

UNITED STATES GOVERNMENT

RAILROAD RETIREMENT BOARD

Memorandum

SEP 02 1988

TO : Director of Retirement Claims

L-88-93

FROM : Deputy General Counsel

SUBJECT: Re-entitlement to a Widow(er)'s Insurance Annuity (WIA)
After the Annulment of a Voidable Marriage

This is in response to your memorandum dated August 5, 1988, wherein you asked whether, if a remarried widow(er) in current pay status has a voidable marriage annulled, you should compute the widow(er)'s insurance annuity (WIA) based upon the original beginning date (OBD) or the later of (a) the month of annulment or (b) the earliest allowable date based on the month of filing.

You stated that when a widow(er) on the rolls remarries, the remarried widow(er)'s insurance annuity (RWIA) is computed as if the employee's service had been covered under the Social Security Act (SSA), which does not distinguish a widow(er)'s annuity and remarried widow(er)'s annuity as two different types of benefits. You stated that, therefore, the RWIA is payable beginning with the month of remarriage, a new application is not required and the widow(er)'s OBD and tier I age reduction month count is retained by the remarried widow(er). Entitlement to the tier II and vested dual benefit (VDB) annuity components terminate with remarriage. You also stated that the Social Security Administration had informed you that the annulment of a voidable marriage is not treated as a terminating event under the SSA, and that therefore payment of the widow(er)'s insurance benefit under that Act is continuous with no change in the benefit rate.

You then asked whether, in computing the WIA of a remarried widow(er) who has had a voidable marriage annulled, you should:

1. Compute the WIA as if the employee's service had been covered under the SSA and base all computations, including the type of tier II and VDB entitlement, on the OBD; or
2. Secure a new application, change the OBD to the later of the month of annulment or the earliest allowable date based on the month of filing, and base all computations on the new OBD; or

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3. Retain the remarried widow(er)'s OBD for the computation of tier I, but determine the type of tier II (including the tier II age reduction) and VDB entitlement based on the later of the month of annulment or the earliest allowable date based on the month of filing.

You then stated that if the widow(er)'s annuity rate after annulment is computed as if payment was continuous, the age reduction month count for the tier I and 1981 tier II will be based on the remarried widow(er)'s initial OBD; and that if the widow(er) remarries between the ages of 62 and 65 and this remarriage is later annulled, the widow(er) is not entitled to a tier II from the month of remarriage to the month of annulment. You asked whether you should adjust the tier II age reduction month count to remove the months of non-entitlement.

A voidable marriage is different from a void marriage. Since a void marriage is one which is nonexistent from the very beginning, courts have held that a person who has entered into a marriage that is void may thereafter legally contract a second marriage without taking any steps to have the first one dissolved. (See 52 Am. Jur. 2d "Marriage", § 68, p. 920.) There is no break in entitlement in the WIA of a widow(er) whose remarriage is annulled because it was void. (See Legal Opinion L-88-80.)

In contrast, however, a voidable marriage is one which is defective under state law but is considered valid until declared void by a court. (See RCM § 6.4.51A.) Thus, for example, in Legal Opinion L-88-48, which you cited in your memorandum to me, I pointed out that there is a break in entitlement in the case of a beneficiary whose annuity is reinstated upon the declaration by a court that his or her remarriage, which was voidable, is invalid.

Because there is a break in the entitlement to a widow(er)'s annuity of a widow(er) whose voidable marriage is annulled, and because, in the period after such remarriage and prior to the annulment, the individual has been receiving a remarried widow(er)'s annuity, it is my opinion that the third alternative presented in your memorandum is the correct computation to be used, modified somewhat for the tier II age reduction, as discussed below. More specifically, the widow(er)'s OBD should be retained for the computation of the tier I, since the widow(er) has been receiving a tier I from that OBD, even during the period of remarriage prior to its annulment. Using a new OBD for such individual could conceivably result in a lesser age reduction

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being applied. This would appear to be an unfair result, since, in essence, there has been no break in entitlement to this annuity component. Cf. Legal Opinion L-82-11.

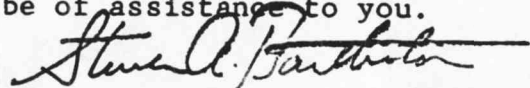
The type of tier II and the VDB entitlement should be based on the later of: (a) the month of annulment or (b) the earliest allowable date based on the month of filing a new application. The tier II age reduction month count should, however, be adjusted to remove the months of non-entitlement, i.e., those months from the month of remarriage to the month of re-entitlement. To do otherwise and thereby ignore the earlier entitlement to a tier II benefit by basing the tier II age reduction on the new OBD could, as with the tier I, result in a lesser age reduction being applied to the widow(er)'s tier II after the annulment than was applied to his or her initial widow(er)'s tier II.

Further, the above conclusion regarding the age reduction which should be applied to the tier II component is consistent with the current general statutory provisions governing the computation of the tier II annuity component payable to a widow(er). Briefly, section 4(g)(1)(i) of the Railroad Retirement Act provides in pertinent part that the widow(er)'s tier II annuity component:

"* * * shall be subject to reduction on account of age in the same manner as is applicable to the annuity amount determined for the widow or widower under subsection (f) of this section * * *."

Subsection (f) of section 4 sets forth the computation of the tier I component, which, for a widow(er), shall be in an amount equal to the amount of the widow(er)'s insurance benefit which would have been payable to the widow(er) if the employee's service had been creditable under the SSA instead of under the Railroad Retirement Act. Section 202(q)(1) of the SSA provides for a roundup recalculation at age 65. Section 202(q)(7)(E) provides, where the benefit being recomputed is a widow(er)'s benefit, for the exclusion of any month before the month in which the widow(er) attained age 62, and also for any later month before the month in which (s)he attained retirement age, for which s(he) was not entitled to such benefit because of the occurrence of an event that terminated his or her entitlement to such benefits. See Legal Opinion L-82-11.

I trust that the above discussion will be of assistance to you.



Steven A. Bartholow