

DATE: June 28, 2021

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In Re: )  
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[REDACTED] ) Claims Case No. 2021-CL-031602.2  
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Claimant )  
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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**

A 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. 2021-CL-031602, dated April 12, 2021. In that decision, DOHA upheld the Defense Finance and Accounting Service's (DFAS's) denial of the member's request to cover his spouse as his beneficiary under the Survivor Benefit Plan (SBP).

**Background**

The member retired from the Army in January 2010. Prior to his retirement, on December 16, 2009, the member submitted a DD Form 2656, *Data for Payment of Retired Pay*, noting that he was not married and had no dependent children. Therefore, he elected not to participate in SBP. On August 18, 2017, the member married. On June 15, 2020, the member notified DFAS of his marriage and requested SBP coverage for his spouse. On August 14, 2020, the member submitted a DD Form 2656-6, *Survivor Benefit Plan Election Change Certificate*, electing SBP coverage for his spouse.

On September 19, 2020, DFAS notified the member that he could not add his spouse as his SBP beneficiary because more than one year had passed since the date of his marriage. The member appealed DFAS's denial of his request to DOHA. In the appeal decision, the DOHA attorney examiner upheld DFAS's denial of the member's request to cover his spouse under SBP. The attorney examiner explained that under statute and regulation, DOHA had no authority to allow the SBP coverage. However, he advised the member that he may find other available relief outside the purview of the DOHA by petitioning the Army Board for Correction of Military Records (ABCMR) under 10 U.S.C. § 1552.

In the member's reconsideration request, he states that due to the errors of a failed mailing system and lack of proper information from DFAS and the Department of Veterans Affairs (VA), he was not able to file his request to cover his spouse under the SBP within the time limits. He explains that his wife could not legally stay in the United States until her immigration papers were completed and she received her green card. During the immigration process, the member was going back and forth with DFAS and the VA to obtain the necessary documentation to use to have her established as his dependent. He states that he timely submitted the documents both agencies were requesting, confirming updates as his wife's immigration status changed. In this regard, he states that after his marriage in August 2017, he immediately made copies of the marriage certificate and mailed it to DFAS and the VA. His wife returned to Belize where she was working as a teacher. Despite all his efforts to comply with the documentation DFAS requested, he states that DFAS continued to deny his request to add his wife as his dependent. It was not until 2020 when DFAS told him that his wife had to have a valid social security card in order to be accepted as his dependent. He therefore requests relief from the ABCMR under 10 U.S.C. § 1552, by correcting the error. He also states that he has two children who have not yet received their social security cards and questions whether or not their dependency status can be established without them.

### **Discussion**

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for survivors of retired military members. A married member or a member with a dependent child may elect to participate in SBP when he becomes eligible for retired pay. *See* 10 U.S.C. § 1448(a)(2)(A). A member who is not married upon becoming eligible to participate in the plan but who later marries may elect to establish coverage for his spouse pursuant to 10 U.S.C. § 1448(a)(5). That section requires a written election, signed by the member, and received by the Secretary concerned within one year of the marriage. *See* DOHA Claims Case No. 2019-CL-031402.2 (September 24, 2019); and Comptroller General decisions B-258328, Feb. 15, 1995, and B-203903, Feb. 11, 1985. The Service Secretaries have delegated their authority under the SBP law to DFAS.

The Secretary of Defense has issued implementing regulations under the authority of 10 U.S.C. § 1455. The Department of Defense Financial Management Regulation (DoDFMR), volume 7B, chapter 43, contains the regulations concerning member SBP elections. Paragraph 430601 states that a member who had no eligible beneficiaries at retirement and acquires a new spouse after retirement must make an election within one year of the marriage. Under paragraph 4305, the DD Form 2656-6, *Survivor Benefit Plan Change Election Certificate*, is recommended

for a member making such an election to provide SBP coverage for the first spouse acquired after retirement. However, if not using that form, the member's election must be in writing, signed by the member and contain all necessary information for establishing the coverage. Under paragraph 360606, the Secretary concerned (or designee) may correct any election or any change or revocation of an election when the Secretary considers it necessary to correct an administrative error. *See also* Department of Defense Instruction (DoDI) 1332.42, *Survivor Benefit Plan* (December 30, 2020).

In this case, when the member retired in 2010 he had no eligible spouse beneficiary. Therefore, he had a year from the date of his marriage in August 2017 to designate his spouse as his SBP beneficiary. Since he failed to make the election within one year of the date of his marriage, DFAS properly denied his request to cover his spouse as his SBP beneficiary. Although the member states that he was in constant contact with DFAS and the VA in order to provide them with the necessary documentation to establish his spouse as his dependent, he did not make a written request of his election for SBP coverage for her until August 2020. In addition, a member's request to have his spouse added as his dependent for the purpose of obtaining a military ID card for her and enrolling her into the Defense Eligibility Enrollment Reporting System (DEERS), is a completely separate request from electing SBP coverage for her. *See generally* DOHA Claims Case No. 2018-CL-011903.2 (June 27, 2019); DOHA Claims Case No. 07030508 (March 13, 2007); and DOHA Claims Case No. 02120406 (December 19, 2002). As for the member's question concerning SBP coverage for his children, a member who did not have an eligible child beneficiary at the time of retirement, may elect coverage for a later acquired child within the one-year period after acquiring that child. *See* 10 U.S.C. § 1448(a)(5).

The member cites various misinformation provided to him by DFAS and the VA that led to his untimely request for SBP coverage for his spouse. As explained by the attorney examiner in the appeal decision, DOHA is bound by statute and regulation, and therefore, is unable to grant the SBP coverage for the member's spouse. However, he may have other available remedies that exist outside DOHA's authority. Under 10 U.S.C § 1454(a), the Secretary concerned may correct or revoke any election under this subchapter when the Secretary considers it necessary to correct an administrative error. Further, 10 U.S.C. § 1552(a)(1) states that the Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice. Either type of action is made through a civilian board, in this case the ABCMR. Information on petitioning the ABCMR is found online at: <https://arba.army.pentagon.mil/abcmr-overview.html>.

## Conclusion

The member's request for reconsideration is denied, and we affirm the appeal decision in DOHA Claim No. 2021-CL-031602, dated April 12, 2021. In accordance with DoD Instruction 1340.21 (May 12, 2004) ¶ 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