



**DEPARTMENT OF DEFENSE
 DEFENSE LEGAL SERVICES AGENCY
 DEFENSE OFFICE OF HEARINGS AND APPEALS
 POST OFFICE BOX 3656
 ARLINGTON, VIRGINIA 22203-1995**



DATE: August 22, 2022

In Re:)	
[REDACTED])	Claims Case No. 2021-CL-080401.3
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. Army, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2021-CL-080401, dated May 19, 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 November 3, 1963, the member and the claimant were married. The member elected spouse SBP coverage for the claimant. He retired from the Army on April 30, 2001. On December 4, 2013, the member passed away. The Defense Finance and Accounting Service (DFAS) sent the claimant a condolence letter dated March 10, 2014, requesting a copy of the member's death certificate in order for DFAS to establish her SBP account. On March 26, 2021, the claimant completed the DD Form 2656-7, *Verification for Survivor Annuity*, claiming the SBP annuity as the member's spouse. On May 14, 2021, DFAS determined that the claim for the SBP annuity was barred by the six-year statute of limitations, the Barring Act, set forth under 31 U.S.C. § 3702(b), and denied the claim. DFAS advised the claimant that she had the right to

request waiver of the Barring Act through the Assistant Secretary of the Army to allow payment of up to \$25,000 in retroactive annuity payments. DFAS also gave her appeal rights to DOHA.

On May 25, 2021, the claimant requested waiver of the Barring Act through the Assistant Secretary of the Army. On October 19, 2021, acting upon the Assistant Secretary of the Army's request, the DOHA Claims Appeals Board waived the Barring Act to allow payment of \$16,459.33 of retroactive SBP annuity payments to the claimant.

The claimant also appealed DFAS's determination to apply the Barring Act to her claim for the SBP annuity to DOHA. In her appeal, she stated that during the 13-year period prior to the member's death, she was his primary caregiver. She ignored her own health, and after his death it took her so long to apply for the benefits because of her own health issues. As soon as she found out that she qualified for the benefits, she immediately took action. The DOHA attorney examiner upheld DFAS's denial of her SBP claim due to the application of the six-year statute of limitations. He explained that she may have an available remedy under 10 U.S.C. § 1552. Under that statute, the Army Board for Correction of Military Records (ABCMR) has the authority to correct a member's record when the Secretary considers it necessary to correct an error or remove an injustice. He explained that the claimant should submit her petition for a records correction to the ABCMR, and listed the address where she should send it.

In her reconsideration request, the claimant apologizes for the time it took her to apply for the SBP annuity. She states that after her husband passed away, she had to deal with her own decline in health. She states that she is experiencing financial hardship from paying for her cancer treatments and medicine. She states that she often has to choose between buying medicine or food. She states that she and her husband sacrificed the money to pay for her coverage for all those years, and now she receives no benefit from it. She states that she is struggling financially while her health is declining. She requests that DOHA cut through all the red tape and award her the annuity.

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 December 2013 fixed the liability of the government and entitled the claimant to make the SBP annuity 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 the attorney examiner in the appeal decision, the claimant may wish to pursue the matter with the ABCMR. Under 10 U.S.C. § 1552, the Secretary of a military department, acting through a correction board, has broad discretion to correct a member's record when the Secretary considers it necessary to correct an error or remove an injustice. More information on petitioning the ABCMR can be found on their website at: <https://arba.army.pentagon.mil/abcmr-overview.html>.

Conclusion

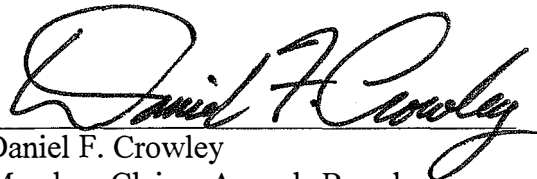
For the reasons stated above, the claimant's request for reconsideration is denied, and we affirm the appeal decision dated May 19, 2022.



Catherine M. Engstrom
Chairman, Claims Appeals Board



Richard C. Ourand
Member, Claims Appeals Board



Daniel F. Crowley
Member, Claims Appeals Board