

**THIS FORM IS TO BE USED ONLY BY THE SECRETARY TO THE BOARD OR AS OTHERWISE SPECIFICALLY DIRECTED BY THE BOARD.**

**FORM NO. G-21 (9-83)**

UNITED STATES OF AMERICA  
RAILROAD RETIREMENT BOARD

**TRANSCRIPT OF BOARD ORDERS**

TRANSCRIPT NO.

**Special**

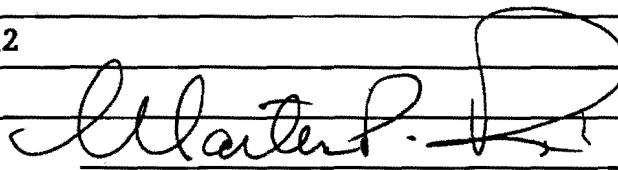
PAGE 1 OF 5 PAGES

DATE TRANSCRIPT RELEASED

I CERTIFY THAT THE FOLLOWING IS A TRUE AND CORRECT TRANSCRIPT

OF BOARD ORDER(S) NUMBERED 12-29

ISSUED BY THE BOARD ON May 21, 2012



SECRETARY TO THE BOARD

B.O. 12-29

This is the statement of the Railroad Retirement Board regarding agency processing of Agreements under the Long Island Railroad Voluntary Disclosure and Disposition Program of the United States Attorney for the Southern District of New York.

I. EARLY AGREEMENT FORM PROCESSING

A. DISABILITY ANNUITY ENTITLEMENT

1. Current Disability Application.

The Board will consider an executed Early Agreement form to be a request to cancel the disability application under section 217.26 of the Board's regulations, without regard to the provision requiring consent of other potential annuitants which is otherwise required by 217.26(b)(2). Cancellation renders all annuity payments based on that application to be erroneous. Recovery of the total amount of erroneous annuity payments will be determined to be compromised by agreement to \$0.00. The Board will also discontinue the employee's participation in early Medicare based on the cancelled disability application. The Board makes no representation regarding recovery of payments made to medical providers as a result of the cancelled application.

## 2. Future Disability Application.

The Board will determine an applicant's entitlement to disability based upon any future disability annuity application filed in accordance with sections 2(a)(1)(iv) and (v) of the Railroad Retirement Act. In determining credibility of claimed disabling impairments in a future application, the Board will weigh the applicant's declaration under penalty of perjury that he or she made false or misleading statements with respect to his or her health condition in the cancelled disability annuity application.

The Board will determine that filing a new disability application voids the agreement to compromise recovery of the erroneous payment caused by cancellation of the earlier application. If the Board determines that the applicant meets the conditions for entitlement to a new disability annuity, no payment will be made to the annuitant until the entire amount of the erroneous payment under the cancelled application is recovered by full offset against the disability annuity payable under the later application. If the Board determines that the applicant does not meet the conditions for entitlement to a new disability annuity, the Board will nevertheless pursue recovery of the entire amount of erroneous payment as a debt due the United States.

Without regard to whether the Board determines the employee to be entitled to a disability annuity based upon a new application, or the recovery by the Board of erroneous payments based on the cancelled application, the Board will also notify the United States Attorney for the Southern District of New York that the claimant filed a new application for a disability annuity. The U.S. Attorney may take action as deemed appropriate.

## B. AGE AND SERVICE ANNUITY ENTITLEMENT.

An employee who cancels his or her disability annuity by an Early Agreement form may file an application for any age and service annuity under section 2(a)(1) of the Railroad Retirement Act at any time after meeting the eligibility requirements provided by law. The Board will determine entitlement to the age and service annuity, and will not consider the application to void or to have any other effect upon the agreement to compromise recovery of the erroneous payments made under the cancelled disability annuity application.

## II. STANDARD AGREEMENT FORM PROCESSING.

### A. DISABILITY ANNUITY ENTITLEMENT

#### 1. Current Disability Application.

The Board will consider an executed Standard Agreement form to be a request to cancel the disability application under section 217.26 of the Board's regulations, without regard to the provision requiring consent of other potential annuitants which is otherwise required by 217.26(b)(2). Cancellation renders all annuity payments based on that application to be erroneous. Recovery of the total amount of erroneous annuity payments will be determined to be compromised by agreement to 50 percent of the total disability annuity payments based on the cancelled application. The compromised amount will be recovered from the employee in installments as specified in the Agreement form, including directly by assignment from payments due to the employee under the Long Island Railroad pension plan. The Board will also discontinue the employee's participation in early Medicare based on the cancelled disability application. The Board makes no representation regarding recovery of payments made to medical providers as a result of the cancelled application.

#### 2. Future Disability Application.

The Board will determine an applicant's entitlement to disability based upon any future disability annuity application filed in accordance with sections 2(a)(1)(iv) and (v) of the Railroad Retirement Act. In determining credibility of claimed disabling impairments in a future application, the Board will weigh the applicant's declaration under penalty of perjury that he or she made false or misleading statements with respect to his or her health condition in the cancelled disability annuity application. The Board will determine that filing a new disability application voids the agreement to compromise the amount of recovery of the erroneous payment caused by cancellation of the earlier application.

If the Board determines that the applicant meets the conditions for entitlement to a new disability annuity, no payment will be made to the annuitant until the entire remaining balance of the erroneous payment under the cancelled application is recovered by full offset against the disability annuity payable under the later application. If the Board determines that the applicant does not meet the conditions for entitlement to a new disability annuity, the Board will nevertheless pursue recovery of the entire remaining balance of erroneous payment as a debt due the United States. Without regard to whether the Board determines the employee to be entitled to a disability annuity based upon a new application, or the recovery by the Board of erroneous payments based on the cancelled application, the Board will also notify the United States Attorney for the Southern District of New York that the claimant filed a new application for a disability annuity. The U.S. Attorney may take action as deemed appropriate.

**B. AGE AND SERVICE ANNUITY ENTITLEMENT.**

An employee who cancels his or her disability annuity by a Standard Agreement form may file an application for any age and service annuity under section 2(a)(1) of the Railroad Retirement Act at any time after meeting the eligibility requirements provided by law. The Board will determine entitlement to the age and service annuity, and will not consider the application to void the agreement to compromise recovery at 50 percent of the erroneous payments made under the cancelled disability annuity application. However, the Board will deduct the monthly installment repayment of the cancelled disability annuity from the employee's age and service annuity. The employee's repayment by assignment from the Long Island Railroad pension will cease effective with the month repayment deductions begin from the age and service annuity under the Railroad Retirement Act.

III. CURRENT CONNECTION.

If the employee enters into either an Early Form or a Standard Form Agreement, the Board will not consider earnings from non-railroad employment performed between the employee's last date worked for the Long Island Railroad and the beginning date of any annuity based on a subsequent application as regular employment for purposes of determining whether the employee has a current connection pursuant to section 1(o) of the Railroad Retirement Act.

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