



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



DATE: April 16, 2025

In Re:

[REDACTED]

Claimant

)
)
) Claims Case No. 2024-CL-010205.2
)
)

**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. Army, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2024-CL-010205, dated October 15, 2024.

Background

The member and the claimant were married on April 9, 1983. On June 26, 2009, the member received orders releasing him from active duty effective August 31, 2006, and placing him on the retired list effective September 1, 2009. On June 26, 2009, the member completed a DD Form 2656, *Data for Payment of Retired Personnel*, in which he elected spouse Survivor Benefit Plan (SBP) coverage for the claimant. The member also designated the claimant as his beneficiary for any unpaid arrears of retired pay (AOP) due upon his death. On February 15, 2019, the member and the claimant divorced. The divorce decree awarded the claimant a portion of the member's monthly disposable retired pay under the Uniformed Services Former Spouses' Protection Act (USFSPA) (10 U.S.C. § 1408). However, it did not require the member to provide the claimant with former spouse SBP coverage.

The Defense Finance and Accounting Service (DFAS) sent the claimant a letter dated June 7, 2019, responding to her application for direct payment under the USFSPA, and estimated that her monthly payments would commence in August 2019. In that letter, DFAS advised the claimant that if the divorce decree or other court order required the member to provide the claimant with former spouse SBP coverage, the claimant must make a deemed election request by submitting a DD Form 2656-10, *Survivor Benefit Plan (SBP) Former Spouse Request for Deemed Election*, directly to the DFAS Garnishment Law Directorate. On January 9, 2023, the member passed away. On February 23, 2023, DFAS received the claimant's completed DD Form 2656-7, *Verification for Survivor Annuity*, claiming the SBP annuity as the member's former spouse. On March 22, 2023, DFAS denied her claim for the SBP annuity because the member did not establish former spouse SBP coverage for the claimant, nor did the claimant make a request for a deemed election. On April 19, 2023, the claimant appealed DFAS's denial of her claim. She stated that the member never knew he was divorced, so he never made an election to provide her with former spouse SBP coverage. She further stated that she was advised by the Veterans Service Office that she did not need to do anything or file any paperwork to change the SBP election from spouse to former spouse coverage.

In the appeal decision, the DOHA attorney examiner upheld DFAS's denial of the claim finding no evidence that the member elected former spouse SBP coverage for the claimant. The attorney examiner noted that the record reflected the member continued to pay spouse SBP coverage for the claimant after the divorce when he no longer had an eligible spouse beneficiary. The attorney examiner explained that those costs should be refunded to the proper AOP beneficiary under 10 U.S.C. § 2771. He explained that to claim the AOP, the member's beneficiary should fill out the SF 1174, *Claim for Unpaid Compensation of a Deceased Member of the Uniformed Services*, and submit it to DFAS.

In the claimant's request for reconsideration, she states that the member abandoned her and he had no knowledge of her filing for divorce. She points out that the member's death certificate lists that he is "married but separated" and names her as his surviving spouse. Therefore, she concludes that the member had no idea that he had to change her SBP coverage from spouse to former spouse. She believes that once she applied to DFAS and was granted his portion of his military retired pay, the member most likely presumed that she had taken care of the paperwork for continuing her SBP coverage.

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 their 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. Under 10 U.S.C. § 1448(a)(1)(A), SBP is open

to a member who is eligible for retired pay. Spousal coverage ends upon divorce. If a member divorces and wishes to provide SBP coverage for a former spouse, the member must notify DFAS in writing of the divorce and the intention to provide coverage for the former spouse, even if the former spouse was the spouse beneficiary immediately prior to the divorce. The member's election of former spouse coverage must be received by DFAS within one year after the date of the decree of divorce, dissolution, or annulment. *See* 10 U.S.C. §1448(b)(3)(A)(iii). In addition, a member may be required under the terms of a divorce decree to provide SBP coverage to a former spouse. If the member fails to do so, the former spouse has one year from the date of the divorce to request a deemed election. *See* 10 U.S.C. § 1450(f)(3).

In this case, the claimant was covered as the member's spouse SBP beneficiary from the effective date of his retirement, September 1, 2006, until such coverage ended with their divorce in February 2019. The claimant was not awarded former spouse SBP coverage in the divorce decree. Therefore, she had no statutory right to request a deemed election. Although the member may not have known of his divorce from the claimant, since he took no action to establish SBP coverage for her within one year of the divorce, DFAS properly denied the claim for the SBP annuity under the statute. *See* DOHA Claims Case No. 2020-CL-102611.2 (August 2, 2022).

As advised by the attorney examiner in the appeal decision, the member erroneously continued to pay SBP premiums for the claimant as his spouse after the divorce. We note that since SBP premiums for spouse coverage were deducted from the member's retired pay when he no longer had an eligible spouse beneficiary, those costs should be refunded to the proper beneficiary as AOP under 10 U.S.C. § 2771.

Conclusion

The claimant's request for reconsideration is denied, and we affirm the appeal decision in DOHA Claim No. 2024-CL-010205, dated October 15, 2024, disallowing the claim.

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