



UNITED STATES GOVERNMENT
MEMORANDUM

FORM G-1157 (1-82)
RAILROAD RETIREMENT BOARD

L-2008-05
February 29, 2008

TO : Ronald Russo
Director of Policy and Systems

FROM : Steven A. Bartholow
General Counsel *[Signature]*

SUBJECT : Policy Regarding Advanced Filing for Disability Annuities

This is in reply to your memorandum of January 4, 2008, wherein you asked if an employee has filed an AA-1d and then dies, can his survivors file the AA-1 so that the agency can consider whether the employee may have been entitled to a disability annuity prior to his death. As background, you described the following two recent cases in which an employee has completed the disability package, which includes a signed and dated AA-1d, but has died before filing his AA-1.

CASE 1 : An employee contacted the field office on June 22, 2007, requesting an application for a disability annuity. A disability packet (Form AA-1d, G-251 and G-197) was released for the employee to complete. On July 31, the field office was informed that the employee planned to return to work. On October 2, 2007, the employee called the same field office and requested to file a disability application. The employee asked if he could complete the paperwork previously sent to him in June. He was advised that this was acceptable. The completed packet was then dropped off at the field office the next day. The disability packet does not include an AA-1. The packet was next looked at on October 18, 2007, at which time the contact representative called the employee to complete the AA-1. The employee's wife informed the contact representative that the employee had died the previous day.

CASE 2 : An employee contacted the field office and requested to file for a disability annuity. A disability package (including the same documents itemized in Case 1) was released and an appointment was made to complete the AA-1. The employee mailed the completed disability package back to the field office before his scheduled appointment. The employee died before the scheduled appointment.

Conclusion

For the reasons explained below, it is my opinion that if an employee has filed a Form AA-1d, the employee's survivors who would be entitled to any annuities due but unpaid at the employee's death may file a Form AA-1 so that the agency may consider whether the employee was disabled prior to his death.

Discussion

Section 6(a)(1) of the Railroad Retirement Act (RRA) provides for the payment of annuities due but unpaid at the death of a railroad employee:

Annuities under section 2(a)(1) and supplemental annuities under section 2(b) 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 subsection (b) of this section 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 subdivision 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 annuities were a lump sum payable under subsection (c)(1) of this section.

Section 6(a) provides the order of payment for an annuity amount that was left unpaid at the death of a railroad employee annuitant. Since a finding that a deceased railroad employee was disabled and entitled to a disability annuity prior to the employee's death would result in an annuity due but unpaid at the employee's death, it is my opinion that an individual must fall within the survivors identified in section 6(a) in order to file an AA-1 for a determination of the employee's eligibility. Thus, for example, if one or both of the employees in the case examples set out in your memorandum were to be found to have been disabled prior to the employee's death (and presuming that the employee also lived long enough to satisfy the required waiting period), it is possible that an

annuity amount could become payable to the employee's widow or widower or one of the other survivors named in section 6(a) of the RRA.

Of course, in order for an annuity to become payable in the first place, an employee must have filed an application with the Board. Section 2(a)(1) of the RRA, which sets out the eligibility requirements for an employee annuity under the RRA, requires in pertinent part that the employee "shall have filed application for annuities". Section 2(a)(1) does not specify the type or format of application that must be used in order to claim an annuity.

Section 5 of the RRA, which provides for annuity beginning and ending dates, provides the most specific information in the Act itself concerning the application that must be filed with the agency in order to claim a benefit under the Act. Section 5(b) provides in pertinent part that:

An application for any payment under this Act shall be made and filed in such manner and form as the Board may prescribe. An application filed with the Board for an employee annuity, spouse annuity, or divorced spouse annuity on the basis of the employment record of an employee who will have completed less than ten years of service shall be deemed to be an application for any benefit to which such applicant may be entitled under this Act or section 202(a), section 202(b), or section 202(c) of the Social Security Act. An application filed with the Board for an annuity on the basis of the employment record of an employee who will have completed ten years of service shall, unless the applicant specified otherwise, be deemed to be an application for any benefit to which such applicant may be entitled under this Act or title II of the Social Security Act . . .

Although section 5(b) does not describe in any detail the contents of an application, it contains two provisions that are particularly helpful in responding to your inquiry. First, section 5(b) indicates that the form and contents of an application for benefits is a matter of discretion for the Board. In other words, the Board has authority to decide what information should be furnished in an application as well as what format to use for the application.

The second provision of section 5(b) that should be considered in answering your inquiry is that one application filed with the agency shall generally serve as an application for any other benefit that a claimant may be entitled to under the RRA. In other words, although section 5(b) of the Act gives discretion to the Board as to the format and contents of an application, it also is intended to ease or limit the steps a claimant must take in order to obtain payment of a benefit under the Act.

The Board's regulations provide no more guidance with respect to your inquiry than does section 5(b). The first sentence of section 217.6(a) of the Board's regulations provides that, "An application filed with the Board is generally one that is filed on a form set up by the Board for that purpose." Thus, neither the RRA nor the Board's regulations contain a detailed description of what will be considered to be an application for a benefit. In fact, the Board has latitude to develop the questions to be asked and the information to be solicited in connection with the individual's claim for an annuity.

We look next at a general description of each document identified in your memorandum as being required of an applicant for a disability annuity. The Form AA-1 is entitled "Application for Employee Annuity." This form solicits a variety of information about the employee, including the type of annuity sought, military service, the employee's railroad and non-railroad work and earnings, pay for time lost, railroad sick pay, current connection eligibility, etc. The Form AA-1d, entitled "Application for Determination of Employee's Disability," solicits primarily information about the employee's medical condition and medical care, but also asks questions about other topics, including the employee's education and training, daily activities, and work and earnings. Both the AA-1 and the AA-1d require identifying information about the employee, including the employee's name, social security number, railroad retirement claim number, and daytime telephone number.

RRB Form G-197 is entitled "Authorization to Disclose Information to the Railroad Retirement Board." The form is used to obtain the employee's written authorization to obtain information to be used in adjudication of his/her claim for a disability annuity, such as records regarding the employee's treatment, hospitalization, and outpatient care. Form G-251, entitled "Vocational Report," requests information about the employee's work history.

In the case of a disability annuity, it is significant in responding to your inquiry that the Form AA-1d is called an "Application for Determination of Employee's Disability." Since neither the RRA nor the Board's regulations specify that a particular form must be used in order to file for a disability annuity and since the employee in both cases summarized in your memorandum completed, signed, and returned to the agency a form furnished by the agency in response to the employee's request to file for a disability annuity, and since the title of that form states that it is an application for a determination of employee disability, it is my opinion that each of those employees in the cases cited filed an application prior to their deaths. Further, it is my opinion that where an employee completes and signs a Form AA-1d, files that Form AA-1d with the Board, and then dies prior to completing a Form AA-1, the employee's survivors who would be entitled to any annuities due but unpaid at death may file a Form AA-1 so that a

determination of whether the employee was entitled to a disability annuity prior to his death may be made.

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