



**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. 2022-CL-031603.2

_____)
 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. Army, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2022-CL-031602, dated April 26, 2022.

Background

The member and the claimant were married on May 23, 1965. On February 23, 1993, in preparation for his retirement, the member elected spouse only Survivor Benefit Plan (SBP) coverage for the claimant. On May 1, 1993, the member retired from the Army. On October 12, 2011, the member and the claimant divorced. The claimant was not awarded former spouse SBP coverage in the divorce decree.

On November 21, 2020, the member passed away. The claimant subsequently claimed the SBP annuity as the member's former spouse. The Defense Finance and Accounting Service (DFAS) denied her claim on the basis that the member did not elect former spouse SBP coverage for her within one year of their divorce.

The claimant appealed DFAS's denial of her claim. The claimant stated that if the member had not been sick after their divorce, he would have elected former spouse coverage for her.

In the DOHA appeal decision, the adjudicator upheld DFAS's denial of the claim for the SBP annuity. She explained that DOHA's authority was limited by statute and regulation, and that an election for former spouse SBP coverage had to have been received by DFAS within one year of the date of the divorce.

In her request for reconsideration, the claimant states that the member made a mistake in not submitting the divorce decree and requesting coverage for her within one year of their divorce. She states that the member was in poor health, due to suffering from several heart attacks, and this led to him not electing former spouse SBP coverage for her after their divorce. She states that since he passed away, she has been experiencing financial hardship.

Discussion

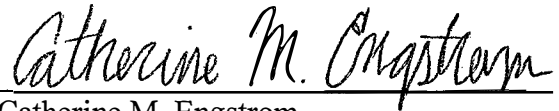
Claims against the government may be allowed only for expenses authorized by statute or regulation. DOHA must render decisions based on the written record in front of us, and applicable statutes, regulations and our prior administrative decisions.

The SBP, set out in 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 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 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 claimant was covered as the member's spouse SBP beneficiary from the time he retired in 1993 until such coverage ended with their divorce in 2011. The claimant was not awarded former spouse SBP coverage in the divorce decree. Therefore, she had no statutory right to request a deemed election. Further, although the member may have intended that his former spouse be covered under the SBP, he failed to establish former spouse SBP coverage within one year of their divorce. Therefore, DFAS properly denied the claim for the SBP annuity. *See* DOHA Claims Case No. 2020-CL-042201.2 (November 18, 2020).

Conclusion

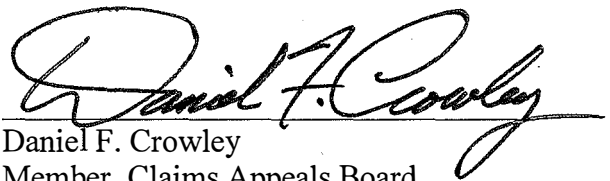
The claimant's request for relief is denied and we uphold the DOHA appeal decision dated April 26, 2022. In accordance with the Department of Defense Instruction 1340.21 ¶ E7.15.2, this is the final administrative action of the Department of Defense in this matter.



Catherine M. Engstrom
Chairman, Claims Appeals Board



Richard C. Ourand, Jr
Member, Claims Appeals Board



Daniel F. Crowley
Member, Claims Appeals Board