



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-121403.2
Claimant)	

**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. Air Force, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2021-CL-121403, dated February 17, 2022.

Background

On May 3, 1986, the claimant and the member were married. On June 25, 2009, with the concurrence of the claimant, the member elected reduced Survivor Benefit Plan (SBP) coverage for the claimant and his children. On January 1, 2010, the member retired from the Air Force. On August 19, 2014, the claimant and the member divorced. The divorce decree stated in pertinent part the following:

The parties have previously elected survivor benefits on the Husband’s military pension referenced above. No action shall be taken by either party to do away with said survivor benefits or alter same in any fashion.

On October 10, 2020, the member passed away. On November 10, 2020, the claimant filed a DD Form 2656-7, *Verification for Survivor Annuity*, claiming the SBP annuity as the former spouse of the member. DFAS subsequently denied the claim for a SBP annuity because

the member did not establish former spouse SBP coverage for the claimant within one year of the date of the divorce, nor did the claimant file a deemed election for the SBP annuity within one year of the divorce.

On March 3, 2021, the claimant appealed DFAS's denial of her claim to DOHA. She stated that neither she nor the member were informed by their attorneys that they needed to make a change in the SBP coverage from spouse to former spouse. She stated that they would have followed the process to make the change had they known it was required. She also submitted a letter from the attorney representing her in reference to the estate of the member. In the letter, the attorney cited to the language concerning SBP in the divorce decree and stated that it was the member's intent to keep the SBP benefit intact for the claimant.

In the appeal decision, the DOHA attorney examiner upheld DFAS's denial of the claim, finding that the member did not establish former spouse SBP coverage for the claimant within one year of the divorce as required by 10 U.S.C. § 1448(b)(3), nor did the claimant request a deemed election within one year of the issuance of the divorce decree as required by 10 U.S.C. § 1450(f)(3). He explained that although DOHA did not have the authority to grant the SBP annuity claim under applicable statute and regulation, the claimant may have another avenue of redress under 10 U.S.C. § 1552, by petitioning the Air Force Board for Correction of Military Records (AFBCMR).

In her reconsideration request, the claimant submits a letter dated March 11, 2022, from her attorney who represented her in the dissolution of her marriage from the member. The attorney states that it was the intent of the parties that the member continue to maintain the claimant's SBP coverage. The attorney states that the parties believed the language in the divorce decree was sufficient to guarantee the claimant the SBP annuity and the member was not aware that he had to execute any further documentation within one year of the divorce decree to maintain the claimant's coverage.

Discussion

Claims against the government may be allowed only for expenses authorized by statute or regulation. *See* DOHA Claims Case No. 2017-CL-101202.2 (April 10, 2018).

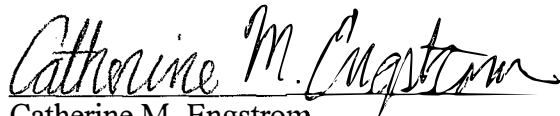
The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for the survivors of deceased members of the uniformed services. Spousal coverage ends upon divorce. If a member divorces and wishes to provide SBP coverage for his former spouse, he must notify DFAS in writing of the divorce and his intention 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. *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).

In this case, the claimant was covered under the SBP as the member's spouse beneficiary from the time he retired from the Air Force in 2010 until such coverage ended with their divorce in August 2014. Although the member may have believed that the language in the divorce decree was sufficient to continue coverage for the claimant after their divorce, he failed to establish former spouse SBP coverage for her within one year of their divorce as required by statute. In addition, the claimant did not make a request for a deemed election for the coverage within one year of the date of divorce. Therefore, DFAS properly denied the claim for the SBP annuity.

We note that the record contains the claimant's submission of a DD Form 149, *Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552*. If the claimant has not already done so, that form should be submitted to the AFBCMR under 10 U.S.C. §1552. As explained by the attorney examiner in the appeal decision, the Secretary of a military department, here the Secretary of the Air Force through their correction board, the AFBCMR, has the discretionary authority to correct the record when it considers it necessary to correct an error or remove an injustice. The AFBCMR's authority is broader than DOHA's authority to settle a claim, and is beyond DOHA's purview.

Conclusion

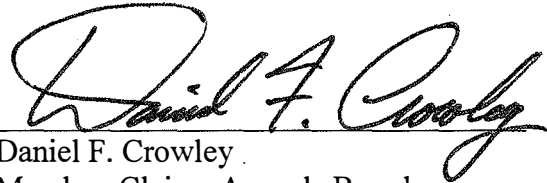
The claimant's request for relief is denied. In accordance with the Department of Defense Instruction 1340.21 ¶ E7.15.2, this is the final administrative action of the Department of Defense in this matter.



Catherine M. Engstrom
Chairman, Claims Appeals Board



Jennifer I. Goldstein
Member, Claims Appeals Board



Daniel F. Crowley
Member, Claims Appeals Board