

KEYWORDS: Survivor Benefits, SBP

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-112803.2

DATE: 07/24/2018

DATE: July 24, 2018

In Re:)	
[REDACTED])	
Claimant)	Claims Case No. 2017-CL-112803.2

**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-112803, dated May 14, 2018.

Background

On September 3, 1955, the claimant and the member were married. On November 19, 1979, the member elected spouse coverage under the Survivor Benefit Plan (SBP).¹ On April 24, 1991, the claimant and the member divorced. The divorce decree did not award the claimant former spouse SBP coverage. On May 8, 1991, the member remarried. On December 13, 1991, an amended divorce decree was issued ordering the member to provide former spouse SBP

¹The member specifically elected spouse 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.

coverage to the claimant. Neither the member nor the claimant filed for former spouse SBP coverage or a deemed election, respectively, within one year of the date of the amended divorce decree. On October 9, 1993, the member was eligible to receive retired pay after reaching his 60th birthday.

On July 8, 2016, the member died. On July 8, 2016, the Defense Finance and Accounting Service (DFAS) established the SBP annuity for the member's widow. On August 5, 2016, DFAS received the claimant's DD Form 2656-7, *Verification for Survivor Annuity*, claiming the SBP annuity as the former spouse of the member. DFAS denied the former spouse's claim for the SBP annuity because the member did not establish former spouse SBP coverage within one year of the date of the amended 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 amended decree as required by 10 U.S.C. 1450(f)(3). DOHA upheld DFAS's denial of the claim.

In her reconsideration request, the claimant states that she was married to the member for over 35 years. During their marriage, she worked for minimum pay because they often had to move around due to the nature of his military duties. She helped support her family while the member attended college. This resulted in a small retirement for her. She never remarried after her divorce. Her divorce attorney did not inform her of the time frame for filing a deemed election.

Discussion

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for the survivors of deceased members of the uniformed services. 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 amended divorce decree 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. 2017-CL-101202.3 (April 10, 2018); 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.

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