



Legal Opinion L-2005-22.1 September 15, 2005

U.S. Railroad Retirement Board Phone: (312) 751-7139
844 North Rush Street TTY: (312) 751-4701
Chicago Illinois, 60611-2092 Web: <http://www.rrb.gov>

TO: Ronald Russo
Director of Policy and Systems

FROM: Steven A. Bartholow
General Counsel

SUBJECT: Termination of Annuities of Disabled Annuitants
Who Complete a Trial Work Period

This is in reply to your memorandum dated July 13, 2005, regarding the termination of the disability annuity of an annuitant who successfully completes a trial work period.

The annuitant was awarded an occupational disability annuity from August 11, 2002, due to coronary artery disease. He returned to his railroad work in January 2005. He would like his disability annuity terminated so that he can apply for an annuity based on age and service at age 60.

You inquire whether the RRB may terminate the disability annuity of an employee who successfully completes a trial work period by returning to substantial gainful activity or to his regular railroad occupation for at least nine months. You also inquire whether the existence of the 36-month re-entitlement period would prevent the RRB from terminating the annuity.

You point out that "trial work period" is defined at section 220.170 of the RRB's regulations and "reentitlement period" is defined in section 220.171 of those regulations. These regulations are based on social security law and regulations. See section 222(c)(1) of the Social Security Act (42 U.S.C. § 422(c)(1) and sections 404.1592 and 404.1592 of the social security regulations (20 CFR 404.1592 and 20 CFR 1592a).

Section 220.170 defines "trial work period: as:

(a) Definition of the trial work period. The trial work period is a period during which the annuitant may test his or her ability to work and still be considered disabled. The trial work period begins and ends as described in paragraph (e) of this section. During this period, the annuitant may perform "services" (see paragraph (b) of this section) in as many as 9 months, but these months do not have to be consecutive. The Board will not consider those services as showing that the annuitant's disability has ended until the annuitant has performed services in at least 9 months. However, after the trial work period has ended, the Board will consider the work the annuitant did during the trial work period in determining whether the annuitant's disability has ended at any time after the trial work period.

The definition of "trial work period" clearly indicates that neither a return to work nor the actual work performed can be used as a basis for terminating a disability annuity during the trial work period. Subparagraph (f) of section 220.170 sets out guidelines for when a trial work period begins and ends. That regulation provides that:



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

- (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 9th 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 he or she has not worked a full 9 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.

(20 CFR 220.170(f); emphasis supplied.)

Under section 220.170(f), a trial work period may terminate if there is evidence – other than the annuitant's work activity – to show that the annuitant is no longer disabled. It is evident from the provisions of section 220.170 that a trial work period is intended to protect an annuitant who wants to attempt to return to work. Similarly, section 220.171 of the Board's regulations provides for an extension of the trial work period by providing for a reentitlement period. Section 220.171 provides in pertinent part that:

(a)(1) The reentitlement period is an additional period after the 9 months of trial work during which the annuitant may continue to test his or her ability to work if he or she has a disabling impairment(s).

* * * * *

(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 * * * * .

Thus, as is the case with a trial work period, evidence (other than work activity) that the annuitant is no longer disabled can form the basis for terminating a reentitlement period.



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In this annuitant's case, since he returned to his railroad job in January of this year, he has not completed a trial work period. Our review of his claim filed indicates that he has, however, submitted medical evidence that he claims shows that he is no longer disabled. If you find that the evidence the annuitant provided does support his claim, then you may find that his disability annuity has terminated. The same type of finding would be possible with respect to a reentitlement period if the annuitant had already completed a trial work period.

Pursuant to the regulations quoted above, a disability annuity may be terminated during the trial work period and during the reentitlement period if there is medical evidence demonstrating that the employee has recovered from his or her disability. The disability annuity may not be terminated during the trial work period or during the reentitlement period based solely on the employee's return to work.