

DATE: October 25, 2021

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In Re: )  
          [REDACTED] ) Claims Case No. 2020-CL-123109.2  
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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**

The claimant, the surviving 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. 2020-CL-123109, dated July 1, 2021.

**Background**

The member was born in 1932. The record reflects that his pay entry base date (PEBD) was June 3, 1954. On June 5, 1971, the member and claimant married. On November 16, 1972, the member and the claimant's son was born in New York City. On November 9, 1989, the member completed the *Reserve Component – Survivor Benefit Plan Option – Election Certificate (RC-SBP)*, NRPC 1772/3, electing child only Survivor Benefit Plan (SBP) coverage. He noted that he married the claimant on June 5, 1971. The claimant signed that form acknowledging the member's election and giving her spousal concurrence. On November 2, 1991, the claimant and the member married again. The member retired in April 1992, and child only SBP coverage was established. In 1996 the member received his SBP account statement reflecting his SBP coverage as child only. On this statement it appears that the member handwrote that he had made multiple attempts to correct his child's date of birth on his SBP account.

On September 5, 2019, the member passed away. On October 19, 2019, the claimant submitted a DD Form 2656-7, *Verification of Survivor Annuity*, to the Defense Finance and Accounting Service (DFAS), claiming the SBP annuity as the member's surviving spouse. On November 6, 2019, DFAS denied her claim on the basis that DFAS's records reflected that the member elected child only SBP coverage.

On November 24, 2019, the claimant appealed DFAS's denial of her claim. In her appeal, she stated that she and the member were married on June 5, 1971, then divorced on October 31, 1986, and remarried on November 2, 1991. She stated that after they remarried, the member filled out the necessary paperwork to name her as his SBP beneficiary.

In the appeal decision, the DOHA adjudicator upheld DFAS's denial of the claim on the basis that the member elected child only SBP coverage and the claimant concurred in his election as his spouse. She explained that as a reservist, the member was qualified to participate in the Reserve Component SBP under 10 U.S.C. § 1448(a)(2)(B) when he received his Notification of Eligibility (NOE) for retired pay in 1989, but for the fact that he had not yet reached the age of 60. She further explained that his election of child only SBP coverage became irrevocable under 10 U.S.C. § 1448(a)(4)(B), when he did not revoke it within the 90-day period beginning on the date he received his NOE. She found no evidence in the record that the member elected spouse SBP coverage before he became eligible for retired pay.

In her request for reconsideration, the claimant states that after they remarried, all paperwork was completed to cover her as the member's SBP beneficiary. She states that the Navy misplaced or lost that paperwork. She states that she has already sent all the paperwork she has to DFAS, including both marriage certificates, her son's birth certificate and her husband's death certificate. She is currently living off her social security payments, which is extremely difficult.

## **Discussion**

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 their claim by clear and convincing evidence on the written record that the United States Department of Defense is liable for the claim. *See* DoD Instruction 1340.21 (May 12, 2004) ¶ E5.7.

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for survivors of retired military members. Under 10 U.S.C. § 1448(a)(1)(B) and (2)(B), a reserve component member who is married or has a dependent child is automatically entered into the Reserve Component SBP upon receiving notice that the member has completed the years of service needed for reserve-component retired pay (unless the member opts out of the program with the written consent of the member's spouse before the end of the 90-day period beginning on the date on which he receives the notification). A member who elects under 10 U.S.C. § 1448(a)(2)(B) not to participate in the SBP remains eligible, upon reaching 60 years of age and otherwise becoming entitled to retired pay, to participate in the SBP. A member's election under

10 U.S.C. § 1448(a)(2)(B), is irrevocable if not revoked before the end of the 90-day period referred to in that section. *See* 10 U.S.C. § 1448(a)(4)(5).

In 1989 when the member met the requisite number of years of service required for reserve-component retired pay, he was eligible to participate in SBP. The record evidence reflects that the member was married to the claimant, had a dependent child and elected child only SBP coverage with the claimant's spousal concurrence. Therefore, since there is no record evidence that he revoked that election or made any subsequent attempt to cover the claimant as his spouse under the SBP, the SBP annuity is not payable to the claimant.

Although the claimant maintains that she and the member divorced in 1986, there is no evidence in the record of a divorce. The member noted on his NRPC 1772/3 in 1989 that he married the claimant on June 5, 1971, and she signed her concurrence as his spouse to his election for child only coverage. While the record does reflect that the member and the claimant married again on November 2, 1991, indicating there may have been a divorce between their original marriage in 1971 and their subsequent marriage, DFAS has advised DOHA that after requesting the claimant send them a copy of her divorce decree, DFAS never received a response. DOHA is bound by statute and regulation, and therefore, is unable to allow the claim for the SBP annuity based on the record evidence in front of us.

### **Conclusion**

For the reasons stated above, the claimant's request for reconsideration is denied, and we affirm the appeal decision dated July 1, 2021.

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