

DATE: February 9, 2022

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In Re: )

[REDACTED] )

) Claims Case No. 2021-CL-030919.2

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-030919, dated October 29, 2021.

**Background**

The member and the claimant were married on February 17, 1964. Prior to the member's retirement from the Air Force, he elected spouse only Survivor Benefit Plan (SBP) coverage for the claimant. On February 1, 1989, the member retired. The record reflects that on December 22, 1999, the member and the claimant divorced. The member continued to pay spouse SBP premiums for the claimant after the divorce. The member passed away on May 30, 2018. At the time of his death, the member had made 353 months (over 29 years) of spouse SBP premium payments from his retired pay. On August 19, 2019, the claimant submitted to the Defense Finance and Accounting Service (DFAS) a DD Form 2656-7, *Verification for Survivor Annuity*, claiming the SP annuity as the member's former spouse. On September 19, 2019, 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 their divorce.

The claimant sent two letters of appeal to DFAS in October 2019. She stated that neither she nor the member were aware of the one-year requirement to elect former spouse SBP coverage. She said that she was attaching the divorce decree that awarded her the SBP coverage. However, the claimant's appeal package sent to DOHA from DFAS did not contain the divorce decree. Therefore, DOHA requested it from DFAS. On September 22, 2021, DFAS provided DOHA a Certificate of Divorce with both the member's and the claimant's names listed with their date of marriage. The certificate was unexecuted; both blocks were blank for the date of the divorce decree and the court official's signature. In the DOHA appeal decision, the attorney examiner upheld DFAS's denial of the claim for the SBP annuity. He explained that there was no evidence in the record that at the time of the divorce, the member was required to make a former spouse election for the claimant. Therefore, spouse SBP coverage for the claimant ended with their divorce and the member did not elect former spouse SBP coverage for her.

In her request for reconsideration, the claimant resubmits her appeal letter dated October 6, 2021. She states that she was married to the member for 34 years. After their divorce, she states that they remained friends, vacationing and travelling together. She states that the member always intended that she be covered under the SBP. She sends an Amended Final Decree of Divorce signed by the judge on March 24, 2000, and filed by the court clerk on March 27, 2000. According to the decree, both the member and the claimant were represented by counsel. That decree, in pertinent part states the following:

8. That the Defendant [Member] shall maintain at his expense a life insurance policy in the face amount of \$5,000.00 with the Plaintiff [Claimant] listed as beneficiaries of said policy, and he shall maintain such policy for so long as he is financially obligated to the Plaintiff hereunder.
9. Defendant shall maintain and or obtain any military benefits due to a divorced spouse of a retired military person which are of no financial cost to himself, on behalf of the Plaintiff.

### **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.

SBP is an income maintenance program for the survivors of deceased members of the uniformed services. *See* 10 U.S.C. §§ 1447-1455. 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 claimant was covered as the member's spouse SBP beneficiary from the time he elected it for her in 1989 until their divorce ended the coverage. Although the claimant now has submitted an amended divorce decree, the language contained in it does not award her the SBP annuity. Therefore, she had no statutory right to request a deemed election. Even if the language did require the member to provide her with former spouse SBP coverage, there is no evidence that she requested a deemed election within one year of the amended decree. 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-062903.2 (February 25, 2021).

Finally, we note that since SBP premiums for spouse coverage were erroneously deducted from the member's retired pay when he no longer had an eligible spouse beneficiary, those costs should be refunded to the proper beneficiary as arrears of retired pay under the statutory order of precedence contained in 10 U.S.C. § 2771. In order to claim the arrears of retired pay, the member's beneficiary should fill out the SF 1174, *Claim for Unpaid Compensation of a Deceased Member of the Uniformed Services*, and submit it to DFAS.

### Conclusion

The claimant's request for reconsideration is denied and we uphold the DOHA appeal decision dated October 29, 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: Jennifer I. Goldstein

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Jennifer I. Goldstein  
Member, Claims Appeals Board