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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-02041

Work-Product

COUNSEL: Work-Product

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HEARING REQUESTED: NOT INDICATED

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

The applicant is the former spouse of the deceased veteran. The divorce decree obligated him to provide former spouse SBP coverage. Due to his mental and physical condition at the time of their divorce and her relationship with his daughters (who were representing him in a legal capacity via a power of attorney), contact was mostly nonexistent. His daughters never completed the paperwork to change the coverage to former spouse as directed. She was not aware at the time that she had an obligation to complete a deemed election with Defense Finance Accounting Service (DFAS) as she did not attend his SBP briefing before he retired, nor did she receive a spouse SBP package outlining the program requirements. She has been denied SBP annuities by DFAS. She is asking for help in correcting this. It is unfair to withhold benefits that her former spouse intended for her to have. They had extensive discussions on SBP and agreed she should be the beneficiary. His intention for her to be his beneficiary is evident by the fact he never canceled the SBP benefit in all the years they were divorced.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 23 Sep 93, according to Reserve Order dated 3 Sep 93, the deceased retired from the Regular Air Force.

At the time of his retirement, the applicant was married to Work-Pr... According to his Retired and Annuitant Pay System (RAS) record, he elected spouse coverage under the SBP.

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On 18 Sep 01, the deceased and [Work-Pr...] divorced.

On 28 Sep 02, according to a Certificate of Marriage, provided by the applicant, she married her former spouse.

On 2 Dec 13, the applicant and the deceased divorced. As of 2 Dec 14, one year after divorce, the deceased had not filed a change to his SBP election under 10 U.S.C. § 1448(b)(3)(A)(iii)), nor had his former spouse (the applicant) filed a deemed election under 10 U.S.C. § 1450(f)(3)(C).

On 29 Jul 21, according to a Certificate of Death, provided by the applicant, he passed away.

On 6 Oct 21, the DFAS informed the applicant in accordance with 10 U.S.C § 2771 and the DoDFMR, Volume 7b, Chapter 30, paragraph 300204, she was not the Arrears of Pay (AOP) Beneficiary.

On 28 Oct 21, the DFAS informed the applicant she is not entitled to receive an annuity under SBP. If the retiree and the former spouse sign an agreement to continue SBP with former spouse coverage, and a qualified court order incorporates, ratifies, or approves the agreement, the former spouse may request a deemed election for former spouse coverage if the retiree fails to elect coverage. The request for a deemed former spouse election must be received within one year of the divorce. A divorce decree alone does not constitute a deemed election. The applicant's former spouse did not make a request to change his election to former spouse coverage nor was a deemed election for former spouse coverage made by the applicant. This was the final decision of DFAS.

On 19 Aug 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); SBP Release of Benefits Affidavit Arrears of Pay (AOP).

On 16 Sep 24, the applicant returned the completed SBP Marital Status Affidavit (Former Spouse). The applicant signed an affidavit stating she is not currently married and understood she must notify AFBCMR if she remarries before her application has been adjudicated. Further, the applicant stated that the SBP Release of Benefits Affidavit AOP was not applicable.

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 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.”

AIR FORCE EVALUATION

AFPC/DPFC (Casualty Matters Division) recommends denying 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 2656-1, *Survivor Benefit Plan (SBP) Election Statement for Former Spouse Coverage*, or (2) the former spouse may request the retiree be deemed via DD Form 2656-10, *Survivor Benefit Plan (SBP) Former Spouse Request for Deemed Election*, to make such a change on his or her behalf. In the latter case, the former spouse must provide legal documentation the member agreed, 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, former spouse coverage may not be established thereafter. Even though a member may continue to pay SBP premiums afterwards, the former spouse is not eligible for annuity payments upon the member’s death.

According to the Defense RAS, at retirement, the deceased elected spouse coverage. He was married to his previous former spouse at the time of his retirement date of 23 Sep 93 and the two later divorced on 18 Dec 01. He then married the applicant on 28 Sep 02, and they subsequently divorced on 2 Dec 13. According to the divorce decree provided by the applicant, under the section of retirement accounts, it states “The husband has designated the wife as a surviving beneficiary on his military retirement. He warrants and covenants that he will not change nor attempt to change that designation as long as the Wife is alive.” The verbiage is rather vague in determining whether it speaks to SBP, AOP, or division of retirement pay. Nevertheless, for SBP, it must be changed to reflect former spouse coverage within one year after the divorce is final. There is no record the divorce decree, DD Form 2656-1 or a DD Form 2656-10 was provided to DFAS within one year of the divorce.

Per the retirement pay record, the deceased continued to pay premiums as of 1 Dec 20, which would mean there is an overpayment of premiums paid from the date of the 2013 divorce (the applicant lost eligibility for spouse coverage). The overpayment premiums will be payable to the beneficiary listed on the deceased’s retired pay account. In review of that account, the deceased had no specific designee. The deceased’s children, by law, would then be the beneficiaries. In this case, there is a claim for competing interest. On 1 Sep 21, the applicant submitted to DFAS the DD Form 2656-7, *Verification for Survivor Annuity*, to receive annuity. DFAS responded in a letter dated 28 Oct 21, stating she was not entitled to receive the annuity citing that neither she nor the deceased submitted a request to change his spouse election to former spouse. It is the member and former spouse’s responsibility to make sure the necessary updates/changes are completed.

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 Nov 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 not 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 does not substantiate the applicant's contentions. By law, an election to convert spouse SBP coverage to former spouse coverage must be made within one year following the divorce. In this case, there is no evidence the former service member submitted an election for change of his SBP spouse coverage to former spouse coverage; nor is there any evidence the applicant submitted a deemed election for former spouse coverage within one year following their divorce as required by law. Accordingly, the applicant is not eligible for an SBP annuity. Moreover, as pointed out by AFPC/DPFC and DFAS, the case includes a competing interest for the AOP (to include any refunds for SBP premiums) and the applicant is not the designated beneficiary for the AOP in accordance with 10 U.S.C § 2771 and the DoDFMR. Therefore, the Board recommends against correcting the applicant's records.
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 Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

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-2024-02041 in Executive Session on 26 Jun 25:

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Panel Chair

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, Panel Member

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Panel Member

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All members voted against correcting the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 22 May 24.

Exhibit B: Documentary Evidence, including relevant excerpts from official records.

Exhibit C: Advisory, AFPC/DPFC, dated 29 Oct 24.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 18 Nov 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.

8/20/2025

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Board Operations Manager, AFBCMR
Signed by: USAF