

LAW REVIEW¹ 10069

No Wife, No Kids—Am I Eligible to Elect RC-SBP

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

5.4— Survivor Benefit Plan

Q: I am a Lieutenant Colonel in the Army Reserve. I graduated from college and received my commission in 1990. I remained on active duty until 1998, then left active duty and affiliated with the Army Reserve. I have earned a “good year” each year. Earlier this year, I attained 20 good years, and I recently received my Notice of Eligibility (NOE) for Reserve Component retired pay at age 60.

Together with the NOE, I received paperwork about the Reserve Component Survivor Benefit Plan (RC-SBP). I have never been married, and I have no children (at least none of whom I am aware). Am I eligible to participate in the RC-SBP?

A: Yes. “A person who is not married and does not have a dependent child upon becoming eligible to participate in the Plan [RC-SBP] 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).

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.

Q: What is a “natural person?” You lawyers always talk in gobbledegook. Is there such a thing as an “unnatural person?”

A: A natural person is a human being, as opposed to a corporation or other “legal person.”

Q: What is an “insurable interest?”

A: *Black’s Law Dictionary* defines “insurable interest” as follows: “In the case of life insurance, a reasonable expectation of pecuniary benefit from the continued life of another; also, a reasonable ground, either pecuniary or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the assured.” *Black’s Law Dictionary, Revised Fourth Edition*, page 942.

Insurance must never be a mere wager. I do not have an insurable interest in your life because I have no reasonable expectation that I will receive a pecuniary benefit from you if you continue living. If I were to buy a life insurance policy on your life that would amount to a bet by me that you will die sooner rather than later. Such a bet is unlawful, and such a life insurance policy would be void as contrary to public policy. If I want to gamble, I need to go to Las Vegas and gamble on card games, not lives.

If you have parents or siblings living, you can choose them, or any one of them, as your RC-SBP beneficiary.

Q: I must make my RC-SBP election within 90 days after I receive my NOE. What happens if I later get married?

A: “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 [Secretary of the Army for you] within one year after the person marries or acquires that dependent child.” 10 U.S.C. 1448(a)(5)(B).

If you marry, it is most important that you notify the Secretary of the Army and request enrollment in the RC-SBP within one year after the wedding. If you wait too long, you will lose the opportunity to enroll. I invite your attention to Law Review 1008.

Q: Let us say that I elect RC-SBP coverage now and designate my sister as the beneficiary, and then I get married three years from now. At that point, will I be able to designate my new wife in lieu of my sister?

A: Yes.

Please join or support ROA

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
1 Constitution Ave. NE
Washington, DC 20002

³Congress recently established the United States Space Force as the 8th uniformed service.