

## LAW REVIEW 15090<sup>1</sup>

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

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

5.0—Military service and family obligations

**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 55% of his monthly check each month from the date of his death until her death. My mother**

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<sup>1</sup> We invite the reader’s attention to [www.servicemembers-lawcenter.org](http://www.servicemembers-lawcenter.org). You will find almost 1,400 “Law Review” articles about laws that are especially pertinent to those who serve our country in uniform, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997.

<sup>2</sup> Captain Wright is the author or co-author of more than 1,200 of the more than 1,400 “Law Review” articles available at [www.servicemembers-lawcenter.org](http://www.servicemembers-lawcenter.org). He has been dealing with the federal reemployment statute for 33 years and has made it the focus of his legal career. He developed the interest and expertise in this law during the decade (1982-92) that he worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), he largely drafted the interagency task force work product that President George H.W. Bush presented to Congress (as his proposal) in February 1991. On October 13, 1994, President Bill Clinton signed into law the Uniformed Services Employment and Reemployment Rights Act (USERRA), Public Law 103-353. The version that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. Wright has also dealt with the VRRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), and as an attorney in private practice, at Tully Rinckey PLLC. For the last six years (June 2009 through May 2015), he was the Director of ROA’s Service Members Law Center (SMLC), as a full-time employee of ROA. In June 2015, he returned to Tully Rinckey PLLC, this time in an “of counsel” relationship. To schedule a consultation with Samuel F. Wright or another Tully Rinckey PLLC attorney concerning USERRA or other legal issues, please call Mr. Zachary Merriman of the firm’s Client Relations Department at (518) 640-3538. Please mention Captain Wright when you call.

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.