



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



DATE: April 23, 2025

In Re:

[REDACTED]

Claimant

)  
)  
) Claims Case No. 2024-CL-100704.2  
)  
)

**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-100704, dated February 19, 2025.

**Background**

On May 25, 1968, the claimant and the member were married. On September 22, 1987, the member completed a DD Form 1883, *Survivor Benefit Plan Election Certificate*. On that form, he elected spouse and child Survivor Benefit Plan (SBP) coverage for the claimant and his dependent children. On February 3, 2000, he completed a DD Form 2656, *Data for Payment of Retired Personnel*, electing spouse only SBP coverage because he no longer had dependent children. On May 22, 2001, the member turned 60 years old and began receiving retired pay.

On March 14, 2002, the member and the claimant divorced. The divorce decree awarded the claimant 45% of the member's monthly disposable retired pay. The decree also ordered the member to maintain the claimant as his SBP beneficiary. On March 28, 2002, the Defense Finance and Accounting Service (DFAS) Garnishment Department received a DD Form 2293, *Application for Former Spouse Payments from Retired Pay*, stating that the claimant was applying for direct payment of 45 % of the member's monthly disposable retired pay under the

Uniformed Services Former Spouses' Protection Act (USFSPA), 10 U.S.C. § 1408, along with the divorce decree, from the claimant's attorney. The DD Form 2293 was completed and signed by the claimant on March 20, 2022, and listed her address where the payments were to be sent. In response, DFAS mailed the claimant a letter dated April 1, 2002, to the same address listed on her DD Form 2293, advising her that her application for payment of a portion of the member's retired pay had been received. The letter advised her to expect direct payments by mail to commence in May 2002. The letter further advised her that if her divorce decree specifies that she is to be designated as a former spouse SBP beneficiary, she should make a "deemed election" for SBP coverage within one year of the date of her divorce directly to the DFAS Retired Pay Office at DFAS-CL/FRB, P.O. Box 99191, Cleveland, Ohio.

The claimant received her first monthly payment of a portion of the member's retired pay in May 2002. DFAS continued to directly pay the claimant her share of the member's monthly retired pay until his death.

On April 10, 2024, the member passed away. On May 8, 2024, the claimant submitted a DD Form 2656-7, *Verification of Survivor Annuity*, to DFAS claiming the SBP annuity as the member's former spouse. On May 21, 2024, DFAS denied the claim on the basis that the member did not make a request to change his election to former spouse coverage, nor was a deemed election for former spouse coverage made by the claimant.

The claimant appealed DFAS's denial of her claim. She stated that the member elected SBP coverage for her when they were still married, and his intent was for her to receive the annuity upon his death. DFAS issued an administrative report on April 23, 2024, sustaining the denial of the claim for the former spouse SBP annuity. DFAS found no evidence that the member elected former spouse SBP coverage for the claimant within one year of their divorce, or that the claimant submitted a deemed election for coverage within one year of the divorce.

On October 2, 2024, the claimant's attorney submitted a rebuttal to DFAS's administrative report. In that rebuttal, the attorney stated that the claimant did not receive DFAS's letter dated April 1, 2002, which included information about deeming a former spouse SBP election. The attorney stated that the address to which DFAS sent the letter was not the address at which the claimant was living at the time. The attorney also pointed out that the member continued to pay SBP premiums from his retired pay.

In the appeal decision, the DOHA attorney examiner upheld DFAS's determination, finding the member did not elect former spouse SBP coverage for the claimant and the claimant did not request a deemed election within one year of the divorce. The attorney examiner noted that the address to which DFAS sent the letter dated April 1, 2002, was the same address which, less than two weeks prior, the claimant had provided to DFAS when she requested former spouse payments. Finally, the attorney examiner explained that since the member continued to pay SBP premiums for spouse coverage when he no longer had a spouse beneficiary, that amount was recoverable as arrears of retired pay (AOP), and that the claimant was the member's AOP beneficiary.

In the claimant's request for reconsideration, through her attorney, she states that she did not receive the letter from DFAS dated April 1, 2002. She states that the divorce decree awarded her the SBP coverage and the member continued to pay for that coverage. Finally, she requests that if the reconsideration decision does not fall in her favor any documents alleged by DFAS to have the claimant's signature be provided to her attorney.

### **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. Spousal coverage ends upon divorce. If a member divorces and wishes to provide SBP coverage for the 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 member's spouse beneficiary immediately prior to the divorce. Former spouse coverage must be established within one year after the date of the decree of divorce. *See* 10 U.S.C. § 1448(b)(3)(A). In addition, a member may be required under the terms of a divorce decree to provide SBP coverage to the former spouse. If the member fails to do so, the former spouse has one year from the date of the court order requiring the election to request a deemed election. *See* 10 U.S.C. § 1450(f)(3). The former spouse's request for a deemed election must be in writing and include the court order requiring the election. *See* 10 U.S.C. § 1450(f)(3).

In this case, the claimant was covered as the member's spouse SBP beneficiary until such coverage ended with divorce in March 2002. However, the member failed to establish former spouse SBP coverage, and the claimant did not file a timely deemed election. Therefore, DFAS properly denied the claim for the SBP annuity. Even if the claimant did not receive DFAS's letter dated April 1, 2002, the annuity claim remains unpayable because the statutory requirement to submit a request for a deemed election for former spouse coverage was not met.

DFAS has advised DOHA that the claimant is the member's AOP beneficiary, and since the member continued to erroneously pay spouse SBP premiums from his retired pay when he no longer had a spouse beneficiary, the member was underpaid retired pay after his divorce. Thus, this underpayment of retired pay is payable as AOP. Finally, any request for documents should be directed to DFAS.

## **Conclusion**

The claimant's request for reconsideration is denied, and we affirm the appeal decision dated February 19, 2025.

Catherine M. Engstrom

Catherine M. Engstrom  
Administrative Judge  
Chair, Claims Appeals Board

Richard C. Ourand, Jr

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

David F. Hayes

David F. Hayes  
Administrative Judge  
Member, Claims Appeals Board