

DATE: August 30, 2022

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In Re: )

[REDACTED] )

) Claims Case No. 2022-CL-030901.2

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. 2022-CL-030901, dated April 26, 2022.

**Background**

The member and the claimant were married on May 22, 1982. On May 5, 2006, in anticipation of his retirement, the member elected spouse and child Survivor Benefit Plan (SBP) coverage for the claimant and his then dependent children. On July 1, 2006, the member retired. On February 1, 2011, the member and the claimant divorced. The divorce decree incorporated by reference the member's and the claimant's stipulation and agreement dated October 5, 2010. In that agreement, the claimant was awarded a portion of the member's monthly disposable retired pay. The agreement also stated the following in regards to SBP coverage:

Husband and Wife shall execute the necessary documents to maintain the Survivor's Benefit Plan with Wife and the parties' child, [redacted], as sole beneficiaries. Husband agrees that this beneficiary election shall be permanent and non-transferable.

On April 27, 2021, 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 establish former spouse SBP coverage for the claimant within one year of their divorce, nor did the claimant file a deemed election for former spouse SBP coverage within one year of the divorce.

The claimant appealed DFAS's denial of her claim. The claimant stated that the member passed away unexpectedly from COVID-19 in April 2021. She stated that they were married for 28 years and agreed at the time of their divorce that she would retain SBP coverage. She stated that while she was listed as the member's SBP beneficiary, she understood the reason for the denial was that he did not update his record to change her status to former spouse. She stated that the divorce decree required him to maintain her SBP coverage and that was the member's intention.

In the appeal decision dated April 26, 2022, the DOHA 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. She explained that although DOHA did not have the authority to grant the SBP annuity claim under applicable statute and regulation, the claimant may have other avenues of relief under 10 U.S.C. § 1552 and 10 U.S.C. § 1454, by petitioning the Board for Correction of Naval Records (BCNR).

On May 22, 2022, the claimant requested an extension of time to file her reconsideration request of the DOHA appeal decision. She stated that she needed time to retain an attorney to assist her in petitioning the BCNR. She also stated that she should be granted the annuity because DFAS told her over the phone that the member continued to pay for SBP coverage for her up until the day he died. She has requested that documentation from DFAS reflecting this. She stated that although the member did not change the coverage from spouse to former spouse, he never elected the coverage for his new spouse. On May 23, 2022, the DOHA adjudicator granted the claimant's request for an extension to file her reconsideration request, and sent her a letter stating that she had until June 27, 2022, to file it with any other documentation she wished the DOHA Claims Appeals Board to consider. On July 5, 2022, the claimant requested another extension to file her reconsideration request.

### **Discussion**

Under the provisions of the Department of Defense Instruction 1340.21 (May 12, 2004), DOHA must generally receive a claimant's request for reconsideration of an appeal decision within 30 days of the date of the appeal decision. Upon request, this period may be extended for an additional 30 days for good cause shown. No request for reconsideration may be accepted after this time has expired.

The claimant must prove, by clear and convincing evidence, on the written record that the United States is liable to the claimant for the amount claimed. *See* Instruction ¶ E5.7. 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). Further, a member who is participating in the SBP program with spouse coverage, who ceases to have an eligible spouse beneficiary and later remarries, may decline coverage for the subsequent spouse if he does so within the first year of the marriage. *See* 10 U.S.C. § 1448(a)(6).

In this case, the claimant was covered as the member's spouse SBP beneficiary from the time he retired in 2006 until such coverage ended with their divorce in 2011. 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. In addition, the claimant did not make a request for a deemed election for coverage within one year of the date of divorce. Therefore, DFAS properly denied the claim for the SBP annuity. *See* DOHA Claims Case No. 2021-CL-121403.2 (August 22, 2022); and DOHA Claims Case No. 2020-CL-052601.2 (January 25, 2021). Under the circumstances, even if the member continued to make spouse SBP premium payments for the claimant, she was no longer his spouse beneficiary, and effective one year after the date of their divorce, she was not eligible for the SBP annuity as the member's former spouse.

The claimant has indicated that she needs more time to pursue a correction of military record with the BCNR. Under DoD Instruction 1340.21, the claimant's request for reconsideration (including all documents the claimant wished the DOHA Claims Appeals Board to consider) had to be received by DOHA no later than June 27, 2022. After that time expired, DOHA had no further authority to consider anything more the claimant wished to be considered, or to grant any further extension of time to consider it. However, please note that DoD Instruction 1340.21 does not apply to the process of making a request for the correction of military record with the Secretary of a military department, here the Secretary of the Navy through their correction board, the BCNR.

## 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.

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