policies, and established three joint bank accounts with her. Following the service member's passing, the applicant, acting as his personal representative, successfully submitted a claim to the Department of Veteran's Affairs (VA) for burial expenses and received Arrears of Pay from DFAS in 2009. However, DFAS did not notify her of her potential eligibility for the service member's SBP annuity at that time.

Years later, after the applicant was diagnosed with severe dementia and her daughter-in-law assumed power of attorney in 2021, her daughter-in-law discovered the applicant had not claimed several survivor benefits. Her daughter-in-law then assisted her in applying for Dependency and Indemnity Compensation with the VA. Despite the service member and the applicant not being legally married under Florida law, the VA recognized their relationship as a "deemed marriage" for benefits purposes. This recognition was based on evidence provided by the applicant, including

certified statements from friends and family, attesting to their continuous cohabitation and public representation as a married couple from 1999 until the service member's death. The service member and the applicant were unaware that Florida did not recognize common law marriages during their nearly 10-year relationship.

With the deemed marriage established with the VA, her daughter-in-law subsequently sought to claim a Spouse Survivor Annuity for the applicant from DFAS under the service member's SBP in March 2023. DFAS initially denied the claim, citing the applicant was not married to the service member for at least one year prior to his death. Following a congressional inquiry initiated by her daughter-in-law, DFAS issued a revised denial, asserting the claim was barred by the Barring Act (31 U.S.C. § 3702) because it was not submitted within six years of the service member's death. DFAS also clarified the applicant was never notified of SBP rights because she was not listed as an annuitant on the service member's account.

DFAS outlined three potential avenues for relief: an appeal to the Defense Office of Hearings and Appeals, a Barring Act waiver request (which was denied due to the claim exceeding the \$25,000 threshold), and an application to the Air Force Board for Correction of Military Records (AFBCMR).

The applicant's complete submission is at Exhibit A.

#### **STATEMENT OF FACTS**

The applicant is the widow of the service member, a retired Air Force technical sergeant (E-6).

On 12 December 2008, according to a Certificate of Marriage, provided by the applicant, the service member married his spouse. According to a Certificate of Death, provided by the applicant, the service member passed away that same day.

Based on documentation provided by the applicant, DFAS documented the following timeline of facts:

- On 9 May 2009, DFAS received a Claim for Unpaid Compensation of Deceased Member of the Uniformed Services from the applicant.
- On 23 March 2023, DFAS received Verification of Survivor Annuity from the applicant requesting a Spouse Survivor Annuity payment.
- On 24 April 2023, DFAS denied the applicant's request for a Spouse Survivor Annuity payment claim citing a Surviving Spouse who was not married to the member for at least 1-year before the member's death or a parent of a child by that marriage is not eligible for SBP/RSFPP benefits.
- On 16 May 2023, the applicant submitted an appeal to DFAS stating she was denied based on the basis the service member and she were not married for one year; while the DFAS website only states that if the retiree wants to decline spouse coverage, he must do so within one year of the remarriage.

- On 19 July 2023, DFAS received a congressional inquiry from a Florida District 14 Representative regarding the status of the applicant's appeal.
- On 21 July 2023, DFAS sent the applicant a letter outlining the appeal process and response time. In addition, DFAS reviewed the initial denial reason and after further review determined a revised denial letter should be sent to the applicant as the initial denial letter did not include the statute for the six-year Barring Act.
- On 23 August 2023, the applicant submitted an appeal in which she questioned why she had not received an application for annuity pay at the time of the service member's death.

On 10 January 2024, 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 (Deceased Retiree).

On 22 January 2024, the applicant returned the completed affidavit.

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

#### **APPLICABLE AUTHORITY**

*DoD Financial Management Regulation*, Volume 7B, Chapter 4, paragraph 420206. Common Law Marriage. Marriage as defined by pertinent state law.

#### **AIR FORCE EVALUATION**

AFPC/DPFC (Transitions Division) recommends denying the application. There is no evidence of an Air Force error or injustice. There is no basis in the law to satisfy this request. The six-year statute of limitations requires a claim for payment of SBP annuities be submitted within six years of the member's death. The United States Court of Appeals, Federal Circuit in *Hart v. United States*, 910 F.2e 815 (Fed. Cir. 1990), held that a claim for SBP benefits accrued on the date of the member's death, and thus, a claim filed more than six years after the member's death was barred by the Claims Court six-year statute of limitations. Absent receipt of a valid claim for payment of the SBP within six years from the date the claim arises (i.e., the date of the member's death), the Air Force has no legal authority to pay the survivor an SBP annuity, and payment "shall be forever barred."

SBP eligibility for a new spouse to become a beneficiary they must be married to the member for 12 months. Eligibility is established at the one-year anniversary of that marriage in accordance with 10 U.S.C. § 1448. When the marriage is less than one year the spouse is not eligible for annuity payments upon the member's death. The official marriage records from the State of Florida reflect the service member and the applicant were issued a marriage license on 9 December 2008, with the marriage becoming effective on 12 December 2008. Unfortunately, the service member passed away on that same day, 12 December 2008. As such, while the applicant became eligible for a military identification card and associated benefits within the Defense Manpower Data Center, she did not meet the legal requirements to qualify as an eligible beneficiary for SBP under federal law. Federal law and SBP Eligibility in accordance with 10 U.S.C., § 1447–1455, a spouse must be married to the service member for at least one year prior to the member's death to

be eligible for SBP benefits, unless the marriage occurred prior to the service member's retirement. In this case, the service member and the applicant married on the date of his passing and did not meet the one-year marriage requirement. Therefore, the applicant does not qualify as an eligible SBP beneficiary.

The applicant's attorney has asserted that her relationship with the service member should be recognized as a common law marriage, beginning on 1 June 1999, until their legal marriage and date of the service member's death both on 12 December 2008. However, this claim is not supported under applicable law. Florida law (Florida Statute 741.211) explicitly states: "No common law marriage entered into after 1 January 1968, shall be valid, except nothing contained in this section shall affect any marriage which, though otherwise defective, was entered into by the party asserting such marriage in good faith and in substantial compliance with this chapter." As Florida does not recognize common law marriages established after 1 January 1968, the relationship between the service member and the applicant prior to their legal marriage on 12 December 2008, cannot be recognized as a valid marriage under state law. Additionally, in the applicant's Last Will and Testament, dated 1 October 2002, he identifies himself as an unmarried man. In this document, the applicant is referred to as a "beloved friend" and personal representative. This language further undermines the claim that a common law marriage existed prior to their legal marriage in December 2008.

Furthermore, the federal government does not create or regulate marriage laws, as marriage is primarily governed by state laws. For federal purposes (e.g., taxes, Social Security benefits, immigration, military benefits), the federal government honors common law marriages if and when the marriage is legally recognized in the state where the couple resides or where the relationship was established. As previously stated, based on the legal requirements under 10 U.S.C. § 1448 and Florida Statute 741.211, the applicant does not meet the eligibility criteria for SBP benefits. Florida does not recognize common law marriage after 1968, and the service member and applicant did not meet the required one-year marriage duration for SBP eligibility. Therefore, her claim for SBP benefits cannot be approved under federal requirements pertaining to common law.

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 23 January 2025, for comment (Exhibit D), and the applicant replied on 10 February 2025. In her response, the applicant through counsel and her daughter-in-law contended the AFPC advisory opinion misstates the authority as it applies to the applicant's request for relief. In relation to the Barring Act, AFPC indicates the Air Force has "no legal authority" to waive the six-year Barring Act requirement. While the AFBCMR may not have the authority to grant an explicit Barring Act Waiver request, since that authority rests statutorily with the Secretary of the Air Force, the AFBCMR has nevertheless, on multiple occasions, updated military records to reflect the veteran timely elected SBP coverage for their spouse.

Counsel cites the following AFBCMR cases in which Boards have changed service member's records to reflect a timely SBP deemed election:

BC-2014-00851: The applicant was denied an annuity because they didn't file a claim within the required six-year timeframe after the former member's death, despite the member electing and paying for spouse coverage. DFAS claimed they should have sent a claim package when they confirmed the member's RCSBP election, the applicant states they never received it and were

misinformed about their eligibility. The Board recommended granting the applicant's request citing it is unlikely the applicant would have knowingly forfeited the benefit.

BC-2015-02107: The applicant was denied an annuity because they didn't file a claim within the required six-year timeframe after the former member's death, despite the member electing and paying for spouse and child SBP coverage. The applicant argued that their mental state following the member's death rendered them incapable of managing day-to-day activities. The Board believed the applicant's mental state may have led to confusion regarding the instructions. The Board recommended granting the applicant's request citing it is unlikely the applicant would have knowingly forfeited the benefit.

The applicant is asking this Board to utilize its equitable power to recognize the extensive relationship between the service member and her as a "marriage" for purposes of her eligibility as the surviving spouse of his SBP. Failure to do so would result in an injustice to her, who for the duration of her relationship with the service member, believed they were in a common law marriage.

The service member enrolled his prior spouse into SBP evidencing his intent to provide SBP benefits for all of his beneficiaries. Once the service member enrolled in SBP, he remained a member for life. As a result, all subsequent spouses would have been automatically enrolled in SBP. After the passing of his previous spouse, the service member met her, and they lived together as husband and wife. Specifically, the service member and her joined bank accounts, appointed each other as their powers of attorney and personal representatives, and held themselves out to be husband and wife such that all who knew them believed them to be married.

In the final years of his life, the service member's health declined such that they were never able to formally marry until, tragically, the date of his passing. In recognition of these unique circumstances, it would be unjust to deny her survivor benefits. Understanding that Florida law does not recognize common law marriages, she is asking this Board to exercise its equitable power to recognize this relationship and afford her survivor benefits to which she is entitled.

The applicant's complete response is at Exhibit E.

## **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. While the applicant cites BC-2014-00851 and BC-2015-02107 as cases similar to theirs where the Board granted relief; in both cases, the applicants were legally married to the service member for at least a year prior to the service members death. The applicant's complete submission was thoroughly reviewed, and her contentions were duly noted. In accordance with 10 U.S.C., § 1447-1455, a spouse must be married to the service member for at least one year prior to the member's death. Although the applicant may believe their marriage existed prior to 2008, legally they were not married for a year prior, and the Board further does not have the authority to change the members records to reflect they were married earlier. Therefore, the Board recommends against correcting the applicant'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-2023-03022 in Executive Session on 24 July 2025:

- Work-Product**, Panel Chair
- Work-Product**, Panel Member
- Work-Product**, Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 18 October 2023.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, AFPC/DPFC, dated 23 January 2025.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 10 February 2025.
- Exhibit E: Applicant’s Response, dated 13 March 2025.

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.

9/18/2025

X **Work-Product**

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Board Operations Manager, AFBCMR  
Signed by: USAF