

KEYWORDS: Survivor Benefits, SBP annuity

DIGEST: The statute governing the Survivor Benefit Plan (SBP) requires that a service member that is not married when eligible to participate in the Plan must elect to cover the surviving spouse within one year of the marriage for the surviving spouse to be eligible to receive annuity payments.

CASE NO: 2019-CL-031402.2

DATE: 09/24/2019

DATE: September 24, 2019

In Re:)	
[REDACTED])	Claims Case No. 2019-CL-031402.2
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

The statute governing the Survivor Benefit Plan (SBP) requires that a service member that is not married when eligible to participate in the Plan must elect to cover the surviving spouse within one year of the marriage for the surviving spouse to be eligible to receive annuity payments.

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. 2019-CL-031402, dated August 6, 2019. In that case, this Office upheld the Defense Finance and Accounting Service's (DFAS's) denial of the claim for the member's Survivor Benefit Plan (SBP) annuity because the member, unmarried at retirement but having elected to participate in the Plan with child only coverage, failed to thereafter elect spouse coverage within one year of the date of his marriage to the claimant.

Background

At the time the member retired from the Air Force on August 1, 1988, he was not married but elected to participate in SBP with child only coverage. That child subsequently aged out of eligibility for SBP coverage. On October 29, 1994, he married the claimant. The member failed to notify DFAS of his marriage and did not elect to designate the claimant as his SBP beneficiary. The member and the claimant had one child together. He did not notify DFAS of the birth of that child.

On August 15, 2017, the member passed away. On August 16, 2017, the claimant notified DFAS of the member's death. On September 23, 2017, she claimed the SBP annuity as the member's surviving spouse. On October 23, 2017, DFAS denied her claim because the member had not established SBP spouse coverage within a year of his marriage to her.

In the appeal decision, the DOHA adjudicator upheld DFAS's denial of the claim due to the member's failure to elect coverage for the claimant 10 U.S.C. § 1448(a)(5). The adjudicator also explained the process for requesting a correction of records through the Secretary of the Air Force.

In her request for reconsideration, the claimant states that her husband assured her that she would receive his SBP annuity upon his death. She states that she is now solely financially responsible for the household and is trying to cover her son's college expenses. She attaches an appeal to the U.S. Department of Veterans Affairs (VA) concerning the member's ongoing efforts to be designated 100% disabled. Apparently after his retirement, the member suffered from numerous health problems but was never designated by the VA as 100% disabled during his lifetime. In the claimant's appeal to the VA, she states that the member believed that she was automatically covered under the SBP if anything happened to him. She maintains that he either forgot or was not aware of the requirement to elect coverage for her when they married.

Discussion

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for survivors of retired military members. A married member or a member with a dependent child is automatically eligible to participate in SBP when he becomes eligible for retired pay. *See* 10 U.S.C. § 1448(a)(2)(A). A member who is not married upon becoming eligible to participate in the plan but who later marries may elect to establish coverage for his spouse pursuant to 10 U.S.C. § 1448(a)(5). That section requires a written election, signed by the member, and received by the Secretary concerned within one year of the marriage. *See* Comptroller General decisions B-258328, Feb. 15, 1995, and B-203903, Feb. 11, 1985. The Service Secretaries have delegated their authority under the SBP law to DFAS.

In 1988 when the member retired and became eligible for retired pay, he had no eligible spouse beneficiary but elected child only SBP coverage. Therefore, he had one year from the date of his marriage to the claimant to designate her as his spouse SBP beneficiary. Since the member failed to make such a designation, the claim for the SBP annuity was properly denied.

DOHA is bound by statute and regulation, and therefore, is unable to allow the claim for the SBP annuity. However, as explained by the DOHA adjudicator in the appeal decision, under 10 U.S.C. § 1552, the Secretary of the Air Force, 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 Air Force Board for Correction of Military Records (AFBCMR) is found online at <https://www.afpc.af.mil/Career-Management/Military-Personnel-Records/>.

Conclusion

For the reasons stated above, the claimant's request for reconsideration is denied, and we affirm the appeal decision dated August 6, 2019.

SIGNED: Catherine M. Engstrom

Catherine M. Engstrom
Chairman, Claims Appeals Board

SIGNED: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board

SIGNED: Ray T. Blank, Jr.

Ray T. Blank, Jr.
Member, Claims Appeals Board