

SBP beneficiary because more than one year had passed since the date of her birth. DFAS also requested that the member provide other pertinent documentation in order for DFAS to properly audit his SBP account. On November 24, 2020, the member completed a DD Form 2656-6, *Survivor Benefit Plan Election Change Certificate*. On that form, he requested to change his SBP election to cover his daughter as his child SBP beneficiary.

On April 2, 2021, DFAS denied his request to change his SBP election to cover his daughter as his beneficiary because more than one year had passed since the date of his daughter's birth. In DFAS's denial, DFAS advised the member of his right to appeal the denial of his request to DOHA. DFAS then advised the member of the following:

Occasionally, Congress approves an Open Season enrollment period that would allow you to add your child to your SBP. If this opportunity becomes available, you will be advised.

The record also reflects that DFAS sent the member a letter dated April 2, 2021, advising him of an adjustment made to the SBP portion of his retired pay account resulting in a credit due him. DFAS included an adjustment worksheet reflecting that the member had overpaid SBP premiums as a result of monthly deductions from his retired pay during the period February 1, 2008, through April 30, 2009, when he did not have an eligible SBP beneficiary. DFAS determined during that period he was underpaid retired pay in the total amount of \$831.60. DFAS advised the member that the \$831.60 was barred due to the six-year statute of limitations contained under 31 U.S.C. § 3702(b) but explained that he had a right to request waiver of the time limitations through the Assistant Secretary of the Navy.

On April 21, 2021, the member, through his mother acting as his representative, appealed DFAS's denial of his request to designate his daughter as his SBP beneficiary. The member stated that DFAS erred in finding that there was no record of him advising DFAS of his daughter's birth. He noted that his daughter was covered under his Tricare Insurance, and Tricare insured and covered the expenses of her birth and all her subsequent pediatric visits.

In the appeal decision, the DOHA attorney examiner upheld DFAS's denial of the member's request to cover his daughter under the SBP. The attorney examiner explained that under statute and regulation, DOHA had no authority to allow the SBP coverage. However, he advised the member that he may find other available relief outside the purview of the DOHA by petitioning the Board for Correction of Naval Records (BCNR) under 10 U.S.C. § 1552.

In the member's reconsideration request, through his mother, he includes copies of his two sons' military identification cards, issued in November 2013. His mother states that due to her son's present incarceration, she is unable to provide proof of when the member's daughter received her military identification card. She does include copies of the hospital's statement showing Tricare coverage and payment for the member's daughter's birth. Her former daughter-in-law has also requested a letter from Tricare be sent evidencing proof of coverage for the member's daughter, but that letter has not yet arrived.

Discussion

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for survivors of retired military members. A married member or a member with a dependent child may elect to participate in SBP when he becomes eligible for retired pay. *See* 10 U.S.C. § 1448(a)(2)(A). A member who does not have a dependent child upon becoming eligible to participate in the plan but who later acquires a dependent child, may elect to establish coverage for that child pursuant to 10 U.S.C. § 1448(a)(5). That section requires a written election, signed by the member, and received by the Secretary concerned within one year after the date the member acquires the dependent child. *See* DOHA Claims Case No. 2021-CL-082409.2 (March 14, 2022); and DOHA Claims Case No. 2021-CL-031602.2 (June 28, 2021).

The member at retirement elected SBP coverage for his spouse. At that time, the member had no dependent children. Therefore, as set forth above, when the member's daughter was born in November 2013, he had one year from the date of her birth to make an SBP election for her as a newly acquired dependent.

As noted by DFAS in their letter dated April 2, 2021, sent to the member, Congress occasionally approves an SBP Open Season for enrollment. We note that the National Defense Authorization Act for Fiscal Year 2023 (NDAA FY 2023) authorizes an SBP Open Season for retired members in receipt of retired pay who are currently not enrolled in SBP to enroll. The SBP Open Season began on December 23, 2022, and ends on January 1, 2024. Information on the Open Season, including those members eligible to make such elections during it, is found online on DFAS's website at:

<https://www.dfas.mil/retiredmilitary/provide/sbp/sbp-open-season-ndaa2023/>

Finally, as set forth in the appeal decision, the claimant may have other available remedies that exist outside DOHA's authority. Under 10 U.S.C § 1454(a), the Secretary concerned may correct or revoke any election when the Secretary considers it necessary to correct an administrative error. Further, 10 U.S.C. § 1552(a)(1) states that the Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice. Either type of action is made through a civilian board, in this case the BCNR. These remedies are outside DOHA's authority and any request for a correction of record needs to be pursued with the BCNR.

Conclusion

The member's request for reconsideration is denied, and we affirm the appeal decision in DOHA Claim No. 2022-CL-072712, dated August 30, 2022. In accordance with DoD 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

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