

DIGEST: Pursuant to a divorce decree, a member was required to elect a spousal annuity for his former spouse and ordered to provide her with survivor's benefits. His former spouse timely requested a deemed election. No action was taken by the member to change the coverage. Therefore, his surviving spouse's claim for the Survivor Benefit Plan (SBP) annuity must be denied.

KEYWORDS: SBP

CASENO: 2017-CL-041103.2

DATE: 8/31/2017

DATE: August 31, 2017

In Re:)

[REDACTED])

Claimant)

Claims Case No. 2017-CL-041103.2)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Pursuant to a divorce decree, a member was required to elect a spousal annuity for his former spouse and ordered to provide her with survivor's benefits. His former spouse timely requested a deemed election. No action was taken by the member to change the coverage. Therefore, his surviving spouse's claim for the Survivor Benefit Plan (SBP) annuity must be denied.

DECISION

The surviving spouse of a deceased member of the U.S. Air Force requests reconsideration of the Defense Office of Hearings and Appeals' (DOHA's) appeal decision in DOHA Claim No. 2017-CL-041103, dated June 20, 2017. In that decision, DOHA denied the spouse's claim for the member's Survivor Benefit Plan (SBP) annuity.

Background

In August 1974 the member elected spouse and child SBP coverage. On September 1, 1974, the member retired. On May 5, 1986, the member was divorced. The divorce decree awarded the member's former spouse monthly spousal support payments, a portion of his disposable retired pay and also SBP coverage. The former spouse submitted a timely SBP deemed election to the Defense Finance and Accounting Service (DFAS). The member then tried unsuccessfully to have a portion of his former spouse's SBP premium payments deducted from her portion of his retired pay. During the 1992-93 Open Season, the member increased his former spouse's SBP coverage to the full base amount. On July 17, 1994, the member remarried. In 2000 DFAS began deducting SBP premium payments from the member's former spouse's portion of his retired pay. On February 28, 2002, the member named his current spouse as his arrears of pay (AOP) beneficiary.

In January 2004 the member missed his former spouse monthly support payment for the first time. On March 16, 2005, the state court entered a Minute Entry concerning the member's and his former spouse's divorce decree. The state court found that the former spouse owed the member \$13,811.81 for unpaid SBP premiums for the period 1986 through 2000, and that the member owed his former spouse \$7,020.00 in unpaid monthly support payments for the period January 2004 through September 2004. The court applied the \$7,020.00 owed by the member to his former spouse, reducing her debt for the unpaid SBP premiums. The court then terminated the member's monthly support payments to his former spouse and wrote-off the former spouse's debt for the SBP premiums.

On October 1, 2008, the member's SBP annuity account reached a paid-up status and SBP premium deductions from the member's retired pay ceased. On February 19, 2016, the member died. DFAS subsequently sent the DD Form 2656-7 for the payment of SBP to the former spouse and sent the SF-1174 for payment of his AOP to his spouse. In March 2016 the member's spouse made a claim for the SBP annuity.

DFAS denied the spouse's claim for the SBP annuity. In the appeal decision, the DOHA adjudicator upheld DFAS's denial of the spouse's claim for the SBP annuity.

In her request for reconsideration, the spouse states that the Air Force failed to provide the member with proper information on how to change his SBP beneficiary from his former spouse to his current spouse. She states that her husband believed that when he changed his AOP beneficiary to his current spouse, that he also made her his SBP beneficiary. She states that he wanted his surviving spouse to be his SBP beneficiary, not his former spouse. For many years the member's former spouse failed to reimburse the member for the SBP premiums as set forth under the divorce decree. The member believed that the Air Force would take care of his widow.

Discussion

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for survivors of deceased members of the uniformed services. A member may elect coverage for a former spouse. *See* 10 U.S.C. § 1448(b)(3). 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 spousal beneficiary immediately before the divorce. If the member is required under the terms of the divorce decree to provide SBP coverage to his former spouse and he fails or refuses 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's former spouse was covered under the SBP as the member's spouse beneficiary from the time he retired in 1974 until such coverage ended with their divorce in May 1986. Under the terms of the divorce decree, the member agreed to provide his former spouse with SBP coverage. Although it appears that the member failed to take any action to accomplish this outcome with DFAS, by letter dated September 22, 1986, the member's former spouse submitted a timely deemed election to DFAS. The member took no actions to change this coverage. In fact, during the 1992-93 Open Season, he increased his former spouse's SBP coverage to the full base amount. In addition, the state court's Minute Entry did not terminate the member's obligation to provide former spouse SBP coverage.

Although the surviving spouse states that the member thought the Air Force would take care of his widow and believed he had covered her under SBP when he made her his AOP beneficiary, lack of knowledge of a statute or regulation does not establish a claim. *See* DOHA Claims Case No. 97121518 (February 10, 1998).

Conclusion

For the reasons stated above, the claimant's request for reconsideration is denied. In accordance with Department of Defense Instruction 1340.21 ¶ E7.11, 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