

DATE: July 29, 2022

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In Re: )  
[REDACTED] ) Claims Case No. 2021-CL-122808.2  
Claimant )

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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.

**DECISION**

The claimant, a former 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-122808, dated January 31, 2022.

**Background**

The member and the claimant were married on March 20, 1981. On May 1, 1996, the member retired from the Navy and elected spouse only Survivor Benefit Plan (SBP) coverage for the claimant, plus supplemental coverage at the 5% level. On November 24, 1998, the claimant obtained a temporary order in a California state court granting her 37.5% interest in the member's retired pay and authorizing her \$400.00 per month in spousal support. The court never finalized the divorce between the member and the claimant. On August 10, 1999, the member attempted to marry another woman in the Philippines, claiming he was divorced. On March 7, 2000, the member asked the Defense Finance and Accounting Service (DFAS) to remove the claimant as his spouse SBP beneficiary, claiming that they were divorced in May 1999. On July 17, 2000, the member requested that DFAS add his new spouse as his beneficiary for SBP. Since the member was still married to the claimant, his marriage to another woman in the Philippines was a nullity, and the claimant continued to be his spouse SBP beneficiary. On July 16, 2003, the member, an Illinois resident, obtained a divorce from the claimant in an Illinois state court. The divorce decree did not award the claimant former spouse SBP coverage.

On June 17, 2015, the member remarried. On March 8, 2019, the member requested that DFAS add his new spouse as his arrears of pay (AOP) beneficiary. On August 26, 2020, the member passed away. The member's death certificate listed that his surviving spouse as the woman he married on June 17, 2015, and whom he designated as his AOP beneficiary.

On December 23, 2020, the claimant submitted to DFAS an incomplete DD Form 2656-7, *Verification for Survivor Annuity*, claiming the SBP annuity as the member's spouse. On January 12, 2021, DFAS denied her claim on the basis that the member did not establish former spouse SBP coverage for the claimant, nor did the claimant make a request for a former spouse deemed election within one year of their divorce.

The claimant appealed DFAS's denial of her claim. She included the temporary order dated November 24, 1998, reflecting that she was entitled to receive 37.5% of the member's retired pay. She noted that she was still legally married to the member because their divorce was never finalized. In the DOHA appeal decision, the attorney examiner upheld DFAS's denial of the claim for the SBP annuity. He explained that the member obtained a divorce from the claimant on July 16, 2003; that spouse SBP coverage for the claimant ended with their divorce; the divorce decree did not require the member to make a former spouse election for the claimant; and the member did not elect former spouse SBP coverage for her.

In her request for reconsideration, the claimant states that she never received the divorce decree dated July 16, 2003, dissolving her marriage to the member. She also states that she was never given a chance to respond to the member's filing of divorce. She reiterates that she was granted a portion of the member's retired pay pursuant to the temporary order issued in November 1998.

### **Discussion**

Claims against the government may be allowed only for expenses authorized by statute or regulation. Therefore, DOHA must render decisions based on applicable statutes, regulations and our prior administrative decisions.

SBP is an income maintenance program for the survivors of deceased members of the uniformed services. *See* 10 U.S.C. §§ 1447-1455. Spousal coverage ends upon divorce. If a member divorces and wishes to provide SBP coverage for the former spouse, the member must notify DFAS in writing of the divorce and the intention to provide coverage for the former spouse, even if the former spouse was the member's 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). In addition, a member may be required under the terms of a divorce decree to provide SBP coverage to the former spouse. If the member 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 member elected spouse SBP coverage for the claimant in 1996. In November 1998 the claimant was granted a temporary order pending trial by a California state

court which awarded her monthly payments of spousal support by wage assignment from the member commencing on December 1, 1998. However, there was no mention of the SBP annuity in the temporary order, and no further action was taken by the court in the matter. Although the member attempted to marry someone else in the Philippines in August 1999, that marriage was null and void because he was still married to the claimant. The claimant continued to be covered as the member's spouse SBP beneficiary from 1996 until 2003 when their divorce ended the coverage. While the claimant maintains that she had no knowledge of the divorce in 2003, a review of the divorce decree reflects that the member obtained a valid divorce in an Illinois state court where he was domiciled. The divorce decree reflects that the court had jurisdiction over the divorce proceedings because of the member's residence in Illinois, and that service of process by publication was made on the claimant pursuant to state law. The divorce decree is valid on its face and the clerk of the court attested to the validity of the copy of it on July 16, 2003. There is no evidence that the claimant was awarded former spouse SBP coverage in the divorce decree. Therefore, she had no statutory right to request a deemed election. DFAS properly denied the claim for the SBP annuity. *See* DOHA Claims Case No. 2021-CL-020502.2 (August 19, 2021).

### **Conclusion**

The claimant's request for reconsideration is denied and we uphold the DOHA appeal decision in DOHA Claim No. 2021-CL-122808, dated January 31, 2022. In accordance with the Department of Defense 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