



**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-111820.2
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-111820, dated August 11, 2025.

**Background**

The member and the claimant married on November 15, 1980. In preparation for his retirement from the Air Force, the member elected spouse only Survivor Benefit Plan (SBP) coverage for the claimant. The member became entitled to retired pay from the Air Force on September 8, 2009, his 60<sup>th</sup> birthday. On March 15, 2011, the member and the claimant divorced. The divorce decree awarded the claimant former spouse SBP coverage.

On October 6, 2023, the member passed away 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 timely 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 member wanted her to

have the benefit of the SBP annuity but was unaware that he needed to change his SBP election to former spouse 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 within one year of the divorce, nor that the claimant filed a request for a deemed election for former spouse coverage within one year of the divorce.

On September 10, 2025, the claimant requested more time to file her request for reconsideration of the appeal decision and DOHA granted that request, giving the claimant an extension of time to file it until October 27, 2025. On October 27, 2025, the claimant requested more time to file her reconsideration request. She also stated that the member wanted her to have the SBP annuity.

### **Discussion**

Under the provisions of the Department of Defense Instruction 1340.21 (May 12, 2004), DOHA must generally receive a claimant's request for reconsideration of an appeal decision within 30 days of the date of the appeal decision. Upon request, this period may be extended for an additional 30 days for good cause shown. No request for reconsideration may be accepted after this time has expired. *See* Instruction ¶ E7.13. More than 60 days has passed since August 11, 2025, the issuance of the appeal decision. Therefore, the Board will consider what the claimant has timely submitted as of October 27, 2025.

The claimant must prove, by clear and convincing evidence, on the written record that the United States is liable to the claimant for the amount claimed. *See* Instruction ¶ E5.7. Claims against the government may be allowed only for expenses authorized by statute or regulation. DOHA must render decisions based on the written record in front of us, and applicable statutes, regulations and our prior administrative decisions.

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). 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 September 8, 2009, until such coverage ended with their divorce in March 2011. The member was obligated based on the divorce decree 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).

### **Conclusion**

The claimant's request for reconsideration is denied, and we affirm the appeal decision dated August 11, 2015, 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