

[REDACTED]

[REDACTED]

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00357

COUNSEL: [REDACTED]

HEARING REQUESTED: [REDACTED]

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

She should be entitled to collect SBP annuities. She speaks Spanish primarily and correspondence from the Department of Veterans Affairs and the Department of Defense have been in English. Defense Finance Accounting Service (DFAS) failed to act on the service member's notice of his former spouse's death. Additionally, the service member did not receive written notice about the option to provide spousal coverage for his wife, AM, as outlined in Public Law (PL) 114-92.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is the surviving spouse of a retired Air Force staff sergeant (E-5).

On 31 November 1972, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the service member retired from the Regular Air Force.

On 4 January 1994, according to a Certificate of Marriage, provided by the applicant, the service member and the applicant were married.

On 23 January 2021, according to a Certificate of Death, provided by the applicant, the service member passed away. The applicant is listed as the surviving spouse on the service member's death certificate.

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) 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

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Work-Product [REDACTED]

[REDACTED]



[REDACTED]

2656-6, *SBP Change Certificate & DD Form 2656-1, Former Spouse Election Certificate*, or (2) the former spouse may request the retiree be deemed to have made such a change on his or her behalf by submitting a DD Form 2656-10, *SBP Former Spouse Request for Deemed Election*. In the latter case, the former spouse must provide legal documentation the member agreed to, 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 immediately following the date of divorce, former spouse coverage may not be established thereafter.

If the member fails to notify Defense Finance and Accounting Service (DFAS-CL) of a divorce and continues to pay SBP premiums afterwards, the former spouse is not eligible for annuity payments upon the member's death. Before PL 114-92 amended the SBP statutes, retired service members who had coverage for a former spouse and that spouse died were not able to elect spouse coverage for a new spouse. However, the amendment allows these retired service members to switch their coverage to a new spouse within one year of the former spouse's death. SBP eligibility ended when a former spouse died. PL 114-92 introduced a one-year open season from 25 November 2015 to 24 November 2016, allowing retired service members with deceased former spouses to request spouse coverage. DFAS sent written notifications to members whose records showed former spouse coverage and who were aware of the former spouse's death. This was the only known direct communication sent to this group of retired service members.

Records show that upon retirement on 1 December 1972, the service member was married to [REDACTED] and elected SBP spouse-only coverage. Following the divorce from [REDACTED] on 22 March 1973, the SBP coverage was suspended. The service member then married [REDACTED] on 10 April 1980 and divorced on 3 March 1992. The divorce decree did not mention former spouse SBP coverage, nor was it noted the service member voluntarily elected former spouse coverage. The service member informed DFAS of the divorce on 3 April 1992. On 4 January 1994, the service member married [REDACTED], but no record exists indicating that a spouse-only SBP election was submitted for [REDACTED]. Upon the service member's death on 23 January 2021, [REDACTED] submitted a DD Form 2656-7, *Verification for Survivor Annuity*, on 16 February 2021, claiming the SBP annuity as the surviving spouse. However, DFAS denied the claim on 8 April 2021. On 26 July 2021, DFAS informed [REDACTED] there was a court-approved agreement for former spouse SBP coverage with [REDACTED], supported by the service member's Retiree Account Statement from December 2019.

The death certificate for [REDACTED] indicated she passed away on 13 June 2009. The service member had requested a change from former spouse to spouse SBP coverage in a letter to DFAS dated 19 November 2010, but this request was not allowed under the law at the time. The Defense Office of Hearings and Appeals decision dated 3 October 2022 noted the service member could have elected to change coverage if he had been notified by DFAS, but there was no evidence of such a notice. Therefore, it is reasonable to conclude the service member was unaware of the option to change the coverage category, which constitutes an injustice since he requested the change prior to the law being updated on 25 November 2015.

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 30 July 24, for comment (Exhibit D), and the applicant, through counsel, replied on 22 August 24. In their response, counsel contended they do not disagree with the advisory opinion, because it affirms their request and is favorable to [REDACTED]. The request seeks two administrative actions under U.S. law:

[REDACTED]

a. Under 10 U.S.C. § 1454, it asks the Secretary of the Air Force to correct the SBP election due to an administrative error.

b. Under 10 U.S.C. § 1552, it requests correction of the service member's record to address an error and rectify the injustice of not providing SBP spousal coverage to [REDACTED].

The errors to be corrected include:

a. Uncertainty about whether the service member established SBP former spouse coverage during the 1983 - 1984 open season.

b. Incorrect collection of SBP premiums, which led to the service member reaching "paid-up" status.

c. Failure to establish SBP spouse coverage for [REDACTED], caused by DFAS records incorrectly showing the service member's spouse, [REDACTED] was still alive, which resulted in the lack of notification about establishing coverage for [REDACTED] ^{Work...}. The records showing [REDACTED] status need to be corrected, and the erroneous premiums must be addressed.

The applicant's complete response is at Exhibit E.

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. 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 30 Nov 15, he submitted a timely and effective open season election for spouse coverage under the Survivor Benefit Plan, based on the previous full level of retired pay, naming the APPLICANT as the eligible beneficiary.

b. On 16 Feb 21, 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

[REDACTED]

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-2024-00357 in Executive Session on 19 Dec 24:

[REDACTED], Panel Chair
[REDACTED], Panel Member
[REDACTED], Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 29 Jan 24.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, AFPC/DPFC, dated 22 Jul 24.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 30 Jul 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.

9/15/2025

X [REDACTED]

[REDACTED]
Associate Director, AFBCMR
Signed by: USAF