

KEYWORDS: SBP Claim

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

CASENO: 2017-CL-101202.2

DATE: 04/10/2018

DATE: April 10, 2018

In Re:)	
[REDACTED])	
Claimant)	Claims Case No. 2017-CL-101202.2

**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. Air Force, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2017-CL-101202, dated March 9, 2018.

Background

On March 10, 1974, the claimant and the member were married. On October 2, 1996, with the concurrence of the claimant, the member elected reduced Survivor Benefit Plan (SBP) coverage for the claimant. On October 17, 1996, the member retired from the Air Force. On August 1, 2014, the claimant and the member divorced. Pursuant to a settlement agreement which was incorporated into the divorce decree, the member agreed to continue to cover the claimant under SBP. However, the member did not make a former spouse election within one year of the date of the divorce, nor did the claimant make a request for a deemed election within one year of the date of the divorce.

On August 31, 2015, the member died. On October 12, 2015, the claimant filed a DD Form 2656, *Verification for Survivor Annuity*, claiming the SBP annuity as the former spouse of the member. DFAS subsequently denied the claim for a SBP annuity because the member did not establish former spouse SBP coverage for the claimant within one year of the date of the divorce decree as required by 10 U.S.C. § 1448(b)(3), nor did the claimant request a deemed election within one year of the issuance of the decree as required by 10 U.S.C. §1450(f)(3).

The claimant appealed DFAS's denial of her claim to DOHA. She stated that neither she nor the member knew of the requirement to notify DFAS of their divorce, and the member would have been incapable of making the notification because of his health. The claimant noted several occasions wherein the government could have informed her of the requirement to request a deemed election within a year of the divorce, but failed to do so. In the appeal decision, DOHA upheld DFAS's denial of the claim.

In her reconsideration request, the claimant states that it is unfair to excuse the government from failing to inform her of the requirement to file the deemed election. She reiterates that the member was unable to make the request because of his poor health. She states that she did everything she was supposed to do and should be given the SBP annuity since the member wanted her to have it.

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).

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-081403.2 (January 8, 2018); DOHA Claims Case No. 2016-CL-111002.2, *supra*; DOHA Claims Case No. 2011-CL-101402.2 (February 9, 2012); and DOHA Claims Case No. 99102801 (July 21, 2000). 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 continue to cover the claimant as his SBP beneficiary. Under the SBP law, the member failed to establish former spouse SBP coverage and the claimant did not file a timely deemed election. *See* DOHA Claims Case No. 2016-CL-090801.3 (March 30, 2017); and Comptroller General decision B-248017, Sept. 16, 1992. Therefore, DFAS properly denied the claim for the SBP annuity.

We appreciate the fact that the claimant has filed a petition with the Air Force Board for Correction of Military Records (AFBCMR) under 10 U.S.C. §1552, and also has been informed of the possible of redress under 10 U.S.C. § 1454. As explained by the adjudicator in the appeal decision, both of these statutes provide the Secretary of the Service concerned with the discretionary authority to correct the record that is broader than our authority to settle a claim.

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