

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03314

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His record be changed to show he made a timely election for former spouse coverage under the Survivor Benefit Plan (SBP).

APPLICANT'S CONTENTIONS

On 29 July 1992, a month prior to retirement, he completed the paperwork requesting SBP for his wife. He and his wife separated on XX July XXXX and signed a marriage settlement agreement which addresses military retired pay and SBP. After their divorce on XX July XXXX, they provided the Defense Finance and Accounting Service (DFAS) with copies of their Judgement Dissolving Marriage and the settlement agreement. In their response, dated 21 August 1995, DFAS offered them two choices for payment. Given the two choices and no mention of a deadline, they elected an allotment, with the understanding his former spouse could request former spouse payment from retired pay later. Sometime between April and May 2012, his former spouse switched to the former spouse payment from retired pay. Initially, DFAS erroneously determined they could not approve her request because the court order did not specifically award her a portion of his retired pay. The issue was resolved, and in a letter dated 12 July 2012, DFAS approved her request. Later in 2012, DFAS stopped the allotment and started the direct former spouse payment. In a letter dated 21 May 2012, 16 years after their divorce was finalized, DFAS advised his former spouse she had one year from the date of divorce to make a "deemed election" for SBP coverage. Since the premiums were still being deducted every month, they must have taken that guidance as a clerical error and there was no cause for alarm.

On his 19 January 2022 pay statement, he noticed DFAS stopped deducting SBP premiums, effective December 2021 with no formal notification. He made a mental note to check on the matter, as he was still one year from completing the required 360 payments. On 1 June 2022, he wrote to DFAS inquiring about the sudden stop of SBP premiums and requested reinstatement of SBP coverage. The next correspondence he received from DFAS, dated 24 March 2023, referred to an action taken in January 2021 (two years earlier), regarding refunding all SBP funds withheld for 29 years as though they had never taken place. The letter also provided information on how to request a waiver on the time limitations associated with the Barring Act, which bars payments over six years. There was no reference to his earlier inquiry and request for reinstatement. In a letter dated 23 April 2023, he tried to explain that he wants SBP reinstated and only wants a refund as a last resort. There has never been any intention to circumvent standard procedures and guidelines. Their divorce decree orders him to establish and maintain SBP for his former spouse and he is legally liable for abiding by that requirement. They believed they had done everything required. His intentions were good, and he paid into SBP for 29 years with no problem ever mentioned. Why would he pay into SBP all those years if he thought it would not be there after his death? He does not want the money back and hates to think that if he left this world tomorrow, his former spouse would not receive the SBP annuity he intended for her and that she is counting on. The Director, Air Force Accounting and Finance Office referred him to the AFBCMR as the best possible path to rectifying this problem. He hopes to correct this clerical error and set the record straight.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force colonel (O-6).

On 29 July 1992, according to DD Form 1266, *Survivor Benefit Plan (SBP) Election*, provided by the applicant, the applicant elected Option A, *Spouse Only Coverage*, based on reduced base amount of \$378.

On 1 September 1992, according to Special Order, dated 23 June 1992, the applicant retired from the Regular Air Force.

On XX July XXXX, the applicant and his former spouse divorced. The divorce decree required the applicant to provide SBP coverage for his former spouse. As of XX July XXXX, [one year after divorce], the applicant had not filed a change to his SBP election under Title 10 United States Code, Section 1448(b)(3)(A)(iii) (10 U.S.C. § 1448(b)(3)(A)(iii)), nor had his former spouse filed a deemed election under 10 U.S.C. § 1450(f)(3)(C).

On 11 September 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 (Former Spouse); SBP Marital Status Affidavit (Retiree).

On 30 October 2024, the applicant returned the completed affidavits, indicating neither of them had remarried and there are no competing interests.

For more information, see the excerpt of the applicant'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."

AIR FORCE EVALUATION

AFPC/DPFC (Casualty Matters Division) recommends granting the application. A person's eligibility to receive a spouse SBP annuity terminates upon divorce; however, the law provides two mechanisms for changing spouse coverage to former spouse coverage. One of the following actions must be taken within the first year following divorce: (1) the retiree may file an election change using DD Form 2656-1, *Survivor Benefit Plan (SBP) Election Statement for Former Spouse Coverage*; or (2) the former spouse may request the retiree be deemed, DD Form 2656-10, *Survivor Benefit Plan (SBP) Former Spouse Request for Deemed Election*, to have made such a change on his or her behalf. In the latter case, the former spouse must provide legal documentation the member agreed, or the court ordered the member to establish former spouse coverage. If neither the member nor the former spouse requests the election change during the one-year eligibility period, former spouse coverage may not be established thereafter. Even though a

member may continue to pay SBP premiums afterwards, the former spouse is not eligible for annuity payments upon the member's death.

At the time of his retirement on 1 September 1992, the applicant was married to his (now) former spouse. The couple subsequently divorced on XX July XXXX, and the divorce decree orders the applicant to maintain SBP coverage for his former spouse. According to the applicant's Retiree Account Statement, dated 19 January 2022, DFAS stopped deducting SBP premiums previously deducted in the amount of \$18.71, which the applicant paid since his retirement date. There are no documents reflecting the applicant or his former spouse provided DD Form 2656-1 or DD Form 2656-10 to change coverage from spouse to former spouse within one year of their divorce as required. According to DFAS letter dated 1 June 2022, the applicant maintained spouse coverage until approximately December 2021 (29 years). The applicant never remarried and, therefore, has no beneficiary eligible for spouse coverage.

Based on the divorce decree provided by the applicant, the court orders former spouse SBP coverage; however, it is the member's and former spouse's responsibility to ensure the necessary updates/changes are completed. The information for changing spouse coverage to former spouse coverage is available on several public websites and publications, DFAS.mil, Air Force retiree website, Afterburner (annual summer and winter editions), and DFAS retiree newsletter. There is no evidence of an Air Force error; however, to preclude an injustice 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 11 February 2025 for comment (Exhibit D) but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all other available administrative remedies 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. Although the applicant nor his former spouse submitted an election to change SBP coverage from spouse to former spouse within one year of their divorce, the applicant paid SBP premiums for 29 years to comply with the court-ordered agreement. Additionally, the correspondence received from DFAS over the years led them to believe all necessary paperwork had been completed and accepted and no further action was required. The applicant's payment history of SBP premiums spanning nearly three decades, along with his requests to DFAS to reinstate SBP, clearly indicate his willingness and intention to provide SBP coverage for his former spouse. Therefore, the Board recommends correcting the applicant's records as indicated below.

RECOMMENDATION

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

a. On XX August XXXX, he submitted a timely and effective election for former spouse coverage under SBP, based on the previous reduced level of retired pay, naming FORMER SPOUSE as the eligible beneficiary.

b. Approval is contingent upon recovery of SBP 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-2023-03314 in Executive Session on 12 September 2025:

, 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 3 September 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 11 February 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.

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Board Operations Manager, AFBCMR