

LAW REVIEW¹ 1008

Reserve Component Survivor Benefit Plan for Reservist Who Marries After Notification of Eligibility to Participate

Also see Law review [No. 1099](#); Law Review 1008 Reconsidered

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5.4 – Survivor Benefit Plan

Q: I was born in 1960. In 1982, I graduated from the Coast Guard Academy and was commissioned an Ensign. I remained on active duty until 1988 then affiliated with the Coast Guard Reserve. In 2002, after I had completed 20 “good years” for Reserve Component (RC) retirement purposes, I received a Notice of Eligibility (NOE) and notice of my opportunity to elect to participate in the RC Survivor Benefit Plan (RCSBP).

I was promoted to Captain (O-6) in 2005, and I expect to remain active in the Coast Guard Reserve until 2012, when I will reach my mandatory retirement date, based on 30 years of commissioned service. At that point, I will become a “gray area retiree” until I attain my 60th birthday in 2020 and start drawing retired pay.

When I received the NOE and the RCSBP notice in 2002, I was not married and had no children. Accordingly, I named my sister as the beneficiary. I got married in 2006 and notified the Coast

¹I invite the reader’s attention to www.roa.org/lawcenter. You will find more than 2000 “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about very specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

²BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General’s Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans’ Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at SWright@roa.org.

Guard during my next drill weekend after the wedding. I asked the Personnel Officer to give me all the forms that I needed to complete because of the marriage, and he gave me several such forms. I completed and submitted all of them and then asked again if he was certain that there were no more forms that I needed to complete. He assured me that I had completed all the forms that I needed to complete.

I recently tried to enroll my wife in the RCSBP, in lieu of my sister, and I was told that I am too late. What gives?

A: Unfortunately, you are too late, and the fact that the Coast Guard Personnel Officer failed to alert you to the need to change your RCSBP election does not change the fact that the deadline has passed.

The law provides as follows concerning eligibility to participate in the Survivor Benefit Plan: “The following person are eligible to participate in the Plan: (A) Persons entitled to retired pay. (B) Persons who would be eligible for reserve-component retired pay but for the fact that they are under 60 years of age.” 10 U.S.C. 1448(a)(1).

“A person who is not married and has no dependent child upon becoming eligible to participate in the Plan but who later marries or acquires a dependent child may elect to participate in the Plan.” 10 U.S.C. 1448(a)(5)(A).

“Such an election must be written, signed by the person making the election, *and received by the Secretary concerned*[the Secretary of Homeland Security for you] *within one year after the date on which that person marries or acquires that dependent child.*” 10 U.S.C. 1448(a)(5)(B) (emphasis supplied).

You lost the opportunity to elect RCSBP coverage for your wife because you failed to make the required election within one year after the marriage.

“A person who is not married and does not have a dependent child upon becoming eligible to participate in the Plan may elect to provide an annuity under the Plan to a natural person with an insurable interest in that person. In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).” 10 U.S.C. 1448(b)(1)(A).

This is the provision that authorized you to designate your sister in 2002, when you received your RCSBP notice. Upon getting married, you could have discontinued the coverage of your sister and chosen coverage for your wife, in accordance with 10 U.S.C. 1448(b)(1)(B). You lost that opportunity when you failed to take the required action within one year after your marriage.

In 2020, when you turn 60 and become eligible to receive retired pay, you will have another opportunity to elect RCSBP coverage for your wife. 10 U.S.C. 1448(a)(2). The problem is that this opportunity does not protect you from the possibility that you could die before you attain your 60th birthday. The RCSBP annuity can pay starting on the day after the reservist’s death, even if

the reservist was not yet 60 and not yet receiving retired pay when he or she died. See 10 U.S.C. 1448(e)(1).

Q: This is not fair! On the first drill weekend after my wedding, I notified the Personnel Officer and asked him to give me all the forms that I needed to complete to notify the Coast Guard of my marriage. I completed all those forms and asked again if there were any other forms I needed to complete. He assured me that I had done all that I needed to do.

In the mid 1990s, the Coast Guard abolished Reserve units, except for a handful of Port Security Units. Most Coast Guard Reserve personnel, myself included, report to active duty Coast Guard organizations. The Personnel Officers at Coast Guard active duty organizations are often unfamiliar with Reserve-specific requirements. I was put at a disadvantage because the Personnel Officer failed in his responsibility to provide me complete and correct information.

A: The Federal Government is not responsible for misleading or incorrect information given out by government agents, even if a private insurance company would be held responsible for misleading information given out by its employee under similar circumstances. See *Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 380 (1947). Ignorance of the law is no excuse. You are *presumed to* know the contents of the United States Code and federal regulations duly published in the *Federal Register*, although having actual knowledge of all such provisions is practically impossible.

In his dissent in *Merrill*, Justice Jackson wrote, “To my mind, it is an absurdity to hold that every farmer who insures his crops knows what the *Federal Register* contains, or even that there is such a publication. If he were to peruse this voluminous and dull publication as it is issued from time to time in order to make sure whether anything has been promulgated that affects his rights, he would never need crop insurance, for he would never get time to plant any crops. Nor am I convinced that a reading of technically worded regulations would enlighten him much, in any event.”

But that was the dissent. The rule of law enunciated by the Supreme Court is that you are held to know the contents of federal laws and regulations, even if you have no actual knowledge of them and even if a federal official has misled you by giving you incomplete or incorrect information. You have no cause of action against the Personnel Officer who failed to notify you of the need to change your RCSBP designation, and the misleading information does not mitigate the fact that you failed to change the designation within one year after your marriage.

Let this be a lesson to readers. In managing your military and civilian careers, you need to understand all the laws and regulations that may be applicable. Spending a few hundred or a few thousand dollars for expert legal advice would be money well spent, especially if you get the advice in time to act upon it. Part of the problem is that there are not a whole lot of lawyers who understand military-specific laws and situations. This demonstrates the need for the Law Review Library, the Servicemembers Law Center, and the Reserve Officers Association.

We are doing everything we can do educate RC members, employers, attorneys, and others about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), and other laws that pertain to members of the armed forces

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This article is one of 2,300-plus “Law Review” articles available at www.roa.org/lawcenter. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is almost a century old—it was established on 10/1/1922 by a group of veterans of “The Great War,” as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For almost a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

Through these articles, and by other means, including amicus curiae (“friend of the court”) briefs that we file in the Supreme Court and other courts, we educate service members, military spouses, attorneys, judges, employers, DOL investigators, ESGR volunteers, congressional and state legislative staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation’s eight³ uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20 or \$450 for a life membership. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve. If you are eligible for ROA membership, please join. You can join on-line at www.roa.org or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

Reserve Organization of America
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³Congress recently established the United States Space Force as the 8th uniformed service.