



DEPARTMENT OF THE AIR FORCE  
WASHINGTON, DC

Office of the Assistant Secretary  
AFBCMR 97-0375 1

JUL 31 1998

MEMORANDUM OF CONSIDERATION OF APPLICATION BEFORE THE AFBCMR

BJEC I [REDACTED] S IN: [REDACTED]

Having carefully reviewed this application, we agree with the recommendation of the Air Force Evaluation and adopt the rationale expressed as the basis for our decision that the applicant has been the victim of either an error or an injustice. Therefore, under the authority delegated in AFI 36-2603, the applicant's records will be corrected as set forth in the accompanying Memorandum for the Chief of Staff signed by the Executive Director of the Board or his designee.

A handwritten signature in cursive script, appearing to read "Patricia J. Zardkey".

Panel Chair

Attachment:  
Ltr, HQ AFPC/DPPTTR, dtd 4 May 98



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MEMORANDUM FOR THE CHIEF OF STAFF

Under the authority of Section 1552, Title 10, United States Code and AFI 36-2603, and having assured compliance with the provisions of the above regulation, the decision of the Air Force Board for Correction of Military Records is announced, and it is directed that:

The pertinent military records of the Department of the Air Force relating to [REDACTED], be corrected to show that on 3 March 1990, he elected under the Survivor Benefit Plan to change his coverage from "spouse coverage" to "former spouse coverage," naming [REDACTED] as former spouse beneficiary, based on a reduced annuity, and that coverage was suspended effective 1 May 1990, following her remarriage.

A handwritten signature in cursive script that reads "Donna Pittenger".

**DONNA PITTENGER**  
Chief Examiner  
Air Force Board for Correction  
of Military Records



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

4 MAY 1995

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

Reference: [REDACTED]

Requested Correction: The applicant, former spouse of the above-named retired member, is requesting corrective action to show that he filed a timely election to voluntarily change his Survivor Benefit Plan (SBP) coverage from spouse to former spouse following his divorce.

Basis for Request: The applicant claims the member paid SBP premiums for years after their divorce proving he intended for her to receive the annuity.

Background:

a. A spouse loses eligibility as a spouse beneficiary following divorce. However, the law provides two mechanisms for changing spouse coverage to former spouse coverage. Both must be exercised within the first year following divorce: the retiree may file an election change, or the former spouse may request the retiree be deemed to have made such a change on his or her behalf. In the latter case, the former spouse must provide legal documentation that the member agreed, or that the court ordered the member, to establish former spouse coverage. If, however, the court is silent on the matter of SBP and there is no written agreement, the member can submit a voluntary election, but there is no provision by which the former spouse can request a deemed election. If the member does not elect former spouse coverage during the one-year eligibility period, coverage may not be established thereafter. Although SBP premiums may continue to be deducted from the member's retired pay following divorce, the former spouse is not eligible to receive annuity payments in the event of the member's death.

b. Former spouse SBP coverage is suspended if the former spouse remarries before age 55. Costs cease effective the first day of the month after the month of remarriage. However, eligibility and premiums are reinstated effective the first day of the month after the date the former spouse's remarriage terminates. If the member dies

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while the former spouse is ineligible, entitlement would be re-instated in the event the disqualifying marriage subsequently ends.

Facts: The member and applicant were married on 31 May 57 and he elected spouse only SBP coverage based on a reduced level of retired pay prior to his 1 Aug 81 retirement. The parties divorced on 2 Mar 90 and the applicant remarried on 5 Apr 90, prior to her 55<sup>th</sup> birthday (date of birth: 27 May 40). There is no evidence the member notified the Defense Finance and Accounting Service (DFAS) of the divorce and SBP premiums continued to be deducted until his death on 9 Oct 97.

Discussion: Although the member did not submit a valid election to voluntarily change from spouse to former spouse coverage within the first year following divorce, there is **no** evidence that he requested coverage be terminated and continued to pay SBP premiums, indicative of his intent to maintain the applicant as the eligible SBP beneficiary.

Recommendation: Although there is no evidence of Air Force error, to preclude a possible injustice, we recommend that the member's record be corrected to reflect on 3 Mar 90, he elected to change SBP spouse coverage to former spouse coverage based on a reduced level of retired pay, naming ██████████ as the former spouse beneficiary and that coverage was suspended effective 1 May 90 following her remarriage.



PAT PEEK, DAFC  
Chief, Retiree Services Branch  
Directorate of Pers Program Mgt .

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