

DATE: June 21, 2021

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In Re: )

[REDACTED] )

) Claims Case No. 2020-CL-120203.2

Claimant )

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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Pursuant to a divorce decree, a member was required to provide his former spouse with a Survivor Benefit Plan (SBP) annuity. Although the member failed to make an election for his former spouse, she made a timely request for a deemed election for former spouse SBP coverage. Therefore, his surviving spouse's claim for the SBP annuity must be denied.

**DECISION**

The surviving spouse (hereinafter claimant) of a deceased 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-120203, dated March 31, 2021. In that case, DOHA denied the claimant's claim for the member's SBP annuity because his former spouse made a timely and proper deemed election.

**Background**

On September 1, 1997, the member retired from the Army. At that time, he was married and elected SBP spouse only coverage. On May 28, 1999, the member divorced. Pursuant to the divorce decree, the member's former spouse was entitled to receive 47.5% of the member's disposable retired pay, and the member was required to provide her with an SBP annuity. In a memorandum dated October 20, 1999, a DFAS Paralegal Specialist acknowledged receipt of the divorce decree awarding SBP coverage to the member's former spouse and recorded the former spouse as the member's SBP beneficiary. By letter dated May 9, 2000, that same DFAS Paralegal Specialist wrote to the member acknowledging receipt of his former spouse's

application for a portion of the member's retired pay under the Uniformed Services Former Spouses' Protection Act (USFSPA). On January 20, 2000, the member married the claimant. The record further reflects that by letter dated April 10, 2000, the former spouse's attorney submitted a deemed election request, attaching a copy of the certified divorce decree, to DFAS's Retired Pay Office in Cleveland, Ohio. In late 2001 the member sought to have the claimant named as his spouse SBP beneficiary. He sent DFAS a handwritten letter dated December 27, 2001, enclosing his Retiree Account Statement (RAS) effective December 5, 2001, for his monthly retired pay account for January 2002. His RAS reflected his former spouse's portion of his monthly disposable retired pay under the USFSPA, but it did not reflect her as his SBP beneficiary, nor did it reflect that SBP premiums were being withheld from the member's retired pay for coverage. His RAS stated that no SBP election was reflected on his account. The member wrote on the copy of his RAS that DFAS should send him an updated RAS reflecting his requested changes. He also requested that his allotment for his retired dental plan insurance cease and his allotment for his mortgage payment increase. Finally, he requested that his designation for arrears for retired pay (AOP) beneficiary be changed from his former spouse to his current spouse, the claimant. On May 21, 2001, DFAS wrote to the member acknowledging that he had submitted a form for the designation of his AOP beneficiary, but the witness signature was missing on it. DFAS explained that the witness signature was required and could not be the member's AOP beneficiary.

On February 18, 2020, the member passed away. On June 3, 2020, the claimant filed a DD Form 2656-7, *Verification for Survivor Annuity*, claiming the SBP annuity as the spouse of the member. On June 16 2020, DFAS denied the claim on the basis that the member's former spouse requested a timely deemed election and was entitled to the SBP annuity. The claimant appealed DFAS's denial of her claims to DOHA.

In the appeal decision, the DOHA attorney examiner upheld DFAS's denial of the SBP annuity claim. He found that the error on the member's RAS reflecting no SBP coverage on the member's retired pay account could not effectuate the establishment of an SBP annuity for the surviving spouse.

In her request for reconsideration, the claimant states that after their marriage, her husband immediately requested SBP coverage for her. She requests that her husband's designation of her as his SBP beneficiary be honored by the Department of Defense. She states that in the appeal decision the DOHA attorney examiner stated that DFAS acknowledged numerous administrative mistakes on its part in administering the member's retired pay account. She states that when her husband received a response from DFAS dated May 21, 2001, requesting that he send a new form designating his beneficiary for AOP to DFAS with a witness signature, he immediately complied. She also points out that she meets the definition of widow for the purposes of receiving the SBP annuity under 10 U.S.C. § 1447(9). She states that she is the surviving spouse of a member who, if not married to the person at the time he became eligible for retired pay, was married to him for at least one year immediately before his death.

## Discussion

Claims against the government may be allowed only for expenses authorized by statute or regulation. *See* DOHA Claims Case No.2018-CL-080208.2 (August 29, 2019); and DOHA Claims Case No 2017-CL-041103.2 (August 31, 2017). Regulations that are promulgated pursuant to an express statutory authority have the force and effect of law, and our Office cannot issue a determination at variance with such regulations. *See* DOHA Claims Case No. 2011-CL-101402.2 (February 9, 2012).

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for survivors of retired military members. A member may elect coverage for a former spouse. *See* 10 U.S.C. § 1448(b)(3). Spousal coverage ends upon divorce. If a member divorces and wishes to provide SBP coverage to his former spouse, he must notify DFAS in writing. If the member is required under the terms of a divorce decree to provide SBP coverage to his former spouse and fails or refuses to do so, the former spouse has one year from the date of the divorce to request a deemed election pursuant to 10 U.S.C. § 1450(f)(3).

In this case, the member's former spouse was automatically covered under SBP as the member's spouse beneficiary from the time he retired in 1997 until such coverage ended with their divorce in May 1999. The divorce decree awarded the former spouse a portion of the member's disposable retired pay and designated her as the beneficiary of the member's SBP. The former spouse timely submitted her request for a deemed election to DFAS. If the member has a spouse or child, a former spouse election prevents an annuity to that spouse or child (other than the child beneficiary under an election for a former spouse and child). *See* Department of Defense Financial Management Regulation (DoDFMR) Volume 7B, Chapter 43, paragraph 430503 (September 1999 version).

While DOHA appreciates the fact that the member attempted to cover the claimant as his spouse SBP beneficiary, he was prohibited by law to do so. The member's former spouse had timely deemed the election. Therefore, the member had no right to request SBP coverage for his new spouse. DFAS and DOHA properly denied the claim.

## Conclusion

The claimant's request for relief is denied and we affirm the appeal decision dated March 31, 2021. 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: Richard C. Ourand, Jr

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Richard C. Ourand, Jr  
Member, Claims Appeals Board

SIGNED: Jennifer I. Goldstein

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Jennifer I. Goldstein  
Member, Claims Appeals Board