

sum death payments are effective with respect to deaths after 1946;

(b) The provisions of paragraph (a) of § 404.1402 insofar as they relate to old-age insurance benefits or monthly benefits of dependents of old-age insurance beneficiaries are effective November 1, 1951; insofar as they relate to disability insurance benefits are effective for months after June 1957; and insofar as they relate to monthly benefits for dependents of disability insurance beneficiaries are effective for months after August 1958;

(c) The provisions of paragraph (c) of § 404.1402 are effective for benefits for months after June 1955; and

(d) The provisions of paragraph (d) of § 404.1402 are effective November 1, 1951.

[25 FR 5182, June 10, 1960]

§ 404.1405 If you have been considered a non-vested worker, what are the situations when your railroad industry work will not be covered under Social Security?

(a) *Awards by the Railroad Retirement Board prior to October 30, 1951.* The provisions of § 404.1402(a) shall not apply with respect to the wages and self-employment income of an individual if, prior to October 30, 1951, the Railroad Retirement Board has awarded under the Railroad Retirement Act a retirement annuity to such individual or a survivor annuity with respect to the death of such individual and such retirement or survivor annuity, as the case may be, was payable at the time an application for benefits is filed under the Social Security Act on the basis of the wages and self-employment income of such individual. A pension payable under section 6 of the Railroad Retirement Act of 1937 as in effect prior to the Railroad Retirement Act of 1974, or an annuity paid in a lump sum equal to its commuted value under section 3(i) of the Railroad Retirement Act in effect prior to the Social Security Act of October 30, 1951, is not a "retirement or survivor annuity" for the purpose of this paragraph.

(b) *You continue to work in the railroad industry after establishing entitlement to old-age insurance benefits under section 202(a) of the Social Security Act.* If your service in the railroad industry is used to establish your entitlement to, or to

determine the amount of, your old-age insurance benefits under section 202(a) of the Social Security Act, but you become vested after the effective date of your benefits, your railroad service will no longer be deemed to be in "employment" as defined in section 210 of the Act. Your benefits and any benefits payable to your spouse or child under section 202(b), (c), or (d) of the Act will be terminated with the month preceding the month in which you become a vested worker. However, if you remain insured (*see* subpart B of this part) without the use of your railroad compensation, your benefits will instead be recalculated without using your railroad compensation. The recalculated benefits will be payable beginning with the month in which you become a vested worker. Any monthly benefits paid prior to the month you become a vested worker are deemed to be correct payments.

[18 FR 8694, Dec. 24, 1953, as amended at 25 FR 5182, June 10, 1960; 42 FR 18273, Apr. 6, 1977; 69 FR 5693, Feb. 6, 2004]

§ 404.1406 Eligibility to railroad retirement benefits as a bar to payment of social security benefits.

Notwithstanding the fact that, pursuant to the preceding provisions of this subpart, services rendered by an individual in the railroad industry are in employment, no lump-sum death payment or survivor monthly benefits shall be paid (except as provided in § 404.1407) under the regulations in this part on the basis of such individual's wages and self-employment income if any person, upon filing application therefor, would be entitled to an annuity under section 2 of the Railroad Retirement Act of 1974 or a lump-sum payment under section 6(b) of such Act with respect to the death of that individual; or for periods prior to 1975, would have been entitled to an annuity under section 5 or a lump-sum payment under section 5(f)(1) of the Railroad Retirement Act of 1937 with respect to the death of that individual.

[42 FR 18273, Apr. 6, 1977]