

DATE: August 31, 2021

---

In Re: )

[REDACTED] )

) Claims Case No. 2020-CL-123106.2

Claimant )

---

**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. Army, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2020-CL-123106, dated June 1, 2021.

**Background**

In 1983 the claimant and the member were married. In 1997 the member received his Notice of Eligibility (NOE) for retired pay at age 60, notifying him that he was eligible to make an election under the Reserve Component Survivor Benefit Plan (SBP). The Reserve Component SBP extends eligibility for SBP to Reserve Component members who would otherwise be eligible to receive retired pay except that they have not reached the required retirement age of 60. On June 11, 1997, the member completed the DD Form 1883, *Survivor Benefit Plan Election Certificate*, electing Option C, to provide immediate spouse SBP coverage for the claimant. The member also indicated that he had no dependent children. On January 18, 2006, the member submitted a DD Form 2656, *Data for Payment of Retired Personnel*, electing spouse only coverage for the claimant. He again indicated that he did not have dependent children. He also designated the claimant as his beneficiary to receive 100% of any unpaid retired pay upon his death, commonly known as arrears of pay (AOP). On July 24, 2007, the member retired for the Army and began receiving retired pay. On July 21, 2010, the claimant and the member divorced. The Defense Finance and Accounting Service (DFAS) has no record

of the member requesting former spouse SBP coverage for the claimant, nor of the claimant requesting a deemed election for former spouse SBP coverage within one year of their divorce.

On November 12, 2019, the member passed away. On December 3, 2019, the claimant submitted to DFAS a DD Form 2656-7, *Verification for Survivor Annuity*, claiming the SBP annuity as the member's former spouse. On December 12, 2019, DFAS 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. She attached her divorce decree, and stated that she believed her divorce decree was a legally binding document and she did not know there was an obligation to change from spouse SBP coverage to former spouse SBP coverage. The divorce decree she submitted referenced an equitable agreement reached by the claimant and the member concerning division of their assets, debt and spousal support, but was not provided with the claimant's appeal. She stated that pursuant to their divorce, the member agreed to pay her \$1,020.00 per month until his death and upon his death, she would receive 55% of his SBP base annuity, calculated to be \$1,363.79 per month. She stated that she was married to the member for 27 years, they remained extremely close (so close that the member continued to refer to her as his spouse) and she never remarried. She stated that the member called DFAS in February 2018 to clarify how much she would receive when he passed away and DFAS advised him that she would receive approximately \$1,517.00 per month. She stated that when the member was getting his affairs in order in September 2019, he contacted the Department of Veterans Affairs (VA), and he verified that upon his death she would receive the SBP annuity. She attached two of the member's Retiree Account Statements (RASs), one dated 2016 and the other 2018, each reflecting that the member continued to pay spouse SBP coverage for her, since under his spouse's birth date the RASs listed her birth date. She stated that the member assured her that he had handled all the necessary paperwork in order for her to receive the SBP annuity.

In the DOHA appeal decision, the adjudicator upheld DFAS's denial of the claim for the SBP annuity. She found no evidence that the member notified DFAS within one year of their divorce to change the SBP coverage from spouse to former spouse. She also explained that although the claimant stated the divorce decree awarded her the SBP annuity, DOHA was not provided with a copy of the parties' agreement entered into regarding division of their assets. She noted that the divorce decree itself was silent on the award of SBP. However, she stated that even if the claimant was awarded SBP coverage in the divorce proceeding, there was no record of the claimant requesting a deemed election for former spouse SBP coverage within one year of the divorce.

In her request for reconsideration, the claimant includes a full copy of her divorce decree including their agreement on the division of assets. She also submits the member's last will and testament dated July 6, 2018, in which the member appointed her as his personal representative and bequeathed all his property to her.

## Discussion

Claims against the government may be allowed only for expenses authorized by statute or regulation. *See* DOHA Claims Case No. 2019-CL-032007.2 (October 28, 2019). Therefore, DOHA must render decisions based on applicable statutes, regulations and our prior administrative decisions.

SBP is an income maintenance program for the survivors of deceased members of the uniformed services. *See* 10 U.S.C. §§ 1447-1455. 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, the claimant was covered as the member's spouse SBP beneficiary from the time he elected Option C coverage for her in 1997 until 2010 when their divorce ended the coverage. We note that the division of assets incorporated into the divorce decree awards the claimant 25% of the member's monthly disposable military retired pay and grants her former spouse SBP coverage. It states the claimant is entitled as the member's former spouse to 55% of his annuity base amount upon his death. However, there is no evidence that either the member or the claimant requested former spouse SBP coverage within one year of their divorce.

We also note that the member's RASs for 2016 and 2018 reflect that he continued to pay spouse SBP coverage for the claimant. The claimant's birth date is listed as the member's spouse's birth date on the RASs. Both RASs reflect a deduction for payment of spouse SBP premiums from the member's monthly retired pay. In addition, the 2018 RAS advised the member of the following:

The annuity payable is 55% of your annuity base amount which is \$1,517.46.  
You have paid 125 months toward your 360 months of paid up RC/SBP coverage.  
Since you have already reached age 70, once you have paid 360 months toward your coverage, your costs will be terminated but your coverage will remain active.

Although the record evidence reflects that the member intended that his former spouse be covered under the SBP, and that she be paid the SBP annuity upon his death, he failed to establish former spouse SBP coverage within one year of their divorce. Under applicable statute and regulation, DFAS properly denied the claim for the SBP annuity. *See* DOHA Claims Case No. 2019-CL-060401.2 (December 7, 2020); and DOHA Claims Case No. 2019-CL-032007.2, *supra*.

As set forth above, DOHA has no authority under the SBP law to award the claimant the SBP annuity. However, the claimant may find relief outside the purview of

DOHA by petitioning for a correction of military record under 10 U.S.C. § 1552. Under that statute, the Secretary of a military department, acting through a correction board, may correct a member's record when the Secretary, in this case, the Secretary of the Army, considers it necessary to correct an error or remove an injustice. If the claimant wishes to petition for a correction of record, she should submit her request to the Army Board for Correction of Military Records (ABCMR). Information for submitting such a petition can be found on the ABCMR's website at:

<https://arba.army.pentagon.mil/abcmr-overview.html>

Finally, we do note that since SBP premiums for spouse coverage were deducted from the member's retired pay when he no longer had an eligible spouse beneficiary, those costs should be refunded to the proper beneficiary as AOP under 10 U.S.C. § 2771. In addition, if the claimant was receiving a portion of the member's monthly disposable retired pay by direct payment under the Uniformed Services Former Spouses' Protection Act (USFSPA), she may have a claim for any resulting underpayment of her share of the member's monthly disposable retired pay.

### **Conclusion**

The claimant's request for reconsideration is denied and we uphold the DOHA appeal decision dated June 1, 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

---

Catherine M. Engstrom  
Chairman, Claims Appeals Board

SIGNED: Richard C. Ourand, Jr

---

Richard C. Ourand, Jr  
Member, Claims Appeals Board

SIGNED: Jennifer I. Goldstein

---

Jennifer I. Goldstein  
Member, Claims Appeals Board