

Railroad Retirement Board

§ 229.67

entitled to worker's compensation or a public disability benefit.

(b) *When reduction is not made.* A reduction for worker's compensation is not made if the law or plan under which the worker's compensation or public disability benefit is paid provides for the reduction of the benefit provided due to entitlement to a social security disability benefit, and so provided on February 18, 1981.

(c) *Amount of reduction.* The reduction in the DIB O/M for worker's compensation or public disability benefit equals the difference between:

(1) The sum of the monthly DIB O/M rate, including benefits for all family members (subject to the family maximum), plus the monthly worker's compensation or public disability benefit; and

(2) The higher of 80 percent of the employee's average current earnings before becoming disabled or the monthly DIB O/M rate (before reduction for worker's compensation or public disability benefit).

(d) *Average current earnings, defined.* Beginning January 1, 1979, an employee's average current earnings for purposes of this section are the highest of:

(1) The average monthly wage (see § 225.2 of this chapter) used to compute the DIB O/M under the Social Security Act rules which were in effect before 1979; or

(2) One-sixtieth of the employee's total earnings from employment or self-employment under either the Social Security or Railroad Retirement Acts (including earnings that exceed the maximum used in computing social security benefits) for the 5 consecutive years after 1950 in which the earnings were the highest; or

(3) One-twelfth of the employee's total earnings from employment or self-employment under either the Social Security or Railroad Retirement Acts (including earnings that exceed the maximum used in computing social security benefits) for the year of highest earnings in the period from 5 years before through the year in which the employee became disabled. The result is rounded to the next lower multiple of \$1.00.

§ 229.66 Changes in reduction amount.

(a) *Change in DIB O/M.* The amount of the worker's compensation or public disability benefit reduction does not change when there is an increase in the DIB O/M rate because of an amendment or cost of living increase. However, the reduction amount does change if there is a change in the family members included in the DIB O/M. When the number of family members changes and the DIB O/M is still payable, the amount of the reduction is recomputed using the DIB O/M rate, including the changed family group, as if the new family composition had existed when the worker's compensation or public disability benefit reduction first applied. However, this new reduction is not effective until the date of the change of the family group. The worker's compensation or public disability benefit and average current earnings are the same as those used before the change in the family group.

(b) *Change in amount of worker's compensation/public disability benefit.* The amount of the reduction for worker's compensation or public disability benefit changes when there is a change in the amount of the worker's compensation or public disability benefit. If the worker's compensation or public disability benefit increases, the change in the reduction amount is effective with the month of the increase. If the worker's compensation or public disability benefit decreases, the change in the reduction amount is effective with the month of the decrease, no matter when the notice of the decrease is received.

§ 229.67 Redetermination of reduction.

(a) *General.* All cases reduced for worker's compensation or public disability benefit are recomputed in the second year after the year the reduction was first applied and every third year after that. The redetermined rate is effective with January of the year after the year the redetermination is made. The redetermined reduction is used only if it provides an annuity rate that is higher than the previous annuity rate.

(b) *Redetermined average current earnings.* The average current earnings amount used in redetermining a worker's compensation or public disability