

§ 261.3

have given him or her an insured status at the time of the decision and the evidence of these earnings was in the possession of the Railroad Retirement Board or the Social Security Administration at the time of the decision;

(7) The decision is wholly or partially unfavorable to a party, but only to correct clerical error or an error that appears on the face of the evidence that was considered when the determination or decision was made;

(8) The decision found the claimant entitled to an annuity or to a lump sum payment based on the earnings record of a deceased person, and it is later established that:

(i) The claimant was convicted of a felony or an act in the nature of a felony for intentionally causing that person's death; or

(ii) If the claimant was subject to the juvenile justice system, he or she was found by a court of competent jurisdiction to have intentionally caused that person's death by committing an act which, if committed by an adult, would have been considered a felony or an act in the nature of a felony;

(9) The claimant shows that it is to his or her advantage to select a later annuity beginning date and refunds, by cash payment or setoff, past payments applying to the period prior to the later beginning date, subject, however, to the provisions of subpart D of part 217 and § 218.9 of this chapter;

(10) The decision is incorrect because of a failure to apply a reduction, or the proper reduction, to the tier I component of an annuity, but the Board shall apply the reduction only for the months following the month the Board first takes corrective action.

(d) Revision of the amount or payment of a separation allowance lump sum amount pursuant to section 6(e) of the Railroad Retirement Act is limited to 60 days from the date of notification of the award of the separation allowance lump sum payment.

§ 261.3 Change of legal interpretation or administrative ruling.

A change of legal interpretation or administrative ruling upon which a decision is based does not render a decision erroneous and does not provide a basis for reopening.

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§ 261.4 Decisions which shall not be reopened.

The following decisions shall not be reopened:

(a) An award of an annuity beginning date to an applicant later found to have been in compensated service to an employer under part 202 of this chapter on that annuity beginning date and who is found not to be at fault in causing the erroneous award; provided, however, that this exception shall not operate to permit payment of benefits for any month in which the claimant is found to be engaged in compensated service.

(b) An award of an annuity based on a subsequently discovered erroneous crediting of months of service and compensation to a claimant where:

(1) The loss of such months of service and compensation will cause the applicant to lose his or her eligibility for an annuity previously awarded;

(2) The erroneously credited months of service do not exceed six months; and

(3) The annuitant is found not to be at fault in causing the erroneous crediting.

(c) An erroneous award of an annuity where the error is no greater than one dollar per month per annuity affected.

(d) An erroneous award of a lump sum or accrued annuity payment where the error is no greater than \$25.00.

§ 261.5 Late completion of timely investigation.

(a) A decision may be revised after the applicable time period in § 261.2(a) or § 261.2(b) of this part expires if the Railroad Retirement Board begins an investigation into whether to revise the decision before the applicable time period expires and the agency diligently pursues the investigation to the conclusion. The investigation may be based on a request by a claimant or on action by the Railroad Retirement Board.

(b) *Diligently pursued* for purposes of this section means that in view of the facts and circumstances of a particular case, the necessary action was undertaken and carried out as promptly as the circumstances permitted. Diligent pursuit will be presumed to have been met if the investigation is concluded