



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



DATE: August 22, 2025

In Re:

[REDACTED]

Claimant

)  
)  
) Claims Case No. 2025-CL-021801.2  
)  
)

**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. The claimant must prove by clear and convincing evidence on the written record that the United States Department of Defense is liable under the law for the amount claimed. Federal agencies and officials must act within the authority granted to them by statute and in issuing regulations. Thus, the liability of the United States is limited to that provided by law. Since military pay entitlements, including survivor benefits, are governed by specific statutes, the Defense Office of Hearings and Appeals (DOHA) must apply the appropriate statutes and regulations in the adjudication of those entitlements as set forth under 31 U.S.C. § 3702(a).

Claims settlement under 31 U.S.C. § 3702 is subject to a statute of limitations imposed by section 3702 itself. Specifically, 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 the claim accrues. 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, retired pay, or survivor benefits, to allow payment of the claim up to \$25,000.00.

**DECISION**

The claimant, the surviving spouse of a deceased 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. 2025-CL-021801, dated June 2, 2025. In that decision, DOHA denied the surviving spouse's claim for the member's Survivor Benefit Plan (SBP) annuity because it was filed more than six years after the member's death.

## Background

The member was born on September 8, 1964. In 2002, the member completed 20 years of qualifying reserve service in the Air National Guard for retired pay upon his application at age 60 and was automatically enrolled in the SBP with spouse coverage, which would provide an immediate spouse SBP annuity upon his death regardless of his age. On September 9, 2004, the member divorced, and on May 26, 2007, the member married the claimant. On July 25, 2011, the member passed away prior to reaching the age of 60. On July 11, 2024, the claimant contacted the Air Force Total Force Service Center (TFSC) to obtain a copy of the member's retirement orders for the purposes of obtaining an identification card. At that time, the TFSC provided the claimant with information on how to submit an SBP annuity claim to the Defense Finance and Accounting Service (DFAS). On July 17, 2024, the claimant submitted to DFAS a DD Form 2656-7, *Verification for Survivor Annuity*, claiming the SBP annuity as the member's surviving spouse.

On August 21, 2024, DFAS denied the claim for the SBP annuity on the grounds that the claimant filed it more than six years after the claim accrued, and therefore it was barred by the Barring Act, 31 U.S.C. § 3702(b). DFAS calculated the arrears of SBP annuity payments due during the period between after the member's death through July 30, 2024, to be \$45,747.17. DFAS advised the claimant of her right to appeal their decision to DOHA, but also informed the claimant of her right to request waiver of the time limit through the Assistant Secretary of the Service concerned, in her case, the Assistant Secretary of the Air Force Financial Management and Comptroller (FM&C) in order to receive up to \$25,000.00 of the arrears of SBP annuity payments. DFAS further advised the claimant that she had the right to seek a correction of record with the correction board for the appropriate service under 10 U.S.C. § 1552, in her case, the Air Force Board for Correction of Military Records (AFBCMR).

The claimant appealed DFAS's denial of her SBP annuity claim. DFAS sustained the denial of her claim and provided her with their administrative report upholding the application of the Barring Act to the SBP annuity claim. On January 27, 2025, the claimant filed a rebuttal to DFAS's administrative report. In that rebuttal, she argued that all the annuity payments should not be barred. She maintained that she is entitled to receive the annuity payments due within the last six years. She cited to 10 U.S.C. § 1450(a) which states that effective the first day after the death of a member "to whom section 1448 of this title applies (or on such other day as that [member] may provide under subsection (j)), a monthly annuity under section 1451 of this title shall be paid . . . ." She argued that based on statute, there is no requirement that she submit a claim for the SBP annuity since payment is only triggered by the death of the member. She maintained that although the Barring Act may apply to claims for the unpaid arrears of annuity pay older than six years, it should not apply and does not bar her from claiming payments that were due and payable within the last six years. In addition, she stated that the Barring Act should not prevent any further annuity payments to be made to her. She also requested waiver of the barred payments through the Secretary of Defense.

In the DOHA appeal decision, the attorney examiner upheld DFAS's denial of the claim finding that the Barring Act, 31 U.S.C. § 3702(b), applied to bar payment of the SBP annuity. The attorney examiner explained that claims settlement under 31 U.S.C. § 3702, including the

settlement of SBP annuity claims, is subject to a statute of limitations, and under section 3702(b), a claimant (including a survivor of a member participating in the SBP) has six years to file a claim for an SBP annuity. The attorney examiner found that all events giving rise to the claim occurred at the member's death in July 2011, and since the claimant did not file her claim for the SBP annuity within six years of his death, her annuity claim was barred. The attorney examiner cited as authority for application of the Barring Act, a United States Court of Appeals decision, *Hart v. United States*, 910 F. 2d 815 (Fed. Circ. 1990). The attorney examiner explained that the claimant had the right to request waiver of the Barring Act through the Assistant Secretary of the Air Force to allow payment of SBP annuity payments retroactive to the member's death up to the statutory maximum of 25,000.00, as set forth under 31 U.S.C. § 3702(e). The attorney examiner then stated that the claimant may find relief outside the purview of DOHA through petitioning the AFBCMR.

In her request for reconsideration, the claimant argues that *Hart* is not applicable to her case because no action was required on her part in order for payment to be made to her of the SBP annuity. She cites to 10 U.S.C. § 1437(a), which states the following:

Except as provided in subsections (b) and (c), each annuity payable under this subchapter accrues as of the first day of the month in which the person upon whose pay the annuity is based dies. Payments shall be made in equal installments and not later than the fifteenth day of each month following that month. However, no annuity accrues for the month in which entitlement thereto ends. The monthly amount of an annuity payable under this subchapter, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.

The claimant argues that there is nothing in the language of that subsection that states if payments are not claimed, payments cease to accrue or such payments are precluded by the Barring Act. She acknowledges that she may not be able to claim payments that were due and payable more than 6 years from her initial inquiry about the SBP annuity. However, she states that future payments cannot be assumed to have been foregone merely because the Barring Act prevented prior claims from being paid. She argues that while the court in *Hart* did conclude that SBP annuity claims were not continuing claims, they ignored the plain language of 10 U.S.C. § 1437, in that it states that "payments shall be made in equal installments and not later than the fifteenth day of each month following that month . . ." with the only exception being that "no annuity accrues for the month in which entitlement thereto ends." She also references the Department of Defense (DoD) Instruction 1332.42, *Survivor Benefit Plan*, and acknowledges that paragraph 10.6 of that Instruction states that for an annuity to be payable, a written claim must be submitted. The claimant further acknowledges that paragraph 10.6 states that in order to initiate an annuity payment under the SBP or RC-SBP programs, the beneficiary must complete a DD Form 2656-7 and submit it for verification. However, she maintains that the language only concerns a proper step in making payment of the annuity but does not state that the failure to file will prevent the accrual of future payments. She notes that the DD Form 2656-7 itself states that the disclosure of information is voluntary, and that failing to provide the information may delay the verification process and any subsequent payment. However, the DD Form 2656-7 does not state that the failure to file may prevent the accrual of future annuity payments. She describes the circumstances surrounding the member's discharge from the Air Force which involved him

enduring a brain stem stroke, causing his physical and mental capabilities to diminish. She states that his memory and communication skills deteriorated due to his health conditions. She states that he was likely unaware of the SBP program after his retirement and was not in a position to process any paperwork or inform her of it. She states that the SBP was never mentioned prior to his untimely death. She requests the SBP annuity as she believes the statute clearly indicates that the payments are continual and there is nothing within the statute that states a claimant must make an initial claim for the subsequent payments to accrue.

## **Discussion**

In 1996, Congress transferred the authority once held by the Comptroller General of the United States (General Accounting Office, now the Government Accountability Office or (GAO)), to settle claims for military pay and allowances, including retired pay and survivor benefits under 31 U.S.C. § 3702(a)(1)(A), to the Director of the Office of Management and Budget (OMB). *See* Section 211 of Public Law No. 104-53, 109 Stat. 514, 535, November 19, 1995. The Director of OMB delegated his authority to the Secretary of Defense effective June 30, 1996. The authority of the Secretary of Defense in this regard was later codified in Section 202(n) of Public Law No. 104-316, 110 Stat. 3826, October 9, 1996. DOHA exercises the authority transferred and delegated to the Secretary of Defense. Under 31 U.S.C. § 3702(a)(1), DOHA's authority to decide cases such as this is derived from the same authority that provided the Comptroller General the authority to decide such claims. Specifically, under 31 U.S.C. § 3702(a)(1)(A), DOHA settles claims involving uniformed service members' pay, allowances, travel, transportation, payments for unused accrued leave, retired pay, and survivor benefits. The implementing regulation for DOHA's authority is set forth in Department of Defense Instruction 1340.21 (May 12, 2004).

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* Instruction ¶ E5.7. A claimant must submit a claim so that it is received by the agency concerned within the time limit allowed by statute. *See* Instruction ¶ E5.6. 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), and DOHA must render decisions based on applicable statutes, regulations and our prior administrative decisions.

In the adjudication of cognizable claims under 31 U.S.C. § 3702, it is a well-established rule that a claim may only be allowed for an expense authorized by statute or regulation. *See* DOHA Claims Case No. 2016-CL-052003.2 (September 27, 2016). When the language of a statute is clear on its face, the plain meaning of the statute will be given effect, and that plain meaning cannot be altered or extended by administrative action. *See* DOHA Claims Case No. 2016-CL-112901.2 (February 2, 2017). Statutory provisions with unambiguous and specific directions may not be interpreted in any manner that will alter or extend their meaning. *See* 71 Comp. Gen. 125 (1991); and 56 Comp. Gen. 943 (1977). The interpretation of a statutory provision and its implementing regulation by those charged with their execution, and the

implementation of them by means of a consistent administrative practice, are to be sustained unless shown to be arbitrary, capricious or contrary to law. *See* DOHA Claims Case No. 2011-CL-101402.2 (February 9, 2012). The rights of individuals to receive benefits under Federal statutes are by virtue of the language of the statute and subject to the conditions and limitations contained therein. *See* B-203903, Feb. 11, 1985.

The SBP now codified under 10 U.S.C. §§ 1447-1455, is an income maintenance program for survivors of retired military members. Under 10 U.S.C. § 1450(a), a monthly SBP annuity is payable to a participating member's surviving spouse effective as of the first day after the date of the member's death. 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 . . .

The official responsible for establishing the SBP annuity accounts for survivors of military members is the office of DFAS – U.S. Retired and Annuitant Pay. All events giving rise to the government's liability to make SBP 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 with DFAS. Claims filed more than six years after a member's death are barred. *See Hart v. United States, supra*; and DOHA Claims Case No. 02082608 (March 26, 2003). In *Hart*, because the claimant's late husband was enrolled in the SBP, only one contingency remained before she became eligible to receive SBP benefits, the member's death.

In this case, the member was a participant in SBP with immediate spouse coverage in 2002 when he became eligible for retirement but for the fact that he had not reached 60 years of age. Spouse SBP coverage was effective one year after the member married the claimant, or effective June 1, 2008, by operation of law. The events that fixed the liability of the government and entitled the claimant to make a claim arose at the time of the member's death in July 2011. The claimant failed to make a claim for the SBP annuity until July 2024, 13 years after it accrued. Absent statutory authority, federal agencies may not waive or extend the time allowed by a statute of limitations. *See United States v. Garbutt Oil Co.*, 302 U.S. 528, 534-35 (1938); and *Finn v. United States*, 123 U.S. 227, 233 (1887). The same is true of the Barring Act under 31 U.S.C. § 3702(b). *See* 70 Comp. Gen. 292(1991). Therefore, DOHA has no authority to modify the application of the Barring Act or make any exceptions to the time limitations it imposes, except as set forth under specific statutory authority. *See* DOHA Claims Case No. 08112402 (November 26, 2008); Comptroller General decisions B-260207, Nov. 6, 1995; and B-260835, May 10, 1995.

The claimant argues that the court erred in *Hart* and cites to the language contained in 10 U.S.C. § 1437. Prior to the U.S. Court of Appeals for the Federal Circuit's decision in *Hart* in 1990, it had been the policy of the Department of Defense and the Comptroller General to handle recurring payments such as SBP under the continuing claims theory. Under that theory, if the

surviving spouse of a military member waited more than six years to file a claim for the SBP annuity and was otherwise entitled, the claim would be allowed, but retroactive payment would be limited to six years of benefits. In *Hart*, the court said that in such a situation the six-year statute of limitations on a surviving spouse's claim begins to run as soon as "all the events have occurred which fix the liability of the Government and entitle the claimant to institute an action." See *Hart v. United States* at 817, quoting *Kinsey v. United States*, 852 F.2d 556, 557 (Fed. Cir. 1988). The court said that the final event in the claimant's case was the member's death. The court found that the claim was barred because the surviving spouse had not filed it within six years of the member's death. In *Hart*, the court said that Congress intended the six-year limit to be strictly construed so as not to burden agencies such as the Department of Defense from having to maintain records for indefinite periods of time. In the case of claims for SBP, the court said that the continuing claims theory created an unwarranted exception to the Barring Act. As previously determined by the Comptroller General in applying *Hart* and the application of the Barring Act to SBP annuity claims, DOHA has no authority to disregard the decisions of the U.S. Court of Appeals. As for the language contained under 10 U.S.C. § 1437, that statute concerns the payment of the Retired Serviceman's Family Protection Plan (RSFPP) benefits. The RSFPP was the Department of Defense survivor program in effect prior to September 21, 1972, when it was replaced by the SBP. RSFPP coverage could not be established after September 20, 1972. In this case, the member was a participant in the SBP, not the RSFPP. However, even if RSFPP coverage for the claimant was in effect at the time of the member's death, the Barring Act would apply if the claimant failed to submit an application for the RSFPP annuity within six years of the member death. See DOHA Claims Case No. 2018-CL-061204.2 (January 18, 2019); and DOHA Claims Case No. 96112101 (May 16, 1997).

As set forth above, the statute of limitations must be strictly applied under 31 U.S.C. § 3702(b), because appropriated funds are not legally available to pay claims on which the statute of limitations has run. See 52 Comp. Gen. 420 (1973); and DOHA Claims Case No. 02082608 (March 26, 2003). The claimant's claim was not timely, and she will not be granted the SBP annuity prospectively.

As explained by DFAS and DOHA, the Department of Defense has the specific statutory authority to waive the Barring Act for claims (not exceeding \$25,000.00) that it is authorized to settle under section 3702(a)(1). 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 uniformed service member's pay, allowances or survivor benefits. Under DoD Instruction 1340.21 ¶ E6.4 (May 12, 2004), the Director of DOHA is delegated the authority to grant or deny the request on behalf of the Secretary of Defense. However, the claimant must file her request directly with the Assistant Secretary of the Air Force at the following address:

Assistant Secretary of the Air Force  
(Financial Management & Comptroller)  
1130 Air Force Pentagon  
Washington DC 20330-1130

We note that under 31 U.S.C. § 3702(e), waiver shall only be granted to allow payment up to a maximum of \$25,000.00, and the claimant will not be granted the SBP annuity prospectively. Therefore, the claimant may wish to also pursue the matter with the AFBCMR. The claimant's request for waiver of the Barring Act does not forfeit her right to seek redress from the AFBCMR. Under 10 U.S.C. § 1552, the Secretary of a military department, acting through a correction board, may correct a member's record when the Secretary considers it necessary to correct an error or remove an injustice. Information on petitioning the AFBCMR can be found on the Air Force Review Boards Agency's website at <https://afrba-portal.cce.af.mil>.

### **Conclusion**

The claimant's request for reconsideration is denied, and we affirm the appeal decision dated June 2, 2025.

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