

DATE: October 28, 2019

In Re:)
[REDACTED]) Claims Case No. 2019-CL-031806.2
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. The claimant must prove by clear and convincing evidence on the written record that the government is liable under the law for the amount claimed.

DECISION

The claimant, the surviving spouse of a deceased member of the U.S. Navy, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2019-CL-031806, dated August 20, 2019.

Background

On December 11, 1982, the claimant and the member were married. On July 8, 1998, in preparation for his retirement, the member completed a DD Form 2656, *Data for Payment of Retired Personnel*, electing Survivor Benefit Plan (SBP) coverage for his spouse and his children. On October 1, 1998, the member retired from the Navy. On October 13, 2000, the member executed a DD Form 2656-2, *Survivor Benefit Plan (SBP) Termination Request*. On that form, the claimant gave her spousal concurrence by co-signing and it was notarized. On November 24, 2000, the Defense Finance and Accounting Service (DFAS), received the request and terminated the member's participation in SBP.

The member and the claimant were divorced in 2014. They subsequently reconciled and remarried on July 31, 2015. On March 19, 2018, the member passed away. On September 13,

2018, the claimant submitted to DFAS a DD Form 2656-7, *Verification of Survivor Annuity*, claiming the SBP annuity as the member's surviving spouse. On October 1, 2018, DFAS denied the claim on the basis that the member had withdrawn from SBP effective November 24, 2000.

The claimant appealed DFAS's denial of her SBP claim. She maintained that she never consented to ending her SBP coverage in 2000. She stated that pursuant to their divorce in 2014, the member agreed to pay her \$2,000.00 a month by an allotment, which indicated his intention to provide her with monthly support. She maintained that her SBP spouse coverage should have resumed upon her remarriage to the member in 2015. She stated that she was never offered nor did she decline spouse SBP coverage upon her remarriage, and her husband may have overlooked making her his SBP beneficiary.

In the appeal decision, the DOHA adjudicator explained that in 2000 the member timely submitted a request for termination of his participation in SBP under the authority of 10 U.S.C. § 1448a. He further advised that under 10 U.S.C. § 1448(b)(1)(E), the member was authorized to reenter participation in SBP by remarrying after retirement. However, under 10 U.S.C. § 1448(a)(5)(B), the member must have requested that his spouse be covered within one year of the date of his remarriage. Since the member failed to reestablish SBP coverage for the claimant, the adjudicator upheld DFAS's denial of the SBP claim. The adjudicator then advised the claimant that she may find other available relief outside the purview of DOHA by petitioning the Board for Correction of Naval Records (BCNR) under 10 U.S.C. § 1552.

In her request for reconsideration, the claimant submits her divorce decree dated May 28, 2014. The decree awarded the claimant 50% of the member's monthly disposable retired pay and the member was ordered to name the claimant as his SBP beneficiary. The claimant also raises the issue of the member's potential overpayment of SBP premiums during the period October 1998 through October 2000. She requests more information on receiving a refund of the premiums paid.

Discussion

Claims against the government may be allowed only for expenses authorized by statute or regulation. The rights of individuals to receive benefits under Federal statutes are by virtue of the language of the statute and subject to the conditions and limitations contained therein. *See* Comptroller General decision B-203903, Feb. 11, 1985.

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for survivors of retired military members. Under the SBP, participating members contribute a portion of their retired pay to fund annuity payments for their designated beneficiaries. A married member or a member with dependent children is eligible to participate in SBP when he becomes eligible for retired pay. *See* 10 U.S.C. § 1448(a)(2)(A). Under 10 U.S.C. § 1448a(a), a member who is participating in SBP may elect to discontinue participation at any time during the one-year period beginning on the second anniversary of the date on which payment of retired pay to the participating member commences. However, concurrence of the member's spouse is required

under 10 U.S.C. § 1448a(b). The consequences of discontinuance, in pertinent part, are set forth under 10 U.S.C. § 1448(b)(1)(E):

Once participation is discontinued, benefits may not be paid in conjunction with the earlier participation in the Plan and premiums paid may not be refunded. Participation in the Plan may not latter be resumed except through a qualified election under paragraph (5) of subsection (a) . . .

Under 10 U.S.C. § 1448(a)(5), a member who marries after retirement, may elect to cover his new spouse if he makes such an election within one year after the date of his marriage.

On October 1, 1998, the member retired, having already elected SBP coverage for his spouse and children on July 8, 1998. On November 24, 2000, DFAS received the member's DD Form 2656-2, requesting termination of his SBP participation. This form was notarized and co-signed with the claimant's concurrence, and received by DFAS within the time period set forth in the statute, *i.e.*, within the one-year period beginning on October 1, 2000, the second anniversary of the member's entitlement to retired pay. Since the member's participation in SBP terminated in November 2000, any SBP premiums he paid for the period October 1998 through October 2000, may not be refunded. *See* 10 U.S.C. § 1448(b)(1)(E).

The divorce decree provided by the claimant in her reconsideration request reflects that the member was ordered to continue to provide SBP coverage for her. However, since the member's participation in SBP terminated in 2000, any election for former spouse SBP coverage would fail since an election to discontinue participation under 10 U.S.C. § 1448a prevents any later participation in the SBP except as provided in the statute. *See* 10 U.S.C. § 1448(a)(5).

When the member remarried the claimant on July 31, 2015, he had one year from the date of the remarriage to reestablish SBP coverage. *See* 10 U.S.C. § 1448(a)(5). However, there is no evidence that the member did so, and therefore, SBP coverage for the claimant cannot be allowed on the basis of the remarriage.

DOHA is bound by statute and regulation and therefore is unable to allow the claim for the SBP annuity. However, under 10 U.S.C. § 1552, the Secretary of a military department, acting through a correction board, in this case, the BCNR, may correct a member's record when the Secretary considers it necessary to correct an error or remove an injustice. Information on petitioning the BCNR is found online at <https://www.secnav.navy.mil/mra/bcnr/Pages/default.aspx>.

Conclusion

For the reasons stated above, the claimant's request for reconsideration is denied, and we affirm the appeal decision dated August 20, 2019.

SIGNED: Catherine M. Engstrom

Catherine M. Engstrom
Chairman, Claims Appeals Board

SIGNED: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board

SIGNED: Ray T. Blank, Jr.

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