301 Provisions of the Regulation

See Part 320 of the Railroad Retirement Board's Regulations.

302 Determinations by Adjudicating Office

The Railroad Retirement Board's regulations provide that each claim for benefits under the Railroad Unemployment Insurance Act will be adjudicated and an initial determination with respect to the claim made by an adjudicating office. "Adjudicating office" is defined as any subordinate unit of the Railroad Retirement Board that may be authorized to make initial determinations and reconsideration decisions. Offices that have been authorized to make initial determinations and are therefore adjudicating offices include district offices, the Bureau of Field Service (BFS) and the Sickness and Unemployment Benefits Section (SUBS) in Operations. The extent to which these offices may make determinations is stated in various articles of the AIM and is summarized below.

303 Authority to Make Determinations

303.01 Office of Programs – Policy and Systems (P&S)

Policy and Systems (P&S) in the Office of Programs formulates and publishes adjudication policy in the form of adjudication instructions and opinions. Each adjudicating office making determinations on claims under the Railroad Unemployment Insurance Act is to be guided by the adjudication instructions contained in the Adjudication Instruction Manual (AIM) and the opinions of P&S.

Although P&S is authorized to make determinations on all issues, the Director of Policy and Systems will normally make initial determinations only on the following issues:

1. Whether a strike or work stoppage against a railroad employer is a “legal” strike, and

2. Whether a plan submitted by an employer or company qualifies as a nongovernmental plan for employment or sickness.

303.02 District Office

District offices are authorized to make determinations as to:

1. Availability for work,

2. Voluntary leaving of work,

3. Failure to accept or apply for work or report to an employment office,

400 Provisions of the Act

400.01 Base year

Section 1(n) of the Act provides that the term "base year" means:

"...the completed calendar year immediately preceding the beginning of the benefit year."

400.02 Benefit year

Section 1(m) of the Act provides, in part, that the term "benefit year" means:

"...the twelve-month period beginning July 1 of any year and ending June 30 of the next year,...."

400.03 Qualifying condition

Section 3 of the Railroad Unemployment Insurance Act provides that:

"An employee shall be a qualified employee if the Board finds that his compensation with respect to the base year will have been not less than 2.5 times the monthly compensation base for months in such base year as computed under section 1(i) of this Act, and, if such employee has had no compensation prior to such year, that he will have had compensation with respect to each of not less than five months in such year."

400.04 Compensation

Section 1(i)(1) of the Act provides, in part, that the term "compensation" means:

"...any form of money remuneration, including pay for time lost but excluding tips, paid for services rendered as an employee to one or more employers, or as an employee representative, except that in computing the compensation paid to any employee, no part of any month's compensation in excess of the monthly compensation base (as defined in subdivision (2)) for any month shall be recognized. Solely for the purpose of determining the compensation received by an employee in a base year, the term 'compensation' shall include any separation allowance or subsistence allowance paid under any benefit schedule provided under section 701 of title VII of the Regional Rail Reorganization Act of 1973 and any termination allowance paid under section 702 of that Act, but does not include any other benefits payable under that title. The total amount of any subsistence allowance payable under a benefit schedule provided pursuant to section 701 of the Regional Rail Reorganization Act of 1973 shall be considered as being compensation in the month in which the employee first timely filed a claim for such an allowance...."

400.05 Monthly Compensation Base

Section 1(i)(2) of the Act provides:

"(2) MONTHLY COMPENSATION BASE. --

A. IN GENERAL. -- For purposes of subdivision (1), the term 'monthly compensation base' means the amount --

(i) of $400 for calendar months before January 1, 1984;

(ii) of $600 for calendar months after December 31, 1983 and before January 1, 1989; and

(iii) computed under subparagraph (B) for months after December 31, 1988.

B. COMPUTATION.--

(i) IN GENERAL. -- The amount of the monthly compensation base for each calendar year beginning after December 31, 1988, is the greater of --

I. $600; or

II. the amount, as rounded under clause (iii) if applicable, computed under the formula:

$$B = 600 \times \left(1 + \frac{A - 37{,}800}{56{,}700} \right)$$

(ii) MEANING OF SYMBOLS. -- For the purposes of the formula in clause (i) --

I. 'B' is the dollar amount of the monthly compensation base; and

II. 'A' is the amount of the applicable base with respect to tier I taxes, for the calendar year for which the monthly compensation base is being computed, as determined under section 3231(e)(2) of the Internal Revenue Code of 1986.

(iii) ROUNDING RULE. -- If the monthly compensation base computed under this formula is not a multiple of $5, it shall be rounded to the nearest multiple of $5, with such rounding being upward in the event the amount computed is equidistant between two multiples of $5."

Example: The tier I base for 2014 is $117,000. Therefore, the monthly compensation base (B) for 2014 is:

$$B = 600 \times \left(1 + \frac{117{,}000 - 37{,}800}{56{,}700} \right) = \$1{,}438.10$$

Which rounds to $1,440.

400.06 Daily benefit rate

Sections 2(a)(2) and 2(a)(3) of the Act provide, in part, that:

"(2) The daily benefit rate with respect to any such employee for such day of unemployment or sickness shall be in an amount equal to 60 per centum of the daily rate of compensation for the employee's last employment in which he engaged for an employer in the base year, but not less than $12.70: Provided, however, that for registration periods beginning after... June 30, 1976, but before July 1, 1988, such amount shall not exceed $25.00 per day of such unemployment or sickness, that for registration periods beginning after June 30, 1988, but before July 1, 1989, such amount shall not exceed $30.00 per day ... and that for registration periods beginning after June 30, 1989, such amount shall not exceed the maximum daily benefit rate provided in paragraph (3) of this subsection. The daily rate of compensation referred to in this paragraph shall be determined by the Board on the basis of information furnished to the Board by the employee, his employer, or both."

"(3) The maximum daily benefit rate computed by the Board under section 12(r)(2) shall be the product of the monthly compensation base, as computed under section 1(i)(2) for the base year immediately preceding the beginning of the benefit year, multiplied by 5 percent. If the maximum daily benefit rate so computed is not a multiple of $1, it shall be rounded down to the nearest multiple of &1.".

Note: The current computation for the maximum daily benefit rate is effective with registration periods beginning on or after October 9, 1996; the date of enactment of the RUIA amendments. Subsequent increases in the maximum rate will apply to registration periods beginning on and after July 1 of the applicable benefit

year. The amendments make no change to the formula for calculating daily benefit rates (60 percent of the employee's last daily pay rate in the base year), nor to the minimum rate of $12.70.

Prior to the 1996 amendments, the maximum daily benefit rate increased as the average national wage level increased. The rate of increase in the maximum daily benefit rate reflected approximately two-thirds of the rate of increase in the tier I railroad retirement compensation base, but the maximum benefit rate could not be less than $30.00. The following table shows past maximum daily benefit rates for tier I compensation bases up to $77,999.

Tier 1 Tax Base

For Calendar Year in Which BY Begins	Maximum DBR for the BY
$48,000 - $53,999	$31.00
54,000 - 59,999	33.00
60,000 - 65,999	36.00

401 Provisions of the Regulations

Regulations concerning the establishment of an applicant's rights to benefits are contained in the following parts of Title 20, Chapter II of the code of Federal Regulations:

Part 302 Qualified Employee

Part 330 Determination of Daily Benefit Rates

402 Name and Social Security Number (SSN)

402.01 When adjudication is required

Each application for benefits is used to establish or update a master record in the bureau's computer system for processing applications and claims for benefits. The master record that is established is for the appropriate benefit year indicated by either the last day worked, first day sick or injured, or other coding entered on the application. If an application is the first one for the benefit year, the computer program calls for a wage record for the applicable base year and attempts to match the wage record with the newly-established benefit year record. As part of the match, the program first checks whether the social security numbers and names agree. In most cases there will be no question concerning the name or social security number shown on the application. However, the name and social

security number that should be shown on the master record must be determined in the following circumstances:

a. The SSN shown on the application does not match any SSN recorded in the RRB's wage records, or it matches an SSN which has been found to be incorrect.

b. The name shown on the application is not the same as the name in the RRB's wage records for the SSN shown on the application.

c. The year of birth shown on the application differs by more than 15 years from the year of birth recorded in the wage record for the matching name and SSN.

d. The name shown on a claim is not the same as the name in the record for the SSN shown on the claim.

e. The SSN shown on a claim does not match any SSN recorded in the record.

f. There is other information that a name or SSN in the record or on an application or claim may not be correct.

402.02 Immediate identification of name

a. Applicant

An applicant may be identified as the person whose wage record has been reported by the Compensation and Employer Service Center (CESC) under the SSN shown on the application if there is no name discrepancy and there is not more than 15 years difference between the year of birth shown on the application and the year of birth recorded in the wage record. It is considered that there is no name discrepancy if the name entered in at least one item on the application agrees with one initial and the last name as shown on the wage record.

b. Claimant

A claimant may be identified as the person whose benefit record has been established for the SSN shown on the claim if the name or signature on the claim agrees with one initial and the last name established in the benefit record.

402.03 Resolution of differences in name

Differences such as those listed below between the name shown in the wage record or in the benefit record and the name on an application or claim are not to be considered as identification discrepancies. Differences not explained below are to be resolved by asking the claimant for a copy of any official paper or judicial process documenting the apparent name change. Not all claimants will

have such documentation, however, because it is not legally required. If the claimant lacks official documentation, he or she must furnish a signed statement of former and current names. If neither name matches the name in the wage record, brief the case for an opinion.

a. One name includes "Jr." or "Sr." while the other does not, and there is less than 15 years difference between the year of birth as given by the applicant or claimant and the year of birth recorded in the wage record or the benefit record.

b. One name is a "foreign" name and the other is obviously an Anglicized form of that name.

c. The names differ in spelling, but are the same in pronunciation, such as Wolf and Wolfe, Waroski and Warosky.

d. The difference is in the last name of a female employee. If, in this circumstance, there is no discrepancy in other identifying data, it may be assumed that the name difference is due to marriage or divorce.

e. The name difference is explained by information that:

   1. the name shown on reports of compensation is a "payroll name", or

   2. the name in the RRB's records is not being disclosed to an employer.

f. The name difference is due to the use of part of the full last name as the surname, as for example, Garcia or Godoy for Garcia Godoy.

402.04 Correction of social security numbers

a. Application

When an application is received with a Form BA-6 or other compensation record issued by CESC and the social security number shown on such record is not the same as the social security number on the application, the social security number on the application is to be corrected to agree with the social security number on such record, provided, of course, that a difference in name or other identifying information does not indicate that such record is not the applicant's record.

b. Claim

When a non-preprinted claim shows an incorrect SSN and is received with an official record showing the claimant's social security number, or is matched with a previously established record, the social security number on the claim is to be corrected and the claim is to be processed under the correct SSN.

c. Incorrect or "Impossible" SSN

"Impossible" social security numbers include any number having an area number (first three digits) beginning with "8" or "9". When an application or claim shows an incorrect or "impossible" SSN, actions are to be taken to determine the correct number. The number on the application or claim is to be corrected before determining the person's rights to benefits on the basis of the application or claim.

402.05 Discrepancy disclosed by wage record report

When the SSN shown on an application for benefits matches an SSN for which a benefit record has been established, the record is updated (unless the name on the application is not the same as the name in the record). In this situation, there is no question about the SSN. When the SSN shown on an application for benefits does not match any SSN for which a benefit record has been set up, a new record is set up and the wage record for such number is called for. A determination with respect to the SSN shown on the application becomes necessary if the report of the wage record shows that the SSN is incorrect or inactive, or there is no wage record for such SSN. In this situation, action is to be taken to find out what the applicant's correct SSN is. The benefit record is then established under such SSN, and the record incorrectly set up is deleted.

402.06 Number to be established

The SSN used for a person's benefit record is to be the SSN of the person's wage record, if any, in CESC. Where it is found that more than one number has been assigned to a person, the number designated as "active" by CESC is to be used. If it appears that CESC has no record for an applicant, the SSN furnished by the applicant is to be used and a determination made as to whether the applicant earned qualifying base year compensation.

402.07 Change in number

Once an applicant's benefit rights have been determined, the benefit record under the number established is not to be deleted and set up under another SSN, except upon receipt of advice from CESC that such other number is the applicant's number or upon discovery of a clerical error in establishing the number in the benefit record.

403 Base Year Compensation

The amount of base year compensation is to be determined from the sources of information described in the following subsections.

403.01 Wage certification file

This file is furnished by CESC in response to record requests from SUBS. The wage certification file shows, for each wage record request, compensation and service months for the base year requested, service months for the base year preceding the base year requested, and total compensation and service months creditable from 1937 through the base year requested. The wage certification file in nearly all cases also shows the employer's report of the employee's daily rate of compensation for the last employment in the base year requested.

The file also contains the following discrepancy codes:

- 0 – no discrepancy
- 2 – SSN is inactive
- 3 – there is no wage record for the SSN
- 4 – there is a wage record for the SSN, but it shows no base year compensation
- 5 – local lodge earnings are included in the record of base year wages

403.02 Form UI-9, Applicant's Statement of Employment and Wages,

when completed by CESC shows base year compensation as previously established in RRB records or as established on the basis of a corrected report from the employer.

403.03 Form UI-24, Request for Wage Record Information Certifications

of base year compensation on Form UI-24 are made by CESC in response to requests by the division of program operations, SUBS.

403.04 Forms UI-41 and UI-41a, Supplemental Report of Service or Compensation,

is used to obtain reports from employers of "lag" service months or compensation not available in CESC. This form may be accepted as valid certification of service and compensation provided it is signed by the contact official or is otherwise validated to show that it cleared through proper employer channels.

403.05 Form BA-6, Certificate of Service Months and Compensation

Form BA-6 shows base year service months and compensation, and contains an RUIA eligibility code. This code follows the birth date and is shown as:

"Y" - qualified for RUIA benefits

"N" - not qualified for RUIA benefits

403.06 Notice to applicant

Applicants who did not earn qualifying compensation in covered employment in the base year are to be notified by sending:

Form Letter ID-4,

if there is no record of any earnings under the SSN shown on the application or if there is a name discrepancy.

Form Letter ID-4s,

if the applicant has service only in the base year.

Form Letter ID-4f,

with UI-9, if an applicant for unemployment benefits has less than 10 years of service and has exhausted normal unemployment benefits in the preceding benefit year, but no extended unemployment benefit period was established.

Form Letter ID-4u,

with Form UI-9, if an applicant for unemployment benefits was not an unemployment claimant in the preceding benefit year, or if the applicant was a claimant in the preceding benefit year and an extended unemployment benefit period was established.

Form Letter ID-4y,

with Form UI-9, if an applicant for sickness benefits has less than 10 years of service and exhausted normal sickness benefits in the preceding benefit year, but no extended sickness benefit period was established.

Form Letter ID-4x,

with Form UI-9, if an applicant for sickness benefits was not a sickness benefit claimant in the preceding benefit year, or if the applicant was a claimant in the preceding benefit year and an extended sickness benefit period was established.

Form Letter ID-32o,

with Form UI-9, if an extended unemployment benefit period for seven registration periods is being established. (See AIM-32, sections 3201-3206.)

Form Letter ID-32u,

if an extended unemployment benefit period for 13 registration periods is being established. (See AIM-32, sections 3201-3206.)

Form Letter ID-32n,

with Form UI-9, if an extended sickness benefit period for seven registration periods is being established. (See AIM-32, sections 3221-3227)

Form Letter ID-32t,

if an extended sickness benefit period for 13 registration periods is being established. (See AIM-32, sections 3221-3227)

404 Daily Rate of Compensation

404.01 General

The claimant's daily rate of compensation for purposes of determining his or her daily benefit rate is the amount of his or her pay, including any cost-of-living allowance, for a basic day's work, excluding overtime, bonuses, deductions, or other extra payments or allowances. If the wage certification file does not contain the claimant's daily rate of compensation, Form UI-1e, Request for Pay Rate Information, is prepared by the computer to be sent to the claimant.

404.02 Mileage-rated employees

The work agreement of a mileage-rated employee specifies the number of miles that make a basic day for his or her occupation and class of service.

404.03 No service performed

If an employee actually performed no service in the base year but received qualifying compensation, such as vacation pay or pay for time lost, for days in the base year, the daily rate of compensation is considered to be the rate for the employment on which the qualifying base year compensation was based.

404.04 Casual or temporary work

If an employee's last covered unemployment in the base year was casual or temporary work, performed while he or she was on furlough from other employment in which he or she engaged in the base year, a report of the employee's last rate of pay in the base year for such other employment may be used to determine the daily benefit rate.

404.05 Commission or piece-rate earnings

a. General

Necessary information about commission or piece-rate earnings may be requested directly from the claimant and employer or through the district office. All employees' reports of compensation based on commission or piece-rate earnings must be verified if such compensation is taken into account in determining the daily benefit rate. The following do not apply in cases where a regular assignment or a work restriction places an unusual limit on the working days.

b. Commission earnings

The daily rate of compensation earned on a commission basis is to be considered to be the employee's net commission earnings in the last month worked (or last two semi-monthly pay periods, depending on the basis of payment) divided by the number of days worked in the period. If the number of days worked is not known, it should be considered that the employee worked on each day in the period. If computation on this basis indicates a daily rate of pay that yields less than the maximum daily benefit rate, information as to the number of days worked is to be obtained. Commission earnings cannot ordinarily be attributed to tours of duty or to a specific number of basic days or hours worked. Consequently, there is no provision for excluding any amounts earned for time worked over and above a "basic day". However, only "net" commissions should be considered. Any amounts paid to the employee to compensate him or her for expenses incurred (such as pay of an assistant, rental of equipment, etc.) should be excluded. A request for opinion should be submitted to the division of program policy, planning and evaluation in any instance where the number of days worked is considerably less than the number of work days in the period.

c. Piece-rate (including tonnage payments)

The daily rate of compensation for piece-work is to be considered to be the employee's average earnings per basic day worked during the last two pay periods worked in the base year. A basic day is considered to be eight hours in the absence of information that some other tour of duty constitutes a basic day. This means that compensation for piece-work (including tonnage work) earned on overtime is to be excluded in computing a daily rate of compensation.

Example 1: A freight handler worked ten hours per day on a gang tonnage basis. Seventy tons of freight were handled. The tonnage handled in eight hours would be 56. The employee's pay for the basic day, then, would be computed on the basis of 56 tons.

Example 2: A billing machine operator's rate of pay was $20.00 per hundred way-bills completed. During the last two pay periods in the base year he worked

20 days, eight hours a day, and was paid $1,600.00. His daily rate of pay, then, was $1,600.00 divided by 20 or $80.00.

Example 3: Same as Example 2 except that during the two pay periods the employee worked 20 days straight time (160 hours) and ten hours overtime. He completed 8500 way-bills but only 8000 are attributed to the 160 hours straight time, or an average of 400 per basic day worked. His daily rate of pay, then, is computed to be four times the rate per hundred, or $80.00.

405 Daily Benefit Rate

405.01 Initial determination

Daily benefit rates are to be determined as follows:

a. If the wage certification file contains the claimant's daily rate of compensation for the base year, the daily benefit rate is set at 60 percent of such rate of compensation, subject to the minimum and maximum daily benefit rates specified in section 2(a) of the Act.

b. If the wage certification file does not contain the claimant's daily rate of compensation, the claimant's daily benefit rate is to be determined on the basis of pay rate information reported on Form UI-1e, provided that the pay rate report is acceptable. (Information is provided below on what constitutes an acceptable pay rate report.)

c. If the wage certification file does not contain the claimant's daily rate of compensation and no acceptable pay rate report is received, the daily benefit rate is $12.70. The rate is to be increased, here appropriate, upon receipt of an acceptable report of the claimant's last daily rate of compensation in the base year. If the rate of pay reported was not verified, the employer must be given the opportunity to furnish a corrected rate of pay.

   A pay rate report is acceptable if:

   1. the claimant has furnished the information called for by the pay rate report form, or

   2. the rate of compensation reported by the claimant has been verified by the employer.

405.02 Redetermination

A redetermination of an employee's daily benefit rate should be made in the following circumstances:

a. Whenever a corrected report of pay rate received from the employer differs from the claimant's report.

b. Whenever an acceptable report of pay rate is received after the daily benefit rate has been set at the minimum daily benefit rate.

c. Where a daily benefit rate has been established on the basis of a verified pay rate report, a second verified pay rate report is received and the last verified rate is determined to be correct.

405.03 Protest of initial determination

If a claimant raises a question about the correctness of his or her daily benefit rate, the evidence upon which the rate was based should be reviewed. If the protest can be resolved from a review of the evidence of record, the daily benefit rate is to be corrected, if necessary, and the claimant advised of the action taken.

If the protest cannot be resolved, send the claimant a Form Letter ID-4g with Form UI-1g preprinted on the back. Upon return of Form UI-1g, determine whether the daily benefit rate can be changed on the basis of the information reported in Part A of the form. If so, make the necessary change and advise the claimant. If not, transmit the Form UI-1g to the employer for completion of Part B. Send the form to the Imaging system.

Upon receipt of Form UI-1g with Part B completed by the claimant's employer, advise the claimant of the information received and take whatever action may be necessary to correct the daily benefit rate. If no increase in his or her daily benefit rate is made, advise the claimant of his or her appeal rights (see AIM-29).

406 Form UI-9, Applicant's Statement of Employment and Wages

406.01 Use

Form UI-9 (Exhibit C) is designed to assist the division of program operations and CESC in identifying applicants, in resolving discrepancies, and in determining base year compensation. The form is used under any of the following circumstances:

a. The name to be established in the benefit record cannot be determined from information available to the division of program operations.

b. The social security number to be established in the benefit record cannot be determined from information available to the division of program operations.

c. An applicant states that his or her base year compensation is not correctly shown on RRB records.

d. The RRB has no record that an applicant has base year compensation or the RRB's records indicate that an applicant is not a qualified employee.

406.02 Acceptability of Form UI-9

An applicant's statement on Form UI-9 is to be considered to be acceptable if:

a. All information called for has been furnished in the items on Form UI-9 which are material to the certification required; or

b. It is apparent, after efforts have been made to obtain additional information, that the applicant cannot furnish additional information.

406.03 Processing Form UI-9

When an applicant has furnished, on Form UI-9, a statement of his or her employment and wages in the base year, the statement is to be examined and further action taken as set forth below. Any supporting evidence furnished by the applicant should be returned when determination of benefit rights is completed.

The Form UI-9 is to be sent to CESC in the following circumstances:

a. The division of program operations is not able to resolve a question of identity.

b. There is evidence that the applicant's base year compensation has been recorded under two or more social security numbers.

c. There is no name or SSN discrepancy, but the applicant shows base year earnings that are not recorded in the wage records of CESC.

406.04 Notice to applicant

a. Wages over the monthly compensation base in any month

If the difference between the amount shown on Form UI-9 and the amount shown on RRB records may be accounted for by inclusion on Form UI-9 of wages in excess of the monthly compensation base in any month, a letter should be sent to the applicant explaining that wages in excess of the monthly base cannot be counted in determining his or her base year compensation.

b. Non-covered employment

If the applicant's statement includes wages from a person or company that is listed in the Employer Status List as "N.C.", and if RRB records do not show other qualifying base year wages, the applicant should be informed that such wages are not creditable under the Railroad Unemployment Insurance Act and

he or she should inquire about rights to benefits under the unemployment compensation law of his or her State.

407 Other Notifications

407.01 Notification to applicant

When processing applications for benefits, the computer program will generate Form Letter ID-4N to an applicant for unemployment benefits and ID-4M to an applicant for sickness benefits. Among other things, the letter states that the Railroad Retirement Board is required by law to notify the claimant's employer each time a claim for benefits is filed. The employer has a right to submit information about the claim before we make a determination as to benefits payable. The claimant is further notified that the employer is allowed 7 calendar days to provide this information.

407.02 Notification to employer

When processing applications and claims for unemployment benefits and claims for sickness benefits, the computer program generates a notice to the base year employer(s), and to the most recent employer if different, requesting relevant information. The Railroad Retirement Board is capable of providing notice of claims for benefits either through an electronic data interchange or printed notices. Use of electronic data interchange ensures timely receipt of notices and allows the RRB to take prompt action on information about claims prior to the payment of benefits. In the absence of arrangements to receive information electronically, notice of applications and claims is made by letter. Notices are sent on a daily basis. After the 7 calendar day period allowed for employer comment, claims are processed and the employers are notified of the determinations electronically or by Form Letter ID-4E.

408 Authority to Make Determinations

Personnel in Operations - Sickness and Unemployment Benefits Section are authorized to resolve discrepancies as to name and social security number as provided in this article and to make determinations as to employees' last daily rates of compensation and daily benefit rates.

Appendices

Appendix A - Summary of Rates and Compensation Amounts

Maximum Daily Benefit Rate

Rate	Effective Date	Rate	Effective Date
$ 30.00	July 1, 1988	$61.00	July 1, 2008
$ 31.00	July 1, 1989	$61.00	July 1, 2008

$ 31.00	July 1, 1990	$64.00	July 1, 2009
$ 31.00	July 1, 1991	$66.00	July 1, 2010
$ 33.00	July 1, 1992	$66.00	July 1, 2011
$ 33.00	July 1, 1993	$66.00	July 1, 2012
$ 36.00	July 1, 1994	$68.00	July 1, 2013
$ 36.00	July 1, 1995	$70.00	July 1, 2014
$ 36.00	July 1, 1996	$72.00	July 1, 2015
$ 42.00	Oct 9, 1996	$72.00	July 1, 2016
$ 43.00	July 1, 1997	$72.00	July 1, 2017
$ 44.00	July 1, 1998	$77.00	July 1, 2018
$ 46.00	July 1, 1999	$78.00	July 1, 2019
$ 48.00	July 1, 2000		
$ 50.00	July 1, 2001		
$ 52.00	July 1, 2002		
$ 55.00	July 1, 2003		
$ 56.00	July 1, 2004		
$ 56.00	July 1, 2005		
$ 57.00	July 1, 2006		
$ 59.00	July 1, 2007		

Maximum Monthly Compensation Base

Compensation	Base	Compensation	Base Year
$ 600	1988	$ 1,195	2006
$ 710	1989	$ 1,230	2007
$ 745	1990	$ 1,280	2008
$ 765	1991	$ 1,330	2009
$ 785	1992	$ 1,330	2010
$ 810	1993	$ 1,330	2011
$ 840	1994	$ 1,365	2012
$ 850	1995	$1,405	2013
$ 865	1996	$1,440	2014
$ 890	1997	$1,455	2015
$ 925	1998	$1,455	2016
$ 970	1999	$1,545	2017
$1,005	2000	$1,560	2018
$1,050	2001		
$1,100	2002		
$1,120	2003		
$ 1,130	2004		
$ 1,150	2005		

Qualifying Base Year Compensation

Compensation	Base Year	Benefit Year	Compensation	Base Year	Benefit Year
$1500.00	1988	July 1, 1989	$2825.00	2004	July 1, 2005
$1775.00	1989	July 1, 1990	$2875.00	2005	July 1, 2006
$1862.50	1990	July 1, 1991	$2987.50	2006	July 1, 2007
$1912.50	1991	July 1, 1992	$3075.00	2007	July 1, 2008
$1962.50	1992	July 1, 1993	$3200.00	2008	July 1, 2009
$2025.00	1993	July 1, 1994	$3325.00	2009	July 1, 2010
$2100.00	1994	July 1, 1995	$3325.00	2010	July 1, 2011
$2125.00	1995	July 1, 1996	$3325.00	2011	July 1, 2012
$2162.50	1996	July 1, 1997	$3412.50	2012	July 1, 2013
$2225.00	1997	July 1, 1998	$3512.50	2013	July 1, 2014
$2312.00	1998	July 1, 1999	$3600.00	2014	July 1, 2015
$2425.00	1999	July 1, 2000	$3637.50	2015	July 1, 2016
$2512.50	2000	July 1, 2001	$3637.50	2016	July 1, 2017
$2625.00	2001	July 1, 2002	$3862.50	2017	July 1, 2018
$2750.00	2002	July 1, 2003	$3900.00	2018	July 1,2019
$2800.00	2003	July 1, 2004			

Maximum Benefits Compensation

Compensation	Base Year	Compensation	Base Year
$ 775	1988	$1,460	2004
$ 917	1989	$1,485	2005
$ 962	1990	$1,544	2006
$ 988	1991	$1,589	2007
$1,014	1992	$1,653	2008
$1,046	1993	$1,718	2009
$1,085	1994	$1,718	2010
$1,098	1995	$1,718	2011
$1,117	1996	$1,763	2012
$1,150	1997	$1,815	2013
$1,195	1998	$1,860	2014
$1,253	1999	$1,879	2015
$1,298	2000	$1,879	2016
$1,356	2001	$1,996	2017
$1,421	2002	$2,015	2018
$1,447	2003		

Unemployment Repayment Tax

Year	Rate	Tax Base
1988	6.0%	$7000 (Yearly Base)
1989	4.0%	$ 710 (Monthly Base)
1990	4.0%	$ 745 (Monthly Base)
1991	4.0%	$ 765 (Monthly Base)
1992	4.0%	$ 785 (Monthly Base)
1993	4.0%	$ 810 (Monthly Base)

NOTE: Loans from the Railroad Retirement Account were fully repaid in June 1993. The last month for which the repayment tax was due was June 1993.

4. Timely registration for unemployment benefits and timely filing of sickness claims,

5. Receipt of remuneration on claimed days of unemployment or sickness,

6. Work restrictions and regular assignments, and

7. Whether a claimant's unemployment is due to a strike.

The authority to make determinations on timely registration for unemployment benefits, timely filing of sickness claims, receipt of remuneration, and work restrictions is limited to certain types of cases or situations specified in DPOM/FOM-II.

303.03 The Bureau of Field Service (BFS)

BFS is authorized to make determinations on the issues listed in subsection .02 above but will ordinarily exercise such authority only in the course of reviewing cases received from district offices. In addition BFS is authorized to make determinations, in circumstances specified in the AIM or DPOM/FOM-II, as to:

1. Fraud,

2. Erroneous payments,

3. Whether a strike against a non-railroad employer is a "legal" strike, and

4. Determinations under sections 2(f) and 12(o).

303.04 Operations – Sickness and Unemployment Benefits Section (SUBS)

The Sickness and Unemployment Benefits Section (SUBS) is authorized to make determinations on all issues. SUBS will not ordinarily exercise that authority in the types of cases or circumstances in which district offices, BFS or P&S are authorized to make determinations.

303.05 Reconsideration Section - Assessment and Training

The Reconsideration Section in Assessment and Training is authorized to make determinations on all issues, but will only exercise such authority in the course of processing requests for reconsideration of decisions made by district offices, regional offices and SUBS. See AIM-29, Protests and Appeals.

303.06 Debt Recovery Division – Bureau of Fiscal Operations

The Debt Recovery Division in the Bureau of Fiscal Operations is authorized to make determinations on requests for waiver of recovery of debts under the RUIA. See AIM-29, Protests and Appeals.

304 District Office Request for Advice

A district office needing advice on the determination to be made in a particular case should submit the question to BFS. The submission may be made by memorandum, e-mail, or telephone.

305 Network Managers Request for Advice

A network manager needing advice as to the determination to be made in a particular case by a district office should submit the question to P&S through BFS. The submission should ordinarily be on Form UI-51, Brief of Case and Request for Opinion. A copy of Form UI-51 should be kept by BFS. The network manager should complete items 1 through 7. Item 7 should also include a statement of the question submitted for determination or a statement of the district office determination that is submitted for review.

Complete Form UI-51 online using RRAILS. E-mail the completed form as an attachment to the P&S Inquiry mailbox. The request will be assigned to the proper section in P&S for reply.

306 SUBS Request for Advice

Form UI-51, Brief of Case and Request for Opinion, should be used by the Sickness and Unemployment Benefits Section for submitting questions to P&S. The question to which an answer is required should be stated in item 7. Complete the form online using RRAILS and either e-mail the request to the P&S Inquiry mailbox or forward a copy of the form to P&S. Any relevant material should be referenced on the request as being available on the imaging system, or attached to the form.

307 Action Upon Receipt of Opinion

Upon receipt of an opinion of P&S on a Form UI-51 the adjudicating office is to adjudicate the claims in question in accordance with the opinion.

501 General

Information needed for determination on a claim may be obtained from the claimant, or other party, as appropriate, by

a. Interview

b. Correspondence

c. Telephone call

In choosing the method of obtaining information, the initiating office - field office, or Sickness and Unemployment Benefits Section (SUBS) - should be guided by any specific instructions or guides in other articles of this manual and in the FOM. In the absence of specific instructions or guides, the choice depends, generally, on the type and amount of information needed, and the location or accessibility of the person from whom the information would be requested. Most routine requests for information should be through correspondence. When time is especially important, and the nature of the situation permits it, the telephone should be used. Interviews should be conducted when an in-depth investigation is needed, a lengthy discussion of the situation would be helpful, or when the importance of the matter under investigation requires personal contact.

502 Field investigation

502.01 General

Information needed for a determination on a claim may be obtained from the claimant or other party by field investigation, which would normally require a personal contact with the claimant and/or such party. A field office may initiate an investigation or may conduct an investigation at the request of another office of the Railroad Retirement Board.

502.02 Request for investigation

A request for investigation shall ordinarily be made on Form UI-49. Two copies of Form UI-49 shall be sent to the field office which is to make the investigation.

a. Selecting field office

In order to determine which field office is responsible for the investigation, enter the claimant's zip code in Zipco. This will provide the name, address, and phone number for the local field office.

b. Preparation of Form UI-49

The main portion of Form UI-49 shall include a statement of the facts of the case already known. This statement shall be sufficiently complete that the investigator will have all necessary specific information, such as dates of claimed days, names, addresses, etc. Some of the information may be provided, when appropriate, by attaching either Macro screens or a TPO to the Form UI-49. The requesting office shall mark the Macro screens and/or TPO to indicate information considered important to the request for investigation. Below the statement of facts, the requesting office shall enter a statement of the information to be obtained in the investigation. The statement may be in general terms, but, if necessary, specific questions may be included.

502.03 Notification to claimant

When a request for field investigation delays a determination on a claim, the claimant shall be sent Form Letter ID-5c (Exhibit C).

503 Investigation by correspondence

503.01 General

Several samples of form letter questionnaire for obtaining information from claimants are shown as exhibits to this article. Special letters may, or course, be used when appropriate.

503.02 Letters prescribed for SUBS

Form Letter ID-5d (Exhibit D) may be used to request from a claimant information which is needed in order to determine whether benefits should be paid. Such form letters will ordinarily be sent to claimants who do not live within the commuting area of a field office city.

Form Letter ID-5f (Exhibit H) may be used to obtain information about a claim on which benefits have already been paid. Such form letters will ordinarily be sent to claimants who do not live within the commuting area of a field office city.

Form Letter ID-5d Special (Exhibit F) may be used to get information from a claimant living within a field office commuting area. The letter directs him to call at the field office and furnish answers to stated questions, or, if he is working or for some other good reason cannot report, to answer the questions in writing and return the letter to SUBS. A copy of the form letter should be sent to the field office together with any information which might help the field office in getting answers to the questions when the claimant calls.

Form Letter ID-5g (Exhibit I) is a form letter following up an earlier request for information which the claimant has not furnished.

Form Letter ID-5e (Exhibit G) is a notice to the claimant that benefits cannot be allowed on his current claim because of his failure to answer an earlier request for information.

Form Letter ID-5c (Exhibit C) is a notice to the claimant that determination on his claim will be held up, pending receipt of additional information.

503.03 Letters prescribed for district offices

Letters prescribed for use of district offices in getting information include Form Letters ID-5, ID-5a, ID-5d-F, ID-5i and ID-5x. Instructions concerning those letters are in the DPOM/FOM-II.

504 Obtaining information by telephone

Telephone requests for information from claimants or other individuals should normally be restricted to questions that can be answered by a simple "yes" or "no" response or by furnishing clarifying information, such as: date last worked, date returned to work, dates the claimant wishes to claim.

505 Form letters prescribed

The following form letters are prescribed.

ID-5	(3-52)	ID-5e	(4-8)
ID-5a	(8-59)	ID-5f	(1-51)
ID-5c	(1-61)	ID-5g	(4-8)
ID-5d	(1-51)	ID-5i	(12-60)
ID-5d-F	(3-52)	ID-5x	(7-55)
ID-5d Special			(1-51)

506 Instructions superseded

This article supersedes

ROM-I-5	-	Investigations on Claims
Title I	-	Field Investigations
Title I	-	By Correspondence
Title III	-	Special Field Visits
Title IV	-	Checking on Employment
Title V	-	Checking Duplicate Payments

701 Provisions of the Act

701.01 Section 1(k)(1)

of the Act provides, in part, that: "a day of unemployment, with respect to any employee, means a calendar day on which he is able to work..."

701.02 Section 1(k)(2)

of the Act provides, in part, that: "a day of sickness, with respect to any employee, means a calendar day on which because of any physical, mental, psychological, or nervous injury, illness, sickness, or disease he is not able to work, or, with respect to a female employee, a calendar day on which, because of pregnancy, miscarriage, or the birth of a child, (i) she is unable to work or (ii) working would be injurious to her health..."

702 Analysis of Requirements

702.01 "Able" and "work" considered separately

In determining whether an employee is "able to work" or "not able to work", there are two primary matters of consideration: (a) factors relating to the physical and mental condition of employees, and (b) activities which would, in general, constitute work and in which, in specific cases, employees might be expected to engage. For purposes of this article, the terms "able" and "ability" refer to considerations relating to physical and mental condition and the term "work" refers to considerations relating to activities in which employees might be expected to engage for hire. Thus, an employee is considered "able to work" if, in consideration of the factors under "able", he or she can perform the duties of an occupation or group of occupations which would be considered as "work".

702.02 "Injury, illness, sickness, or disease" as cause

In connection with the requirements as to "day of sickness", consideration has been given to: (1) the conditions under which "physical, mental, psychological, or nervous injury, illness, sickness, or disease" may be held to exist, and (2) the conditions under which they may be held to be the cause of the condition of being not able to work. These points are discussed in Section 728 of this article.

702.03 "Pregnancy, miscarriage, or the birth of a child" as cause

The conditions under which days of sickness may result from pregnancy, miscarriage, or the birth of a child are discussed in AIM-7, Section 736.

702.04 Applicability of determinations

A determination with respect to an individual's ability to work shall be applicable alike in connection with either claims for unemployment benefits or claims for sickness benefits during any period in which there is no substantial change in his or her circumstances.

703 "Ability"

703.01 General

The application of the term "able" has to do with determinations as to the physical and mental conditions of employees. It involves such considerations as (a) whether an employee has any physical or mental infirmity which would limit his or her capacity to perform what would be considered as "work"; (b) whether his or her condition is such that performance of work might aggravate illness or injury; and (c) whether his or her condition is such that performance of work would retard recovery from illness or injury. Such determinations of ability are to be based upon available standards of medical experience showing the conditions under which individuals are not able to work or are not able to work without the probability of aggravating illness or injury or retarding recovery.

703.02 Comparative physical and mental condition

The physical and mental condition of an employee shall be compared with the conditions of individuals engaged in "work", and the possibility of the employee's performing "work" shall be considered in the light of any performance of service by others with physical and mental conditions substantially similar to his or hers.

703.03 Probability of aggravating illness or injury

The probability of an employee's aggravating an illness or injury by working shall be considered. An employee shall be held not able to work in an occupation where it is probable that working would increase the severity of his or her illness or injury.

703.04 Probability of retarding recovery

The probability of an employee's retarding his or her recovery from illness or injury shall be considered. An employee shall be held not able to work during a reasonable period of convalescence. It shall not be required that he or she resume work or profess willingness to work at the earliest possible moment, thereby prolonging convalescence and incurring a possible risk to his or her health.

704 "Work"

704.01 General

The application of the term "work" has to do with determination of the occupation or group of occupations in connection with which an employee's "ability" shall be considered. "Work" does not refer to the whole field of gainful employment. As applied in connection with a particular employee, "work" includes only services:

a. Which are performed for hire,

b. Which are in a recognized occupation,

c. Which are substantial, not trifling and

d. Which (disregarding any question of "ability") the employee can reasonably be expected to perform.

704.02 Services which employee can reasonably be expected to perform

In determining what services an employee can reasonably be expected to perform (disregarding any question of "ability") consideration shall be given to whether any infirmity the employee may have is temporary or permanent. An employee who has an infirmity from which there appears to be no prospect of further recovery shall be considered to have a permanent infirmity.

a. Employee having temporary infirmity

An employee would not ordinarily be expected to change his occupation or working habits because of a temporary infirmity. In determining the services which an employee having such an infirmity can reasonably be expected to perform, consideration shall be given to:

1. The employee's training, experience and qualifications;
2. His or her ordinary occupation;
3. His or her prior earnings;
4. The length of his or her unemployment;
5. His or her prospects for employment.

b. Employee having permanent infirmity

An employee having a permanent infirmity would be expected, unless the impairment were such that he or she could never engage in any occupation, to adapt to the change of circumstances resulting from the infirmity. To do this, he

or she might have to change his or her working habits and occupation. In determining the services which such an employee can reasonably be expected to perform, consideration shall be given to his or her age training, experience, and qualifications.

704.03 Determinations with respect to "work"

In applying the criteria for determining the "work" against which an individual's ability shall be measured, these results might be expected:

a. For an employee with a temporary infirmity who was employed when he or she became sick or injured, "work" would ordinarily consist of the duties of the occupation in which he or she was engaged when he or she became sick or injured.

b. For an employee with a temporary infirmity who was, at the time when he or she became sick or injured, temporarily absent from employment which he or she expected to resume, "work" would ordinarily consist of the duties of the occupation which he or she expected to resume.

c. For an employee with a permanent infirmity "work" would consist of the duties of any occupation for which the employee had the necessary training, experience, and qualifications.

712 Claimant's Certification of Ability to Work

712.01 Initial proof

Accept a claimant's certification on a claim for unemployment benefits, in the absence of evidence to the contrary, as initial proof of ability to work.

712.02 Conditions where explanation is required

Do not accept the claimant's certification without explanation if there is information covered in the following paragraphs:

a. Statement by claimant that he or she is not able to work

The claimant makes a general statement that he is not able to work or not able to work during a period including days for which he or she registered. Statements such as "sick", or "cold" and the like, made with respect to not more than four days in a registration period, may be assumed to indicate a temporary condition not requiring consideration of ability to work. (Consideration of availability may be required.)

b. Leaving work

There is information that within thirty days before a day claimed as a day of unemployment the claimant left work because of physical or mental infirmity, or to prevent an anticipated onset of infirmity.

c. Being held out of service

There is information that within thirty days before a day claimed as a day of unemployment a person or company for whom the claimant performed work held him or her out of service because of physical or mental infirmity.

d. Failure to hire

There is information that within thirty days before a day claimed as a day of unemployment a person or company to whom the claimant applied for work did not hire him or her because of physical or mental infirmity.

e. Failure to apply for, or to accept, work

Within thirty days before a day claimed as a day of unemployment the claimant failed to apply for, or to accept, work offered to him or her, stating that he or she was not able to perform the work.

f. Receipt of sickness benefits

There is information that the claimant previously received sickness benefits under the Act and there is no evidence of his or her subsequent recovery. The exception to this rule is in the case of an employee who has a permanent partial disability that prevents him or her from ever returning to his or her railroad occupation. An employee in that situation who has been re-trained and has the skills to perform and is able to perform that work should be considered able to work, even though his or her physical condition is unchanged.

g. Applying for, or receiving, benefits based on partial disability

There is information that the claimant has applied for, or is receiving, benefits based on partial disability, such as an occupational disability annuity under the Railroad Retirement Act or benefits for partial disability under a workmen's compensation law.

712.03 Explanation revalidating certification

When a claimant's certification cannot be accepted because of any of the circumstances stated in .02 of this section, Form Letter ID-7j is to be sent to him or her. Upon reply to Form Letter ID-7j the claimant's certification that he or she is able to work is to be considered acceptable as proof of ability to work if he or she furnishes:

a. An explanation that he or she has recovered from his infirmity;

b. An explanation that he or she has performed substantial work while affected by his or her infirmity and that there has been no significant change in his or her physical or mental condition;

c. An explanation that he or she is affected by a chronic infirmity or has a permanent disability; or

d. An explanation showing otherwise that the information in possession of the adjudicating office is not inconsistent with his or her certification that he or she is able to work.

713 Consideration of Ability to Work

713.01 Conditions for consideration

The question whether a claimant was, or was not, able to work on days for which he or she registered is to be considered under any of the conditions stated below:

a. There is information as set forth in section 712.02,

and the claimant does not furnish in reply to Form Letter ID-7j an explanation showing that such information is not inconsistent with his or her certification that he or she is able to work.

b. Statement by other person that claimant is not able to work

A person who is reported to have seen the claimant makes a general statement that the claimant is not able to work or a statement that he or she was not able to work during a period including days for which he or she registered. Statements such as "sick", "cold" and the like, made with respect to not more than four days in a registration period, may be assumed to indicate a temporary condition not requiring consideration of ability to work. (Consideration of availability may be required.)

c. Applying for, or receiving, benefits based on total disability

There is information that the claimant has applied for, or is receiving, benefits based on total disability, such as an annuity for total and permanent disability under the Railroad Retirement Act or benefits for total disability under a workmen's compensation law or from a railroad relief association.

d. Specified disabilities

There is information that the claimant has any of these disabilities:

1. Loss of (or permanent loss of use of) both feet;
2. Loss of (or permanent loss of use of) both hands;
3. Loss of (or permanent loss of use of) one hand and one foot;
4. Permanent industrial blindness (corrected vision of twenty-two-hundredths or less in both eyes);
5. Permanent total loss of hearing in both ears (inability to hear the conversational tone of voice at any distance) unless offset or capable of being offset by some practicable device;
6. Aphonia (complete loss of vocalization, (phonetic) from organic, i.e., non-functional cause.); or
7. Any other impairment listed in Appendix I, Part A, of Part 220 of the RRB's regulations.

713.02 Finding

When consideration of a question with respect to a claimant's ability to work is completed, a finding is to be made under Section 714. Such finding will govern later determinations and redetermination of claims made by the claimant.

714 Evidence of Ability to Work

714.01 Performance of substantial work

Consider a claimant able to work during any period of time in which he or she has performed substantial work <u>and</u> in which there has been no significant change in his or her physical or mental condition. In the absence of evidence to the contrary, sufficient indication of the performance of substantial work may be given by:

a. Information that a claimant performed service for hire in a recognized occupation for as many as thirty hours in each of two consecutive weeks; or

b. Information that a claimant worked on any eight days in a period of fourteen consecutive days, or

c. The date of last employment as shown on Form UI-1 or Form UI-3.

714.02 Permanent impairment

Consider a claimant able to work if he or she has a permanent physical or mental impairment, from the temporary effects of which he or she has recovered, provided:

a. Such impairment would not prevent him or her from engaging in substantial employment for which he or she is fitted by training and experience; and

b. There is no evidence of disability other than such impairment.

714.03 Other evidence of ability to work

A claimant who cannot perform work which he or she has recently performed or which has been offered to him or her to be considered able to work if:

a. He or she furnishes information concerning other work which he or she believes he or she can perform and which he or she would perform if it were offered;

b. He or she has the training, experience and qualifications necessary to perform such work;

c. Evidence relating to his or her physical and mental condition indicates that he or she is able to perform such work; and

d. He or she could otherwise reasonably be expected to perform such work.

714.04 Medical evidence

When consideration of a question of ability to work is required and the adjudicating office does not have evidence sufficient to show ability to work, any medical evidence readily obtainable is to be procured as promptly as possible. Such evidence is to be considered, and the claimant held to be able to work or not able to work.

715 How to Investigate Ability to Work

715.01 Obtaining information about claimant's ability

Investigation should be made by a field office representative in a personal interview with the claimant, or any other person who may be able to furnish information about the claimant's ability to work, when practicable. When investigation by personal interview is not possible, investigation may be made by correspondence. A standard list of questions is found in DPOM/FOM-II-307 Appendix A. If information on additional points is required in a particular case, other questions may be included.

715.02 Obtaining medical evidence

If medical evidence is required and there is information that the claimant has been examined by a doctor, efforts are to be made to obtain such evidence unless the claimant has applied for an annuity based on disability.

a. A claimant who has been examined by a doctor may be requested to obtain medical information from the doctor. In such case, provide Form SI-7 to the claimant for completion by his or her doctor.

b. If there is no information that a claimant has been examined by a doctor, arrange for a medical examination and for a report in accordance with instructions on "Medical Examinations". (DPOM/FOM-II-640.)

716 Notification to Claimant

716.01 Sickness benefits not payable

If a finding is made that a claimant was not able to work on a day or days for which he or she registered, and there were not enough days of inability for sickness benefits to be payable, send Form Letter ID-7.

716.02 Sickness benefits payable

If it is found that a claimant was not able to work on days for which he or she registered, and there were enough days of inability for sickness benefits to be payable, send Form Letter ID-7i. Send Form SI-1a or Form SI-1b, or both if needed, with the letter.

717 Determinations by SUBS

The Sickness and Unemployment Benefits Section (SUBS) is authorized to make determinations as to ability and inability to work.

718 Form Letters Prescribed

The following form letters are prescribed.

ID-7
ID-7i
ID-7j

727 Procedure for Considering Ability to Work

727.01 Statements of Sickness

Steps in the consideration of ability to work in connection with statements of sickness are as follows:

a. Consideration of evidence

Consider the evidence as to ability to work submitted with a statement of sickness.

b. Finding with respect to ability to work

On the basis of the evidence, make a finding on ability to work.

c. Estimate of duration

If an employee is not able to work, estimate the probable duration of the illness or injury.

d. Request for additional evidence in connection with claim to be sent

Consider whether additional medical evidence will be required in connection with any claim form to be sent.

727.02 Claims

Consider ability to work in connection with claims for sickness benefits as follows:

a. Consideration of new evidence

Consider any new evidence as to ability to work submitted in connection with a claim for sickness benefits.

b. Reconsideration of estimate of duration

If the evidence indicates that the duration of an illness or injury will probably be greater or less than previously estimated, make a revised estimate or a new estimate.

c. Request for additional evidence in connection with claim to be sent

Consider whether additional medical evidence will be required in connection with any claim form to be sent.

728 Consideration of "Ability"

728.01 Requirement of Medical Evidence

Medical evidence is required to determine ability in connection with a statement of sickness or claim for sickness benefits.

a. Evidence as of time of illness or injury

Information furnished by an employee's doctor is not sufficient for a determination as to ability unless the doctor examined the employee during the period of his or her illness or injury, except for information furnished by a railroad's chief medical officer regarding an employee in the railroad's employee assistance program for treatment of alcoholism or chemical dependency. To determine the number of days a claimant has after becoming sick or injured to be examined or treated by a qualified doctor, see Appendix D.

b. Evidence as to ability during unclaimed period

A new statement of sickness is not required after a period in which no days are claimed as days of sickness if the RRB is satisfied that the employee was not able to work during such period. This requirement is met if information as to the claimant's condition when compared with available standards of medical experience indicates the probability that inability to work continued through the period in question, and if the claimant's reason for failure to file claims gives no indication of possible ability to work during the period in question.

c. Statement of sickness executed by Christian Science practitioner

See Appendix C.

728.02 Consideration of Evidence

Consider all pertinent elements of medical evidence. Consider medical evidence of infirmity in the light of medical experience with that infirmity or with similar infirmities. Summaries of medical experience prepared for use of persons not medically trained are available in medical reference manuals. Also, the disability norms in the RUCS Diagnosis/Disability Norms Table reflect medical experience with infirmities.

728.03 Total and Permanent Disability

Consider an employee not able to work if (1) it has been determined, in accordance with the provisions of the Railroad Retirement Act, that his or her permanent physical or mental condition is such that he or she is unable to engage in any regular employment, or (2) he or she has one of the disabilities specified below except that, if he or she has performed substantial work on or after the date the determination was made or the disability incurred, he or she is to be considered able to work unless medical evidence indicates that the illness or injury has been aggravated or an additional illness or injury has occurred after the date of performance of work.

These disabilities are considered, in the absence of evidence to the contrary, to be total and permanent:

1. Loss of (or permanent loss of use of) both feet;

2. Loss of (or permanent loss of use of) both hands;

3. Loss of (or permanent loss of use of) one hand and one foot;

4. Permanent industrial blindness (corrected vision of twenty two-hundredths or less in both eyes);

5. Permanent total loss of hearing in both ears (inability to hear the conversational tone of voice at any distance) unless offset or capable of being offset by some practicable device;

6. Aphonia (complete loss of vocalization, (phonetic) from organic, i.e., nonfunctional cause.)

728.04 Permanent, but not Total, Disability

A claimant shall be considered able to work if he or she has a permanent physical or mental impairment and if he or she has recovered from the temporary effects of any injury, illness, sickness or disease causing such impairment, provided:

a. Such impairment would not prevent the employee from engaging in substantial employment for which he or she is fitted by training and experience;

b. it is not unreasonable to expect the employee to engage in such employment in view of factors such as age, previous earnings, and the conditions of his or her previous work; and

c. the employee has no other injury, illness, sickness or disease causing inability to work.

When a claimant is held unable to work, because of any infirmity, and it is found that he or she will have a resulting permanent impairment, he or she is to be considered unable to work during the period of convalescence from the temporary effects of the infirmity. When the convalescence has been completed, a determination is to be made under this subsection with respect to the claimant's ability to work after the end of the period of convalescence.

In the following cases, a claimant who has a permanent, but not total, disability will be considered unable to work even after recovering from the temporary effects of an infirmity:

1. The claimant is a career railroad employee (ten or more years of service) and is age 50 or older. In such situations, it is extremely unlikely the claimant will possess the skills, training and experience to perform non-

railroad work compatible with his or her physical limitations. Unless positive evidence is presented to the contrary, the claimant should be considered as remaining unable to work, and sickness benefits should continue.

2. The claimant is a career railroad employee, is age 40 or older, and is within three months of complete exhaustion of benefits (exhausting rights in the current benefit year and not qualified for benefits in the following benefit year). Experience indicates that the claimant will not be able to perform non-railroad work compatible with his or her physical limitations without extensive re-training. Thus, the claimant should be considered unable to work up to the period of exhaustion of benefits.

729 Consideration of Work Which Employee Can Most Reasonably Be Expected to Perform

729.01 Making a Finding

When a finding is required as to the work an employee can most reasonably be expected to perform, it shall be made, in the absence of information to the contrary, in accordance with the rules stated below. No such finding will be required if medical evidence indicates that an employee is totally incapable, either permanently or temporarily, of performing any employment.

a. Employment at time of, or after, onset of illness or injury

If an employee was engaged in work when he or she became sick or was injured or has worked after the onset of illness or injury, the last work performed may be considered to be the work which the employee he could most reasonably be expected to perform.

b. Work for covered employer within 90 days

If, in circumstances other than those described in a. above, an employee worked for a covered employer within 90 days prior to the onset of the injury or illness, the work he or she then performed may be considered to be the work which he or she could most reasonably be expected to perform.

c. Other cases

In circumstances other than those described in a. and b. above, the work an employee last performed may be considered to be the work he or she could most reasonably be expected to perform.

730 Cause of Inability

730.01 Infirmity

A physical, mental, psychological, or nervous condition shall be considered to be an "injury, illness, sickness or disease" if it is recognized as such in any summary of, or according to any source of, medical experience employed to provide standards for making determinations as to ability. If medical evidence submitted in connection with an application or claim for sickness benefits indicates that the employee's injury, illness, sickness, or disease was sufficient to have caused inability to work, it shall be considered that the injury, illness, sickness, or disease was, in fact, the cause of the inability.

730.02 Pregnancy

Pregnancy is not an injury, illness, sickness or disease. It may, however, be complicated by an injury, illness, sickness or disease, which may cause inability to work. In the absence of information as to any such complication, determinations with respect to statements of sickness and claims for sickness benefits based on pregnancy shall be made in accordance with instructions in Section 736.

730.03 Alcohol or Drug Abuse (Dependency)

Sickness benefits are payable for days of sickness caused by alcoholism or chemical dependency on the same basis that sickness benefits are payable for days of sickness caused by any other infirmity. See Appendix B.

731 Estimate of Duration

731.01 Beginning Date of Disability

In determining the beginning date of a period of disability there shall be considered:

a. Date employee last worked.

b. Date employee became sick or injured.

c. Date of first examination.

d. Date of change in employee's condition, if any is reported.

731.02 Basis for Estimate

The probable length of a period of disability shall be estimated from the beginning date of the disability. In making an estimate, consideration shall be given to all of the evidence in the possession of the RRB.

a. Key to Diagnosis Code and Computer EEI, which may be found in the RUCS Diagnosis/Disability Norms Table, is a table showing the diagnosis code, the meaning for each code, the number of weeks used in determining the estimated end of inability and the morbidity code. This table is a part of the computer program and is used by the computer in determining the initial estimated end of inability.

b. A doctor's unsupported prognosis or opinion as to the length of the period of disability is not ordinarily to be considered by itself. With respect to some atypical, unpredictable infirmities, an unsupported prognosis or opinion may be acceptable because it is impractical to insist on better evidence. Lack of a definitely stated opinion of the probable date of recovery is not a serious defect in a doctor's report. The medical evidence is more important. Medical evidence includes a report of:

1. Diagnosis - The normal period of inability of some infirmities can be reasonably and even accurately determined by the diagnosis alone.

2. Objective findings - The findings help confirm the diagnosis and afford a measure of the relative seriousness of an infirmity.

3. Complications - The presence of complicating or secondary injuries or infirmities or sensitivity to drugs may prolong the period of inability.

4. Surgical procedures - Rather definite periods of inability can normally be expected to follow various operations, injections, treatments, and the like.

5. History - General physical condition, the number and frequency of previous attacks, and the rate of previous recovery may give a basis for a prognosis.

6. Response to treatment - The amount and rate of improvement indicates whether inability is likely to be relatively short or prolonged.

731.03 Revision of Estimate of Duration

An estimate of the duration of a period of disability may be revised under the circumstances described below:

a. There is new medical evidence.

b. The initial estimate of the period of disability may be revised once on the basis of little if any additional evidence other than the doctor's unsupported statement that the claimant continues to be unable to work. The revision may be for a period less than or reasonably exceeding the

Disability Norms. Any determination that a claimant's disability significantly exceeds the disability norm must be supported by adequate medical evidence of individual difference in the objective findings, complications or response to treatment.

c. There is information that an employee who has been held out of service because of physical or mental condition was not permitted or will not be permitted by the employer to return to work until after the estimated end of the period of disability. In such case, if the interval between the estimated end of the period of disability and the date of return to work is reasonable (approximately 14 days or less), the period of disability may be estimated to end with the latter date.

731.04 Ending Date of Disability

When the probable length of a period of disability has been estimated, the ending date of the period shall be recorded. In the absence of evidence to the contrary, this day is to be considered a day of sickness. If the estimate is based on a recovery date stated by a doctor, the ending date of the period of disability will be the recovery date.

731.05 Payment Beyond Estimate of Duration

An ending date of disability based on a report of treatment or examination which took place before the ending date is necessarily an approximation. When the estimated ending date falls on any one of the last ten days of a registration period, and a supplemental doctor's statement has not been filed, the absence of such statement shall not cause denial of benefits.

732 Requests for Additional Medical Information

732.01 Additional Information from Original Source

If medical evidence furnished by an employee's doctor or other person executing a statement of sickness is not sufficient for a determination of ability, efforts may be made to obtain additional information from the doctor or other person. In such case, Form Letter ID-7e may be sent to the employee requesting him or her to have the doctor or other person furnish additional information by completing Form SI-7.

732.02 Special Medical Examination

Refer to AIM Article 31, Medical Examinations, and Section 3102, Examination Required, of Article 31.

733 Requirement of Supplemental Doctor's Statement

733.01 Sending Form to Claimant

A supplemental doctor's statement is to be sent to the claimant at the same time a claim is mailed for the second to last claim period supported by existing medical evidence.

733.02 Registration Period Ending After EEI

When the form for supplemental doctor's statement is sent in addition to a claim form for a registration period ending after the estimated end of disability, the instruction on the form for supplemental doctor's statement shall ordinarily show that it is to be completed if the claimant wants to claim any day after the end of the registration period.

733.03 Determinations

With respect to days claimed as days of sickness on a claim form in connection with which a form for supplemental doctor's statement was sent as provided above but was not returned, benefits may nevertheless be payable in accordance with section 731.05.

734 No Claim Form Sent

No claim form is to be sent for a registration period if there are less than five days before the date on which the claimant is found to be able to work, since the claim would neither satisfy the waiting period requirement nor be compensable.

735 Notice to Claimant When no Claim Form is to be Sent

When it is determined that an applicant or claimant for sickness benefits is able to work and that, as a result, no claim form is to be sent, notice shall be given as follows:

a. When a claim is paid as provided in section 733.02, no notice need be sent to the claimant, unless he or she protests or inquires, in which case Form Letter ID-7K is to be sent.

b. If a claimant is held able to work although apparently not able to resume his or her usual occupation, Form Letter ID-7n is to be sent to him or her. A copy of the letter is to be forwarded to the appropriate field office.

c. If it is determined, before any claim form is sent, that there are less than five days of sickness in a registration period, Form Letter ID-7h is to be sent.

d. If benefits are payable for the claim but one or more days are claimed after the date on which, according to the medical information the claimant became able to work, Form Letter ID-7p is to be sent.

e. In any other case a special letter is to be sent, except that, where the claimant has indicated that he or she has returned to work, no notice is to be sent.

736 Pregnancy, Miscarriage, and Birth of a Child

736.01 General

Forms SI-1a/b, SI-7, and SI-3, in the case of pregnancy, miscarriage and childbirth are the same as for sickness benefits based on injury, illness, sickness or disease.

736.02 Consideration of Evidence

Medical evidence as to pregnancy, miscarriage or childbirth is required for a finding as to inability to work or injury to health. Information called for on Form SI-1a/b is ordinarily sufficient for this purpose.

736.03 Pregnancy

Medical evidence with respect to a claimant's pregnancy will ordinarily include a doctor's statement as to the predicted date of delivery and as to the first day during pregnancy when the claimant was (or will be) unable to work or working would be injurious to her health. This is sufficient evidence for a finding of inability beginning with such first day, and sickness benefits may be paid accordingly. Form SI-7 will be sent to the claimant as for sickness benefits and pending return of this form, benefits may be paid up to four weeks after the predicted date of delivery. Benefits will not be paid thereafter without additional evidence. If additional evidence shows that the pregnancy has terminated, a finding as to inability is to be made as in .04 below. If the evidence shows that the pregnancy continued more than four weeks after the predicted date of delivery, a finding as to continuing inability is to be made on that basis. In any case in which the doctor does not give a specific date as the first day during pregnancy when the claimant was or will be unable to work or working would be injurious to her health, the claimant shall be notified that benefits cannot be paid without a doctor's specific statement as to such first day.

736.04 Childbirth or Miscarriage

Medical evidence with respect to childbirth or miscarriage will ordinarily include a doctor's statement as to the date of delivery or miscarriage and the date when the claimant can safely resume normal activities. This is sufficient evidence for a finding of inability with respect to the period from the earlier to the latter date.

Benefits are not to be paid for days after the latter date without additional evidence, on a supplemental doctor's statement or in some other form, as to the claimant's continuing inability to work. In any case in which there is evidence of childbirth or miscarriage but no doctor's statement as to the date when the claimant can safely resume normal activities, the claimant is to be advised that benefits cannot be paid without such specific information.

737 Determinations by SUBS

The Sickness and Unemployment Benefits Section (SUBS) is authorized to make determinations as to ability and inability to work.

738 Form and Form Letters Prescribed

The following are prescribed:

ID-7h ID-7p
ID-7k ID-7n
ID-7

Appendices

Appendix A - Ability To Work In Problem Cases

This appendix provides guidance on the handling of certain types of sickness benefit cases that present an ability to work problem.

A. Statement of the Problem

The ability to work issues addressed in this appendix arise in the context of these three problem situations:

1. The claimant is reported able to perform "light duty;"

2. The claimant's personal physician says the claimant can return to work but the railroad doctor holds the claimant out of service; and

3. The claimant claims unemployment benefits after exhausting his sickness benefits, or vice versa.

In reading the following discussion, keep in mind that determinations of inability to work are the responsibility of the division of program operations and that medical evidence is required for a finding that a claimant is "not able to work."

B. General Statement of Adjudication Policy

The payment of sickness benefits under the Railroad Unemployment Insurance Act is conditioned, in part, on the submission of a properly-executed "statement

of sickness." Such statement is to provide substantial medical evidence that the claimant is "not able to work" with respect to days claimed as "days of sickness."

It is the claimant's responsibility to provide a properly-executed statement of sickness (Form SI-1b) or supplemental doctor's statement (Form SI-7). If either form does not provide the necessary medical proof of inability to work, the RRB can require the claimant to undergo a special examination by a doctor designated by the RRB.

1. Claimant Becomes Unable to Work Because of the Onset of Illness or Injury

   A claimant's ability to work is to be judged initially on the basis of his ability to do his usual railroad job. Assuming that the claimant has satisfied all of the conditions for receipt of sickness benefits, such benefits are to be paid throughout the period of time necessary for him to recover fully from the effects of a temporary infirmity. Substantial medical evidence verifying the duration of such period is, of course, required.

2. <u>Claimant May have a Permanent Infirmity Following Onset of Illness or Injury</u>

   When a claimant is initially unable to work because of the onset of an illness or injury and it is later reported that he or she has a permanent infirmity that may impair his or her ability to return to his or her usual railroad job, the issue of continued inability to work may eventually have to be considered. But that issue does not require resolution while the claimant is convalescing from the temporary effects of his infirmity. During such period of convalescence, sickness benefits would normally remain payable. After such period has passed, an ability to work determination is required if the claimant is still claiming sickness benefits. A claimant remains permanently "not able to work" under circumstances described in Article 7, Title III of the Adjudication Instruction Manual.

3. <u>Claimant has a Permanent Infirmity but May Become Able to do Other Work</u>

   Under other circumstances, a claimant having a permanent impairment but no other disabling condition may be considered "able to work" and possibly eligible for unemployment benefits after reaching maximum recovery from the temporary effects of the infirmity. This applies if the permanent infirmity is not totally disabling. Eligibility for unemployment benefits will then be judged on the basis of ability to do other substantial work for which the claimant may be suited by training and experience and his or her availability for such other work. See AIM-728.04 and 804.02 in this regard.

4. <u>Claimants Who Require Rehabilitation</u>

   Some claimants with severe and permanent infirmities may require both physical and vocational rehabilitation before they will be able to return to

gainful employment. Such claimants are "not able to work." Nor are they available for work merely by reason of their participation in a vocational rehabilitation program. AIM-804.30a, relating to the availability for work of a claimant who is enrolled in a technical or trade school or a vocational training program, does not apply to a claimant who is not able to work and who requires rehabilitation before he or she will be able to obtain new employment.

C. Claimant is Able to Perform Light Duty

A claimant's sickness benefits are not to be terminated merely because the medical evidence shows ability to perform "light duty" if in fact he or she remains unable to return to his or her usual job. Remember that Forms SI-1b and SI-7 do not ask for a report of the date when the claimant can perform "light duty" as such information is irrelevant.

In many railroad occupations, there is no such thing as "light duty," especially in certain occupations where the claimant must be fully physically qualified to work, as determined by the railroad medical department. In other situations, a railroad might offer to create a "light duty" job for a particular claimant, in which case the claimant decides whether to accept the job. If he or she accepts the job on a permanent basis, the job in time becomes his or her usual railroad job. The claimant's ability or inability to work is then judged with reference to the new job.

D. Personal Physician Approves Claimant for Return to Work But Railroad Medical Department Withholds Approval

In general, a claimant who has been off work for an extended period because of sickness or injury may not be allowed to return to work until the railroad medical department is satisfied that the claimant can perform the duties of his or her job. The railroad medical department may make its decision on the basis of a report from the treating physician or on the basis of an independent physical examination. The following examples illustrate the problem that arises when the claimant's personal physician approves the claimant for return to work but the railroad medical department holds the claimant out of service for an additional period of time. Guidance on solving the problem follows each example.

Example 1: The claimant's personal doctor releases the claimant for return to work on March 9, and Form SI-7 is received so stating. Sickness benefits therefore terminate with payment for days through March 8. Later, it is learned that the claimant did not actually return to work until March 23, because the railroad doctor did not approve the claimant's return to service any earlier. The claimant then requests sickness benefits for days through March 22.

Solution: The claimant's request should be granted. In a case where the claimant returns to work within 14 days of the return-to-work date reported initially by the personal physician, the EEI date may be extended for up to 14 additional days.

Example 2: Same basic facts as in example 1 except that the railroad doctor holds the claimant out of service for a period longer than 14 additional days or indefinitely. The claimant tries, without success, to get an updated medical report and then requests that sickness benefits be extended for however long the railroad holds him out of service.

Solution: The claimant's request cannot be granted in the absence of medical confirmation of the date that the railroad doctor released him for return to work or medical confirmation that he remains unable to return to his railroad job. The claimant should be so advised. The claimant should also be advised that he may register for unemployment benefits. But he should not be directed to do so if he asserts a right to sickness benefits for the days in question and declares his intention to obtain the necessary medical verification.

Except in a situation where it may be necessary for the claimant to be examined by an RRB - designated medical examiner, it is the claimant's responsibility to provide medical evidence of his inability to work. RRB employees should not intervene with a doctor or hospital or railroad medical department for the purpose of obtaining a medical report in behalf of a claimant who cannot get the report on his own. We should simply advise the claimant as to the requirements for receipt of benefits.

E. Claimant Claims Unemployment Benefits After Exhausting Sickness Benefits or Sickness Benefits After Exhausting Unemployment Benefits

In any such situation, a careful review of the medical evidence on record together with current medical information will be required for a determination relating to the claimant's ability to work. A key point to keep in mind in conducting the review is whether there has been a significant change in the claimant's physical or mental condition that would explain a switch from sickness to unemployment benefits, or vice versa.

For instance, if a claimant exhausts sickness benefits based upon medical evidence establishing that he cannot do his usual job because of a chronic infirmity that does not lend itself to further improvement, he shall continue to be

considered "not able to work" with respect to any subsequent period of time during which his physical condition remains substantially unchanged. In other words, if a claimant establishes through the submission of medical evidence that his infirmity is such as to make him "not able to work" for sickness benefit purposes, he cannot later maintain that the same medical evidence is adequate to show for unemployment benefit purposes that his condition, though unchanged, is now not so severe as to make it theoretically possible for him to engage in some form of "light duty." A claimed ability to perform employment that is essentially trifling or theoretical does not establish ability to work. The other facts of the case should be considered in light of the adjudication principles set forth in AIM-7, as summarized in this appendix.

Appendix B- Guidance To Alcohol and Drug Abuse Cases

This appendix provides guidance on the disposition of claims for unemployment or sickness benefits received from an employee who is not working because of alcoholism or drug abuse.

What is Alcoholism and Drug Abuse?

Taber's Cyclopedic Medical Dictionary defines alcoholism as an illness characterized by preoccupation with alcohol and loss of control over its consumption. It is associated with physical disability and impaired emotional, occupational and/or social adjustments. Symptoms and signs of alcoholism include malnutrition, vitamin deficiency, alcoholic cirrhosis of the liver, gastritis, pancreatitis and neurologic disorders such as tremulousness, hallucinosis, seizures and delirium tremens. Taber's says that drug abuse is the use or overuse, usually by self-administration, of any drug in a manner that deviates from the prescribed pattern.

Rail labor and management personnel policies recognize that alcohol and drug abuse impair an employee's job performance. Through their cooperative efforts, counseling and treatment programs have been established to aid affected employees. Most railroad companies now have employee assistance counselors whose job it is to evaluate an employee referred for assistance under the program and to recommend medical treatment, more extensive counseling, or an education program, as appropriate.

Federal Regulations on Control of Alcohol and Drug Use

The Federal Railroad Administration (FRA), United States Department of Transportation, has issued regulations for the purpose of controlling alcohol and drug use by railroad employees who are subject to the Hours of Service Act. In general, the regulations apply to employees engaged in the operation of trains.

The regulations prohibit employees from using, possessing, or being impaired by alcohol or any controlled substance while on duty, and the railroads are required

to exercise due diligence to prevent such conduct. The regulations authorize railroads to require breath or urine samples for testing under conditions constituting "reasonable cause" and to make post-accident testing and employee assistance programs mandatory.

Determining Eligibility for Sickness Benefits

In adjudicating claims for sickness benefits, keep in mind that alcoholism is an illness within the meaning of section 1(k) of the Railroad Unemployment Insurance Act. Section 1(k) provides, in pertinent part, that:

> ". . . a 'day of sickness,' with respect to any employee means a calendar day on which because of any physical, mental, psychological, or nervous injury, illness, sickness or disease he is not able to work . . . and with respect to which . . . a statement of sickness is filed . . . "

Accordingly, sickness benefits are payable for days of sickness caused by alcoholism on the same basis that sickness benefits are payable for days of sickness caused by any other infirmity, that is, on the basis of medical evidence establishing that the employee is "not able to work." Alcoholism may or may not cause inability to work. In reviewing medical reports, certain key factors must be considered in making a finding as to the claimant's ability or inability to work. They are:

1. Is the claimant hospitalized or confined to an institution?

2. Is the claimant under treatment by a doctor (as opposed to merely seeing a counselor)?

3. Does the claimant have a related medical condition indicating that damage to the internal organs of the body may have occurred, i.e. cirrhosis of the liver? Such condition itself may be a cause of inability to work;

4. Does the medical evidence show that the claimant is not working because of his or her physical condition or because the employer is holding him or her out of service?

While the foregoing points are clues as to a claimant's ability to work, they should be evaluated with care. A claimant may be unable to work due to alcoholism even though not hospitalized and even though there is no damage to any of the internal organs of the body. Claims examiners should bring any questionable cases to the attention of their supervisors.

In alcoholism cases, the employer may require an employee to participate in and complete the employer's counseling and rehabilitation program as a condition for return to service. The employee's progress is monitored by an employee assistance program counselor, who is authorized to decide when the employee may return to service. The chief medical officer of one large railroad has

reported that employees participating in counseling and rehabilitation are out of service an average of 10 months.

If otherwise eligible, such employees may receive sickness benefits provided that the railroad medical officer or other licensed doctor or hospital representative executes a statement of sickness confirming that the employee suffers from alcoholism and is either taking part in the employer's counseling program or is receiving medical treatment. An initial estimated end of inability (EEI) of at least three months should be established if the medical evidence shows that the employee is in an employee assistance program, unless an earlier recovery date is indicated. If there is no indication that the claimant is taking part in an employee assistance program, the initial EEI date should be one month.

In drug abuse cases, the situation is less clear. While it has become common for some railroads to conduct random urine testing of employees, the tests do not necessarily indicate whether the use of a drug has impaired the person's ability to work. Individual metabolism varies from one person to another, and evidence of drug use may remain in the body for weeks after the drug was last used, depending on the drug used and the frequency of use. Also, the tests themselves are recognized as having some margin for error. Both prescription and over-the-counter non-prescription medications may produce a positive urine test result. An employee who is removed from service as a result of testing positive for drugs is not necessarily eligible for sickness benefits. Drug test results cannot by themselves serve as the basis for paying or denying benefits. A careful review of the medical evidence or other facts of the case will be required.

In summary, a claimant's claim to a day as a "day of sickness" must be supported by substantial medical evidence. Otherwise, he or she may not be considered as "not able to work," and no sickness benefits may be paid.

Acceptable Proof of Sickness

Section 12(l) of the Railroad Unemployment Insurance Act provides, in part, that proof of sickness is to be supplied in the form of a statement of sickness executed by any licensed doctor, or by an official of a hospital, clinic or other medical institution. Section 12(l) also provides that the statement of sickness is to provide "substantial evidence" of the employee's days of sickness.

Acceptable proof of inability to work due to sickness caused by alcoholism or drug abuse may be furnished by the treating physician or psychologist, or by a hospital, clinic or other institution for medical treatment, or by the employer's medical department or chief surgeon. Employee assistance counselors and substance abuse professionals are acceptable if certified by one of the following certifying bodies below:

- the National Association of Alcohol and Drug Abuse Counselors (NAADAC),
- the Certified Employee Assistance Professionals (CEAP),
- the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC) or the
- National Board for Certified Counselors, Inc. and Affiliates/Master Addictions Counselor (NBCC).

Establishing Eligibility for Unemployment Benefits

Pursuant to regulations issued by the Federal Railroad Administration, an employer may remove an employee from service if the employee is found to be using alcohol or drugs. In this type of case, the employee may be eligible for unemployment benefits. Specifically, if an employer holds an employee out of service but leaves open the possibility for him or her to return to service upon satisfying the employer's requirements, the employee has good prospects for employment. This, together with active participation in the employer's counseling program (usually an employer requirement in this type of case), would be a satisfactory substitute for work-seeking efforts that might otherwise be required.

If an employee has been discharged outright for alcohol or drug abuse, he or she would be eligible for unemployment benefits on the same basis as any other discharged employee, that is, if the labor representative is actively handling a claim for reinstatement or if the employee is making other reasonable efforts to obtain employment. Remember that there is no misconduct disqualification in the Railroad Unemployment Insurance Act, and we should not ordinarily inquire into the reasons for an employee's discharge. See also AIM-804.07.

In non-discharge cases, periodic follow-up (including contacts with the employer's employee assistance counselor) would be necessary to ascertain the claimant's continued eligibility. So long as the claimant is doing what it takes to return to service, the payment of unemployment benefits would be permissible. If the claimant, however, is not meeting employer requirements necessary to return to service, the claimant would then have to show evidence that he or she is making reasonable efforts to obtain new employment.

If, at the end of three months' participation in the counseling program, the employee still has not satisfied his employer's requirements for return to service, the case should be submitted through channels to the program policy and review section for consideration. In submitting the case, there should be included information from the employer and the employee as to why the employee has not returned to work, whether there remains any prospect of return to work and what the employee's plans are with regard to finding and accepting new employment. Any claims received in the interim may be paid while the case is under review.

Drug or Substance Abuse

The general principles discussed in this training memorandum apply equally to employees who are not working because of drug or substance abuse. Sickness benefits may be payable provided there is sufficient proof of sickness, as reported on an acceptable statement of sickness or supplemental doctor's statement. Unemployment benefits may be payable in other circumstances. If, for instance, an employer holds an employee out of service because the employee did not pass a urine test administered at the direction of the employer and if the employee is not otherwise undergoing medical treatment for an underlying illness, the employee should be considered to be able to work.

Here are a number of sample situations that have arisen, along with a discussion of the guidelines to follow in each one. Request advice on any cases that cannot be resolved by reference to this appendix.

1. Situation

   Claimant has been discharged or suspended for Rule G violation.

   Discussion

   Employees who are discharged for Rule G violation are usually able to work and may be paid unemployment benefits if they are available for work. In considering availability, find out if the claimant is actively seeking reinstatement. If not, is he or she actively seeking new employment?

2. Situation

   Claimant has been removed from service because of alcohol or drug addiction and agrees to participate in the railroad's employee assistance program rather than contest the removal action under collective-bargaining procedures.

   Discussion

   So long as the claimant is fully participating in the program and has prospects for return to service upon satisfactory completion of the program, he may be considered available for work.

   If the claimant's alcoholism or drug addition is so severe as to be disabling, he may be paid sickness benefits upon filing an acceptable application and statement of sickness. The duration of sickness benefits will depend on the medical evidence submitted.

3. Situation

Claimant has failed a drug screen urinalysis and is removed from service or not permitted to return to service.

Discussion

Failure to pass such a test should not be taken as evidence that the claimant is either not able to work or not available for work. Additional facts will need to be developed. The claimant may deny using drugs, or he may have a serious drug problem that requires medical attention.

If the claimant denies using drugs and contests the railroad's action in removing him from service, he may available for work. If he voluntarily enters a drug treatment program, is not under a doctor's care, and has good prospects for return to service, he may also be available for work.

4. Situation

Claimant voluntarily enters an employee assistance program as a condition for retaining or returning to employment but is dropped from the program for not participating in it as required and is then discharged.

Discussion

The proper determination will depend on full knowledge of all the facts and circumstances of the case. It would help to interview the claimant and contact the appropriate labor and management officials for more information about the case. Remember that nothing in the Railroad Unemployment Insurance Act requires a claimant to participate in an employee assistance program or to submit to alcohol or drug testing. Nor should we draw any particular inference from an employee's refusal to submit to such testing or inability to pass a test. As the Railroad Unemployment Insurance Act does not impose a disqualification for job-related misconduct, it may be sufficient if the claimant makes a reasonable effort to find new employment. If a claimant decides not to enter or complete an employee assistance program, the claimant may be showing that he or she is not ready and willing to satisfy employer requirements. If he or she is not attempting to meet those requirements but is attempting to find new employment, the employee may be available for work. Any district office having such a case should bring it to the attention of the Bureau of Field Service.

Appendix C - Statements Of Sickness Executed By Christian Science Practitioners

Designation of Christian Science practitioners

Section 12(i) of the Railroad Unemployment Insurance Act provides that the Board shall issue regulations for the qualification of certain persons to execute

statements of sickness. Christian Science practitioners are not among those persons who may be so qualified. However, section 12(i) provides that the Board may designate others to execute statements of sickness, and in Board Order 61-146 the Board has designated duly authorized and accredited Christian Science practitioners.

"Duly authorized and accredited"

When the letters "C.S.", "C.S.B.", or "C.S.D." appear after the signature on a Form SI-1b, it may be considered, in the absence of evidence to the contrary, that the form was executed by a duly authorized and accredited Christian Science practitioner.

Considering information on statement of sickness

When a duly authorized and accredited Christian Science practitioner fills out Form SI-1b, he may make in the space for "Diagnosis" an entry describing a condition recognized as an injury, illness, sickness, or disease. However, Christian Science practitioners do not give diagnoses. Accordingly, there may be a statement indicating that the description of infirmity is not a diagnosis. Such a statement might be worded as follows: "Based upon my observation and without attempting any diagnosis, it is my opinion that the claimant is suffering from . . ." the qualifying statement indicating that no diagnosis is made does not affect the validity of the information describing the employee's condition.

Information not sufficient

If a Form SI-1b executed by a Christian Science practitioner does not contain information showing on what day or days the employee was affected by infirmity, or does not contain information showing that the employee's infirmity was sufficient to cause inability to work, the employee shall be asked to have the practitioner furnish such information on the form prescribed for supplemental statements. If the practitioner does not furnish such information in a supplemental statement, a medical examination shall be requested. The letter notifying the employee that a medical examination is required shall include an explanation stating in what respect the information furnished by the Christian Science practitioner is insufficient. If the practitioner then furnishes the necessary information, it shall be given the same consideration as though furnished in the original statement. It shall not in any case be considered that the employee's claim for benefits is based upon an examination requested in accordance with this instruction. Accordingly, no charge shall be deducted from the employee's benefits for such examination. The employee's claims shall be considered as based upon an acceptable statement of sickness executed by a Christian Science practitioner.

Action after end of estimated period of inability

If, after the end of the period of inability estimated on the basis of an acceptable statement of sickness executed by a Christian Science practitioner, an employee wishes to continue to claim sickness benefits on the basis of the infirmity described in the statement of sickness, a medical examination shall be requested. Additional sickness benefits are to be paid for the same infirmity only on the basis of medical evidence.

Limitation on medical examinations

No medical examination except as indicated above shall be requested in the case of any employee whose statement of sickness is executed by a Christian Science practitioner.

Appendix D - Timeliness of Doctors Examination or Treatment

Number of days the claimant has to be examined or treated by a doctor after becoming sick or injured

This text provides guidance on adjudicating the examination or treatment date shown on the statement of sickness form (SI-1b). A claimant must be examined or treated by a doctor within 15 days of the first day she/he wishes to claim sickness benefits unless evidence exists that would warrant a delay in the initial medical treatment of the claimant. See example 1 below.

If the date of examination or treatment is greater than 15 calendar days, but not more than 30 calendar days, a claims examiner must determine whether the medical treatment date is acceptable or attempt to develop earlier treatment or examination dates. If the claims examiner is able to develop an earlier date of treatment/examination, the file should be documented with all information developed and the statement of sickness processed. If an earlier date(s) of treatment cannot be obtained but the claims examiner determines the medical information is acceptable, the case needs to be referred to the supervisor for approval before the statement of sickness can be processed. See example 2 below.

If the earliest date of examination or treatment is greater than 30 days from the first day a claimant wishes to claim sickness benefits but the claims examiner determines the initial medical treatment date is acceptable, the case must be submitted for approval through the supervisor to the Chief of SUBS. See example 3 below.

If the medical evidence is questionable and/or a determination cannot be made, refer the case to Policy and Systems for an opinion.

Example 1:

Last Day Worked * 11-15-2014
First Day of Infirmity *11-15-2014

First Examination*11-20-2014
Most recent Examination*12-07-2014

Diagnosis & Chemical Dependency
Si-1ab received *12-13-2014

Sickness benefits can begin 11-16-2014 because the examination date is within 15 calendar days of the first day of infirmity.

Example 2:

Last Day Worked *10-04-2014
First Day of Infirmity* 10-05-2014

First Examination*10-30-2014
Most recent Examination*10-30-2014

Diagnosis* Lumbar Sprain
Si-1ab received* 11-06-2014

Sickness benefits can begin 10-06-2014. This case needs supervisor's approval because the examination date is more than 15 calendar days after the first day of infirmity.

Example 3:

Last Day Worked * 11-04-2014
First Day of Infirmity* 11-05-2014

First Examination*12-10-2014
Most recent Examination *12-10-2014

Diagnosis *Influenza
Si-1ab received *12-16-2014

Sickness benefits can begin 11-05-2014. This case needs the Chief of SUBS's approval because the examination date is more than 30 calendar days after the first day of infirmity.

801 Provision of the Act and the Regulations

801.01 The Act

Section 1(k) of the Act provides, in part, as follows:

"... a day of unemployment, with respect to any employee, means a calendar day on which he is...available for work..."

802 Meaning of "Available for Work"

802.01 Available

A claimant is available for work if he or she is willing and ready to work.

802.02 Willing to work

A claimant is willing to work if he or she is willing to accept and perform for hire such work as is reasonably appropriate to his or her circumstances in view of factors such as:

a. The current practices recognized by management and labor with respect to such work;

b. The degree of risk involved to the claimant's health, safety, and morals;

c. The claimant's physical fitness and prior training;

d. The claimant's experience and prior earnings;

e. The claimant's length of unemployment and prospects for obtaining work; and

f. The distance of the work from the claimant's residence and most recent work.

802.03 Ready to work

A claimant is ready to work if he or she:

a. Is in a position to receive notice of work which he or she is willing to accept and perform, and

b. Is prepared to be present with the customary equipment at the location of such work within the time usually allotted.

802.04 Work

Work means services for hire.

803 Consideration of Availability

803.01 Initial proof

When a claimant has registered for unemployment benefits in accordance with the Railroad Retirement Board's (RRB) regulations, he or she will, absent any evidence to the contrary, initially be considered available for work. Evidence to the contrary includes any evidence of unavailability provided by the claimant's base year employer(s) pursuant to section 5(b) of the Railroad Unemployment Insurance Act or by his or her current employer, if different than the base year employer.

803.02 Information indicating unavailability

If the office of the RRB which is adjudicating an individual's claims for benefits receives information indicating that the claimant may not be available for work, the claimant will be required to submit evidence of his or her availability for work, and no benefits will thereafter be paid with respect to any day in the period of the claimant's unemployment, unless sufficient evidence of the claimant's availability for work on such day is presented.

803.03 Reasonable efforts to obtain work

a. Requirement

A claimant may be required at any time to show, as evidence of willingness to work, that he or she is making reasonable efforts to obtain work which he or she professes to be willing to accept and perform, unless he or she has good prospects of obtaining such work or his or her circumstances are such that any efforts to obtain work other than by making application for employment service pursuant to section 325.13 of the regulations would be fruitless to the claimant.

b. Failure to comply with requirement

When the office of the RRB which is adjudicating claims for benefits has information that the claimant has failed to comply with the requirements set forth in the preceding paragraph, no benefits are to be paid with respect to any days in the period of the claimant's unemployment unless sufficient evidence of the claimant's availability for work on such days is presented.

c. What constitutes "reasonable efforts"

A claimant is considered to be making reasonable efforts to obtain work when he or she takes such steps toward obtaining work as are appropriate to his or her

circumstances. In determining what steps are appropriate to a claimant's circumstances, consideration will be given to actions such as:

1. registering with a union hiring or placement facility;
2. applying for employment with former employers;
3. making application with employers, including individuals and companies not covered by the Act, who may reasonably be expected to have openings in suitable work;
4. responding to appropriate "want ads" for work which appears suitable;
5. actively prosecuting a claim for reinstatement in his or her former work; and
6. any other action reasonably directed toward obtaining work.

803.04 Unreasonable restriction on work

A claimant who places unreasonable restrictions on the work he or she is willing to accept and perform for hire is not willing to work.

a. Unreasonable restriction is to be determined from a consideration of all factors considered in determining good cause and suitability of work.

b. It is not necessary that a claimant be willing to accept all suitable work he or she does not have good cause to refuse. The claimant is allowed some freedom of choice. However, as the length of unemployment increases and prospects of securing work diminish, a claimant may be expected to increase the sphere of work he or she is willing to accept.

c. A claimant who is willing to accept work only with a particular employer or in a particular occupation, job, or location is not placing unreasonable restriction on his or her willingness to accept and perform work if:

    1. the claimant is so employed at substantial work, or
    2. the claimant has good prospects of being so employed within one month.

    Work may be considered substantial if the claimant averages three days' employment per registration period during the over-all period in which availability is in question, although the substantiality of work will in part depend upon comparison with the income and security of work which can be obtained from other job opportunities.

d. A claimant who has been discharged or suspended and who is seeking reinstatement may be considered willing to work, even though he or she is

not willing to accept other work until final action has been taken on his or her request for reinstatement.

1. If an employee's claim for reinstatement is being actively prosecuted, the employee is to be considered willing to work. A union official's statement that the union is seeking the employee's reinstatement is usually sufficient evidence that a claim for reinstatement is being actively prosecuted.

2. If efforts to obtain the reinstatement of an employee are based, not on a claim but on factors such as leniency, consideration must be given to: (1) whether efforts toward reinstatement are being made currently and (2) whether final action is likely to take place within a reasonable time. In such a case, an employee may be considered available for work if his or her union is currently engaged in efforts to obtain reinstatement. If there are no current efforts, and a request for the employee's reinstatement is to be made later, the employee is to be considered willing to work only if it is reasonable to expect his or her employer to take action within a reasonable time, for example three months, or if the employee is making reasonable efforts to get other work.

804 Action to be taken in Various Types of Cases

804.01 Introduction

In the absence of other evidence regarding availability for work, a claimant's certifications on Form UI-3 are sufficient to establish his or her availability for work on the days for which he or she registers. When there is other evidence regarding availability for work, it should be given consideration in accordance with the instructions of this article. Experience has shown, in general, when such evidence requires investigation and when such evidence furnishes sufficient basis for a determination. In this instruction, consideration has been given to the action to be taken on various types of evidence. However, it has been and will be impossible to provide a specific instruction for the facts in every case because the determination often depends upon the facts and circumstances of the particular case.

804.02 Ability

a. General statement of inability

1. A claimant who makes a general statement that he or she is unable to work will be given an opportunity to make an explanation revalidating the certification that he or she is able to work. (See AIM-7.)

2. If the claimant gives an explanation showing that his or her certification that he or she is able to work is acceptable, there will ordinarily be no further question of availability.

3. If the claimant, after having had an opportunity to make an explanation in accordance with AIM-7, fails to furnish information showing that the certification that he or she is able to work is acceptable, an investigation of ability (see AIM-7) and also of availability is to be made. If the claimant persists in the statement that he or she is not able to work, the claimant will not be considered available for work.

b. Application for benefits based on disability

1. A claimant who has made application for, or is receiving, benefits based on disability, such as a disability annuity under the Railroad Retirement Act, worker's compensation, or railroad relief association payments, will, unless a specific finding with respect to his or her ability to work has previously been made, be given an opportunity to apply for sickness benefits or to make an explanation revalidating the certification that he or she is able to work.

2. If the claimant's explanation is not sufficient for the purposes of revalidating his or her certification under AIM-7, an investigation of ability and also of availability is to be made.

c. Period following inability to work

If a claimant is found unable to work and a determination is made that his or her inability has ended, the claimant will be considered available for work from the day on which he or she became able to work until the end of the second registration period beginning after the date of determination that his or her inability has ended.

804.03 Act of God, storm, blizzard

A claimant who fails to take advantage of a job opportunity on a day claimed as a day of unemployment, because of a storm, blizzard, or other Act of God will be considered unavailable for work on all days on which he or she was so prevented from registering and on which he or she was, or would have been, prevented from taking advantage of any job opportunity, unless it is established that the storm, blizzard, or other Act of God would not have prevented the claimant from being ready to work.

804.04 Eligibility of retired claimants

A claimant who has retired voluntarily is presumed not to be eligible for unemployment benefits. District offices should promptly investigate to determine whether claimants have retired voluntarily. It is not necessary for the processing

office (OPNS-SUBD) to withhold the payment of benefits, as notice about days not to be paid will ordinarily be accomplished by district office coding on claims.

a. Voluntary retirement

In determining whether a claimant has retired voluntarily, careful consideration must be given to any action on the part of the claimant tending to limit his or her access to the labor market. A claimant's application for an age and service annuity under the Railroad Retirement Act or for old-age benefits under the Social Security Act is considered as an indication of voluntary retirement. Similarly, a claimant's leaving work on or after attaining age 60 is considered as an indication of voluntary retirement.

1. Leaving work to get an annuity When information is received that a claimant left suitable work, in which he or she could have continued, for the purpose of getting an annuity, pension, or old-age benefits, the claimant is to be considered as having voluntarily retired.

2. Out of service pursuant to an agreement A claimant is to be regarded as having retired voluntarily if his or her not being in the active service of his or her employer is due to an agreement between the claimant's labor organization and the employer requiring retirement upon attaining a certain age. The presumption of ineligibility is applicable to all claimants in the classes of service covered by the agreement irrespective of whether they are members of the labor organization. The presumption applies in the case of claimants taken out of service pursuant to such an agreement. It also applies in the case of a claimant who is out of service at the time he or she attains retirement age and cannot be recalled because of the agreement.

3. Withdrawal from labor market Even though a claimant did not leave suitable work for the purpose of getting an annuity, pension or old-age benefits, or is not out of service due to an agreement between his or her labor organization and his employer, the claimant may retire voluntarily by withdrawing from the labor market.

4. Unilateral rule A claimant who was required by his or her employer in accordance with a unilateral rule (not an agreement) to leave employment at a certain age is not, on that account, to be regarded as having retired by withdrawing from the labor market.

5. Unemployed at time of application for annuity When a claimant applies for an annuity, pension or old-age benefits while unemployed (who did not for the purpose of applying, leave suitable work in which he or she could have continued), the application will be regarded as an indication of retirement. Such an application will not, however, be regarded as sufficient to show that the claimant has voluntarily retired.

b. Rebuttal of presumption

The presumption that a claimant who voluntarily retired is ineligible for benefits may be rebutted. It is considered to have been rebutted if the claimant earns qualifying wages under the Railroad Unemployment Insurance Act after his or her voluntary retirement or a comparable amount of wages in non-railroad employment. It is also considered to have been rebutted if the character and extent of the claimant's efforts to get work are such as to demonstrate beyond question that he or she is doing what a reasonable person in similar circumstances would do to get substantial full-time employment.

804.05 "Bumping"

A claimant who fails to "bump" or otherwise exercise seniority rights to displace another employee, is not thereby to be considered unavailable for work. Investigation of availability may be required in accordance with other instructions of this article. For instance, such investigation should be made when a claimant fails to exercise seniority rights to a job which appears suitable from the standpoint of location, rate of pay, and type of work. An employee who voluntarily accepts a furlough in case of a force reduction while junior employees continue to work should be considered not available for work unless it appears that the job he or she could have had was not suitable because of physical requirements, location, rate of pay, or other circumstances. In such a case an investigation should be undertaken to determine the suitability of the work.

804.06 Deceased claimants

Death of a claimant does not require an investigation of availability for work.

804.07 Discharge, suspension or removal from service

Discharge, suspension or removal from service does not require an investigation of availability for work, unless the reason for such action is given and requires an investigation in accordance with other instructions of this article. (The reason for a claimant's discharge may be such as to require investigation on some point other than availability; if disability was the reason for the discharge, for example, ability to work should be investigated. Similarly, a discharge for being absent without leave might require investigation to see whether the claimant had, in fact, left work voluntarily.)

804.08 Domestic or other personal circumstances

Whenever information is received that a claimant failed to take advantage of a job opportunity because of domestic or personal circumstances, his or her availability for work is to be investigated. If the claimant is willing to work, readiness may be established:

a. by showing that arrangements have been made or would be made to have someone else take over the responsibilities arising out of such circumstances if work were obtained; or

b. by showing that he or she performed work in the past while affected by such circumstances; or

c. by otherwise showing that such circumstances do not prevent him or her from being ready to work.

804.09 Draft status

When information is received that a claimant has failed to take advantage of a job opportunity or has otherwise indicated that he no longer wishes to work because of his draft status, his availability for work will be investigated. He will be considered unavailable for work from the date with respect to which he was not ready and willing to work.

804.10 Employer requirements

a. Investigation of availability for work

An investigation of availability for work will be made when information is received that a claimant has failed to take advantage of a job opportunity, has been suspended or discharged, or has voluntarily left work, because of an employer requirement such as the following:

1. Making of adequate provision for notification of work;
2. Undergoing a medical examination or securing a certificate of freedom from contagious disease;
3. Obtaining necessary tools and equipment;
4. Taking the steps necessary to become bonded or licensed.

b. Determination of availability for work

The claimant is considered unavailable for work from the date of his or her failure, discharge or leaving until the date on which he or she meets such requirement, unless it is established:

1. that it was unreasonable for the claimant to comply with the requirement or that there is other work for which no such requirement exists for which he or she is qualified and which is willing to perform; or
2. that the employer requirement was not a reasonable one. An employer requirement is to be considered reasonable if it does not require violation of

law and is provided for in an agreement between the employer and a bona fide labor organization, or is generally met by employees in the occupation in which it applies.

804.11 Voluntary leaving of work and failure to take advantage of job opportunity

A claimant who has voluntarily left work or failed to take advantage of a job opportunity is not necessarily unavailable for work but the reasons for the voluntary leaving or the failure should be considered in connection with other provisions of this article.

804.12 Information on Form UI-1 (ES-1)

If an entry on Form UI-1 (ES-1) indicates that the claimant may not be able to work, or if the claimant states he or she is unable to work, an investigation shall be conducted or determination made in accordance with instructions in AIM-7 and AIM-804.02.

804.13 Intoxication

When there is information that a claimant is intoxicated, he or she is to be considered unavailable for work on the days on which he or she was intoxicated. The claimant may later be considered available for work if he or she states that he or she could have performed some work on any part of such day.

804.14 Jail, custody of government officials, parole

A claimant who is confined in a penal institution or is in the custody of a Federal, State or local governmental unit or official is not to be considered available for work. A claimant is not considered confined or in custody if he or she is released on bail or placed on probation or parole. A claimant, however, released from custody under a program that permits short-term leave from custody and after which leave the claimant must return to custody, is not to be considered available for work with respect to those days on which the claimant is on furlough from confinement.

Examples:

a. Claimant A is serving a prison term that permits periodic weekend furloughs. Claimant A is not available for work during his or her confinement or weekend furloughs.

b. Claimant B is serving a prison sentence under terms permitting prisoners to report to their employer during the day, while requiring prisoners to return to jail each night. Claimant B is currently unemployed and therefore is confined 24 hours a day. The fact that the claimant would be released to work if he or she had a job does not make him or her available for work.

804.15 Jury duty

A claimant who is on jury duty or is required to appear in court as a witness, is considered to be unavailable for work on each day on which he or she is required to be on jury duty or in court, unless it is established that the claimant is ready to work on such days.

804.16 Leave of absence

When there is information that a claimant is on leave of absence, an investigation of availability for work is to be made. The claimant is considered available for work if it is established that he or she is willing to work and ready to work in accordance with the other instructions of this article. In determining willingness to work, consideration is to be given to the claimant's reasons for taking a leave of absence, prospects of getting other work while on leave, and efforts to obtain other work. A leave of absence taken because of personal circumstances or taken in order to perform activities not consistent with full-time work often indicates unwillingness to work. If the claimant took the leave of absence, and continues it, to protect seniority rights in order to look for other work or to engage in other work, or the work from which the claimant took leave of absence was, and continues to be, unsuitable, the leave of absence would not indicate unwillingness.

804.17 Locality of limited job opportunities

A claimant who moves from a locality in which employment opportunities are relatively good to a locality in which employment opportunities are relatively poor or remains in such a locality of limited job opportunities is considered to be available for work, unless there is additional information showing:

a. that work which the claimant is willing to accept does not usually exist and there is no prospect that it will exist, within the distance from his or her residence that he or she is willing to accept such work; or

b. that the claimant is otherwise unduly or unreasonably restricting his or her willingness to work; or

c. that the claimant may not be available for work in accordance with other instructions in this article.

804.18 Lodge or organization work, and electioneering or other political campaign work

a. Holding a position

The fact that a claimant is holding a position in a lodge or other organization, electioneering or doing other political campaign work, requires no investigation of availability for work, unless there is additional information which indicates that the

position requires work that would interfere with the acceptance of suitable work. If there is such additional information, the claimant is to be considered available for work if he or she:

1. would be willing to give up the position, or
2. can arrange to have his or her work done by someone else, or
3. can change the days or hours of work if he or she obtains work; and
4. otherwise establishes that he or she is ready and willing to work.

b. Attendance at meetings

A claimant who is attending a lodge or other organization convention is to be considered unavailable for work on each day on which he or she is attending such convention, unless it is established that:

1. the claimant's responsibilities or obligations in connection with the convention would not interfere with the acceptance of other suitable work, or, if it would, that he or she is willing to leave the convention, can arrange to have his or her work done by someone else, or can change the days or hours of work if he or she obtains work; and
2. the claimant otherwise establishes that he or she is ready and willing to work.

804.19 "Marking back" on extra-board and missing turns in pool service

A claimant who is on an extra-board and "marks back" so as to cause his or her name to be placed in a lower position on the extra-list, will be considered unavailable for work from the date he or she marks back to the date with respect to which the circumstances which caused him or her to "mark back" have been removed and the claimant is ready to work and willing to work.

An employee in pool service is not available for work on any day the employee would have worked but for missing a turn. An employee is generally considered to be in pool service if he or she performs train and engine service as a regular member of a crew that works as a unit on a first in, first out basis.

804.20 Marriage

When a claimant voluntarily leaves his or her last work in order to marry, availability for work is to be investigated. The claimant is considered available for work if it is established, with respect to the days subsequent to the leaving, that he or she is ready and willing to work and if the apparent discrepancy between the claimant's unwillingness as indicated by the voluntary leaving and any statement of willingness to work is reconciled.

804.21 Military service

A claimant who is in active military service is considered unavailable for work. If a claimant's address is preceded by "Camp", or indicates that he or she is stationed at a Military Reservation, an investigation is to be conducted to determine whether he or she is in active military service.

804.22 National Guard and Reserve service

A claimant who is merely attending weekly military drills of the National Guard or Reserves is considered available for work unless there is other information to show that he or she may not be available for work in accordance with instructions in this article.

804.23 Notices of work

a. Failure to respond to notice of work

A claimant's failure to respond to a notice or call for work from an employer, may require an investigation of availability. If the claimant refuses an assignment in his or her regular occupation with his or her employer for a specific day, the claimant should be considered not available for work on such day. Section 4(a-2)(ii) of the Act is not ordinarily applicable in such cases. A claimant is considered unavailable for work on each day with respect to which he or she is not in a position to receive notices of work from the employer from whom he or she could reasonably expect to receive a call or notice of work.

b. Returned mail

Return of a check or mail as undeliverable because of an improper or incorrect address furnished by a claimant will not, of itself, be considered as raising a question of availability for work.

804.24 Part-time work

A claimant who is a part-time worker is considered available for work unless there is other information to show he or she may not be available for work in accordance with instructions in this article.

804.25 Pregnancy and childbirth

a. Before the birth of a child

When there is information that a claimant for unemployment benefits is pregnant, an investigation should be made to determine her availability for work and to determine the expected date of normal delivery. She should not ordinarily be considered available for work after a date four weeks before the expected date of birth. The claimant should be fully advised concerning her rights to sickness

benefits based on pregnancy, miscarriage and childbirth and should be given Forms SI-1A and SI-1B, Application and Statement of Sickness.

b. After the birth of a child

Unemployment benefits should not be paid to a claimant after the birth of a child unless investigation shows that she is available for work or unless she has been employed since the child was born.

804.26 Public office

Whenever information is received that a claimant holds a public office, his or her availability for work is to be investigated. The claimant is considered unavailable for work on each day on which he or she is required to perform duties which require substantial time unless it is established:

a. that the claimant can carry out the duties of his office at such times and on such days as to not prevent him or her from being ready to accept other suitable work, or

b. that the claimant has performed work in the past while holding such office, or

c. that the claimant can arrange to have his or her work done by someone else, or

d. that the claimant would be willing to give up the office if he or she obtained work; and

e. it is otherwise established that the claimant is ready and willing to work.

804.27 Quarantine

a. Quarantine

A claimant who is quarantined or whose residence is quarantined is to be considered unavailable for work from the date that the quarantine is established to the date the restriction is lifted, unless it is established that under the condition of the quarantine he or she is permitted to perform work.

b. Infectious illness

A claimant who is recovering from an infectious illness or who has remained at home on the advice of a physician or public health official is considered unavailable for work on each day on which he or she remains at home unless it is established that the claimant is ready and willing to work and is able to work.

c. Employer rule

No investigation of availability for work need be made and a claimant is considered available for work if he or she is required to stay away from work because of an employer rule prohibiting employees from working while there is an infectious illness in their home.

804.28 Religious or personal convictions

A claimant who is not willing to work on the Sabbath Day of his or her faith, because of religious convictions, will not for that reason be considered unavailable for work on such day. In any other situation, unwillingness to work on a particular day because of religious or personal convictions would raise a question of availability and the case should be briefed to the RUIA, Internet and Support Section (RIS) in Policy and Systems.

804.29 Restriction on area of employment

A claimant is considered unavailable for work during the time he or she is willing to work only in an area where there is usually no work he or she is ready and willing to perform.

804.30 School or training course

a. Technical school, trade school or vocational training program

Enrollment in a technical or trade school or in a vocational training program is considered a reasonable effort to obtain work. A claimant who is attending or participating in such school or program is considered available for work if both of these conditions are met:

1. The claimant's current prospects for work are poor; and

2. The claimant's training can reasonably be expected to increase his or her prospects for work.

b. High school or college: Presumption of unavailability

A claimant who is attending regular day classes in a high school or college is presumed to be unavailable for work unless there is clear evidence, as indicated below, of availability. If such a claimant protests the determination that he or she is not available for work, detailed information should be obtained, through personal interview if at all possible, concerning:

1. The claimant's present circumstances, such as the hours of class attendance, and any special financial assistance or allowance he or she is receiving while in school.

2. The claimant's work history, particularly any previous work performed while attending school.

3. The claimant's efforts to obtain work.

4. The claimant's prospects for work.

c. High school or college: Determination as to availability

A student-claimant is to be considered available for work if both of these conditions are met:

1. There is clear and convincing evidence that the claimant is making reasonable efforts to get work or has good prospects of such work. In this connection, "work" means full-time work. A claimant should not be considered available for work on the basis of applications for part-time work such as students frequently perform.

2. It is clear that the claimant could perform full-time work while continuing in school or that his or her personal circumstances are clearly such that he or she would leave school in order to perform work. On this latter point, consideration may be given to the nature of the school work, the claimant's financial resources, and the amount of financial loss he or she would incur by leaving school.

d. Employment on extra board

A student who is on a rotating extra board should ordinarily be considered to be available for work. But if he or she "marks back" on the board, or misses calls for work because of school attendance, careful investigation must be made to ascertain whether the claimant is ready and willing to accept and perform regular full-time work.

e. Voluntarily leaving work to attend school

A claimant who voluntarily leaves work that he or she could have continued in order to attend school will be presumed not to be available for work. This presumption does not apply to a furloughed employee who begins attending school, because the employee does not have work to leave, although the employee's availability must still be evaluated in light of paragraph a, b, and c above. The presumption would apply, however, if the employee failed to respond to a recall in order to continue attending school.

804.31 Seasonal work

A claimant who is customarily unemployed during certain seasons of the year is to be considered available for work unless there is other information to show that

he or she may not be available for work in accordance with instructions in this article.

804.32 Self-employed persons and farmers

Whenever information is received that a claimant is substantially engaged in an activity or enterprise for earned income, his or her availability for work is to be investigated. (See .39 Salesperson.) The claimant's availability for work is not in question on days for which remuneration is payable or accrues because for this reason those days cannot be considered days of unemployment. The claimant will be considered unavailable for work on every day on which he or she is engaged in the employment or enterprise, which would otherwise be a day of unemployment, unless it is established that the claimant:

a. could engage in the activity or enterprise at such times and on such days as would not interfere with his or her readiness to work.

b. could arrange to have the work done by someone else, or

c. would be willing to give up such activity or enterprise if he or she were offered work he or she is willing to perform.

In considering a claimant's willingness to work, knowledge of the amounts of his or her investment and income, and his or her work history while engaged in such activity and enterprise are material, since such knowledge will afford some insight into the claimant's reason for self-employment, i.e., whether for subsistence, as a stop-gap, or as a main source of income. The time spent in the enterprise (with due consideration given to seasons), and the arrangement the claimant may have made or would make for someone else to take care of the enterprise give indications of the claimant's readiness to work.

804.33 Strike or labor dispute

A claimant, unemployed because of a strike or other labor dispute, will be considered available for work, unless there is additional information to show either:

a. that the claimant is not available for work in accordance with other instructions of this article, or,

b. that the claimant is not ready or willing, upon the termination of such strike or labor dispute, to return to the work at which he or she is not employed because of a strike or labor dispute.

804.35 Accumulated rest days

Under the provisions of certain collective bargaining agreements, when it is not practical for an employee in a given position to take his or her rest days each

week, the rest days may be allowed to accumulate and taken in a block. A claimant will ordinarily be considered not available for work on such accumulated rest days. If in any case it appears that the claimant may be available for work on the accumulated rest days, the question whether remuneration is attributable to the rest days will be considered. In some cases, investigation has disclosed that provisions of the agreements are such that remuneration is attributable to the accumulated rest days.

Note: Compressed work schedules are becoming more common among railroad workers. These consist of an employee working a block of days in a row followed by the accumulated rest days. When adjudicating these claims for availability, the key issue to be determined is the reason a claimant is unemployed on a particular day.

1. If the reason is that the day is an “extra” rest day resulting from a compressed workweek or schedule, the day should be denied based on availability.

2. If the reason is furlough or lay off, the “extra” rest day should be allowed as a day of unemployment. (A claimant on furlough does not have rest days).

Any questionable case should be routed through channels to the RUIA Internet and Support section in Policy and Systems (P&S-RIS).

804.36 Equivalent of full-time work

A claimant who is continuously employed in work providing the equivalent of full-time employment is not to be considered available for work with respect to any rest day, holiday or other non-work day within a 14-day registration period. Examples of such cases follow. Any questionable case should be routed through channels to RIS.

a. An employee regularly receives remuneration for 40 hours per week by working 10 hours on each of four days in the week. Consequently, the claimant has six rest days, instead of the usual four, in a 14-day registration period.

b. An employee who is employed in a position with a compressed work schedule during only part of a registration period is to be considered unavailable for work on extra rest days resulting from the compressed work schedule. An "extra" rest day is a day on which the employee would have worked under a conventional schedule of five consecutive 8-hour workdays.

For example, the claim of an employee who is recalled from furlough on the eighth day of a registration period to a job requiring four 10-hour workdays per week is coded as follows:

1111111 2222811

c. An employee changes from one regular assignment or shift to another which has different rest days, with the result that in one 14-day registration period he or she has five rest days.

d. An extra board employee works under an agreement providing that the daily rate of compensation is the weekly rate divided by the number of working days in the week. In a week containing a holiday, the daily rate is one-fourth the weekly rate. On a claim the employee shows employment on all days in the registration period except a holiday and four rest days. The claimed days are to be denied because the claimant is being paid the same amount as if he or she had worked full-time.

804.37 Extra-Board

A claimant who is on a rotating extra board will ordinarily be considered available for work. The amount of work a claimant may be likely to get by being on a seniority extra board or seniority list is to be considered along with other factors in determining whether the claimant is available for work. A claimant who chooses to work on an extra board in preference to holding a regular assignment will not on that account alone be considered unavailable for work. However, if there is an indication that the claimant did not have good prospects of getting full-time work by choosing the extra board, availability for work is to be investigated. If the investigation discloses that the claimant did not have good reason to believe that he or she would get the equivalent of full-time work, the claimant will be considered not ready and willing to perform full-time work and consequently not available for work on non-work days.

804.38 Union membership requirements

If information is received indicating that a claimant may have been discharged for failure to meet union membership requirements, an investigation is to be made to determine whether he or she is available for work. If it is found that the claimant has been discharged for failure to meet union membership requirements, he or she will be considered unavailable for work until demonstrating a willingness to work despite his or her failure to meet union membership requirements.

804.39 Salesperson

A claimant who is spending substantially full time as a salesperson on a commission basis receives remuneration attributable to the days on which sales are made, and for other days is generally not available for work. If such a

claimant contends that he or she is willing to discontinue the selling job to accept other employment, he or she may be available on days on which no sales are made. In such cases the circumstances surrounding the termination of the claimant's last employment, his or her prospects of getting other work and the amount earned from sales should be taken into account in arriving at the determination. A salesperson who is getting substantial earnings will generally not be likely to abandon the endeavor in favor of accepting other full-time work, and hence, is not available.

804.40 Failure to work in anticipation of maximum mileage

An employee in train and engine service who voluntarily lays off work on any day to avoid reaching maximum mileage, hours or earnings permitted under a labor-management agreement providing for work restrictions is not to be considered available for work with respect to such day.

804.41 Foreign Residency

Unemployment benefits may be paid to a person residing outside of the United States if he or she is available for work and otherwise eligible. While a claimant may establish a presumption of availability by registering for benefits, the RRB's inability to verify availability is grounds for terminating benefits. The Bureau of Field Service (BFS) is to consider the circumstances that resulted in foreign residency, whether the claimant has any required work permit, prohibitions or limitations on the employment of immigrants, work seeking efforts as monitored by questionnaire or other means and any other material evidence in determining availability. (Reference L-95-13)

805 Determinations as to Availability

805.01 Determinations by field offices

District offices are authorized to make determinations on availability. If it appears to the district office that benefits have already been paid for one or more days included in a period of unavailability that is identifiable, BFS is to be notified. In such case, BFS will determine whether benefits already paid are erroneous. (Such a case should occur infrequently. Example: claimant marked off the extra board for one or more days but still claimed the days. The claimant’s certification that he or she was available for work on such days would presumably have been false.)

805.02 Determination of unavailability for indefinite period

When a claimant is held unavailable for work for an indefinite period with no identifiable beginning date, no further unemployment benefits are to be paid without evidence of availability. (Benefits already paid should not ordinarily be disturbed.) Thus, a claim received in the field office on or after the date of an

adverse determination will ordinarily be denied even though some or all of the days are on or before the date of the determination. The determination will be considered applicable with respect to each day after the date of determination until the claimant obtains substantial employment or there is other information showing that he or she became available for work. If evidence is presented to the effect that the claimant became available for work after the date of determination, such evidence will be considered and a determination will be made concerning the claimant's availability for work on the days with respect to which such evidence is presented. During or after any period of substantial employment, the claimant is to be considered available for work, in the absence of any evidence to the contrary, on the basis of the certifications on his or her claim forms.

a. Gap in registration

If a claimant who has been held not available for work stops registering and later begins to register again, it may be considered that he or she has become available for work if:

1. There is evidence that the claimant worked during the gap in registration, or,

2. The first day claimed is 60 or more days after the last day previously claimed.

805.03 Reconsideration of field office determination

When BFS receives information which appears to furnish grounds for a reconsideration of a field office determination, BFS will make a re-determination if appropriate.

805.04 Review of field office determination

If, in the opinion of BFS, information received raises a question whether a field office determination was correct when made, BFS should request the field office file for the claimant and review the evidence. In the event that BFS finds that the field office determination was correct when made, the field office file will be returned to the field office with a memorandum affirming the determination or with information needed for reconsideration in accordance with subsection .03 of this section. In the event BFS finds that the field office determination was not correct when made, BFS will make a re-determination, and, when returning the field office file, furnish the field office an explanation of the action taken and request the field office to inform the claimant.

806 Notice

Notice of determination that a claimant is not available will be sent in each case in which benefits are denied on the basis of such determination and in each case

where a period of unavailability extends beyond the latest day claimed as a day of unemployment.

Appendices

Appendix A - Expression Of Policy On Availability For Work

(Body of Letter from RRB's General Counsel to General Chairman of a Labor Organization)

According to your letter, Mr. __________________ stated that the Railroad Retirement Board's (RRB) district manager there had issued circular letters to all unemployed railroad men and women, advising them that they would lose benefits unless they appeared at his office and showed that they had made an honest effort to find "any kind of work."

Our district manager at _________________ advises us that he has not issued any circular of the type described in your letter. It would appear that Mr. _____________ was referring to certain letters which have been sent out to individuals whose claims for unemployment insurance benefits have been denied. These letters contain spaces for the insertion of the reasons for denial. A copy of a typical letter of this sort is enclosed for your information; this was used in a case in which it had been found that the claimant was not "available for work", as required by the Railroad Unemployment Insurance Act.

You will note from the enclosed letter that evidence of effort to find work is required only if the claimant does not have good prospects of getting work soon. Such evidence is not required if, for example, the claimant is on an extra board. In such cases, the claimant would be regarded as satisfying the "availability" requirement of the Act. Under the RRB's adjudication policy, even a claimant who does not have good prospects of being called back to work and is not on an extra board is not required to look for "any kind of work." All that is required of him is that he make reasonable efforts to obtain work. What constitutes "reasonable efforts" is determined on the basis of all the facts of the particular case. No claimant would, of course, be expected to seek, or to accept, work which would not be suitable for him. The Act itself prescribes certain standards regarding the suitability of work, and the RRB's policies in this connection are intended to effectuate the purposes of the Act.

Policies similar to those discussed above in connection with the "availability" requirement are also followed by the Board in applying the provisions of section 4(a-2)(ii) of the Act, regarding a thirty-day disqualification for failure to accept suitable work, or to comply with instructions from the Board to apply for suitable work or to report to an employment office.

Appendix B - Availability For Work

Introduction

This appendix provides an overview of the basic concepts of the availability for work requirement.

Basic Meaning of "Available for Work"

The meaning of the phrase "available for work" is spelled out in the Board's regulations:

- A claimant for unemployment benefits is available for work if he or she is willing and ready to work.
- A claimant is "willing to work" if he or she is willing to perform work reasonably appropriate to his or her circumstances.
- A claimant is "ready to work" if he or she is in a position to be notified of work and is prepared to go to work when the call comes.

Initial Proof of Availability

The great majority of claimants for unemployment benefits are ready and willing to work. Recognizing this, the regulations provide that a claimant who has complied with the registration requirements is initially to be considered available for work, provided there is no evidence to the contrary.

Specific evidence as to a claimant's availability for work is required when the district office receives information indicating that he or she may not be available. Such information may be provided, for example, by the claimant on the claim form or by the employer in the prepayment verification process.

Readiness to Work

Many of the claimants who are found to be not available are not "ready to work." Some personal circumstance keeps them out of the full-time labor force. The claimant attending school full-time is the prime example of an individual who is not ready to work and hence not available for work. Persons who have to care for small children often are not "ready to work."

It is important for field office personnel to be on the alert for any personal circumstances which indicate a claimant's lack of readiness to work.

Willingness to Work

Whether a claimant is "willing to work" is, of course, an intangible matter, much more difficult to determine than whether he or she is ready to work. It is

reasonable to assume that a claimant is willing to work unless there is a clear signal that he or she is not. Refusal of an offer of suitable work without good cause may be such a sign. Failure to make reasonable efforts to obtain work is a more frequent and more reliable indication of unwillingness to work. The RRB's regulations provide that a claimant may be required to show, as evidence of willingness to work, that he or she is making reasonable efforts to obtain work unless he or she has good prospects of obtaining work or the circumstances are such that any efforts would be fruitless. If the claimant fails to make such a showing benefits are not thereafter to be paid unless evidence of availability for work is presented.

But it must be said, with emphasis, that a finding of unavailability based on the claimant's lack of efforts to obtain work is to be made after the claimant has been fully advised and has had an opportunity to establish availability for work. An exception is made, however, in the case of an employee who has voluntarily retired, and thus may be determined immediately to be unavailable for work.

Reasonable Efforts to Obtain Work

Information about a claimant's efforts to obtain work is normally obtained in a claimant interview. Most of the time the interview discloses the claimant is making reasonable efforts or has good prospects of work. If not, it becomes the interviewer's responsibility (1) to make sure that the claimant understands the "reasonable efforts to get work" requirement and (2) to help him or her find work. The interviewer should discuss with the claimant in detail

- The types of jobs he or she might obtain.
- Specific applications for work which the claimant has made.
- Additional places where the claimant might look for work.

The interviewer should try to reach an understanding with the claimant as to what the latter is going to do to try to find work. The interviewer should explain that if claimant's efforts are not successful he or she will be interviewed about the matter again within 30 to 60 days.

Discussions in a subsequent interview with a claimant about his or her job-seeking efforts should center on

- Results of applications for work.
- Whether he or she followed through on suggestions made at the previous interview and, if not, why.
- Mapping out a continuing campaign to get a job.

If claimant interviews are skillfully conducted, a finding of failure to make reasonable efforts to get work will occur only when it is clear that the claimant really is not willing to work.

Suitable Work

The above presupposes a reasonable, thoughtful approach to what constitutes suitable work. Some jobs - generally those with sub-standard wages or working conditions - are not suitable for anyone. Others may or may not be suitable for the individual claimant. In making such individual determinations the key considerations include:

- The claimant's experience, training and education. A claimant is not expected to apply for work for which he or she obviously is not qualified.

- Claimant's physical fitness, age and other personal factors. Lack of physical fitness for a job makes the work unsuitable. Age may be a limiting factor - realistically, older claimants do not generally have as wide a choice of job opportunities as younger ones.

Length of unemployment and work prospects

Work which the claimant could perform but which differs substantially from the types of work he or she has performed, or requires substantially less skill, may or may not be suitable. Good judgment is essential in this area. The length of unemployment is an important factor. The area of suitable jobs broadens as the individual's unemployment lengthens and his or her prospects lessen for getting a job in his or her customary occupation.

Appendix C - Guidelines For Requiring Work-Seeking Efforts Of Claimants

The purpose of this appendix is to summarize guidelines to be considered in deciding which claimants are required to make reasonable work-seeking efforts and in making related availability determinations.

Because of the limited resources available, it is important that the time allocated for placement activities be spent where it will do the most good. In general terms, district offices should differentiate between three groups of claimants:

1. claimants who are not required to make work-seeking efforts in order to be considered available,

2. claimants for whom active placement assistance would not likely be useful, and

3. claimants who are required to make reasonable work-seeking efforts and who we can help find work through active placement assistance. District offices should concentrate their placement efforts on the third group.

Regulations

The RRB's regulations regarding availability for work are contained in Part 327.

Section 327.15 Reasonable efforts to obtain work.

(a) Requirement. A claimant may be required at any time to show, as evidence of willingness to work that he is making reasonable efforts to obtain work which he professes to be willing to accept and perform, unless he has good prospects of obtaining such work or his circumstances are such that any efforts to obtain work other than by making application for employment service by filing Form UI-1(ES-1) . . . would be fruitless to the claimant.

(b) What constitutes reasonable efforts. A claimant shall be considered as making reasonable efforts to obtain work when he takes such steps toward obtaining work as are appropriate to his circumstances.

What Are Good Prospects?

Generally a claimant is considered to have "good prospects of obtaining work" if he or she expects to be recalled within a reasonable time. The claimant may be unemployed due to adverse weather conditions (seasonal unemployment) or due to some other factor affecting his or her job. The underlying principle in determining "good prospects" is whether the period of unemployment can be clearly attributed to a temporary situation.

There is no specific time period that may be considered reasonable. Seasonal layoffs in northern areas are often longer than those in more moderate climates, but still may be reasonable for the area. In fact, the duration of a reasonable seasonal layoff in a particular territory may differ from one year to the next because of a very harsh or mild winter. Likewise, there is no absolute definition of a reasonable time of layoffs caused by non-weather factors. It is the responsibility of the district manager to maintain contact with local railroad officials to be aware of prevailing conditions in the industry. The district office staff should then use this information to help determine if a claimant's expectations are reasonable and based on valid assumption about probable recall.

Note that AIM 804.31 specifically states:

> A claimant who is customarily unemployed during certain seasons of the year is to be considered available for work unless there is other information to show that he or she may not be available for work in accordance with instructions in this article.

Thus, a seasonally unemployed claimant with good prospects for recall is not required to give evidence of work-seeking efforts in order to prove availability. Of course, such claimants may be encouraged to seek interim employment while laid off, and they may be referred to appropriate job orders. For example, a seasonally unemployed track laborer could be referred to a short-term snow clearing job, and could be disqualified for 30 days for failure to report to or apply for the job without good cause.

The case record of each claimant whose availability is based on "good prospects" should be flagged to indicate the expected date of recall. If more than one claim is received covering days after a claimant's expected recall date, the claimant's availability should be reconsidered. Such claimants should be re-interviewed if necessary to determine if they are available for work.

When are Work-Seeking Efforts Fruitless?

Based on the knowledge of local labor markets and considering the rate of unemployment, district managers have the authority to determine when work-seeking efforts can generally be considered fruitless for certain classes of claimants in a particular area. District managers may make such a decision on a group basis and apply it to an entire occupational group and/or to a specific geographic territory, as appropriate. For example, in a depressed area with high unemployment, the district manager may determine that no work-seeking efforts other than registering with a state employment service are required of unskilled or semi-skilled claimants. In such cases, it is mandatory that Form UI-35a, Field Office Record of Claimant Interview, be so documented for each affected claimant. It is not intended that district offices should abandon job placement efforts in economically depressed areas. Rather, emphasis should be placed on developing job orders and on providing claimants with specific work-seeking advice whenever possible.

On an individual basis, work-seeking efforts may be considered fruitless in the case of a furloughed claimant without good prospects who is approaching retirement age, and whose work experience is primarily in occupations unique to the to the railroad industry. There are other claimants whose work experience may be limited to railroad occupations, but who are expected to remain in the labor market for some time. Such claimants without transferable skills may be informed that enrollment in a technical or trade school or a vocational training program can be considered to be a reasonable effort to obtain work (See AIM 804.30).

What Are Reasonable Efforts?

There is no single explanation of what constitutes reasonable efforts, since the circumstances of the individual claimant must be taken into account. What is reasonable for one claimant may not be for another, and it may be necessary to redefine reasonable efforts for a particular claimant as the length of his or her

unemployment increases. Claimants who have been unable to find the type of job they want after several months may be encouraged to widen the scope of what they consider acceptable employment, and to increase their job search efforts.

District offices should not establish arbitrary work-seeking effort quotas, such as requiring all claimants without good prospects to file two or three job applications per week. Such quotas are not productive and do not accurately indicate whether a claimant is truly making reasonable efforts to find work. There may be cases, however, where the district office has reason to believe that a particular claimant is not making reasonable efforts. In such a case, an individual claimant may be required to make a specific number of efforts, and the district office may require the claimant to furnish proof of such efforts at regular intervals.

When counseling a claimant about work-seeking efforts, it is important for the Board representative to consider the quality of efforts the claimant has made or will make, not just the quantity. A claimant's efforts should reflect inquiries for jobs that he or she would be qualified and willing to perform. Here are issues that may be relevant in judging the character and extent of the claimant's work-seeking efforts.

Character:

1. Are the claimant's expectations regarding wages, hours, location and duties realistic in view of the local labor market?

2. Do the jobs for which the claimant applies match his or her training, experience and qualifications?

3. Does the claimant apply for "any work" or target inquiries and applications for specific jobs or job categories?

4. Do the job contacts consist only of telephone inquiries or do they include personal visits?

5. Were the telephone inquiries preceded or followed by a resume?

6. Does the scope of inquiries expand to additional employers or is it confined to repeated contacts with the same employers?

7. Does the claimant request to leave an application on file with the prospective employer?

8. Does the claimant prepare for contact with the company by learning about it?

9. Does the claimant request an interview with a person who has the authority to hire or limit contacts to acquaintances without authority to hire?

10. Does the claimant ask or determine the reasons why he or she is not hired or permitted to submit an application, and take steps to correct the deficiencies where appropriate?

11. Does the claimant organize and record his or her job search?

12. Does the timing of the work-seeking efforts indicate they were made only to satisfy UI eligibility requirements?

Extent:

1. What is the number of job contacts?

2. Does the claimant show persistence in making contacts?

3. What is the geographic range of the contacts?

4. How large is the scope of job types considered acceptable?

5. How broad is the range of job and referral sources utilized?

Who Should be Given Work-Seeking Advice?

All claimants without good prospects of obtaining work, including those indefinitely furloughed, those who voluntarily quit, and those who are discharged and are not actively pursuing a claim for reinstatement, should be given specific and detailed work-seeking advice, unless it has been determined that work-seeking efforts would be fruitless. The work-seeking advice given a claimant is to be fully documented on Form UI-35a, Field Office Record of Claimant Interview.

The individual conducting the interview should assist the claimant in identifying his or her job skills and prospective employers. The interviewer should recommend specific actions such as:

1. Registering with a union hiring facility;

2. Applying for employment with former employers;

3. Filing job applications with non-railroad employers who may reasonably be expected to have suitable openings;

4. With the assistance of a RRB representative, checking the office's file of open job orders and the railroad job vacancies list;

5. Responding to suitable job advertisements in local papers;

6. Registering with a state employment service office and regularly reviewing their vacancy files;

7. Attending job search or career change workshops or clinics sponsored by community organizations;

8. Any other action reasonably directed toward obtaining work.

Appendix D - Availability Of Employees Who Take Separation Allowances

General

The employee who has given up an employment relationship in order to receive a substantial cash payment may drop out of the labor market. This is particularly true in the case of a person approaching retirement age, or a married person who is not the sole support of the family. Accordingly, the availability of employees who take separation allowances should be checked with great care at the outset if they claim days for which the disqualification for separation allowance does not prevent payment. Perfunctory inquiries by the interviewer as to the claimant's work-seeking efforts would be far from adequate. The claimant should not be held to be available unless the evidence clearly supports such a finding.

When availability should be investigated

In cases in which the disqualification for separation allowance has elapsed and thus does not prevent payment of benefits, the claimant's availability should be looked into. When the evidence indicates the claimant has not left the labor market, the claimant should be allowed a reasonable length of time in which to find other work. Such evidence would be substantial employment since accepting a separation allowance. Investigation should be made promptly if there is a question.

The claimant's first claim for unemployment benefits after the end of the disqualification period calls for close scrutiny of availability, and, if necessary, an investigation to develop information sufficient for a determination. Evidence of a substantial amount of work in the disqualification period, considered with other circumstances of the case, may, of course, indicate that the claimant is still in the labor market.

Circumstances of claimant's election

The circumstances under which a claimant resigned to take a separation allowance may give a clue to his or her intention with respect to continuing in the job market, or suggest what aspects of availability should be explored. If necessary, officials of management and labor should be contacted for

information as to the options that were available at the time the claimant elected separation, and for information as to claimant's long-term prospects with the employer had he or she not resigned. A careful distinction should be made between the type of case where the claimant who took a separation allowance did not give up a job or a guarantee of employment, and the type of case where the claimant actually gave up guaranteed employment of several years' expected duration. The following types of information and issues may be relevant to the availability determination.

Information from the claimant:

- how he or she learned about the separation offer
- what party initiated the offer
- what options the carrier offered
- the claimant's understanding of his or her prospects for continued employment or wage guarantee
- the claimant's understanding of how the separation program was being administered
- how much time the claimant had to investigate alternatives/options and what actions he or she took to do so
- the names and titles of carrier and labor officials the claimant contacted about his or her prospects and options
- the claimant's personal circumstances at the time the offer was made
- the claimant's understanding of the area labor market and his or her chances for other employment at the time the offer was made

Information from the carrier:

- the separation offer and the claimant's prospects
- information made available to the claimant concerning continued employment and workforce reductions
- changes in job duties or assignments affecting the claimant
- whether relocation or reclassification were alternatives

Circumstances of claimant's new situation

Information regarding the claimant's personal circumstances and his or her prospects for finding suitable work in the new situation created by the resignation

and receipt of a cash settlement should be developed and documented unless it is already a part of the record:

- the claimant's age, number of service months, number of dependents, health (as it may affect prospects for obtaining and performing full-time, meaningful employment);
- the claimant's education, training, experience, and customary rate of pay;
- the size of the town in which the claimant resides;
- the job opportunities there in work that is suitable;
- the claimant's work-seeking activities since resignation and whether they are consistent with the claimant's qualifications, and the claimant's statements as to the work he or she is willing to accept and perform;
- any claimant actions limiting access to the labor market.

Voluntary retirement

If the claimant who resigned to take a separation allowance is near retirement age, the question regarding voluntary retirement should be resolved in accordance with the detailed instructions given in AIM-804.04. Careful consideration should be given to the evidence developed regarding the circumstances under which the claimant took the separation allowance, and the facts of the claimant's new situation. If the claimant could have remained in the same job, in the same location with prospects for future employment not substantially diminished, or if circumstances are otherwise such that, by resigning to take the separation allowance the claimant effectively left the job market, the claimant should, at the outset be considered to have voluntarily retired and thus presumed not eligible for benefits. Some of the factors to be considered in cases where there is a question of voluntary retirement are discussed in the following excerpt from a decision of the RRB in a case where the appellant resigned after almost 40 years of employer service to accept a severance allowance. It should be especially noted that superficial efforts on the part of a claimant to find work will not establish eligibility--the efforts must be such that they leave no doubt regarding the genuineness of his or her efforts and of his or her desire to find and perform suitable work.

"Appellant argues that he did not retire but merely resigned voluntarily. All of the circumstances, however, point to the conclusion that his resignation was in effect in a retirement. He became 64 years of age ... and states that he had always intended to quit work at age 65. The offer of a large cash payment for his resignation by the Railroad obviously made an earlier retirement more attractive to him. And in view of his age, his limited education, his specialized experience as a railroad engineer and fireman with practically no other experience, and his

residing in a rural area with limited work opportunities even for young men, the only realistic conclusion is that by accepting the Railroad's offer he took himself out of the job market and in effect retired. The efforts made by him to obtain employment are obviously not of a character to rebut the presumption of his retirement or to establish his availability for work; they are of a kind more indicative of a person seeking only to establish his eligibility for unemployment benefits."

901 Provisions of the Act and the Regulations

901.01 The Railroad Unemployment Insurance Act

a. Section 1 (j) of the Act provides that:

"The term 'remuneration' means pay for services for hire, including pay for time lost, and tips, but pay for time lost shall be deemed earned on the day on which such time is lost. The term 'remuneration' includes also earned income other than for services for hire if the accrual thereof in whole or in part is ascertainable with respect to a particular day or particular days. The term 'remuneration' does not include any money payments received pursuant to any non-governmental plan for unemployment insurance, maternity insurance, or sickness insurance."

b. Section 1 (k) of the Act provides, in part, that:

"(1) a day of unemployment, with respect to any employee, means a calendar day...with respect to which (i) no remuneration is payable or accrues to him...and (2) a 'day of sickness', with respect to any employee, means a calendar day...with respect to which (i) no remuneration is payable or accrues to him...: Provided, however, that 'subsidiary remuneration', as hereinafter defined in this subsection, shall not be remuneration for the purpose of this subsection except with respect to an employee whose base-year compensation, exclusive of earnings from the position or occupation in which he earned such subsidiary remuneration, is less than [an amount that is equal to 2.5 times the monthly compensation base for months in such base year as computed under section 1(i) of this Act]: Provided further, that remuneration for a working day which includes a part of each of two consecutive calendar days shall be deemed to have been earned on the first of such two days, and any individual who takes work for such working day shall not by reason thereof be deemed not available for work on the second of such calendar days....

"For the purpose of this subsection, the term 'subsidiary remuneration' means, with respect to any employee, remuneration not in excess of an average of $15.00 a day for the period with respect to which such remuneration is payable or accrues, if the work from which the remuneration is derived (i) requires substantially less than full time as determined by generally prevailing standards, and (ii) is susceptible of performance at such times and under such circumstances as not to be inconsistent with the holding of normal full-time employment in another occupation."

901.02 Regulations

See Part 322, Remuneration, of the RRB's regulations.

902 Elements of the Provisions of the Act

902.01 Payable

Remuneration is payable if there is a legal obligation to pay either presently or at a future date.

902.02 Accrues

Remuneration accrues if it is derived from and related to the performance of work or service.

902.03 Days with respect to which remuneration is payable or accrues

are days on which it is earned or deemed to be earned. Remuneration for a working day which includes a part of two consecutive calendar days is deemed to have been earned on the calendar day on which the working day begins.

902.04 Remuneration is earned income

Each kind of income included in the definition of the term "remuneration" in the Act is a form of earned income. Income which is not earned is not remuneration.

902.05 Specified forms of earned income are remuneration

Earned income is remuneration if:

a. It is pay for services for hire, or

b. The accrual of the earned income is ascertainable with respect to a particular day or particular days.

902.06 Pay for time lost and tips

Pay for time lost is a form of pay for services for hire. Tips are remuneration only if they are earned income.

902.07 Payments excluded by definition

The Act specifically excludes from the definition of remuneration voluntary payments of payroll taxes, and contributions and payments under private or nongovernmental plans for unemployment, maternity, or sickness insurance.

903 Subsidiary Remuneration

Subsidiary remuneration does not prevent a day from being considered a day of unemployment or sickness, unless the employee who earns the subsidiary remuneration did not have base year compensation equal to 2.5 times the

monthly compensation base for months in the base year, which was paid for work in another position or occupation. Remuneration is subsidiary if all these conditions are met:

a. The payment is not in excess of an average of $15.00 a day for the period for which it is paid. The average applies to the "period" for which the remuneration is paid under the terms under which the work is performed. For instance, if the employee is customarily paid by the week, the average applies to the week. If the employee works by the month, the average applies to the month. If he or she is hired and paid by the hour or by the day, the period is a day.

b. The work which produced the remuneration requires substantially less than full time as determined by generally prevailing standards.

c. The work which produced the remuneration can be performed at such times and under such circumstances as not to be inconsistent with the holding of normal full-time employment in another occupation.

In circumstances in which the question of subsidiary remuneration arises, that question should be considered first. If the evidence does not support a determination that the payments are subsidiary remuneration, then the question whether the payments are remuneration attributable to particular days should be considered.

904 Supplemental Benefit Plans

Payments made under a nongovernmental plan for unemployment or sickness insurance are not compensation or remuneration. Therefore, such payments are not subject to tier II railroad retirement tax, although sickness payments may be subject to tier I tax. The determination whether a particular labor-management agreement or other arrangement constitutes such a nongovernmental plan for unemployment or sickness insurance is made by the Director of Policy and Systems, after study of the provisions of the plan. Listings of plans, usually referred to as "supplemental unemployment (or sickness) benefit plans," that affect railroad employees appear in Appendices F and G. The standards for nongovernmental plans are in Part 323 of the RRB's regulations.

905 Earned Income

905.01 Income

For the purposes of the Act, income is expressed in terms of money. Income, therefore, is money, or commodities, services or privileges which have an agreed money value. Commodities, services or privileges have an agreed money value if:

a. Income is payable or accrues in the form of money and it is agreed that the whole or a specified part of the income accrued or payable may be paid in the form of commodities, services or privileges; or

b. There is an agreement before the income accrues or becomes payable that:

   1. the commodities, services, or privileges in the form of which it is payable have a specified money value, and

   2. income to the extent of the specified money value is to accrue or be payable in the form of such commodities, services, or privileges.

905.02 Earned

Income is earned if it is payable or accrues in consideration of work or services performed in consideration of the income.

a. Work is physical or mental activity.

b. Service is the rendering of any labor, office or duty to another. The term describes obligation in relation to the person to whom the service is rendered rather than activity. Service may consist of readiness for activity or of a promise or arrangement to engage in activity.

c. Income is in consideration of work or service if:

   1. the performance of work or service is contingent upon the accrual or income; or

   2. there is an expressed agreement that work or service should be performed in return for which income would be payable or accrue; or

   3. the statements or actions made before income was payable indicate that it was the intention of the persons involved that the payment or accrual of the income was related to the performance of work or service.

d. Work or service is in consideration of income if:

   1. there is an agreement made prior to the performance of the work or service that income would be payable or accrue as a result of the work or service; or

   2. the statements or actions made prior to the performance of the work or service indicate that it was the intention of the persons

involved that income would accrue or be payable as a result of the work or service.

906 Pay for Services for Hire

906.01 Pay

Pay for services for hire is earned income payable or accrued in consideration of the performance of services for hire.

906.02 Services for hire

Services for hire are services performed in consideration of income, subject to continuing authority to supervise and direct the manner of performing the services.

906.03 Pay for time lost

Pay for time lost is a form of pay for services for hire. Time is lost when active service is not performed but the relation which originated in the performance of service for hire continues. Pay for time lost is usually allocated to time prior to the date of the award of pay for time lost. Benefits paid for days to which pay for time lost is allocated may be recoverable under section 2(f) of the Act.

Amounts awarded as pay for time lost may be allocated to time subsequent to the award. Such an amount allocated to a period of time subsequent to an award may be considered as pay for time lost only if, during this period, the employee actually loses time from the employer's service and retains an employment relation. Resignation, death or other termination of the employer-employee relation prevents any time after such termination from being considered as time lost. An amount allocated to time after termination of the employer-employee relation cannot be regarded as pay for time lost.

No day with respect to which pay for time lost is payable may be considered as a day of unemployment or a day of sickness.

Note: A payment for time lost is subject to contribution by the employer under the Unemployment Insurance Act and both the employee and employer are required to pay taxes under the Railroad Retirement Tax Act on the basis of such payment. If a payment is allocated to a period in the future, prescribed compensation and contribution reports are to be made after the end of each quarterly or annual reporting period to which any part of the payment is allocated.

906.04 Payments under job protection plans

Remuneration is sometimes paid to railroad employees in the form of allowances compensating them for wage losses resulting from abandonment or coordination of railroad facilities, merger of two or more railroads, technological changes, etc.

An employee who is entitled to receive such a protective payment for a particular period - a monthly allowance, for instance - may claim benefits under the Act pending receipt of the protective payment. In such case the benefits are paid subject to recovery under section 2(f) of the Act. A number of the most important job protection plans and the various types of payments they provide are described in Appendix A. Payments made under two of the plans are discussed below.

a. Washington Agreement of 1936

1. Displacement allowances are paid to employees who, as a result of a coordination, are removed from their former positions and required to work in positions compensated at a lower rate of pay. The amount of the displacement allowance is the amount by which the employee's average monthly compensation in the 12 months preceding the coordination exceeds the pay in the position in which he works after the coordination. This amount is paid for service equivalent to the average monthly time worked during the 12 months preceding the coordination. Displacement allowances are remuneration with respect to the days for which they are paid.

2. Coordination allowances are paid to employees who are unemployed as a result of a coordination, but who do not sever their relationship with the carrier and who remain subject to call. The monthly amount of the coordination allowance is equal to 60% of an employee's average monthly compensation during the 12 months preceding the coordination. It is payable for a number of months, not exceeding 60, depending upon the number of years of service preceding the coordination. Coordination allowances are remuneration with respect to the days for which they are paid.

3. The separation allowance is a lump-sum payment payable to employees eligible for a coordination allowance who may, at their option, elect to sever their relation with the carrier and to receive a lump-sum settlement in lieu of the coordination allowance. A separation allowance is equal to a certain number of months' pay, not exceeding 12 months, depending upon the number of years of service preceding the coordination. Employees who receive such allowances retain no rights as employees and are not subject to call for service. A separation allowance is remuneration, but such remuneration is not attributable to any day after the employment relation was severed.

b. National Job Stabilization Agreement of February 7, 1965

Under this agreement protected employees are retained in service and have their compensation preserved unless or until they retire, are discharged for cause, or are otherwise removed by natural attrition.

1. Monthly allowances are paid to employees as necessary to preserve their compensation. In determining the amount of a protective allowance for a particular month, account is taken of the employee's compensation and the amount of time worked in the month and his average monthly time worked in the last 12 months of compensated service before the date of the agreement. This allowance is considered to be remuneration with respect to a number of days in the month determined as follows: the number of hours actually worked in the month is subtracted from the monthly average hours for the base period; the remainder is converted into days and the resulting figure is the number of days for which the protective allowance is considered to be paid. The amount of benefits recovered under Section 2(f) will be the benefits paid for that number of days or the amount of the protective allowance for the month, whichever is less.

2. Lump-sum separation allowance Any protected employee who has 15 or more years of employment relationship with the carrier and is requested by the carrier to transfer to a new point that would require him to move his residence, may elect to resign and accept a lump-sum separation allowance instead. The separation allowance is computed in accordance with provisions of the Washington Agreement. The separation allowance is remuneration; the remuneration is not attributable to any day after the date of separation.

906.05 Guaranteed earnings

A payment under a plan which guarantees an amount of earnings or mileage in a specified period is remuneration with respect to each day in the specified period.

906.06 Tips

Tips are income in the form of fees or gratuities paid in consideration of service.

a. Tips are earned income if the services for which they are paid are performed in consideration of the income.

b. Tips are pay for services for hire if the services are performed in consideration of the income subject to continuing authority to supervise the manner of performing the services.

906.07 Layover days

Remuneration is not to be regarded as payable or accruing with respect to "layover" days, solely because the days are termed "layover" days.

906.08 Equivalent of full-time work

An employee who works fewer than five days each week under a compressed work schedule that provides the equivalent of full-time employment does not earn remuneration with respect to his or her additional rest days resulting from such

work schedule, but such employee will not be considered to be available for work on such rest days.

907 Ascertaining Accrual of Income with Respect to Particular Days

907.01 Income related to work or service

To be ascertainable with respect to a particular day or particular days, the accrual of income must be related to work or service performed on the particular day or particular days.

907.02 Relation of accrual to work or service

a. The accrual of income is ascertainable with respect to days on which work is performed if the amount of income is proportionate to the estimated length of time needed to perform the work.

b. The accrual of income is ascertainable with respect to days on which the performance of work or service is required.

c. The accrual of income is ascertainable with respect to a day upon which a result is accomplished, if the accrual of a specified amount of income is contingent upon the accomplishment of such result.

907.03 Earned income which is not remuneration

Earned income other than pay for services for hire is not remuneration if it not related to work or service on a particular day or particular days.

907.04 Work day overlapping two calendar days

Income for a working day which includes a part of two consecutive calendar days is considered to have been earned on the calendar day on which the working day begins.

907.05 Commission on sales

Commissions on sales are to be regarded as remuneration with respect to the day or days on which sales are made.

907.06 Pay not attributable to holiday

Under some agreements, the daily rate of compensation of an extra employee is the weekly rate divided by the number of working days in the week. Most weeks contain five working days, so the daily rate is one-fifth the weekly rate, but in a week that includes a holiday, the daily rate is one-fourth the weekly rate. Regardless of such variations in daily rates, the pay the employee receives for

working in a holiday week is attributable only to the days on which he or she works. None of the pay is attributable to the holiday, unless, of course, he works on the holiday.

908 Consideration of Evidence

908.01 Claimant's certification acceptable in absence of conflicting evidence

The claimant's certification on Form UI-3 that he or she did not work on any claimed day and will not receive income, such as vacation pay or pay for time lost, constitutes sufficient evidence that no remuneration is payable or has accrued to the claimant with respect to any day for which he or she has registered on Form UI-3, unless conflicting evidence is presented. Likewise acceptable is the claimant's statement on Form SI-3 that he or she has not received wages for any claimed days in the claim period.

908.02 Conflicting evidence

Conflicting evidence is any information that the claimant has performed, on one or more days for which he or she registered, work from which earned income may be derived; or that the claimant has received or is entitled to receive payments which may be earned income, payable or accrued with respect to days for which the claimant has registered.

908.03 Information which is not conflicting evidence

Experience has shown that remuneration is usually not derived from certain kinds of work and that certain types of payments are not remuneration. Accordingly, the claimant's certification is not considered to be in conflict with the performance of work or the receipt of payments of the kinds set forth below.

a. Work

1. Farming - Work performed by a claimant on a farm which he or she owns or rents ordinarily does not produce remuneration since the accrual of income is not ascertainable with respect to a particular day or days. (See instructions on availability of self-employed persons and farmers.)

2. Picketing - A claimant does not earn income serving as a picket for a union of which he or she is a member, since the union can usually require that its members picket without pay and the picketing is performed to discharge the duties of membership. Picketing has no effect upon availability.

3. Public relief - Work performed under the immediate supervision of a state, county, or local relief agency as a requirement for the continued receipt of relief payments does not produce earned income since public relief payments are made on consideration of individual need and public policy.

b. Payments

1. Interest, dividends, and other returns on invested capital- Payments of interest, dividends and other returns on invested capital not coupled with the rendition of personal service are not earned income because they are not paid in consideration of service.

2. Nongovernmental insurance payments- Money payments received pursuant to any nongovernmental plan for unemployment, maternity, or sickness insurance are specifically excluded from the definition of remuneration in section 1(j) of the Act.

3. Pension- Although a pension paid to an individual by a person who previously employed him or her may be pay for services for hire, it is not payable with respect to days subsequent to the last day on which active service was performed since no return to active service is contemplated.

4. Relief- Payments of relief on the basis of need and without a work requirement by either public relief agencies or private charities are not earned income, since the payments are made in consideration of need. Payments of relief on the basis of need by a state, county or local public relief agency with a requirement that work be performed under the direct supervision of the agency are not earned income, since the payments are made on the basis of need and public policy and the work requirement is for the recipient's welfare.

5. Rent- Payments for the rental of property are not earned income unless the individual who receives such payments performs service in connection with the rental of property.

6. Strike benefits- Strike benefits paid by a union to its members are not earned income even though the recipients may be required to picket, since the payments are made in consideration of loss of income and union membership and since the requirement to picket is an obligation of union membership.

908.04 Effect of conflicting evidence

The claimant's certification on Form UI-3 or Form SI-3 does not constitute sufficient evidence that no remuneration is payable or has accrued to the claimant with respect to any day for which he or she has registered when there is evidence to the contrary in file. An investigation is to be conducted to determine whether remuneration is payable or has accrued, unless the information is sufficiently complete that a determination can be made on the basis of such information.

909 Determinations Based on Limited Information

909.01 Work for an employer

If there is information that a claimant has performed work for an employer, as defined in section 1(a) of the Act, other than a railway labor organization, consider that remuneration is payable or has accrued to the claimant with respect to the days on which he or she worked.

909.02 Work for person for whom claimant previously performed service for hire

If there is information that a claimant has performed work for a person for whom he or she previously performed service for hire, consider that remuneration is payable or has accrued to the claimant with respect to the days on which he or she worked.

909.03 Payments by an employer

If there is information that an employer as defined in section 1(a) of the Act, other than a railway labor organization, has paid or has acknowledged an obligation to pay a claimant for certain days, consider that remuneration is payable with respect to such days, unless it is alleged that the payments were not in consideration of service or were not payable with respect to such days. For example:

a. Vacation pay

When a payment under a vacation agreement is assigned to any days, consider that remuneration is payable with respect to such days. (See also section 910.05 .)

b. Wages while sick

Except as provided in section 910.05, a payment of compensation by an employer to an employee for days in a period during which the employee was absent from work on account of sickness, is to be considered remuneration for such days.

909.04 Payments by person for whom claimant previously performed service for hire

If there is information that a person for whom a claimant previously performed service for hire has paid or has acknowledged an obligation to pay the claimant for certain days, consider that remuneration is payable with respect to such days, unless the claimant denies that the payment is earned income or that it is payable with respect to such days.

909.05 Payments to local lodge officials

A payment by a local lodge of a labor organization to an employee for services as a local lodge official is to be regarded as subsidiary remuneration if such payment does not exceed an average of $15.00 a day for the period with respect to which it is payable or accrues, unless there is information that the work from which the payment is derived does not require substantially less than full time as determined by generally prevailing standards, or is not susceptible of performance at such times and under such circumstances as not to be inconsistent with the holding of normal full-time employment in another occupation.

909.06 Claimant states that he or she earned income

If a claimant states that he/she earned income on certain days, consider that remuneration is payable or accrued to him/her for such days, unless the statement is later denied by the claimant.

909.07 Claimant indicates employment or holiday pay for day claimed

When a claimant indicates on an application or claim form that he or she worked on or received holiday pay for a day which is claimed as a day of unemployment or sickness, consider that remuneration is payable or has accrued to the claimant for such day.

909.08 Payments for National Guard duty

Pay for National Guard duty or reserve drills performed on a Saturday or a Sunday is to be considered as remuneration with respect to the days on which the duty is performed, regardless of the amount received by the claimant. Pay for National Guard duty or a reserve drill performed in an evening during the week is to be considered as reimbursement to the claimant for his or her expenses; as such, the payment would not prevent a day from being a day of unemployment or a day of sickness.

909.09 Mercantile establishment

`A claimant who works in his/her own mercantile establishment is considered to be in receipt of remuneration if income from the work is ascertainable with respect to particular days. Each case in which a claimant works in his/her own mercantile establishment should be investigated. If investigation discloses that the claimant works regularly or does a substantial amount of work at irregular intervals, he/she is to be presumed to be receiving remuneration with respect to each day on which he or she works. If the claimant disagrees with the determination, the case should be referred to Policy and Systems-RIS. In any other case, i.e. where a claimant does not work regularly and does not perform a substantial amount of work, information as to the kind, amount, and frequency of

the work the claimant performs is to be forwarded to Policy and Systems-RIS for a determination as to whether the work produces income ascertainable with respect to particular days.

910 Evidence Required

910.01 Work

If the information that the claimant is performing work is insufficient for a determination, evidence is required on the following points:

a. Description of the work performed.

b. Whether income is payable or has accrued in consideration of the work.

c. Whether the accrual of income is ascertainable with respect to a particular day or days.

910.02 Payments

If the information that a claimant has received or is entitled to receive payments is insufficient for a determination, evidence is required on the following points:

a. Terms and conditions of payments.

b. Whether the payment is in consideration of service.

c. Whether the accrual of income is ascertainable with respect to a particular day or days.

910.03 Work or service in consideration of income

Consider that work or service is performed in consideration of income unless there is information that the work or service may be performed in consideration of something other than income. It will be necessary to determine on the basis of positive evidence, whether work or service was performed in consideration of income, if there is information that the work or service may have been performed for one of the following considerations.

a. Anticipation of future employment

An individual may perform service with the expectation that if his or her service is satisfactory, he or she will be employed to perform service for hire; or an individual may perform service for an enterprise which cannot pay for the service in the expectation that when the enterprise can afford to pay, the individual will be engaged to perform service for hire.

b. Board

An individual may perform work or service in consideration of board upon which there is no agreed monetary value.

c. Charity

An individual may perform work or service in consideration of sympathy, friendship, or compassion for another without expectation of income.

d. Companionship

An individual may perform work or service in consideration of companionship so that he or she may continue to frequent another's property.

e. Family ties

An individual may perform work or service in consideration of family relationship or in consideration of ties created by living in a household.

f. Payments in kind

An individual may perform work or service in consideration of commodities, service, or privileges upon which there is no agreed money value.

g. Reciprocal service

An individual may perform work or service in consideration of reciprocal promises of work or service upon which there is no agreed money value.

h. Shelter

An individual may perform work or service in consideration of living in a house or room upon which there is no agreed money value.

i. Training

An individual may perform work or service in consideration of training in the work or of maintaining his or her skills by performing work.

910.04 Pay for time lost

If there is information that income which may be in consideration of service was not payable upon performance of all or part of the service, but became payable upon the existence of other circumstances, an investigation should be conducted to determine whether such income is pay for service for hire and whether it is pay for time lost.

910.05 Vacation pay and allowances

Vacation pay and allowances are remuneration. Vacation pay is attributable to the days in a vacation period. An allowance in lieu of vacation is not attributable to any day for the purposes of section 1(k). The accrual and payment of vacation pay and allowances are governed ordinarily by vacation agreements and practices. The days, if any to which a payment under a vacation agreement are attributable depend upon the circumstances of payment.

a. Vacation agreement

In general, vacation agreements in the railroad industry provide for the accumulation of a right to a paid vacation. This right is to be exercised during a vacation year defined in the agreements. There is a method set forth of determining a vacation period for each employee. In the event that an employer cannot grant an employee his or her vacation, the employer is obligated at the end of the vacation year, if the employee is still in the employer's service, to pay an allowance in lieu of vacation. There is a special provision for the granting of vacation pay or allowances in lieu of vacation to employees who retire. Otherwise, the employer's obligation to make a payment ceases upon the death of the employee or upon the severance of his or her employment relation.

Accordingly, in any case where there is a question whether an employee has taken a vacation in accordance with a vacation agreement or whether any payment made pursuant to a vacation agreement is remuneration payable or accrued with respect to any day, it will be necessary to have information concerning the provisions of the agreement and an account of any local practices said to exist under the agreement. Where any payment in connection with a vacation agreement is not clearly within the provisions of the agreement, such as a payment on account of a deceased employee, the character of the payment may be determined on the basis of the intent of the parties.

b. Vacation Pay

1. If an employee takes a vacation in accordance with a vacation agreement, remuneration is payable or accrues to him or her with respect to the days in the vacation period, irrespective when payment is made. An employee is considered as taking a vacation when he or she is absent from work during a scheduled or assigned vacation period.

2. If an employee receives a payment for a vacation period scheduled or assigned in accordance with a vacation agreement, remuneration is payable to him or her with respect to the days in the vacation period.

3. If, in accordance with a vacation agreement, an employee is required to take his or her vacation on certain days (for example, days immediately following a

furlough), remuneration is payable with respect to such days, subject to the exception in item 5 below.

4. If an employee requests payment of any amount provided under a vacation agreement and such payment is made for any days when the employee is sick or unemployed, remuneration is payable with respect to such days.

5. If an employee elects in accordance with the provisions of the applicable agreement to waive payment of unused vacation allowance during a period of illness or unemployment, no remuneration is payable or accrues to him or her with respect to days in such period.

6. The vacation pay of operating (T&E) employees subject to the national agreement is attributable to all seven days of the vacation week. Conversely, the vacation pay of non-operating employees subject to the national agreement is attributable to the days that would otherwise be workdays, generally to non-rest days. The vacation pay of employees working a compressed schedule is attributable as shown on the payroll record, generally to four or five days per week. If the payroll record is inconsistent with the vacation agreement, submit information on the agreement and local practices through channels for an opinion.

c. Allowance in lieu of vacation

An allowance which is paid to an employee in lieu of vacation and which, for accounting purposes only, is carried on a payroll cannot be regarded as made with respect to the days in the particular pay period. An allowance in lieu of vacation may be found payable to an employee who dies, or ceases service for the purpose of receiving an annuity, or has not at the end of a vacation period had a vacation in accordance with the applicable vacation agreement, or has his or her vacation otherwise set aside in accordance with the provisions of the applicable agreement and practices.

If a claimant states that he or she received "pay in lieu of vacation" and there is no evidence to the contrary, initially consider that the pay is not attributable to any particular day or days and allow the payment of benefits accordingly. Send Form Letter ID-9g to the employer in such a case. If the employer then advises that the payment is attributable to a particular day or days, necessary adjustments should be made. In the case of an employee who dies or cease service to receive an annuity, the RRB may, in the interest of the employee, allocate the payments to a period equivalent to the entire vacation period. In such cases, the payment is considered as vacation pay, and remuneration with respect to the days in the period to which allocated. In any case where vacation pay is reported as paid for days after the beginning date of a claimant's annuity, the payment is to be considered in lieu of vacation.

Appendices

Appendix A - Job Protection Plans

A. Introduction

Job Protection plans originate in a variety of ways - by agreement between management and labor, by order of the Interstate Commerce Commission, etc. The provisions of these plans that are of particular importance in connection with unemployment and sickness benefits are those calling for payments to protect employees. The major types of payments are listed below.

B. Effect of Protective Payments on Benefits

1. Monthly allowance to employee who is removed from his former position and placed in a lower-paid position. The allowance is remuneration. Usually it has no effect on benefits because the individual is not unemployed.

2. Monthly allowance to employee who retains his right to work and is available for service but does not have regular work. The allowance is remuneration. An employee entitled to this type of protection may receive unemployment benefits subject to recovery under Section 2(f) in case an allowance is later paid for the month in question. The method of determining the amount recoverable depends upon the protective agreement. If the agreement indicates that the allowance should be considered as paid for each day in the month all benefits paid for days in the month are recoverable (unless the allowance is less than the benefits). If the agreement indicates that the allowance should be considered not as remuneration for a lesser time not worked, the amount recoverable will ordinarily be the benefits for the number of days represented by the payment for time not worked.

3. Payment under guaranteed earnings provision (such as a guaranteed extra board). This is a payment made to an employee who is not provided with enough work to make his guarantee. The payment is remuneration with respect to days for which it is paid. If the guarantee is for full-time work (40 hours per week on a guaranteed extra board, for instance) unemployment benefits are not payable. If the guarantee is for less than full-time work, benefits may be paid, subject to recovery under Section 2(f).

4. Supplemental unemployment and sickness benefits. Payment made by an employer (sometimes through an insurance company) under a plan designed to supplement benefits provided by law. Payment is not remuneration and does not affect an employee's rights to benefits under the Railroad Unemployment Insurance Act.

5. Lump-sum severance allowance. Payment to employee whose employment relationship is severed. Payment is remuneration but is not attributable to any

day after the separation. The employee is disqualified for benefits for a period following the separation.

C. Examples of Plans

1. Washington Agreement of May 1936

   a. Parties to the agreement - 21 railroad brotherhoods and most railroads.

   b. Covers changes in employment solely due to and resulting from coordination, that is joint action by two or more carriers whereby they consolidate facilities, operations or services

   c. Payments provided:

      (1) Displacement allowances are paid to employees who, as a result of a coordination, are removed from their former positions and placed in positions compensated at a lower rate of pay. The amount of the displacement allowances is the amount by which the employee's average monthly compensation is the 12 months preceding the coordination exceeds the pay in the position in which he works after the coordination.

      (2) Coordination allowances are paid to employees who are unemployed as a result of a coordination, but who do not sever their relationship with the carrier and who remain subject to call. The monthly amount of the coordination allowance is equal to 60% of an employee's average monthly compensation during the 12 months preceding the coordination. It is payable for a number of months, not exceeding 60, depending upon the number of years of service preceding the coordination.

      (3) The separation allowance is a lump-sum payment payable to employees eligible for a coordination allowance who elect to sever their relation with the carrier and receive a lump-sum settlement in lieu of the coordination allowance. A separation allowance is equal to a certain number of months' pay, not exceeding 12 months, depending upon the number of years of service preceding the coordination. Employees who receive such allowances retain no rights as employees and are not subject to call for service.

2. Oklahoma Conditions

   a. Prescribed by ICC, May 17, 1944, in connection with the abandonment of operations and purchases authorized in the transactions involving the Oklahoma Railway, The Santa Fe and the Rock Island.

   b. Coverage: Employees of above railroads.

c. Payments provided:

(1) Monthly displacement allowances (Similar to those under the Washington Agreement).

(2) Monthly dismissal allowances (Similar to the "coordination allowances" of the Washington Agreement).

3. <u>Award of Arbitration Board No. 282</u>

a. Prescribed by National Mediation Board (Arbitration Board No. 282).

b. Coverage: Use of locomotive firemen; crew consist (other than engine service).

c. Payments provided:

(1) Lump-sum separation allowances - provides for varying lump-sum separation allowances, depending on amount of service, etc. Employees in one group may be separated, with allowance, if they choose not to accept comparable jobs offered. (Firemen with 10 or more years of seniority generally removed by natural attrition, such as retirement, death, etc.)

(2) Guaranteed earnings provided for firemen who accept comparable jobs offered.

4. <u>Shop Crafts Agreement of September 25, 1964</u>

a. Parties to agreement - the nation's major railroads and six labor organizations representing shop craft employees.

b. Coverage: Employees who are displaced or deprived of employment as a result of certain operational changes, including transfer of work, abandonment or consolidation of facilities, contracting out of work, and technological changes.

c. Payments provided:

(1) Monthly displacement allowances (Similar to Washington Agreement)

(2) Dismissal allowances (Similar to "coordination allowances" of Washington Agreement)

5. <u>National Job Stabilization Agreement of February 7, 1965</u>

a. Parties to agreement - the nation's major railroads and five labor organizations representing (1) clerks, freight handlers, express and station

employees; (2) telegraphers; (3) M of W employees; (4) signalmen; and (5) dining car employees.

b. Coverage: An employee, other than a seasonal employee, is protected if he was in "active service" as of October 1, 1964 (or was restored to active service between October 1, 1964 and February 7, 1965); had two years or more of employment relationship as of October 1, 1964; and had 15 or more days of compensated service during 1964. The "active service" group includes not only regularly assigned employees but also extra board employees and furloughed employees who are active in extra work.

   Seasonal employees who had compensated service during each of the years 1962, 1963, and 1964 will be offered employment in future years at least equivalent to what they performed in 1964.

c. Payments provided:

   (1) Periodic payments: A protected employee entitled to preservation of employment, who held a regularly assigned position on October 1, 1964 shall not be placed in a worse position with respect to compensation than the normal rate of compensation for such position on October 1, 1964. That is he gets, in effect, full-time work or pay for full-time work. All other protected employees are not to be placed in a worse position with respect to compensation than that earned during a 12-month base period, specified in the agreement. In determining the amount of a protective allowance due under this provision, account is taken of the average monthly compensation and the average monthly time paid for in the base period. The protection to these employees is effective with the month of March 1965.

   (2) Lump-sum separation allowances: Any protected employee who has 15 or more years of employment relationship with the carrier and who is requested by the carrier to transfer to a new point that would require him to move his residence, may elect to resign and accept a lump-sum separation allowance instead.

Appendix - Agreement OF May 1936, Washington, D.C.

Sec. 6.

(a) No employee of any of the carriers involved in a particular coordination who is continued in service shall, for a period not exceeding five years following the effective date of such coordination, be placed, as a result of such coordination, in a worse position with respect to compensation and rules governing working conditions than he occupied at the time of such coordination so long as he is unable in the normal exercise of his seniority rights under existing agreements, rules, and practices to obtain a position

producing compensation equal to or exceeding the compensation of the position held by him at the time of the particular coordination, except, however, that if he fails to exercise his seniority rights to secure another available position, which does not require a change of residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position which he elects to decline.

(b) The protection afforded by the foregoing paragraph shall be made effective whenever appropriate through what is hereby designated as a "displacement allowance" which shall be determined in each instance in the manner hereinafter described. An employee entitled to such an allowance is hereinafter referred to as a "displaced" employee.

(c) Each displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee and his total time paid for during the last 12 months in which he performed service immediately preceding the date of his displacement (such 12 months being hereinafter referred to as the "test period") and by dividing separately the total compensation and the total time paid for by 12, thereby producing the average monthly compensation and average monthly time paid for, which shall be the minimum amounts used to guarantee the displaced employee, and if his compensation in his current position is less in any month in which he performs work than the aforesaid average compensation he shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but he shall be compensated in addition thereto at the rate of the position filled for any time worked in excess of the average monthly time paid for during the test period.

Sec. 7.

(a) Any employee of any of the carriers participating in a particular coordination who is deprived of employment as a result of said coordination shall be accorded an allowance (hereinafter termed a "coordination allowance" based on length of service which (except in the case of an employee with less than one year of service) shall be a monthly allowance equivalent in each instance to 60 percent of the average monthly compensation of the employee in question during the last 12 months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the coordination. This coordination allowances will be made to each eligible employee while unemployed by his home road or in the coordinated operation during a period beginning at the date he is first deprived of employment as a result

of the coordination and extending in each instance for a length of time determined and limited by the following schedule:

Length of service	Period of payment (months)
1 years and less than 2 years	6
2 years and less than 3 years	12
3 years and less than 5 years	18
5 years and less than 10 years	36
10 years and less than 15 years	48
15 years and over	60

In the case of an employee with less than 1 year of service, the total coordination allowance shall be a lump-sum payment in an amount equivalent to 60 days' pay at the straight-time daily rate of the last position held by him at the time he is deprived of employment as a result of the coordination.

(b) For the purposes of this agreement the length of service of the employee shall be determined from the date he last acquired an employment status with the employing carrier, and he shall be given credit for 1 month's service for each month in which he performed any service (in any capacity whatsoever) and 12 such months shall be credited as 1 year's service. The employment status of an employee shall not be interrupted by furlough in instances where the employee has a right to and does return to service when called. In determining length of service of an employee acting as an officer or other official representative of an employee organization he will be given credit for performing service while so engaged on leave of absence from the service of a carrier.

(c) An employee shall be regarded as deprived of his employment and entitled to a coordination allowance in the following cases:

1. When the position which he holds on his home road is abolished as a result of coordination and he is unable to obtain by the exercise of his seniority rights another position on his home road or a position in the coordinated operation, or

2. When the position he holds on his home road is not abolished but he loses that position as a result of the exercise of seniority rights by an employee whose position is abolished as a result of said coordination, or by other employees, brought about as a proximate

consequence of the coordination, and if he is unable by the exercise of his seniority rights to secure another position on his home road or a position in the coordinated operation.

(d) An employee shall not be regarded as deprived of employment in case of his resignation, death, retirement on pension or on account of age or disability in accordance with the current rules and practices applicable to employees generally, dismissal for justifiable cause in accordance with the rules, or furloughed because of reduction in forces due to seasonal requirements of the service; nor shall any employee be regarded as deprived of employment as the result of a particular coordination who is not deprived of his employment within 3 years from the effective date of said coordination.

(e) Each employee receiving a coordination allowance shall keep the employer informed of his address and the name and address of any other person by whom he may be regularly employed.

(f) The coordination allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished while he is absent from service, he will be entitled to the coordination allowance when he is available for service. The employee temporarily filling said position at the time it was abolished will be given a coordination allowance on the basis of said position until the regular employee is available for service and thereafter shall revert to his previous status and will be given a coordination allowance accordingly if any is due.

(g) An employee receiving a coordination allowance shall be subject to call to return to service after being notified in accordance with the working agreement, and such employee may be required to return to the service of the employing carrier for other reasonably comparable employment for which he is physically and mentally qualified and which does not require a change in his place of residence, if his return does not infringe upon the employment rights of other employees under the working agreement.

(h) If an employee who is receiving a coordination allowance returns to service the coordination allowance shall cease while he is so reemployed and the period of time during which he is so reemployed shall be deducted from the total period for which he is entitled to receive a coordination allowance. During the time of such reemployment however he shall be entitled to protection in accordance with the provision of section 6.

(i) If an employee who is receiving a coordination allowance obtains railroad employment (other than with his home road or in the coordinated operation) his coordination allowance shall be reduced to the extent that the sum total of his earnings in such employment and his allowance exceed the amount upon which his coordination allowance is based;

provided that this shall not apply to employees with less than 1 year's service.

(j) A coordination allowance shall cease prior to the expiration of its prescribed period in the event of---

1. Failure without good cause to return to service in accordance with working agreement after being notified of position for which he is eligible and as provided in paragraphs (g) and (h).

2. Resignation

3. Death

4. Retirement on pension or on account of age or disability in accordance with the current rules and practices applicable to employees generally.

5. Dismissal for justifiable cause.

Sec. 8.

An employee affected by a particular coordination shall not be deprived of benefits attaching to his previous employment, such as free transportation, pensions, hospitalization, relief, etc., under the same conditions and so long as such benefits continue to be accorded to other employees on his home road, in active service, or on furlough, as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

Sec. 9.

Any employee eligible to receive a coordination allowance under section 7 hereof may, at his option at the time of coordination, resign and (in lieu of all other benefits and protections provided in this agreement) accept in a lump sum a separation allowance determined in accordance with following schedule:

Length of service:	Separation allowance, months' pay
1 year and less than 2 years	3
2 years and less than 3 years	6
3 years and less than 5 years	9

5 years and less than 10 years	12
10 years and less than 15 years	12
15 years and over	12

In the case of employees with less than 1 year's service, 5 days' pay, at the rate of the position last occupied, for each month in which they performed service, will be paid as the lump sum.

(a) Length of service shall be computed as provided in section 7.

(b) One month's pay shall be computed by multiplying by 30 the daily rate of pay received by the employee in the position last occupied prior to time of coordination.

Sec. 10.

(a) Any employee who is retained in the service of any carrier involved in a particular coordination (or who is later restored to service from the group of employees entitled to receive a coordination allowance) who is required to change the point of his employment as result of such coordination and is therefore required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects, and for the traveling expenses of himself and members of his family, including living expenses for himself and his family, and his own actual wage loss during the time necessary for such transfer, and for a reasonable time thereafter (not to exceed 2 working days), used in securing a place of residence in his new location. The exact extent of the responsibility of the carrier under the provision and the ways and means of transportation shall be agreed upon in advance between the carrier responsible and the organization of the employee affected. No claim for expenses under this section shall be allowed unless they are incurred within 3 years from the date of coordination, and the claim must be submitted within 90 days after the expenses are incurred.

Appendix F - Supplemental Sickness Benefit Plans

A through B

Employer	Class of Employees	Effective Date
Alabama Great Southern	TCIU	01/01/1975

Alabama Great Southern	IBEW (Communication and Signal Department)	07/01/1974
Alameda Belt Line	UTU	07/01/1976
Alton & Southern	TCIU (Allied Services)	04/06/1976
Alton & Southern	TCIU	01/01/1976
Alton & Southern	All Salaried Employees	05/01/1965
American Refrigerator Transit	TCIU	09/01/1975
Anacostia Rail Holdings	All active full-time employees working in the United States who are actively at work for the employer who have completed the waiting period (min of 30 hours per week). Part-time, seasonal and temporary employees are not eligible.	07/01/2011
Ann Arbor	TCIU	01/01/1975
A N Railway L.L.C	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
Arkansas, Louisiana, Mississippi	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
Arkansas & Memphis Railway Bridge	TCIU	09/01/1975
Atchison, Topeka & Santa Fe	Railroad Yardmasters of America	01/01/1979

Atchison, Topeka & Santa Fe	All full-time employees not covered by a collective bargaining agreement	06/01/1977
Atchison, Topeka & Santa Fe	TCIU	07/01/1976
Atchison, Topeka & Santa Fe System Federation of Maintenance of Way Employees	Office Employees	10/09/1968
Atlanta & St. Andrews Bay	Salaried Employees	04/01/1972
Atlanta & West Point (Part of CSX)	TCIU	06/01/1975
Atlantic & Western Railway, L. P.	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
Baltimore & Annapolis	Amalgamated Transit Union (AFL-CIO) Division 1300	09/08/1971
Bangor & Aroostook	Amalgamated Transit Union	06/17/1974
Bangor & Aroostook	TCIU	10/20/1972
Bay Line Railroad L.L.C.	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
Belt Railway of Chicago	TCIU	07/01/1974
Belt Railway of Chicago	American Train Dispatchers	05/01/1975

Bessemer & Lake Erie	TCIU	01/01/1980
Bethlehem Steel Corp.,	All Salaried Employees	09/01/1956
Subsidiaries of Cambria & Indiana Conemaugh & Black Lick River Patapsco & Back Rivers Philadelphia, Bethlehem & New England South Buffalo Steelton & Highspire Black River and Western Railroad	All Full-time Employees	12/27/1991
Boston & Maine	TCIU	05/15/1971
Boston & Maine	Non-agreement employees	08/01/1980
Bro. of Railway & Airline Clerks	(TCIU) Grand Lodge Employees	01/01/1980
Brownsville & Metamoros Bridge	TCIU	09/01/1975
Buffalo & Pittsburgh RR Inc.	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
Burlington Northern	American Railway Supervisors Association	03/01/1970
Burlington Northern	American Train Dispatchers Association	07/01/1970
Burlington Northern	TCIU	03/02/1970

Burlington Northern	Officers & Exempt Employees	05/01/1971
Burlington Northern	Brotherhood of Railroad Signalmen	09/01/1972
Burlington Northern & Santa Fe Railway Co. (BN/SF)	Long Term Disability Plan is for all active non-union salaried employees over the age of 18 regularly working a minimum of 32 hours per week.	01/01/1997

C

Camas Prairie	American Train Dispatchers Association	06/01/1974
Canadian National	BLE, BLFE	03/16/1965
Canadian National	Non-operating employees and trainmen	03/16/1965
Canadian Pacific Limited	TCIU (lines in Maine, Vermont, Detroit)	01/01/1975
Canadian Pacific	BLE, BLFE	11/01/1964
Canadian Pacific	Non-operating employees and trainmen	03/16/1992
Canadian Pacific Railway	Non-Union Employees (US)	01/01/2003
Cedar American Rail Holding, Inc.(CARH)	Non-Management Full-time employees	02/12/2003
Central Montana Rail	All Employees	07/01/1990
Central of Georgia	TCIU	01/01/1990
Central of Georgia	IBEW (Communication and Signal Department)	07/01/1974
Central Vermont	TCIU	01/01/1974

Chattahoochee Bay RR	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
Chattahoochee Industrial RR	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
Chattooga & Chickamauga Railway	All full-time employees *Supplemental Sickness/Unemployment Benefit Plan	06/01/2010
Chicago Central and Pacific	Full-time Management Employees	01/01/1990
Chicago Central and Pacific	Locomotive Engineers (BLE)	05/01/2000
Chicago Central and Pacific	Conductors, Brakemen, Yard Foremen, Yard Helpers and (UTU) Trainmen	05/01/2000
Chicago & Illinois Midland	TCIU	01/01/1975
Chicago & North Western	TCIU	03/01/1969
Chicago & North Western	Railroad Yardmasters	01/01/1974
Chicago & North Western	Officers of the Railway	01/05/1957
Chicago Pacific Corporation	All Employees	07/01/1985
Chicago Union Station	TCIU	07/01/1974
Chicago Union Station	Patrolmen	02/18/1972
Chicago & Western Indiana	American Train Dispatchers	01/01/1975

Chicago & Western Indiana	TCIU	07/01/1974
Chicago, West Pullman & Southern	TCIU	01/01/1974
Cincinnati, New Orleans & Texas Pacific	IBEW (Communication and Signal Department)	07/01/1974
Colorado & Wyoming (PLAN TERMINATED)	Operating employees	08/01/1975 through 01/26/1993
Columbus & Greenville Railway Company	All full-time employees *Supplemental Sickness/Unemployment Benefit Plan	06/01/2010
Commonwealth Railway	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
Connex Railroad, LLC	Connex is honoring the supplemental sick contract for all former **Amtrak employees** that were under the supplemental sick plan agreement for Amtrak non-agreement employees.	01/01/1994
Consolidated Rail Corp.	American Railway Supervisors Association	05/01/1978
Consolidated Rail Corp.	American Train Dispatchers (BLE)	12/03/1998
Consolidated Rail Corp.	Inspectors in Quality Control Dept.	03/01/1979
Consolidated Rail Corp.	Railroad Yardmasters	07/01/1979
Consolidated Rail Corp.	TCIU	05/01/1979

Corpus Christi Terminal	All full-time employees-- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
CSX Transportation	Full-time Non-contract Employees of former Chessie Roads: Chesapeake and Ohio Railroad Baltimore and Ohio Railroad Western Maryland Railway Baltimore and Ohio Chicago Terminal Railroad Staten Island Railroad Corp. Toledo, Lorain and Fairport Co.	01/01/1977
CSX Transportation	TCIU (Clerks) - former C&O	07/01/1980
CSX Transportation	TCIU (Clerks) - former B&O	01/01/1981
CSX Transportation	TCIU (Clerks) - former SCL	05/07/1981
CSX Transportation	Train Dispatchers of former Chessie Roads	10/01/1981
CSX Transportation	TCIU (Clerks) - former L&N	11/01/1982
CSX Transportation	Train Dispatchers - 1st 10, 20, or 30 days full pay not supplemental	01/09/1988
CSX Transportation	Employees represented by the BLE- Train Dispatcher Group Policy 9000	01/01/2004
CSX Transportation	Regular full-time dispatchers that includes ATDA Officers that hold a Train Dispatcher position	05/01/2004

D through I

Dakota, Minnesota & Eastern Rail Corp.	Non-management Full-time employees	01/01/1996
Delaware & Hudson RY Co Inc.	BLE	01/01/2001
Denver & Rio Grande Western	American Train Dispatchers	06/01/1974
Denver & Rio Grande Western	TCIU	01/01/1974
Denver & Rio Grande Western	Clerical-Telephone and Telegraph, Maintenance and Construction Employees	01/01/1979
DeQueen & Eastern	Teamsters	11/22/1976
Detroit & Toledo Shore Line	TCIU	01/01/1976
Detroit, Toledo & Ironton	TCIU	01/01/1971
Duluth, Winnipeg & Pacific	TCIU	01/01/1974
Duluth, Winnipeg & Pacific	Former active Locomotive Engineers, Conductors, Utility Employees and Brakemen represented by the UTU.	09/01/2003
East Camden & Highland	All	01/01/1977
East Erie Commercial	Salaried Employees	09/01/1987
East Jersey Railroad & Terminal	Engineers, Brakemen, Conductors & Maintenance of way employees	09/14/1970
East Tennessee Railway LLP	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010

Emons Railroad Group	For full-time non bargaining Unit employees	09/01/2000
First Coast Railroad, Inc.	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
Fordyce & Princeton RR Co	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
Fruit Growers Express	Officers and excepted employees	03/01/1972
Galveston Railroad L.P.	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
Genesee & Wyoming	INT'L Union of District 50, Allied & Technical Workers of the U.S. and Canada	09/01/1970
Genesee & Wyoming Railroad Services, Inc.	All full-time employees-- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
Georgia Central Railway L.P.	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010

Georgia Railroad	TCIU	06/01/1975
Georgia Southern & Florida	TCIU	01/01/1975
Georgia Southern & Florida	IBEW (Communication and Signal Department	07/01/1974
Golden Isles Terminal Railroad Inc.	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
Grand Trunk Western	American Train Dispatchers Association	01/01/1976
Grand Trunk Western	TCIU	10/01/1970
Grand Trunk Western	Non-Agreement Supervisory	01/01/1983
Grand Trunk Western	Yard Service Employees	07/19/1988
Grand Trunk Western	BLE, Conductors, Brakemen, Yard Foreman and Yard Helpers	11/13/2000
Great Lakes Central	All employees who have completed 5 years of service	11/01/1991
Green Bay & Western	TCIU	01/01/1982
Harbor Belt Line	TCIU	07/01/1980
Illinois Central Gulf	TCIU	01/01/1973
Illinois Central Gulf	Management Personnel	08/01/1967
Illinois Central Gulf	BLE	11/13/2000
Illinois Central	Trainmen, (represented by the UTU)	09/01/2003

Illinois & Midland Railroad, Inc.	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
Indiana Harbor Belt RR	American Railway Supervisors Association (ARASA)	01/17/2001
Indiana Harbor Belt RR	Brotherhood of Railway, Airline and Steamship Clerks (BRAC)	01/01/1988
Int'l Bro. of Boilermakers	Officers and Employees	05/01/1973
Int'l Association of Machinists and Aerospace Workers (IAM)	District Lodge 19 Officers, General Chairmen, Organizers, and Communicators Note: The first 6 months of an employee's infirmity are covered by a full-salary benefit payment, making those benefits remuneration under the RUIA. The nongovernmental portion of this plan only covers the second 6-month period of an employee's infirmity.	03/01/2016
Iowa, Chicago and Eastern Railroad Corporation (IC&E)	Non-management Full-time employees	02/12/2003
Iowa, Chicago and Eastern Railroad Corporation (IC&E)	Non-exempt Engineering Department Employees (Two Supplemental Sickness Benefits Plans for): • (Off the job Illnesses and Injuries) • (On the Job Injuries)	08/31/2004

Iowa Interstate Railroad, LTD	All employees who have completed twelve consecutive months of service	09/01/1999
Iowa Northern Railway Company	All active full-time employees under either the Short-Term Disability Weekly Income Policy Number, IAO409 or the Long-Term Disability Policy number, GLT N53094	 09/01/1995 02/01/2001

J through M

Jacksonville Terminal	Boilermakers, Blacksmiths, Carmen, Electrical Workers, Firemen & Oilers, Machinists, Sheet Metal Workers, and Signalmen	07/01/1973
Kansas City Southern	TCIU	06/01/1972
Kentucky & Indiana Terminal	TCIU	01/01/1975
Kentucky & Indiana Terminal	American Train Dispatchers	01/01/1975
Keolis Commuter Services	Non-union employees and ARASA foremen, also **former Massachusetts Bay Commuter Railroad employees** supplemental sick plans that worked under the MBTA Commuter Rail contract (through 07/18/2016).	07/18/2016
KWT Railway, Inc.	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010

Lake Superior & Ishpeming	TCIU	10/01/1973
Lake Terminal	TCIU	04/03/1980
Lake Terminal	Maintenance of Way and Maintenance of Equipment employees	04/01/1969
Little Rock & Western Railway, L. P.	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
Long Island	TCIU, IBEW, IAM, Carmen IBT (M of W Dept.) IBT (Marine Dept.) Signalmen	03/01/1968 08/19/1968 04/02/1968 03/15/1968
Los Angeles Union Passenger Term.	TCIU	07/01/1980
Louisiana & Arkansas	TCIU	06/01/1965
Louisiana & Delta Railroad	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
Luxapalila Valley Railroad, Inc.	All full-time employees *Supplemental Sickness/Unemployment Benefit Plan	06/01/2010

Magma Copper Co., Subsidiaries of Magma Arizona RR San Manuel Arizona RR	All Employees	07/01/1965
Maine Central	TCIU	11/12/1971
Maryland Midland Railway, Inc.	All full-time employees *Supplemental Sickness/Unemployment Benefit Plan	06/01/2010
Massachusetts Bay Commuter Railroad (PLAN TERMINATED)	Union employees of the Brotherhoods or Crafts of ARASA, M of W, Shopcrafts and Signalmen, also **former Amtrak employees** supplemental sick plans that worked under the MBTA Commuter Rail contract for the following groups of employees: Non-agreement employees, TCU employees, and American Train Dispatcher employees	07/01/2003 through 07/18/2016 01/01/1994 07/21/1972 01/01/1977
Meridian &Bigbee Railroad, L. L. C.	All full-time employees - *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
McCloud River	Salaried Employees	01/01/1970
Metro-North Commuter RR	BLE, ACRE, TCIU Non-agreement, employees, police, supervisors, technicians and foremen, yardmasters, power supervisors and train dispatchers	04/01/1985

Minneapolis, Northfield & Southern	TCIU	04/01/1977
Minnesota Commercial	All Employees	12/01/1988
Mississippi Export	Non-contract full-time employees	03/01/1992
Missouri Pacific	TCIU	03/01/1973
Missouri Pacific	TCIU (Linemen-Gulf Division)	03/01/1976
Modesto & Empire Traction	UTU	01/01/1977
Monongahela Railway	Railroad Yardmasters	01/01/1980

N

Nashville & Eastern R.R. Corp.	All employees	01/01/1996
National Conference of Firemen & Oilers System Council No. 19	All full-time employees	10/01/2002
National Railroad Passenger Corp. (Amtrak)	Non-Agreement Employees	01/01/1994
National Railroad Passenger Corp. (Amtrak)	TCIU	07/21/1972
National Railroad Passenger Corp. (Amtrak)	American Train Dispatchers	01/01/1977
New Jersey Transit Rail	Carmen, Machinists, Boilermakers, Electricians, Firemen, Sheet Metal Workers, Signalmen, Yardmasters, and Maintenance of Way Employees	09/15/1983
New Jersey Transit Rail	American Railroads Supervisor Association (ARSA), Clerks & Supervisors/Maintenance of Way	05/09/1985
New Orleans Public Belt	TCIU	10/08/1971
New Orleans Terminal	TCIU	01/01/1975

New Orleans Terminal	IBEW (Communication and Signal Department)	07/01/1974
New Orleans Union Passenger Terminal	TCIU	01/01/1974
New York, Susquehanna and Western Railway Corp.	BLE	07/01/1989
Nimishillen and Tuscarawas	All hourly employees	09/07/2001
Norfolk Southern Corp.	TCU	01/01/1975
Norfolk Southern Corp.	Clerical and Train Dispatcher Employees represented by the TCIU	01/01/2006
Northeastern Illinois Reg. Comm. RR Corporation (METRA)	IBEW COMM. DEPT. Rule 34(B)	10/01/1987
Northeastern Illinois Reg. Comm. RR Corporation (METRA)	IBEW – SUBSTATIONS Rule 30(B)	03/01/1988
Northeastern Illinois Reg. Comm. RR Corporation (METRA)	IBEW - MECH. DEPT. Rule 57(B)	10/01/1987
Northeastern Illinois Reg. Comm. RR Corporation (METRA)	IBEW - ENG. DEPT. Rule 34(B)	10/01/1989
Northeastern Illinois Reg. Comm. RR Corporation (METRA)	IAMAW Rule 57(B)	12/16/1987
Northeastern Illinois Reg. Comm. RR Corporation (METRA)	BRC DIVISION OF TCIU Rule 58(B)	10/01/1986
Northeastern Illinois Reg. Comm. RR Corporation (METRA)	SMWIA Rule 57(B)	01/16/1988

Northeastern Illinois Reg. Comm. RR Corporation (METRA)	I.B.F.&O Rule 42(B) Sick Leave (B)	01/13/1994
Northeastern Illinois Reg. Comm. RR Corporation (METRA)	BMWE - Appdx. R Sick Leave (B)	12/18/1992
Northeastern Illinois Reg. Comm. RR Corporation (METRA)	UTU - Yardmaster's Dept. Supp No. 14(B)	05/01/1994
Northeastern Illinois Reg. Comm. RR Corporation (METRA)	IBBB - Appdx. 8 Sick Leave (B)	01/01/1994
Northeastern Illinois Reg. Comm.	BRS - 58(a) Sick Leave (B)	04/15/1994
Northeastern Illinois Reg. Comm. (METRA)	BLE-Policy Number GH3058883R	01/16/2001
Northeastern Illinois Reg. Comm. (METRA)	Trainmen-Policy Number GH307291	01/16/2001
Northern Plains Railroad, Inc	All Employees	05/24/2000
Northwestern Pacific	TCIU	07/01/1979
North Pacific Coast Freight Bureau	TCIU	07/01/1979

O through S

Oakland Terminal	UTU	01/01/1980
Ohio Central Railroad, Inc.	All full-time employees- *Supplemental Sickness/Unemployment Benefit Plan	06/01/2010
Pacific Fruit Express Co.	TCIU	01/01/1980
Pacific Southcoast Freight Bureau	Teamsters	01/01/1980

Paducah & Louisville	BMWE	06/20/1999
Paducah & Louisville	Brotherhood of Railway Carmen	07/28/2000
Paducah & Louisville	Full-Time Employees	01/01/1993
Paducah & Louisville	IAM	12/01/1998
Peoria & Pekin Union	TCIU	01/01/1968
Pittsburgh & Conneaut Dock	United Steelworkers of America	08/01/1975
Pittsburgh & Lake Erie	Railroad Yardmasters	01/01/1980
Port-Authority Trans-Hudson	All	01/01/1964
Portland & Western Railroad, Inc.	All full-time employees with a minimum of two years of service- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	01/01/2005 12/01/2007 06/01/2010
Port Terminal RR Assoc.	TCIU	06/01/1974
Port Terminal Company	TCIU	11/12/1971
Providence and Worcester	Brotherhood of Signalman	12/03/1998
Providence and Worcester	TCIU	06/01/2000
Providence and Worcester	UTU	09/30/1999
Riceboro Southern Railway, L. L. C.	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
River Terminal	TCIU	08/01/1967

Rochester & Southern Railroad	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
Savannah Port Terminal	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
St. Johns River Terminal	TCIU	01/01/1975
St. Johns River Terminal	IBEW (Communication and Signal Department)	07/01/1974
St. Lawrence & Atlantic RR	For full-time non bargaining Unit employees	09/01/2000
Sioux City Terminal	TCIU	08/01/1969
Soo Line	American Train Dispatchers Association	06/11/1974
Soo Line	TCIU	01/01/1974
Soo Line	Shopcraft Employees	01/01/1971
Soo Line	Officers and excepted employees	08/11/1976
South Buffalo Railway Company	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
South Central System	TCIU	01/01/1978
Board of Adjustment No.72 Southeastern Demurrage & Storage Bureau	TCIU	05/21/1974

Southern Pacific (Pacific Lines)	TCIU	07/01/1979
Southern Pacific (Pacific Lines)	UTU	07/01/1966
Southern Pacific (Texas & Louisiana Lines)	TCIU	10/01/1966
Southern Pacific (Texas & Louisiana Lines)	UTU	10/01/1966
Staten Island Rapid Transit	TCIU	11/01/1974
St. Lawrence & Atlantic Railroad Company	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010

T through Z

Tacoma Public Utilities	Tacoma Municipal Belt Line Non-exempt Employees	08/01/1986
Talleyrand Terminal	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
Tazewell & Peoria Railroad Inc.	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
Tennken Railroad Corporation	All full-time	08/07/1995
Terminal Railroad Association of St. Louis	TCIU	03/01/1973

Texas & Northern	Officers and Exempt Employees	01/01/1966
Texas, Oklahoma & Eastern	Teamsters	03/01/1973
Toledo, Peoria & Western Railway Company	All full time, non union employees	07/11/2000
Tomahawk Railway L.P.	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
Trailer Train Company	All	01/01/1966
Trans-Continental Freight Bureau	TCIU	09/05/1969
Transkentucky Transportation Railroad Inc.	Long-Term Disability Plan(LTD) is for all employees in active employment. Employees must be working at least 30 hours per week.	09/01/1997
Transportation Communications International Union	Grand Lodge Employees	01/01/1980
Transport Workers Union of America	Full-Time Staff Members of Local 7001	09/01/1990
TTX Company	Salaried Employees	09/01/1995
Union Pacific	All Salaried Employees	07/01/1968
Union Pacific	TCIU	07/15/1967
Union Pacific	Foreman & Supervisors of Mechanics in the motive power & machinery dept.	01/01/1968
Union Pacific Employees Hospital	Nurses, technical employees & clerks represented by TCIU	01/01/1969

Utah Railway	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
Valdosta Railway, L. P.	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
West Tennessee Railroad Corporation	All full-time	08/07/1995
Western Fruit Express Co.	Officers and excepted employees	01/01/1972
Western Kentucky Railway, L. L. C.	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
Western Maryland	TCIU	01/01/1972
Western Maryland	RR Yardmasters of America	01/01/1979
Western Railway of Alabama	TCIU	06/01/1975
Western Railroad Assn.	All full-time non-union employees	12/01/1975
Western Railroad Assn.	TCIU	01/01/1974
Western Weighing & Inspection Bureau	TCIU	02/18/1974
Wheeling & Lake Erie Railway	All active full-time employees	07/01/2009

Willamette & Pacific RR, Inc.	All full-time employees with a minimum of two years of service- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	01/01/2005 12/01/2007 06/01/2010
Wilmington Terminal Railway, L.L.C.	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
Wisconsin Central Limited	All employees	01/01/1991
York Railway Company	For full-time non bargaining Unit employees For all full-time employees *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	09/01/2000 12/01/2007 06/01/2010
York Rail Logistics	All full-time employees- *Supplemental on the job injury Benefit Plan or the *Supplemental Sickness/Unemployment Benefit Plan	12/01/2007 06/01/2010
Youngstown & Northern	TCIU	07/01/1974

Nationwide Agreements Regarding Accidents Involving Off-Track Vehicles

Nationwide agreements with most of the railroad labor organizations cover accidents involving employees while they are riding in, boarding or alighting from off-track vehicles authorized by the carrier, and are deadheading under orders or being transported at carrier expense. The protective payments provided by these agreements, which are described below, are not "remuneration" and do not interfere with the receipt of sickness benefits.

1. Payment of $100,000 for loss of life; $50,000 for loss of one hand, or one foot, or sight of one eye; or $100,000 for certain other losses such as both hands, or both feet, etc.

2. Payment for expenses of medical and hospital care commencing within 120 days after the accident occurred, subject to a limitation of $3,000.

3. Payment of 80% of the employee's basic full-time weekly compensation for time actually lost, subject to a maximum of $100 a week for time lost during a period of 156 continuous weeks following the accident; these payments are reduced by any sickness benefits the employee may be entitled to receive under the Railroad Unemployment Insurance Act.

American Family Life Assurance Company of Columbus (AFLAC)

Effective Date: April 1, 2012

A Short-Term Disability Insurance Plan for all Arkansas & Missouri railroad employees as administered by the **American Family Life Assurance Company of Columbus** are paid conforming to a private contract that has **no impact** upon an employee’s eligibility for benefits under the RUIA.

Anthem Life Insurance Company

Effective Dates: 01/01/2010, 02/01/2010 and 03/01/2010

A Short Term Disability Plan for all active dues paying rail members of the **United Transportation Union** (UTU) that are working at least 30 hours per week as administered by the Anthem Life Insurance Company are paid conforming to a private insurance contract that has **no impact** upon an employee’s eligibility for benefits under the RUIA.

Benefit Trust Life Insurance Company and National Carriers' Conference Committee

Effective Date: July 1, 1991

Maintenance of way employees are covered in the sickness benefit plan. The following employers are included in the plan:

Akron & Barberton Belt

Alameda Belt Line

Alton & Southern Railway Company

Atchison, Tepeka & Santa Fe

Bangor and Aroostook

Belt Railway Company of Chicago

Bessemer & Lake Erie

Birmingham Southern

Burlington Northern

Camas Prairie

Canadian Consolidated Rail

Canadian National Railways

Canadian Pacific Rail Limited

Canton Railroad

Central California Traction Company

Central Vermont Railway

Chicago & Illinois Midland

Chicago & North Western Trans. Co.

Chicago Short Line Railway

Colorado & Wyoming

Davenport, Rock Island & N.W.

Delaware & Hudson

Denver & Rio Grande Western

Denver Union Terminal Railway

Duluth Missabe & Iron Range

Duluth, Winnipeg & Pacific

Escanaba & Lake Superior

Grand Trunk

Green Bay & Western

Houston Belt & Terminal

Illinois Central Gulf Railroad

Indiana Harbor Belt Railroad

Kansas City Southern Railway

Kansas City Terminal Railway

Lake Superior & Ishpeming

Longview, Portland & Northern

Los Angeles Junction Railway

Louisiana Northwest

Meridian & Bigbee Railroad

Mississippi Export

Missouri Pacific Railroad

Monongahela Railway

National Railroad Passenger Corporation (AMTRAK)

New Orleans Public Belt Railroad

Norfolk Southern Railway

Northeast Illinois Regional Commuter RR.

Northern Indiana Commuter Transportation

Pittsburgh & Shawmut

Pittsburgh Chartiers & Youghiogheny

Port Terminal Railroad

Portland Terminal Company

Sand Springs Railway

SEPTA

Southern Pacific Transportation Co.

Springfield Terminal

Stockton Terminal & Eartern

Terminal RR Assoc. of St. Louis

Texas City Terminal Railway

Texas Mexican Railway

Union Pacific Railroad

Utah Railway

Wichita Terminal Association

Youngstown & Southern

Benefit Trust Insurance Company and National Carriers' Conference Committee

Effective Date: January 1, 1982

Employees represented by the following Unions are covered by the Sickness Plan:

Hotel & Restaurant Employees & Bartenders International Union

Brotherhood of Sleeping Car Porters

Amtrak Service Workers Council

The following employers are included in the plan:

Chicago and North Western

Metro-North

National Railroad Passenger Corporation (Amtrak) (On-Board Services)

Union Pacific Railroad

Fortis Benefits Insurance Company

Effective Date: March 1, 2004

A Short Term Disability Plan (STD) **ISG Cleveland Works Railway company** as administered by the **Fortis Benefits Insurance Company** for all full-time union employees of Grant Railway Services, Inc. Benefits are paid conforming to a

private insurance contract that has **no impact** upon an employee's eligibility for benefits under the RUIA.

Fort Dearborn Life Insurance Company

Effective Date: July 1, 2011

A Short Term Disability Insurance Plan with Anacostia Rail Holdings as administered by the Fort Dearborn Insurance Company for all active full-time employees working in the United States full-time who regularly works a minimum of 30 hours per week. Part-time seasonal and temporary employees are not eligible. Benefits are paid conforming to a private insurance contract that has **no impact** upon an employee's eligibility for benefits under the RUIA.

Guardian Life Insurance Company of America

Effective Date: October 1, 1999

A Short Term Disability Plan (STD) administered by the **Guardian Life Insurance Company of America** for officers and full time staff of the **Pennsylvania Federation, Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters**. Benefits are paid conforming to a private insurance contract that has **no impact** upon an employee's eligibility for benefits under the RUIA.

Hartford Life and Accident Insurance Company

Effective Date: August 1, 2005

A Short (AD&D) and Long Term (Supplemental Life) Disability Insurance Plan administered by the **Hartford Life and Accident Insurance Company (Dallas, TX)** for the **Brotherhood of Locomotive Engineers and Trainmen.** Benefits are paid conforming to a private insurance contract that has **no impact** upon an employee's eligibility for benefits under the RUIA.

Jefferson Pilot Financial Insurance Company

Effective Date: August 1, 2000

A Short Term Disability Plan (STD) administered by the **Jefferson Pilot Financial Insurance Company** covers all full-time regular employees of the **Twin Cities & Western Railroad Company** that work at least 30 hours per week. Benefits are paid conforming to a private insurance contract that has **no impact** upon an employee's eligibility for benefits under the RUIA.

Effective Date: July 1, 2006

A Long Term Disability Insurance Plan (LTD) administered by the **Jefferson Pilot Financial Insurance Company** covers employees of the **Twin Cities & Western Railroad Company** for all Class 1 full-time regular employees electing to pay premiums and Class 2 full-time employees who elect to receive the benefit on a non-contributory basis that work a minimum of 30 hours per week. Benefits are paid conforming to a private insurance contract that has **no impact** upon an employee's eligibility for benefits under the RUIA.

Lincoln National Life Insurance Company

Effective Date: January 1, 2008

A Short Term Disability Insurance Benefit Plan administered by the **Lincoln National Life Insurance Company** that covers employees of the **Massachusetts Bay Commuter Rail**. Payments made under this plan are provided through a private commercial insurance contract that has **no impact** upon an employee's eligibility for benefits under the RUIA.

Metropolitan Life Insurance Company (MetLife) and Brotherhood of Locomotive Engineers and Trainmen (BLET)

Effective Date: October 1, 2004

Employees represented by the **Brotherhood of Locomotive Engineers and Trainmen** are covered by a supplemental sickness benefit plan administered by the **Metropolitan Life Insurance Company (MetLife).** Benefits are paid conforming to a private insurance contract that has **no impact** upon an employee's eligibility for benefits under the RUIA. The following is a list of railroads currently covered by this plan:

Consolidated Rail Corporation

CSX Transportation, Inc., including:

- Baltimore and Ohio Chicago Terminal Railroad Company
- Gainsville Midland Railroad Company
- Richmond, Fredericksburg and Potomac Railway Company

Duluth, Missabe & Iron Range Railway Company

Elgin, Joliet and Eastern Railway Company

Kansas City Southern Railway Company

Longview Switching Company

Port Terminal Railroad Company

Union Pacific Railroad Company

Utah Railway Company

Winston Salem Southbound Railway Company

Mutual of Omaha Insurance Company

Effective Date: May 1, 2003

A Long Term Disability Plan (LTD) administered by **Mutual of Omaha Insurance Company** that covers all full-time regular employees of the **Twin Cities & Western Railroad Company** that work at least 30 hours per week. Benefits are paid conforming to a private insurance contract that has **no impact** upon an employee's eligibility for benefits under the RUIA.

Provident Life and Accident Insurance Company and National Carriers' Conference Committee

Effective Date: July 1, 1983

Employees in the following job groups are covered by the sickness benefit plan:

Signalmen and Shop Craft Employees:

Boilermakers and BlackSmiths	Machinists
Carmen	Sheet Metal Workers
Electrical Workers	Signalmen
Firemen and Oilers	Marine Employees

The following employers are included in the plan:

Alameda Belt Line

Alton & Southern Railway Company

Atchison, Topeka & Santa Fe

Atlanta & St. Andrews Bay

Atlanta & West Point

Bangor & Aroostook

Belt Railway Company of Chicago

Bessemer & Lake Erie

Burlington Northern

Camas Prairie Railroad

Canadian National Railways

Canadian Pacific Railway

Central of Georgia Railway

Central Vermont Railway

Chicago & Illinois Midland

Chicago & North Western

Chicago Heights Term. Transfer RR

Chicago, South Shore & South Bend RR

Chicago Union Station

Colorado & Wyoming

Consolidated Rail

CSX

Delaware & Hudson

Denver & Rio Grande Western

Detroit & Mackinac Railway

Duluth, Winnipeg & Pacific

Escanaba & Lake Superior

Fort Worth & Denver

Grand Trunk Western Railroad

Green Bay Western

Harbor Belt Line Railraod

High Point, Thomasville & Denton

Houston Belt Line Railroad

Illinois Central Gulf Railroad

Indiana Harbor Belt Railroad

Kansas City Southern Railway

Kansas City Terminal Railway

Lake Erie, Franklin & Clarion

Lake Superior & Ishpeming

Longview, Portland & Northern

Los Angeles Junction Railway

Louisiana & Arkansas

Manufacturers Railway Company

Meridian & Bigbee

Milwaukee, Kansas City SN Joint Agency

Minneapolis, Northfield & Southern Railway

Missouri, Kansas, Texas Railroad

Missouri Pacific Railroad

Monongahela Railway

Montour Railroad

National Railroad Passenger Corp. (Amtrak)

New Orleans Public Belt Railroad

New Burgh & South Shore

Norfolk & Portsmouth Belt Line

Norfolk Southern Railway

Northeast Illinois Regional Commuter R.R.

Northern Indiana Commuter

Oakland Terminal Railway

Odgen Union Railway & Depot Road

Pacific Fruit Express Company

Peoria & Pekin Union

Pittsburgh & Shawmut

Port Terminal Railroad

Portland Terminal Company

Richmond, Fredericksburg & Potomac

River Terminal Railway

St. Louis-Southwestern Railway

Sand Springs Railway

Soo Line Railroad

South Carolina Public RWY

Southern Pacific Transportation Co.

Southwestern Pennsylvania Trans. Auth.

Southern Railway

Springfield Terminal

Stockton Terminal & Eastern

Terminal Railroad Assoc. of St. Louis

Terminal Railway Alabama State Docks

Texas Mexican Railway

Texas City Terminal Railway

Three Rivers RWY

Toledo Terminal Railway

Union Belt of Detroit

Union Pacific Railroad

Utah Railway

Western Pacific Railroad

Youngstown & Southern

Reliance Standard Life Insurance Company

Effective Date: January 1, 2008

A Group Short Term Disability (STD) and Long Term Disability Plan (LTD) administered by the **Reliance Standard Life Insurance Company** for all full-time employees of the **Montreal, Maine, & Atlantic Railway, Ltd**. Benefits are paid conforming to a private insurance contract that has **no impact** upon an employee's eligibility for benefits under the RUIA.

Standard Insurance Company

Effective Date: Every December 1st

The Group Short Term Disability Insurance Plan **Wisconsin and Southern Railroad** has with **Standard Insurance Company** for all eligible employees provides for disability under this plan. Benefits are paid conforming to a private insurance contract that has **no impact** upon an employee's eligibility for benefits under the RUIA.

Effective Date: May 1, 2007

The Group Short Term Disability Insurance Plan **Springfield Terminal Railway Co.** and its subsidiaries that are Pan Am Railways, Boston & Maine Corp, GMX, Guilford Transportation Ind., Maine Central Railroad, Pan Am Systems, Portland Terminal Railway have with **Standard Insurance Company** for all regular full-time management and Springfield terminal police employees of the Employer provides for disability under this plan. Benefits are paid conforming to a private insurance contract that has **no impact** upon an employee's eligibility for benefits under the RUIA.

Sun Life and Assurance Company of Canada

Effective Date: January 1, 2010

The Short and Long Term Disability Insurance Plan covering all **D&I's** full-time United States employees working in the U.S scheduled to work at least 24 hours per week have with the Sun Life Assurance Company of Canada. Benefits are

paid conforming to a private insurance contract that has **no impact** upon an employee's eligibility for benefits under the RUIA.Effective Date: 10/01/2005

The Long Term Disability Insurance Plan (LTD) and the Life and Accident Death and Dismemberment Insurance (AD&D) plans **Providence and Worcester RR Company** has with **Sun Life and Assurance Company of Canada** (LTD) and the **Metropolitan Life Insurance Company** (AD&D) for all full-time management employees scheduled to work at least 30 hours per week and for U.S. employees under the Railroad Employees National Health and Welfare Plan for eligible employees provide long term disability and accident death and dismemberment benefit payments. Benefits are paid conforming to a private insurance contract that has **no impact** upon an employee's eligibility for benefits under the RUIA.

Trustmark Life Insurance Company and National Carriers' Conference Committee

Effective Date: March 1, 2002

Employees represented by the **Railroad Yardmasters of America** are covered by the sickness benefit plan. The following employers are included in the plan:

Alton & Southern Railway Company

Buffalo & Pittsburgh

Burlington Northern and Santa Fe Rwy Co.

Canadian Pacific Rail

Chicago & North Western Trans. Co.

CSX Transportation, Inc.

Delaware & Hudson

Grand Trunk Western

Houston Belt & Terminal

Illinois Central Gulf Railroad

Indiana Harbor Belt Railroad

I&M Kansas City Joint Agency

Kansas City Southern Railway

Missouri Pacific Railroad

National Railroad Passenger Corporation (Amtrak)

Northeast Illinois Regional Commuter Railroad

New Orleans Public Belt

Norfolk Southern Railway

Port Terminal Railroad

Soo Line Railroad

Soo - KC Joint Agency

Terminal Railroad Assoc. of St. Louis

Texas City Terminal Railway

Union Pacific

Trustmark Life Insurance Company

Effective Date: January 1, 2004

Employees represented by the **Brotherhood of Locomotive Engineers-Train Dispatcher Department** employed by **CSX Transportation**.

Plan benefits are fully insured by Trustmark Insurance Company under Group Policy 9000. Benefits are paid conforming to a private insurance contract that has **no impact** upon an employee's eligibility for benefits under the RUIA.

United States Steel and Carnegie Pension Fund

Effective Date: January 1, 2000

For all Management employees of **Transtar Inc.** and its subsidiaries has with **United States Steel and Carnegie Pension Fund.** . Benefits are paid conforming to a private insurance contract that has **no impact** upon an employee's eligibility for benefits under the RUIA.

UNUM Provident Insurance Company

Effective Date: September 22, 1995

The **Montana Rail Link** has a long term disability plan with the **UNUM Provident Insurance Company**. Benefits are paid conforming to a private insurance contract that has **no impact** upon an employee's eligibility for benefits under the RUIA.

Effective Date: July 1, 2003

Massachusetts Bay Commuter Railroad was a covered employer that had a Group Long Term Disability Insurance Benefits Plan for all salaried employees working at least 20 hours per week with the **Unum Provident Insurance Company**. Benefits were paid conforming to a private insurance contract that had **no impact** upon an employee's eligibility for benefits under the RUIA. This plan was grandfathered in for employees of **Keolis Commuter Services** until 07/18/2016.

Effective Date: January 1, 2013

Genesee & Wyoming is a covered employer that has a supplemental sickness benefit plan for its full-time non–union employees administered by the **UNUM Provident Insurance Company**. Benefits are paid conforming to a private insurance contract that has **no impact** upon an employee's eligibility for benefits under the RUIA. The following is a list of railroads included in this plan (prior to 2013, these roads were owned by RailAmerica):

Alabama & Gulf Coast Railway	Kyle Railroad Co.
American Rail Dispatching Center, Inc.	Massena Terminal Railroad Co
Arizona & California Railroad	Mid Michigan Railroad
Bauxite & Northern Railway	Missouri & Northern Arkansas Railroad
California Northern Railroad	New England Central Railroad
Cascade & Columbia River Railroad	North Carolina & Virginia Railroad
Central Oregon & Pacific Railroad	Otter Tail Valley Railroad Co.
Central Railroad of Indianapolis	Point Comfort & Northern Railroad
Central Railroad of Indiana	Puget Sound & Pacific Railroad
Connecticut Southern Railroad	RailAmerica Intermodal Services
Dallas, Garland & Northeastern	Rockdale Sandow & Southern Rail
Eastern Alabama Railway	San Diego & Imperial Valley Railroad
Florida East Coast Railway	San Joaquin Valley Railroad Co

Huron and Eastern Railway Co	South Carolina Central Railroad., Inc
Indiana Southern Railroad	Toledo Peoria & Western Railway
Indiana & Ohio Railway	Ventura County Railroad Company
Kiamichi Railroad	RailAmerica Intermodal Services
	Rail Operating Support Group

Effective Date: January 1, 2005

Norfolk Southern is a covered employer that has a supplemental sickness benefit plan with the Brotherhood of Locomotives Engineers and Trainmen administered by the **UNUM Provident Insurance Company**. Benefits are paid conforming to a private insurance contract that has **no impact** upon an employee's eligibility for benefits under the RUIA.

Effective Date: July 18, 2016

Keolis Commuter Services is a covered employer that has a Short Term Disability Policy for all non-union employees and ARASA foremen with the **Unum Provident Insurance Company**. Benefits are paid conforming to a private insurance contract that has **no impact** upon an employee's eligibility for benefits under the RUIA.

Appendix G - Supplemental Unemployment Benefit Plans

Employer	Class of Employees	Effective Date
Atchison, Topeka & Santa Fe	TCIU	01/01/1980
Bangor and Aroostook	All eligible employees	03/05/1986
Bauxite and Northern Railway (at Bauxite, AR)	All employees with two or more years of service represented by the International Union, United Steelworkers of America	06/01/2001
Bessemer & Lake Erie	Int'l Bro. of Oilers and Int'l Assn. of Machinists and Aerospace Workers	07/01/1983
Bethlehem Steel Corp., Sudsidiaries of:	All employees represented by United Steelworkers of America	10/01/1956

Cambria & Indiana RR Conemaugh & Black Lick RR Patapsco & Back Rivers RR Philadelphia, Bethlehem & New England RR Pittsburgh & Ohio Valley RR South Buffalo Railway Steelton & Highspire RR		
Birmingham Southern Railroad Company	All Non-Union Salaried Employees under the Layoff Unemployment Benefit (LUB) Program	07/01/2003
Black River and Western	All full-time employees	12/27/1991
Brandywine Valley RR	Full-time hourly employees	07/15/1986
Carolina & Northwestern	TCIU	04/01/1971
Chicago & North Western Transportation	TCIU	12/13/1982
Colorado & Wyoming	Fireman, Engineers and Switchman	04/06/1962
Consolidated Rail Corporation (ConRail)	Agreement Employees (ConRail SUB Plan)	04/02/1987
CSX Transportation	TCIU (Clerks) – former B&O	06/04/1973
CSX Transportation	TCIU (Clerks) – former C&O	01/01/1982
CSX Transportation	Machinists	08/01/1980
CSX Transportation	TCIU (Clerks) – former SCL	05/07/1981
CSX Transportation	TCIU (Clerks) – former L&N	05/22/1981
CSX Transportation	UTU (Trainmen) – former PM & Hocking Valley	08/01/1989

Delaware & Hudson Railway Co.	Brotherhood of Maintenance Way Employees (BMWE)	11/29/2000
Delaware & Hudson Railway Co.	Brotherhood of Railway Carmen (BRC)	01/01/2002
Delaware & Hudson Railway Company Inc.	National Conference of Fireman and Oilers (NCFO)	09/21/2006
Delaware & Hudson Railway Company Inc.	American Railway Supervisors Association (ARSA) (Mechanical Department Foreman)	09/21/2006
Delaware & Hudson Railway Company Inc.	International Association of Machinists and Aerospace Workers (IAMAW)	09/21/2006
Delaware & Hudson Railway Company Inc.	International Brotherhood of Electrical Workers (IBEW)	10/10/2006
Delaware & Hudson Railway Company Inc.	D&H Special Agents, represented by the ASD (Division TCU)	09/21/2006
Denver & Rio Grande Western	TCIU	01/01/1982
Elgin, Joliet and Eastern Railway Company	All Non-Union Salaried Employees under the Layoff Unemployment Benefit (LUB) Program	07/01/2003
Gulf, Colorado & Santa Fe	TCIU	05/20/1963
Grand Trunk Western	UTU – Yardmen and Foremen	07/19/1988
Grand Trunk Western	UTU – Former DT&I Yard and Road Trainmen	07/19/1988
Grand Trunk Western	UTU – Road Conductors and Brakemen	05/14/1990
Illinois Central Gulf	TCIU	09/15/1972
Illinois Central Gulf	Maintenance of Way Employees	09/15/1972

Illinois Central Gulf	Shopcraft employees	05/18/1972
ISG-Railway Inc	All employees who are covered by a collective bargaining agreement with the United Steelworkers of America (Arcelor Mittal)	06/22/2009
ISG-Railway Cleveland Works Railway Co.	All employees who are covered by a collective bargaining agreement with the United Steelworkers of America (Arcelor Mittal)	06/22/2009
ISG-South Chicago & Indiana Harbor Rwy	All employees who are covered by a collective bargaining agreement with the United Steelworkers of America (Arcelor Mittal)	06/22/1009
Kansas City Terminal	TCIU	05/21/1984
Lake Terminal	Employees represented by United Steelworkers of America & All Non-Union Salaried Employees under the Layoff Unemployment Benefit (LUB) Program	10/01/1983 07/01/2003
Long Island	TCIU	04/01/1964
Marine Atlantic	All employees	04/12/1994
Massena Terminal Railroad at (Massena, NY)	All employees with two or more years of service represented by the International Union, United Steelworkers of America	06/01/2001
McKeesport Connecting	All employees represented by United Steelworkers of America & All Non-Union Salaried Employees under the Layoff Unemployment Benefit (LUB) Program	03/01/1963 07/01/2003
Metro North Commuter	All non-contract employees	01/01/1983

Midland Terminal Company	All bargaining-unit employees	03/20/2000
Missouri Pacific RR & Subsidiaries	TCIU	04/17/1963
Panhandle & Santa Fe	TCIU	05/20/1963
Pittsburgh & Conneaut Dock Company	Employees represented by United Steelworkers of America	01/01/1969
Point Comfort & Northern Railroad at (Point Comfort, TX)	All employees with two or more years of service represented by the International Union, United Steelworkers of America	06/01/2001
Rockdale Sandow & Southern Railroad at (Rockdale, TX)	All employees with two or more years of service represented by the International Union, United Steelworkers of America	06/01/2001
Seaboard System	TCIU	01/01/1981
Soo Line	Sheet Metal Workers	07/15/1985
Southern Pacific Co. (Pacific Lines)	TCIU	10/22/1958
Southern Railway System	TCIU	04/01/1971
Texas & Pacific (& Subsidiaries)	TCIU	04/17/1963
Toledo Terminal	TCIU	01/01/1982
Tracks Traffic and Management Services Inc.	All Non-Union Salaried Employees under the Layoff Unemployment Benefit (LUB) Program	07/01/2003
Transtar, Inc	All Non-Union Salaried Employees under the Layoff Unemployment Benefit (LUB) Program	07/01/2003
Union Belt of Detroit	TCIU	07/01/1981

Union Railroad (Pittsburgh)	All employees represented by United Steelworkers of America & All Non-Union Salaried Employees under the Layoff Unemployment Benefit (LUB) Program	03/01/1963 07/01/2003
United Transportation Union Voluntary Contribution Plan	UTU	01/07/1969
Warrior & Gulf Navigation Company	All Non-Union Salaried Employees under the Layoff Unemployment Benefit (LUB) Program	07/01/2003
Western Railroad Assn.	TCIU	04/01/1995
Western Railroad Assn.	Non-agreement employees	01/04/1982
Western Railroad Assn.	Rate Bureau employees	11/01/1983
Western Railroad Traffic Association	Non-agreement employees	01/04/1982
Western Weighing & Inspection Bureau	TCIU	01/01/1989

1001 Provisions of the Act

1001.01 Section 1(k)

of the Act provides, in part, that "... a day of unemployment, with respect to an employee, means a calendar day... with respect to which...he has, in accordance with such regulations as the Board may prescribe, registered at an employment office...".

1001.02 Section 12(h)

of the Act provides, in part, that "The Board may enter into agreements or arrangements with employers, and railway-labor organizations which are duly organized in accordance with the provisions of the Railway Labor Act, for securing the performance of services or the use of facilities in connection with the administration of this Act. . ."

1001.03 Section 12(i)

of the Act provides, in part, that "The Board may establish, maintain, and operate free employment offices, and may designate as free employment offices facilities maintained by (i) a railway labor organization which is duly authorized and designated to represent employees in accordance with the Railway Labor Act, or (ii) any other labor organization which has been or may be organized in accordance with the provisions of the Railway Labor Act, or (iii) one or more employers, or (iv) an organization of employers, or (v) a group of such employers and labor organizations, or (vi) a State, Territorial, foreign, or the Federal Government. . . . the Board shall prescribe a procedure for registration of unemployed employees at employment offices. Such procedure for registration shall be prescribed with a view to such registration affording substantial evidence of the days of unemployment of the employees who register. . ."

1002 Provisions of the Regulations

See section 325 of the Railroad Retirement Board's (RRB) regulations.

1003 Definitions

1003.01 Registration

To claim unemployment benefits for any day, an employee must:

a. Register as unemployed by applying for unemployment benefits and employment service as required by the RRB's regulations and described in section 1006 of this article,

b. File a claim for benefits in accordance with the RRB's regulations (section 1007), and

c. Provide any other information that the RRB needs to properly adjudicate his or her right to unemployment benefits.

A registration exists with respect to any day for which the employee registers in accordance with the RRB's regulations as described above except:

a. If a registration has been made for a day of unemployment, and the claim for that day is later withdrawn, the registration made for that day is not considered to have been withdrawn; and

b. If, at the time of establishment of an extended benefit period, it is apparent that beginning the extended benefit period with a particular day would clearly be to the employee's disadvantage, no registration is deemed to have been made with respect to that day; and

c. No registration is deemed to have been made for any day that would be the first day of a registration period in a benefit year:

   1. In which the employee is not a qualified employee, or

   2. In which benefits have already been paid to the employee for 130 days of unemployment (unless the registration is made in an extended benefit period), or

   3. In which unemployment benefits have already been paid to the employee in an amount equal to the employee's compensation in the base year (unless the registration is made in an extended benefit period).

1003.02 Filing

Filing is the delivery of an application or a claim form for unemployment benefits to an office of the RRB within the time prescribed by the RRB's regulations. An application must be received at an RRB office within 30 calendar days of the first day that the employee intends to claim as a day of unemployment. A claim must be received no later than 15 calendar days after the last day of the claim form or the date the form was mailed to the employee, whichever is later.

1003.03 Claim

An employee claims a day as a day of unemployment by registering for the day on a claim form provided by an office of the RRB.

1003.04 Withdrawal of a claim

In the absence of fraud, a claimant may withdraw a claim to a day by informing the RRB in writing that he or she no longer wishes to claim such day. Benefits paid to the employee for days which are being withdrawn must be repaid to the RRB. (See Section 1003.01)

1003.05 Normal Registration

A normal registration is made by an employee by filing an application or a claim for unemployment benefits with an office of the RRB within the time prescribed by the RRB's regulations.

1003.06 Advanced registration

An advanced registration is a registration filed prior to days claimed as days of unemployment on the claim form. Advance registration for days is not permitted.

1003.07 Delayed registration

A delayed registration is a registration made on a day after the last day on which the claimant could have made a normal registration.

1004 Registered in Accordance With Regulations of the Board

For the purpose of Section 1(k) of the Act, which defines a day of unemployment, an employee has registered in accordance with the regulations of the RRB, with respect to a day, if:

a. A registration with respect to such day has been made by the employee (see section 1005);

b. A Form UI-1 for the benefit year which includes the days to be claimed, completed by the claimant, has been received in the district office serving his or her area or any other office of the RRB (see section 1006);

c. The information required by the claim form with respect to such day has been received in the district office (see section 1007);

d. Any other information required by the RRB to properly adjudicate the employee's right to unemployment benefits has been provided; and

e. The registration is normal or is acceptable as a delayed registration (see section 1008).

Note: Any questions regarding registration for unemployment benefits by claimants residing in a foreign country should be referred to the Bureau of Field Service.

1005 Determining Whether Registration Has Been Made

1005.01 Usual basis for determination

In the absence of evidence to the contrary, consider that an employee has registered for a day if he or she has signed for the day on Form UI-3 or other form provided by the RRB for registration.

1005.02 Signature

An employee has not registered for a day unless he or she has signed for it on the claim form provided by the RRB. If a signature is recognizable as the signature of the claimant, it is acceptable whether made in writing, in printing, or by witnessed mark. If the claimant signs with a mark, two witnesses should also sign the form. If there is a change from written to printed signature, from signature to mark, or vice versa, an investigation will be necessary unless an adequate explanation is furnished.

1005.03 Existence of more than one registration

An employee who has made a registration with respect to a day may, after withdrawing his or her claim based on such registration, make another registration for the day. Thus, there may exist simultaneously more than one registration made by an employee with respect to a day, but not more than one claim to the day.

1006 Application for Unemployment Benefits and Employment Service

1006.01 Requirement

An application is required at the beginning of each period of unemployment in a benefit year unless:

a. The employee filed an application for an initial period of unemployment in a benefit year and has a subsequent period of unemployment within the same benefit year, or

b. The employee had filed an application for benefits for a period of unemployment that began in the preceding benefit year and the period of unemployment continued into the next benefit year.

In either circumstance, the initial application will be treated as an application for days in the subsequent period of unemployment or as an application for days in the next benefit year, as the case may be.

1006.02 Purpose

An application for unemployment benefits and employment service must:

a. Furnish sufficient information to identify the individual who submitted the application;

b. Assist the RRB in determining whether the applicant is a qualified employee and whether any of the information reported on the application affects eligibility for benefits; and

c. Assist the RRB in placing the employee in any suitable employment that may be available.

1006.03 Time for filing application

An employee may deliver or mail his or her application to any RRB office, but the application must be received within 30 calendar days of the first day the employee intends to claim as a day of unemployment.

1007 Claim Form

1007.01 Requirements

After an employee has applied for unemployment benefits in accordance with section 1006 of this part, he or she must claim a day as a day of unemployment by registering with respect to such day. Registration will be made on the claim form provided by the RRB to the employee. Upon registration, a claimant will furnish the information required by the claim form. Information is required if it is called for by the form and is needed to adjudicate the particular claim. Until the information required, no day with respect to which such information is needed will be considered as a day of unemployment.

1007.02 Claim period

A claim for unemployment benefits covers a period of 14 consecutive calendar days.

1007.03 Time for filing

A claim for unemployment benefits must be filed at an office of the RRB no later than 15 calendar days after the last day of the claim period or 15 calendar days after the date on which the claim form was mailed to the employee, whichever is

later. To determine whether the time for filing the claim may be extended, consult section 1008 on delayed claims. None of the days in a claim that is not timely filed is considered to be a day of unemployment.

1007.04 Claim for new period of unemployment

An employee, who has applied for benefits in a benefit year and again becomes unemployed in the same benefit year, need not file a new application but may request a claim for benefits for days in the subsequent period by contacting the RRB. The request must be made no later than 30 calendar days after the first day for which the employee wishes to claim benefits. Upon receipt of a request for a claim, the field office will provide the employee with a claim form beginning no earlier than the 30th day before the date on which the employee requested the claim form, unless the delay may be excused applying the standards in section 1008.

1007.05 Claims delayed due to denial

If an employee makes an initial application and claim for benefits but does not file ongoing claims because of an initial determination denying his or her application or claim for benefits and if, upon review, the denial is reversed by an authorized reviewing official, the employee has 30 days from the date of the notice of reversal in which to file a claim or claims for benefits for the days he or she would have claimed as days of unemployment but for the initial determination denying benefits. The reviewing official will notify the employee of the 30-day time limit imposed by the RRB's regulations.

1007.06 Claim required for waiting period

The requirement to file a claim for unemployment benefits includes filing a claim for the non-compensable waiting period required in each benefit year.

1008 Delayed Registration

1008.01 Acceptability

An application or claim for unemployment benefits will be considered timely filed if the employee can show a reasonable effort to file the form on time but was prevented from doing so by circumstances beyond his or her control. Lack of diligence, forgetfulness or lack of knowledge of the time limit for applying will not be considered a circumstance beyond the employee's control. The employee must file the application or claim within one year of the day(s) to be claimed as a day or days of unemployment, and not later than 30 days after the circumstance or condition which caused the delay was removed. The one-year deadline does not apply where the delay was caused by denial of benefits. (AIM 1007.05)

1008.02 Reasonable causal relationship

There must be a reasonable causal relationship between the failure to register normally and the circumstances or conditions which caused the delayed registration. The circumstances or conditions need not be such as would make it impossible to register; it is sufficient if the claimant would not reasonably be expected to register under such circumstances or conditions.

1008.03 Written statement of explanation

The claimant must submit a written statement to an office of the RRB explaining why he or she did not make a normal registration for the day(s) for which he or she makes a delayed registration. The statement must be signed by the claimant; however, a statement is to be regarded as signed by the claimant if it is attached to, or is in the form of a notation on, a form or other document that the employee signed.

1008.04 Investigation

If the claimant registers for a day on which he or she failed to make a registration because of employment, because of sickness, or because of death or serious illness in the claimant's immediate family, it may be necessary to investigate whether:

a. the claimant's failure to register on such day is in fact attributable to such circumstance or condition, and

b. if it is found that the claimant failed to register because of such condition, any day on which the condition existed can be considered as a day of unemployment.

1008.05 Lack of diligence

The following conditions or circumstances are among those considered attributable to lack of diligence on the part of the claimant:

a. Laziness or inertia;

b. Forgetfulness;

c. Carelessness;

d. Lack of ordinary prudence or foresight.

1008.06 Circumstances or conditions beyond an employee's control

Consider that any of the following circumstances or conditions for failing to make a normal registration affect the claimant directly and are not attributable to any lack of diligence on the claimant's part and that the required reasonable causal relationship exists.

a. The employee is away from home for an extended period of time working, searching for work, complying with instructions from the RRB to apply for work, or being held over or is lying over after completing a job in anticipation of a possible call for work;

b. The employee is away from home for an extended period of time due to a death or serious illness in his or her immediate family;

c. The employee was given misinformation by a railway labor official or an employee of the RRB (see .08);

d. The employee filed for sickness benefits, but was later determined to be able to work;

e. The employee registered in accordance with the provisions of a state unemployment compensation law and is thereafter informed by the state agency that he or she is not eligible. (see .09);

f. The employee attempted to file his or her form on time, but the form was lost or destroyed (see .11);

g. The employee is directly affected by any other circumstance or condition which caused him or her to fail to make a normal registration. This may be grounds for an acceptable delayed registration if evidence shows that the required reasonable causal relationship exists and that such circumstance or condition directly affects the employee and is not attributable to any lack of diligence.

1008.07 Efforts to file timely

It should be considered that an employee made a reasonable attempt to file for unemployment benefits timely and delayed registration should be accepted if any of the following circumstances exist:

a. The employee mailed the form within a reasonable time for it to be received at a RRB office timely, but the form is delayed in the mail. (The postmark date is considered to be the date the employee mailed the form unless there is evidence that the form was actually mailed earlier.)

b. The employee calls or writes to an office of the RRB within the time prescribed for filing the form.

c. The employee provides the RRB with the incorrect type of claim form or an application.

1008.08 Misinformation

The receipt of misinformation constitutes acceptable grounds for delayed registration when it is shown that:

a. There is a causal relationship between the misinformation and the claimant's failure to register,

b. The delayed registration was the direct result of complying with the instructions as he or she understood them, and

c. The misinformation was given by a railway labor official or an employee of the RRB. (Failure on the part of a labor official or an RRB employee to give proper instructions in answer to an inquiry is tantamount to the giving of misinformation.)

1008.09 Registration for state unemployment benefits

An employee may register in accordance with the provisions of a state unemployment compensation law and later be informed that he or she is not eligible for benefits under state law. The attempt to register for benefits with the state is an acceptable reason for delayed registration. Evidence that the employee registered and was denied is required. The employee may furnish evidence in the form of (1) a registration card showing dates on which he or she registered with the state agency, and (2) a notice of ineligibility sent by the state agency. If the employee cannot furnish such evidence, it may be requested from the state. If the evidence shows that the claimant did register with the state agency, delayed registrations should be taken for all the days the claimant wishes to claim as days of unemployment which are included in the periods for which the claimant registered in accordance with the provisions of the state law and which are prior to the day on which he or she was properly instructed to register under the Railroad Unemployment Insurance Act.

1008.10 Lost or destroyed claim form

If it appears that a claim form for a day(s) is lost or destroyed, the claimant may re-register for each of the days within one year of the last of day for which he or she signed on the form. Re-registrations are acceptable if, after full investigation, it is clear that the employee in fact made a normal or acceptable delayed registration for such days.

1009 Form Letters Prescribed

The following form letters are hereby prescribed:

- ID-10
- ID-10a
- ID-10b
- ID-10t
- ID-10u
- ID-10y
- UD-10z

1021 Provisions of the Act and the Regulations

1021.01 The Railroad Unemployment Insurance Act

a. Section 1(h) of the Act provides, in part, that 'The term registration period' means ... the period which begins with the first day with respect to which a statement of sickness is filed ... or the first such day after the end of a registration period which will have begun with a day with respect to which a statement of sickness was filed... and ends with the thirteenth day thereafter."

b. Section 1(k) of the Act provides, in part, that "... 'a day of sickness', with respect to any employee, means a calendar day ... with respect to which ... in accordance with such regulations as the Board may prescribe, a statement of sickness is filed within such reasonable period, not in excess of ten days, as the Board may prescribe ..."

c. Section 1(l) of the Act provides, in part, that "The term 'statement of sickness' means a statement with respect to days of sickness of an employee ... executed in such manner and form by an individual duly authorized ... to execute such statement, and filed as the Board may prescribe by regulations."

d. Section 12(i) of the Act provides, in part, that "The Board shall provide a form or forms for statements of sickness and a procedure for the execution and filing thereof. Such forms and procedure shall be designed with a view to having such statements provide substantial evidence of the days of sickness of the employee. Such statements may be executed by any doctor (authorized to practice in the State or foreign jurisdiction in

which he practices his profession) or any officer or supervisory employee of a hospital, clinic, group health association, or other similar organization, who is qualified under such regulations as the Board may prescribe to execute such statements. The Board shall issue regulations for the qualification of such persons to execute such statements. When so executed by any such person, or in the discretion of the Board, by others designated by the Board individually or by groups, they may be accepted as initial proof of days of sickness sufficient to certify for payment a claim for benefits.

1021.02 Regulations

See 20 CFR 335.

1022 Explanation of Terms

1022.01 Filing

Is the delivery of a properly executed form to an office of the RRB.

1022.02 Normal filing

Is the delivery of a properly executed form to an office of the RRB by mailing such form to an office of the RRB within the time specified in the instructions on the form or by sending the form so that it is received within the prescribed time.

1022.03 Conditional filing

Includes the delivery of a properly executed form to an office of the RRB within a reasonable time in the case of an employee:

a. who made such efforts to file the form within the prescribed time as a reasonable person could be expected to make in the same situation but was prevented from doing so by circumstances beyond his or her control; or

b. who registered for the day in question as a day of unemployment in accordance with Part 325 of the regulations, but whose claim for such day as a day of unemployment was denied on the grounds that he or she was not able to work on such day.

1022.04 Mailing date

Is the date on which a form or notice is received by the United States Postal Service.

1022.05 Day of infirmity

Is a day on which, according to a statement of sickness, an employee is affected by an injury, illness, sickness or disease described in the statement of sickness. There is said to be a statement of sickness with respect to such day. In this title, the term "infirmity" encompasses pregnancy, miscarriage and childbirth as well as injury, illness, sickness and disease.

1023 Summary of Requirements

1023.01 Claim for Sickness Benefits

For the purpose of section 335.2 of the regulations, which prescribes the manner of claiming sickness benefits, an employee has made a claim for sickness benefits, if:

a. Statement of sickness filed

A properly executed statement of sickness with respect to any day, acceptable in accordance with the RRB's regulations, is filed on behalf of the employee at an office of the RRB; and

b. Application for sickness benefits

An application for sickness benefits, properly executed on a form prescribed by the RRB, and the information required by the form have been received at the office of the RRB where his or her statement of sickness is on file; and

c. Claim form

A properly executed Form SI-3 for a registration period including a day with respect to which a statement of sickness is filed, and the information required by such form, are received at an office of the RRB.

1023.02 Form Prescribed for Statement of Sickness

A statement of sickness is to be filed on a form provided by the RRB (Form SI-1b or SI-7) or on a form or official stationery provided by a hospital, clinic, group health association, or other similar organization for transcription of medical records of such organization.

1023.03 Filing within the Prescribed Time

No day is to be considered as a day of sickness unless a statement of sickness with respect to such day is filed within the time prescribed for statements of

sickness, and no day is to be considered as a day of sickness unless a claim form with respect to a registration period including such day is filed within the time prescribed for claim forms.

1023.04 Persons who may Execute Statements of Sickness

A statement of sickness may be executed by any person who is qualified under section 335.3 of the regulations of the RRB to execute such statements, or by others designated by the RRB.

a. Qualified doctors

A person is qualified to execute statements of sickness if he or she is:

1. A doctor trained in medical and surgical diagnosis and licensed to practice professionally in the State or foreign jurisdiction where the statement is executed, or

2. A licensed dentist if the infirmity relates to the teeth or gums, or

3. A licensed podiatrist or chiropodist if the infirmity relates to the feet, or

4. A chiropractor licensed to practice professionally in the State or foreign jurisdiction in which the statement is executed, or

5. A licensed clinical psychologist having a doctoral degree (Ph.D. or Psy.D.) in psychology.

b. Physician assistant - certified (P.A.C.)

A physician assistant- certified is qualified to execute statements of sickness. Physician assistants-certified diagnose, manage and treat patients across a broad range of common illnesses and injuries while working under the supervision of a practicing, licensed medical doctor.

c. Nurse Practitioners (NP)

A nurse practitioner is qualified to execute statements of sickness. Nurse Practitioners are registered nurses with advanced education and clinical expertise that qualifies them to diagnose and treat illnesses and injuries.

d. Employee Assistance Professionals (EAP) and Substance Abuse Professionals (SAP)

A Substance Abuse Professional (SAP) is a person who evaluates employees who have violated a Department of Transportation (DOT) drug

and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

An employee assistance professional (EAP) or a substance abuse professional (SAP) is qualified to execute statements of sickness in cases where an employee is unable to work due to drug and/or alcohol-related infirmities. The EAP or SAP must be certified by one of the following certifying organizations:

- the National Association of Alcohol and Drug Abuse Counselors (NAADAC)
- the Certified Employee Assistance Professionals (CEAP)
- the International Certification Reciprocity Consortium/alcohol and Other Drug Abuse (ICRC) or the
- National Board for Certified Counselors, Inc. and Affiliates/Master Addictions Counselor (NBCC).

e. Certified nurse mid-wives

A certified nurse midwife is qualified to execute statements of sickness in cases where pregnancy, miscarriage or childbirth makes the employee unable to work or makes working injurious to the employee's health.

f. Other qualified persons

A person is qualified to execute statements of sickness if he or she is a superintendent or other supervisory official of a hospital, clinic, group health association, or similar organization where

1. all examinations and treatment are conducted under the supervision of licensed doctors trained in medical and surgical diagnosis, or under the supervision of licensed chiropractors, or under the supervision of others authorized to execute statements of sickness, and
2. medical records are maintained for each patient.

g. Persons designated by the RRB

1. The RRB has designated duly authorized and accredited Christian Science practitioners to execute statements of sickness.
2. A person may be designated by the RRB if there are circumstances which warrant such designation. (See AIM-1031.)

1024 Statement of Sickness

1024.01 Information relating a statement of sickness to a day

It is to be considered that there is a statement of sickness with respect to a day when a form provided by the RRB for making statements of sickness or a form otherwise acceptable in accordance with the RRB's regulations, together with any required supplemental doctor's statement, has been properly executed and information has been furnished:

a. Describing an infirmity affecting an employee, and

b. Indicating when the employee became affected, or was found to be affected, by such infirmity, and

c. Indicating that the employee was continuously affected by an infirmity from the time when he or she became affected or was found to be affected, by the infirmity described in the statement of sickness, up to and including such day.

1024.02 Execution

A form provided for making statements of sickness or otherwise acceptable in accordance with the RRB's regulations, is to be regarded as properly executed if:

a. It is signed by a person who may execute statements of sickness and

b. There is information indicating that the employee whose infirmity is described in the statement of sickness was examined by a qualified doctor or by a person designated to execute statements of sickness, during the period when the employee was affected by such infirmity.

1024.03 Acceptable Form SI-1b

Form SI-1b is acceptable if there is information as follows:

a. Employee's name

A name or other information sufficient to identify the applicant is entered on the form. If this information is not shown on the form, consider that a statement of sickness has not been filed.

b. Information relating to infirmity

An entry on the form describes an infirmity and indicates the applicant has been examined by a qualified doctor or other person authorized to execute

statements of sickness. Medical evidence obtained in accordance with AIM-31 is also acceptable.

c. Day of infirmity

One or more days on which the employee was affected by such infirmity are indicated. Sufficient indication is given by:

1. an entry on Form SI-1b of the date on which the employee became sick or injured; or
2. an entry on Form SI-1b of a date on which the employee was examined or treated; or
3. an entry on an accompanying Form SI-1a showing the date on which the employee became sick or injured.

NOTE: In cases involving pregnancy, miscarriage or childbirth, an entry of the date the patient became unable to work, or an entry of the date of delivery and a date the employee can safely resume work in her occupation is required.

d. Evidence of execution

1024.03(d)

A signature has been entered in the space for "Signature of Doctor" and there is evidence that the person who signed is one who may execute statements of sickness. It may be considered that there is such evidence if:

1. the signature is followed by the letters "M.D.", "D.O.", "D.C.", "P.A.C.", "NP", "F.N.P" or "A.R.N.P", "C.S.", "C.S.B.", or "C.S.D." (When the letters "C.S.", "C.S.B." or "C.S.D." appear after the signature on a Form SI-1b, it may be considered, in the absence of evidence to the contrary, that the form was executed by a duly authorized and accredited Christian Science practitioner.); or
2. the signature is followed by the letters "D.D.S." or "D.M.D." if the infirmity is of the teeth and jaws; or
3. the signature is followed by the title "Podiatrist" or "D.P.," if the infirmity is of the foot or ankle and is within the podiatrist's field of treatment; or
4. the signature is followed by the letters "Ph.D." or "Psy.D." indicating that the person who executed the form is a clinical psychologist holding a doctoral degree in psychology, if the infirmity is of a

mental, emotional or behavioral nature within a psychologist's field of treatment, or

5. in the case of infirmity due to drug or alcohol use, the signature is followed by any of the following letters:

   "E.A.P," or “CEAP” indicating that the person who executed the form is an employee assistance professional or a

   "S.A.P" Substance Abuse Professional

   “NCAC I” National Certified Addiction Counselor

   “NCAC II” National Certified Addiction Counselor

   “MAC” Master Addiction Counselor

   “AODA” Alcohol and Other Drug Addiction Counselor

   “AAODA” Advanced Alcohol and Other Drug Addiction Counselor

   “CCS” Certified Clinical Supervisor

   “CPS” Certified Prevention Specialist

   “CCJP” Certified Criminal Justice Addiction Professional

   “NCC” National Certified Counselor

   “CADAC” or” LADAC” Certified Alcohol Drug Abuse Counselors **not** “CPADAC” or LPADAC” P is for provisional not yet certified.

6. the signature is followed by the letters "C.N.M." indicating that the person who executed the form is a certified nurse midwife, and the diagnosis is childbirth, pregnancy, or miscarriage, or

7. the person who signed has supplied his or her official title as a supervisory official, and the name of a hospital, clinic, group health association, or similar organization is also provided; or

8. the person who signed is one who has been designated by the RRB to execute statements of sickness; or

9. the employee is confined to a hospital or the address of the person who signed is shown as that of a hospital as described in section 1023.04c; or

10. the person who signed is listed in the American Medical Directory or was properly identified at the time a previous statement of sickness executed by him or her was examined.

If there is any information that the person who signed the medical report is not authorized to execute statements of sickness, or if comparison of dates on the form indicates that the employee was not examined by a person authorized to execute statements of sickness during the period of infirmity, do not consider that a proper statement of sickness has been filed.

A medical report signed by a doctor of optometry (O.D.) is not an acceptable statement of sickness.

1025 Filing Statements of Sickness

1025.01 Prescribed Time for Filing

A statement of sickness with respect to any day is to be filed not later than the ninth day after such day.

1025.02 First Day of Normal Filing Period

The period within which an acceptable statement of sickness is normally filed begins with:

a. The ninth day prior to the day when the form was received in any office of the RRB, or

b. The seventh day prior to the day when the form was mailed to and office of the RRB. (See AIM-1030.)

1025.03 Normally Filed

If the first day of infirmity or any subsequent day of infirmity occurs on or after the first day of the normal filing period, consider that a statement of sickness has been filed normally within the prescribed time.

1025.04 Further Consideration

If the first day of infirmity is prior to the first day of the normal filing period, consideration is to be given to any evidence of conditional filing in accordance with AIM-1029.

1026 Application for Sickness Benefits

1026.01 Requirement

No benefits are to be paid for any claim based upon a statement of sickness until a properly executed application for sickness benefits containing information required by the form is received.

1026.02 Execution

An application for sickness benefits is properly executed if it is signed by the applicant or signed by someone who may properly act on behalf of the applicant in accordance with AIM-23.

1026.03 Information Required

The information required by the form has been furnished if there is sufficient information:

a. To identify the applicant; and

b. To make any required determination of base year wages; and

c. To identify the period of sickness to which the application relates.

1026.04 Acceptable Form SI-1a

Form SI-1a is acceptable if there is information as follows:

a. Employee's name

A name identifying the applicant has been entered on the form, or the form is received with some other form having information sufficient to identify the applicant.

b. Information required for determination of base year wages

Sufficient information is given for any required determination of the applicant's base year compensation.

c. Information relating to infirmity

Entries on Form SI-1a correspond with entries on Form SI-1b or with other information relating to the period of infirmity for which the Form SI-1a is required. Despite entries on Form SI-1a, consider that the Form SI-1a corresponds with the period of infirmity if Form SI-1a and SI-1b are received attached.

d. Signature

An acceptable signature is entered on the form. A signature is acceptable if:

1. It appears to be the signature of the applicant; or

2. It appears to be the mark of the applicant and is witnessed by an RRB representative, or by a person authorized to execute a statement of sickness, or by two other persons; or

3. It is recognizable as the signature of someone who may properly act on behalf of the applicant in accordance with AIM-23.

1027 Claim Form

1027.01 Forms to be Sent

A claim form will ordinarily be sent to an individual for the first registration period beginning with a day with respect to which a statement of sickness is filed on his or her behalf. When the individual has filed a claim for any registration period, a claim form will be sent to the individual for the next registration period beginning with a day with respect to which a statement of sickness is filed. These forms will be sent as prescribed in AIM-11, Title II.

1027.02 Execution

A claim form is to be regarded as properly executed if it is signed by the claimant or if it is signed by someone who may properly act on behalf of the claimant.

1027.03 Information Required

Information is required by a claim form if it is called for by the form and if it is needed to adjudicate the claim. Some of the information called for need not be furnished in connection with a particular claim either because it has been previously furnished or because other information furnished shows that it is not applicable. Until the required information is received by the adjudicating office, no day with respect to which such information is needed is to be considered as a day of sickness.

1027.04 Acceptable Form SI-3

A Form SI-3 is acceptable if the information needed to adjudicate the claim has been furnished. The need for information called for by the items on a Form SI-3 is as follows:

a. Days claimed

The entries on the claim form must show clearly which days are claimed. If the entries are unclear, the claimant may be contacted by telephone or letter for clarification. If entries are missing or incomplete, the form is to be returned to the claimant for proper completion.

b. Wages and other payments

If no entry has been made regarding any wages or other payments received by the claimant, or if an entry has been made and is apparently incorrect, information with respect to these items need not be obtained except as specifically provided under applicable instructions in the AIM or DPOM/FOM.

c. Signature

An acceptable signature must appear on the form. A signature is acceptable if:

1. It appears to be the signature of the claimant; or

2. It appears to be the mark of the claimant and is witnessed by an RRB representative, or by a person authorized to execute a statement of sickness, or by two other persons; or

3. It is recognizable as the signature of someone who may properly act on behalf of the claimant.

1028 Filing Claim Forms

1028.01 Prescribed Time for Filing

An employee's claim for sickness benefits is to be filed within 30 days after the last day of the registration period or within 30 days after the day on which the claim form was mailed to the employee, whichever is later.

1028.02 Normally Filed

A claim for sickness benefits with respect to any registration period is normally filed if:

a. The claim form was received at an office of the RRB within 30 days after the later of (i) the last day of the registration period shown on the claim form or (ii) the day such claim form was mailed to the employee, or

b. There is evidence that the claim form was mailed to an office of the RRB in accordance with the instructions on the form and was received there.

1028.03 Further Consideration

If a claim form is not normally filed, consideration is to be given to any evidence of conditional filing in accordance with AIM-1029.02.

1029 Determination on Conditional Filing of Forms

1029.01 Consideration if Form not Normally Filed

a. Statement of sickness

When a Form SI-1b with respect to a particular day was mailed later than the seventh day after such day and was received at an office of the RRB later than the ninth day after such day, consider the possibility that a statement of sickness was conditionally filed within the prescribed time, provided that it is received within two years of the first day for which the employee wishes to claim benefits.

b. Claim Form

When a claim form is not normally filed, consider the possibility that the claim is conditionally filed within the prescribed time, provided that it is received within two years of the first day for which the employee wishes to claim benefits.

1029.02 Employee prevented from Filing by Circumstances Beyond his or her Control

An employee's statement of sickness or claim form is conditionally filed within the prescribed time, if the employee made a reasonable effort to file within the prescribed time but was prevented from doing so by circumstances beyond his or her control, and if such statement or claim was received at an RRB office within a reasonable time following the removal of the circumstances that prevented the employee from filing the form.

For the purposes of this provision, if a statement of sickness is not received within the prescribed time (10 days) but is received within 30 days of the first day that an employee intends to claim as a day of sickness, the RRB will consider that the employee made a reasonable effort to file the statement within the prescribed time, unless affirmative evidence shows that the delay was not the result of circumstances beyond the employee's control.

a. Effort

1. An employee is expected to make an effort to file within the prescribed time, except in situations where the employee's physical or mental condition prevents such an effort. An effort to file a form is to be considered in relation to the employee's situation. Any action which might reasonably be expected to result in the filing of an employee's statement of sickness or claim form within the prescribed time would be considered as a proper effort, provided that the employee, upon finding that such action is ineffective, takes other appropriate action.

   (a) If information relating to an employee's infirmity is received at an office of the RRB within the time prescribed for filing a statement of sickness or claim form, or is mailed to an office of the RRB within the time specified, it is to be considered that the employee made a proper effort to file a statement of sickness or claim form. Any correspondence indicating that the employee is sick and wants to claim sickness benefits is considered as a communication relating to the employee's infirmity.

   (b) If an employee is confined in a hospital and sends in an application for sickness benefits during confinement or shortly after being released, it is to be considered that the employee made a proper effort to file a statement of sickness with respect to the days when he or she was in the hospital.

   (c) If an employee in the circumstances described in "b" above entered the hospital within seven days after the first day which he or she wishes to claim as a day of sickness, consider that the employee made a proper effort to file a statement of sickness with respect to all the days which he or she wishes to claim.

   (d) An employee's action to obtain Forms SI-1a and SI-1b shows an effort to file. If an employee's statement of sickness is received within a reasonable time after the date he or she took action to obtain the forms, the statement of sickness may be considered filed with respect to the seventh day prior to the date of such action. Forms supplied by a field office will normally be notated by the field office with an entry showing the date the forms were provided to the claimant.

2. A claimant who delivers or mails a claim on the last day which he or she claims or on any subsequent day before the normal filing period for the claim has ended has made a reasonable effort to file the form within the prescribed time.

b. Circumstances beyond employee's control

An employee is considered as prevented from filing a statement of sickness or claim form by circumstances beyond his or her control when:

1. The employee is confined to home or to a hospital and the delay in filing is attributable to this confinement. This condition is met where the employee is confined:

   (a) to a hospital and his or her statement of sickness is filed within a reasonable time after leaving the hospital, unless there is information that the employee did not make a proper effort to file a statement of sickness.

   (b) to home, is bedridden, or confinement otherwise prevented timely filing a statement of sickness.

2. The employee's statement of sickness is in the possession of his or her doctor or in the possession of a hospital. It is considered that this circumstance exists if:

   (a) the employee gave or sent the form to a doctor or hospital for execution within the normal time for mailing, and the form was not returned within the normal filing period; or

   (b) a supervisory official of the hospital states that the delay in filing was caused by the hospital; or

   (c) the doctor states that the delay in filing was caused by him or her; or

   (d) the application or claim form, mailed with the statement of sickness, was dated within the normal period for mailing and was mailed from a hospital in which the employee was confined or to which he or she sent the form for execution; or

   (e) the date the statement of sickness was signed by the doctor or hospital official is within 30 days of the date the application was signed by the employee and the forms are received at an office of the RRB within 10 days of the date of the doctor's signature on Form SI-1B, unless there is evidence that the doctor delayed the forms beyond the 10 days. The employee is considered to have made a proper

effort to file a statement of sickness with respect to the seventh day before the application was signed.

NOTE: Anytime a SI-1B is received more than 30 days after the SI-1A, a filing date needs to be entered on the SI-1B screen on Rucs.

3. Information in a doctor's statement shows that the employee could not sign forms. (If the delay in filing the form was due to the employee's inability to sign forms, it should be determined whether the statement is supported by medical evidence.)

4. Forms for applying for sickness benefits are not available at a place where such forms are ordinarily kept for distribution; or a form (either statement of sickness or claim form) which was sent to the employee by an RRB office was not received by the employee. In the absence of evidence to the contrary, an employee's statement may be accepted as correct.

5. Within the normal time for mailing the form, the employee gave it to someone who he or she could reasonably trust to mail it, and that person failed to mail it within the time specified.

6. The employee was given misinformation by someone whom he or she could reasonably expect to furnish correct information.

7. The employee misunderstood the instructions on the form.

8. There is evidence that the employee's infirmity caused physical weakness, mental incapacity or extreme anxiety, such that the employee could not be expected to take effective action toward filing a statement of sickness.

1029.03 Registration for unemployment benefits

An employee's statement of sickness with respect to any day is considered as conditionally filed within the prescribed time if:

a. The employee registered for the day in accordance with the regulations of the RRB; and

b. The employee's claim to the day as a day of unemployment was denied on the grounds that the employee was not able to work on such day; and

c. A properly executed statement of sickness was received within a reasonable time.

For the purpose of this subsection, consider that the statement of sickness was received within a reasonable time, if it was obtained in connection with the

adjudication of the employee's claim for unemployment benefits or was received within the time prescribed for the filing of a sickness claim form or forms sent to the employee when he or she was notified of the denial of his or her claim to the day as a day of unemployment.

1029.04 Obsolete Form Filed

If an employee files an obsolete statement of sickness form with the prescribed time and after being so informed, files the proper statement of sickness form within a reasonable period of time thereafter, the proper form is to be considered as conditionally filed within the prescribed time. If the obsolete form contains sufficient information to make a determination concerning inability to work, the obsolete form is to be considered an acceptable statement of sickness.

1029.05 Reasonable Time

Except as provided in AIM-1029.03, a statement of sickness or claim form is considered as received within a reasonable time if it is received at an office of the RRB within ten days after:

a. The date on which an RRB office mailed a reply to a communication relating to the employee's infirmity; or

b. The date on which a communication relating to the employee's infirmity, not requiring a reply was mailed to an office of the RRB.

c. The first day on which circumstances or conditions preventing the employee from filing the form no longer exist.

1029.06 Time Limit on Conditional Filing

A form is not considered filed within the time prescribed with regard to it unless it is received at an office of the RRB within two years of the day in question. If a form is not received within two years of the first day for which the employee wishes to claim benefits, take action as follows:

a. All days prior to two-year limit

If all days for which an employee wishes to claim sickness benefits are earlier than two years prior to the date the form is received at an office of the RRB, the form is not be considered filed within respect any day.

b. Some but not all days prior to two-year limit

If some but not all days for which an employee wishes to claim sickness benefits are earlier than two years prior to the date the form is received at

an office of the RRB, submit a request for opinion to the the Office of Programs - Policy &Systems (OP-P&S).

1029.07 Circumstances not beyond employee's control

The phrase "circumstances beyond his or her control" does not include an employee's forgetfulness, lack of knowledge of the sickness benefit program or the time limit for filing for sickness benefits, or any other lack of diligence by the employee.

1030 Determining the Date on Which a Form or Communication Was Mailed

The postmark date is considered to be the date on which such form or communication was mailed. If there is no postmark on such a document, the postmark date on the envelope in which the document was received is considered to be the mailing date. However, experience sometimes shows that the date of postmark is later than the date of mailing. If mail from the locality where the document was mailed is often postmarked on the day after it is mailed, and if the time shown in the postmark is in the morning, it may be considered that the document was mailed on the day before the date of the postmark. If there is no postmark, the mailing date is considered to be the second business day prior to the date on which the document was received in an office of the RRB.

1031 Action When Employee Cannot Get Statement of Sickness Executed

1031.01 Designation of Person to Execute Statement

If an employee does not submit an acceptable statement of sickness and he or she cannot get a statement executed because a person who may execute statements of sickness is not available to examine or treat the employee, the adjudicating office is to submit the case through channels for consideration of designating a person to execute a statement of sickness.

1031.02 Special Medical Examination

Occasionally, there may be information that an employee cannot get a statement of sickness executed although a person who may execute statements of sickness is available to examine or treat the employee. In such case, the adjudicating office may arrange for a medical examination in accordance with AIM-31. When such an examination is made and the employee's claim to benefits is based on medical evidence obtained at the expense of the RRB, consideration is to be given in accordance with section 12(n) of the Act, to deducting a reasonable charge from benefits payable. Prior approval for any

such deduction is to be obtained from the Chief of Sickness and Unemployment Benefits Section.

Appendices

Appendix A - Examples of Earliest Initial Filing Date

Examples Showing The Earliest Date With Respect To Which A Statement Of Sickness May Be Considered Filed.

Each example is based on June 30 as the last day of employment and a two-day interval between mailing of forms and receipt in the Board office.

Example 1

7/08	Employee sends letter to an office of the RRB: "Please send me sickness application form."	Filed with respect to July 1. Written inquiry shows effort to file. SI-1a/b received "within a reasonable time" after they were sent to claimant.
7/10	An office of the RRB sends SI-1a/b.	
7/17	Employee mails completed forms to an office of the RRB.	

Example 2

7/12	Employee sends letter to an office of the RRB: "Please send sickness application blank. I can't get one here. Yesterday I tried three different places - all out."	Filed with respect to July 4. Claimant reports no effort made to file prior to July 11.
7/15	An office of the RRB sends SI-1a/b.	
7/23	Employee mails completed forms to an office of the RRB.	

Example 3

7/08	Employee obtains SI-1a/b from field office.	Filed with respect to July 1. Action of obtaining forms shows effort to file.

7/10	Employee mails completed forms to an office of the RRB.	

Example 4

7/10	Employee calls at field office, says "I just found out about sickness benefits. Where do I apply?" Field office furnishes forms.	Filed with respect to July 3. Action of obtaining forms shows effort to file Claimant's statement indicates delay not due to circumstances beyond the claimant's control.
7/14	Employee brings completed forms to field office.	

Example 5

7/12	Employee mails completed SI-1a to an office of the RRB.	Filed with respect to July 1. Statement of sickness within 30 days of July 1 clear evidence that delay the result of circumstances beyond claimant's control.
7/16	Employee mails SI-1b, completed by doctor on the same date.	

Example 6

7/10	Employee calls at field office and obtains forms.	Filed with respect to July 1. Statement of sickness is received within 30 days of July 1 with no clear evidence that delay was not the result of circumstances beyond claimant's control.
7/11	Employee brings completed forms to field office.	

Example 7

7/12	Employee mails letter to an office of the RRB: "I just found out today about sickness benefits. Send me forms."	Filed with respect to July 18. Effort made to file on July 12. However, statement of sickness was not received within 10 days after forms were furnished. The forms are not considered as having been received within a reasonable time.

7/14	An office of the RRB sends forms.	
7/25	Employee mails completed forms to an office of the RRB.	

Example 8

7/12	Employee mails letter to an office of the RRB: "I just found out today about sickness benefits. Send me forms.	Filed with respect to July 5. Effort made to file on July 12. Delay attributable to doctor.
7/14	An office of the RRB sends forms.	
7/25	Employee mails completed forms to an office of the RRB and writes: "I took form to the doctor to sign on July 20 but he was sick and couldn't see me until today.	

Example 9

7/10	Form SI-1a signed. No evidence to show when forms were obtained.	Filed with respect to July 1. Statement of sickness is received within 30 days of July 1 with no clear evidence that delay was not the result of circumstances beyond claimant's control.
7/26	Form SI-1b signed by doctor or hospital official.	
7/28	Forms SI-1a/b are received in an office of the RRB.	

Example 10

7/08	Forms SI-1a/b furnished to employee by a district office. District office enters date furnished on forms.	Filed with respect to July 1. Action of obtaining forms shows effort to file.
7/16	Completed forms SI-1a/b received in an office of the RRB.	

Appendix B - Filing Statements Of Sickness In Advance

THE FOLLOWING RESPONSE PROVIDES THE RATIONALE FOR WHY A STATEMENT OF SICKNESS IS NOT ACCEPTABLE IF IT IS FILED IN ADVANCE OF THE EMPLOYEE BECOMING UNABLE TO WORK.

A question was recently asked whether applications for sickness benefits and statements of sickness signed before the employee becomes unable to work are acceptable. A statement of sickness signed before the employee is unable to work is not acceptable. Nor is it acceptable if the last examination or treatment date precedes by more than one day the date the employee became unable to work. This is true even if the doctor's signature date is after the first reported day of inability to work. An application that is signed early, however, may be accepted if accompanied or followed by an acceptable statement of sickness.

Section 1(k) of the RUIA defines a day of sickness, in part, as a day on which an employee is unable to work due to infirmity and for which the employee has filed a statement of sickness. Section 12(l) provides that a statement of sickness must contain substantial evidence of the days of sickness of the employee. Under AIM 728 and 1024, medical evidence is acceptable only if the doctor examined or treated the employee during the period of illness or injury. These sections of the law and policy require the same documentation of the employee's actual (rather than potential) inability to work. A doctor cannot, however, certify that a condition is disabling if the employee is working. A doctor's estimate that inability will begin when elective surgery is performed some days in the future is speculative. The inability may or may not occur. The surgery could be postponed, canceled, or bring results other than the doctor expects. Therefore, examiners may accept only a statement of sickness showing that the doctor examined or treated the employee during the period when the employee was unable to work due to the infirmity.

Since these cases are rare, examiners may release claims after verifying by telephone with doctors' offices that surgery took place as scheduled or that non-surgical treatment occurred during a period of inability to work. The verification is to be documented on the original statement of sickness

1100 Provisions of the Act and the Regulations

1100.01 The Act

a. Section 1(h) of the Act provides, in part, that:

"The term 'registration period' means, with respect to any employee, the period which begins with the first day for which such employee registers at an employment office in accordance with such regulations as the Board may prescribe, and ends with whichever is the earlier of (i) the thirteenth day thereafter, or (ii) the day immediately preceding the day for which he next registers at a different employment office; and thereafter each period which begins with the first day for which he next registers at an employment office after the end of his last preceding registration period which began with a day for which he registered at an employment office and ends with whichever is the earlier of (i) the thirteenth day thereafter, or (ii) the day immediately preceding the day for which he next registers at a different employment office . . ."

b. Section 1(m) of the Act provides that:

"The term 'benefit year' means the twelve-month period beginning July 1 of any year and ending June 30 of the next year, except that a registration period beginning in June and ending in July shall be deemed to be in the benefit year ending in such month of June."

c. Section 2(c) of the Act provides, in part, that:

". . . The extended benefit period shall begin on the first day of unemployment following the day on which the employee exhausted his then current rights to normal benefits for days of unemployment and shall continue for successive fourteen-day periods (each of which periods shall constitute a registration period) . . ."]

1100.02 Regulations

See sections 325.12(a) and 325.25.

1101 Registration

See AIM-10-I for definition of registration.

1102 First Day of a Registration Period for Normal Benefits

1102.01 General rule

The first day of a claimant's registration period for normal benefits is the first day for which he registers, and thereafter the first day for which he registers for normal benefits, occurring after the last day of his last preceding registration period. Such a day remains the first day of a registration period for normal benefits, even though the claimant withdraws his claim for the day or the day is found not to be a day of unemployment.

1102.02 Transition from one benefit year to another

a. Registration period including days in June and July

All of the days in a registration period beginning in the month of June and ending in the month of July are deemed to be in the benefit year ending in such month of June.

b. Not qualified or benefit rights exhausted

A claimant may sign on a claim form for a period beginning in June and ending in July in circumstances where, as provided in AIM-10-I, no registration is deemed to have been made for the days in June. If the claimant is qualified in the new benefit year, the first day in July for which he has registered is the first day of a registration period. For such a claimant, registration periods shall be adjusted as provided in section 1104.

1103 Last Day of a Registration Period for Normal Benefits

1103.01 Initial determination

The last day of a registration period for normal benefits with respect to any claimant shall be initially determined to be the thirteenth day after the first day of the registration period.

Example 1: Form UI-3 shows registrations at employment office A for the first to the thirteenth. The last day of the registration period is initially determined to be the fourteenth.

1103.02 Redetermination

a. Conditions

A redetermination with respect to the last day of a registration period shall be made if:

1. The claimants does not register at the employment office where he registered for the first day of the registration period for a day initially determined to be within the registration period and registers for such a day at another employment office; or

2. The claimant withdraws his claim to any day on the basis of his registration at the employment office where he registered for the first day of the registration period and registers for such day at another employment office.

b. Last day as redetermined

The last day of the registration period shall be redetermined to be the day immediately preceding the first day, included in the registration period as initially determined, for which the claimant registered at such different employment office.

Example 2: In the case cited above as Example 1, Form UI-3 is later received showing registrations at employment office B for the fourteenth to the twenty-seventh. It is redetermined that the thirteenth is the last day of the registration period begun on the first.

Example 3: Claimant began a registration period by registering for the first. Without having in the meantime registered at another employment office, he registered on another Form UI-3 at the same employment office for the fourteenth. The last day was initially determined to be the fourteenth, and no redetermination of last day shall be made regardless whether claimant did or did not register for the fourteenth on the first of these Forms UI-3. Adjustment of the second registration period shall be made as provided in section 1104, and the fourteenth may be a day of unemployment in the first registration period.

Example 4: Claimant makes normal registration at employment office A for 1 through 5, at employment office B for 6 through 10, and at employment office A for 11 through 15. On the eighteenth, the claimant makes delayed registrations at A for 6 through 10 and withdraws his claim to 6 through 10 on the basis of his registrations made at B. The registration periods, initially determined to be 1-5, 6-10, and 11-24, are redetermined to begin and end as follows: 1-14 and 15-28. Since the claims to the days 6 through 10 based on normal registration are withdrawn, these days are not considered as days of unemployment unless the registrations made on the eighteenth are acceptable as delayed registrations.

1104 Registration Periods in an Extended Benefit Period

Each of the seven or 13 successive 14-day periods in an extended benefit period constitutes a registration period. The pattern of days of unemployment and any changes in place of registration do not affect the beginning or ending dates of the registration periods.

1105 Form Letter Prescribed

The following form letter is prescribed:

ID-11h (11-62)
ID-11v (02-89)

1121 Provisions of the Act and the Regulations

1121.01 The Act

a. Section 1(h) of the Act provides, in part, that:

". . . The term registration period means . . . the period which begins with the first day with respect to which a statement of sickness is filed . . . or the first such day after the end of a registration period which will have begun with a day with respect to which a statement of sickness was filed . . . and ends with the thirteenth day thereafter."

b. Section 1(m) of the Act provides that:

"The term benefit year means the twelve-month period beginning July 1 of any year and ending June 30 of the next year, except that a registration period beginning in June and ending in July shall be deemed to be in the benefit year ending in such month of June."

1121.02 Regulations

See sections 335.104 and 335.105 of Board Regulations.

1122 Explanation of Terms

1122.01 Filing

is the delivery of a properly executed form to an office of the Board.

1122.02 Normal filing

is the delivery of a properly executed form to an office of the Board by mailing such form within the time specified in the instructions on the form or by sending the form so that it is received within the prescribed time.

1122.03 Conditional filing

includes the delivery of a properly executed form to an office of the Board by mailing a communication within the time specified in the instructions on the form

and sending the form so that it is received within a reasonable time, and the delivery of a properly executed form within a reasonable time in a case where an employee's claim to a day as a day of unemployment is denied on the ground that he is not able to work.

1122.04 Day of infirmity

is a day on which, according to a statement of sickness, an employee is affected by an injury, illness, sickness, or disease described in the statement of sickness. There is said to be a statement of sickness with respect to such day.

1123 Analysis of Requirements

1123.01 Registration period

A registration period begins with a day with respect to which a statement of sickness is filed. Such a registration period includes fourteen consecutive days.

1123.02 First registration period

The first day with respect to which a statement of sickness is filed in behalf of an employee begins a registration period which ends with the thirteenth day thereafter.

1123.03 Registration period after first registration period

When a registration period begun with a day with respect to which a statement of sickness is filed has ended, the first day thereafter, with respect to which the same statement of sickness or a new statement of sickness is filed, begins a new registration period.

1123.04 First day with respect to which a statement of sickness is filed

When a statement of sickness is filed with respect to any days, each such day is included in a registration period. The first day with respect to which the statement of sickness is filed will either:

a. Begin a registration period, or

b. Be included in a registration period begun with a day with respect to which another statement of sickness was filed. This occurs when such first day falls within a registration period containing earlier days of sickness determined on the basis of the other statement of sickness.

1123.05 Relationship to registration period for unemployment benefits

A registration period may begin with a day which is included in a registration period for unemployment benefits.

1124 Statement of Sickness

1124.01 Information relating a statement of sickness to a day

It is to be considered that there is a statement of sickness with respect to a day when a form provided by the Board for making statements of sickness or a form otherwise acceptable in accordance with the Board's regulations, together with any required supplemental doctor's statements has been properly executed and information has been furnished.

a. Describing an infirmity affecting an employee,

b. Indicating when the employee became affected, or when he was found to be affected, by such infirmity, and

c. Indicating that the employee was continuously affected by the infirmity from the time when he became affected, or was found to be affected, by the infirmity described in the statement of sickness up to and including such day.

1124.02 Execution

A form provided for making statements of sickness or otherwise acceptable in accordance with the Board's regulations is to be regarded as properly executed, if:

a. It is signed by a person who may execute statements of sickness; and

b. There is information indicating that the employee whose infirmity is described in the statement of sickness was examined by a qualified doctor or by a person who has been designated to execute statements of sickness during the period when he was affected by such infirmity.

1125 Filing Period

1125.01 Definition

The filing period for statements of sickness is the period within which a form provided for statements of sickness may be normally or conditionally filed.

1125.02 Normal filing

The period within which an acceptable Form SI-1b is normally filed begins with

a. The ninth day prior to the day when the Form SI-1b was received in any office of the Board, or

b. The seventh day prior to the day when the Form SI-1b was mailed to an office of the Board, whichever is earlier.

1125.03 Conditional filing

The period within which an acceptable Form SI-1b may be conditionally filed is determined as follows:

a. Communication

A statement of sickness with respect to any day is to be considered as filed within the prescribed time when a communication relating to an employee's infirmity was mailed within the time specified for statements of sickness and was received in an office of the Board, provided that:

1. Form SI-1b, properly executed, is received within a reasonable time thereafter; and
2. Failure to mail Form SI-1b within the time specified is found to have been caused by some circumstance or condition directly affecting the employee and not attributable to any lack of diligence on his part.

b. Registration

A statement of sickness with respect to any day for which an employee registered in accordance with the regulations of the Board shall be considered as filed within the prescribed time, provided that:

1. The employee's claim to such day as a day of unemployment was denied on the ground that he was not able to work on such day; and
2. A form provided for statements of sickness was received within a reasonable time.

1126 Day With Respect to Which a Statement of Sickness is Filed

1126.01 Information as to days with respect to which a statement of sickness is filed

Information to be considered in connection with determining days with respect to which a statement of sickness is filed includes information furnished in the statement of sickness, information furnished by the employee at the time the statement of sickness is submitted, and information which was previously furnished by the employee and which is in the possession of the adjudicating office at the time the statement of sickness is submitted. Examples of information to be considered are:

a. A statement by an employee as to the first day he wishes to claim.

b. Any indication of apparent or obvious ability to work on any day. Information that an employee worked on a day or claimed unemployment benefits for a day may constitute such information.

c. A statement by an employee that he received or is receiving remuneration or payment described in Section 4(a-1)(ii).

1126.02 Determining days with respect to which a statement of sickness is filed

Except as set forth in subsection .03 of this section:

a. An employee's statement of sickness shall be considered as filed with respect to the day on which he was examined by a qualified doctor or a person who has been designated to execute statements of sickness, or with respect to any earlier day, under the following conditions:

   1. The day is a day of infirmity; (If there is a discrepancy as to the beginning date of an infirmity between the information furnished on the form for statement of sickness and the information furnished on the form for application for sickness benefits, the infirmity shall, in the absence of evidence to the contrary, be considered to have begun on the date shown on the application for sickness benefits.)

   2. The day is not prior to the first day of the filing period whether normal or conditional, of Form SI-1b or other form provided by the Board for statements of sickness;

   3. The day is not indicated in the statement of sickness as a day on which the employee was able to work;

4. The day is not a day on which the employee is reported to have worked; and

5. The day is not a day which the employee has indicated he does not wish to claim.

b. If an employee's statement of sickness is not filed with respect to the day on which he was examined by a qualified doctor or a person who has been designated to execute statements of sickness or with respect to any earlier day, it shall be considered as filed with respect to the first day thereafter which meets the following conditions:

1. The day is indicated on the statement of sickness as a day of infirmity; (In the absence of evidence to the contrary, it shall be considered that a day is indicated as a day of infirmity if the date is on or prior to the date shown on the statement of sickness as the date on which the employee will have recovered or, in the absence of a specific date, is on or prior to the date which information in the list of norms would indicate to be the probable ending date of the period of inability.)

2. The day is not prior to the first day of the filing period, whether normal or conditional, of Form SI-1b or other form provided by the Board for statements of sickness;

3. The employee has not been found able to work on such day or on any preceding day since the most recent examination by a qualified doctor or by a person who has been designated to execute statements of sickness;

4. The day is not a day on which the employee is reported to have worked; and

5. The day is not a day which the employee has indicated he does not wish to claim.

c. If the employee has checked his Form SI-1a to indicate that he expects vacation pay or sick pay from his employer but it appears that he may be expecting only sickness benefits from the Board, it shall be tentatively determined that a statement of sickness was filed with respect to the earliest date which meets the other requirements.

d. If an employee's statement of sickness is considered as filed with respect to any day in accordance with a. or b. above, it shall be considered as filed with respect to any subsequent day, if:

1. The day is indicated on the statement of sickness as a day of infirmity; (In the absence of evidence to the contrary, it shall be

considered that a day is indicated as a day of infirmity if the date is on or prior to the date shown on the statement of sickness as the date on which the employee will have recovered or, in the absence of a specific date, is on or prior to the date which information in the list of norms would indicate to be the probable ending date of the period of inability.)

2. The employee has not been found able to work on such day or on any preceding day since the most recent examination by a qualified doctor or by a person who has been designated to execute statements of sickness or has protested a finding that he is able to work; and

3. The employee has not failed to file the claim form last sent to him with respect to a registration period begun with a day with respect to which the statement of sickness was filed; or there is evidence of continuing inability.

1126.03 Day for which no statement deemed to have been filed

Except for statements of sickness with respect to days in extended periods, no statement of sickness shall be deemed to have been filed with respect to any day which, if a statement of sickness were filed with respect to it, would be the first day of a registration period in a benefit year in which (1) the employee is not a qualified employee under Section 3 of the Railroad Unemployment Insurance Act, or (2) benefits have already been payable to the employee for 130 days of sickness, other than days of sickness in a maternity period, or (3) benefits have already been payable to the employee for days of sickness, other than days of sickness in a maternity period, in an amount equal to his compensation in the base year.

1127 Redeterminations

1127.01 Redetermination of first day

A redetermination of the first day with respect to which a statement of sickness was filed shall be made if there is information that some other day is such first day provided that the redetermination would be advantageous to the claimant. For example, a redetermination shall be made under any of the following circumstances:

a. It is found that the first day with respect to which the statement of sickness was filed is earlier than the day initially determined to be such first day.

b. On his first claim form the claimant shows that he received vacation pay or other remuneration for a period extending through some of the days in the first registration period.

1127.02 Adjustment of registration periods

When a redetermination is made as to the first day with respect to which a statement of sickness was filed:

a. any necessary adjustment of registration periods shall be made; and

b. for any period which is to be adjusted as provided in .01 above, payment may be made immediately when expedient for days claimed which are not to be disallowed (additional benefits due may be paid when the claim for other days in received).

1128 Sending Claim Forms

1128.01 Condition under which claim form sent

A claim form shall be sent for the first registration period in a benefit year containing days of infirmity sufficient that it could be a first valid registration period and for each registration period thereafter containing days of infirmity sufficient for the payment of benefits, providing that no claim form shall be sent where there is evidence that there would not be sufficient days of sickness for a first valid registration period or for the payment of benefits in a subsequent registration period.

1128.02 Conditions under which no claim form sent

a. No first valid period established

When the applicant has not had, in the benefit year, a registration period containing seven or more days of sickness, no claim form shall be sent for a registration period including less than seven days of infirmity other than:

1. Days with respect to which a disqualification has been found applicable;

2. Days which the employee has indicated he does not wish to claim as days of sickness.

b. First valid period established

When the applicant has had, in the benefit year, a registration period containing seven or more days of sickness, no claim form shall be sent for a registration period including less than five days of infirmity other than:

1. Days with respect to which a disqualification has been found applicable;

2. Days which the employee has indicated he does not wish to claim as days of sickness.

1128.03 Time for sending claim forms

Claim forms which are to be sent in accordance with other subsections of this section will ordinarily be mailed on the day immediately preceding the end of the registration period. When a determination is made as to the days with respect to which a statement of sickness is filed a claim form for the current and earlier registration period may be sent.

1128.04 Sending claim form for first registration period

When a claim form is to be sent for the first registration period including days with respect to which a statement of sickness has been filed, the beginning day will be either (a) the first day with respect to which the statement of sickness was filed if it is apparently the earliest date the applicant would wish; or (b) the first day with respect to which the statement of sickness was filed if more than 14 days earlier may be allowable if the applicant gives a satisfactory explanation of delayed filing; or (c) up to 14 days earlier than the first day with respect to which the statement of sickness was filed if not more than 14 days earlier may be allowable if the applicant gives a satisfactory explanation of delayed filing: Provided, however, that the beginning day cannot be earlier than whichever is the latest of the following:

a. The first day of infirmity;

b. The first day after the day on which the employee last worked;

c. July 1 in any benefit year, if the employee exhausted benefits or was not qualified in the preceding benefit year;

d. The first day which the employee has indicated he wishes to claim.

The ending day will be the thirteenth day after the first day with respect to which a statement of sickness has been filed. When the first registration period apparently begins with a date later than the applicant would wish, he shall be given an opportunity to explain why his statement of sickness was filed late.

1128.05 Sending claim form for later registration period

When a claim form is to be sent for a registration period including days with respect to which a statement of sickness has been filed and such registration period is subsequent to the first registration period including days with respect to which the statement of sickness was filed, the beginning day will be the first day after the ending day of the last previous registration period. The ending day will be the thirteenth day thereafter.

1128.06 Sending claim form after employee's failure to file previous form

When an employee indicates that he wishes to claim benefits for days of infirmity subsequent to a registration period for which he has failed to file a claim form sent to him, and does not intend to file a new statement of sickness, consideration shall be given to (1) whether the employee has given reasonable notice of his desire to claim such days and (2) whether there is sufficient evidence of continuing inability. If the employee has given reasonable notice and if there is evidence of continuing inability, a claim form shall be sent to him, subject to the provisions of other subsections of this section, for a registration period including days which he wishes to claim.

a. Reasonable notice

An employee shall be considered to have given reasonable notice in a communication relating to his infirmity (1) is mailed to an office of the Board within eight days after the ending date of the registration period including days which he wishes to claim, and such communication is received at such an office, or (2) is received at an office of the Board within ten days after the ending date of the registration period including days which he wishes to claim. For the purpose of this subsection, any letter, postal card, form, or report of personal inquiry at a Board office, which indicates that the employee wishes to claim sickness benefits, shall be considered as a communication relating to the employee's infirmity.

b. Evidence of inability

There must be sufficient evidence of continuing inability. In this connection, consideration shall be given to the description of the infirmity, recognized standards as to the probable period of inability, other evidence as to the probability of the inability continuing, and the reason given for failing to file the previous claim form.

1128.07 Sending claim form after employee's failure to file previous form within the normal time

a. When a claim form is received late but is considered as conditionally filed within the time prescribed, a claim form for the following registration period is to be sent if there is evidence of continuing inability.

b. When a claim form is received late and is not considered as conditionally filed within the time prescribed, a claim form for a later registration period is to be sent if there is evidence of continuing inability. The claim form sent shall be for the first registration period ending not more than 30 days before the date of receipt of the claim denied.

1201 Provisions of the Act as amended October 9, 1996

Section 2(a)(1) of the Act provides, in part, that:

"(A) Payment of Unemployment Benefits.--

"(iii) Strikes.--

"(I) Initial 14-day waiting period.--If the Board finds that a qualified employee has a period of continuing unemployment that includes days of unemployment due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which such employee was last employed, no benefits shall be payable for such employee's first 14 days of unemployment due to such stoppage of work.

"(II) Subsequent days of unemployment.--For subsequent days of unemployment due to the same stoppage of work, benefits shall be payable as provided in clause (i) of this subparagraph.

"(III) Subsequent periods of continuing unemployment.--If such period of continuing unemployment ends by reason of clause (v) but the stoppage of work continues, the waiting period established in clause (ii) shall apply to the employee's first registration period in a new period of continuing unemployment based upon the same stoppage of work.

"(iv) Definition of period of continuing unemployment.--Except as limited by clause (v), for the purpose of this subparagraph, the term 'period of continuing unemployment' means--

"(I) a single registration period that includes more than 4 days of unemployment;

"(II) a series of consecutive registration periods, each of which includes more than 4 days of unemployment; or

"(III) a series of successive registration periods, each of which includes more than 4 days of unemployment, if each succeeding registration period begins within 15 days after the last day of the immediately preceding registration period.

"(v) Special rule regarding end of period.--For purposes of applying clause (ii), a period of continuing unemployment

ends when an employee exhausts rights to unemployment benefits under subsection (c) of this section.

"(vi) Limit on amount of benefits.--No benefits shall be payable to an otherwise eligible employee for any day of unemployment in a registration period where the total amount of the remuneration (as defined in section 1(j) payable or accruing to him for days within such registration period exceeds the amount of the base year monthly compensation base. For purposes of the preceding sentence, an employee's remuneration shall be deemed to include the gross amount of any remuneration that would have become payable to that employee but did not become payable because that employee was not ready or willing to perform suitable work available to that employee on any day within such registration period."

1202 Analysis of Section 2(a)(1)

1202.01 Period of Continuing Unemployment

The phrase "period of continuing unemployment" refers to a period of time when an employee is unemployed but is ready, willing and able to work. For the purpose of paying unemployment benefits, a period of continuing unemployment exists when:

a. The claimant has a single registration period that includes more than 4 days of unemployment; or

b. The claimant has a series of consecutive registration periods, each of which includes more than 4 days of unemployment; or

c. The claimant has a series of successive registration periods, each of which includes more than 4 days of unemployment, if each succeeding registration period begins within 15 days after the last day of the immediately preceding registration period.

A waiting period is required only in the <u>first period of continuing unemployment beginning in a benefit year</u>. This means that most claimants who continue to claim unemployment benefits from one benefit year into the next benefit year will serve only one waiting period when an employee's unemployment begins in one benefit year.

1202.02 Beginning Date

A period of continuing unemployment begins with the first day of a number of consecutive days of unemployment, or with the first day of a number of

successive days of unemployment with an interval of no more than 15 days which are not days of unemployment.

Example: An employee is unemployed May 1 through May 15 and also May 20, 21, 22, 25 and 26. May 1 begins a period of continuing unemployment. The days May 20, 21, 22, 25 and 26 are in the period of continuing unemployment beginning May 1 and benefits would be payable for days over 4 provided that the days May 20, 21, 22, 23 and 26 are not days of unemployment resulting from a strike. If the days May 20, 21, 22, 23 and 26 are the result of a strike, those days would be used to establish the strike waiting period and no benefits would be payable.

A period of continuing unemployment applies to registration periods beginning on or after October 9, 1996.

1202.03 Duration

A period of continuing unemployment lasts for as long as the employee has consecutive days of unemployment, or as long as the employee has successive days of unemployment if each succeeding period begins within 15 days after the last day of the preceding period.

1202.04 Ending Date

A period of continuing unemployment ends when:

- an employee exhausts rights to unemployment benefits; or
- 16 or more days elapse from the last day of the preceding period and the first day of the succeeding period.

The end of the benefit year does not end a period of continuing unemployment.

1203 Distinction Between "Consecutive" and "Successive" in Section 2(a)(1)

a. "Consecutive" days of unemployment occur one after the other continuously and without interruption.

b. "Successive" days of unemployment occur when one or more days of unemployment follow any day of unemployment with a possible interval of one or more days which are not days of unemployment.

Example: An employee is unemployed for 14 "consecutive" days from December 1 through December 14, meaning each day in the period December 1 through December 14 is a day of unemployment and that there is no day in that period which is not a day of unemployment. If the

employee also had days of unemployment on December 20, 21, 22, 23 and 26, those 5 days are considered "successive" days of unemployment.

1204 Interruption of Period of Continuing Unemployment

A period of continuing unemployment can be interrupted, provided that there are not more than 15 days from the last day of the registration period immediately preceding the first day of the succeeding period. A period of continuing unemployment can be interrupted any number of times so long as each interruption is not more than 15 days.

1205 Number of Compensable Days

Benefits are payable for each day of unemployment in excess of 7 in an employee's first registration period in a period of continuing unemployment, provided that the period of continuing unemployment is the first beginning in the benefit year. For each subsequent registration period, benefits are payable for day of unemployment in excess of 4.

Exception: No benefits are payable for an employee's first 14 days of unemployment due to a strike. Such days, however, are days of unemployment within a period of continuing unemployment. (See AIM-25.)

1206 Effect of Recovery on the Period of Continuing Unemployment

A determination must be made as to whether to adjust a claimant's record if a recovery of benefits for days of unemployment changes the status of a period of continuing unemployment. The following examples illustrate this point.

Example 1: A claimant exhausts unemployment benefits in June of benefit year 1996; thereby ending a period of continuing unemployment. The claimant claims benefits again in July of benefit year 1997. The registration period beginning date of the first claim in BY-97 is within 15 days after the last day of the immediately preceding registration period in BY-96 and would be considered within the period of continuing unemployment beginning in the previous benefit year, except that the claimant exhausted benefits in the previous benefit year. The first claim in BY-97, therefore, begins a new period of continuing unemployment and is a "waiting period" claim.

Information subsequently received shows that the claimant received guarantee pay, and benefits are recovered for days of unemployment in BY-96. Every attempt should be made to "re-exhaust" benefits in BY-96 with days claimed but unpaid because benefits were exhausted at the time the days initially processed. This will avoid changes to the periods of continuing unemployment, and to the waiting period claim in the subsequent benefit year.

Occasions will also arise when a sufficient number of days of unemployment are recovered to "break" a period of continuing unemployment.

<u>Example 2:</u> A claimant claims consecutive periods of benefits in benefit years 1996 and 1997. Because the benefits paid in BY-97 are in the period of continuing unemployment beginning in BY-96, no first valid claim is established in BY-97. Subsequent information shows the claimant received vacation pay and benefits are recovered for days in BY-97, resulting in a "break" in the period of continuing unemployment from BY-96.

It will be necessary, in this example, to establish a waiting period for the subsequent benefit year for the new period of continuing unemployment beginning in BY-97.

Refer to AIM-24 for information and guidance in determining whether a waiting period is to be established for the new period of continuing unemployment for these and other situations.

1207 Effect of the Earnings Test on the Period of Continuing Unemployment

Days of unemployment denied due to earnings in excess of the monthly compensation base (the earnings test) are considered days of unemployment, even though they are non-compensable. For purposes of determining a period of continuing unemployment, therefore, days denied because of the earnings test are days of unemployment.

1208 Provisions of the Act as Amended October 9, 1996

Section 2(a)(1) of the Act provides, in part, that:

"(B) Payment of Sickness Benefits.--

(iii) Definition of period of continuing sickness.--For the purposes of this subparagraph, a period of continuing sickness means--

(I) a period of consecutive days of sickness, whether from 1 or more causes; or

(II) a period of successive days of sickness due to a single cause without interruption of more than 90 consecutive days which are not days of sickness.

(iv) Special rule regarding end of period.--For purposes of applying cause (ii)*, a period of continuing sickness ends when an employee exhausts rights to sickness benefits under subsection (c)** of this section."

** cause (ii)- from Article 24*

"(ii) Waiting period for first registration period.--Benefits shall be payable to any qualified employee for each day of sickness in excess of 7 during that employee's first registration period in a period of continuing sickness if such period of continuing sickness is the employee's initial period of continuing sickness commencing in the benefit year. For the purposes of this clause, the first registration period in a period of continuing sickness is that registration period that first begins with 4 consecutive days of sickness and includes more than 4 days of sickness."

Note: Prior to amendments to the RUIA in October 1996, no benefits were payable for an employee's first registration period having more than 4 days of unemployment and sickness in each benefit year. This resulted in a 14-day waiting period. The change to a 7-day waiting period applies to periods of continuing unemployment and periods of continuing sickness beginning on and after October 9, 1996.

*** subsection (c)- from Article 20*

Section 2(c) of the Act provides, in part, that:

"(c) Maximum Number of Days for Benefits.--

"(1) Normal benefits--

"(A) Generally--The maximum number of days of unemployment within a benefit year for which benefits may be paid to an employee shall be 130, and the maximum number of days of sickness within a benefit year for which benefits may be paid to an employee shall be 130.

"(B) Limitation--The total amount of benefits that may be paid to an employee for days of unemployment within a benefit year shall in no case exceed the employee's compensation in the base year; and the total amount of benefits that may be paid to an employee for days of sickness within a benefit year shall in no case exceed the employee's compensation in the base year, except that notwithstanding section 1(i), in determining the employee's compensation in the base year for the purpose of this sentence, any money remuneration paid to the employee for services rendered as an

> *employee shall be taken into account that is not in excess of an amount that bears the same ratio to $775 as the monthly compensation base for that year as computed under section 1(i) bears to $600.*

1209 Analysis of Section 2(a)(1)

1209.01 Period of Continuing Sickness

The phrase "period of continuing sickness" refers to a period of time when an employee is not able to work on account of illness, injury, sickness or disease. For the purpose of paying sickness benefits, a period of continuing sickness exists when:

a. The claimant has any number of "consecutive" days of sickness based on one or more infirmities, or

b. The claimant has any number of "successive" days of sickness based on a single infirmity and there is no interruption of more than 90 "consecutive" days which are not days of sickness.

A waiting period is required only in the first period of continuing sickness beginning in a benefit year. This means that most claimants who continue to claim sickness benefits from one benefit year into the next benefit year will serve only one waiting period.

1209.02 Beginning date

A period of continuing sickness, with respect to any employee, begins with the first day of a number of consecutive days of sickness, or with the first day of a number of successive days of sickness attributable to a single cause with no interval of more than 90 days which are not days of sickness.

Example: An employee is ill May 1 through May 15 and also May 20, 21, 22, 25 and 26. May 1 begins a period of continuing sickness. The days May 20, 21, 22, 25, and 26 are in the period of continuing sickness beginning May 1, and benefits would be payable for them, provided that the employee's inability to work on those five days is due to one or more of the same infirmities which caused him to be unable to work on the days from May 1 through May 15. Otherwise, May 20 would begin another period of continuing sickness.

Note: Most periods of continuing sickness may be expected to have at least four consecutive days of sickness at the beginning. This, however, is not an invariable condition since as few as two consecutive days of sickness could comprise a period of continuing sickness.

1209.03 Duration

A period of continuing sickness lasts for as long as the employee has consecutive days of sickness based on one or more infirmities. It also lasts for a period of inability caused by a single infirmity with no interval of more than 90 days which are not days of sickness.

1209.04 Ending date

A period of continuing sickness ends when:

- an employee exhausts rights to sickness benefits;

- 91 consecutive days have elapsed none of which is a day of sickness resulting from the infirmity which was the basis for the preceding days of sickness; or

- One or more days which are not days of sickness have elapsed and a statement of sickness is filed with respect to a day of sickness based on an infirmity other than any infirmity causing inability on the preceding days of sickness.

Note: Caution must be observed in determining the cause of inability to work on any day of sickness with a view to including such day in a particular period of continuing sickness. There may be a tendency to regard two infirmities having the same name as a single infirmity. An individual who was unable to work on a particular day because of a broken leg obviously has a different cause of inability to work if he cannot work because he broke the other leg. There would, of course, be more difficulty in distinguishing causes of inability to work when there are separate bouts of the same infirmity with intermissions during which recovery was complete.

The end of the benefit year does not end a period of continuing sickness.

1210 Distinction Between "Consecutive" and "Successive"

a. "Consecutive" days of sickness occur one after the other continuously and without interruption.

b. "Successive" days of sickness occur when one or more days of sickness follow any day of sickness with a possible interval of one or more days which are not days of sickness.

   Example: An employee is sick for 11 "consecutive" days from October 1 through October 11, meaning that each day in the period October 1 through October 11 is a day of sickness and that there is no day in that period which is not a day of sickness. If the employee also had days of

sickness on October 16, 17, 18, 21, and 22, those five days are considered "successive" days of sickness.

1211 Interruption of Period of Continuing Sickness

A period of continuing sickness can be interrupted provided that:

a. The interruption is for not more than 90 consecutive days, and

b. The days of sickness after the interruption were due to one or more of the same causes as the days of sickness before the interruption.

A period of continuing sickness can be interrupted any number of times so long as each interruption is not more than 90 days and the days of sickness are all due to the same cause.

If a period of continuing sickness is caused by more than one infirmity, any one of the infirmities can be considered as the single continuing cause which will permit the interruption of the period of continuing sickness for not more than 90 days without ending it.

1212 Number of Compensable Days

In the first registration period in a period of continuing sickness, benefits are payable for each day of sickness after the fourth consecutive day of sickness.

Exception: Benefits are payable for each day of sickness in excess of 7 in an employee's first registration period in a period of continuing sickness, if the period of continuing sickness is the first beginning in the benefit year. For the purposes of this exception, the first registration period in a period of continuing sickness is the registration period that first begins with 4 consecutive days of sickness and includes more than 4 days of sickness.

For each subsequent registration period in a period of continuing sickness, benefits are payable for each day of sickness in excess of 4. There is no requirement that the 4 days be consecutive in subsequent claims. See Appendix A for examples of how compensable days are figured.

1213 Effect of Recovery on the Period of Continuing Sickness

A determination must be made as to whether to adjust a claimant's record if a recovery of benefits for days of sickness changes the status of a period of continuing sickness. The following examples illustrate this point.

Example 1: A claimant exhausts sickness benefits in June of benefit year 1996; thereby ending a period of continuing sickness. The claimant begins claiming again in July of benefit year 1997. The claimant's infirmity and the registration period beginning date of the first claim in BY-97 would allow the claim to be

considered within the period of continuing sickness beginning in the preceding benefit year, except that the claimant exhausted benefits in the previous benefit year. The first claim in BY-97, therefore, begins a new period of continuing sickness and is the "waiting period" claim.

Information subsequently received shows the claimant received remuneration, and benefits are recovered for days of sickness claimed in BY-96. Every attempt should be made to "re-exhaust" BY-96 benefits with days claimed but unpaid because benefits were exhausted at the time the days initially processed. This will avoid changes to the periods of continuing sickness and to the waiting period claim in the subsequent benefit year.

Occasions will also arise when a sufficient number of days of sickness are recovered to "break" a period of continuing sickness.

Example 2: A claimant claims consecutive periods of benefits in benefit years 1996 and 1997. Because the benefits paid in BY-97 are in the period of continuing sickness beginning in BY-96, no first valid claim is established in BY-97. Subsequent information shows that the claimant received wage continuation pay, and benefits are recovered for days in BY-97, resulting in a "break" the period of continuing sickness from BY-96.

It will be necessary, in this example, to establish a waiting period for the subsequent benefit year for the new period of continuing sickness beginning in BY-97.

Appendices

I. Benefit Payments in a Period of Continuing Sickness

* Denotes Waiting Period Claim

Example 1:

Mr. Baker has the flu and is unable to work from August 4 through August 13. On August 14, he contracts pneumonia and is unable to work until September 15. Mr. Baker has one "period of continuing sickness" because there is no interruption between his days of sickness for flu and his days of sickness for pneumonia. Mr. Baker's benefits are computed as:

REGISTRATION PERIOD	CLAIM PROFILE	DAYS OF SICKNESS	PAYABLE DAYS
8/04 - 8/17	1111111 1111111	14	7*
8/18 - 8/31	1111111 1111111	14	10
9/01 - 9/14	1111111 1111111	14	10

Example 2:

Mr. Johnson sprained his shoulder on August 2. He returns to work on August 12, but realizes that his shoulder has not healed completely. He is not able to return to work again until August 22. Mr. Johnson has one "period of continuing sickness" because the interruption is not more than 90 days and the days of sickness are due to a single cause. Mr. Johnson's benefits are computed as:

REGISTRATION PERIOD	CLAIM PROFILE	DAYS OF SICKNESS	PAYABLE DAYS
8/02 - 8/15	1111111 1110111	13	6*
8/16 - 8/29	1111112 0000000	6	2

Example 3:

Mr. Carson injured his knee on August 15 and last worked on that date. He received vacation pay for the days August 18 through August 22, and filed his statement of sickness within 10 days of August 15. He returned to work on September 1. Mr. Carson's "period of continuing sickness" began August 16. But because he did not have four consecutive days of sickness until after his vacation period, his filing date is determined to be August 23. Mr. Carson's benefits are computed as:

REGISTRATION PERIOD	CLAIM PROFILE	DAYS OF SICKNESS	PAYABLE DAYS
8/23 - 9/5	1111111 1120000	9	2*

Example 4:

Mr. Redwood was injured at work on August 4. The statement of sickness showed that he had a mild brain concussion, facial lacerations and a sprained shoulder. He was paid sickness benefits from August 5 through August 31; he returned to work on September 1 and worked until October 5. He reapplied for sickness benefits to begin October 6. His new statement of sickness showed the first day of infirmity as August 4, and the diagnosis as sprained shoulder. Mr. Redwood returned to work on October 20. Mr. Redwood had one "period of continuing sickness" because the medical evidence indicates that his sprained shoulder is a single continuing cause which made him unable to work from August 5 through August 31, and from October 6 through October 19. Mr. Redwood's benefits are computed as:

REGISTRATION	CLAIM	DAYS OF	PAYABLE

PERIOD	PROFILE	SICKNESS	DAYS
8/05 - 8/18	1111111 1111111	14	7*
8/19 - 9/01	1111111 1111112	13	9
10/6 - 10/19	1111111 1111111	14	10

Example 5:

Ms. Hapgood is off work for flu from August 2 through August 13. She returns to work on August 14 and, at work, breaks her wrist. She is unable to work from August 15 through September 9. Ms. Hapgood has two "periods of continuing sickness". Her first period of continuing sickness ran from August 2 through August 14; her new one began August 15. Ms. Hapgood's benefits are computed as:

REGISTRATION PERIOD	CLAIM PROFILE	DAYS OF SICKNESS	PAYABLE DAYS
8/02 - 8/15	1111111 1111191	13	6*
8/16 - 8/29	1111111 1111111	14	10
8/30 - 9/11	1111111 1111120	12	8

Example 6:

Mr. Smith fractures his leg on June 1 and claims sickness benefits until he is able to work on August 24. He has one "period of continuing sickness" beginning June 1. Mr. Smith serves only one 7-day waiting period even though his days of sickness cross from one benefit year to the next. Mr. Smith's benefits are computed as:

REGISTRATION PERIOD	CLAIM PROFILE	DAYS OF SICKNESS	PAYABLE DAYS
6/01 - 6/14	1111111 1111111	14	7*
6/15 - 6/28	1111111 1111111	14	10
6/29 - 7/12	1111111 1111111	14	10
7/13 - 7/26	1111111 1111111	14	10
7/27 - 8/09	1111111 1111111	14	10
8/10 - 8/23	1111111 1111111	14	10

Example 7:

Ms. Green has spinal stenosis and is unable to work from October 11, 1996 through February 18, 1997. She returns to work and reapplies for sickness benefits for the same condition beginning July 15, 1997. Ms. Green has two

"periods of continuing sickness". Her first period of continuing sickness runs from October through February in BY-96; the other began July 15, 1997 in BY-97. Ms. Green must satisfy a waiting period in each benefit year although she is unable to work due to the same infirmity. Her benefits are computed as:

REGISTRATION PERIOD	CLAIM PROFILE	DAYS OF SICKNESS	PAYABLE DAYS
10/11 - 10/24	1111111 1111111	14	7*
10/25 - 11/07	1111111 1111111	14	10
02/14 - 02/27	1111120 0000000	5	1
07/15 - 07/28	1111111 1111111	14	7*

Example 8:

Ms. Meyers is off from work beginning December 1, 1996 for bypass surgery. She exhausts her normal sickness benefits on June 7, 1997. Because she has less than 10 years of railroad service, she is not entitled to extended benefits. She reapplies in July. Ms. Meyers has two "periods of continuing sickness". She must serve another waiting period in July and re-satisfy the four consecutive day rule because exhaustion of her rights to benefits ended her "period of continuing sickness" that began in December, even though there is less than a 90-day gap in her claims for the same illness. Her benefits are computed as:

REGISTRATION PERIOD	CLAIM PROFILE	DAYS OF SICKNESS	PAYABLE DAYS
12/01 - 12/14	1111111 1111111	14	7*
12/15 - 12/28	1111111 1111111	14	10
06/01 - 06/14	1111111 3333333	14	3
07/01 - 07/14	1111111 1111111	14	7*

Example 9:

Mr. Ryan is like Ms. Meyers, but has 25 years of service and receives extended sickness benefits for 65 days from June 8 through September 8, 1997. He continues to claim into October after his extended period ends. Mr. Ryan has two "periods of continuing sickness and must serve a new waiting period in September because the ending of his extended benefit period exhausts his rights to benefits. Mr. Ryan's benefits are computed as:

REGISTRATION PERIOD	CLAIM PROFILE	DAYS OF SICKNESS	PAYABLE DAYS

06/08 - 06/21	1111111 1111111	14	10*
06/22 - 07/05	1111111 1111111	14	10
08/31 - 09/13	1111111 1133333	9	5
09/14 - 09/27	1111111 1111111	14	7*

Example 10:

Ms. O'Neil had an infectious virus and was unable to work from March 13 and until she returned to work April 23. She was paid sickness benefits from March 13 through April 22. She was furloughed, however, May 1 and claimed and was paid unemployment from May 2 through 29. She returned to work May 30 and worked until July 6. She reapplied for sickness benefits to begin July 7. Her new statement of sickness showed the first day of infirmity as March 13, and the diagnosis as "infectious virus". Ms. O'Neil returned to work on July 31. Ms. O'Neil had one "period of continuing sickness" because the medical evidence indicates that her virus is a single continuing cause which made her unable to work from March 13 through April 22, and July 7 through July 30. She does not have to satisfy a new waiting period in the new benefit year because the interruption was not more than 90 days and the days of sickness were due to a single cause. Ms. O'Neil's benefits are computed as:

REGISTRATION PERIOD	CLAIM PROFILE	DAYS OF SICKNESS	PAYABLE DAYS
3/13 - 3/26	1111111 1111111	14	7*
3/27 - 4/09	1111111 1111111	14	10
4/10 - 4/23	1111111 1111112	13	9

REGISTRATION PERIOD	CLAIM PROFILE	DAYS OF UNEMPLOYMENT	PAYABLE DAYS
5/02 - 5/15	1111111 1111111	14	7*
5/16 - 5/29	1111111 1111111	14	10

REGISTRATION PERIOD	CLAIM PROFILE	DAYS OF SICKNESS	PAYABLE DAYS
7/07 - 7/20	1111111 1111111	14	10
7/21 - 8/03	1111111 1111111	10	6

II. Benefit Payments in a Period of Continuing Unemployment

Example 11:

The shop Mr. McDivitt works at closes March 1. He claims unemployment benefits beginning March 1. To supplement his income, Mr. McDivitt has a side business milling lumber in his back yard. On the claims beginning March 1 and March 15, he indicates that he received gross earnings from his side business in excess of the RUIA monthly compensation base. The district office denies his claims because of the earnings test. Even though the claims were denied because of the earnings test, the days remain days of unemployment and are part of the period of continuing unemployment. In addition, the period beginning March 1 satisfies the 7-day waiting period requirement. Mr. McDivitt's benefits are computed as:

REGISTRATION PERIOD	CLAIM PROFILE	DAYS OF UNEMPLOYMENT	PAYABLE DAYS
3/01 - 3/14	4444004 4440004	0	0*
3/15 - 3/28	4400044 4444400	0	0

Example 12:

Mr. Mooring is furloughed from September 1 until he is called back to work on September 23. He is furloughed again on September 29. Mr. Mooring has one "period of continuing unemployment" because there is an interruption of less than 15 days from the last day of the preceding registration period (September 22), to the first day of the succeeding period (September 29). His benefits are computed as:

REGISTRATION PERIOD	CLAIM PROFILE	DAYS OF UNEMPLOYMENT	PAYABLE DAYS
9/01 - 9/14	1111111 1111111	14	7*
9/15 - 9/28	1111111 1222222	8	4
9/29 - 10/12	1111111 11111111	14	10

Example 13:

Ms. Brooks is suspended from June 1 through 30. She returns to work July 1 and falls off a ladder and injures her back. She is off work due to her back injury until her doctor releases her to go back to work on December 15. Before she returns to work, she is laid off. Ms. Brooks has two "periods of continuing unemployment" because there is an interruption of more than 15 days from the last day of the preceding claim (June 30), and the first day of the succeeding claim (December 15). She must satisfy a waiting period in each benefit year. Her benefits are computed as:

REGISTRATION PERIOD	CLAIM PROFILE	DAYS OF UNEMPLOYMENT	PAYABLE DAYS
6/01 - 6/14	1111111 1111111	14	7*
6/15 - 6/28	1111111 1111111	14	10
6/29 - 7/11	1100000 0000000	2	0
12/15-12/28	1111111 1111111	14	7*

Example 14:

Mr. Hinckley is suspended from June 2 through August 2. He has one "period of continuing unemployment" beginning June 2. Mr. Hinckley serves only one 7-day waiting period even though his days of unemployment cross from one benefit year into the next. His benefits are computed as:

REGISTRATION PERIOD	CLAIM PROFILE	DAYS OF UNEMPLOYMENT	PAYABLE DAYS
6/02 - 6/15	1111111 1111111	14	7*
6/16 - 6/29	1111111 1111111	14	10
6/30 - 7/13	1111111 1111111	14	10
7/14 - 7/27	1111111 1111111	14	10
7/28 - 8/10	1111122 2220022	5	1

Example 15:

Mr. Breen, who has 8 years of service, is laid off on January 2 and claims unemployment benefits until he exhausts normal benefits on June 27. He again applies for and claims unemployment benefits beginning July 1. Mr. Breen has two "periods of continuing unemployment" because his exhaustion of unemployment benefits ended the period of continuing unemployment beginning January 2. In addition, he must satisfy two 7-day waiting periods. His benefits are computed as:

REGISTRATION PERIOD	CLAIM PROFILE	DAYS OF UNEMPLOYMENT	PAYABLE DAYS
1/02 - 1/15	1111111 1111111	14	7*
6/16 - 6/29	1111111 1111333	11	7
7/01 - 7/14	1111111 1111111	14	7*

Example 16:

Ms. Verbilt is an unemployed carman who begins claiming unemployment benefits November 10. She is called back to work on December 8, but there is a legal strike at the rail yard and her craft is honoring the picket lines. Ms. Verbilt receives no payment for the benefits she claims for the claim period beginning December 8 because that claim must satisfy the 14-day strike waiting period. The claim beginning December 8 is, however, considered in the period of continuing unemployment beginning November 10. Her benefits are computed as:

REGISTRATION PERIOD	CLAIM PROFILE	DAYS OF UNEMPLOYMENT	PAYABLE DAYS
11/10 - 11/23	1111111 1111111	14	7*
11/24 - 12/07	1111111 1111111	14	10
12/08 - 12/21	1111111 1111111	14	0**

Refer to AIM-24 for information and guidance in determining whether a waiting period is to be established for the new period of continuing sickness for these and other situations.

1301 Provision of Law

Section 4(a-1) of the Act provides, in part, that:

"There shall not be considered as a day of unemployment or as a day of sickness, with respect to any employee--

* * *

(iii) if he is paid a separation allowance, any of the days in the period beginning with the day following his separation from service and continuing for that number of consecutive fourteen-day periods which is equal, or most nearly equal, to the amount of the separation allowance divided (i) by ten times his last daily rate of compensation prior to his separation if he normally works five days a week, (ii) by twelve times such rate if he normally works six days a week, and (iii) by fourteen times such rate if he normally works seven days a week;".

1302 General Description of the Disqualification

Under Section 4(a-1)(iii) an employee who is paid a separation allowance is disqualified from receiving either unemployment or sickness benefits. The disqualification period begins the day following the employee's separation from service. It runs for a number of consecutive 14-day periods determined by a formula taking into account the amount of the separation allowance, the employee's last daily rate of pay and the number of days in his normal work week. The disqualification lasts approximately as long as the employee would work to earn the amount of the allowance.

1303 Information as to Separation Allowances

1303.01 Reports from employers

Railroad employers report to the Quality Reporting Service Center (QRSC) information about separation allowances paid in connection with separations from service on Form BA-9 Report of Separation Allowance or Severance Pay. From this form, a UI-13 computer tape is created and sent to the RUIA Daily System to calculate the separation disqualification period. The form furnished to employers for this report is Form UI-13, Notice of Payment of separation Allowance. (See Exhibit A.) Form UI-13 calls for the date of the employee's separation from service; the amount of the separation allowance; the employee's occupation and last rate of pay; and whether he worked a five, six, or seven-day week or was in train-and-engine, dining-car, or sleeping-car service.

1303.02 Advice from claimants

Spaces are provided on the application and claim forms for unemployment benefits and on the claim form for sickness benefits for claimants to report receipt of separation allowances from employers.

1303.03 Reports from district offices

District offices report information about separation allowances to the Sickness and Unemployment Benefit Section on Form T-13, Separation Allowance Notice. (See Exhibit B.) If a district office finds out from information on a claim or from any other source that a claimant has been separated from service, it will check to find out whether he has been or will be paid a separation allowance. If so, the district office will report information about the allowance to the division of claims operations on Form T-13.

1304 Information Recorded on Computer Record

When a district office reports a separation allowance, a stop is put on the BUSI tape record to prevent the payment of benefits until the employer reports the particulars; and the employer is asked for a report on Form UI-13. Upon receipt of an employer's report on Form UI-13, the duration of the disqualification period is determined; a stop is then placed on the BUSI tape record to prevent the payment of benefits for days in the disqualification period. This action is taken even if there is no previous record for the individual in the SUBS computer record.

1305 Considerations in Applying the Provision

1305.01 Separation allowance

A "separation allowance" is a payment by an employer to an employee who elects to separate from service. It may be paid under the provisions of a labor-management agreement or other job-protection plan, such as the Washington Agreement, or as a result of an arrangement between the employer and the individual employee.

The disqualification for separation allowance applies when the employee receives a separation allowance, regardless of whether the employee voluntarily elected to end the employment relationship or the employee is involuntarily separated.

The separation allowance may be paid in a lump sum, or it may be paid in installments for the convenience of one or both of the parties. The method of payment does not alter the character of the allowance. It is "remuneration" and "compensation" for the month in which the employee's separation from service is effective, but it is not attributable to any particular days in the month or to any day

after the employee's separation from service. Thus no day will be denied on the ground that all or part of a separation allowance is attributable to that day. The "amount of the separation allowance" is the gross amount before any deductions.

1305.02 Date of separation

The date of an employee's "separation from service" is the date as of which his employment relationship is terminated. This usually comes about on the day when he signs a paper accepting a separation allowance. In occasional cases, an employee may sign a form specifying separation on a future date; in such cases, separation would occur on the date specified. The acceptance of a separation allowance does not cause a separation to take place at some time in the past. An employee who accepts a separation allowance does not ordinarily work on the day separation takes place. An arrangement for an employee to accept a separation allowance is usually made some time after the date of the employee's last work. Thus the date of an employee's last work for an employer generally is not the date of his separation from service. Typically, the date of separation is later than the date last worked. The date of separation included in the employer's report of the separation allowance is accepted as correct in the absence of evidence to the contrary.

1305.03 Daily rate of compensation

The daily rate of compensation used in determining the length of an employee's disqualification period is the rate applicable to his last work before his separation from service. The rate included in the employer's report of the separation allowance is accepted as correct in the absence of evidence to the contrary.

1305.04 Normal work week

The number of days an employee "normally works" in a week is the number of days' work considered full-time for his occupation. For this purpose, employees in train-and-engine service, dining-car service, and sleeping-car service, are regarded as working seven-day weeks. The reports of separation allowance will ordinarily contain sufficient information about the work weeks of employees in other occupations; thus an employee is ordinarily regarded as working the number of days (5, 6, or 7) indicated in his employer's report of separation allowance. An employee who works part-time or intermittently is regarded as normally working the number of days in a week (5, 6, or 7) that would be full time for his occupation.

1306 Determining Length of Disqualification Period

1306.01 General

The method of determining the length of a disqualification period is set forth briefly below. The computer program follows this method.

1306.02 Determining daily rate of compensation

The employee's last daily rate of compensation is ascertained from the employer's report of the separation allowance. If the rate of pay is reported in terms other than a daily rate, it is converted to a daily rate. Conversion to a daily rate of pay is as indicated below unless there is information that such conversion would be improper. Most exceptions to these rules are covered in Appendix A to AIM-4-I,

1. **Monthly rate**

   Divide by:

   21.75 for 5-day-week employees

   26 for 6-day-week employees

   30 for 7-day-week employees, including employees in train-and-engine service, dining-car service, sleeping-car service.

2. **Weekly rate**

   Divide by 5, 6, or 7, according to the number of days in the employee's normal work week.

3. **Hourly rate**

   Multiply by:

   8 for shop crafts, yard service, and office employees

   6 for sleeping-car conductors

   6 for all dining-car employees (Including stewards), porters, attendants, maids and bus boys in service on trains, except multiply by

   5.8 for chair-car attendants, sleeping-car porters, all dining-car employees (including stewards) and train porters for GM&O; all dining-car employees (except stewards) for CB&Q.

4. **100 (or 150) miles**

   Consider as daily pay rate.

1306.03 Computation of 14-day periods

The employee's last daily rate of compensation prior to his separation from service is multiplied by 10 for 5-day-week employees; by 12 for 6-day-week employees; and by 14 for 7-day-week employees; including employees in train-

and-engine service, dining-car service, and sleeping-car service. The result is divided into the amount of the separation allowance (the gross amount--before any deductions). The net result is the number of consecutive 14-day periods for which the disqualification runs. In this resulting number, a fraction of less than one-half shall be disregarded; a fraction of one-half or more shall be increased to the next higher number.

Example 1 Employee A, a clerk, is separated from service on July 26, 1969. He is paid a separation allowance of $7,500. His last daily rate of compensation before separation was $23. Ten times $23 is $230. Dividing $7,5000 by $230 gives 32.6, rounded to 33. Therefore the number of 14-day periods constituting the disqualification period is 33. The disqualification period starts July 27, 1969 and runs for 462 calendar days (33 14-day periods); it ends on October 31, 1970.

Example 2 Employee B, a trainman, is separated from service August 31, 1969. He is paid a separation allowance of $10,000. His last work before separation was at the rate of $20.83 for 100 miles. Fourteen times $20.83 is $291.62. Dividing $10,000 by $291.62 gives 34.2, rounded to 34. The number of 14-day periods constituting the disqualification period is 34. The disqualification period starts September 1, 1969 and runs through December 20, 1970.

1307 Determinations on Claims for Benefits

1307.01 Claim including days in disqualification period

When there is an active stop for separation allowance, the computer will deny any days in the disqualification period which are claimed as days of unemployment or as days of sickness, and will generate a referral.

1307.02 Claim including days after disqualification period

An employee who is paid a separation allowance may get unemployment or sickness benefits for days after the end of the disqualification period if he is then a qualified employee and meets the usual requirements.

Example Employee C separates from service in January 1969 and is paid a separation allowance of $6,000. The disqualification period ends January 20, 1970. From January 21, 1970 through July 7, 1970 he claims and receives BY-69 benefits. He applies for benefits in BY-70 but is found not qualified. He had only $400 creditable compensation and one month's service for base year 1969, all of his $6,000 separation allowance having been attributed to January 1969.

1308 Determining Whether Benefit Payment Erroneous

If it is found that benefits have been paid for days in an employee's disqualification period a determination is required as to whether benefits were paid erroneously. Such determinations shall be governed by principles set forth

in AIM-21. It may generally be assumed, in this connection, that payment of benefits was not induced by fraud or other fault of the claimant if the claim or claims were made before the separation allowance was paid. It may be considered, without investigation, that claims were made before the allowance was paid if the last day for which benefits were paid is no more than two weeks after the reported date of separation from service. In other cases, information should be obtained from the claimant or the employer as to (a) the date which the claimant signed a paper accepting the separation allowance, (b) the date stated in the paper as the date of separation from service and (c) the date on which the separation allowance was paid.

1309 Notice to Claimant

Notice of disqualification for separation allowance shall be sent to each claimant who is denied benefits on the basis of such disqualification. Form Letters ID-13c through ID-13f (Exhibits C through E) are provided for this purpose.

1310 Effective Date

The disqualification applies in cases of separations occurring after the enactment date of the amendments, with respect to calendar days in benefit years beginning after June 30, 1968. The benefit year is the individual's benefit year, not the general benefit year. That is, no day can be denied before the first day of the employee's first benefit year beginning July 1, 1968 or later.

1311 Authority to Make Determinations

The Sickness and Unemployment Benefit Section is authorized to make determinations as to disqualification for separation allowance.

1312 Forms and Form Letters Prescribed

The following forms and form letters are prescribed:

UI-13	(3-68)
T-13	(2-68)
ID-13c	(6-68)
ID-13e	(6-68)
ID-13f	(6-68)

1313 Form Letters Superseded

The following form letter is hereby superseded:

ID-13d (6-68)

1314 Instructions Superseded

The following instructions are hereby supersede

1401 Provisions of the Act

1401.01 Section 4(a-2)

of the Act provides, in part, that:

"There shall not be considered as a day of unemployment, with respect to any employee...(ii) any of the thirty days beginning with the day with respect to which the Board finds that he failed, without good cause, to accept suitable work available on such day and offered to him, or to comply with instructions from the Board requiring him to apply for suitable work or to report, in person or by mail as the Board may require, to an employment office;..."

1401.02 Section 4(c)

of the Act provides that:

"No work shall be deemed suitable for the purposes of section 4(a-2)(ii) of this Act, and benefits shall not be denied under this Act to any otherwise qualified employee for refusing to accept work if --

"(i) the position offered is vacant due directly to a strike, lockout, or other labor dispute;

"(ii) the remuneration, hours, or other conditions of work offered are substantially less favorable to the employee than those prevailing for similar work in the locality, or the rate of remuneration is less than the union rate, if any, for similar work in the locality;

"(iii) as a condition of being employed he would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

"(iv) acceptance of the work would require him to engage in activities in violation of law or which, by reason of their being in violation of reasonable requirements of the constitution, by-laws, or similar regulations of a bona fide labor organization of which he is a member, would subject him to expulsion from such labor organization; or

"(v) acceptance of the work would subject him to lose of substantial seniority rights under any collective bargaining agreement between a railway labor organization, organized in accordance with the provisions of the Railway Labor Act, and any other employer."

1401.03 Section 4(d) of the Act

provides that:

"In determining, within the limitations of section 4(c) of this Act, whether or not any work is suitable for an employee for the purposes of section 4(a-2)(ii) of this Act, the Board shall consider, in addition to such other factors as it deems relevant, (i) the current practices recognized by management and labor with respect to such work; (ii) the degree of risk involved to such employee's health, safety, and morals; (iii) his physical fitness and prior training; (iv) his experience and prior earnings; (v) his length of unemployment and prospects for securing work in his customary occupation; and (vi) the distance of the available work from his residence and from his most recent work."

1402 Analysis of Section 4(a-2)(ii)

1402.01 Disqualification applies even if benefits not claimed

The disqualification provided in section 4(a-2)(ii) of the Act may be applicable even though an employee does not claim benefits on the date or previous to the date of a failure to accept or apply for work or failure to report to an employment office.

1402.02 Employment office

An employment office is, as provided in section

325.11 of the regulations of the Railroad Retirement Board (RRB), any office or other facility selected by an unemployment claims agent for the registration of unemployed employees, or any employment office maintained by a State of by the Federal government.

1402.03 Failure to accept an offer of work

a. Conditions

The disqualification provided for failure to accept an offer of work applies only if it is established that all the following conditions exist:

1 An offer of suitable work was made to the claimant, by a person authorized to hire persons for the work offered, and in such a manner that it was understood or should have been understood that an offer was made.

2 The offer was of such a nature that it could have resulted in employment if the claimant accepted and if he met the conditions of employment laid down by the employer.

3 The claimant failed, without good cause, to accept the work offered or failed to take whatever steps were reasonably required in order to obtain the work. Failure to exercise a right to displace an occupant of a position is not a failure to accept an offer of work (L-39-568).

b. Date

The disqualification dates from the first day on which the claimant could have worked had he accepted the offer. It shall be considered in the absence of evidence of the specific date on which the claimant could have worked that such date is the date on which he stated he would not accept the work, or the date on which he failed to take whatever steps were reasonably required to obtain the work, whichever is earlier.

1402.04 Failure to comply with instructions from the RRB

a. Conditions

Except in the circumstances described in .05 (Conditional finding of failure to report), the disqualification provided for failure to comply with instructions from the Board requiring a claimant (a) to apply for suitable work or (b) to report to an employment office applies only if it is established that all the following conditions exist:

1 An instruction was brought to the claimant's attention. If a claimant states that he did not receive an instruction which was mailed to him and not returned undeliverable, the determination whether an instruction shall be considered to have been brought to the claimant's attention shall be made as follows:

(a) If there is no information of a previous instance in which the claimant stated that he failed to receive a similar instruction, it shall be considered, in the absence of affirmative evidence to the contrary, that an instruction was not brought to his attention.

(b) If there is information of a previous instance in which the claimant stated he failed to receive a similar instruction, it shall be considered, in the absence of evidence to the contrary, that the instruction was brought to his attention three business days after mailing, Affirmative evidence to the contrary may consist of: (1) evidence of carelessness in the handling of the claimant's mail by persons other than the claimant, or (2) the demonstrated interest of the claimant in job opportunities.

2 Such instruction was given by the RRB that required the claimant to apply for suitable work or to report. in person or by mail. to an employment office.

(a) It is not necessary that the work to be applied for was available or that the employment office had any work to offer.

(b) An instruction to "apply if interested", to "report if interested", "it is suggested that you apply", or other similarly qualified instruction cannot be considered to be an instruction to apply or to report to an employment office.

(c) An instruction or request that the claimant notify the RRB whether he will or did apply to an employer or report to an employment office cannot be considered as an instruction to report to an employment office. However, if a claimant does not notify the RRB after being instructed to do so, a conditional finding may be made that he did fail without good cause to apply for work or report to an employment office. (Section 1402.05.)

(d) The work for which he was instructed to apply must have been suitable. However, it is not necessary that the instruction to report to an employment office contemplate a referral to suitable work. But if referral to work was contemplated and the claimant knows of the work and what he knew about the job was enough to show it was unsuitable, he had good cause for failing to report.

(e) Form ES-21, the referral prescribed for referring individuals to the State Employment Service, contains the following provisions:

This is notice that you are to report in person to the State Employment Service (SES) office shown above and apply for work to which you may be referred by that office. Give this notice and the enclosed postage paid envelope to the SES representative when you report. After having the SES representative complete item 1 below, please sign and date the form in item 3 and return this page to us at the address shown above in the enclosed postage due envelope. The SES representative should complete the second page of this notice and return it to us in the postage paid envelope.

If you fail to report to the SES office or to comply with the office's instructions, you may be disqualified from receiving unemployment benefits for a period of 30 days. If you do not report to the SES office, complete items 2 and 3 and return this notice to us no later than the date you are to report.

In issuing such a referral notice, the RRB incorporates in its instructions such directions as may be given to the individual by the SES. Accordingly, the disqualification provided for in section 4(a-2) (ii) would be applicable in the case of an individual who receives such a referral notice, who reports to the SES, but who fails, without good cause, to apply for suitable work as directed by the SES, or who fails, without good cause, to report back to the employment office as instructed by the SES.

3. The claimant failed, without good cause, to comply with the instructions in the manner specified in the instructions or failed to take whatever steps were reasonably required in order to obtain the work. The claimant's statement

that he will apply is not evidence that he applied, but his statement that he did apply is sufficient evidence in the absence of evidence to the contrary.

b. Date

The disqualification dates from the day the claimant was required to apply or report as provided in the instructions. The following table shows the beginning date of the disqualification with respect to various instructions:

Disqualification

Instructions state	dates from
1. One specified date	1. The specified date
2. "between ____ and ____," or "not later than ____".	2. The last date given
3. "immediately"	3. First business day after instruction is received
4. "as soon as possible"	4. No disqualification

1402.05 Conditional finding of failure to comply with instructions

in the absence of evidence to the contrary, section 4(a-2)(ii) shall be applied conditionally in any case in which:

a. a claimant fails to report to a RRB representative at an employment office in accordance with instructions mailed to him and fails to inform the Board why he did not report; or

b. a claimant has been instructed by the RRB to apply for work or to report to a state employment office, and he fails to inform the RRB whether he complied with such instructions.

Such a finding shall be made when an office of the RRB receives a claim form showing registrations for any of the thirty days beginning with the day on which the claimant was to comply with instructions given him, except in a case where a field office gives instructions to a claimant whose claims are not transmitted through the field office. In such a case a finding shall be made not later than five days after the date when the claimant was to comply with the instructions.

1402.06 Redetermination of conditional finding

If, after section 4(a-2)(ii) has been applied conditionally, evidence is presented showing that the claimant did comply with the instructions or had good cause for failure to comply with the instructions, a finding shall be made that section 4(a-2)(ii) is not applicable. As indicated in section 1402.04a2(c), a claimant's failure to give information whether he did or did not comply with instructions does not in itself constitute failure to comply with instructions.

1403 Distinction Between Good Cause and Suitable Work

The term "suitable work" refers to the conditions and terms of employment and the personal factors relating to them; among such factors are those specifically mentioned in section 4(c) and section 4(d) of the Act. Good cause generally refers to a determination made by the Board on the basis of personal factors not related to the conditions and terms of employment.

1404 Determining Suitable Work

1404.01 Position vacant due to strike, lockout, or labor dispute

Work is not suitable if the position offered is vacant due directly to a strike, lockout, or other labor dispute.

1404.02 Remuneration

Work is not suitable if the rate of remuneration for such work (a) is substantially less favorable to the employee than that prevailing for similar work in the locality; (b) is less than the minimum wage rate provided in federal or state legislation applicable to such work; or (c) is less than the union wage rate, if any, applicable to such work.

1404.03 Hours or other conditions of work

Work is not suitable if the hours or other conditions of the work are substantially less favorable to the employee than those prevailing for similar work in the locality.

1404.04 Union membership

Work is not suitable if, as a condition of being employed, the employee would be required to join a company union or to resign from or refrain from joining any bona fide labor organization. Work is not unsuitable by reason of a requirement that the employee join, or maintain membership in, a railway labor organization pursuant to an agreement under Section 2, Eleventh, of the Railway Labor Act requiring union membership under certain conditions.

1404.05 Violation of law or of requirement of labor organization

Work is not suitable if it would require the employee to engage in activities in violation of law, or, by reason of their being in violation of reasonable requirements of the constitution, by-laws, or similar regulations of a bona fide labor organization of which he is a member, would subject him to expulsion from such labor organization.

1404.06 Loss of seniority rights

Work is not suitable if acceptance of it would subject the employee to loss of substantial seniority rights under any collective bargaining agreement between a railway labor organization, organized in accordance with the provisions of the Railway Labor Act, and any other employee. In determining whether seniority rights are "substantial", consideration shall be given to the employee's years of seniority, his relative position on the seniority roster, the duration of employment currently held or expected as a result of the seniority rights, and a comparison of the rights which would be lost with the rights which could be expected to accrue from the work offered.

1404.07 Current practices of management and labor

Current practices of management and labor with respect to a job include provisions of any collective bargaining agreement entered into by the employer and a bona fide labor organization, and any other practices with respect to the job developed and commonly recognized by the parties. Work is not suitable solely because, as a condition of employment, the employee is required by such agreement or practice to furnish certain tools or equipment, to take a medical examination, or to comply with any other reasonable job requirement.

1404.08 Risk to employee's safety

Risks normally inherent in an occupation do not render work in that occupation unsuitable except as such risks are related to a particular employee's fitness for the work. In determining the degree of risk involved to an employee's safety, consideration shall be given to his statements with respect to the work, and to supporting information regarding his physical and mental condition, age, experience, and training, as these factors relate to the job requirements.

1404.09 Risk to employee's health

Work is not suitable for an employee if it would adversely affect his health and well-being. On this point, consideration shall be given to the employee's statements with respect to the effect of the work on his health and to supporting information regarding his physical condition and personal qualifications as these factors relate to the job requirements.

1404.10 Risk to employee's morals

Personal convictions must be considered in determination of degree of risk to an employee's morals. Thus, work is not suitable for an employee if it would require him t work on the Sabbath Day of his faith when he is not willing, because of religious convictions, to work on such day.

1404.11 Physical fitness

Work is not suitable for an employee whose physical fitness does not conform to the job requirements. A finding on his point shall be based on the employee's statements with respect to his physical condition as related to the work, and to supporting information.

1404.12 Training and experience

Work is not suitable for an employee who is not reasonably qualified, by training, education, and experience, to meet the essential job requirements.

1404.13 Length of unemployment and work prospects

Work which is not suitable for an employee at the outset of his unemployment in view of his qualifications, prior earnings, and prospects for obtaining more favorable work, may subsequently become suitable for him. The area of jobs considered suitable for an employee broadens as his unemployment lengthens and his prospects of getting work in his customary occupation, or other work of his choice, dwindle.

1404.14 Distance of work

Work is not suitable for an employee who has no means of transportation to the work or who would be required to travel an unreasonable distance. In determining what would be reasonable for a particular employee, consideration shall be given to the distance of the work from his residence, the distance he has customarily traveled to work, and any change in his circumstances supporting his decision to hold himself out for work closer to home.

1405 Determining Good Cause for Failure to Accept or Apply for Suitable Work

Some of the circumstances in which an employee has good cause for failure to accept or apply for suitable work are:

1. The employee received the instructions to apply too late for him to apply at the time specified.

2. Acceptance of the work would result in financial loss to the employee.

3. Acceptance of the work would require the employee to be away from his home when his presence at or near his home was required, and other arrangements could not be made.

4. The employee had good prospects of returning within one month to work in his customary occupation or to work in an occupation more acceptable to him.

1406 Determining Good Cause for Failure to Report to an Employment Office

An employee has good cause for failure to comply with instructions from the RRB requiring him to report to an employment office if:

1. He did not receive the instructions or received them too late to report in time; or

2. He had a misunderstanding of the instructions and he complied with the instructions as he understood them; or

3. He was working or expected a call to work, he had no means of transportation, he was sick, or other circumstances were such that he could not reasonably be expected to comply with the instructions.

1407 Notice

Notice of determination of the applicability of section 4(a-2)(ii) shall be sent in each case in which benefits are denied on the basis of such determination.

1408 Determinations by Field Office

Field offices are authorized to make determinations as to whether claimants have good cause for failure to accept or apply for suitable work or to report to an employment office.

1409 Reconsideration and Review

1409.01 Reconsideration of field determination

When the Bureau of Field Service (BFS) receives information which appears to furnish grounds for reconsideration of a field office determination, BFS shall send the information to the field office. The field office will make a redetermination if appropriate.

1409.02 Review of field office determination

If, in the opinion of the network manager, information received in BFS raises a question whether a field office determination was correct, the network manager shall request the field office file for the claimant and review the evidence. In the event the network manager finds that the field office determination was correct, the field office file shall be returned to the field office with a memorandum affirming the determination or with information needed for reconsideration in accordance with subsection .01 of this section. In the event that the network manager finds that the field office determination was not correct, the network manager shall make a redetermination, and, with return of the field office file, shall furnish the field office an explanation of the action taken and request the field office to inform the claimant.

1410 Form Letters Prescribed

The following form letters are prescribed:

ID-14 (12-48)
ID-14a (9-64)

1501 Provisions of the Act

1501.01 Section 4(a-2)

of the Act provides, in part, that

"There shall not be considered as a day of unemployment, with respect to any employee--

"(i)

(A) subject to the provisions of subdivision (B) hereof, any of the days in the period beginning with the day with respect to which the Board finds that he left work voluntarily, and continuing until he has been paid compensation of not less than $1500 with respect to time after the beginning of such period and before 1989 or, if any part of such compensation is paid in a calendar year after 1988, not less than an amount that is equal to 2.5 times the monthly compensation base for months in such calendar year, as computed under section 1(i) of this Act;"

"(B) if the Board finds that he left work voluntarily with good cause, the provisions of subdivision (A) shall not apply, with respect to him, to any day in a registration period if such period does not include any day which is in a period for which he could receive benefits under an unemployment compensation law other than this Act, and he so certifies. Such certification shall, in the absence of evidence to the contrary, be accepted subject to the penalty provisions of section 9(a) of this Act".

1501.02 Section 4(e)

of the Act provides that:

"For the purposes of section 4(a-2)(i) of this Act, no voluntary leaving of work shall be deemed to have been without good cause if the Board finds that such work would not have been suitable for the purposes of section 4(a-2)(ii) of this Act."

1501.03 Section 4(c)

of the Act provides that:

"No work shall be deemed suitable for the purposes of section 4(a-2)(ii) of this Act, and benefits shall not be denied under this Act to any otherwise qualified employee for refusing to accept work if--

"(i) the position offered is vacant due directly to a strike, lockout, or other labor dispute;

"(ii) the remuneration, hours, or other conditions of work offered are substantially less favorable to the employee than those prevailing for similar work in the locality, or the rate of remuneration is less than the union wage rate, if any, for similar work in the locality;

"(iii) as a condition of being employed he would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

"(iv) acceptance of the work would require him to engage in activities in violation of law or which, by reason of their being in violation of reasonable requirements of the constitution, by-law, or similar regulations of a bona fide labor organization of which he is a member, would subject him to expulsion from such labor organization; or

"(v) acceptance of the work would subject him to loss of substantial seniority rights under any collective bargaining agreement between a railway labor organization, organized in accordance with the provisions of the Railway Labor Act, and any other employer."

1501.04 Section 4(d)

of the Act provides that:

"In determining, within the limitations of section 4(c) of this Act, whether or not any work is suitable for an employee for the purposes of section 4(a-2)(ii) of this Act, the Board shall consider, in addition to such other factors as it deems relevant, (i) the current practices recognized by management and labor with respect to such work; (ii) the degree of risk involved to such employee's health, safety, and morals: (iii) his physical fitness and prior training; (iv) his experience and prior earnings; (v) his length of unemployment and prospects for securing work in his customary occupation; and (vi) the distance of the available work from his residence and from his most recent work."

1502 Disqualification Period

1502.01 Beginning of period

The disqualification period provided in section 4(a-2)(i) of the Act begins with the day with respect to which the employee left work voluntarily. That is the day on which the employee absented him or herself from work, or otherwise failed to perform the duties in connection with the work.

1502.02 Ending of period

A disqualification period continues until the employee has been paid compensation of not less than 2½ times the monthly RUIA creditable compensation base with respect to time after the beginning of the period. In this connection, compensation means creditable railroad compensation, including pay for time lost, not in excess of the monthly compensation base for months in the year in which the compensation was earned. When compensation for a particular pay period brings the total creditable compensation for time after the beginning of the disqualification period to the amount needed to qualify for RUIA benefits in that base year, the disqualification period is to be considered as ending on that day of the pay period as of which the obligation to pay such compensation has arisen, regardless of when payable. (Ascertaining the exact date of the disqualification period will not be necessary in most cases. It will not be necessary, for instance, in a case in which qualifying compensation was obviously earned some time before the first day claimed after the voluntary leaving.)

1503 Conditions Under Which Disqualification Applies

1503.01 Without good cause

An employee who is found to have left work voluntarily without good cause is disqualified for unemployment benefits under the Railroad Unemployment Insurance Act throughout the disqualification period.

1503.02 With good cause

An employee who is found to have left work voluntarily with good cause is disqualified for unemployment benefits under the Railroad Unemployment Insurance Act for any day in the disqualification period which is in a registration period which includes a day in a period for which he or she could receive benefits under any other unemployment compensation law.

1504 Determining Voluntary Leaving of Work

1504.01 General

A determination as to whether an employee left work voluntarily is required when there is information (on an application or claim for unemployment benefits or from any other source) that he or she voluntarily left work, and the employee applies for benefits for days in what would apparently be the disqualification period for the voluntary leaving. A claimant's statement that he or she left work voluntary is normally sufficient for a determination to that effect. In case of any question, the determination as to whether there was a voluntary leaving of work is to be made in accordance with principles discussed in this section.

1504.02 Work

The term "work", as used in section 4(a-2)(i), means services for hire. It refers to the particular job or position which the employee occupied at the time of his or her separation from employment, rather than to work in general. Self employment is not services for hire. Consequently, the cessation of self employment does not constitute leaving work.

1504.03 Voluntary leaving

An employee voluntarily leaves work when he or she absents himself or herself from work, under circumstances or conditions which indicate an intent or desire of the employee to terminate his or her employment relation with respect to such work.

a. Voluntary action resulting in discharge

An employee is not considered as having left work voluntarily when the employee is discharged as a result of a voluntary action on his or her part (such as theft, violation of "Rule G", etc.) unless the circumstances and conditions indicate an intent or desire of the employee to terminate the employment relation.

b. Resignation in face of threatened discharge

An employee is not considered as having left work voluntarily when he or she leaves in the face of threatened or imminent discharge unless the circumstances indicate an intent or desire of the employee to bring about a discharge and thereby terminate the employment relation.

c. Leave of absence

An employee who takes a leave of absence granted in accordance with a rule or practice recognized by the employer does not thereby leave work within the meaning of section 4(a-2)(i). (See AIM-8, "Availability for Work".) Failure to return to available work at the termination of a leave of absence does constitute leaving of work.

d. Strike

Absenting one's self from employment in concerted action with other employees as a result of a strike or other labor dispute does not constitute voluntary leaving of work.

e. Recall to railroad work

An employee is not considered as having left work voluntarily when he or she returns to a railroad job because of recall and discontinues other work in which he or she was engaged at the time of recall. An employee who does not return

to his or her railroad job when recalled is considered as having left work voluntarily.

f. Resignation while laid off

An employee who has been laid off generally does not have a job or position; that is, he or she does not have "work" within the meaning of section 4(a-2)(i). Accordingly, an employee who resigns while in furlough status is not generally considered to have left work.

g. Resignation to take severance allowance

An employee's resignation to take a severance allowance constitutes voluntary leaving of work if provisions of the agreement or plan under which the severance allowance is paid are such that the employee could have continued working for the employer in the same occupation and at the same location, with prospects for future employment not substantially diminished. Otherwise, the employee's resignation to take the severance allowance does not constitute a voluntary leaving of work.

h. Resignation in face of imminent lay off

An employee is not considered as having left work voluntarily when he or she discontinues working on one job to take another because of real and imminent prospects of being laid off the first job.

i. Non-payment of union dues

An employee is considered as having left work voluntarily when the employee is discharged, pursuant to provisions of the agreement under which he or she worked, for failure to maintain union membership by paying dues, unless the circumstances indicate that the employee did not intend to terminate the employment relation.

1505 Determination Good Cause

1505.01 General

When an employee is found to have left work voluntarily, a determination is required as to whether the leaving was with good cause. Before the determination is made, detailed information about the cause for the voluntary leaving should be obtained from both the claimant and from the firm or person whose employ he or she left. If possible, information from the claimant should be obtained by personal interview.

1505.02 Suitability of work

No voluntary leaving of work is to be considered as having been without good cause if the work would not have been suitable for the purposes of section 4 (a-2)(ii) of the Act. For discussion of the relationship between suitability and good cause, see AIM-14, "Failure to Accept or Apply for Work and Failure to Report to an Employment Office."

a. Consideration in connection with section 4(c) of the Act

An employee has good cause for leaving work which has any of the characteristics listed in section 4(c) of the Act.

b. Consideration in connection with section 4(d) of the Act

Factors listed in section 4(d) of the Act are to be considered, within the limitation of section 4(c), in determining whether the work an employee left was suitable. The length of time an employee has worked on a job is a factor to be considered. Thus, work which an employee has been performing for some time might be considered suitable even though it would not have been considered suitable at the time he or she began it. An employee should exhaust the means at his or her disposal in an attempt to obtain adjustment of a grievance, unsatisfactory working conditions, etc., prior to leaving work because of the grievance. However, if an individual accepts work, after reconsideration or after finding the work to be unsatisfactory, he or she leaves that work with good cause.

1505.03 Personal circumstances

An employee who leaves suitable work voluntarily because of personal or family circumstances may have good cause for leaving. The determination in each case depends upon the particular circumstances. (See 1505.05 below for examples of situations in which leaving is considered to be with good cause.

1505.04 Temporary circumstances

If the personal or family circumstances which cause an employee to leave work are temporary in nature, the employee does not have good cause for leaving unless it is shown that he or she had first attempted to obtain a leave of absence or the permission of his or her employer to be absent for the duration of such circumstances.

1505.05 Particular circumstances constituting good cause

Subject to the provisions of subsection 1505.04 above, an employee should be considered to have good cause for leaving work in the following circumstances. (This list is not exhaustive.)

a. Work away from home

An employee who leaves work because it requires him or her to live away from home has good cause for leaving if his or her family situation or personal circumstances are such that he or she could not reasonably be expected to continue working on the job. In the case of an employee who had worked away from home for some time there would normally have to be a showing of a change in circumstances to justify leaving.

b. Marital obligations

In general, an employee who leaves work to follow his or her spouse to a new residence leaves with good cause.

c. Sickness in family

An employee who leaves work to provide needed care for a sick member of his or her family has good cause for leaving if he or she made reasonable efforts to provide such care through other arrangements but was unsuccessful.

d. Health

An employee who leaves work because his or her health does not permit performance of the duties of the job, or because continued performance of the duties of the job would be dangerous to his or her health, leaves with good cause.

e. Leaving to take another job

An employee who leaves one job because he or she has obtained another which appears to offer reasonable assurance of continued employment leaves with good cause. An employee who leaves one job to look for another, however, does not have good cause for leaving unless it is shown that he or she could not look for another job without leaving work and there is a reasonable basis for the employee to believe that he or she could obtain a better job.

f. Lack of transportation to work

An employee who leaves work because of lack of transportation to the job leaves with good cause. Thus an employee who had been driving his or her car to work but could no longer do so would have good cause for leaving work if no other satisfactory transportation was available.

g. Resignation in return for cash settlement

An employee who resigns as a condition of receiving a cash settlement of a personal injury claim leaves work with good cause.

h. Resignation to take severance allowance

An employee who is considered to have left work voluntarily because he or she resigned to take a severance allowance should ordinarily be considered to have good cause for the leaving. If circumstances of a particular case raise a question as to whether there was good cause, the case should be submitted to the Office of Programs, Sickness and Unemployment Benefits Section (SUBS) for advice.

i. Leaving work to attend school

An employee who leaves work to attend school has good cause for leaving if it would not have been possible for him or her to attend school without leaving work and there is reasonable basis for hoping that the schooling would improve his or her economic or social status.

j. Leaving work to take annuity

An employee who leaves work for the purpose of receiving an annuity leaves with good cause. (See AIM-8, 32 and 33 with respect to eligibility of retired employees.)

1506 Determining Whether Claimant Could Receive Other Benefits

1506.01 General

When an employee is found to have left work voluntarily with good cause, a determination is required as to whether he or she could receive benefits under an unemployment compensation law other than the Railroad Unemployment Insurance Act. Generally, consider that an employee could receive benefits under another unemployment compensation law if he or she had the employment required to be qualified under the other law and there is no indication that he or she is not eligible to receive benefits under that law. Thus, a claimant who had left work voluntarily with good cause and who was qualified under a state unemployment compensation law would normally have to exhaust his or her rights under that law before railroad unemployment benefits could be paid in the disqualification period.

1506.02 Guidelines for determinations

A certification from the employee respecting rights to benefits under other unemployment compensation laws is required. Such a certification is normally obtained through completion of Form UI-45, Claimant's Statement - Voluntary Leaving of Work. Except as indicated below, an employee's certification is to be accepted as sufficient evidence for a determination as to whether he or she could receive benefits under another unemployment compensation law.

a. When an employee certifies that he or she does not have the qualifying work to receive benefits under another unemployment compensation law, the certification, in the absence of evidence to the contrary, is sufficient for a determination that he or she could not receive benefits under another law. If there is evidence to the contrary, such as a work history which indicates that the employee is likely to be qualified for benefits under another law, consider that the employee could receive benefits under that law. Such a determination should, of course, be reversed if it is later established that the employee is not, in fact, qualified.

b. When an employee certifies that he or she had the qualifying work to receive other benefits, but has exhausted rights to benefits under another law, the employee should be asked for supporting evidence. An exhaustion notice or letter from the state agency indicating that the employee had exhausted rights is sufficient evidence that he or she could not receive unemployment benefits under that law.

c. When an employee certifies that he or she had the qualifying work to receive, and has not exhausted rights to, benefits under another law, and there is no indication that benefits under that law have been denied for any other reason, consider that the employee could receive benefits under that law.

d. When an employee certifies that he or she had the qualifying work to receive and has not exhausted rights to benefits under another law, but states that benefits have been denied for some other reason, the employee should be asked for evidence as to the denial. If evidence is submitted showing that benefits have been denied, consider that the employee could not receive benefits under the other law. (Exception: If benefits were denied on the grounds that the employee did not make a timely claim but it appears that he or she could have received benefits if the employee had applied for benefits when advised to do so by an RRB office, the district office should submit the case to SUBS through the Bureau of Field Service (BFS) for advice.)

1506.03 "Waiting period" under other laws

Railroad unemployment benefits should not be paid for days in a period which an employee has claimed benefits under another unemployment compensation law and the claims has been determined to be a "waiting period" under that law. Payment of RUIA benefits would presumably cancel the waiting period credit.

1507 District Office Authority

District offices are authorized to make determinations under section 4(a-2)(i) of the Act. This includes determining whether an employee left work voluntarily, whether an employee who left work voluntarily had good cause for leaving, and

whether an employee who left work voluntarily with good cause could receive benefits under an unemployment compensation law other than the Railroad Unemployment Insurance Act. Any difficult or questionable case should be referred to the BFS for advice.

1601 Provisions of the Act

1601.01 Section 4(a-1)(i)

of the Act provides, in part, that:

"There shall not be considered as a day of unemployment or as a day of sickness with respect to any employee...

"(i) any of the seventy-five days beginning with the first day of any registration period with respect to which the Board finds that he knowingly made or aided in making or caused to be made any false or fraudulent statement or claim for the purpose of causing benefits to be paid;"

1601.02 Section 9(a)

of the Act provides, in part, that:

". . . any person . . . who shall knowingly make or aid in making or cause to be made any false or fraudulent statement or claim for the purpose of causing benefits or other payment to be made or not to be made under this Act, shall be punished by a fine or not more than $10,000 or by imprisonment not exceeding one year, or both."

1602 Provisions of the Regulations

Title 20, Part 355, Regulations under the Program Fraud Civil Remedies Act of 1986 (20 CFR 355) provides procedures for civil penalties and assessments against persons who make false or fraudulent statements or claims.

1603 Provisions of the Basic Board Orders

Basic Board Order No. 1, Section 6, Fraud, Waste, Abuse or Other Wrongdoing in Agency Programs and Operations, Part B states:

All bureau and office heads shall:

1. Refer to the OIG Office of Investigations matters that appear to involve criminal activity, fraud, waste, abuse or other wrongdoing.

2. Ensure an OIG investigation is not jeopardized by administrative action by directing employees to adhere to guidance issued by the agency's General Counsel pursuant to the request of the OIG.

3. Provide advice and assistance to the OIG as requested. If the head of an office or bureau believes that a request made by the OIG is unreasonably

burdensome, the office or bureau head may appeal to the Chairman of the Board.

4. Pursue recovery of debts incurred under the Acts administered by the Board concurrent with investigations by the OIG; however, upon notice from the OIG that the case has been submitted to the Department of Justice for criminal prosecution, recovery shall be ceased.

In essence, the Board Order directs the Office of Programs to develop the facts, issue notices of determination and establish accounts receivable before referring a case with an appearance of fraud to the OIG.

1604 Scope of Article Confined to Fraud of Claimant

This article is confined to a discussion of fraudulent claims made by a claimant, since experience has shown fraudulent claims made by an individual other than a claimant to be uncommon. A brief should be prepared to obtain advice from the Director of Policy and Systems before proceeding to develop a case for prosecution of a non-claimant under section 9(a).

1605 Elements of Fraud

To constitute fraud within the meaning of section 4(a-1)(i) or 9(a) of the Act, the following facts must be established:

a. That the claimant made or aided in making a statement or claim or caused a statement or claim to be made.

b. That the statement or claim was false.

c. That when the statement was made, the claimant knew it to be false or made it recklessly without any knowledge of its truth.

d. That the claimant made the statement or claim with the intention that it should be acted upon so as to cause benefits to be paid.

1606 Types of Fraud

For the purposes of section 9(a) and section 4(a-1)(i) of the RUIA, there are three types of overpayment cases with respect to fraud.

1. Criminal Fraud - Cases that meet the criteria for referral to the Office of Inspector General for criminal prosecution and punitive action. Also may include the filing of a civil action to obtain a judgment against the debtor. A debtor may be subject to both actions.

2. Administrative Fraud - Cases that do not meet the criteria for referral to the Office of Inspector General for criminal prosecution but the 75-day fraud disqualification period still applies.

3. "No Fraud" - Cases where evidence does not support a fraud determination but a denial or recovery of benefits is still warranted.

1607 Basis for Fraud

Fraud may be involved if there is information that:

1. a claim or statement made by a claimant in connection with a claim may be false or fraudulent, or

2. a claimant has knowingly withheld information pertinent to a claim.

For example: a claimant was or may have been employed on a substantial number of days for which unemployment or sickness benefits were paid. Employment on a single claimed day or on a few days only ordinarily does not warrant investigation for fraud, although benefits paid for the days may be determined to be erroneous.

In nearly all cases, fraud determinations can reasonably be based upon the evidence in file and the circumstances of the case (e.g. number of incorrect certifications, repeated infractions, previous inquiries, interviews, warnings, booklets or notices, degree of education, number of years of railroad service and prior job responsibilities, health, etc.)

1607.01 Sources of fraud

Information indicating fraud may be received:

- on or with applications or claims,
- from wages shown on state wage records,
- during entitlement interviews,
- from tips or complaints from interested outsiders directed to either the field office, headquarters or through the OIG Hotline,
- from employers, or
- from other sources.

1607.02 "Hot" tips

Occasionally, information is received from someone other than the claimant that an individual may be fraudulently claiming sickness or unemployment benefits. This information may be received directly at headquarters, field offices or through the Office of Inspector General's (OIG) Hotline. If offices need to report this information to the OIG, the information should be sent to the OIG Hotline e-mail address (Hotline@OIG.RRB.Gov). Receipt of such tips are to be treated as potential fraud and developed accordingly. If the OIG receives information about a claimant committing fraud, they may refer the information to the Director of Operations for further case development.

1608 Investigating for Fraud

Ordinarily, field offices and Operations are to adjudicate cases only to the extent needed to determine entitlement to benefits. If, in the course of adjudication, it is found that the claimant is not entitled to benefits and the standards of fraud apply, care is to be taken in developing supporting information on the alleged fraud.

In cases that appear to meet the OIG referral criteria, the investigation should be limited to obtaining facts (e.g. information not provided on forms or clarification of information provided.) Any investigations should not determine why answers were given or used as a means to confront an individual about the fraudulent information he or she has given. If it is necessary to contact the claimant, do so only through written questionnaires. There is to be no personal contact either face to face or by telephone. This will help to avoid alerting the parties suspected of fraud and compromising any subsequent investigations that may be initiated by the OIG.

In cases that do not meet the OIG referral criteria, an interview is to be scheduled, if appropriate. The basic information to be obtained and reported is described in Appendix 316-A. Form UI-48, Claimant's Statement Regarding Benefit Claims for Days on Which He or She Worked, is to be completed at the interview.

1609 Applying Disqualification Under Section 4(a-1)(i)

1609.01 Statement of Determination

A Statement of Determination Form UI-27 showing the basis for the determination that section 4(a-1)(i) is applicable is to be prepared in each case which it is found to be applicable. The statement should also contain information as to whether the case was referred to OIG for possible prosecution.

1609.02 Notice to claimant

When it is determined that the disqualification provided for in section 4(a-1)(i) is applicable, the claimant is to be notified in the body of the letter advising the claimant of his or her denial of benefits. If a recovery is involved, such disqualification notice is to be included in the billing document.

1609.03 Application of a stop record

A stop reason 160 is to be established on the claimant's record beginning the first day of a registration period in which it was found that the claimant fraudulently claimed benefits and ending 75 days after the beginning date of the last fraudulent claim.

Example A:

A claimant fraudulently claimed benefits for days in the following claim periods:

03/03 - 03/16 6666999 9999999
03/17 - 03/30 9999999 9999999
03/31 - 04/13 9999999 9999999
04/14 - 04/27 9999999 9666666

A 75-day disqualification period applies to each fraudulent registration period. In this example, the stop should end 75 days after the beginning of the last fraudulent registration period beginning April 14. Therefore, one stop should be established beginning March 3 and ending June 27.

Example B:

A claimant fraudulently claims benefits for days in the following two claim periods:

10/12 - 10/25 9999999 9999999
01/02 - 01/15 9999999 9999999

In this example, two stop periods need to be established because there is more than 75 days between the fraudulent registration periods. Therefore, one stop should be established beginning October 12 and ending 75 days later on December 25. The other stop should begin January 2 and end March 17.

1610 Referral to OIG for Possible Prosecution

1610.01 Actions By Headquarters- SUBS

Personnel in Operations-SUBS will make the final fraud determinations and establish the receivables, including the 75-day disqualification period. If the fraud case also meets the case referral standards for the Office of the Inspector

General (OIG), SUBS will refer the case to them for criminal investigation within one workday after establishing the account receivable and verifying it processed on PAR correctly.

1610.02 Referral Criteria

Refer the case to the OIG for their investigation if it meets any of the following criteria:

Debt Amount

- The debt is equal to or greater than $7,500.00, excluding debt due to the 75-day disqualification or;
- The debt is less than $7,500.00 and there is evidence that the claimant:

  - previously filed fraudulent claims and;

  - - has a debt established on his/her record but no notification or bill was released.

Fraudulent Representation

- Regardless of whether there is an overpayment, SUBS will refer the case if the individual fraudulently represented that he or she is a railroad employee entitled to benefits.

Forged Signature

- The individual forged the signature of a person authorized under Part 335 of the Railroad Retirement Board's regulations to execute a statement of sickness or altered the statements contents.

1610.03 Notifying the Debt Recovery Division (DRD)

SUBS will also notify BFO - Debt Recovery Division (DRD) of the referral to OIG. DRD will modify PAR to suspend further collection activities and update the PAR AREF table. See 1610.05.1 for codes.

1610.04 Manner of referral

A memorandum summarizing the facts shall be prepared for each case to be referred to the OIG and shall be sent together with the following.

For SI cases include:

- the source documents
- the UI-27

- the original sickness claims (SI-3's) stored at headquarters or sent in by Field Service. If the SI-3's are at the Federal Records Center (FRC), SUBS should request the Division of Real Property Management to retrieve them. SUBS should send an e-mail to the current file assistant with the Forms "G-50" and "Request for Forms from the FRC" completed and attached. Copy (CC) the assistant's supervisor and the OIG on the e-mail. The request should include instructions for the SI-3's to be delivered directly to the OIG. The OIG will follow up and trace for these claims if needed.

For UI cases include:

- the source documents
- the UI-27
- the UI-35 and UI-35c (interview)
- the UI-1
- the original unemployment claims (UI-3's) stored at headquarters or sent in by Field Service. If the UI-3's are at the Federal Records Center (FRC), SUBS should request the Division of Real Property Management to retrieve them. SUBS should send an e-mail to the current file assistant with the Forms "G-50" and "Request for Forms from the FRC" completed and attached. Copy (CC) the assistant's supervisor and the OIG on the e-mail. The request should include instructions for the UI-3's to be delivered directly to the OIG. The OIG will follow up and trace for these claims if needed.

1610.05 OIG action

Upon receiving a referral from Operations, the OIG will examine the case and through their investigations determine if the case warrants civil or criminal prosecution. If, after the OIG's investigation, it is found that the case warrants prosecution, the case will be referred by the OIG to the appropriate United States Attorney. The OIG releases Referral Memos in cases that are referred to the United States Attorney. A copy of those memos can be found on imaging.

If the U.S. Attorney prosecutes successfully obtaining an order or agreement of restitution, the OIG will refer the case to DRD to reactivate the accounts receivable and follow-up on the restitution in keeping with the order or agreement. In such cases, no recovery letter is to be released to the claimant; rather, funds are applied to the debt as remitted directly to DRD by the claimant or through the Department of Justice.

If the U.S. Attorney declines the case, the OIG will return the case to DRD with a closing memorandum to reactivate the debt and follow-up on repayment.

1610.05.1 PAR Codes

The following codes will be shown on the PAR AREF table indicating the cases' OIG status

- "OIG" indicates the case has been referred to the OIG
- "OIGX" indicates prosecution has been declined
- "OIGD" indicates the case has been referred to the Department of Justice (DOJ).

1610.06 Action if repayment is offered

If, after the case has been referred to the OIG, the claimant offers to make repayment or has any inquiries regarding the benefits he/she received as a result of his/her fraudulent claim or statement, those inquiries should be forwarded to the OIG.

District Office (DO) Actions

Written Inquiries – DO personnel are to fax written inquiries to the OIG at 312/751-4342. Include the claimant's social security number and the statement "Open Investigation" on the fax cover sheet. Forward the original to SUBS via Form G-26. SUBS will forward the documents to OPNS-UPSD-Tax, Clerical & Imaging Section (TCIS) to be imaged. Notate on the original that it was faxed to the OIG, initial and date. A copy of the correspondence should be retained in the DO for one year.

E-mail Inquiries- FO personnel should forward the e-mail to **Hotline@oig.rrb.gov.** The subject line should include "Open Investigation" and the social security number. Make a copy of the email and forward it to SUBS via Form G-26. SUBS will forward the documents to TCIS to be imaged. Notate on the copy that the original was forwarded to the OIG, initial and date. A copy of the correspondence should be retained in the DO for one year.

Telephone or In Office Inquiries- If a claimant calls or comes into the office to discuss their case, the DO personnel should advise the claimant that **"We do not have specific information on your case and a written request will have to be sent to headquarters for a response."** Request the claimant to prepare a written statement that will be forwarded to headquarters. Do not mention that the request will be sent to the OIG. Fax the statement to the OIG at 312/751-4342. Include the claimant's SSN and the statement "Open Investigation" on the fax cover sheet. Forward the original to SUBS, via Form G-26. SUBS will forward the statement to TCIS to be imaged. Notate on the original that it was faxed to

the OIG, initial and date. A copy of the correspondence should be retained in the DO for one year.

Problems or Special Needs Cases- If a claimant insists on speaking to someone or this case needs special attention, have the DO Manager call or e-mail the Chief of SUBS (X4708). He will contact the OIG for the DO and obtain the requested information.

UNDER NO CIRCUMSTANCES SHOULD FO PERSONNEL FORWARD ANY CLAIMANT CALLS TO THE OIG OR GIVE OUT THE OIG TELEPHONE NUMBER.

Note: You may take any non-overpayment related action on these cases (i.e. change of address, direct deposit, etc.). However, after performing the action, send an e-mail to Hotline@oig.rrb.gov. Notate the action taken and date. The subject line should include "Open Investigation" and the SSN.

Headquarters Actions

Written Inquiries- Headquarter employees are to fax written inquiries to the OIG at 312/751-4342. Include the claimant's SSN and the statement "Open Investigation" on the fax cover sheet. The original should be sent to TCIS, so that the statement can be imaged. Notate on the original that it was faxed to the OIG, initial and date.

E-mail Inquiries- Headquarter employees should forward the email to **Hotline@oig.rrb.gov.** The subject line should include "Open Investigation" and the SSN. Make a copy of the email and forward it to TCIS via a G-156a to be imaged. Notate on the original that it was faxed to the OIG, initial and date.

Phone calls- If a claimant calls to discuss their case, personnel should advise the claimant that "**We can not provide the information over the telephone and a written request is required."** Have the claimant send the request to:

U.S. Railroad Retirement Board

844 N. Rush St

Chicago, Il. 60611

Attention: Sickness and Unemployment Benefits Section (SUBS)

Do not mention that the request will be sent to the OIG upon receipt. Fax the statement to the OIG at 312/751-4342. Include the claimant's SSN and the statement "Open Investigation" on the fax cover sheet. The original should be sent to TCIS, via a G-156a, so that the statement can be imaged. Notate on the original that it was faxed to the OIG, initial and date.

Problems or Special Needs Cases- If a claimant insists on speaking to someone or this case needs special attention, refer it to your supervisor (Chief of SUBS). He will contact the OIG and obtain the requested information.

UNDER NO CIRCUMSTANCES SHOULD HEADQUARTER PERSONNEL FORWARD ANY CLAIMANT CALLS TO THE OIG OR GIVE OUT THE OIG TELEPHONE NUMBER.

Note: You may take any non-overpayment related action on these cases (i.e. change of address, direct deposit, etc.). However, after performing the action, send an e-mail to Hotline@oig.rrb.gov. Notate the action taken and date. The subject line should include "Open Investigation" and the SSN.

1611 Release of Information

1611.01 U.S. Attorney requesting RRB records

Original RRB records required by the United States Attorney shall be made available upon request. This means that, in any such case, the RRB consents to the release of information to the United States Attorney. Also, the RRB employee may, if requested, appear as a witness for the United States Government taking with him or her original documents and necessary data and certified copies.

1611.03 Subpoena requesting RRB records

Any subpoena served on an employee in connection with such a fraud case should be accepted. Upon request, such copies of documents should be furnished for the record, but the original documents should not be placed in the record.

If an RRB employee is to appear as a witness, and original documents are to be displayed, the RRB employee shall explain that the original documents may not be placed in the record. RRB employees may testify fully from the files in their possession. Records and testimony must relate solely to the claimant whose case is being prosecuted.

1612 Authority to Make Fraud Determinations

Both the Bureau of Field Service (BFS) and Operations are authorized to make final determinations as to fraud in unemployment and sickness benefit cases. However, personnel in Operations are responsible for establishing the receivables and/or denial of benefits including the 75-day fraud disqualification period.

1613 Publicity on Fraud Cases

Notice that a claimant has been indicted for or convicted of making a fraudulent claim for benefits should tend to discourage others from making fraudulent claims. OIG will arrange to publicize any indictments or convictions for fraud.

1614 Reconsideration and Appeal of Fraud Determinations

If the claimant shows lack of fraudulent intent in reconsideration or appeal, the fraud determination can be reversed. This is not to say however, that the recovery for the erroneously claimed days will also be reversed. That determination must be made separately from the fraud reversal determination.

If there is indication that a fraud case has been submitted to the United States Attorney for prosecution, all reconsideration and administrative appeal considerations are to be suspended. If the U.S. Attorney declines the case for prosecution reconsideration or appeals determinations may resume.

1701 Provisions of the Act

1701.01 The Act

Section 4(a-1(ii) of the Act reads, in part, as follows:

"There shall not be considered as a day of unemployment or as a day of sickness with respect to any employee...(ii) any day in any period with respect to which the Board finds that he is receiving or will have received annuity payments under the Railroad Retirement Act of 1974 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 other than this Act, or any other social insurance payments under any law: PROVIDED, that if an employee receives or is held entitled to receive any such payments, other than unemployment, maternity, or sickness payments with respect to any period which include days of unemployment or sickness in a registration period, after benefits under this Act for such registration period will have been paid, the amount by which such benefits under the Act will have been increased by including such days as days of unemployment or as days of sickness shall be recoverable by the Board: PROVIDED further, that, if that part of any such payment or payments, other than unemployment, maternity, or sickness payments, which is proportionable to such days of unemployment or days of sickness is less in amount than the benefits under this Act which, but for this paragraph, would be payable and not recoverable with respect to such days of unemployment or days of sickness, the preceding provisions of this paragraph shall not apply but such benefits under this Act for such days of unemployment or days of sickness shall be diminished or recoverable in the amount of such part of such other payment or payments;"

1702 Analysis of the Proviso

1702.01 Introduction

Section 4(a-1)(ii) is a disqualification provision which applies when the RRB finds that an employee is receiving, or will have received, a social insurance payment for a specific period under any law other than the RUIA. In some cases, this section prevents days from being considered as days of unemployment or sickness; in other cases, the section provides that the benefits under the RUIA are diminished. In addition, when employees are held entitled to receive social insurance payments after RUIA benefits have been paid, the benefits, though properly paid, may be recoverable under certain circumstances.

1702.02 Finding that an employee is receiving, or will have received, social insurance payments

To apply the disqualification in Section 4(a-1)(ii), it must be found that an employee is receiving or will have received one or more social insurance payments. An employee is receiving social insurance payments or will have received such payments, if, he or she is held entitled to receive them in accordance with the applicable provision of law. In any case where an employee is held not entitled to receive social insurance payments, or is held to have received them erroneously, it cannot be considered that he or she is receiving or will have received such payments unless recovery of such payments is waived.

1702.03 Social insurance payments

a. Payments within the scope of Section 4(a-1)(ii)

The social insurance payments within the scope of Section 4(a-1)(ii) are:

1. Annuity payments under the Railroad Retirement Act of 1974. (Social Insurance Payment)

2. Insurance benefits under Title II of the Social Security Act. (Social Insurance Payment)

3. Unemployment, maternity, or sickness compensation under any law other than this Act. (Unemployment Insurance Payment)

4. Any other social-insurance payments under any law.

For convenience in this article, the payments specified in items 1, 2, and 4 of paragraph a above are referred to as "social Insurance payments"; and the payments specified in item 3 are referred to as "unemployment insurance payments."

Appendix C lists payments which have been held either to be or not to be "social insurance payments."

b. Exclusion of payments not made for specific periods

The disqualifying provision is applicable when payments are made with respect to specific periods. Accordingly when it is found that a payment is not made "with respect to" any period, the disqualifying condition is not applicable. A payment equal to the commuted value of an annuity, or a worker's compensation payment for partial disability, for disfigurement, and the like, where the intervals and periods serve merely as a measure of the payments which are to be made, is not made with respect to a specific period.

1702.04 Unemployment insurance payments distinguished from other social insurance payments

The application of Section 4(a-1)(ii) to "unemployment insurance payments," is distinguished from its application to other social insurance payments. The difference is that the provisions for diminishing or recovering benefits do not apply in connection with "unemployment insurance payments."

1702.05 Application in connection with unemployment insurance payments

A day in any period with respect to which an employee is receiving or will have received unemployment insurance payments under any other law, (including unemployment compensation for federal employees and unemployment compensation for ex-servicemen) cannot be considered as a day of unemployment or sickness, irrespective of the amount of the payment. The recovery of any benefits paid to an employee receiving other unemployment insurance payments depends upon a finding that the payment of RUIA benefits was erroneous. (See Section 1703).

1702.06 Application in connection with other social insurance payments

When it is found that an employee is receiving or will have received social insurance payments with respect to any period including days which would, except for the provision of Section 4(a-1)(ii), be days of unemployment or sickness, the application of this section requires the following:

a. A comparison of the amount of RUIA benefits and the amount of social insurance payments. See Subsection 1702.07.

b. A determination of the amount of benefits payable on the basis of the comparison. See Subsection 1702.08.

c. Action to recover any benefits paid in excess of the amount found to be payable. See Subsection 1702.09.

d. A determination of the days to be considered days of unemployment or sickness. See Subsection 1702.10.

1702.07 Comparison of benefits and other social insurance payments

a. Social insurance payments apportionable

1. Days to which such payments are apportionable A social insurance payment with respect to any period is apportionable in equal amounts to each of the days in the period. Where social insurance payments are payable on the basis of a thirty-day month, no amount of such a payment is apportionable to the thirty-first day of a thirty-one day month.

Note: (3/30 of the amount is apportionable to February 28, except in a leap year, and 2/30 of the monthly amount is apportionable to February 29 in a leap year.)

2. Amount apportionable To find the amount of a social insurance payment apportionable to days in a registration period, first determine the days payable without regard to Section 4(a-1)(ii). Next, determine the number of days to which the social insurance payment is apportionable. Then determine the amount of social insurance payments apportionable to such days. This amount may be computed from the following formula:

   A – BxC = amount of social insurance apportionable to registration period.

   A = the number of days of unemployment or sickness in the regristration period to which the social insurance payment is apportionable

   B = the number of days in the period for which social insurance payment is payable. (Usually a 30-day month)

   C = the amount of social insurance payment (Usually a monthly payment)

   For example: Claimant John Doe, with a daily benefit rate of $33.00 and monthly OASI benefit of $550.00 beginning May 1, claimed sickness benefits for a registration period, April 29 - May 12. Hence he had 12 days of sickness in this period to which social insurance was apportionable. Here's how to apply the formula in this case:

   A is 12 (number of days of sickness in the registration period to which OASI is apportionable)

   B is 30 (days in period for which OASI payable)

   C is $550.00 (monthly OASI payment)

   Thus: $\frac{12}{30} \times \$550.00 = \$220.00$

b. Benefits

1. Days with respect to which benefits are payable Section 2(a) of the RUIA provides that benefits are payable for each day of unemployment in excess of four and each day of sickness in excess of four in a registration period. There is no indication that any specific days of the registration period are to be covered by unemployment insurance benefits or that any specific days are not to be covered, and the individual must have been unemployed or sick for more than four days in order to be entitled to any benefits. Thus, each and every day is part of the basis for the individual's

right to benefits, and the benefits are, in fact, payable with respect to the entire registration period. The daily benefit rate and the number of days of unemployment or sickness in excess of four serve merely as a measure of the amount of benefits which are to be payable for the registration period.

2. Days to which benefits are apportionable Benefits are payable with respect to all of the days of unemployment or sickness in a registration period. Therefore the benefits are apportionable to each day in a registration period equally.

3. Benefits apportionable In most cases, the entire amount of RUIA benefits otherwise payable for a registration period will equal the amount considered apportionable. The exceptions occur when there are some days in a period for which RUIA benefits are payable but social insurance payments are not payable.

   To find the RUIA benefits apportionable, first determine the days payable without regard to Section 4(a-1)(ii). Next determine the amount of RUIA benefits apportionable to this number of days. This amount may be computed from the following formula:

   D

   _

   E X F = amount of benefits apportionable to days which social insurance is payable.

   D = the number of days of unemployment or sickness in the registration period for which the social insurance payments are payable. (This number includes the 31st day of a 31-day month for which a social insurance payment is payable on the basis of a 30-day month. Even though none of the social insurance payment is apportionable to such day, the day is included in the period (the month) for which the social insurance payment is payable.)

   E = total number of days of RUIA benefits in registration period.

   F = total benefit amount for registration period.

   In Mr. John Doe's case above, here's how to apply the formula if he had a total of 14 days of sickness including April 29 and 30:

   D is 12 (days of sickness in the registration period and also within the period for which social insurance payments are payable)

   E is 14 (total number of days of sickness in registration period)

F is $330.00 (benefits for registration period - 10 compensable days at $33.00 a day)

Thus: $\frac{12}{14} \times \$330.00 = \$282.86$

Therefore, $282.86 is the amount of sickness benefits apportionable to days included in the period for which social insurance payments are payable. This is the amount used for the "comparison". The benefits apportionable to the first two days of the registration period remain payable to Mr. Doe.

1702.08 Benefits payable for registration period

The determination with respect to benefits payable shall be as follows:

a. Social insurance apportionable to all days

Where social insurance payments are apportionable to all days in a registration period benefits are payable only if the benefits apportionable exceed the social insurance payments apportionable. The amount of benefits payable is the difference between the benefits apportionable and the social insurance payments apportionable.

b. Social insurance apportionable to some, but not all days

Where social insurance payments are apportionable to some, but not all, days in a registration period, benefits are payable under any of the following conditions:

1. The social insurance payments apportionable are less than the benefits apportionable. The amount of benefits payable is equal to the difference between them, plus the benefits apportionable to days to which social insurance payments are not apportionable.

   In the illustration the amount of sickness benefits apportionable ($282.86) exceeded the amount of OASI benefits apportionable ($220.00) by $62.86. Mr. Doe would therefore be paid this amount plus the $47.14 apportionable to April 29 and 30, or $110.00 for the registration period April 29 – May 12.

2. The social insurance payments apportionable are equal to or greater than the benefits apportionable and benefits have been paid. The amount payable is the amount of benefits apportionable to days to which the social insurance payments are not apportionable.

3. The social insurance payments apportionable are equal to, or greater than, the benefits apportionable; benefits have not been paid for the period and the number of days of unemployment or sickness to which social insurance payments are not apportionable is more than four. The amount of benefits payable is computed on the basis that no day to which social insurance payments are apportionable is a day of unemployment or sickness.

c. Benefits previously exhausted

A claim for sickness benefits previously classified as the exhausting claim and containing fewer than 10 compensable days, may have 10 compensable days in a case where the annuity exceeded the benefits for the first registration period in the benefit year but was less than the benefits for subsequent periods. Additional benefits may be allowed on a claim for unemployment or sickness benefits previously considered to have exhausted benefits at the base year wage limit, since the reduced amount of benefits is used in determining whether benefits have been paid to the extent of base year wages.

1702.09 Recovery under Section 4(a-1)(ii)

Section 4(a-1)(ii) specifically provides for recovery of benefits. Any amount by which benefits paid exceed benefits payable is recoverable; however, amounts of $1.00 or less should be considered not recoverable.

1702.10 Days of unemployment or sickness

Days which would be days of unemployment or sickness, but for Section 4(a-1)(ii), are considered as follows:

a. Benefits recoverable in part

When benefits paid for a registration period are recoverable in part the days with respect to which benefits were paid remain days of unemployment or sickness.

b. Benefits wholly recoverable

When the entire amount of benefits paid for a registration period is recoverable no day in the registration period remains a day of unemployment or sickness, except as described in paragraph d.

c. Benefits not previously paid

When Section 4(a-1)(ii) is applicable in connection with the initial determination of a claim, no days to which social insurance payments

apportionable equal or exceed benefits apportionable can be considered days of unemployment or sickness except as described in paragraph d.

d. First valid registration period (waiting period)

The receipt of social insurance payments does not prevent a registration period from being considered as a first valid registration period if the apportionable amount of the social insurance payment is less than the benefits which might otherwise be payable. However, regardless of the amount of social insurance payments, their receipt does not cancel a previously established first valid registration period.

1703 Unemployment Insurance Payments

1703.01 Obtaining information

If the Sickness and Unemployment Benefits Section (SUBS) has information that a claimant has claimed unemployment, maternity or sickness benefits under a State or Federal law or through a State or Federal agency, for days for which he or she has claimed benefits under the Railroad Unemployment Insurance Act, Form Letter ID-17c is to be sent to the appropriate agency.

1703.02 Notifying claimant of initial determination

Notification is to be sent to a claimant regarding an initial determination that days claimed cannot be considered as days of unemployment or sickness the claimant is receiving or has received unemployment insurance payments under another law for the same days.

1703.03 Determination of erroneous payments

If it is found that a claimant has received unemployment or sickness benefits under the RUIA and under another law for the same days, a determination of possible erroneous RUIA payments will be required.

a. No payment may be considered erroneous unless it is determined that there was an "obvious mistake of fact," "obvious mistake of law," "insufficient evidence" or "fault of claimant." (See AIM-21).

b. If Section 4(a-1)(ii) is found applicable, payments under the RUIA are erroneous.

c. If Section 4(a-1)(ii) is not applicable, and if the state agency will attempt recovery of the payments which it made, no erroneous payment with respect to a claimant's receipt of duplicate payments should be set up. The division of program operations should clarify which agency will initiate recovery action.

d. Benefits for a day are not erroneous on the grounds that the claim for that day was certified for payment subsequent to the date on which the state agency's claim for that day was certified. Generally, either all benefits for a registration period will be determined to be erroneous or none of them will be.

1704 Annuities under the Railroad Retirement Act

1704.01 Action upon receipt of notice of annuity awarded

a. The RUIA Daily System usually receives notice of annuity awards mechanically through the Retirement Adjudication System Initial (RASI). When an employee files an application for an annuity, the RASI system performs a "pre-clearance" check with the RUIA claims system. If RUIA benefits were not paid for a day within one year of the annuity application filing date, the pre-clearance check determines that no further clearance is required. If RUIA benefits were paid for days within one year of the annuity filing date, no pre-clearance reply is generated. The lack of reply causes the RASI system to clear later with annuity beginning date and rate data that generate a RUIA reply on RASI specifying the amount of benefits recoverable. Amounts recoverable reported through the RASI system are usually transferred to RUIA within 90 days. The clearance process also notifies the Retirement Benefits Division (RBD) of cases flagged with a "930" stop for garnishment.

b. RBD sends SUBS an e-mail notice of the certification or recertification of an annuity under the Railroad Retirement Act. It will show the claimant's name, social security number, beginning date and amount of the annuity, and any subsequent changes made in the amount or beginning date. SUBS will reply to RBD's e-mail reporting any amount recoverable and any erroneous payment outstanding. RBD will withhold the amount shown on the e-mail and will usually transfer the requested amount to SUBS within 90 days. SUBS will take any necessary actions to the RUIA record.

1704.02 Request for information from the annuity file

If the claimant is receiving an annuity under the Railroad Retirement Act and notice of the annuity has not been received from RBD, the payment of benefits should be withheld until the necessary information is received.

1704.03 Spouse's annuities

If a claimant is receiving a spouse's annuity under the Railroad Retirement Act, obtain the annuity information and update the claimant's record.

1704.04 Recovering RUIA Overpayments from Annuities

Prior to paying annuities, any RUIA claims that were paid within the rate period and/or any outstanding overpayments on record are to be withheld from any accrual due the claimant.

The RASI system mechanically obtains all current claim information from the RUIA daily system. RASI obtains the RUIA overpayment information from the EDM UI-87 indicator. This indicator is updated nightly from PARS with either the code “N” or “Y”. “N” represents no RUIA debt and “Y” represents an open RUIA debt.

When RASI matches against the code “Y”, the case will be referred out as a compute only for manual handling by the RRA examiner. The lead examiner will review the case and look to PARS and debt checker to determine the amount of the outstanding RUIA debt. If applicable, the case will be forwarded to an examiner for handling and the withholding of any overpayment from the RASI accrual.

1705 Insurance Benefits under Title II of the Social Security Act

1705.01 Provisions of Section 4(a-1)(ii)

Section 4(a-1)(ii) provides for the reduction or recovery of RUIA benefits paid for any day for which a claimant also receives payments under Title II of the Social Security Act. Payments made under Title II of the Social Security Act include old age insurance benefits (OAIB), survivor insurance benefits and disability insurance benefits (DIB).

1705.02 Clearance with Social Security Administration

Below are the steps through which the RRB routinely obtains information about annuity awards to individuals who have railroad earnings.

a. When an applicant for OAIB or DIB has railroad service, the Social Security Administration asks the Compensation and Employee Services Center (CESC) in Assessment and Training for a report of railroad compensation.

b. If the individual had qualifying base year wages for the current or preceding benefit year, CESC notifies SUBS.

c. If the employee has applied for UI or SI in the current or preceding benefit year, a "reason 99" stop is put on record, a card Form RR-12, Report to RRB of Award or Disallowance is sent to the Social Security Administration, and Form Letter ID-17n is sent to the employee.

d. If there is a clearance record but the employee has not applied for UI or SI in the current or preceding benefit year, a "reason 99" stop is put on the record which will send an RR-12 and ID-17n, in case the claimant does apply.

e. If there is no record for the employee, a pseudo clearance record is established containing a "reason 99" stop which will send an RR-12 and ID-17n, if the employee applies.

f. Form RR-12 will be completed by the Social Security Administration and returned to SUBS. Entries on the form will show:

- the monthly amount and effective date of any OAIB or DIB awarded.
- that the claim was disallowed, or
- that no claim was filed (In this case, the original request for railroad wages was made by the Social Security Administration for information purposes only and not because of a claim.)

1705.03 Special request to Social Security Administration

If incomplete information about a claimant's OAIB or DIB is received and no RR-12 was sent to the Social Security Administration, Form Letter ID-17j is to be sent to the Social Security Administration. Form Letter ID-17n is to be sent to notify the claimant that benefits may be recoverable. If it is necessary to clarify or reconcile the information, a special letter may be sent to the Social Security Administration.

1705.04 Withholding benefits

Benefits payable will be withheld if the award of an OAIB or DIB is established. If the information indicates that a claimant has only applied for social security benefits, RUIA benefits payable will be paid. Likewise, benefits payable will not be withheld pending receipt of a reply to Form ID-17j unless the information indicates the claimant has been awarded an OAIB or DIB. If an OAIB has been suspended because of employment and the claimant reports no work during a month, assume the claimant will receive OAIB for the month provided the Social Security Administration receives notice that he or she did not work. Benefits for days in the month shall be reduced or withheld accordingly.

1705.05 Determination

If a claimant's OAIB or DIB monthly annuity amount for days claimed as days of unemployment or sickness is shown on a Form RR-12 or Form Letter ID-17j completed by the Social Security Administration or on an award letter, the information is considered complete and correct and claims for unemployment or sickness benefits should be processed. If a claimant has submitted an original

Social Security Administration award letter, make a photocopy of the award letter and return the original to the claimant.

1705.06 Recovery from social security accruals

If an OAIB or DIB was recently awarded or will soon be awarded covering a period for which RUIA benefits have been paid, prompt action is necessary so that recovery can be made before the claimant spends the proceeds of his or her first check.

a. Determine the amount recoverable under Section 4(a-1)(ii).

b. Telephone or send an E-mail message notifying the district office of the amount due (unless the amount is so small that special action is not justified) and request that the office contact the claimant as soon as possible. Send notice of the determination to the claimant.

1705.07 Withdrawal of SSA application

If the Social Security Administration approves withdrawal of an application, the claimant is not considered to be "entitled" to receive benefits under the Social Security Act within the meaning of Section 4(a-1)(ii) and the RRB will not be entitled to recover benefits paid to the claimant during the period covered by the withdrawn application. (L-63-229)

1705.08 Effect of employment on Social Security Administration award

If a claimant has been awarded social security benefits but is presently employed, social security benefits may be reduced. The Social Security Administration will determine if, based upon the claimant's age, monthly amount earned and yearly earnings to date, the amount of the benefits will be affected.

1706 Workmen's Compensation

1706.01 Verification

When an employee is injured at work and a person or company may be liable for damages, verify the following:

a. If the employer which the employee was working for when injured is covered by a workmen's compensation law which provides payment from a state or federal agency, send a Form Letter ID-17e and Form SI-5 to the appropriate agency. Form Letter ID-17h should be sent to the employee.

b. Form Letter ID-17e and Form SI-5 is to be sent to the employer if the employer is covered by a workmen's compensation law which provides for payment of workmen's compensation by the employer. Form Letter ID-17e is sent to the official designated to receive Form Letters ID-30b and

copies are to be sent to any persons who would receive copies of Form Letters ID-30b. Form Letter ID-17h is to be sent to the employee.

c. Otherwise, Form Letter ID-30b and Form Letter SI-5 are sent to the employer as provided in AIM-30-II.

1706.02 Payment or withholding of benefits pending receipt of information

a. Withholding of benefits pending reply to ID-17h

When Form Letter ID-17h is sent, benefits payable are to be withheld until a reply is received or information permitting calculation of the amount payable is received.

b. Action upon reply to ID-17h

If the claimant wants to receive benefits while awaiting a reply, benefits may be approved for payment without reduction until information about workmen's compensation payments is received. Any necessary adjustments will be made when information about workmen's compensation payments is received.

c. Action when Form Letter ID-30b has been sent

1. Reply received before benefits paid If before benefits are paid, a reply to Form Letter ID-30b states the claimant is receiving, or is entitled to receive, workmen's compensation payments for total disability, accept the statement as correct and process the claims as provided elsewhere in this article.

2. Reply received after benefits paid If after benefits have been paid, the reply to Form Letter ID-30b states that the claimant has been paid workmen's compensation (regardless whether the payment was for total disability), verify that the payment is workmen's compensation and take action according to whether the workmen's compensation was for total disability. If it is found that the payment was in fact not workmen's compensation, undertake recovery under section 12(o) of the Act as provided in AIM-30-II.

1706.03 Unemployment benefits and workmen's compensation

If a claimant entitled to workmen's compensation for total disability claims unemployment benefits and is able to work under the RUIA, take action as described in .02 above. NOTE: Send a special letter instead of Form Letter ID-17h.

1707 Other Social Insurance Payments

1707.01 Payments within the scope of section 4(a-1)(ii)

Where the claimant is receiving or will receive any payment which is within the scope of Section 4(a)(ii) of the Act, other than those discussed in preceding sections, take action as described in Section 1704. Make appropriate changes in the prescribed letter of inquiry or notice.

1707.02 Payments not within the scope of Section 4(a-1)(ii)

In any case where a claimant is receiving or will receive a payment not within the scope of Section 4(a-1)(ii) benefits will be paid, provided the other requirements of the law are met.

1707.03 Payments with respect to which the applicability of Section 4(a-1)(ii) has not been determined

Upon receipt of information that a claimant is receiving or will receive, payments similar to those within the scope of Section 4(a-1)(ii) but for which the applicability of Section 4(a-1)(ii) has not been determined, a brief of the case is to be sent to Policy and Systems and payment of benefits is to be withheld until an opinion is received.

1708 Form UI-60a

1708.01 Use of Form UI-60a

This form is used to manually determine the amount of benefits recoverable or payable in accordance with Section 4(a-1)(ii).

1708.02 Preparation of Form UI-60a

This subsection covers preparation of Form UI-60a in detail.

a. Enter the claimant's name and social security number, complete items 1-6 as appropriate.

b. The following items should be completed as appropriate.

    1. Period Beginning Date Show the beginning date of each registration period which includes any day(s) included in a period for which the annuity payment is payable.

    2. D.B.R. (Daily Benefit Rate) Show the claimant's daily benefit rate for that year. If the daily benefit rate has been re-determined, show the last redetermination.

3. Days From Beginning Date For each registration period, show the number of days of unemployment or sickness for which other payments are payable.

4. Apportionable Benefits If all days of unemployment or sickness in the registration period are included in any period(s) for which the other payments are payable, show the amount of RUIA benefits determined to be payable for each registration period were Section 4(a-1)(ii) not applicable. If any day(s) in a registration period are not included in a period for which the other payments are payable, show the amount of benefits apportionable to the days of unemployment or sickness included in a period for which other payments are payable. The amount of benefits apportionable are determined as provided in Section 1702.07.

5. Apportionable Other Payments Show the amount of the other payments apportionable to days of unemployment or sickness in each registration period as determined in accordance with Section 1702.07.

6. Benefits Payable Show the amount of benefits which, after applying Section 4(a-1)(ii), is payable for all days of unemployment or sickness in the registration period as determined in Section 1702.08.

7. Benefits Paid Show the amount of benefits, if any, paid for days of unemployment or sickness in the registration period.

8. Recoverable Enter the remainder, if any, left when the amount of benefits payable is subtracted from the amount of benefits paid.

9. Recoverable under Section 4(a-1)(ii) Under "Unemployment," show the total amount of unemployment benefits recoverable under Section 4(a-1)(ii). Under "Sickness," show the total amount of sickness benefits recoverable under Section 4(a-1)(ii). If amounts are shown in both columns show the sum under "Total."

   Note: If this amount includes an amount recoverable because the claimant also received OASI benefits, mark the amounts on the UI-60a with an asterisk and notate the form "includes OASI."

10. Erroneous Payments Under the appropriate heading, show the amount of any erroneous payment which is recoverable. If there is an amount recoverable under Section 12(o), and the liable party did not have notice of the RRB's right to reimbursement, such amount should be shown in the "Sickness" column. If there is no payment recoverable, except under Section 4(a-1)(ii), enter the word "none."

11. Gross Amount Recoverable Show the sum of the amounts shown under the same heading.

12. Previously Requested If an amount was previously reported as recoverable from the claimant's annuity, show the amount on previous Form UI-60a which has not been canceled.

13. Additional Amount to be recovered In this item, under the appropriate heading, enter the difference obtained by subtracting the amount, if any, shown in the previously requested from the amount shown in the gross amount recoverable. This difference may be "none" or minus quantity.

14. Number of Claims Recovered Enter the number of claims recovered for each type of benefits.

15. Prepared by The examiner is to initial and date the form and create a computer record of the amount recoverable.

1708.03 More than one other payment

If the claimant is receiving more than one payment under Section 4(a-1)(ii), apportionment of each payment should be shown on Form UI-60a. If one of the payments is an annuity under the Railroad Retirement Act, recovery of the total amount recoverable under Section 4(a-1)(ii) may be effected by deduction from the annuity.

1708.04 Entries for concurrent payments

If the claimant is entitled to receive benefits in a diminished amount, entries should be made on Form UI-60a for each claim as received, except that entries are not to be made in the columns headed "Benefits Paid," and "Recoverable." If Form UI-60a has been prepared for previous claims, entries for subsequent claims may be made on the same Form UI-60a. Draw a line to separate the entries made upon initial preparation from those for subsequent claims.

1709 Concurrent payments

1709.01 Annuitants

If the claimant is awarded an annuity under the Railroad Retirement Act, benefits payable under Section 4(a-1)(ii) for claims received after making the report of the amount recoverable will ordinarily be paid regardless of whether the transfer of funds has been received. However, benefits should not be paid in a case where an erroneous payment is recoverable until recovery is completed.

1709.02 Recipients of other social insurance payments

If the claimant is entitled to social insurance payments, other than an annuity under the Railroad Retirement Act, any amount recoverable under Section 4(a-1)(ii) because of such payments should be recovered before any additional benefits are paid. In any such case, recovery from the claimant may be undertaken.

1709.03 Recipient of sum or damages

If the claimant is entitled to diminished benefits under Section 4(a-1)(ii) and has received damages against which benefits are to be offset under Section 12(o), the amount to be offset is the amount of the benefits as diminished under Section 4(a-1)(ii).

1709.04 Payments less than $3.00 per claim

If benefits diminished under Section 4(a-1)(ii) amount to less than $3.00 per claim (disregarding periods including the 31st of a month,) payment may, with the consent of the claimant, be deferred until all the benefits which the claimant can get in the benefit year may be paid in a single payment. When this is done the case is to be pended so that appropriate action will be taken timely.

1710 Notices of Determination

1710.01 Annuitant

Notification of the claimant's entitlement to claim RUIA benefits while awaiting an annuity is to be sent when a claimant informs the RRB that he or she is applying for or receiving an annuity under the Railroad Retirement Act. If the claimant's annuity equals or exceeds RUIA benefits, Form Letter ID-17a is to be sent. NOTE: Benefits which might be payable only for periods including the 31st day of a month may be disregarded for the purposes of this subsection.

1710.02 Claimant entitled to workmen's compensation for total disability

A letter is to be sent to notify the claimant of the determination on the first claim for which benefits are diminished, or for which no benefits are payable, because of entitlement to receive workmen's compensation for total disability.

1710.03 Claimant entitled to retirement payments other than annuity under the Railroad Retirement Act

If the claimant is entitled to benefits under Title II of the Social Security Act or any other retirement payment with respect to which Section 4(a-1)(ii) is applicable, an appropriate letter is to be sent.

1711 Form Letters in Effect

The form letters listed below are prescribed:

ID-17a ID-17j
ID-17e ID-17k
ID-17g ID-17n
ID-17h
ID-17i

1712 Forms Prescribed

Forms RR-12 and UI-60a.

Appendices

Appendix B - SSA Program Service Centers And Reviewing Offices

For OASI Claims With SSA Numbers	Address of Program Service Center
001 - 134	Social Security Administration Northeastern Program Service Center One Jamaica Center Plaza Jamaica, New York 11432-3830
135 - 222 232 - 236 577 - 584 596 - 599	Social Security Administration Mid-Atlantic Program Service Center 300 Spring Garden Street Philadelphia, Pennsylvania 19123
223 - 231 237 - 267 400 - 428 587 - 595	Social Security Administration Southeastern Program Service Center 2001 12th Avenue, North Birmingham, Alabama 35285
268 - 302 316 - 399 700 series	Social Security Administration Great Lakes Program Service Center 600 West Madison Street Chicago, Illinois 60606
303 - 315 429 - 500 505 - 515 525 and 585	Social Security Administration Mid-America Program Service Center 601 East 12th Street Kansas City, Missouri 64106

501 - 504 516 - 524 526 - 576 and 586 600 - 626	Social Security Administration Western Program Service Center P.O. Box 2000 Richmond, California 94802
DIB claims	Disability Review Section Great Lakes Program Service Center Social Security Administration 600 West Madison Street, 6th Floor Chicago, Illinois 60606
Foreign claims - A foreign address is any address outside the U.S. except Puerto Rico, the Virgin Islands, Guam, and American Samoa.	International Program Policy Staff Office of International Policy Social Security Administration 6401 Security Boulevard Baltimore, Maryland 21235

Appendix C - Social Insurance Within Scope of (4a-1)(ii)

I. Social Insurance Payments Within The Scope of Section 4(a-1)(ii)

1. Railroad Retirement Act: employee, disability, survivor, and spouse annuities.

2. Social Security Act, Title II: old age, disability, wife's, husband's, child's, widow's, widower's, mother's, and parent's insurance benefits. (See Appendix AIM 17-B for SSA office addresses)

   Note: Does not include (a) any annuity or insurance benefit payment made to the claimant on behalf of, or for the use of, another person, or (b) the commuted value of an annuity paid in a lump sum.

3. Retirement and survivor payments under other Federal laws.

   a. Retirement payments for service in the Armed Forces of the United States, including the Coast Guard, based on service or disability, or both, and survivor benefits paid under the same law. (See Appendix 17-E for Uniformed Service office addresses)

   b. Retirement and survivor payments to Federal civil service employees.

4. Retirement or survivor payments under a public law. For example: to state, county, city and village employees, including policemen, firemen, teachers and transit workers.

5. Pension payments under the Old-Age Security Act of Canada [and retirement pension payments under the Canadian Pension Plan].

6. Worker's compensation for <u>total</u> disability payable under Federal (Federal employees, longshoremen and harbor workers), State, and Canadian law.

7. State Employee Retirement Benefits paid as a statutory retirement annuity for specific periods. Some plans allow for a beneficiary protection plan which is also subject to section 4(a-1)(ii).

8. Black Lung Benefits under Title IV of the Federal Coal Mine Health and Safety Act of 1969.

9. Incapacitation pay, which is a medical benefit armed service members and national guard reservists can earn if they are injured, incur a disease or have an illness aggravated while performing military duties. The injury must be found to have occurred in the line of duty.

<u>II. Payments Not Within The Scope of Section 4(a-1)(ii)</u>

1. Subsistence allowances paid by the Bureau of Indian Affairs, and monthly family allowances paid to dependents of enlisted men in the Armed Services, including the Coast Guard.

2. State old-age assistance payments, public assistance, Supplemental Security Income (SSI), and relief payments and payments to the needy blind.

3. Worker's compensation for <u>partial</u> disability.

4. The following payments made by the Veterans Administration:

    a. Disability compensation and pension payments to a veteran; and

    b. Death compensation, dependency and indemnity compensation, and pension payments to dependents of a deceased veteran.

5. Payments under Medicare.

6. Supplemental annuities under the Railroad Retirement Act.

7. Pension payments made by an employer under a privately-maintained pension plan.

8. When a deduction is being made from military retirement pay for a former spouse, the divorce court will make the distinction between 'equitable distribution of a marital estate' (or `division of property'), and an `award of alimony'. If the court determines that the portion of a claimants military pension is to be paid to a former spouse as part of a `division of property', that

portion does not fall within the scope of section 4(a-1)(ii). However, if the portion directed is to be paid as alimony, the entire amount of the military retirement pay falls within the scope of section 4(a-1)(ii).

9. A court-ordered deduction made from a former spouse's benefits under the RRA is considered a partition payment or payment of property awarded to the spouse during a proceeding for divorce or legal separation and is not considered social insurance payable to the claimant.

Appendix D - State Waiting Periods for Workman's Compensation

Table Of Waiting Periods For Workmen's Compensation

State	Waiting Period
Alabama	The waiting period is 7 days and until employer has knowledge or notice of injury; none if disability continues for 28 days.
Alaska	3 days in addition to day of injury, excepting medical services and supplies; none if disability continues for more than 28 days.
Arizona	7 days; none if disability continues more than 2 weeks.
Arkansas	7 days; none if disability continues for 2 weeks.
California	7 days; in temporary disability cases payment; may be made from first day employee leaves work if disability lasts more than 49 days, in permanent disability cases, a disability payment shall be made for one week in advance on the 8th day after the injury becomes permanent, or the date of last payment for temporary disability, whichever date first occurs.
Colorado	7 days; none if disability continues for more than 3 weeks.
Connecticut	3 days; none if disability continues 7 days.
Delaware	3 days; none if incapacity extends for a period of 7 days or more, results in hospitalization, or is caused by amputation of a member.
Florida	7 days; none if disability continues for more than 21 days. (Effective with respect to injuries which occur after June 30, 1959.)

Georgia	7 days. None if disability continues for 28 consecutive days.
Hawaii	2 days in temporary total disability cases. None if disability continue for more than 7 days.
Idaho	eff. 1/1/72 5 days in total disability cases, unless disability exceeds 2 weeks.
Illinois	6 working days in temporary disability cases. None if disability continues for more than 21 days.
Indiana	7 days for temporary disability, none if disability exceeds 28 days.
Iowa	1 week compensation increased by 1/3 during 4th, 5th and 6th weeks of disability.
Kansas	1 week. Except that if temporary total disability exists for 3 consecutive weeks payments will be made during such temporary total disability.
Kentucky	7 days; none if disability continues more than 2 weeks.
Louisiana	1 week; none if disability continues for 6 weeks or more.
Maine	Compensation to begin on 8th day of incapacity, unless incapacity continues for more than 14 days, with compensation, then allowed from day incapacity began.
Maryland	3 calendar days, none if incapacity extends for a period of more than 28 days.
Massachusetts	5 days; none if incapacity extends for a period of 6 days or more.
Michigan	1 week; none if disability continues 2 weeks or death results from injury.
Minnesota	In some cases of temporary disability, either total or partial, compensation is computed beginning with the 4th day, unless the disability continues for 10 days or more in which case compensation is computed from the time of disability. Payment of compensation must be made by the employer within 30 days of the time he learns of the injury.
Mississippi	5 days; if disability continues 14 days or more, then

	compensation from date of disability.
Missouri	3 days; none if disability continues longer than 4 weeks.
Montana	In cases of alien nonresident dependents or no dependents, one week but full compensation if disability continues 1 week; in case of resident dependents, one week but full compensation if disability continues 1 week, plus separate benefits for medical and hospital services from date of injury.
Nebraska	1 week; none if disability continues for 6 weeks.
Nevada	5 days; then compensation from date of injury.
New Hampshire	1 week; then compensation from date of injury.
New Jersey	7 days, none if disability exceeds 7 days.
New Mexico	7 days in temporary disability cases, none if disability exceeds 4 weeks.
New York	1 week; none if disability continues for more than 14 days.
North Carolina	No compensation for the first 7 calendar days unless injury results in disability of more than 28 days.
North Dakota	5 days; none if disability continues for more than 5 days.
Ohio	1 week, and no compensation shall be allowed for the first week of total disability whenever it may occur unless the employee is disabled more than 3 weeks.
Oklahoma	5 days. None if disability continues 5 or more days.
Oregon	3 calendar days, unless disability continues for 14 days or workman is an inpatient in a hospital.
Pennsylvania	7 days. None if disability continues more than 6 weeks.
Rhode Island	3 days; none if disability continues for more than 2 weeks.
South Carolina	7 days; none if disability is more than 28 days.
South Dakota	7 days; none if disability is more than 28 days.
Tennessee	1 week; none if disability continues for 14 days.

Texas	1 week; none if disability of more than 4 weeks.
Utah	3 days. But compensation is payable for these days if temporary total disability lasts more than 21 days.
Vermont	1 week; none in total disability cases continuing 7 days beyond first week.
Virginia	7 calendar days, compensation shall be allowed from first day if incapacity continues for more than 6 weeks.
Washington	3 days, succeeding date of injury unless disability continues for 14 days.
West Virginia	3 days but if the period of disability lasts longer than 14 days, an award shall be allowed for the 3 days.
Wisconsin	3 days exclusive of Sunday (Sunday not excluded if employee works on Sunday); none if disability continues for more than 10 days.
Wyoming	3 days in temporary total disability cases; none if disability continued for more than 8 days.
Dist. of Columbia	(Federal Employees Compensation Act) 3 days in temporary disability cases, unless disability exceeds 21 days or is followed by permanent disability (Sec. 752) an employee with annual or sick leave to his credit may use the leave until it is exhausted in which case compensation for disability shall begin on the 4th day of disability after the annual or sick leave has ceased (Sec. 758).

1800 Provisions of the Act and the Regulations

1800.01 The Act

Section 1(k) of the Act reads, in part, as follows:

"...Provided, further, That any calendar day on which no remuneration is payable to or accrues to an employee solely because of the application to him of mileage or work restrictions agreed upon in schedule agreements between employers and employees or solely because he is standing by for or laying over between regularly assigned trips or tours of duty shall not be considered either a day of unemployment or a day of sickness...."

1801 Analysis of the Proviso

The proviso in Section 1(k) of the Act limits the payment of unemployment benefits. It does not limit the payment of sickness benefits. The conditions set forth in the proviso restrict it to employees in service on trains.

1801.01 Mileage and other work restrictions

Certain schedule agreements between employers and employees prescribe maximum mileage. When an employee reaches or exceeds the maximum mileage, he or she may be held out of service. Certain other schedule agreements provide for holding employees out of service when they reach or exceed specified maximum earnings or hours of work. These work restriction provisions are to be distinguished from provisions setting overtime or other premium rates of pay.

1801.02 Restrictions agreed upon in schedule agreements

Some schedule agreements spell out the terms of work restrictions. Other agreements authorize work restrictions, but the detailed provisions of the restrictions are not written into the agreements. An agreement may authorize work restrictions which may vary as between terminals or seniority districts. Any restrictions authorized pursuant to an agreement are regarded as within the scope of section 1(k).

1801.03 Regular assignments

Regularly assigned trips or tours of duty constitute regular assignments. A regular assignment is characterized by, (1) a definite starting time, (2) a definite number of trips or tours of duty, either periodically or for the duration of the assignment, and (3) a definite route of each trip or definite duration of each tour of duty. Employees who have regular assignments layover or stand by during the intervals between the trips or tours of duty constituting their assignments.

1801.04 Work other than a regular assignment

It is an established practice for railroads to maintain rotating boards for employees in train and engine service and on-board passenger service. The most common forms are the extra board and pool service. The rules governing extra boards and pools vary. In general, separate boards are set up for each occupation.

a. Extra board

The extra board is used to fill assignments when regularly assigned employees are absent. Employees on the extra board are called in seniority order or on a rotating basis to work assignments. The number of positions on the extra board may be periodically adjusted as the availability of regular assignments increases or decreases.

b. Pool service

Employees in pool service perform train and engine service as regular members of a crew that works as a unit on a first-in, first-out basis. For the purpose of determining whether an employee has the equivalent of full-time work in a registration period, an employee in pool service who marks off or otherwise misses an assignment with his or her regular crew will be credited with the amount of mileage, hours or earnings that would have been earned if the assignment had not been missed. Also, an employee who misses an assignment with his or her regular crew will be considered unavailable for work until the crew completes that assignment.

1801.05 Proviso restricted to certain services

a. Mileage or work restriction

It is considered that conditions under which remuneration with respect to a day may not be payable to or accrue to an employee solely because of the application of a mileage or work restriction exist only in train-and-engine service, yard service, dining-car service, sleeping-car service, and similar service, on trains. Accordingly, the work-restriction part of the proviso in section 1(k) does not affect the payment of benefits to employees in any other classes of service.

b. Standing by or laying over

It is considered that conditions under which remuneration with respect to a day may not be payable to or accrue to an employee solely because he or she is standing by for or laying over between regular assigned trips or tours of duty exist only in train-and-engine service, dining-car service, sleeping-car service, and similar service on trains. Accordingly, the

regular-assignment part of the proviso does not affect the payment of benefits to employees in any other class of service.

1801.06 Eligibility

A day may not be considered a day of unemployment with respect to an employee if no remuneration is payable or accrues to him solely because of any of the conditions stated in the proviso. Such a condition may be the sole cause why remuneration does not accrue to an individual who is able to work and available for work.

It would not be considered that any of the conditions stated in the proviso is the sole cause for the lack of remuneration in the case of an individual who is not able to work. In such a case inability to work is itself a cause why no remuneration is payable or accrues. Accordingly, the proviso does not prevent any day from being considered as a day of sickness.

1802 Occupations Covered by the Proviso

1802.01 List of occupations

The occupations in which it is considered that the conditions described in either or both parts of the proviso exist at this time are listed in Appendix A.

1802.02 Interstate Commerce Commission list of occupations

If an occupation is not listed in Appendix A, the reporting division number is to be ascertained by referring to the Interstate Commerce Commission's classification of railroad occupations. An occupation in reporting division series 100, 200, 300, or 400 should be considered not to be an occupation in which the conditions described in the proviso exist.

1803 Considerations in Applying the Proviso

1803.01 Application of mileage-work restriction

It is to be considered that an employee lacks remuneration because of the application to him or her of mileage or work restrictions only when he or she is actually held out of service on account of a mileage or work restriction. The proviso does not apply to an employee who has reached or exceeded the maximum mileage or hours of work but is not held out of service on that account. (Example: an employee reaches the maximum mileage on January 18, continues to work until January 20 and is thereafter out of work because of a strike.)

1803.02 Failure to work in anticipation of maximum

An employee who marks off or does not work on any day because he or she expects to reach the maximum mileage or earnings or working time permitted under an agreement is considered not available for work.

1803.03 Substituting on a regular assignment

An employee may, without having a regular assignment, work in trips or tours of duty included in the regular assignment of someone else, as for example, when someone is absent on account of sickness. An employee called for such work, would not, on the days when he or she does not work, be considered as laying over or standing by between regularly assigned trips or tours of duty. However, if an employee is called upon to work on more than three consecutive tours of duty included in the same regular assignment, there may be a question whether he or she has a regular assignment.

1803.04 Unemployment during regular assignment

An employee who has a regular assignment may be prevented from working on one or more regularly assigned trips or tours of duty. He or she may not be permitted to work by some emergency, such as flood, fire, wash-out or other condition not stated in the proviso. In any such case, the employee's lack of remuneration during the period including the day or days when he or she was not permitted to work would not be considered as caused solely by laying over or standing by between regularly assigned trips or tours of duty. The employee's days of unemployment might include normal lay-over days before and after the day or days when he or she was not permitted to work by the emergency.

1803.05 Separation from a regular assignment

When an employee is separated from a regular assignment, he or she is not standing by for or laying over between regularly assigned trips or tours of duty on any day after the date last worked on the assignment. Examples of how an employee may be relieved of an assignment follow:

a. Assignment abolished

An assignment may be abolished or discontinued, as for example, when the number of scheduled trains is reduced.

b. Bumping

An employee may be "bumped", displaced by a senior employee.

c. Suspension

An employee may be held out of service for investigation or for discipline.

d. Discharge

An employee may be separated from the service of his or her employer by discharge.

1803.06 Other work while out of regular service

An employee who is out of his or her regular service because of the application of mileage or work restrictions or who is standing by for or laying over between regularly assigned trips or tours of duty may perform other work. If the other work is terminated, the employee will be considered to lack remuneration solely because of the application of the mileage or work restrictions or solely because he or she is standing by for or laying over between trips or tours of duty.

1803.07 Employee who does not hold regular assignment

The non-work days of any train-and-engine-service employee who does not hold a regular assignment, but works under an arrangement which provides the equivalent of full-time work, may not be counted as days of unemployment. Under such condition, it is considered that the non-work days are due solely to the arrangements agreed upon in schedule agreements between the employee's employer and his or her labor organization. In general, this will apply to employees on rotating boards, extra boards, chain gangs, and so forth. Determinations as to whether an employee has the equivalent of full-time work will be made only with respect to registration periods. If an employee who gets the equivalent of full-time work for a two-week registration period is on the extra board for all days in the period, all non-work days in the period are due solely to the work restriction. However, if an employee gets the equivalent of full-time work for a two-week registration period but is on the extra board for only part of the period, only his or her non-work days while on the extra board are due solely to the work restriction. See Appendix B.

Part 332.5 of the regulations of the Board provides that an employee is considered to have the equivalent of full-time employment if he or she earned ten times the basic work day (as defined by labor agreement) in a fourteen-day registration period.

Nearly all intercity passenger service is provided by the National Railroad Passenger Service Corporation (Amtrak). A basic day for Amtrak's train and engine service employees is currently 8 hours; the basic day is not measured in mileage. Accordingly, 80 hours in a registration period is the equivalent of full-time employment for such employees. With respect to on-board passenger service (train attendants, food service employees, etc.), the current agreement between Amtrak and the Amtrak Service Workers Council defines a basic day as 6.92 hours; therefore 69.2 hours, or 69 hours and 12 minutes, is the equivalent of full-time work in a 14-day registration period for such employees. With respect to

stewards and train chiefs, 8 hours constitute a basic day, and 80 hours in a registration period is the equivalent of full-time employment.

1803.08 Employee holding regular assignment

When an employee has a regular assignment in train-and-engine service, the days between trips or tours of duty may not ordinarily be days of unemployment because on those days he or she is considered to be "standing by for or laying over between regularly assigned trips or tours of duty." This does not hold true for regularly assigned employees in yard service; yard-service employees are not subject to the standing-by-for-or-laying-over provision. Nor does it hold true for a limited number of train-and-engine service employees whose circumstances are similar to those prevailing in yard service. For instance, some train-and-engine service employees work a regular five-day week in local passenger service and receive pay more or less equivalent to that of yard service employees. They are not considered to be standing by for or laying over between regularly assigned trips or tours of duty on their two rest days a week.

1803.09 Standard daily rate of pay

Some employees work under agreements that provide for a flat daily rate of pay regardless of whether the employee works more or less than the basic work day. For example, a switchman may receive 8 hours pay even if he or she works 6 or 10 hours. In this situation, the number of hours or miles for which the employee receives pay, rather than the number actually worked, would be used to determine if the employee has the equivalent of full-time work. Nevertheless, any day that an employee in this situation is held out of service because of work restrictions is not a day of unemployment.

1804 Determining Whether An Employee Without Regular Assignment Has Full-Time Work

1804.01 Train-and-engine service

If an employee earns the equivalent of 10 times a basic day's pay in a 14-day registration period, no day in the period, while he or she was on the extra board, can be considered a day of unemployment. To determine whether an employee earned the equivalent of 10 times a basic day's pay in a registration period, compute the actual number of miles credited to him or her for employment in the registration period, if this information is given. If this information is not given, it must be obtained from the employee or the employer, unless the employee worked three days or less in the registration period. Mileage not earned because the employee missed a turn in pool service must be added to that for days worked in order to obtain the correct total. Also, consider that for each day of paid vacation the employee earned the equivalent of one day's credit.

1804.02 On-board passenger service

The term "on-board passenger service" refers to that group of occupations characterized by service to passengers in dining cars, sleeping cars, passenger cars and similar service. Such employees working in regular assignments for Amtrak are guaranteed 180 hours per month; those on extra-boards are guaranteed 150 hours per month. If an employee in on-board passenger service earns 69 hours and 12 minutes in a registration period, no day in the registration period may be considered a day of unemployment. For each day of paid vacation, consider that the employee earned one day's credit. If the employee fails to report his or her hours credited, the information must be obtained from the employee or the employer, unless the employee has 4 or fewer days of employment in the registration period.

1804.03 Yard service

Generally, 40 hours constitute a work week for employees in yard service. If such an employee earned credit for 80 hours in a 14-day registration period, consider that he or she earned the equivalent of full-time employment and consider no day in the period, while he or she was on the extra board, as a day of unemployment. In determining whether an employee had the equivalent of full-time work, count overtime hours at their face value. For example, a switchman who works 12 hours - 8 hours at a regular pay and 4 hours overtime - should be considered to have 12 hours' credit. When the number of hours credit earned in a registration period is not given, obtain the information from the employee or the employer.

1804.04 Type of Service

Where information about the type of service in which an employee worked is not furnished with the claim, consider that he or she worked as follows:

a. <u>In yard service</u>

   if work is reported in terms of hours and the occupation given is engineer, fireman, conductor, brakeman, trainman, or switchman.

b. <u>In road service</u>

   if work is reported in terms of miles.

1804.05 Conversion of Hours or Miles

Where an employee's service during a registration period was mixed (i.e. yard and road), and it appears that he or she may have earned the equivalent of full-time employment, convert the figures for each type of service to a percentage of the amount considered to be the equivalent of full-time work for that service and add the resulting percentages. If the total is less than 100 percent, consider that

the employee earned less than the equivalent of full-time employment during the period.

Example: During a registration period the claimant worked 32 hours in yard service and 600 miles in road freight service. The 32 hours in yard service is 40 percent of 80 hours (the equivalent of full-time work for that service), and the 600 miles in road freight service is 53 percent of 1,140 miles (the common equivalent of full time for that service as of July 29, 1991). Since the total of 93 percent is less than 100 percent, the claimant would be considered to have less than the equivalent of full-time work.

1805 Determinations on Claims

All claimants must answer question 6a on the unemployment claim (Form UI-3). Only those in occupations covered by work restrictions are to answer 6b and 6c. Answers are to be considered as follows:

a. Question 6a

"Do you work in train and engine service or passenger service?"

1. If the claimant answers "yes" to this question, he or she is to complete questions 6b and 6c.

2. If the question is not answered, question 2c of the claim or 7b of the unemployment application ("last railroad occupation") may provide an answer. If those questions are not answered, the claimant or employer must be contacted if there are a sufficient number of days of employment shown that work restrictions may apply, i.e. if there are 4 days of work in road service, 6 days in yard service, or 5 days in on-board passenger service, the information must be obtained.

b. Question 6b

"If yes, give miles or hours during this 14-day claim period. Include miles or hours earned for regular pay, premium pay, overtime and deadheading."

Information given in response to this question or the lack of information is to be considered in accordance with the instructions in AIM-1804. Benefits may be disallowed for a claim because the claimant had the equivalent of full-time work. If the employee had the equivalent of full-time work but was not on the extra board during the entire period, deny benefits on the basis of the work restriction proviso only for that part of the period during which the employee was on the extra board. If the registration periods are out of adjustment, i.e. do not coincide with each claim period, the determination may be based on miles or hours earned in the 14 days covered by the claim rather than in the registration period. In such a case, no action need be taken to determine the number of miles or

hours credit earned in the registration period unless a protest is received from the claimant.

c. Question 6c

"Show dates in this period on which you did not work because of a layover or stand-by rule, mileage restriction, or because you missed a turn in pool service."

1. If the claimant lists any dates in this space and those days are claimed as days of unemployment, the days are to be disallowed under the work restriction proviso or on the grounds that the employee was not available for work, as appropriate.

2. If no dates are listed in item 6c, but the pattern of employment suggests the claimant may have a regular assignment, more information from the claimant or employer may be needed to ensure that the claimant was not off duty on days claimed because of work restrictions, missed turns or layover days.

1806 Notice

Notice of determination of the applicability of section 1(k) is to be sent to the claimant in each case in which benefits are denied on the basis of such determination. In the case where a special letter is appropriate, the claimant must be apprised of his or her right to reconsideration.

1807 Form Letters Prescribed

The following form letters are hereby prescribed:

ID-18e	ID-18k
ID-18f	ID-18a-F
ID-18j-F	ID-18b-F

Appendices

Appendix A - Work Restrictions and Regular Assignments

NOTE: Occupations in yard service are covered only with respect to the work restriction part of the proviso, and not the lay over/stand-by provision.

Title of Occupation	**Equivalent of Full-Time Employment in 14-Days**
(On-board passenger service)	
Attendants	69.2 hours

- chair car - lead service - pantryman - porter - sleeping car - waiter		
Chef		69.2 hours
Food specialist		69.2 hours
Steward		80 hours
Train chief		80 hours
(Train and engine service)		
Brakeman	(yard) (road passenger) (road freight)	80 hours 80 hours 1,140 miles (Effective July 29,1991 - The basic day increases by 4 miles each January 1 through 1995.)
Car retarder operator		80 hours
Car rider	(yard) (road passenger)	80 hours 80 hours
Conductor	(yard) (road passenger) (road freight)	80 hours 80 miles 1,140 miles (Effective July 29, 1991 - The basic day increases by 4 miles each January 1 through 1995.)
Engineer	(yard) (road freight)	80 hours 1,140 miles (Effective July 29,1991 - The basic day increases by 4 miles each January 1 through 1995.)
Fireman	(yard) (road freight)	80 hours 1,140 miles (Effective July 29,1991 - The basic day increases by 4 miles each January 1 through 1995.)
Foreman	(yard)	80 hours
Hostler		80 hours

Motorman	(yard) (road)	80 hours 1,140 miles (Effective July 29,1991 - The basic day increases by 4 miles each January 1 through 1995.)
Switchman		80 hours
Switch tender		80 hours

Appendix B - Application of Third Proviso (Extra Board)

Application of Third Proviso of Section 1(k) of the Act to Employees Without Regular Assignment

It is an established practice for railroads and related employers to maintain rotating boards for employees in train and engine service, dining car service, and similar service. Employees on these boards are called as needed. The rules governing the establishment of extra boards vary with the employer. In general, separate boards are set up for each occupation used in train and engine service.

There are two basic characteristics that apply to all boards. The arrangements governing the operation of any rotating board are agreed to by representatives of management and labor. This arrangement includes some method for increasing and decreasing the number of employees on the board. For the most part, these boards are cut, that is, the number of employees on such board is reduced, when the amount of employment available for the employees falls below certain levels. The board is increased when the amount of work is such that employees would otherwise be required to work beyond certain fixed limits. Under ideal conditions a rotating board would provide full-time work for all employees on the board. Under such conditions, however, the employees would have some non-work days. Clearly, such non-work days would be due to the conditions under which the board is set up. In other words, the non-work days of such employees would be due solely to the work restrictions in the arrangement for setting up the board and agreed to by management and labor. Hence, unemployment benefits for these days must be denied by reason of the third proviso of Section 1(k).

On the other hand, when conditions are such that employees on a rotating board may not get the equivalent of full-time work, the non-work days of the employees would not be due solely to the work restriction in the set up of the board. Accordingly, under such conditions the third proviso of Section 1(k) would not prohibit the payment of benefits for the employees' non-work days.

An employee on a rotating board will have non-work days that may be due either (1) to the restriction on work in excess of full-time or (2) to lack of business if he is not getting the equivalent of full-time employment.

If an employee on an extra board is getting 10 basic work days in a two-week registration period, the employee is, in effect, employed full-time. Under such circumstances any non-work days which he would have, would be due to the arrangements governing the operation of the extra board. Hence, in such case his non-work days would be due solely to the work restriction in the set up of the extra board and his claim for benefits for such days must be denied under the third proviso of Section 1(k).

On the other hand, if the employee gets less than 10 days' work in a two-week registration period, the non-work days may be due at least in part to lack of business. Accordingly, non-work days of an employee on a rotating board may be counted as days of unemployment if the employee had less than the equivalent of 10 basic work days in a registration period.

Appendix C - Answering The Call (Train & Engine Service)

"Answering The Call," Description Of Train And Engine Service, The Type Of Work, How Seniority Works, And What Consists Of A Work Day

The following article is from the publication "Trains", November 1994, and is entitled "Answering The Call". The article describes train and engine service, the type of work done, how seniority works, and what consists of a work day. This article may be helpful in better understanding our "customers".

This article can be used as a reference source, as a training tool for new employees, and as a refresher for current employees who make work restriction determinations on claims for unemployment benefits.

Answering The Call

Today's mainline railroading is an around-the-clock, 7-day-a-week, 365-day-a-year enterprise. This relentless pace requires train and engine crews be available for duty at all times so that carriers can fulfill commitments to shippers and passengers.

How do the people who operate these trains come to be assigned to which train, and when? The procedures behind this process are fascinating, yet nearly invisible. They must accommodate the 24-hour-a-day nature of railroading while honoring union contracts which demand that duties be assigned strictly by seniority.

The basic mechanisms by with Class 1 railroads staff their trains have been developed through collective bargaining. Although separate, highly detailed operating agreements exist at each and every railroad crew terminal in the United States--and for each operating craft (e.g., trainmen, enginemen)--these agreements all provide for the same general framework for assigning crews.

(Editor's note: To maintain readability, gender-specific references have been retained.)

In recent years, agreements or arbitration have enabled railroads to reduce the number of people on a train crew. (We will examine the crew-assignment framework primarily from the standpoint of train-service employees [conductors and brakemen], but basic concepts also apply to enginemen.) From around 1900 until the early 1980's, union agreements required all trains to run with a "full" train crew, consisting of a conductor and two or three brakemen. During much of this period, full crews also were required by many states, but by the 1970's the railroad industry had succeeded in having most of those laws repealed.

Significant changes to the standard train-crew consist began in the early 1980's, and now, in the 1990's, most Class 1 railroads have reached labor agreements permitting almost all through trains to run with only an engineer and a conductor.

Nevertheless, today's crew-assignment procedures really are modifications of long-established practices. So while crew consists have changed substantially, crew-assignment procedures have not changed as much.

Seniority

Length of employment with the company, or seniority, historically has been the means of determining which individual employee is assigned to which specific job, and each class of job has been protected by a particular craft. All employees in a craft within defined seniority district have the right to apply for assignment to the job of their choice through a formal bidding process. The most-senior employee to bid on a particular job wins the assignment (bids must be submitted in writing). In any craft, the most desirable assignments almost always are held by employees with long company service.

An employee whose assignment is terminated for any reason can "bump" any other employee with less seniority--that is, assume the less-senior employee's regular assignment. The displaced employee in turn bumps another even less-senior employee, and the bumping process continues, domino fashion, often until someone is furloughed. (In dual seniority areas, employees who hired out in one craft before a certain date cannot be bumped by employees who hired out in another craft. For example a protected switchman cannot be bumped from a yard engine by a non-protected brakemen even though the brakeman hired out two years before the switchman. "Protected" employees are sometimes referred to as "prior right" employees. The protected/non-protected concept also generally applies on railroads that have established system wide seniority.)

The seniority concept also underlies the assignment of train crews. The around-the-clock character of railroading means that one aspect of road trainmen's and

enginemen's assignments is unique; desirability is viewed mostly in terms of the nature of working assignments rather than their on-and off-duty times.

Working cut off

Historically, road-service employment has been characterized by two basic either-or conditions: (1) working or furloughed, and (2) "extra" status or regular assignment.

"Capacity management" is a buzz-term in American business today; it refers to efforts to tailor the size of a company's workforce to its level of customer demand. Railroad car loadings have long been a measure of national economic activity, and the cyclical, feast-or-famine railroad industry has traditionally practiced capacity management by furloughing temporarily unneeded train-service employees according to seniority. Being hired by the company guarantees the right to exercise seniority in pursuit of work but is not a guarantee of year-round work itself. Furloughed railroad employees usually are said to be "cut off" rather than "laid off." Employees who are cut off retain their seniority and are called back to work at some future point--be it in 10 days or 10 years.

At the outset of his railroad career, a trainman establishes his "brakeman's date," representing his relative ability to bid successfully for brakemen's assignments within his seniority district. The date of his promotion to conductor establishes his "conductor's date" (Usually after three to five years of experience as a brakeman). A promoted trainman can bid on both conductors' and brakemen's jobs. In good times, with everybody working, a higher proportion of promoted trainmen work as conductors. When traffic declines, there are fewer assignments for conductors or brakemen, so low-seniority conductors get bumped back to brakemen's jobs and the least-senior brakemen get cut off.

Extra or regular

If a road-service employee has sufficient seniority to be working, the second either-or condition is "extra" status or regular assignment. This is one of the intriguing aspects of the crew assignment process. To be working but unassigned is to be on the "extra board" maintained at the home terminal. Extra-board employees are "called" for (1) "regular jobs" whose normal occupants are temporarily absent (e.g., on vacation) and (2) "extra jobs." The latter include temporary assignments, such as an emergency work train, as well as new regular jobs activated before the bids close. (The term "board" dates from when crew assignments were often written on large, lined chalkboards. Today they commonly are displayed on computer screens or in a computer printout. Most crew calls are made 1 hour, 30 minutes ahead of reporting time; a "long call" of 2 hours is often done during the night hours.)

Customarily, the brakemen's extra board has been the domain of employees with little seniority because, by nature, extra-board people have the least control over

assignments. (Similarly, the conductors' extra board usually consists mostly of young conductors.) Extra-board trainmen must protect vacant assignments everywhere within their seniority district. In fact, for years, working the extra board people have the least control over assignments. (Similarly, the conductors' extra board usually consists mostly of young conductors.) Extra-board trainmen must protect vacant assignments everywhere within their seniority district. In fact, for years, working the extra board also has been described negatively as "bucking the board."

On the other hand, working the board traditionally provides an employee the most possible "pay trips" per pay period, so some high-seniority employees choose to work the brakemen's or conductors' extra board temporarily (by vacating their regular assignments) in order to maximize earnings for a given period.

At any time, the extra board consists of a specified number of employees, as determined by local agreement based upon prevailing traffic. The board "turns" in first-in/first-out rotation; extra-board employees "mark up" on the board in the order they complete previous assignments to await call for the next assignment. A person marking up at the bottom of the board usually has 8 to perhaps 30 hours off, depending on immediate traffic, before he or she works again. The extra-board employee at the top of the board at a given time is the next one called and is referred to as "first out." Those that follow are considered "second out" (or, "two times out"), "third out" ("three times out"), and so forth.

A prolonged traffic increase first causes the extra board to turn more rapidly, then expand as cut-off employees are called back. If necessary, the railroad then hires new employees. A traffic decline will cause the board to turn more slowly. If the decline persists, the board is cut, and employees are cut off according to seniority.

<u>Pay by the mile</u>

Road crews are paid per-mile for miles earned, based on actual miles run. The scheme is rather complicated. Unlike yard crews, road crews never receive premium pay for holidays, and they receive overtime pay only if they are on duty longer than a period determined by the length of their run.

For years, a basic day for road-pay purposes was 100 miles, based on an assumed average train speed of 12.5 mph--operating a train 100 miles was regarded as equivalent to 8 hours of work. Within the last decade, the agreed-upon mileage equivalent of a basic day has lengthened. In 1994, a basic day equals 126 miles; effective in 1995 it will equal 130.

The 1994 basic day means that a road crew whose regular run is any distance up to 126 actual miles is paid for a basic day, about $130 for engineers, $122 for conductors, and $114 for brakemen on most railroads, for that run. Crews whose

regular runs are longer than 126 miles claim a basic day plus additional pay for the miles run in excess of 126 ("over miles"), about 96 cents, 89 cents, and 83 cents per mile for engineers, conductors, and brakemen, respectively. For example, crews running 150 miles are paid for a basic day plus 24 "over miles" (or, 150 minus 126).

The 1994 basic day assumes an average train speed of 15.75 mph (126 miles/8 hours) for computing road overtime. For our example 150-mile run, a total of 9 hours, 31 minutes (150 miles/15.75 mph = 9.52 hours) must elapse before overtime is payable. If the completed trip takes longer than 9:31, the crew receives an overtime premium, based on an overtime-hour of 23.625 miles (15.75 x 1.5), for the time on duty in excess of 9:31.

In some instances, road crews receive "arbitraries"--additional payments as required under local contract. A typical arbitrary is "final terminal delay," claimed by inbound crews not released from duty within a specified period after "hitting the switch" (arriving at the main track turnout defining the physical limit of the terminal.)

The pay-by-the-mile concept underlies a direct relationship between length of crew district and number of pool turns working that district. Around the U.S., long-established crew districts range from about 60 miles to upwards of 150. By agreement, the number of pool turns is adjusted for changes in traffic so that the average miles earned by each turn in any 10-day checking period ranges between 1200 and 1400. This means that, for a given traffic level, a longer crew district requires more turns than does a shorter one. More turns means fewer trips per turn during any time period. Put another way, on a comparatively long district, fewer trips are needed for a crew to make its miles than is the case for a crew working a shorter district. In general, the longer the district, the more time each pool crew is home between trips.

On the other hand, assuming constant traffic, lengthening the basic day reduces the number of turns in any pool. Longer basic days reduce the miles earned per trip as illustrated here.

Fewer miles earned per trip require more trips per checking period for a turn to make its miles. More trips per turn, for a given number of trains, means fewer turns.

Also, the increased mileage equivalent of the basic day has effectively cut a road employee's per-trip pay because more miles are included in the basic day rather than being paid for as "over miles." Since the early 80's, the dollar amount of the basic day has increased, but proportionately less than the equivalent mileage. The net result is that road employees now work more trips for about the same, or less, total pay per pay period than they earned a few years back. Understandably, the carriers like this and the employees do not.

Where run-through agreements have been negotiated, crew changes at traditional away-from-home terminals between consecutive crew districts have been eliminated. Crews from each home terminal run over both crew districts to the other home terminal. An example: On the Santa Fe in Arizona, Seligman used to be the away-from-home terminal for the West Pool out of Winslow and the East Pool out of Needles, California. Beginning in 1984, crew changes at Seligman were eliminated, approximately doubling the per-trip mileage of Winslow pool crews running west and Needles crews running east. The local agreement addresses matters such as distribution of turns to each home terminal and provisions for away-from-home crews to go first-out after so many hours.

Actual miles run (assumed) less basic day in miles = "Over miles" earned

1982 150 - 100 = 50
1994 150 - 126 = 24
1995 150 - 130 = 20

The pool

The alternative to working the extra board is to work or "hold" a regular assignment. Any job expected to last longer than a period specified by local agreement is a "regular job" that must be advertised for bid. In a sense, the term "regular assignment" is self-explanatory, but it means regular hours only in certain instances. Regular assignments include:

- Jobs going on duty at the same time and place each day, with specified days off, such as locals, road-switchers, work trains, and passenger jobs (before Amtrak took responsibility for its own crews).

- The freight pool, which is unique because it is a regular assignment with irregular hours. Employees working the pool (also known as the "chain gang") are called only for through freight trains to and from their home terminal and an away-from-home terminal. For example, for many years Santa Fe's East Pool crews out of the home terminal of Winslow, Arizona worked 130 miles to the away-from-home terminal of Gallup, New Mexico. The West Pool worked 143 miles to Seligman, Arizona, and the Short Pool worked 89 miles to Ash Fork, Arizona, on the "Peavine" line toward Phoenix. (The East Pool now runs through 286 miles to Belen, New Mexico and the West Pool runs through 293 miles to Needles, California.)

The freight pool consists of a specified number of assigned train crews--known as "turns"--which are called, in sequence, to work or to "deadhead" as freight trains are scheduled to depart the terminal. (Deadhead crews are moved to the opposite terminal to begin their work in order to balance the available crews with the traffic. They travel by train, auto, bus, or van, without being considered as working, but with pay and generally subject to the hours of service law.)

The freight pool is an attractive assignment for most road-service employees, so holding it full-time as either a conductor or a brakemen requires considerable seniority. A basic characteristic of the pool is that within it, seniority means nothing--you take what you get, when you get it, between your assigned terminals. So, although working pool freight is a high-seniority proposition, it will not assure catching a hot train or making a trip in daylight.

As with the extra board, the size of the freight pool varies with traffic. A sustained upswing of traffic requires additional pool turns, enabling some brakemen to bid from the extra board to the new brakemen's turns. (Replacing those who have bid off the extra board is one reason cut-off employees are called back, and perhaps new ones hired, when traffic picks up.) Likewise, some pool brakemen and/or extra-board conductors bid to new conductor's turns. The process reverses with a sustained traffic slump--turns are abolished, requiring the affected employees to bump others. Ultimately, the youngest pool men get bumped back to the two extra boards.

Again, like the extra board, the pool turns on a first-in, first-out basis. Upon return to the home terminal, each pool crew marks up at the bottom of the board and works its way up to first-out position over an 8- to 30-hour period, depending on traffic.

A trainman or engineman working the pool can predict to some extent when he'll go to work, and on which train, by checking the lineup of trans projected to arrive and depart the terminal during a specified period. (The chief train dispatcher issues the lineup, which can be obtained by an employee via computer screen or printout, a recorded telephone message from the crew caller, or a computer-generated telephone voice message.)

Lineups are only estimates, though, and trains often "fall down" from their projected departure times, so that predicting probable on-duty time is inexact. In fact, the unpredictability of on-duty times for both extra-board and pool employees is viewed as a major drawback of railroad employment. Being chained to the telephone disrupts an employee's family life, and the lack of regular rest periods is considered a prime cause of fatigue.

A Few Hours at a Mainline Crew Change (Full-crew era)

Westbound Lineup		**Eastbound Lineup**	
Symbol	**Figured**	**Symbol**	**Figured**
1-999	06:15	1-MDSE	04:10
1-MUTT	10:40	2-MDSE	09:15
2-999	10:55	1-HEVY	12:30
1-MDSW	13:05	1-VHOT	14:45

West Freight Pool		
Conductor	**Brakemen**	**Brakemen's Extra-Board**
Jones	Able Baker	Rogers
Smith	Charles	Maxwell
Miller	Martinez Quincy	Agnell
Benson	Endicott Thomas	Sampson

East Freight Pool		
Andrews	Graves	Pearson
Lopez	McDuff	Owens
Kennedy		
Duke	Lanier	Jenkins

Rogers will be the next extra brakeman called.

On the west end, conductor Jones and brakemen Able and Baker will be called for the 1-999, on duty at or about the figured (arrival) time.

Based on the lineup, the first open brakeman's turn is with conductor Smith on the west pool. Smith, Charles and Rogers may be called for the 1-MUTT, a manifest that typically works at one or more stations en route.

However, with the 2-999 hot on 1-MUTT's heals on the lineup, there's a good change that the 2-999 will run around the 1-MUTT before arriving, in which case Smith et al, will work the 2-999, leaving Miller, Martinez and Quincy first out for the 1-MUTT.

Benson, Endicott and Thomas stand for the 1-MDSW.

The inbound crews on the westbound trains will go to the bottom of the East Pool board.

On the east end, Andrews, Graves and Pearson will be called for the 1-MDSE on duty at or about 04:10.

Lopez, McDuff and Owens will catch the 2-MDSE.

Conductor Kennedy stands for the 1-HEVY, along with extra brakemen Maxwell and Agnelli, about lunchtime.

Duke, Lanier and Jenkins can anticipate a fast trip on the 1-VHOT later this afternoon.

The inbound crews on the eastbound trains will go to the bottom of the West Pool board.

Extra-board brakeman Sampson won't work any of the trains shown on the lineups; later, he'll go either west or east, depending on which pool has the first open brakeman's turn.

Pool conductor's vacancies are filled from the conductors' extra board.

Flexibility and variety

Since there are no regular days off, an employee can, within limits choose whether or not to work a particular trip. With the crew dispatcher's permission, both pool-crew and extra-board employees can "mark off" or lay off for a day or two. A pool employee who lays off has an extra-board employee called in his place when his turn "gets out." Of course, the extra man, not the pool regular man, is paid for the trip. When the regular employee wishes to return service, he will mark up on his regular turn to await first-out status and another call; the extra man is in turn released to the extra board.

When an extra person lays off, he is removed from the sequence of extra employees to be called until he marks back up (at the bottom of the board). He forfeits the call(s) which otherwise would have been his own during the period from layoff to markup. Being able to lay off at any time sometimes leads to "sharpshooting"--laying off, then marking up at a strategic time to try to catch (or avoid) a particular assignment based on an assessment of the train lineup and the "spaces" (existing vacancies in the pool(s) and other jobs).

The layoffs and vacations of regularly assigned employees are typically a major cause of extra-board activity. Layoffs have declined considerably where railroads have negotiated run-through agreements. The longer runs pay more, but each pool turn gets called correspondingly less often, so missing a trip causes more damage to an employee's pocketbook than before.

Many regular assignments (including the pool) are considered desirable because they feature high pay, attractive hours, or both, and so are held by the high-seniority "old heads." A local going on duty at the home terminal at, say, 7:30 a.m. with Saturday and/or Sunday off is an example of a very attractive assignment.

By contrast, some regular assignments (e.g., road-switchers or locals) go on duty at locations other than the home terminal. These outside jobs require the assigned crew members either to live at the outside location or to commute from the home terminal. As such, outside jobs, even high-paying daylight ones, sometimes are so unpopular that no one bids on them. In this case, the last-senior employees on the extra board are "force-assigned" to the job.

Employees forced to any job must work that assignment until they can bid to another regular assignment or until the extra board is augmented with even-younger employees. When the extra board is augmented, the regulars on an undesirable job formally can vacate it. The job must again be advertised for bid, resulting in the forced assignment of newer extra-board employees while allowing the former "victims" to return to the extra board.

A representative career profile

During much of the past 100 years, a typical train-service employee's career would have followed a pattern similar to this: After hiring out, he'd spend his first three or four years on the brakemen's extra board, possibly being cut off much of that time. After five years or so he would have sufficient seniority to work the extra board all year. During this time, usually after at least three years of road experience, he'd be required to take a written rules exam to qualify for promotion to conductor.

At this point, depending on his seniority, he might (1) stay on the brakemen's extra board, (2) be required to work the conductors' extra board and--as a young conductor--face possible force assignment as conductor to the undesirable jobs he tried to avoid as a brakeman, and/or (3) hold a brakeman's pool turn part of the time.

After several more years he'd be able to hold a steady job as head brakeman on a pool turn, then, with 20 or more years of seniority, hold a year-round job as rear brakeman (flagman) on a pool turn. At this stage of his career, his seniority would provide him considerable flexibility. For a change of pace, he might bid from his usual job to a brakeman's or conductor's job on a work train or local (often high-paying, daylight assignments with weekends off) or, during peak traffic periods, to the conductors' freight pool.

Finally, after 30 or more years, his seniority would be sufficient to allow him to work exclusively as a conductor on the job of his choice. This might be on a freight pool, a passenger job, or whatever other assignment he considered desirable.

Changes in crew consists

The railroad industry through the years has reacted cautiously to change. But over the last 10 years, it has acted on the crew-consist question with rather uncharacteristic swiftness.

In fact, the railroad companies have been fighting for crew-reduction agreements for almost half a century. One of the first--and most publicized--battles was waged in California in the late 1940's. Back then, California had a full-crew law which required additional brakemen--besides the three then standard on mountain-district pool crews--placed literally on top of trains to relay hand signals

on locations with a certain amount of track curvature. The railroads put this law before the voters of California and funded a massive advertising campaign in which the term "featherbedding" was coined to describe being paid for doing little or no work. The campaign was very effective; the full-crew law was voted out.

The turning point for train-crew reductions came in the 1960's when the Florida East Coast decided to run its trains with reduced crews. The railroad labor unions struck, the battle was joined, and, after a long and bitter struggle, the railroad won.

Once FEC made its point that trains could be operated safely with reduced crews, it was only a matter of time until all railroads would operate in the same manner. In fact, for years many shortline and regional railroads--many of them with union contracts--have operated with crews comprised of either a conductor and one brakeman or a conductor only. Diesel freight railroads with an electric traction history were among them.

In the early 1980's, the United Transportation Union realized that concessions had to be made in the face of deregulation of the entire transportation industry and the intensified truck-rail competition which followed. With this understanding, almost all Class 1 railroads were able to negotiate reduced-crew (conductor and one brakeman) agreements with the UTU. (Engine-service employees earlier faced a similar situation as the carriers succeeded in largely eliminating the fireman's job.)

The first step; smaller crews

Reductions in train-crew size were phased in. Initial agreements provided for establishing reduced or "short" pool crews simply by leaving a brakeman's vacancy unfilled temporarily when a regular man marked off or took vacation, and permanently if he quit or retired. Short crews only could be assigned to trains under a certain length and/or tonnage. On some railroads, the members of a short crew received a "productivity payment" (or "lonesome pay") in addition to their regular pay for the trip. On other roads, the productivity pay went into a common pot and was divided among all train-service employees at the end of the year based on the number of trips each had made that year.

If a reduced crew was used on a train whose characteristics required a full crew, an extra brakeman (at home terminals) or a pool brakeman from the next-out turn (at away-from-home terminals) filled the vacancy. In this case, there was no productivity payment. The productivity payment concept proved unwieldy to administer and account for, so most carriers bought out this contract provision with lump-sum payments to affected train-service employees. Nevertheless, coinciding with the phase-out of cabooses on through trains, more and more trains ran with reduced crews.

These agreements set other precedents. They introduced personal leave days for road employees. Now, employees requiring time off for personal business can claim up to 12 personal leave days per year and receive pay for 100 miles for each, instead of having to lay off. These agreements also conferred protected status on then-existing employees but provided that train-service employees hired after a certain date in 1982 would be non-protected. Non-protected employees receive 70 percent of protected employees' pay for the same job and reduced fringe benefits.

The landmark labor agreements of the 1980's and early 1990's made some notable changes to long-established practices in the railroad industry...but the carriers wanted more.

Conductor-only crews of today

Since 1991, many Class 1 railroads have negotiated new agreements or won arbitration awards allowing them to reduce crew size on through trains to conductor-only in most cases. The resulting settlements provide significant current-earnings protection and certain lump-sum cash payments to train-service employees as compensation for future financial losses. Also negotiated were the amount and kind of work a conductor-only crew is required to do. As one would expect, an on-duty conductor is now much busier than before.

The objectives of these agreements are to reduce the costs of operating through freight trains while minimizing the job losses and earnings reductions of union members. Obviously, since most trains now run conductor-only but required at least one brakeman until recently, a large number of train-service employees are currently surplus. In return for accepting the conductor-only crew as the new standard, trainmen received employment and earnings protection unprecedented in the history of the railroad labor movement. Few, if any, train-service employees will have their railroad employment involuntarily terminated. The intent is that, barring severe traffic declines, relatively few employees will be cut off for extended periods. Train-service ranks will be thinned through normal attrition and in cases where employees accept severance-pay offers.

In the midst of the changes brought about by the conductor-only trend, the traditional assignment mechanisms continue, in updated form, to provide the backbone of contemporary crew assignment procedures. Employees still bid for jobs, get bumped, lay off, and favor some assignments over others.

Conductor-only: Please, don't give me a brakeman!

The dream of every new-hire extra brakeman who has suffered the verbal abuse of a grouchy, sarcastic, old-head conductor is that one day he, too, will be a grouchy, sarcastic, old-head conductor. He longs for the day when he will be able to sit, in cushioned and regal ease, back on the "hack" and strain his index finger as he points toward the work that has to be done. No more rain and snow

down the back of his neck while he hangs on the side of a boxcar, no more hot sun on the top of his head while he struggles to align a switch. And never again to sit on an engine and have to listen to some pompous ass of an engineer brag about his female conquests. Oh, happy day!

Well, it's 30 years later an his dream is fulfilled; now he is the conductor. But, alas, he finds that he is also a permanently assigned head brakeman, having to ride the locomotive cab, and who is sitting across from him but that same obnoxious engineer--much older now, but still inclined to "jaw."

He also finds that, besides being the head brakeman, he also is doing the work of a rear brakeman, fireman, switchman, locomotive electrician and machinist, carman, train-order operator, waybill clerk, supply man and janitor. All these other employees are now gone--either cut off or working at a computer terminal in an office several hundred or thousand miles distant. What's going on here?

What's going on is something called "downsizing," capacity management, maximized personnel utilization," or, in railroad language, the "reduced crew." To the conductor it's a new definition of business as usual. Depending on the train, he might have to put the engines on, walk a mile-long train checking the air hoses and hand brakes, get an air test, then walk a mile back to the engines, all before they leave town and he starts his paperwork.

Out on the road, he watches the train to the rear and the track ahead. When a locomotive unit goes down and the defect bells start ringing, he goes back to try to find out what's wrong and get it running again.

He copies track warrants when the dispatcher calls on the radio to arrange meets with other trains. If they "head in" a siding to meet an opposing train in on-CTC territory, he lines the train into and out of the siding. He walks the train, if an on-road inspection is needed and "rolls-by" (inspects) trains they meet or that run around them. He sets out or picks up cars en route, lining switches, coupling cars and air hoses, and knocking off or tying hand brakes as required--keeping a list of what cars are picked up or set out, the time and location, and where in the train they are or were in relation to the power. Every once in a while, the "Big E" has to go to the "necessary," so the conductor will blow the whistle and ring the bell for a few minutes. If required at the completion of the trip, he yards the train, cutting off the units and taking them to the engine track.

Back in the yard office, he telephones the train dispatcher and the communications coordinator with the trip information. He then completes his time slip and other paperwork, calls the crew caller to "tie up" the crew for rest, checks the computer's crew and train display boards to try to figure when he'll be called again, and, finally, goes home or to the hotel.

Still, a conductor faces one thing worse than working a conductor-only crew and that is to walk into the yard office to find he's been favored with an extra-board brakeman. A den full of surly rattlesnakes would be only slightly less welcome.

Having a brakeman means the company has a dog train (politely called a "low priority manifest") waiting out in the yard, and it probably will have to be switched from front to FRED before leaving town. More work looms en route--on a probable "hog-law" trip during which they'll get "run around" by other crews. With luck, they may deadhead or catch a hot train home...but he doesn't count on it, and please, no more favors!--*L.E.J. and W.H.*

Hog law

All trainmen and enginemen are subject to the federal Hours of Service Law, which sets (1) the maximum time employees may be on duty without relief, and (2) the minimum time employees must be off duty between assignments.

Originally, the law provided that trainmen and enginemen could not be on duty in excess of 16 consecutive hours. After 16 hours on duty, a road crew was legally obligated to cease working (and was referred to as "dead on the law"). A crew on "short time" would put their train in a siding and call for a relief, or "dog catch," crew to continue the trip. At 16 hours it was illegal for the first crew to "turn a wheel" any longer.

During the 1970's, the law was amended to shorten the maximum time from 16 to 12 hours (with a transitional 14-hour maximum). The 12-hour limit remains in effect today. Crews still routinely go dead and are relieved by dog-catch crews. You'll often hear the law referred to as the "hog law," a name derived from "hogger," an old slang term for engineer.

An employee's 12-hour sequence commences with the on-duty time. This is not the time that the employee receives a call to report for duty, but the time specified by the crew caller. For example, assume the phone rings at 0430 hours to advise a conductor that he is on duty on 0600--he is *called for* 6 a.m. He can't work *continuously* past 1800 (6 p.m.), then, without violating the law.

The law provides for extending mandatory off-duty time if the employee receives a 4-hour minimum rest break sometime during the 12 hours following the on-duty time. At either terminal, once a road crew is off duty 8 hours or longer, the crew is "fully rested" and can again work 12 consecutive hours. To be "called on his rest" means that a person goes on duty exactly 8 hours after "tying up" (formally going off duty). This puts the squeeze on his sleep since he'll normally spend the first part of his 8-hour "rest" period showering and eating, and the last part of this time is devoted to getting ready to report back to work. (Getting called on one's rest happens frequently during periods of high traffic). The 8-hour minimum required for full rest is raised to 10 hours for a crew that has died on the law. --*L.E.J. and W.H.*

The essence of the new train-crew scheme is that a through train now carries only an engineer and a conductor unless it is scheduled to perform a certain number of "events" en route, specified by local agreements. Such tasks include picking up or setting out cars or "blocking" (rearranging) the train. If the specified number (say, three) or more events are scheduled, the train crew includes an extra-board brakeman. On the other hand, if unforeseen circumstances require a conductor-only crew to perform more than the specified number of events (four or more), the conductor receives significant pay--a "penalty brakeman's day"--in addition to regular conductor's pay for the trip. (The standard train crew on locals, road-switchers, and work trains is now a conductor and one brakeman).

At home terminals, conductors are assigned to through trains from a conductors' freight pool operating essentially as it always has. Conductor-qualified employees bid for assignment to pool turns which are called on a first-in/first-out basis.

At least one extra board also is maintained at the home terminal. In most cases it has been several years since the railroads hired new train-service employees, meaning that even the "youngest" employee today usually is a promoted man or woman. So, in place of separate brakemen's and conductors' extra boards, there may be a consolidated "guaranteed extra board" from which employees are called, first-in/first-out, to fill both conductors' and brakemen's vacancies. Employees working this board are paid for the higher of a certain number of miles for each pay period at conductor's rate or actual miles earned at brakeman's or conductor's rate. The number of employees on the guaranteed extra board is closely regulated for traffic changes so those on the board stay fairly busy.

The reserve board

Those employees not holding working assignments are either cut off or assigned to the "reserve board" established by the recent agreements. The reserve-board concept is intended to avoid the dysfunctional effects of mass unemployment of train-service employees today, followed by the inevitable need for future new hires resulting from retirements and/or traffic growth tomorrow. When business is slow, fewer employees are needed for active assignments, so, within limits, the reserve board grows. As traffic picks up, employees from the reserve board return to active status and any employees who are cut off are called back.

Being on the reserve board is like being cut off, in the sense that a reserve-board employee is not currently working. However, there are three major differences:

- Being cut off means drawing unemployment benefits while waiting to be called back to work; reserve-board status entitles an employee to regular paychecks based on a significant percentage (as specified by local agreement) of recent annual wages.

- Cut-off workers always are the youngest in seniority; assignment to the reserve board requires exercise of seniority.

- As traffic increases, cut-off employees are called back in seniority order; reserve-board employees are reassigned to active status in reverse seniority order (i.e., youngest to oldest).

A trainman can almost always earn more pay on active status than by holding the reserve board. However, paychecks based on, say, 70 percent of a recent annual wage are often regarded as very satisfactory in return for tending the home fires and sleeping every night. In many cases, then, high-seniority employees--whose recent earnings invariably are high dollar--are delighted to hold the reserve board, requiring less-senior employees to work the trains.

As mentioned, changes in crew agreements since the early 1980's virtually eliminated the hiring of new train-service employees, although with traffic booming now in a lot of places, many carriers in recent months have begun hiring again. In the meantime, the railroads operate, day and night, with a train-service workforce having an ever-increasing level of experience. For those railroad employees, the phone keeps ringing.

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1901 Provisions of Law

1901.01 Section 2(c) of the Railroad Unemployment Insurance Act,

as amended October 9, 1996, provides, in part, that:

"...With respect to an employee who has 10 or more years of service as defined in section 1(f) of the Railroad Retirement Act of 1974, who did not voluntarily retire and (in a case involving exhaustion of rights to normal benefits for days of unemployment) did not voluntarily leave work without good cause, and who had current rights to normal benefits for days of unemployment or days of sickness in a benefit year but has exhausted such rights, the benefit year in which such rights are exhausted shall be deemed not to be ended until the last day of the extended benefit period determined under this paragraph, and extended unemployment benefits or extended sickness benefits (depending on the type of normal benefit rights exhausted) may be paid for not more than 65 days of unemployment or 65 days of sickness within such extended benefit period.

Section 2(c) of the Railroad Unemployment Insurance Act

also provides, in part, that:

"...With respect to an employee who has 10 or more years of service as defined in section 1(f) of the Railroad Retirement Act of 1974, who did not voluntarily retire and (in a case involving unemployment benefits) did not voluntarily leave work without good cause, who has 14 or more consecutive days of unemployment, or 14 or more consecutive days of sickness, and who is not a qualified employee with respect to the general benefit year current when such unemployment or sickness commences but is or becomes a qualified employee for the next succeeding general benefit year, such succeeding benefit year shall, in that employee's case, begin on the first day of the month in which such unemployment or sickness commences."

1901.02 Section 1(f) of the Railroad Retirement Act

provides that:

"The term 'years of service' shall mean the number of years an individual as an employee shall have rendered service to one or more employers for compensation or received remuneration for time lost, and shall be computed in accordance with the provisions of section 3(i). Twelve calendar months, consecutive or otherwise, in each of which an employee has rendered such service or received such wages for time lost, shall constitute a year of service. Ultimate fractions shall be taken at their actual value.

"Where service prior to August 29, 1935, may be included in the computation of years of service as provided in subdivision (3) of section 3(i), it may be included as to--

"(i) service rendered to a person which was an employer on August 29, 1935, irrespective of whether such person was an employer at the time such service was rendered;

"(ii) service rendered to any express company, sleeping-car company, or carrier by railroad which was a predecessor of a company which, on August 29, 1935, was an employer as defined in paragraph (i) of subsection (a)(1), irrespective of whether such predecessor was an employer at the time such service was rendered; and

"(iii) service rendered to a person not an employer in the performance of operations involving the use of standard railroad equipment if such operations were performed by an employer on August 29, 1935."

1901.03 Section 1(g) of the Railroad Retirement Act

provides that:

"(1) .... an individual shall be deemed to have been in 'military service' when commissioned or enrolled in the active service of the land or naval forces of the United States and until resignation or discharge there from; and the service of any individual in any reserve component of the land or naval forces of the United States, while serving in the land or naval forces of the United States for any period, even though less than thirty days shall be deemed to have been active service in such force during such period.

"(2) .... a 'war service period' shall mean (A) any war period, or (B) with respect to any particular individual, any period during which such individual (i) having been in military service at the end of a war period, was required to continue in military service, or (ii) was required by call of the President, or by any Act of Congress or regulation, order, or proclamation pursuant thereto, to enter and continue in military service, or (C) any period after September 7, 1939, with respect to which a state of national emergency was duly declared to exist which requires a strengthening of the national defense.

"(3) .... a 'war period' shall be deemed to have begun on whichever of the following dates is the earliest: (A) the date on which the Congress of the United States declared war; or (B) the date as of which the Congress of the United States declared that a state of war has existed; or (C) the date on which war was declared by one or more foreign states against the United States; or (D) the date on which any part of the United States or any territory under its jurisdiction was invaded or attacked by any armed

force of one or more foreign states; or (E) the date on which the United States engaged in armed hostilities for the purpose of preserving the Union or of maintaining in any State of the Union a republican form of government.

"(4) .... a 'war period' shall be deemed to have ended on the date on which hostilities ceased."

1901.04 Section 3(i) of the Railroad Retirement Act

provides that:

"(1) The 'years of service' of an individual shall include all his service subsequent to December 31, 1936.

"(2) The 'years of service' of an individual shall also include his voluntary or involuntary military service, within or without the United States, during any war service period: Provided, however, That such military service shall be included only if, prior to the beginning of his military service and in the same calendar year in which such military service began, or in the next preceding calendar year, the individual rendered service for compensation to an employer or to a person service to which is otherwise creditable under this Act, or lost time as an employee for which he received remuneration, or was serving as an employee representative: Provided further, That such military service shall be included only subject to and in accordance with the provisions of subdivisions (1) and (3) of this subsection in the same manner as though military service were service rendered as an employee: And provided further, That such military service rendered after December 1956 shall not be included with respect to any month if (A) any benefits are payable for that month under the Social Security Act on the basis of such individual's wages and self- employment income, (B) such military service was included in the computation of such benefits, and (C) the inclusion of such military service in the computation of such benefits resulted (for that month) in benefits not otherwise payable or in an increase in the benefits otherwise payable: And provided further, that an individual who entered military service prior to a war service period shall not be regarded as having been in military service in a war service period with respect to any part of the period for which he entered such military service.

"(3) The 'years of service' of an individual who was an employee on August 29, 1935, shall, if the total number of his 'years of service' as determined under subdivisions (1) and (2) is less than thirty, also include his service prior to January 1, 1937, but not so as to make his total years of service exceed thirty: Provided, however, that with respect to any such individual who rendered service to any employer subsequent to December 31, 1936, and who on August 29, 1935, was not an employee of an employer conducting

the principal part of its business in the United States, no greater proportion of his service rendered prior to January 1, 1937, shall be included in his 'years of service' than the proportion which his total compensation (without regard to any limitation on the amount of compensation otherwise provided in this Act) for service subsequent to December 31, 1936, rendered anywhere to an employer conducting the principal part of its business in the United States or rendered in the United States to any other employer bears to his total compensation (without regard to any limitation on the amount of compensation otherwise provided in this Act) for service rendered anywhere to an employer subsequent to December 31, 1936. Where the 'years of service' include only part of the service prior to January 1, 1937, the part included shall be taken in reverse order beginning with the last calendar month of such service."

1902 Introduction

1902.01 General considerations

An employee's rights to an extended benefit period or to an early beginning of a benefit year are contingent upon the employee having at least 10 years of service. Prior to the enactment of the 1996 Amendments to the RUIA on October 9, 1996, the extended benefit period was longer for an employee with 15 or more years of service. An employee with 15 or more years of service and an extended benefit period beginning on or before October 8, 1996, is still entitled to 13 consecutive 14-day registration periods. For purposes of extended benefit periods and accelerated benefit years, "service" means service creditable under the Railroad Retirement Act. Such service may include service prior to 1937, as well as later service; it may include service after the base year; and it may include military service.

1902.02 Year of service

Twelve calendar months constitute a year of service. Thus, 120 months of service constitute 10 years of service, and 180 months constitute 15 years of service. However, with enactment of the 1996 Amendments to the RUIA on October 9, 1996, all employees with 10 or more years of service are entitled to the same number of extended benefit registration periods -- 7 (but not more than 65 days).

Note: For employees beginning an extended benefit period with a day before October 1, 1981, 174 months constitute 15 years of service.

1902.03 Month of service

A month of service is a calendar month in which an employee has rendered service to one or more employers for compensation or has received remuneration for time lost. Where service was performed for two or more

employers in the same calendar month, or where both employer service and military service were creditable in the same calendar month, only one month of service may be credited.

1903 Establishing Additional Service

1903.01 Development

Service in addition to that established on Board records shall be developed if the employee claims such additional service and if establishing it would entitle him or her to benefits.

1903.02 Sequence in developing service

Additional service shall be developed in the following order of precedence:

a. service after 1936 recorded in the bureau of research and employment accounts but not reflected in the wage tape;

b. service before 1937 or military service established by the bureau of retirement benefits;

c. lag service;

d. service before 1937 not credited on Board records;

e. military service not credited on Board records.

1903.03 Acceptable records of service

Any of the following may be used in establishing an employee's years of service:

a. any official report or certification of service issued by the bureau of research and employment accounts;

b. Form UI-41, Supplemental Report of Service or Compensation, completed by an employer or a statement submitted by an employer in lieu of Form UI-41;

c. Form AA-2P(R), Record of Employee's Prior Service, completed by an employer.

1904 Service after 1936

1904.01 General

Service after 1936, called subsequent service, includes all employer service performed after 1936 by an employee.

1904.02 Claim for subsequent service

If a claimant indicates that he has rendered service for an employer after December 31, 1936, in more months than are credited on Board records, he or she must submit Form UI-9, Applicant's Statement of Employment and Wages, and proof of such service. Acceptable proof of service is as follows:

a. Form W-2, Wage and Tax Statement; or

b. pay stubs; or

c. statement from the employer or from claimant's supervisor verifying claimant's employment.

1904.03 Time limit

The Board's records of the compensation reported paid to an employee for a period after 1936 and the service months involved are conclusive, unless the error or omission is called to the attention of the Board within four years after the last date on which the employer was required to report such compensation to the Board.

1904.04 Authority to make determinations

The RRB's Employer Service and Training Center is authorized to make determinations of the creditability of employer service performed after 1936 for which returns of compensation have been made to the Board.

1905 Lag Service

1905.01 Lag service defined

Lag service is employer service after the base year which has not been reported to the Employer Service and Training Center.

1905.02 Acceptable record of lag service

Form UI-41, Supplemental Report of Service or Compensation, may be accepted as a valid certification of service, provided it is signed by the retirement claims contact official or is otherwise validated to show that it was cleared through proper employer channels. A statement submitted by an employer in lieu of Form UI-41 may be accepted as a valid certification of lag service.

1905.03 Authority to make determinations

The RUIA Adjudication Section is authorized to make determinations of the creditability of lag service. The claims examiner handling the case is responsible for adding the lag service to the claimant's record.

1906 Prior Service

1906.01 Prior service defined

Prior service is service performed before January 1, 1937

1906.02 Creditability

Prior service may be credited only if, on August 29, 1935, the employee was:

a. in the active compensated service of, or in an employment relation to, an employer conducting the principal part of its business in the United States; or

b. in active compensated service within the United States for, or in an employment relation to, an employer conducting the principal part of its business outside the United States.

The number of months of service before 1937 to be included in the employee's total years of service must be taken in reverse chronological order starting with December 1936, contingent upon verification of service. (When prior service is included in the years of service, the total years of service may not exceed 30.)

1906.03 Authority to make determinations

The Employer Service and Training Center is authorized to make determinations of the creditability of employer service performed before January 1, 1937.

1907 Military Service

1907.01 General

Military service may be included in an employee's years of service if the employee entered the Armed Forces of the United States during a "war period" or a "war service period", and if military service was preceded by railroad service in the same or preceding calendar year. These "periods" would include -

a. the following wars:

World War I -- April 6, 1917 through November 11, 1918.

World War II -- December 7, 1941 through December 31, 1946; and

b. the following periods:

National Emergency -- September 8, 1939 through June 14, 1948.

National Emergency -- December 16, 1950 through September 14, 1978.

National Emergency -- August 2, 1990 to date not yet determined.

c. any other period in which the employee has military service resulting from the draft or other requirement to service; and any time for which the employee was required to continue in active service following the end of a war period.

d. Active service of a commissioned officer of the Public Health Service at the times specified in Section 213(a) in Title 42 of the United States code may also be credited as military service provided the requirements of the RRA for crediting military service are met. (See Legal Opinion L-95-28)

1907.02 Creditability of service

Military service may be credited if the following conditions are met:

a. Proof of active military service is obtained. Such proof consists of a certificate of discharge or release to inactive duty showing the period of claimant's active duty service. A claimant's DD-214 is acceptable proof of active military service.

b. The service consists of one unbroken period of active duty service which falls within a war service period.

c. Claimant's military service was preceded by railroad service in the same or preceding calendar year.

d. The military service of a other-than-honorably discharged claimant is creditable provided the military service meets the qualifying requirements listed above.

Note: Alternate service performed by a Conscientious Objector in place of active military service is not creditable under the Railroad Retirement Act (RRA) because alternate service is not "military service" within the meaning of section 1(g) of the RRA. Consequently, alternate service cannot be used as a basis for establishing additional years of service under the RUIA.

1907.03 Authority to make determinations

The RUIA Adjudication Section is authorized to make determinations of the creditability of military service. The claims examiner handling the case is responsible for adding the military service to the claimant's record.

1908 Forms and Form Letter Prescribed

1908.01 Forms

The following forms are prescribed:

Form UI-41	Supplemental Report of Service or Compensation
Form UI-44	Claim for Credit for Military Service (Railroad Unemployment Insurance Act)
Form AA-15	Employee's Statement of Service Performed Before January 1, 1937, to Employers under the Railroad Retirement Act
Form AA-2P(R)	Record of Employee's Prior Service
Form G-122	Employee Service and Compensation Record
Form G-563	Request for Subsequent Service and Compensation Data

1908.02 Form Letters

The following form letters are prescribed:

ID-19 (11/89)

1908.03 Exhibit

The following text can be used to notify a claimant about the creditability of his or her military service.

- Your military service is not creditable under the Railroad Unemployment Insurance Act because it was not preceded by railroad service in the calendar year in which your military service began or in the preceding calendar year.

- Military service of ____ months is being included in your years of service for purposes of the Railroad Unemployment Insurance Act. (Note: If the number of months shown above does not agree with your records it may be due to the fact that you cannot receive credit for a month of military service if that month was credited to your account as railroad service.)

- Your military service papers are returned herewith.

2001 Provisions of the Act

Section 2(c) of the Act provides, in part, that:

"(c) Maximum Number of Days for Benefits.--

"(1) Normal benefits.--

"(A) Generally--The maximum number of days of unemployment within a benefit year for which benefits may be paid to an employee shall be 130, and the maximum number of days of sickness within a benefit year for which benefits may be paid to an employee shall be 130.

"(B) Limitation--The total amount of benefits that may be paid to an employee for days of unemployment within a benefit year shall in no case exceed the employee's compensation in the base year; and the total amount of benefits that may be paid to an employee for days of sickness within a benefit year shall in no case exceed the employee's compensation in the base year, except that notwithstanding section 1(i), in determining the employee's compensation in the base year for the purpose of this sentence, any money remuneration paid to the employee for services rendered as an employee shall be taken into account that is not in excess of an amount that bears the same ratio to $775 as the monthly compensation base for that year as computed under section 1(i) bears to $600.

2002 General

This article contains information about the receipt of maximum normal unemployment and sickness benefits. It contains information about sending notices to claimants who have exhausted normal benefits and about handling claims for periods following exhaustion of normal benefits for claimants who are not entitled to extended benefits. (For information about extended benefits, see AIM, Article 32.)

2002.01 Exhaustion on 130 days

A claimant exhausts normal benefits when he or she has been paid benefits for 130 days of unemployment or for 130 days of sickness.

2002.02 Exhaustion on base year compensation

A claimant exhausts normal benefits when he or she has been paid such benefits for fewer than 130 days, and the amount of benefits paid equals the amount of

his or her base year compensation. While an employee's base year compensation for the purpose of qualifying for benefits may not include compensation in excess of the monthly compensation base, it may include compensation over the compensation base for the purpose of determining exhaustion of normal benefits. Beginning with base year 1989, amounts of creditable compensation for the purpose of qualifying for and exhausting benefits were indexed to the tier I base. For example: Base year 1994 compensation for the purpose of qualifying included up to $840 per month, with compensation up to $1,085 per month included for the purpose of determining exhaustion of normal benefits. Future changes in these amounts will be determined and published in the Federal Register prior to the beginning of each base year.

Example: If an employee had earnings of $2,000 in each of three months in the base year 1994, his qualifying base year compensation would be $2,520 (3 x $840 per month), whereas normal benefits of up to $3,255 (3 x $1,085 per month) could be paid before it would be considered that he had exhausted normal benefits for the benefit year 1995.

If the employee's base year compensation is less than the maximum normal benefits payable for 130 days ($4,680 in BY 95), the computer will print Form UI-41A to be sent to the employer, requesting a report of earnings up to the maximum monthly base year compensation amount ($1,085 in base year 1994). If Form UI-41A is not returned and follow-up with the employer becomes necessary, a special letter shall be sent to the appropriate contact official.

2002.03 Computer action in determining base year compensation.

Base year compensation is determined by sources detailed in Section 403, Article 4 of the AIM.

2003 Notice to Claimant About to Exhaust Unemployment Benefits

If the claimant is not receiving other social insurance and has less than 120 months of service, Form ID-20-I (See RPS for sample) will be prepared by the computer when one more claim will probably exhaust the claimant's rights to normal unemployment benefits. (Note: Form ID-20-I is not used during a period of high unemployment, since during such period an employee with less than 120 service months may receive extended unemployment benefits.)

2004 Notice to Claimant Who Has Exhausted Unemployment Benefits

A claimant who exhausts normal unemployment benefits and has not previously been notified that he was about to exhaust benefits is ordinarily advised of the exhaustion in connection with the determination as to extended benefits. Form ID-20-5, ID-20-6 or ID-20-9 (See RPS for samples) will be prepared by the

computer in cases where the computer establishes an extended benefit period. Cases which are not set up automatically for extended benefits are referred to an examiner for a determination and the sending of an appropriate notice (see AIM 32-I).

2005 Unemployment Claims for Periods Following Exhaustion

Claims for periods following the exhaustion of normal benefits for claimants who are not entitled to extended benefits shall be handled as follows:

- Days which are after the end of the registration period containing the claimant's last compensable day and which are before July 1 shall be disregarded as claimed days; it shall be considered that no registration has been made with respect to such days.

- Days in July which are after the end of the registration period containing the claimant's last compensable day may be considered as days of unemployment in the benefit year beginning July 1 (see AIM 11-I).

- If the claimant continues to sign for days in the benefit year after the issuing of a check for the last compensable day, Form Letter ID-20a (See RPS for sample) shall be sent to him.

2006 Notice to Claimant About to Exhaust Sickness Benefits

2006.01 Computer-prepared notice

If a claimant is not receiving other social insurance and has less than 120 service months or has attained age 65, Form ID-20-2, ID-20-3, or ID-20-4 (See RPS for samples), as appropriate, will be prepared by the computer when one more claim will probably exhaust the claimant's rights to normal sickness benefits.

2006.02 Notice by examiner

If a claimant's computer record does not show either a year of birth taken from the claimant's application or a year of birth taken from the wage record or if one of the years of birth on record indicates that the claimant has attained age 65 or could attain age 65 before the end of an extended benefit period, the case is referred to an examiner for determination and sending appropriate notice to the claimant. If the examiner determines:

a. that the claimant attained age 65 before an extended benefit period would begin, Form Letter ID-20-3 (See RPS for sample) shall be sent;

b. that the claimant will not attain age 65 before an extended benefit period would begin but does not have 120 months of service, a special letter shall be sent;

c. that there is insufficient evidence to fix the claimant's date of birth, a special letter shall be sent; or

d. that the claimant has 120 or more months of service, and will not attain age 65 before an extended benefit period would begin, no letter is necessary.

2007 Notice to Claimant Who Has Exhausted Sickness Benefits

2007.01 Computer-established extended benefit period

Form ID-20-7 or ID-20-8 (See RPS for samples) will be prepared for cases in which the computer establishes an extended benefit period.

2007.02 Cases referred for examiner determination

Cases in which the computer does not establish an extended benefit period are referred to an examiner for determination and sending of an appropriate notice in accordance with AIM 32-II.

a. If the examiner establishes an extended sickness benefit period, the claimant shall be notified in accordance with the provisions of AIM 32-II.

b. If the claimant attained age 65 before an extended benefit period would begin, Form Letter ID-20c (See RPS for sample) shall be sent.

c. If an extended benefit period is not established for some other reason (less than 120 months of service, voluntary retirement, age unknown, etc.), a special letter shall be sent to the claimant.

2008 Payment of $1.00 or Less on Exhaustion Claim

If the amount payable for the claimant's last compensable day in a benefit year is less than $1.00, and if that day is the only compensable day in the claim period, the claim need not be processed for payment. However, if extended benefits are payable, the amount less than $1.00 shall be included in the check for the next claim. The claimant shall be considered to have exhausted his benefit rights on the day for which that amount is paid.

2009 Inquiry Regarding Last Check

The proper ID-20 series letter shall be sent to a claimant who writes in about the amount of his or her last sickness benefit check which was smaller than usual due to the exhaustion of normal benefits.

2010 Instruction Superseded

This is a reissue of AIM 20. It supersedes all pages of AIM 20 effective prior to October 9, 1996.

2011 Form Letters Prescribed

See RUIA Procedure Supplement (RPS) for samples:

ID-20-1 through 9
ID-20a
ID-20c
ID-201

2101 Provisions of Regulations Part 349 and Part 320

Part 349

Part 349 of the Railroad Retirement Board's (RRB) Regulations pertains to the "Finality of Decisions Regarding Unemployment and Sickness Insurance Benefits". These regulations contain the time limits for reopening similar to Part 261 of the Board's regulations on reopening of decisions under the Railroad Retirement Act.

Certain determinations to recover benefits are set forth in Sections 2(f), 4(a-1)(ii), and 12(o) of the Railroad Unemployment Insurance Act (RUIA). Determinations of claims to which those sections of the Act are not applicable are to be reopened only in the circumstances set forth in Part 349.

Part 320

Part 320 of the RRB's regulations pertains to "Initial Determinations Under the Railroad Unemployment Insurance Act and Reviews of and Appeals from such Determinations". These regulations explain which units of the RRB are authorized to make initial determinations with respect to entitlement to benefits and waiver of recovery of overpayments under the RUIA. It also explains how notice of such determination is to be communicated to the claimant and to his or her base-year employer(s) and how these determinations may be appealed.

2102 Definitions

2102.01 Reopening

A conscious determination on the part of the agency to reconsider an otherwise final decision for purposes of revising that decision.

2102.02 Final Decision

Any decision made with respect to each claim for unemployment or sickness benefits by the appropriate adjudicating office where the time limit for review, as set forth in Part 320 or in the RUIA has expired.

2102.03 New and material evidence

Evidence which was unavailable to the agency at the time the decision was made, which would have been likely to influence the outcome of the decision, and which the claimant could not reasonably have been expected to have submitted at that time.

2102.04 Diligently Pursued

In view of the facts and circumstances of a particular case, the necessary action was undertaken and carried out as promptly as the circumstances permitted. Diligent pursuit is presumed to have been met if the investigation is concluded and, if necessary, the decision is revised within 6 months from the date the investigation began.

If the investigation is not diligently pursued to its conclusion, the decision will be revised if a revision is applicable, and if it is favorable to the claimant. It will not be revised if it is unfavorable to the claimant.

2103 Authority to Reopen Determinations

District offices are authorized to reopen determinations which they have made denying claims but are not authorized to reopen determinations which they have made allowing claims. The Bureau of Field Service (BFS) is authorized to reopen determinations- both those allowing and those denying claims- which were made by the district offices or by BFS. The Sickness and Unemployment Benefits Section (SUBS) in Operations is authorized to reopen any determination but will generally reopen only such determinations as were initially made in the division. The authority to reopen determinations is delegated to the Chief of SUBS and to such employees of the division, GS-7 and over, as he or she may select, and to field employees, GS-7 and over, as he or she may select.

2104 Circumstances for Reopening

2104.01 Within 12 Months

A final decision may be reopened within 12 months of the date of notice of such decision for any reason.

2104.02 Within 4 years of the date of notice:

a. if there is new and material evidence or

b. if the decision is not reasonably consistent with the evidence of record at the time of adjudication.

2104.03 At any time:

a. if the decision was obtained by fraud or similar fault or

b. if the decision was that the employee was not a qualified employee and he or she is now qualified because compensation was credited to the employee's record of compensation in accordance with Part 211 of the Regulations

1. to correct errors apparent on the face of the compensation record;

2. to enter items transferred by the SSA which were credited under the SSA when they should have been credited to the employee's railroad retirement record; or

3. to correct errors made in the allocation of earnings to individuals or periods which would have made him or her a qualified employee at the time of the decision if the earnings had been credited to his or her earnings at that time.

c. If the decision was wholly or partially unfavorable to the claimant, but only to correct a clerical error or an error that appears on the face of the evidence that was considered when the decision was made.

2104.04 Discretion of the three member Board to reopen or not to reopen a final decision

Whether a final decision is reopened or not reopened is solely within the discretion of the Board, except where reopening is required by sections 2(f), 4(a-1)(ii), or 12(o).

2105 No Basis for Reopening

If a decision now known to be erroneous cannot be reopened under Part 349, the benefit payment is final and should not be considered for recovery.

2106 Provisions of the Act Requiring Recovery

2106.01 General

Sections of the Act described below require recovery of benefits in specified circumstances. Recovery under these provisions of law is made in accordance with instructions in articles of the AIM specifically concerned with those provisions. The provisions of this article regarding reopening are not ordinarily applicable except as indicated in the paragraphs below.

2106.02 Section 2(f)

When pay for time lost or a protective payment is found to be payable for a period including days for which unemployment benefits were paid, the employer ordinarily withholds from the payment and remits to the RRB an amount determined by the RRB to be recoverable. If recovery is not thus affected, the adjudicating office should decide whether there is a basis for reopening with a view to recovering from the claimant the amount that should have been paid to the RRB under Section 2(f).

a. If the failure to affect recovery from the employer is due to a mistake by the adjudicating office, the determination allowing benefits may be reopened within 4 years to affect recovery from the claimant because “the decision was not reasonably consistent with the evidence of record at the time of adjudication”.

b. If the failure to affect recovery from the employer was induced by fraud or similar fault of the claimant, benefits are recoverable from the claimant “at any time”. For example, a claimant falsely states to an RRB representative that he or she has not claimed time lost, so amounts due under Section 2(f) are not recovered from the employer. A further example: a claimant receives a protective payment from which the employer made no deduction for benefits paid and the claimant knew or should have known that some or all of the payment should have been withheld for the RRB.

2106.03 Section 4(a-1)(ii)

Adjustments (dollar-for-dollar) of benefit payments under Section 4(a-1)(ii) of the Act are to made in accordance with instructions in AIM-17; such adjustments are not subject to the provisions of this article. In contrast, unemployment, maternity, or sickness payments under another law are excepted from the adjustment provisions of Section 4(a-1)(ii). RUIA benefits paid to a claimant for days for which he or she also received such other unemployment insurance payments are recoverable if the RUIA benefits were paid erroneously within the meaning of this instruction.

2106.04 Section 12(o)

Benefit payments to which Section 12(o) is found to be applicable are to be adjusted in accordance with the instructions in AIM-30, Title II. The provisions of the present article are not applicable with respect to any payment affected by the provisions of Section 12(o).

2107 Old Board Order 75-8

Prior to the establishment of Part 349, this Board Order authorized the reopening of determinations of claims for benefits under the RUIA. This Board Order stated that a reopening was appropriate if the initial determination was:

1. made on the basis of a clear and obvious mistake of fact;

2. based on evidence, as of the date of determination, which did not reasonably support the determination;

3. made on the basis of a clear and obvious mistake of law; or

4. even though made on the basis of reasonable evidence and laws, induced by fraud or other fault of the claimant.

Part 349 superseded Board Order 75-8 effective November 6, 2000.

2108 Reopening after time limits

A decision may be re-opened after the one-year and the four-year time limits if the Board:

a. has begun an investigation into whether to revise the decision before the applicable time period expires and

b. the agency diligently pursues the investigation to the conclusion.

The investigation may be based on a request by a claimant or on action of the Board.

2109 Notice to Claimant

2109.01 Erroneous Payment

When a redetermination cancels or reduces a previous allowance of claimed days of sickness or unemployment and there is an erroneous payment, the claimant shall be notified. The claimant shall be requested to make repayment unless it is concluded that full recovery will be made by offset. The notice shall be sent to their last known address and state the basis and effect of the decision. The notice will also inform the parties of their right to review.

2109.02 Determination Affirmed

When a redetermination affirms a previous determination denying benefits, the claimant shall be notified.

2109.03 Benefits Payable

When a redetermination allows benefits, or increases a previous allowance, the claimant need not be advised by letter of the redetermination.

2109.04 Hearings Officer/Board Revision

If a hearings officer or the three member Board proposes to revise a decision, and the revision would be based only on evidence included in the record on which the prior decision was based, all parties will be notified in writing of the proposed action. If the revised decision is issued by a hearings officer, any party may request that it be reviewed by the three member Board, or the three member Board may review the decision on its own initiative.

2110 Record of Reopening

Each redetermination shall be recorded. Where reopening a claim results in payment, examiner remarks on the claim redetermination input detail will be a sufficient record. Where reopening reduces benefits, a Statement of Determination is to be prepared.

2111 Effect of Revised Decision

A revised decision is binding unless:

- the revised decision is being reconsidered or appealed under Part 320 of the regulations.
- the three member Board reviews the revised decision.
- the revised decision is further revised consistent with this part.

2112 Time and place to request a review and/or hearing on revised decision

A party to a revised decision may request further review of the decision under Part 320 "Initial Determinations Under the Railroad Unemployment Insurance Act and Reviews of and Appeals from such Determinations".

2113 of record at the time of adjudication

Evidence of record means evidence the adjudicating office possesses when it makes the determination. It also includes information in the possession of other offices of the Board that they could reasonably be expected to use in the normal course of adjudication

2114 Change of legal interpretation /opinion

A change of legal interpretation or administrative ruling upon which a decision is based does not render a decision erroneous, and is not a basis for reopening. For example, an opinion of Policy and Systems advising that it does not concur in a determination of an adjudicating office allowing benefits may serve as a precedent with respect to subsequent cases. However, the Policy and Systems opinion does not constitute grounds for reopening the determination, if the evidence available as of the date of determination reasonably supported the determination awarding benefits.

2115 Fraud or similar fault of claimant

The decision may be reopened at any time if obtained by fraud or similar fault.

2115.01 Fraud

A determination induced by fraud of the claimant is one which would have been rendered to the contrary if the claimant had not knowingly made a false statement or claim for the purpose of causing benefits to be paid. The payments induced by fraud, as well as payments for the 75-day period of disqualification, are erroneous.

2115.02 Fault similar to fraud

A determination is considered to have been induced by fault similar to fraud if available evidence which a claimant knew or ought to have known was material to the case and which would have necessitated a different determination, was concealed or not furnished and the claimant should have furnished such evidence. In deciding whether a claimant knew or ought to have known that certain information was material to the case, consideration must be given to all the facts relating to the claimant's knowledge and understanding of the pertinent requirements, and to the conditions under which he/she failed to furnish information or furnished incorrect information. The following matters are among those which should be considered:

a. The claimant's education, literacy, and general level of intelligence.

b. The claimant's understanding of the pertinent requirements as demonstrated in the past.

c. Specific explanations that Board employees made to him or her and the circumstances of such explanations.

d. The claimant's explanation of his or her failure to furnish information or his or her failure to furnish correct information.

e. The claimant's diligence using information booklets furnished to him or her.

f. The reasonableness of the claimant's misunderstanding or misinterpretation of terms or instructions.

g. The claimant's diligence in reporting, at the earliest possible moment, any change in his or her circumstances affecting his or her claim.

2116 Guidelines for Reopening in Selected Cases

This section gives some examples of circumstances in which reopening applies. This is <u>not</u> a definitive listing.

2116.01 Remuneration

If remuneration and benefits are attributable to the same days, the determination allowing benefits should ordinarily be reopened. Fraud or similar fault of the claimant is the most likely reason for reopening; therefore, the decision could be reopened at any time. In some situations it may be assumed, without investigation, that the determination was induced by fault (similar to fraud) of the claimant because in the given circumstances any claimant would be expected to know that benefits were not payable. Such an assumption may be made, for instance, when a day for which benefits were paid is:

a. a day on which the claimant worked for an employer (railroad or non-railroad) and for which he received an identifiable amount of remuneration, or

b. a day in a vacation period for which the claimant received pay for vacation (rather than pay in lieu of vacation).

2116.02 Availability for work

A finding that a claimant was not available for work on days for which unemployment benefits were paid may require reopening of the determination. The finding can be reopened within one-year for any reason.

Benefits are occasionally paid to a claimant, through oversight, after he or she has been held to be not available for work. If there is evidence as to the claimant's unavailability on the days for which benefits were paid, it must be concluded that the decision is not reasonably consistent with the evidence of record at the time of adjudication, hence the payment is erroneous. The decision can be reopened within four years of that date.

It is seldom found that payment of benefits for a period of unavailability was induced by any type of claimant fault. A claimant's statement that he or she is willing to perform some work, irrespective how trivial, and that he or she is in a position to perform such work is not inconsistent with his or her certification on Form UI-3 that he or she is available for work. However, where a claimant states that he or she is not willing to accept any work, or that he or she is not in a position to perform such work under any condition, the claimant should be asked to reconcile either of these statements with his or her certification on Form UI-3 that he or she is available for work.

2116.03 Ability - inability to work

Consideration should be given to reopening a determination of a claim allowing unemployment benefits if medical evidence is received clearly establishing that the claimant was not able to work. (Example: a claimant applies for sickness benefits shortly after exhausting unemployment benefits and the statement of

sickness shows that he became unable to work in the period for which unemployment benefits were paid.) Similarly, consideration must be given to reopening a determination of a claim allowing sickness benefits if it is established that the claimant was able to work during the period covered by the claim. Such determinations shall be reopened for reduction or cancellation of the allowance of benefits if the time limits required for reopening are found.

However, a determination allowing benefits may be reopened without investigation in any case in which the benefits to which the claimant is found not entitled may readily be recovered by offset against other benefits for the same days. That is, unemployment benefits to which the claimant was not entitled can be recovered by offset against sickness benefits or sickness benefits can be recovered by offset against unemployment benefits.

2116.04 Separation allowance disqualification

If it is found that benefits have been paid for days in a disqualification period established because of an employee's receipt of a separation allowance, the question of reopening the determination allowing benefits must be considered. The time limits set forth in this article are, of course, applicable. It may generally be assumed that payment of benefits was not induced by fraud or other fault of the claimant if the claim or claims were made before the separation allowance was paid. It may be considered, without investigation, that claims were made before the allowance was paid if the last day for which benefits were paid is no more than two weeks after the reported date of separation from service. In other cases, information should be obtained from the claimant or the employer as to:

(a) the date on which the claimant signed a paper accepting the separation allowance,

(b) the date stated in the paper as the date of separation from service, and

(c) the date on which the separation allowance was paid.

Appendices

Regulations Part 349 Supercedes Board Order 61-146

Effective November 6, 2000.

Board Order 61-146

1. Ruling With Respect To Reopening Determinations Of Claims For Benefits Under The Railroad Unemployment Insurance Act And Delegation Of Authority To Reopen Such Determinations In Certain Cases

The reopening of determinations of claims for benefits under the Railroad Unemployment Insurance Act shall be governed by the following provisions:

A. Authority to reopen claims under the provisions of this order, subject to the limitations in C below, is hereby delegated to the director of unemployment and sickness insurance, to the regional directors, and to such employees, grades GS-7 and over, as are selected by the director of unemployment and sickness insurance and the regional directors respectively.

B. The opinion and conclusions of the general counsel, contained in his memorandum of August 16, 1939 (L-39-527), on reopening by the Board of final decisions on claims for benefits under Railroad Retirement Act, shall, to the extent that they are applicable, govern reopening of determinations made upon the Railroad Unemployment Insurance Act. The applications of these conclusions as set forth in the general counsel's memorandums of March 18, 1942 (L-42-177) and October 4, 1945 (L-45-650) is hereby continued in effect.

C. No reopening shall extend to:

   (1) Any issue settled by the decision of a referee or other reviewing body, or of the Board; or

   (2) Any issue not affected by circumstances constituting grounds for reopening under the specific provisions of this order.

D. When a determination is reopened, a new determination shall be made affirming, modifying, or reversing the previous determination.

E. A determination allowing a claim in whole or in part shall be reopened for reduction or cancellation of the allowance upon a finding that the determination:

   (1) Was made on the basis of a clear and obvious mistake of fact;

   (2) Was based on evidence, as of the date of determination, which did not reasonably support the determination;

   (3) Was made on the basis of a clear and obvious mistake of law; or

   (4) Was, even though made on the basis of reasonable evidence and law, induced by fraud or other fault of the claimant.

F. If reopening results in the reduction or cancellation of the allowance of claimed days of unemployment or sickness in a registration period, the amount by which benefits were increased by including such days as

days of unemployment or sickness in the registration period shall be recoverable by the Board, unless recovery is waived under section 2(d) of the Act.

G. If a claim is reopened upon a finding that section 4(a-1)(i) of the Act is applicable with respect to the registration period, the amount by which benefits were increased by including any of the seventy-five days beginning with the first day of the registration period as days of unemployment or sickness in any registration period shall be recoverable, and claims with respect to registration periods including such days shall be reopened.

H. Under no other circumstances may a determination allowing a claim in whole or in part be reopened for reduction or cancellation.

I. A determination denying a claim for benefits in whole or in part shall be reopened for an allowance or an increase of the allowance upon a finding that the denial:

(1) Was made on the basis of a clear and obvious mistake of fact;

(2) Was based on evidence, as of the date of determination, which did not reasonably support the determination; or

(3) Was made on the basis of a clear and obvious mistake of law.

J. A determination denying a claim for benefits in whole or in part may be reopened when new and material evidence is submitted provided there is no conflicting evidence or a previous conflict is satisfactorily explained.

2201 Provisions of the Act

2201.01 Section 2(d)

of the Act provides that:

"If the Board finds that at any time more than the correct amount of benefits has been paid to any individual under this Act or a payment has been made to an individual not entitled thereto (including payments made prior to July 1, 1940) recovery by adjustments in subsequent payments to which such individual is entitled under this Act or any other Act administered by the Board may, except as otherwise provided in this subsection, be made under regulations prescribed by the Board. If such individual dies before recovery is completed, recovery may be made by set-off or adjustments, under regulations prescribed by the Board, in subsequent payments due, under this Act or any other Act administered by the Board, to the estate, designee, next of kin, legal representative, or surviving spouse of such individual, with respect to the employment of such individual.

"Adjustments under this subsection may be made either by deductions from subsequent payments or, with respect to payments which are to be made during a lifetime or lifetimes, by subtracting the total amount of benefits paid in excess of the proper amount from the actuarial value, as determined by the Board, of such payments to be made during a lifetime or lifetimes and recertifying such payments on the basis of the reduced actuarial value. In the latter case recovery shall be deemed to have been completed upon such recertification.

"There shall be no recovery in any case in which more than the correct amount of benefits has been paid to an individual or payment has been made to an individual not entitled thereto (including payments made prior to July 1, 1940) who, in the judgment of the Board, is without fault when, in the judgment of the Board, recovery would be contrary to the purpose of this Act or would be against equity or good conscience."

"No certifying or disbursing officer shall be held liable for any amount certified or paid by him in good faith to any person where the recovery of such amount is waived under the third paragraph of this subsection or has been begun but cannot be completed under the first paragraph of this subsection."

2201.02 Section 2(f)

of the Act provides that:

"If (i) benefits are paid to any employee with respect to unemployment or sickness in any registration period, and it is later determined that remuneration is payable to such employee with respect to any period which includes days in such registration period which has been determined to be days of unemployment or

sickness, and (ii) the person or company from which such remuneration is payable has, before payment thereof, notice of the payment of benefits upon the basis of days of unemployment or sickness included in such period, the remuneration so payable shall not be reduced by reason of such benefits but the remuneration so payable, to the extent to which benefits were paid upon the basis of days which had been determined to be days of unemployment or sickness and which are included in the period for which such remuneration is payable, shall be held to be a special fund in trust for the Board. The amount of such special fund shall be paid to the Board and in the collection thereof the Board shall have the same authority, and the same penalties shall apply, as are provided in section 8 of this Act with respect to contributions. The proceeds of such special fund shall be credited to the account. Such benefits, to the extent that they are represented in such a special fund which has been collected by the Board, shall be disregarded for the purposes of subsection (c) of this section."

2201.03 Section 4(a-1)

of the Act provides, in part, that:

"There shall not be considered as a day of unemployment or as a day of sickness, with respect to any employee-- . . . (ii) 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 other than this Act, or any other social insurance payment under any law: Provided, That if an employee receives or is held entitled to receive any such payments, other than unemployment, maternity, or sickness payments, with respect to any period which include days of unemployment or sickness in a registration period which include days of unemployment or sickness in a registration period, after benefits under this Act for such registration period will have been paid, the amount by which such benefits under this Act will have been increased by including such days as days of unemployment or as days of sickness shall be recoverable by the Board: Provided further, That, if that part of any such payment or payments, other than unemployment, maternity, or sickness payments, which is apportionable to such days of unemployment or days of sickness is less in amount than the benefits under this Act which, but for this paragraph, would be payable and not recoverable with respect to such days of unemployment or days of sickness, the preceding provisions of this paragraph shall not apply but such benefits under this Act for such days of unemployment or days of sickness shall be diminished or recoverable in the amount of such part of such other payment or payments;"

2201.04 Section 12(o)

of the Act provides that:

"Benefits payable to an employee with respect to days of sickness shall be payable regardless of the liability of any person to pay damages for such infirmity. The Board shall be entitled to reimbursement from any sum or damages paid or payable to such employee or other person through suit, compromise, settlement, judgment, or otherwise on account of any liability (other than a liability under a health, sickness, accident, or similar insurance policy) based upon such infirmity, to the extent that it will have paid or will pay benefits for days of sickness resulting from such infirmity. Upon notice to the person against whom such right or claim exists or is asserted, the Board shall have a lien upon such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimbursement."

2202 Provisions of the Federal Claims Collection Act of 1966

Section 3, Public Law 89-508, 80 Stat. 308, provides that:

"(a) The head of an agency or his designee, pursuant to regulations prescribed by him and in conformity with such standards as may be promulgated jointly by the Attorney General and the Comptroller General, shall attempt collection of all claims of the United States for money or property arising out of the activities of, or referred to, his agency.

"(b) With respect to such claims of the United States that have not been referred to another agency, including the General Accounting Office, for further collection action and that do not exceed $100,000, exclusive of interest, the head of an agency or his designee, pursuant to regulations prescribed by him an in conformity with such standards as may be promulgated jointly by the Attorney General and the Comptroller General, may (1) compromise any such claim, or (2) cause collection action on any such claim to be terminated or suspended where it appears that no person liable on the claim has the present or prospective financial ability to pay any significant sum thereon or that the cost of collecting the claim is likely to exceed the amount of recovery. The Comptroller General or his designee shall have the foregoing authority with respect to claims referred to the General Accounting Office by another agency for further collection action. The head of an agency or his designee shall not exercise the foregoing authority with respect to a claim as to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, or a claim based in whole or in part on conduct in violation of the antitrust laws; nor shall the head of an agency, other than the Comptroller General of the United States, have authority to compromise a claim that arises from an exception made by the General Accounting Office in the account of an accountable officer.

"(c) A compromise effected pursuant to authority conferred by subsection (b) of this section shall be final and conclusive on the debtor and on all officials, agencies, and courts of the United States, except if procured by fraud, misrepresentation, the presentation of a false claim, or mutual mistake of fact. No accountable officer shall be liable for any amount paid or for the value of property lost, damaged, or destroyed, where the recovery of such amount or value may not be had because of a compromise with a person primarily responsible under subsection (b)."

2203 Kinds of Adjustments

2203.01 Underpayments and overpayments

Adjustment is made when less than the correct amount of benefits has been paid or benefits are determined to have been paid erroneously. (See AIM-21, "Reopening and Redetermination".)

2203.02 Adjustment under Section 4(a-1)(ii) of the Act

Adjustment is made when a claimant is receiving or has received other social insurance payments with respect to days for which benefits have been paid or are to be paid. (See AIM-17, "Determinations under Section 4(a-1)(ii).")

2203.03 Adjustments under Section 2(f) and 12(o) of the Act

Adjustment is made when a recovery under Section 2(f) or 12(o) is made. (See AIM-30, "Determinations under Sections 2(f) and 12(o).")

2203.04 Payments to beneficiaries of deceased claimants or fiduciaries of incompetents

When payment is made to a beneficiary or fiduciary, the transaction is treated as an adjustment if the amount of the payment was previously certified for payment to the claimant and the check was returned. (See AIM-28, "Death Cases.")

2204 Collection of Recoverable Amount

2204.01 General

When an amount has been determined to be recoverable from a debtor (i.e. claimant, railroad or third party), efforts to collect shall be started promptly. The first effort shall normally be a billing statement to the debtor, prepared by the office that made the determination or by the division of debt management, clearly explaining why the amount is recoverable. After this document has been released the follow-up efforts (dunning notices) shall be timely, forceful and persistent. If the amount recoverable is less than $25, no additional recovery efforts are to be made following the release of the final dunning notice.

The amount recoverable should be collected in full in one lump sum whenever possible. However, if the debtor is financially unable to pay the full amount in one lump sum, payment may be accepted in regular installments. An RRB representative making arrangements for installment payments should try to get an agreement which will result in liquidating the debt in not more than three years. Where this is manifestly impossible, arrangements covering a longer period of time will be acceptable. Installment payments of less than $50.00 per month should be accepted in only the most unusual circumstances.

2204.02 Amount recoverable from Railroad Retirement Act (RRA) annuitant

When an amount in excess of $25.00 (other than an amount reported in accordance with instructions in AIM-17) is recoverable from a debtor receiving an annuity under the RRA, the billing statement advising the debtor of the overpayment is to explain that recovery will be made from the annuity if cash repayment is not promptly made. No installment billing or partial withholding of an annuity will be offered to a debtor whose overpayment is less than the total monthly annuity. Installment billing will only be offered to debtors whose overpayments may be cleared within one year by applying 50 percent of their annuity. Cases where the debtor expresses an inability to pay the installment amount will be reviewed on an individual basis.

2204.03 Internal Revenue Service (IRS) and Administrative Offset

When the debtor is receiving federal payments such as those paid by the Social Security, Veteran's Administration or federal salary, or is entitled to a tax refund from the IRS, recovery may be effected by administrative offset of these payments. The criteria for referring cases to the IRS can be found in DPOM-I, Article 7, chapter 740.25.

2205 Compromise of Recoverable Amount

Under the Federal Claims Collection Act of 1966 the Board has authority to compromise claims for amounts not exceeding $100,000. The authority does not extend to any case in which there is an indication of fraud, the presentation of a false claim or misrepresentation on the part of the debtor or his representative. Factors to be considered in a compromise are set forth in part 340.14 of the RRB's regulations. Any offer or suggestion of compromise of a debt arising under the Railroad Unemployment Insurance Act is to be referred to the Director of Operations, Office of Programs.

2206 Reconsideration and Waiver of Recovery

Section 5(c)(1) of the Railroad Unemployment Insurance Act provides for reconsideration of adverse determinations and authorizes the Board to establish appeal procedures. Any debtor or survivor from whom we attempt collection of a debt has the right to request reconsideration and waiver of recovery. Survivors

are bound by the time limits that applied to the claimant, so the claimant's failure to protest may extinguish the survivor's rights. Business debtors do not have the same rights as claimants; under certain circumstances the business may request review, resulting in appointment of a hearings examiner who reports to the three-member board, which issues a final agency decision. The business debtor may then seek adjudication in a federal court. A party failing to file a timely request for reconsideration forfeits rights to review, thereby making the decision of the adjudicating office final.

Section 2(d) of the Railroad Unemployment Insurance Act provides for waiver of recovery in any case in which, in the judgment of the Board, the individual who received the amount recoverable is without fault and recovery would be against equity and good conscience. When recovery has been waived, the adjustment shall be considered as completed.

2206.01 Reconsideration and Waiver of Recovery for Deceased Claimants

Section 2(d) of the Railroad Unemployment Insurance Act also provides authority for the Board to recover an overpayment under that Act by offset against annuities payable under the RRA not only to the debtor but also to the estate, designee, next of kin, legal representative or surviving spouse. However, the survivor(s) of a deceased claimant has the same rights to reconsideration except when:

1. the employee debtor had the opportunity to protest but did not do so; or

2. the employee debtor protested but failed to exhaust the administrative remedies prior to his/her death.

2207 Bankruptcy

When information is received that a debtor is involved in a bankruptcy proceeding, the case is to be referred to the RUIA Analysis and Systems section to determine whether the RRB shall participate in the bankruptcy proceeding or whether the case shall be written off. The section shall give the adjudicating office appropriate instructions.

2208 Determinations as to Uncollectibility

If efforts to collect a recoverable amount are unsuccessful, the division of debt management shall determine that the amount is uncollectible. An account is considered uncollectible in any of these circumstances:

1. The debtor is unable to make any substantial payment and there is positive financial evidence to this effect. Such cases are to be followed up periodically.

2. The debtor cannot be located and/or the statute of limitations has run.

3. It is likely that the cost of further collection action will exceed the amount recoverable.

4. If the debtor is deceased and has at least 120 cumulative service months and there is positive evidence showing the decedent left no estate.

2209 Suspension or Termination of Collection Activity

2209.01 General

The Board has authority, under the Federal Claims Collection Act of 1966, to suspend or terminate collection activity under certain circumstances when collection efforts have been unsuccessful. Such cases are not referred to the IRS, Department of Justice or a private collection agency for further action. The Board's authority to suspend or terminate does not extend to fraud cases.

2209.02 Suspension of collection activity

Collection action may be suspended temporarily if the amount recoverable cannot be collected immediately and there is reason to believe that future collection action may be sufficiently productive to justify periodic review and recovery action, considering the size of the debt and the amount that may be collected.

2209.03 Termination of collection activity (write off)

The collection activity shall be terminated and the debt written off in any of these circumstances:

a. The debt is less than $25.00 and collection efforts have failed or are no longer justified.

b. The debtor is discharged in bankruptcy. (A debt based on a false claim is not dischargeable in bankruptcy).

c. It is determined that the RRB's claim is legally without merit.

d. If the debtor is deceased and has less than 120 cumulative service months and all collection efforts have failed.

e. If the debtor has less than 120 cumulative service months, is at least 60 years old, has not worked in the railroad industry within the past 10 years, and all collection efforts have failed.

The file must contain a brief statement as to the basis for termination of collection activity.

2210 Forms and Form Letters Prescribed

Form G-145, Billing Statement, U. S. Railroad Retirement Board
ID-22
UI-68

Appendices

Statute of Limitations

Public Law 89-505, 80 Stat. 304 (28 U.S.C. 2415(a)) is the statute of limitations applicable to erroneous payment cases and to recovery under section 12(o). The statute bars legal action to collect unless the complaint is filed in court within 6 years after the right of action accrues. In erroneous payment cases, the right of action generally accrues when a benefit payment is made. In section 12(o) cases, the right generally accrues when damages become payable giving the RRB a right to reimbursement. Legally required administrative proceedings (generally reconsideration and appeals) can extend the 6-year limit to 1 year after the date of a final decision.

In section 2(f) cases the statute of limitations depends on whether the RRB chooses to treat the section 2(f) claim as a tax claim. If so, under 26 U.S.C. 6501(a) the RRB must "assess" or bill the debtor within 3 years of receiving information necessary to compute and establish the debt; under 26 U.S.C. 6501(c), the RRB has 10 years from the date of billing to levy or file a claim in court to enforce collection of an amount for which the debtor was timely billed.

If the section 2(f) debt is not treated as a tax claim, the 6-year statute of limitations in 28 U.S.C. 2415(a) applies and runs from the date the RRB receives information necessary to establish the account receivable; the 3-year billing period requirement does not apply under 28 U.S.C. 2415(a).

(References: L-80-45, L-89-52, L-89-147)

2301 Provisions of Law and Board Regulations

2301.01 Railroad Retirement Act

Section 12 of the Railroad Retirement Act provides, in part, that:

"(a) Every individual receiving or claiming benefits, or to whom any right or privilege is extended, under this Act or any other Act of Congress now or hereafter administered, in whole or in part, by the Board shall be conclusively presumed to have been competent until the date on which the Board receives written notice, in a form and manner acceptable to the Board, that he is an incompetent, or a minor, for whom a guardian or other person legally vested with the care of his person or estate has been appointed: Provided, however, that regardless of the legal competency or incompetency of an individual entitled to a benefit administered by the Board, the Board may, if it finds the interest of such individual to be served thereby, recognize actions by, and conduct transactions with, and make payments to a relative or some other person for such individual's use and benefit.

"(b) Every guardian or other person legally vested with the care of the person or estate of an incompetent or minor who is receiving or claiming benefits, or to whom any right or privilege is extended, under this Act or any other Act of Congress now or hereafter administered, in whole or in part, by the Board shall have power everywhere, in the manner and to the extent prescribed by the Board, but subject to the provisions of the preceding subsection, to take any action necessary or appropriate to perfect any right or exercise any privilege of the incompetent or minor and to conduct all transactions on his behalf under this or any other Act of Congress now or hereafter administered by the Board. Any payment made pursuant to the provisions of this section shall be a complete settlement and satisfaction of any claim, right, or interest in and to such payment."

In as much as section 12 of the Railroad Retirement Act applies to "any other Act of Congress now or hereafter administered, in whole or in part, by the Board", the provisions of section 12 apply to payments under the Railroad Unemployment Insurance Act.

2301.02 Regulations

See 20 CFR 266.

2301.03 Board Order 75-8

Item 12 of Basic Board Order 75-8 provides:

"In the absence, or prior to receipt, of written notice of the appointment of a guardian or other person legally vested with the care of the person or estate of an individual to

whom benefits are payable under the Railroad Unemployment Insurance Act, the office of the Board adjudicating the individual's claims for benefits is authorized to certify payment of such benefits to another for the use of the individual if, in accordance with instructions issued by the director of unemployment and sickness insurance, it finds that the individual is unable, because of incompetence, to endorse checks and that such certification is in the best interest of the individual. In the absence of special circumstances, consideration of the proper person to be designated in the certification as the payee should be limited to the following persons, who are listed in order of preference: (a) the spouse; (b) a child who has gained majority; (c) a parent; (d) a brother or sister; (e) the head of the institution where the individual is receiving treatment."

2302 Considerations in Applying the Provisions

2302.01 Presumption of competence

It is to be presumed that an individual is competent and able to sign forms unless (a) a guardian or other legal representative has been appointed by a court, or (b) a written statement has been submitted that the individual is not able to sign forms.

2302.02 Persons who may act for individual

Ordinarily the person who is to act for an individual in claiming benefits under the Act should be (a) the guardian or other legal representative appointed by a court or (b) a person whose relationship to the employee/claimant is such that it can be reasonably inferred that he or she will act in the best interest of the individual.

2302.03 Accepting forms and paying benefits

a. A guardian or other legal representative may take all actions necessary to file and perfect a claim for benefits in behalf of an individual who is unable to sign forms or endorse checks. Benefits are to be certified for payment to a guardian or other legal representative for the use of the individual entitled to payment. (See AIM-2303.)

b. In the absence of a guardian or other legal representative, another person may file claims in behalf of an individual who is unable to sign forms. A properly executed Form SI-10, Statement of Authority to Act for Employee, is sufficient evidence of an individual's inability to sign forms. However, benefits are to be certified for payment to the individual entitled unless there is additional evidence to show that the individual is unable to endorse checks. (See AIM-2304.)

2303 Guardian or Other Legal Representative Appointed

2303.01 Recognition

When a certified transcript of a court order showing the appointment of a guardian or other legal representative of an individual has been received:

a. All correspondence and forms concerning the individual's rights under the Railroad Unemployment Insurance Act are to be sent to the guardian or other legal representative,

b. Required forms or documents completed in behalf of the individual by the guardian or other legal representative are to be accepted.

c. Any amounts to which the individual is found to be entitled are to be approved for payment to the guardian or other legal representative for the use of the individual.

Note: Use a type 1 payee legend in order to mail computer-generated correspondence, claim forms and benefit payments to the guardian or other legal representative for the claimant. For example, enter the legend and address as follows:

J A JOHNSON FOR	Type 1 legend
I M CLAIMANT	Name of claimant
123 MAIN ST	Address of guardian or legal representative
CHICAGO IL 60611	

2303.02 Termination of Appointment

When notice of termination of the appointment of a guardian or other legal representative of an individual is received, a certified copy of the court order terminating the appointment should be obtained. Upon receipt of a copy of the court order, any required correspondence or forms should be sent to the individual and any amounts to which the individual is found to be entitled are to be approved for payment to him or her. A request for opinion should be submitted when there is information that an individual may have regained competence and appointment of a guardian or other legal representative has not been terminated.

2304 Recognition of Person Other Than Guardian or Legal Representative

2304.01 Requirement

Ordinarily, it will be necessary to recognize a person to act for an individual for whom no guardian or other legal representative has been appointed when such individual:

a. May be entitled to benefits; and

b. Is so sick or injured that he or she cannot sign forms.

2304.02 Qualification of person to act

A person may properly act in behalf of an individual when such person:

a. Is willing to undertake to transact in the individual's best interests all business relating to applications and claims;

b. Is related to the individual by blood or marriage, or in the event there is no such relative available, has some other relationship from which it might reasonably be inferred that he or she would act in the individual's best interests; and

c. Has furnished the information required by Form SI-10 and has properly executed such form.

2304.03 Form SI-10

The information required by Form SI-10, and the action to obtain needed information which has not been furnished, should be determined as provided below.

a. Identity of individual

There should be sufficient information in section 1 of Form SI-10 to identify the individual in whose behalf a person is to claim benefits. When this information has not been furnished or is not sufficient, it should be obtained from the person who signed section 1.

b. Description of individual's condition

When this information has been omitted from section 1, it should be obtained, unless medical information shows that the individual is in no condition to act for himself or herself.

c. Relationship

Section 1 should contain information indicating the relationship to the individual of the person who is to claim benefits in his or her behalf. If information concerning relationship has not been furnished, or if it is not clear that the person who signed section 1 will act in the individual's best interests, an investigation should be initiated to obtain the required information.

d. Signature in Section 1

The signature of the person who is to claim benefits in behalf of the individual is required in section 1. The form is not acceptable if the signature has been omitted, and action should be initiated to obtain a proper signature.

e. Address in Section 1

When the address has been omitted from section 1, the address shown on forms filed in behalf of the individual should be used.

f. Signature in Section 2

The signature of a doctor or other person qualified or designated to execute statements of sickness is required in section 2. To be acceptable the doctor or other person must have examined the individual entitled to benefits during the period when he or she was unable to sign forms because of sickness or injury for which benefits are claimed.

Where there is no signature in section 2, a signature of the individual's doctor should be obtained. When a signature that has been entered in section 2 is not acceptable because there is no information that a person qualified to execute statements of sickness examined the claimant, such information or an acceptable Form SI-10 should be obtained.

2304.04 Application and claim forms

Application and claim forms should be sent to the person recognized to act for the individual who may be entitled to benefits. The forms should be signed by that person.

Note: Unless it has been determined that the employee/claimant is unable to endorse checks, use a type 2 address legend in order to mail computer-generated correspondence and claim forms to the claimant in care of the person recognized to act in behalf of the claimant. For example, enter the address as follows:

I M CLAIMANT	Name of claimant
C/O J A JOHNSON	Type 2 legend
123 MAIN ST CHICAGO IL 60611	Address of individual recognized to act for claimant

See AIM-2303.01 for an example of how to enter an address for a claimant who is unable to endorse checks.

2304.05 Payment of benefits

Benefits are to be certified in the name of the employee/claimant entitled to payment unless it has been found that he or she is unable to endorse checks. It may be considered that an employee is not able to endorse checks when a written statement, other than Form SI-10, has been received indicating that he or she cannot endorse checks and such statement is supported by the medical evidence submitted.

In cases in which it is determined that the employee/claimant cannot endorse checks, benefits may be certified to one of the following persons, provided such person has executed Form SI-10. The following are listed in order of preference:

a. The spouse of the individual to whom payment is due, or

b. A child who has gained majority, or

c. A parent, or

d. a brother or sister, or

e. The head of the institution where the individual is receiving treatment.

In any other circumstances, a request for opinion should be submitted and payment should be withheld until an opinion is received.

2304.06 Termination of recognition

Payment to the person recognized to act for an individual is to be discontinued immediately upon receipt of information that such individual may be able to endorse checks. Upon receipt of evidence that an individual can act for himself or herself in claiming benefits, required forms should be sent to the claimant and should be signed by him or her rather than by the person who had been recognized to act for him.

Appendices

Appendix A

Additional Examples of Unacceptable Statements of Authority To Act For Employees Form (SI-10):

See AIM 2304.03 Form SI-10, for a description of an unacceptable Form SI-10. Below are additional examples. . Use Form ID-23 Notice of Authority To Act For Employee to notify claimant and designee of an unacceptable Form SI-10.

- When a claimant is physically able to sign either the Application for Sickness Benefits (SI-1A) or Claim for Sickness Benefits (SI-3), but is confined to a hospital or similar institution.

- When a claimant is physically able to sign our forms but is receiving medical treatment away from home and requests that spouse be able to sign forms.
- When a claimant is physically able to sign our forms but does not understand the English language.

2400 Provisions of the Act, As Amended October 9, 1996

Section 2(a)(1) provides, in part that,

"(ii) Waiting period for first registration period. -- Benefits shall be payable to any qualified employee for each day of unemployment in excess of 7 during that employee's first registration period in a period of continuing unemployment if such period of continuing unemployment is the employee's initial period of continuing unemployment commencing in the benefit year."

"(ii) Waiting period for first registration period. -- Benefits shall be payable to any qualified employee for each day of sickness in excess of 7 during that employee's first registration period in a period of continuing sickness if such period of continuing sickness is the employee's initial period of continuing sickness commencing in the benefit year. For the purposes of this clause, the first registration period in a period of continuing sickness is that registration period that first begins with 4 consecutive days of sickness and includes more than 4 days of sickness."

Note: Prior to amendments to the RUIA in October 1996, no benefits were payable for an employee's first registration period having more than 4 days of unemployment and sickness in each benefit year. This resulted in a 14-day waiting period. The change to a 7-day waiting period applies to periods of continuing unemployment and periods of continuing sickness beginning on and after October 9, 1996.

2401 General

The term "waiting period" refers to the first 7-days of an employee's first registration period in the first period of continuing sickness and first period of continuing unemployment beginning in the benefit year. Benefits are payable for each day of unemployment or sickness in excess of 7 for an employee's first registration period in a period of continuing unemployment or period of continuing sickness. A second waiting period, as provided for prior to the October 1996 amendments, is no longer required when a claimant's benefit claims continue into a new benefit year. The term "first valid registration period" is also used to refer to the "waiting period."

2402 Establishing the Waiting Period

In general, the first registration period established in the first period of continuing sickness and first period of continuing unemployment in a benefit year constitutes the waiting period, provided there are at least 5 days of unemployment or sickness in the registration period and in the case of sickness benefits, the period contains 4 consecutive days of sickness. Therefore, as few as 5 days of either

unemployment or sickness can satisfy the benefit year waiting period requirement. No benefits are payable on the basis of a waiting period claim, however, unless there are at least 8 days of sickness or unemployment in the period.

The waiting period cannot begin until the employee establishes a valid day of sickness or unemployment. Accordingly, a waiting period may not begin with rest days followed immediately by days of employment or paid vacation, since such a registration is not in accordance with Part 325.2(c) of the regulations. In such a case, the waiting period is to begin with the first day of unemployment or sickness after the employee's date last worked or after the days to which remuneration is attributable.

2403 Possibility of Earlier Waiting Period

If a registration period is the first one to be recorded on a claimant's record for a benefit year and the period is an otherwise compensable period, the registration period will satisfy the waiting period requirement, even though there is a possibility that an earlier registration period may subsequently be determined to satisfy the waiting period requirement. If a claim for an earlier period is subsequently filed and meets the requirements, a redetermination is to be made of the claim previously held to satisfy the waiting period requirement, and benefits paid accordingly.

For example, an employee files a statement of sickness late for an infirmity beginning April 20. His first day of sickness is determined to be May 25. He claims all days as days of sickness in the claim period May 25 through June 7. His 7-day waiting period is satisfied in the claim period May 25 through June 7 leaving 7 days payable. The employee then provides information which allows conditional filing of his statement of sickness to April 20. The claim period April 20 through May 3 becomes the waiting period, and benefits are payable for subsequent registration for days of sickness in excess of 4, including days in the period beginning May 25 that were included in the original waiting period.

2404 Adjusting the Waiting Period

2404.01 General

As a general rule, an employee's earliest day of unemployment or sickness should be allowed regardless of the 7-day waiting period provision. Many employees have supplemental benefit plans that provide for payment of benefits for days in the waiting period(s), so the earliest permissible day is, in general, to the advantage of the employee. This rule also applies to days of unemployment or sickness prior to October 9, 1996, even though such days will result in a 14-day waiting period and possibly back-to-back waiting periods if claims begins at the end of one benefit year and continue into the next. An exception may be

made, however, if the employee insists on a later day to avoid back-to-back 14-day waiting periods or for some other legitimate reason.

If the employee requests a different beginning for the waiting period, it may be deemed that no registration was made and the waiting period may be adjusted. Such requests must be in writing and addressed to Operations-RUIA Adjudication, Attn: Claims Operations. Once the change is made, it cannot be reversed.

2404.02 Redetermination of days in the waiting period

The waiting period may be redetermined to change the number of days of unemployment or sickness. As long as there are 5 or more days of unemployment or sickness remaining, and in the case of sickness benefits, the days of sickness begin with 4 consecutive days of sickness, the waiting period remains valid.

For example, Employee A last worked December 31, and is initially determined to have 14 consecutive days of sickness from January 1 through 14. If it is subsequently determined that he received vacation pay for January 3, then the days January 1, 2 and 3 may not count toward the required five days of sickness in Employee A's first valid period. January 1 and 2 may not count because they are not part of, or preceded by 4 consecutive days of sickness. January 3 may not count because remuneration is attributable to that day. However, because a sufficient number of days of sickness remain in the claim period, the 7-days waiting period is still satisfied.

2405 Erroneous Determination of Waiting Period

2405.01 Claimant not at fault

When it is found that a claim previously considered to be a first valid registration period can no longer be considered the first valid period, determinations already made on claims for later periods may not be erroneous. The later determinations would not be erroneous if at the time of the determination:

1. The adjudicating office could not reasonable have been expected to know that a first valid registration period had not been established; and

2. The claimant is not at fault for establishment of the erroneous first valid period; and

3. The later determinations were not otherwise erroneous.

When it is found that a claimant has no first valid registration period, no further benefits of that type are to be paid to the claimant in the benefit year unless a first valid registration period is thereafter established. In such a case, the next claim to process in the same benefit year will be determined to be the first valid

period. Form Letter ID-11V will automatically be prepared and referred to a claims examiner for checking and release. Form Letter ID-11V advises the claimant that his or her recent claim was used to reestablish a first valid period. Such a situation may occur, for example, where a claimant receives pay for time lost for a period that previously satisfied the waiting period requirement.

If an attempt is made to redetermine a claim already on record to increase benefits, but there is no first valid period established, the redetermination will not take place and the case will be referred to an examiner for reason "690". Examiners are to notate the referral as a "suspense payable" and file the referral in the claimant's folder. If a first valid period is subsequently established, the redetermination action is to be completed by the next examiner who handles the case so the amount due the claimant is paid.

2405.02 Claimant at fault

If a first valid period is established erroneously through fault of the claimant, then benefits for the first succeeding compensable period are recoverable. Such first succeeding period, after redetermination to establish the amount recoverable from the claimant, may be again redetermined to establish a waiting period. For reasons of administrative finality, further adjustment of the record to reflect the change in first valid periods, such as reexhaustion of normal benefits and alteration of extended benefit periods, is not to be undertaken once rights to benefits have been exhausted or the benefit year has ended. Questionable cases should be briefed to Policy and Systems.

2406 Effect of Section 4(a-1)(ii) on the Waiting Period

The receipt of social insurance payments does not prevent a registration period from being considered a first valid period if the apportionable amount of social insurance is less than the amount of benefits otherwise payable for days in excess of 4 in a period containing 14 days of sickness or unemployment. However, regardless of the amount of social insurance payments, receipt of such payments, after a first valid period has been correctly determined, does not cancel such first valid period.

2407 Effect of Section 12(o) on the Waiting Period

Settlements under section 12(o) do not keep days from being days of sickness, but may prevent payment of benefits for such days. Therefore, a claim containing days of sickness to which section 12(o) applies may establish a first valid period. Recovery under section 12(o) does not cancel a first valid registration period previously established.

2408 Effect of Section 2(f) on the Waiting Period

If days in a first valid period are redetermined under section 2(f) leaving less than 5 days of unemployment or sickness, additional benefits of that type may not be paid in the benefit year unless a first valid period is thereafter established.

2409 Strike 'Waiting Period'

Section 2(a)(1)(A)(iii) provides, in effect, that no benefits are payable for an employee's first 14 days of unemployment due to a strike in the establishment at which the employee otherwise works. An employee who becomes unemployed due to a strike and satisfies the strike waiting period by filing a claim having 5 or more days of unemployment need not establish a 7-day `waiting period' in the same benefit year. The strike `waiting period' satisfies the general benefit year `waiting period requirement'.

On the other hand, an employee who establishes a waiting period, returns to work, and is subsequently unemployed in the same benefit year due to a strike in the establishment were he or she works, must satisfy the strike waiting period to become eligible for benefits for days of unemployment due to the strike. An established general benefit year waiting period does not satisfy a subsequent strike waiting period requirement.

If a strike begins in one benefit year, continues into a second benefit year and the days are in one period of continuing unemployment, no strike waiting period or general benefit year waiting period is required at the beginning of the second benefit year.

2410 Suspense Recoverable Amounts

In rare circumstances, the change to an earlier first valid period when claims are filed out of sequence may generate an amount recoverable. The adjustment type will be "08". The case will refer a claims examiner for verification that the correct processing occurred. If the processing is correct, claims examiners are to take no action on the referral.

The amount due will offset against the next claim to process in the same benefit year, but will not be included in the "claimant owes" amount and will not be included in the automated follow-up system. No recovery letter is to be sent to the claimant.

If the earlier claim is clearly not to the advantage of the claimant, the claims examiner is to redetermine the claim and restore the registration periods to offset the debt. For example, allowing an earlier filing date and establishing an amount recoverable may be to the claimant's advantage if benefits payable for the next registration period to process will offset the entire debt. So, unless there is an actual EEI or other evidence that no benefits would be payable for the next

registration period, the earlier filing date should be assumed to be to the claimant's advantage. If, on the other had, when the next claim processes it is clear that the earlier filing date results in less total benefits being payable or a debt remaining, the original filing date and registration period sequence should be restored.

2411 Form Letters Prescribed

Form Letter ID-11v is used to notify a claimant that no benefits are payable for a claim because the original waiting period claim is no longer valid and thus the recent claim establishes a new waiting period. The letter is automatically generated and referred to an examiner for review and release when a claim that is not the earliest in the benefit year is processed or redetermined and used to reestablish a waiting period.

2501 Provisions of the RUIA and Railway Labor Act

2501.01 Section 4(a-2)(iii)

of the Railroad Unemployment Insurance Act provides that:

"There shall not be considered as a day of unemployment, with respect to any employee - subject to the provisions of subsection (b) of this section, any day with respect to which the Board finds that his unemployment was due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which he was last employed, and the Board finds that such strike was commenced in violation of the provisions of the Railway Labor Act or in violation of the established rules and practices of a bona fide labor organization of which he was a member."

2501.02 Section 4(b)

of the Railroad Unemployment Insurance Act provides that:

"The disqualification provided in section 4(a-2)(iii) of this Act shall not apply if the Board finds that--

(1) the employee is not participating in or financing or directly interested in the strike which causes the stoppage of work: Provided, that payment of regular union dues shall not be construed to constitute financing a strike or direct interest in a strike within the meaning of this and the following paragraphs; and

(2) he does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed in the establishment, premises, or enterprise at which the stoppage occurs, any of whom are participating in, or financing or directly interested in the dispute: Provided, that if separate types of work are commonly conducted in separate departments of a single enterprise, each such department shall, for the purpose of this subsection, be deemed to be a separate establishment, enterprise, or other premises."

2501.03 Section 2(a)(i)(A)(iii)

of the Railroad Unemployment Insurance Act provides that:

"(iii) Strikes.--

"(I) Initial 14-day waiting period.--If the Board finds that a qualified employee has a period of continuing unemployment that includes days of unemployment due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which such

employee was last employed, no benefits shall be payable for such employee's first 14 days of unemployment due to such stoppage of work.

"(II) Subsequent days of unemployment.--For subsequent days of unemployment due to the same stoppage of work, benefits shall be payable as provided in clause (i) of this subparagraph.

"(III) Subsequent periods of continuing unemployment.--If such period of continuing unemployment ends by reason of clause (v) but the stoppage of work continues, the waiting period established in clause (ii) shall apply to the employee's first registration period in a new period of continuing unemployment based upon the same stoppage of work.

2501.04 Section 9A of the Railway Labor Act

After creating special procedures for resolving disputes involving publicly funded and operated commuter rail service, subsection (i) provides:

"(i) If the emergency board selects the final offer submitted by the carrier and, after the expiration of the 60-day period described in subsection (h), the employees of such carrier engage in any work stoppage arising out of the dispute, such employees shall not be eligible during the period of such work stoppage for benefits under the Railroad Unemployment Insurance Act."

(The full text of section 9A of the Railway Labor Act is given in Appendix C.)

2502 Analysis of Section 4(a-2)(iii)

2502.01 Conditions under which a disqualification is applicable

In general, the disqualification provided in section 4(a-2)(iii) is applicable with respect to a day claimed as a day of unemployment when all of the following conditions are found to exist:

a. A work stoppage occurred.

b. The claimant's unemployment on such day is due to the stoppage of work.

c. Such work stoppage is caused by a strike in the establishment, premises, or enterprise at which the claimant was last employed.

d. The strike was commenced in violation of either (1) the provisions of the Railway Labor Act, or (2) the established rules and practices of a labor organization of which the claimant was a member.

e. The claimant was participating in, or financing (other than by paying regular union dues), or directly interested in the strike, or was a member of a grade or class of workers any of whom were participating in, or financing, or directly interested in the strike.

2502.02 Strike

A determination that the work stoppage is caused by a strike is required in connection with any disqualification under section 4(a-2)(iii). Evidence that both the employer and employee agree that a strike caused the work stoppage is usually sufficient to support such a determination. When there is a disagreement between the employer and employees on this item, it is necessary to base the determination on the actions preceding the work stoppage of both the employer and its employees.

2502.03 Casual relationship

If the claimant was employed in a particular establishment until the commencement of a work stoppage at the establishment, his or her ensuing unemployment, in the absence of other information, may be presumed to be due to such work stoppage. If the claimant became unemployed sometime prior to the commencement of the work stoppage, his or her continuing unemployment would not be considered as due to a strike.

2502.04 Railway Labor Act

In general, employers listed in the Employer Status List as covered by the Railroad Retirement Act and the Railroad Unemployment Insurance Act, and common carriers by air, are required to comply with the provisions of the Railway Labor Act. (See Appendix B.)

2502.05 Established rules and practices

The constitution, rules, regulations and by-laws as published by the union will usually suffice to show the established rules of the labor organization. Information regarding the established practices of the organization not covered by those publications can usually be obtained from a grand lodge officer.

2503 Analysis of Section 2(a)(1)(A)(iii)

2503.01 Strike waiting period

No benefits are payable for a claimant's first 14 days of unemployment due to a strike at his or her place of work. A strike waiting period is necessary for each period of continuing unemployment due to a strike.

2503.02 Satisfying the strike waiting period and waiting period for the benefit year

A claim for unemployment due to a strike will serve as both the 14-day strike waiting period and as the 7-day waiting period for the benefit year, if it is the first claim of a period of unemployment in the benefit year. If the claimant returns to work and becomes unemployed again for another reason in the same benefit year, he or she will not have to serve a 7-day waiting period.

2503.03 Exhaustion of benefits and the strike waiting period

Exhaustion of benefits ends a period of continuing unemployment. However, if a claimant remains unemployed due to a strike and exhausts his/her rights to unemployment benefits for the benefit year, the claimant will only have to satisfy a 7-day waiting period in the new benefit year. There is no need to satisfy a 14-day strike waiting period in the subsequent benefit year provided that the new period of continuing unemployment is due to the same strike.

2504 Investigation

2504.01 Investigation required

An investigation is to be conducted to obtain the information needed for a determination under section 4(a-2)(iii) of the Act under either of these circumstances:

a. There is information that a strike has occurred on the premises of an employer covered by the RUIA.

b. A claimant indicates "Strike" on Form UI-1 or Form UI-3 as the reason for his or her unemployment or there is other information indicating that the claimant's unemployment may be due to a stoppage of work arising out of a labor dispute.

2504.02 Information to be obtained

The amount of information and evidence required for making a determination whether a disqualification under section 4(a-2)(iii) is applicable will depend on the circumstances in each case. Items of information that may be needed are described in Appendix A. In the case of a strike on the premises of a railroad employer, the information needed is discussed in detail in sections 1, 2, 3 and 4 of Appendix A. In the case of a non-railroad strike, the information in sections 1, 2 and 3 of Appendix A will be needed, but generally will be less detailed than in the case of a railroad strike. If a question arises as to the applicability of the strike disqualification to a particular individual (rather than to members of a grade or class of workers), the information called for in section 5 of Appendix A may be needed.

2504.03 Making investigation

The Bureau of Field Service (BFS) is responsible for conducting the investigation of a strike confined to a particular region. If the strike is a railroad strike, BFS is to keep the Director of Policy and Systems informed of the progress of the investigation. In the case of a strike affecting more than one region, the Director of Policy and Systems will determine who is to make the investigation.

Investigation of a strike against a railroad employer is to be completed and a report of the investigation made to the Director of Policy and Systems within 10 days of the beginning date of the strike, so that a determination of the applicability of section 4(a-2)(iii) of the Act can be made not later than 15 days after the beginning date of the strike. If the investigation is not completed within 10 days, Director of Policy and Systems should be advised of the status and expected completion date.

2505 Information to headquarters

When BFS receives information about a strike on a covered employer's property, all readily available information, including the best possible estimate of the number of strikers and the number of other employees unemployed because of the strike, is to be forwarded to the Director of Policy and Systems immediately by facsimile, telephone or e-mail.

When BFS receives information about a strike outside the railroad industry which will result in a substantial number of covered employees being unemployed, information as to the possible effect on the workload and other pertinent information is to be furnished by facsimile or e-mail to the Director of Policy and Systems.

2506 Determination

A determination as to the applicability of the disqualification in section 4(a-2)(iii) may be made by BFS if the strike is a non-railroad strike confined wholly to the region. In all other cases, the determination will be made by the Director of Policy and Systems.

2507 Notice under section 2(f)

A special letter is to be sent to covered employers explaining their responsibilities under section 2(f) as specified in AIM-30.

Appendices

Appendix A - When Strike Disqualification Should be Applied

Information To Be Obtained When There Is A Question Whether A Disqualification Under Section 4(a-2)(iii) Should Be Applied

1. Work Stoppage

a. Extent of work stoppage.

1. Employer

2. Labor organization

3. Location or locations

4. Occupations and departments or organizational units of employer in which operations ceased

5. Number of employees affected (show strikers and non-strikers separately)

b. Date and time of work stoppage.

c. Circumstances leading up to the work stoppage.

d. Was the work stoppage initiated by employer or employees?

e. Circumstances leading to resumption of work. If a court order was issued, state when and by what court. Obtain copies of the court order and related documents.

f. Date and time work resumed.

2. Dispute

a. A statement from an official of the employer and a statement from an official of the labor organization describing the circumstances which led to the work stoppage which is being investigated. Each statement should include a description of the actions taken in attempting to adjust the dispute. In addition, the statement of the labor organization official should contain a description of the action taken in connection with the decision to commence a work stoppage.

b. Copies, if obtainable, of the communications between the employer and the labor organization concerning the dispute, or quoted pertinent excerpts from such communications. If copies cannot be obtained or

examined, a statement from an official of the labor organization describing such communications and stating as nearly as possible the date of each.

3. Rules and Practices of Labor Organization

a. Name of each labor organization which is a party to the dispute. Does such labor organization have a charter, a constitution, or by-laws?

b. Copies, if obtainable, of the constitution, by-laws, rules or regulations of any labor organization which is a party to the dispute. If copies are not obtainable, excerpts may be taken from any documents concerning the settlement of disputes and the calling of strikes. If copies cannot be obtained or examined, a statement may be obtained from an official of the labor organization, describing the steps in the procedure for the settlement of disputes and for the calling of strikes as such procedure appears in the rules of the organization or is followed in practice and is recognized. Any such statement should be general and should not refer to the dispute under investigation.

c. Whether a strike vote was taken, and, if so, the date, or the first and last dates, of the voting, the results of the voting, and the date and manner in which the strike notice was served upon the employer. If possible, furnish a copy of the strike notice and strike ballot.

d. A statement from an official of the labor organization whether the work stoppage was commenced in accordance with the established rules and practices of the organization. The basis for the official's opinion in this connection should be expressed in the statement. Verification of a local official's contention in this connection should be obtained from higher organization officials if the rules and practices of the organization require a local organization to obtain the sanction of higher officials in strike action.

4. Railway Labor Act

a. Description and dates of actions taken to utilize the services of the National Mediation Board to effect settlement of the dispute. This description should include the date of submission of the dispute to the National Mediation Board or to the Emergency Board and the circumstances under which it was submitted. If possible, obtain a copy of the submission.

b. Description and dates of actions taken by the National Mediation Board in an effort to effect settlement. If possible, obtain copies of communications between the National Mediation Board and the interested parties.

c. The date of the report of the Emergency Board and the substance of the recommendations made in the report.

d. A description of any changes in the conditions out of which the dispute arose, occurring after the creation of the Emergency Board and before the commencement of the strike, together with the dates of any such changes, for example:

   1. Changes in rates of pay, rules or working conditions made by common agreement.

   2. Changes in demands made by labor or management.

   3. Other changes made by management or labor.

e. Any attempts made to settle the dispute by conference, arbitration, or mediation during the period of time after the report of the Emergency Board was made and before the strike commenced.

5. Claimant

a. Date claimant became unemployed and the reason given by claimant for unemployment.

b. Occupation

   1. Last occupation in which he worked.

   2. Customary occupation if different from his last occupation.

c. Name of employer.

d. Department or organization unit in which he last worked.

e. Name of any labor organization of which the claimant was a member. If not a member of a labor organization, has he applied for membership in one?

f. Whether the claimant performed picket duty after he became unemployed.

Appendix B - Procedure for Settlement of Disputes under RLA

Procedure for Settlement of Disputes as Provided in the Railway Labor Act

Introduction

Under section 4(a-2)(iii) of the Railroad Unemployment Insurance Act unemployment benefits are not payable to an employee whose unemployment is

due to a strike commenced in violation of the provisions of the Railway Labor Act. Generally speaking, employers covered by the Railroad Unemployment Insurance Act are subject to the provisions of the Railway Labor Act. Thus, when an employee claims unemployment benefits for one or more days on which he was on strike against a covered employer, it is necessary, for a determination regarding the applicability of section 4(a-2)(iii), to find whether or not the strike was commenced in violation of the provisions of the Railway Labor Act. (This is in addition to the finding required with respect to the established rules and practices of the labor organization of which the claimant is a member.) A determination in any such case is made only on the basis of advice from the director of unemployment and sickness insurance.

The information to be developed in a strike case is outlined in Appendix A. Not all of the information listed is necessary in every case. AIM-25 explains the extent to which the information listed in Appendix A should be developed.

The provisions of the Railway Labor Act related to settlement of disputes are described briefly below. This information is given with the thought that it may help field office personnel who investigates strikes to anticipate what information may be required by the Director of Policy and Systems for a finding under section 4(a-2)(iii) of the Railroad Unemployment Insurance Act.

Purpose of the Railway Labor Act

The purposes of the Railway Labor Act are, among other things:

1. To avoid any interruption to commerce or to the operation of any carrier engaged therein;

2. To provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions.

National Railroad Adjustment Board

The Railway Labor Act establishes a board known as the "National Railroad Adjustment Board", composed of four divisions. The Act defines the jurisdiction of each division by specifying the occupational groups of employees whose disputes with carriers are referable to the particular division.

Disputes between an employee, or group of employees, and a carrier over grievances or the interpretation or application of an agreement concerning rates of pay, rules, or working conditions, may be referred by petition of the parties or either party to the appropriate division of the Adjustment Board. An award of the Adjustment Board is final and binding upon both parties to the dispute.

The Adjustment Board is not directly involved in the proceedings pertinent to a finding under section 4(a-2)(iii) of the Railroad Unemployment Insurance Act. It is mentioned in this Appendix only as a matter of information.

National Mediation Board

The Railway Labor Act also establishes an independent agency in the executive branch of the Government, known as the "National Mediation Board". This Board has jurisdiction over disputes concerning changes in rates of pay, rules, or working conditions and any other disputes not referable to the National Railroad Adjustment Board. Such Board may not be involved in the proceedings leading up to a strike of a covered employer. When it is involved, the circumstances under which it became a party to the proceedings and the efforts which such Board made to bring about a settlement are pertinent to a finding under section 4(a-2)(iii) of the Railroad Unemployment Insurance Act.

Procedure for settlement of disputes

The provisions in the Railway Labor Act for the handling of major disputes retain the traditional process of negotiation, mediation, voluntary arbitration, and conciliation. The parties to a dispute are not compelled to utilize each and every one of the procedural steps provided. Nor does the Act specifically forbid a strike at any particular stage of the proceedings under the Act other than immediately after the creation of an Emergency Board and continuing for 30 days after such Board has made its report. The proceedings with respect to a particular dispute may not include the appointment of an Emergency Board. This is left to the "judgment" of the National Mediation Board and the "discretion" of the President of the United States.

General Duties

The Railway Labor Act imposes these "General Duties" upon all carriers, their officers, agents, and employees:

1. "...to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes ... in order to avoid any interruption to commerce ...";

2. to consider and decide disputes in conference between representatives of the parties;

3. within 10 days after receipt of notice of a desire on the part of either party to confer in respect to such dispute to specify a time and place at which such conference is to be held;

4. no carrier, its officers, or agents is to change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements, except as prescribed in such agreements or in section 6 of the Act.

Carriers and representatives of the employees are required to give at least 30 days' written notice of an intended change in agreements affecting rates of pay,

rules, or working conditions. Such a notice is commonly referred to as a "Section 6 Notice". Section 6 also requires that the time and place for the beginning of conferences between the representatives of the parties be agreed upon within ten days after receipt of such notice, and that such time be within the 30 days provided in the notice.

Mediation

The Act provides that the parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the National Mediation Board in any of the following cases:

a. A dispute concerning changes in rates of pay, rules, or working conditions which has not been adjusted by the parties in conference.

b. Any other dispute which is not referable to the National Railroad Adjustment Board and which has not been adjusted in conference between the parties or for which conferences are refused.

However, the National Mediation Board does not have to wait for a request for aid; it may proffer its service at any time any labor emergency is found to exist. In either event, the National Mediation Board promptly communicates with the parties and uses its best efforts, by mediation, to bring them to agreement.

In every case where a Section 6 notice of intended change has been given, or conferences are being held with respect to such notice, or the service of the National Mediation Board has been requested by either party, or such Board has proffered its service, the rates of pay, rules, or working conditions are not to be altered by the carrier until the controversy has been finally acted upon by the Mediation Board, unless 10 days have elapsed after termination of conferences without any request for or proffer of the services of the Mediation Board.

Arbitration

If the efforts of the National Mediation Board to bring about an amicable settlement through mediation are unsuccessful, the Board endeavors to induce the parties to submit their controversy to arbitration. The Act provides, however, that the failure or refusal of either party to submit a controversy to arbitration is not to be construed as a violation of any legal obligation imposed upon such party by the terms of the Railway Labor Act.

NMB Notice That Mediatory Efforts Have Failed

If arbitration is refused by one or both parties, the National Mediation Board notifies both parties in writing that its mediatory efforts have failed. During the 30 days which follow this written notice, no change (unless the parties agree to arbitration or an Emergency Board is created) may be made in the rates of pay,

rules, or working conditions or established in effect prior to the time the dispute arose.

If a dispute between a carrier and its employees is not adjusted under the foregoing procedure, and should, in the judgment of the Mediation Board, "threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service", the Mediation Board is required to notify the President of the United States who may, in his discretion, create a board to investigate and report on the dispute. Such a board, commonly referred to as the "emergency board" is required to investigate the facts promptly and make a report to the President within 30 days from the date of its creation.

Section 10 specifically requires that "After the creation of such a board, and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose."

Appendix C - Special Procedure Under RLA for Commuter Service

Section 9A Of The Railway Labor Act Special Procedure For Commuter Service

a. Except as provided in section 510(h) of the Rail Passenger Service Act, the provisions of this section shall apply to any dispute subject to this Act between a publicly funded and publicly operated carrier providing rail commuter service (including the Amtrak Commuter Service Corporation) and its employees.

b. If a dispute between the parties described in subsection (a) is not adjusted under the foregoing provisions of this Act and the President does not, under section 10 of this Act, create an emergency board to investigate and report on such dispute, then any party to the dispute or the Governor of any State through which the service that is the subject of the dispute is operated may request the President to establish such an emergency board.

c.
1. Upon the request of a party or a Governor under subsection (b), the President shall create an emergency board to investigate and report on the dispute in accordance with section 10 of this Act. For purposes of this subsection, the period during which no change, except by agreement, shall be made by the parties in the conditions out of which the dispute arose shall be 120 days from the date of the creation of such an emergency board.

2. If the President, in his discretion, creates a board to investigate and report on a dispute between the parties described in subsection (a),

the provisions of this section shall apply to the same extent as if such board had been created pursuant to paragraph (1) of this subsection.

d. Within 60 days after the creation of an emergency board under this section, if there has been no settlement between the parties, the National Mediation Board shall conduct a public hearing on the dispute at which each party shall appear and provide testimony setting forth the reasons it has not accepted the recommendations of the emergency board for settlement of the dispute.

e. If no settlement in the dispute is reached at the end of the 120-day period beginning on the date of the creation of the emergency board, any party to the dispute or the Governor of any State through which the service that is the subject of the dispute is operated may request the President to establish another emergency board, in which case the President shall establish such emergency board.

f. Within 30 days after creation of a board under subsection (e), the parties to the dispute shall submit to the board final offers for settlement of the dispute.

g. Within 90 days after the submission of final offers under subsection (f), the emergency board shall submit a report to the President setting forth its selection of the most reasonable offer.

h. From the time a request to establish a board is made under subsection (e) until 60 days after such board makes its report under subsection (g), no change, except by agreement, shall be made by the parties in the conditions out of which the dispute arose.

i. If the emergency board selected the final offer submitted by the carrier, and, after the expiration of the 60-day period described in subsection (h), the employees of such carrier engage in any work stoppage arising out of the dispute, such employees shall not be eligible during the period of such work stoppage for benefits under the Railroad Unemployment Insurance Act.

j. If the emergency board selects the final offer submitted by the employees and, after the expiration of the 60-day period described in subsection (h), the carrier refuses to accept the final offer submitted by the employees and the employees of such carrier engage in any work stoppage arising out of the dispute, the carrier shall not participate in any benefits of any agreement between carriers which is designed to provide benefits to such carriers during a work stoppage.

2701 Provision of the Act

Section 5(i) of the Act provides, in part, that:

"...Any...claimant or other properly interested person may be represented by counsel or other duly authorized agent, in any proceeding before the Board or its representatives or a court, but no such counsel or agent for a claimant shall either charge or receive for such services more than an amount approved by the Board or by the court before whom the proceedings of the Board are reviewed. Any person who violates any provision of this subsection shall be punished by a fine of not more than $10,000 or by imprisonment not exceeding one year."

2702 Railroad Retirement Board's (RRB) Action Confined to Approval of Fee

The RRB does not, under Section 5(i) of the Act, set attorneys' fees for representing claimants in obtaining benefits. The amount of the fee to be charged in any particular case, is in the first instance, a matter of agreement between the attorney and his client. After the amount of the fee has been so agreed upon, it must be submitted to the RRB for approval. After approval by the RRB, the fee may properly be received by the attorney for his services in the case.

2703 Notice Regarding Section 5(i)

2703.01 Communication from attorney

When an attorney communicates with an adjudicating office (field office or the Sickness and Unemployment Benefits Section (SUBS)) with respect to a claimant and there is information indicating that the claimant is being charged an amount by this attorney for services in connection with his claims for unemployment insurance benefits, the reply should call attention to the provisions of Section 5(i) unless this was previously done. A paragraph similar to the following should be included in the first reply to the attorney:

"I do not know whether Mr. (name of claimant) has employed you in a professional capacity, but if he has, your attention is called to the provisions of Section 5(i) of the Railroad Unemployment Insurance Act, a copy of which is enclosed. You will note that no counsel or agent may charge or receive for such service more than an amount approved by the Railroad Retirement Board."

2703.02 Information received from sources other than attorney

If a claimant informs the adjudicating office, or if the adjudicating office is otherwise reliably informed, that the claimant is being charged an amount by an attorney for services in connection with his claims for unemployment insurance

benefits the claimant should be advised by special letter of the provisions of Section 5(i) of the Act and instructed to show such letter to his attorney. In the absence of information that the provisions of Section 5(i) of the Act are being violated, no further action should be taken by the adjudicating office.

2704 Inquiries from Attorneys

When an attorney inquires about the amount of his fee, the adjudicating office shall immediately send him a letter stating the policy of the RRB in not setting fees (See Section 2702). If an attorney requests approval of a fee, the pertinent files on the case shall be sent to the SUBS.

2705 Subsequent Action

After the files have been submitted, the adjudicating office shall refer any letters or inquiries received from the attorney to SUBS for reply.

The Office of General Counsel will notify the attorney directly whether or not the fee is approved by the RRB and will send a copy of the notification to the adjudicating office.

2800 Provisions of the Acts and Board Regulations

2800.01 Provisions of the Acts

Section 2(g) of the Railroad Unemployment Insurance Act provides that:

"Benefits accrued to an individual but not yet paid at death shall, upon certification by the Board, be paid, without necessity of filing further claims therefore, to the same individual or individuals to whom any accrued annuities under section 3(f)(1) of the Railroad Retirement Act of 1937 are paid. In the event that no such accrued annuities are paid, and if application for such accrued benefits is filed prior to the expiration of two years after the death of the individual to whom such benefits accrued, such accrued benefits shall be paid, upon certification by the Board, to the individual or individuals who would be entitled thereto under section 3(f)(1) of the Railroad Retirement Act of 1937 if such accrued benefits were accrued annuities. If there is no individual to whom all or any part of such accrued benefits can be paid in accordance with the foregoing provisions, such benefits or part thereof shall escheat to the credit of the account."

Section 3(f)(1) of the Railroad Retirement Act provides that:

"Annuities under section 2(a) which will have become due an individual but will not have been paid at the time of such individual's death shall be payable to the person, if any, who is determined by the Board to be such individual's widow or widower and to have been living with such individual at the time of such individual's death and who will not have died before receiving payment of such annuities. If there be no such widow or widower, such annuities shall be payable to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid the expenses of burial of such individual, and to the extent that he or they will not have been reimbursed under section 5(f)(1) for having paid such expenses. If there be no person or persons so entitled, or if the total of such annuities exceeds the amount payable under this paragraph to such person or persons, such total, or the remainder thereof, as the case may be, shall be paid to the children, grandchildren, parents, or brothers and sisters of the deceased individual in the same manner as if such unpaid annuities were a lump sum payable under section 5(f)(2)."

2800.02 Provisions of the Regulations

Refer to CFR 20, Part 335.5 of the RRB's regulations, Death of Employee.

2801 Considerations as to Payment of Benefits

2801.01 When accrued benefits may be due

Benefits may be due in the case of a deceased employee if a claim has not been fully processed, or a benefit check has been returned, or if there is an inquiry or other communication regarding sickness or unemployment benefits which apparently would be payable if a form or forms that had not been filed were to be timely filed.

2801.02 Application for accrued benefits

A person will be considered to have made application for accrued benefits due but not paid at death for an employee if person's name is shown in any portion of a timely application for any type of benefit provided under the Railroad Retirement Act. If the person to whom accrued benefits should be paid has not been named in such an application under the Railroad Retirement Act, Form UI-63, Application for Accrued Benefits Due Under the Railroad Unemployment Insurance Act and Unpaid at Death, is required.

2801.03 Outstanding recoverable amount

If there is an outstanding amount recoverable which cannot be completely recovered by set-off against additional benefits otherwise payable under the Railroad Unemployment Insurance Act, immediately refer the case to the Bureau of Fiscal Operations - Debt Recovery Division (BFO-DRD) for advice. BFO-DRD will determine whether the deceased employee left an estate from which recovery can be made before the estate is closed.

2801.04 Persons to whom benefits are to be paid

Unemployment or sickness benefits accrued to an individual but not paid at death are to be paid:

a. To those persons to whom accrued annuities under Section 3(f)(1) of the Railroad Retirement Act are paid.

b. If no accrued annuities are due under Section 3(f)(1) of the Railroad Retirement Act, then to those persons who would be entitled to such annuities if any were due, provided an application for the accrued benefits is filed within two years after the employee's death.

   RUIA benefits due but unpaid at the time of an employee's death are payable under Section 3(f)(1) to survivors in the following priority order:

   1. Widow or widower "living with" the employee at the time of death who will not have died before receiving payment.

2. Person or persons equitably entitled (payer of the employee's burial expenses).

3. Children (full amount if only one, equal shares if more than one).

4. Grandchildren (full amount if only one, equal shares if more than one).

5. Parents (full amount if only one parent, equal shares if both survive).

6. Brothers and sisters (full amount if only one, equal shares if more than one).

c. If there are no persons who would be entitled to receive all or part of the accrued annuities if any were due, then any accrued benefits or part thereof shall return to the RUIA account.

2801.05 Amount of Accrued Benefits Payable

Sickness benefits are payable through the date of death. Unemployment benefits are payable through the date prior to the date of death.

2802 Receipt of Notice of Death

2802.01 Notice Received in Operations

If a notice is received that a railroad employee has died, develop the case in accordance to DPOM/FOM-II-280.

2802.02 Notice Received at a Field Office

If a notice is received that a railroad employee has died, develop the case in accordance to DPOM/FOM-II-328.

2803 Certification of Accrued Benefits

2803.01 Certifying Authority

Operations-Sickness and Unemployment Benefits Division (SUBD) is authorized to certify to whom the payment of accrued benefits not paid at death on the basis of information developed by the district office. However, if the surviving widow(er) is not considered to have been "living with" the deceased and the deceased employee had at least 120 cumulative service months prior to 1975, Operations-Survivor Benefits Division (SBD) is authorized to certify the person to whom benefits will be paid. SBD may also certify where neither an accrued annuity nor a lump-sum death payment is payable but there is sufficient

information to support a determination as to the person or persons entitled to receive the accrued benefits.

2803.02 Supporting evidence required

Certification based on information developed by a district office must be supported by:

a. An application on Form UI-63 for the payment of accrued benefits to the person or persons found to be entitled to them or advice on Form UI-64 from the district office that the required application has been filed under the Railroad Retirement Act.

b. A completed Form UI-64 showing the following:

   1. That acceptable proof of death has been examined.

   2. That acceptable proof of marriage has been examined.

   3. That the surviving widow or widower was "living with" the employee when the death occurred.

   4. That acceptable proof of payment of the burial expenses has been examined to certify the payment of accrued benefits to someone other than a "living with" widow or widower (payer of burial expenses).

c. Any required forms not filed before the death of the claimant.

2803.03 Certification Form

The Form UI-65 shall serve as documentation for the certification for payment of accrued unemployment and sickness benefits.

2803.04 Action If No Certification Can Be Made

If certification cannot be made, the claims folder shall be retained until a date two years after the employee's death. At some convenient time thereafter, the claims folder shall be forwarded to storage files.

2804 Proofs

2804.01 Form UI-64

A report from the district office on Form UI-64, indicating that it has examined the following proofs and has taken no exception to them, shall be accepted as evidence sufficient to support certification on Form UI-65 by SUBD.

2804.02 Death Certificate

A public record of death (Death Certificate) or a coroner's report of death, or a certified copy of either, is acceptable as proof of death of the claimant.

2804.03 Relationship of widow or widower

Any one of the following is acceptable as proof of relationship of the widow or widower to the claimant:

a. A copy of, or statement as to, a public record of the marriage duly certified by the custodian of such record or by an RRB employee.

b. A copy of or statement as to, a church record of the marriage duly certified by the custodian of such record, or by an RRB employee.

c. The original certificate of the marriage.

2804.04 "Living with" Defined

The surviving widow (or widower) shall be considered to have been "living with" the employee, at the time of the employee's death, if:

a. She (he) and the employee were members of the same household, or

b. The employee was contributing to her (his) support, or

c. The employee was under court order to contribute to her (his) support.

Ordinarily, the survivor's statement, on her (his) application for benefits under the Railroad Retirement Act or on Form UI-63, showing that she (he) was living with the deceased employee at the time of the employee's death is acceptable. If the survivor and the employee were not residing at the same address when the application was filed or at the time of the employee's death, proof of "living with", must be established.

2804.05 Payment of Burial Expenses

A receipt or other statement from a funeral home director identifying the payer of burial expenses and showing a zero balance is acceptable as proof of payment of the burial expenses.

2805 Required Forms Not Filed Before Death

2805.01 General

If an employee dies before an application for sickness or unemployment benefits, a statement of sickness or a claim is filed, such a form may be filed by or in

behalf of the individuals to whom any benefits accrued but not paid at the employee's death would be payable.

2805.02 Obtaining required forms

The person (or one of the persons) determined to be entitled to accrued benefits, or a person who can properly act in that person's behalf, shall be requested to submit or have the required form or forms submitted. If there are two or more such persons, direct the request to one of the persons and pend the case for reply. If no reply is received within a reasonable time, a request shall be made of the other person (or one of the other persons).

Note: If it appears reasonably certain that the employee was survived by a spouse, child or parent, and that such person would be entitled to accrued benefits, the district office may be asked to secure the required forms in connection with developing the case.

2805.03 Examining forms

Forms obtained in accordance with the foregoing subsection shall be examined to determine whether they were properly executed and whether all needed information was submitted. The form on the reverse side of Form UI-63 shall be regarded as properly executed if signed by a person found to be entitled to accrued benefits or by a person who can properly act in such a person's behalf. With respect to Form SI-1b and Form SI-3, the usual filing requirements for statements of sickness and claims for sickness benefits must be met.

2806 Payment of Accrued Benefits

2806.01 General

Except as provided in Subsection .03, payment is to be made to the person or persons named in Part B of Form UI-65 and in the proportion indicated when certification in Part B has been made by SUBD personnel. Any amount due with respect to claims on file shall be certified regardless whether an additional amount may become payable upon receipt of additional claims.

2806.02 Payer of burial expenses

If the person who paid the burial expenses of the claimant is certified by SBD, the accrued benefits, to the extent of the difference between the burial expenses and the lump-sum death payment, shall be paid to such person. If the accrued benefits are more than such difference, payment shall not be made for the excess and the Director of SUBD shall be informed of the amount not paid.

2806.03 Non-payment to beneficiary living in restricted country

When the address of a person entitled to payment is other than the United States or Canada, brief the case for opinion to the Payment Analysis and System section in Policy and Systems for a determination as to whether payment may be made to the country indicated. If the address of a person entitled to payment is in a restricted country or area, payment shall be withheld and notice shall be sent to the Director of SUBD.

2806.05 Notice to person who is to receive benefits

Prepare a special letter for each person determined to be entitled to accrued benefits. The letter should inform them that they have been acknowledged as the beneficiary of the deceased claimant and the amount of benefits that they will receive.

2807 Requests for Guidance

Form UI-51, Brief of Case and Request for Opinion, shall be submitted to Records Analysis and Systems (RIS) in Policy and Systems in any case where benefits are due and (a) information received from a district office is not sufficient to support certification to a widow or widower or, (b) the address of the nearest surviving relative, or in the absence of information as to surviving relatives, the last address of the claimant, is not within the territory of any district office. In addition, questions concerning the validity of the marriage or whether the survivor was "living with" the employee at the time of death should also be referred to RIS for advice.

2800 Provisions of the Acts and Board Regulations

2800.01 Provisions of the Acts

Section 2(g) of the Railroad Unemployment Insurance Act provides that:

"Benefits accrued to an individual but not yet paid at death shall, upon certification by the Board, be paid, without necessity of filing further claims therefore, to the same individual or individuals to whom any accrued annuities under section 3(f)(1) of the Railroad Retirement Act of 1937 are paid. In the event that no such accrued annuities are paid, and if application for such accrued benefits is filed prior to the expiration of two years after the death of the individual to whom such benefits accrued, such accrued benefits shall be paid, upon certification by the Board, to the individual or individuals who would be entitled thereto under section 3(f)(1) of the Railroad Retirement Act of 1937 if such accrued benefits were accrued annuities. If there is no individual to whom all or any part of such accrued benefits can be paid in accordance with the foregoing provisions, such benefits or part thereof shall escheat to the credit of the account."

Section 3(f)(1) of the Railroad Retirement Act provides that:

"Annuities under section 2(a) which will have become due an individual but will not have been paid at the time of such individual's death shall be payable to the person, if any, who is determined by the Board to be such individual's widow or widower and to have been living with such individual at the time of such individual's death and who will not have died before receiving payment of such annuities. If there be no such widow or widower, such annuities shall be payable to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid the expenses of burial of such individual, and to the extent that he or they will not have been reimbursed under section 5(f)(1) for having paid such expenses. If there be no person or persons so entitled, or if the total of such annuities exceeds the amount payable under this paragraph to such person or persons, such total, or the remainder thereof, as the case may be, shall be paid to the children, grandchildren, parents, or brothers and sisters of the deceased individual in the same manner as if such unpaid annuities were a lump sum payable under section 5(f)(2)."

2800.02 Provisions of the Regulations

Refer to CFR 20, Part 335.5 of the RRB's regulations, Death of Employee.

2801 Considerations as to Payment of Benefits

2801.01 When accrued benefits may be due

Benefits may be due in the case of a deceased employee if a claim has not been fully processed, or a benefit check has been returned, or if there is an inquiry or other communication regarding sickness or unemployment benefits which apparently would be payable if a form or forms that had not been filed were to be timely filed.

2801.02 Application for accrued benefits

A person will be considered to have made application for accrued benefits due but not paid at death for an employee if person's name is shown in any portion of a timely application for any type of benefit provided under the Railroad Retirement Act. If the person to whom accrued benefits should be paid has not been named in such an application under the Railroad Retirement Act, Form UI-63, Application for Accrued Benefits Due Under the Railroad Unemployment Insurance Act and Unpaid at Death, is required.

2801.03 Outstanding recoverable amount

If there is an outstanding amount recoverable which cannot be completely recovered by set-off against additional benefits otherwise payable under the Railroad Unemployment Insurance Act, immediately refer the case to the Bureau of Fiscal Operations - Debt Recovery Division (BFO-DRD) for advice. BFO-DRD will determine whether the deceased employee left an estate from which recovery can be made before the estate is closed.

2801.04 Persons to whom benefits are to be paid

Unemployment or sickness benefits accrued to an individual but not paid at death are to be paid:

a. To those persons to whom accrued annuities under Section 3(f)(1) of the Railroad Retirement Act are paid.

b. If no accrued annuities are due under Section 3(f)(1) of the Railroad Retirement Act, then to those persons who would be entitled to such annuities if any were due, provided an application for the accrued benefits is filed within two years after the employee's death.

   RUIA benefits due but unpaid at the time of an employee's death are payable under Section 3(f)(1) to survivors in the following priority order:

   1. Widow or widower "living with" the employee at the time of death who will not have died before receiving payment.

2. Person or persons equitably entitled (payer of the employee's burial expenses).

3. Children (full amount if only one, equal shares if more than one).

4. Grandchildren (full amount if only one, equal shares if more than one).

5. Parents (full amount if only one parent, equal shares if both survive).

6. Brothers and sisters (full amount if only one, equal shares if more than one).

c. If there are no persons who would be entitled to receive all or part of the accrued annuities if any were due, then any accrued benefits or part thereof shall return to the RUIA account.

2801.05 Amount of Accrued Benefits Payable

Sickness benefits are payable through the date of death. Unemployment benefits are payable through the date prior to the date of death.

2802 Receipt of Notice of Death

2802.01 Notice Received in Operations

If a notice is received that a railroad employee has died, develop the case in accordance to DPOM/FOM-II-280.

2802.02 Notice Received at a Field Office

If a notice is received that a railroad employee has died, develop the case in accordance to DPOM/FOM-II-328.

2803 Certification of Accrued Benefits

2803.01 Certifying Authority

Operations-Sickness and Unemployment Benefits Division (SUBD) is authorized to certify to whom the payment of accrued benefits not paid at death on the basis of information developed by the district office. However, if the surviving widow(er) is not considered to have been "living with" the deceased and the deceased employee had at least 120 cumulative service months prior to 1975, Operations-Survivor Benefits Division (SBD) is authorized to certify the person to whom benefits will be paid. SBD may also certify where neither an accrued annuity nor a lump-sum death payment is payable but there is sufficient

information to support a determination as to the person or persons entitled to receive the accrued benefits.

2803.02 Supporting evidence required

Certification based on information developed by a district office must be supported by:

a. An application on Form UI-63 for the payment of accrued benefits to the person or persons found to be entitled to them or advice on Form UI-64 from the district office that the required application has been filed under the Railroad Retirement Act.

b. A completed Form UI-64 showing the following:

   1. That acceptable proof of death has been examined.

   2. That acceptable proof of marriage has been examined.

   3. That the surviving widow or widower was "living with" the employee when the death occurred.

   4. That acceptable proof of payment of the burial expenses has been examined to certify the payment of accrued benefits to someone other than a "living with" widow or widower (payer of burial expenses).

c. Any required forms not filed before the death of the claimant.

2803.03 Certification Form

The Form UI-65 shall serve as documentation for the certification for payment of accrued unemployment and sickness benefits.

2803.04 Action If No Certification Can Be Made

If certification cannot be made, the claims folder shall be retained until a date two years after the employee's death. At some convenient time thereafter, the claims folder shall be forwarded to storage files.

2804 Proofs

2804.01 Form UI-64

A report from the district office on Form UI-64, indicating that it has examined the following proofs and has taken no exception to them, shall be accepted as evidence sufficient to support certification on Form UI-65 by SUBD.

2804.02 Death Certificate

A public record of death (Death Certificate) or a coroner's report of death, or a certified copy of either, is acceptable as proof of death of the claimant.

2804.03 Relationship of widow or widower

Any one of the following is acceptable as proof of relationship of the widow or widower to the claimant:

a. A copy of, or statement as to, a public record of the marriage duly certified by the custodian of such record or by an RRB employee.

b. A copy of or statement as to, a church record of the marriage duly certified by the custodian of such record, or by an RRB employee.

c. The original certificate of the marriage.

2804.04 "Living with" Defined

The surviving widow (or widower) shall be considered to have been "living with" the employee, at the time of the employee's death, if:

a. She (he) and the employee were members of the same household, or

b. The employee was contributing to her (his) support, or

c. The employee was under court order to contribute to her (his) support.

Ordinarily, the survivor's statement, on her (his) application for benefits under the Railroad Retirement Act or on Form UI-63, showing that she (he) was living with the deceased employee at the time of the employee's death is acceptable. If the survivor and the employee were not residing at the same address when the application was filed or at the time of the employee's death, proof of "living with", must be established.

2804.05 Payment of Burial Expenses

A receipt or other statement from a funeral home director identifying the payer of burial expenses and showing a zero balance is acceptable as proof of payment of the burial expenses.

2805 Required Forms Not Filed Before Death

2805.01 General

If an employee dies before an application for sickness or unemployment benefits, a statement of sickness or a claim is filed, such a form may be filed by or in

behalf of the individuals to whom any benefits accrued but not paid at the employee's death would be payable.

2805.02 Obtaining required forms

The person (or one of the persons) determined to be entitled to accrued benefits, or a person who can properly act in that person's behalf, shall be requested to submit or have the required form or forms submitted. If there are two or more such persons, direct the request to one of the persons and pend the case for reply. If no reply is received within a reasonable time, a request shall be made of the other person (or one of the other persons).

Note: If it appears reasonably certain that the employee was survived by a spouse, child or parent, and that such person would be entitled to accrued benefits, the district office may be asked to secure the required forms in connection with developing the case.

2805.03 Examining forms

Forms obtained in accordance with the foregoing subsection shall be examined to determine whether they were properly executed and whether all needed information was submitted. The form on the reverse side of Form UI-63 shall be regarded as properly executed if signed by a person found to be entitled to accrued benefits or by a person who can properly act in such a person's behalf. With respect to Form SI-1b and Form SI-3, the usual filing requirements for statements of sickness and claims for sickness benefits must be met.

2806 Payment of Accrued Benefits

2806.01 General

Except as provided in Subsection .03, payment is to be made to the person or persons named in Part B of Form UI-65 and in the proportion indicated when certification in Part B has been made by SUBD personnel. Any amount due with respect to claims on file shall be certified regardless whether an additional amount may become payable upon receipt of additional claims.

2806.02 Payer of burial expenses

If the person who paid the burial expenses of the claimant is certified by SBD, the accrued benefits, to the extent of the difference between the burial expenses and the lump-sum death payment, shall be paid to such person. If the accrued benefits are more than such difference, payment shall not be made for the excess and the Director of SUBD shall be informed of the amount not paid.

2806.03 Non-payment to beneficiary living in restricted country

When the address of a person entitled to payment is other than the United States or Canada, brief the case for opinion to the Payment Analysis and System section in Policy and Systems for a determination as to whether payment may be made to the country indicated. If the address of a person entitled to payment is in a restricted country or area, payment shall be withheld and notice shall be sent to the Director of SUBD.

2806.05 Notice to person who is to receive benefits

Prepare a special letter for each person determined to be entitled to accrued benefits. The letter should inform them that they have been acknowledged as the beneficiary of the deceased claimant and the amount of benefits that they will receive.

2807 Requests for Guidance

Form UI-51, Brief of Case and Request for Opinion, shall be submitted to Records Analysis and Systems (RIS) in Policy and Systems in any case where benefits are due and (a) information received from a district office is not sufficient to support certification to a widow or widower or, (b) the address of the nearest surviving relative, or in the absence of information as to surviving relatives, the last address of the claimant, is not within the territory of any district office. In addition, questions concerning the validity of the marriage or whether the survivor was "living with" the employee at the time of death should also be referred to RIS for advice.

2901 Provisions of the Act and the Regulations

2901.01 The Act

See sections 2(d) and 5(a), (b), (c), (d), (e) and (f) of the RUIA.

2901.02 Regulations

See Part 320, Initial Determinations Under the Railroad Unemployment Insurance Act and Reviews of and Appeals from such Determinations. Also, see Part 340, Recovery of Benefits, regarding waiver of recovery.

2902 Introduction

A claimant may request reconsideration of an initial determination which denies in whole or in part a claim for benefits, or which results in a reduction of benefits previously approved, i.e. an overpayment. A claimant may also request waiver of recovery of an overpayment that exceeds 10 times the maximum daily benefit rate that is in effect at the time of the request, and is not covered by one of the exceptions listed in section 2910.08. The time limit for requesting reconsideration and/or waiver of recovery is 60 days from the date of the initial determination. (Requests received within 5 calendar days after the 60 day period are deemed timely.)

A denial of benefits made by a district office is to be reviewed by the district manager upon a request for reconsideration by the claimant and, if not reversed in full, by the Bureau of Field Service (BFS). An adverse determination resulting in the recovery of benefits is to be reviewed by the district manager and, if not reversed in full, by BFS if the recovery involves an issue other than remuneration. Requests for reconsideration of adverse determinations made by personnel in the Sickness and Unemployment Benefits Section (SUBS) and those made by a district office which result in a recovery of benefits due to remuneration are to be forwarded to the Assessment and Training - Reconsideration Section. All requests for waiver of recovery, including those that also involve a request for reconsideration or involve debts that are less than or equal to 10 times the maximum daily benefit rate, are to be forwarded to the Bureau of Fiscal Operations - Debt Recovery Division (DRD) for a decision and/or adjustment of the PARS record. DRD will forward the case to the Reconsideration Section (RS) if a decision is needed for reconsideration. If their review confirms the overpayment, RS will return the case to DRD to consider the waiver request.

The reviewing official is responsible for a complete review of the initial determination. If additional development is needed, the reviewing official is responsible for obtaining the additional information. When the record has been completed to the satisfaction of the reviewing official, he or she must decide

whether to sustain or reverse, in whole or in part, the determination and, if appropriate, whether recovery of an overpayment may be waived. The reviewing official is to notify the claimant of the decision in writing within 15 days of the date of the decision. In waiver cases, no recovery action is to be taken within the 15 days following release of the notice of decision.

The claimant may appeal an adverse reconsideration decision, including a decision denying waiver, to the Bureau of Hearings and Appeals within 60 days of the date of the reconsideration decision. If there is an issue of fact, the appellant is entitled to a hearing before a hearings officer of the Bureau of Hearings and Appeals. The hearings officer will notify all potential parties of the appeal and of their right to participate in the hearing. The appellant and other parties are allowed to state their case, present additional evidence, review the evidence of record, and ask questions concerning the adjudication of the claim.

If employer status or creditability of compensation is at issue, the hearings officer will receive evidence and issue a report to the Board Members with recommendations. In all other cases, the hearings officer will consider and decide the appeal. If the hearings officer's decision is favorable to the claimant, benefits will be paid in accordance with the decision; if the decision is adverse, in whole or in part, the claimant may appeal within 60 days to the Board Members. An adverse decision of the Board Members may be appealed by filing a petition for review within 90 days in the appropriate Federal Court of Appeals.

Section 5(c)(3) of the RUIA provides base year employers the right to request, within 60 days, review of a determination to pay benefits to an employee. Determinations made by SUBS are reviewed by the Assessment and Training - Reconsideration Section; field office determinations are reviewed by district offices. If after review the determination allowing benefits is sustained, the base year employer is to be notified in writing and advised of the right to appeal within 60 days. No notice need be sent to the claimant. If the determination allowing benefits is reversed, the employer and claimant are to be notified of the decision, and the claimant advised that benefits are recoverable (if awarded erroneously) and that he or she has the right to request reconsideration and/or waiver of recovery. An employer that appeals and is aggrieved by a decision of the hearings officer may appeal to the three-member Board within 60 days. If the Board's decision is adverse, the employer may petition the U.S. Court of Appeals within 90 days.

2903 Basis for Initial Determination

An initial determination with respect to each claim for benefits is to be made by the adjudicating office (district office or SUBS) on the basis of the application and claim, any supplemental statements, the facts of record and any relevant information furnished by the claimant's employer(s). Initial determinations are to be made in accordance with instructions and advice issued by the Director of Policy and Systems.

2904 Notice of Initial Determination

Written notice of an initial determination which denies in whole or in part a claim for benefits is to be sent to the claimant by the adjudicating office within 15 days after the date the determination is made. The notice is to be in the form of a prescribed form letter or a special letter, and is to include a statement of the basis for the denial and notice of the right to request reconsideration within 60 days. The notice is considered to have been communicated to the claimant when it is mailed to him or her at the latest address in the agency's records. If benefits are determined payable for a claim, no notice to the claimant of the determination is required.

Notice to the claimant's base year employer(s) of a benefit payment is to be furnished by Form Letter ID-4E, by an electronic data interchange (EDI) equivalent, or by a web based application.

2905 Request for Reconsideration

2905.01 General

Each letter advising a claimant of a determination to recover benefits is to include Form UI-68, Your Rights to Reconsideration and Waiver. Form UI-68 recommends that a claimant requesting reconsideration or waiver return the form with his or her request so it can be distinguished from other types of correspondence. However, because some requests are submitted without Form UI-68, care must be taken to recognize requests for reconsideration and requests for waiver of recovery. A letter which expresses dissatisfaction or disagreement with a determination to deny or recover benefits, but does not explicitly request reconsideration, is to be regarded as a request for reconsideration. A letter in which the claimant states that he or she is without fault for causing a debt or cannot repay a debt, but does not explicitly mention waiver, is to be regarded as a request for waiver of recovery.

2905.02 Referral to Reviewing Official

When a request for reconsideration and/or waiver of recovery is received at an office of the RRB, the office is to date stamp the request, determine the appropriate reviewing official, and refer the request to that official. Always attach the envelope with the reconsideration and/or waiver request. The post mark date shows the date of mailing and can be used to verify timeliness.

In general, requests involving unemployment or sickness claims processed by field offices are to be reviewed by the field office that made the initial determination. Exceptions include adverse determinations involving ability to work, separation allowances, social insurance, and pay for time lost awards, which are to be reviewed by Assessment and Training - Reconsideration Section. Cases involving denial or recovery of benefits by Operations - SUBS are to be

referred to them for review and possible referral to the Reconsideration Section. . All requests for waiver of recovery are to be referred to BFO-DRD.

2905.03 Reconsideration of an Adverse Determination

A request for reconsideration and/or waiver of recovery received within 60 days of the date of the notice of the initial determination is to be considered a timely request. (Requests received within 5 calendar days after the rights period expired are deemed timely filed and should be handled as if they were timely filed.) The reviewing official is to conduct a complete examination of all relevant information, including any additional evidence received with the request. If additional evidence is needed that may affect the decision, including information from employers, other RRB offices or the claimant, the reviewing official is to attempt to obtain the information. Once all relevant information is obtained, or is determined to be unobtainable, the reviewing official is to consider the evidence and make a decision to sustain or reverse, in whole or in part, the initial determination. No interest or penalties are to be charged for the period during which a determination to recover benefits is under reconsideration.

Once a decision on the request for reconsideration is made, the reviewing official is to prepare and release a written decision within 15 days. If a district office review is adverse to the protester, whether claimant or employer, the district office is to prepare the RRAILS form ID-29, which includes the grounds for sustaining the original decision and forward the case to BFS. The district office may, however, release decisions that are not adverse and do not reduce benefits. BFS is to release notice of a decision within 7 days of completing a review of a district office decision. Copies of decisions are to be sent to any other properly interested parties such as attorneys or union officials representing the protester. If the case involves an employer protest which results in a recovery of benefits, the claimant is to be sent an initial recovery letter with Form UI-68. The claimant's base year employer is to be sent a copy of the letter with a brief transmittal letter. All letters sustaining an adverse determination are to include notice of the protester's right to appeal the reconsideration determination within 60 days to the Bureau of Hearings and Appeals. Unless requested by the protester, appeal forms are not to be enclosed with reconsideration decisions.

Any corollary issues raised by the claimant or employer are to be addressed thoroughly upon reconsideration. Also, if a claimant requests copies of items in the RRB's possession needed to prepare a protest, e.g. claims or wage records, every effort is to be made to provide the copies. If copies cannot be obtained, the claimant is to be so advised. Copies of an employee's claims or other records may be furnished to the base year employer upon request if the employer has filed a proper and timely protest and requests the records to complete the already-established protest proceedings. Medical records may be released by the Chief of Sickness and Unemployment Benefits Section directly to base year employers under these narrow circumstances. If the reviewing official reverses, in whole or in part, a determination to deny or recover benefits,

corrective action is to be taken promptly to approve benefits or cancel the debt, as appropriate.

Despite an employer's request for reconsideration, benefits awarded are to be paid, subject to recovery if the benefits are subsequently determined to have been awarded erroneously.

2905.04 Request Received After 60 Days

If the reviewing official determines that a request for reconsideration was received at an RRB office more than 60 days after the date of the letter advising of the adverse determination, the official is to briefly review the case. Reconsideration requests received within 5 calendar days after the 60 day period are deemed timely. If it is clear the adverse determination is incorrect, e.g. the claimant submits a letter from his or her employer stating pay was incorrectly attributed, the official is to reverse the determination and advise the protester. Otherwise, the official is to prepare a letter advising the protester that the right to further review has been forfeited because the request was received more than 60 days after the date of the initial determination notice. The letter is also to advise the protester that reconsideration of the late filing determination may be requested within 60 days.

If the reviewing official in BFO-DRD determines that a request for waiver of recovery was received at an RRB office more than 60 days after the date of the letter advising of the debt, the official may, at his or her discretion, investigate further if a brief review of the case indicates an obvious injustice in pursuing collection. Because the vast majority of debts involve some degree of fault on the part of the claimant, waiver of recovery is rarely granted. Accordingly, waiver requests received after 60 days (65 days including 5-day grace period) will generally be immediately denied for late filing. In some cases, however, particularly those where recovery is sought from the survivors of a deceased claimant, the facts of the case may suggest that recovery would be against equity or good conscience. If the reviewer determines that may be the case, he or she may investigate further. If further investigation indicates that the debt should be collected, however, the request for waiver should be denied for late filing, not on the merits of the case, in order to foreclose the possibility of further appeal.

2905.05 Review of Late Filing Determination

The reviewing official who issues a determination that a protester has forfeited the right to reconsideration and/or waiver of recovery because the request was received late is also responsible for considering any request for review of the late filing determination. If the request is received within 60 days of the date of the late filing determination and the protester provides a statement indicating that a timely protest was prevented by valid circumstances beyond the protester's control, the request for reconsideration and/or waiver of recovery is to be

regarded as timely filed, and the reviewing official is to consider the request in accordance with section 2905.03.

If the reviewing official determines that the reason for late filing is not valid, or if no reason for late filing is provided, the reviewing official is to advise the protester in writing that the original determination of late filing has been sustained. The protester is also to be informed that the late filing determination may be appealed within 60 days by filing Form HA-1.

If the reviewing official determines that the request for review of the late filing determination was received more than 60 days after the date of the letter notifying the protester of the forfeiture of review rights, the reviewing official is to notify the protester that he or she has again forfeited the right to further review. The protester is also to be advised of his or her right to appeal the second late filing decision within 60 days.

2906 Receipt of Appeal Form

Instructions on Form HA-1, Appeal under the Railroad Retirement Act or the Railroad Unemployment Insurance Act, advise the protester to send the completed form to the Bureau of Hearings and Appeals. On occasion, however, a form may be received at another RRB office. A copy of the Form HA-1 and the envelope with postmark should be imaged. The original Form HA-1 and envelope should be forwarded to the Director of Hearings and Appeals. Include any additional evidence the individual may supply, but do not hold Form HA-1 pending receipt of additional evidence. If the individual plans to submit additional evidence, annotate the HA-1 with that information.

2907 Action by the Bureau of Hearings and Appeals

2907.01 The Hearing

Once a timely appeal is received in the Bureau of Hearings and Appeals, the case is assigned to a hearings officer. The hearings officer will request the claimant's entire file from all offices that have been involved with the case and send a letter acknowledging receipt of the appeal to the appellant and notification to other parties. A party that fails to respond to the notification within 30 days is barred from further participation in the appeal and forfeits further rights to review. The case is then docketed for a hearing or teleconference, as appropriate. In cases that involve a legal interpretation but no factual dispute, no hearing is held.

The parties are allowed the opportunity to review the file before a hearing or teleconference. At the hearing, the parties and/or their representatives provide responses to the hearings officer's inquiries, may present additional evidence, and may ask questions concerning the adjudication of the claim. After the hearing, the parties may be allowed an additional period of time to submit evidence.

2907.02 Decision of the Hearings Officer

After the hearing has been held or, if no hearing is held, after all evidence has been submitted, the hearings officer will consider the facts of the case, precedent decisions, and applicable law and regulations, and reach a decision. The decision will address the central issue and related issues that arise during the course of the hearing. The appellant and any other parties are notified of the decision within 15 days. If the decision is favorable to the appellant, the case is returned to the SUBS for appropriate action. If the decision is not favorable, in whole or in part, the hearings officer notifies the appellant of the right to appeal the determination to the Board Members within 60 days.

2907.3 Contact with Hearings Officers

To avoid the appearance of improper influence on hearings officers, RRB employees needing information about an appeal are to direct inquiries to the Director of Hearings and Appeals and are not to contact the hearings officer.

2908 Appeals to the Board Members

A claimant or employer dissatisfied with a decision of the Bureau of Hearings and Appeals and who elected to participate in the appeal may, within 60 days of the date of the notification letter, appeal the decision to the Board Members by filing Form HA-1. Any office in receipt of a Form HA-1 that appeals a hearings officer's decision should date-stamp and promptly forward the form and relevant files directly to the Bureau of Hearings and Appeals. BHA will then forward the appeal and case file to the Secretary to the Board. The Board Members will consider the appeal. The Board Members may appoint an employee to obtain additional information, or to conduct additional investigation or research. The Board Members will then vote to reach a decision on the appeal. When a decision has been reached, the claimant or employer and interested parties are advised in writing within 15 days. The case file is to be returned to the SUBS for any appropriate action. In the event of an adverse decision, the claimant or employer is advised of the right to request judicial review in the U. S. Court of Appeals within 90 days.

2909 Employer Status or Creditability of Compensation

2909.01 Hearings Officer's Report

In cases involving employer status or creditability of compensation, the hearings officer will submit a report to the Board Members. The report will contain a statement of (a) the issue or issues raised, (b) the evidence submitted, (c) finding of facts, (d) conclusions of law and (e) recommendations as to the decision to be made by the Board. Copies of the report and of the transcript of the hearing, if any, are mailed to each interested party. Any party to the proceeding may, within

20 days after the mailing of the report, file with the Board any exceptions to the hearing officer's findings of fact and conclusions of law.

2909.02 Decision of the Board

After submission of a report by a hearings officer, the Board Members will make a decision on the basis of the record established after consideration of any exceptions taken to the report. Notice of the decision, together with Board's findings of fact and conclusions of law, are mailed to the parties within 15 days from the date on which the decision is made. The decision of the Board is final and conclusive for all purposes, subject only to judicial review in accordance with section 5(f) of the Act.

2910 Waiver of Recovery

2910.01 General

Section 2(d) of the RUIA provides that there is to be no recovery of benefits where the claimant is without fault for the overpayment and where recovery would be contrary to the purpose of the Act or would be against equity or good conscience. A claimant is to be notified of his or her right to request waiver of recovery when he or she is notified of an overpayment determination. Such requests are to be forwarded to the Bureau of Fiscal Operations - Debt Recovery Division, who will prepare a decision. An adverse decision may be appealed to the Bureau of Hearings and Appeals and, if sustained, to the three-member Board.

2910.02 Time Limitations

If a request for waiver of recovery is received within 60 days of the initial debt letter, action to recover the debt, including withholding of subsequent benefits due, should be suspended until a decision has been reached, unless one of the four circumstances for non-deferral described in section 2910.07 is found to exist. If a request for waiver is received after 60 days, subsequent benefits payable may be withheld, but other collection efforts are to be suspended.

2910.03 Fault

The term "fault" means a defect of judgment or conduct arising from inattention or bad faith. Judgment or conduct is defective when it deviates from a prudent standard of care taken to comply with the entitlement provisions of the RUIA. Conduct includes both action and inaction. Unlike fraud, fault does not require a deliberate intent to deceive. Whether an individual is at fault for an overpayment depends on all relevant circumstances, including his or her ability to understand reporting requirements and to realize that he or she is being overpaid. The claimant's comprehension, memory and health are relevant, as are the causes of non-entitlement to benefits and the number of claims on which the claimant made

erroneous statements or omitted information. Circumstances indicating claimant fault include, but are not limited to:

a. Failure to furnish information which the claimant knew or should have known was material;

b. An incorrect statement made by the claimant which he or she knew or should have known was incorrect (including furnishing an opinion or conclusion when asked for fact); and

c. Failure to return a payment which the claimant knew or should have known was incorrect.

2910.04 Contrary to Purpose of the Act

The purpose of the Act is to replace some earnings lost because of sickness or unemployment. That purpose is defeated if an erroneous payment is recovered from income and resources the individual needs to meet ordinary and necessary living expenses. Income includes funds available for the individual's use, regardless of their source. Income to the individual's spouse or dependents is available if the spouse or dependents live with the individual at the time waiver is considered. Types of income include governmental benefits, wages, self-employment income, regular payments such as rent or pensions, and investment income. Resources include liquid assets such as cash, savings accounts, stocks and bonds, and certain non-liquid assets.

Whether an individual can meet ordinary and necessary living expenses depends on both income and whether the expenses are truly "ordinary and necessary." While the level of ordinary and necessary expenses may vary between individuals, it must be held at a level reasonable for an unemployed or sick individual, and the expenses must not be primarily discretionary. Ordinary and necessary expenses include fixed living expenses such as food, rent, mortgage payments, utilities, clothing, insurance, and taxes. Such expenses also include medical expenses, support for which the individual is legally responsible, and miscellaneous expenses (e.g. newspaper, haircuts, etc.). Care must be taken, however, to distinguish between necessary expenses related to a primary residence as opposed to discretionary expenses such as utilities, rent, mortgage payments or taxes related to a vacation home, or payments or insurance on a recreational motor home. Where full recovery would make an individual unable to meet ordinary and necessary living expenses but partial recovery would not, recovery of the lesser amount does not defeat the purpose of the Act.

2910.05 Against Equity or Good Conscience

Recovery is against equity or good conscience when the claimant, in reliance upon benefits or notice that benefits will be paid, relinquishes a valuable right or changes his or her position for the worse. For example, a claimant who

irrevocably relinquishes rights to state unemployment benefits in favor of RUIA benefits that later are determined to have been erroneously paid due to an RRB mistake has given up a valuable right to state benefits in detrimental reliance upon RUIA benefits. The fact that an individual's financial circumstances may permit repayment without hardship is not material to a finding that recovery is against equity or good conscience and does not prevent waiver of recovery in such circumstances.

2910.06 Notice to Employer

Most requests for waiver are denied because, to some degree, the claimant is at fault for causing the debt. However, if an initial review of the request indicates the claimant may meet the requirements for allowing waiver, the base-year employer and the most recent employer, if different, must be notified of the request and permitted to submit information relevant to the case. Send a brief letter to the employer(s) advising that the claimant has requested waiver of recovery and giving a brief description of how the debt occurred. Explain that the employer(s) may submit relevant information, within 30 days, which will be considered when the determination is made. When a reply is received, or 30 days have passed without reply, process the request in accordance with section 2910.07.

2910.07 Processing Requests for Waiver Consideration

The Chief Financial Officer has authority to waive recovery of overpayments under the RUIA. Requests for waiver are to be date stamped and routed to the Bureau of Fiscal Operations - Debt Recovery Division.

Waiver consideration is a category of reconsideration subject to the same 60-day time limit for filing other types of requests for reconsideration. If a request is filed within 60 days debt recovery actions are to be deferred, except under these circumstances:

a. The amount of the erroneous payment does not exceed 10 times the current maximum daily benefit rate;

b. The claimant admits he or she was at fault in causing the overpayment;

c. The claimant is found to have committed fraud; or

d. The claimant authorizes recovery by offset or agrees to repayment.

Debt collection efforts are to be suspended, where appropriate, during consideration of the waiver request. When it appears that the claimant is without fault for the overpayment but the claimant has not made a successful case based on equity or good conscience, BFO-DRD is to obtain a completed Form DR-423, Financial Disclosure Statement, from the claimant to determine if recovery would cause financial hardship. If the Chief Financial Officer approves waiver of

recovery, BFO-DRD is to notify the claimant and adjust the claimant's PARS record. DRD will then forward the case to SUBS who will adjust the claimant's RUIA record and refund any amounts recovered that are included in the amount waived. Notice of the waiver determination is not to be provided to the employer(s) because they have no right to appeal waiver determinations.

If waiver is denied, the Chief Financial Officer will so advise the claimant in writing and notify the claimant of the right to appeal to the Bureau of Hearings and Appeals by filing Form HA-1 within 60 days. Further recovery action is to be deferred for 15 days from the date of the Chief Financial Officer's adverse determination. If the claimant files a timely appeal, recovery action is to be deferred pending the outcome of the appeal, unless the case meets one of the four conditions above that permit immediate recovery. A claimant may appeal an adverse decision of the hearings officer to the three-member Board within 60 days.

2910.08 Circumstances Where Waiver Not Permitted

Part 340 of the RRB's regulations prohibits granting waiver of a debt which:

a. is equal to or less than 10 times the current maximum daily benefit rate in effect at the time the waiver request is filed;

b. is caused by entitlement to an annuity under the Railroad Retirement Act and may be recovered from the accrued annuity or a residual lump sum payable under the Railroad Retirement Act;

c. is recoverable up to the amount of any accrued Federal benefits payable to the debtor by any executive agency of the United States (i.e. an award from the Social Security Administration). This means that recovery from an accrual does not deprive the debtor of funds for necessary living expenses. However, waiver may be granted for the amount of debt exceeding the accrual, provided the debtor meets the standards for waiver in Part 320; or

d. is recoverable from a third-party (such as from a party liable for an injury who pays damages or an employer who pays for time lost).

Note: if at least one of the above applies, the waiver denial should be based upon Part 340 of the regulations and not because he or she was at fault.

2911 Deceased Cases

2911.01 General

Any person from whom collection of an RUIA debt is sought may request reconsideration and/or waiver of recovery. A deceased person's estate is considered a "person" under the law.

2911.02 Survivors

A survivor (usually a spouse) of a debtor is entitled to the same rights to request reconsideration and/or waiver of recovery as the debtor, but is also bound by the debtor's actions or inaction. If the debtor was properly informed of but did not exercise his or her right to review, or did not exhaust all administrative remedies, the survivor is considered to have forfeited rights to further review. If the debtor was at fault in connection with the overpayment, waiver may not be granted to the survivor. Also, if the survivor was at fault in connection with the debt (while conducting the debtor's personal affairs, for example), a waiver may not be granted.

2911.03 Estates

As with a survivor, an estate may request reconsideration and/or waiver of recovery, but is bound by the debtor's actions or inaction. If the debtor was properly informed of but did not exercise review rights, the estate will have no further appeal rights, and if the debtor was at fault in connection with the debt, waiver may not be granted. If it is established that the debtor was without fault, waiver may be granted to the estate only if recovery would be against equity and good conscience (see AIM 2910.05), because recovery from an estate cannot be said to deprive the estate of income needed to meet normal living expenses.

2911.04 Divorced Spouses

Recovery may not be made from the divorced spouse of a deceased debtor. In such cases, a debt should be declared uncollectible, unless there are reasonable prospects of recovering the debt from a third party, such as a liable party in a personal-injury case.

2912 Reconsideration and Waiver Cases Involving Fraud

If there is an indication that a reconsideration and/or waiver case that involves fraud has been submitted and accepted by the United States Attorney for criminal prosecution, all reconsideration and waiver determinations are to be suspended pending the outcome. If the U.S. Attorney declines the case for prosecution, reconsideration and/or waiver determinations may then resume.

2913 Forms Prescribed

The following forms and form letters are prescribed:

DR-423, Financial Disclosure Statement

ID-29, RUIA Reconsideration Request

ID-29B, Notice on Request for Reconsideration

UI-68, Your Right to Reconsideration and Waiver

3001 Provisions of the Act

3001.01 Section 2(f)

of the Act provides:

"If (i) benefits are paid to any employee with respect to unemployment or sickness in any registration period, and it is later determined that remuneration is payable to such employee with respect to any period which includes days in such registration period which had been determined to be days of unemployment or sickness, and (ii) the person or company from which such remuneration is payable has, before payment thereof, notice of the payment of benefits upon the basis of days of unemployment or sickness included in such period, the remuneration so payable shall not be reduced by reason of such benefits but the remuneration so payable, to the extent to which benefits were paid upon the basis of days which had been determined to be days of unemployment or sickness and which are included in the period for which such remuneration is payable, shall be held to be a special fund in trust for the Board..."

3001.02 Section 1(j) of the Act provides:

"The term `remuneration' means pay for services for hire, including pay for time lost, and tips, but pay for time lost shall be deemed earned on the day on which such time is lost. The term `remuneration' includes also earned income other than for services for hire if the accrual thereof in whole or in part is ascertainable with respect to a particular day or particular days. The term `remuneration' does not include (i) the voluntary payment by another, without deduction from the pay of an employee, of any tax or contribution now or hereafter imposed with respect to the remuneration of such employee, or (ii) any money payments received pursuant to any nongovernmental plan for unemployment insurance, maternity insurance, or sickness insurance."

3002 Analysis of Section 2(f)

3002.01 Provision for special fund

Section 2(f) provides for collection of a special fund from a person or company from which remuneration is payable with respect to a period including days of unemployment or sickness. Such a collection is to be made if:

a. remuneration is determined to be payable after the payment of benefits; and

b. the person or company has notice of the payment of benefits prior to the payment of remuneration.

3002.02 Amount to be collected

The amount to be collected is the lesser of the following:

a. The amount of benefits paid for days which had been determined to be days of unemployment or sickness and which are included in any period with respect to which it is later determined that remuneration is payable. This is the amount which would not have been paid if days with respect to which remuneration is payable had not been considered days of unemployment or sickness. For example, if remuneration is payable for the first seven days of a registration period containing 14 days of unemployment, the amount due under section 2(f) is seven times the claimant's daily benefit rate.

   OR

b. The amount of remuneration payable with respect to the period which includes days which had been determined to be days of unemployment or sickness.

3002.03 Effect on available balance

When the entire amount of benefits paid for any day or days is represented in such a collection, the day or days are to be disregarded in computing the number of days for which benefits have been paid.

3003 Initial Determinations on Claims

Adjudication of a claim shall not be delayed, but days in a registration period may be considered as days of unemployment or sickness, even though it is known that the claimant is claiming and may later receive remuneration for such days. If the facts are not clear as to whether the claimant is receiving, or expects to receive remuneration in the future, an investigation should be made to determine the facts.

3004 Notice under Section 2(f)

3004.01 Notice to person or company

When there is information that a claimant is claiming or may receive at some later date, pay for time lost for a particular day or days with respect to which benefits have been determined to be payable, notice of the Railroad Retirement Board's (RRB) right to recovery under section 2(f) shall be sent to the person or company which may pay the remuneration. When there is information that a claimant is a protected employee under a job protection plan, notice under section 2(f) shall be sent to his employer.

3004.02 Notice in case of labor dispute

Notice under section 2(f) is to be sent to a covered employer whose employees are unemployed due to a stoppage of work caused by a labor dispute on the premises of the employer. Only one such letter is needed in connection with a particular work stoppage; separate letters respecting individual employees are not required.

3004.03 Notice to claimant

When information is received that a claimant is entitled to guaranteed wages, payable annually, he is to be notified of the RRB's right, under section 2(f) to recovery of benefits from any annual guarantee payment.

3005 Determining Amount to be Collected under Section 2(f)

3005.01 General

Determinations as to the amounts to be collected under section 2(f) are made in the Sickness and Unemployment Benefits Section (SUBS). in accordance with applicable instructions. The method to be used in a particular case depends upon provisions of the agreement or settlement under which remuneration is to be paid. The general principles for determining amounts to be collected under section 2(f) are given below, and are covered in more detail in Appendices A and B. Variations occur when an employee is in an occupation that does not have a standard eight-hour day, or when labor-management practices for implementing an agreement are not uniform.

3005.02 Remuneration payable for each day in the period covered

Pay for time lost under some agreements covers a period, e.g. a month, and remuneration is payable with respect to each day in the period. Payments of this type are made under agreements providing for monthly guarantees in the form of "coordination allowances" or "dismissal allowances". See Appendix A. Settlements of pay for time lost claims (such as those filed by employees who were discharged or held out of service and are seeking reinstatement, etc.) may also indicate that the payment should be considered as compensation for each day in the period covered. The amount to be collected under section 2(f) from a payment of this type is the lesser of these amounts:

a. the amount of benefits paid for days in the period for which the payment is to be made,

   OR

b. the amount of the payment for the period.

3005.03 Remuneration payable for time not worked in a particular month

Pay for time lost under some agreements covers time not worked within a period, e.g., a number of days within a month; and remuneration payable under such an agreement is attributable to less than the whole number of days in the period. Payments of this type are made under agreements similar to the National Job Stabilization Agreement of February 7, 1965. See Appendix B. The amount to be collected under section 2(f) in this type of case is the lesser of the following:

a. the amount of unemployment benefits paid for time not worked covered by the protective payment,

   OR

b. the amount of the protective payment for time not worked.

3005.04 Remuneration payable under annual guarantee

When an employee is entitled to an annual guarantee of remuneration without reference to the number of hours or days per week, month or year for which he is protected, the amount to be collected under section 2(f) will be an amount equal to the benefits paid for a number of days equal to whichever is smaller of the following:

a. the number of days obtained by dividing the amount of the guarantee payment by the daily rate of compensation of the employee's job in the guarantee period,

   OR

b. the number of days for which unemployment benefits were paid to the employee in the guarantee period.

Example: Employee works or gets vacation pay for 158 days in guarantee period, and is paid $4,684.00. His average daily compensation was therefore $29.65. His protective payment for the guarantee period was reported to be $2,541.78. This figure divided by $29.65 gives 86 days. The benefits paid for 86 days amount to $877.20; this is the amount to be collected under section 2(f).

3005.05 Dining-car employees

These employees have a working standard different from the eight-hour day that is common in the non-operating railroad occupations. To determine the number of days to which protective payments are attributable under the National Job Stabilization Agreement in the case of a dining-car employee, the number of hours covered by the payment is generally divided by 8.3 instead of by 8. The 8.3 figure is obtained by dividing 180 hours (full-time in dining-car service) by 21.75 (the average number of working days in a month.)

3005.06 Guaranteed extra board

Under some extra board agreements employees are guaranteed a specific number of basic days' pay per period. In the case of such an agreement the amount to be collected under section 2(f) from a guarantee payment is (1) an amount equal to the benefits paid for the number of days represented by the guarantee payment or (2) an amount equal to the benefits paid for days in the guarantee period, whichever is less.

3006 Effecting Collection

3006.01 Request for payment

When information is received that remuneration payable to a claimant is being withheld in accordance with the provisions of section 2(f), and a determination under section 2(f) has been made as specified in AIM-3005, the person or company from which the remuneration is payable is to be requested to remit the amount to be collected or informed that no amount is to be remitted.

3006.02 Adjudication pending receipt of remittance

When an employer to whom section 2(f) notice was sent advises that remuneration is payable to a claimant for a period for which benefits have been paid, no action shall be taken to recover from the claimant an amount due under section 2(f), as the amount to be collected is provided for in the special fund created by the employer.

3006.03 Brief of case when remuneration not withheld

A brief of case is to be submitted to the Sickness and Unemployment Benefits Section (SUBS) when an employer or company, after having been put on notice under section 2(f), pays remuneration to a claimant for a period including days of unemployment or sickness and does not withhold the amount to which the RRB is entitled.

3006.04 Recovery from employee

An amount due under section 2(f) is to be collected from the claimant only if:

a. The amount is not received from the employer,

    and

b. It is determined that the amount was paid erroneously to the claimant. (See instructions on "Reopening and Redetermination".)

3007 Settlements to Which Both Sections 2(f) and 12(o) May be Applicable

Terms of settlement of an employee's personal injury claim against a person or company may provide for payment of an amount allocated as pay for time lost. In such a case, consideration is first given to the applicability of section 2(f). If section 2(f) is applicable and the amount to be collected there under is determined, section 12(o) will be considered applicable to the amount by which the total settlement exceeds the amount of the pay for time lost. An amount reported by the employer as pay for time lost is, to the extent that it bears a reasonable relation to the individual's earnings, to be considered to be pay for time lost.

3008 Authority to Make Determinations

SUBS is authorized to make determinations under section 2(f). Cases in which there is a question as to the proper determination are to be submitted to Policy and Systems for advice.

3020 Provisions of the Act

Section 12(o) of the Act provides:

"Benefits payable to an employee with respect to days of sickness shall be payable regardless of the liability of any person to pay damages for such infirmity. The Board shall be entitled to reimbursement from any sum or damages paid or payable to such employee or other person through suit, compromise, settlement, judgment, or otherwise on account of any liability (other than a liability under a health, sickness, accident, or similar insurance policy) based upon such infirmity, to the extent that it will have paid or will pay benefits for days of sickness resulting from such infirmity. Upon notice to the person against whom such right or claim exists or is asserted, the Board shall have a lien upon such right or claim, any judgment obtained there under, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimbursement."

3021 Analysis of Section 12(o)

3021.01 Benefits payable regardless of liability to pay damages

Section 12(o) provides that benefits payable with respect to days of sickness are to be payable regardless of the liability of any person to pay damages for the employee's infirmity.

3021.02 RRB's right to reimbursement

The RRB is entitled to reimbursement under section 12(o) from any sum or damages paid or payable to the employee on account of any liability (except a liability under a health, sickness, accident, or similar insurance policy) based upon the infirmity. It is not necessary that a liability actually exist, but merely that it be asserted. No reimbursement is to be requested in connection with sickness benefits payable on the basis of any infirmity other than the infirmity for which a sum or damages were paid or payable. The RRB should not assert any right to reimbursement from amounts paid to, or in behalf of, the employee for his or her expenses in connection with an infirmity.

3021.03 Medical, hospital and legal expenses

The RRB's right of reimbursement under section 12(o) applies only to the net amount of a settlement after deduction of the amount of an employee's expenses incurred in connection with the injury. The right of reimbursement does not extend to amounts of expenses incurred by an employee for medical, hospital, or legal services in connection with the infirmity. Legal expenses include the amount of the attorney's fee with the employee (usually one-third of the gross settlement amount).

The fact that an employee's medical or hospital expenses are covered by health, sickness or accident insurance does not prevent them from being considered as expenses incurred by the employee. The costs of medical or hospital services provided an employee because of his membership in a medical or hospital plan or association, or provided under Medicare, are also considered to be expenses incurred by the employee. Medical or hospital expenses paid directly by the liable party (eg. employer, etc.), however, are not to be deducted from the gross settlement.

Medical and hospital expenses are not deductible if they are paid under an insurance policy that indemnifies a railroad employer against liability under the Federal Employers' Liability Act (FELA). For example, under the Health and Welfare Agreement that was entered into by railroad management represented by the National Carriers' Conference Committee and railroad labor represented by the Brotherhood of Maintenance of Way Employees on October 22, 1975, employee medical expenses are paid to the providers directly by an insurance company. See Appendix I for the Legal Opinion concerning the Agreement and click here for a link to the list of railroad employers covered by the Agreement.

3021.04 Amount of reimbursement

The amount of reimbursement is the lesser of (a) the amount of benefits, or (b) the amount of the sum or damages (excluding amounts of certain expenses incurred by the claimant in connection with his infirmity as indicated in subsection 3021.03 above). In any case where Section 4(a-1)(ii) is also applicable, the

amount of reimbursement for purposes of section 12(o) is the amount of benefits paid after diminution or recovery under Section 4(a-1)(ii).

3021.05 Notice required

Notice is to be given to the person who is reported to be liable. Unless notice is given to a person who makes a payment of any sum or damages before he or she makes the payment, reimbursement is not to be requested of him or her.

3021.06 Recovery from claimant

The RRB may recover from the claimant if notice is not given to the person who pays a sum or damages before he makes the payment, or in some cases if notice has been given but not honored.

3021.07 Effect of 12(o) recovery on benefit balance

Any day for which the full amount of benefits is recovered or set off against a sum or damages is not to be counted in determining the number of days for which benefits have been paid in a benefit year.

3021.08 Workmen's compensation

Payments under workmen's compensation laws are not damage payments from which the RRB might be entitled to reimbursement. All payments under workmen's compensation laws are social insurance payments, but they affect a claimant's rights to benefits only if payable periodically to the claimant for total disability. (See AIM-17, "Determinations under Section 4(a-1)(ii)".)

3021.09 Formula when sickness benefits for registration period based on two infirmities

When the benefits payable for a registration period are based, in part, on days of sickness resulting from an infirmity for which damages are payable and, in part, on days of sickness resulting from some other infirmity, the amount of reimbursement to which the RRB is entitled is to be determined according to the following formula: Number of days of sickness in registration period based on infirmity for which damages are payable minus seven or four days (as the case may be), multiplied by daily benefit rate.

3021.10 "Advances"

Ordinarily, a cash payment (other than wages), made by an employer to an employee following an injury, is considered to be a sum paid on account of a liability; and it is considered that the RRB is entitled to reimbursement to the extent that it has paid or will pay benefits for days of sickness resulting from such injury. However, if an employer makes payments to an employee in advance of

settlement (generally referred to as "advances"), benefit payments may be continued until settlement is made or liability is otherwise established.

3021.11 "Coverage U"

Section 12(o) does not apply to a payment made to a claimant by his own insurance carrier under an endorsement to his policy (usually referred to as "Coverage U") providing that the insurance carrier will pay all sums, up to a specified maximum, which the claimant or his legal representative is legally entitled to recover as damages for bodily injury from the owner or operator of an uninsured automobile. Section 12(o) does apply to any payment which may be made by the tortfeasor, or anyone on his behalf, because of liability for causing the claimant's infirmity, whether the payment is made to the claimant or some other person, such as the claimant's insurance carrier under its subrogation rights.

3021.12 "No-fault automobile insurance statutes"

Section 12(o) applies to any payment made to our claimant under the "no-fault" insurance policy of another individual. A payment made under a no-fault insurance statute constitutes a sum paid because of the responsibility (liability) of the insured for our claimant's injury. The fact that a state's no-fault insurance statute requires payment without establishing fault for the injury does not remove the payment from the scope of section 12(o).

The RRB's right to reimbursement was clarified in the General Counsel's opinion L77-464, which stated that where liability to a claimant under the insurance policy of another individual occurs, even though no fault is established, and where payments are made pursuant to that liability, the payments are subject to the RRB's right to reimbursement under section 12(o) of the RUIA.

3022 Initial Determinations on Claims

Except as provided in Section 3026 benefits for days of sickness shall not be withheld because of information indicating that the claimant is claiming or may later receive a sum or damages on account of a liability based on the infirmity from which such days of sickness resulted.

3023 Notice of RRB's Right to Reimbursement

3023.01 Notice of lien

Notice of the RRB's right to reimbursement, Form Letter ID-30b, Notice of Lien, is to be sent in each case where a right or claim to damages may be asserted on the basis of an infirmity for which sickness benefits may be paid. The notice is to be sent (a) to each person or company who may be responsible for the infirmity, and (b) to each person or company against whom a claim may be made. In

addition, if any such person or company is insured, notice is to be sent to the insurance company. When notice is sent in any case where the employee was not injured at work, only the employee's name and social security account number and the date and place of injury shall be shown on the lien notice. If a reply to a Notice of Lien indicates that it was misunderstood, new notice must be delivered with appropriate explanation, by contact representative, if necessary.

3023.02 Notice to claimant

When notice of the RRB's right to reimbursement under section 12(o) is given to a person or company other than a covered employer, the claimant is to be notified of his liability to reimburse the RRB in case of a settlement.

3023.03 Notice to tortfeasor in "Coverage U" case

Upon receipt of information that a claimant has been paid by his insurer on account of an uninsured driver's legal liability for the claimant's injuries, the tortfeasor is to be notified of the RRB's right to reimbursement from any sum paid or payable to the claimant's insurer under its subrogation rights. A copy of such notice is to be sent to the claimant's insurer under its subrogation rights. A copy of such notice is to be sent to the claimant's insurer.

3024 Request for Information as to Liable Party

If it appears that a claimant is claiming or may later receive a sum or damages on account of liability for the infirmity from which his days of sickness resulted but information available is not sufficient for sending a Notice of Lien, further information is to be requested from the claimant. Such further information would ordinarily appear to be needed when covered employer liability is not indicated, the questions as to liability on the application for sickness benefits are not adequately answered, and the infirmity is an injury such as commonly results from an accident, or is a hernia, or in the case of a shop worker, is contact dermatitis.

Further information would also appear to be needed when liability other than covered employer liability is indicated and the liable party's insurance company is not known.

When it appears that the claimant may claim damages but he cannot or will not name the person who may be liable and such information is not available from some other source, the claimant shall be notified that he must advise the RRB of any settlement.

3025 Releasing Information as to Amount Recoverable

3025.01 General

Information as to the amount recoverable under section 12(o) shall be furnished, upon request, to an employer or other person who may be liable for payment of damages, or to the claimant, or to an attorney representing any of those parties. Such information is to be furnished whether or not terms of a settlement have been agreed upon.

3025.02 Settlement made

If an inquiry as to amount recoverable discloses that settlement has been made, request for reimbursement shall be made as prescribed in Section 3028.

3025.03 Settlement not made

If an inquiry indicates that settlement has not been made, the adjudicating office shall advise the inquirer as to the amount of benefits paid to date on the basis of the injury for which settlement may be made. If the claimant is still claiming benefits on the basis of that infirmity, the inquirer shall be advised that the amount of benefits paid to date must not be considered as a final notice of benefits paid unless the RRB is notified within seven days that a settlement has been made.

3026 Ten-Day Suspension of Benefit Payments

When the employer, or other person who is to make a settlement, or the representative of any such party, has indicated that settlement is to be made within seven days in a case where the claimant is continuing to claim benefits on the basis of the injury for which settlement is being considered, benefits may be suspended for a period of ten days beginning with the day the information is furnished. The ten-day suspension will allow for mailing time for a communication sent by the employer or other person within the seven-day period. Benefits are not to be suspended unless the inquirer has indicated that settlement will be made within seven days.

3027 Determining Amount Recoverable

When a person or company notifies the RRB concerning the provisions of a settlement of a claim for damages, the adjudicating office shall determine the amount to which the RRB is entitled by way of reimbursement. The amount stated as the sum or damages, and the amounts, if any, stated as expenses paid to or in behalf of the employee in connection with his infirmity shall ordinarily be accepted as correct. Where no expenses are reported, it shall be assumed, in the absence of evidence to the contrary, that the sum or damages reported does not include any amount paid for expenses.

3028 Request for Reimbursement

3028.01 General

When the amount recoverable from a settlement has been determined, request for reimbursement should ordinarily be addressed to the person or company making the settlement. If that person or company did not have notice that the RRB was paying benefits, the request for reimbursement should be addressed to the claimant. In the latter case no sickness or unemployment benefits should be paid to the claimant while any amount remains recoverable under section 12(o).

3028.02 Lien not honored

When the liable party has been put on notice but apparently failed to withhold for the RRB the amount recoverable under section 12(o), demand for reimbursement should be made upon the liable party. Telephone contact may be advisable as a means of ascertaining the facts and the liable party's position as to reimbursing the RRB. If this effort to collect from the liable party is unsuccessful, request for reimbursement should then be addressed to the claimant. Special efforts to get in touch with the claimant by personal visit or telephone may be advisable if the settlement was recent. In such a case the adjudicating office may send the collection letter to the field office for personal delivery and explanation.

If recovery from the claimant is not affected within a reasonable time, further efforts to recover from the liable party or his insurer should be undertaken without delay. Appropriate court decisions may be cited in making efforts to collect from insurance companies or large corporations. Care should be taken in speaking and writing not to disavow the RRB's right to recovery from the claimant. If there is an opportunity to collect from the claimant by offsetting benefits due under the Railroad Unemployment Insurance Act or the Railroad Retirement Act, the case should be submitted to the division of adjudication for an opinion whether recovery should be made by offset or whether efforts should be continued to recover from the liable party.

3028.03 Lien payment received

Ordinarily, receipt of a remittance in full payment of the RRB's lien will not require any acknowledgement. The remittance (canceled check, etc.) would usually be adequate evidence of payment. If, however, the railroad, insurance company, attorney, or other person requests a written acknowledgement, discharge, or release of lien, a typed letter is to be sent to the person or company requesting such acknowledgement. If a formal release is not requested, a release as shown in Exhibit W is to be sent.

If the remittance received is for less than the amount of the RRB's lien, and some question is raised as to the RRB's right to full reimbursement, the check is to be

returned to the remitter with a letter explaining the RRB's position, and a new remittance for the complete amount due the RRB is to be requested.

If, because of an apparent clerical error, less than the correct amount was remitted, the remittance is to be retained without depositing it, and a letter is to be sent explaining the situation and requesting the additional amount due.

3029 Notice to Claimant Concerning Expenses

When it appears, in connection with a report of a settlement, that information as to the claimant's expenses might affect the amount recoverable under section 12(o), the claimant should be so advised. As a rule of thumb such advice should ordinarily be sent when all these conditions are present: (1) the settlement is reported to be for less than $3,000, (2) the settlement was made by a party other than a covered employer, and (3) the amount due the RRB is being withheld from the settlement.

3030 Receipt of Information Concerning Expenses

Action shall be taken as follows when information about a claimant's expenses is received after the amount recoverable under section 12(o) has been determined:

a. The amount to which the RRB is entitled by way of reimbursement is to be tentatively recomputed by deducting the reported expenses from the amount of settlement.

b. If deduction of the expenses from the amount of settlement would result in a smaller amount recoverable but the claimant has not furnished receipts, bills or statements supporting the expenses which he reported, he is to be requested to furnish such evidence or a statement explaining why he cannot furnish such evidence. Only amounts for which supporting evidence is furnished, or with respect to which the lack of such evidence is explained, are to be considered for purposes of Section 3031 below.

3031 Excessive Recovery

In any case where a recovery exceeds the amount to which the RRB is entitled by way of reimbursement under section 12(o), the correct disposition of the excess amount must be determined. If it is apparent that the excessive recovery has been withheld from the amount of the settlement paid the employee, the excess amount is to be paid to the employee. In other cases, it may appear that the excess amount should be refunded to the person or company from whom it was collected.

3032 Set-Off under Section 12(o)

3032.01 Reimbursement for benefits payable but not paid

If the amount of the settlement for an injury exceeds the amount of benefits paid on the basis of the injury, any additional benefits payable on the basis of the same injury are to be offset against the amount of the settlement to the extent of the difference between the two amounts. This adjustment is to be completed before any benefits are offset against any amount recoverable from the claimant.

3032.02 Letter to claimant

When the amount of a settlement exceeds the amount of benefits paid, and it appears that the claimant might claim additional benefits on the basis of the injury for which settlement was made, the claimant should be advised concerning the set-off.

a. **Settlement in excess of $7,500**

    If the sum or damages is in excess of $7,500, the letter should explain that the amount of the payment is in excess of the sickness benefits which may be payable as a result of his injury and that no sickness benefits are payable.

b. **Settlement less than $7,500**

    If the sum or damages is less than $7,500, the earliest date with respect to which sickness benefits may be paid is to be determined, and the letter should explain that no sickness benefits resulting from the same injury may be paid before that date.

3032.03 Notice to employee when benefits may exceed payment for injury

When a sufficient time has elapsed so that sickness benefits may be paid and the claimant has informed the RRB that he wishes to begin or resume claiming benefits, a claim form for a series of registration periods for which no benefits may be paid is to be sent to the claimant, together with a letter of explanation.

3032.04 Supplemental medical evidence

If the information on the statement of sickness is sufficient for making a determination that the claimant is unable to work at the beginning of the period for which no benefits may be paid, no additional medical evidence is to be requested until a claim form is sent to the employee for a period for which benefits may be paid.

3033 "Nuisance" Settlements

In some cases of disputed liability, railroads pay small amounts largely for the purpose of obtaining a release. In such cases, the amount paid is the amount of the settlement and accordingly that is the amount recoverable under section 12(o).

3034 Attorney Fee Cases

3034.01 Attorney refuses to endorse check

Checks in payment of the RRB's claim under section 12(o) are often made payable jointly to the RRB, the injured person, and his attorney. If the attorney refuses to endorse and turn over the check unless the RRB pays part of his fee, an effort should be made to have the drawer of the check issue a new check payable to the RRB alone. If this effort fails, the case is to be briefed.

3034.02 Explaining the RRB's position

When explaining the RRB's position with respect to attorney's fees in section 12(o) cases, the adjudicating office may cite the court decisions given in Appendices F and G.

3035 Protecting Lien in Court Cases

3035.01 Introduction

It is the duty of the adjudicating office to make arrangements for protecting the RRB's lien in cases where personal injury suits are based on infirmities for which the RRB has paid benefits. The first consideration is to prevent the money from getting away. Legal intervention in the suit is to be avoided, if possible. However, if legal intervention is necessary, preparation must be made for it. The adjudicating office should do all it can to provide time so that requests for legal intervention may be routed through the Department of Justice. Since information about a suit may reach the RRB at any of the various stages in the proceedings, the things to be done will vary according to the situation at the time when the RRB gets the information.

Note: In this instruction, "legal intervention" does not denote a particular form of legal action, either in the pending case or an independent suit, which the Dept. of Justice or a U. S. Attorney may ultimately determine to be advisable.

3035.02 Notice

If there is an amount recoverable under section 12(o) and if no notice of the RRB's lien has been sent to the defendant in the suit, Form Letter ID-30b should be sent, or delivered by special messenger, immediately.

3035.03 Arrangements for protecting the RRB's lien

Arrangements to protect the RRB's lien should be undertaken as follows:

a. Protection of lien by defense attorney

The attorney for the defendant should be asked whether the RRB's lien will be protected. If he gives assurance that the lien will be protected, he should be advised of the amount of reimbursement to which the RRB may be entitled, unless he already has this information. The attorney's assurance that he will protect the lien may ordinarily be accepted.

b. Protection of lien by plaintiff's attorney

If the attorney for the defendant does not give assurance that the RRB's lien will be protected, an effort should be made to get the plaintiff's attorney to agree to protect the RRB's lien. It is preferable to have him or her agree that the defendant's attorney should deduct the amount due the RRB. Whatever agreement is made, there should be some written record of it. A letter from the plaintiff's attorney is preferred as a record. A letter from the RRB office, confirming the understanding of action to be taken by the attorney, amy also serve as a record. Copies of this letter should be sent to the defense attorney, the clerk of the court, or the U.S. Attorney, or all, as appropriate. A written record may be dispensed with where experience with the attorney indicates that is not needed.

c. Attorneys refuse to protect lien

If arrangements cannot readily be made with the attorneys, the clerk of the court may be notified of the RRB's right to reimbursement under section 12(o). With the notice, he should also be furnished a copy of the Form Letter ID-30b which was sent to the defendant. If the clerk of the court gives assurance that the RRB's lien will be protected, further action will not ordinarily be necessary.

d. No arrangements for protection of lien

If no arrangements to protect the RRB's lien can be made, it will be necessary to make preparations for legal intervention.

e. Payment of funds to clerk of court

If there is information that funds on which the RRB has a lien under section 12(o) are to be, or have been, paid to the clerk of a court, the appropriate U.S. Attorney should be notified and the matter reported at once to the chief, division of adjudication, by telephone. If the

adjudicating office has already been given assurance that the RRB's lien will be protected, the U.S. Attorney should be so advised.

3035.04 Preparing for legal intervention

Following are steps to be taken, normally after consultation with the chief, division of adjudication, in preparation for legal intervention:

a. Find out the status of the court proceedings, including the scheduled or probable date of the next action, such as pre-trial hearing, trial, appeal, hearing on appeal, decision by the court, or payment in satisfaction of judgment.

b. Take steps to obtain sufficient delay in payment to the plaintiff to enable the RRB to take necessary action:

   1. Find out when payment may be made and whether it will be made to the clerk of the court or to the plaintiff or his representatives. If payment is to be made to the clerk of the court, follow instructions in 3035.03e above.

   2. If payment is to be made to the plaintiff or his representatives, ask the defendant's attorney for delay in payment, if necessary, so that the RRB may have at least seven days to institute proceedings. If delay is obtained in this way, notify the chief, division of adjudication, at once of the circumstances so that legal intervention can be undertaken. If delay cannot be obtained in this way, proceed as provided below.

c. If payment is to be made by the defendant within seven days and cannot be deferred, and efforts to protect the lien have been unsuccessful, give a report of the facts in the case immediately to the U.S. Attorney. In addition, notify the chief, division of adjudication, at once. The U.S. Attorney should be advised that the headquarters office of the RRB or the Department of Justice will request that he intervene in the case to protect the RRB's lien, and will furnish material on the interpretation of the law which may be required. In some cases the U.S. Attorney may find it necessary to take immediate action before receiving a formal request to intervene.

3035.05 Information to Policy and Systems

In any case where legal intervention may be required or where difficulty is encountered in protecting the RRB's lien, Policy and Systems is to be kept informed of all developments by memorandum or telephone. If there is any question about the relation of the suit to an infirmity resulting in days of sickness, copies of any complaints, answers, judgment and settlement agreements are to

be obtained and furnished. The initial report should include as much of the following as is available, together with any other pertinent information:

a. claimant's name and account number

b. name and address of plaintiff's attorney

c. name of the liable person or company (defendant)

d. name and address of defendant's attorney

e. date Notice of Lien was sent, and to whom it was sent

f. amount of the RRB's lien

g. name of the Court

h. case number

i. date of judgment, if rendered

j. date payment is to be made, if determined, and to whom

k. source of information about the judgment

l. date notice of judgment was given to the regional office

m. what are the attitudes of the claimant's attorney and the defendant's attorney with regard to recognizing the RRB's lien.

3036 Settlement to Which Section 12(o) and 2(f) May be Applicable

Terms of settlement of an employee's claim against a person or company may provide for payment of an amount allocated as pay for time lost. In such a case, consideration is to be given first to the applicability of section 2(f). If section 2(f) is applicable and the amount recoverable there under is determined, it is to be considered that section 12(o) is applicable to the amount by which the total settlement exceeds the amount of the pay for time lost.

3037 Authority to Make Determinations

SUBS is authorized to make determinations under section 12(o). Cases in which there is a question as to the proper determination are to be submitted to Policy and Systems for advice.

Appendices

Appendix A - Circular RE: Recovery From Protective Payments

Circular Letter No. Ui-C-110 - Recovery Of Benefits From Protective Payments

November 1966

To Unemployment Insurance Contact Officials

Benefits paid to an employee under the Railroad Unemployment Insurance Act may be recoverable under Section 2(f) of that Act if compensation is later found to be payable to him under a protective agreement. This circular explains how the amount recoverable from a protective payment is determined when provisions of the agreement under which the payment is made indicate that it should be considered as compensation for each day in the period covered.

The amount of benefits recoverable from a protective payment of the type described above is the lesser of these amounts:

a. the amount of benefits paid for days in the period (almost always a month) for which the protective payment is to be made;

b. the amount of the protective payment for the period.

c. (Provisions of many protective agreements take into account time worked in a base period as a factor in the extent of protection. Thereby they indicate that the protective payments provided should be considered not as compensation for each day in the period covered but rather as compensation for a lesser time not worked in the period. Payments under the National Job Stabilization Agreement of February 7, 1965 are of this nature. The procedure applicable to those payments is covered in Circular Letter UI-C-106, issued in December 1965.)

Protective payments of the type to which this circular applies are payable under the Washington Job Protection Agreement of May, 1936, the national agreement of September 25, 1964 covering shop craft employees, and, generally, all existing agreements (other than the National Job Stabilization Agreement) that protect employees who are deprived of employment against loss of compensation. An example of such a protective payment--based on compensation earned in, without regard to time worked in, the base period--is the "coordination allowance" payable under the Washington Agreement. It is a monthly allowance equivalent to 60% of the employee's average monthly compensation in the last 12 months of his employment before he was deprived of employment.

The procedure by which recovery cases are identified and the amount of recovery determined is ordinarily as follows:

a. When an employer finds that, under terms of a protective agreement, compensation is due an employee for a particular period, the employer notifies the Board immediately as to the amount of compensation payable and asks how much is recoverable.

b. The Board determines the amount recoverable and notifies the employer. The amount recoverable is, as explained above, the amount of benefits for the period (usually a month), or the amount of the protective payment for the period, whichever is less.

c. The employer withholds the amount recoverable from the protective payment and remits it to the Board.

Some employers have been following this procedure. However, many have been sending Board offices lists of employees and asking for monthly reports of the amounts of unemployment benefits paid to the employees. Thereafter the Board gave such employers monthly reports of the amount of unemployment benefits paid to each employee on the list for the preceding month. If a protective payment was due any employee who had received benefits, the employer sent the Board a remittance equal to the amount of the benefits or the amount of the protective payment, whichever was less.

The Board's experience shows that the vase majority of employees on these lists do not claim benefits under the Railroad Unemployment Insurance Act and, of those who do claim benefits, many do not receive protective payments. Moreover, Board experience shows that the amounts reported on these lists are subject to change and cannot be validly considered as the amounts recoverable under Section 2(f). Therefore, with this circular the Board establishes a procedure whereby the Board will indicate on a list only whether or not benefits have been paid under the Railroad Unemployment Insurance Act without stating any amount. When an employer finds that a protective payment is actually due, the employer will advise the Board as to the amount of such protective payment. The Board will then promptly determine the amount recoverable under Section 2(f) of the Railroad Unemployment Insurance Act and will notify the employer.

The bureau of unemployment and sickness insurance will be glad to answer any questions that employer officials may have about this circular.

s/ Samuel Chmell

Director of Unemployment

and Sickness Insurance

Appendix B - Circular RE: Nat'l Job Stabilization Agreement

Circular Letter No. UI-C-106 - Compensation Paid Under National Job Stabilization Agreement

December 1965

To Unemployment Insurance Contact Officials

I. Railroad Retirement Board's Right to Reimbursement

When a railroad determines that compensation is payable to an employee for time not worked in a period for which the Board has paid unemployment benefits, the benefits may be recoverable under Section 2(f) of the Railroad Unemployment Insurance Act. Railroads are now making many such payments of compensation under the national job stabilization agreement of February 7, 1965. This circular is issued to explain how Section 2(f) is applied in connections with such payments.

Section 2(f) provides, in general, for recovery of unemployment benefits paid to an employee if it is later determined that compensation is due him from his employer for a period covered by the benefit payments, provided the employer has been put on notice concerning the benefit payments. The amount recoverable is the amount of the unemployment benefits paid for the period for which compensation is found to be payable, or the amount of the compensation, whichever is less.

II Procedure for Effecting Reimbursement

This is the general procedure under Section 2(f) in cases involving protective payments made under the national job stabilization agreement:

1. When it appears that a claimant for unemployment benefits may be protected under the agreement, the Board will notify the claimant's employer that unemployment benefits are being paid.

2. If the employer finds that compensation is due the employee for time not worked in a particular month, the employer should check with the Board to see whether benefits are recoverable from the compensation.

3. The Board will advise the employer of the amount recoverable, if any.

4. The employer should remit to the Board the amount determined to be recoverable.

III Determining Amount Recoverable

When protective payments are made under the job stabilization agreement, the Board is entitled to reimbursement for:

The unemployment benefits paid for time <u>not worked</u> covered by the protective payment or the amount of the protective payment for time not worked, whichever is less.

The amount recoverable is derived as follows:

1. Compute the time not worked covered by the protective payment. This is the difference between (1) number of hours for which the employee is protected as established by the average monthly number of hours worked in the 12 month base period* and (2) the number of hours actually worked in the month for which he is to receive payment.

   * With respect to protected employees other than seasonal employees and employees holding regularly assigned positions on October 1, 1964, Article IV, Section 2 of the agreement provides for a "base period comprised of the last twelve months in which they performed compensated service immediately preceding the date of this Agreement."

2. Compute the amount of the protective payment covering time not worked in the month. This is the total compensation payable to the employee for the month for which the payment is made less the compensation paid for work performed in the month.

3. The amount by which the Board is to be reimbursed is the amount of unemployment benefits paid for the number of protected hours (converted into days) <u>not worked</u> and for which a protective payment is made (as computed in accordance with item 1) or the amount of the protective payment for time <u>not worked</u> (as computed in accordance with item 2) whichever is less.

Example:

Consider an employee who is protected to the extent of 120 hours and $300 per month on the basis of his service in the base period.

A. In August he worked 80 hours (10 days) and earned $200. He received unemployment benefits from the Board for 11 days of unemployment in August at the rate of $10.20 per day, or $112.20.

1. Period of time not worked

120 hours minus 80 hours equals 40 hours 40 hours divided by 8 hours per day equals 5 days* <u>5 days</u>

When the hours for the month are not evenly divisible by 8, the fractional remainder is treated as a full day. For example, if dividing by 8 produces a result of 3 days and 1 hour, consider that the answer is 4 days. A fraction of a day which is less than 1 hour is disregarded.

2. Amount of protective payment for time not worked $300 minus $200 equals $100 <u>$100.00</u>

3. Unemployment benefits paid at the rate of$10.20 for 5 days of unemployment for which the employee receives a protective payment <u>$51.00</u>

4. Since $51.00 (item 3) is less than $100 (item 2) the amount of reimbursement to which the Board is entitled is <u>$51.00</u>

5. The Board originally paid the employee $112.20 for 11 days; he retains unemployment benefits of $61.20 for 6 days

B. In September the employee worked 128 hours and earned $296.00.

   1. Period of time not worked 120 hours minus 128 hours leaves a negative balance. Hence in September there is no period of time not worked for which a protective payment is to be made, and the Board is not entitled to reimbursement for any unemployment benefits. The protective payment of $4 is made for the days on which the employee actually worked.

IV. Information to be Furnished by Railroads

When an employer is preparing to make a payment under the job stabilization agreement for one or more months the Board will determine the amount recoverable as illustrated in the above section.

The employer will report:

1. Period of time <u>not worked</u> for which a protective payment is payable, and

2. The amount of the protective payment covering the time not worked (shown in item 1 above).

s/ Samuel Chmell

Director of Unemployment
and Sickness Insurance

Appendix C - Circular Letters RE: 12(o)

Circular Letter Of Instructions No. UI-C-35 - Questions And Answers On Sections 12(o) And 2(f) Of The Railroad Unemployment Insurance Act, And On Workmen's Compensation Payments

Railroad Retirement Board

Bureau of Employment and Claims

October 17, 1947

This circular is issued in order to answer questions which employers have raised concerning provisions of the Railroad Unemployment Insurance Act under which employers are required to withhold sums payable to employees and to reimburse the Railroad Retirement Board for benefits paid to such employees.

The applicable sections of the Act are Sections 2(f) and 12(o). (Circular Letter of Instructions No. UI-C-34, issued July 9, 1947, also dealt with these sections of the Act.)

Provisions of Section 12(o)

Section 12(o) provides that:

"Benefits payable to an employee with respect to days of sickness shall be payable regardless of the liability of any person to pay damages for such infirmity. The Board shall be entitled to reimbursement from any sum or damages paid or payable to such employee or other person through suit, compromise, settlement, judgment, or otherwise on account of any liability (other than a liability under a health, sickness, accident, or similar insurance policy) based upon such infirmity, to the extent that it will have paid or will pay benefits for days of sickness resulting from such infirmity. Upon notice to the person against whom such right or claim exists or is asserted, the Board shall have a lien upon such right or claim, any judgment obtained there under, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimbursement."

What payment by employers may be within the scope of Section 12(o)?

The "sum or damages paid or payable . . . on account of liability . . ." which is referred to in Section 12(o) includes what are ordinarily called payments for damages, settlements of personal injury claims, etc. Payments which are solely for time lost are not included. Workmen's Compensation payments are not included. (This statement may be considered as a correction of any earlier statements to the contrary. See the last three paragraphs of this circular letter.) Railroad relief association payments are not included.

When is an employer required to reimburse the Board under Section 12(o)?

An employer will be required to reimburse the Board in accordance with the provisions of Section 12(o) when all these conditions exist:

(1) Sickness benefits have been paid to an employee by the Board.

(2) A "sum or damages" is paid or payable to the employee by the employer on account of a liability based on the infirmity for which the sickness benefits were paid (liability under a health, sickness, accident, or similar insurance policy being excepted.)

(3) The employer has notice from the Board, before making settlement, that reimbursement may be required.

If the employer has already paid the employee before receiving the letter of notification, or otherwise having actual notice of the Board's rights under Section 12(o), it will not be required to make any payment to the Board. Them employer's only responsibility to the Board in such cases is to furnish such information as the Board may require.

When and how will an employer be notified that reimbursement may be required?

The Board will notify an employer that reimbursement may be required under Section 12(o) whenever an employee who has made application or claim for sickness benefits:

(1) States that the employer has paid or may be responsible for payment of damages, or

(2) States that his injury resulted from his work.

The notification will be by letter addressed to an appropriate official of the employer. Such letters will be addressed to any official whom the employer designates. In the absence of any designation, they will be addressed to the sickness insurance contact officer for the employer.

When action is required of an employer when he is notified that reimbursement may be required?

No action is required of an employer as a result of receipt of notice that reimbursement may be required until such time, if ever, as payment of a sum or damages is to be made to the employee.

In order to protect its interest, the employer should either (1) withhold payment of any sum, other than workmen's compensation, which has been awarded but has not been paid, until notified by the Board of the amount due the Board; or (2) before making settlement, obtain (by telephone or telegraph if desired) from the regional office information as to the amount of benefits paid to the employee. If the employer contacts the regional office before making settlement, the regional office will withhold payment of any additional benefits to the employee for seven days to give the employer an opportunity to complete the settlement. If, within seven days, the regional office does not receive notice that a settlement has been made, additional payments of benefits may be made to the claimant.

The employer is required to advise the Board of the amount of the settlement. (If the settlement exceeds $2000, only "in excess of $2000" need be reported.) The employer is to report also the amount, if any, allocated as pay for time lost, and the period to which pay for time lost is allocated. For the employer's convenience in furnishing this information, Form SI-5 will be sent with the notification. The Board will, in turn, notify the employer of the amount, if any, which is to be paid to the Board as reimbursement for benefits. The employer is then to send to the Board a check for this amount made payable to the Treasurer of the United States.

What will the amount of reimbursement be?

The amount to be paid to the Board as reimbursement will be whichever is the lesser of these:

(1) The amount of benefits paid on the basis of the infirmity, or

(2) The amount of the damages.

Provisions of Section 2(f)

Section 2(f) provides, in part, that:

"If (i) benefits are paid to any employee with respect to unemployment or sickness in any registration period, and it is later determined that remuneration is payable to such employee with respect to any period which includes days in such registration period which had been determined to be days of unemployment or sickness, and (ii) the person or company from which such remuneration is payable has, before payment thereof, notice of the payment of benefits upon the basis of days of unemployment or sickness included in such period, the

remuneration so payable shall not be reduced by reason of such benefits but the remuneration so payable to the extent to which benefits were paid upon the basis of days which had been determined to be days of unemployment or sickness and which are included in the period for which such remuneration is payable, shall be held to be a special fund in trust for the Board. The amount of such special fund shall be paid to the. . ."

When will payments by an employer to an employee be affected by provisions of Section 2(f)?

Payments by an employer to an employee may come under provisions of Section 2(f) only if the employer has notice to that effect from the Board. The notice will ordinarily be in the form of a letter from the Board. In the absence of any such notice, Section 2(f) has no effect.

When will an employer be notified that Section 2(f) may be applicable?

The Board will notify an employer that Section 2(f) may be applicable when there is information that an employee is claiming or may receive remuneration from the employer for days for which unemployment or sickness benefits have been found payable.

What is meant by "remuneration" in Section 2(f)?

Upon receipt of notice that Section 2(f) may be applicable, an employer is required to take action if and when remuneration is found to be payable. In such case, the employer is required to:

(1) notify the Board of the amount of remuneration payable and the days for which it is payable; and

(2) withhold payment of remuneration until further advice is received from the Board.

What happens after the Board has been advised that remuneration is payable?

When the Board is advised that remuneration is payable for a day or days for which benefits have been paid, the Board will determine the amount which is recoverable under Section 2(f) and will notify the employer accordingly. The employer will be required to deduct that amount from the amount payable to the employee and pay it to the Board (in the form of a check made payable to the Treasurer of the United States).

How does the Board compute the amount to be paid to it?

The amount determined by the Board to be payable to it under the provisions of Section 2(f) will be whichever is the lesser of these:

(1) The amount of benefits paid for days for which remuneration is found payable.

(2) The amount of remuneration found payable for days for which benefits were paid.

What is the relation between workman's compensation and benefits under the Act?

Certain workmen's compensation payments are considered social insurance payments. If workmen's compensation is paid to an employee for permanent total or temporary total disability, the payments are made "with respect to" definite period and are, consequently, within the scope of Section 4(a-1)(ii) of the Act. The effect of that section is that such an employee receives only the amount by which his benefits for a period under the Act exceed his workmen's compensation for the period.

What information is needed by the Board?

In order to determine the amount of benefits under the Act, which may be payable to an employee who is receiving workmen's compensation payments, it is necessary to have information as to whether such payments re for permanent total or temporary total disability, and, if so, the amount and duration of the payments. Employers can aid us materially is they will furnish such information promptly upon request.

Must the employer reimburse the Board from workmen's compensation payments?

No. If, after benefits under the Act have been paid to an employee, it is found that he has received workmen's compensation payments for days with respect to which the benefits were paid, recovery from the employee will be undertaken. Neither the employer, nor the insurance company concerned, who has made, or may be making, the workmen's compensation payments, will be requested to reimburse the Board in connection with such payments.

Action to be taken in judgment cases

If a judgment is paid by the employer into a court, it may become necessary for the Board to intervene and assert its lien. It is expected that cases of this kind will be few in number. Whenever such a payment is to be made immediate notice should be sent to the appropriate regional office.

Distribution of this circular

Two copies of this circular are being sent to each sickness contact officer. Additional copies will be furnished upon request.

Director of Employment and Claims

Approved:

Chief Executive Officer

Circular Letter To Sickness Contact Officials - Supplement to Circular Letter No. UI-C-35 - Information About Past Settlements

Railroad Retirement Board
Bureau of Employment and Claims

December 19, 1947

This circular outlines what the Board does when a claim is made for sickness benefits on the basis of an injury for which the claimant has received a settlement.

If an employer has made a settlement even before the effective date of the Act and thereafter receives notice that sickness benefits may be paid, the employer is not required to reimburse the Board; however in such case the Board needs information regarding the amount of settlement since it may pay only that portion of the benefits which exceed the amount of settlement.

At the time the application for sickness benefits is received, the Board generally does not have any information as to whether a settlement has or has not been made. In his application for sickness benefits, the applicant is required to state whether some person may be responsible for the payment of damages. When an applicant states that some person or company may be responsible, the Board sends appropriate notice to such person or company.

If a settlement has been made prior to the date the notice is received, the person or company is not required to pay any amount to the Board. However, the Board cannot pay any sickness benefits to the claimant until the sickness benefits payable for his claims exceed the amount paid in settlement for his personal injury. At such time, the Board may pay only that amount which exceeds the amount of the settlement.

Accordingly, the Board needs prompt information as to the amount of the settlements made in these cases in order to prevent payment of sickness benefits to which the claimants are not entitled. In any case where you are asked to furnish the amount of settlement, it will be satisfactory when such settlement is in excess of $2,000 to report, "in excess of $2,000".

/a/ H. L. Carter
Director of Employment and Claims

Approved:

/a/ Robert H. LaMotte
Chief Executive Officer

Circular Letter No. UI-C-35 - Withholding For Board When All Or Part Of Damage Settlement Is To Reimburse Employee For Expenses

United States of America
RAILROAD RETIREMENT BOARD
844 Rush Street
Chicago 11, Illinois

Bureau of Employment and Claims

December 3, 1948

Supplement No. 2

To Sickness Insurance Contact Officials

This circular supplements information previously supplied regarding the provisions of Section 12(o) of the Railroad Unemployment Insurance Act.

It has recently been held that Section 12(o) applies only to the net amount of a settlement after deduction of the amount, if any, of expenses incurred by a claimant in connection with his injury. (Such expenses would include costs of hospital care, doctor's fees, and attorney's fees.)

For employers, the practical effects of this are as follows:

1. When the amount of a claimant's expenses is equal to or more than the amount of the settlement, no report to the Board of the settlement is required even though the employer may have been notified, in accordance with Section 12(o), that the claimant had applied for sickness benefits. In cases of this type, the Board will not be entitled to any reimbursement.

   Example: Claimant's medical expenses - $585. Settlement - $500. No report to the Board required.

2. When the amount of a claimant's expenses is less than the amount of the settlement, Section 12(o) is applicable only to the amount of the difference. That is, it is applicable only to the amount of the settlement less the amount of the expenses. In cases of this type, the employer should inform the Board of (a) the amount of the claimant's expenses and (b) the net amount of the settlement after deduction of such expenses.

   Example: Claimant's medical expenses- $500. Settlement - $2000. Sickness Benefits paid - $650. Information to be furnished to the Board: (a) claimant's expenses - $500; (b) net amount of settlement - $1500. Amount to be withheld from the settlement for reimbursement to the Board - $650.

Example: Claimant's medical expenses - $1500. Settlement - $2000. Sickness Benefits paid - $650. Information to be furnished to the Board: (a) claimant's expenses - $1500; (b) net amount of settlement - $500. Amount to be withheld from the settlement for reimbursement to the Board - $500.

3. When the net amount of a settlement is more than $2000, the employer may report such net amount as being "in excess of $2000", instead of reporting the exact amount.

Example: Claimant's medical expenses - $450. Settlement - $2600. Information to be furnished to the Board: (a) claimant's expenses - $450; (b) net amount of settlement - "in excess of $2000."

What has been said above relates only to expenses for which the claimant has made, or is to make, payment. It does not apply to expenses borne directly by an employer. Any amount which an employer pays directly to a third party (such as a doctor or hospital) for care of an employee is not to be reported to the Board and is not to be deducted from the total amount of the settlement.

Example: The employer directly paid claimant's doctor and hospital bills amounting to $235. Settlement - $1000. Amount of settlement to be reported to the Board - $1000. No report of the $235 paid directly to be made.

Additional copies of this circular will be furnished upon request.

/s/H.L.Carter
Bureau of Employment and Claims

Circular Letter No. UI-C-35 - Disclosure Of Information In Personal Injury Cases

United States of America
RAILROAD RETIREMENT BOARD
844 Rush Street
Chicago 11, Illinois

Bureau of Employment and Claims

December 3, 1949

Supplement No. 3

To Sickness Insurance Contact Officials

The Board sometimes receives requests for information from employers in personal injury cases which cannot be released because of prohibitions set by the Railroad Unemployment Insurance Act on the release of information.

Section 12(d) contains a general prohibition against disclosure of information but permits disclosure when it would be in the claimant's interest. Section 12(n) specifically prohibits the disclosure of information furnished by a doctor except that such information may be disclosed in a court proceeding relating to a claim for benefits under the Act by the employee.

In view of these provisions of the Act, the Board cannot release information in a personal injury case beyond what is needed to protect a lien in accordance with the provisions of Section 12(o) of the Act. Section 12(o) relates to reimbursement of the Board when a settlement is made with an employee to whom the Board has paid sickness benefits. The Board must, or course, advise the employer or other liable party of the amount of reimbursement due. In the ordinary case, the Board can disclose no more than this. In any event, the Board will not be able to disclose any of the medical information which may be in file.

Two copies of this circular are being sent to each sickness contact officer. Additional copies will be furnished upon request.

/s/ H. L. Carter

Director of Employment and Claims

Circular Letter No. UI-C-35 - Notifying Board When Personal Injury Case Goes To Court

United States of America
RAILROAD RETIREMENT BOARD
844 Rush Street
Chicago 11, Illinois

Bureau of Employment and Claims

October 24, 1950

Supplement No. 4

To Sickness Insurance Contact Officials and Claims Attorneys

This circular has to do with protecting the Board's lien under Section 12(o).

In a personal injury case where appeal is taken from a judgment or where efforts to satisfy a judgment are met with refusal by either the plaintiff or the court to recognize the Board's lien, the railroad's counsel should wire the Board's General

Counsel, Myles F. Gibbons, at 844 Rush Street, Chicago 11, Illinois or call him at Whitehall 4-5500.

The regional office from which the employer obtained the lien information should also be notified.

Additional copies of this circular should be requisitioned for claims attorneys and those who may represent the employer in personal injury suits.

/s/ H. L. Carter

Director of Employment and Claims

Circular Letter No. UI-C-35 - Letting Board Know Amount Of Damage

United States of America
RAILROAD RETIREMENT BOARD
844 Rush Street
Chicago 11, Illinois

Bureau of Unemployment and Sickness Insurance

Released to Employers 6-22-55

Supplement No. 5

SETTLEMENT

To Sickness Insurance Contact Officials

Circular Letter UI-C-35 and it Supplement No. 1 stated that it would be satisfactory to report a damage settlement amounting to more than $2000 as "in excess of $2000". This is no longer adequate as benefit rates under the recent amendments to the Railroad Unemployment Insurance Act will result in payment of more than $2000 in benefits based on injuries in a number of cases.

Accordingly, the Board needs to know the exact amount of settlements up to $3000. If a settlement is in excess of $3000, it will be satisfactory to report it as "in excess of $3000." Form SI-5 is being revised accordingly.

Additional copies of this circular will be furnished on request.

/a/ H. L. Carter

Director of Unemployment and Sickness Insurance

Appendix D - Court Decision: Lewis v. Railroad Retirement Board

Alabama Supreme Court Decision

(Lewis v. Railroad Retirement Board, 54 So. 2d 777 (Ala. 1951) cert. den. 343 U.S. 919 (1952))

Following is a copy of decision of the Alabama Supreme Court which affirms the decision of a lower court directing payment to the Railroad Retirement Board of an amount due under Section 12(o) of the Railroad Unemployment Insurance Act.

L-51-493

THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT
THE SUPREME COURT OF ALABAMA
OCTOBER TERM, 1951-52
6 Div. 234
David D. Lewis etc., et al.,
v.
Railroad Retirement Board et al.,
Appeal from Jefferson Circuit Court
in Equity.
STAKELY, JUSTICE

This is an interpleader suit in equity in which the lower court entered a final decree awarding the fund in controversy of $1,213.25, which had been paid into the registry of the court, to the claimant, respondent Railroad Retirement Board, and denying in whole or in part to the claimant, complainant David D. Lewis and the intervening law firm of Jackson, Rives & Pettus, any right to such fund. The claimant, complainant David D. Lewis, and the intervenors Jackson, Rives & Pettus have appealed to this court from the decree. The Railroad Retirement Board is an independent agency in the executive branch of the Government of the United States. -- 45 U.S.C.A. S 228(j).

The complainant was injured on or about February 25, 1948. Complainant filed his application for sickness benefits under the Railroad Unemployment Insurance Act with the Regional Office of the Railroad Retirement Board on March 3, 1948. The Railroad Retirement Board began payments under the provisions of the act to the complainant on account of this injury on February 25, 1948, the day following the injury. These payments continued with a brief interruption provided by the act through September, 1949. On August 13, 1948 the Railroad Retirement Board sent notice, as provided by the act, to the Comptroller of the Louisville & Nashville Railroad Company. This notice was received on or about the 17th of August, 1948.

The firm of Jackson, Rives & Pettus, Intervenors, was first contacted by the complainant with reference to employment as his attorneys in his civil action against the Louisville & Nashville Railroad Company on January 20, 1949. Intervenors filed suit in behalf of complainant against the Louisville & Nashville Railroad Company on January 21, 1949, and the summons and complaint in the

suit were served on January 27, 1949. This suit was for personal injuries and was brought under the Federal Employers' Liability Act. On October 3, 1949 a consent judgment in the aforesaid suit -- Case Number 18,372-X--in the sum of $37,500.00 was entered in favor of the complainant and against the Louisville and Nashville Railroad Company in the circuit Court for the 10th Judicial Circuit of Alabama. On October 8, 1949 the Louisville & Nashville Railroad Company requested information from the Railroad Retirement Board concerning the amount of benefits paid by the Board to the complainant, referring to the Board's letter of August 13, 1948. On October 13, 1949 the Board advised the Louisville & Nashville Railroad Company that the correct amount paid was $1,213.25. It is without dispute that this is the correct amount which was paid.

The Louisville & Nashville Railroad Company paid to the Clerk of the Circuit Court for the 10th Judicial Circuit of Alabama the sum of $36,286.75 subsequent to the entry of the aforesaid judgment. The sum of $1,213.25 was withheld because of the claim of the Railroad Retirement Board.

Subsequent thereto the intervenors distributed the amount received by them from the clerk of the court by deducting and paying to the firm $611.67 for expenses, by withholding as a fee the sum of $8,918.77 and paying over the balance of the proceeds to the complainant. This was done with knowledge that the Board claimed $1,213.25 of the $37,500.00 judgment.

I. It is without dispute that the complainant employed intervenors on January 20, 1949 as his attorneys to represent him in prosecuting Liability Act against the L. & N. Railroad Company with the agreement that the attorneys' fee of intervenors would be a contingent fee in an amount equal to 24% of the amount of recovery after deduction of expenses of prosecuting the claim. This suit was filed as aforesaid and without dispute the intervenors prepared the case for trial and tried the case. While the case was in progress and shortly before submission of the case to the jury, the consent judgment in the amount of $37,500.00 was entered by the court, as aforesaid. Without dispute the fee as agreed upon was conceded to be a reasonable fee and the services of the attorneys in bringing and prosecuting the suit were well and properly performed.

No attorneys' fee has been paid to the intervenors on the $1,213.25, which was withheld from payment by the L. & N. R.R. Co. and which was later paid into the registry of the court in this interpleader suit. In addition to the claim of the intervenors for a fee from the fund of $1,213.25, the intervenors also claim an additional fee for filing the bill of interpleader on behalf of complainant in the amount of $100.00.

In the letter of August 13, 1948 from the respondent, the Railroad Retirement Board, to the Louisville & Nashville Railroad Company the statute under which the respondent claimed its lien is set out in a form

attached to the letter. This statute is Section 12(o) of the Railroad Unemployment Insurance Act, 45 U.S.C.A., 362(o) and reads as follows:

"Benefits payable to an employee with respect to days of sickness shall be payable regardless of the liability of any person to pay damages for such infirmity. The Board shall be entitled to reimbursement from any sum or damages paid or payable to such employee or other person through suit, compromise, settlement, judgment, or otherwise on account of any liability (other than a liability under a health, sickness, accident, or similar insurance policy) based upon such infirmity, to the extent that it will have paid or will pay benefits for such days of sickness resulting from such infirmity. Upon notice to the person against whom such right or claim exists or is asserted, the Board shall have a lien upon such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimbursement."

It is the position of the appellants that the lien of the respondent, the Railroad Retirement Board, if any, is subordinate to the lien of the intervenors for attorneys' fees for services performed in obtaining judgment in the suit brought by the complainant against the Louisville & Nashville Railroad Company. The lien of intervenors as attorneys arises pursuant to 64 (2), Title 46, Code of 1940, which reads as follows:

"2. Upon suits, judgments, and decrees for money, they shall have a lien superior to all liens but tax liens, and no person shall be at liberty to satisfy said suit, judgment or decree, until the lien or claim of the attorney for his fee is fully satisfied; and attorneys at law shall have the same right and power over said suits, judgments, and decrees, to enforce their liens, as their clients had or may have for the amount due thereon to them."

Subsection 4 of the aforesaid section of the code is as follows:

"4. The lien in the event of suit, provided in paragraphs two and three of this section, shall not attach until the service upon the defendant or respondent of summons, writ or other process * * * *."

It clearly appears from the statute that the lien of the intervenors as attorneys could not arise until summons and complaint were served. This service was made on January 27, 1949. The notice of the respondent Railroad Retirement Board to the Louisville & Nashville Railroad Company was given on August 13, 1948 and was received not later than the other. It is apparent that the lien of the Railroad Retirement Board antedates that of the intervenors by several months because the lien of the Railroad Retirement Board under the statute arises "Upon notice to the person against whom such right or claim exists * * *." -- 45 U.S.C.A. 362(o).

Since the lien of the Railroad Retirement Board antedates the lien of the intervenors, it is superior to it.

In Adams v. Alabama Lime and Stone Corp., 221 Ala. 10, 127 So. 544, this court said:

"- - -it has been consistently and often declared that the attorneys' lien is subordinate to all set-offs held by the judgment debtor as the time of its rendition. * * *

"We do not think this settled rule, declaring in effect that the attorneys' lien on a judgment rises no higher than the judgment itself at the time of its rendition, has been changed by our statute, ***. It could hardly be supposed the attorney's lien on property is made to displace existing liens or equities therein. ***

"It is often said with force this view destroys, wipes out the judgment, the subject matter on which the lien is declared; that it is sound policy to protect the attorney whose professional labors have brought the judgment into being. Obviously our statutes aim to protect attorneys as to the effects of their clients involved in the litigation. There is likewise strong reason for saying the rights of the attorney shielded to those of his client."

In the case of Grace v. Solomon, 241 Ala. 452, 3 So. 2d 3 this court said:

"This lien here provided (attorney's lien) cannot be extended beyond the fair interment of the statute, the effect of which, in agreement with the common law, is to place the attorney in the position of an equitable assignee of the judgment obtained for his client."

From the foregoing authorities it is clear that the lien of the intervenors as attorneys is limited to the equity of their client in the judgment. It cannot under the statute extend to an equity in the judgment which is owned by another and which is superior to that of the complainant. Under the federal statute the Railroad Retirement Board clearly had a lien to the extent of the payments made by it superior to the rights of the lien of the intervenors, attorneys, must be considered as subordinate to the lien of the respondent Railroad Retirement Board.

It is contended that the notice relied upon the respondent Railroad Retirement Board in its letter of August 13, 1948 to the Louisville & Nashville Railroad Company fails to meet the requirements in claiming a lien because it fails to state any amount for which a lien is claimed and for which reimbursement should be made. There is no merit in this contention. The statute provides that the Board's right to reimbursement is determined by the "extent that it will have paid or will pay benefits for days of sickness resulting from such infirmity". The statute provides for

notice to the persons against whom the claim of the injured person exists and does not require any notice of the amount. Benefits paid under this statute are not lump sum benefits but are paid every two weeks upon application of the person entitled thereto. In the present case complainant upon his application received benefits beginning February 26, 1948 and continued with a brief interruption until September 1949. A total of $1,213.25 was paid. It would have been impossible at any time prior to the last payment for the respondent to have advised the Louisville & Nashville Railroad Company of the amount of it lien. To require it to wait would cause it to fail to assert its lien and would be to impose a condition not required by the act. We think the notice was in all respect sufficient to create a lien provided for in the statute and as pointed out, it contains in an attachment to the letter the provisions of the act relating to the Board's lien in verbatim. We think the notice served to advise the Louisville & Nashville Railroad Company might later owe to the complainant. The notice put the Louisville & Nashville Railroad Company on notice of the right of the Board and provided the railroad with the means of ascertaining the amount claimed upon to settle complainant's claim against it. The railroad was placed in the position where it had the duty to make inquiry and was charged with all that inquiry would reveal. -- Figh v. Taber, 203 Ala. 253, 82 So. 495; Morgan Plan Co. v. Accounts Supervision Co., 34 Ala. App. 457, 41 So. 2d 424, cert. den. 252 Ala. 473, 41 So. 2d 428.

II. Citing Kimbrough v. Dickinson, 251 Ala. 677, 39 So. 2d 241, the position is taken by the appellant that the intervenors are entitled to be allowed a fee out of the fund paid into the registry of the court on the principle that the complainant has maintained a successful suit for the creation, preservation and protection of a common fund and has brought into court a fund in which another may share. The principle set forth in the foregoing authority is not applicable here. That case involved a trust fund of an estate. The interest of the person who had borne the burden and expense of litigation was not antagonistic to those who benefitted by the litigation, all being heirs and next of kin of a decedent. In the foregoing authority it was said:

"It will be observed that the co-complainants, in suits of this nature, all have a similar interest in the subject matter of litigation--a common, and not an antagonistic interest in the trust fund, which has been brought under the control of the court. The necessary expenses of the original complainant incurred in litigation may very well, under these circumstances, be made payable out of the common fund. * * *"

In the case of Lewis v. Wilkinson, 237 Ala. 197, 186 So. 150, the court said:

"Attorney's fees will be charged to the interest in truth of fact represented. The fact that the representation incidentally resulted in benefit to the other cestuis sque trustent did not authorize charging them with attorney's fees."

In Wilkinson v. McCall, 247 Ala. 225, 23 So. 2d 577, this court said:

"Services for the common benefit of the parties mean services that are of benefit to the common estate, or in other words services rendered in a matter in which the trust as a trust is interested and not serviced in behalf of the individual interests of the parties to the cause." See Bidwell v. Johnson, 191 Ala. 195, 67 So. 985; Coker v. Coker, 208 Ala. 239, 94 So. 308.

In the foregoing authorities the court was considering the right of the attorney in the administration of a trust and in most of these cases such right in the light of 63, Title 46, Code of 1940. See Penney et al. v. Pritchard & McCall, _______Ala.______, 49 So. 2d 782. But even though no trust be involved, the right to charge a fund with costs and expenses depends upon whether the costs and expenses were incurred in the promotion of the interest of those eventually found to be entitled to the fund. 14 Am. Jur. 48.

The suit brought by complainant against the Louisville & Nashville Railroad Company was not in any sense a class suit or brought for the benefit of others. The complainant sought only to establish his own rights. The incidental benefit resulting to the Railroad Retirement Board is not a basis for charging the Railroad Retirement Board with the creation of a fund for its benefit.

Furthermore the action in which the judgment was procured was an action in a law court and not in equity. It was not filed in aid of or in connection with an equity proceeding as for example a receivership. In an action at law attorney's fees are not ordinarily taxable as costs., -- 20 C.J.S. p. 457. The interpleader suit was instituted by complainant to protect himself against conflicting claims, 48 C.J.S. p. 38 and not to create or protect a common fund from waste or destruction. -- Strong v. Taylor, 82 Ala. 213, 2 So. 760; Penny v. Pritchard & McCall, supra.

The services rendered by the attorney in the suit in which the judgment against the railroad company was procured were services rendered in behalf of a client, the complainant in the cause, and his individual interest under a contract made only between complainant and intervenors. It was not a service rendered in behalf of the Railroad Retirement Board, although it resulted incidentally in benefit to the Railroad Retirement Board. As a result of the views which we have here expressed, the allowance of a fee cannot be sustained on a theory of services rendered for the common benefit of all the parties.

III. As to the allowance of an attorney's fee to be paid to the attorneys for instituting the interpleader proceedings out of the fund deposited, this was a matter which rested in the discretion of the court. There is nothing to show that this discretion was abused in failing to make the allowance, especially since the complainant and the intervenor were adjudged to have no interest in the fund. -- Jennings v. Jennings, 250 Ala. 130, 33 So. 2d 251.

There was no error in directing payment of the fund deposited in court to the Railroad Retirement Board. The decree of the lower court must be affirmed.

Affirmed.

Livingston, C. J., Brown and Lawson, J. J., concur.

Appendix E - Court Decision: U.S. v. Luquire Funeral Chapel

Decision By The United States Court Of Appeals

FOR THE FIFTH CIRCUIT
(U.S. v. Luquire Funeral Chapel, 199 Fed. (2d) 429 (CA 5, 1952))

The following is a copy of a decision of the United States Court of Appeals for the Fifth Circuit. The Court held that a notice addressed to "Luquire Ambulance Company" when it should have been addressed to "Luquire Funeral Chapel, Inc." was a legal and sufficient notice under Section 12(o), in that it reached the party for whom it was intended and fulfilled every purpose of such a notice. The Court also held that the Board does not have to prove that a compromise or settlement was based upon actual legal liability for the employee's injuries.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 13763

UNITED STATES OF AMERICA,
Appellant,
versus
LUQUIRE FUNERAL CHAPEL, AND
JOHNS FUNERAL CHAPEL, INC.,
Appellees.

(October 31, 1952)
Before BORAH, STRUM, and RIVES, Circuit Judges.

RIVES, Circuit Judge: The district court held that a notice addressed to "Luquire Ambulance Company" when it should have been addressed to "Luquire Funeral Chapel, Inc." was insufficient, and hence that no lien was created within the purview of Section 12(o) of the Railroad Unemployment Insurance Act, 45 U.S.C.A. 362(o), set out in the margin.1/ The appellee2/ insists that the judgment in its favor should be affirmed on account of the claimed insufficiency of the notice, and, if not, then because there was no proof "of any liability" on the part of the appellee for the sickness of the railroad employee.

The case was tried upon an agreed statement of facts. The railroad employee, George R. Sewell, was injured in a motorcycle accident. An ambulance of Luquire Funeral Chapel, Inc., while transporting him to a hospital, collided with an automobile. Luquire Funeral Chapel, have been sustained by Sewell as the result of said collision, but ultimately agreed to a settlement pursuant to which judgment by consent in the State Court was entered in favor of Sewell and against the Luquire Funeral Chapel, Inc. in the sum of $5,000.00 and costs, which judgment has been paid and satisfied.

Meanwhile, Sewell had filed claims with the Railroad Retirement Board for sickness benefits stating that his injuries were sustained in a collision between an automobile and an ambulance of "Luquire Ambulance Company, Birmingham, Alabama." Over a period of months, the Railroad Retirement Board paid to him sickness benefits on said claims in the total amount of $985.00. The Board mailed a letter addressed to right of reimbursement under the provisions of Section 12(o), supra. There was no Luquire Ambulance Company, but the correct corporate title was Luquire Funeral Chapel, Inc. The letter was received by appellee's President and turned over by him to its attorney, who placed it in the legal files concerning the suit which Sewell had brought against the appellee. Notwithstanding that letter, Sewell's claim against the appellee was subsequently compromised and settled without recognition of the Board's right or reimbursement.

Under Section 12(o), the lien arises "upon notice" to the party alleged to be responsible for the injury. Appellee insists that since the notice is a condition precedent to the creation of the lien, the Board had no rights until the giving of the notice in precisely the manner required. It appears to us that no particular form of notice is prescribed, and that actual notice is sufficient. Luquire Funeral Chapel, Inc. was not misled because the notice was wrongly addressed to Luquire Ambulance Company. It reached the appellee for whom it was intended and fulfilled very purpose of, and in effect was, a legal and sufficient notice.3/ We would not underestimate the help rendered by technical accuracy in notices and proceedings toward attaining the goal of justice under law, but it is seldom that a poor vehicle should compel abandonment of the journey.

In support of its further defense, appellee points out that the Board is entitled to reimbursement from any sum or damages paid "on account of any liability" based upon the infirmity for sickness resulting from which the benefits are paid, and that

there was no showing in this case of any such liability on the part of the appellee. The appellee denied liability and insists that "it bought its peace and procured a release by the entry of a consent judgment". Section 12(o), supra, explicitly provides that the Board's right of reimbursement extends to any sum or damages paid through "compromise" or "settlement". It refers several times in the alternative to the employee's "right or claim", and in one instance follows those words with the alternative expression "exists or is asserted". The Railroad Unemployment Insurance Act contains no express provision for the Board's enforcement of the employee's right or claim against an alleged tortfeasor in the event the employee himself elects not to pursue the same, and that is probably for the reason that, without the employee's cooperation, such a provision would usually prove to be impractical or unenforceable. It is true also, we think that the Board's right to reimbursement in cases of compromise or settlement would generally be unenforceable, if the Board had to prove that the compromise or settlement was based upon actual legal liability for the employee's injuries. An employee who asserts a colorable or false claim against an alleged tortfeasor cannot expect more favorable treatment from the Board than one whose right is based upon legal liability. In either case, the obstacle to a compromise or settlement is a necessary consequence of the employee's acceptance of benefits from the Board. The result contemplated by the Act is that the Board shall ultimately respond in benefits to the employee only to the extent that damages are not collected from the alleged tortfeasor.

The judgment is therefore reversed with instructions to enter judgment for the appellant, plaintiff below.

REVERSED.

A True Copy;
Teste

Clerk of the United States Court of Appeals for the Fifth Circuit

1/ "Benefits payable to an employee with respect to days of sickness shall be payable regardless of the liability of any person to pay damages for such infirmity. The Board shall be entitled to reimbursement from any sum or damages paid or payable to such employee or other person through suit, compromise, settlement, judgment, or otherwise on account of any liability (other than a liability under a health, sickness, accident, or similar insurance policy) based upon such infirmity, to the extent that it will have paid or will pay benefits for days of sickness resulting from such infirmity. Upon notice to the person against whom such right or claim exists or is asserted, the Board shall have a lien upon such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of amount to which the Board is entitled by way or reimbursement."

2/ Luquire Funeral Chapel, Inc. and Johns Funeral Chapel, Inc. had merged, and we therefore refer to the appellees as a single party.

3/ No case on this point has been decided under this Section, but diligent counsel have collected many cases as to the sufficiency of notice under other statutes. Closely analogous are cases of mistakes in the names of persons to whom writs of garnishment are addressed; e.g. Johnson, et al. vs. McDonald et al., 73 S.W. 2d 128; Arkansas Rice Growers' Cooperative Ass'n vs. Minneapolis-Moline Power Implement Co., 65 S.W. 2d 913; Aly et al. vs. Texas Publication House, 5 W.S. 2d 235; Bailie Furniture Co. vs. Hotel Richmond Inc., 57 Ga. App. 281; Eslinger vs. Herndon, 158 Ga. 823. The cases cited by the parties include, for the appellant; Internation M. & T. Co. vs. Kensington Heights Homes Co., 183 N.W. 793; Whiteselle vs. Texas Loan Agency, 27 S.W. 309; Coffee vs. United States, 157 F. 2d 968; United States vs. Perry, 115 F. 2d 724; The Maine, 28 F. Supp. 578, 580, 581, aff'd sub nom. Standard Wholesale P. & A. Works vs. Travelers Ins. Co., 107 F. 2d 373 (C.A. 4, 1939); and for the appellee; Fleisher Co. vs. United States, 311 U.S. 15; United States vs. Beaver Run Coal Co., 99 F 2d 610; Barton vs. City of Waterloo, 255 N.W. 700; in Re Lounsberry, 226 N.W. 140.

Appendix F - Court Decision: U.S. v. Hall

L-53-490

U.S. v. Hall,

116 F. Supp. 47 (W. D. Wis., 1953)

BOARD'S LIEN AGAINST PERSONAL INJURY AWARD

United States of America, Plaintiff v. Norman C. Hall and Wisconsin Telephone Company, a Wisconsin corporation, Defendants.

In the United States District Court for the Western District of Wisconsin. Civil No. 492, July 21, 1953.

Where notice of a lien against an award granted in a personal injury settlement was properly given under Section 12(o) of the Railroad Unemployment Insurance Act which provides for recovery of the amount of benefits paid for sickness or injury in such cases, the Board is entitled to reimbursement. The defendant company's attempt to nullify the provisions of the Act and the lien thereunder, by payment of the award before notice to the Board of such payment, was futile and it could not avoid its liability on the lien by such procedure.

Frank L. Nikolay, U.S. Attorney, Madison, Wisconsin, for the plaintiff.

Messrs. Crawford, Crawford, and Cirilli, Attorneys, Superior, Wisconsin for the defendant.

STONE, J. -- This case was considered by the Court on briefs submitted by the plaintiff and the defendant Wisconsin Telephone Company on their respective motions for summary judgment, the action having previously been dismissed as to the defendant Norman C. Hall. The Court hereby makes the following findings of fact and conclusions of Law:

Findings of Fact

1. The Railroad Retirement Board, hereinafter referred to as the Board, is an independent agency in the Executive Branch of the Government of the United States.

2. The defendant Norman C. Hall resides at 1212 North 57th Avenue West, Duluth, Minnesota.

3. The defendant Wisconsin Telephone Company, hereinafter referred to as the Telephone Company, was on August 17, 1948, and at all times subsequent thereto has been, a corporation duly organized and existing under the laws of the State of Wisconsin and engaged in the business of furnishing telephone service.

4. The Board is charged with the administration of the Railroad Unemployment Insurance Act (45 U.S.C., 1946 ed., ³ 351-367), hereinafter referred to as the Act.

5. Norman C. Hall was injured on August 17, 1948, through the alleged negligence of the Telephone Company, and on the basis of that injury benefits under the Act, in the total amount of $650.00, were paid him by the Treasurer of the United States, upon certification by the Board, during the period from August 17, 1948, through February 28, 1949.

6. The said payments were made under the following provisions of Section 12(o) of the Act, 45 U.S.C., 1946 ed., ³ 362(o):

   "Benefits payable to an employee with respect to days of sickness shall be payable regardless of the liability of any person to pay day damages for such infirmity. The Board shall be entitled to reimbursement from any sum or damages paid or payable to such employee or other person through suit, compromise, settlement, judgment, or otherwise on account of any liability (other than a liability under a health, sickness, accident, or similar insurance policy) based upon such infirmity, to the extent that it will have paid or will pay benefits for days of sickness resulting from such infirmity. Upon notice to the person against whom such right or claim exists or is asserted, the Board shall have a lien upon such right or claim, any

judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way or reimbursement."

7. Notice of the Board's rights under the said provisions of Section 12(o) was sent the Telephone Company on August 27, 1948.

8. At some time during May, 1949, the Telephone Company's attorneys agreed with Norman C. Hall's attorneys to pay Mr. Hall $5,000.00 in settlement of his claim against the Telephone Company.

9. At some time during May 1949, the Telephone Company's attorneys advised Mr. Hall's attorneys that "it will be necessary that we pay the sum of $650.00 to the Railroad Retirement Board in order to extinguish the lien which is given to them under the Federal statutes."

10. On May 25, 1949, the Telephone Company's attorneys requested the Board's Minneapolis regional office to furnish them a letter stating the amount due the Board by way of reimbursement, and asked to be advised to whom the check should be made payable.

11. On May 26, 1949, the Telephone Company's attorneys were advised by the regional office that the amount due the Board was $650.00 and that payment should be made to the Treasure of the United States.

12. Mr. Hall's attorneys subsequently advised the Telephone Company's attorneys that he "would not accept the settlement unless the Railroad Retirement Board's claim of $650.00 was paid in addition to the settlement already agreed on."

13. The Telephone Company's attorneys thereupon, without notice to the Board, applied to the Superior Court of Douglas County, Wisconsin, for approval of a $5,000.00 settlement between the Telephone Company and Norman C. Hall.

14. Pursuant to the said application, judgment for $5,000.00 was entered in Mr. Hall's favor on June 23, 1949, no provision being made for the protection of the Board's claim.

15. The amount of the judgment was thereupon paid by the Telephone Company to the Clerk of the Court, by whom it was disbursed to Mr. Hall.

16. Subsequently, on or about June 26 1949, the Telephone Company's attorneys advised the Board's Minneapolis regional office of the entry and payment of the judgment.

17. The Board had no prior notice of the proceedings in the Superior Court, and has never been reimbursed for any of the benefits paid Norman C. Hall as aforesaid.

18. The Telephone Company has rejected all demands that it reimburse the United States of America in the amount of the Board's claim.

Conclusions of Law

Upon the foregoing findings of fact, which are made a part of the judgment herein, the Court concludes that:

1. The Court has jurisdiction of this proceeding under the provisions of 28 U.S.C., 1946 ed., Supp. V, ³ 1345.

2. The indebtedness of the defendant Wisconsin Telephone Company to Norman C. Hall was at all times after the notice to it on August 27, 1948, subject to the statutory lien of the Railroad Retirement Board under the provisions of Section 12(o) of the Railroad Unemployment Insurance Act (45 U.S.C., 1946 ed., ³ 362(o).

3. The defendant Telephone Company's attempt to nullify the provisions of the Federal Act, and the Board's lien thereunder, by entry and payment of the judgment, without notice to the Board until after the amount of the judgment had been paid to Norman C. Hall, was futile and of no effect, and the Telephone Company could not by this procedure avoid its liability on the said lien.

4. The defendant Telephone Company is indebted to the plaintiff in the amount of $650.00, with interest from June 23, 1949.

5. The plaintiff is entitled to summary judgment against the defendant Wisconsin Telephone Company for $650.00, with interest from June 23, 1949, and costs, and the Telephone Company's motion for summary judgment must be denied.

Memorandum Opinion

The plaintiff has moved for summary judgment against the defendant Wisconsin Telephone Company, for the sum of Six Hundred Fifty Dollars ($650.00), plus interest, which represents the benefit payments by the alleged negligence of the defendant. The action was dismissed against the defendant, Norman C. Hall. The Railroad Retirement Board is an independent agency in the Executive Branch of the Government of the United States and will be hereinafter referred to as the Board.

Admitted Facts

The allegations in the amended complaint are admitted by the defendant's answer, and read as follows:

"The Railroad Retirement Board is an independent agency in the Executive Branch of the government of the United States, established under the Railroad Retirement Acts, as amended.

"This Court has jurisdiction by reason of 28 USC 1345.

"The defendant, Norman C. Hall, is a resident of 1212 North 57th Avenue West, Duluth, Minnesota, whose occupation is unknown.

"That the Wisconsin Telephone Company is a corporation duly organized and existing under the laws of the Sate of Wisconsin and is engaged in the business of furnishing telephone service and was such a corporation and so engaged on August 17, 1948 and at all times subsequent thereto.

"Plaintiff claims of the defendants the sum of $650.00 plus interest at the rate of 5% from August 27, 1948, and costs, said principle sum representing the payment by the Railroad Retirement Board during the period from August 17, 1948 through February 28, 1949, inclusive for sickness benefits to defendant, Norman C. Hall under the Railroad Unemployment Insurance Act, as amended.

"Plaintiff avers that on August 17, 1948, defendant Norman C. Hall was injured and that on June 23, 1949 judgment in favor of Norman C. Hall in the sum of $5,000 was made against the defendant, Wisconsin Telephone Company, for personal injuries sustained in the accident of August 17, 1948, claimed to have resulted from negligence of defendant Wisconsin Telephone Company, which $5,000.00 was subsequently paid to defendant Norman C. Hall by the Clerk of Court, Superior, Douglas County, Wisconsin.

"Plaintiff further avers that on August 27, 1948 the Railroad Retirement Board duly notified by letter the defendant, Wisconsin Telephone Company, a corporation, of the right of the Railroad Retirement Board under Section 12(o) of the Railroad Unemployment Insurance Act, as amended (45 U.S.C. 1946 ed. 362(o)), for the sickness benefits paid to and to be paid to defendant Norman C. Hall out of any sums or damages payable to said Norman C. Hall by defendant Wisconsin Telephone Company for injuries sustained by the said Norman C. Hall in the accident occurring August 17, 1948.

"That on May 25, 1949, Mr. R. A. Crawford, an attorney at law in Superior, Wisconsin and counsel for the defendant, Wisconsin Telephone Company, informed the Regional Adjudicator, Railroad Retirement Board, 123 East Grant Street, Minneapolis 3, Minnesota, to put the claim of the Railroad Retirement Board in letter form and advise as to whom the check should be made payable, and that the paid Railroad Retirement Board on May 26, 1949, forwarded such a

reply to the said R. A. Crawford, stating the amount due to be $650.00 and that payment should be made to the Treasurer of the United States.

"Plaintiff further avers that neither defendant Norman C. Hall or defendant Wisconsin Telephone Company, a Wisconsin corporation, have reimbursed that said Railroad Retirement Board in accordance with Section 12(o) of the Railroad Unemployment Insurance Act, as amended, and demand having been made, the said defendants have refused to pay.

"WHEREFORE, Plaintiff demands judgment of the defendants in the sum of $650.00 plus interest and costs."

Controlling Statute

The defendant Norman C. Hall was injured on August 17, 1948, through the alleged negligence of the defendant Wisconsin Telephone Company. He applied to the Railroad Retirement Board, an agency of the United States Government, for benefits under the Railroad Unemployment Insurance Act, 45 U.S.C. 1946 ed. ³ 351-367, based on that injury. Such benefits totaling $650.00 were paid him during the period from August 17, 1948, through February 28, 1949. These payments were made under the following provisions of Section 12(o) of the Act, 45 U.S.C., 1946 ed. ³ 362(o):

> "Benefits payable to an employee with respect to days of sickness shall be payable regardless of the liability of any person to pay day damages for such infirmity. The Board shall be entitled to reimbursement from any sum or damages paid or payable to such employee or other person through suit, compromise, settlement, judgment, or otherwise on account of any liability (other than a liability under a health, sickness, accident, or similar insurance policy) based upon such infirmity, to the extent that it will have paid or will pay benefits for days of sickness resulting from such infirmity. Upon notice to the person against whom such right or claim exists or is asserted, the Board shall have a lien upon such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way or reimbursement."

Notice of the Board's rights under this Section was sent the defendant Wisconsin Telephone Company on August 27, 1948.

Statement of Benefits Paid

On May 26, 1949, pursuant to defendant's request, the Board furnished it with a statement of the amount of benefit payments it had paid to Norman C. Hall from the date of injury, August 17, 1949, to February 28, 1949, and for which it claimed its statutory lien on any indebtedness defendant owed or may owe Norman C. Hall, arising of his injury.

On or about June 26, 1949, after the judgment in favor of Hall for $5,000.00 and against the defendant had been entered in the Superior Court for Douglas County, Wisconsin, the defendant then thoughtfully notified the Board that judgment had been entered, but failed to apprise the Board that it paid the full amount of the judgment to Hall via the Clerk of the Superior Court for Douglas County, Wisconsin, almost immediately after its entry.

Defendant Liable on Lien

Defendant's indebtedness to Hall was at all times after notice to defendant on August 27, 1948, subject to plaintiff's statutory lien and defendant's attempt to invalidate the Federal Statute and plaintiff's lien by entry and payment of the judgment without notice to the Board until after the judgment was paid to Hall was futile and of no effect. It could not by this procedure avoid its liability to plaintiff on the said lien. It is now indebted to plaintiff for the amount claimed in plaintiff's complaint with interest.

Plaintiff may have judgment against defendant for said amount, with cost.

Plaintiff's counsel may submit proposed findings of fact, conclusions of law and judgment.

Appendix G - Legal Opinions Re: Deductible Expenses

Chronological Summary Of Legal Opinions Re Deductible Expenses In 12(o) Cases

L-48-643

(August 26, 1948)

In this opinion it was held that the provisions of Section 12(o) should be applied only to the net amount inuring to the benefit of the individual after the payment of medical, legal, and other expenses incurred in connection with the injury. The associate general counsel pointed out that to apply the provisions of Section 12(o) to amounts representing reimbursement for such expenses would tend to discourage benefit claimants from prosecuting their demands against those responsible for their injuries and that this would react unfavorably upon the railroad unemployment insurance account by reducing the amounts recovered under Section 12(o).

L-50-127

(March 1, 1950)

In this opinion it was held that, in determining the net amount available for reimbursement of the Board under Section 12(o), the claimant's hospital expenses should be deducted even though they were covered by his personal

hospitalization policy. The associate general counsel noted that there are provisions in the RUIA which show a definite concern by Congress that a claimant's private insurance should not in any way limit his rights under the Act. Thus, Section 12(o) specifically provides that no reimbursement shall be required from payments made "under a health, sickness, accident, or similar insurance policy". Similarly, it is provided in Section 1(j) that "money payments received pursuant to any nongovernmental plan for unemployment insurance, maternity insurance, or sickness insurance: shall not constitute "remuneration"; consequently, the receipt of such payments does not prevent an individual from receiving benefits under the Act. The associate general counsel also stated in L-50-127 that it was immaterial whether the claimant was a patient in a member hospital, which supplied the services, or in a non-member hospital which was reimbursed under the provisions of his hospitalization policy.

October 1, 1957

In a letter of this date to Peter A. McDermott, Esq. (case of Henry T. Bieker, Jr.), the associate general counsel stated that the cost of hospital and medical services provided because of the claimant's membership in a hospital association should be deducted in computing the net amount of his settlement. In this connection he said: "The fact that because of his membership in, and contributions to, the Hospital Association, Mr. Bieker was not actually out-of-pocket for the amount of these expenses is not, in my opinion, controlling."

L-60-461

(November 4, 1960)

This case involved the off-duty injury of Luis Guerrero. In this opinion, the associate general counsel pointed out that the conclusion stated in the Bieker matter must also be reached in a case, such as that of Guerrero, in which the claimant's hospital association dues are paid by his employer pursuant to an agreement with the employee's labor organization. The Associates General Counsel pointed out that the provisions of Section 12(o) and 1(j) referred to in L-50-127 make no distinction on the basis of who pays for the insurance. Nor does there appear to be any reason for such a distinction in the matter of determining when hospital and medical expenses may be deducted in determining the net amount of a settlement. One of the considerations upon which earlier rulings permitting the deductions of such expenses were based was the fact that to apply Section 12(o) to these amounts would tend to discourage benefit claimants from prosecuting their personal-injury claims and that this would react unfavorably upon the unemployment insurance account. Refusal to permit the deduction of hospital and medical expenses would have as great a tendency to discourage the prosecution of a person-injury claim in the case of an employee, such as Mr. Guerrero, whose hospital association dues were paid by his employer pursuant to an agreement with his labor organization, as it would in the case of a claimant, such as Mr. Bieker, who had paid his own hospital

association dues. It was also noted, in L-60-461, that the payment of Mr. Guerrero's hospital association dues by his employer is not a gratuity, but rather something to which he became entitled under the terms of an agreement negotiated with the employer by his labor organization.

July 11, 1961

L-61-316

B.O. 61-115

This case involved the on-duty injuries of claimant Jones and Townsent. These claimants were entitled to medical and hospital cars by reason of their member ship in the Union Pacific Railroad Employees Hospital Association. The employer contributes a fixed percentage of the entire cost of operating the Association to compensate the Association for caring for employees injured on duty.

In L-61-316, the associate general counsel pointed out that there is nothing in the Hospital Association's Regulations to indicate that a member of the Association is not entitled, as a member, to care for injuries sustained on duty. It was apparent that the Railroad Company's contribution to the Hospital Association is required under agreements resulting from negotiations between the Company and the labor organization. Under these circumstances, and in accordance with the views expressed in the Guerrero case, the associate general counsel believed that the cost of the claimant's medical and hospital care should be deducted in determining the net amounts available for reimbursement of the Board under Section 12(o). The associate general counsel noted that the situation here is unlike the ordinary case in which an alleged tort-feasor, in settling a personal injury claim, himself takes care of the medical and hospital expenses. Here, the Company's payment to the Hospital Association is required by its agreements with the labor organizations, and is made without reference to whether or not the Company is liable, or is alleged to be liable, for the injury involved.

Appendix H - Court Decision: Richter and Levy v. U.S.

This decision denied a claim for counsel fees against the Railroad Retirement Board on that part of a personal injury recovery paid to the Board under Section 12(o) of the Railroad Unemployment Insurance Act. (For decision of U.S. District Court see Appendix G.)

Cite this case: 296 F. 2d 509; cert denied, 369 U.S. 828

UNITED STATES COURT OF APPEALS
For The Third Circuit

No. 13, 563

B. NATHANIEL RICHTER AND ELWOOD S. LEVY,
Appellants
v.
UNITED STATES OF AMERICA

Argued October 2, 1961
Before Goodrich, Staley and Smith, Circuit Judges.

OPINION OF THE COURT
(Filed November 16, 1961)

By Goodrich, Circuit Judge.

The plaintiffs effected a settlement with a railroad in a Federal Employers' Liability Act case and paid part of the recovery to the United States under statutory provision. They now claim counsel fees against the Government on that part of the settlement paid to it. Plaintiffs lost in the court below. 190 F. Supp. 159 (1960).

The facts are undisputed. The plaintiffs, as lawyers, secured on behalf an employee of the Pennsylvania Railroad the sum of $16,800. The railroad, in satisfaction of a lien of the Railroad Retirement Board, fits previously paid by the United States to the employee as compensation for disability arising from the accident. The remainder of the settlement arrangement, retained $4,639.41 and turned the remainder over to the injured employee. What the appellants now want from the United States if one-third of what was paid to the Government pursuant to the provisions of the Railroad Unemployment Insurance Act.

The plaintiffs base their claim on the Tucker Act, 28 U.S.C., sec. 1346(a)(2). This gives a district court jurisdiction in claims against the United States founded upon an act of Congress or upon either express or implied contract with the United States.1/ The argument for the appellants suggests that the district judge denied them relief on the basis that there was no implied contract with the United States within the meaning of the Tucker Act. They now say that this is not the theory of their case at all. In their words, "they depend upon the 'founded upon an Act of Congress' provision of the Tucker Act jurisdictional declarations."

The relevant portion of the Railroad Unemployment Insurance Act provides that the Board is entitled to reimbursement from any damages paid to an employee through suit on or settlement of any liability.2/

The act itself makes no provision for counsel fees for those who affect the recovery for the injured workman. Nor does the act make any statement against counsel fees. The section referred to obviously is to protect the interest of the United States.3/ The plaintiffs say, however, that, even though the act does not

provide for an attorney's fee, they should be allowed to recover one either under Pennsylvania law or general federal equity principles. The theory is that the attorney who, by efforts, created the fund should be entitled to reimbursement from the Government on the principle or preventing unjust enrichment. RESTATEMENT, RESTITUTION, sec. 1, 105(2).

The minute this argument is made, however, it puts the claim outside the Tucker Act altogether. The claim is then based not upon a statute of the United States, but rather on general equitable principles. There is no basis in the Tucker Act at all for the assertion of these. In spite of the multitude of citations with which we have been deluged, the point seems to us perfectly clear.

Then it is suggested that, even though the act does not expressly provide for attorneys' fees in this case, the appellant should be entitled to a fee. The employee, it is said, is the only one who can retain an attorney to benefit both himself and the Board. Therefore, since the employee did so and did benefit both the Board and himself through the lawyer's efforts, the lawyer by proper implication from the act should be paid.

We find no basis for taking any such liberty with the statute. What we are in effect asked to do is to write in a provision which is not there. We think we are no more entitled to redraft the Railroad Unemployment Insurance Act than we are to tinker with a provision in the Internal Revenue Code. Cf. Evans v. Dudley, No. 13559, 3d Cir., Nov. 8, 1961. There is nothing in the legislative history to which we are cited that says anything for or against attorneys' fees in this situation. Congress when it desires to make provision for attorneys' fees knows perfectly well how to do so, as it has in the Federal Employees' Compensation Act4/ and an abundance of other situations.5/ It has not done so here and we do not think it a proper subject for court action.

The judgment of the district court will be affirmed.

A True Copy;

Teste

Clerk of the United States Court of Appeals

for the Third Circuit.

1/ The wording of the subsection is as follows:

"(2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with

the United States, or for liquidated or unliquidated damages in cases not sounding in tort."

2/ Railroad Unemployment Insurance Act section 12(o), 45 U.S.C.A., sec. 362(o):

"Benefits payable to an employee with respect to days of sickness shall be payable regardless of the liability of any person to pay damages for such infirmity. The Board shall be entitled to reimbursement from any sum or damages paid or payable to such employee or other person through suit, compromise, settlement, judgment, or otherwise on account of any liability (other than a liability under a health, sickness, accident, or similar insurance policy) based upon such infirmity, to the extent that it will have paid or will pay benefits for days of sickness resulting from such infirmity. Upon notice to the person against whom such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimbursement."

3/ The extent of this interest is shown in figures cited to us by government counsel. The Government states that the Board, by virtue of ^{3}12(o), has been able to recover almost ten percent of the sickness and maternity benefits paid out under the Railroad Unemployment Insurance Act. At the end of the fiscal year 1958-59, the cumulative benefits disbursed by the Board totalled $500,000,000, while the total section 12(o) reimbursement was $39,294,000.

4/ 5 U.S.C.A., sec. 777 provides that, if a compensable injury creates a legal liability in some person other than the United States and a beneficiary entitled to compensation under the act recovers damages therefore from that other person, the beneficiary "shall, after deducting costs of suit and a reasonable attorney's fee, refund the amount of the compensation received or to be received from the United States." (Emphasis added.)

5/ For example, Congress has made specific provision for the recovery of attorneys' fees in various types of private actions which might be said to be affected with a public interest. See 15 U.S.C.A. ^{3}15 (suits by persons injured by violations of the antitrust laws); 15 U.S.C.A., sec. 77www (suits against persons filing false and misleading statements under the Trust Indenture Act); 49 U.S.C.A., sec. 16(2) (proceedings to enforce orders of the Interstate Commerce Commission).

Appendix I - Court Decision: Richter, Lord and Levy v. U.S.

This decision denied a claim for counsel fees against the Railroad Retirement Board on that part of a personal injury recovery paid to the Board under Section

12(o) of the Railroad Unemployment Insurance Act. (For decision of U.S. Court of Appeals see Appendix F.)

L-61-15-A

Cite this case: 190 F. Supp. 159 (E.D. Penn., 1960); affirmed 196 F. 2d 509; cert denied, 369 U.S. 828

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

B. NATHANIEL RICHTER,	:	CIVIL ACTION
JOSEPH S. LORD, III, and	:	
ELWOOD S. LEVY	:	
v.		
UNITED STATES OF AMERICA	:	NO. 27957
		OPINION AND ORDER
EGAN, J.		DECEMBER 29, 1960.

This suit was brought by a well known Philadelphia law firm against the United States to recover a one-third portion of the amount remitted by the Pennsylvania Railroad Company direct to the Government in pay of a lien filed with the railroad by the Railroad Retirement Board under ³12(o) of the Railroad Unemployment Insurance Act of June 25, 1938, c. 680, 52 Stat. 1107, as added by section 323 of the Act of July 31, 1946, c. 709, 60 Stat. 740, 45 U.S.C. section 362 (o).1/

Jurisdiction is founded on the Tucker Act, 28 U.S.C., section 1346.2/ The Government moves to dismiss for lack of jurisdiction of the subject matter and for failure of the complaint to state a claim upon which relief can be granted. The motion will be granted.

The instant case is a suit against the United States to recover a proportionate share of a legal fee for services allegedly rendered to the United States in connection with a suit under the Federal Employers' Liability Act.

The plaintiffs are B. Nathaniel Richter, Joseph S. Lord, III, and Elwood S. Levy. The complaint alleges that plaintiffs, as attorneys for Peter J. Urban during March of 1960, effectuated by settlement a gross recovery from the Pennsylvania Railroad Company of the sum of $16,800, for injuries sustained in the course of his employment; that the railroad, in satisfaction of the lien of the Railroad Retirement Board, paid to the United States a portion of said recovery amounting to $2,210, said amount representing the benefits previously paid by the said accident; that the railroad paid to the plaintiffs and the employee the sum of $14,590, being the difference between the agreed settlement of $16,800 and the sum of $2,210 paid by the railroad to the United States pursuant to the lien of the railroad Retirement Board; that plaintiffs were retained as counsel by the employee on a contingent fee basis; 3/ that the employee paid a contingent fee

to the plaintiffs for their services of $4,639.41 based on the net recovery after litigation expenses and the aforesaid lien of the Railroad Retirement Board had been deducted; that the payment to the United States was made possible by, and as a direct result of, the efforts and legal services of the plaintiffs who seek to be paid by the United States for these services; and that the reasonable and proper value of the services rendered by the plaintiffs for the benefit of the United States is $736.67.

The plaintiffs aver that the payment to the United States was the direct result of their legal efforts and services and seek to be paid on any of several theories. Since there is no statutory authority, their recovery must be based on a quantum meruit basis or on principles of implied contract or of quasi-contract, or on the equitable principle of having created the fund.

It is quite clear from reading the complaint that if the plaintiffs have any claim against the United States, it is on the basis of a contract implied in law as opposed to a contract implied in fact, or on the equitable principle of having created the fund. The United States has not consented to be sued in this action and federal jurisdiction recognizes no such equitable right. Therefore the District Court has no jurisdiction over this action.

Under the Tucker Act, (supra, footnote 1) jurisdiction is conferred upon the District Courts concurrent with that of the Court of Claims of "any other civil action or claim against the United States," not exceeding $10,000 in amount, founded either upon the Constitution, or upon any express or implied contract with the Untied States, or for liquidated or unliquidated damages in cases not sounding in tort. 28 U.S.C. section 1346(a)(2).

The Courts have uniformly construed the above provision of the Tucker Act to provide that the implied contract must be one implied in fact as opposed to one implied in law. <u>Goodyear Tire & Rubber Co. v. United States</u>, 276 U.S. 287 (1928); <u>United States v. Minnesota Mutual Investment Co.</u>, 271 U.S. 212 (1926); <u>Sutton v. United States</u>, 192 F. 2d 438 (3 Cir. 1951).

As the Supreme Court stated in the case of <u>United States v. Minnesota Mutual Investment Co.</u>, <u>supra</u>, at page 217:

> "* * * An implied contract in order to give the court of claims or a district court under the Tucker Act jurisdiction to give judgment against the government must be one implied in fact and not one based merely on equitable considerations and implied in law."

This distinction between contracts implied in fact as opposed to contracts implied in law is well recognized and has been the subject of much comments by the Courts. The Third Circuit defined the distinction as follows in the case of <u>American La France Fire Engine Co. v. Borough of Shenandoah</u>, 115 F. 2d 866 (3 Cir. 1940), at page 867:

> "* * * The distinction between express and implied contracts on the one hand and quasi-contracts on the other basic. It has been succinctly stated by Mr. Justice Stern in Cameron v. Eynon, 332 Pa.. 529, 532, 3 A.2d 423, 424, thus: "A quasi contract arises where the law imposes a duty upon a person, not because of any express or implied promise on his part to perform it, but even in spite of any intention he might have to the contrary. A quasi contract, which is a fictional contract, is not to be confused with a contract implied in fact, which is an actual contract, and which arises where the parties agree upon the obligations to be incurred, but their intention, instead of being expressed in words, is inferred from their acts in the light of the surrounding circumstances."'

The distinction was also set forth at some length in the case of G.T. Fogle & Co. v. United States, 135 F. 2d 117 (4 Cir. 1943), at page 120:

> "* * * The law, however, makes a distinction, absolutely vital here, between contracts implied in fact and contracts implied by law. This distinction is thus aptly stated in 17 C.J.S., Contracts, section 4, p. 320, 321: section Contract implied in law distinguished. A distinction exists between contracts implied in fact and those which are implied in law. Thus, a contract implied in fact is a true contract, the agreement of the parties being inferred from the circumstances, while a contract implied in law is but a duty imposed by law and treated as a contract for the purposes of a remedy only. Another distinction between such classes of implied contracts lies in the fact that, * * * in the case of contracts implied in fact, there must be an assent of the parties, as in express contracts, whereas, * * * in the case of contracts implied in law, or more properly quasi or constructive contracts, such element of assent is lacking. The distinction has also been stated that a contract implied in fact is an implied contract in which the intention is ascertained and enforced while a contract implied in law is a mere fiction, the intention being disregarded, and the quasi contractual obligation being imposed by law to bring about justice, without regard to the intention of the parties. Again, in the case of contracts implied in fact, the contract defines the duty, while in the case of constructive contracts, the duty defines the contract."'

See also Martin v. Campanaro, 156 F. 2d 127 (2 Cir. 1946) and Lach v. Fleth, 361 Pa. 340 (1949).

In the instant case, there are no facts alleged in the complaint from which assent can be inferred. In fact, the complaint alleges no direct relationship whatsoever between the plaintiffs and the United States or the Railroad Retirement Board. It is quite clear that the theory of the complaint is that by the Plaintiffs' services, a benefit has been conferred upon the United States, of which, in equity, the United States should bear its proportionate share of the cost of recovery. Thus, it is quite clear that recovery is sought on the basis of equitable principles rather than a contract implied in fact.

This case does not fall within the category of class actions4/ and certainly an attorney cannot seek to have a contract implied in fact as against the Government when he has been representing a private client under a separate bilateral agreement and was acting solely in his behalf. Any benefit which might be received by the Government is purely incidental. In Coleman v. United States, 152 U.S. 96 (1894), the Court refused to imply a contract in fact between an attorney and the United States when he had been previously engaged by another party and the attorney admitted that he had looked to that client for his recompense. The rule generally is that each litigant must pay his own counsel fees and that an attorney cannot make another party - who receives an indirect benefit - his debtor by voluntarily rendering services in his behalf without his express or implied assent. Nolte v. Hudson Navigation Co., 47 F. 2d 166 (2 Cir. 1931); Lamar v. Hall & Wimberly, 129 Fed. 79 (5 Cir. 1904); Weinberg v. Goldenberg's, 81 F. Supp. 353 (D.D.. 1948).

As the general rule is stated in 7 C.J.S., Attorney & Client, section 175:

> "An attorney's claim for professional services against persons sui juris, or against the property of such persons, must rest on a contract of employment, express or implied, made with the person sought to be charged or with his agent. No one can legally claim compensation for incidental benefits and advantages to one, flowing to him on account of services rendered to another by whom the attorney may have been employed, or, as has been shown supra section 160, for services voluntarily rendered."

There is sound reason why a contract cannot be implied in fact in the instant case. Under the statutes of the United States only the Attorney General or the United States Attorney can represent the Government in an action in Court. 5 U.S.C. sections 306-310; Sutherland v. International Insurance Co. of New York, 43 F. 2d 969 (2 Cir. 1930). Section 306 of Title U.S.C. provides as follows:

> "The officers of the Department of Justice, under the direction of the Attorney-General, shall give all opinions and render all services requiring the skill of persons learned in the law necessary to enable the President and heads of Departments, and the heads of Bureaus and other officers in the Departments, to discharge their respective duties; and shall, on behalf of the United States, procure the proper evidence for, and conduct, prosecute, or defend all suits and proceedings in the Supreme Court and in the Court of Claims, in which the United States, or any officer thereof, as such officer, is a party or may be interested; and no fees shall be allowed or paid to any other attorney or counselor at law for any service herein required of the officers of the Department of Justice, except in cases of services performed by attorneys appointed under section 503 of Title 28, for whom compensation is provided under section 508 of Title 28."

Further, Sections 314 and 315 provide:

> "Section 314. Counsel fees restricted. No compensation shall be allowed to any person, besides the respective United States attorneys and assistant United States attorneys for services as an attorney or counselor to the United States, or to any branch or department of the Government thereof, except in cases specially authorized by law, and then only on the certificate of the Attorney General that such services were actually rendered, and that the same could not be performed by the Attorney General, or Solicitor General, or the officers of the Department of Justice, or by the district attorneys. * * *"
>
> "Section 315. Appointment and oath of special attorneys or counsel. Every attorney or counselor who is specially retained, under the authority of the Department of Justice, to assist in the trial of any case in which the Government is interested, shall receive a commission from the head of such department, as a special assistant to the Attorney General, or to some one of the district attorneys, as the nature of the appointment may require; and shall take the oath required by law to be taken by the district attorneys, and shall be subject to all the liabilities imposed upon them by law. Foreign counsel employed by the Attorney General in special cases shall not be required to take the oath required by this section."

In the case of Eastern Extension Tel. Co. v. United States, 251 U.S. 355 (1920), the Supreme Court stated, at pages 363-66:

> "* * * It is obvious that no express contract by the United States to adopt and be bound by the third or any of the concessions can be made out from the findings of fact, and it is equally clear that such an implied contract, using the words in any strict sense, cannot be derived from the findings, for it is plain that there is nothing in them tending to show that any official with power, express or implied, to commit that government to such a contract, ever intended to so commit it.
>
> "The contention of the claimant must be sustained, if at all, as a quasi contract, - as an obligation imposed by law independent of intention on the part of any officials to bind the government, - one which in equity and good conscience the government should discharge because of the conduct of its representatives in dealing with the subject-matter.
>
> * * * *
>
> "In the jurisdiction given to the court of claims Congress has consented that contracts, express or implied, may be judicially enforced against the government of the United States. But such a liability can be created only by some officer of the government lawfully invested with power to make

> such contracts or to perform acts from which they may be lawfully implied."

See also United States v. Willis, 164 F. 2d 453 (4 Cir. 1947)

Thus, it can be seen that only the Attorney General has the authority to make a contract for the special employment of an attorney. Furthermore, no attorney can receive counsel fees from the Government except on receipt of the certificate of the Attorney General that such services were actually rendered. There is no allegation in the complaint of the receipt of such a certificate. Under the circumstances, plaintiffs cannot qualify and no contract can be implied in fact.

It is clear, therefore, that the United States has not consented to be sued and that the complaint must be dismissed.

Notwithstanding this posture of the federal law, the plaintiffs in the instant action contend "that this is a misconstruction of the Act and that, absent a specific provision in the statute denying reasonable compensation to the attorneys who benefitted the Board by creating the fund from which the Board is to receive the payments, the courts must look to the laws of the several states to determine whether the attorney who so benefitted the Board is entitled to reasonable compensation out of the Board's share of the recovery" and further that the "issue of the case is whether the Act of Congress requires denial of compensation to those who created the fund for the Board or whether by reason of the failure of Congress to specifically deny the employee's attorneys' compensation the courts should look to applicable state law. The plaintiffs contend that where Congress is silent the courts should not ascribe to Congress an inequitable intent." (Plaintiffs' brief, p. 15).

From this circumstance, they argue that the Pennsylvania decisions, notably Furia v. Philadelphia, 180 Pa. Super. 50 (1955) (where plaintiff's attorney was permitted recovery on the theories of subrogation and the creation of a fund from which the City was reimbursed its workmen's compensation outlay), and Meehan v. Philadelphia, 184 Pa. Super. 659 (1957) (where it was stated that in Pennsylvania "subrogation is a matter of pure equity"), apply and that this permits a recovery by plaintiffs under the Rules of Decision Act, section 1652 of the Judicial Code of June 25, 1948, c. 646, 62 Stat. 944, 28 U.S.C. section 1652.

Unfortunately for plaintiffs, they overlook the fact that the equity jurisdiction of the Federal Courts differs from that of the State Courts. The general rule is stated at 19 Am. Jur., Equity §11 as follows:

> "The equity jurisdiction of the Federal Courts is derived from the Constitution and laws of the United States; and throughout the different states of the Union the jurisdiction of these courts in equity is uniform and unaffected by state legislation."

See Mississippi Mills v. Cohn, 150 U.S. 202 (1893).

As a consequence the many authorities cited by plaintiffs in their well-prepared briefs have no application to the facts at hand.

Plaintiffs argue, contrary to the defendant, that Lewis v. Railroad Retirement Board, 256 Ala, 430 54 So. 2d 777 (1951), cert. denied, 343 U.S. 919 (1952), supports plaintiffs' theory of the instant case. They say that the Sate Court decided Lewis on the basis of whether the lien of the Board or the lien of the employee's attorney was superior, and applying Alabama law determined that the Board's lien, being first in time, was superior to that of the attorney. From this they argue that this Court, by applying Pennsylvania law, will reach a conclusion directly opposite to that reached by the Alabama court under the unique lien law of that State. We believe that the Alabama court reached the right conclusion, but for the wrong reason. No State law and no State decision can divest or downgrade a federal lien in the absence of the cent of Congress. This is clear from the authorities above cited.

Plaintiffs also argue that the cases cited by the defendant, decided under the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. sections 901-50, have no value in helping the Court in solving the problems presented by the instant case. We disagree. We think those cases are most helpful because they make it clear that when Congress wants an attorney's fee paid out of money returned to the Government by way of a lien, it knows how to use language to accomplish the purpose. The cases referred to are Davis v. United States Lines Co., 253 F. 2d 262 (3 Cir. 1958); Oleszezuk v. Calmar Steamship Corp., 163 F. Supp. 370 (D. Md. 1958); Davis v. United States Lines Co., 153 F. Supp. 912 (1957) decided by my able colleague, Judge Van Dusen; Fontana v. Pennsylvania R.R., 106 F. Supp 461 (S.D. N.Y. 1952), aff'd sub nom. Fontana v. Grace Line, Inc., 205 F. 2d 151 (2 Cir.), cert. denied, 346 U.S. 886 (1953). See also Voris v. Gult-Tide Stevedores, Inc. 211 F. 2d 549 (5 Cir.), cert. denied, 348 U.S. 823 (1954).

For the foregoing reasons, we believe that defendant's motion to dismiss must be granted as this Court has no jurisdiction and plaintiffs have not stated a cause of action.

It is so ordered.

/s/ Thomas C. Egan

Thomas C. Egan
J.

1/ section 12(o) provides: "Benefits payable to an employee with respect to days of sickness shall be payable regardless of the liability of any person to pay damages for such infirmity. The Board shall be entitled to reimbursement from any sum or damages paid or payable to such

employee or other person through suit, compromise, settlement, judgment, or otherwise on account of any liability (other than a liability under a health, sickness, accident, or similar insurance policy) based upon such infirmity, to the extent that it will have paid or will pay benefits for days of sickness resulting from such infirmity. Upon notice to the person against whom such right or claim exists or is asserted, the Board shall have a lien upon such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way or reimbursement."

2/ Jurisdiction is founded upon the Tucker Act as codified in §1346 of the Judicial Code (28 U.S.C. section 1346) which provides in part that, "(a) The district courts shall have original jurisdiction, concurrent with the Court of Claims, of: . . . (2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort."

3/ A copy of the contingent fee contract is not in the record but it is immaterial to our disposition of the case.

4/ The cases of Sprague v. Ticonic National Bank, 307 U.S. 161 (1939); Doherty v. Bress, 262 F. 2d 20 (D.C. Cir. 1958) cert. denied, 359 U.S. 934 (1959); Voris v. Gulf-Tide Stevedores, Inc., 211 F. 2d 549 (5 Cir. 1954), and Brown v. T. W. Phillips Gas & Oil Co., 105 F. Supp. 479 (W.D. Pa. 1952) are not controlling here. They were special situations and are controlled by their own facts.

Appendix J - Decision Of The Comptroller General Of The United States

L-72-230

On occasion, the Board's assertion of a section 12(o) lien against a recovery of damages under the Federal Tort Claims Act has been resisted by the Government agency concerned or by one of its contacts in the General Accounting Office on the strength of Comptroller General decisions holding that property damage claims between government agencies must be borne by the agency suffering the loss, since the appropriations of the other agency are not considered available for reimbursement. (Such opinions are found in 25 Comp. Gen. 49, 25 Comp. Gen 322, 9 Comp. Gen. 263, 8 Comp. Gen. 600 and in other reports of such decisions.) In answering such an objection, the Board has pointed out the differences between the decisions cited and the situation involving a Board claim against someone who is entitled to recover damages from the other agency rather than a claim against the other agency itself.

The distinction the Board has urged in such a case was made by the Comptroller General in the 1950 opinion quoted below. In handling a 12(o) claim asserted against damages recovered from another government agency under the Federal Tort Claims Act, the direct authority may be more readily accepted by the other agency and by reviewers in the General Accounting Office.

29 Comp. Gen. 470 [B-94488], May 17,1950

"Personal Injuries--Damages--Availability of Post Office Department Appropriations to Reimburse Subrogee Under Railroad Unemployment Insurance Act

"The Railroad Retirement Board, as subrogee under the Railroad Unemployment Insurance Act of a railroad employee injured through the negligence of a postal employee, may be reimbursed from appropriations of the Post Office Department the sum withheld by the Department from an award made under the Federal Tort Claims Act, in the amount of sick benefits received by the employee from the Railroad Unemployment Insurance Account.

"Comptroller General Warren to the Postmaster General, May 17, 1950:

"Reference is made to your letter of April 10, 1950, requesting to be advised as to whether your Department properly may reimburse the Railroad Retirement Board for an amount paid as sick benefits to an employee of the Central Railroad Company of New Jersey, who was injured through the negligence of an employee of your Department while performing official duties.

It is explained that the injured employee of the Central Railroad Company of New Jersey filed a claim with your Department in the sum of $335.56 pursuant to the Federal Tort Claims Act, approved August 2, 1946, 60 Stat. 842, 843, and that, upon consideration of the claim, it appeared that the claimant had been paid the sum of $68 in sick benefits by the Railroad Retirement Board. Under such circumstances the claimant was awarded the sum of $267.56 and the Railroad Retirement Board has now requested reimbursement from your Department in the amount paid by the Board as sick benefits to the claimant as the result of such injury.

"You point out that the right of an insurer or other subrogee to assert a claim under the Federal Tort Claims Act has been established in the case of United States v. Aetna Casualty & Surety Company, 338 U.S. 366. However, it is indicated that your doubt in the instant matter arises by reason of the fact that the subrogee, the Railroad Retirement Board, is an agency of the United States Government, and as such comes within the principles of the decisions 25 Comp. Gen. 322; 10 id. 288; 8 id. 600; 5 id. 162.

"The decisions of the accounting officers just cited are to the effect that, where public property in the custody of one agency of the Government is loaned to

another agency, the cost of repairs and replacement in the event of damage or loss of the property may not be paid from the appropriations of the borrowing agency. The reason for this rule is, generally, that the appropriations of the borrowing agency were not provided for the purpose of repairs or replacements of articles under the control of another agency, and that any payment therefor would result in an improper enhancement of the appropriations of the lending agency available for that purpose. However, the applicability of the rule of said decisions to the instant case is not apparent. Aside from the fact that there is not here involved the matter of repairs or replacement of damaged or lost public property, it is obvious that the appropriations of the Post Office Department are available for the payment requested by the Railroad Retirement Board, and that such payment would not result in any improper enhancement of appropriated funds of the Board. In that connection, it appears that the benefits in question were paid from the Railroad Unemployment Insurance Account established by 45 U.S. Code 360, which account is maintained by the contributions of employers and employee representatives covered by the Railroad Unemployment Insurance Act. See 45 U.S. Code 358.

"Further, particular attention is invited to section 12(o) of the Railroad Unemployment Insurance Act, 45 U.S. Code 362(o), which provides as follows:

> 'Benefits payable to an employee with respect to days of sickness shall be payable regardless of the liability of any person to pay damages for such infirmity. The Board shall be entitled to reimbursement from any sum or damages paid or payable to such employee or other person through suit, compromise, settlement, judgment, or otherwise on account of any liability (other than a liability under a health, sickness, accident, or similar insurance policy) based upon such infirmity, to the extent that it will have paid or will pay benefits for days of sickness resulting from such infirmity. Upon notice to the person against whom such right or claim exists or is asserted, the Board shall have a lien upon such right or claim, and any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of he amount of which the Board is entitled by way of reimbursement.'

Appendix K

L-2011-06

July 22, 2011

L-2011-06

Mr. Richard G. Lifto

Assistant Vice President

General Claims Department

BNSF Railway Company

2500 Lou Menk Drive

Fort Worth, Texas 76131

In reply refer to

C. 2011-3617

Dear Mr. Lifto:

This is in reply to your letter of June 24, 2011, wherein you asked the Railroad Retirement Board (RRB) to modify the factors it considers when determining whether to waive all or a portion of the RRB's lien under section 12(o) of the Railroad Unemployment Insurance Act (RUIA).

More specifically, you asked that the RRB not allow the 12(o) lien amount to be reduced by the amount of medical expenses that are paid on the employee's behalf pursuant to a Health and Welfare Agreement ("Agreement") entered into by rail management and rail labor on October 22, 1975. That Agreement provides in relevant part that:

In the case of an injury or a sickness for which an Employee who is eligible for Employee benefits and may have a right of recovery against the employing railroad, Benefits will be provided under the Policy Contract, subject to the provisions hereinafter set forth. The parties hereto do not intend that benefits provided under the Policy Contract will duplicate, in whole or in part, any amount recovered from the employing railroad for hospital, surgical, medical or related expenses of any kind specified in the Policy Contract, and they intend that benefits provided under the Policy Contract will satisfy any right of recovery against the employing railroad for such benefits to the extent of the benefits provided. Accordingly, benefits provided under the Policy Contract will be offset against any right of recovery the Employee may have against the employing

railroad for hospital, surgical, medical or related expenses for any kind specified in the Policy Contract. (Art. III, Sec. A.).

Section 341.5(b) of the RRB's regulations specifies the expenses that may be subtracted from the amount of damages recovered in calculating a 12(o) lien:

"(1) The medical and hospital expenses that the employee incurred because of his or her injury. These expenses are deductible even if they are paid under an insurance policy covering the employee or are covered by his or her membership in a medical or hospital plan or association. But such expenses are not deductible if they are not covered by insurance or by membership in a medical or hospital plan or association and are consequently paid by a railroad or other person directly to the doctor, clinic or hospital that provided the medical care or services.

(2) The cost of litigation. This includes both the amount of the fee to which the attorney and the employee have agreed and the other expenses that the employee incurred in the conduct of the litigation itself." [20 CFR 341.5(b)(1) and (2)].

You have explained that when an employee's medical expenses are paid for pursuant to the Agreement, the insurance company United Healthcare pays the medical service providers directly. The insurance is funded solely by BNSF. Thus, although BNSF does not pay the medical expenses directly to the providers of those services, it does pay the full cost of the insurance obtained to fund the railroad's liability for medical expenses resulting from the employee's injury or illness where the employee may have a right of recovery against the railroad.

The question then becomes whether payment of medical expenses by an insurance policy fully paid for by the railroad for the purpose of funding the railroad's liability for medical expenses resulting from employee injury or illness should be considered the equivalent of payment of medical expenses directly by the railroad.

A railroad's liability for an employee's injury would generally be determined under the provisions of the Federal Employers' Liability Act (45 U.S.C. § 51 et seq.) (FELA). That Act contains the following provision:

"Any contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this chapter, shall to that extent be void: *Provided*, That in any action brought against any such common carrier under or by virtue of any of the provisions of this chapter, such common carrier may set off therein any sum it has contributed or paid to any insurance, relief benefit, or indemnity that may

have been paid to the injured employee or the person entitled thereto on account of the injury or death for which said action was brought." 45 U.S.C. §55.

While section 55 in effect prohibits a railroad from exempting itself from liability under the FELA, it anticipates that a railroad may insure itself to cover liability under FELA and allows the railroad to set off amounts paid for such insurance from an amount paid to an employee who brought an action under FELA. The issue of whether benefits paid pursuant to such insurance should be set off from money due to the injured employee in an FELA action has been addressed by several courts. According to the U.S. Court of Appeals for the Ninth Circuit:

"In dealing with this issue both in the railroad and maritime cases, courts have been virtually unanimous in their refusal to make the source of the premiums the determinative factor in deciding whether the benefits should be regarded as emanating from the employer or from a 'collateral source'. Rather, courts have tried to look to 'the purpose and nature of the fund and of the payments' and not merely at their source." Folkestad v. Burlington Northern, Inc., 813 F.2d 1377, 1381 (9th Cir. 1987).

In the Folkestad decision, the Ninth Circuit discussed whether the insurance should be treated as a fringe benefit in part compensation for the employee's work. The Court noted that if the insurance is viewed as the product of the employee's labors, it is deemed to come from a source collateral to the employer rather than from the employer. Setoff in that instance would permit avoidance of FELA liability and such avoidance is prohibited by 45 U.S.C. § 55, 813 F.2d at 1381. The Court then noted that if the insurance is viewed as a contribution by the employer intended to fulfill FELA obligation, it would appear to fall within the proviso of 45 U.S.C. § 55 and setoff should be permitted. The Court considered the fact that the 1975 Health and Welfare Agreement between railroads represented by the National Carriers' Conference Committee and railroad employees represented by the Brotherhood of Maintenance of Way Employees, which contained a provision almost identical to the Agreement provision quoted at the beginning of this letter, expressly provided for setoff. Because the agreement between the railroad and the union was clear, the Court held that the amount of the FELA judgment should be reduced by the amount of the insurance benefits paid pursuant to the collective bargaining agreement.

Two other Federal Circuit Courts of Appeals have reached the same conclusion with respect to setoff. See Clark v. Burlington Northern, Inc. , 726. F.2d 448 (8th Cir. 1984), wherein the Court found that the railroad employer clearly intended to make a voluntary disability plan supplemental to sums recovered under the FELA and allowed setoff; and Burlington Northern Railroad Company v. Strong, 907 F. 2d 707 (7th Cir. 1990), wherein the Court found that benefits paid pursuant to a Supplemental Sickness Benefit Agreement, which provided that the Supplemental Sickness Benefits (SSB) received by employees would not duplicate recovery of lost wages, could be set off from the amount of a FELA award. The Seventh Circuit Court wrote that, "We agree with our colleagues in

the Eighth and Ninth Circuits that section 55 is not violated by an indemnity program agreed to between the union and the employer that allows the employer to deduct certain amounts from a FELA award. Section 55 was designed to prevent employers from receiving a windfall but not, as the Eighth Circuit points out, to 'deter them from voluntarily paying monthly disability payments in lieu of wages to disabled workers'" 907 F.2d at 714, quoting Clark, 726 F.2d at 451.

It is my opinion, based on the discussion set out in this letter, that the RRB should not allow the amount of its 12(o) lien to be reduced by the amount of medical expenses that are paid on an injured employee's behalf pursuant to the Health and Welfare Agreement (the Agreement) entered into by rail management and rail labor on October 22, 1975 because that Agreement is clear that rail management and rail labor have agreed that the amount of a FELA award should be reduced by the amount of the insurance benefits paid pursuant to the Agreement. I find further that this conclusion is consistent with the last sentence of section 341.5(b)(1) of the RRB's regulations, as the "insurance" cited therein refers to a fringe benefit provided as part of an employee's compensation paid by an employer and not to insurance purchased to indemnify a railroad employer against FELA liability.

A copy of this opinion is being released to the RRB's Office of Programs so that appropriate procedures may be developed to apply the conclusion reached herein on a prospective basis. See 20 CFR 261.3.

Sincerely,

Steven A. Bartholow

General Counsel

3101 Provisions of the Act

Section 12(n) of the Railroad Unemployment Insurance Act provides in part:

"Any employee claiming, entitled to, or receiving sickness benefits under this Act may be required to take such examination, physical, medical, mental, or otherwise, in such manner and at such times and by such qualified individuals, including medical officers or employees of the United States or a State, as the Board may prescribe. The place or places of examination shall be reasonably convenient for the employee. No sickness benefits shall be payable under this Act with respect to any period during which the employee unreasonably refuses to take or willfully obstructs an examination as prescribed by the Board...The Board may enter into agreements or arrangements with doctors, hospitals, clinics, or other persons for securing the examination, physical, medical, mental, or otherwise, of employees claiming, entitled to, or receiving sickness benefits under this Act....The Board may compensate any such doctors, hospitals, clinics, or other persons upon such reasonable basis as the Board shall prescribe...."

3102 Examination required

3102.01 Conditions for prescribing examination

An examination of the claimant for sickness benefits may be prescribed under any of the conditions set forth below:

a. Insufficient evidence for determination

Information on Form SI-1b or Form SI-34 is insufficient to determine ability to work.

b. Extended duration of infirmity

A date of recovery reported on a supplemental doctor's statement executed within 14 days of the estimated ending date of a period of disability is later than such date as determined on the basis of available evidence.

c. Protest

The claimant protests an initial determination that he is able to work and such initial determination was not based on an examination by a medical examiner.

d. Questionable evidence

The reliability of the medical evidence presented is questionable.

e. Test check

The claimant's infirmity, occupation, place of residence or other circumstances are such that his case is a proper subject of investigation with a view to assembling information relating to the administration of the Act.

3102.02 Additional factors to be considered

The following additional factors are to be considered in prescribing an examination:

a. Claimant's reported condition

If the claimant's condition is reported to be such that he could not appear at an examiner's office, the examination may be conducted at the place where the claimant is confined.

b. Qualification of examiner

If a specialized examination is required, the district office shall select an examiner qualified to conduct the type of examination required.

c. Place of examination

The place of examination is to be reasonably convenient for the claimant, taking into consideration his reported condition, the distance which he would have to travel, transportation facilities, travel cost and travel time.

d. Time of examination

The examination should be scheduled within the period of infirmity indicated by the medical information presented.

3102.03 Status of claimed days after determination

No day after the date of determination that a claimant is required to take an examination shall be considered as a day of sickness pending:

a. Receipt of a report of examination, or

b. Receipt of information showing that the examination was not made, or

c. Receipt of a new statement of sickness.

3103 District office responsible for selection of medical examiners

3103.01 General

The district office shall make arrangements with a sufficient number of qualified medical examiners located in its territory to permit ready scheduling of medical examinations of sickness claimants. The district office shall select all medical examiners needed.

3103.02 Files

The district office shall originate and maintain a medical examiner's index card file. The index card shall show, for each medical examiner, the doctor's name, address and telephone number, and the doctor's specialties or special equipment.

3104 Scheduling medical examination

3104.01 Request to district office

When requested by the chief of claims operations, the district office shall schedule the type of examination called for in the request.

3104.02 District office action

The district office shall:

a. schedule examinations in accordance with instructions in FOM-II-31 (if the district office cannot schedule an examination promptly, it shall notify the division of claims operations), and

b. send to the chief of claims operations two copies of the authorization letter along with the medical report and the doctor's claim for reimbursement for conducting the medical examination.

3105 Following up request for medical examination

A request for medical examination shall be followed up provided:

a. A claim is held pending the report of examination, and

b. No medical report or other information is received from the medical examiner, the claimant, or the district office on or before the pending date.

3106 Consideration of medical report

3106.01 Acceptable or unacceptable

A medical report is acceptable if the medical examiner has signed it, has shown the date of the examination, and has completed not less than two other items. If the report is not acceptable, practicable efforts shall be made to have it completed so that it will be acceptable. If, after such efforts have been made, a report is not acceptable, notify the medical examiner that he will not be paid for the examination, giving the reason.

3106.02 Satisfactory or unsatisfactory

An acceptable medical report shall be considered satisfactory if the examination was given no more than two days after the date specified by the district office in its authorization letter, and if enough items on the report are completed to permit a reasonably accurate determination of the claimant's ability to work. If a determination of the claimant's ability to work can be made even though the report is unsatisfactory, proceed as though the report were satisfactory.

3107 Denial of claims for refusing or obstructing examination

If it is found that the claimant unreasonably refused or willfully obstructed the examination, no benefits shall be paid with respect to the period beginning with the day when the claimant was to be examined, or if no such date was set, the date shown in the authorization letter as the latest date for conducting the examination, and ending immediately prior to (1) the day when the claimant places himself in a position to take the examination, or (2) the first day with respect to which a new statement of sickness is filed in his behalf.

3108 Instructions superseded

This article supersedes ROM-I-31.

3201 Provisions of the Act, as amended October 9, 1996

Section 2(c) of the Act provides in part that,

"(A) Generally

With respect to an employee who has ten or more years of service as defined in section 1(f) of the Railroad Retirement Act of 1974, who did not voluntarily retire and (in a case involving exhaustion of rights to benefits for days of unemployment) did not voluntarily leave work without good cause, and who had current rights to normal benefits for days of unemployment or days of sickness in a benefit year but has exhausted such rights, the benefit year in which such rights are exhausted shall be deemed not to be ended until the last day of the extended benefit period determined under this paragraph, and extended unemployment benefits or extended sickness benefits (depending on the type of normal benefit rights exhausted) may be paid for not more than 65 days of unemployment or 65 days of sickness within such extended benefit period.

(B) Beginning date

An employee's extended benefit period shall begin on the employee's first day of unemployment or first day of sickness, as the case may be, following the day on which the employee exhausts the employee's then current rights to normal benefits for days of unemployment or days of sickness and shall continue for 7 consecutive 14-day periods, each of which shall constitute a registration period, but no such extended benefit period shall extend beyond the beginning of the first registration period in a benefit year in which the employee is again qualified for benefits in accordance with section 3 on the basis of compensation earned after the first of such consecutive 14-day periods has begun."

Note: Prior to the 1996 amendments, extended benefit periods for employees with 10, but less than 15 years of service, consisted of 7 consecutive 14-day registration periods, during which a maximum of 65 days of benefits were payable. Extended benefit periods for employees with 15 or more years of service consisted of 13 consecutive 14-day registration periods, during which a maximum of 130 days of benefits were payable. The 1996 amendments limited payment of extended benefits to a maximum of 65 days during 7 consecutive registration periods for all employees. This change was effective with extended periods beginning after October 8, 1996.

3202 Provisions of the Regulations

See Railroad Retirement Board Regulations, Section 336.14.

3203 Elements of Extended Benefit Provisions

3203.01 Exhaustion of Rights

An employee is deemed to have exhausted his or her current rights to normal benefits for days of unemployment in a benefit year if:

a. the employee has received unemployment benefits for 130 days of unemployment in the benefit year; or

b. the employee has received unemployment benefits in the benefit year equal to his or her base year compensation; or

c. at the end of the benefit year, during which the employee was qualified for benefits, the employee has received less than the maximum normal unemployment benefits for the benefit year and the employee is not qualified for benefits in the next succeeding benefit year. (An employee who, though qualified for benefits, has not established a right to unemployment benefits in a benefit year, may not be regarded as having "received less than the maximum normal unemployment benefits for the benefit year". A qualified employee establishes a right to benefits by filing an application and a compensable claim, or a claim satisfying the waiting period requirement.)

3203.02 Years of Service

a. Computing years of service

For purposes of extended benefit periods, "years of service" are years of service as defined in section 1(f) of the Railroad Retirement Act. This includes "prior" service (railroad service before 1937), as well as service subsequent to 1936; service subsequent to the base year; and any military service which is creditable under the Railroad Retirement Act (see AIM-19). In accordance with section 1(f) of the Railroad Retirement Act, 12 months of service constitute a year of service. Thus, an employee who has 120 months of service is considered to have 10 years of service.

b. Effective date

Ten years of service is considered to have been acquired by an employee as of the first day to which creditable compensation is attributable in his or her 120th month of service. Benefits for days of unemployment in an extended benefit period are not payable for any day before the date as of which the employee acquired the requisite years of service. Generally, an extended benefit period will not begin before that date.

3203.03 Voluntary Leaving

a. In determining for purposes of an extended benefit period whether a leaving of work was "voluntary" and "without good cause", principles established in connection with determinations under section 4(a-2)(i) of the Railroad Unemployment Insurance Act are to be followed (see AIM-15).

b. Under some circumstances a voluntary leaving without good cause does not prevent establishment of an extended benefit period. Only a voluntary leaving creating the need for the extended benefit period and reasonably related to the claimant's continued unemployment after the exhaustion of his or her normal benefits affects his or her entitlement to such a period. When an employee has been paid compensation equal to 2.5 times the applicable monthly compensation base for time after a voluntary leaving it may generally be assumed that the voluntary leaving did not create the need for an extended benefit period.

c. Any voluntary leaving of work which occurred before the base year is to be disregarded.

d. A voluntary leaving without good cause occurring after a date with respect to which the claimant meets all the conditions precedent to establishment of an extended benefit period does not prevent the establishment of an extended benefit period beginning on that date and does not terminate the period. Under the provisions of section 4(a-2)(i) of the Act, however, no day in the period beginning with the date of the voluntary leaving, and continuing until the claimant has been paid compensation of not less than 2.5 times the applicable monthly compensation base with respect to time after the date of the voluntary leaving, can be a day of unemployment.

3203.04 Voluntary Retirement

a. In determining for purposes of extended benefit periods whether a claimant has voluntarily retired, principles established on that point in connection with determination as to availability for work should be followed (see AIM-8). In accordance with those principles, application for a retirement annuity is not in itself to be considered as conclusive evidence of voluntary retirement. Consideration must be given to any action of the claimant tending to limit his or her access to the labor market.

b. If a claimant is found to have voluntarily retired, the date of retirement is considered to be the date on which he or she took action showing that he or she was out of the labor market. In many cases this will be the date on which the claimant applied for the annuity or relinquished rights to return to service.

c. Any voluntary retirement which occurred before the base year upon which the extended benefit period would be based does not prevent establishment of such a period.

d. Voluntary retirement occurring after a date with respect to which the claimant meets all the conditions precedent to establishment of an extended benefit period does not prevent establishment of an extended benefit period beginning on that date and does not terminate the period. In such a case, the claimant may receive benefits in the extended benefit period for days before the date of retirement, provided that he or she is available for work and meets the other requirements of the Act. Benefits for days on or after the date of retirement will not ordinarily be payable since the claimant ordinarily cannot meet the availability requirement.

3203.05 Beginning of Extended Benefit Period

a. An extended benefit period begins with the first day of unemployment after the day on which the claimant exhausts his or her rights to normal unemployment benefits. Such first day may fall within a registration period established in accordance with section 1(h) of the Act. An extended benefit period cannot begin in a benefit year in which the claimant is a qualified employee and with respect to which he or she has not exhausted his or her rights to normal unemployment benefits.

b. If at the time of establishment of an extended benefit period it is apparent that beginning the period with a particular day would clearly be to the claimant's disadvantage, no registration is deemed to have been made with respect to such day, and, accordingly, the period cannot begin with such day.

c. Although an extended benefit period does not have to begin immediately after the exhaustion of rights to normal benefits, its beginning cannot, as a practical matter, be deferred indefinitely. The following rule has been determined to be administratively practical. An extended benefit period may not begin later than the first June 30 after the last day of the benefit year with respect to which normal rights to benefits were exhausted.

Example A: An employee exhausts normal unemployment benefits for BY 96 on January 28, 1997; he is not qualified for BY 97. An extended unemployment benefit period may start at any time from January 29, 1997, up to and including June 30, 1998.

Example B: An employee exhausts normal unemployment benefits for BY 96 on January 28, 1997; she receives some normal sickness benefits in BY 96 and exhausts those benefits on June 30, 1997, by reason of the ending of the general benefit year; an extended sickness benefit period is established for April 1 to September 29, 1998. An extended unemployment benefit period may start at

any time from January 29, 1997 up to and including June 30, 1999, which is the first June 30 after the ending of BY-96 as previously extended.

3203.06 Length of Extended Benefit Period

For an employee with 10 or more years of service, an extended benefit period runs for seven consecutive 14-day periods. Benefits are payable for not more than 65 days of unemployment in such an extended benefit period. Employees with less than 10 years of service are not eligible for extended benefits.

Note: For employees having 10, but less than 15 years of service, extended benefit periods with beginning dates prior to October 9, 1996, ran for seven consecutive 14-day periods. Benefits were payable for not more than 65 days of unemployment in such periods. For employees having 15 or more years of service, extended benefit periods with beginning dates prior to October 9, 1996, ran for 13 consecutive 14-day periods during which a maximum of 130 days of benefits were payable. If an employee acquired 15 years of service during an extended benefit period based on 10 years of service, the extended benefit period continued until the employee had 13 consecutive 14-day periods.

3203.07 Ending of Benefit Year

A benefit year with respect to which an extended benefit period is established for an employee does not end for that employee until the last day of the extended benefit period. When both an extended unemployment benefit period and an extended sickness benefit period are established, the benefit year does not end before the last day of the later of the two periods.

3203.08 Effect On Normal Sickness Benefits

A benefit year which, as a result of establishment of an extended unemployment benefit period, does not end until after the end of the general benefit year, is continued for sickness benefit purposes as well as for unemployment benefit purposes. Such continuation of the benefit year does not affect the limitation on amount of normal sickness benefits payable in the benefit year; the limit remains at 130 days or an amount equal to base year wages. Sickness benefits based on rights to benefits in the next succeeding general benefit year are not payable for any day before the day following the end of the extended unemployment benefit period.

3203.09 Sequence of Registration Periods

Each of the consecutive 14-day periods in an extended benefit period constitutes a registration period. Thus, once the beginning date of an extended benefit period has been established, the registration periods for extended benefits are fixed; the pattern of days of unemployment and any changes in place of

registration do not affect the beginning or ending dates of the registration periods.

3203.10 Relationship of Extended Unemployment to Extended Sickness Benefits

An employee's exhaustion of rights to normal unemployment benefits may occur during an extended period based on exhaustion of rights to normal sickness benefits. In such a case the employee may begin another extended benefit period, this one based on his or her exhaustion of normal unemployment benefit rights. The establishment of this extended benefit period does not terminate the previously established extended sickness benefit period. The two extended benefit periods continue to exist independently, each for the period prescribed in the Act. Conversely, an employee who exhausted his or her sickness benefit rights during an extended unemployment benefit period could then have an extended sickness benefit period.

3204 Determining Entitlement to Extended Benefit Period

3204.01 Authority to Make Determinations

In most cases extended benefit periods are established by computer action, without examiner determination. In these cases information of record is sufficient to indicate entitlement. When information on the record does not warrant establishing an extended benefit period automatically, determination by an examiner is necessary. The examiners and specialists in the Office of Programs-Operations are authorized to make such determinations. Some of the points to be considered in making determinations are discussed below.

3204.02 Years of Service

The number of years of service shown in the RRB's records is to be accepted as correct unless the employee has indicated that he or she has sufficient service to qualify for extended benefits, but the record shows insufficient service. If there is such an indication that the claimant may have more service than is shown on EDMA, the additional service should be developed in accordance with instructions in AIM-19.

3204.03 Voluntary Retirement and Voluntary Leaving

In most cases, no special information will be needed on these points because the field office would have denied claims for normal benefits if the claimant had voluntarily retired or voluntarily left work without good cause. If there is doubt on either point, investigation should be made.

3204.04 Establishing Beginning Date

If the claimant is found to meet the requirements for an extended benefit period, the beginning and ending dates of the period are to be determined. If beginning the extended benefit period with a particular day would result in there being less than five days unemployment in the first 14 days, the extended benefit period should not ordinarily be begun with such day since to do so would clearly be to the claimant's disadvantage. In such a case, no registration for the day would be considered to have been made and consequently it would not be a day of unemployment.

3205 Notice to Claimant

3205.01 Claimant Held Entitled

Form Letter ID-20-5 serves as notice that a claimant is entitled to an extended unemployment benefit period. Such notice is usually automatically sent by the computer when the claimant exhausts his or her rights to normal unemployment benefits and is entitled to an extended benefit period.

3205.02 Claimant Not Entitled

Notice of a determination that an extended unemployment benefit period cannot be established is to be sent to the claimant. The notice is to explain why an extended benefit period cannot be established, and is to be mailed in each case in which benefits are denied on the basis of such a determination.

3206 Determination on Claims in an Extended Benefit Period

Claims for days in an extended unemployment benefit period are to be adjudicated in accordance with instructions in the AIM. When a claim ending on one of the 14 days before the end of the extended period is processed, the claimant is to be advised that his or her extended benefit period is about to end. If the extended benefit period ends before the end of the general benefit year, Form Letter ID-32c is to be sent; otherwise Form Letter ID-32d should be sent.

3221 Provisions of the Act, as amended October 9, 1996

Section 2(c) of the Act provides in part that,

"(A) Generally

With respect to an employee who has ten or more years of service as defined in section 1(f) of the Railroad Retirement Act of 1974, who did not voluntarily retire and (in a case involving exhaustion of rights to benefits for days of unemployment) did not voluntarily leave work without good cause, and who had current rights to normal benefits for days of

unemployment or days of sickness in a benefit year but has exhausted such rights, the benefit year in which such rights are exhausted shall be deemed not to be ended until the last day of the extended benefit period determined under this paragraph, and extended unemployment benefits or extended sickness benefits (depending on the type or normal benefit rights exhausted) may be paid for not more than 65 days of unemployment or 65 days of sickness within such extended benefit period.

(B) Beginning date

An employee's extended benefit period shall begin on the employee's first day of unemployment or first day of sickness, as the case may be, following the day on which the employee exhausts the employee's then current rights to normal benefits for days of unemployment or days of sickness and shall continue for 7 consecutive 14-day periods, each of which shall constitute a registration period, but no such extended benefit period shall extend beyond the beginning of the first registration period in a benefit year in which the employee is again qualified for benefits in accordance with section 3 on the basis of compensation earned after the first of such consecutive 14-day periods has begun.

Note: Prior to the 1996 amendments, extended benefit periods for employees with 10, but less than 15 years of service, consisted of 7 consecutive 14-day registration periods, during which a maximum of 65 days of benefits were payable. Extended benefit periods for employees with 15 or more years of service consisted of 13 consecutive 14-day registration periods, during which a maximum of 130 days of benefits were payable. The 1996 amendments limited payment of extended benefits to a maximum of 65 days during 7 registration periods for all employees. The change was effective with extended periods beginning after October 8, 1996.

(C) Termination when employee reaches age 65

Notwithstanding any other provision of this paragraph, an extended benefit period for sickness benefits shall terminate on the day next preceding the date on which the employee attains age 65, except that it may continue for the purpose of paying benefits for days of unemployment."

3222 Provisions of the Regulations

See Railroad Retirement Board Regulations, Section 336.14.

3223 Elements of Extended Benefit Provision

3223.01 Exhaustion of Rights

An employee is deemed to have exhausted his or her current rights to normal benefits for days of sickness in a benefit year if:

a. an employee has received sickness benefits for 130 days of sickness in the benefit year; or

b. an employee has received sickness benefits in the benefit year equal to his or her base year compensation; or

c. at the end of the benefit year during which the employee was qualified for benefits, the employee has received less than the maximum normal sickness benefits for the benefit year and the employee is not qualified for benefits in the next succeeding benefit year. (An employee who, though qualified for benefits, has not established a right to sickness benefits in a benefit year, may not be regarded as having "received less than the maximum normal sickness benefits for the benefit year". A qualified employee establishes a right to benefits by filing a statement of sickness and a compensable claim, or a claim satisfying the waiting period requirement.)

3223.02 Years of Service

a. Computing years of service

For purposes of extended benefit periods, "years of service" are years of service as defined in section 1(f) of the Railroad Retirement Act. Service includes "prior" service (railroad service before 1937), as well as service subsequent to 1936; service subsequent to the base year; and any military service which is creditable under the Railroad Retirement Act (see AIM-19). In accordance with section 1(f) of the Railroad Retirement Act, 12 months of service constitute a year of service. Thus, an employee who has 120 months of service is considered to have 10 years of service.

b. Effective date

Ten years of service is considered to have been acquired by an employee as of the first day to which creditable compensation is attributable in his or her 120th month of service. Benefits for days of sickness in an extended benefit period are not payable for any day before the date as of which the employee acquired the requisite years of service. Generally, an extended benefit period will not begin before that date.

3223.03 Voluntary Retirement

a. In determining for purposes of an extended benefit period whether a claimant has voluntarily retired, principles established on that point in connection with determination as to availability for work should be followed (see AIM-8). In accordance with those principles, application for a retirement annuity is not in itself to be considered as conclusive evidence of voluntary retirement. Consideration must be given to any action of the claimant tending to limit his or her access to the labor market.

b. If a claimant is found to have voluntarily retired, the date of retirement is considered to be the date on which he or she took action showing that he or she was out of the labor market. In many cases this will be the date on which the claimant applied for the annuity or relinquished rights to return to service.

c. Any voluntary retirement which occurred before the base year upon which the extended benefit period would be based does not prevent establishment of such a period.

d. Voluntary retirement occurring after a date with respect to which the claimant meets all the conditions precedent to establishment of an extended benefit period does not prevent establishment of an extended benefit period beginning on that date and does not terminate the period.

3223.04 Effect of Attaining Age 65

a. Extended sickness benefits are not payable for the day on which an employee attains age 65 or for any day thereafter.

b. An extended sickness benefit period terminates for the purpose of paying sickness benefits on the day next preceding the date on which the employee attains age 65. But it may be continued for the purpose of paying unemployment benefits.

c. An extended sickness benefit period continues for the purpose of paying unemployment benefits until (1) the end of the seventh (or thirteenth) registration period of the extended benefit period or until (2) the employee again becomes entitled to normal sickness benefits. That is, if the employee is qualified for benefits in a later benefit year and applies for sickness benefits in that year and is found entitled to them, the extended sickness benefit period then terminates for unemployment benefit purposes.

   To illustrate this point, assume that an employee with 10 years of service exhausts his normal BY-96 sickness benefits on April 14, 1997. He begins an extended sickness benefit period of 7 registration periods on

April 15, 1997. On May 15, 1997 he becomes age 65. Consequently, the extended sickness benefit period terminates for the purpose of paying sickness benefits on May 14, 1997. But it may continue for the purpose of paying unemployment benefits, as illustrated below.

Example 1 The employee recovers from his sickness and becomes able to work on June 15, 1997. He claims normal BY-96 unemployment benefits from June 15 through October 13, the end of the extended sickness benefit period. He is a qualified employee for BY-97, so he receives normal BY-97 unemployment benefits beginning October 14, 1997.

Example 2 As in Example 1, the employee claims normal BY-96 unemployment benefits beginning June 15, 1997. However, he exhausts those benefits on August 31, 1997. He therefore begins an extended BY-97 unemployment benefit period on September 1, 1997. That period runs for 7 registration periods.

Example 3 As in Example 1, the employee claims and receives normal unemployment benefits beginning June 15, 1997. However, he becomes sick again on September 1, 1997. Since he is qualified for BY-97, he claims and receives normal BY-97 sickness benefits beginning September 1, 1997. In this instance the extended sickness benefit period which was continued for unemployment benefit purposes beyond age 65 ends for unemployment benefit purposes on August 31, 1997.

Example 4 The employee does not become able to work. He claims and receives normal BY-97 sickness benefits beginning July 1, 1997. Therefore, the extended sickness benefit period was not continued at all for the purpose of paying unemployment benefits.

3223.05 Beginning of Extended Benefit Period

a. An extended sickness benefit period begins with the first day of sickness after the day on which the claimant exhausts his or her rights to normal sickness benefits. Such first day may fall within a registration period established in accordance with section 1(h) of the Act. An extended sickness benefit period cannot begin in a benefit year in which the claimant is a qualified employee and with respect to which he or she has not exhausted his or her rights to normal sickness benefits.

b. If at the time of establishment of an extended sickness benefit period it is apparent that beginning the period with a particular day would clearly be to the claimant's disadvantage, it is considered that there is no statement of sickness with respect to such day, and, accordingly, the period cannot begin with such day.

c. Although an extended benefit period does not have to begin immediately after the exhaustion of rights to normal benefits, its beginning cannot, as a practical matter, be deferred indefinitely. The following rule has been determined to be administratively practical. An extended benefit period may not begin later than the first June 30 after the last day of the benefit year with respect to which normal rights to benefits were exhausted.

Example A: An employee exhausts sickness benefits for BY-97 on January 5, 1998; he is not qualified for BY-98. An extended sickness benefit period may start at any time from January 6, 1998, up to and including June 30, 1999.

Example B: An employee exhausts BY-96 sickness benefits on January 5, 1997; she receives some normal unemployment benefits in BY-96 and exhausts those benefits on June 30, 1997, by reason of the ending of the general benefit year. An extended unemployment benefit period is established for April 1 to September 29, 1998. An extended sickness benefit period may start as late as June 30, 1999, which is the first June 30 after the ending of BY-96 as previously extended.

3223.06 Length of Extended Benefit Period

For an employee with 10 or more years of service, an extended benefit period runs for seven consecutive 14-day periods. Benefits are payable for not more than 65 days of sickness in such an extended benefit period. Employees with less than 10 years of service are not eligible for extended benefits.

Note: For employees having 10, but less than 15 years of service, extended benefit periods with beginning dates prior to October 9, 1996, ran for seven consecutive 14-day periods. Benefits were payable for not more than 65 days of sickness in such periods. For employees having 15 or more years of service, extended benefit periods with beginning dates prior to October 9, 1996, ran for 13 consecutive 14-day periods during which a maximum of 130 days of benefits were payable. If an employee acquired 15 years of service during an extended benefit period based on 10 years of service, the extended benefit period continued until the employee had 13 successive 14-day periods.

3223.07 Ending of Benefit Year

A benefit year with respect to which an extended sickness benefit period is established for an employee does not end for that employee until the last day of the extended benefit period. When both an extended sickness benefit period and an extended unemployment benefit period are established, the benefit year does not end before the last day of the later of the two periods.

3223.08 Effect on Normal Unemployment Benefits

A benefit year which, as a result of establishment of an extended sickness benefit period, does not end until after the end of the general benefit year, is continued for unemployment benefit purposes as well as for sickness benefit purposes. Such continuation of the benefit year does not affect the limitation on amount of normal unemployment benefits payable in the benefit year; the limit remains at 130 days or an amount equal to base year wages. Unemployment benefits based on rights to benefits in the next succeeding general benefit year are not payable for any day before the day following the end of the extended sickness benefit period.

3223.09 Sequence of Registration Periods

Each of the consecutive 14-day periods in an extended sickness benefit period constitutes a registration period. Thus, once the beginning date of an extended benefit period has been established, the registration periods for extended benefits are fixed; the pattern of days of sickness does not affect the beginning or ending dates of the registration periods.

3223.10 Relationship of Extended Sickness to Extended Unemployment Benefits

An employee's exhaustion of rights to normal sickness benefits may occur during an extended benefit period based on exhaustion of rights to normal unemployment benefits. In such a case the employee may begin another extended benefit period, this one based on his or her exhaustion of normal sickness benefit rights. The establishment of this extended benefit period does not terminate the previously established extended unemployment benefit period. The two extended benefit periods continue to exist independently, each for the period prescribed in the Act. Conversely, an employee who exhausted his or her unemployment benefit rights during an extended sickness benefit period could then have an extended unemployment benefit period.

3224 Determining Age 65

An employee attains age 65 on the day before his or her sixty-fifth birthday. Thus, an employee born on January 15, 1925 attains age 65 on January 14, 1990. For purposes of determining an employee's rights to benefits in an extended sickness benefit period, the adjudicating office may rely on evidence of age in the RRB's records and files at the time the determination is made. In the absence of fraud, a determination allowing benefits in an extended sickness benefit period is not to be disturbed although based on evidence as to age later found to be incorrect. But no additional benefits may be paid on the basis of the incorrect evidence. In determining whether an employee has attained age 65, the adjudicating office is to consider the evidence of age in the Employment Data Maintenance system (EDMA) and in the employee's application for benefits.

3225 Determining Entitlement to Extended Benefit Period

3225.01 Authority to Make Determinations

In most cases extended benefit periods are established by computer action, without examiner determination. In these cases information of record is sufficient to indicate entitlement. When information on the record does not warrant establishing an extended benefit period automatically, determination by an examiner is necessary. The examiners and specialists in the Office of Programs-Operations are authorized to make such determinations. Some of the points to be considered in making determinations are discussed below.

3225.02 Years of Service

The number of years of service shown in the RRB's records is to be accepted as correct unless the employee has indicated that he or she has sufficient years of service to qualify for extended benefits, but the record shows insufficient service. If there is such an indication that the claimant may have more service than is shown on EDMA, the additional service should be developed in accordance with instructions in AIM-19.

3225.03 Voluntary Retirement

In the absence of evidence to the contrary it may be determined that the claimant did not voluntarily retire. If the claimant is receiving an annuity under the Railroad Retirement Act there is a possibility that he or she voluntarily retired. Also, if the claimant is over 60 years of age and there is a gap of a month or more between the last day he or she worked and the first day of infirmity, the claimant may have retired before the infirmity began. In these types of cases, an investigation and a determination are necessary.

3225.04 Action on Evidence of Age

The clearance portion of the RUIA claimant record contains the employee's year of birth as shown on EDMA and the year of birth as shown on his or her application for benefits. To determine whether an employee has attained age 65, both of these years must be checked. Action is to be taken in accordance with instructions in the examples below.

Example 1: Both years of birth show that the employee attained age 65 before the calendar year in which the extended sickness benefit period would begin. In this case an extended sickness benefit period should not be established.

Example 2: Both years of birth show that the employee will not attain age 65 until after the calendar year in which the extended sickness benefit period would end. In this case it may be determined that the employee has not attained age 65 and will not attain it during the extended benefit period.

<u>Example 3</u>: Both years of birth agree and show that the employee will attain age 65 during the calendar year in which the extended sickness benefit period would begin or would end. In this case, the full date of birth as shown on the application for benefits is to be accepted as correct.

a. If the date of birth on the application indicates that the employee attained age 65 before the date the extended period would begin, an extended benefit period should not be established.

b. If the employee will attain age 65 after the end of the extended period, the extended period may be established.

c. If the employee will attain age 65 during the extended benefit period, the extended period may be established, but a stop is to be entered on the record.

<u>Example 4</u>: The years of birth do not agree and the earlier shows that the employee will attain age 65 before or during the calendar year in which the extended period would begin or end.

a. If the employee is receiving an RRA annuity, check the DATAQ record.

   1. If the date of birth is established on the DATAQ record, accept it.

   2. If the date of birth is not established on the DATAQ record, proceed as in b below.

b. If the employee is not receiving an RRA annuity and

   1. the application year is earlier, accept the date of birth shown on the application. If the date of birth is not shown on the application, proceed as in 2. below.

   2. the application year is later, mail the employee a letter requesting that he or she submit proof of date of birth if he or she has not attained age 65.

<u>Example 5</u>: One year of birth is missing (either the year is missing from EDMA or the year is missing from the application and is not found on an application).

a. If the employee is receiving an RRA annuity, check the DATAQ record.

   1. If a date of birth is established on DATAQ, accept it.

   2. If a date of birth is not established on DATAQ, proceed as in b. below.

b. If the employee is not receiving an RRA annuity and

1. the year of birth shown indicates that the employee is less than age 65, mail the claimant a letter requesting a report of his or her date of birth and proof, if available.

2. the year of birth shown indicates that the employee is 65, send the claimant a letter informing him or her that he or she will have to submit proof of date of birth if he or she has not attained age 65.

3225.05 Establishing Beginning Date

If the claimant is found to meet the requirements for an extended benefit period, the beginning and ending dates of the period is to be determined. If beginning the extended benefit period with a particular day would result in there being less than five days of sickness in the first 14 days, the extended benefit period should not ordinarily be begun with such day since to do so would clearly be to the claimant's disadvantage. In such a case, no registration for the day would be considered to have been made and consequently it would not be a day of sickness.

3226 Notice to Claimant

3226.01 Claimant Held Entitled

Form Letter ID-20-7 serves as notice that a claimant is entitled to an extended sickness benefit period. Such notice is usually automatically sent by the computer when the claimant exhausts his or her rights to normal sickness benefits and is entitled to an extended benefit period.

3226.02 Claimant Not Entitled

Notice of a determination that an extended sickness benefit period cannot be established is to be sent to the claimant. The notice should explain why an extended benefit period cannot be established, and is to be mailed in each case in which benefits are denied on the basis of such a determination.

3227 Determination on Claims in an Extended Benefit Period

Claims for days in an extended sickness benefit period are to be adjudicated in accordance with instructions in the AIM. When a claim ending on one of the 14 days before the end of the extended period is processed, the claimant is to be advised that his or her extended benefit period is about to end. If the extended benefit period ends before the end of the general benefit year, Form Letter ID-32g is to be sent; otherwise, Form Letter ID-32h should be sent.

3301 Provisions of the Act

Section 2(c) of the Act provides, in part, that

"... For an employee who has ten or more years of service, who did not voluntarily retire and (in a case involving unemployment) did not voluntarily leave work without good cause, who has fourteen or more consecutive days of sickness, and who is not a "qualified employee" for the general benefit year current when such unemployment or sickness commences but is or becomes a "qualified employee for the next succeeding general benefit year, such succeeding benefit year shall, in his case, begin on the first day of the month in which such unemployment or sickness commences. Notwithstanding the other provisions of this subsection. in the case of a succeeding benefit year beginning in accordance with the next preceding sentence by reason of sickness, such sentence shall not operate to permit the payment of benefits in the period provided for in such sentence for any day of sickness beginning with the day on which age 65 is attained and continuing through the day preceding the first day of the next succeeding general benefit year. For purposes of this subsection.the Board may rely on evidence of age available in its records and files at the time determinations of age are made."

3302 Elements of the Provisions

3302.01 Qualified employee

The qualifying earnings requirements for accelerated benefits or beginning a year early are: (1) the claimant must not be a qualified employee for the current general benefit year when his or her individual benefit year is to begin, and (2) he or she must be, or become, a qualified employee for the next succeeding general benefit year.

3302.02 Fourteen consecutive days of unemployment

The 14 consecutive days of unemployment necessary for beginning a benefit year early may be in more than one registration period. The 14 days may occur before the claimant has become a qualified employee for the next succeeding general benefit year. The 14 consecutive days may not include days for which benefits were paid in an earlier benefit year. For example: a claimant's extended benefit period for BY-87 ends September 12, 1988; benefits are payable with respect to all days through September 12, 1988; the claimant is not qualified for BY-88 but is qualified for BY-89; September 12, 1988 and earlier days cannot be included as part of the 14 consecutive days of unemployment necessary for the purposes of establishing an early beginning of BY-89.

3302.03 Years of service

For purposes of early beginning of benefit year, "years of service" are years of service as defined in Section 1(f) of the Railroad Retirement Act of 1974. Service includes service before 1937, as well as service subsequent to 1936; it includes service subsequent to the base year; it includes any military service which is creditable under the Railroad Retirement Act. (See AIM-19.) In accordance with section 1(f) of the Railroad Retirement Act, 12 months of service constitute a year of service. Thus, an employee who has 120 months of service is considered to have ten years of service. The 120th month of service must have occurred before the first day of the benefit year which is begun early.

3302.04 Beginning and ending date of benefit year

The first day of a benefit year which is begun early is the first day of the month containing the first of the 14 consecutive days of unemployment. For example: a claimant who is not qualified for BY-87 but is qualified for BY-88 who meets the 14 consecutive days of unemployment requirement with the days February 29, 1988 through March 13, 1988 can begin his or her accelerated benefit year with February 1, 1988, the first day of the month containing the first of the 14 consecutive days of unemployment. The earliest possible beginning date of an accelerated benefit year is the July 1st preceding the beginning of the general benefit year. (BY-88 could not begin earlier than July 1, 1987. A benefit year which begins early ends at the same time as the general benefit year. For instance, if BY-88 is begun for an employee on February 1, 1988, it ends on June 30, 1989, unless it is extended beyond that date as a result of the establishment of an extended benefit period.

3302.05 Voluntary leaving

a. In determining, for purposes of the early beginning of a benefit year, whether a leaving of work was "voluntary" and "without good cause", the principles established in connection with determinations under Section 4(a-2)(i) of the Railroad Unemployment Insurance Act should be followed. See AIM-15.

b. Under some circumstances a voluntary leaving without good cause does not prevent the beginning of a benefit year early. Only a voluntary leaving which creates the need for beginning the benefit year early and which is reasonably related to the employee's unemployment at the time, affects his or her entitlement to an early beginning. When an employee has been paid compensation equal to 2.5 times the monthly compensation base for time after a voluntary leaving without good cause, it may generally be assumed that the voluntary leaving did not create the need for beginning the benefit year early.

c. A voluntary leaving without good cause which occurs after the employee's acquisition of ten years of service and after the 14 consecutive days of unemployment does not prevent an early beginning of a benefit year and does not terminate the year. Under the provisions of section 4(a-2)(i) of the Act, however, no day beginning with the date of the voluntary leaving, and continuing until the employee has been paid creditable compensation of 2.5 times the monthly compensation base with respect to time after the date of the voluntary leaving, can be a day of unemployment.

3302.06 Voluntary retirement

a. In determining, for purposes of the early beginning of a benefit year, whether an employee has voluntarily retired, principles established on that point in connection with determinations as to availability for work should be followed. See AIM-8. In accordance with those principles, application for a retirement annuity is not in itself to be considered as conclusive evidence of voluntary retirement. Consideration must be given to any action of the employee tending to limit his or access to the labor market.

b. If an employee is found to have voluntarily retired, the date of retirement shall be considered to be the date on which the individual took action showing that he or she was out of the labor market. In many cases this will be the date on which the employee applied for the annuity or relinquished rights to return to service.

c. Voluntary retirement occurring after the employee's acquisition of ten years of service and after the 14 consecutive days of unemployment does not prevent an early beginning of a benefit year and does not terminate the year. In such case, the employee may receive benefits for days before the date of retirement, provided that he or she is available for work and meets the other requirements of the Act. Benefits for days on or after the date of retirement will not ordinarily be payable since the employee ordinarily cannot meet the availability requirement.

3302.07 Effect on sickness benefits

A benefit year which begins early for the purpose of paying unemployment benefits also begins early for sickness benefit purposes. The early beginning does not affect or limit the amount of normal sickness benefits payable in the benefit year; the limit remains 130 days or benefits equal to the base year wages.

3302.08 Relation to extended benefit periods

A benefit year should not begin early for an employee until after the end of any extended unemployment or sickness benefit period to which he is entitled as a result of exhaustion of rights to normal benefits in an earlier general benefit year. If rights to normal benefits are exhausted in a benefit year which was begun

early, an extended benefit period may be established if the usual requirements are met.

3302.09 Creditable earnings after early beginning date

Creditable base year wages earned after a benefit year has been begun early are to be taken into account in determining the claimant's daily benefit rate and the maximum amount of benefits payable, and any necessary adjustments are to be made periodically.

3302.10 Registration periods

Registration periods for normal unemployment benefits in a benefit year which is begun early are established according to provisions of the Act and regulations respecting registration periods for unemployment benefits. A registration period in a benefit year which is begun early may begin with a day earlier than the first of the 14 consecutive days of unemployment on the basis of which the benefit year was begun early. The fact that a day is earlier than the first of the 14 consecutive days does not prevent it from being a day of unemployment. Registration periods for sickness benefits in a benefit year which is begun early for the purpose of paying unemployment benefits are established according to provisions of the Act and of the regulations respecting registration periods for sickness benefits. Such a registration period may begin with a day earlier than the first of the 14 consecutive days of unemployment on the basis of which the benefit year was begun early.

3303 Determining Entitlement to Early Beginning of the Benefit Year

3303.01 Authority to make determination

The division of program operations is authorized to make determinations as to the early beginning of a benefit year for the purpose of paying unemployment benefits. Some of the points to be considered when making accelerated benefit year determinations are discussed below.

3303.02 Years of service

The number of years of service show in the Board's records shall be accepted as correct unless the claimant has indicated that he has ten years of service and the records shows less than that. If there is such an indication that the claimant may have more service than is shown on the wage record, the additional service should be developed in accordance with instructions in AIM-19.

3303.03 Qualifying wages

To determine whether a claimant is a qualified employee for the next succeeding general benefit year, a record of "lag service" and compensation is to be obtained in accordance with instructions in AIM-19. If it is initially determined that the employee is not qualified for the next succeeding general benefit year but he or she later earns enough to qualify for the next succeeding general benefit year, the benefit year may begin with the first of the month in which the employee's 14 or more consecutive days of unemployment began.

3303.04 Voluntary retirement - voluntary leaving

No special inquiry is needed generally because the field office would have denied claims if the claimant had voluntarily retired or voluntarily left work without good cause. However, if there is doubt on either point, an investigation should be made.

3304 Notice to Claimant

A notice of the determination that a benefit year cannot be begun early should be sent to the claimant, showing why the benefit year cannot be begun early, in each case in which benefits are denied on the basis of such a determination. The letter should contain the claimant's review and appeal rights.

3305 Additional Base Year Earnings

3305.01 Tentative determinations

If the report of base year wages used to establish the early beginning of a benefit year was completed before the end of the base year and the base year earnings on record are less than the maximum amount of normal benefits for a benefit year, the determination should be considered as tentative. The daily benefit rate shall also be considered tentative if based on a pay rate report completed before the end of the base year.

3305.02 Review of tentative determinations

When a determination is tentative, as described above, it should be reviewed shortly after the end of the calendar year. If the claimant may have had additional creditable service in the base year, he or she should be given an opportunity to claim it by sending him or her Form Letter ID-33e (Exhibit F). In any case in which the claimant's reply to Form Letter ID-33e or information in the file indicates that the claimant was not in covered employment in the base year subsequent to the employment which had been previously reported when the initial determination of benefit rights was made consider the tentative determinations as final.

3306 Form Letters Prescribed

ID-33 (9-88) ID-33c (9-88)
ID-33a (9-88) ID-33d (9-88)
ID-33b (9-88) ID-33e (9-88)

3321 Provisions of the Act

Section 2(c) of the Act provides, in part, that

"...For an employee who has ten or more years of service, who did not voluntarily retire and (in a case involving unemployment) did not voluntarily leave work without good cause, who has fourteen or more consecutive days of unemployment or fourteen or more consecutive days of sickness, and who is not a 'qualified employee' for the general benefit year current when such unemployment or sickness commences but is or becomes a 'qualified employee' for the next succeeding general benefit year, such succeeding benefit year shall, in his case, begin on the first day of the month in which such unemployment or sickness commences. Notwithstanding the other provisions of this subsection...in the case of a succeeding benefit year beginning in accordance with the next preceding sentence by reason of sickness, such sentence shall not operate to permit the payment of benefits in the period provided for in such sentence for any day of sickness beginning with the day on which age 65 is attained and continuing through the day preceding the first day of the next succeeding general benefit year. For purposes of this subsection...the Board may rely on evidence of age available in its records and files at the time determinations of age are made."

3322 Elements of the Provisions

3322.01 Qualified employee

The qualifying earnings requirements for accelerated benefits or beginning a year early are: (1) the claimant must not be a qualified employee for the current general benefit year when his or her individual benefit year is to begin, and (2) he or she must be, or become, a qualified employee for the next succeeding general benefit year.

3322.02 Fourteen consecutive days of sickness

The 14 consecutive days of sickness necessary for beginning a benefit year early may be in more than one registration period. The 14 days may occur before the claimant has become a qualified employee for the next succeeding general benefit year.

The 14 consecutive days may not include days for which benefits were paid in an earlier benefit year. For example: a claimant's extended benefit year period for

BY-87 ends September 12, 1988; benefits are payable with respect to all days through September 12, 1988; the claimant is not qualified for BY-88 but is qualified for BY-89; September 12, 1988 and earlier days cannot be included as part of the 14 consecutive days of sickness necessary for the purposes of establishing an early beginning of BY-89.

3322.03 Years of service

For purposes of early beginning of benefit year, "years of service" are years of service as defined in Section 1(f) of the Railroad Retirement Act of 1974. Service includes service before 1937, as well as service subsequent to 1936; it includes service subsequent to the base year; it includes any military service which is creditable under the Railroad Retirement Act. See AIM-19. In accordance with Section 1(f) of the Railroad Retirement Act, 12 months of service constitute a year of service. Thus, an employee who has 120 months of service is considered to have ten years of service. The 120th month of service must have occurred before the first day of the benefit year which is begun early.

3322.04 Beginning and ending date of benefit year

The first day of a benefit year which is begun early is the first day of the month containing the first of the 14 consecutive days of sickness. For example: a claimant who is not qualified for BY-87 but is qualified for BY-88 who meets the 14 consecutive days of sickness requirement with the days February 29, 1988 through March 13, 1988 can begin his or her accelerated benefit year with February 1, 1988, the first day of the month containing the first of the 14 consecutive days of sickness. The earliest possible beginning date of an accelerated benefit year is the July 1st preceding the beginning of the general benefit year. (BY-88 could not begin earlier than July 1, 1987.) A benefit year that begins early ends at the same time as the general benefit year. For instance, if BY-88 is begun for an employee on February 1, 1988 it ends on June 30, 1989, unless it is extended beyond that date as a result of the establishment of an extended benefit period.

3322.05 Voluntary retirement

a. In determining, for purposes of the early beginning of a benefit year, whether an employee has voluntarily retired, principles established on that point in connection with determinations as to availability for work should be followed. See AIM-8. In accordance with those principles, application for a retirement annuity is not in itself to be considered as conclusive evidence of voluntary retirement. Consideration must be given to any action of the employee tending to limit his or her access to the labor market.

b. If an employee is found to have voluntarily retired, the date of the retirement shall be considered to be the date on which the individual took

action showing that he or she was out of the labor market. In many cases this will be the date on which the employee applied for the annuity or relinquished rights to return to service.

c. Voluntary retirement occurring after the employee's acquisition of ten years of service and after the 14 consecutive days of sickness does not prevent an early beginning of a benefit year and does not terminate the year.

3322.06 Effect on unemployment benefits

A benefit year which begins early for the purpose of paying sickness benefits also begins early for unemployment benefit purposes. The early beginning does not affect or limit the amount of normal unemployment benefits payable in the benefit year; the limit remains 130 days or benefits equal to the base year wages.

3322.07 Relation to extended benefit periods

A benefit year should not be begun early for an employee until after the end of any extended unemployment or sickness benefit period to which the employee is entitled as a result of exhaustion of rights to normal benefits in an earlier general benefit year. If rights to normal benefits are exhausted in a benefit year which was begun early, an extended benefit period may be established if the usual requirements are met.

3322.08 Creditable earnings after early beginning date

Creditable base year wages earned after a benefit year has been begun early are to be taken into account in determining the claimant's daily benefit rate and the maximum amount of benefits payable, and any necessary adjustments are to be made periodically.

3322.09 Registration periods

Registration periods for normal sickness benefits in a benefit year which is begun early are established according to provisions of the Act and regulations respecting registration periods for sickness benefits. A registration period in a benefit year which is begun early may begin with a day earlier than the first of the 14 consecutive days of sickness on the basis of which the benefit year was begun early. The fact that a day is earlier than the first of the consecutive days does not prevent it from being a day of sickness. Registration periods for unemployment benefits in a benefit year which is begun early for the purpose of paying sickness benefits are established according to provisions of the Act and of the regulations respecting registration periods for unemployment benefits. Such a registration period may begin with a day earlier than the first of the 14 consecutive days of sickness on the basis of which the benefit year was begun early.

3322.10 Effect of attaining age 65

If a benefit year is begun early for the purpose of paying sickness benefits, and the employee attains age 65 before July 1 of the general benefit year, sickness benefits may not be paid for any day from the day on which the employee attained age 65 up to July 1, but unemployment benefits may be paid for days in the interim period. Sickness benefits may be paid from July 1 on. In this situation a statement of sickness is not deemed to have been filed with respect to any day from the day the employee attained age 65 up to July 1. The employee shall be advised of the denial of benefits by Form Letter ID-33k (Exhibit E). He shall be advised to file a new application and statement of sickness if he wishes to claim benefits beginning July 1. If a benefit year is begun early for the purpose of paying unemployment benefits, attainment of age 65 will have no effect on the employee's rights to normal sickness benefits in the accelerated benefit year.

Example 1. An employee has 14 consecutive days of sickness in February 1988 and as a result, BY-88 is begun for him or her early on February 1, 1988. He attains 65 years on April 2, 1988; his birthday is April 3. BY-88 accelerated sickness benefits are payable through April 1, 1988, the day before the claimant attains age 65. Sickness benefits are not payable for the days April 2, 1988 through June 30, 1988. However, they are payable from July 1, 1988 on.

Example 2. An employee has 14 consecutive days of unemployment in February 1988 and as a result, BY-88 is begun for him or her on February 1, 1988. The claimant becomes sick on March 3, 1988 and normal BY-88 sickness benefits are paid beginning March 3. He or she is 65 years old on March 31, 1988. But in this case attainment of age 65, even though occurring before the beginning of the general benefit year, does not stop the payment of sickness benefits because the benefit year was not begun early for the purpose of paying sickness benefits.

3323 Determining Age 65

An employee attains age 65 on the day before his sixty-fifth birthday. Thus, an employee born on January 15, 1923 attains age 65 on January 14, 1988. For purposes of determining an employee's rights to benefits in an accelerated benefit year, the adjudicating office may rely on evidence of age in the Board's records and files at the time the determination is made. In the absence of fraud, a determination allowing the early beginning of a benefit year shall not be disturbed although based on evidence as to age later found to be incorrect. But no additional benefits may be paid on the basis of the incorrect evidence. In determining whether an employee has attained age 65 the adjudicating office shall consider the evidence of age in the wage and service records maintained by the bureau of compensation and certification.

3324 Determining Entitlement to Early Beginning of the Benefit Year

3324.01 Authority to make determinations

The division of program operations is authorized to make determinations as to the early beginning of a benefit year for the purpose of paying sickness benefits. Some of the points to be considered when making accelerated benefit year determinations are discussed below.

3324.02 Years of service

The number of years of service shown in the Board's records shall be accepted as correct unless the claimant has indicated that he has ten years of service and the record shows less than that. If there is such an indication that the claimant may have more service than is shown on the wage record, the additional service should be developed in accordance with instructions in AIM-19.

3324.03 Qualifying wages

To determine whether a claimant is a qualified employee for the next succeeding general benefit year, a record of "lag service" and compensation is to be obtained in accordance with instructions in AIM-19. If it is initially determined that the employee is not qualified for the next succeeding general benefit year but he or she later earns enough to qualify for the next succeeding general benefit year, the benefit year may begin with the first of the month in which the employee's 14 or more consecutive days of sickness began.

3324.04 Voluntary retirement

Investigation and determination as to whether the claimant retired voluntarily is necessary only if the claimant is over 60 years of age and there is a gap of a month or more between the last day he worked and the first day of infirmity or the claimant is receiving an annuity under the Railroad Retirement Act.

3325 Notice to Claimant

A notice of the determination that a benefit year cannot be begun early should be sent to the claimant, showing why the benefit year cannot be begun early, in each case in which benefits are denied on the basis of such a determination. The letter should contain the claimant's review and appeal rights.

3326 Additional Base Year Earnings

3326.01 Tentative determinations

If the report of base year wages used to establish the early beginning of a benefit year was completed before the end of the base year and the base year earnings on record are less than the maximum amount of normal benefits for a benefit year, the determination should be considered as tentative. The daily benefit rate shall also be considered tentative if based on a pay rate report completed before the end of the base year.

3326.02 Review of tentative determination

When a determination is tentative, as described above, it should be reviewed shortly after the end of the calendar year. If the claimant may have additional creditable service in the base year, he or she should be given an opportunity to claim it by sending him or her Form Letter ID-33e (Exhibit F of AIM-33, Title I). In any case in which the claimant's reply to Form Letter ID-33e or information in the file indicates that the claimant was not in covered employment in the base year subsequent to the employment which had been previously reported when the initial determination of benefit rights was made, consider the tentative determination as final.

3327 Form Letters

ID-33f (9-88)
ID-33g (9-88)
ID-33h (9-88)
ID-33j
ID-33k

3401 Provisions Of The Act

Section 2(a)(1) of the Act provides, in part, that:

"No benefits shall be payable to an otherwise eligible employee for any day of unemployment in a registration period where the total amount of the remuneration (as defined in section 1(j)) payable or accruing to him for days within such registration period exceeds the amount of the base year monthly compensation base. For purposes of the preceding sentence, an employee's remuneration shall be deemed to include the gross amount of any remuneration that would have become payable to that employee but did not become payable because that employee was not ready or willing to perform suitable work available to that employee on any day within such registration period."

This section was added to the Act by the Railroad Unemployment Insurance Amendments Act of 1996, and is effective October 9, 1996.

3402 Summary Of Requirement

In accordance with section 2(a)(1) of the Act, unemployment benefits are not payable for any day in a registration period beginning on or after October 9, 1996, where the total amount of remuneration payable or accruing to the claimant for days in the period exceeds the amount of the monthly RUIA compensation base for the base year. The amount of earnings to be counted includes remuneration from railroad and non-railroad work; it does not include income from investments, insurance payments, pensions, strike pay, welfare payments, payments in lieu of vacation, productivity fund payments, etc. The amount of remuneration attributable to days in the registration period also includes the amount of earnings that would have been paid to the claimant for days that he or she was not ready or willing to perform suitable work that was available.

Days denied because of the earnings test remain days of unemployment for purposes of satisfying the waiting period requirement and determining a period of continuing unemployment.

3403 Analysis Of Earnings Test

3403.01 Unemployment Benefits Only

The earnings test applies to claims for unemployment benefits and not to claims for sickness benefits.

3403.02 Earnings Means Remuneration

The only type of earnings subject to the test is "remuneration" as defined in section 1(j) of the RUIA, Part 322 of the regulations and AIM-9. In general, remuneration comprises wages, salary, pay for time lost and business profits. Income from other sources, e.g. investments and pensions, is not remuneration.

3403.03 Earnings Attributable to Registration Period

Only remuneration earned or accruing on days in the registration period counts in the earnings test. Payments made or received during the registration period but attributable to days outside the period are not subject to the test.

3403.04 Gross Earnings

Earnings include gross remuneration prior to taxes and other deductions.

3403.05 Foregone Earnings

Earnings include remuneration the employee would have earned but did not because he or she was not ready or willing to perform suitable work available to him or her on one or more days within the registration period.

3403.06 Monthly Compensation Base

Benefits are not payable if earnings for the registration period exceed the monthly compensation base for the employee's base year. Three different bases can apply to the same period, depending upon whether the claim is for normal, extended or accelerated benefits. For example, a claim for days in November 1996, may be subject to three bases as follows:

* If the claim is for normal BY-96, $850 is the base, i.e. the 1995 base.

* If the claim is for extended BY-95, $840 is the base, i.e. the 1994 base.

* If the claim is for accelerated BY-97, $865 is the base, i.e. the 1996 base.

3404 Considerations In Applying The Earnings Test

3404.01 Registration or Claim Period

Section 2(a)(1)A(vi) of the RUIA provides that the earnings test is to be applied to registration periods. Registration and claim periods usually coincide. But where they are out of adjustment (not the same period of days), the earnings test may be applied on a claim-by-claim basis to prevent payment delays. The amount of earnings attributable to registration periods (as opposed to claim periods) need not be determined unless the claimant or base year employer protests the

determination. This is analogous to the procedure used in applying the work restriction proviso in section 1(k) of the Act.

3404.02 Work Shifts that Begin and End on Different Days

All earnings for a work shift that begins before midnight and ends after midnight are attributable to the day the shift begins.

3404.03 Return to Work

Remuneration for days within the registration period and after the employee's return to partial or full-time employment is to be included in applying the earnings test.

3404.04 Self Employment

Remuneration accrues from self-employment to the extent the employee has a profit or salary from the enterprise. The days to which remuneration is attributable depend upon the nature of the enterprise. For example, remuneration may accrue with respect to each day an employee operates a service or store, to the day a sales agent makes a sale, or to the day a certain result is accomplished triggering an obligation to pay for the result. Refer to AIM-9 for details.

3404.05 Pay for Time Lost/Guarantee Payments

An employee is to report on each claim all pay for time lost that is paid or payable for days in the claim period. Pay for time lost is not considered paid or payable for purposes of applying the earnings test until the employee has filed a claim for pay for time lost and been notified of the determination on the claim. In most cases, therefore, benefits will not be denied under the earnings test due to pay for time lost. Rather, the pay for time lost will become payable after the payment of unemployment benefits.

The unemployment benefits are subject to recovery under section 2(f). The amount due under section 2(f) is the amount of remuneration payable or the amount of benefits paid for the same period, whichever is less. This is true even if the pay for time lost increases the claimant's earnings for days in a claim period to more than the monthly compensation base.

3404.06 Developing Earnings for Days Unclaimed or Denied for Availability

Even if the reported earnings are less than or equal to the monthly base, a sufficient number of days may be unclaimed or denied on the basis of availability to require a determination on whether all earnings and foregone earnings were reported. If reported earnings are unreasonably low, contact the claimant's employer to develop the amount of actual and foregone earnings. The employer need not be contacted, however, if the employee could not reasonably have

been expected to earn an amount in excess of the limit, the employee did not stand for work on the days he or she was unavailable (e.g. the claimant was furloughed or suspended, had insufficient seniority, etc.), or if excess earnings can be presumed using the claimant's daily rate of pay shown in EDMA or other sources.

3404.07 Examples of the Earnings Test

The following examples illustrate application of the earnings test.

1. Employee A worked on 6 days in the period December 13 through 26, 1996, and received holiday pay for December 25. His earnings and holiday pay total $845.00. Since that amount is less than the 1995 compensation base of $850.00, benefits are payable for all days of unemployment in the period.

2. Employee B files a claim that is identical to the one filed by employee A, except employee B is in an extended BY-95 benefit period. Because her earnings of $845.00 exceed the 1994 compensation base of $840.00, she is denied benefits and claimed days are coded '4'.

3. Employee C worked intermittently on the extra board in the first week of May 1997, bumped into a regular brakeman's assignment on May 8, worked May 8 and 10, had a layover on day 9, and missed his turn in pool service with respect to days 12, 13 and 14. He reported earnings of $600. The district office denied benefits for May 9 because the employee was on a layover between regularly scheduled runs. The office also denied benefits for the days May 12, 13 and 14, on grounds of availability due to his missing a turn in pool service. Benefits were denied with respect to other claimed days because the employee's foregone earnings of $300.00 attributable to the missed turn and calculated on the basis of the pay rate shown in EDMA, when added to his reported earnings of $600.00, total $900.00, exceeding the earnings limitation of $850.00.

4. Employee D, a clerk, worked 1 day, reported wages of $100.00, and marked off 2 days. Because it can be presumed that the employee would not have earned $750.00 on the two days on which he marked off, the district office denied the 2 days on grounds of availability and allowed the other claimed days, all without requesting wage information from the employer.

5. Employee E reported earnings of $700.00 and called in sick on 2 days claimed as days of unemployment. The district office denied the sick days on grounds of availability, and denied the remaining claimed days code '4' due to the earnings test. The district office assumed that the claimant would have earned more than $150.00 for the two sick days. (Note: If the employee received sick pay for the two days, the days are to be coded "9"

or "0" depending on whether benefits were claimed, and the sick pay is to be included in the earnings total for purposes of the test.) If the employee protests the denial, the district office is to contact the employer for detailed earnings information.

6. Employee F, an extra-board switchman, reported earnings of $800.00 and employment on 3 days in the first week of his claim. He was suspended beginning with the second week of his claim. The employee reported he was sick on the 12th day of the claim due to a cold. There is no need to develop or to estimate earnings for day 12 because the employee was suspended and did not stand for work. Benefits are to be denied on grounds of availability for day 12, and the claim is considered to have passed the earnings test.

7. In his first claim of the benefit year, Employee G, files a claim for 5 days of unemployment. The remaining days, he worked and earned $200.00 a day from his logging business. The days are not to be denied because of the earnings test because the days claimed satisfy the waiting period requirement and affect determination of the period of continuing unemployment. After the claim is processed and shown on MACRO, however, a stop must be entered to prevent inadvertent payment of days in the waiting period claim.

8. Employee H files a claim with less than 5 days claimed as days of unemployment and has earnings over the monthly compensation base. It is not necessary to send a Form ID-9e denial notice to the claimant. Rather the claimant should be informed that the claim was not payable because it did not have more than 4 days of unemployment (Form ID-6m). Similarly, if the claimant failed to report any earnings, it would not be necessary to develop the earnings because he did not have a sufficient number of days of unemployment to make a compensable claim.