

Death Gratuity and the “Blended” Military Family

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

5.3—Death Gratuity

In Law Review 182 (*The Officer*, July-August 2005), CDR Wayne Johnson, JAGC, USN (Ret.), pointed out: “Orphans who are not the children of the deceased and his or her current spouse do not receive any of the death gratuity.” This issue has received attention in the news media in recent months: cases of servicemembers killed in action leaving young children to be cared for by grandparents who are in dire financial straits and receive none of the death gratuity.

When I started my military career, the death gratuity was only \$1,000—hardly worth arguing about. After the Sept. 11, 2001, terrorist attacks, Congress raised the amount to \$100,000, so now it is a significant issue.

The law as currently written provides for the distribution of the death gratuity; the servicemember has no opportunity to designate a beneficiary, unlike the case of the

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 (VRRRA—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 VRRRA 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 VRRRA 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.

Servicemembers' Group Life Insurance (SGLI). Title 10, U.S. Code, section 1477(a), of SGLI provides as follows: "A death gratuity payable upon the death of a person covered by section 1475 or 1476 of this title shall be paid to or for the living survivor highest on the following list: (1) *His surviving spouse*. (2) His children, as prescribed in subsection (b), in equal shares. (3) If designated by him, any one or more of the following persons: (A) His parents or persons in loco parentis, as prescribed by subsection (c). (B) His brothers. (C) His sisters. (4) His parents or persons in loco parentis, as prescribed by subsection (c), in equal shares. (5) His brothers and sisters in equal shares." 10 U.S.C. 1477(a) (emphasis supplied).

CDR Johnson has also pointed out that the "blended family" is now quite common in the military. Let us take the hypothetical but entirely realistic SGT Mary Roe. She married Joe Jones just days before she deployed to Iraq, where she was killed in action. She left her two young children with her mother; they are children by an earlier relationship and are not Mr. Jones' kids. Under 10 U.S.C. 1477(a), as currently written, Mr. Jones gets the \$100,000 death gratuity as SGT Roe's surviving spouse, even if she left written instructions that the money should go to her mother, in trust for the children. Elizabeth Roe, SGT Roe's mother, has been and will be caring for the two young children; there is no one else available. But she gets none of the death gratuity.

On Feb. 16, Sen. John McCain (RAriz.) introduced S. 663 to address this issue. If enacted, his bill would amend 10 U.S.C. 1477(a) to make "any person designated by the person [the deceased servicemember] in writing" the first priority for the distribution of the death gratuity. I favor this approach and urge support of S. 663.

Let this article and the "horror stories" you may have read serve as another reminder: If you are deploying to a war zone, consult with a judge advocate about all the things you need to do to minimize hardship and disruption for your family during your deployment and in the event of your demise. A judge advocate can draft a will or a power of attorney and can advise you about SGLI beneficiaries, child custody arrangements, and other important issues that will almost certainly arise during your deployment or after your death. Try to do this a few days or weeks in advance; don't wait until you are on the tarmac at the airport, waiting to board the airplane to fly to Iraq.

Update – April 2022³

Section 645 of the national Defense Authorization Act of Fiscal Year 2008 addresses much of Senator Jon McCain's proposals. The new law amends 10 U.S.C. § 1477 by adding the following new language:

On or after July 1, 2008, or such earlier date as the secretary of defense may prescribe, a person covered by section 1475 or 1476 of this title may designate one or more persons to receive all or a portion of the amount payable under section 1478 of this title. The

³Update by Second Lieutenant Lauren Walker, USMC.

designation of a person to receive a portion of the amount shall indicate the percentage of the amount, to be specified only in 10 percent increments, that the designated person may receive. The balance of the amount, if any, shall be paid in accordance with subsection (b). ... If a person covered by section 1475 or 1476 of this title has a spouse, but designates a person other than the spouse to receive all or a portion of the amount payable under section 1478 of this title, the secretary concerned [service secretary, like the secretary of the Navy] shall provide notice of the designation to the spouse.

This change allows service members to designate a person to receive all or a portion of the amount payable under the death gratuity.