

[REDACTED]

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03610

COUNSEL: [REDACTED]

HEARING REQUESTED: [REDACTED]

APPLICANT'S REQUEST

The record of her former spouse be corrected to show that he made a timely election for former spouse coverage under Survivor Benefit Plan (SBP).

APPLICANT'S CONTENTIONS

Her former spouse served honorably for 38 years in the Wisconsin National Guard, and they were married for over 50 years, raising four daughters together. During his military service, she was a stay-at-home mom, which allowed him to fulfill his duties without interruption. They divorced on 2 January 2018, following advice from their daughters, she did not retain an attorney to save money since it was an amicable divorce. However, her former spouse, who was suffering from early-onset dementia, did hire an attorney.

Due to a misunderstanding by her former spouse's attorney, it was believed the divorce decree would ensure her former spouse's annuity continued after his death. As a result, the issue of the Reserve Component Survivor Benefit Plan former spouse coverage was never addressed in the divorce settlement. According to the divorce agreement, she was entitled to receive his military pension as his survivor after his death. After the divorce, they both continued to receive his Air Force annuity, splitting the proceeds, under the assumption that it was property to be divided equally. However, the former spouse SBP election was never processed because neither she nor her former spouse's attorney were aware that it needed to be done.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is the former spouse of a retired Air Reserve master sergeant (E-7).

On 20 October 1965, according to a Certificate of Marriage, provided by the applicant, the service member and applicant were married.

On 31 December 1996, according to Reserve Order [REDACTED], dated 6 November 1996, the service member was assigned to the Retired Reserve Section and placed on the Reserve Retired List.

According to the Defense Retiree and Annuitant Pay System, the service member elected Spouse Coverage for Spouse Only, based on Full retired pay effective 20 September 1999.



On 20 September 1999, according to Reserve Order [REDACTED], dated 3 November 1999, the service member was authorized retired pay and placed on the Retired List.

On 2 January 2018, the service member and the applicant divorced. The divorce decree required the service member to provide 100 percent interest in the military pension subject to the name survivorship interest awarded to the applicant and 100 percent of survivorship interest in the service member's military pension payable on the death of the service member. As of 2 January 2019, the service member 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 15 December 2021, according to a Certificate of Death, provided by the applicant, the service member passed away. The death certificate reflects he was divorced at the time of his death.

On 4 March 2024, the Board sent the applicant the following standard form, 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).

The applicant provided a signed/notarized affidavit dated 5 April 2024, which states she is not currently married, did not marry before age 55, and that her former spouse had not 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

An election by the service member 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." Title 10 United States Code, Section 1448(b)(3)(A)(iii) [10 U.S.C. § 1448(b)(3)(A)(iii)].

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." 10 U.S.C. § 1450(f)(3)(C).

AIR FORCE EVALUATION

AFPC/DPFC (Casualty) recommends denying the application. The Defense Enrollment Eligibility Reporting System (DEERS) indicates the service member, and the applicant were married at the time of his retirement on 20 September 1999. The service member retired under the "Grey Area" program, which applies to Guard or Reserve members who begin receiving retired pay at age 60. According to Defense Finance Accounting Service – Cleveland (DFAS-CL), the service member elected spouse-only coverage for the Reserve Component Survivor Benefit Plan (RCSBP) on 11 February 1982. He completed his DD Form 2656, selecting immediate RCSBP coverage during his grey area, and the Survivor Benefit Plan (SBP) became an automatic election upon retirement at age 60.

The service member and the applicant divorced on 2 January 2018. However, the divorce decree did not include any provision for awarding SBP benefits to the applicant, meaning there was no

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entitlement to SBP unless the service member voluntarily elected former spouse coverage. Before the service member's death on 15 December 2021, there is no evidence he submitted any request to DFAS-CL to establish former spouse coverage.

The applicant later submitted a DD Form 2656-7, *Verification for Survivor Annuity*, which DFAS received on 26 May 2022. DFAS responded with a letter dated 28 June 2022, informing the applicant that SBP spouse coverage ended with the divorce, and that former spouse coverage could only be established within one year of the divorce decree.

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 1 July 2024, for comment (Exhibit D), and the applicant replied on 13 July 2024. In her response, the applicant contended. She agrees the Air Force did not make any mistakes or errors in its strict interpretation of the rules or law. However, her request is based on the SecAF's authority to correct an injustice that, while not caused by the Air Force, still exists. The injustice stems from the following facts. Her former spouse, who passed away on 15 December 2021, had been suffering from dementia for many years before his death. At the time of their divorce on 2 January 2018, she assumed her former spouse had completed all necessary paperwork to ensure his military pension would continue to her after his death. This assumption was based on the fact that her former spouse had always handled financial matters throughout their marriage. The divorce settlement explicitly stated that she would receive 100% of survivorship interest in the petitioner's military pension payable on the death of the petitioner, which should meet the requirements for Survivor Benefit Plan (SBP) eligibility for a former spouse.

After the divorce, her former spouse continued to share his pension payments with her until his death, which aligned with his intent for the pension to continue to her. However, due to his dementia, he was unable to file the necessary forms (DD Form 2656-6, *Survivor Benefit Plan Election Change Certificate* and DD Form 2656-10, *Survivor Benefit Plan (SBP) Former Spouse Request for Deemed Election*) to ensure SBP coverage for her. Additionally, she was unaware of the specific military requirements, as her former spouse had always handled these matters. Given that she had focused on raising their children and managing the household during his 38 years of service, she had no knowledge of military pension procedures. She believes the Air Force, known for supporting military families, should approve her request for an exemption, as it aligns with the spirit of the law and would correct this oversight.

The applicant's complete response is at Exhibit E.

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. While the Board notes the recommendation of AFPC/DPFC against correcting the record, the Board finds a preponderance of the evidence substantiates the applicant's contentions.



The divorce settlement explicitly stated the applicant would receive 100% of survivorship interest in the service member’s military pension payable on the death of the service member. 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 MEMBER be corrected to show that:


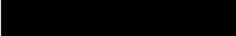
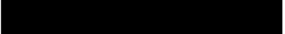
a. On 2 January 2019, he submitted a timely and effective election for former spouse coverage under the Survivor Benefit Plan, based on the previous full level of retired pay, naming FORMER SPOUSE as the eligible beneficiary.

b. On 26 May 2022, the APPLICANT submitted a timely and effective claim for survivor benefit annuity.

c. 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-2023-03610 in Executive Session on 19 December 2024:


- , 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 7 December 2023.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, AFPC/DPFC, dated 29 June 2024.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 1 July 2024.
- Exhibit E: Applicant’s Response, dated 13 July 2024.

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.

9/30/2025

X 

Board Operations Manager, AFBCMR
Signed by: 