

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-02519

COUNSEL: None

AUG 14 1998

HEARING DESIRED: No

APPLICANT REQUESTS:

Corrective action that would entitle her to a Retired Serviceman's Family Protection Plan (RSFPP) or Survivor Benefit Plan (SBP) annuity.

APPLICANT CONTENDS THAT:

Her former deceased husband told her he would continue to pay on RSFPP/SBP and she requests the document that her husband signed terminating her coverage.

In support of her appeal, the applicant provides a Certificate of Death of her former husband, a Decree of Dissolution of Marriage, a Certificate of Marriage, and a list of names indicating 81 - 82 and 92 - 93 open enrollment.

Applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

The relevant facts pertaining to this application, extracted from the applicant's military records, are contained in the letter prepared by the appropriate office of the Air Force. Accordingly, there is no need to recite these facts in this Record of Proceedings.

AIR FORCE EVALUATION:

The Chief, Retiree Services Branch, AFPC/DPPT, reviewed this application and indicated that prior to his 1 Jul 70 retirement, the applicant's former deceased husband elected spouse and child RSFPP coverage plus Option 4. Although the applicant's RSFPP coverage terminated following their 31 Oct 83 divorce, there is

no record he notified the finance center of the divorce nor requested termination of RSFPP monthly premiums. Premiums erroneously continued to be deducted from his retired pay until his 30 Jan 97 death. He was eligible to elect spouse coverage on the applicant's behalf during the 1972 and 1981 SBP open enrollments. He could have elected former spouse SBP coverage for her during the 1992 open enrollment. There is no record he returned an election nor any record that notices of the enrollments were not delivered to him. Although applicant's former husband may have mistakenly believed that she was eligible to receive an RSFPP annuity following their divorce, his belief had no basis in fact or law. Furthermore, there is also no basis in law by which the applicant would be entitled to an SBP annuity as the service member failed to elect coverage on her behalf. It would be inequitable to those members who chose to participate in the SBP when eligible, to provide entitlement to the applicant on the basis of the evidence presented.

DPPTTR further indicates that, Public Law (PL) 87-381, which established the RSFPP, provided that a covered spouse lost eligibility upon divorce, but did not contain a former spouse coverage option. However, spouse premiums could be terminated following divorce if the member additionally selected Option 4. *Any* refund of premiums is subject to the six-year statute of limitations.

PL 92-425, which implemented the SBP, authorized an 18-month open enrollment period (21 Sep 72 - 20 Mar 74). PLs 97-35 and 101-189 later authorized two additional open enrollments periods (1 Oct 81 - 30 Sep 82 and 1 Apr 92 - 31 Mar 93, respectively). During these opportunities, members were advised of their eligibility to make an election under the SBP. The enrollment packets, as well as the retiree newsletters published during those timeframes, were sent to the member's correspondence address maintained by the finance center and contained information, instructions, examples, and points-of-contact for members to use to gain additional information. There is no evidence of an Air Force error or injustice in this case and no basis in law to grant relief. Therefore, DPPTTR recommends this request be denied.

A complete copy of the Air Force evaluation is attached at Exhibit B.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to applicant on 15 Dec 97 for review and response. As of this date, no response has been received by this office.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. We took notice of the applicant's complete submission in judging the merits of the case; however, we agree with the opinion and recommendation of the Air Force and adopt their rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. Therefore, in the absence of evidence to the contrary, we find no compelling basis to recommend granting the relief sought in this application.

THE BOARD DETERMINES THAT:

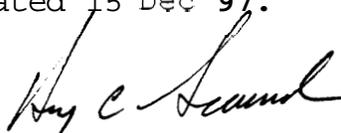
The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 16 July 1998, under the provisions of Air Force Instruction 36-2603:

Mr. Henry C. Saunders, Panel Chair
 Mr. David C. Van Gasbeck, Member
 Mrs. Barbara A. Westgate, Member
 Mrs. Joyce Earley, Examiner (without vote)

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 18 Aug 97, w/atch.
- Exhibit B. Letter, AFPC/DPPT, dated 26 Nov 97.
- Exhibit C. Letter, AFBCMR, dated 15 Dec 97.


 HENRY C. SAUNDERS
 Panel Chair



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE PERSONNEL CENTER
RANDOLPH AIR FORCE BASE TEXAS



MEMORANDUM FOR AFBCMR

26 NOV 1997

FROM: HQ AFPC/DPPTR
550 C Street West Ste 11
Randolph AFB TX 78150-4713

SUBJECT: Application for Correction of Military Records

ice [REDACTED]

Requested Correction: The applicant is requesting corrective action that would entitle her to a Retired Serviceman's Family Protection Plan (RSFPP) or Survivor Benefit Plan (SBP) annuity.

Basis for Request: The petitioner claims that the member told her he would continue to pay on the RSFPP/SBP and wants to see the document that the decedent signed terminating her coverage.

Background:

a. Public Law (PL) 87-381, which established the RSFPP, provided that a covered spouse lost eligibility upon divorce, but did not contain a former spouse coverage option. However, spouse premiums could be terminated following divorce if the member additionally selected Option 4. Any refund of premiums is subject to the six-year statute of limitations.

b. PL 92-425, which implemented the SBP, authorized an 18-month open enrollment period (21 Sep 72 - 20 Mar 74). PLs 97-35 and 101-189 later authorized two additional open enrollment periods (1 Oct 81 - 30 Sep 82 and 1 Apr 92 - 31 Mar 93 respectively). During these opportunities, members were advised of their eligibility to make an election under the SBP. The enrollment packets, as well as the retiree newsletters published during those timeframes were sent to the member's correspondence address maintained by the finance center and contained information, instructions, examples, and points-of-contact for members to use to gain additional information.

Facts:

a. Prior to his 1 Jul 70 retirement, the decedent elected spouse and child RSFPP coverage plus Option 4. Although the applicant's RSFPP coverage terminated following their 31 Oct 83 divorce, there is no record the member notified the finance center of the divorce nor requested termination of RSFPP monthly premiums. Premiums erroneously continued to be deducted from his retired pay until his 30 Jan 97 death.

b. The decedent was eligible to elect spouse coverage on the petitioner's behalf during the 72 and 81 SBP open enrollments. He could have elected former spouse SBP coverage for

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her during the 92 open enrollment. There **is no** record the **decendent** returned **an election**, nor **any** record notices of the **enrollments were not delivered to him**.

Discussion: Although **the** member may have mistakenly **believed that the applicant was** eligible to receive an RSFPP **annuity** following **their divorce**, his **belief had no basis in fact or** law. Furthermore, there **is also no basis in law** by which the applicant **would be entitled to an SBP annuity as the** member failed to **elect coverage on her behalf**. It would **be inequitable** to those members who chose to **participate in the SBP when eligible, to provide entitlement to the applicant on the basis of the evidence presented**.

Recommendation: There is **no evidence of an Air Force error or injustice in this case** and no basis in law to grant relief; therefore, we recommend this **request be denied**. However, if the Board's decision is to grant relief, the member's record should be corrected to show **he** elected spouse only SBP coverage based on full retired pay effective 21 Sep 72, coverage was suspended effective 1 Nov 83, and he elected former spouse coverage effective 1 Mar 86. An effective date of 1 Mar 86 is appropriate **as this is** the first date former **spouse** coverage could have been **established** under the same costs and conditions as spouse coverage. Approval should be contingent upon recoupment of appropriate SBP retroactive costs.



PAT PEEK, DAFC
Chief, Retiree Services Branch
Directorate of **Pers** Program Management

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