



DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS



DATE: May 27, 2026

In Re:)
 [REDACTED]) Claims Case No. 2025-CL-081803.2
 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. The claimant must prove by clear and convincing evidence on the written record that the United States is liable under the law for the amount claimed. Federal agencies and officials must act within the authority granted to them by statute and in issuing regulations. Thus, the liability of the United States is limited to that provided by law. Since military pay entitlements, including survivor benefits, are governed by specific statutes, the Defense Office of Hearings and Appeals (DOHA) must apply the appropriate statutes and regulations in the adjudication of those entitlements as set forth under 31 U.S.C. § 3702(a).

Claims settlement under 31 U.S.C. § 3702 is subject to a statute of limitations imposed by section 3702 itself. Specifically, under 31 U.S.C. § 3702(b), the Barring Act, jurisdiction to consider claims is limited to those that are filed within six years after the claim accrues. However, under 31 U.S.C. § 3702(e), upon request of the Secretary concerned, the Secretary of Defense may waive the time limits established by the Barring Act for claims involving a uniformed service member’s pay, allowances, retired pay, or survivor benefits, to allow payment of the claim up to \$25,000.00.

DECISION

The claimant, the surviving spouse of a deceased 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. 2025-CL-081803, dated March 9, 2026. In that decision, DOHA denied the

surviving spouse's claim for the member's Survivor Benefit Plan (SBP) annuity because it was filed more than six years after the member's death.

Background

The member retired from the Navy on May 31, 1984, and established spouse SBP coverage. His spouse passed away on January 20, 1993. The member informed the Defense Finance and Accounting Service (DFAS) of her death, and DFAS suspended the member's SBP account and ceased deducting SBP premiums from his retired pay. On July 11, 2004, the member married the claimant. On February 18, 2019, the member passed away. On February 21, 2019, and March 18, 2019, DFAS received notification of the member's death from the claimant. DFAS advised that this was the first time DFAS was made aware of the member's marriage after the death of his first wife.

On March 7, 2025, the claimant submitted to DFAS a DD Form 2656-7, *Verification for Survivor Annuity*, claiming the SBP annuity as the member's surviving spouse. On April 7, 2025, DFAS denied the claim for the SBP annuity on the grounds that the claimant filed it more than six years after the claim accrued, and therefore it was barred by the Barring Act, 31 U.S.C. § 3702(b). DFAS calculated the barred arrears of SBP annuity payments due during the period between after the member's death, February 19, 2019, through March 30, 2025, to be \$31,392.60. DFAS advised the claimant of her right to appeal their decision to DOHA, but also informed the claimant of her right to request waiver of the time limit through the Assistant Secretary of the Service concerned, in her case, the Assistant Secretary of the Navy Financial Management and Comptroller (FM&C) in order to receive up to \$25,000.00 of the arrears of SBP annuity payments. DFAS further advised the claimant that she had the right to seek a correction of record with the correction board for the appropriate service under 10 U.S.C. § 1552, in her case, the Board for Correction of Naval Records (BCNR).

The claimant appealed DFAS's denial of her SBP annuity claim. DFAS sustained the denial of her claim and provided her with their administrative report upholding the application of the Barring Act to the SBP annuity claim. On July 14, 2025, the claimant filed a rebuttal to DFAS's administrative report. In that rebuttal, she requested that her appeal be expedited because of her medical issues. She stated that the member left her with nothing when he died, to include no retirement, pension, bank account, or insurance. She stated that she lost her home since the member passed away.

In the DOHA appeal decision, the attorney examiner upheld DFAS's denial of the claim finding that the Barring Act, 31 U.S.C. § 3702(b), applied to bar payment of the SBP annuity. The attorney examiner explained that claims settlement under 31 U.S.C. § 3702, including the settlement of SBP annuity claims, is subject to a statute of limitations, and under section 3702(b), a claimant (including a survivor of a member participating in the SBP) has six years to file a claim for an SBP annuity. The attorney examiner found that all events giving rise to the claim occurred at the member's death in February 2019, and since the claimant did not file her claim for the SBP annuity within six years of his death, her annuity claim was barred. The attorney

examiner stated that the claimant had the right to request waiver of the Barring Act through the Assistant Secretary of the Navy and to petition the BCNR for a correction of record.

In her request for reconsideration, the claimant states that at the time of the member's death, she contacted the SBP officer and was told that she was not entitled to an SBP annuity. She attaches DOHA Claims Case No. 2021-CL-122804.2 (July 27, 2022), a case cited by the attorney examiner as precedent in the DOHA appeal decision. The claimant cites errors in that decision, such as her age, the years of her husband's service in the Navy and the date of his death. Finally, she states that she has requested waiver of the Barring Act.

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. Preliminarily, we will address the claimant's concern that the attorney examiner erred by citing DOHA Claims Case No. 2021-CL-122804.2, *supra*, and attaching it to the appeal decision in her case. The decision included in the appeal decision is legal precedent and was cited by the attorney examiner as analogous to the situation presented in the claimant's case. The dates addressed in that decision are not pertinent to the claimant's case.

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 is liable for the claim. *See* Instruction ¶ E5.7. A claimant must submit a claim so that it is received by the agency concerned within the time limit allowed by statute. *See* Instruction ¶ E5.6. Federal agencies and officials must act within the authority granted to them by statute in issuing regulations.

In the adjudication of cognizable claims under 31 U.S.C. § 3702, it is a well-established rule that a claim may only be allowed for an expense authorized by statute or regulation. *See* DOHA Claims Case No. 2016-CL-052003.2 (September 27, 2016). When the language of a statute is clear on its face, the plain meaning of the statute will be given effect, and that plain meaning cannot be altered or extended by administrative action. *See* DOHA Claims Case No. 2016-CL-112901.2 (February 2, 2017).

The SBP now codified under 10 U.S.C. §§ 1447-1455, is an income maintenance program for survivors of retired military members. Under 10 U.S.C. § 1450(a), a monthly SBP annuity is payable to a participating member's surviving spouse effective as of the first day after the date of the member's death. Under 31 U.S.C. § 3702(b), a survivor has six years to file a claim for an SBP annuity. In pertinent part, section (b)(1) states the following:

A claim against the Government presented under this section must contain the signature and address of the claimant or an authorized representative. The claim must be received by the official responsible under subsection (a) for settling the claim or by the agency that conducts the activity from which the claim arises within 6 years after the claim accrues . . .

The official responsible for establishing the SBP annuity accounts for survivors of military members is the office of DFAS – U.S. Retired and Annuitant Pay. All events giving rise to the government’s liability to make SBP payments to a survivor occur at the date of the member’s death, and the survivor has six years from that date to file the claim with DFAS. Claims filed more than six years after a member’s death are barred. *See* DOHA Claims Case No. 02082608 (March 26, 2003).

We acknowledge the claimant’s medical issues and her financial situation. However, DOHA has no authority to allow her claim for the SBP annuity. The member’s death on February 18, 2019, fixed the liability of the government and entitled the claimant to make a claim. DOHA has no authority to modify the application of the Barring Act or make any exceptions to the time limitations it imposes, except as set forth under specific statutory authority. *See* DOHA Claims Case No. 08112402 (November 26, 2008).

As explained by DFAS and DOHA, the Department of Defense has the specific statutory authority to waive the Barring Act for claims (not exceeding \$25,000.00) that it is authorized to settle under section 3702(a)(1). The claimant may request waiver of the Barring Act under 31 U.S.C. § 3702(e), through the Assistant Secretary of the Navy. Under 31 U.S.C. § 3702(e), upon request of the Assistant Secretary of the Navy, the Secretary of Defense may waive the time limits established by 31 U.S.C. § 3702(b) for claims involving a uniformed service member's pay, allowances or survivor benefits. Under DoD Instruction 1340.21 ¶ E6.4 (May 12, 2004), the Director of DOHA is delegated the authority to grant or deny the request on behalf of the Secretary of Defense. However, the claimant must file her request directly with the Assistant Secretary of the Navy. We note that under 31 U.S.C. § 3702(e), waiver shall only be granted to allow payment up to a maximum of \$25,000.00, and the claimant will not be granted the SBP annuity prospectively. Therefore, the claimant may wish to also pursue the matter with the BCNR. The claimant’s request for waiver of the Barring Act does not forfeit her right to seek redress from the BCNR. Under 10 U.S.C. § 1552, the Secretary of a military department, acting through a correction board, may correct a member’s record when the Secretary considers it necessary to correct an error or remove an injustice. Information on petitioning the BCNR can be found on the BCNR’s website at <https://www.secnv.navy.mil/mra/bcnr/Pages/default.aspx>.

Conclusion

The claimant's request for reconsideration is denied, and we affirm the appeal decision dated March 9, 2026.

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