

DATE: January 25, 2021

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In Re: )

[REDACTED] )

) Claims Case No. 2020-CL-052601.2

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**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. Navy, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2020-CL-052601, dated September 8, 2020.

**Background**

On August 2, 1968, the claimant and the member were married. On September 15, 1987, the member became eligible to receive retired pay except that he had not yet reached the required retirement age of 60. At that time, he elected Reserve Component Survivor Benefit Plan (SBP) coverage for the claimant as his spouse. On July 7, 1991, the claimant and the member were divorced. The divorce decree stated that the claimant was to receive a portion of the member's retired pay pursuant to a Qualified Domestic Relations Order (QDRO). The QDRO was pronounced and rendered in open court on July 7, 1991, but was noted on the court's docket to be signed and ratified at a later date. On September 1, 1993, the member retired, and began receiving his retired pay on his 60<sup>th</sup> birthday, November 28, 1993. On March 16, 1998, the QDRO was issued. The QDRO granted the claimant 40.38% of the member's monthly disposable retired pay and awarded her former spouse SBP coverage.

On June 30, 1998, the claimant submitted a DD Form 2293, Application for *Former Spouse Payments from Retired Pay*, to the Defense Finance and Accounting Service (DFAS). On September 16, 1998, DFAS acknowledged receipt of the claimant's application for payment of a portion of the member's retired pay. DFAS also informed the claimant that if the divorce decree awarded her former spouse SBP coverage, she must request a "deemed election" for SBP within one year of the date of the divorce directly to the DFAS Retired Pay Office. The member did not make a request to change his SBP coverage from spouse to former spouse, and the claimant did not submit a deemed election for former spouse SBP coverage. On February 21, 2019, the member passed away and the claimant submitted a claim for the SBP annuity.

DFAS subsequently denied the claimant's claim for a SBP annuity because the member did not establish former spouse SBP coverage for the claimant, nor did the claimant make a request for a deemed election. The claimant appealed DFAS's denial of her claim to DOHA. She stated that she believed her actions and the actions of her attorney throughout their appearances in court with the member constituted the request for a deemed election. In the appeal decision, the DOHA adjudicator upheld DFAS's denial of the claim for SBP. She explained that the member did not make an election to provide former spouse coverage for the claimant after the divorce and the claimant did request a deemed election after being awarded SBP coverage in the QDRO. She further advised the claimant that she may find relief outside the purview of DOHA with the Board for Correction of Naval Records (BCNR).

In her reconsideration request, the claimant states that she appreciates DOHA's thorough response to her appeal. She understands that DOHA does not have the authority to grant her request for the SBP annuity. She states that she wants to pursue the matter with the BCNR in order to correct the injustice caused by the member not following the QDRO. However, she requests that DOHA again review all documentation to ensure that there were no errors in the below considerations of her claim.

### **Discussion**

Claims against the government may be allowed only for expenses authorized by statute or regulation. *See* DOHA Claims Case No. 2018-CL-080201.2 (January 3, 2019).

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 (September 17, 2019). Spousal coverage ends upon divorce. However, a member may elect coverage for a former spouse. *See* 10 U.S.C. § 1448(b)(2)(B). Former spouse coverage may be required under the terms of a divorce decree. When a member elects former spouse SBP coverage, he must provide the Secretary concerned with a written statement setting forth whether the election is being made pursuant to a court order or to an agreement voluntarily entered into and incorporated in, ratified, or approved by court order. *See* 10 U.S.C. § 1448(b)(5). However, former spouse coverage can be established without the member's active participation. The former spouse may request a deemed election by providing the Secretary concerned with a written request and a copy of the court order requiring the SBP election. *See* 10 U.S.C.

§ 1450(f)(3)(A). The former spouse's request for a deemed election must be submitted to DFAS within one year of the date of the court order. *See* 10 U.S.C. § 1450(f)(3)(C).

In this case, the member was obligated based on the QDRO to cover the claimant as his former spouse under the SBP. However, the member failed to establish former spouse SBP coverage and the claimant did not file a timely deemed election. Therefore, DFAS properly denied the claim for the SBP annuity.

As explained by the DOHA adjudicator in the appeal decision, the claimant may have other available remedies that rest with the BCNR under 10 U.S.C. § 1552 and 10 U.S.C. § 1454. These remedies are outside DOHA's authority and any request for a correction of record needs to be pursued with the BCNR.

### **Conclusion**

The claimant's request for relief is denied, and we affirm the DOHA appeal decision dated September 8, 2020. 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

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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: Jennifer I. Goldstein

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Jennifer I. Goldstein  
Member, Claims Appeals Board