

DATE: February 9, 2022

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In Re: )  
[REDACTED] ) Claims Case No. 2021-CL-082405.2  
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. Army, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2021-CL-082405, dated October 29, 2021.

**Background**

At the time the member retired from the Army in March 1993 on a disability retirement, he was married to the claimant, and he elected spouse Survivor Benefit Plan (SBP) coverage for her. On March 3, 2001, the member and the claimant divorced. The divorce decree did not require the member to provide former spouse SBP coverage for the claimant. On October 16, 2002, the member sent a signed, handwritten statement to the Defense Finance and Accounting Service (DFAS) requesting SBP coverage be cancelled. The record contains a court order dated March 7, 2013, that reflects both the member and the claimant were amending the 2001 divorce decree to ensure that the claimant was maintained on any military pension – disability benefits from the member’s military service. In December 2020 the member passed away.

On January 15, 2021, the claimant submitted to DFAS a DD Form 2656-7, *Verification for Survivor Annuity*, claiming the SP 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 within one year of their divorce.

The claimant appealed DFAS's denial of her claim. She stated that neither she nor the member were aware of the one-year requirement to elect former spouse SBP coverage. She stated that she was the member's advocate for over 25 years. She explained that the member always promised that she was covered under the SBP.

In the DOHA appeal decision, the attorney examiner sustained DFAS's denial of the claim for SBP. He explained that even though the claimant submitted the stipulation dated March 7, 2013, reflecting the member's intent to cover the claimant as his SBP beneficiary, that stipulation was not signed by the judge. Even if it had been signed, there is no evidence in the record that the member elected or the claimant requested a deemed election within a year of the stipulation to effectuate the parties' agreement. The attorney examiner further explained that although the claim for the SBP annuity was not payable under applicable statute and regulation, she may find further relief outside of DOHA. He directed the claimant to an alternative remedy under 10 U.S.C. § 1552, that rests with the Army Board for Correction of Military Records (ABCMR).

In her request for reconsideration, the claimant states that the member intended her to continue to be covered under the SBP. She states that in March 2013 she did submit to the court an intent that both she and the member were amending the 2001 divorce decree to establish her SBP coverage. She states that she did not know that they had to submit something further to the court to finalize it for the judge's signature. She also seeks guidance on her daughter's special needs trust and asks if the SBP annuity can be paid into it.

### **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 1993 until 2001 when their divorce ended the coverage. There is no

evidence that the claimant was 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). The 2013 stipulation may have reflected the member's intent to cover his former spouse but there is no evidence the stipulation was ever ordered by a court or filed with DFAS within one year of the stipulation being issued by a court.

As for her daughter's claim for any benefits, generally, a dependent child who is under 18 years of age or at least 18 but under 22 years of age pursuing a full-time course of study in school, is an eligible beneficiary for payment of the SBP annuity under 10 U.S.C. § 1447(11). However, the record reflects that the member's daughter was born in 1982 and when he retired in 1993 he elected spouse only SBP coverage. That coverage ended upon divorce and there is no record evidence that the member instituted child coverage for his daughter. In order to be eligible for the SBP annuity as an adult disabled dependent child of the member, besides the member's election of child coverage, it must be shown that the child is incapable of self-support because of a mental or physical incapacity existing before the person's eighteenth birthday or incurred on or after that birthday, but before the person's twenty-second birthday, while pursuing a full-time course of study or training. *See* 10 U.S.C. § 1447(11)(A)(ii).

Finally, as set forth in the appeal decision, the claimant may wish to pursue a correction of military record under 10 U.S.C. § 1552(a)(1). Under that statute, the Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice. This action is made by a civilian board, in this case, the ABCMR.

## 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