

KEYWORDS: Service Member Claim

DIGEST: In clear language, the statute governing the Survivor Benefit Plan (SBP) requires that a surviving spouse, i.e., widow, be married to the deceased member for at least one year immediately before his death in order to receive benefits.

CASENO: 2012-CL-061105.2

DATE: 09/27/2012

DATE: September 27, 2012

)	
In Re:)	
[REDACTED])	Claims Case No. 2012-CL-061105.2
)	
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

In clear language, the statute governing the Survivor Benefit Plan (SBP) requires that a surviving spouse, *i.e.*, widow, be married to the deceased member for at least one year immediately before his death in order to receive benefits.

DECISION

The widow of a retired member of the U.S. Navy Reserve (USNR) requests reconsideration of the August 28, 2012, appeal decision of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 2012-CL-061105. In that case, DOHA denied her request for an annuity under the Survivor Benefit Plan (SBP).

Background

The record shows that the member was retired from the USNR. The member's first wife died on September 30, 2007. The member began dating his second wife, the claimant, during the summer of 2008. The claimant contends that the couple became inseparable soon after meeting. She contends that they attended church daily, took all their meals together, and renovated the member's home with the intention they would reside in it after their marriage. They did not

reside together during this period. The claimant was divorced and wished to be married in the Roman Catholic Church. To this end, the claimant petitioned for an ecclesiastical annulment of her previous marriage, which delayed the claimant and the member's marriage. On December 7, 2009, a Decree of Nullity was issued for the claimant's previous marriage, and the member and the claimant married on December 19, 2009. The member, by letter dated February 20, 2010, advised the Defense Finance and Accounting Service (DFAS) of his marriage, and requested a change in his SBP beneficiary, since the records still listed his first wife as beneficiary. The member died on March 12, 2010, less than three months after his marriage to the claimant. She claimed the SBP annuity as his surviving spouse by executing a DD Form 2656-7, *Verification for Survivor Annuity*, dated May 3, 2010. After she retained an attorney, he had her submit another DD Form 2656-7, dated February 10, 2012.

The attorney argued that the history of the relationship between the claimant and the member was not a "deathbed marriage" that disqualified her from receiving an SBP annuity. Citing the legislative history of the SBP statute, the attorney disputed that the claimant and the member had a deathbed marriage as defined by Florida Statutes § 732.805. The attorney also cited as support the decision of the Merit Systems Protection Board in the case of *Huizar v. Office of Personnel Management*, 19 MSPR 256 (1984). DFAS sent a number of letters of denial to the claimant and her attorney stating that she had not been married to the member for at least a year before his death. Finally, on August 17, 2012, DFAS sent a denial letter to the claimant and her attorney and included the appeal rights to this Office. This Office denied the claimant's appeal, and she now seeks reconsideration.

Discussion

The SBP is authorized by 10 U.S.C., subtitle A, part II, chapter 73, subchapter II, §§ 1447 through 1455. The fundamental rule in adjudicating a claim is that payment may be made only for an expense authorized by statute or regulation. *See* Comptroller General Decision B-205113, February 12, 1982. Moreover, it is a rule of statutory construction that 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. *See* DOHA Claims Case No. 05021409 (March 30, 2005), and Comptroller General Decision, 61 Comp. Gen. 461 (1982).¹

Title 10, U.S.C. § 1450(a)(1), states that upon the death of a retired and married member participating in the SBP, payment of the SBP annuity is authorized to "the eligible surviving spouse." "Surviving spouse" is defined for SBP purposes by 10 U.S.C. § 1447(9) as a "widow or widower." In turn, "widow" is defined by 10 U.S.C. § 1447(7) as:

(7) Widow.--The term "widow" means the surviving wife of a person who, if not married to the person at the time he became eligible for retired pay—

(A) was married to him for at least one year immediately before his death; or

¹ Statutory provisions with unambiguous and specific directions may not be interpreted in any manner that will alter or extend their meaning and omissions from a statute are treated as intended. *See* 61 Comp. Gen. 461, *supra*.

(B) is the mother of issue by that marriage.

The claimant was not married to the member at the time that he retired from the USNR, and no issue was born from their marriage. They were married on December 19, 2009, and the member died on March 12, 2010, less than one year after their marriage. The attorney has claimed that due to the close relationship of the couple, the preceding stages of the marriage, *i.e.*, the betrothal and courtship should be included for SBP purposes. There is no definition of “married” in 10 U.S.C. § 1447; therefore, we must assume the word to have its plain and ordinary meaning. The Merriam-Webster Dictionary defines married as “Being in the state of matrimony; WEDDED.”² The Florida Statute cited by the claimant’s attorney has no relevance to this matter, particularly in light of the clear language of the statute.

The claimant’s attorney has also cited *Huizar v. Office of Personnel Management, supra*. This case involved a Civil Service Retirement Annuity, an entitlement similar to, but not the same as, the SBP annuity. Therefore, *Huizar* is not binding as precedent, and the facts are quite different. In *Huizar*, the claimant was successively married to, separated from, reconciled with, and divorced from the decedent. Further, she was a co-habitant with the decedent and was residing with the decedent in a common-law marriage at the time of his death. The claimant and the decedent were together over the course of nine years, and their marriage had produced a child. In *Huizar*, the events occurred in Texas, a state that recognizes common-law marriages. In the instant case, the claimant and the member were married and residing in wedlock for a period of approximately 3 months. No children were born of the marriage in this case. Additionally, this marriage occurred in Florida, a state that abolished common-law marriage in 1967. The case is not analogous.

The claimant does not qualify as an eligible widow under the SBP, and is not entitled to an SBP annuity. Additionally, she has offered no new information that would change the decision of the adjudicator.

Conclusion

The claimant’s request for relief is denied, and we affirm the August 28, 2012, decision to deny entitlement to SBP annuity. 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.

///Original Signed///

Jean E. Smallin
Chairman, Claims Appeals Board

²Online edition at www.merriam-webster.com, retrieved September 17, 2012.

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Gregg A. Cervi
Member, Claims Appeals Board

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