

DATE: September 23, 2024

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In Re: )

[REDACTED] )

Claimant )

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) Claims Case No. 2023-CL-071015.2

**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. Navy, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2023-CL-071015, dated May 28, 2024.

**Background**

The member was born on May 24, 1939. On October 27, 1962, the claimant and the member were married. The member subsequently became entitled to receive retired pay except that he had not yet reached the required retirement age of 60. At that time, he was notified that he was eligible to make an election under the Reserve Component Survivor Benefit Plan (SBP). The Reserve Component SBP extends eligibility for the SBP to Reserve Component members who would otherwise be eligible to receive retired pay except that they have not reached the required retirement age of 60. On April 14, 1984, the member completed the NRPC 1772/3, *Reserve Component – Survivor Benefit Plan Option-Election Certificate*, electing immediate spouse only SBP coverage. On July 31, 1987, the claimant and the member were divorced. The divorce decree incorporated a Property Settlement Agreement dated July 29, 1987. That agreement, in pertinent part, stated the following:

10. Insurance and Survivor Benefits. The husband shall maintain wife as the beneficiary of all United States Navy Survivor benefits to which he is entitled by virtue of his service in the United States Navy. Further, husband hereby irrevocably assigns to wife fifty percent (50%) of his retirement benefits generated by his active duty and reserve service in the United States Navy; and husband shall execute such additional documents as are necessary to implement this assignment. Husband shall also, for so long as he is obligated to the payment of alimony and child support hereunder maintain wife as beneficiary of all life insurance afforded to him by virtue of his employment with [REDACTED].

In 1991, the Defense Finance and Accounting Service (DFAS) was created, consolidating financially-related services for military members, including the administration of the SBP program. On July 28, 1995, the member married. On August 29, 1995, the member submitted a NRPC 1772/3A, *Reserve Component Survivor Benefit Plan Notice of Change of Beneficiary*, requesting spouse SBP coverage for his new spouse, to DFAS.

On April 27, 1998, the claimant submitted a DD Form 2293, *Application for Former Spouse Payments from Retired Pay*, requesting direct payment of a portion of the member's monthly disposable retired pay under the Uniformed Services Former Spouses' Protection Act (USFSPA) to DFAS. On June 12, 1998, the claimant sent a letter to DFAS requesting to deem her election for former spouse SBP coverage. On August 17, 1998, DFAS acknowledged receipt of the claimant's deemed election request. On May 24, 1999, the member turned 60 years old and began receiving his retired pay.

On November 23, 2021, the member passed away. On November 25, 2021, DFAS sent the claimant a letter notifying her that DFAS had terminated her former spouse payments under the USFSPA after receipt of notification of the member's death. On December 15, 2021, the claimant submitted a DD Form 2656-10, *Survivor Benefit Plan (SBP) Former Spouse Request for Deemed Election*, to DFAS. On February 22, 2022, the claimant claimed the SBP annuity as the member's former spouse by submitting a DD Form 2656-7, *Verification for Survivor Annuity*. DFAS subsequently denied the claimant's claim for an SBP annuity. DFAS found that the member did not establish former spouse SBP coverage for the claimant, and the claimant's request for a deemed election for former spouse SBP coverage was untimely. DFAS found that although the claimant did submit a request for a deemed election, her request was received by DFAS on July 24, 1998, more than one year from the date of the first court order obligating the member to elect former spouse SBP coverage.

On June 9, 2022, the claimant appealed DFAS's denial of her claim to DOHA. She stated that she requested the deemed election on June 12, 1998, and DFAS did not enter it into their system until June 24, 1998, approximately six weeks after it was mailed to DFAS. She acknowledged that her divorce decree was dated July 31, 1987, but she was never notified that the deemed election request had to have been filed within one year of the date of the decree. She stated that she received a letter from DFAS on April 30, 1998, with information about deeming the election but that was over 11 years after her divorce. She believed that since the SBP coverage was in the divorce decree that it was binding and DFAS would honor the provision.

The DOHA adjudicator sustained DFAS's denial of the former spouse SBP annuity claim. The adjudicator found no evidence that the claimant filed a request for a deemed election within one year of the divorce decree. Therefore, under the applicable law, the claim was not payable. The adjudicator further advised the claimant that she may find relief outside the purview of DFAS by petitioning the Secretary of the Navy under 10 U.S.C. § 1552.

In her reconsideration request, the claimant states that the divorce decree required the member to provide coverage for her as his former spouse SBP beneficiary. She states that he did not comply with the court order, and she was never notified that he failed to comply. Therefore, she states that she has been denied the SBP annuity through no fault of her own. She again questions who is responsible for notifying her about the one-year rule for requesting a deemed election of former spouse SBP coverage. She states that someone in the Navy Reserves should be held accountable for the lack of communication. She attaches a copy of a letter, dated March 23, 1984, sent by the Navy addressed to her but sent to a P.O. Box. However, she states that she has never used a private post office box. She believes that this classifies as an administrative error. She maintains that this error, along with the administrative errors made by the Government, need to be corrected and thus, remove an injustice in order to grant her the SBP annuity.

### **Discussion**

Claims against the government may be allowed only for expenses authorized by statute or regulation. *See* DOHA Claims Case No. 2018-CL-080201.2 (January 3, 2019).

The SBP, 10 U.S.C. §§ 1447-1455, was established by Congress in 1972 as an income maintenance program for dependents of deceased members of the uniformed services. Under the SBP, participating members contribute a portion of their retired pay to fund annuity payments for their designated beneficiaries. Participation in SBP is automatic for members who are married or have dependent children when they become eligible to participate in the SBP, *i.e.*, when they become eligible for retired pay. Specifically, a married reservist or reservist with dependent children may elect to participate in the SBP when the member is notified under 10 U.S.C. § 12731(d) that the member has completed the years of service required for eligibility for reserve-component retired pay. SBP spouse coverage ends upon divorce.

Under the original SBP legislation, there was no authority for coverage of a former spouse and upon divorce a retired member's former spouse lost coverage. In 1983, Congress amended the SBP law to allow eligible members the option of designating a former spouse as an SBP beneficiary if the member had elected coverage initially for a spouse and later divorced that spouse. The election would have to be made within one year of the effective date of the Act or within one year of the divorce if the divorce took place after the passage of the Act. To make an election it was necessary for the member to provide the appropriate Secretary with a voluntary written agreement to provide former spouse coverage as well as the election. *See* Public Law No. 98-94, § 941, 97 Stat. 614, 652-654 (1983). In 1984, Congress addressed the concern that under the current SBP law a member could agree to designate a former spouse, permit a court to incorporate that agreement into a court order, and then the member could subvert the law by

refusing to sign the actual documentation to make the former spouse SBP election. *See* S. Rep. No. 500, 98<sup>th</sup> Cong., 2d Sess. 222 (1984). In October 1984, Congress amended the law to provide that in such a situation the former spouse could make an appropriate request to the Secretary concerned within one year of the amendment's passage or the date of the court order, whichever was later, and the Secretary concerned would "deem" an election to have been made by the member. *See* Public Law No. 98-525, § 644, 98 Stat. 2492, 2548 (1984). In 1986, Congress amended the law further to give state courts in divorce proceedings the authority to require a member to elect former spouse SBP coverage regardless of whether the member agrees to do so. *See* Public Law No. 99-661, § 641, 100 Stat. 3816, 3885 (1986). However, the law required, as it currently does today, that the former spouse file the request for a deemed election within one year of the court order requiring the member to elect former spouse coverage. *See* 10 U.S.C. § 1450(f)(3) (an election may not be deemed to have been made "in the case of any person unless the Secretary concerned receives a request from the former spouse of the person within one year of the date of the court order or filing involved").

In this case, the claimant was covered as the member's spouse SBP beneficiary from the time he elected immediate spouse coverage for her in 1984 until July 1987 when their divorce ended the coverage. Although the member was obligated based on the divorce decree in 1987 to cover the claimant as his former spouse under the SBP, he failed to do so. In addition, the claimant had one year from the date of the divorce decree, one year from July 29, 1987, to submit her request for a deemed election to the Secretary concerned and the claimant did not file a timely deemed election. Therefore, DFAS properly denied the claim for the SBP annuity.

As explained by the DOHA adjudicator in the appeal decision, DOHA has no authority under applicable statute and regulation to allow the SBP annuity to the claimant. However, the Board for Correction of Naval Records (BCNR) under 10 U.S.C. § 1552, has the authority to correct a military record when it considers it necessary to correct an error or remove an injustice. The BCNR's authority is separate from DOHA's authority and any request for a correction of record needs to be pursued with the BCNR.

## Conclusion

The claimant's request for relief is denied, and we affirm the DOHA appeal decision dated May 28, 2024. 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

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Catherine M. Engstrom  
Administrative Judge  
Chair, Claims Appeals Board

SIGNED: Richard C. Ourand, Jr.

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

SIGNED: David F. Hayes

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David F. Hayes  
Administrative Judge  
Member, Claims Appeals Board