



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

OCT 22 1998

Office of the Assistant Secretary

AFBCMR 98-01403

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
Panel Chair

Attachment:
Ltr, HQ AFPC/DPPTR, dtd 9/2/98



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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 22 September 1992, he elected, under the Survivor Benefit Plan, to change his coverage from "spouse coverage" to "former spouse as former spouse beneficiary, based on full retired pay.

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

2 SEP 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

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

Basis for Request: The applicant claims he was never advised of the 12-month deadline for changing to former spouse coverage following divorce.

Background: A spouse loses eligibility to receive an SBP annuity upon divorce. However, the law provides two mechanisms for changing spouse to former spouse coverage. Both must be exercised within one year after 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 former spouse requests the election change during the one-year eligibility period, former spouse coverage may not be established thereafter. Thus, even though a member may not have notified the Defense Finance and Accounting Service (DFAS) of the divorce and continued to pay premiums for spouse coverage after the divorce, the former spouse is not eligible for annuity payments upon the member's death.

Facts: The member retired effective 1 Mar 72 and elected spouse SBP coverage based on full retired pay during the open enrollment season authorized by Public Law (PL) 97-35 (13 Aug 81). The parties divorced on 21 Sep 92 and the final divorce decree required SBP coverage be continued. Although the member claims he provided a copy of the divorce decree to DFAS-Cleveland Center (DFAS-CL), neither he nor his former spouse submitted a valid request to change from spouse to former spouse coverage during the first year following their divorce. The member remarried Nov 94, but premiums continued to be deducted from his retired pay; and his record reflected the former spouse as the spouse beneficiary.

Discussion: Although neither the applicant, nor the former spouse made an election change request during the required time limit, there is no evidence the member requested coverage for his former spouse be terminated, indicative of his intent to maintain her as the eligible SBP beneficiary. To deny the request would be to deny his former spouse an asset awarded to her by the court.

Recommendation: Although there is no evidence of Air Force error, to preclude a possible injustice, we recommend the member's record be corrected to reflect that on 22 Sep 92 he elected to change SBP spouse coverage to former spouse coverage based on full retired pay, naming [redacted] as the eligible former spouse beneficiary. Approval should be contingent upon recoupment of all applicable premiums.

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

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