

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: 2018-CL-020503.2

DATE: 09/13/2018

DATE: September 13, 2018

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| In Re: |) | |
| [REDACTED] |) | Claims Case No. 2018-CL-020503.2 |
| Claimant |) | |

**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. 2018-CL-020503, dated June 20, 2018.

Background

On June 6, 1998, the claimant and the member were married. On August 1, 2003, the member retired and elected spouse Survivor Benefit Plan (SBP) coverage. On December 7, 2004, 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 October 18, 2012, the member passed away. In November 2016 the claimant

advised the Defense Finance and Accounting Service (DFAS) of the member's death and claimed the SBP annuity.

DFAS subsequently denied the claimant's claim for the 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. 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 the member made the exclusive decision to separate from her and divorce her. She stated that due to the circumstances, they agreed on a short-term spousal alimony for her in lieu of the member continuing to cover her under SBP. She stated that she was still married to the member when he retired from the Army and she never agreed to give up her SBP coverage. She also stated that DFAS told her the member continued to pay SBP premiums until 2012. In the appeal decision, the attorney examiner upheld DFAS's denial of the claim.

In her reconsideration request, the claimant states that the attorney examiner made various errors in the appeal decision. She states that he stated the member sent a letter to DFAS in March 2004 providing them with the divorce decree and settlement agreement, which was impossible considering they were not divorced until December 7, 2004. She states that he listed the member's date of death incorrectly and provided enclosures with his decision that contained factual inaccuracies. She continues to maintain that the member provided her with SBP coverage. She states that the member sent her an email stating that he took care of informing DFAS of her SBP coverage. She also states that the member continued to make SBP premium payments. She states that she contacted DFAS and was informed that the member did have an SBP beneficiary. She states that since she is the only beneficiary, she is entitled to the SBP coverage. She requests that DOHA summon both of the attorneys involved in her divorce in order to obtain all documentation concerning the agreements she and the member made. She also volunteers to give testimony in front of DOHA.

Discussion

We note at the outset that this decision addresses only the former spouse's claim for the SBP annuity. The Claims Appeals Board must base its decision on the written record submitted to us by DFAS and any evidence submitted by the claimant. The Board has no authority to investigate the claim independently or to subpoena witnesses. 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); 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 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 30, 2017). Therefore, DFAS properly denied the claim for the SBP annuity.

In reviewing the record, we acknowledge that the member died on October 18, 2012, not in 2016 as stated in the DOHA appeal decision. In addition, the record reflects that the member sent DFAS a letter on December 9, 2004, not March 9, 2004, requesting that DFAS terminate his SBP due to his divorce. He also included in his letter the divorce decree and property settlement agreement. As stated in the appeal decision, neither document awarded the claimant former spouse SBP coverage. Therefore, although DOHA erred, we view these errors as harmless, since we see no way the claimant's substantive rights were affected. *See* DOHA Claims Case No. 2014-CL-111201.2 (April 13, 2016). In addition, we note that the attorney examiner cited and attached published case precedent that was analogous to the claimant's case in his appeal decision to support his finding that she was not entitled to receive the SBP. So the claimant is correct that the dates and certain facts contained in those DOHA Claims Appeals Board decisions are not the same as the dates and facts of her case.

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

