

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

**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-03838

Work-Product

**COUNSEL:** Work-Product

Work-Product

**HEARING REQUESTED:** Work-Pro...

**APPLICANT'S REQUEST**

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

**APPLICANT'S CONTENTIONS**

She came to this country from [Country] as a young teenager. English is her second language which she learned by reading the dictionary when she arrived here. At that time, there were no state programs to assist children from foreign countries in learning English. Unfortunately, that meant many words in the English language did not translate properly for her. She did not know what "annuity" meant. In 2004, she asked her attorney about the term and was told it meant that she would receive benefits from her spouse, and she assumed that it was medical benefits which she does receive. She did not know there was a difference between the terms "benefits" and "annuity" until her son, a retired chief master sergeant, explained it to her.

The [State] Supreme Court ordered the former spouse (applicant) be treated as the irrevocable beneficiary under the Survivor Benefit Plan (SBP). This election was submitted to the Defense Finance and Accounting Services (DFAS) on 24 March 2005, but due to a clerical error, it was never processed. By updating the SBP election and adjusting the claim date to 1 January 2018, retroactive benefits can be paid, and the monthly SBP payments will begin to the rightful annuitant.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

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

On 19 May 1979, according to a Marital Status Affidavit, provided by the applicant, the service member and the applicant were married.

In December 1992, according to PS Form 3811, *Domestic Return Receipt*, an RCSBP package was delivered to the service member's address and was signed.

On 8 October 2002, according to Reserve Order Work-Product, dated 28 January 2003, the service member was assigned to the Retired Reserve Section and placed on the Air Force Reserve Retired

List. The order notes the service member was eligible for retired pay under Title 10 United States Code, Section 12731 (10 U.S.C. § 12731), upon attaining age 60 (June 2010).

On 12 May 2004, the service member and his former spouse divorced. The military qualifying court order required the service member to provide SBP coverage for his former spouse. There are no records indicating the service member filed a change of election under 10 U.S.C. § 1448(b)(3)(A)(iii).

On 24 March 2005, according to DFAS records, the applicant's attorney notified DFAS of the couple's divorce and submitted the court order and a letter signed by the applicant, dated 28 February 2005, requesting a deemed election to be named the beneficiary of the service member's survivor annuity under SBP as set forth under the court order, dated 26 January 2005. For unknown reasons, DFAS never processed the election.

On 18 August 2014, according to a Certificate of Death, provided by the applicant, the service member passed away.

On 28 August 2023, according to a letter from DFAS provided by the applicant, DFAS denied the applicant's claim noting the Barring Act, 31 U.S.C. § 3702(b), bars payment of any claim not received within six years of the retired member's death.

On 23 February 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 Release of Benefits Affidavit (Arrears of Pay/AOP).

On 6 May 2024, the applicant provided a signed/notarized affidavit dated 26 April 2024, indicating she is not currently married, did not marry before age 55, and that her former spouse had not remarried. According to the notarized SBP Release of Benefits (AOP) Affidavits, dated 26 April 2024, REF and GGF swore/affirmed they were the service member's legal heirs. In addition, both acknowledged the service member had received a court order to provide SBP benefits to his former spouse (applicant) and relinquished any competing interest they may have in the AOP in favor of the former spouse receiving the decedent's survivor annuity.

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 a 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."

31 U.S.C. § 3702 (Barring Act): Authority to Settle Claims: The claim must be received by the Government official responsible for settling the claim or by the agency that conducts the activity from which the claim arises within six years after the claim accrues.

### **AIR FORCE EVALUATION**

ARPC/DPTT (Transition Division) recommends denying the application. All Reserve component service members who are eligible to participate in RCSBP but fail to make an election in the prescribed time will, by law, automatically have full, immediate RCSBP coverage for their dependent spouse and/or children, based upon dependents in the member's record in the Military Personnel Data System. The prescribed time limit for RCSBP election is before the end of the 90th day after the service member receives notification of having completed the years of service to be eligible for non-regular retirement in accordance with 10 U.S.C. § 12731. However, prior to 1 January 2001, spousal consent was not required when a Reserve member eligible for retirement elected RCSBP coverage for less than maximum coverage for their spouse. Members who received notice of retired pay eligibility under 10 U.S.C. § 1223 had 90 days to make an election; if no election was made within this timeframe, an automatic election of Option A (decline election until age 60) was selected.

The service member completed 20 satisfactory years of service on 12 August 1992, and received a Notification of Eligibility, which was confirmed by signing a PS Form 3811 in December 1992. ARPC does not have a record of the service member submitting an RCSBP election form. Since the service member did not submit the form within the required 90-day period, the automatic election of Option A was applied. The service member divorced his spouse on 5 October 1994 [sic], before retiring on 8 October 2002.

Under 10 U.S.C. § 1448(A)(4)(B), a service member's election regarding RCSBP or SBP is irrevocable unless changed within the first 90 days after notification. The only circumstance in which a member could change their coverage is if they experience a life-changing event.

ARPC does not have a record of the service member's retirement pay package or application for retired pay at age 60, which would indicate whether he made an RCSBP or SBP election. At the time of the service member's retirement, the relevant forms did not include an option to elect RCSBP or SBP if eligible. Additionally, ARPC contacted DFAS for documentation; however, DFAS could not provide any records related to the service member's RCSBP or SBP elections.

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 12 August 2024 for comment (Exhibit D), and the applicant replied on 26 August 2024. In her response, the applicant contends her misinterpretation of the term "benefits" caused a delay in the court-ordered former spouse annuity benefits. DFAS confirms the service member was receiving retired pay and that a retired pay welcome letter is on file, contradicting ARPC's advisory opinion. Her request is based on a DFAS representative's statement, which is directly quoted from the advisory opinion. She requested a video conference on the initial application, but received a letter indicating she would not hear from the Board until a decision is made. She would like to clarify any issues to avoid future errors and hopes the requested corrections will be made to grant the proper benefits owed.

The applicant's complete response is at Exhibit E.

## FINDINGS AND CONCLUSION

1. The application was not timely filed, but it is in the interest of justice to excuse the delay.
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 ARPC/DPTT against correcting the record, the Board finds a preponderance of the evidence substantiates the applicant's contentions. According to their divorce agreement, the service member was required to provide SBP coverage for his former spouse (applicant), but there is no evidence he attempted to comply with the court order. In March 2005, through counsel, the applicant notified DFAS of the divorce and submitted a request for a deemed election for SBP former spouse coverage within one year following the divorce as required by law. DFAS records show they received the request; however, due to an administrative oversight, the request was never processed. Several years after the service member's death, the applicant submitted a claim for the survivor annuity and DFAS denied the claim citing time limitations of the Barring Act. The applicant contends her lack of understanding of terms and specific benefits contributed to the delay of the claim, and ultimately DFAS's denial. After careful consideration, the Board finds it reasonable to conclude the applicant's limited knowledge of SBP benefits and required procedures following the death of her former spouse delayed her claim for the survivor annuity. In addition, the decedent's AOP beneficiaries relinquished any competing interests in favor of the applicant receiving the decedent's annuity. Accordingly, 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 APPLICANT be corrected to show that:

- a. On 27 January 2005, he submitted a timely and effective election for former spouse coverage under SBP, based on full retired pay, naming APPLICANT as the eligible beneficiary.
- b. On 19 August 2014, APPLICANT submitted a timely and effective claim for survivor benefit annuity.
- c. 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-2023-03838 in Executive Session on 30 May 2025:

Work-Product, Panel Chair

Work-Product, Panel Member

Work-Product, Panel Member

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

**AFBCMR Docket Number BC-2023-03838**

Work-Product

*Work-Product*

- Exhibit A: Application, DD Form 149, w/atchs, dated 30 November 2023.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, ARPC/DPTT, dated 30 July 2024.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 12 August 2024.
- Exhibit E: Applicant's Response, dated 26 August 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.

11/6/2025

X

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Board Operations Manager, AFBCMR  
Signed by: USAF

**AFBCMR Docket Number BC-2023-03838**

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