

DATE: February 29, 2024

In Re:)

[REDACTED])

Claimant)

) Claims Case No. 2023-CL-060506.2
)
)

**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. 2023-CL-060506, dated July 27, 2023.

Background

On September 5, 1985, the claimant and the member were married. The member retired from the Army on August 11, 2009, with automatic spouse Survivor Benefit Plan (SBP) coverage for the claimant. On July 21, 2020, the claimant and the member divorced. The divorce decree incorporated a settlement agreement awarding the claimant former spouse SBP coverage. The settlement agreement, in pertinent part, stated the following:

The Husband agrees to elect the Wife as the irrevocable beneficiary of the Survivor Benefit Plan and he shall execute such paperwork as is required to make or extend this election to the Wife. The Husband shall elect the Former Spouse-Only option and shall select as the base amount the full amount of his monthly retired pay.

On March 6, 2022, the member passed away. On March 23, 2022, the claimant submitted to the Defense Finance and Accounting Service (DFAS) a DD Form 2656-7,

Verification for Survivor Annuity, claiming the SBP annuity as the member's former spouse. On April 21, 2022, 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. She stated that a year after they filed for divorce the member had a terrible motorcycle accident. He was hospitalized and suffered multiple strokes. She stated that his speech was impaired, and he needed long-term care. She did not know that she had to do anything further to receive the SBP annuity. She believed that her attorney had taken care of that. She enclosed the member's last will and testament and power of attorney, both signed by the member on December 1, 1995, appointing the claimant as his personal representative and his attorney-in-fact, respectively.

In the DOHA appeal decision, the attorney examiner upheld DFAS's denial of the claim for the SBP annuity. He found no evidence that the member notified DFAS within one year of the divorce to change the SBP coverage from spouse to former spouse. He also found no record of the claimant requesting a deemed election for former spouse SBP coverage within one year of the divorce.

In her request for reconsideration, the claimant states that after their divorce, the member spent the last years of his life in a rehabilitation facility. She states that along with his underlying health issues, he also contracted COVID multiple times during his stay. Although they kept in contact during his stay at the facility, they did not speak about updating his SBP election. She states that in 2020 the member had multiple seizures resulting in numerous emergency room visits. She states that neither of them were mentally nor physically able to complete the necessary documentation in the allotted period of time to elect former spouse SBP coverage. She also states that during 2020 many offices were closed that may have been able to assist with filing the proper election forms. She states that she was married to the member for 35 years while he served in the military and that he continued to pay premiums for her SBP coverage. She believes that given these facts, she should not be denied the SBP annuity because of the failure to file one form. She requests that the former spouse election be made on her behalf and her request be honored, considering the circumstances.

Discussion

Claims against the government may be allowed only for expenses authorized by statute or regulation. *See* DOHA Claims Case No. 2021-CL-021901.2 (June 28, 2021). Therefore, DOHA must render decisions based on applicable statutes, regulations, and our prior administrative decisions. *See* Department of Defense Instruction 1340.21 (May 12, 2004).

SBP is an income maintenance program for the survivors of deceased members of the uniformed services. *See* 10 U.S.C. §§ 1447-1455. 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 member's spouse beneficiary immediately prior to the

divorce. The member must establish former spouse coverage within one year of the divorce decree, or pertinent court order. *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 a court order or filing involved to request a deemed election for former spouse coverage. *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 August 2011 until July 2020 when their divorce ended the coverage. Pursuant to a settlement agreement, which was incorporated into the parties' divorce decree, the claimant was awarded former spouse SBP coverage. However, the member failed to establish former spouse SBP coverage, and the claimant did not file a deemed election within one year of the divorce decree. Although the member may have intended that his former spouse be covered under the SBP, he failed to elect 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. 2020-CL-102613.2 (July 18, 2022); and DOHA Claims Case No. 2020-CL-042702.2 (September 14, 2020).

The claimant may have other available remedies that rest with the Army Board for Correction of Military Records (ABCMR) under 10 U.S.C. § 1552 and 10 U.S.C. § 1454. Administrative relief under these statutes is by the Secretary of the Army acting through the ABCMR, outside of DOHA's purview and must be pursued with the ABCMR. Information on petitioning the ABCMR can be found on their website.

Conclusion

The claimant's request for reconsideration is denied and we uphold the DOHA appeal decision dated July 27, 2023. 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: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board

SIGNED: Gregg A. Cervi

Gregg A. Cervi
Member, Claims Appeals Board