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Director of Retirement Claims

Associate General Counsel

Disability Freeze Periods Established by the Social Security Administration after September 5, 1958 for Career Railroad Workers

In answer to your request of November 17, 1959, it is my opinion that when the Social Security Administration has made a "disability freeze" determination in a particular case the Board may accept that determination for purposes of the "social-security-minimum" provision of section 3(e) of the Railroad Retirement Act, particularly when that determination accords with an earlier disability determination by the Board for disability annuity purposes. In such a case, when a notice of the "freeze" determination will have been made by the Social Security Administration, I see no need for the giving of notice also by the Board.

The provision in section 3(e) of the Railroad Retirement Act authorizing the Board to make "freeze" determinations is in terms of: "[T]he Board shall have the same authority to determine a 'period of disability' within the meaning of section 216(1) of the Social Security Act, with respect to any employee who will . . . (i) have completed ten years of service or (ii) have been awarded an annuity, as the Secretary of Health, Education, and Welfare would have to determine such a period under such section 216(1) [etc.]". Under this provision, obviously, the Board has simply been given the independent authority, equal to that otherwise in the Secretary of Health, Education, and Welfare, to make "freeze" determinations for career railroad workers, but has not <sup>been</sup> given the exclusive authority. This conclusion is supported by the last sentence of section 3(e), as amended, by which an application for the "freeze" filed with the Board "shall be deemed filed as of the same date also with the Secretary of Health, Education, and Welfare for the purpose of determining a 'period of disability' under section 216(1) of the Social Security Act". The provisions of section 5(k)(1) and of section 5(k)(3), as amended by section 2(e) of Public Law 85-927, for the use of railroad credits in determining qualifications for "freeze" determinations by the Social Security Administration and for the transfer between the agencies of reports of records of various information, including "determinations under section 3(e) of this Act [the Railroad Retirement Act] or section 216(1) of the Social Security Act, of periods of disability within the meaning of such section 216(1)" but providing

Director of Retirement Claims

that reports of such determinations are not to be conclusive in adjudication by the other agency as they are in the case of other matters, show the same thing. And see Senate Report No. 2364, 85th Congress, pages 4, 5, and 14; and House Report No. 2641, 85th Congress, pages 5, 6, and 15.

The grant of this authority, however, does not necessarily mean that the Board need make a completely independent "freeze" determination in a particular case without regard to a determination made by the Social Security Administration in the very same case. The findings of the Social Security Administration are important, particularly since they concern the administration of the very provisions of law which the Board must apply in making "freeze" determinations for adjudications under section 3(e) of the Railroad Retirement Act. Moreover, as pointed out in Mr. Habermeyer's letter of June 16, 1958, to the Subcommittee on Railroad Retirement of the Senate Committee on Labor and Public Welfare, the Board, in making "freeze" determinations "would, of necessity, comply with all the standards established by that section [216(i) of the Social Security Act] just as would the Social Security Administration itself, and, of course, these standards would not be different between the two agencies". See Senate Hearings on S.2020, 85th Congress, Second Session, page 34. Accordingly, and since the purpose of giving the two agencies concurrent jurisdiction over "freeze" determinations was to "add to efficiency and economy of administration" (Senate Report No. 2364, 85th Congress, page 5; House Report No. 2641, 85th Congress, page 6), and that would be the effect of your proposal, I think that the Board could, as you have proposed, accept the "freeze" determination by the Social Security Administration without further development in any case, if that is not inconsistent with a disability determination made independently by the Board for disability annuity purposes.

I see no need for the Board to give formal notice to an applicant of the determination in such a case if the Social Security Administration has done so, since any failure to give immediate notice would operate only to extend the applicant's period for seeking judicial review from the Board's determination on the "freeze". It would not do so, however, in connection with the "freeze" determination of the Social Security Administration; nor would it affect any judicial review of a disability or survivor annuity decision. Consequently, the applicant would not suffer any disadvantage from the non-receipt of notice and the Board's administration would be eased; no other consideration would be relevant in the giving or not giving of such notice before the final decision on the annuity claim. Cf. Associate General Counsel's opinion to the Board of September 9, 1958 (Analysis of Public Law 85-927).

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cc: Chief Executive Officer

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