

DATE: March 20, 2023

In Re:)

[REDACTED])

) Claims Case No. 2022-CL-060203.2

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-060203, dated August 22, 2022.

Background

The member and the claimant were married in 1983. On July 1, 2004, the member retired from the Army. At the member's retirement he elected spouse and child Survivor Benefit Plan (SBP) coverage for the claimant and his children. On October 20, 2011, the member and the claimant divorced. The divorce decree did not award former spouse SBP coverage to the claimant.

On June 17, 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 establish former spouse SBP coverage for the claimant, nor did the claimant make a request for a former spouse deemed election.

The claimant appealed DFAS's denial of her claim. In her appeal, she stated that she supported the member and honored the member during their marriage while he served in the Army. She stated that they had three children during the marriage. At the member's retirement,

he told her that he named her and their children as his SBP beneficiaries. She stated that at the time of his death, the member assured her that she would be covered as his SBP beneficiary. In the DOHA appeal decision, the attorney examiner upheld DFAS's denial of the claim for the SBP annuity. He noted that the divorce decree did not award the claimant former spouse SBP coverage. He found no evidence that the member made a voluntary election to provide former spouse SBP coverage within one year of the divorce.

In her request for reconsideration, submitted through her congressional representative, the claimant states that prior to his death, the member consistently listed the claimant as his beneficiary and intended to keep her as his SBP beneficiary. The claimant states that the record evidence reflects that the member intended her to receive the SBP benefits upon his death.

Discussion

Claims against the government may be allowed only for expenses authorized by statute or regulation. *See* DOHA Claims Case No. 2021-CL-041616.2 (July 7, 2022); and DOHA Claims Case No. 2021-CL-021201.2 (August 20, 2021). 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 2004 until such coverage ended with their divorce in October 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. 2021-CL-021201.2, *supra*.

Conclusion

The claimant's request for reconsideration is denied and we uphold the DOHA appeal decision in DOHA Claim No. 2022-CL-060203, dated August 22, 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

Catherine M. Engstrom
Chairperson, Claims Appeals Board

SIGNED: Jennifer I. Goldstein

Jennifer I. Goldstein
Member, Claims Appeals Board

SIGNED: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board