

DATE: July 11, 2024

In Re:)

[REDACTED])

Claimant)

) Claims Case No. 2023-CL-082803.2

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

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

DECISION

The claimant, the surviving spouse of a deceased member of the U.S. Air Force, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2023-CL-082803, dated November 17, 2023. In that decision, DOHA upheld the application of the Barring Act by the Defense Finance and Accounting Service (DFAS) to the claim for the member's Survivor Benefit Plan (SBP) annuity and the claim for the member's arrears of retired pay (AOP).

Background

On September 4, 1962, the member married the claimant. In 1983, the member, an Air Force reservist, completed 20 years of service creditable for retirement and elected Option C, full and immediate spouse SBP coverage for the claimant. On August 25, 1999, the member retired from the Air Force on his 60th birthday. He paid monthly SBP premiums for spouse SBP coverage from the date he retired until his death on March 3, 2015.

On May 1, 2015, DFAS received an unsigned SF-1174, *Claim for Unpaid Compensation of Deceased Member of the Uniformed Services*, and a copy of the member's death certificate from the claimant. On June 1, 2015, DFAS sent the claimant a letter requesting her signature, date, and address on the SF-1174. However, DFAS's records reflect that the claimant did not respond to their letter.

On December 1, 2021, DFAS received a request from the claimant for the member's retirement orders to see if he elected spousal benefits on the DD Form 2656, *Data for Payment of Retired Personnel*. On January 20, 2022, DFAS received a completed DD Form 2656-7, *Verification for Survivor Annuity*, from the claimant claiming the spouse SBP annuity. On May 6, 2022, DFAS denied the claim for the spouse SBP annuity on the grounds that it was untimely. Her claim was not filed within six years of the member's death as required by 31 U.S.C. § 3702(b), also referred to as the Barring Act. DFAS calculated the retroactive SBP annuity payments to be \$84,408.40 for the period March 4, 2015, through April 30, 2022. DFAS advised the claimant of her right to appeal the application of the Barring Act to our Office. DFAS also advised her that in addition to submitting an appeal to DOHA, she had the right to request waiver of the application of the Barring Act by petitioning the Secretary concerned. DFAS further advised her that she had the right to seek full relief by applying for a correction of record with the correction board for the appropriate service.

On February 8, 2022, DFAS received a completed SF-1174 from the claimant claiming the member's arrears of retired pay (AOP).

On May 11, 2022, the claimant, through her daughter who has power of attorney (POA), appealed DFAS's denial of the SBP annuity claim. In that appeal, her daughter included medical records concerning her mother's condition, and the POA dated February 3, 2021. She stated that on her mother's behalf she contacted DFAS to find out if her father, the member, paid spouse SBP premiums from his retired pay, and now is requesting that her mother be paid the SBP annuity.

In DFAS's administrative report dated January 5, 2023, DFAS found that the claimant was the proper beneficiary for both the member's AOP and the SBP annuity as his surviving spouse. DFAS noted that the AOP was approximately \$153.86 for the period March 1, 2015, through March 3, 2015. DFAS's annuity calculation worksheet reflected that the claimant was due an estimated \$89,813.40 in unpaid SBP annuity payments for the period March 4, 2015, through September 30, 2022.¹ However, DFAS concluded that both claims were barred by the six-year statute of limitations.

In the appeal decision, the DOHA attorney examiner sustained DFAS's denial of both claims due to the application of the Barring Act. The attorney examiner reiterated that the claimant had the right to request waiver of the Barring Act and petition the Air Force for a correction of military record.

¹DFAS's administrative report states in error the amount as \$127,382.70 for the period March 4, 2015, through September 30, 2018.

In her request for reconsideration, the claimant's daughter states that her parents were high school sweethearts and got married. Both served in the military, one as a soldier and the other as a military spouse. She states that her mother is a cancer survivor since 2009. Her mother and father made a decision in 2009 for her mother to have surgery and the outcome of the surgery has compromised her mother's physical health. In 2019, her mother suffered from a major illness which affected her ability to make sound legal decisions, resulting in the POA. She states that it has been a financial struggle since her father passed away and she is her mother's caregiver. She requests that under the circumstances her mother be paid the spousal benefits as her father's widow.

Discussion

The SBP program, 10 U.S.C. §§ 1447-1455, was established in 1972 as an income maintenance program for survivors of retired military members. Under the SBP, participating members contribute a portion of their retired pay to fund annuity payments for their designated beneficiaries. Under 31 U.S.C. § 3702(b), a survivor has six years to file a claim for an SBP annuity. 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 . . .

All events giving rise to the government's liability to make SBP annuity payments to a survivor occur at the date of the member's death, and the survivor has six years from that date to file the claim. Claims filed more than six years after a member's death are barred. *See* DOHA Claims Case No. 2021-CL-081902.3 (December 5, 2022); and DOHA Claims Case No. 2018-CL-061204.2 (January 18, 2019).

In this case, the member elected coverage for the claimant in 1983 when he first became eligible for participation in SBP. When he retired on his 60th birthday, August 25, 1999, SBP premiums to pay for the claimant's coverage were withheld from his retired pay until he passed away on March 3, 2015. The events which fixed the liability of the government and entitled the claimant to make a claim arose at the time of the member's death. The claimant failed to make a claim until January 20, 2022, over six years after it arose. Although we acknowledge the circumstances surrounding her failure to make a timely claim, we have no authority to allow her claim for the SBP annuity.

In addition, the claim for AOP due the member accrued in March 2015, when he died. We acknowledge that an incomplete SF-1174 was sent to DFAS in May 2015, but it was unsigned, not dated, and did not contain the claimant's address. As set forth above, the claim lacked the statutorily required information contained in 31 U.S.C. § 3702(b)(1). Therefore, when DFAS received the completed AOP claim in February 2022, DFAS properly barred it under 31 U.S.C. § 3702(b).

As explained by DFAS, the claimant may request waiver of the Barring Act under 31 U.S.C. § 3702(e), through the Assistant Secretary of the Air Force. Under 31 U.S.C. § 3702(e), upon request of the Assistant Secretary of the Air Force, the Secretary of Defense may waive the time limits established by 31 U.S.C. § 3702(b) for claims involving a member's pay, allowances, or survivor benefits. Under DoD Instruction 1340.21 ¶ E6.4 (May 12, 2004), DOHA is delegated the authority to grant or deny the request on behalf of the Secretary of Defense. Requests for waiver should be submitted to the Assistant Secretary of the Air Force at the following address:

Assistant Secretary of the Air Force
(Financial Management & Comptroller)
SAF/FMF, Rm 5D739
1130 Air Force Pentagon
Washington, DC 20330-1130

Under DOHA's Barring Act waiver authority as set forth in 31 U.S.C. § 3702(e), waiver shall only be granted to allow payment up to a maximum of \$25,000.00 of the retroactive payment of the SBP annuity, and the claimant will not be granted the SBP annuity prospectively. Therefore, the claimant may wish to also pursue the matter with the Air Force Board for Correction of Military Records (AFBCMR). The claimant's request for waiver of the Barring Act does not forfeit her right to seek redress from the AFBCMR. Under 10 U.S.C. § 1552, the Secretary of a military department, acting through a correction board, may correct a member's record when the Secretary considers it necessary to correct an error or remove an injustice. Information on petitioning the AFBCMR can be found online at <https://afbrb-portal.cce.af.mil/#all-board-info/afbcmr>.

Conclusion

For the reasons stated above, the claimant's request for reconsideration is denied, and we affirm the appeal decision dated November 17, 2023.

SIGNED: Catherine M. Engstrom

Catherine M. Engstrom
Administrative Judge
Chair, Claims Appeals Board

SIGNED: Charles C. Hale

Charles C. Hale
Administrative Judge
Member, Claims Appeals Board

SIGNED: David F. Hayes

David F. Hayes
Administrative Judge
Member, Claims Appeals Board