Digest

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Board Member Speirs

L70-142

Associate General Counsel

The Effect of Section 3(j)(4) of the Railroad Retirement Act on Employees who have been Awarded a Supplemental Annuity

In response to your oral request, it is my opinion that a retired employee who is receiving a supplemental annuity will permanently disqualify himself for all future supplemental annuity payments if he renders any service as an employee for compensation after the supplemental annuity closing date.

My opinion is in accord with the questions and answers of May 1, 1970, on supplemental annuity closing dates where an example appears of an individual receiving a supplemental annuity who was 66 years old in March 1970 and, thus, has a closing date of January 31, 1972. This conclusion is based on section 3(j)(4) of the Railroad Retirement Act (45 U.S.C. §228c(j)(4)) which was added to the Act by Public Law 91-215. That section states in part:

> "(4) Notwithstanding any other provision of this Act, no individual shall be entitled to a supplemental annuity provided by this subsection for any period after he renders any service as an employee for compensation after his supplemental annuity closing date . . ."

The above interpretation of the quoted provision of the law is supported by language in House Report No. 91-866, which is the conference report on H.R. 13300, at page 5:

> ". . .[A]ny individual who renders service as an employee for compensation after the 'supplemental annuity closing date' applicable to him will not be entitled to a supplemental annuity, or, if he has already qualified for a supplemental annuity and renders such service after such date, will cease to be entitled to such an annuity for periods after he renders such service . . ." (Emphasis supplied.)

Memorandum to
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There seems to be no doubt that the underlined language refers to a case where a supplemental annuity has already been awarded. The distinction made between the individual referred to in the first clause and the individual in the second clause, together with the use of the word "cease" in the quotation above, indicate very strongly that the reference in the second clause is to an individual who is actually receiving a supplemental annuity. To qualify for a supplemental annuity, an individual must have been awarded a regular annuity. Section 3(j)(1) of the Act provides that an individual "who is entitled to the payment of an annuity under section 2 of this Act" shall be entitled to a supplemental annuity. He can be entitled to payment of the regular annuity only after his retirement from service and, therefore, only after such retirement he is "qualified" for the supplemental annuity.

The conclusion reached here is consistent with the Senate version of H.R. 13300 which would have only reduced the annuity because of railroad work after the year in which age 65 is attained. Report No. 91-690 on the Senate version expressly states (p. 8) that an individual who returns to work after he has been awarded a supplemental annuity would have such annuity reduced.

Moreover, the conclusion is supported by the circumstance that otherwise it would be possible for some individuals, with cooperation from their employers, to circumvent the law simply by retiring before the supplemental annuity closing date, taking a supplemental annuity, and then returning to compensated service.

Finally, there is nothing in the language of section 3(j)(4) of the Act or the legislative history of H.R. 13300, Public Law 91-215, on which to draw a contrary inference or implication.

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