



On January 2, 2013, the Qualified Domestic Relations Order (QDRO) was approved by the court. The QDRO awarded the claimant 50% of the member's monthly disposable retired pay and former spouse SBP coverage. Concerning SBP, the QDRO stated the following:

**20. Former Spouse Survivor Annuity:** Former Spouse shall be awarded a former spouse survivor under the Military Retirement System.

On July 3, 2013, the member notified the Defense Finance and Accounting Service (DFAS) of his divorce by submitting a copy of the divorce decree dated February 26, 2008. He requested that spouse SBP premiums cease to be deducted from his retired pay. He did not submit the QDRO to DFAS. DFAS ceased deducting premiums for spouse SBP coverage from the member's retired pay and refunded the SBP premiums paid by the member retroactive to the date of the divorce.

On August 2, 2013, the claimant submitted a DD Form 2293, *Application for Former Spouse Payments from Retired Pay*, the divorce decree and the QDRO, to DFAS, requesting payment of 50% of the member's monthly disposable retired pay under the Uniformed Services Former Spouses' Protection Act (USFSPA) (10 U.S.C. § 1408). Although the claimant was granted the former spouse SBP annuity under the QDRO, she did not request a deemed election for it, nor did she submit the required form for requesting a deemed election, the DD Form 2656-10, *Survivor Benefit Plan (SBP) Former Spouse Request for a Deemed Election*.

On July 27, 2018, the claimant wrote to DFAS requesting that her SBP coverage be reinstated. On November 30, 2018, DFAS responded to her letter advising her that her attempt to deem an election for former spouse SBP coverage could not be processed because her application to deem the election was received by DFAS more than one year after the date of the court order. The claimant appealed DFAS's denial of her request to deem an election for former spouse SBP coverage. In her appeal, she stated that she first attempted to enroll in SBP in December 2008 by submitting by mail and fax to DFAS a completed DD Form 2656-10. She stated that she did not file anything after the 2013 QDRO because she thought she had properly submitted her deemed election request in 2008.

In the appeal decision, the DOHA attorney examiner upheld DFAS's determination that the claimant's request for a deemed election was not timely. He found that although the claimant may have submitted her request in 2008 to DFAS, the divorce decree did not award her former spouse coverage. Therefore, once the QDRO was issued by the court on January 2, 2013, awarding her former spouse SBP coverage, she had one year from that date to request a deemed election. The attorney examiner also found that although in 2018 DFAS received from the claimant a completed DD Form 2656-10 requesting a deemed election, there was no evidence that she submitted this form within one year of the date of the QDRO.

In the claimant's request for reconsideration, she continues to assert that SBP coverage should be reinstated because the QDRO issued on January 2, 2013, was based on the divorce decree issued in 2008. She also requests that her military ID card be issued. She further states

that in 2018 the member signed and submitted a DD Form 2656-1, *Survivor Benefit Plan (SBP) Election Statement for Former Spouse Coverage*, electing former spouse SBP coverage for her.

### **Discussion**

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 their claim by clear and convincing evidence on the written record that the United States Department of Defense is liable for the claim. *See* DoD Instruction 1340.21 (May 12, 2004) ¶ E5.7. Federal agencies and officials must act within the authority granted to them by statute in issuing regulations. Thus, the liability of the United States is limited to that provided by law (including implementing regulations).

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for the survivors of deceased members of the uniformed services. Under 10 U.S.C. § 1448(a)(1)(A), SBP is open to a member who is eligible for retired pay. Spousal coverage ends upon divorce, but the SBP includes provisions whereby a member may elect coverage for a former spouse. If a member elects to provide coverage for a 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, dissolution or annulment. *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). Under 10 U.S.C. § 1450(f)(3), the former spouse's request that the retired member shall be deemed to have made an election for former spouse SBP coverage must be submitted in writing and in the manner prescribed by the Secretary concerned. *See* 10 U.S.C. § 1450(f)(3)(A). Under 10 U.S.C. § 1450(f)(3)(C), the former spouse's written request for a deemed election must also include a copy of the court order, regular on its face, which require such an election. An election for former spouse SBP coverage may not be deemed to have been made unless the Secretary concerned receives such a request from the former spouse within one year of the date of the divorce decree. *See* 10 U.S.C. § 1450(f)(3)(C).

The implementing regulations for SBP elections and election changes are currently found under Chapter 43, Volume 7B of DoD 7000.14-R, the Department of Defense Financial Management Regulation (DoDFMR), Military Pay Policy and Procedures -- Retired Pay. Under that chapter, a former spouse or the former spouse's legal representative must request the deemed election by completing the DD Form 2656-10, and submitting it with the court order requiring the former spouse SBP election. The use of the DD Form 2656-10 to request a deemed election became mandatory on September 27, 2008. *See* DoDFMR ¶ 430504(C) (April 2019).

In order for the claimant to be covered as the member's former spouse under SBP after the issuance of the divorce decree, the member must have expressly elected the claimant as his former spouse beneficiary within one year after the date of the divorce. Therefore, if the member voluntarily decided to designate the claimant as his former spouse SBP beneficiary, he could have done so within the statutory time limit. The member did not voluntarily designate her as his

former spouse beneficiary within one year of the date of the divorce decree. In July 2013 when the member notified DFAS of his divorce, he submitted the divorce decree, but not the QDRO, and requested DFAS cease deduction of SBP premiums for spouse coverage.

In order for the claimant to have the statutory right to request a deemed election for former spouse SBP coverage, the divorce decree must have required the member to provide former spouse SBP coverage for her. *See* 10 U.S.C. § 1450(f). However, the divorce decree issued on February 26, 2008, did not award her former spouse SBP coverage. It was not until the issuance of the QDRO on January 2, 2013, that the claimant had the statutory right to request a deemed election. *See* 10 U.S.C. § 1450(f)(3)(A). Although the claimant submitted to DFAS her request to receive a portion of the member's retired pay in 2013, she did not submit her request for a deemed election to DFAS until 2018. Therefore, DFAS properly denied her request to be covered as the member's former spouse under the SBP. In addition, even if the member submitted a form in 2018 electing former spouse SBP coverage for the claimant, he too is not timely under the law, since he was required to elect it within one year of the date of the divorce, dissolution or annulment. *See* 10 U.S.C. §1448(b)(3)(A)(iii).

Finally, the issuance of a military ID to the claimant as the member's former spouse is a separate matter from the election of SBP. *See* DOHA Claims Case No. 2021-CL-031602.2 (June 28, 2021).

### **Conclusion**

The claimant's request for reconsideration is denied, and we affirm the appeal decision in DOHA Claim No. 2021-CL-110301, dated January 20, 2022, 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: Jennifer I. Goldstein

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Jennifer I. Goldstein  
Member, Claims Appeals Board