



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

Office of the Assistant Secretary

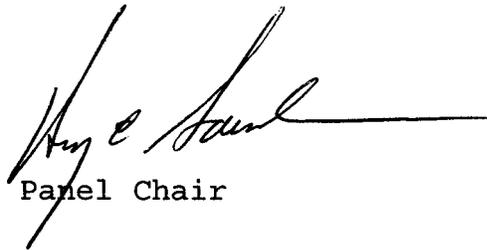
JUL 20 1998

AFBCMR 98-00062

MEMORANDUM OF CONSIDERATION OF APPLICATION BEFORE THE AFBCMR

SUBJECT: [REDACTED]

Having carefully reviewed this application, we agree with the recommendation of the Air Staff 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.



Panel Chair

Attachment:
Ltr, AFPC/DPPTTR, dtd 29 Jun 98



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

Office of the Assistant Secretary

JUL 20 1998

AFBCMR 98-00062

MEMORANDUM FOR THE CHIEF OF STAFF

Under the authority of Section 1552, Title 10, United States Code, Air Force Instruction 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 2 February 1996 he elected under the Survivor Benefit Plan to change his coverage from "spouse and child coverage" to "former spouse coverage," based on full retired pay, and naming [REDACTED] as the former spouse beneficiary.

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

29 JUN 1998

MEMORANDUM FOR AFBCMR

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

SUBJECT: Application for Correction of Military Records

Reference: [REDACTED]

Requested Correction: The applicant is requesting corrective action to show that he filed a timely election for former spouse coverage under the Survivor Benefit Plan (SBP).

Basis for Request: The applicant claims he repeatedly requested the election form after the divorce, but did not receive it until after the time limit had passed.

Background: A spouse's eligibility as an SBP beneficiary terminates upon 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 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 fails to notify the Defense Finance and Accounting Service-Cleveland Center (DFAS-CL) of the divorce and continues to pay SBP premiums afterwards, the former spouse is not eligible for annuity payments upon the member's death.

Facts: The parties married on 8 Dec 73 and the applicant elected spouse and child coverage based on full retired pay prior to his 1 Feb 90 retirement. The parties divorced on 1 Feb 96 and the divorce was silent on the issue of the SBP. The former spouse submitted paperwork to DFAS-CL for division of retired pay in compliance with the divorce decree, but the member did not submit an SBP election change. The youngest child's eligibility was terminated effective 1 Jul 97 due to age. Neither party remarried, SBP premiums continue to be deducted from the member's retired pay, and the former spouse is reflected as the eligible spouse beneficiary.

Discussion: Even though the member did not make a valid election change, he continued to allow premiums to be deducted from his retired pay and there is no evidence he requested coverage for his former spouse be terminated, indicative of his intent to maintain coverage on her behalf. It is reasonable to believe he would have submitted an election change during the required time had he been given the correct form when he first requested assistance.

9800062

Recommendation: Although there is no evidence of Air Force error, we recommend the member's record be corrected to reflect that on 2 Feb 96 he elected to change SBP spouse and child coverage to former spouse coverage based on full retired pay, naming [REDACTED] as the former spouse beneficiary. Approval should be contingent upon recoupment of any applicable premiums.



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

9800062