

### Subpart F—Reduction for Workers' Compensation and Disability Benefits Under a Federal, State, or Local Law or Plan

#### § 226.70 General.

For any month an employee disability annuitant is entitled to workers' compensation or a public disability benefit, the tier I benefit of the spouse or divorced spouse is reduced due to receipt of such benefits. (If both spouse and divorced spouse annuities are payable, the reduction amount is divided and applied in equal amounts to both the spouse and divorced spouse tier I benefits.) The employee tier I is reduced by the difference between the total reduction amount, described in § 226.71 of this part, and the reduction in the spouse and divorced spouse tier I benefits.

#### § 226.71 Initial reduction.

(a) *When reduction is effective.* A reduction for other disability benefits begins with the first month the employee is receiving both a disability annuity and workers' compensation or a public disability benefit. The reduction ends with the month before the month in which the employee becomes 65 years old or with the month in which the workers compensation or public disability benefit ends.

(b) *Amount of reduction.* The reduction for other disability benefits equals the difference between—

(1) The total tier I rates of the employee, spouse, and divorced spouse, before any reductions (age, public pension, social security benefits, etc.) plus the monthly amount of the workers' compensation or public disability benefit; and

(2) The higher of—

(i) Eighty percent of the employee's average current earnings, as defined in this section; or

(ii) The total tier I rates, as described in paragraph (b)(1) of this section.

*Example 1:* Harold is entitled to a monthly disability annuity with a tier I component of \$507 and a monthly public disability benefit of \$410 from the state. Eighty percent of Harold's average current earnings is \$800. Because this amount is higher than Harold's tier I component, to determine the reduction for other disability benefits the Board sub-

tracts this amount (\$800) from the total of Harold's tier I component (\$507) and public disability benefit (\$410) which results in a reduction amount of \$117 (\$917-\$800). This leaves Harold with a reduced tier I amount of \$390 (\$507-\$117).

*Example 2:* Tom is entitled to a disability annuity with a tier I component of \$560. His wife and divorced wife are both entitled to annuities with tier I components of \$280 each. Total benefits are \$1,120. Tom is receiving a monthly workers' compensation benefit of \$500 from the state. Eighty percent of Tom's average current earnings is \$820. Because the total benefit (\$1,120) is higher than Tom's average current earnings, to determine the reduction for other disability benefits the Board subtracts this amount from \$1,620 (\$1,120 plus \$500) which results in a reduction amount of \$500. This means that the tier I of the spouse and divorced spouse annuity are each reduced by \$250.

(c) *Average current earnings, defined.* An employee's "average current earnings" is the highest of—

(1) The average monthly wage (AMW) used to compute the tier I AMW PIA. (The earnings are not indexed, even if the tier I PIA which is being paid is based on average indexed monthly earnings. See part 225 of this chapter.); or

(2) One-sixtieth of the employee's total earnings covered under either the Social Security or Railroad Retirement Acts (including earnings that exceed the maximum earnings used in computing social security benefits) for the five consecutive years after 1950 in which the employee had the highest earnings. The result, if not a multiple of \$1, is rounded to the next lower multiple of \$1; or

(3) One-twelfth of the employee's total earnings covered under either the Social Security or Railroad Retirement Acts (including earnings that exceed the maximum earnings used in computing social security benefits) for the year of highest earnings in the period which includes the year in which the employee became disabled and the five preceding years. The result, if not a multiple of \$1, is rounded to the next lower multiple of \$1.

#### § 226.72 Benefits that do not cause a reduction.

The tier I is not reduced for the following types of benefits: