



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

Office of the Assistant Secretary

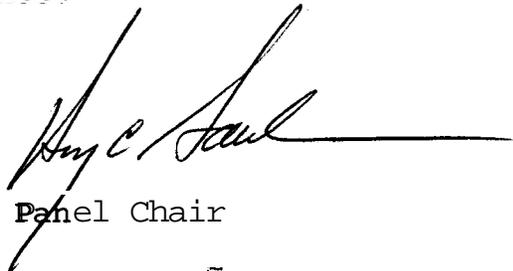
JUL 20 1998

AFBCMR 98-00609

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/DPPT, dtd 17 Jun 98



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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 30 March 1996, he elected under the Survivor Benefit Plan to change his coverage from "spouse 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

17 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

Reference: [REDACTED]

Requested Correction: The applicant, former spouse 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 her former spouse continued to make SBP premium payments after their divorce and meant for her to have SBP, and it would be unfair and unjust to deny those benefits.

Backaround: A spouse's eligibility to receive an annuity terminates upon divorce. However, the law provides two mechanisms for changing spouse 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 the court ordered the member, to establish former spouse coverage. If neither the member nor the former spouse requests the election change within the one-year eligibility period, former spouse coverage may not be established thereafter.

Facts: The decedent elected spouse coverage based on a reduced level of retired pay prior to his retirement on 20 Jan 73, but increased the amount to full retired pay during the open enrollment authorized by Public Law 101-189. The election for increased coverage became effective 1 May 92. Although their 29 Mar 96 divorce terminated the applicant's eligibility as the spouse beneficiary, the member did not request her coverage be canceled and the SBP premiums continued to be deducted from his retired pay until his 19 Oct 96 death.

Discussion: Although the decedent made no election change during the required one-year time limit following divorce, there is no evidence that he requested coverage for his former spouse be terminated, indicative of his intent to maintain her as the eligible SBP beneficiary as required by the court order. To deny this request would be to deny the applicant an asset awarded her by the court.

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 that on 30 Mar 96, he elected to change SBP spouse to former spouse coverage, naming [REDACTED] as the former spouse beneficiary. Approval should be contingent upon recoupment of appropriate premiums.

Pat Peek

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

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