



**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-081203.2
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-081203, dated September 17, 2025.

**Background**

On December 19, 1970, the member and the claimant married. The member retired from the Marine Corps on February 1, 1992. In preparation for his retirement, on October 29, 1991, the member elected not to participate in the Survivor Benefit Plan (SBP) and the claimant concurred with that election. During an Open Season held during October 1, 2005, through September 30, 2006, the member elected spouse SBP coverage for the claimant at a reduced base amount. On June 16, 2021, the member and the claimant divorced. The divorce decree incorporated a separation and property settlement agreement dated October 18, 2020, in which the member agreed to pay the claimant 50 percent of his monthly retired pay and to continue SBP coverage for her. On November 21, 2021, the member completed a DD Form 2293, *Application for Former Spouse Payments from Retired Pay*, with which he requested the Defense Finance and Accounting Service (DFAS) directly pay the claimant a portion of his monthly disposable retired pay under 10 U.S.C. § 1408, the Uniformed Services Former Spouses’

Protection Act (USFSPA). On December 27, 2021, the DFAS Garnishment Law Directorate sent the claimant a letter acknowledging receipt of the DD Form 2293 but denied the application for direct payment of the member's retired pay without a court certified copy of the divorce decree. In that letter, DFAS advised the claimant that if her divorce decree specifies that she is to be designated as a former spouse SBP beneficiary, she should make a "deemed election" for the SBP coverage within one year of the date of her divorce decree directly to the DFAS Garnishment Law Directorate using a DD Form 2656-10. The record reflects that the member continued to pay SBP premiums from his retired pay until he reached age 70 and had made 360 payments effective February 1, 2022.

The member passed away on January 4, 2024, 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 within one year of the divorce. The claimant appealed DFAS's denial of her claim on the basis of DFAS's failure to notify her of the existence of a deemed election. She included a copy of the member's retiree account statement dated December 2020, reflecting that the member continued to pay for spouse SBP coverage from his monthly retired pay.

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 that DFAS sent the claimant a letter which included guidance on how to deem a former spouse SBP election. The attorney examiner explained that regardless, lack of knowledge about a statute or regulation does not establish a claim.

In the claimant's request for reconsideration, she states that she spent 20 years as a military spouse which resulted in immeasurable sacrifices on herself and children. She requests that the SBP benefits be reinstated and reiterates that she was never notified that she should file a deemed election form. She states that the member continued to pay for her coverage as his spouse SBP beneficiary after their divorce.

## **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 June 2021. The member was obligated based on the divorce decree that incorporated a separation and property settlement agreement 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. The claimant's lack of knowledge of the requirements to file a deemed election does not establish a claim. 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).

Finally, we note that SBP premiums were deducted from the member's retired pay after the divorce in June 2021 through February 1, 2022, when the member reached paid-up status. Those premiums should be refunded to the proper beneficiary as arrears of retired pay under 10 U.S.C. § 2771.

## 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

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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