

DATE: February 25, 2021

In Re:)

[REDACTED])

) Claims Case No. 2020-CL-062903.2

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 retired 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-062903, dated December 15, 2020.

Background

The member retired from the Army on September 1, 1992, and elected Survivor Benefit Plan (SBP) coverage for the claimant and his children. On October 2, 2000, the member and the claimant divorced. The final divorce decree did not award the claimant former spouse SBP coverage. However, the divorce decree incorporated a Separation Agreement entered into by the parties on August 18, 2000, but there is no record of that agreement in the file. Neither the member nor the claimant notified the Defense Finance and Accounting Service (DFAS) of their divorce. As a result, DFAS continued to withhold SBP premiums for spouse coverage from the member's retired pay until the member's death on January 23, 2019. DFAS learned of the divorce when the claimant filed a DD Form 2656-7, *Verification of Survivor Annuity*, dated February 13, 2019. On April 26, 2019, DFAS denied the claim on the basis that the claimant's divorce from the member ended her SBP coverage as his spouse, and that SBP former spouse coverage had not been established within a year of the divorce by either an election by the

member or through a former spouse deemed election. The claimant appealed DFAS's denial of her claim for the SBP annuity. DFAS reconsidered her claim but ultimately denied it on the basis that the member did not voluntarily elect former spouse SBP coverage within one year of the divorce, and that the claimant had no basis to request a deemed election because the divorce decree did not award her former spouse SBP coverage. In the appeal decision, the DOHA adjudicator sustained DFAS's denial of the claim. He further advised the claimant that she may find relief outside the purview of DOHA with the Army Board for Correction of Military Records (ABCMR).

In her request for reconsideration, the claimant states that it was always the member's intention to provide SBP coverage for her and for the past 27 years she had been told by the member she would receive the SBP annuity upon his death. She states that she wishes to pursue a correction of military record with the ABCMR.

Discussion

Claims against the government may be allowed only for expenses authorized by statute or regulation. *See* DOHA Claims Case No. 2019-CL-022108.2 (September 17, 2019). Therefore, DOHA must render decisions based on applicable statutes, regulations and our prior administrative decisions.

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for the survivors of deceased members of the uniformed services. *See* DOHA Claims Case No. 2019-CL-022108.2, *supra*; and DOHA Claims Case No. 2017-CL-081403.2 (January 8, 2018). 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). 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 SBP 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. Therefore, DFAS properly denied the claim for the SBP annuity.

Finally, the claimant should submit her application for a record correction to the ABCMR, not DOHA, since DOHA has no authority over this type of relief.

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: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board

SIGNED: Gregg A. Cervi

Gregg A. Cervi
Member, Claims Appeals Board