

SEP 8 1978

Director of Retirement Claims

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General Counsel

Effect of RRB/SSA disability freeze conflicts on
windfall eligibility and payment

This is in reply to your memorandum of August 18, 1977, in which you requested my opinion with respect to a question which has arisen interpreting and applying General Counsel's opinion L-77-387.

In General Counsel's opinion L-77-387 it was held that the Board may accept and give effect to a Social Security Administration disability freeze determination if the Social Security Administration determination is not inconsistent with an independent freeze determination made by the Board. The rationale for this decision was that the Board has authority to issue decisions on disability freeze questions and the authority to accept a Social Security Administration decision on the same case is inherent in the Board's independent authority.

The question which you now raise is whether the Board may, in a case where it has granted a disability freeze to a beneficiary and the Social Security Administration has either denied a freeze or granted a freeze with a later onset date than that found by the Board, use the disability freeze and onset date determination it has issued in determining whether the annuitant is vested for and entitled to a windfall benefit. For the reasons set out immediately below, it is my opinion that the Board may not use the disability freeze determination and onset date which it has rendered to, in effect, impute a favorable disability freeze determination by the Social Security Administration where the Administration has, in fact, denied a freeze or established a later onset date.

Director of Retirement Claims

Although entitlement to a windfall benefit is referred to in the Railroad Retirement Act of 1974 as being conditioned, in part, on a beneficiary's being "permanently insured" for benefits under the Social Security Act, the Board has interpreted this language as meaning that a windfall benefit may be paid from the earliest time at which the beneficiary would be eligible for benefits under the Social Security Act. This interpretation is logical and reasonable in view of the purpose for which the windfall benefit was provided. Eligibility, as opposed to entitlement, is easily determined for age and service benefits and a windfall would generally be payable when the beneficiary reaches the minimum age of eligibility. However, eligibility for a disability benefit does not arise merely by attaining a certain age, but is dependent on a finding by the benefit paying agency that the individual is disabled. Thus, a beneficiary cannot be considered eligible for a disability benefit under the Social Security Act where the Social Security Administration has actually determined him not to be disabled. Accordingly, under the Board's interpretation of the windfall benefit provisions, no windfall benefit may be paid to a railroad retirement annuitant at a time when the Social Security Administration has found him not to be disabled under the Social Security Act.

It is also my opinion that the Board may not use its disability freeze determination to reduce the number of quarters of coverage required for vesting for a windfall benefit in a case such as that discussed above. The purpose of the windfall benefit is to protect the interests of persons who had legitimate expectations as to the receipt of benefits under both the Railroad Retirement Act and the Social Security Act; it was not intended to place individuals in a better situation than they would have been under the 1937 Act. If the Board were permitted to, in effect, impose its disability freeze decision on the Social Security Administration, albeit solely for the purpose of determining eligibility to a windfall benefit, the result would be to place individuals not granted a disability freeze by the Social Security Administration in an advantageous position in comparison to what their situations would have been under the 1937 Act.

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