

DATE: June 30, 2021

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In Re: )

[REDACTED] )

) Claims Case No. 2021-CL-021205.2

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**

The claimant, a former spouse 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. 2021-CL-021205, dated May 4, 2021.

**Background**

The member was born on December 20, 1949, and the claimant was born on January 22, 1953. On November 11, 1972, the member and the claimant were married. On October 25, 1999, in preparation for his retirement, the member elected spouse only Survivor Benefit Plan (SBP) coverage for the claimant. On November 1, 1999, the member retired from the Navy. In June 2001 the member and the claimant divorced. On June 26, 2001, pursuant to a modification to the final judgment of divorce dated June 5, 2001, the claimant was awarded a portion of the member's monthly disposable retired pay under the Uniformed Services Former Spouses' Protection Act (USFSPA). The modification of the final judgment did not award former spouse SBP coverage. However, the modification did incorporate a prior marital settlement agreement entered into by the parties on September 20, 2000, but there is no record of that agreement in the file.

On October 1, 2018, the member passed away. The claimant subsequently claimed the SBP annuity as the member's former spouse. The Defense Finance and Accounting Service

denied her claim on the basis that the member did not establish former spouse SBP coverage for the claimant, nor did the claimant make a request for a former spouse deemed election.

The claimant appealed DFAS's denial of her claim. In the DOHA appeal decision, the attorney examiner upheld DFAS's denial of the claim for the SBP annuity. He explained that an election for former spouse SBP coverage, whether voluntary, ordered, or deemed, had to have been received by DFAS within one year of the date of the divorce.

In her request for reconsideration, the claimant points out that the DOHA appeal decision incorrectly stated the member's birthdate. She states that his birthdate was listed as her birthdate. She states that it is clear from the decision that the Department of Defense does not inform the member or the member's former spouse of the requirements for changing spouse SBP coverage to former spouse SBP coverage. She states that she was married to the member for 28 years and raised two sons by herself while her husband was deployed. She believes that the DFAS has no respect for military spouses.

### **Discussion**

Claims against the government may be allowed only for expenses authorized by statute or regulation. *See* DOHA Claims Case No. 2020-CL-062903.2 (February 25, 2021). Therefore, DOHA must render decisions based on applicable statutes, regulations and our prior administrative decisions.

The SBP, set out in 10 U.S.C. §§ 1447-1455, is an income maintenance program for the survivors of deceased members of the uniformed services. Spousal coverage ends upon divorce. If a member divorces and wishes to provide SBP coverage for the former spouse, the member must notify DFAS in writing of the divorce and the intention to provide coverage for the 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). In addition, a member may be required under the terms of a divorce decree to provide SBP coverage to the former spouse. If the member 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, there is nothing in the record reflecting that the claimant was awarded former spouse SBP coverage in the divorce decree. But even if the claimant was awarded it, there is no evidence that she requested a deemed election within one year of the date of the divorce. Further, the member did not elect former spouse SBP coverage for the claimant within one year of the divorce. Therefore, DFAS properly denied the claim for the SBP annuity.

## Conclusion

The claimant's request for relief is denied and we uphold the DOHA appeal decision in DOHA Claims Case No. 2021-CL-021205, dated May 4, 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: 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