



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

OCT 21 1998

Office of the Assistant Secretary

AFBCMR 98-01371

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 1 March 1986, he elected former spouse coverage under the Survivor Benefit Plan, naming [REDACTED] as the former spouse beneficiary, based on full retired pay.

A handwritten signature in cursive script that reads "Raymond H. Weller".

RAYMOND 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.


Panel Chair

Attachment:
Ltr, AFPC/DPPTR, dtd 14 Sep 98



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

MEMORANDUM FOR AFBCMR

14 SEP 1998

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

SUBJECT: Application for Correction of Military Records

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 the member continued to pay premiums until his death and assured her she was covered under the Plan.

Background: A spouse's eligibility to receive an SBP annuity terminates upon divorce. Public Law (PL) 92-425 (21 Sep 72) which established the SBP, did not provide authority to change from spouse to former spouse coverage following divorce, nor to suspend premium payments when the retiree no longer had an eligible beneficiary. However, PL 94-496 (14 Oct 76, but effective 1 Oct 76) allowed suspension of premiums following the spouse's divorce or death. PL 98-94 (24 Sep 83) permitted retirees to elect former spouse coverage within one year following the divorce. If former spouse coverage is not established within that time, it may not be established thereafter. Even though SBP premiums continue to be deducted from the member's retired pay following divorce, the former spouse is not entitled to receive the annuity in the event of the member's death.

Facts: The applicant and retiree were married during the initial SBP open enrollment period when he elected full spouse and child coverage. The parties divorced on 9 Apr 73, and the divorce decree did not address the SBP. However, neither remarried, the former spouse's date of birth remained in his records as the eligible beneficiary, and the SBP premiums continued to be deducted until his death on 30 Mar 98.

Discussion: Although the law in effect when the parties divorced did not provide any mechanism for continuing the coverage for a former spouse, or allow the retiree to stop the monthly cost, there is no evidence or documentation showing that he requested coverage for his former spouse be terminated, indicative of his intent to keep her as the 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 1 Mar 86, he elected former spouse coverage, naming [REDACTED] as the former spouse beneficiary. It is appropriate that the effective date be 1 Mar 86 as it was the earliest opportunity a retiree could change to former spouse coverage at the same cost and benefit as spouse coverage. Approval should be contingent upon recoupment of appropriate premiums.

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

9801371