

DATE: March 9, 2023

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In Re: )

[REDACTED] )

) Claims Case No. 2022-CL-090604.2

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. Army, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2022-CL-090604, dated September 27, 2022.

**Background**

The member was serving in the Army when he married the claimant on December 12, 1981. The member retired from the Army on March 1, 1998, having elected spouse and child Survivor Benefit Plan (SBP) coverage. On September 18, 2001, the member and the claimant divorced. The divorce decree approved and ratified the member and the claimant's prior marital agreement in which the parties agreed that the claimant would continue to be covered as the member's SBP beneficiary. That agreement also stated that both parties would execute all documentation necessary to enforce its terms.

On April 20, 2022, the member passed away. The claimant subsequently claimed the SBP annuity as the member's former spouse. On June 3, 2022, the Defense Finance and Accounting Service (DFAS) denied her claim and on June 14, 2022, the claimant appealed the denial. She stated that neither she nor the member knew about the one-year requirement to request former spouse SBP coverage after their divorce. She stated that they both believed the divorce decree was sufficient documentation to award her the coverage and neither of their

attorneys advised them of the one-year requirement to request it. She stated that during their marriage, she and the member made the mutual decision for her to end her military career and raise their children. She stated that she has now reached retirement age but does not know how to make ends meet without the SBP annuity.

In the DOHA appeal decision, the attorney examiner upheld DFAS's denial of the claim for the SBP annuity. He explained that an election for former spouse SBP coverage, whether voluntary, ordered, or deemed, had to have been received by DFAS within one year of the date of the divorce. The attorney examiner then described other available remedies outside the DOHA claims process that rest with the Army Board for Correction of Military Records (ABCMR) under 10 U.S.C. § 1454 and 10 U.S.C. § 1552.

In the request for reconsideration, the claimant requests that the ABCMR correct an error or injustice in order to grant her the SBP annuity. She attaches a completed DD Form 149, *Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552*, and supporting documentation.

### **Discussion**

Claims against the government may be allowed only for expenses authorized by statute or regulation. Therefore, DOHA must render decisions based on 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 1998 until such coverage ended with their divorce in 2001. However, the member failed to establish former spouse SBP coverage and the claimant did not file a timely deemed election. Therefore, DFAS properly denied the claim for the SBP annuity. *See* DOHA Claims Case No. 2019-CL-060401.2 (December 7, 2020).

As set forth above, DOHA has no authority under statute or regulation to allow the claim. However, as explained by the attorney examiner in the appeal decision, under 10 U.S.C. § 1552, a Secretary of a military department, acting through a correction board, in this case the ABCMR, may correct a member's record when the Secretary considers it necessary to correct an error or remove an injustice. *See also* 10 U.S.C. § 1454 (the specific statutory authority for the ABCMR

to correct or revoke an election for SBP). The ABCMR's authority under these two statutes is discretionary and outside DOHA's authority. Therefore, the claimant should submit her application for a correction of record to the ABCMR, not DOHA, since DOHA has no authority over this type of relief.

### **Conclusion**

The claimant's request for reconsideration is denied and we uphold the DOHA appeal decision dated September 27, 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  
Chairperson, Claims Appeals Board

SIGNED: Richard C. Ourand, Jr

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Richard C. Ourand, Jr  
Member, Claims Appeals Board

SIGNED: Jennifer I. Goldstein

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Jennifer I. Goldstein  
Member, Claims Appeals Board