

October 29, 1997
L-97-42

TO : Robert E. Bergeron
Assistant to the Labor Member
Office of the Labor Member

FROM : Catherine C. Cook
General Counsel

SUBJECT : Entitlement to the Overall Minimum

This is in response to your memorandum dated October 20, 1997, wherein you asked whether Mr. P.D.L. could qualify for the payment of his annuity under the overall minimum if he adopts a child. According to your memorandum, Mr. L was granted a period of disability effective February 1, 1989, and his annuity began to accrue effective November 1, 1989. Mr. L's annuity has not previously been paid under the overall minimum.

Section 229.32 of the Board's regulations (20 CFR 229.32) sets forth when a child may be included in the computation of the overall minimum. That regulation requires that a child adopted after the employee's annuity beginning date can be included in the overall minimum if the overall minimum is payable in the month before the month the adoption takes place. See 20 CFR 229.32(b). In addition, a child adopted after the annuity beginning date can be included in the overall minimum if the child meets the dependency requirements set forth in section 222.53 of the Board's regulations. See 20 CFR 229.32(b)(2).

Section 222.53 sets forth the following requirements for dependency:

(1) The child must be adopted in the United States and the child must begin living with the employee before the child attains age 18; and either (2) or (3) is met;

(2) The child is living with the employee in the United States and received at least one-half of his or her support from the employee for the year before the month in which the employee could have

become entitled to a social security benefit or the month in which the employee becomes entitled to a period of disability which continues until the employee could have become entitled to a social security benefit; or

(3) If the child is born within one year of either of the conditions in (2), the child was living with the employee and receiving one-half of his or her support from the employee for substantially all of the period that began on the date the child was born.

Since Mr. L will be adopting the child after his annuity beginning date, the child must meet 2 or 3 above. Since the child is now 4 years old, it appears that number 3 cannot be met. Since Mr. L was awarded a period of disability before the child was born, it appears that number 2 can also not be met.

Your final question is whether the overall minimum may become payable at age 62. It appears that if the child is adopted in the United States and begins living with the employee in the United States before the child attains age 18, Mr. L would qualify for the overall minimum if the child is living with Mr. L in the United States and is dependent on the employee for one-half of his support in the year before Mr. L attains age 62. See 20 CFR 222.53(c)(1).