



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



DATE: December 19, 2025

)	
In Re:)	
[REDACTED])	Claims Case No. 2024-CL-111819.2
)	
Claimant)	

**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-111819, dated August 18, 2025.

Background

On July 14, 1976, the claimant and the member were married. On June 27, 1991, the member elected spouse and child Survivor Benefit Plan (SBP) coverage for the claimant and his dependent children. On September 1, 1991, the member retired from the Army. On August 26, 1996, the member and the claimant divorced. The divorce decree was silent as to the SBP benefits. On September 26, 1996, the Defense Finance and Accounting Service (DFAS) received the divorce decree from the member and the member’s written request to terminate spouse SBP coverage for the claimant.

On November 12, 2022, the member passed away. On December 5, 2022, 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 December 29, 2022, DFAS denied the claim on the basis that the member did not make a request to change his election to former spouse coverage within one year of the divorce. DFAS explained that if the member and the claimant had entered

into a written agreement for the member to provide former spouse SBP coverage, and that agreement had been incorporated into the divorce decree, the claimant could have requested a deemed former spouse election.

The claimant appealed DFAS's denial of her claim. She indicated that the member had entered into a written agreement to continue SBP coverage for her after their divorce. DFAS issued an administrative report sustaining the denial of the claim for the former spouse SBP annuity. DFAS found no language in the divorce decree requiring the member to provide former spouse SBP coverage for the claimant. DFAS also found no evidence that the member made a voluntary former spouse SBP election for the claimant.

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.

In the claimant's request for reconsideration, she attaches two documents. The first document is the first page of a letter dated July 11, 1997, from the claimant's attorney's office to an attorney representing the member, responding to a settlement offer and proposing a counter-offer. Of note is the following provision of the counter-offer:

[The member] would voluntarily elect the former spouse benefit (FSB) on his military retirement payments. The court does have discretion to order the election, especially considering the fact that the parties had jointly elected the survivor benefit while they were married.

The second document the claimant attaches is a U.S. Postal Service receipt for certified mail dated December 10, 1997, with the sender listed as DFAS.

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 August 1996. The divorce decree did not mention the SBP, and the member did not elect former spouse SBP coverage. Although the claimant now presents a letter suggesting that a written agreement post-dating the divorce may have been discussed, there is no evidence that the agreement was incorporated into a court order. Absent the claimant being awarded former spouse coverage pursuant to a court order, she has no statutory right to request a deemed election. *See* DOHA Claims Case No. 2020-CL-120211.2 (September 15, 2022). Further, even if a court order was issued requiring former spouse SBP coverage, DFAS has no record of ever receiving it. Therefore, the annuity claim would remain unpayable because the statutory requirement to submit a request for a deemed election for former spouse coverage was not met.

Conclusion

The claimant’s request for reconsideration is denied, and we affirm the appeal decision dated August 18, 2025.

SIGNED: Catherine M. Engstrom

Catherine M. Engstrom
Administrative Judge
Chair, Claims Appeals Board

SIGNED: David F. Hayes

David F. Hayes
Administrative Judge
Member, Claims Appeals Board

SIGNED: Charles C. Hale

Charles C. Hale
Administrative Judge
Member, Claims Appeals Board