

**LAW REVIEW<sup>1</sup> 15090**  
**October 2015**

## **Does my Mother Lose her Military Widow Benefits if she Remarries?**

By Captain Samuel F. Wright, JAGC, USN (Ret.)<sup>2</sup>

### **5.4— Survivor Benefit Plan**

**Q: I am a Commander in the Navy Reserve and a life member of the Reserve Officers Association (ROA). I read with great interest your “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), and other laws that are especially pertinent to those of us who serve our country in uniform.**

**My father retired from the Regular Navy as a Vice Admiral 15 years ago and passed away seven years ago. My mother (now age 70) has been seriously dating a widower her age, a man who has never served in the military.**

**Many years ago, my late father elected to participate in the Survivor Benefit Plan (SBP). A deduction was made from his monthly retirement check, and in exchange my mother receives**

---

<sup>1</sup>I invite the reader's attention to [www.roa.org/lawcenter](http://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.

<sup>2</sup>BA 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](mailto:SWright@roa.org).

**55% of his monthly check each month from the date of his death until her death. My mother also participates in the TRICARE for Life Program and uses that program (plus Medicare) to pay for her health care.**

**If my mother marries this widower that she is dating, will that have any effect on her eligibility for these military widow benefits?**

**A:** Let me answer the SBP question first. I invite your attention to an excellent explanation of military benefits provided by Military.com. Here is the link:

<http://www.military.com/benefits/survivor-benefits/survivor-benefit-plan-faqs.html#DDR>

I invite your attention specifically to Question 7 and the answer, as follows:

**Question 7.** If I'm receiving an SBP annuity and I remarry, is the SBP annuity lost forever?

**Answer:** No. If remarriage occurs before age 55, the annuity is suspended and can be reinstated if the remarriage ends by death or divorce. If remarriage occurs at age 55 or older, the annuity continues uninterrupted for the duration of the spouse's life.

Because your mother is already past the age of 55, remarriage will have no effect on her right to receive SBP payments for the rest of her life. But the news is not good with respect to TRICARE. The Military.com website states: "Widows or widowers remain eligible [for TRICARE] until they remarry (loss of benefits remains applicable even if remarriage ends in death or divorce)." There does not appear to be an exception for remarriage after age 55.

#### **Please join or support ROA**

This article is one of 2,300-plus "Law Review" articles available at [www.roa.org/lawcenter](http://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 eight<sup>3</sup> 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](http://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

---

<sup>3</sup>Congress recently established the United States Space Force as the 8<sup>th</sup> uniformed service.