

DATE: July 17, 2024

In Re:)	
)	
[REDACTED])	Claims Case No. 2024-CL-050609.2
)	
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A surviving spouse's failure to submit an application for the annuity within six years of the member's death, bars the Survivor Benefit Plan (SBP) claim under 31 U.S.C. § 3702(b).

DECISION

The claimant, the surviving 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. 2024-CL-050906, dated May 9, 2024. In that decision, DOHA sustained the decision by the Defense Finance and Accounting Service (DFAS) to deny the surviving spouse's claim for the member's Survivor Benefit Plan (SBP) annuity because it was filed more than six years after the member's death.

Background

The member and the claimant were married on December 28, 1958. The member retired from the Navy on November 23, 1976, and established SBP spouse and child coverage for the claimant and his two dependent children. In a letter dated May 16, 2008, DFAS notified the member that he had reached paid-up status effective October 1, 2008, and that no additional SBP premiums would be deducted from his retired pay. On June 8, 2011, the member passed away.

On January 2, 2023, the claimant completed the DD Form 2656-7, *Verification for Survivor Annuity*, claiming the SBP annuity as the member's spouse. DFAS received the claim on February 8, 2023. On March 9, 2023, DFAS sent a response to the claimant denying the SBP annuity claim on the basis that it was received by DFAS more than six years after it accrued and thus was barred from consideration by the statute of limitations, 31 U.S.C. § 3702(b), commonly known as the Barring Act. In the letter, DFAS also advised the claimant of two possible administrative recourses available to her: (1) an appeal of her claim to DOHA; and (2) a request for waiver of the Barring Act under 31 U.S.C. § 3702(e).

On April 8, 2023, the claimant appealed DFAS's application of the Barring Act to the claim to DOHA. In that appeal, she stated she was 85 years old, and described the issues that surrounded her life over the last twelve years, including the fact she had been homeless and now has medical conditions requiring her to be in a wheelchair. She indicated that she had never heard of the Barring Act and did not know there was a time limit to file for an annuity. Her family members are helping her now to file the necessary paperwork for a spousal SBP annuity.

DFAS responded to the claimant's appeal in an administrative report dated March 28, 2022. In that report, DFAS sustained the denial of the claim on the basis that it was untimely.

In the appeal decision, the DOHA attorney examiner sustained DFAS's application of the Barring Act, disallowing the SBP annuity claim. The attorney examiner explained that the claimant had the right to request waiver of the Barring Act through the Assistant Secretary of the Navy (ASN) to allow payment of SBP benefits retroactive to the member's death up to the statutory maximum of \$25,000, as set forth under 31 U.S.C. § 3702(e).

In her request for reconsideration, the claimant states that she wishes to request reconsideration of her claim and request a waiver of the Barring Act. She states that she has submitted a request to the ASN to waive the Barring Act to allow payment of up to \$25,000. She reiterates she was unaware of the Barring Act and the need to file for the SBP annuity within six years of the member's death. She pointed out her husband served his country for 22 years and she faithfully maintained the family home during those years. The member elected SBP coverage for her in order to provide for her in the event of his death. When she called DFAS to report her husband's death, no one told her she had to file paperwork to receive the SBP annuity. Her daughter provided a statement that the claimant is not computer literate and lived many miles from the closest military base. Her daughter maintains that her mother's circumstances clearly justify an exception to policy in applying the Barring Act.

Discussion

The SBP, now codified under 10 U.S.C. §§ 1447-1455, is an income maintenance program for survivors of retired military members. Under 10 U.S.C. § 1450(a), a monthly SBP annuity is payable to a retired member's surviving spouse effective as of the first day after the date of the member's death. 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 ...

The official responsible for establishing the SBP annuity accounts for survivors of retired military members is the office of DFAS – U.S. Retired and Annuitant Pay. All events giving rise to the government's liability to make SBP 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 with DFAS. Claims filed more than six years after a member's death are barred. *See* DOHA Claims Case No. 2021-CL-122804.2 (July 27, 2022); DOHA Claims Case No. 2018-CL-091702.2 (June 17, 2019); and DOHA Claims Case No. 2017-CL-062703.2 (August 31, 2017).

We acknowledge the claimant's health during the period after the member's death and her financial situation. However, DOHA has no authority to allow her claim for the SBP annuity. The member's death in 2011 fixed the liability of the government and entitled the claimant to make a claim. DOHA does not have the authority to modify or make any exceptions to the time limitations imposed by the Barring Act. *See* DOHA Claims Case No. 2021-CL-122804.2, *supra*.

As explained by DFAS and DOHA, the claimant may request waiver of the Barring Act under 31 U.S.C. § 3702(e), through the ASN, which she has done. However, we note that under 31 U.S.C. § 3702(e), waiver shall only be granted to allow payment up to a maximum of \$25,000, and the claimant will not be granted the SBP annuity prospectively. Therefore, the claimant may wish to also pursue the matter with the Board for Correction of Naval Records (BCNR). The claimant's request for waiver of the Barring Act with the ASN does not forfeit her right to seek redress with the BCNR. 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. The BCNR's authority is much broader than DOHA's claims settlement authority, and any petition for a correction of record must be pursued with the BCNR. Information on petitioning the BCNR can be found online at <https://www.secnav.navy.mil/mra/bcnr>.

Conclusion

For the reasons stated above, the claimant's request for reconsideration is denied, and we affirm the appeal decision dated May 9, 2024. In accordance with DoD Instruction 1340.21 (May 12, 2004) ¶ E7.15.2, this is the final administrative action of the Department of Defense in this matter.

Signed: Richard C. Ourand, Jr.

Richard C. Ourand, Jr.
Administrative Judge
Acting Chair, Claims Appeals Board

SIGNED: Charles C. Hale

Charles C. Hale
Administrative Judge
Member, Claims Appeals Board

SIGNED: Gregg A. Cervi

Gregg A. Cervi
Administrative Judge
Member, Claims Appeals Board