

DATE: August 20, 2021

In Re:)

[REDACTED])

Claimant)

) Claims Case No. 2020-CL-123110.2
)
)

**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.

DECISION

The claimant, a former spouse of a deceased member of the U.S. Marine Corps, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2020-CL-123110, dated June 1, 2021.

Background

The claimant and the member married in June 1991. On May 18, 2006, in preparation for his retirement, the member elected spouse and child Survivor Benefit Plan (SBP) coverage for the claimant and his children. On September 1, 2006, the member retired from the Marine Corps. On January 26, 2016, the claimant and the member divorced. The divorce decree awarded the claimant a portion of the member's monthly disposable retired pay but did not award her former spouse SBP coverage.

On October 22, 2018, the member passed away. On September 9, 2019, the claimant submitted to the Defense Finance and Accounting Service (DFAS) a DD Form 2656-7, *Verification for Survivor Annuity*, claiming the SBP annuity. DFAS originally denied the claim on the basis that the member elected SBP coverage only for his children. The claimant appealed DFAS's denial of her claim. In DFAS's administrative report, DFAS stated that their office

erred in their original denial. DFAS found that the member had elected both spouse and child SBP coverage at his retirement. However, DFAS explained that spouse SBP coverage ended with the divorce. DFAS further explained that the divorce decree did not require the member to provide former spouse SBP coverage for the claimant and the member did not voluntarily elect her as his former spouse SBP beneficiary within one year of the divorce.

In the claimant's rebuttal of DFAS's administrative report, she stated that she did submit a timely deemed election. She originally sent it to DFAS in April 2016. In the DOHA appeal decision, the adjudicator upheld DFAS's denial of the SBP claim, finding no evidence that the member elected former spouse SBP within one year of their divorce. She further explained that the claimant did not have the statutory right to request a former spouse deemed election because the divorce decree did not require the member to continue coverage for her after their divorce.

In her reconsideration request, the claimant states that the member died in October 2018 leaving her as his SBP beneficiary. She states that she has provided more than enough information reflecting that she is the member's SBP beneficiary. She attaches the member's final will and testament awarding her all his worldly goods and his military benefits. She states that she spent 25 years as the member's military spouse. She states that their family endured two wartime deployments during his service. She states that the member continued to pay SBP premiums for her coverage, and intended that she and her now adult children be able to have financial security once he passed away.

Discussion

Claims against the government may be allowed only for expenses authorized by statute or regulation. *See* DOHA Claims Case No. 2019-CL-022202.2 (August 27, 2019).

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for survivors of deceased members of the uniformed services. Spousal coverage ends upon divorce. If a member divorces and wishes to provide SBP coverage for a former spouse, the member must notify DFAS in writing of the divorce and the member's 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)(iii). 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 under the SBP as the member's spouse beneficiary from the time he became eligible to receive retired pay in 2006 until such coverage ended with their divorce in January 2016 even though spouse SBP premiums continued to be withheld in error. 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. 2019-CL-022202.2, *supra*; and DOHA Claims Case No. 2017-CL-081403.2 (January 8, 2018).

Conclusion

The claimant's request for reconsideration is denied, and we affirm the appeal decision dated June 1, 2021. In accordance with DoD 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