

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NO: 97-03688

AUG 21 1998

COUNSEL: [REDACTED]

HEARING DESIRED: NO

Applicant requests that her late husband's records be corrected to show that he elected coverage for her under the Survivor Benefit Plan (SBP). Applicant's submission is at Exhibit A.

The appropriate Air Force office evaluated applicant's request and provided an advisory opinion to the Board recommending the application be denied (Exhibit C). The advisory opinion was forwarded to the applicant's counsel for review and response (Exhibit D). As of this date, no response has been received by this office.

The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.

After careful consideration of applicant's request and the available evidence of record, we find insufficient evidence of error or injustice to warrant corrective action. The facts and opinions stated in the advisory opinion appear to be based on the evidence of record and have not been rebutted by applicant's counsel. Absent persuasive evidence applicant was denied rights to which entitled, appropriate regulations were not followed, or appropriate standards were not applied, we find no basis to disturb the existing record.

Accordingly, applicant's request is denied.

The Board staff is directed to inform applicant of this decision. Applicant should also be informed that this decision is final and will only be reconsidered upon the presentation of new relevant evidence, which was not reasonably available at the time the application was filed.

Members of the Board Mr. Thomas S. Markiewicz, Mr. Henry Romo Jr., and Mr. Walter J. Hosey, considered this application on 19 August 1998, in accordance with the provisions of Air Force Instruction 36-2603, and the governing statute, 10, U.S.C. 1552.

  
THOMAS S. MARKIEWICZ  
Panel Chair

Exhibits:

- A. Applicant's DD Form 149
- B. Available Master Personnel Records
- C. Advisory Opinion
- D. AFBCMR Ltr Forwarding Advisory Opinion



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

31 MAR 1998

MEMORANDUM FOR AFBCMR

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

SUBJECT: Application for Correction of Military Records

Requested Correction: The applicant, widow of the above-named retired member, is requesting corrective action that would entitle her to a Survivor Benefit Plan (SBP) annuity.

Basis for Request: The applicant claims she never agreed or signed any document waiving a spouse annuity.

Background:

- a. Survivors of military retirees may continue to receive a portion of the sponsor's retired pay only if the member was a participant in one of the annuity plans offered by the Department of Defense. There is no legal authority for the Air Force to pay the survivor an annuity if the member did not choose to provide coverage on the survivor's behalf.
- b. The Retired Serviceman's Family Protection Plan (RSFPP) was in effect when the member retired. Members were briefed and required to make their RSFPP elections before completing 18 years of service. No spouse notification was required. The RSFPP has several unattractive features and less than 15 percent of members retired during its existence enrolled.
- c. Public Law (PL) 92-425, which established the SBP on 21 Sep 72, authorized an 18-month enrollment period for retired members to elect SBP coverage. PL 97-35 later authorized an additional open enrollment period (1 Oct 81 - 30 Sep 82). During each enrollment period, members were advised by direct mail of their eligibility to make an election. The enrollment packets, as well as the Afterburner, USAF News For Retired Personnel, published during those timeframes, were sent to the member's correspondence address maintained by the finance center and contained points of contact for members to use to gain additional information.
- d. There were no provisions in the laws during these open enrollment periods requiring the Services to notify spouses of retired members if the member did not enroll. Federal Appeals Court decision--Appeal 85-927, Helen Passaro v. U.S.--held that the notice provision does not apply to a service member already entitled to retired or retainer pay on 21 Sep 72.

Facts: Defense Enrollment Eligibility Reporting System (DEERS) records indicate the decedent and applicant were married on 3 Dec 52. The member did not enroll in the RSFPP

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prior to his 1 Oct 69 retirement and there is no evidence he returned an election form during either **SBP** open enrollment period. He died on 24 Jun 93.

Discussion: The member had two opportunities to elect SBP coverage for the applicant but failed to do so. Microfiche records verify the SBP enrollment packet and newsletter mailed to the decedent during the 81-82 open enrollment period (copy enclosed in case) was mailed to the address maintained by the finance center at the time, the address where the applicant continues to reside. SBP is similar to commercial life insurance in that an individual must elect to participate and pay the associated premiums in order to have coverage. It **would** be inequitable to those members who chose to participate when eligible and subsequently received reduced retired pay, and to other widows whose sponsors chose not to participate, to provide entitlement to this widow on the basis of the evidence presented.

Recommendation: There **is** no basis in law to grant relief; therefore, we recommend that request be denied. However, if the decision of the Board is to grant relief, the decedent's record should be corrected to show on 21 Sep 72 he made an **SBP** election for spouse only coverage based on full retired pay. Approval should be contingent upon the recovery of premiums the decedent would have paid if he had made the election at that time.



PAUL E. DAKE

Retiree Services Branch  
Directorate Pers Prog Management