



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



DATE: February 25, 2026

In Re:)	
[REDACTED])	Claims Case No. 2024-CL-111806.2
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, retired 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-111806, dated December 17, 2025.

Background

On November 28, 1987, the claimant and the member were married. On July 31, 2003, the member retired from the Navy, having elected spouse and child Survivor Benefit Plan (SBP) coverage. On or about June 23, 2009, the claimant and the member divorced. On May 23, 2009, as part of the divorce proceedings, the claimant and the member entered into a marital settlement agreement (MSA). The MSA contained a calculation of the claimant’s interest in the member’s retired pay. There was also a statement that the claimant and the member acknowledged the claimant’s right to direct enforcement of her portion of the member’s retired pay under the Uniformed Services Former Spouses’ Protection Act (USFSPA) and that until such direct payments commenced, the member would pay the claimant directly. In addition, the MSA contained a provision which stated that the member would execute all documents required to certify that his disposable retired pay could be paid to the claimant. The MSA further stated that the Court would continue to reserve jurisdiction over the member’s SBP and that he was

enjoined from removing the claimant as his SBP beneficiary. In the record is an undated and incomplete "Attachment to Order," which, based on dates mentioned in the excerpts, preceded the MSA, and the function of which is not clear.

On April 12, 2023, the member passed away and his death certificate indicates he was married. On October 29, 2023, the claimant submitted a DD Form 2656-7, *Verification of Survivor Annuity*, to the Defense Finance and Accounting Service (DFAS) claiming the SBP annuity as the member's former spouse. On December 28, 2023, DFAS denied the claim on the basis that the member elected to provide the claimant with spouse SBP coverage when he retired, but the claimant lost her eligibility as a spouse beneficiary when she and the member divorced. DFAS explained that the member could have elected former spouse SBP coverage if he had done so within one year of the divorce. DFAS also explained that if a retired member and former spouse enter into a written agreement for the member to provide former spouse coverage, and that agreement is incorporated into a decree, the former spouse can request a deemed former spouse election, but that would also have to happen within one year of the divorce. DFAS stated that the member did not make a request to change his election to former spouse coverage, nor was a deemed election for former spouse coverage made by the claimant.

The claimant appealed DFAS's denial of her claim. In the appeal, she acknowledged DFAS's basis for denying her claim, specifically, that the member failed to change his SBP election from spouse to former spouse after the divorce. However, she wrote that DFAS was aware of the divorce because she received a portion of the member's retired pay, from which SBP premiums were deducted, and that she had received those payments for years. She stated that since DFAS paid her directly her portion of the member's military retired pay, she believed that the member had executed all documents necessary for her to remain his SBP beneficiary.

DFAS issued an administrative report on September 30, 2024, sustaining the denial of the claim for the former spouse SBP annuity. DFAS stated that their records do not reflect that DFAS-Retired and Annuitant Pay made payment to the claimant under the USFSPA. In a rebuttal to DFAS's administrative report, the claimant stated the Court allotted her payments of \$814.24 per month. She attached her monthly bank statements reflecting monthly deposits of \$663.15 from DFAS into her personal bank account. She stated that the amount of the monthly deposits meant that \$151.09 was taken out to pay the SBP premiums. She reiterated that the Court ordered the member to make the necessary adjustments to ensure she received SBP benefits. She stated that the member told her he had fulfilled his obligations. She stated that the equitable result would be for her to be recognized as his SBP beneficiary, or in the alternative, reimbursed for the premiums she paid from her share of the member's retired pay.

In the appeal decision, the DOHA attorney examiner upheld DFAS's determination, finding no evidence that the member elected former spouse SBP coverage for the claimant, or that the claimant submitted a deemed election request within the period prescribed by law.

In the claimant's request for reconsideration, she states that in accordance with the MSA, it was agreed that she would remain the SBP beneficiary and that she would pay for the coverage out of her portion of the member's retired pay. The member agreed to execute all documents necessary to provide her the SBP coverage. She states that based on the MSA, she believed all

forms were updated and completed. She states that she made payments of \$151.09 per month for SBP coverage beginning in June 2009 until the member's death in April 2023. She states that she was not notified that the forms were not updated from spouse to former spouse, and she continued to make monthly premium payments for 14 years. She requests a fair and equitable result to be that she receive the SBP annuity since she paid over \$25,000.00 in SBP premiums to DFAS for her coverage.

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 and 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, but the SBP includes provisions to allow a member to elect coverage for a former spouse. If a member elects to provide coverage for a former spouse, the member must notify DFAS in writing of the divorce and the member's intention to provide coverage for the former spouse, even if the former spouse was the spouse beneficiary immediately prior to the divorce. A member's election of former spouse coverage must be written, signed by the member making the election, and received by the Secretary concerned within one year after the date of the decree of divorce, dissolution, or annulment. *See* 10 U.S.C. § 1448(b)(3)(A)(iii). A member who makes a former spouse election, at the time of making the election, shall provide the Secretary concerned with a written statement (in a form to be prescribed by that Secretary and signed by the member and the former spouse) setting forth whether the election is being made pursuant to a requirement of a court order or a written agreement previously entered into voluntarily by the member as part of, or incident to, a proceeding of divorce, dissolution, or annulment. *See* 10 U.S.C. § 1448(b)(5). If a member is required under the terms of a divorce decree to provide SBP coverage to a former spouse, and fails to do so, the former spouse has one year from the date of the court order or filing requiring the election to request a deemed election. Under 10 U.S.C. § 1450(f)(3), the former spouse's request that the retired member shall be deemed to have made an election for former spouse coverage must be submitted in writing and in a manner prescribed by the Secretary concerned. Under 10 U.S.C. § 1450(f)(3), the former spouse's request for a deemed election must also include a copy of the court order, regular on its face, which requires such an election. An election for former spouse SBP coverage may not be deemed to have been made unless the Secretary concerned receives such a request from the former spouse within one year of the date of the court order or filing involved. *See* 10 U.S.C. § 1450(f)(3)(C).

In this case, the claimant was covered as the member's spouse SBP beneficiary from the time he retired from the Navy in 2003, until such coverage ended with divorce on or about June 23, 2009. The record evidence reflects that the member failed to establish former spouse SBP

coverage, and the claimant did not make a request for a deemed election. Accordingly, we find that the claimant is not entitled to the SBP annuity as the member's former spouse and DFAS properly denied the claim for the SBP annuity. *See* 10 U.S.C. § 1450(f)(3); DOHA Claims Case No. 2022-CL-080205.2 (March 23, 2023); and DOHA Claims Case No. 2021-CL-021901.2 (June 28, 2021).

DFAS has no record that the claimant either requested or was paid her portion of the member's monthly retired pay directly by DFAS under the authority of 10 U.S.C. § 1408, the USFSPA. The payments received by the claimant from DFAS were most likely set up by the member through a monthly voluntary allotment to her bank account in order to adhere to the terms of the MSA. As set forth above, the applicable statutory law renders her SBP annuity claim unpayable.

Conclusion

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