



**DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS**



DATE: May 26, 2026

In Re:

[REDACTED]

Claimant

)
)
)
)
)

Claims Case No. 2024-CL-111808.2

**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. A claim may be allowed only if it is for an item authorized by statute or regulation. Under the order of precedence established by 10 U.S.C. § 2771(a), a designated beneficiary has a claim superior to the late member’s surviving spouse.

DECISION

The claimant, the surviving spouse of a 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-111808, dated February 26, 2026.

Background

On June 28, 1995, the member completed the DD Form 2656, *Data for Payment of Retired Personnel*. On that form, he noted that he was married and designated three beneficiaries for his arrears of retired pay (AOP). On August 31, 1995, the member retired from the Navy. The record reflects that in October 1998 the member divorced. On December 5, 2023, the member passed away.

In January 2023, the claimant submitted a SF 1174, *Claim for Unpaid Compensation of Deceased Member of the Uniformed Services*, to the Defense Finance and Accounting Service (DFAS), claiming the AOP as the member’s surviving spouse. DFAS denied the AOP claim on

the grounds that their records indicated someone else is the member's AOP beneficiary and the AOP would be paid out to the beneficiary designated by the member in writing.

The claimant appealed DFAS's denial of her claim for the AOP. In that appeal, she attached a copy of the member's divorce decree dated October 22, 1998. She stated that DFAS erred in denying her claim because she married the member in 2013 and remained married to him until his death. She stated that the member likely forgot that he named his first wife as his AOP beneficiary and never contacted DFAS to remove her name.

In the appeal decision, the DOHA attorney examiner upheld DFAS's denial of the claim, finding that the member made a written designation under 10 U.S.C. § 2771. Under that statute, the rights of a member's designated beneficiary(ies) are superior to those of a member's surviving spouse (if not the named beneficiary). The attorney examiner explained that the member made a written designation of his AOP beneficiaries on June 28, 1995, and that designation was never changed by the member.

In the claimant's request for reconsideration, she attaches a copy of her certificate of marriage, the member's death certificate and his divorce decree. She states that the member was divorced twenty years prior to his death and that as part of the divorce proceedings, the court issued a decree stating that his former spouse waived any interest she may have had in his Veterans Affairs disability benefits. She states that this provision of the decree reflects the clear intent of the divorce settlement that his former spouse relinquish financial rights related to the member's veteran benefits following dissolution of their marriage. She states that as his wife, she has been recognized by the Department of Veterans Affairs (VA) as his surviving spouse, and she currently receives VA survivor benefits. She requests that in light of the divorce decree and clear intent of the divorce settlement, she receive the AOP.

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 the claim by clear and convincing evidence on the written record that the United States Department of Defense is liable to the claimant for the amount claimed. *See* Department of Defense 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). When the language of a statute is clear on its face, the plain meaning of that statute will be given effect, and that plain meaning cannot be altered or extended by administrative action. *See* DOHA Claims Case No. 2022-CL-120609.2 (February 7, 2024).

The final settlement of accounts owed by the Government to deceased members of the armed forces are to be paid according to the statutory instructions contained under 10 U.S.C. § 2771(a). Subsection (a) provides for payment of the amount due to the person or persons surviving the member in the following order of precedence:

- (1) Beneficiary designated by him in writing to receive such an amount, if the designation is received, before the deceased member's death, at the place named in regulations to be prescribed by the Secretary concerned.
- (2) Surviving spouse.
- (3) Children and their descendants, by representation.
- (4) Father and mother in equal parts or, if either is dead, the survivor.
- (5) Legal representative.
- (6) Person entitled under the law of the domicile of the deceased member.

Under 10 U.S.C. § 2771(b), designations and changes of designations under subsection (a)(1) are subject to regulations prescribed by the Secretary of Defense. The current implementing regulations for the statute are found in Chapter 30, Volume 7B of the DoD 7000.14-R, the *Department of Defense Financial Management Regulation, Military Pay Policy - Retired Pay*. Paragraph 2.4.1 restates the order of precedence set forth under 10 U.S.C. § 2771. Paragraph 2.4.2 states that a retired member may change a designated beneficiary either in writing or electronically via MyPay as long as the change is received by DFAS-Cleveland before the retired member's death.

On June 28, 1995, the member designated named beneficiaries to receive any arrears of retired pay that might be due at his death. DFAS has no record of the member changing his AOP designated beneficiaries. As explained by the attorney examiner in the appeal decision, in setting forth the order of precedence of persons to whom payment may be made, 10 U.S.C. § 2771(a) lists the member's designated beneficiary first in the order of precedence. Since the member designated beneficiaries to receive any arrears of retired pay, his designation takes precedence over a surviving spouse. Therefore, there is no authority to allow payment of the AOP to the claimant.

The VA is a separate agency from the Department of Defense, and the VA adjudicates different entitlements upon a member's death under different statutory authority. Laws relating to a deceased veteran's benefits are separate and distinct from the laws relating to the entitlement to a deceased member's AOP. DOHA is only bound by the AOP law, as set forth under pertinent statute and regulation.

Conclusion

The claimant's request for reconsideration is denied, and we uphold the appeal decision dated February 26, 2026, disallowing the claim. In accordance with the 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: Michelle P. Tilford

Michelle P. Tilford
Administrative Judge
Member, Claims Appeals Board

SIGNED: Charles C. Hale

Charles C. Hale
Administrative Judge
Member, Claims Appeals Board