

KEYWORDS: SBP annuity, Survivor Benefits

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-041801.2

DATE: 12/20/2018

DATE: December 20, 2018

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In Re:	)	
[REDACTED]	)	Claims Case No. 2018-CL-041801.2
Claimant	)	

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**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. 2018-CL-041801, dated August 30, 2018. In that decision, DOHA denied the claim for the member's Survivor Benefit Plan (SBP) annuity.

**Background**

On February 16, 1972, the member and the claimant were married. On May 24, 2002, they divorced. The divorce decree awarded the claimant a portion of the member's disposable retired pay upon his retirement and also, the SBP annuity as his former spouse. 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. In addition, on October 1, 2004, the member elected not to participate in SBP. On January 1, 2005, the member retired.

On February 26, 2017, the member died. On June 29, 2017, the claimant filed a DD Form 2656, *Verification for Survivor Annuity*, claiming the SBP annuity as the former spouse of the member. The Defense Finance and Accounting Service (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, and DOHA upheld DFAS's denial of the claim.

In her reconsideration request, the claimant acknowledges that the member did not elect to participate in SBP prior to his retirement. However, she requests the SBP annuity be paid to her because of their 25 years of marriage.

### **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-101202.2 (April 10, 2018); DOHA Claims Case No. 2017-CL-081403.2 (January 8, 2018); and DOHA Claims Case No. 2016-CL-111002.2, *supra*. 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 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-101202.2, *supra*. 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

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Catherine M. Engstrom  
Chairman, Claims Appeals Board

SIGNED: Ray T. Blank, Jr.

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

SIGNED: Gregg A. Cervi

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Gregg A. Cervi  
Member, Claims Appeals Board