

KEYWORDS: SBP claim

DIGEST: A surviving spouse's failure to submit an application for the annuity within six years of the member's death, bars her Survivor Benefit Plan (SBP) claim under 31 U.S.C. § 3702(b).

CASENO: 2017-CL-062730.2

DATE: 08/31/2017

DATE: August 31, 2017

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In Re:	)	
[REDACTED]	)	Claims Case No. 2017-CL-062703.2
Claimant	)	

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

A surviving spouse's failure to submit an application for the annuity within six years of the member's death, bars her Survivor Benefit Plan (SBP) claim under 31 U.S.C. § 3702(b).

**DECISION**

The surviving spouse of a deceased member of the U.S. Air Force requests reconsideration of the July 31, 2017, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2017-CL-062703. In that case, this Office denied the surviving spouse's claim for the member's Survivor Benefit Plan (SBP) annuity because it was filed more than six years after the member's death.

**Background**

At the time the member retired from the Air Force in September 1988 he was married and elected to participate in SBP. In December 1990 he was divorced from his first wife. The member remarried in August 1992. His second wife passed away in October 1994. He married

Claimant on October 23, 2000. On February 16, 2001, he updated the Defense Finance and Accounting Service (DFAS) on his marital status. DFAS added Claimant as an eligible spouse for an SBP annuity. The member died on July 18, 2005. DFAS was notified of the death and his surviving spouse became eligible for the SBP annuity. Claimant, as the surviving spouse, was notified by DFAS of her eligibility and sent an annuity claim package. The Claimant did not file a claim for the SBP annuity until December 19, 2014. On December 22, 2014, DFAS denied her claim because it was untimely. Claimant filed a completed *Verification for Survivor Annuity*, DD Form 2656-7, which DFAS received on December 15, 2015. DFAS notified Claimant, on January 13, 2016, that she did not qualify for an annuity because her claim was untimely. Her claim was not filed within the six years as required under 31 U.S.C. § 3702(b), also referred to as the Barring Act. On appeal, DFAS advised her that she could request a waiver of the Barring Act through the Assistant Secretary of the Air Force (USAF).

In the appeal decision, the attorney examiner upheld DFAS's denial of the claim due to the application of the Barring Act. The attorney examiner also explained the process for requesting waiver of the Barring Act through the USAF.

In her request for reconsideration, the surviving spouse states that she is weak and sick. She provided statements to demonstrate she is ill and in dire financial straits.

### **Discussion**

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for survivors of retired military members. Under 31 U.S.C. § 3702(b), a survivor has six years to file a claim for an SBP annuity. All the events giving rise to the government's liability to make SBP payments to a survivor occur at the date of the member's death, and the survivor has six years from that date to file her claim. Claims filed more than six years after a member's death are barred. *See* DOHA Claims Case No. 02082608 (March 26, 2003); and DOHA Claims Case No. 98033020 (June 12, 1998).

In this case, the member's spouse was covered under SBP after her marriage to him in October 2000. At the time of the member's death in July 2005, all events arose which fixed the liability of the government, and entitled the surviving spouse to make a claim. She failed to make a claim until approximately nine years and four months after it arose. Although we acknowledge her poor health and financial condition, we have no authority to allow her claim for the SBP annuity.

As explained by the attorney examiner in the appeal decision, the surviving spouse may request waiver of the Barring Act under 31 U.S.C. § 3702(e), through the USAF. Under 31 U.S.C. § 3702(e), waiver shall only be granted to allow payment up to a maximum of \$25,000.00.<sup>1</sup>

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<sup>1</sup>Under 31 U.S.C. § 3702(e), upon request of the Secretary concerned (in this case, the Secretary of the Air Force), the Secretary of Defense may waive the time limits established by 31 U.S.C. § 3702(b) for claims involving a uniformed service member's pay, allowances or survivor benefits, as long as the claim does not exceed \$25,000.00. Under Department of Defense Instruction 1340.21 ¶ E6.4 (May 12, 2004), the Director of the Defense Office of

## Conclusion

For the reasons stated above, the claimant's request for reconsideration is denied, and we affirm the appeal decision dated July 31, 2017.

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: William S. Fields

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William S. Fields  
Member, Claims Appeals Board