

DATE: November 19, 2021

In Re:)

[REDACTED])

) Claims Case No. 2021-CL-032614.2

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. Navy, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2021-CL-032614, dated July 12, 2021.

Background

The member and the claimant were married on May 2, 1985. On April 29, 2003, in preparation for his retirement, the member elected spouse only Survivor Benefit Plan (SBP) coverage for the claimant. Effective May 1, 2003, the member retired from the Navy. In October 2017 the member and the claimant divorced. In pertinent part, the divorce decree stated the following:

Military Benefits: The marriage of the parties having been of a substantial length and the Plaintiff may be qualified for benefits which are available to spouses of military personnel, it is specifically provided that such benefits as may be available to her due to the military healthcare system (Tricare), base privileges and survivor benefits shall be available to Plaintiff following the divorce herein.

The record reflects that the member remarried after his divorce from the claimant. On October 10, 2018, the member completed a DD Form 2894, *Designation of Beneficiary Information*, designating his spouse as his 100% beneficiary for any arrears of retired pay (AOP) due upon his death. On September 24, 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 elected spouse SBP coverage when he retired, and since she was his former spouse, she was not entitled to the SBP annuity.

The claimant appealed DFAS's denial of her claim. The claimant stated that she and the member were married for over 30 years; he intended her to be his SBP beneficiary as stated in the divorce decree; he never made any changes to his SBP election after their divorce; and his Retiree Account Statement (RAS) reflected her as his spouse SBP beneficiary. The claimant stated that neither she nor the member were aware of the requirement to change her SBP beneficiary status from spouse to former spouse within one year of the divorce. DFAS upheld its denial of the claim in its administrative report, and the claimant then submitted a timely rebuttal to DFAS dated December 12, 2020. In her rebuttal, the claimant included signed affidavits from relatives reflecting that she was the member's intended beneficiary upon his death for the SBP.

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 through her U.S. Senator's Office, the claimant states that the member intended her to be his SBP beneficiary evidenced by the fact that he continued to pay SBP premiums for her coverage. The claimant states that DFAS and DOHA both ignored the fact that when the member updated his records upon divorce and remarriage, the personnel office did not verify the member's records. The claimant again refers to her previously provided witness statements reflecting that the member intended her to be covered as his SBP beneficiary upon his death.

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, there is nothing in the record reflecting that the claimant 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. *See* DOHA Claims Case No. 2021-CL-021205.2 (June 30, 2021).

Conclusion

The claimant's request for relief is denied and we uphold the DOHA appeal decision dated July 12, 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