

## § 255.16

from the estate of an overpaid individual.

### § 255.16 Administrative relief from recovery.

(a) Where the Board seeks to recover an overpayment from someone other than the overpaid individual, as provided for in § 255.4 of this part, and where waiver of recovery, as provided for in § 255.10 of this part, is not available because the overpaid individual was at fault as defined in § 255.11 of this part, the Board may forego recovery of the overpayment where the individual from whom recovery is sought was not at fault in causing the overpayment and where recovery is contrary to the purpose of the Railroad Retirement Act as defined in § 255.12 of this part.

(b) Application of administrative relief from recovery with respect to a given person from whom recovery may be made shall have no effect on the authority of the Board to recover the overpayment from anyone else from whom recovery may be sought.

(c) This section may be illustrated by the following examples:

*Example (1):* An employee, through his own fault, causes an overpayment in his annuity. The employee dies before the overpayment can be recovered from him and he leaves no estate. A widow's annuity is payable on the employee's compensation record. The widow was not at fault in causing the overpayment. The Board may recover the remainder of the overpayment by setoff against the widow's annuity. However, it may forego recovery under this section if such recovery would be contrary to the purpose of the Railroad Retirement Act as defined in § 255.12 of this part. Since this is not a waiver of the overpayment, the Board is free to recover the overpayment from the widow at a later date, for example, if an accrual of benefits should become payable, or if it determines that such recovery would not be against the purpose of the Railroad Retirement Act.

*Example (2):* A representative payee for a retarded child, through her own fault, causes an overpayment in the child's annuity. The overpaid amounts were used for the benefit of the child. The representative payee dies before the overpayment can be recovered from her and she leaves no estate. The Board may not waive the remainder of the overpayment with respect to the child since for purposes of waiver the representative payee is considered the overpaid individual (see § 255.17 of this part) and the overpaid individual was at fault. However, if the child was

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not at fault in causing the overpayment and recovery would be contrary to the purpose of the Railroad Retirement Act as defined in § 255.12 of this part, then the Board may forego recovery of the overpayment from the child's annuity under this section.

### § 255.17 Recovery of overpayments from a representative payee.

(a) *Joint liability.* In general, if an overpayment is made to an individual receiving benefits as a representative payee (see part 266 of this chapter) the Board may recover the overpayment from either the representative payee or the beneficiary, or both. If the beneficiary is currently receiving benefits, either in his or her own right or through a representative payee, the Board will generally propose to recover the overpayment by setoff against those benefits as provided for in § 255.6 of this part. If the beneficiary is not currently receiving benefits but the representative payee is receiving benefits, then the Board will generally propose to recover the overpayment by setoff against those benefits.

(b) *Waiver of overpayments.* For purposes of § 255.10 of this part (Waiver of recovery), if it is determined that the representative payee was at fault in causing the overpayment there may be no waiver of the overpayment either as to the representative payee or the beneficiary. However, if the beneficiary was not at fault in causing the overpayment he or she may be eligible for administrative relief from recovery under § 255.16 of this part.

(c) This section may be illustrated by the following examples:

*Example (1).* M is receiving a child's annuity as a representative payee for her disabled son, S. With M's knowledge S marries. Although both M and S know that marriage terminates the child's annuity, neither of them informs the Board of this event. Both M and S are liable for any overpayment caused. Waiver is not available since M would be considered at fault in causing the overpayment. Administrative relief from recovery is not available to S since he would also be considered at fault.

*Example (2).* R is a representative payee for B, who resides in a skilled-care facility. R is found to be at fault in causing an overpayment of benefits to B. The Board may recover the overpayment from either R or B. Waiver is not available because R was at fault in causing the overpayment. However,

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if B was not at fault in causing the overpayment he or she may be entitled to administrative relief from recovery under §255.16 of this part.

### § 255.18 Compromise of overpayments.

(a) This section sets forth the principal standards which the Board applies in exercising its authority under 31 U.S.C. 3711 to compromise an overpayment. In addition, the Board may compromise an overpayment under the Federal Claims Collection Standards set forth in 4 CFR part 103.

(b) An overpayment may be compromised only if it is in the best interest of the agency. Circumstances and factors to be considered are:

(1) The overpayment cannot be collected because of the overpaid individual's inability to pay the full amount of the overpayment within a reasonable time;

(2) The overpaid individual refuses to pay the overpayment in full and it appears that enforced collection procedures will take an inordinate amount of time or that the cost of collecting does not justify the enforced collection of the full amount; or

(3) There is doubt that the Board could prove its case in court for the full amount claimed because of a bona fide dispute as to the facts or because of the legal issues involved.

### § 255.19 Suspension or termination of the collection of overpayments.

This section sets forth the principal standards which the Board applies in approving the suspension or termination of the collection of an overpayment. In addition the Board may suspend or terminate collection under the Federal Claims Collection Standards set forth in 4 CFR part 104.

(a) Collection action on a Board claim may be suspended temporarily when the debtor cannot be located and there is reason to believe future collection action may be productive or collection may be effected by offset in the near future.

(b) Collection action may be terminated when:

(1) The debtor is unable to make any substantial payment;

(2) The debtor cannot be located and offset is too remote to justify retention of the claim;

(3) The cost of collection action will exceed the amount recoverable; or

(4) The claim is legally without merit or cannot be substantiated by the evidence.

## PART 258—HEARINGS BEFORE THE BOARD OR DESIGNATED EXAMINERS

Sec.

258.1 Hearings.

258.2 Witnesses.

258.3 Application for witnesses.

258.4 Service of subpoenas.

258.5 Exhibits.

258.6 Procedure when examiner appointed.

258.7 Board decisions and opinions and dissenting opinions.

AUTHORITY: Sec. 10, 50 Stat. 314, as amended; 45 U.S.C. 228j, unless otherwise noted.

SOURCE: 43 FR 56888, Dec. 5, 1978, unless otherwise noted.

### § 258.1 Hearings.

(a) To such extent as may be necessary to determine (1) the employee status of any individual or group of individuals, (2) the employer status of any person, and (3) any other matter arising out of or necessary for the administration of the Railroad Unemployment Insurance Act and the Railroad Retirement Acts of 1935, 1937, and 1974, other than those matters specifically provided for in parts 260 and 320 of this chapter, the Board may itself or through one of its members or a designated examiner, conduct hearings, require and compel the attendance of witnesses and the production of records and documents, administer oaths, take testimony, make all pertinent investigations and findings of fact, and render decisions upon such findings.

(b) Where the Board determines that an oral hearing is necessary to the determination of a matter before it, the Board shall notify all parties to the proceeding that a hearing will be conducted, and, if the hearing is to be before a single Board member or a designated examiner, the notice shall identify the member or examiner authorized to conduct the hearing. The Board or the person authorized to conduct the hearing shall fix a time and place for the holding of the hearing and shall notify all parties thereof.