



**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-110415.2
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. Navy, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2024-CL-110415, dated September 16, 2025.

**Background**

In December 1970, the member and the claimant were married. When the member retired from the Navy on September 2, 1976, he elected spouse and child Survivor Benefit Plan (SBP) coverage. On July 22, 2004, the member and the claimant divorced. The divorce decree incorporated a separation and property agreement dated May 23, 2004, which in pertinent part stated the following:

Both parties further agree that should the Husband predecease the Wife, then the Wife will be entitled to the Survivor's Benefit of all the Husband's retirement benefits from the Government retirement fund.

The member passed away on December 9, 2021, and the claimant applied for the SBP annuity as the member's former spouse. The Defense Finance and Accounting Service (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 within one year of the divorce. In the claimant's appeal, she maintained that the separation and property agreement dated May 23, 2004, granted her the former spouse SBP coverage. She stated that after their divorce, she was still listed as the member's SBP beneficiary and that he continued to receive his retired pay at a reduced amount in order to pay the premiums for her coverage. DFAS reviewed the claimant's appeal and issued an administrative report dated October 17, 2022, upholding the denial of the claim for the former spouse SBP annuity. In a rebuttal to DFAS administrative report, the claimant stated that the rules changed in 1986 for divorces which was long after the member retired in 1976 and neither the member nor the claimant were aware of the rule changes.

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.

In the claimant's request for reconsideration, she states that divorce decree clearly stated the member's intention to provide her SBP coverage. She states that he completed all the necessary paperwork for her coverage when he elected SBP coverage at his retirement in 1976.

### **Discussion**

Claims against the government may be allowed only for expenses authorized by statute or regulation. Therefore, DOHA 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 July 2004. The member was

obligated based on the divorce decree that incorporated a separation and property agreement to cover the claimant as his former spouse under the SBP. Although the member may have agreed to cover the claimant as his former spouse SBP beneficiary, he failed to establish former spouse SBP coverage for her within one year of the divorce and the claimant did not file a timely deemed election. Therefore, DFAS properly denied the claim for the SBP annuity. *See* DOHA Claims Case No. 2021-CL-030509.2 (January 26, 2022).

### **Conclusion**

The claimant's request for reconsideration is denied, and we affirm the appeal decision dated September 16, 2025, disallowing the claim. In accordance with DoD Instruction 1340.21 ¶ E7.15.2, this is the final administrative action of the Department of Defense in this matter.

SIGNED: Catherine M. Engstrom

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Catherine M. Engstrom  
Administrative Judge  
Chair, Claims Appeals Board

SIGNED: Michelle P. Tilford

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Michelle P. Tilford  
Administrative Judge  
Member, Claims Appeals Board

SIGNED: David F. Hayes

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David F. Hayes  
Administrative Judge  
Member, Claims Appeals Board