

May 4, 2000
L-2000-13

TO : Philip H. Arnold
Chief of Records Analysis and Systems
Through: Ronald Russo
Acting Director of Policy and Systems

FROM : Steven A. Bartholow
General Counsel

SUBJECT : Future Disability Onset Dates

This is in response to your request of March 24, 2000 for guidance concerning whether, in cases where the attainment of age is the deciding factor for a disability case being rated an allowance or a denial, it is permissible to set a disability onset date in the future upon attainment of the necessary age. It is my opinion that disability onset dates may not be set in the future prior to coincide with attainment of a particular age.

In your memorandum you provided a scenario where a 49-year old applicant filed an application for a disability annuity on January 24, 1999. On March 15, 1999 the case was reviewed and it was determined the applicant was not disabled based on MVR 202.21. The applicant requested reconsideration of the initial decision on April 8, 1999. On May 2, 1999, the applicant turned age 50. Your memorandum indicated that, using the same medical evidence from the initial decision, the case was reviewed on May 12, 1999 and it was determined the applicant was disabled based on MVR 201.14 because the applicant had attained age 50 and was now considered closely approaching advanced age according to the guidelines. The case was rated and the applicant was granted a disability with an onset date of May 2, 1999.

Part 219.2 of the Board's regulations provides that a person is "eligible" when he or she has met all the requirements for payment of an annuity but has not yet applied. Further, that section defines entitlement for a disability annuity. According to the Board's regulations, "entitled" means that a person has applied for and has proven his or her right to have an annuity, period of

disability or Medicare coverage begin.

You are correct in your statement that the Board's regulations at 20 CFR §220.128 preclude the mechanical application of age as a vocational factor in borderline disability determinations. However, that section does not suggest that an annuity beginning date may be set in the future when the applicant attains a particular age. Indeed, in my opinion, it suggests just the opposite, i.e., that the mechanical attainment or non-attainment of a particular age should not be determinative of disability in borderline cases.

I hope this information is helpful.