

DATE: August 23, 2021

In Re:)
 [REDACTED]) Claims Case No. 2021-CL-032609.2
)
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-032609, dated June 22, 2021.

Background

The member and the claimant were married in 1970. At the member's retirement from the Army in 2007 he elected spouse Survivor Benefit Plan (SBP) coverage for the claimant on his DD Form 2656, *Data for Payment of Retired Personnel*. On December 4, 2017, the member and the claimant divorced. The divorce decree did not award former spouse SBP coverage to the claimant.

On June 21, 2019, 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, through her attorney, appealed DFAS's denial of her claim. 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 of the date of the divorce.

In the request for reconsideration, the claimant's attorney asserts that the member's election of spouse coverage for the claimant on the DD Form 2656 should be maintained. He states that the divorce decree was silent on the issue of SBP coverage because it was the member's intention to continue to cover the claimant under the SBP. In addition, the member did not affirmatively terminate the prior coverage for the claimant.

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 2007 until such coverage ended with their divorce in December 2017. 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 dated June 22, 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