

November 6, 1997
L-97-47.LOP

TO : Claudia C. Walch
Supervisor, Reconsideration Section
Through: Catherine A. Leyser
Director of Assessment and Training

FROM : Steven A. Bartholow
Deputy General Counsel

SUBJECT : Last Pre-Retirement Non-Railroad Employment
R.R.B. No. - E.M. B.

This is in response to your memorandum of October 27, 1997, regarding whether E. M. B.'s work for the WIC program constitutes work for her last pre-retirement non-railroad employment.

You advise that prior to her annuity beginning date in 1988, Ms. B. worked as a nurse for the Crawford County Health Department. In 1989, she was asked to work for the Labette County WIC program. The WIC Program is a Special Supplemental Nutrition Program for Women, Infants, and Children ("WIC Program") sponsored by the Food and Consumer Service Agency of the Department of Agriculture. The WIC program is a federally funded program which provides benefits to women, infants and children. All payments under the WIC program are federal funds, rather than the funds of Ms. B.'s past employer, Crawford County, Kansas. She checked with the Board and was told that work for Labette County would not affect her annuity.

Labette County later subcontracted with Crawford County to operate Labette County's WIC program. Ms. B. was unaware of this change. In file is a statement from the Crawford County Health Department that since 1989, Ms. B. has only worked for the WIC program and that all funds for this program come from the Federal Government. There are no state or local funds used in this program.

Section 2(f)(6)(A)(ii) of the Railroad Retirement Act requires a deduction of \$1 for every \$2 earned in "compensated service rendered ... to the last person, or

persons, by whom such spouse was employed". In order to invoke the deduction, the spouse must not only be in the employ of the last person employer, but must also receive compensation from that last person employer. In my opinion, Ms. B. was not in compensated service to Crawford County after her annuity beginning date. Although she was nominally employed by Crawford County, she was not paid by Crawford County. All funds for her position were paid by the Federal Government. Therefore, she was not in compensated service to Crawford County, her LPE employer.

In response to your question regarding certain types of work described in subsections 1.6.18B through E of the Retirement Claims Manual as not constituting LPE employment, the rationale for that conclusion appears to be that each type of work constituted volunteer work, and that the payments involved, if any, do not or are deemed not to constitute remuneration.