



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



DATE: August 6, 2025

In Re:

[REDACTED]

Claimant

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Claims Case No. 2024-CL-111812.2

**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. Navy, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2024-CL-111812, dated June 4, 2025.

Background

On July 7, 1979, the member and the claimant married. On June 1, 1994, the member retired from the Navy and was enrolled in the Survivor Benefit Plan (SBP) with spouse coverage. On September 8, 1997, the member and the claimant divorced. Under the divorce decree, the member was required to maintain the claimant as his SBP beneficiary. However, the member did not elect former spouse SBP for the claimant, nor did the claimant request it within one year of the divorce. In addition, the Defense Finance and Accounting Service (DFAS) continued to withhold SBP premiums for spouse coverage from the member's retired pay.

On October 25, 2022, the member passed away. The claimant subsequently claimed the SBP annuity as the member's former spouse. DFAS denied her claim on the basis that the member did not establish former spouse SBP coverage for her, nor did the claimant make a request for a former spouse deemed election.

The claimant appealed DFAS's denial of her claim. In the DOHA appeal decision, the attorney examiner upheld DFAS's denial of the claim for the SBP annuity. The attorney examiner found no evidence that the member elected former spouse SBP coverage for the claimant or that the claimant submitted a deemed election for that coverage.

In her request for reconsideration, the claimant attaches two DOHA Claims Appeals Board decisions cited by the attorney examiner in the appeal decision. She states that these claims are not hers, and she is returning them to DOHA because she believes they contain private information. She states that both DFAS and DOHA can make mistakes, but if she makes one that she no even aware of making, the result is she is not entitled to the SBP annuity. She questions where all the money went that the member paid into the SBP for her coverage.

Discussion

Claims against the government may be allowed only for expenses authorized by statute or regulation. Therefore, DOHA must render decision based on applicable statutes, regulations and our prior administrative decisions. The two decisions referenced and included as attachments in the appeal decision were cited by the attorney examiner as analogous to the circumstances surrounding the claimant's case and are considered legal precedent. Both decisions are redacted and published as case precedent for the Department of Defense.

The SBP, set out in 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 from the date of the 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 divorce decree to request a deemed election. *See* 10 U.S.C. § 1450(f)(3).

In this case, the member was obligated based on the divorce decree to cover the claimant as his former spouse under the SBP. 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. *See* DOHA Claims Case No. 2017-CL-101202.2 (April 10, 2018).

Finally, since SBP premiums for spouse coverage were deducted from the member's retired pay after the divorce in 1997, those costs should be refunded to the proper beneficiary as arrears of pay under 10 U.S.C. § 2771.

Conclusion

The claimant's request for relief is denied and we uphold the DOHA appeal decision dated June 4, 2025. In accordance with the Department of Defense 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

David F. Hayes
David F. Hayes
Administrative Judge
Member, Claims Appeals Board

Charles C. Hale
Charles C. Hale
Administrative Judge
Member, Claims Appeals Board