

DIGEST: A Survivor Benefit Plan (SBP) annuity for a former spouse terminates upon the former spouse's remarriage before the age of 55.

KEYWORDS: SBP

CLAIM NO: 2017-CL-081404.2

DATE: 03/01/2018

DATE: March 1, 2018

In Re:	)	
[REDACTED]	)	
Claimant	)	Claims Case No. 2017-CL-081404.2
	)	

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

A Survivor Benefit Plan (SBP) annuity for a former spouse terminates upon the former spouse's remarriage before the age of 55.

**DECISION**

The former 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. 2017-CL-081404, dated December 8, 2017. In that decision, DOHA denied the former spouse's claim for the member's SBP annuity.

**Background**

In April 1976 the member and the former spouse (hereinafter claimant) were married. In February 1992 they divorced. In December 1992 they remarried. On June 29, 1994, the member elected spouse and child SBP coverage. On October 1, 1994, the member retired. On September

15, 2000, the member and the claimant were divorced. The Defense Finance and Accounting Service (DFAS) subsequently established former spouse SBP coverage for the claimant and began deducting SBP premiums from the member's retired pay. On November 10, 2000, the claimant remarried while she was 42 years old. On March 3, 2017, the member died.

Upon the member's death, the claimant claimed the former spouse SBP annuity. DFAS then established the SBP annuity for the claimant. DFAS later determined that since the claimant remarried prior to her 55<sup>th</sup> birthday, she was not eligible to receive the SBP annuity. DFAS advised the claimant of her ineligibility and notified her that she owed \$685.90 for the erroneous SBP payments made to her. In the appeal decision, the DOHA adjudicator upheld DFAS's denial of the claim for the SBP annuity.

In her request for reconsideration, the claimant states that DFAS caused this error. She states that the member paid the premiums for SBP coverage from the time of his retirement until his death. She states that DFAS never provided her with any information concerning the effect of remarrying before 55 on her SBP coverage. She states that DFAS knew of her remarriage but when she and the member checked the status of her SBP coverage, DFAS assured them both she was covered. She states that she needs the money because she is in poor health. She requests that DFAS change her marriage date to November 12, 2013, in order to reflect that she married at age 55.

### **Discussion**

The SBP, 10 U.S.C. §§ 1447-1455, was established by Congress in 1972 as an income maintenance program for survivors of deceased members of the uniformed services.<sup>1</sup> Under 10 U.S.C. §1450(B), an annuity payable to the beneficiary terminates effective the first day of the month in which eligibility is lost. Section 1450(B) also provides that an annuity for a former spouse shall be paid to the former spouse while she is living or, if the former spouse remarries before reaching age 55, until the former spouse remarries. Therefore, remarriage prior to age 55 renders the former spouse ineligible for the SBP annuity.<sup>2</sup> Section 1450(b) further provides for the resumption of the SBP annuity if the subsequent marriage is terminated by death, annulment or divorce. If the subsequent marriage is terminated then the payment of the annuity is resumed effective the first day of the month in which the marriage is so terminated.

In this case, the claimant remarried in November 2000 prior to reaching age 55. Therefore, the claimant ceased being an eligible beneficiary under SBP. While it is regrettable that the claimant was not aware of the impact of remarrying before age 55, due to the applicable provision of law, we have no authority to award the claimant the SBP annuity. Although the

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<sup>1</sup>See Pub. L. No. 92-425, 86 Stat. 706 (1972).

<sup>2</sup>Prior to the National Defense Authorization Act (NDAA) for Fiscal Year 1987, a SBP beneficiary who remarried before age 60 lost eligibility to the SBP annuity. In 1987 Congress lowered, from 60 to 55, the age at which the former spouse could remarry without losing eligibility to the SBP annuity. See Pub. L. No. 99-661, 100 Stat. 3816 (1986). The purpose of this amendment was to provide "military surviving spouses . . . the same considerations as civil service surviving spouses." See H.R. REP. NO. 99-718, at 211 (1986).

claimant states that the member thought his former spouse would be covered under SBP, lack of knowledge of a statute or regulation does not establish a claim. *See* DOHA Claims Case No. 2017-CL-041103.2 (August 31, 2017); and DOHA Claims Case No. 97121518 (February 10, 1998).

DOHA has no authority to correct the record to allow the claim. As explained by the adjudicator in the appeal decision, under 10 U.S.C. § 1552, the Secretary of a military department, 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.<sup>3</sup>

### **Conclusion**

For the reasons stated above, the claimant's request for reconsideration is denied. In accordance with 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

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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: Ray T. Blank, Jr.

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

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<sup>3</sup>Information on petitioning the Air Force Board for Correction of Military Records (AFBCMR) is found online at <http://www.afpc.af.mil/Career-Management/Board-for-Correction-of-Military-Records>. The claimant should submit a DD Form 149, *Application for Correction of Military Record*, which can be downloaded at <http://www.afpc.af.mil/Portals/70/documents/Home/AFBCMR/DD%20Form%20149.pdf?ver=2016-12-15-120123-183>.