



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



DATE: January 8, 2026

	)	
In Re:	)	
[REDACTED]	)	Claims Case No. 2024-CL-111821.2
	)	
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. Marine Corps, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2024-CL-111821, dated August 18, 2025.

**Background**

On June 13, 2010, the member and the claimant were married. When the member retired from the Marine Corps, he elected spouse Survivor Benefit Plan (SBP) coverage. On March 19, 2020, the member and the claimant divorced. The divorce decree did not specifically address SBP coverage. The record reflects that since the Defense Finance and Accounting Service (DFAS) was unaware of the divorce, the member continued to pay SBP premiums for spouse coverage from his monthly retired pay.

On October 19, 2022, the member passed away. On November 1, 2022, the claimant submitted a DD Form 2656-7, *Verification for Survivor Annuity*, to DFAS, claiming the SBP annuity as the member’s former spouse. On February 6, 2023, DFAS denied her claim for the SBP annuity on the grounds that the claimant lost her eligibility as a spouse SBP beneficiary upon divorce. DFAS explained that the member could have elected former spouse SBP coverage

for the claimant if he had done so within one year of the divorce, but he did not. DFAS also explained that if the member and the claimant had entered into a written agreement for him to provide former spouse SBP coverage, and that agreement had been incorporated into the divorce decree, the claimant could have requested a deemed election for former spouse coverage, but that request had to have been made within one year of the divorce. On February 21, 2023, the claimant appealed DFAS's denial of her claim. She stated that the member intended for her to have SBP coverage after their divorce and that the member was not aware of how to change his coverage from spouse to former spouse. She also stated that since the member did not change his SBP coverage to former spouse, he continued to pay for her coverage from his monthly retired pay after their divorce. She questioned what happened to the money taken from the member to pay for that coverage.

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. The attorney examiner further explained that since the divorce decree was silent as to the SBP, the claimant had no right to request a deemed election for former spouse SBP coverage.

In the claimant's request for reconsideration, she states that she was not aware of the requirement to change the coverage from spouse to former spouse after the divorce and the member was incapable of completing the required paperwork due to his severe service-connected disabilities. She states that it was the member's intent that she receive the SBP annuity. She states that DFAS's own records reflect that SBP premiums continued to be deducted from the member's monthly retired pay for her SBP coverage. She also states that she is the member's arrears of retired pay (AOP) beneficiary. She attaches an affidavit from the member's father attesting that the member repeatedly expressed his intention to continue SBP coverage for her and believed that he had done so.

## **Discussion**

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 their claim by clear and convincing evidence on the written record that the United States Department of Defense is liable for the claim. *See* DoD Instruction 1340.21 (May 12, 2004) ¶ E5.7. Federal agencies and officials must act within the authority granted to them by statute in issuing regulations. Thus, the liability of the United States is limited to that provided by law (including implementing regulations).

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for the survivors of deceased members of the uniformed services. Under 10 U.S.C. § 1448(a)(1)(A), SBP is open to a member who is eligible for retired pay. 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 March 2020. The claimant was not awarded former spouse SBP coverage in the divorce decree. Therefore, she had no statutory right to request a deemed election. There is no evidence that the member submitted anything to DFAS in order to elect former spouse coverage. 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. Therefore, DFAS properly denied the claim for the SBP annuity. *See* DOHA Claims Case No. 2021-CL-032612.2 (November 19, 2021).

Finally, DFAS was not notified of the member's divorce until after his death. Since the member continued to erroneously pay for spouse SBP coverage from his retired pay when he did not have an eligible spouse beneficiary, he was underpaid retired pay after his divorce. Thus, this underpayment of retired pay is payable as AOP to the member's designated beneficiaries. However, there is no SBP annuity payable in this case since the member had no eligible SBP beneficiary upon his death.

## Conclusion

The claimant's request for reconsideration is denied, and we affirm the appeal decision dated August 18, 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

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Catherine M. Engstrom  
Administrative Judge  
Chair, Claims Appeals Board

SIGNED: David F. Hayes

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David F. Hayes  
Administrative Judge  
Member, Claims Appeals Board

SIGNED: Charles C. Hale

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Charles C. Hale  
Administrative Judge  
Member, Claims Appeals Board