

April 18, 2000
L-2000-11

TO : Ronald Russo
Acting Director of Policy and System

FROM : Steven A. Bartholow
General Counsel

SUBJECT: Separation Payments to Disabled Annuitants

This is in response to your March 20, 2000 request for clarification of Legal Opinion L-99-18 which holds that section 2(e)(3)¹ of the Railroad Retirement Act prohibits payment of a disability annuity in the month in which an annuitant elects a separation payment in return for relinquishment of employment rights. Specifically, you question what action the annuitant took to lead to a conclusion that he performed service.

In opinions dating back to the 1940's, the Board has consistently treated a separation allowance as compensation with respect to the month in which the employee severs his employment relationship. See L-47-486. Although it is true that the separation allowance is not tied to specific services, the payment arises out of the employment relationship and the amount of the payment is almost invariably tied to the amount of service the employee has accrued. This interpretation was made part of the Board's regulations in 1984 with the introduction of section 211.10 of the Board's regulations (20 CFR 211.10). As a general rule, severance pay or a separation allowance is creditable in the month in which the employment relationship is terminated, regardless of when the employee actually receives payment. It is in the month of election that the employee fulfills the conditions necessary to receive the severance pay and thus may be said to have "earned" the pay. Severance pay or a separation allowance is never creditable in a month after the employment relationship has been terminated.

Your memo makes reference to the month in which an annuitant accepts a separation payment. Please note that the month for which no annuity is payable is the month in which the disabled annuitant elects to participate in the separation program, thereby terminating the employment relationship, not the month in which he actually receives payment.

¹ The last sentence of L-99-18 mistakenly refers to section 2(e)(2).