

DATE: July 15, 2024

In Re:)

[REDACTED])

Claimant)

) Claims Case No. 2021-CL-111501.3

**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. The claimant must prove by clear and convincing evidence on the written record that the government is liable under the law for the amount claimed. Payment of a claim may only be made for an expense 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.

DECISION

The claimant, the adult child 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. 2021-CL-111501.2, dated December 21, 2023. In that decision, DOHA sustained the Defense Finance and Accounting Service's denial of the claim for the Survivor Benefit Plan (SBP) annuity of the deceased member.

Background

In 1967, the member married. On July 4, 1970, the claimant was born. In anticipation of his retirement, the member executed a DD Form 2656, *Data for Payment of Retired Personnel*, on July 8, 2002. On that form, he designated three people to receive his arrears of retired pay (AOP), *i.e.*, any unpaid retired pay due him at the time of his death. He listed his spouse and designated her to receive 50% of his AOP; he listed his daughter, the claimant, and designated her to receive 25% of his AOP; and he listed his grandchild and designated that his grandchild

receive 25% of his AOP. In the SBP section of the form he elected spouse only SBP coverage based on his full gross retired pay and did not list any dependent children. On May 8, 2003, the member reached age 60 and retired from the Army.

On September 23, 2015, the member's spouse passed away. On November 12, 2015, the member executed a DD Form 2894, *Designation of Beneficiary Information*, wherein he designated two beneficiaries for his AOP: 50% to his daughter, the claimant, and 50% to his grandchild. He also completed a DD Form 2656-6, *Survivor Benefit Plan Election Change Certificate*, on November 12, 2015, requesting suspension of his SBP coverage due to the death of his spouse. On November 18, 2015, the member wrote the Defense Finance and Accounting Service (DFAS) requesting that SBP premiums no longer be deducted from his retired pay due to the death of his spouse. DFAS subsequently terminated the member's SBP premium deductions from his retired pay.

On January 1, 2021, the member passed away. On January 7, 2022, the claimant filed a DD Form 2656-7, *Verification for Survivor Annuity*, claiming the SBP annuity as both the member's dependent child and a person who had an insurable interest in him. DFAS denied the claim on the basis that the member had elected to withdraw from the SBP. In her appeal of DFAS's denial, the claimant stated that the member's passing had created financial hardship for her because she was single, and her father had provided her with 65% of her income.

In DFAS's administrative report dated February 22, 2023, DFAS reconsidered the SBP annuity claim. DFAS determined that the member had elected spouse only SBP coverage at retirement, not spouse and child coverage. Moreover, DFAS stated that the claimant did not qualify as a child for SBP purposes. DFAS also found that the member's election of spouse only SBP coverage precluded payment to the claimant as an insurable interest person.

In the appeal decision, the DOHA adjudicator upheld DFAS's denial of the claimant's claim for the SBP. The adjudicator found that the member identified no dependent children on his DD Form 2656, even noting "N/A" (not applicable) on that form. The adjudicator further explained that the claimant did not qualify as a dependent child to receive the annuity under 10 U.S.C. § 1447(11) because she was not: (1) under 18 years of age; (2) at least 18 but under 22 years of age, and pursuing a full-time course of study or training in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution; or (3) incapable of self-support because of a mental or physical incapacity which existed before her 18th birthday or incurred on or after her 18th birthday, but before her 22nd birthday, while pursuing a full-time course of study or training.

In her reconsideration request, the claimant states that her father sent a request to DFAS to have her covered as an insurable interest person after her mother passed away. She states that he never received any notice but was told to keep calling DFAS or wait for a decision to be mailed to him, which he never received. She believes that it is unfair for the government to withhold the SBP annuity since it was the government's error in not responding to his request and the funds were meant to support his family upon his death. She states that the Claims Appeals Board decision sent by the adjudicator with the appeal decision contained incorrect information regarding her family.

Discussion

Preliminarily, we will address the claimant's concern that the adjudicator sent her confidential information from another claimant's case file. The Claims Appeals Board decision included in the adjudicator's appeal decision is legal precedent and was cited by the adjudicator as analogous to the facts presented in the claimant's case. The decision cited is redacted and DOHA is legally required to publish case precedent online. *See* DoD Instruction 1340.21 (May 12, 2004) ¶ E3.7.

The SBP, 10 U.S.C. §§ 1447-1455, is 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. Participation in the SBP is automatic for members who are married or have dependent children when they become eligible to participate in SBP. Only a member who is not married and has no dependent children when he becomes entitled to receive retired pay may elect to provide an annuity to a natural born person with an insurable interest. *See* 10 U.S.C. § 1448(b)(1). Once a member has made an election to participate in SBP, participation is irrevocable and cannot be waived by the member. *See* 10 U.S.C. § 1448(a)(4). If a member ceases to have an eligible spouse beneficiary and later remarries, the member may decline coverage for the subsequent spouse if the member does so within the first year of marriage. *See* 10 U.S.C. § 1448(a)(6).

Under 10 U.S.C. § 1447(11), payment of an annuity is authorized for the dependent children who meet the statutory definition of "dependent child" of participating service members. Eligible dependent children are defined as including individuals more than 18 years old but incapable of supporting themselves because of a mental or physical incapacity existing before their eighteenth birthday. *See* 10 U.S.C. § 1447(11)(A)(ii). Under 10 U.S.C. § 1450(a)(2), the SBP annuity is payable to the member's dependent children when the member's surviving spouse is dead, dies, or otherwise becomes ineligible for the annuity.

In this case, the member elected SBP coverage for his spouse in 2002 and indicated that he had no dependent children. At that time, the claimant was 32 years old, and did not qualify as a dependent child for the purposes of SBP. The member's spouse was covered as his SBP beneficiary from 2003 until her death in September 2015. During that period, SBP premiums were properly deducted from the member's retired pay to pay for his spouse's SBP coverage. Upon his spouse's death, the member ceased to have an eligible SBP beneficiary, and his spouse coverage went into suspended status, meaning he no longer was required to pay SBP premiums from his retired pay. If the member had remarried, he would have had an opportunity to opt out of coverage for his new spouse under 10 U.S.C. § 1448(a)(6), but the member never remarried. Further, there is no provision in the SBP law for the member to have elected coverage for the claimant as his dependent child or as a person with an insurable interest in him after the death of his spouse.

As for claimant's prior requests for reimbursement of the premiums her father paid from 2003 until 2015, there is no authority in statute or regulation for the retroactive payment of a member's properly paid SBP premiums for coverage of an eligible beneficiary upon his death.

If the member had died when he had an eligible spouse beneficiary, his beneficiary would have received the SBP annuity. *See* DOHA Claims Case No. 2020-CL-102001.3 (March 16, 2021).

Conclusion

For the reasons stated above, the claimant's request for reconsideration is denied, and we affirm the appeal decision dated December 21, 2023. 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
Administrative Judge
Chair, Claims Appeals Board

Signed: Richard C. Ourand, Jr.

Richard C. Ourand, Jr.
Administrative Judge
Member, Claims Appeals Board

Signed: Charles C. Hale

Charles C. Hale
Administrative Judge
Member, Claims Appeals Board