

DATE: August 19, 2021

In Re:)

[REDACTED])

) Claims Case No. 2021-CL-020502.2

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. 2021-CL-020502, dated June 1, 2021.

Background

The member and the claimant were married in 1984. On April 16, 2002, in preparation for his retirement, the member elected spouse and child Survivor Benefit Plan (SBP) coverage for the claimant and his two children. On August 1, 2002, the member retired from the Army. On July 1, 2003, the member and the claimant divorced. The divorce decree granted the claimant a portion of the member's monthly disposable retired pay but did not award her former spouse SBP coverage.

On November 26, 2018, the member passed away. The claimant subsequently claimed the SBP annuity as the member's former spouse. The Defense Finance and Accounting Service (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. In the DOHA appeal decision, the adjudicator upheld DFAS's denial of the claim for the SBP annuity. She 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 states that she was married to the member while he served on active duty and she took care of the household so that he could focus on his work. She states that each time he received orders resulting in a move, she had to quit her job and start a new one somewhere else. She believes that it is unfair that his second wife who was not in his life for all of his active military service gets the benefit of the SBP annuity.

Discussion

Claims against the government may be allowed only for expenses authorized by statute or regulation. *See* DOHA Claims Case No. 2021-CL-021205.2 (June 30, 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, the claimant was covered as the member's spouse SBP beneficiary from the time he retired in 2002 until such coverage ended with their divorce in July 2003. The claimant was not awarded former spouse SBP coverage in the divorce decree. Therefore, she had no statutory right to request a deemed election. Further, although the member may have intended that his former spouse be covered under the SBP, he failed to establish former spouse SBP coverage within one year of their divorce. Therefore, DFAS properly denied the claim for the SBP annuity. *See* DOHA Claims Case No. 2021-CL-021205.2, *supra*; and DOHA Claims Case No. 2020-CL-042201.2 (November 18, 2020).

Conclusion

The claimant's request for reconsideration is denied and we uphold the DOHA appeal decision in DOHA Claim No. 2021-CL-020502, 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: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board

SIGNED: Richard C. Ourand, Jr

Richard C. Ourand, Jr
Member, Claims Appeals Board