

KEYWORDS: SBP, 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-041803.2

DATE: 09/24/2018

DATE: September 24, 2018

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In Re:							
[REDACTED]						Claims Case No. 2018-CL-041803.2	
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-041803, dated August 30, 2018.

Background

On March 12, 1965, the claimant and the member were married. On September 1, 1986, the member retired from the Army and elected spouse and child Survivor Benefit Plan (SBP) coverage. On June 16, 1998, the claimant and the member were divorced. Pursuant to the Marital Dissolution Agreement which was incorporated into the divorce decree, the member agreed to designate the claimant as his sole SBP beneficiary. However, the member did not make a former spouse SBP election within one year of the date of the divorce decree, nor did the

claimant request a deemed election within one year of the issuance of the decree. On March 13, 2017, the member passed away. On April 26, 2017, the claimant submitted a DD Form 2656, *Verification of Survivor Annuity*, claiming the SBP annuity as the former spouse of the member.

DFAS subsequently denied the claim for a SBP annuity because the member did not make a former spouse SBP election 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).

On appeal, DOHA upheld DFAS's denial of the claim. In her reconsideration request, the claimant states that neither she, nor the member knew that they were required to elect former spouse coverage within one year of the date of the divorce. She states that while the member was in the hospital in 2016, he told her and their son-in-law he had taken care of her by covering her under SBP. She states that the member believed the content of the divorce decree was considered law, and he did not need to do anything further in order to implement the SBP coverage. She states that she found out after his death that he had designated her as the sole beneficiary on two other insurance policies, and this supports the fact that the member truly wanted her to receive the SBP coverage. Finally, she states that she did petition the Army Board for Correction of Military Records (ABCMR), but has yet to hear an answer.

Discussion

Claims against the government may be allowed only for expenses authorized by statute or regulation. *See* DOHA Claims Case No. 2017-CL-101202.2 (April 10, 2018); and DOHA Claims Case No. 2017-CL-081403.2 (January 8, 2018).

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 (October 31, 2017). 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 under 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-101202.3, *supra*. Therefore, DFAS properly denied the claim for the SBP annuity.

We appreciate the fact that the claimant has filed a petition with the ABCMR under 10 U.S.C. §1552, and has also been informed of the possibility of redress under 10 U.S.C. § 1454. As explained by the attorney examiner in the appeal decision, both of these statutes provide the

Secretary of the Service concerned with the discretionary authority to correct the record that is broader than our authority to settle a claim.

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

DOHA Claims Case No. 2018-CL-041803.2

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