

DATE: February 7, 2022

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In Re: )

[REDACTED] )

) Claims Case No. 2021-CL-061505.2

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. The claimant must prove by clear and convincing evidence on the written record that the government is liable under the law for the amount claimed.

**DECISION**

The claimant, the widow of a retired U.S. Army member, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2021-CL-061505, dated October 18, 2021. In that decision, DOHA denied the claim for a Survivor Benefit Plan (SBP) annuity because the member did not elect SBP coverage for his spouse within one year of their marriage.

**Background**

The member was born on August 3, 1947. On December 17, 1988, the member completed the DD Form 1883, *Survivor Benefit Plan Election Certificate*, and requested Option C, child-only SBP coverage for his son. At that time, the Army established SBP coverage for his son. On August 25, 1990, the member and the claimant married. Since the member was already a participant in SBP, he had one year from the date of his marriage to the claimant to designate her as his spouse SBP beneficiary. On November 2, 2005, prior to the member receiving retired pay on his 60<sup>th</sup> birthday in August 2007, he completed the DD Form 2656, *Data for Payment of Retired Personnel*, electing spouse SBP coverage for the claimant. He also named the claimant as his beneficiary for the unpaid arrears of his retired pay (AOP). The Defense Finance and Accounting Service (DFAS) did not place

the claimant on the SBP account when it established the member's retired pay account because the member did not elect SBP coverage for her within one year of their marriage.

On July 15, 2020, the member passed away. On October 19, 2020, the claimant submitted to the DFAS a DD Form 2656-7, *Verification for Survivor Annuity*, claiming the SBP annuity as the surviving spouse of the member. In November 2020 DFAS denied the SBP claim because the member had not elected to participate in SBP within one year of the marriage. The claimant appealed the denial to DOHA through DFAS.

On appeal the claimant stated that the member was unaware he had to elect spouse SBP coverage within one year of their marriage. She stated that the member told her before he died that she would be covered under the SBP. In the appeal decision, the DOHA adjudicator sustained DFAS's denial of the claim for the SBP annuity. She explained that under the SBP law, the member was required to file the election with DFAS within one year of the date of his marriage to the claimant. Since the member did not request coverage for the claimant until 2005, 15 years after their marriage, the claim for the SBP annuity was disallowed. The adjudicator did explain that the claimant may have another avenue of relief available outside of DOHA that rests with the Army Board for Correction of Military Records (ABCMR).

In the claimant's request for reconsideration, she states that neither she nor the member were aware that spouse SBP coverage had to be elected for her within one year of their marriage. She states that she does not understand how the average person would know to do this. She states that the member did elect spouse coverage for her in 2005. She offers to pay the difference in premiums from child only SBP coverage and spouse SBP coverage in order to receive the annuity.

### **Discussion**

The SBP program, 10 U.S.C. §§ 1447-1455, was established in 1972 as an income maintenance program for the dependents of deceased members of the uniformed services. Under the SBP, participating members contribute a portion of their retired pay to fund annuity payments for their designated beneficiaries. Participation in the SBP is automatic for members who are married or have dependent children when they become eligible to participate in SBP, *i.e.*, when they become eligible for retired pay. *See* 10 U.S.C. § 1448(a)(1)(A) and (B). Members who marry or acquire a dependent child after becoming eligible for retired pay may elect to include that spouse or dependent child in the program if they provide the statutory notice. *See* 10 U.S.C. § 1448(a)(5)(A). The member's election must be in writing and received by the Secretary concerned within one year after the date on which that member marries. *See* 10 U.S.C. § 1448(a)(5)(B).

The member married the claimant on August 25, 1990, after he became a participant in SBP under 10 U.S.C. § 1448(a)(1)(B). Therefore, he had to elect spouse SBP coverage for the claimant within one year of their marriage. 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 adjudicator in the appeal decision, under 10 U.S.C. § 1552, the Secretary of the Army, 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.

## Conclusion

The claimant's request for reconsideration is denied, and we affirm the appeal decision in DOHA Claim No. 2021-CL-061505 disallowing the claim. In accordance with DoD 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: Richard C. Ourand, Jr

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Richard C. Ourand, Jr  
Member, Claims Appeals Board