



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

Office of the Assistant Secretary

AUG 25 1998

AFBCMR 98-00095

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 16 November 1992, he elected to change his Survivor Benefit Plan election from "spouse and child coverage" to "former spouse and child coverage" naming [REDACTED] as beneficiary, based on a reduced annuity.

A handwritten signature in black ink, appearing to read "H. Weller".

MOND H. WELLER
Chief Examiner
Air Force Board for Correction
of Military Records



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MEMORANDUM OF CONSIDERATION OF APPLICATION BEFORE THE AFBCMR

SUBJECT: [REDACTED]

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

Joseph J. Henry

Panel Chair'

Attachment:

Ltr, AFPC/DPPTTR, dtd 11 Jun 98



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

11 JUN 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

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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 to former spouse and child coverage under the Survivor Benefit Plan (SBP) following their divorce.

Basis for Request: The applicant claims the decedent never stopped paying for the SBP because he meant for her to have it.

Background: A spouse's eligibility ceases 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 former spouse 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, that 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.

Facts: The member and applicant were married when the member elected spouse and child coverage, reduced annuity, prior to his 1 Apr 89 retirement. The parties divorced on 15 Nov 92, but the court order was silent on the issue of SBP. There is no evidence the member notified the Defense Finance and Accounting Service (DFAS) of the divorce and he continued to pay spouse and child premiums. The member remarried on 1 Aug 96; however, his pay record reflected the applicant as the eligible spouse beneficiary until his 9 May 97 death. Shortly after the member's death, his widow applied for the annuity, but was determined ineligible because they were not married for one year prior to the retiree's death. The member's and applicant's son (date of birth 25 Feb 81) is currently receiving the annuity and the applicant submitted a statement waiving all payments that the child has received.

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

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evidence that he requested the applicant's coverage be terminated or changed to cover his new spouse, all indicative of his intent to maintain her as the eligible **SBP** beneficiary.

Recommendation: Although there is no evidence of Air Force error, we recommend that the member's record be corrected to reflect that on 16 Nov 92 he elected to change SBP spouse and child **coverage to former spouse** and child coverage based on a reduced level of retired pay, naming [REDACTED] as the eligible former spouse beneficiary. Approval should be **contingent upon recoupment** of any applicable premiums and the applicant's waiver of SBP payment received by her son.



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

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