

DATE: August 18, 2022

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In Re: )  
[REDACTED] ) Claims Case No. 2022-CL-020804.2  
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**

A retired member of the U.S. Army requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 2022-CL-020804, dated April 25, 2022. In that decision, DOHA upheld the Defense Finance and Accounting Service's (DFAS's) denial of the member's request to cover his spouse as his beneficiary under the Survivor Benefit Plan (SBP).

**Background**

The member was born on June 7, 1960. When he received his Notification of Eligibility for Retired Pay memorandum (NOE), he completed the DD Form 2656-5, *Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate*, indicating that he was not married and electing Option C, immediate SBP coverage for his dependent children. On September 10, 2016, the member married. On July 15, 2019, in anticipation of his 60<sup>th</sup> birthday, June 7, 2020, when he became entitled to receive retired pay, he completed the DD Form 2656, *Data for Payment of Retired Personnel*. On that form, he did not list any dependent children and requested SBP coverage for his spouse. On July 24, 2020, the member completed a DD Form 2656-6, *Survivor Benefit Plan Election Change Certificate*, requesting spouse SBP coverage. DFAS denied the member's request to elect SBP coverage for his spouse.

On August 31, 2021, the member appealed DFAS's denial of his request for spouse SBP coverage. In his appeal, the member stated that when he got married, he added his new spouse to the Defense Enrollment Eligibility Reporting System (DEERS). The member stated that Army National Guard personnel advised him that he was not permitted to submit the paperwork for his retirement until he was within one year of his 60<sup>th</sup> birthday. He stated that when he was within one year of his retirement, he filled out the forms and requested spouse SBP coverage. In response to the member's appeal, DFAS completed an administrative report dated February 18, 2021, and indicated that the member filled out his DD Form 2656-5 on September 5, 2003.

In the appeal decision, the DOHA adjudicator upheld DFAS's denial of the member's request to cover his spouse under the SBP. The adjudicator noted that the DD Form 2656-5, was undated and missing its third page, and that although DOHA had requested the documentation from DFAS, DFAS never provided it. She then explained that the member had one year from the date of his marriage to request SBP spouse coverage for her. Therefore, under statute and regulation, DOHA had no authority to allow the SBP coverage. However, she advised the member that he may find other available relief outside the purview of DOHA by petitioning the Army Board for Correction of Military Records (ABCMR) under 10 U.S.C. § 1454 and 10 U.S.C. § 1552.

In the member's reconsideration request, he states that he has no new documents to submit in support of his claim. He states that DFAS and DOHA have all the supporting evidence to support his claim concerning why his spouse should be covered as his beneficiary. He states that he submitted everything to cover his spouse including a complete DD Form 2656-6 that he submitted in 2020. He maintains that it is in DOHA's authority to award the SBP coverage to his spouse. He requests that DOHA override his previous election in 2003 for child SBP coverage.

## **Discussion**

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for survivors of retired military members. A married reservist or reservist with a dependent child may elect to participate in SBP when he is notified under 10 U.S.C. § 12731(d) that he has completed the years of service required for eligibility for reserve-component retired pay. *See* 10 U.S.C. § 1448(a)(2)(B). A member who is not married upon becoming eligible to participate in the plan but who later marries may elect to establish coverage for his spouse pursuant to 10 U.S.C. § 1448(a)(5). That section requires a written election, signed by the member, and received by the Secretary concerned within one year of the marriage. *See* DOHA Claims Case No. 2021-CL-031602.2 (June 28, 2021); and DOHA Claims Case No. 2019-CL-031402.2 (September 24, 2019).

The member was unmarried at the time he elected Option C, immediate child only SBP coverage. On September 10, 2016, he married. He had one year from the date of his marriage to designate his new spouse as his SBP beneficiary. There is no record of an election for spouse SBP coverage during the period September 2016 through September 2017. Since he failed to

make the election within one year of the date of his marriage, DFAS properly denied his request to cover his spouse as his SBP beneficiary.

We appreciate the fact that the member may have been given incorrect information by Army National Guard personnel. However, DOHA is bound by statute and regulation, and therefore, is unable to grant the SBP coverage for the member's spouse. As set forth in the appeal decision, the member may have other available remedies that exist outside DOHA's authority. Under 10 U.S.C § 1454(a), the Secretary concerned may correct or revoke any election under this subchapter when the Secretary considers it necessary to correct an administrative error. Further, 10 U.S.C. § 1552(a)(1) states that the Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice. Either type of action is made through a civilian board, in this case the Army Board for Correction of Military Records (ABCMR). These remedies are outside DOHA's authority and any request for a correction of record needs to be pursued with the ABCMR.

### **Conclusion**

The member's request for reconsideration is denied, and we affirm the appeal decision in DOHA Claim No. 2022-CL-020804, dated April 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: Richard C. Ourand, Jr

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Richard C. Ourand, Jr  
Member, Claims Appeals Board

SIGNED: Daniel F. Crowley

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Daniel F. Crowley  
Member, Claims Appeals Board