

DATE: April 22, 2022

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In Re: )

[REDACTED] )

Claimant )

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) Claims Case No. 2021-CL-083107.2  
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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 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. 2021-CL-0831307, dated December 10, 2021.

**Background**

On March 21, 1987, the claimant and the member were married. On October 30, 2006, the member elected spouse and child Survivor Benefit Plan (SBP) coverage for the claimant and his children. On April 1, 2007, the member retired from the Air Force. The claimant and the member entered into a marital settlement agreement signed by the claimant and notarized on December 17, 2018, and signed by the member and notarized on January 30, 2019. The parties agreed that the claimant was entitled to receive 50% of the member's military retired pay beginning in January 2019. In addition, the agreement stated the following regarding the SBP:

The Wife [claimant] is entitled to remain the beneficiary of the Husband's Survivor Benefit Plan and the Husband will take no action to harm her status as the current beneficiary.

On February 18, 2019, the final decree of divorce was issued. The decree incorporated the marital settlement agreement.

On January 25, 2021, the member passed away. The claimant submitted a claim to the Defense Finance and Accounting Service (DFAS) for the SBP annuity as the member's former spouse. On March 29, 2021, DFAS denied her claim for the SBP annuity because the member did not elect former spouse SBP coverage for the claimant, nor did the claimant request a deemed election for SBP coverage within one year of the date of their divorce.

The claimant appealed DFAS's denial of her SBP claim to DOHA. In her appeal, she stated that the member told her that he would take care of everything. She said that she began directly receiving her portion of the member's retired pay in March 2019 through DFAS. Therefore, she assumed that the member had notified DFAS of the divorce. She believed that DFAS and the SBP were one entity, and did not know how the SBP process worked. She also stated that she is experiencing severe financial hardship and attached documents in support of her claim which included the marital settlement agreement, but not the final divorce decree.

In the appeal decision, the DOHA adjudicator upheld DFAS's denial of her claim for the former spouse SBP annuity, finding no evidence that the member elected former spouse SBP coverage or the claimant requested a deemed election for SBP coverage within one year of the divorce. The adjudicator further advised the claimant that she may find relief outside the purview of DOHA by petitioning the Secretary concerned for a correction of military records under 10 U.S.C. § 1552 and 10 U.S.C. § 1454.

In her request for reconsideration, the claimant attaches the final divorce decree. She states that after the divorce the SBP coverage should have been changed from spouse to former spouse, but the member failed to make the change. She states that the member may not have known to request the change since he was suffering from major health issues for the last five years of his life. She further states that she was left as the member's spouse SBP beneficiary on his account and he continued to pay SBP premiums for that coverage until his death.

### **Discussion**

Claims against the government may be allowed only for expenses authorized by statute or regulation. *See* DOHA Claims Case No. 2019-CL-022108.2 (September 17, 2019).

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for 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 after 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 covered under the SBP as the member's spouse beneficiary from the time he retired in 2007 until they divorced on February 18, 2019. Although the member may have intended that the claimant be covered as his former spouse under the SBP as set forth under the martial settlement agreement, he failed to establish former spouse SBP coverage within one year of their divorce. In addition, there is no evidence in the written record that the claimant made a request for former spouse SBP coverage within one year of the date of the divorce decree. Therefore, DFAS properly denied the claim for the SBP annuity. *See* DOHA Claims Case No. 2020-CL-120502.2 (May 26, 2021).

As set forth above, DOHA has no authority under statute or regulation to allow the claim. However, as explained by the adjudicator in the appeal decision, the claimant may have other available remedies that rest with the Air Force Board for Correction of Military Records (AFBCMR) 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 the record needs to be pursued with the AFBCMR.

### **Conclusion**

The claimant's request for relief is denied, and we affirm the appeal decision dated December 10, 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

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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