

DATE: August 20, 2021

In Re:)

[REDACTED])

) Claims Case No. 2021-CL-021201.2

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-021201, dated May 19, 2021.

Background

The member and the claimant were married in 1979. At the member's retirement from the Army in 1990 he elected spouse and child Survivor Benefit Plan (SBP) coverage for the claimant and his children. On December 2, 1991, the member and the claimant divorced. The divorce decree did not award former spouse SBP coverage to the claimant.

On December 28, 2016, the member passed away. The claimant subsequently claimed the SBP annuity as the member's former spouse. The Defense Finance and Accounting Service 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 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 her request for reconsideration, the claimant states that the member began participating in SBP when he retired in 1990 and continued to pay premiums until he passed away in 2016. She states that the member was provided with monthly statements that reflect his contributions for her SBP coverage. She attaches his leave and earnings statement (LES) dated March 1987 reflecting that he had automatic enrollment in family dental insurance. She also attaches his *JUMPS – Army Retired/Annuitant Pay Statement*, effective March 1990 reflecting that his SBP election resulted in coverage for his spouse and children. Finally, she states that her ex-husband always told her that he would take care of her and their three children if anything ever happened to him

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 (July 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 1990 until such coverage ended with their divorce in December 1991. 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).

Finally, there is no record evidence that the member continued to pay spouse SBP premiums on behalf of the claimant until his death. The LES and the retired pay account statement the claimant attaches to her reconsideration request predate their divorce in December 1991.

Conclusion

The claimant's request for reconsideration is denied and we uphold the DOHA appeal decision in DOHA Claim No. 2021-CL-021201.2, dated May 19, 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