

KEYWORDS: Survivor Benefits, SBP annuity

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

CASENO: 2018-CL-080201.2

DATE: 01/03/2019

DATE: January 3, 2019

---

In Re: )  
          ) [REDACTED] ) Claims Case No. 2018-CL-080201.2  
          ) )  
          ) )  
          ) )

---

**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.

**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. 2018-CL-080201, dated October 25, 2018.

**Background**

On March 16, 1962, the claimant and the member were married. On April 22, 1981, the member elected Survivor Benefit Plan (SBP) coverage for the claimant as his spouse.<sup>1</sup> On November 21, 1997, the member retired. On December 3, 2002, the claimant and the member

---

<sup>1</sup>The member specifically elected spouse coverage under the Reserve Component Survivor Benefit Plan (RCSBP). The RCSBP extends eligibility for SBP to Reserve Component members who would otherwise be eligible to receive retired pay except that they have not reached the required retirement age of 60.

were divorced. The divorce decree, which incorporated a prior agreement by the parties dated March 1, 2002, awarded the claimant former spouse SBP coverage. However, the member did not elect former spouse SBP for the claimant, nor did the claimant request it within one year of the divorce.

On April 5, 2005, the claimant remarried. The member advised the Defense Finance and Accounting Service (DFAS) by letter dated April 26, 2005, of his divorce and the claimant's remarriage. He included a copy of the divorce decree with his letter. However, SBP premiums continued to be deducted from the member's retired pay.

On July 3, 2017, the member passed away. On July 10, 2017, the claimant submitted DD Form 2656-7, *Verification of Survivor Annuity*, to DFAS claiming the SBP annuity as the member's former spouse.

DFAS subsequently denied the claimant's claim for a SBP annuity because the member did not establish former spouse SBP coverage for the claimant, nor did the claimant make a request for a deemed election within one year of the divorce.

The claimant appealed DFAS's denial of her claim to DOHA. She stated that she and the member were married for 40 years, the member agreed to SBP coverage in the agreement that was incorporated into the divorce decree and he paid SBP premiums until his death. In the appeal decision, the DOHA adjudicator upheld DFAS's denial of the claim.

In her reconsideration request, the claimant states that the member agreed to continue to cover her as his SBP beneficiary in the divorce. She states neither she nor the member knew of the requirement to submit the SBP election for former spouse coverage within one year of the divorce. She further requests that the Board of Correction amend the record to establish former spouse SBP coverage for her.

## Discussion

Claims against the government may be allowed only for expenses authorized by statute or regulation. *See* DOHA Claims Case No. 2017-CL-101202.2 (April 10, 2018).

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. 2017-CL-112704.2 (May 22, 2018); DOHA Claims Case No. 2017-CL-101202.2, *supra*; and DOHA Claims Case No. 2017-CL-081403.2 (January 8, 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)(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 member was obligated based on the divorce decree to cover the claimant as his former spouse under the SBP. However, the member failed to establish former spouse SBP coverage and the claimant did not file a timely deemed election. Therefore, DFAS properly denied the claim for the SBP annuity.

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 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: Charles C. Hale

---

Charles C. Hale  
Member, Claims Appeals Board

SIGNED: Ray T. Blank, Jr.

---

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

