

DATE: September 21, 2021

In Re:)

[REDACTED])

) Claims Case No. 2020-CL-123104.2

Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A Survivor Benefit Plan (SBP) beneficiary's remarriage prior to age 55, renders the beneficiary ineligible for the SBP annuity.

DECISION

The claimant, a former spouse 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-123104, dated July 19, 2021.

Background

The claimant was born on September 6, 1945. In 1967 the claimant and the member were married. On October 1, 1970, the member was placed on the temporary disability retired list. On November 9, 1972, he completed the *Survivor Benefit Plan Election Certificate – By Existing Retiree*, USAFSA Form 2621, and elected spouse only Survivor Benefit Plan (SBP) coverage for the claimant. Effective June 1, 1975, the member was placed on the permanent disability retired list. The claimant and the member divorced in 1988. On November 21, 1988, the claimant remarried while she was 43 years old.

The record reflects that on April 16, 1991, the Army Office of Retirement Services Survivor Benefit Plan Board met and determined that an administrative correction was appropriate in the member's SBP election. The Board approved the enrollment into the SBP for the claimant as the member's former spouse.

The member passed away on April 1, 2019. Upon the member's death, the claimant claimed the SBP annuity as his former spouse. DFAS denied her claim on the basis that she had married prior to her 55th birthday. In the appeal decision, the DOHA adjudicator upheld DFAS's denial of her claim for the SBP annuity. The adjudicator explained that under 10 U.S.C. § 1450(b), a former spouse's remarriage prior to age 55 renders the former spouse ineligible for the SBP annuity. She further explained that although DOHA had no authority to allow the claim for the SBP annuity under the law, the claimant may pursue relief outside of DOHA under 10 U.S.C. § 1552, with the Army Board for Correction of Military Records (ABCMR).

In her request for reconsideration, the claimant states that she married the member in 1967 before he went to Vietnam. She states that for his tour of duty he received various medals and commendations. However, upon his return from the war it was discovered that he kidneys were failing. She states that he told her that he was exposed to Agent Orange. She stayed with her husband for 20 years through his sickness and transplants. She completed all his paperwork, fought for his social security benefits, all the while raising their two small children. She states that she continued to care for him after he received a kidney transplant. She put herself through college while her children were in school, and she finally earned her degree even though it was extremely difficult given she was raising her children and taking care of the member at the same time. When they finally got divorced, the only thing she asked of the member was for him to continue to pay for her coverage under the SBP. She states that the member then stopped making payments for her coverage, so she sent the court order and necessary documentation to the Army, and was subsequently granted the former spouse SBP coverage. She further states that the whole time she was corresponding with the Army concerning her coverage, she was never advised of the existence of the rule concerning marrying before the age of 55. She requests that she be granted the SBP annuity.

Discussion

Claims against the government may be allowed only for expenses authorized by statute or regulation. *See* DOHA Claims Case No. 2020-CL-120504.2 (May 28, 2021).

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.¹ Section 1450(b) further provides for the resumption of the SBP annuity if the subsequent marriage is terminated by death, annulment

¹Prior 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).

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.²

In this case, the claimant remarried in 1988 prior to reaching age 55. Therefore, the claimant ceased being an eligible beneficiary under SBP. *See* 10 U.S.C. §1450(b). 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.

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

Catherine M. Engstrom
Chairman, Claims Appeals Board

SIGNED: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board

SIGNED: Richard C. Ourand, Jr

Richard C. Ourand, Jr
Member, Claims Appeals Board

²The implementing regulations for 10 U.S.C. § 1450(b) are found in Chapter 46 of Volume 7B of the Department of Defense Financial Management Regulation (DoDFMR). Under DoDFMR ¶ 461101, a former spouse's SBP annuity is reinstated effective the first day of the month in which the death occurs or the marriage terminates by divorce or annulment.