

Program Letter

United States Railroad Retirement Board Office of Programs



Office of Programs

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TO: Employer Medical Departments

SUBJECT: Guidelines Used by the Railroad Retirement Board for Approving Benefits
for Alcohol and Drug/Substance Abuse Cases

Please share this information with the appropriate members of your staff who file service and compensation reporting forms for employees of your organization.

Background

The Railroad Unemployment Insurance Act (RUIA) authorizes the Railroad Retirement Board (RRB) to pay unemployment or sickness benefits to employees who are not working due to alcoholism and drug or substance abuse. The type of RUIA benefits that are payable depends on what form of treatment the employee is receiving, if any.

The purpose of this circular letter is to explain what guidelines are used by the RRB when adjudicating claims for unemployment or sickness benefits where the reason not working is alcoholism or drug/substance abuse.

Federal Regulations

The Federal Railroad Administration (FRA), United States Department of Transportation, has issued regulations for the purpose of controlling alcohol and drug use by employees who are subject to the Hours of Service Act. In general, the regulations apply to employees engaged in the operation of trains.

The regulations authorize employers to require breath or urine samples for testing under conditions constituting "reasonable cause" and to make post-accident testing and employee assistance programs mandatory.

Failed Drug Test or Rule Violations

An employee who tests positive for drugs and who is removed from service as a result is not necessarily eligible for sickness benefits. Drug test results cannot by themselves serve as the basis for paying or denying benefits. A careful review of the medical evidence or other facts of the case will be required. Employees who are not eligible for sickness benefits may be entitled to unemployment benefits.

Although the FRA's regulations require employees who are subject to the Hours of Service Act to be deemed "medically disqualified" from work for a period of time based on a failed drug test, that does not mean the employee is qualified for sickness benefits under the RUIA.

Acceptable Proof of Sickness

Acceptable proof of inability to work due to sickness caused by alcoholism or drug abuse may be furnished by the treating physician or psychologist, or by a hospital, clinic or other institution for medical treatment, or by the employer's medical department or chief surgeon. Employee assistance counselors and substance abuse professionals are acceptable if they are certified by the National Association of Alcohol and Drug Abuse Counselors (NAADAC) or the Certified Employee Assistance Professionals (CEAP).

Sickness benefits are payable based on an employee's "inability to work". A diagnosis of alcohol or substance abuse does not by itself demonstrate a persons inability to work. To be eligible for sickness benefits, an employee must be treated for his/her condition or be in a treatment program. This does not include an educational program, only.

A claimant's claim to a day as a "day of sickness" must be supported by substantial medical evidence. Otherwise, he or she may be considered as "able to work," and no sickness benefits may be paid.

Eligibility for Unemployment Benefits

If, for instance, an employer holds an employee out of service because the employee did not pass a urine test administered at the direction of the employer and if the employee is not otherwise undergoing medical treatment for an underlying illness, the employee should be considered to be able to work. Under these circumstances the employee may be eligible for unemployment benefits.

Rule G Violations

Employees who are suspended or discharged for a Rule G violation are usually able to work and may be paid unemployment benefits if they are available for work. If they are actively seeking reinstatement, they are considered available for work under the RUIA. If they are not seeking reinstatement, they must be actively seeking new employment to draw unemployment benefits.

**Employee
Assistance
Program (EAP)
Participation**

If an employee has been removed from service because of alcohol or drug addiction and agrees to participate in the railroad's EAP program rather than contest the removal action under collective bargaining procedures, the employee may be considered available for work and eligible for unemployment benefits.

If the addiction is so severe as to be disabling, the employee may be paid sickness benefits upon filing an acceptable application and statement of sickness.

Questions

If you have any questions or need additional information about this circular letter, please contact the Sickness and Unemployment Section Chief at (312) 751-4708.

This circular letter is also available on our Web site at <http://www.rrb.gov>.
