

DATE: May 26, 2021

---

In Re: )

[REDACTED] )

Claimant )

---

) Claims Case No. 2020-CL-120502.2  
)  
)

**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. The claimant must prove by clear and convincing evidence in the written record that the government is liable under the law for the amount claimed.

**DECISION**

The claimant, a former spouse of a deceased member of the U.S. Air Force, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2020-CL-120502, dated April 5, 2021.

**Background**

On October 26, 1992, the claimant and the member were married. In October 2007 the member elected spouse and child Survivor Benefit Plan (SBP) coverage for the claimant and his children. On January 1, 2008, the member retired from the Air Force. On October 31, 2016, the claimant and the member divorced. Pursuant to the divorce decree, the claimant was awarded 29.1% of the member's disposable retired pay under the Uniformed Services Former Spouses' Protection Act (USFSPA). The divorce decree also incorporated a prior agreement by the parties that stated, in pertinent part, the following:

The parties acknowledge that at the time of retirement Husband elected to take the Survivor Benefit Plan (SBP) Coverage for the Wife and that they agree that the same shall be continued in full force and effect.

On February 27, 2019, the member passed away. The claimant submitted a claim to the Defense Finance and Accounting Service (DFAS) for the SBP annuity as the member's former spouse. On April 9, 2019, DFAS denied her claim for the SBP annuity because the member did not elect former spouse SBP coverage for the claimant, nor did the claimant request a deemed election for SBP coverage within one year of the date of their divorce.

The claimant appealed DFAS's denial of her SBP claim to DOHA. In her appeal, she stated that she called DFAS in January 2017 to make sure she was still eligible to receive the SBP annuity, and was told that she was eligible and there was nothing else that she needed to do.

In the appeal decision, the DOHA adjudicator upheld DFAS's denial of her claim for the former spouse SBP annuity, finding no evidence that the member elected former spouse SBP coverage or the claimant requested a deemed election for SBP coverage within one year of the divorce. The adjudicator further advised the claimant that she may find relief outside the purview of DOHA by petitioning the Secretary concerned for a correction of military records under 10 U.S.C. § 1552 and 10 U.S.C. § 1454.

The claimant addresses her reconsideration request to the "Secretary." In her request, the claimant states that the divorce decree stated that her coverage would continue in the SBP. She states that the member told her he was not allowed to be involved in electing former spouse SBP coverage for her and that she should call DFAS to request it. She states that she filled out the requested forms and then followed up with a telephone call to DFAS to confirm her eligibility. When she called, she was told that everything was in order. She further states that she is disabled and really needs the annuity to survive. She also includes photographs of what appear to be her family with the member.

### **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).

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 claimant was covered under the SBP as the member's spouse beneficiary from the time he retired in 2008. Although the member may have intended that the claimant be covered as his former spouse under the SBP, as set forth in the divorce decree, he failed to establish former spouse SBP coverage within one year of their divorce. The claimant states that

she submitted the proper forms and then called DFAS in January 2017 to confirm her eligibility. However, there is no evidence in the written record that she made a request for former spouse SBP coverage within one year of her divorce. Therefore, DFAS properly denied the claim for the SBP annuity. *See* DOHA Claims Case No. 2019-CL-032007.2 (October 28, 2019).

As set forth above, DOHA has no authority under statute or regulation to allow the claim. However, as explained by the adjudicator in the appeal decision, the claimant may have other available remedies that rest with the Army Board for Correction of Military Records (ABCMR) 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 the record needs to be pursued with the ABCMR.

### **Conclusion**

The claimant's request for relief is denied, and we affirm the appeal decision dated April 5, 2021. 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: Charles C. Hale

---

Charles C. Hale  
Member, Claims Appeals Board

SIGNED: Richard C. Ourand, Jr

---

Richard C. Ourand, Jr  
Member, Claims Appeals Board