

DATE: February 27, 2023

In Re:)

[REDACTED])

) Claims Case No. 2021-CL-101311.3

Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Under 31 U.S.C. § 3702(b), the Barring Act, jurisdiction to consider claims is limited to those that are filed within six years after they accrue. However, under 31 U.S.C. § 3702(e), upon request of the Secretary concerned, the Secretary of Defense may waive the time limits established by the Barring Act for claims involving a uniformed service member's pay, allowances or survivor benefits, to allow payment of up to \$25,000.00.

DECISION

The claimant, the former spouse of a deceased retired 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-101311.2, dated July 19, 2022.

Background

The member and the claimant divorced in 1989. Pursuant to the divorce decree, the claimant was entitled to receive a portion of the member's monthly disposable retired pay under 10 U.S.C. § 1408, the Uniformed Services Former Spouses' Protection Act (USFSPA). In 1991, the claimant began receiving her portion of the member's monthly retired pay under the USFSPA. On October 1, 1998, due to a change to the member's Department of Veterans Affairs (VA) disability rating, the member's retired pay account was suspended, and the claimant's former spouse payments stopped. On January 1, 2004, the member's retired pay account was restored. However, due to an administrative error, the Defense Finance and Accounting Service (DFAS) failed to restart the claimant's former spouse payments. On May 26, 2009, the member passed away. On November 28, 2017, DFAS notified the claimant of the adjustment made to the member's retired pay account in 2004 and advised her of a possible claim under the USFSPA. DFAS provided her with a SF-1174, *Claim for Unpaid Compensation of Deceased Member of*

the Uniformed Services. DFAS also informed the claimant that pursuant to the Barring Act, 10 U.S.C. § 3702(b), the government is prohibited from making payments that accrue more than six years prior to the date a claim is received. DFAS advised her that if her claim was subject to the Barring Act, they would provide her with information on how to proceed. On January 27, 2018, the claimant submitted the completed SF-1174 to DFAS. On July 15, 2019, citing the statute of limitations imposed by the Barring Act, DFAS barred payment of \$39,373.96, the retroactive former spouse underpayments due the claimant for the period January 1, 2004, through April 30, 2009. DFAS gave the claimant the right to appeal the application of the Barring Act to her claim, but also informed her of the right to request waiver of the Barring Act through the Assistant Secretary of the Army (Financial Management and Comptroller).

The claimant requested waiver of the Barring Act through the Assistant Secretary of the Army. In addition, on September 4, 2019, the claimant appealed DFAS's application of the Barring Act to her claim. In her appeal, she stated that she was notified by DFAS that her former spouse payments would stop when the member received the 100% disability rating from the VA. However, she did not know the member began drawing military retired pay again.

On October 14, 2021, the DOHA Claims Appeals Board, acting on the request of the Assistant Secretary of the Army, waived the time limits imposed by 31 U.S.C. § 3702(b) to allow reimbursement of underpaid former spouse payments from the member's retired pay account in the amount of \$25,000.00, the statutory maximum amount allowable. On October 27, 2021, DOHA received the claimant's appeal package forwarded to our office from DFAS.

In the appeal decision, the attorney examiner explained that there was no evidence that the claimant filed a claim for the retroactive former spouse payments until January 27, 2018, which was more than six years after they accrued. He explained that under applicable statute and regulation, DOHA had no authority to allow her claim for the barred amount. However, he advised her that she may wish to pursue a correction of military record with the Army Board for Correction of Military Records (ABCMR).

In her reconsideration request, the claimant reiterates that she was not aware that the member's retired pay had restarted. She requests payment of the balance of her claim.

Discussion

Claims against the government may be allowed only for expenses authorized by statute or regulation. When the 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.

Under 31 U.S.C. § 3702(b), jurisdiction to consider claims is limited to those that are filed within six years after they accrue. The claimant was underpaid her portion of the member's retired pay, under the USFSPA, during the period January 1, 2004, through April 30, 2009. DFAS did not receive a claim for the underpaid former spouse payments until January 27, 2018, more than six years from the date the claim accrued. Therefore, the claimant's claim for the

\$39,373.96 was properly barred by DFAS. *See* DOHA Claims Case No. 2017-CL-112704.2 (May 22, 2018). However, under the authority of 31 U.S.C. § 3702(e), upon the request submitted to DOHA by the Assistant Secretary concerned, our office waived the Barring Act to allow payment to the claimant of the statutory maximum amount of \$25,000.00. As the attorney examiner explained in the appeal decision, under 10 U.S.C. § 1552, the Secretary of the Army, acting through a correction board, may correct an error or remove an injustice. Information on petitioning the ABCMR is found on the Army Review Boards Agency's website.

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: Richard C. Ourand, Jr

Richard C. Ourand, Jr
Member, Claims Appeals Board

SIGNED: Jennifer I. Goldstein

Jennifer I. Goldstein
Member, Claims Appeals Board