

DATE: March 14, 2022

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In Re: )

[REDACTED] )

Claimant )

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) Claims Case No. 2021-CL-110801.2  
)  
)

**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, on the written record that the United States is liable to the claimant for the amount claimed.

**DECISION**

The claimant, a surviving spouse of a deceased retired member of the U.S. Army Reserve, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 2021-CL-110801, dated January 25, 2022.

**Background**

The member was born on June 27, 1946. He joined the Army Reserve on September 14, 1969. Effective September 14, 1989, the member had 20 years of qualifying reserve service towards retirement and received his *Notification of Eligibility for Retired Pay at Age 60* (NOE). However, in December 1997 he was discharged from Army Reserve, and became a former member by resigning his commission and electing not to transfer to the retired reserve. Therefore, he held no military status after the date of discharge, and was not authorized entitlements or benefits until he applied for and received retired pay at age 60. Although the member was eligible to apply for reserve retired pay on June 27, 2006, his 60<sup>th</sup> birthday, he did not submit the DD Form 108, *Application for Retired Pay Benefits*, until April 30, 2015. At the time he submitted the DD Form 108, he was not married, and named his sister as an insurable

interest beneficiary for the Survivor Benefit Plan (SBP) on the DD Form 2656, *Data for Payment of Retired Pay Personnel*, which he also completed on April 30, 2015. The Army Reserve issued the member's retirement order, dated June 5, 2015, which retired the member in the grade of a Major effective June 27, 2006. On October 20, 2015, the member married the claimant. On January 24, 2021, the member passed away.

On March 5, 2021, the claimant filed a DD Form 2656-7, *Verification of Survivor Annuity*, applying for the member's SBP annuity as his surviving spouse. On April 9, 2021, the Defense Finance and Accounting Service (DFAS) denied her claim for the SBP annuity on the basis that the member did not designate her as an insurable-interest beneficiary at the time of his retirement. On April 19, 2021, the claimant appealed DFAS's denial of her claim for the SBP annuity. She stated that she was the legal wife of the member; they got married on October 20, 20[15]; and were married at the time of his death. She stated that they bought a house together utilizing the Department of Veterans Affairs (VA) loan process and then refinanced the mortgage. She stated that she is still living in their home and continues to pay the mortgage. She stated that as the widow of a deceased veteran, she is entitled to be supported by the SBP annuity.

On August 11, 2021, DFAS upheld their denial of the spouse SBP claim. On August 14, 2021, the claimant requested clarification on the SBP annuity. She stated that at the time of her late husband's retirement, he was not married and designated his sister, who was also not married, as his SBP beneficiary. She stated that the member's sister is now married to a retired Army officer and has been named as that member's SBP beneficiary. The claimant asked DFAS if the member's sister is eligible for both annuities. On September 15, 2021, DFAS responded to the claimant. DFAS answered that the member's sister is eligible for payment of both SBP annuities, citing the DoD Financial Management Regulation (DoDFMR), Volume 7B, Chapter 44, paragraph 4401. DFAS then forwarded the claimant's appeal package to DOHA for consideration.

In the appeal decision, the DOHA attorney examiner upheld DFAS's denial of the claim for the spouse SBP annuity on the basis that the member was not married to the claimant at the time he filed his election on April 30, 2015. The attorney examiner explained that the member had the right to elect spouse SBP coverage for the claimant within one year of their marriage. However, according to the record, the member failed to do so. Therefore, the claimant was not eligible for the SBP annuity.

In her request for reconsideration, the claimant states that she took care of her husband until the day he died. She loved him and comforted him while he was sick and hospitalized. She attaches her military identification and privilege card, which her late husband renewed for her in December 2020, a month before his death. She states that as the spouse of a deceased veteran, she is entitled to the SBP annuity and the member would not be happy with how she has had to fight for this entitlement.

## Discussion

The fundamental rule in adjudicating a claim is that payment may be made only for an expense authorized by statute or regulation. Moreover, it is a rule of statutory construction that 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. 2021-CL-041302.2 (August 31, 2021).

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) and (a)(2). 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 or acquires a dependent child. *See* 10 U.S.C. § 1448(a)(5)(B).

In this case, the member was eligible to apply for and receive retired pay when he reached the age of 60. However, he did not complete his application for retired pay and the DD Form 2656 until April 30, 2015. At that time, he was not married and did not have dependent children. Therefore, as set forth above, when the member married the claimant, he was able to elect coverage for her as a newly acquired spouse, but had to make such an election within one year after the date of the marriage. *See* 10 U.S.C. § 1448(a)(5)(B). Since the member failed to do so, the claimant's claim for the spouse SBP annuity is not payable.

## Conclusion

The claimant's request for reconsideration is denied, and we affirm the appeal decision dated January 25, 2022. In accordance with DoD Instruction 1340.21 (May 12, 2004) ¶ 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