

KEYWORDS: SBP Claim

DIGEST: The burden of proving the existence of a valid claim against the United States is on the person asserting the claim. The claimant must prove by clear and convincing evidence on the written record that the government is liable under the law for the amount claimed. Payment of a claim may only be made for an expense authorized by statute or regulation. When the language of a statute is clear on its face, the plain meaning of the statute will be given effect, and that plain meaning cannot be altered or extended by administrative action.

CASENO: 2017-CL-062708.2

DATE: 12/11/17

DATE: December 11, 2017

)	
In Re:)	
[REDACTED])	Claims Case No. 2017-CL-062708.2
)	
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. The claimant must prove by clear and convincing evidence on the written record that the government is liable under the law for the amount claimed. Payment of a claim may only be made for an expense authorized by statute or regulation. When the language of a statute is clear on its face, the plain meaning of the statute will be given effect, and that plain meaning cannot be altered or extended by administrative action.

Decision

The niece of a retired U.S. Army National Guard member requests reconsideration of the October 26, 2017, decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2017-CL-062708. In that decision, DOHA denied the claimant’s claim for a Survivor Benefit Program (SBP) annuity after an earlier election as the insurable interest beneficiary of her uncle, when he chose to terminate SBP participation before he began to receive retired pay upon reaching the age of 60 years.

Background

The member was born December 3, 1948. He became a member of the Army National Guard, a reserve component of the U.S. Army. In 1994 he requested early retirement. That request was subsequently approved. He was advised of his eligibility to receive retired pay at age 60 with 15 years but less than 20 years of service, and he was sent various documents in December 1994. The member completed and submitted a DD Form 1883, *Survivor Benefit Plan Election Certificate*, dated December 21, 1994. He noted he was single and had no dependent children, however, he elected SBP coverage for his niece, as a person with an insurable interest in him.

On August 28, 2008, prior to his 60th birthday and prior to receiving his retired pay, he executed a DD Form 2656, *Data for Payment of Retired Personnel*. On the form he noted he was single and elected not to participate in the SBP.

The member died on June 6, 2014. The claimant submitted a DD Form 2656-7, *Verification for Survivor Annuity*, dated October 15, 2015, in which she claimed an SBP annuity as a person with an insurable interest. On November 30, 2015, the Defense Finance and Accounting Service (DFAS) denied her claim on the grounds that the member had not elected to participate in the SBP. The claimant appealed the denial to DOHA through DFAS, and DFAS forwarded various documents pertaining to her claim.

In the appeal decision, the DOHA adjudicator concluded that after electing SBP coverage for his niece in 1994, he subsequently requested termination of that coverage in 2008. Accordingly, the claim for the SBP annuity was disallowed. In requesting reconsideration of that decision, claimant has submitted the same documentation and relies again on the member's 1994 election.

Discussion

Two rules of claims adjudication are (1) that payment may be made only for an expense authorized by statute or regulation and (2) that when the language of a statute is clear on its face, the plain meaning of that statute will be followed and that the plain meaning cannot be altered or extended by administrative action. *See* DOHA Claims Case No. 2012-CL-061105.2 (September 27, 2012). The claimant must prove by clear and convincing evidence on the written record, that the United States is liable to the claimant for the amount claimed. *See* DOHA Claims Case No. 2016-CL-111002.2 (October 31, 2017).

The member actually participated in the Reserve Component Survivor Benefit Plan (RCSBP), part of the SBP. However, most documents in the case file refer to the RCSBP as the SBP and for clarity, the term SBP will be used hereafter. The SBP was created by Public Law 92-425, 86 Stat. 706, September 21, 1972, which is codified, as amended, at 10 U.S.C. §§ 1447-1455. Under 10 U.S.C. § 1448(a)(1)(B), the members eligible to participate in the SBP include

members who would be eligible for reserve-component retired pay but for the fact that they are under 60 years of age.¹

SBP coverage as a person with an insurable interest is established by 10 U.S.C. § 1448(b)(1)(A). Under that section, a member who is not married and does not have a dependent child when he becomes eligible to participate in the SBP may elect to provide an annuity to a natural person with an insurable interest.

However, under 10 U.S.C. § 1448(b), an election of SBP insurable interest coverage for a beneficiary who is not the member's former spouse may be terminated.² The request for termination must be in the form established by regulations and submitted to the Secretary concerned. Participation in the plan shall discontinue effective on the first day of the first month following the month in which the request is received by the Secretary concerned. Once participation is discontinued, benefits may not be paid in conjunction with the earlier participation in the SBP.

The record shows that in 1994 the member initially elected to participate in the SBP, and that not having a spouse or dependent child, he elected SBP insurable interest coverage for his niece under the authority of 10 U.S.C. § 1448(b)(1)(A).

However, the record also shows that in 2008 the member requested the termination of that SBP insurable interest coverage under 10 U.S.C. § 1448(b)(1)(B) when he checked off item 26g on the DD Form 2656 dated August 28, 2008. DFAS accepted that DD Form 2656 as it was in the proper form required by statute and regulation. DFAS properly terminated SBP insurable interest coverage. The member lived for nearly six more years, but made no attempt to reestablish SBP insurable interest coverage. The pertinent statutory law thereby renders the claim unpayable.

Conclusion

The claimant's request for relief is denied, and we affirm the October 26, 2017, appeal decision to deny payment. In accordance with Department of Defense Instruction 1340.21 ¶ E7.15, 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

¹The citations from 10 U.S.C. § 1448(a) and § 1448(b)(1)(A) are from that statute as it existed on December 21, 1994, when the member executed his DD Form 1883.

²The following citations from 10 U.S.C. § 1448(b) are from that statute as of August 28, 2008, when the member executed the DD Form 2656.

Charles C. Hale
Member, Claims Appeals Board

SIGNED: Ray T. Blank, Jr.

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