

Work-Product

Work-Product

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03238

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

Her deceased spouse's records be corrected to show she made a timely election for Survivor Benefit Plan (SBP) annuity.

APPLICANT'S CONTENTIONS

She was given inaccurate information about the filing procedures and time limit for the SBP annuity. She was told by a customer service representative at the Defense Finance and Accounting Service (DFAS) she would be better off receiving only the Dependency Indemnity Compensation payment from the Department of Veterans Affairs because she would receive less money with the offset and that she should not file at that time. She recently learned the information she received was incorrect and that she did, in fact, need to file. In Jul 23, she filed a claim for SBP annuity and on 6 Sep 23, she received DFAS letter stating her claim was denied based on the Barring Act, which limits claims to six years. The Barring Act is not common knowledge, and she had never heard of it until she received the denial letter. None of the claim paperwork noted a time limit. All the decisions she made for her family were based on the information provided. She would have never allowed the time limitation to elapse had she known. Her husband served 27 years and made sure she would receive those benefits if he passed. His unexpected death has been difficult.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 31 Dec 87, according to a Certificate of Marriage, provided by the applicant, the service member and the applicant were married.

On 8 Apr 11, according to DD Form 2656, *Data for Payment of Retired Personnel*, the service member elected Option B, *Coverage for Spouse and Child[ren]*, based on full retired pay. Section X, *Remarks*, states "Spouse was not present for one-on-one SBP briefing on 8 Apr 11 at 1330."

On 1 Jul 11, according to Special Order **Work-Product**, dated 31 Jan 11, the service member retired from the Regular Air Force.

On 26 Nov 14, according to a Certificate of Death, provided by the applicant, the service member passed away.

On 25 Jul 23, the applicant submitted DD Form 2656-7, *Verification for Survivor Annuity*.

AFBCMR Docket Number BC-2023-03238

Work-Product

Controlled by: SAF/MRB

CUI Categories: **Work-Product**

Limited Dissemination Control: N/A

POC: SAF.MRBC.Workflow@us.af.mil

On 30 Aug 23, according to a memorandum provided by the applicant, DFAS denied the applicant's claim noting the Barring Act, Title 31 United States Code, Section 3702 (31 U.S.C. § 3702), bars payment of any claim not received within six years from the date it accrues.

On 26 Jan 24, the Board sent the applicant the following standard form to establish who should receive notice of the requested correction to the record: SBP Marital Status Affidavit (Deceased Retiree). On 5 Mar 24, the applicant returned the completed affidavit, signed 20 Feb 24.

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 Sustainment Program) recommends granting the application. All retiring service members must attend a mandatory SBP briefing with a certified SBP counselor before their final separation date. Spouses are strongly encouraged to attend the briefing to understand SBP options and implications, though attendance cannot be enforced. The member makes an election using DD Form 2656 with spouse concurrence if necessary. The SBP election can be made or adjusted at any time before the member separates from service.

The Barring Act, 31 U.S.C. § 3702, known as 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*, 910F.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's 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."

The applicant and service member were married at the time of his retirement and remained married until his death on 26 Nov 14. On 8 Apr 11, he completed DD Form 2656, electing spouse and child coverage, with premiums deducted from his retired pay. Although DFAS was informed of the member's death on 16 Dec 14, a death certificate was not received until 1 Nov 16, when the applicant filed a claim for unpaid compensation using SF 1174, *Claim for Unpaid Compensation of Deceased Member of the Uniformed Services*. She received \$2,821.58 as payment owed to the member. DFAS did not receive a DD Form 2656-7 until 27 Jul 23, nine years after the member's death and denied the SBP claim under the Barring Act. The applicant appealed to the Defense Office of Hearings and Appeals; however, DFAS's denial was upheld. The DD Form 2656 notes the applicant did not attend the one-on-one briefing with her spouse on 8 Apr 11, and that premiums are not reimbursed for barred claims. The applicant may petition DFAS for a waiver, which, if approved, could result in a one-time payment up to \$25,000, but no monthly annuity.

There is no evidence of an Air Force error; however, to preclude any injustice of possibly being misinformed regarding submitting a claim and the fact the member's SBP paid premiums being barred and not refunded, they recommend granting the applicant's request. 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 20 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 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 substantiates the applicant's contentions. The Board was convinced the applicant was miscounseled on the proper procedures for submitting a claim for survivor benefit annuity. Had she received the correct information, she would have submitted the claim within the time required by law. Therefore, the Board recommends correcting the decedent's records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to MEMBER be corrected to show that:

- a. On 28 Nov 14, APPLICANT submitted a timely and effective claim for survivor benefit annuity.
- b. Approval should be contingent upon recovery of Survivor Benefit Plan premiums. If applicable, the monthly survivor benefit annuity will be applied to the premium debt until the total amount of premiums owed is recovered.

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-2023-03238 in Executive Session on 26 Sep 24:

Work-Product . Parker, Panel Chair
Work-Product . Panel Member
Work-Product . Panel Member

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

- Exhibit A: Application, DD Form 149, dated 29 Sep 23.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, AFPC/DPFC, dated 17 May 24.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 20 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.

1/24/2025

X Work-Product

Work-Product

Board Operations Manager, AFBCMR

Signed by: Work-Product

AFBCMR Docket Number BC-2023-03238

Work-Product