

## Railroad Retirement Board

## § 220.21

(e) *When the trial work period begins and ends.* (1) The trial work period begins with whichever of the following calendar months is the latest—

- (i) The annuity beginning date;
- (ii) The month after the end of the appropriate waiting period; or
- (iii) The month the application for disability is filed.

(2) The trial work period ends with the close of whichever of the following calendar months is the earlier—

- (i) The ninth month (whether or not the months have been consecutive) in which the annuitant performed services; or
- (ii) The month in which new evidence, other than evidence relating to any work the annuitant did during the trial work period, shows that the annuitant is not disabled, even though the annuitant has not worked a full nine months. The Board may find that the annuitant's disability has ended at any time during the trial work period if the medical or other evidence shows that the annuitant is no longer disabled.

### § 220.18 The reentitlement period.

(a) *General.* The reentitlement period is an additional period after the nine months of trial work during which the annuitant may continue to test his or her ability to work if the annuitant has a disabling impairment.

(b) *When the reentitlement period begins and ends.* The reentitlement period begins with the first month following completion of nine months of trial work but cannot begin earlier than December 1, 1980. It ends with whichever is earlier—

(1) The month before the first month in which the annuitant's impairment(s) no longer exists or is not medically disabling; or

(2) The last day of the 36th month following the end of the annuitant's trial work period.

(c) *When the annuitant is not entitled to a reentitlement period.* The annuitant is not entitled to a reentitlement period if—

(1) The annuitant is not entitled to a trial work period; or

(2) The annuitant's disability ended before the annuitant completed nine months of trial work in that period in which he or she was disabled.

### § 220.19 Payment of the disability annuity during the trial work period and the reentitlement period.

(a) The employee who is entitled to an occupational disability annuity will not be paid an annuity for each month in the trial work period or reentitlement period in which he or she—

(1) Works for an employer covered by the Railroad Retirement Act (see § 220.160); or

(2) Earns more than \$400 (after deduction of impairment-related work expenses) in employment or self-employment (see §§ 220.161 and 220.164). See § 220.145 for the definition of impairment-related work expenses.

(b) If the employee's occupational disability annuity is stopped because of work during the trial work period or reentitlement period, and the employee discontinues that work before the end of either period, the disability annuity may be started again without a new application and a new determination of disability.

### § 220.20 Notice that an annuitant is no longer disabled.

The regulation explaining the Board's responsibilities in notifying the annuitant, and the annuitant's rights when the disability annuity is stopped is found in § 220.183.

### § 220.21 Initial evaluation of a previous occupational disability.

(a) In some cases, the Board may determine that a claimant is not currently disabled for work in his or her regular occupation but was previously disabled for a specified period of time in the past. This can occur when—

(1) The disability application was filed before the claimant's occupational disability ended, but the Board did not make the initial determination of occupational disability until after the claimant's disability ended; or

(2) The disability application was filed after the claimant's occupational disability ended but no later than the 12th month after the month the disability ended.

(b) When evaluating a claim for a previous occupational disability, the Board follows the steps in § 220.13 to determine whether an occupational disability existed, and follows the steps in

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§§ 220.16 and 220.17 to determine when the occupational disability ended.

*Example 1:* The claimant sustained multiple fractures to his left leg in an automobile accident which occurred on June 16, 1982. For a period of 18 months following the accident the claimant underwent 2 surgical procedures which restored the functional use of his leg. After a recovery period following the last surgery, the claimant returned to his regular railroad job on February 1, 1984. The claimant, although fully recovered medically and regularly employed, filed an application on December 3, 1984 for a determination of occupational disability for the period June 16, 1982 through January 31, 1984. The Board reviewed his claim in January 1985 and determined that he was occupationally disabled for the prior period which began on June 16, 1982 and continued through January 31, 1984. A disability annuity is payable to the employee only for the period December 1, 1983 through January 31, 1984. An annuity may not begin any earlier than the 1st day of the 12th month before the month in which the application was filed. (See part 218 of this chapter for the rules on when an annuity may begin).

*Example 2:* The claimant is occupationally disabled using the same medical facts disclosed above, beginning June 16, 1982 (the date of the automobile accident). The claimant files an application for an occupational disability annuity, dated December 1, 1983. However, as of February 1, 1984, and before the Board makes a disability determination, the claimant returns to his regular railroad job and is no longer considered occupationally disabled. The Board reviews the claimant's application in May of 1984 and finds him occupationally disabled for the period June 16, 1982 through January 31, 1984. A disability annuity is payable to the employee from December 1, 1982 through January 31, 1984. (See part 218 of this chapter for the rules on when an annuity may begin).

### **Subpart D—Disability Under the Railroad Retirement Act for Any Regular Employment**

#### **§ 220.25 General.**

The definition and discussion of disability for any regular employment are found in §§ 220.26 through 220.184.

#### **§ 220.26 Disability for any regular employment, defined.**

An employee, widow(er), or child is disabled for any regular employment if he or she is unable to do any substantial gainful activity because of a medically determinable physical or mental

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impairment which meets the duration requirement defined in § 220.28. In the case of a widow(er), the permanent physical or mental impairment must have prevented work in any regular employment before the end of a specific period (see § 220.30). In the case of a child, the permanent physical or mental impairment must have prevented work in any regular employment since before age 22. To meet this definition of disability, a claimant must have a severe impairment, which makes him or her unable to do any previous work or other substantial gainful activity which exists in the national economy. To determine whether a claimant is able to do any other work, the Board considers a claimant's residual functional capacity, age, education and work experience. See § 220.100 for the process by which the Board evaluates disability for any regular employment. This process applies to employees, widow(er)s, or children who apply for annuities based on disability for any regular employment. This process does not apply to surviving divorced spouses or remarried widow(er)s who apply for annuities based on disability.

#### **§ 220.27 What is needed to show an impairment.**

A physical or mental impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only by the claimant's statement of symptoms. (See § 220.113 for further information about what is meant by symptoms, signs, and laboratory findings.) (See also § 220.112 for the effect of a medical opinion about whether or not a claimant is disabled.)

#### **§ 220.28 How long the impairment must last.**

Unless the claimant's impairment is expected to result in death, it must have lasted or must be expected to last for a continuous period of at least 12 months. This is known as the duration requirement.