

DATE: May 28, 2021

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In Re: )  
[REDACTED] ) Claims Case No. 2020-CL-120504.2  
Claimant )  
)

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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Survivor Benefit Plan (SBP) coverage for a former spouse is terminated upon the former spouse's remarriage before the age of 55.

**DECISION**

The claimant, the 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-120504, dated April 5, 2021.

**Background**

The claimant was born on May 7, 1941, and the member was born on September 12, 1941. In December 1963 the member and the claimant were married. On March 6, 1992, they divorced. The divorce decree awarded the claimant former spouse SBP coverage. In March 1993 the member submitted an *Open Enrollment Election Certificate Reserve Component Survivor Benefit Plan*, DARP Form 3854, electing former spouse SBP coverage for the claimant based on his full retired pay under Option B. By choosing that option, the member elected to provide her with an annuity beginning on the 60<sup>th</sup> anniversary of his birth, should he die before that date, or beginning on the day after his death should he die on or after his 60<sup>th</sup> birthday.

On August 26, 1995, the member remarried. On December 21, 1995, the claimant remarried while she was 54 years old. On February 15, 2001, prior to turning 60 years old, the member completed the *Data for Payment of Retired Personnel*, DD Form 2656, electing again to

cover the claimant as his former spouse under the SBP. The member passed away on June 7, 2018.

Upon the member's death, the claimant claimed the former spouse SBP annuity. The Defense Finance and Accounting Service (DFAS) denied her claim on the basis that she had remarried prior to her 55<sup>th</sup> birthday. In the appeal decision, the DOHA adjudicator upheld DFAS's denial of the claim for the SBP annuity.

In her request for reconsideration, the claimant states that she was never provided any information about the rules qualifying her for receipt of SBP. She states that she remarried just five months prior to her 55<sup>th</sup> birthday, not knowing the existence of the rule. Had she known of the rule, she would have delayed her marriage date. She notes that former spouse SBP was awarded to her in the divorce in 1992 and the member continued to pay premiums for former spouse SBP coverage. She states that during her marriage to the member, she was devoted to their life together, supporting and following her husband's military career and lifestyle, while raising a family together. She requests that DOHA make an exception in her case and grant her the annuity.

### **Discussion**

Claims against the government may be allowed only for expenses authorized by statute or regulation. *See* DOHA Claims Case No. 2019-CL-032007.2 (October 28, 2019).

The SBP, 10 U.S.C. §§ 1447-1455, was established by Congress in 1972 as an income maintenance program for survivors of deceased members of the uniformed services. Under 10 U.S.C. §1450(b), an annuity payable to the beneficiary terminates effective the first day of the month in which eligibility is lost. Section 1450(b) also provides that an annuity for a former spouse shall be paid to the former spouse while she is living or, if the former spouse remarries before reaching age 55, until the former spouse remarries. Therefore, remarriage prior to age 55 renders the former spouse ineligible for the SBP annuity.<sup>1</sup> Section 1450(b) further provides for the resumption of the SBP annuity if the subsequent marriage is terminated by death, annulment or divorce. If the subsequent marriage is terminated, then the payment of the annuity is resumed effective the first day of the month in which the marriage is so terminated.

In this case, the claimant remarried in December 1995 prior to reaching age 55. Therefore, the claimant ceased being an eligible beneficiary under SBP. While it is regrettable that the claimant was not aware of the impact of remarrying before age 55, due to the applicable provision of law, we have no authority to award the claimant the SBP annuity. Although the claimant states that she had always believed that she was covered under the SBP, lack of

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<sup>1</sup>Prior to the National Defense Authorization Act (NDAA) for Fiscal Year 1987, a SBP beneficiary who remarried before age 60 lost eligibility to the SBP annuity. In 1987 Congress lowered, from 60 to 55, the age at which the former spouse could remarry without losing eligibility to the SBP annuity. *See* Pub. L. No. 99-661, 100 Stat. 3816 (1986). The purpose of this amendment was to provide "military surviving spouses . . . the same considerations as civil service surviving spouses." *See* H.R. REP. NO. 99-718, at 211 (1986).

knowledge of a statute or regulation does not establish a claim. *See* DOHA Claims Case No. 2017-CL-081404.2 (March 1, 2018).

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. Under those statutes, the Secretary of a military department, acting through a correction board, may correct a member's record when the Secretary considers it necessary to correct an error or remove an injustice. *See* DOHA Claims Case No. 2021-CL-082003.2 (April 24, 2013).

### **Conclusion**

For the reasons stated above, the claimant's request for reconsideration is denied. In accordance with 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: Richard C. Ourand, Jr

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Richard C. Ourand, Jr  
Member, Claims Appeals Board