

KEYWORDS: waiver of indebtedness, overpayment of basic salary

DIGEST: The burden of proving the existence of a valid claim against the United States is on the person asserting the claim.

CASE NO: 2019-CL-022202.2

DATE: 08/27/2019

DATE: August 27, 2019

In Re:)
[REDACTED]) Claims Case No. 2019-CL-022202.2
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. 2019-CL-022202, dated August 5, 2019.

Background

On September 21, 1986, the claimant and the member were married. On December 15, 2005, the member retired from the Army. At that time, he elected Survivor Benefit Plan (SBP) coverage for his spouse and children. On July 18, 2008, the claimant and the member were divorced. The divorce decree did not award the claimant former spouse SBP coverage. Further, the member did not elect former spouse SBP for the claimant. On May 9, 2017, the member passed away. In July 2017 the claimant advised DFAS of the member's death and claimed the SBP annuity.

DFAS subsequently denied the claimant's claim for a SBP annuity because the member did not establish former spouse SBP coverage for the claimant. In addition, the divorce decree did not award her SBP coverage. Therefore, as a result, she could not submit a deemed election for SBP.

The claimant appealed DFAS's denial of her claim to DOHA. She maintained that although she and the member were divorced, he told her that he would provide for her and his children. He left his bank account to her and a life insurance policy. In the appeal decision, the DOHA attorney examiner upheld DFAS's denial of the claim. He noted other possible avenues of relief the claimant may wish to pursue, outside of DOHA's authority in the matter, such as through a state court or military board for correction.

In her reconsideration request, the claimant attaches DOHA Claims Case No. 2017-CL-081403.2 (January 8, 2018), a case cited by the attorney examiner in the DOHA appeal decision. She alleges various errors in that decision, such as the date of her marriage and the date of the member's death. She also states that if the member knew he had to change the SBP coverage from spouse to former spouse, he would have done so. After their divorce, she states that she and the member continued to support each other spiritually, mentally, emotionally and financially until his death. She states that they maintained a joint bank account and he periodically gave her large sums of money. He obtained a life insurance policy for her and one for her children. She made all the arrangements for his funeral and paid for it. She attaches evidence supporting her statements.

Discussion

Claims against the government may be allowed only for expenses authorized by statute or regulation. *See* DOHA Claims Case No. 2016-CL-111002.2 (October 31, 2017). Therefore, DOHA must render decisions based on applicable statutes, regulations and our prior administrative decisions. Preliminarily, we will address the claimant's concern that the attorney examiner erred by citing DOHA Claims Case No. 2017-CL-081403.2, *supra*, and attaching it to the appeal decision in her case. The decision included in the appeal decision is legal precedent and was cited by the attorney examiner as analogous to the situation presented in the claimant's case. The dates addressed in that decision are not pertinent to the claimant's case.

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for the survivors of deceased members of the uniformed services. *See* DOHA Claims Case No. 2016-CL-111002.2, *supra*; and DOHA Claims Case No. 2017-CL-101202.2 (April 10, 2018). Spousal coverage ends upon divorce. If a member divorces and wishes to provide SBP coverage for his former spouse, he must notify DFAS in writing of the divorce and his intention to provide coverage for his former spouse, even if the former spouse was the 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 his former spouse. If he fails to do so, the former spouse has one year from the date of the divorce to request a deemed election. *See* 10 U.S.C. § 1450(f)(3).

In this case, the claimant was not awarded former spouse coverage in the divorce decree. Therefore, she had no statutory right to request a deemed election. The member did not voluntarily elect former spouse coverage for the claimant, within one year of the date of the divorce. *See* DOHA Claims Case No. 2018-CL-090703.2 (June 19, 2019). Therefore, DFAS properly denied the claim for the SBP annuity.

As explained by the attorney examiner in the appeal decision, the claimant may have other available remedies that rest with the Army Board for Correction of Military Records (ABCMR) under 10 U.S.C. § 1552 and 10 U.S.C. § 1454. These remedies are outside DOHA's authority and any request for a correction of record needs to be pursued with the ABCMR.

Conclusion

The claimant's request for relief is denied. 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.

SIGNED: Catherine M. Engstrom

Catherine M. Engstrom
Chairman, Claims Appeals Board

SIGNED: Ray T. Blank, Jr.

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

SIGNED: Gregg A. Cervi

Gregg A. Cervi
Member, Claims Appeals Board