



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



DATE: March 21, 2025

In Re:

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Claimant

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Claims Case No. 2024-CL-092310.2

**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. A claim may be allowed only if it is for an item authorized by statute or regulation. Under the order of precedence established by 10 U.S.C. § 2771(a), a designated beneficiary has a claim superior to the late member's child.

DECISION

The claimant, the daughter of deceased, retired 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-092310, dated November 18, 2024.

Background

On September 12, 2002, the member retired from the Army. On October 6, 2002, he completed a DFAS-CL 5890/2, *Designation of Beneficiary Information*, designating beneficiary(ies) for his arrears of retired pay (AOP). On May 4, 2022, the member passed away. On July 20, 2023, the claimant submitted a SF 1174, *Claim for Unpaid Compensation of Deceased Member of the Uniformed Services*, to the Defense Finance and Accounting Service (DFAS), claiming the AOP as the member's daughter. Between August 2023 and December 2023, the claimant submitted four more SF 1174s to DFAS. DFAS denied the AOP claim on the grounds that the claimant was not an eligible AOP beneficiary on the member's account. DFAS stated that the member designated someone else as his AOP beneficiary.

The claimant appealed DFAS's denial of her claim for the AOP. In that appeal, she stated that she needed her father's "pension" to be paid to her monthly due to her current financial situation. She also detailed the care she provided her father. In an administrative report dated July 24, 2024, DFAS sustained the denial of the AOP claim. DFAS explained that following the member's retirement, he designated a beneficiary to receive his AOP.

In the appeal decision, the DOHA attorney examiner upheld DFAS's denial of the claim, finding that the member made a written designation under 10 U.S.C. § 2771. Under that statute, the rights of a member's designated beneficiary(ies) are superior to those of a member's child (if not the named beneficiary). The attorney examiner also noted that the AOP is a one-time payment of a member's arrears of retired pay, and not a monthly "pension" payable after a member's dies.

In the claimant's request for reconsideration, she attaches a doctor's statement concerning her medical issues.

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). When the language of a statute is clear on its face, the plain meaning of that statute will be given effect and that plain meaning cannot be altered or extended by administrative action. *See* DOHA Claims Case No. 2022-CL-120609.2 (February 7, 2024).

The final settlement of accounts owed by the Government to deceased members of the armed forces are to be paid according to the statutory instructions contained under 10 U.S.C. § 2771(a). Subsection (a) provides for payment of the amount due to the person or persons surviving the member in the following order of precedence:

- (1) Beneficiary designated by him in writing to receive such an amount, if the designation is received, before the deceased member's death, at the place named in regulations to be prescribed by the Secretary concerned.
- (2) Surviving spouse.
- (3) Children and their descendants, by representation.
- (4) Father and mother in equal parts or, if either is dead, the survivor.
- (5) Legal representative.
- (6) Person entitled under the law of the domicile of the deceased member.

On October 6, 2002, the member designated his beneficiary to receive any arrears of retired pay that might be due at his death. As explained by the attorney examiner in the appeal decision, in setting forth the order of precedence of persons to whom payment may be made, 10 U.S.C. § 2771(a) lists the member's children as third in the order of precedence. Since the member designated his beneficiary to receive any arrears of retired pay, his designation takes precedence. Therefore, there is no authority to allow payment of the AOP to the member's daughter.

Conclusion

The claimant's request for reconsideration is denied, and we affirm the appeal decision dated November 18, 2024, 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

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Administrative Judge

Chair, Claims Appeals Board

Richard C. Ourand, Jr

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Administrative Judge

Member, Claims Appeals Board

David F. Hayes

David F. Hayes

Administrative Judge

Member, Claims Appeals Board