

DATE: January 31, 2022

In Re:)

[REDACTED])

) Claims Case No. 2021-CL-060401.2

Claimant)

**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-060401, dated October 18, 2021.

Background

The member was retired from the Air Force when he married the claimant in October 1992. On January 1, 1993, the member submitted a request to the Defense Finance and Accounting Service (DFAS) to designate spouse Survivor Benefit Plan (SBP) coverage for the claimant. On March 30, 2017, the member and the claimant divorced. The record does not contain a signed agreement or court order requiring the member to provide former spouse SBP coverage for the claimant. In December 2020 the member passed away.

On January 22, 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. On January 27, 2021, 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. In the DOHA appeal decision, the attorney adjudicator upheld DFAS's denial of the claim for the SBP annuity. She explained that the divorce decree did not require the member to make a former spouse election for the claimant; that 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 states that the member continued to pay SBP premiums for her coverage until his death. He never wrote to DFAS to cancel the SBP coverage. She requests the SBP annuity be paid to her as the member would have wanted. She then asks that if the SBP annuity is denied, what happens to the payments the member made from his retired pay during the period 1992 to 2020 for spouse SBP coverage.

Discussion

Claims against the government may be allowed only for expenses authorized by statute or regulation. *See* DOHA Claims Case No. 2021-CL-021205.2 (June 30, 2021). 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 1992 until 2017 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).

Finally, we do note that if SBP premiums for spouse coverage were 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 10 U.S.C. § 2771. In order to claim the arrears of retired pay, the member's designated 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 in DOHA Claim No. 2021-CL-060401, dated October 18, 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

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