

DATE: January 8, 2018

In Re:)

[REDACTED])

Claimant)

Claims Case No. 2017-CL-081403.2

**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. 2017-CL-081403, dated November 22, 2017.

Background

On January 21, 1989, the claimant and the member were married. On October 9, 2001, the member elected Survivor Benefit Plan (SBP) coverage for spouse and child.¹ In March 2002 the member retired from the Army. On August 6, 2008, the claimant and the member were divorced. The divorce decree did not award the claimant former spouse SBP coverage. Further, the member did not elect former spouse SBP for the claimant. On February 5, 2009, the member died. In August 2015 the claimant advised DFAS of the member's death and claimed the SBP annuity.

¹The member specifically elected spouse and child immediate 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.

DFAS subsequently denied the claimant's claim for a 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.

The claimant appealed DFAS's denial of her claim to DOHA. She stated that although she and the member were divorced a couple years prior to his death, his intention was to take care of her and their family. She stated that after the divorce, the member left her name on all his financial paperwork because he did not want her to suffer financial hardship. She stated that since she was able to collect on his life insurance policy because he kept it in her name, she should be able to collect the SBP annuity. In the appeal decision, DOHA upheld DFAS's denial of the claim.

In her reconsideration request, the claimant states that it is unfair for the government to withhold the SBP annuity from her since the member specifically left it to her as his former spouse. She also states that the member was ordered to pay her alimony, but he never did. Therefore, she feels that she should be compensated for her loss by awarding her the SBP annuity.

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. 2016-CL-111002.2, *supra*; DOHA Claims Case No. 2011-CL-101402.2 (February 9, 2012); 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 claimant was not awarded former spouse coverage in the divorce decree. Therefore, she had no statutory right to request a deemed election. 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. 2016-CL-090801.3 (March 20, 2017). Therefore, DFAS properly denied the claim for the SBP annuity.

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: Ray T. Blank, Jr.

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

SIGNED: Gregg A. Cervi

Gregg A. Cervi
Member, Claims Appeals Board