

## Railroad Retirement Board

## § 260.10

time prescribed in this section, the Board may waive this requirement if, along with the final appeal form, the appellant in writing requests an extension of time. The request for an extension of time must give the reasons why the final appeal form was not filed within the time limit prescribed in this section. If in the judgment of the Board the reasons given establish that the appellant had good cause for not filing the final appeal form within the time prescribed, the Board will consider the appeal to have been filed in a timely manner. The Board will use the standards found in §260.3(d) of this chapter in determining if good cause exists.

(d) *Delay in the commencement of recovery of erroneous payment.* Where a timely appeal seeking waiver of recovery of an erroneous payment has been filed with the three-member Board, the Board shall not commence recovery of the erroneous payment by suspension or reduction of a monthly benefit payable by the Board until a decision with respect to such appeal seeking waiver has been made and notice thereof has been mailed to the claimant.

(e) *Submission of additional evidence.* Upon final appeal to the Board, the appellant shall not have the right to submit additional evidence. However, the Board may grant a request to submit new evidence where new and material evidence is available that, despite due diligence, was not available before the decision of the hearings officer was issued. The Board may also obtain new evidence on its own motion. Upon admission of new evidence, the Board, at its discretion, may:

(1) Vacate the decision of the hearings officer and remand the case to the Bureau of Hearings and Appeals for issuance of a new decision. The decision of the hearings officer on remand may be appealed to the Board in the manner described in paragraph (b) of this section; or

(2) Return the case to the hearings officer for further consideration with direction to submit a recommended decision to the Board.

(f) *Decision of the Board.* The decision of the Board shall be made upon the record of evidence developed by the hearings officer and any additional evidence admitted pursuant to paragraph

(e) of this section. The appellant may submit additional argument in writing with the appeal to the Board. The appellant shall have no right to an oral presentation before the Board except where the Board so permits. Such presentation shall be limited in form, subject matter, length, and time as the Board may indicate to the appellant.

(g) *Issuance of decision.* The Board shall make every effort to issue a decision within 90 days after the later of:

(1) The date the final appeal is filed;

(2) The date new or better evidence is obtained in accordance with §260.9(d) and the appellant has commented on it;

(3) The date new or better evidence is obtained in accordance with §260.9(d) and after the close of the comment period;

(4) The date further argument submitted in accordance with §260.9(e) is received; or

(5) The date the record is returned to the Board following referral back to the hearings officer.

(h) *Review of decisions rendered prior to appeal to Board.* The Board may, on its own motion, review or cause to be reviewed any decision issued by a subordinate official or employee under this part.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 3220-0007)

[47 FR 36809, Aug. 24, 1982, as amended at 50 FR 19523, May 9, 1985; 52 FR 11017, Apr. 6, 1987; 67 FR 77155, Dec. 17, 2002; 68 FR 6820, Feb. 11, 2003]

### §260.10 Determination of date of filing.

(a) *General rule.* Except as otherwise provided in paragraph (b) of this section, for purposes of this part, a document or form is filed on the day it is received by an office of the Board or by an employee of the Board who is authorized to receive it at a place other than one of the Board's offices.

(b) *Other dates of filing.* The Board will also accept as the date of filing the date a document or form is mailed to the Board by the United States mail, if using the date the Board receives it would result in the loss or lessening of

rights. The date shown by a U.S. postmark will be used as the date of mailing. If the postmark is unreadable, or there is no postmark, the Board will consider other evidence of when the document or form was mailed to the Board.

[67 FR 77156, Dec. 17, 2002]

### PART 261—ADMINISTRATIVE FINALITY

Sec.

- 261.1 Reopening and revising decisions.
- 261.2 Conditions for reopening.
- 261.3 Change of legal interpretation or administrative ruling.
- 261.4 Decisions which shall not be reopened.
- 261.5 Late completion of timely investigation.
- 261.6 Notice of revised decision.
- 261.7 Effect of revised decision.
- 261.8 Time and place to request review of a revised decision.
- 261.9 Finality of findings when later claim is filed on same earnings record.
- 261.10 Increase in future benefits where time period for reopening has expired.
- 261.11 Discretion of the three-member Board to reopen or not to reopen a final decision.

AUTHORITY: 45 U.S.C. 231f.

SOURCE: 62 FR 45713, Aug. 29, 1997, unless otherwise noted.

#### §261.1 Reopening and revising decisions.

(a) This part sets forth the Board's rules governing finality of decisions. After the expiration of the time limits for review as set forth in part 260 of this chapter, decisions of the agency may be reopened and revised under the conditions described in this part, by the bureau, office, or entity that made the earlier decision or by a bureau, office, or other entity at a higher level, which has the claim properly before it.

(b) A *final decision* as that term is used in this part means any decision of the type listed in §260.1 of this chapter where the time limits for review as set forth in part 260 of this chapter or in the Railroad Retirement Act have expired.

(c) *Reopening* a final decision under this part means a conscious determination on the part of the agency to reconsider an otherwise final decision for purposes of revising that decision.

(d) *New and material evidence* as that phrase is used in this part means evidence that may reasonably be expected to affect a final decision, which was unavailable to the agency at the time the decision was made, and which the claimant could not reasonably have been expected to have submitted at that time.

#### §261.2 Conditions for reopening.

A final decision may be reopened:

(a) Within 12 months of the date of the notice of such decision, for any reason;

(b) Within four years of the date of the notice of such decision, if there is new and material evidence or there was adjudicative error not consistent with the evidence of record at the time of adjudication; or

(c) At any time if:

(1) The decision was obtained by fraud or similar fault;

(2) Another person files a claim on the same record of compensation and allowance of the claim adversely affects the first claim;

(3) A person previously determined to be dead on whose earnings record a survivor annuity is based is found to be alive;

(4) A claim was denied because of the absence of proof of death of the employee, and the death is later established:

(i) By reason of an unexplained absence from his or her residence for a period of 7 years; or

(ii) By location or identification of his or her body;

(5) The Social Security Administration has awarded duplicate benefits on the same record of compensation;

(6) The decision was that the claimant did not have an insured status, and compensation has been credited to the employee's record of compensation in accordance with part 211 of this chapter:

(i) To enter items transferred by the Social Security Administration which were credited under the Social Security Act when they should have been credited to the employee's railroad retirement compensation record; or

(ii) To correct an error made in the allocation of earnings to an individual which, if properly allocated, would