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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00521

Work-Product

COUNSEL: Work-Product

Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The deceased service member's record be changed to show he elected former spouse coverage under the Survivor Benefit Plan (SBP) on 11 Sep 19.

APPLICANT'S CONTENTIONS

Through counsel, the applicant contends there has been a mix-up with her former spouse SBP benefits and it has caused severe consequences that have resulted in an injustice to her. She has made numerous attempts with the Defense Finance and Accounting Service (DFAS) to acquire the SBP annuity her former spouse intended for her to have. On 10 Oct 19, her former spouse submitted DD Form 2656-1, *Survivor Benefit Plan (SBP) Election Statement for Former Spouse Coverage*, to a military installation pay office that processes actions for DFAS to change his election from spouse to former spouse coverage after their divorce. The form was verified by the pay office and submitted within the 12-month time limit required by DFAS. It is reasonable to assume that the pay office failed to either deliver the DD Form 2656-1 to DFAS or failed to provide the proper instructions to her former spouse that it was his responsibility to mail the form to DFAS. As a result, once he received a copy of the signed form, he thought the process was complete. Furthermore, after their divorce, her former spouse continued making spousal payments from his monthly retirement pay, up until his death in 2021. The monthly payments are an additional indicator of his intent for his former spouse to receive his SBP benefits. As a result of the multiple denials for SBP annuity, she is experiencing severe financial, emotional, and mental hardships.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is the former spouse of a deceased retired Air Force technical sergeant (E-6).

On 2 Jun 98, according to a Certificate of Marriage, provided by the applicant, she and the service member were married.

On 10 Aug 07, according to DD Form 2656, *Data for Payment of Retired Personnel*, the service member elected Option A, *Spouse Coverage for Spouse Only*; based on full retired pay.

On 1 Oct 07, according to Special Order *Work-Product*, dated 24 Oct 06, the service member retired from the Regular Air Force.

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On 10 Sep 19, the applicant and the service member divorced. The divorce decree is silent on the SBP. As of 10 Sep 20, [one year after divorce], a change to the service member's SBP election had not been filed 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).

The service member submitted DD Form 2656-1 changing his election from spouse to former spouse. The service member's witness signed date reflects "20190110" and the former spouse's witness signed date reflects "10-10-19."

On 28 Aug 21, according to a Certificate of Death, provided by the applicant, the service member passed away.

On 22 Apr 24, the Board staff 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) and SBP Release of Benefits Affidavit (Arrears of Pay).

On 13 and 18 Sep 24, the applicant returned the completed affidavits. The applicant indicated the service member did not remarry, she is not currently married, and that she is the legal heir to the Arrears of Pay (AOP) of the SBP for the decedent.

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(a) (2) (B). "Participants in the plan. The Plan applies to the following persons, who shall be participants in the Plan: ... Reserve-component annuity participants. A person who (i) is eligible to participate in the Plan under paragraph (1)(B), and (ii) is married or has a dependent child when he is notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve component retired pay, unless the person elects (with his spouse's concurrence, if required under paragraph (3)) not to participate in the Plan before the end of the 90-day period beginning on the date on which he receives that notification."

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."

AIR FORCE EVALUATION

AFPC/DPFC recommends partially granting the application. While the decedent elected full spouse SBP coverage at retirement, the parties divorced on 10 Sep 19, thereby terminating the applicant's eligibility as a spouse beneficiary. Following the passing of the service member on 28 Aug 21, the applicant submitted DD Form 2656-1, *SBP Election Statement for Former Spouse Coverage*, to DFAS-CL. Although the form was signed by the decedent in the presence of an SBP counselor, it was not valid, as the date signed reflects as before the divorce was finalized. The applicant then did not sign the form until 10 Oct 19 and her signature was witnessed by someone other than the SBP counselor.

Initial completion of the DD Form 2656-1 prior to the divorce suggests that the decedent was voluntarily electing to change the SBP coverage category to a former spouse rather than doing so under a legal obligation since the divorce decree does not indicate that the applicant was awarded the SBP annuity as part of the divorce settlement. However, because the form was never properly received by the SBP counselor or DFAS, it is unclear whether he later changed his decision. Furthermore, under SBP regulations, the decedent had up to one year from the date of divorce to voluntarily submit the DD Form 2656-1. However, DFAS did not receive the form until 7 Dec 21 nearly three years after the divorce and after the service member's passing. No deemed election was submitted within the required timeframe and even if it had been timely received, the form remains invalid because the decedent signed it before the divorce was finalized. Consequently, there is no legal basis to establish former spouse coverage, and the applicant is not entitled to an SBP annuity. However, because the decedent continued paying SBP premiums after his divorce and did not remarry, an overpayment of premiums was made for coverage that was no longer valid. These excess premiums, paid after the divorce, are now owed to the designated AOP beneficiary.

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 18 Feb 25, for comment (Exhibit D), and the applicant replied on 14 Mar 25. Through counsel, the applicant contended the conclusion by AFPC/DPFC that the form is invalid because it was signed before the divorce decree is overly rigid and the recommendation to reimburse the overpaid premiums to the AOP beneficiary fails to consider the intent of her former spouse, who clearly intended to provide her with SBP coverage. The error in the signature date was brought to the attention of the clerk at the military installation pay office in which they advised it was not a problem. The signature of the employee and stamp of approval can also be seen on the form. The failure to submit the form to DFAS was an administrative oversight at the pay office and she should not be penalized for it. The memorandum for record provided by the SBP counselor provides critical evidence her former spouse intended to change his SBP coverage to former spouse.

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. 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 Board acknowledges the administrative errors with the service member's election for former spouse coverage. At this time, the Board cannot know if the date the former service member signed the DD 2656-1 of "20190110" was a typo or the form was signed eight months prior to the divorce. The Board notes the date of divorce on the DD 2656-1 is correct and reflects "20190910." However, the Board finds the evidence substantiates the service member's actions indicate he elected former spouse SBP coverage. Further, the former service member continued to pay monthly premiums for the former spouse SBP coverage until his death. Accordingly, the Board opines the deceased service member intended for his former spouse to receive the SBP benefit and

does not find it in the interest of justice to deny the applicant the SBP benefit. Moreover, per the provided affidavit, there are no competing interests for the SBP benefit. Therefore, the Board recommends correcting the applicant's records as indicated below.

4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

RECOMMENDATION

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

a. On 11 Sep 19, he submitted his election for former spouse coverage under the Survivor Benefit Plan, based on the previous full level of retired pay, naming his former spouse as the eligible beneficiary.

b. On 29 Aug 21, the applicant submitted a timely and effective claim for survivor benefit annuity.

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-2024-00521 in Executive Session on 26 Jun 25:

- Work-Product**, 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, w/atchs, various dates.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, AFPC/DPFC, w/atchs, dated 13 Feb 25.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 18 Feb 25.
- Exhibit E: Applicant's Response, w/atchs, dated 14 Mar 25.

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.

7/28/2025

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Board Operations Manager, AFBCMR
Signed by: USAF