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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03138

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(DECEASED)

COUNSEL: NONE

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(APPLICANT)

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

Neither she nor her former spouse knew they were required to submit an election for former spouse SBP coverage within one year after their divorce. On several occasions after their divorce, he expressed to her, their daughter and his good friend he was glad he purchased the SBP and that she would be taken care of. It is clear, his intent was that she receive the SBP annuity.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is the former spouse of a retired deceased Air Force senior master sergeant (E-8).

On 3 Sep 05, according to a certificate of marriage, provided by the applicant, she and the former service member married.

The former service member's military human resources record (MHRR) includes certification of an SBP briefing on 11 Apr 89 and he acknowledged he understood the provisions of the SBP.

On 1 Jul 89, the former service member retired.

On 6 Feb 01, according to a decree of divorce, provided by the applicant, she and the former service member divorced. The divorce decree states the applicant was the named beneficiary for the former service member's SBP and that the SBP should be continued, maintained in full force

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Controlled by: SAF/MRB

Attorney-Client

Limited Dissemination Control: N/A

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and effect and should not be altered or withdrawn by the former service member during his lifetime. It was therefore ordered that he should immediately designate the applicant, his former spouse, the beneficiary under the SBP and that the former spouse shall continue to remain the beneficiary as former spouse under the SBP.

On 22 Feb 05, the former service member married PSK.

On 12 Apr 17, the former service member and PSK divorced.

On 30 May 22, according to a certificate of death, provided by the applicant, the former service member passed away.

On 16 May 24, the applicant returned the Arrears of Pay (AOP) and Former Spouse affidavits. The applicant indicates she is the legal heir to the SBP of the former service member. She also indicated she is not currently remarried and her former spouse remarried.

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 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."

DoD 7000.14-R, Volume 7B, paragraph 5408. "The Government does not subsidize the cost of providing RCSBP coverage under the immediate or deferred annuity option, but the members and beneficiaries who potentially will benefit from the coverage share the cost. The cost to the retiree, known as the Reserve Component Premium, is in the form of an additional deduction from his or her retired pay beyond the Standard Premium. The RCSBP, unlike SBP, requires a reduction in the survivor annuity. That reduction, known as the Survivor's Annuity Premium Deduction, begins when the survivor begins to receive an annuity. The Reserve Component Premium and the Survivor's Annuity Premium Deduction increase at the same time and by the same percentage that retired pay increases by cost-of-living adjustments."

AIR FORCE EVALUATION

AFPC/DPFC recommends denial. Under federal law, 10 U.S.C. § 1450(f), dictates that former spouse annuities can be paid if a valid election has been made in accordance with 10 U.S.C. § 1448. The absence of a timely election renders the applicant ineligible for SBP annuity payments. Furthermore, the DoDFMR, Volume 7B, Chapter 43 underscores the shared responsibility of the retiree and the former spouse to ensure compliance with SBP election requirements. Given the circumstances, it is recommended the applicant's request for SBP annuity payments be denied as the statutory requirements for establishing former spouse coverage were not met.

The former service member retired on 1 Jul 89, electing spouse SBP coverage naming the applicant as the spouse beneficiary. On 6 Feb 01, they divorced. The divorce decree required the former service member to continue and maintain SBP coverage for the applicant as the former spouse. It further instructed him to complete the necessary documentation to ensure the transition of coverage. The deemed election, DD Form 2656-10, *Survivor Benefit Plan (SB) Former Spouse Request for Deemed Election*, is a preventive action for the former spouse to ensure the award of the SBP is provided in accordance with the divorce decree. However, records from the Defense Finance and Accounting Service (DFAS) show neither the applicant nor the former service member submitted the required paperwork to convert the SBP election from spouse coverage to former spouse coverage as required by 10 U.S.C. § 1448(b)(3)(A)(iii). Failure to complete the process within the statutory timeline precludes the establishment of former spouse coverage. Furthermore, the former service member remarried and they divorced on 12 Apr 17. PSK was the legal recipient of the SBP during the time of marriage until their divorce as the coverage was for spouse. However, neither the documentation of the marriage nor the divorce were submitted to DFAS. Following their divorce in 2017, the payment of the SBP premiums should have been suspended. Nonetheless, premiums continued to be deducted from the former service member's retired pay despite the absence of an eligible beneficiary.

On 30 May 22, the applicant submitted a claim for the SBP annuity, citing the provisions of their divorce decree, which required him to maintain her coverage. While the divorce decree required the former service member to maintain coverage for the applicant as his former spouse, compliance with the order was dependent on the submission of the required forms to DFAS within the statutory period. However, neither party took this action, the necessary conversion of coverage was not established under the law. Also, if the service member would have passed during his marriage to his second spouse, PSK, she would have been the eligible beneficiary.

It is also recommended the deceased former spouse's records be corrected to suspend SBP premiums for Mar 01 to Apr 06 and 12 Apr 17 to his date of death as there was no eligible spouse to fill the coverage category during those times. Any SBP premiums deducted beyond this point should be refunded to the deceased's estate or next of kin.

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 Jan 25, 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. The Board acknowledges the divorce decree provided by the applicant directed the former service member to elect former spouse SBP coverage naming the applicant as the former spouse SBP beneficiary. However, based on the evidence, neither the former service member nor the applicant filed a timely election for former spouse SBP coverage as required by law. Moreover, following their divorce, the former service member married PSK who would have been the legal spouse SBP beneficiary until their divorce on 12 Apr 17. Therefore, the Board recommends against correcting the applicant'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 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-2023-03138 in Executive Session on 4 Sep 25:

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 11 Aug 23.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, AFPC/DPFC, w/atchs, dated 24 Jan 25. .

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Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 27 Jan 25.

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

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Board Operations Manager, AFBCMR
Signed by: USAF

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