

LAW REVIEW¹ 16068

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

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5.4—Survivor Benefit Plan

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

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.

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 (<https://www.amazon.com/2010-Reserve-Forces-Almanac-Smith/dp/1888096225>). The book costs \$15.63. 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.