

October 16, 2000  
L-2000-30

TO: Robert J. Duda  
Director of Operations

FROM: Steven A. Bartholow  
General Counsel

SUBJECT: xxx

Annulment of Decree of Dissolution of Marriage (Kentucky)

This memorandum is in response to the application for a spouse/divorced spouse annuity filed in September 2000. That application was filed with the Huntington, West Virginia office of the Railroad Retirement Board. The application was forwarded by that office to this office for a determination of whether Mrs. xxx' spouse annuity may be reinstated pursuant to the annulment of the decree of dissolution entered by the Circuit Court of Boyd County, Kentucky in September 2000.

Mrs. xxx was originally paid a spouse annuity as the spouse of xxx Mr. and Mrs. xxx were married in xxx 1972. Payment terminated effective April 1, 1997, because she divorced Mr. xxx in April 1997. This divorce was annulled by the court decree of September 2000, and Mrs. xxx again filed for an annuity as the spouse of xxx. The decree states:

“This action having come before the Court upon Joint Motion for Annulment of Dissolution of Marriage. The Court being sufficiently advised;

It is HEREBY ORDERED that the Decree of Dissolution of Marriage entered in April 1997 is hereby annulled.”

Section 403.040 of the Kentucky Revised Statutes places discretion in the court to declare the decree of dissolution void stating that “the court rendering a judgment for divorce may, at any time, annul it on the joint application of the parties, and restore the parties to the condition of husband and wife. The annulment voids the divorce decree and any separation agreement.”

In this regard it should be noted that the Board's Bureau of Law, in Legal Opinion L-61-48.2, under facts similar to the present factual situation, found at least one Kentucky court decision (*Berning v. Berning*, 75 S. W. 2d 355 (Ky. App. , 1934) which threw

serious doubt on the retroactive effect of such a decree of annulment. However, more recently in the case of *Litteral v. Celebrezze*, 215 F. Supp. 865 (E. D. Ky., 1963), the court held that an “annulment order relates to divorce and renders it void and of no effect.”

Accordingly, it is my opinion that the divorce between xxx and xxx was annulled, thereby voiding the decree of dissolution entered in April 1997, and the parties were restored to the previous condition of husband and wife, as if the decree of divorce had never been entered. xxx therefore, as the legal spouse of xxx, is entitled to retroactive Tier II spouse annuity payments effective from April 1, 1997.

Please take appropriate action based upon this decision.

cc: District Office,  
Huntington, West Virginia