

DATE: November 18, 2020

In Re:)

[REDACTED])

Claimant)

) Claims Case No. 2020-CL-042201.2
)
)

**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. 2020-CL-042201, dated August 12, 2020.

Background

The claimant and the member married on August 7, 1997. In preparation for his retirement, the member elected Survivor Benefit Plan (SBP) coverage for the claimant as his spouse and appointed her as his arrears of pay (AOP) beneficiary for any unpaid retired pay due upon his death. On May 22, 2007, the member retired. On June 10, 2016, the claimant and the member divorced. The divorce decree incorporated a prior agreement by the parties dated June 2, 2016. That agreement did not award the claimant former spouse SBP coverage. However, it did state that the member was to retain the claimant as his AOP beneficiary.

On October 22, 2018, the member passed away. On December 31, 2018, the claimant submitted to the Defense Finance and Accounting Service (DFAS) a DD Form 2656-7, *Verification for Survivor Annuity*, claiming the SBP annuity. DFAS denied her claim for the SBP annuity because the divorce decree and settlement agreement did not require the member to

provide former spouse SBP coverage for the claimant and the member did not voluntarily elect her as his former spouse SBP beneficiary within one year of the divorce.

In the claimant's appeal of DFAS's denial of her claim for the SBP, she stated that the member was suffering from many medical issues that clouded his thinking and memory. She stated that the member thought the language contained in the divorce decree was enough to award her the SBP annuity. She stated that the member always intended her to have the coverage and would be very upset that she did not receive it.

In the DOHA appeal decision, the attorney examiner upheld DFAS's denial of the SBP claim, finding no evidence that the member elected former spouse SBP within one year of their divorce. He further advised the claimant that she may find relief outside the purview of DOHA by petitioning the Army Board for Correction of Military Records (ABCMR).

In her reconsideration request, the claimant states that member told her that she would get the benefits. She states that he did not know he had to notify anyone that she was his SBP beneficiary after the divorce. She requests that DOHA reconsider our decision and make an exception in her case because she needs the financial support.

Discussion

Claims against the government may be allowed only for expenses authorized by statute or regulation. *See* DOHA Claims Case No. 2019-CL-022202.2 (August 27, 2019).

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for 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 member's former spouse was covered under the SBP as the member's spouse beneficiary from the time he became eligible to receive retired pay in 2007 until such coverage ended with their divorce in June 2016. The claimant was not awarded former spouse SBP coverage in the divorce degree, nor the settlement agreement. Therefore, she had no statutory right to request a deemed election. Further, although the member may have intended that his former spouse be covered under the SBP, he failed to establish former spouse SBP coverage within one year of their divorce. Therefore, DFAS properly denied the claim for the SBP annuity. *See* DOHA Claims Case No. 2019-CL-022202.2, *supra*; and DOHA Claims Case No. 2017-CL-081403.2 (January 3, 2019).

As set forth above, DOHA has no authority under statute or regulation to allow the claim. However, as explained by the attorney examiner in the appeal decision, the claimant may have another avenue of redress that rests with the Army Board for Correction of Military Records (ABCMR) under 10 U.S.C. § 1552. Any remedy available under that statute is a discretionary action that rests with the ABCMR, and is outside DOHA's authority.

Conclusion

The claimant's request for relief is denied, and we affirm the appeal decision dated August 12, 2020. In accordance with DoD 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: Gregg A. Cervi

Gregg A. Cervi
Member, Claims Appeals Board

SIGNED: Jennifer I. Goldstein

Jennifer I. Goldstein
Member, Claims Appeals Board