

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. The claim must also be filed within the time limit specified by law.

CASENO: 2017-CL-112704.2

DATE: 05/22/2018

DATE: May 22, 2018

In Re:)	
[REDACTED])	
Claimant)	Claims Case No. 2017-CL-112704.2
)	

**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. The claim must also be filed within the time limit specified by law.

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-112704, dated May 3, 2018.

Background

On November 1, 1974, the member retired from the Air Force. At the time of his retirement, he was married and elected Survivor Benefit Plan (SBP) spouse coverage. On April 28, 1986, he was divorced. On July 17, 1993, the member married the claimant. He appointed the claimant as his arrears of pay (AOP) beneficiary. On December 12, 2002, the member and the claimant divorced. Pursuant to the divorce decree, the member was required to provide the

claimant with an SBP annuity. The Defense Finance and Accounting Service (DFAS) has advised our office that at the time of the claimant's divorce, they were not notified by either the member or the claimant of the requirement, the member did not elect former spouse SBP coverage for the claimant, nor did the claimant request a deemed election for SBP coverage. The member's designation of the claimant as his AOP beneficiary remained undisturbed.

On October 1, 2008, DFAS ceased deduction of SBP premiums from the member's retired pay since he had reached a "paid up" status. On January 17, 2015, the member died. DFAS, unaware of the member and claimant's divorce, sent a letter of condolence to the claimant. On August 23, 2016, the claimant sent DFAS a copy of the member's death certificate and claimed an SBP annuity as his former spouse, AOP and any unpaid retired pay.

DFAS 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. DFAS paid the claimant \$1,001.87 of the member's unpaid retired pay for the period January 1, 2015, through January 15, 2015, as the member's AOP beneficiary. DFAS advised the claimant that \$4,501.13 in SBP premiums had been erroneously deducted from the member's retired pay during the period January 1, 2003, the first day of the first month after the divorce, through September 30, 2008, the last day before he reached his paid up status. Pursuant to 31 U.S.C. § 3702(b)(1), DFAS was barred by the statute of limitations from paying the claimant the \$4,501.13. Under 31 U.S.C. § 3702(b), also referred to as the Barring Act, the administrative statute of limitations, jurisdiction to consider claims is limited to those that are filed within six years after they accrue. DFAS advised the claimant that she had the right to request a waiver of the Barring Act with the Assistant Secretary of the Air Force.

In the appeal decision, the DOHA adjudicator upheld DFAS's denial of the claim for the SBP annuity and application of the Barring Act to the claim for AOP in the amount of \$4,501.13 for the period January 1, 2003, through September 30, 2008.

The claimant requests reconsideration of the barred AOP claim and refund of the SBP premiums erroneously deducted from the member's retired pay. She also states that it has not been six years since it became apparent that SBP premiums were erroneously being deducted from the member's retired pay.

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 six years after they accrue. The member overpaid SBP premiums from his retired pay during the period January 1, 2003, through September 30, 2008, when he no longer had an eligible SBP beneficiary. The member died on January 17, 2015. The claimant filed her claim on August 23, 2016, for the member's AOP. The record does not show any inquiries made, or a claim filed within six years of the accrual of the claim for the erroneous deduction of SBP premiums from the member's retired

pay. Therefore, the claimant's request for the AOP in the amount of \$4,501.13 is barred. *See* DOHA Claims Case No. 2016-CL-101801.2 (May 30, 2017).

As explained by DFAS in their letter to the claimant dated October 3, 2016, she has the right to seek waiver of the Barring Act through the Assistant Secretary of the Air Force.

Conclusion

The claimant's request for relief is denied, and we affirm the appeal decision dated May 3, 2018. 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