

DATE: September 6, 2023

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In Re: )  
          [REDACTED] ) Claims Case No. 2023-CL-051603.2  
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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. Navy, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2023-CL-051603, dated June 28, 2023.

**Background**

The member and the claimant were married on April 16, 1976. On August 20, 1993, the member elected spouse only Survivor Benefit Plan (SBP) coverage for the claimant at a reduced base amount of \$1,000.00 per month. He also designated the claimant to receive 100% of any unpaid retired pay upon his death, commonly known as arrears of pay (AOP). On December 1, 1995, the member retired from the Navy. On January 30, 1998, the member and the claimant divorced. The judge, in a handwritten provision on the divorce decree, stated the following:

The wife shall receive \$650 of the husband's retirement and shall have continued use of military benefits and survivor benefits as described in the Settlement Agreement.

Even though the member was divorced, he continued to pay spouse SBP premiums from his retired pay. On January 11, 2022, the member passed away. On February 2, 2022, the claimant called the Defense Finance and Accounting Service (DFAS) to report the member's death. On February 14, 2022, the claimant submitted a DD Form 2656-7, *Verification for Survivor Annuity*, to DFAS, claiming the SBP annuity as the member's former spouse. On April 6, 2022, DFAS received the SBP annuity claim along with a copy of the divorce decree. On May 3, 2022, DFAS denied the claim for the SBP annuity because the member did not establish former spouse SBP coverage for the claimant, nor did the claimant make a request for a deemed election. On May 13, 2022, the claimant appealed DFAS's denial of her claim. In her appeal, she stated that she was married to the member for 18 years while he served in the military, and they had two boys together. She also was married to the member for five years after his retirement until they divorced. She stated that they remained the best of friends and were always in touch with each other. When the member fell ill, she convinced him to go to the doctor resulting in his hospitalization, and he lived with her during his recovery. She stated that the member eventually had to be placed in an assisted living facility. She stated that she remained his power of attorney, medical advocate and executor. She stated that the member told her he wanted her to be taken care of if anything ever happened to him and continued to pay for her SBP coverage. She stated that the member knew nothing about filling out the form to change her coverage to former spouse. If he had, he would have done so. She stated that she too knew nothing about filling out a form, and the judge during their divorce proceeding did not inform either of them of the requirement to file a change in coverage to former spouse. The claimant's stepdaughter also attached a statement to her appeal in support of her claim for the SBP annuity. On August 15, 2022, DFAS requested the claimant provide a full copy of the divorce decree and settlement agreement in order to reach a decision in the case. The claimant again submitted the divorce decree to DFAS. She explained that the judge signed the divorce decree and it was dated January 30, 1998.

DFAS issued an administrative report on February 7, 2023, sustaining the denial of the claim for the former spouse SBP annuity. DFAS found no evidence that the member elected former spouse SBP coverage within one year of the divorce, nor that the claimant requested a deemed election within one year of the divorce decree. In the appeal decision, the DOHA attorney examiner upheld DFAS's denial of the claim.

In the claimant's request for reconsideration, she states that the member meant for her to have the SBP annuity. She reiterates that if the member had received the paperwork for her to receive the annuity, he would have completed it. She states that after their divorce was final, he continued to pay for her SBP coverage. She questions why money continued to be withheld from his retired pay for her coverage if she is not to receive the annuity. She states that if nothing else, she should receive the money that was used to pay for her coverage.

### **Discussion**

The burden of proving the existence of a valid claim against the United States is on the person asserting the claim. The claimant must prove the claim by clear and convincing evidence on the written record that the United States Department of Defense is liable for the claim.

See DoD Instruction 1340.21 (May 12, 2004) ¶ E5.7. Federal agencies and officials must act within the authority granted to them by statute in issuing regulations. Thus, the liability of the United States is limited to that provided by law (including implementing regulations).

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for the survivors of deceased members of the uniformed services. Under 10 U.S.C. § 1448(a)(1)(A), SBP is open to a member who is eligible for retired pay. Spousal coverage ends upon divorce. If a member divorces and wishes to provide SBP coverage for a 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 after the date of the divorce, dissolution, or annulment. See 10 U.S.C. § 1448(b)(3)(A)(iii). In addition, a member may be required under the terms of a divorce decree to provide SBP coverage to a former spouse. If the member fails to do so, the former spouse has one year from the date of the court order or filing involved. See 10 U.S.C. § 1450(f)(3)(C).

In this case, the claimant was covered as the member's spouse SBP beneficiary from the time he retired in 1995 until such coverage ended with their divorce in 1998. Although the member may have intended the claimant be covered as his former spouse SBP beneficiary, he failed to establish former spouse SBP coverage for her within one year of the divorce. Therefore, DFAS properly denied the claim for the SBP annuity. See DOHA Claims Case No. 2021-CL-110201.2 (January 25, 2021).

Although DOHA has no authority to allow the claim, the claimant may have other remedies that rest with the Board for Correction of Naval Records (BCNR) under 10 U.S.C. § 1552 and 10 U.S.C. § 1454 (the specific authority to correct or revoke an election for SBP). The BCNR has the discretionary authority to correct the record when it considers it necessary to correct an error or remove an injustice. The BCNR's authority is broader than DOHA's authority to settle a claim and is beyond DOHA's purview. Information on the BCNR is located online at <https://www.secnav.navy.mil/mra/bcnr>.

Finally, we note that since SBP premiums for spouse coverage were deducted from the member's retired pay when he did not have an eligible spouse beneficiary, those costs should be refunded to the proper beneficiary as AOP under 10 U.S.C. § 2771. In order to claim the AOP, the member's beneficiary should fill out the SF-1174, *Claim for Unpaid Compensation of a Deceased Member of the Uniformed Services*, and submit it to DFAS.

## Conclusion

The claimant's request for reconsideration is denied, and we affirm the appeal decision in DOHA Claim No. 2023-CL-051603, dated June 28, 2023, disallowing the claim. 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

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Catherine M. Engstrom  
Chairperson, Claims Appeals Board

SIGNED: Charles C. Hale

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Charles C. Hale  
Member, Claims Appeals Board

SIGNED: Gregg A. Cervi

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Member, Claims Appeals Board