

DATE: May 30, 2019

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In Re: )

[REDACTED] )

Claimant )

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) Claims Case No. 2018-CL-082703.2  
)  
)

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Pursuant to a divorce decree, a member was required to provide an annuity for his former spouse and ordered to provide her with survivor's benefits. His former spouse timely requested a deemed election. No appropriate action was taken by the member to change the survivor benefit coverage. Therefore, his surviving spouse's claim for the Reserve Component Survivor Benefit Plan (RCSBP) annuity must be denied.

**DECISION**

The claimant, the surviving spouse of a deceased member of the U.S. Air Force, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2018-CL-082703, dated April 19, 2019.

**Background**

In July 1986 the member married. In October 2006, on his sixtieth birthday, the member retired from the U.S. Air Force Reserve. Spousal RCSBP coverage was established at that time. The member and his spouse divorced in January 2011. The divorce decree awarded the member's former spouse monthly spousal support payments, a portion of his disposable retired pay, and also former spouse RCSBP coverage. The former spouse submitted a timely RCSBP deemed election to the Defense Finance and Accounting Service (DFAS) in July 2011. The member married the claimant in December 2012. In November 2013 the member applied to DFAS to change his RCSBP coverage to his spouse, the claimant. In January 2014 DFAS

denied his request on the basis that a timely deemed election had been submitted by his former spouse thereby establishing RCSBP former spouse coverage for her.

After the member's death in 2017 the claimant submitted a claim for the RCSBP annuity. DFAS denied the claim because the member's former spouse had submitted a timely deemed election. In the appeal decision, the DOHA adjudicator upheld DFAS's denial of the claimant's claim for the RCSBP annuity.

In her request for reconsideration, through her attorney, the claimant states that the member never elected RCSBP coverage for his former spouse. She states that the member was mentally unstable at the time of his divorce proceedings, and therefore, did not participate in the divorce proceedings, never signed any divorce documentation, and did not appear at any hearings on the matter. However, she states that he clearly designated her as his RCSBP beneficiary after they were married. She requests correction of the record in order to receive the RCSBP as the member's lawful widow.

### **Discussion**

SBP is an income maintenance program for survivors of deceased members of the uniformed services. *See* 10 U.S.C. §§ 1447-1455. A member may elect coverage for a former spouse. *See* 10 U.S.C. § 1448(b)(3). However, in recognition of the fact that coverage under the SBP could become an item of negotiation in a divorce settlement, Congress concluded that a former spouse should be able to rely on and enforce an award of survivors benefits by a divorce court by means of a "deemed election." *See* 10 U.S.C. § 1450(f)(3); and 66 Comp. Gen. 687 (1987). As a result, statutory provisions have been included to provide that if a member who is required by court order to provide former spouse SBP coverage, or has entered into such an agreement which has been incorporated in, or ratified or approved by, a court order, then refuses or fails to make the election as agreed, the former spouse may make a request to the Secretary concerned within a year of the court order, and the Secretary concerned shall then "deem" an election to have been made by the member. *See* 10 U.S.C. § 1450(f)(3).

In this case, the member's former spouse was covered under the RCSBP as the member's spouse beneficiary from the time he retired in 2006, until such coverage ended with their divorce in January 2011. Under the terms of the divorce decree, the former spouse was entitled to former spouse RCSBP coverage. The member's former spouse submitted a timely deemed election to DFAS in July 2011. The member took no action to challenge this provision or the deemed election in court.

Although the claimant maintains that the member was not competent at the time of the divorce, DFAS had no obligation to go beyond the face of the court order. *See* DOHA Claims Case No. 2013-CL-110501.2 (July 17, 2014); DOHA Claims Case No. 2011-CL-101402.2 (February 9, 2012); and DOHA Claims Case No. 06050122 (May 31, 2006). Absent anything on the face of the order indicating that it was issued without proper legal authority, DFAS is obligated to process the election under 10 U.S.C. § 1450(f)(3). DFAS determined the divorce

decree was regular on its face and the former spouse's request for a deemed election was timely. We find no error with DFAS's actions.

The claimant requests relief in the form of a correction of the record. Administratively, this type of relief is governed by 10 U.S.C. §1552, and 10 U.S.C. § 1454. Administrative relief under these statutes is by the Secretary concerned of the applicable military department, acting through a board. These equitable remedies are discretionary actions outside the purview of DOHA. This decision does not prevent the claimant from pursuing any other remedy that she may have to correct the record administratively or before a court of competent jurisdiction. *See* DOHA Claims Case No. 2017-CL-101202.2 (April 10, 2018).

### **Conclusion**

For the reasons stated above, the claimant's request for reconsideration is denied. In accordance with Department of Defense Instruction 1340.21 ¶ E7.15.2, this is the final administrative action of the Department of Defense in this matter.

SIGNED: Catherine M. Engstrom

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Catherine M. Engstrom  
Chairman, Claims Appeals Board

SIGNED: Charles C. Hale

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Charles C. Hale  
Member, Claims Appeals Board

SIGNED: Gregg A. Cervi

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Gregg A. Cervi  
Member, Claims Appeals Board