

DATE: February 7, 2022

In Re:

[REDACTED]

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) Claims Case No. 2021-CL-032618.2
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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. The claimant must prove their claim by clear and convincing evidence on the written record that the United States Department of Defense is liable for the claim. Federal agencies and officials must act within the authority granted to them by statute in issuing regulations. Thus, the liability of the United States is limited to that provided by law (including implementing regulations). Since military pay entitlements are governed by statute, DOHA must apply the appropriate statutes without regard to equitable considerations.

DECISION

The claimant, the surviving 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-032618, dated November 4, 2021. In that decision, DOHA upheld the Defense Finance and Accounting Service's (DFAS's) denial of the claim for the member's Survivor Benefit Plan (SBP) annuity because the member, unmarried at the time he retired and a participant in the Plan having elected to participate with child only coverage, failed thereafter to elect spouse coverage within one year of the date of his marriage to the claimant.

Background

On April 8, 1998, in preparation for his retirement from the Navy, the member executed a DD Form 2656, electing child only SBP coverage for his dependent children. On July 1, 1998, the member retired from the Navy. On March 29, 2008, the member married the claimant. On June 26, 2011, the member completed a DD Form 2894, *Designation of Beneficiary Information*,

requesting that his spouse, the claimant, be designated his beneficiary for 100% of his arrears of retired pay (AOP) due to him as a retired member on the date of his death. The member paid SBP premiums for child coverage from his retired pay from 1998 until 2012, when his youngest child turned 22 years old.

The member died on April 17, 2020. The claimant claimed the SBP annuity as the member's surviving spouse. On May 22, 2020, DFAS denied the claim because the member had not elected spouse SBP coverage within one year of the marriage. In the claimant's own appeal and rebuttal (filed through her attorney), she suggested that the member's failure to elect her as his spouse SBP beneficiary may have been due to mental impairment arising from post-traumatic stress disorder.

In the appeal decision, the DOHA attorney examiner upheld DFAS's denial of the claim. He explained that when the member retired, he was not married and had only elected SBP coverage for his dependent children. When he married the claimant, he had one year from the date of the marriage to elect spouse SBP coverage for her. Since the member failed to do so, the claim for the SBP annuity was not payable under statute and regulations. The attorney examiner further advised the claimant may have other available remedies that rest outside of DOHA. First, under 10 U.S.C. § 1454, the Secretary of the member's service may correct or revoke an SBP election when the Secretary deems it necessary to correct an administrative error. Second, under 10 U.S.C. § 1552, the Secretary, acting through a correction board, may correct a member's record when the Secretary considers it necessary to correct an error or remove an injustice.

In the claimant's reconsideration request, her attorney states that the DOHA attorney examiner arbitrarily stated that DOHA could not consider equitable arguments to support the claim for the SBP annuity. He stated that the attorney examiner erred when he stated DOHA had no equitable authority beyond the failure to examine whether or not the member executed his election for spouse coverage under statute and regulation. He cites DOHA Claims Appeals Board decision in DOHA Claims Case No. 2013-CL-052301.3 (August 21, 2015). He states that in that case, DOHA considered a claim by Ri3 Consultant, LLC, for equitable relief in the form of a quasi contract and *quantum meruit* claim. He states that while DOHA denied Ri3 Consultant's claim on the facts, DOHA clearly stated that it could consider it as an equitable claim and the equitable arguments to support it.

Discussion

In 1996 Congress transferred the authority once held by the Comptroller General of the United States (General Accounting Office, now the Government Accountability Office or (GAO)), to settle claims for military pay and allowances, including retired pay and survivor benefits under 31 U.S.C. § 3702(a)(1)(A), to the Director of the Office of Management and Budget (OMB). *See* Section 211 of Public Law No. 104-53, 109 Stat. 514, 535, November 19, 1995. The Director of OMB delegated his authority to the Secretary of Defense effective June 30, 1996. The authority of the Secretary of Defense in this regard was later codified in Section 202(n) of Public Law No. 104-316, 110 Stat. 3826, October 9, 1996. DOHA exercises the authority transferred and delegated to the Secretary of Defense. Under 31 U.S.C.

§ 3702(a)(1), DOHA's authority to decide cases such as this is derived from the same authority that provided the Comptroller General the authority to decide such claims. Specifically, under 31 U.S.C. § 3702(a)(1)(A), DOHA settles claims involving uniformed service members' pay, allowances, travel, transportation, payments for unused accrued leave, retired pay, and survivor benefits. The implementing regulation for DOHA's authority is set forth in Department of Defense Instruction 1340.21 (May 12, 2004).

The burden of proving the existence of a valid claim against the United States is on the person asserting the claim. The claimant must prove their claim by clear and convincing evidence on the written record that the United States Department of Defense is liable for the claim. *See* Instruction ¶ E5.7. Federal agencies and officials must act within the authority granted to them by statute in issuing regulations. Thus, the liability of the United States is limited to that provided by law (including implementing regulations).

In the adjudication of cognizable claims under 31 U.S.C. § 3702, it is a well-established rule that a claim may only be allowed for an expense authorized by statute or regulation. *See* DOHA Claims Case No. 2016-CL-052003.2 (September 27, 2016). When the language of a statute is clear on its face, the plain meaning of the statute will be given effect, and that plain meaning cannot be altered or extended by administrative action. *See* DOHA Claims Case No. 2016-CL-112901.2 (February 2, 2017). Statutory provisions with unambiguous and specific directions may not be interpreted in any manner that will alter or extend their meaning. *See* 71 Comp. Gen. 125 (1991); and 56 Comp. Gen. 943 (1977). The interpretation of a statutory provision and its implementing regulation by those charged with their execution, and the implementation of them by means of a consistent administrative practice, are to be sustained unless shown to be arbitrary, capricious or contrary to law. *See* DOHA Claims Case No. 2011-CL-101402.2 (February 9, 2012).

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for survivors of retired military members. An unmarried member with a dependent child may elect to participate in SBP when he becomes eligible to receive retired pay. *See* 10 U.S.C. § 1448(a)(2). A member who is not married upon becoming eligible to participate in the plan but who later marries may elect to establish coverage for his spouse pursuant to 10 U.S.C. § 1448(a)(5). That section requires a written election, signed by the member, and received by the Secretary concerned within one year of the marriage. *See* DOHA Claims Case No. 2019-CL-031402.2 (September 24, 2019); and Comptroller General decision B-258328, Feb. 15, 1995.

In 1998 when the member became eligible for retired pay, he was not married and elected child only SBP coverage for his dependent children. In March 2008 he married the claimant. He had one year from the date of his marriage to the claimant to designate her as his spouse SBP beneficiary. There is no record of an election for spouse SBP coverage during the period March 2008 through March 2009. The only evidence contained in the file is the member's designation of the claimant as his AOP beneficiary in 2011. However, a member's designation of his AOP beneficiary is a separate statute and has separate statutory requirements than a member's election of a newly acquired spouse after retirement under the SBP law.

In response to the attorney's submission of the DOHA Claims Appeals Board decision in DOHA Claims Case No. 2013-CL-052301.3, *supra*, that decision has no precedential value in the current case. DOHA agrees that the decision was based on the Board's analysis of whether the claimant, Ri3 Consultants, in the absence of express authorization by contract or statute, was able to recover from the government under the equitable theory of *quantum meruit*. However, DOHA's authority to grant relief in contractual disputes is limited to the relief, if any, available under the general claims statute, 31 U.S.C. § 3702(a)(4). So even though the Board did consider that claim under the equitable theory of *quantum meruit*, or equitable considerations as the attorney suggests, since military pay entitlements are governed by statute, DOHA must apply the appropriate statutes without regard to equitable considerations. *See* DOHA Claims Case No. 99071918 (October 29, 1999).

DOHA is bound by statute and regulation, and therefore, is unable to allow the claim for the SBP annuity. However, as explained by the DOHA attorney examiner in the appeal decision, the claimant may have other available remedies that rest with the Army Board for Correction of Military Records (ABCMR) under 10 U.S.C. § 1552 and 10 U.S.C. § 1454. These remedies are outside DOHA's authority and any request for a correction of record needs to be pursued with the ABCMR.

Conclusion

The claimant's request for relief is denied. 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: Richard C. Ourand, Jr

Richard C. Ourand, Jr
Member, Claims Appeals Board

SIGNED: Jennifer I. Goldstein

Jennifer I. Goldstein
Member, Claims Appeals Board