

DATE: January 17, 2023

In Re:)

[REDACTED])

) Claims Case No. 2022-CL-060702.2

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, the surviving spouse of a deceased retired member of the U.S. Marine Corps, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2022-CL-060702, dated July 28, 2022.

Background

The member retired from the Marine Corps on March 1, 2008. At that time, he was married and elected to participate in the Survivor Benefit Plan (SBP) with spouse coverage. On August 12, 2016, the member divorced his spouse. While the divorce decree required the member to provide SBP coverage for his former spouse, he did not elect former spouse SBP coverage for her, and she did not request a deemed election for coverage within one year of their divorce. On July 2, 2020, the member and the claimant were married. On July 24, 2020, the member submitted a DD Form 2656-6, *Survivor Benefit Plan Election Change Certificate*, naming the claimant as his spouse SBP beneficiary. On May 12, 2021, the member passed away. The claimant claimed the SBP annuity by submitting a DD Form 2656-7, *Verification for Survivor Annuity*, to the Defense Finance and Accounting Service (DFAS). On June 30, 2021, DFAS denied her claim for the SBP annuity as the member's surviving spouse because she was not married to the member for at least one year before his death.

The claimant appealed DFAS's denial of her claim for the SBP annuity. In her appeal, she stated that her husband proudly served in the Marine Corps from 1983 until 2008, and loved

his country. She stated that they were finally married on July 2, 2020, in the county court house, because their wedding had to be rescheduled twice due to the COVID-19 pandemic. She stated that she and the member dated for three years and lived together for two years prior to their wedding. She stated that the length of their actual marriage fell 50 days short of the one-year requirement before the member passed away.

In the DOHA appeal decision, the attorney examiner sustained DFAS's denial of the claim. He acknowledged that the member died just 50 days prior to the one-year anniversary of the marriage. However, he explained that under statute and regulation, the SBP claim was not payable because the claimant had not been married to the member for a year prior to his death.

In the claimant's reconsideration request, she states that her husband completed all the paperwork to ensure that she was his SBP beneficiary. She believes that the law is unjust, and if it were not for the pandemic, her husband would still be alive today.

Discussion

Claims against the government may be allowed only for expenses authorized by statute or regulation. When a language of a statute is clear on its face, the plain meaning of the statute will be given effect, and that plain meaning cannot be altered or extended by administrative action. *See* DOHA Claims Case No. 2020-CL-052603.2 (September 21, 2021); and DOHA Claims Case No. 2012-CL-061105.2 (September 27, 2012).

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for the survivors of deceased members of the uniformed services. Under the SBP, participating members contribute a portion of their retired pay to fund annuity payments for their designated beneficiaries. Participation in the SBP is automatic for members who are married or have dependent children when they become eligible to participate in SBP, *i.e.*, when they become eligible for retired pay. *See* 10 U.S.C. § 1448 (a)(1) and (a)(2). Once a member has made an election to participate in SBP, participation is irrevocable and cannot be waived by the member. *See* 10 U.S.C. § 1448(a)(4). Divorce ends the spouse's coverage under the SBP. If the member ceases to have an eligible spouse beneficiary and later remarries, he may decline coverage for the subsequent spouse if he does so within the first year of marriage. *See* 10 U.S.C. § 1448(a)(6).

Under 10 U.S.C. § 1450(a)(1), a spousal annuity is to be paid to a member's surviving spouse as defined in 10 U.S.C. § 1447(9). Section 1447(9) defines a surviving spouse as the member's widow or widower. Section (7) defines widow as the following:

- (7) Widow.- - The term "widow" means the surviving wife of a person who, if not married to the person at the time he became eligible for retired pay- -
 - (A) was married to him for at least one year immediately before his death; or
 - (B) is the mother of issue by that marriage.

In this case, the claimant was not married to the member at the time that he retired from the Marine Corps, and no issue was born from their marriage. They were married on July 2, 2020, and the member passed away on May 12, 2021, less than one year after their marriage.

DOHA is bound by statute and regulation, and therefore, is unable to allow the claim for the SBP annuity. However, the claimant may have other available remedies that rest with the Board for Correction of Naval Records (BCNR) under 10 U.S.C. § 1552 and 10 U.S.C. § 1454. These remedies are outside DOHA's authority and any request for a correction of record needs to be pursued with the BCNR.

Conclusion

The claimant's request for reconsideration 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.

SIGNED: Catherine M. Engstrom

Catherine M. Engstrom
Chairperson, Claims Appeals Board

SIGNED: Jennifer I. Goldstein

Jennifer I. Goldstein
Member, Claims Appeals Board

SIGNED: Gregg A. Cervi

Gregg A. Cervi
Member, Claims Appeals Board