

DATE: November 19, 2021

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In Re: )

[REDACTED] )

) Claims Case No. 2021-CL-030918.2

Claimant )

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**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. Air Force, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2021-CL-030918.2, dated July 8, 2021.

**Background**

The member was serving in the Air Force when he married the claimant on August 17, 1968. When the member retired from the Air Force in 1986 he elected spouse and child Survivor Benefit Plan (SBP) coverage. On May 4, 2016, the member and the claimant divorced. The divorce decree awarded the claimant 41.5% of the member's monthly retired pay. However, the claimant was not awarded former spouse SBP coverage.

On November 25, 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 within one year of the divorce.

The claimant appealed DFAS's denial of her claim through her U.S. Senator. The claimant explained that in August 2016 she received information from DFAS that her portion of

the member's monthly retired pay would start in September 2016. She stated that DFAS also informed her that she needed to call about changing her designation as the member's SBP beneficiary from spouse to former spouse. When she called, DFAS informed her that since the SBP was not addressed in the divorce decree, the member would have to make the change in the designation. She stated that she then requested the member make the change.

In the DOHA appeal decision, the adjudicator upheld DFAS's denial of the claim for the SBP annuity. She 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. The adjudicator then described other available remedies outside the DOHA claims process that rest with the Air Force Board for Correction of Military Records (AFBCMR) under 10 U.S.C. § 1454 and 10 U.S.C. § 1552.

In her request for reconsideration, the claimant states that she advised her ex-husband that he had to change her SBP designation from spouse to former spouse since the divorce decree did not grant her former spouse SBP coverage. She states that her ex-husband did not leave a will and he never removed her name as the designated beneficiary on his life insurance policies. She states that she recently became aware that he had partially filled out the form to change his SBP designation to former spouse before he passed away.

### **Discussion**

Claims against the government may be allowed only for expenses authorized by statute or regulation. 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 1986 until such coverage ended with their divorce in May 2016. 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. 2020-CL-042201.2 (November 18, 2020).

Finally, as set forth above, DOHA has no authority under statute or regulation to allow the claim. However, as explained by the adjudicator in the appeal decision, under 10 U.S.C. § 1552, a Secretary of a military department, acting through a correction board, in this case the AFBCMR, may correct a member's record when the Secretary considers it necessary to correct an error or remove an injustice. *See also* 10 U.S.C. § 1454 (the specific statutory authority for the AFBCMR to correct or revoke an election for SBP). The AFBCMR's authority under these two statutes is discretionary, and is outside DOHA's authority.

### **Conclusion**

The claimant's request for reconsideration is denied and we uphold the DOHA appeal decision dated July 8, 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

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Catherine M. Engstrom  
Chairman, Claims Appeals Board

SIGNED: Charles C. Hale

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Charles C. Hale  
Member, Claims Appeals Board

SIGNED: Richard C. Ourand, Jr

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Richard C. Ourand, Jr  
Member, Claims Appeals Board