

DATE: March 14, 2022

In Re:)

[REDACTED])

Claimant)

) Claims Case No. 2020-CL-122805.2
)
)

**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 in the written record that the government is liable under the law for the amount claimed.

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. 2020-CL-122805, dated December 9, 2021.

Background

The claimant and the member were married on August 11, 1962. On January 14, 1988, the member retired and elected to provide SBP spouse and child coverage for the claimant and their children. Upon retirement, spouse and child coverage was established on the member's retired pay account and premiums were deducted from his retired pay for that coverage. On November 10, 1988, the claimant and the member divorced. The divorce decree did not award the claimant former spouse SBP coverage. Furthermore, after the divorce the member did not elect former spouse SBP coverage.

The member passed away on September 1, 2017. The Defense Finance and Accounting Service (DFAS) was subsequently notified of the member's death and first learned that the member was not married. On May 14, 2018, DFAS requested that the claimant send them a

copy of the divorce decree. On September 27, 2018, the claimant submitted to DFAS a DD Form 2656-7, *Verification for Survivor Annuity*, claiming the SBP annuity as the member's former spouse. DFAS subsequently denied her claim for the SBP annuity because the member did not establish former spouse SBP coverage for the claimant. In addition, the divorce decree did not award her SBP coverage. Therefore, as a result, she could not submit a deemed election for SBP. In the appeal decision, DOHA upheld DFAS's denial of the SBP claim.

In her reconsideration request, the claimant states that it was the member's intention that she receive the SBP annuity upon his death. She states that she did not ask for alimony and after their divorce, the member continued to live in their house with her. She states that he would stay in the house while she went to work. After his first stroke, he had to move into a hotel and she moved in with him for six weeks to take care of him. When it became apparent that he could no longer be on his own, she took him in to her home again. She drove him to the Department of Veterans Affairs (VA) hospital for his health needs, and this involved many trips far from her home. She also states that she was told that since he continued to pay for spouse SBP coverage for her when she was no longer his spouse, the money would go to his children. She says that she submitted her sons' names and addresses on the original forms she signed after the member's death.

Discussion

Claims against the government may be allowed only for expenses authorized by statute or regulation. *See* DOHA Claims Case No. 2019-CL-082701.2 (September 29, 2020). The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for the survivors of deceased members of the uniformed services. Spousal coverage ends upon divorce. If a member divorces and wishes to provide SBP coverage for his former spouse, he must notify DFAS in writing of the divorce and his intention to provide coverage for his former spouse, even if the former spouse was the 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)(iii). In addition, a member may be required under the terms of a divorce decree to provide SBP coverage to his former spouse. If he 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 not awarded former spouse coverage in the divorce decree. Therefore, she had no statutory right to request a deemed election. Further, the member did not voluntarily elect former spouse coverage for the claimant within one year of the date of the divorce. Therefore, DFAS properly denied the claim for the SBP annuity. *See* DOHA Claims Case No. 2017-CL-081403.2 (January 8, 2018).

As set forth above, DOHA has no authority under statute or regulation to allow the claim. However, as explained in the DOHA appeal decision, the claimant may have another avenue of relief that rests with the Air Force Board for Correction of Military Records (AFBCMR) under 10 U.S.C. § 1552.

Finally, 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 relief is denied, and we affirm the appeal decision dated December 9, 2021. 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

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