

DATE: June 19, 2019

In Re:)

[REDACTED])

) Claims Case No. 2018-CL-090703.2

Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

The burden of proving the existence of a valid claim against the United States is on the person asserting the claim.

DECISION

The claimant, a former spouse of a deceased member of the U.S. Army, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2018-CL-090703, dated May 17, 2019.

Background

On March 1, 2008, the member retired from the Army and elected Survivor Benefit Plan (SBP) coverage for his spouse, the claimant, at that time. On May 7, 2015, the claimant and the member were divorced. The divorce decree did not award the claimant former spouse SBP coverage. Further, the member did not elect former spouse SBP for the claimant. On September 3, 2017, the member passed away. On January 9, 2018, the claimant claimed the SBP annuity as the member's former spouse.

DFAS subsequently denied the claimant's claim for an SBP annuity because the member did not establish former spouse SBP coverage for the claimant. In addition, the divorce decree did not award her SBP coverage. Therefore, as a result, she could not submit a deemed election for SBP. In the appeal decision, DOHA upheld DFAS's denial of the SBP claim.

In her reconsideration request, the claimant states that it was the member's intention that she receive the SBP annuity upon his death. Even though they divorced in 2015, they continued to live together in the home where they raised seven children together. She states that he wanted her to receive the SBP in order to survive financially and keep their home. In addition, she attaches the member's Retiree Account Statements (RAS) that reflect he continued to pay for spouse SBP coverage.

Discussion

The claimant must prove, by clear and convincing evidence, on the written record that the United States is liable to the claimant for the amount claimed. *See* Department of Defense Instruction 1340.212 (May 12, 2004) ¶ 5.7. Claims against the government may be allowed only for expenses authorized by statute or regulation. *See* DOHA Claims Case No. 2016-CL-111002.2 (October 31, 2017).

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for the survivors of deceased members of the uniformed services. Spousal coverage ends upon divorce. If a member divorces and wishes to provide SBP coverage for his former spouse, he must notify DFAS in writing of the divorce and his intention to provide coverage for his former spouse, even if the former spouse was the spouse beneficiary immediately prior to the divorce. Former spouse coverage must be established within one year from the date of the divorce. *See* 10 U.S.C. §1448(b)(3)(A)(iii). In addition, a member may be required under the terms of a divorce decree to provide SBP coverage to his former spouse. If he fails to do so, the former spouse has one year from the date of the divorce to request a deemed election. *See* 10 U.S.C. § 1450(f)(3).

In this case, the claimant was not awarded former spouse coverage in the divorce decree. Therefore, she had no statutory right to request a deemed election. The member did not voluntarily elect former spouse coverage for the claimant, within one year of the date of the divorce. *See* DOHA Claims Case No. 2017-CL-081403.2 (January 8, 2018); and DOHA Claims Case No. 2016-CL-090801.3 (March 30, 2017). Therefore, DFAS properly denied the claim for the SBP annuity.

Conclusion

The claimant's request for relief is denied. In accordance with the 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

Catherine M. Engstrom
Chairman, Claims Appeals Board

SIGNED: Ray T. Blank, Jr.

Ray T. Blank, Jr.
Member, Claims Appeals Board

SIGNED: Gregg A. Cervi

Gregg A. Cervi
Member, Claims Appeals Board