

DATE: March 16, 2023

---

In Re: )  
          [REDACTED] ) Claims Case No. 2022-CL-082204.2  
                                  )  
Claimant )

---

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Under the Barring Act, 31 U.S.C. § 3702(b), 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, retired pay or survivor benefits, to allow payment of the claim up to \$25,000.00.

**DECISION**

The claimants, two surviving children of a deceased member of the U.S. Navy, request reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2022-CL-082204, dated September 29, 2022.

**Background**

The member was born November 11, 1936, and married December 1967. On March 29, 1981, when the member met the requisite years of service in the Navy Reserve to be eligible to receive retired pay at age 60, he elected Option C, immediate Survivor Benefit Plan (SBP) coverage for his spouse and children. On November 11, 1996, the member turned 60 years old and began receiving retired pay, and the proper SBP premiums were withheld from his monthly retired pay. On June 13, 2000, the member divorced. However, SBP premiums for spouse coverage continued to be deducted from the member’s monthly retired pay when he no longer had an eligible spouse SBP beneficiary. In April 2015, the member sent a completed DD Form 2894, *Designation of Beneficiary Information*, to the Defense Finance and Accounting Service (DFAS), designating his two children, in equal shares, as his beneficiaries for any arrears of retired pay (AOP) due upon his death. On March 20, 2021, the member passed away.

On April 28, 2021, the claimants submitted a SF 1174, *Claim for Unpaid Compensation of Deceased Member of the Uniformed Services*. Once DFAS received a completed SF 1174, along with the appropriate documentation concerning the member's marital status, DFAS completed an audit of the member's retired pay account. DFAS discovered that spouse SBP premiums were erroneously deducted from the member's retired pay after his divorce until the date of his death. As a result, DFAS determined that the member was due a refund of overpaid SBP premiums totaling \$70,317.62, during the period July 1, 2000, the first day of the month after his divorce, through February 28, 2021, the last day of the month prior to the month of his death. DFAS paid the claimants \$22,122.31 in equal shares as an AOP refund of SBP premiums for the period March 21, 2015, through February 28, 2021. However, pursuant to the six-year statute of limitations under 31 U.S.C. § 3702(b), DFAS barred payment of \$48,195.31, the portion of the AOP resulting from the overpayment of SBP premiums during the period July 1, 2000, through March 20, 2015.

The claimants, through their attorney, appealed DFAS's denial of their claim for the barred amount of \$48,195.31. In their appeal, they stated that the member continued to pay SBP premiums from his retired pay until the day he died. They stated that the member suffered from cognitive issues, stress, and other associated illnesses at the time of his divorce which may have contributed to him continuing to pay SBP premiums when he no longer had an eligible SBP beneficiary. They stated that it would be unjust and inequitable for these monies not to be paid the member's family.

In the appeal decision, the DOHA attorney examiner upheld DFAS's application of the Barring Act to the AOP claim for the period July 1, 2000, through March 20, 2015. The attorney examiner explained that under 31 U.S.C. § 3702(b), referred to as the Barring Act, the administrative statute of limitations, jurisdiction to consider claims is limited to those that are filed within 6 years after they accrue. The attorney examiner stated that the member's underlying claim to the retired pay due him as a result of the overpayment of SBP premiums first accrued after his divorce in June 2000, when he no longer had an eligible spouse SBP beneficiary. The attorney examiner advised the claimants that they have the right to seek waiver of the time limitations imposed by the Barring Act through the Assistant Secretary of the Navy. The attorney examiner stated that the member's claimants may claim any amount due, but waiver can be granted so as to allow payment up to a maximum of \$25,000.00, which is to be divided equally.

In their request for reconsideration, the claimants state that relevant facts were overlooked in the appeal decision and the attorney examiner's conclusion to uphold DFAS's application of the Barring Act was therefore arbitrary, capricious, and contrary to law. The claimants point out that the attorney examiner stated that DFAS for the first time learned of the member's divorce after his death. The claimants state that the record reflects that DFAS was aware or should have been aware of the member's divorce as of 2001. The claimants submit the member's claim for disability compensation from the Department of Veterans (VA) that they assert he filed in 2001. On that form, the member indicates that he was divorced on June 13, 2000. The claimants submit the member's retiree account statement (RAS) dated December 13, 2015, which reflects his tax withholding status as single, along with SBP premiums deductions from his retired pay for spouse coverage. The claimants point out that the date of birth listed for

the member's spouse is the date of birth for the member's former spouse. The claimants maintain that putting all this information together, the government was aware of the member's marital status way before the member's death. The claimants also request a further review of the member's record to determine whether or not DFAS was on notice or should have been on notice after the member's divorce.

### **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. Therefore, DOHA must render decisions based on applicable statutes, regulations, and our prior administrative decisions.

Claims settlement under 31 U.S.C. § 3702 is subject to a statute of limitations. Under 31 U.S.C. § 3702(b), jurisdiction to consider claims is limited to those that are filed within six years after they accrue. In pertinent part, section (b)(1) states the following:

A claim against the Government presented under this section must contain the signature and address of the claimant or an authorized representative. The claim must be received by the official responsible under subsection (a) for settling the claim or by the agency that conducts the activity from which the claim arises within 6 years after the claim accrues . . .

Unless otherwise provided by law, appropriated funds are not legally available to pay claims on which the applicable limitation has run. Absent statutory authority, agencies may not waive or extend the time allowed by the Barring Act. *See* DOHA Claims Case No. 2019-CL-012401.2 (November 26, 2019).

At the time the member met the requisite years of service in the Navy Reserve to be eligible to receive retired pay at age 60, he was married. He elected spouse and child SBP coverage and when he began receiving his retired pay in 1996, proper SBP premiums were withheld for his spouse's coverage. However, after the member divorced in June 2000 spouse SBP premiums continued to be deducted from his monthly retired pay, resulting in the member being underpaid a total of \$70,317.62 during the period July 1, 2000, through February 28, 2021. DFAS properly barred payment of the portion of the claim for the underpaid retired pay accruing during the period July 1, 2000, through March 20, 2015, in the amount of \$48,195.31. The claimants filed their claim for the member's AOP after the member's death. The record does not show any inquiries made, or a claim filed within six years of the accrual of the claim for the erroneous deduction of SBP premiums from the member's retired pay. Therefore, DFAS properly paid the AOP for the underpaid retired pay accruing after March 21, 2015 (six years from the date the claim was first filed) and barred the portion of AOP for the underpaid retired pay before that date. *See* DOHA Claims Case No. 2018-CL-051101.2 (November 29, 2018); and DOHA Claims Case No. 2017-CL-112704.2 (May 22, 2018).

The claimants argue that the Barring Act should not apply in this case since the member submitted information to the VA after his divorce when he applied for disability compensation. However, as set forth under 31 U.S.C. § 3702(b), a claim must be received by the official responsible for settling the claim or by the agency that conducts the activity from which the claim arises within six years from the date it first accrued. DFAS is the agency responsible for paying a member's retired pay, establishing coverage for a member under the SBP on the member's retired pay account, and making the necessary deductions from the member's retired pay for the established coverage. The VA is a separate agency from DFAS, and the member's submission of his VA disability compensation to the VA does not constitute a timely claim for the underpayment of his retired pay.

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, the claimants may request waiver of the Barring Act under 31 U.S.C. § 3702(e), through the Assistant Secretary of the Navy.

### **Conclusion**

The claimants' request for reconsideration is denied. In accordance with 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