

KEYWORDS: Barring Act, SBP

DIGEST: Under 31 U.S.C. § 3702(b), the Barring Act, jurisdiction to consider claims is limited to those that are filed within six years after they accrue. However, under 31 U.S.C. § 3702(e), upon request of the Secretary concerned, the Secretary of Defense may waive the time limits established by the Barring Act for claims involving a uniformed service member's pay, allowances or survivor benefits, to allow payment of the claim up to \$25,000.00.

CASE NO: 2018-CL-101603.2

DATE: 08/08/2019

DATE: August 8, 2019

In Re:)	
[REDACTED])	Claims Case No. 2018-CL-101603.2
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Under 31 U.S.C. § 3702(b), the Barring Act, jurisdiction to consider claims is limited to those that are filed within six years after they accrue. However, under 31 U.S.C. § 3702(e), upon request of the Secretary concerned, the Secretary of Defense may waive the time limits established by the Barring Act for claims involving a uniformed service member's pay, allowances or survivor benefits, to allow payment of the claim up to \$25,000.00.

DECISION

The claimant, one of two surviving sons, of a deceased member of the U.S. Army requests reconsideration of the June 27, 2019 appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2018- CL-101603. In that case, this Office upheld the Defense Finance and Accounting Service's (DFAS's) application of the Barring Act to the claimant's entire claim for his share of the member's arrears of pay (AOP).

Background

At the time the member retired from the Army in 1973 he was married. At retirement he elected Survivor Benefit Plan (SBP) coverage for his spouse, and spouse SBP premiums were withheld from his retired pay. The member divorced in January 1983. The member passed away on February 5, 2007. The member had two sons. DFAS was notified of the death by the claimant's brother. During the processing of the death notification DFAS noted the member's marital status at the time of death did not match the SBP election information on file. Once DFAS received a completed SF 1174, *Claim for Unpaid Compensation for Deceased Member of the Uniform Services*, along with the appropriate documentation concerning the member's marital status from the claimant's brother, DFAS completed an audit of the member's retired pay account. DFAS found that spouse SBP premiums were erroneously deducted from the member's retired pay from the date of his divorce until the date of his death. Since the member had overpaid SBP premiums from April 1983 until February 2007, DFAS determined that he was due a refund of \$20,900.15. In addition, the member's AOP for the five days the member lived in February 2007 totaled \$250.83. Therefore, the AOP entitlement due the member's sons totaled \$21,150.98 (\$20,900.15 + \$250.83).

DFAS paid the claimant's brother his 50 percent share of the member's AOP for the period February 6, 2001, through February 5, 2007, in the amount of \$3,343.54. However, DFAS barred payment of the brother's share of the AOP for the period January 1, 1983, through February 5, 2001, in the amount of \$7,231.95. DFAS advised the brother of the barred amount and gave him appeal rights. However, DFAS never received an appeal from the claimant's brother.

The claimant did not submit a claim for his share of the AOP until June 2016. DFAS determined that the claimant's share of the AOP totaled \$10,575.49. However, due to the six-year statute of limitations under 10 U.S.C. § 3702(b)(1), the Barring Act, DFAS could not pay the claimant any portion of his share of the AOP.

In the appeal decision, the DOHA adjudicator agreed with DFAS's application of the Barring Act to the claimant's claim. DFAS and the adjudicator advised the claimant that he has the right to seek waiver of the time limitations of the Barring Act through the Assistant Secretary of the Army up to the amount of \$25,000.00.

Discussion

DFAS's application of the Barring Act is proper in this case. Under 31 U.S.C. § 3702(b), jurisdiction to consider claims is limited to those that are filed within 6 years after they accrue. The member overpaid SBP premiums after his divorce in 1983 until his death in February 2007. The claimant did not submit his claim for his share of the AOP until 2016. Therefore, the claimant's entire claim for his share of the AOP in the amount of \$10,575.49 is barred pursuant to 10 U.S.C. § 3702(b)(1). *See* Claims Case No. 2016-CL-101801.2 (May 30, 2017).

The claimant should consider, as explained in DFAS's denial and the DOHA appeal decision, his right to seek waiver of the Barring Act through the Assistant Secretary of the Army.

Conclusion

The claimant's request for relief is denied and we affirm the appeal decision dated June 27, 2019, upholding the application of the Barring Act to the claim. 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

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