



**DEPARTMENT OF DEFENSE
 DEFENSE LEGAL SERVICES AGENCY
 DEFENSE OFFICE OF HEARINGS AND APPEALS
 POST OFFICE BOX 3656
 ARLINGTON, VIRGINIA 22203-1995**



DATE: January 21, 2026

In Re:)	
[REDACTED])	Claims Case No. 2024-CL-072903.2
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. Air Force, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2024-CL-072903, dated September 17, 2025.

Background

On July 12, 1982, the member and the claimant married. The member retired from the Air Force on January 1, 1994. In preparation for his retirement, the member elected spouse and child Survivor Benefit Plan (SBP) coverage. On April 15, 1998, the member and the claimant divorced. As part of the divorce proceedings, the state court acknowledged an agreement between the member and the claimant in which the member retained sole ownership of his military retirement benefits on the condition that he maintain the claimant as his SBP beneficiary. On April 15, 1998, the state court issued a notice to withhold child support from the member's retired pay to the Defense Finance and Accounting Service (DFAS). On August 3, 2007, DFAS received a termination order for the child support withholding. On September 1, 2011, the member's children were no longer eligible beneficiaries for the SBP.

The member passed away on March 12, 2023, and the claimant applied for the SBP annuity as the member's former spouse. DFAS denied the claim for the former spouse SBP annuity on the grounds that the member did not make a request to change his SBP election to former spouse coverage nor was a deemed election for former spouse coverage made by the claimant. DFAS noted that a divorce decree alone does not constitute a deemed election. The claimant appealed DFAS's denial of her claim on the basis that the divorce decree was sent to DFAS in May 1998 with the child support order. The claimant stated that in the divorce decree the member was directed to maintain former spouse benefits and that the member continued to pay for SBP coverage as reflected on his retiree account statements.

In the appeal decision, the DOHA attorney examiner upheld DFAS's denial of the claim finding no evidence that the member elected former spouse SBP coverage for the claimant, nor that the claimant filed a request for a deemed election for former spouse coverage. The attorney examiner noted in an instance in which former spouse coverage is mandatory in a divorce decree, the former spouse is able to request a deemed election. However, the attorney examiner stated that the request must be in writing, in such a manner as the Secretary shall prescribe, along with the court order which incorporated the agreement.

In the claimant's request for reconsideration, she states that she has submitted a petition for a correction of record with the Air Force Board for Correction of Military Records (AFBCMR) which is currently pending. She states that she also served in the Air Force and finds it appalling and disappointing that former spouses are treated in the manner she has been treated after the death of a loved one. She states that although she and the member divorced, they remained friends and continued to coparent their children. She states that she cared for the member during the last year of his life and paid for his funeral so his son would not have to bear that burden. She requests the SBP annuity on the grounds that the member had a good faith intention for her to receive it: he agreed to it as outlined in the divorce decree; and he continued to pay SBP premiums for her coverage. She contends that the DOHA Claims Appeals Board has the opportunity to exercise its discretion and award her the annuity based on fairness and equity.

Discussion

Claims against the government may be allowed only for expenses authorized by statute or regulation. Therefore, DOHA, including the Claims Appeals Board, must render decisions based on applicable statutes, regulations and our prior administrative decisions. *See* Department of Defense Instruction 1340.21 (May 12, 2004).

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for the survivors of deceased members of the uniformed services. Spousal coverage ends upon divorce. If a member divorces and wishes to provide SBP coverage for a former spouse, the member must notify DFAS in writing of the divorce and the intention to provide coverage for the 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 after the date of the divorce, dissolution, or annulment. *See* 10 U.S.C. §1448(b)(3)(A)(iii). Under 10 U.S.C. § 1448(b)(5), a member who elects to provide an annuity to a former spouse under section 1448(b)(3), shall, at

the time of making the election, provide the Secretary concerned with a written statement signed by the member and the member's former spouse setting forth whether the election is being made pursuant to the requirements of a court order or whether the election is made pursuant to a written agreement. In addition, a member may be required under the terms of a divorce decree to provide SBP coverage to a former spouse. If the member fails to do so, the former spouse has one year from the date of the court order or filing involved to request a deemed election. *See* 10 U.S.C. § 1450(f)(3).

In this case, the claimant was covered as the member's spouse SBP beneficiary from the time he retired until such coverage ended with their divorce in 1998. The member was obligated based on an agreement acknowledged by the state court as part of the divorce proceedings to cover the claimant as his former spouse under the SBP. Although the member may have intended that the claimant be covered as his former spouse SBP beneficiary, he failed to establish SBP coverage for her within one year of the divorce and the claimant did not file a timely deemed election. Due to applicable provisions of the SBP law, DFAS properly denied the claim for the SBP annuity. *See* DOHA Claims Case No. 2021-CL-030509.2 (January 26, 2022).

As for considering equity in this matter, DOHA is bound by statute and regulation, and therefore, the claim for the former spouse SBP annuity must be denied. However, we note that the claimant has filed a request for correction of military records with the AFBCMR. Under 10 U.S.C. § 1552, the Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice. This remedy must be pursued with the AFBCMR. DOHA has no role in the correction of military records, and the discretion to act upon a petition for a request for correction rests in the sole discretion of the AFBCMR.

Conclusion

The claimant's request for reconsideration is denied, and we affirm the appeal decision dated September 17, 2025, disallowing the claim. In accordance with Instruction 1340.21 ¶ E7.15.2, this is the final administrative action in this matter.

SIGNED: Catherine M. Engstrom

Catherine M. Engstrom
Administrative Judge
Chair, Claims Appeals Board

SIGNED: David F. Hayes

David F. Hayes
Administrative Judge
Member, Claims Appeals Board

SIGNED: Charles C. Hale

Charles C. Hale
Administrative Judge
Member, Claims Appeals Board