



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



DATE: March 26, 2025

In Re:

[REDACTED]

Claimant

)
)
) Claims Case No. 2024-CL-102102.2
)
)

**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 surviving spouse.

DECISION

The claimant, the surviving spouse, of a 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-102102, dated January 15, 2025.

Background

On April 30, 1985, the member completed DA Form 4240, *Data for Payment of Retired Army Personnel*. On that form, he designated a beneficiary for his arrears of retired pay (AOP). On May 1, 1985, the member retired from the Army. The record reflects that in 2016 the member married the claimant. On December 25, 2023, the member passed away.

In April 2024, 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 surviving spouse. DFAS denied the AOP claim on the grounds that their records indicated someone else is the member's AOP beneficiary and the AOP would be paid out to the beneficiary designated by the member in writing.

The claimant appealed DFAS's denial of her claim for the AOP, using a Department of Veterans' Affairs (VA) Form 21-4138, *Statement in Support of Claim*. In that appeal, she attached copies of the divorce decrees from each of the member's four previous marriages. She also attached a copy of the VA Form 21-686c, *Declaration of Status of Dependents*, which the member completed on March 5, 2018. She requested that the AOP be paid to her based on the member's submission of the VA Form 21-686c, which reflected their marriage in 2016.

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 surviving spouse (if not the named beneficiary). The attorney examiner explained that the member made a written designation of his AOP beneficiary on April 30, 1985, and that designation was never changed by the member.

In the claimant's request for reconsideration, she asserts that the member changed his AOP beneficiary by submitting the VA Form 21-686c to the Veterans' Board of Appeals (VBA) in 2018. She maintains that the paperwork submitted to the VBA at that time changed the member's beneficiary and dependents. She states that the member believed that the information provided would be submitted to both the VBA and DFAS, especially since the member was entitled to receive Combat Related Special Compensation (CRSC).

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 to the claimant for the amount claimed. *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.

Under 10 U.S.C. § 2771(b), designations and changes of designations under subsection (a)(1) are subject to regulations prescribed by the Secretary of Defense. The current implementing regulations for the statute are found in Chapter 30, Volume 7B of the DoD 7000.14-R, the *Department of Defense Financial Management Regulation* (DoDFMR), *Military Pay Policy - Retired Pay*. Paragraph 2.4.1 restates the order of precedence set forth under 10 U.S.C. § 2771. Paragraph 2.4.2 states that a retired member may change a designated beneficiary either in writing or electronically via MyPay as long as the change is received by DFAS-Cleveland before the retired member's death.

On April 30, 1985, the member designated a named beneficiary to receive any arrears of retired pay that might be due at his death. DFAS has no record of the member changing his AOP beneficiary. 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 designated beneficiary first in the order of precedence. Since the member designated his beneficiary to receive any arrears of retired pay, his designation takes precedence over a surviving spouse. Therefore, there is no authority to allow payment of the AOP to the member's the claimant.

The VA is a separate agency from the Department of Defense, including DFAS, and the VA adjudicates different entitlements upon a member's death under different statutory authority. In fact, the VA Form 21-686c used by the member and submitted to the VBA in 2018 is a form used for the express purpose of providing information to the VA to determine marital status and eligibility for an additional allowance for a member's dependents under 38 U.S.C. § 1115. Laws relating to a deceased veteran's benefits are separate and distinct from the laws relating to the entitlement to a deceased member's AOP. DOHA is only bound by the AOP law, as set forth under pertinent statute and regulation.

Conclusion

The claimant's request for reconsideration is denied, and we affirm the appeal decision dated January 15, 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

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