

## § 259.5

records or other documents pertinent to the matter under consideration.

(45 U.S.C. 231f(b)(5))

[43 FR 56889, Dec. 5, 1978, as amended at 48 FR 51447, Nov. 9, 1983; 57 FR 4366, Feb. 5, 1992]

### § 259.5 Appeals from decisions of the Board.

A party who claims to be aggrieved by a decision of the Board under this part may obtain review of such decision by filing a petition for review in the United States court of appeals for the circuit in which the party resides or has its principal place of business or principal executive office, in the United States Court of Appeals for the Seventh Circuit, or in the United States Court of Appeals for the District of Columbia. The petition for review must be filed within 90 days following the date on which the notice of the Board's decision was mailed to that party.

[43 FR 56889, Dec. 5, 1978. Redesignated at 57 FR 4366, Feb. 5, 1992]

### § 259.6 Finality of determinations issued under this part.

Any determination rendered by the Board at the initial or reconsideration stages shall be considered a final determination and shall be binding with respect to all parties unless reversed on reconsideration or upon judicial review. A final determination may be reopened at the request of a party who was, or could have been, a party to the final determination when the party alleges that the law or the facts upon which the final determination was based have changed sufficiently to warrant a contrary determination. Such a request shall be submitted to the Secretary to the Board, who shall consider such request as a request for an initial determination under § 259.1.

[57 FR 4366, Feb. 5, 1992]

## PART 260—REQUESTS FOR RECONSIDERATION AND APPEALS WITHIN THE BOARD

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AUTHORITY: 45 U.S.C. 231f; 45 U.S.C. 231g; 45 U.S.C. 355.

SOURCE: 47 FR 36809, Aug. 24, 1982, unless otherwise noted.

### § 260.1 Initial decisions.

(a) *General.* Claims for benefits shall be adjudicated and initial decisions made by the Board concerning:

(1) Applications for benefits under the Railroad Retirement Act;

(2) The withdrawal of an application;

(3) A change in an annuity beginning date;

(4) The termination of an annuity;

(5) The modification of the amount of an annuity or lump-sum benefit;

(6) The reinstatement of an annuity which had been terminated or modified;

(7) The existence of an erroneous payment;

(8) The recovery of the amount of an erroneous payment;

(9) The eligibility of an individual for a supplemental annuity or the amount of such supplemental annuity;

(10) Whether representative payment shall serve the best interests of an annuitant as a result of that individual's incapacity to manage his annuity payments; and

(11) Who shall be designated or continued as representative payee on behalf of an annuitant.

(b) *Adjudication of claim and the issuance of initial decision.* Adjudication of a claim and the issuance of an initial decision shall be in accordance with instructions issued by the Board and shall be made upon the basis of evidence submitted by the claimant and evidence otherwise available.

(c) *Recovery of erroneous payment.* A decision to recover the amount of an erroneous payment under paragraph

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(a)(8) of this section by suspension or reduction of a monthly benefit payable by the Board shall not be made prior to a date 30 calendar days after the date on which notice of the erroneous payment decision is sent to the beneficiary or payee of the benefit as provided in §260.1(d)(6).

(d) *Notice of initial decision.* (1) In all cases except those described in paragraph (d)(2) through (4) and (6) of this section, written notice of an initial decision shall be mailed by the Board to the claimant, annuitant or payee of an annuity at the individual's last known address within 30 calendar days after such decision is made. Such notice shall inform the claimant, annuitant or payee of an annuity of the reason(s) for the decision and such individual's right to reconsideration of such initial decision as provided in §260.3.

(2) No notice of an initial decision by the Board shall be required when the death of an annuitant causes the entitlement to an annuity to cease.

(3) When an initial decision is made that an annuitant's entitlement to a disability has ended, written notice of the decision shall be mailed to the annuitant or payee of an annuity at the annuitant's or payee's last known address. Such notice shall inform the annuitant or payee of an annuity:

(i) Of the date on which the recovery from disability is found to have occurred;

(ii) Of the reason(s) supporting such a finding of recovery;

(iii) That entitlement to the annuity ends on the last day of the second month after the month in which disability ends as described in §220.181;

(iv) That the Board will stop payment of the annuitant's disability annuity with the last day of the second month following the month in which disability ends as described in §220.181, or the last day of the first month following the month in which the notice provided by this paragraph is sent by the Board, whichever date is later;

(v) That any annuity payments received after entitlement has ended will have to be repaid unless waiver of recovery is appropriate;

(vi) That prior to the termination date of the annuity the annuitant or payee of an annuity may submit to the

Board any information in writing which the annuitant or payee desires to be considered by the Board in its review;

(vii) That if no information in writing is received by the Board before the termination date the annuity will be terminated as scheduled on that date; and

(viii) That the annuitant or payee has the right to reconsideration of such decision as provided in §260.3.

(4) When an initial decision would result in the termination of an annuity for which there are competing claims or as a result of the receipt by the Board of information from a source other than the annuitant or payee of an annuity, written notice of the proposed decision shall be mailed to the annuitant or payee of an annuity at such annuitant's or payee's last known address. Such notice shall inform the annuitant or payee of an annuity:

(i) Of the reason(s) for the annuity termination;

(ii) That the annuitant or payee has 30 calendar days from the date of the notice to submit to the Board any information in writing which such annuitant or payee desires to be considered by the Board in its review;

(iii) That payment of the annuity will either cease or a decision to continue payment of such annuity shall be made after the Board has considered any information in writing which may be submitted to the Board within 30 calendar days from the date of the notice;

(iv) That if no information in writing is received within 30 calendar days from the date of the notice, payment of the annuity will cease at the end of that 30-day period; and

(v) That the annuitant or payee has the right to reconsideration of such decision as provided in §260.3.

(5) Whenever the Board receives any significant information in writing from an annuitant or payee of an annuity as a result of mailing the notice described in paragraph (d)(4) of this section, the Board shall forward a copy of such information to each of the individuals who has filed a competing claim for such annuity informing them that:

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(i) The annuity will either be terminated at the specified time or a decision to continue payment of the annuity will be made by the Board; and

(ii) They may respond to such information and their response will be considered by the Board provided that it is received by the Board within a reasonable time. When the Board decision in such case is to continue payment of the annuity, the Board shall send notice of such initial decision to each of the competing claimants in accordance with paragraph (d)(1) of this section.

(6) When an initial decision that an erroneous payment has been made to a beneficiary is made under paragraph (a)(7) of this section, written notice of that decision shall be mailed to the beneficiary or payee of the benefit at such beneficiary's or payee's last known address within 30 calendar days after such decision is made. Such notice shall inform the beneficiary or payee:

- (i) Of the reason(s) for the decision;
- (ii) Of the methods by which recovery may be made;
- (iii) Of the possibility of waiver of recovery of the erroneous payment;
- (iv) Of the conditions which must be met before waiver of recovery could be granted;
- (v) That the beneficiary may request waiver of recovery of the erroneous payment and/or reconsideration of the erroneous payment decision as provided in § 260.4; and
- (vi) Of the possibility of an oral hearing with respect to the issues of waiver of recovery and reconsideration of the erroneous payment decision.

[47 FR 36809, Aug. 24, 1982, as amended at 55 FR 39146, Sept. 25, 1990; 56 FR 13040, Mar. 28, 1991; 67 FR 77153, Dec. 17, 2002]

### **§ 260.2 Initial decisions on the amount of service and compensation credited to an employee.**

Within 30 days after receipt of a timely request by an employee for amendment with respect to the number of service months and amount of compensation credited to the employee by the Board under the Railroad Retirement Act and the Railroad Unemployment Insurance Act, the Board shall appoint a qualified employee to make a determination with respect to such

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matter. The employee appointed by the Board shall promptly render a decision. Written notice of such decision shall be communicated to the employee within 30 days after such decision is made. Such decision shall include notification of the employee's right to reconsideration of the initial decision as provided in § 260.3. For purposes of this section, a timely request to amend an employee's record of service months and compensation maintained under the Railroad Retirement Act shall be filed within four years after the date on which the report of service months and compensation was required to be made to the Board by the employee's employer. See § 211.16 of this chapter.

[67 FR 77153, Dec. 17, 2002]

### **§ 260.3 Request for reconsideration of initial decision.**

(a) *Right to file request for reconsideration.* Every claimant shall have the right to file a request for reconsideration of an initial decision described in § 260.1(a) or in § 260.2. *Provided, however,* That:

(1) An individual under age 18 shall not have the right to reconsideration of a finding of incapacity to manage his or her annuity payments, but shall have the right to contest the finding that he or she is, in fact, under age 18;

(2) An individual who has been adjudged legally incompetent shall not have the right to reconsideration of a finding of incapacity to manage his or her annuity payments, but shall have the right to contest the fact of his or her having been adjudged legally incompetent; and

(3) An individual shall not have the right to reconsideration of a denial of his or her application to serve as representative payee on behalf of an annuitant. Such request for reconsideration shall be filed and disposed of in the manner prescribed in this section, except that a request for reconsideration of an initial erroneous payment decision under § 260.1(a)(7) shall be filed and disposed of in the manner prescribed in § 260.4.

(b) *Written request for reconsideration.* A written request for reconsideration may be filed with any office of the Board within 60 days from the date on which notice of the initial decision is