

LAW REVIEW 1068

If I Choose the RC-SBP and then Die, When Does My Husband Get the Cash?

By Captain Samuel F. Wright, JAGC, USN (Ret.)

5.0—Military Service and Family Obligations

Q: I am a Commander in the Navy Reserve. I was commissioned in 1990, and I then served on active duty until 1996. I affiliated with the Navy Reserve when I left active duty, and I have gotten a “good year” each year. I attained 20 good years as of earlier this year, and I recently received my Notice of Eligibility (NOE) in the mail.

A good year is a year when you receive at least 50 points, a minimal participation level. The year is measured by your anniversary date, which is probably the same as Pay Entry Base Date.

I understand that the NOE means that I am now assured of receiving Reserve Component retired pay at age 60, or perhaps a few months early, based on service that I performed in Afghanistan and Iraq in 2009 and 2010. But I am not ready to retire yet. I intend to keep participating in the Navy Reserve until I reach my mandatory retirement date.

Together with my NOE, I received paperwork about the Reserve Component Survivor Benefit Plan (RC-SBP). I have two young children, and I am seriously contemplating electing to participate in the RC-SBP. Am I eligible to enroll now, although I am not yet ready to retire from the Navy Reserve? If I choose to enroll and then die before I reach my 60th birthday, will my husband have to wait until the 60th anniversary of my birth to start drawing this money?

A: The answer is “yes” to the first question and “no” to the second.

“The following persons are eligible to participate in the Plan [RC-SBP]: 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.” Title 10, United States Code, section 1448(a)(1) [10 U.S.C. 1448(a)(1)]. You are entitled to the retired pay (but for your age) as of the date when you meet the 20-good-year threshold, regardless of whether you become a “gray area retiree” at that point or whether you keep participating in the Navy Reserve.

I invite your attention to the 2010 *Reserve Forces Almanac*, published by Uniformed Services Almanac, Inc., of Falls Church, Virginia (www.militaryalmanac.com). The book costs \$12.95, plus \$3.50 for postage and handling, and I recommend it. The book states on page 169: “A Reserve Component member is eligible to elect RC-SBP (Reserve Component annuity) for a spouse, former spouse, or dependent child upon notification of eligibility to receive retired pay (20 year letter). The member must elect one of the following options during the 90 day period after receiving the 20 year letter: (A) decline to make an election until attaining the eligibility age to begin receiving retired pay; (B) elect coverage for an annuity to begin upon the member’s death or upon the date the member would have become eligible to receive retired pay, whichever is later; or (C) elect coverage for an annuity to begin upon the member’s death, regardless of the member’s age when death occurs.

Effective with notifications of eligibility to elect RC-SBP dated on or after January 1, 2001, a Reservist is automatically enrolled in option (C) at the maximum amount unless the member, with written spousal concurrence (if required), elects reduced coverage or not to participate in the plan within the 90 day period beginning on the date the member receives notification of eligibility.” (emphasis supplied).

Option C is clearly the way to go for a person in your situation, and you would need your husband’s written concurrence to choose Option A or Option B. If you choose Option C, your husband will start receiving the annuity immediately upon your death, even if you are still actively participating in the Navy Reserve when you die.