



Legal Opinion L-2004-07
April 14, 2004

U.S. Railroad Retirement Board Phone: (312) 751-7139
844 North Rush Street TTY: (312) 751-4701
Chicago Illinois, 60611-2092 Web: <http://www.rrb.gov>

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In reply refer to:
R.R.B. Nos. xxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxx

Dear Phyllis:

This is in response to your letter of March 12, 2004, requesting my opinion as to the effect which an annulment of your second marriage would have upon your eligibility for a widow's annuity under the Railroad Retirement Act on the earnings record of your first husband.

Records of the Railroad Retirement Board show that you married your first husband Loren in 1951. Following his death in 1993 in Illinois, you were awarded a widow's annuity under section 2(d) of the Railroad Retirement Act of 1974, as amended (45 U.S.C. § 231a(d)), beginning with the month you attained age 60 in 1994. You married your second husband Donald in January 2000 in Illinois. As he was also a retired railroad employee, you were therefore entitled to a spouse annuity under section 2(c)(1) of the Act (45 U.S.C. § 231a(c)(1)) on the basis of your second husband's railroad service as well. However, section 2(h)(4) of the Act (45 U.S.C. § 231a(h)(4)) requires that where an individual qualifies for both a spouse and widow annuity, only the higher of the two benefits may be paid.

Benefits under the Railroad Retirement Act are comprised of independently calculated segments, or tiers. The tier I component generally represents the amount which would be payable to that individual if the railroad employee's earnings had been covered by the Social Security Act, using social security benefit formulas. The tier II annuity component is based on railroad earnings alone, and is not calculated under social security benefit formulas. A widow's annuity and a spouse annuity each include both a tier I and tier II benefit component, but a remarried widow's annuity includes only a tier I component. This means that while you continued to be entitled to a remarried widow's annuity based on Loren's railroad service after your marriage to Donald, the remarried widow's annuity no longer included the tier II benefit component. As a result, the annuity as Donald's spouse exceeded the amount of annuity which you would receive as Loren's remarried widow. You therefore were entitled under section 2(h)(4) of the Act only to the spouse annuity based on Donald's railroad service beginning January 2000.

Your letter in essence asks the circumstances under which you may again be considered Loren's widow for purposes of the Railroad Retirement Act. Section 2(d)(4) of the Act provides that whether a claimant is a widow for benefit entitlement purposes shall be determined pursuant to section 216(h) of the Social Security Act (42 U.S.C. §416(h)). Insofar as relevant here, section 216(h) requires that the claimant's status be determined with reference to the law of the state in which the railroad employee resided at death. Cases applying section 216(h) under both the Railroad Retirement Act and the Social Security Act have held that a state court decree which annuls a subsequent marriage will return the claimant once more to the status of widow of the former husband. Harris v. Railroad Retirement Board, 3 F. 3d 131, 133 (3rd Cir., 1993)(Texas annulment revives right to widow's annuity on former husband's earnings); and Purganan v. Schweiker, 665 F. 2d 269, 270 (9th Cir., 1982)(California annulment revives status as widow under the Social Security Act). If the state court finds that the grounds for annulment of the marriage would make it valid under state law until annulled (i.e., the marriage was "voidable" rather than "void"), the individual become once more the widow of her earlier husband for benefit entitlement purposes effective with the date of the decree annulling the subsequent marriage.

In your case, your status as Loren's widow under the Railroad Retirement Act depends upon the conditions under which you may again be considered Loren's widow by the laws of Illinois. Illinois



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statutes allow a court to enter a judgment declaring a marriage invalid if a party to the marriage lacked capacity to consent, lacked the physical capacity to consummate the marriage, if a party was age 16 or was age 17 and married without parental consent, or if the marriage is prohibited by law. See S.H.A. 750 Illinois Compiled Statutes 5/301, which substantially adopted section 208 of the Uniform Marriage and Divorce Act (1970). It has also been held that a marriage which potentially may be declared invalid under S.H.A. 750 ILCS 5/301 is merely voidable until judicial determination. See In Re Estate of Crockett, 728 N.E. 2d 765 (IL. App. 2000). The United States Court of Appeals has reached the same conclusion under this provision of the Uniform Act as adopted by Missouri. Everetts v. Apfel, 214 F. 3d 990, 993 (8th Cir. 2000)(a marriage which may be declared invalid under the Missouri statute adopting section 208 is voidable until the judgment).

In view of the foregoing, in my opinion, if you were to obtain a judgment declaring your marriage to Donald invalid under S.H.A. 750 ILCS 5/301 on grounds which establish the marriage was valid until declared void by the court, you would once again become widow of Loren for purposes of widow's annuity entitlement, effective with the month of entry of the judgment of invalidity. If an Illinois Court declared your marriage to Donald invalid on grounds that it was void as prohibited by law, the result under state law would be as if the marriage had never occurred. However, in that case whether previous payments to you might be reopened and retroactively increased would be governed by limitations on the reopening of a final decision on a claim as specified by section 261.2 of the Board's regulations (20 CFR 261.2). As a general matter, under that regulation a final decision may not be reopened for new evidence after four years from the date of the initial decision on that annuitant's claim.

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

Very truly yours,

Steven A. Bartholow
General Counsel