

DATE: January 26, 2022

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In Re: )

[REDACTED] )

) Claims Case No. 2021-CL-030509.2

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. Navy, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2021-CL-030509, dated September 23, 2021.

**Background**

In 1997 when the member retired from the Navy, the claimant was covered as his spouse under the Survivor Benefit Plan (SBP). On October 16, 2013, the member and the claimant divorced. Under the divorce decree, the claimant was awarded a portion of the member's monthly disposable retired pay, and the member was required to maintain her as his SBP beneficiary. However, the member did not elect former spouse SBP for the claimant, nor did the claimant request it within one year of the divorce. In addition, the Defense Finance and Accounting Service (DFAS) continued to withhold SBP premiums for spouse coverage from the member's retired pay.

On July 16, 2019, the member passed away. The claimant subsequently claimed the SBP annuity as the member's former spouse. 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 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 had to have been received by DFAS within one year of the date of the divorce. He noted that the claimant may find further relief outside the purview of DOHA by petitioning the Board for Correction of Naval Records (BCNR) under 10 U.S.C. § 1552.

In her request for reconsideration, the claimant states that the member was never informed he had to change her beneficiary status from spouse to former spouse in order for her to receive the SBP annuity. She states that after their divorce both she and the member contacted the Personnel Support Detachment (PSD) to advise them that their divorce was final and to verify her eligibility for medical coverage. She states that the PSD never informed either of them about the one-year period for establishing former spouse SBP coverage. She states that she and the member paid into the SBP for over 20 years. She requests that the member's wishes be considered and that she be awarded the annuity.

### **Discussion**

Claims against the government may be allowed only for expenses authorized by statute or regulation. Therefore, DOHA must render decision 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 member's 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 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 noted by the attorney examiner, since SBP premiums for spouse coverage were deducted from the member's retired pay after the divorce in 2013, those costs should be refunded to the proper beneficiary as arrears of pay under 10 U.S.C. § 2771. Further, since it appears that the claimant may have been receiving a portion of the member's monthly disposable retired pay by direct payment under the Uniformed Services Former Spouses' Protection Act (USFSPA), she may have a claim for any resulting underpayment of her share of the member's monthly disposable retired pay. She should contact DFAS for any questions concerning these matters.

Finally, as explained in the appeal decision, the claimant may have another avenue of relief that rests with the BCNR under 10 U.S.C. § 1552. Any relief available under that statute is outside of DOHA's authority and any request for a correction of record needs to be pursued with the BCNR.

### **Conclusion**

The claimant's request for relief is denied and we uphold the DOHA appeal decision in DOHA Claims Case No. 2021-CL-030509, dated September 23, 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: Richard C. Ourand, Jr

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Richard C. Ourand, Jr  
Member, Claims Appeals Board

SIGNED: Jennifer I. Goldstein

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Jennifer I. Goldstein  
Member, Claims Appeals Board