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The Director of Employment and Claims

The Associate General Counsel

Your Memorandum of September 10, 1952
Effect of Payments Under the Veterans' Readjustment
Assistance Act of 1952 on the Payment of Benefits
Under the Railroad Unemployment Insurance Act

Your memorandum presents the question whether payments made pursuant to Section 408(b), in Title IV of the Veterans' Readjustment Assistance Act of 1952, are "unemployment . . . benefits under an unemployment . . . compensation law . . . of the United States" within the meaning of Section 4(a-1)(ii) of the Railroad Unemployment Insurance Act.

Section 4(a-1)(ii) of the Railroad Unemployment Insurance Act provides that, subject to certain provisos, there shall not be considered as a day of unemployment or as a day of sickness, with respect to any employee, "any day in any period with respect to which the Board finds that he is receiving or will have received annuity payments or pensions under the Railroad Retirement Act of 1935 or the Railroad Retirement Act of 1937, or insurance benefits under title II of the Social Security Act, or unemployment, maternity, or sickness benefits under an unemployment, maternity, or sickness compensation law of any State or of the United States other than this Act, or any other social-insurance payments under a law of any State or of the United States."

Title IV of the Veterans' Readjustment Assistance Act of 1952 provides for certain payments to unemployed veterans who have served in the armed forces of the United States on or after June 27, 1950. It is stated in the Act (Section 102) that these payments "are for the purpose of assisting in the readjustment of such persons from military to civilian life." They are to be made under agreements entered into by the Secretary of Labor with agencies administering unemployment compensation laws; in the absence of such an agreement, the payments to the veteran are to be made by the Secretary of Labor.

Title IV provides for payments at the rate of \$26 a week for as many as 26 weeks.^{1/} However, no payment may be made for periods during

^{1/} The payments may be made for weeks of unemployment occurring after the ninetieth day following the enactment of the Veterans' Readjustment

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which a veteran is eligible for benefits under any Federal or State unemployment compensation law in an amount equal to or in excess of \$26 a week, or for periods during which he would be eligible for such benefits if it were not for the provisions of Title IV or any action taken by him thereunder.^{2/} Cases involving eligibility for benefits of less than \$26 a week under a Federal or State unemployment compensation law are governed by the provisions of Section 408(b) of Title IV. This Section provides that a veteran who is eligible, or would be eligible if it were not for the provisions of Title IV or any action taken by him thereunder, to receive benefits at a rate of less than \$26 a week under any Federal or State unemployment compensation law, may elect to receive payments under Title IV. If the veteran so elects, however, his payments under Title IV must be reduced by the amount of the Federal or State unemployment benefits for which he either is eligible or would be eligible if it were not for the provisions of Title IV or action taken thereunder.

If the question stated in the first paragraph of this opinion is answered in the affirmative, that is, if payments made pursuant to Section 408(b) of Title IV are held to be "unemployment benefits" within the meaning of Section 4(a-1)(ii) of the Unemployment Insurance Act, a veteran could not receive any railroad unemployment benefits for days in periods with respect to which he receives any payments, however small, under Section 408(b); the receipt of the latter would prevent him from being eligible for the former. Moreover, the veteran's payments under Section 408(b) could not be increased to make up for the railroad unemployment benefits lost as a result of such a holding with regard to the application of Section 4(a-1)(ii); Section 408(b) requires that the Title IV payments be reduced by the amount of the railroad unemployment benefits for which the veteran would have been eligible if it were not for Section 408(b) or action taken thereunder. For example, under such a holding a veteran qualified for railroad unemployment benefits of \$22.50 a week would be rendered ineligible for such benefits if he were to accept the \$3.50 to which he would be entitled for that week under Section 408(b), this being the difference between \$26 and \$22.50; moreover, he could not receive any amount greater than \$3.50 under Section 408(b), since, if it had not been for that Section, he would have been entitled to railroad benefits in the sum of \$22.50, and he can receive under Section 408(b) only the amount by which \$26 exceeds that sum.

It is apparent from the provisions of Title IV that Congress wished to assure unemployed veterans a minimum income of \$26 a week for

1/ (continued)

Assistance Act of 1952 (July 16, 1952), and not commencing more than five years after a date determined by Presidential proclamation or concurrent resolution of the Congress.

^{2/} A veteran is also not entitled to receive the payments during a period covered by mustering-out pay or a period for which he receives certain allowances specified in the Act.

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at least 26 weeks to assist them in their readjustment from military to civilian life. In cases in which payments to which the veteran might be entitled under a Federal or State unemployment compensation law would be less than \$26 a week, Section 408(b) provides for supplementing these benefits by paying the veteran the difference. These supplemental payments will ordinarily be small; they may amount to as little as \$1 a week. It is my opinion that payments of this type are not "unemployment benefits" within the meaning of Section 4(a-1)(ii) of the Railroad Unemployment Insurance Act. Under the provisions of that Section an individual may not ordinarily receive railroad unemployment insurance benefits for days in periods for which he receives certain social insurance payments. Some types of social insurance payments are specifically mentioned in Section 4(a-1)(ii); among them are "unemployment benefits". Moreover, "unemployment benefits" are specifically excepted from the operation of the provision. This means that an individual receiving such payments is not entitled to any benefits whatever under the Railroad Unemployment Insurance Act. He is, for example, not entitled to the advantages of the second proviso of Section 4(a-1)(ii), under which individuals receiving certain types of social insurance payments from other sources may be entitled to benefits under the Unemployment Insurance Act reduced by the amount of the other payments. It seems clear that, as used in Section 4(a-1)(ii), the term "unemployment benefits" was not meant to include payments such as the supplemental, often insubstantial, payments made under Section 408(b) of Title IV. Payments under that Section are not "unemployment benefits" within the meaning of Section 4(a-1)(ii); they are merely amounts paid to eligible veterans to supplement "unemployment benefits",^{3/} and the payment of such amounts along with benefits under the Unemployment Insurance Act does not give rise to the

^{3/} Payments under Section 408(b) of Title IV cannot be anything other than supplemental; in this and other respects they are unlike the "readjustment allowances" paid under Title V of the Servicemen's Readjustment Act of 1944. Although the payments provided for in the 1944 Act were called "readjustment allowances", they had all the attributes of "unemployment benefits", and it was held in Opinion 1-45-373 that they were "unemployment benefits" within the meaning of Section 4(a)(v) of the Unemployment Insurance Act (now Section 4(a-1)(ii)). Payments under Section 408(b) of the 1952 Act, on the other hand, are, for the reasons stated in this opinion, not "unemployment benefits" within the meaning of Section 4(a-1)(ii).

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duplication of benefits against which the provisions of Section 4(a-1)
(11) are directed.4/

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cc: Chief Executive Officer

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4/ As an example of rulings that the receipt of payments under Section 408(b) does not prevent an individual from receiving benefits under a state unemployment compensation law, see Opinion of the Attorney General of Connecticut, dated September 8, 1952, reported in 2 CCH Unemployment Insurance Rep. sec. 8316. The Attorney General wrote in part as follows: "Congress has made it very clear that it did not intend to duplicate benefits payable under State laws, but merely to supplement such benefits where necessary . . .".