

DATE: July 27, 2022

In Re:)
 [REDACTED]) Claims Case No. 2021-CL-122804.2
)
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A surviving spouse's failure to submit an application for the annuity within six years of the member's death, bars her Survivor Benefit Plan (SBP) claim under 31 U.S.C. § 3702(b).

DECISION

The claimant, the surviving spouse of a deceased member of the U.S. Navy, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2021-CL-122804, dated February 16, 2022. In that case, DOHA denied the claim for the member's Survivor Benefit Plan (SBP) annuity because it was filed more than six years after the member's death.

Background

On June 8, 1963, the member and the claimant were married. On December 16, 1999, in anticipation of the member's retirement, he elected spouse and child SBP coverage. The member then retired from the Navy in 1999. On August 31, 2014, the member passed away. On November 17, 2014, the claimant applied for the member's arrears of pay (AOP) by completing the SF 1174, *Claim for Unpaid Compensation of Deceased Member of the Uniformed Services*. On February 21, 2015, the Defense Finance and Accounting Service (DFAS) sent the claimant a letter explaining that there was no AOP due on the member's account because he died on the last day of the month. DFAS has no record of the claimant applying for the member's SBP annuity until April 16, 2021, more than six years after the member's death, when she completed the DD

Form 2656-7, *Verification for Survivor Annuity*. DFAS determined that the claim for the SBP annuity was barred by the six-year statute of limitations set forth under 31 U.S.C. § 3702, and denied the claim.

The claimant appealed DFAS's determination to DOHA. In her appeal, she stated that the member left no instruction for her and she received no information from the Navy after his death. The DOHA attorney examiner upheld DFAS's denial of her SBP claim due to the application of the six-year statute of limitations, the Barring Act. He explained that the claimant had the right to request waiver of the Barring Act through the Assistant Secretary of the Navy. The attorney examiner then explained that the Board for Correction of Naval Records (BCNR) has the authority under 10 U.S.C. § 1552, to correct a member's record when the Secretary concerned considers it necessary to correct an error or remove an injustice.

In her reconsideration request, the claimant states that in 2021 she first became aware that she may be entitled to the SBP annuity when her granddaughter, who is a military member, informed her about the possible benefits. She states that she is 87 years old and has to rely on her children for financial assistance. She understands that she passed the deadline for claiming the SBP, but she believes that she should be entitled to what her husband paid into the program, if nothing else. She further requests waiver of the Barring Act under 31 U.S.C. § 3702(e) to allow SBP annuity payments up to the maximum amount of \$25,000.00.

Discussion

The SBP now codified under 10 U.S.C. §§ 1447-1455, is an income maintenance program for survivors of retired military members. Under 31 U.S.C. § 3702(b), a survivor has six years to file a claim for the SBP annuity. In pertinent part, section (b)(1) states the following:

A claim against the Government presented under this section must contain the signature and address of the claimant or an authorized representative. The claim must be received by the official responsible under subsection (a) for settling the claim or by the agency that conducts the activity from which the claim arises within 6 years after the claim accrues . . .

All the events giving rise to the government's liability to make SBP annuity payments to a survivor occur at the date of the member's death, and the survivor has six years from that date to file the claim. Claims filed more than six years after a member's death are barred. *See* DOHA Claims Case No. 2018-CL-091702.2 (June 17, 2019); DOHA Claims Case No. 2018-CL-061204.2 (January 18, 2019); and DOHA Claims Case No. 2017-CL-062703.2 (August 31, 2017).

We acknowledge the claimant's financial situation. However, DOHA has no authority to allow her claim for the SBP annuity. The member's death in 2014 fixed the liability of the government and entitled the claimant to make a claim. DOHA has no authority to modify or waive the provisions of the Barring Act or make any exceptions to the time limitations it

imposes. *See* DOHA Claims Case No. 08112402 (November 26, 2008); Comptroller General decisions B-260207, Nov. 6, 1995; and B-260835, May 10, 1995.

As explained by DFAS and DOHA, the claimant may request waiver of the Barring Act under 31 U.S.C. § 3702(e), through the Assistant Secretary of the Navy. Under 31 U.S.C. § 3702(e), upon request of the Assistant Secretary of the Navy, the Secretary of Defense may waive the time limits established by 31 U.S.C. § 3702(b) for claims involving a uniformed service member's pay, allowances or survivor benefits. Under DoD Instruction 1340.21 ¶ E6.4 (May 12, 2004), the Director of DOHA is delegated the authority to grant or deny the request on behalf of the Secretary of Defense. However, the claimant must file her request directly with the Assistant Secretary of the Navy at the following address:

Assistant Secretary of the Navy
(Financial Management & Comptroller)
720 Kennon Street SE
Bldg 36, Room 104
Washington Navy Yard, DC 20374

We note that under 31 U.S.C. § 3702(e), waiver shall only be granted to allow payment up to a maximum of \$25,000.00, and the claimant will not be granted the SBP annuity prospectively. Therefore, the claimant may wish to also pursue the matter with the BCNR. Under 10 U.S.C. § 1552, the Secretary of a military department, acting through a correction board, may correct a member's record when the Secretary considers it necessary to correct an error or remove an injustice.

Conclusion

For the reasons stated above, the claimant's request for reconsideration is denied, and we affirm the appeal decision dated February 16, 2022.

SIGNED: Catherine M. Engstrom

Catherine M. Engstrom
Chairman, Claims Appeals Board

SIGNED: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board

SIGNED: Jennifer I. Goldstein

Jennifer I. Goldstein
Member, Claims Appeals Board