

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2024-01339

XXXXXXXXXXXXXXXXXX  
(SERVICE MEMBER)

**COUNSEL:** NONE

XXXXXXXXXXXXXXXXXX  
(APPLICANT)

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

His deceased father's official military personnel records be amended to:

- a. Authorize payment of Unpaid Pay and Allowance (UPPA) and Basic Allowance for Housing (BAH) for the applicant.
- b. Authorize payment of death gratuity for the applicant.

### APPLICANT'S CONTENTIONS

He was recently informed his claim was denied due to not filing timely, in accordance with the Barring Act. The Barring Act aside, it was his understanding he would be due the following amounts:

- Total UPPA: \$3,721.97 and BAH: \$6,642.00; Death Gratuity: \$50,000.00.

He was initially informed by his Casualty Assistance Representative (CAR) he could apply for benefits no sooner than his 18th birthday, if legal guardianship was not in place sooner. In addition, his guardian was informed the applications must be submitted within six years of his 18th birthday to prevent loss of benefits, in accordance with the Barring Act. Due to the cost of obtaining guardianship, his guardian determined it was best to wait until his 18th birthday to apply for death benefits.

Soon after his 18th birthday, he met with the CAR who assisted him with applying for his benefits, as previously planned. As mentioned above, he was informed his claim was denied due to the Barring Act. The CAR explained the guidance that has been in place was a misinterpretation of the Barring Act; specifically, benefits should have been applied for within six years of his father's death and not within six years of his 18th birthday. His sister received a similar denial after she submitted her application following her 18th birthday.

He does not believe it is right to not provide him with death benefits based on a misinterpretation of the Barring Act and what was advised by his government representative. He applied soon after he turned 18 years old, as advised, and his sister did the same.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is the son of a deceased Air Force staff sergeant (E-5).

According to a *Certificate of Live Birth*, the service member is listed as the applicant's father.

On 8 Jan 14, according to DD Form 93, *Record of Emergency Data*, the service member named his spouse as beneficiary for UPPA and death gratuity.

On 13 Dec 14, according to AF Form 348, *Line of Duty Determination*, the service member died as a result of a motor vehicle accident. The recommended finding was "in the line of duty." Unfortunately, the service member's spouse died in the same accident.

On 25 May 22, according to DD Form 1300, *Report of Casualty (Corrected Final)*, the service member died as a result of an accident on 13 Dec 14 while off duty and in an active duty status. His deceased spouse was listed as beneficiary for UPPA and death gratuity, and the applicant's sister was listed as the primary next-of-kin.

On 21 Oct 22, according to Standard Form 1174, *Claim for Unpaid Compensation of Deceased Member of the Uniformed Service*, provided by the applicant, he applied for UPPA and BAH.

On 26 Oct 22, according to DD Form 397, *Claim Certification and Voucher for Death Gratuity Payment*, provided by the applicant, he applied for payment of death gratuity.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit C.

## **AIR FORCE EVALUATION**

AFPC/DPFCS recommends granting the application. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice. The Air Force Casualty Assistance Program improperly advised the beneficiaries, based on guidance and training provided by the Defense Finance and Accounting Service (DFAS), which caused the late submission for the claims.

UPPA, BAH, and death gratuity are payable by DFAS to surviving beneficiaries, typically to spouse and children. The applicant was informed by the CAR his claims for UPPA, BAH, and death gratuity were denied due to not being filed in a timely manner in accordance with the Barring Act. The Barring Act states: "Title 31 U.S. Code 3702 (b) (1) Authority to settle claims, governs the time limitations to file for death gratuity, unpaid pay and allowances, and basic allowance for housing, known as the Barring Act. The Barring Act states the claim(s) must be received by the official responsible under subsection (a) for settling the claim or by the agency that conducts the activity from which the claim arises within six years after the claim accrues."

The applicant stated his guardian was initially informed by the local CAR he could apply for the death benefits no sooner than his 18th birthday, if legal guardianship was not in place sooner. The guardian was also informed by the CAR the application must be submitted within six years of his 18th birthday to prevent loss of benefits. This was a longstanding guidance and application by DFAS as to how services' casualty representatives were to advise and apply for survivor benefits, especially for children awaiting age of majority (age 18). Additionally, the high cost of obtaining legal guardianship compelled the guardian to determine it was in his best interest to wait until his 18th birthday to apply for benefits; hence, the delay in filing his claims.

As instructed, the applicant met with the CAR shortly after his 18th birthday, who then assisted him with applying for benefits. He was later informed his claim for UPPA, BAH, and death gratuity was denied by DFAS. DFAS would not pay the claims based on new interpretation of the Barring Act received by the Office of General Counsel (OGC), which did not occur until Apr

22. Within the OGC advisory, they stated DFAS's previous execution of the Barring Act was incorrect and advised DFAS to stop any previous practices; and they should not pay beneficiaries still awaiting payment at age 18 who did not previously submit a claim within six years of the service member's death.

The applicant believes he is the victim of an error and/or injustice by the Air Force due to the misinterpretation of the Barring Act, and he should not be penalized. Further, the applicant states he applied for benefits soon after he turned 18 years old, as previously instructed by the CAR.

The applicant believes he is entitled to the following amounts owed:

- UPPA (\$3,721.97); BAH (\$6,642,00); Death Gratuity (\$50,000); Total Owed: \$60,363,97.

The Air Force incorrectly briefed the applicant's guardian due to DFAS's longstanding misinterpretation and training of services' casualty personnel regarding application of the Barring Act. Although inadvertent, he was still misinformed and missed the six-year suspense to file for benefits, not by his own doing. This office recommends UPPA, BAH, and death gratuity be granted to the applicant.

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 25 Apr 24 for comment (Exhibit D) but has received no response.

#### **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/DPFCS and finds a preponderance of the evidence substantiates the applicant's contentions. The Air Force incorrectly briefed the applicant's guardian due to DFAS's longstanding misinterpretation and training of services' casualty personnel regarding the application of the Barring Act. Although inadvertent, the deceased service member's beneficiary was still misinformed and missed the six-year suspense to file for benefits, not by his own doing. In fact, both the applicant and his sister timely filed their claims according to the erroneous guidance they received, demonstrating their intent to comply with timelines provided. Therefore, the Board recommends correcting the service member's records as indicated below.

#### **RECOMMENDATION**

The pertinent military records of the Department of the Air Force relating to the SERVICE MEMBER be corrected to show on 13 Dec 15, the APPLICANT submitted a timely and effective claim for Unpaid Pay and Allowance (UPPA); Basic Allowance for Housing (BAH); and death gratuity.

## 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-2024-01339 in Executive Session on 29 Apr 24:

, 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 16 Apr 24.  
Exhibit B: Documentary evidence, including relevant excerpts from official records.  
Exhibit C: Advisory opinion, AFPC/DPFCS, atchs, dated 24 Apr 24.  
Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 25 Apr 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.

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Board Operations Manager, AFBCMR