



DEPARTMENT OF DEFENSE  
DEFENSE LEGAL SERVICES AGENCY  
DEFENSE OFFICE OF HEARINGS AND APPEALS  
POST OFFICE BOX 3656  
ARLINGTON, VIRGINIA 22203-1995



DATE: July 2, 2025

In Re:

[REDACTED]

Claimant

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)

Claims Case No. 2024-CL-120202.2

**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 widow of a deceased, retired 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. 2024-CL-120202, dated April 19, 2025.

**Background**

The member and the claimant were married on April 7, 1962. On September 1, 1965, the member retired from the Air Force. Public Law 92-425, 86 Stat. 706, September 21, 1972, established the Survivor Benefit Plan (SBP). As a part of the transition to the new SBP program, there was an 18-month Open Season held from the date of enactment through March 20, 1974, for service members who had retired before September 21, 1972, who wanted to participate in the SBP. During this Open Season, the member elected to provide SBP spouse coverage to the claimant. As a result, SBP spouse premiums were deducted from the member's monthly military retired pay until he reached paid-up status on October 1, 2008.

The member passed away on August 31, 2012, and the claimant reported his death to the Defense Finance and Accounting Service (DFAS) on September 5, 2012. On September 19, 2012, the claimant submitted a DD Form 2656-7, *Verification for Survivor Annuity*, to DFAS,

claiming the SBP annuity as the member's surviving spouse. On that form, the following was set forth in Block 6, *STATEMENT OF UNDERSTANDING – DEPENDENCY AND INDEMINITY COMPENSATION (DIC)* (*This applies to spouse applicants only.*):

The surviving spouse of a deceased member may be eligible for DIC, payable by the Department of Veterans Affairs (VA) if the member dies from a disease or injury incurred or aggravated in the line of duty while on active duty for training, or inactive duty for training. A spouse receiving DIC may not receive the full amount of an annuity under SBP, or RCSBP. In order to eliminate problems resulting from an annuity overpayment due to concurrent DIC payments, a statement of understanding is provided for your signature.

**I UNDERSTAND THAT:**

I cannot receive both the full amounts of my annuity and DIC from the same deceased member.

DFAS will establish my annuity in full if DIC or other survivor annuity payments data, as may be applicable, is not known at time of establishment.

I am only entitled to the amount of the annuity that exceeds the DIC payment that may be payable, or the DIC only if that payment is greater than the annuity. Note: All SBP premiums paid will be refunded if the SBP annuity is not payable because the DIC payment is greater. In cases where the annuity is greater than the DIC payment, the cost will be recalculated and the difference between the SBP premiums paid and the recalculated cost will be refunded.

If any overpayment of benefits occurs as the result of being awarded DIC, my signature on this statement authorizes the VA to repay DFAS the amount of the overpayment from the DIC payments to which I am or may become eligible.

In the event I apply to the VA for DIC, I agree to notify DFAS of that application to include the address of the VA Office applied to, VA Claim number, and if applicable, the amount of award.

The claimant checked YES that she had applied for Department of Veterans' Affairs (VA) benefits, listed her VA claim number, and stated that her monthly award was in progress. Effective September 1, 2012, DFAS established the SBP annuity account for the claimant. The VA began monthly payments of DIC to the claimant in September 2012.

On March 6, 2013, the claimant accepted a \$75,000.00 compensation payment under the Radiation Exposure Compensation Act (RECA). The record reflects that the VA recouped this amount from the claimant's DIC from March 1, 2013, through February 28, 2018. During that time, while she was still entitled to DIC, she did not receive a DIC payment from the VA due to the RECA recoupment. She began receiving the DIC payments again in March 2018, after the RECA payment had been fully recouped.

On October 4, 2013, DFAS received a system notification to calculate a cost refund due to a DIC award by the VA, which fully offset the claimant's monthly SBP annuity payments. Due to the claimant's SBP annuity being offset by DIC, she later qualified for a Special Survivor Indemnity Allowance (SSIA), which she began receiving retroactive to September 1, 2012.

In a letter to DFAS dated November 4, 2013, the claimant wrote that she had been awarded DIC by the VA in the monthly amount of \$1,215.00, and that her payments commenced on April 1, 2013. She further stated that according to her SBP annuitant account statement, she had a balance due of \$8,394.00. She stated that her current annuity payment was \$150.00, and she was counting on receiving \$648.00 per month for life. She stated that her present debts amounted to \$58,000.00, and that she was about to turn 80 years old and was still working. On December 5, 2013, DFAS responded with a letter advising the claimant that the law required her SBP annuity to be reduced (offset) by any DIC paid to her by the VA, and that she was only entitled to receive the amount of SBP annuity payments that exceeds her DIC entitlement. DFAS further advised the claimant that DFAS had received notification from the VA that she became entitled to DIC effective September 1, 2012, at the monthly rate of \$1,215.00. DFAS explained that because the claimant's DIC entitlement of \$1,215.00 exceeded her monthly SBP annuity of \$648.00, her SBP annuity account had been suspended beginning with the payment she would normally receive on November 1, 2013. DFAS also stated that since her DIC award was made retroactively, the SBP annuity payments she previously received were not reduced at the time she received those payments, and she had been overpaid \$8,394.00 in SBP payments that had to be offset. DFAS stated that because the claimant's DIC entitlement exceeded her monthly SBP annuity payment, the law entitled her to a refund of all SBP spouse premiums that were deducted from the member's retired pay. DFAS enclosed a worksheet that calculated the claimant's refund of premiums and advised her that the SBP annuity overpayment would be collected from that refund. DFAS concluded that the claimant's net SBP refund was \$5,178.77 (gross SBP premium refund of \$13,572.77 - \$8,394.00 SBP annuity overpayment).

On June 24, 2014, DFAS received a letter from the claimant requesting that her SBP annuity be reinstated. DFAS responded by letter dated July 9, 2014, explaining that DFAS could not issue the claimant any additional funds because she was still entitled to DIC. DFAS also stated that the funds she was supposed to receive from the VA were used to pay back her RECA debt.

On January 4, 2017, DFAS received a congressional inquiry from the claimant's U.S. Senator concerning the RECA being recouped from her DIC and the nonpayment of her SBP annuity. DFAS responded to that inquiry on January 11, 2017, explaining that the claimant's SBP annuity was fully offset by her DIC entitlement. DFAS also explained that because her SBP annuity payments were fully offset by DIC, she received a SBP premium refund in October 2013 in the amount of \$13,572.77.

DFAS received a letter from the claimant on February 14, 2017, requesting an explanation as to why she had not received SBP annuity payments since August 31, 2012. She also stated that she had not received DIC because of the recoupment of the RECA debt. On February 23, 2017,

DFAS responded to the claimant's letter advising her that she should contact the VA concerning the RECA recoupment from the DIC.

On March 10, 2022, DFAS received a congressional inquiry from the claimant's U.S. Congressional Representative. In that inquiry, the Congressman stated that the claimant believed she was still owed SBP annuity payments from March 1, 2013, through February 28, 2018, since she lost her DIC entitlement effective March 1, 2013, due to compensation awarded to her under the RECA. On March 25, 2022, DFAS responded and explained that in order for DFAS to stop the DIC offset, DFAS needed a letter from the VA stating the claimant's DIC benefits had stopped and the effective date those benefits stopped.

On November 1, 2022, DFAS received a second inquiry from the Congressman's office, reiterating the claim for the SBP annuity payments from March 1, 2013, through February 28, 2018. DFAS responded to the inquiry advising the Congressman's office that DFAS had recently contacted the VA, and the VA told DFAS that the DIC had not stopped, but "included a benefit that was added for radiation exposure, and [the claimant's] DIC amount was not reduced." DFAS stated that the claimant was paid correctly by DFAS, and that the claimant's inquiry properly rested with the VA to respond to her radiation exposure claim.

On January 6, 2023, DFAS formally denied the claimant's SBP annuity claim for the period from March 1, 2013, through February 28, 2018, in a detailed letter stating her SBP annuity was properly offset by her DIC entitlement. DFAS further explained that despite her DIC entitlements being offset due to the recoupment of the RECA payment, her entitlement to DIC was not terminated. DFAS stated that this is evidenced by the SBP premium refund and the SSIA the claimant received due to the SBP being offset by her DIC entitlement. DFAS wrote that had the claimant lost her DIC entitlement, she would no longer have been eligible to receive those funds. DFAS then informed the claimant of the right to appeal to DOHA for the denial of her claim to the SBP annuity payments from March 1, 2013, through February 28, 2018.

In the claimant's appeal dated February 2, 2023, she stated that DFAS erred in denying the SBP annuity claim because the RECA payment of \$75,000.00 should have been paid to the member's estate. She stated that she believed the payment was made directly to her because the Department of Justice (DOJ) was slow in processing the claim, the member died before the claim was fully processed, and the payment came directly to her.

In their appeal decision, the DOHA attorney examiner upheld DFAS's denial of the claim, explaining that the claimant's SBP annuity payments were required to be offset dollar for dollar by the amount of her entitlement to DIC from the VA. The attorney examiner noted that the claimant's receipt of the RECA payment in the amount of \$75,000.00, required that her monthly DIC payments be applied to recoup that payment until paid in full. The attorney examiner found that the claimant never lost eligibility to receive DIC; her monthly payments of DIC were statutorily required to be collected to repay the RECA. The attorney examiner concluded that since the claimant was still eligible for DIC, under 10 U.S.C. § 1450(c), her SBP annuity payments were properly offset by DFAS.

In the claimant's request for reconsideration, she states her husband, a veteran of World War II, retired from the Air Force because of his failing health and applied for benefits. She states his application for benefits was denied, and after appealing several times, even after being declared totally disabled with a service-connected disability, his benefits continued to be denied. She states that on June 2012, he applied for the \$75,000.00 of RECA, but he passed away in August 2012. She states that the member's application for the RECA was approved in March 2013, and the \$75,000.00 was supposed to be paid to his estate. She further states that the DOJ told her to reapply for the RECA, but by doing so, she could not receive the DIC that was awarded to her. She states that the RECA was not a loan, it was compensation. Therefore, she states that she does not have a debt for RECA. She states that she has been receiving both DIC and SBP since 2023 and would like the same payments to be made for her for the period 2013 through 2018.

### **Discussion**

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 the claim by clear and convincing evidence on the written record that the United States Department of Defense is liable for the claim. *See* DoD Instruction 1340.21 (May 12, 2004) ¶ E5.7. Federal agencies and officials must act within the authority granted to them by statute in issuing regulations. Thus, the liability of the United States is limited to that provided by law (including implementing regulations).

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for the survivors of deceased members of the uniformed services. Prior to January 2020, if the SBP beneficiary was entitled to DIC upon the death of the member, the SBP annuity had to be reduced by the amount of DIC, as calculated under 10 U.S.C. § 1450(c)(1). In addition, when the DIC offset provision was applicable under 10 U.S.C. § 1450(c), a full or partial refund of SBP premiums withheld from a member's retired pay was refundable to the SBP beneficiary. The Service Secretaries have delegated their authority under the SBP law to DFAS.

The DIC, set forth under 38 U.S.C. § 1310, is a tax-free monetary benefit paid by the VA to eligible survivors of military service members who die in the line of duty or survivors of veterans whose death resulted from a service-related injury or disease. The VA determines the entitlement to DIC and the amount of the DIC award.

As DFAS and the DOHA attorney examiner explained in their decisions, prior to January 1, 2020, SBP annuity payments payable by the Department of Defense to a surviving spouse were required to be offset dollar for dollar by the amount of the surviving spouse's DIC entitlement from the VA. Section 622 of the National Defense Authorization Act for Fiscal Year 2020, Public Law 116-92, 133 Stat. 1198 (2019), phased-out the reduction of SBP annuity payments by the amount of DIC beginning January 1, 2020.

Under the RECA, the DOJ has the authority to award a one-time payment of \$75,000.00 to a veteran who contracted cancer as a result of exposure to nuclear testing undertaken by the United States. An award may also be paid to the survivor of a veteran who was eligible for

RECA benefits. However, recoupment of payment of the RECA from the DIC is required by 10 U.S.C. 38 U.S.C. § 1310(c). That section states:

(c) A person who receives a payment under the provisions of the Radiation Exposure Compensation Act of 1990 (42 U.S.C. 2210 note) shall not be deprived, by reason of the receipt of that payment, of receipt of dependency and indemnity compensation to which that person is otherwise entitled, but there shall be deducted from payment of such dependency and indemnity compensation the amount of the payment under that Act.

Historically, payment of DIC was barred on behalf of an individual based upon death resulting from the same disease for which a RECA payment was made. Prior to December 2004, payment of DIC was not authorized after a survivor's receipt of RECA. Pursuant to the Veterans Benefits Improvement Act of 2004, 38 U.S.C. § 1310 was amended to allow a deduction of DIC payments from the amount of the payment that had been made under RECA. *See* Section 302(b) of Public Law 108-454, 118 Stat. 3598 (2004).

In this case, the claimant received the RECA payment in the amount of \$75,000.00, and the payments of her monthly DIC were required to be applied to that payment until paid in full. The claimant's monthly DIC payments went directly to the recoupment of the \$75,000.00. The claimant never lost eligibility to the DIC. Under 10 U.S.C. § 1450(c), because the claimant was still eligible for DIC, her SBP annuity payments were properly offset by DFAS, as required by law.

## Conclusion

The claimant's request for reconsideration is denied, and we affirm the appeal decision dated April 19, 2025, disallowing the claim. In accordance with DoD Instruction 1340.21 ¶ E7.15.2, this is the final administrative action of the Department of Defense in this matter.

Catherine M. Engstrom

Catherine M. Engstrom  
Administrative Judge  
Chair, Claims Appeals Board

Michelle P. Tilford

Michelle P. Tilford  
Administrative Judge  
Member, Claims Appeals Board

David F. Hayes

David F. Hayes  
Administrative Judge  
Member, Claims Appeals Board