

DATE: September 29, 2020

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In Re: )

[REDACTED] )

Claimant )

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) Claims Case No. 2019-CL-082701.2  
)  
)

**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 in the written record that the government is liable under the law for the amount claimed.

**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-082701.2, dated July 21, 2020.

**Background**

The claimant and the member were married on June 7, 1963. On September 1, 1987, the member retired and elected to provide SBP spouse and child coverage for the claimant and their children. On April 9, 2003, the claimant and the member divorced. The divorce decree did not award the claimant former spouse SBP coverage. Further, after the divorce the member did not elect former spouse SBP coverage.

The member passed away on March 2, 2018. On April 2, 2018, the claimant submitted to DFAS a DD Form 2656-7, *Verification for Survivor Annuity*, claiming the SBP annuity as the member's former spouse. DFAS subsequently denied her claim for the 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. In the appeal decision, DOHA upheld DFAS's denial of the SBP claim.

In her reconsideration request, the claimant states that it was the member's intention that she receive the SBP annuity upon his death. She attaches a statement signed by the member dated February 19, 2018, expressing his wish to specify the claimant as his beneficiary for his military benefits until her death. The statement is witnessed by the member's caretaker and his son. The claimant states that further evidence suggests that the member always intended her to be his SBP beneficiary. He continued to pay spouse SBP premiums on her behalf. Her date of birth is reflected on his Retiree Account Statements (RAS) as the beneficiary for his SBP annuity. In addition, the RAS showed DFAS was deducting former spouse payments from the member's retired pay as required by the divorce decree; therefore, DFAS had a copy of the decree on file.

### **Discussion**

The claimant must prove, by clear and convincing evidence, on the written record that the United States is liable to the claimant for the amount claimed. *See* Department of Defense Instruction 1340.212 (May 12, 2004) ¶ 5.7. 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).

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 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)(iii). 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. Regardless of what the member's RAS indicated 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. 2017-CL-081403.2 (January 8, 2018); and DOHA Claims Case No. 2017-CL-112707.2 (October 23, 2018). Therefore, DFAS properly denied the claim for the SBP annuity.

As set forth above, DOHA has no authority under statute or regulation to allow the claim. However, as explained by the DOHA adjudicator 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 the record needs to be pursued with the ABCMR. *See* DOHA Claims Case No. 2016-CL-090801.3 (March 30, 2017).

## Conclusion

The claimant's request for relief is denied, and we affirm the appeal decision dated July 21, 2020. In accordance with DoD Instruction 1340.21 ¶ E7.15.2, this is the final administrative action of the Department of Defense in this matter.

SIGNED: Catherine M. Engstrom

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Catherine M. Engstrom  
Chairman, Claims Appeals Board

SIGNED: Charles C. Hale

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Charles C. Hale  
Member, Claims Appeals Board

SIGNED: Gregg A. Cervi

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Member, Claims Appeals Board