

DATE: August 23, 2021

In Re:)

[REDACTED])

) Claims Case No. 2021-CL-040204.2

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-040204, dated June 4, 2021.

Background

On December 17, 1973, the claimant and the member were married. On May 1, 1988, the member retired from the Army. At that time, he elected Survivor Benefit Plan (SBP) coverage for the claimant as his spouse. On July 10, 2007, the claimant and the member were divorced. The divorce decree awarded the claimant former spouse SBP coverage. On November 26, 2018, the member passed away.

On May 18, 2019, the claimant submitted her claim as the member's former spouse for the SBP annuity to the Defense Finance and Accounting Service (DFAS). DFAS denied her claim for the SBP annuity on the basis that the member did not establish former spouse SBP coverage for her, nor did she make a timely request for a deemed election. The claimant appealed DFAS's denial of her claim for the SBP annuity to DOHA. In her appeal, she stated that she believed her ex-husband had the responsibility to make the necessary changes to the SBP election to ensure her coverage. She assumed that he had taken care of all the necessary paperwork when she began receiving direct payments from his retired pay.

In the appeal decision, the DOHA attorney examiner sustained DFAS's denial of the claim. He advised the claimant that she may find relief outside the purview of DOHA with the Army Board for Correction of Military Records (ABCMR).

In her reconsideration request, the claimant states that she was not aware that she had access to the member's SBP account information. She believed that since the judge in her divorce proceedings directed her ex-husband to complete the action to cover her as his former spouse SBP beneficiary, she assumed all requirements were met. She questions why she was not furnished the information at the time of her divorce from DFAS concerning this matter.

Discussion

Claims against the government may be allowed only for expenses authorized by statute or regulation. *See* DOHA Claims Case No. 2019-CL-022108.2 (September 17, 2019).

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for the survivors of deceased members of the uniformed services. *See* DOHA Claims Case No. 2019-CL-022108.2, *supra*; and DOHA Claims Case No. 2017-CL-081403.2 (January 8, 2018). Spousal coverage ends upon divorce. If a member divorces and wishes to provide SBP coverage for his former spouse, he must notify DFAS in writing of the divorce and his intention to provide coverage for his 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 his former spouse. If he 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 member was obligated based on the divorce decree to cover the claimant as his former spouse under the SBP. However, the member failed to establish former spouse SBP coverage and the claimant did not file a timely deemed election. Therefore, DFAS properly denied the claim for the SBP annuity.

As explained by the attorney examiner in the appeal decision, the claimant may have other available remedies that rest with the ABCMR under 10 U.S.C. § 1552. These remedies are outside DOHA's authority and any request for a correction of record needs to be pursued with the ABCMR.

Conclusion

The claimant's request for reconsideration is denied, and we affirm the appeal decision in DOHA Claim No. 2021-040204, dated June 4, 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: Jennifer I. Goldstein

Jennifer I. Goldstein
Member, Claims Appeals Board