



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



DATE: May 22, 2026

)	
In Re:)	
[REDACTED])	Claims Case No. 2024-CL-070102.2
)	
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 surviving spouse of a deceased retired member of the U.S. Army, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2024-CL-070102, dated February 24, 2026.

Background

The member married the claimant on July 5, 1968. On February 13, 1974, the member completed a DD Form 1883, *Survivor Benefit Plan – Election Certificate* (September 1972). On that form, he noted that he was married and had dependent children and elected not to participate in the Survivor Benefit Plan (SBP). Specifically, the member selected “No” in response to the question “Do you want an annuity under the Survivor Benefit Program?” The member’s signature on the DD Form 1883 was witnessed. The claimant also signed the DD Form 1883 on February 13, 1974, acknowledging that she was fully informed and counseled concerning the options available under the SBP. Her signature was witnessed by an SBP counselor. On March 1, 1974, the member retired from the Army. Since the member declined participation in the SBP, no SBP premiums were deducted from his retired pay.

On August 12, 2023, the member passed away. On September 5, 2023, the claimant submitted a DD Form 2656-7, *Verification for Survivor Annuity*, to the Defense Finance and Accounting Service (DFAS) claiming the SBP annuity as the member's spouse. On September 29, 2023, DFAS denied her claim on the basis that the member did not elect to participate in the SBP. On October 3, 2023, the claimant appealed DFAS's denial of her claim. She stated that she never signed any documentation to allow the member not to cover her under the SBP. She requested a copy of the document she signed allowing the member to receive his full retired pay.

On May 22, 2024, DFAS reviewed the claimant's appeal and issued an administrative report, upholding the initial denial of the SBP annuity claim. DFAS forwarded the appeal package to DOHA.

In the DOHA appeal decision, the attorney examiner sustained DFAS's denial of the claim, finding that the record evidence reflected that the member elected to not participate, and the claimant was notified of the member's election as evidenced by her signature on the DD Form 1883.

In her request for reconsideration, through her attorney, the claimant states that she never signed the DD Form 1883 on February 13, 1974, or any other day. She states that she never received notice that a DD Form 1883 was ever signed nor notice that her spouse declined SBP benefits. She requests that DFAS provide proof that she signed the DD Form 1883. Her attorney argues that since the claimant was not notified of the member's election to not participate in the SBP, she is entitled to the SBP annuity. Her attorney cites *Barber v. United States*, 230 Ct. Cl. 287, 676 F.2d 651 (1982), to support the claimant's contention that she is entitled to the SBP annuity.

Discussion

Under Department of Defense Instruction 1340.21 (May 12, 2004), 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. 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. *See* DOHA Claims Case No. 2020-CL-072214.2 (January 27, 2021).

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for the survivors of deceased members of the uniformed services. A married member is eligible to participate in the SBP when he becomes entitled to retired pay. However, a member may elect not to participate, elect to provide less than maximum coverage, or elect to provide SBP benefits to a dependent child rather than a spouse. *See* 10 U.S.C. § 1448(a). At the time of enactment, the law stated that if a member who is married elects not to participate in the SBP at the maximum level, that member's spouse shall be notified of the decision, and that an election not to participate in SBP is irrevocable if not revoked before the date on which the member first becomes entitled to retired pay. *See* Pub. L. No. 92-425, § 1(3), 86 Stat. 707 (1972). Currently,

the law requires spousal written concurrence when a married member elects not to participate in the SBP. *See* Pub. L. No. 99-145, title VII, § 721(a), 99 Stat. 583, 676 (1985).

The record reflects that in 1974 when the member elected not to participate in the SBP he was married and had dependent children. The statute in effect at the time merely required that the spouse be notified of the member's decision not to participate but provided no specifics on the type of notification or remedy for lack of notification. However, in *Barber v. United States, supra*, the U.S. Court of Claims held that if a spouse was not notified of the member's failure to make such an election, the spouse was entitled to an SBP annuity upon the member's death.

The record evidence in this case reflects that at the time of the member's election, the claimant, as his spouse, signed the DD Form 1883 acknowledging that she had been fully informed and counseled concerning the SBP options available to her under the SBP for a survivor annuity and that she understood the member's decision to elect not to participate in the SBP. The claimant's signature was witnessed by the SBP counselor. The Army accepted the member's election not to participate and established the member's retired pay account. As a result of the member election not to participate in the SBP, no SBP premiums were deducted from his monthly retired pay. We note that the military services financing offices performed this function, as well as other financially-related services for members, prior to the consolidation of the function with the creation of DFAS in 1991. After DFAS was created in 1991, DFAS also did not deduct SBP premiums from the member's retired pay. Under the circumstances, DOHA is unable to allow this claim for the SBP annuity because we are bound by statute and regulation, and the written record submitted to us by the agency and the claimant. *See* DOHA Claims Case No. 2020-CL-072214.2, *supra*.

Conclusion

The claimant's request for reconsideration is denied, and we uphold the appeal decision dated February 24, 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: David F. Hayes

David F. Hayes
Administrative Judge
Member, Claims Appeals Board