

DATE: September 21, 2021

In Re:)

[REDACTED])

Claimant)

) Claims Case No. 2020-CL-052603.2
)
)

**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, on the written record that the United States is liable to the claimant for the amount claimed.

DECISION

The claimant, a surviving spouse of a deceased retired 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-052603, dated June 28, 2021.

Background

In 1979 the member was married. When the member retired from the Air Force in 1991, he elected spouse and child Survivor Benefit Plan (SBP) coverage. In 2004 the member and his spouse divorced. On January 11, 2018, the claimant and the member were married in Georgia. On January 20, 2018, the member wrote to the Defense Finance and Accounting Service (DFAS) from his home address in Georgia, requesting that the claimant be covered as his new spouse under the SBP. In his letter to DFAS, he attached a copy of his marriage certificate dated January 11, 2018. On August 29, 2018, the member passed away in Georgia. On November 18, 2019, the claimant submitted a DD Form 2656-7, *Verification of Survivor Annuity*, applying for the member's SBP annuity as his surviving spouse. On that form, she listed her correspondence address as one in Georgia, certified that she was legally married to the member on the date of his

death, and listed their marriage date as January 11, 2018. On December 26, 2019, DFAS denied her claim for the SBP annuity as the member's surviving spouse because she was not married to the member for at least one year before his death.

By letter dated March 12, 2020, the claimant's U.S. Senator from Georgia submitted more documentation to DFAS on the claimant's behalf in regards to her claim for the SBP annuity. That submission contained claimant's letter to her senator stating that she and the member were blessed as a committed couple in their church in a 2013 service, but that they did not get married until January 2018. She stated that she and the member lived together as husband and wife from 2013 until his death. She attached the church bulletin that reflects that on July 21, 2013, she and the member participated in a "Blessing of Relationship" ceremony in Georgia. She also attached a letter from the reverend who officiated the ceremony. In his letter, the reverend states that although the ceremony was not a traditional wedding service, it was taken seriously by the parties and the congregation. He also stated that the claimant and the member lived near the church and he knew them to be lovingly committed to each other, as any husband and wife might be.

On March 23, 2020, DFAS issued an administrative report upholding the original denial of the SBP annuity claim on the basis that the claimant and the member were not married for one full year prior to the member's death as required by 10 U.S.C. § 1447(7). On July 13, 2020, DFAS forwarded the claimant's appeal package to DOHA for action.

In the appeal decision, the DOHA attorney examiner upheld DFAS's denial of the claim. He acknowledged that while the claimant, the member and their church treated the ceremony in July 2013 seriously, it is not considered a traditional marriage ceremony by the state of Georgia. Therefore, he found under statute and regulation, that the SBP claim was not payable because the claimant had not been married to the member for a year prior to his death.

In her request for reconsideration, the claimant states that she believes the Department of Defense is still using the wrong date of her marriage to the member. She states that she has made every effort to provide documentation that she and the member were in a common-law marriage in Texas. She states that they lived together in Texas as husband and wife, and presented themselves to others as such. She asserts that she and the member were married for five years prior to his death. She attached a section of the U.S. Code of Federal Regulations (CFR), as well as a section of the Texas Family Code.

Discussion

Under 31 U.S.C § 3702(a), DOHA has the authority to consider appeals of denials of military member pay and allowances claims, including retired pay and survivor benefits claims, such as the claim for the SBP annuity in this instance. The implementing regulation for 31 U.S.C. § 3702(a), is Department of Defense Instruction 1340.21 (May 12, 2004). Under Instruction ¶ E5.7, the claimant must prove, by clear and convincing evidence on the written record that the United States is liable to the claimant for the amount claimed; all relevant evidence to prove the claim should be presented when a claim is first submitted; and in the

absence of compelling circumstances, evidence that is presented at later stages of the administrative process will not be considered. When considering an appeal, DOHA must base its decision on the written record, including the recommendation and administrative report and any rebuttal by the claimant. *See* Instruction ¶ E7.9.

The fundamental rule in adjudicating a claim is that payment may be made only for an expense authorized by statute or regulation. Moreover, it is a rule of statutory construction that when the language of a statute is clear on its face, the plain meaning of the statute will be given effect, and that plain meaning cannot be altered or extended by administrative action. *See* DOHA Claims Case No. 2012-CL-061105.2 (September 27, 2012).

The SBP program, 10 U.S.C. §§ 1447-1455, was established in 1972 as an income maintenance program for the dependents of deceased members of the uniformed services. Under the SBP, participating members contribute a portion of their retired pay to fund annuity payments for their designated beneficiaries. Participation in the SBP is automatic for members who are married or have dependent children when they become eligible to participate in SBP, *i.e.*, when they become eligible for retired pay. *See* 10 U.S.C. § 1448(a)(1) and (a)(2). Once a member has made an election to participate in SBP, participation is irrevocable and cannot be waived by the member. *See* 10 U.S.C. § 1448 (a)(4). If the member ceases to have an eligible spouse beneficiary and later remarries, he may decline coverage for the subsequent spouse if he does so within the first year of marriage. *See* 10 U.S.C. § 1448(a)(6). The Service Secretaries have delegated their authority under the SBP law to DFAS.

Under U.S.C. § 1450(a)(1), a spousal annuity is to be paid to a member's widow as defined in 10 U.S.C. § 1447(7). Section 1447(7) states:

(7) Widow.- - The term "widow" means the surviving wife of a person who, if not married to the person at the time he became eligible for retired pay- -

(A) was married to him for at least one year immediately before his death; or

(B) is the mother of issue by that marriage.

The claimant was not married to the member at the time he retired from the Air Force in 1991, and no issue was born of their marriage. They were married on January 11, 2018, and the member died on August 29, 2018, less than one year after their marriage.

The claimant now asserts that she and the member were married over the one-year statutory limitation under the common law of the state of Texas. The Secretary of Defense has issued implementing regulations under the authority of 10 U.S.C. § 1455, regarding this matter. The Department of Defense Financial Management Regulation (DoDFMR), volume 7B, chapter 44, paragraph 440201, *Spouse (Including the Spouse of a Common-Law Marriage)*, states that the spouse of member who marries a member after retirement becomes eligible upon the first anniversary of the marriage. Common-law marriage is defined in volume 7B as "a marriage recognized by state law that is not solemnized by religious or civil ceremony as defined in

pertinent state law.” See DoDFMR, volume 7B, *Definitions*. As set forth above, all record evidence reflects the claimant and the member’s ties to Georgia. There is no evidence reflecting the couple’s ties to Texas. They lived together in Georgia. The couple participated in a blessing of their relationship in 2013 in their church in Georgia, where they lived near. They married in 2018 in Georgia. In January 2018 the member wrote to DFAS from his address in Georgia updating his SBP account. The member passed away in 2019 in Georgia. Although the claimant and member may have held themselves out together as husband and wife prior to their marriage at least five years prior to their marriage in 2018 in Georgia, effective January 1, 1997, no common-law marriage may be entered into in the state of Georgia. See *Franklin v. Franklin*, 558 S.E.2d 738, 739. Other than her bare averment, the claimant failed to establish any record evidence of residency in Texas. Therefore, DOHA is bound by statute and regulation, and is unable to allow the claim for the SBP annuity.

Conclusion

The claimant’s request for reconsideration is denied, and we affirm the appeal decision dated June 28, 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

Catherine M. Engstrom
Chairman, Claims Appeals Board

SIGNED: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board

SIGNED: Jennifer I. Goldstein

Jennifer I. Goldstein
Member, Claims Appeals Board