

October 1, 1997
L-97-37

Mrs. M. D. F.

In reply refer to:
R.R.B. No.
C. 2535-97

Dear Mrs. F.:

This is in reply to your letter dated September 10, 1997, inquiring about the restrictions on post-retirement employment contained in the Railroad Retirement Act.

You advise that you will be 60 years old on January 24, 1998, and plan to apply for a spouse annuity effective as of that time. You state that you retired from Payless Shoe Source in April 1994. For the last three years you have worked as a part-time secretary for the Kansas legislature for the first 3½ months of each year. You have also worked at Eddie Bauer stores part-time over the Christmas holiday. Your annual earnings have been approximately \$5,500 per year. This amount appears to be derived from both sources of employment; however, it is not entirely clear that \$5,500 represents earnings from both the Kansas legislature and Eddie Bauer. You inquire whether you will be able to work for the Kansas legislature and the Eddie Bauer stores and still be eligible for a spouse annuity.

There are two restrictions in connection with post-retirement work which may affect your annuity. The first restriction is contained in section 2(f)(6) of the Railroad Retirement Act, which provides that if an employee or spouse continues in or returns to "last person service" employment, the tier II benefit is subject to a reduction of one dollar for each two dollars earned up to a maximum of 50 percent of that annuity component. "Last person service" employment refers to work for pay in the service of the last non-railroad employer by whom an individual is employed prior to becoming entitled to an annuity. See 20 CFR 216.22(b). This section of the Board's regulations provides that employment which an individual stops within 6 months of the date on which the individual files for an annuity will be presumed, in the absence of evidence to the contrary, to be service from which the individual resigned in order to receive an annuity and, thus, to be "last person service" employment. With respect to seasonal employment, this office has held that the rendition of such services will not be considered last person service employment where the following conditions are met: (1) the employee possesses no re-employment rights and must reapply each year for the position; (2) the employment relationship is terminated at the end of each period of employment; and (3) such employment has terminated prior to the annuity beginning date for some reason not related to the application for an annuity under the Railroad Retirement Act.

Applying the above rules to the work you described in your letter, it appears that your work for

Mrs. Milo D. Fultz

Eddie Bauer stores may be considered to be seasonal employment so long as you are not working in such employment when your annuity begins, you have no re-employment rights for the position you hold each Christmas season, and you must reapply each year in order to have a job for the Christmas season. If your annuity begins, as you plan in February 1998, and you are then working for or have just stopped working for the Kansas legislature, that work cannot fall under the category of seasonal employment. Instead, such work would fall under the definition of "last person service" employment. Thus, for example, assuming that you were currently eligible for an annuity and using the estimated tier II amount of \$470.00 a month, you could lose as much as \$235.00 per month by working for that "last person service" employer. If, however, you were to choose not to work for the Kansas legislature until after your annuity beginning date in 1998, that job would not be considered to be "last person service" employment under the Board's regulations.

A second restriction which applies to an annuity regardless of whether an annuitant works for a "last person service" employer or any other (non-railroad) employer is an earnings limitation which is contained in section 2(f) of the Railroad Retirement Act (45 U.S.C. §231a(f)). That restriction provides that the tier I railroad retirement benefit may be reduced if a beneficiary under age 70 works after retirement and earnings exceed certain exempt amounts. In 1997, the amounts are \$8,640 for annuitants under age 65, and \$13,500 for annuitants age 65-69. For those under age 65, the deduction is one dollar for every two dollars of earnings over the exempt amount, and for those 65-69, the deduction is one dollar for every three dollars over the exempt amount. Based on the level of proposed post-retirement earnings you have described, this restriction would not affect your annuity.

I am enclosing two Board publications which may also be useful to you. The IB-2 (February 1997) booklet describes the various benefits available under the Railroad Retirement Act. The sheets entitled "Railroad Retirement Reminders for 1997" detail changes made in benefit amounts in 1997; the response to question 6 summarizes the earnings limitations discussed in this letter.

I hope that the above discussion and the enclosed information will be helpful to you.

Sincerely,

Catherine C. Cook
General Counsel

Enclosures

Mrs. Milo D. Fultz