

DATE: March 16, 2021

In Re:)

[REDACTED])

Claimant)

) Claims Case No. 2020-CL-102001.3
)
)
)

**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. Payment of a claim may only be made for an expense authorized by statute or regulation. When the language of a statute is clear on its face, the plain meaning of the statute will be given effect, and that plain meaning cannot be altered or extended by administrative action.

DECISION

The claimant, the adult child 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-102001.2, dated February 16, 2021. In that decision, DOHA sustained the Defense Finance and Accounting Service's denial of the claim for the Survivor Benefit Plan (SBP) annuity of the deceased member.

Background

In 1946 the member married. On December 13, 1963, the claimant was born. On August 1, 1965, the member retired. The SBP law was enacted in 1972. On September 16, 1973, during an open season for members who retired prior to the enactment of SBP, the member elected SBP coverage for his spouse and child. The member paid SBP premiums for spouse and child coverage through June 1986. Effective July 1, 1986, his SBP coverage was changed from spouse and child to spouse only. The member paid SBP premiums for spouse coverage until October 1,

2008, when he reached paid-up status. On February 10, 2009, the member's spouse passed away. On March 28, 2018, the member passed away.

On August 9, 2018, the claimant filed a DD Form 2656, *Verification of Survivor Annuity*, claiming the SBP annuity as the dependent child of the member. The Defense Finance and Accounting Service (DFAS) denied the claim on the basis that the claimant did not qualify as a dependent child to receive the annuity because she was not: (1) under 18 years of age; (2) at least 18 but under 22 years of age, and pursuing a full-time course of study or training in a high school, trade school, technical or vocational institute junior college, college, university, or comparable recognized educational institution; or (3) incapable of self-support because of a mental or physical incapacity which existed before her 18th birthday or incurred on or after her 18th birthday, but before her 22nd birthday, while pursuing a full-time course of study or training. The claimant appealed DFAS's denial of her claim to DOHA, asserting that she was incapacitated, and since February 2014 had been deemed disabled by the Social Security Administration (SSA).

In the appeal decision, the DOHA adjudicator upheld DFAS's denial of the claimant's claim for the SBP, explaining that although she may have been deemed disabled by the SSA, she did not fit the definition of a dependent child as set forth under 10 U.S.C. § 1447(11).

In her reconsideration request, the claimant states that her father elected SBP coverage for her and continued to pay for coverage for 23 years. She states that she did attend an institution of higher learning until she turned 22 years old in 1985. She states that her father would not have made SBP premium payments for her coverage if it served no purpose other than to enrich the government. She believes that the government had a responsibility to advise her father that he was paying for coverage into the SBP that would not benefit his children as he intended. She requests that the SBP annuity be awarded to her; but argues in the alternative, that if denial of her claim for it is sustained, she be reimbursed for the amount her father paid in SBP premiums during the period 1985 to 2008.

Discussion

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for survivors of retired military members. Under 10 U.S.C. § 1447(11), payment of an annuity is authorized for the dependent children of participating service members when they die. Eligible dependent children are defined as including individuals more than 18 years old but incapable of supporting themselves because of a mental or physical incapacity existing before their eighteenth birthday. *See* 10 U.S.C. § 1447(11)(A)(ii). Under 10 U.S.C. § 1450(a)(2), the SBP annuity is payable to the member's dependent children when the member's surviving spouse is dead, dies, or otherwise becomes ineligible for the annuity.

In this case, the member elected coverage for his spouse and the claimant in 1973. In 1985 the claimant turned 22 years old. Effective July 1, 1986, the member ceased paying for child SBP coverage because the claimant aged out and had finished the school year at an institution of higher learning. Therefore, the claimant no longer qualified as an eligible SBP

beneficiary. The member continued to pay premiums for spouse SBP coverage until he reached paid up status effective October 2008. His spouse passed away in 2009, and he no longer had an eligible beneficiary for the SBP annuity.

As for claimant's request for reimbursement of the premiums her father paid from 1985 until 2008, there is no authority in statute or regulation for the retroactive payment of a member's properly paid SBP premiums for coverage of an eligible beneficiary upon his death. If the member had died when he had an eligible beneficiary, his beneficiary would have received the SBP annuity.

Conclusion

For the reasons stated above, the claimant's request for reconsideration is denied, and we affirm the appeal decision dated February 16, 2021. In accordance with Department of Defense Instruction 1340.21 ¶ E7.11, 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: Richard C. Ourand, Jr.

Richard C. Ourand, Jr.
Member, Claims Appeals Board