



the member is deemed to have made such election if the Secretary concerned receives a completed DD Form 2656-10, Survivor Benefit Plan/Reserve Component Survivor Benefit Plan Request for Deemed Election from a former spouse or the former spouse's attorney on behalf of the former spouse. A copy of the pertinent court order or agreement referring to the Survivor Benefit Plan coverage must accompany the DD Form 2656-10. Furthermore, a member who is participating with spouse or spouse and child coverage and who does not have an eligible spouse beneficiary may, upon remarriage: resume coverage, increase the level of coverage up to and including full retired pay, or elect not to have spouse coverage resumed. Unless a member elects not to cover the new spouse within 1-year after the marriage, spouse coverage automatically resumes at the first anniversary of the marriage.

A review of your father's record reflects he married your mother, █ on 12 August 1982, and elected Survivor Benefit Plan Spouse and Children coverage on 7 August 1998. On 31 October 1998, your father transferred to the Fleet Reserve and Survivor Benefit Plan premium deductions began with your mother listed as the annuitant. Your parents divorced on 10 July 2003, with a Constituted Pension Order being issued on 8 September 2003 awarding Survivor Benefit Plan Former Spouse coverage to your mother. With no DD Form 2656-1, Survivor Benefit Plan Election Statement for Former Spouse Coverage, submitted by your father nor DD Form 2656-10 being submitted by your mother with a copy of the divorce decree and Constituted Pension Order within 1-year from the date of order; no action was taken by the Defense Finance and Accounting Service (DFAS).

On 17 February 2008, your father married █. It was noted no action was taken by your father to cover his new spouse under Survivor Benefit Plan within 1-year from the date of his marriage, however with the lack of action from your father nor mother to change the Survivor Benefit Plan Spouse coverage to Survivor Benefit Plan Former Spouse coverage within 1-year from the date of court order, your father's new spouse became the legal Survivor Benefit Plan annuitant. Your father passed away on 18 October 2019 and your mother submitted DD Form 2656-7, Verification for Survivor Annuity, to the DFAS on 12 November 2019. The DFAS denied your mother's claim on 3 December 2019 stating, "...a spouse loses eligibility as a spouse beneficiary upon divorce. Retirees have the option to change their spouse coverage to former spouse coverage upon divorce. For this to become effective, we must receive a request from the retiree within one year of the divorce. If the retiree and the former spouse sign an agreement to continue Survivor Benefit Plan 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 does not constitute a deemed election."

After your mother appealed the DFAS and the Defense Office of Hearings and Appeals (DOHA), the DOHA issued the final decision on 10 January 2023. The DOHA concluded, "[t]he claimant argues that the DFAS was aware of her divorce from the member in 2003 as evidenced by her receipt of fifty percent of the member's monthly military retired pay under 10 U.S.C. § 1408(d)(2), the Uniformed Services Former Spouses' Protection Act (USFSPA). However, the USFSPA is a separate statute from the Survivor Benefit Plan law, and both set forth different entitlements."

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

6/28/2024

