



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



DATE: March 7, 2025

In Re:

[REDACTED]

Claimant

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Claims Case No. 2024-CL-012907.2

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Under 31 U.S.C. § 3702(b), the Barring Act, jurisdiction to consider claims is limited to those that are filed within six years after they accrue. However, under 31 U.S.C. § 3702(e), upon request of the Secretary concerned, the Secretary of Defense may waive the time limits established by the Barring Act for claims involving a uniformed service member's pay, allowances, or survivor benefits, to allow payment of the claim up to \$25,000.00.

**DECISION**

The claimant, the surviving spouse 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-012907, dated October 9, 2024. In that decision, DOHA upheld the application of the Barring Act by the Defense Finance and Accounting Service (DFAS) to the claim for the member's Survivor Benefit Plan (SBP) annuity.

**Background**

On December 31, 1987, the member married the claimant. In April 2011, in preparation for his retirement, the member completed the DD Form 2656, *Data for Payment of Retired Personnel*, electing spouse and child SBP coverage based on his full gross retired pay. On July 1, 2011, the member retired from the Air Force. He paid monthly SBP premiums for spouse coverage from the date he retired until his death on November 26, 2014.

On December 15, 2014, the claimant called DFAS to notify them of the member's death. On November 1, 2016, DFAS received a copy of the member's official death certificate from the

claimant. On July 27, 2023, DFAS received a completed DD Form 2656-7, *Verification of Survivor Annuity*, from the claimant claiming the spouse SBP annuity. On August 30, 2023, DFAS denied the claim for the spouse SBP annuity on the grounds that it was untimely. Her claim was not filed within six years of the member's death as required by 31 U.S.C. § 3702(b), also referred to as the Barring Act. DFAS calculated the retroactive SBP annuity payments to be \$112,214.52 for the period November 27, 2014, through August 31, 2023. DFAS advised the claimant of her right to appeal the application of the Barring Act to our office. DFAS also advised her that in addition to submitting an appeal to DOHA, she had the right to request waiver of the Barring Act by petitioning the Secretary concerned. DFAS further advised her that she had the right to seek full relief by applying for a correction of the member's military record with the correction board for the appropriate service.

On September 29, 2023, the claimant appealed DFAS's denial of her claim, through her congressional representative, to DFAS. In that appeal, she stated that when the member died, she contacted DFAS and was told that she could file for SBP but would lose money because of the Dependency and Indemnity Compensation (DIC) offset. Therefore, she did not file for the SBP annuity because she needed the DIC to support herself and her children.

In an administrative report dated December 15, 2023, DFAS sustained the denial of the claim for the SBP annuity. DFAS acknowledged that it was unfortunate that the claimant may have been given incorrect information regarding filing for the SBP annuity. However, DFAS cited the long-standing rule that the government is not bound by the erroneous advice of its officers or employees. DFAS noted that its audit of the barred funds found that the claimant was due \$112,214.52 in retroactive SBP annuity payments with the DIC offset. DFAS concluded that the SBP annuity claim was barred by the six-year statute of limitations.

In the appeal decision, the DOHA attorney examiner sustained DFAS's denial of the claim due to the application of the Barring Act. The attorney examiner reiterated that the claimant had the right to request waiver of the Barring Act and petition the Air Force Board for Correction of Military Records (AFBCMR) for a correction of the member's military record.

In her request for reconsideration, the claimant states that she submitted a timely SBP annuity claim. She states that she is a victim to DFAS's misinformation. She states that she never was given any information about the Barring Act, even when she called DFAS. In 2015, she contacted DFAS by phone and was told that she would lose her DIC each month if she filed for the SBP annuity. She was told that she could apply for the SBP annuity at a later time. She also attaches a memorandum dated May 13, 2024, from the Air Force Personnel Center to the AFBCMR concerning her application for a correction of military record. In that memorandum, the Air Force Personnel Center recommends that the AFBCMR approve the claimant's petition to correct the record to reflect that on November 28, 2014, the claimant made a timely application for the SBP annuity.

## Discussion

The SBP program, 10 U.S.C. §§ 1447-1455, was established in 1972 as 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. 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 . . .

All events giving rise to the government's liability to make SBP annuity 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. Claims filed more than six years after a member's death are barred. *See* DOHA Claims Case No. 2021-CL-081902.3 (December 5, 2022); and DOHA Claims Case No. 2018-CL-061204.2 (January 18, 2019).

In this case, in April 2011, the member elected coverage for the claimant in preparation for this retirement from the Air Force. When he retired on July 1, 2011, SBP premiums to pay for the claimant's coverage were withheld from his retired pay until he passed away on November 26, 2014. The events which fixed the liability of the government and entitled the claimant to make a claim arose at the time of the member's death. The claimant failed to make a claim until July 2023, over six years after it arose. Although we acknowledge the circumstances surrounding her failure to make a timely claim, we have no authority to allow her claim for the SBP annuity.

As explained by DFAS, the claimant may request waiver of the Barring Act under 31 U.S.C. § 3702(e), through the Assistant Secretary of the Air Force. Under 31 U.S.C. § 3702(e), upon request of the Assistant Secretary of the Air Force, the Secretary of Defense may waive the time limits established by 31 U.S.C. § 3702(b) for claims involving a member's pay, allowances, or survivor benefits. Under DoD Instruction 1340.21 ¶ E6.4 (May 12, 2004), DOHA is delegated the authority to grant or deny the request on behalf of the Secretary of Defense. Requests for waiver should be submitted to the Assistant Secretary of the Air Force at the following address:

Assistant Secretary of the Air Force  
(Financial Management & Comptroller)  
SAF/FMF, Rm 5D739  
1130 Air Force Pentagon  
Washington, DC 20330-1130

Under DOHA's Barring Act waiver authority as set forth in 31 U.S.C. § 3702(e), waiver shall only be granted to allow payment up to a maximum of \$25,000.00 of the retroactive

payment of the SBP annuity, and the claimant will not be granted the SBP annuity prospectively. Therefore, the claimant was advised by DFAS and the DOHA attorney examiner that she may wish to also pursue the matter with the AFBCMR. We note that the claimant has submitted documentation upon reconsideration that she has done so and is awaiting a decision on her petition from the AFBCMR. Thus, it appears that the AFBCMR is currently considering the claimant's petition under 10 U.S.C. § 1552, presumably including the Air Force Personnel Center's recommendation. We note that DOHA has no authority or involvement with the correction of a member's military record under 10 U.S.C. § 1552. Any correction of the record by the AFBCMR is final and conclusive on all officers of the United States under 10 U.S.C. § 1552(a)(4). The claimant should continue to pursue the matter with the AFBCMR, the proper authority for relief under 10 U.S.C. § 1552.

### **Conclusion**

For the reasons stated above, the claimant's request for reconsideration is denied, and we affirm the appeal decision dated October 9, 2024.

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