

DATE: September 21, 2021

In Re:)

[REDACTED])

) Claims Case No. 2021-CL-021802.2

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-021802, dated July 13, 2021.

Background

On July 26, 1963, the claimant and the member were married. In 1985 when the member retired from the Army, he elected spouse only Survivor Benefit Plan (SBP) coverage for the claimant. On January 2, 2004, the claimant and the member divorced. The divorce decree specified that each party would keep their own retirement as their separate property. The decree did not award the claimant former spouse SBP coverage.

On September 3, 2017, 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. She stated that after receiving DFAS's letter she visited the retirement services office at the Army base close to her home, and

was told that the member never changed his SBP beneficiary after the divorce and he continued to pay SBP premiums for the coverage under he reached paid-up status in 2015. In the DOHA appeal decision, the attorney examiner upheld DFAS's denial of the claim for the SBP annuity. He explained that an election for former spouse SBP coverage, whether voluntary, ordered, or deemed, had to have been received by DFAS within one year date of the divorce.

In her request for reconsideration, the claimant states that her ex-husband never changed his SBP beneficiary and continued to pay SBP premiums to cover her. She maintains that if her ex-husband did not intend to continue SBP coverage for her, he would have replaced her as his beneficiary with his children. She further states that she was married to the member for over 40 years, of which 24 years she spent with him while he was in the military, including his service during the Vietnam War. She has a small pension from the state and needs 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, there is nothing in the record reflecting that the claimant was awarded former spouse SBP coverage in the divorce decree. But even if the claimant was awarded it, there is no evidence that she requested a deemed election within one year of the date of the divorce. Further, the member did not elect former spouse SBP coverage for the claimant within one year of the divorce. Therefore, DFAS properly denied the claim for the SBP annuity.

Finally, we do note that if SBP premiums for spouse coverage were deducted from the member's retired pay after the divorce in 2004, those costs should be refunded to the proper beneficiary as arrears of pay under 10 U.S.C. § 2771.

Conclusion

The claimant's request for relief is denied and we uphold the DOHA appeal decision dated July 13, 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