

## 7.1 Introduction

### 7.1.1 Scope of Chapter

This chapter focuses on the processing and disposition of requests for reconsideration and appeals of disability rating decisions rendered by the Disability Programs Section (DPS) under the Railroad Retirement Act (RR Act). The Reconsideration Section in Assessment and Training handles all reconsideration requests of disability decisions and appeals of decisions are charged to the Bureau of Hearings and Appeals.

This section contains procedures that are unique to disability reconsideration such as medical development, vocational documentation and preparing a rationale. RCM [6.1.1](#) contains procedures regarding all non-medical issues pertaining to reconsideration.

### 7.1.2 Right To Request Reconsideration

Every annuitant has the right to file a request for reconsideration of an initial or post disability decision made by DBD. See [RCM 6.1](#) for exceptions, summary of the reconsideration and appeals process, and filing for reconsideration and appeals.

**NOTE:** An annuitant may request a reconsideration of a disability annuity onset decision based on Form RL-121f notice. For this reason, RL-121f letters must include information about reconsideration rights, even if additional medical evidence has been requested for a possible earlier onset date. Requests for reconsideration of the ABD or annuity rate must be based on the annuity award letter (RL-20 for retirement cases and RL-43 for survivor cases).

In addition, reconsideration rights are **not** to be included in letters when informing an annuitant that their annuity has been impacted by earnings and impairment related work expenses (IRWE) have been considered. The reconsideration rights will be provided in a letter when the annuity is adjusted by the adjudicating unit.

### 7.1.3 Types Of Reconsideration

- A. Initial Denial Actions - A reconsideration request may be handled for cases where an initial disability annuity under the RR Act and/or "period of disability" (disability freeze) or early Medicare entitlement under the SS Act were denied. The disability denial may be based on service requirement not met, lack of disability severity, insufficient quarters of coverage (QC's) for disability freeze, etc.

The handling of the reconsideration request pertains to the following beneficiary types:

Employee's occupational disability

Employee's total and permanent disability (including DF)

Widow's disability

Child's disability

- B. Partially Favorable Decisions - This type of reconsideration request involves disability decisions for each beneficiary where a partially favorable allowance was made. For example, we did not allow the earliest onset date, as claimed by the annuitant since the medical evidence of record did not permit it. Also, another situation is where the occupational disability annuity was allowed but the "period of disability" (disability freeze for early Medicare entitlement) was denied. The medical evidence of record did not support a finding of total and permanent disability.
- C. Cessation of Disability Determinations - Regarding this reconsideration request, a CDR was conducted and it resulted in a termination of either disability benefits under the RR Act and/or disability freeze for early Medicare entitlement under the SS Act. The termination was made due to an annuitant's medical recovery, subsequent work for covered railroad carrier, substantial gainful activities (SGA), continued work activity after a trial work period (TWP) or failure to cooperate.

Also, a reconsideration request may be received after we have reopened to deny because a post review uncovered that an erroneous initial determination had been made for him/her.

#### **7.1.4 Third Party Inquiry Relating To Adverse Decisions**

If an inquiry is received from someone clearly representing the claimant, which refers to our adverse notice (denial letter) and indicates that the notice was incorrect, this may indicate an attempt by the claimant to ask for a reconsideration.

In such cases, the field office should be advised to contact the claimant to find out if a reconsideration request was intended. If so, the third party letter will preserve his/her appeal as long as the third party letter was received within the 60 day reconsideration/appeal period.

#### **7.1.5 Reconsideration Handling By Reconsideration Examiners**

A reconsideration examiner, not involved in the initial determination or post termination decision, performs the case review after Form RL-211a is released to the individual acknowledging the receipt of request for reconsideration.

If it is not already in file, request the field office to secure any medical evidence including evidence from the individual's treating physician(s). This request should also include records from hospitalizations or clinic treatments and/or non-medical evidence (vocational/work records) from him/her and/or employer(s).

It may be necessary to request that the individual undergo a consultative examination (CE) or refer the case to QTC when the medical evidence presented for use at the reconsideration level is in conflict with medical evidence of record.

Based on all the evidence, render a reconsideration decision.

If you determine that the initial denial, partially favorable or cessation decision should be reversed, prepare the appropriate screen(s) on OLDDS and/or paper forms. (G-325, G-325.1, SSA-831-U3, or G-325a).

Also, prepare a letter advising the individual about the wholly/partially favorable allowance or continuance of disability decision.

After the reconsideration decision has been authorized the case should be handled as follows:

- Forward to the Director of the Retirement Benefits Division or the Director of the Survivor Benefits Division. The route slip should indicate the type of action needed by the payment examiner, such as awarding the initial disability annuity, recertifying the disability annuity payment based on an earlier onset date, enrolling for Medicare coverage, etc.

When the reconsideration decision still affirms the initial decision, prepare and release a letter affirming our earlier decision. Unless there is some other action needed after reconsideration action has been taken, forward the folder to BHA.

### **7.1.6 Reconsideration Request Filed Before The Initial Determination Is Made On An Initial Disability Claim**

Under RRB's regulations, a claimant does not have a right to request a reconsideration in advance of an initial determination. For purposes of an appeal, an initial determination is made when the notice of such determination is dated for release.

In instances where a request for reconsideration is filed before the initial determination is made, Disability Initial Section (DIS) will dismiss the reconsideration request on the basis that an initial determination had not been made. Conversely, in those instances when the reconsideration request is filed before receipt of the notification (the denial notification is prepared but not released, or it is in transit), the reconsideration request should be processed as a valid request.

In some situations, the field office will have to telephone DIS to ascertain the status of a claim before taking an action. Any new and material medical evidence submitted at this time should be forwarded to DIS for association and consideration with the pending unadjudicated claim.

An example of the language which may be used in dismissing such a request is as follows, but may have to be modified to fit the particular case involved:

"We have dismissed your request for reconsideration dated \_\_\_\_\_ because an initial disability determination has not been made in your case. The RRB regulations provide the right to reconsideration of a disability determination only after an initial determination has been made. You will be advised of this right in the initial disability determination notice.

If you have any questions about your claim, you should get in touch with any RRB field office. Most questions can be handled by telephone or mail. If you visit the field office, please bring this notice with you.

### **7.1.7 New Disability Applications Filed While A Reconsideration Or Appeal Is Pending**

RRB's regulations (20 CFR Section 217.9) states that the effective period of an application ends on the date of the notice of an initial decision denying the claim. Also, Section 217.9 states that if a timely appeal is made, the effective period of the application ends on the date of the notice of the decision of the hearings officer, on the date of the notice of the final decision of the Board or when the court review of the denial has been completed. After the effective period of an application ends, the person must file a new application for any annuity.

Due to varying circumstances, the time period involved in the handling of cases from the initial decision through the entire appeal process can become quite lengthy. For that reason, some claimants file a new application while they are still appealing the decision from the original application.

Section 5(b) of the RR Act provides that an application for any payment under the Act "shall be made and filed in such manner and form as the Board may prescribe." This statute thus expressly grants to the Board the discretion to determine the manner in which applications may be filed.

Based on the above, DBD can receive new applications filed while a reconsideration or appeal before the Board is pending, but should take no development action until the appeal process is completed. No additional development is necessary in those cases where the appeal is ultimately decided in the claimant's favor. Where the appeal is not decided in the claimant's favor, payments are prohibited on the application for the period covered by the initial application only (claimant's potential eligibility for receiving a benefit for up to twelve months prior to the filing date).

This approach conforms with procedures of SSA. See POMS GND1 12045.027 for specifics.

When a claimant files a new application while a reconsideration of an initial determination is pending, process the case as follows:

- A. New Application Filed While Initial Denial Being Reconsidered - If the claimant files a new application while the Reconsideration Section is reconsidering an

initial denial, and the new application represents the same issue as the previous claim, combine the application with the reconsideration request. Advise claimant that since his original application is still in an appeal process, it is active so no action will be taken on the second application filed.

- B. New Application Filed While Cessation Being Reconsidered - When a Reconsideration examiner is preparing a reconsideration determination affirming a substantial gainful activity (SGA) cessation, and a new application is filed, the new application should be combined with the reconsideration request.
- C. Dual Disability Claim Filed While An Initial Denial Or Cessation Is Being Reconsidered

When a claimant files a related claim (dual entitlement exists) while a reconsideration request is pending on another disability claim under the same entitlement, the new claim should be referred to DPS. DPS should complete the disability rating for the new application and then review the claim that had been denied. If this new rating shows that the previously denied rating should be reopened then DPS should take all necessary actions. For example:

An employee was denied a total and permanent disability and files a reconsideration. In the interim the employee files for a disabled widower benefit. When the medical evidence is received for the widower claim, evidence that was unavailable when the denied rating was made, is submitted. This new evidence shows the claimant to be disabled for both a widower and total and permanent annuity. DPS should reopen the denied claim, make the appropriate disability determination, and inform the Reconsideration Section that the decision has been overturned.

However, if the decision on the new application does not affect the denied rating, DPS should complete their action and return the claim to the Reconsideration Section.

Prepare a personalized notice for each claim to include the claimant's right to request a hearing if dissatisfied with the reconsideration decision.

- D. Application Filed After Appeal Process Completed

If an application is filed after the appeal process has been completed, the medical determination cannot consider a period covered by the earlier application. To do so would in effect be reopening the original final decision.

NOTE: The appeals process ends 60 days after notification to the applicant of a decision even if no request for reconsideration was filed.

## 7.2 Jurisdictional Handling Of Reconsideration / Appeals

### 7.2.1 General

There had been some questions raised about the manner in which a request for reconsideration should be processed. This section incorporates the interim procedure (A-91-05) issued to the disability claims examiners on February 15, 1991 that provided guidelines for the jurisdictional handling of reconsideration/appeals.

Some of the questions being raised referred to notifications advising annuitants of the reconsideration decision, which cases should be referred to hearings and appeals and what type of appeal backing should be on reconsideration letter. Procedure is provided in DCM 7.2.2 with examples on how to handle each issue.

### 7.2.2 Issues

1. The first issue involves an initial disability denial.

An employee filed a disability application and his claim for a disability annuity is denied for a lack of medical severity. He disagrees with the decision and files a timely reconsideration request. After the reconsideration review is completed, if the determination affirms that the initial disability denial decision is correct, the employee should be provided an explanation including appeal rights.

2. The second issue involves a difference in the claimed onset date (wholly favorable).

An employee filed a disability application and claimed an onset date of October 17, 1988. His application was denied for a lack of medical severity. He timely submitted a request for reconsideration along with medical evidence. Based on the new medical evidence, his disability annuity was allowed from October 17, 1988, his alleged onset date. The employee should be sent a letter advising him of the wholly favorable decision. No appeal paragraph is required in this letter since the employee will be given appeal rights on the award letter.

3. The third issue involves a difference in the claimed onset date (partially favorable).

An employee filed a disability application and claimed an onset date of October 17, 1988. His application was denied for lack of medical severity. He submitted a timely request for reconsideration along with additional medical evidence. Based on the new medical evidence, he was found disabled from October 17, 1989, one year after his alleged onset date. The employee should be sent a letter advising him of the partially favorable decision. The letter should also advise him of his appeal rights if he does not agree with the partially favorable decision and it should advise him that he will receive another notice in the mail with specific details about his annuity rate and beginning date.

4. The fourth issue involves a further protest about the reconsideration decision.

An employee filed a disability application and claimed an onset date of October 17, 1988. His application was denied for lack of medical severity. He timely submitted a request for reconsideration along with additional medical evidence. Based on the new medical evidence, he was found to be disabled from October 17, 1989. Since the decision was only partially favorable, the employee was sent a letter advising him of the partially favorable decision and his annuity was awarded as stated above in issue 3. He now files a protest about the reconsideration decision and wants his alleged onset date to be established based on his disabling conditions. That protest letter should be treated as an appeal request. The file containing the protest letter is to be sent directly to the Bureau of Hearings and Appeals.

5. The fifth issue involves a request for reconsideration of the earliest onset date and medical evidence is submitted.

An employee filed a disability application and claimed an onset date of October 17, 1988. A disability annuity and/or a "period of disability" is granted with a later onset date of October 17, 1989. He timely submits a request for a reconsideration of the earliest onset date along with medical evidence. Based on the new medical evidence, no change is warranted. The employee should be advised of his appeal rights if he does not agree with the partially favorable decision. However, if the medical evidence does permit a wholly favorable decision, no appeal paragraph is required in the letter advising him of the reconsideration decision.

## 7.3 Request For Reconsideration Development

### 7.3.1 General

The Reconsideration examiner has the responsibility for development of medical evidence in a reconsideration case. Use the general instructions on initial cases for development and tracing of medical evidence (DCM [Chapter 4](#)).

The reconsideration examiner will consider the issues of whether a claimant is disabled, the onset of disability and cessation of disability. Nonmedical aspects of disability, e.g., vocational consideration, may be fundamental to a proper decision. Resolve doubts about need for further documentation in favor of obtaining such documentation.

The primary requirement of a reconsideration determination is that it be legally and factually proper. A well documented folder gives sufficient evidence at higher appeal levels for validity of determination.

Reconsideration examiners will concentrate on the following for a reconsideration determination:

- A. Examine file for all essential elements and proper documentation of all pertinent allegations.
- B. Secure additional evidence if evidence is incomplete, insufficient, conflicting, subject to different conclusions, or subject to questionable assumptions.
- C. Analyze total evidence in file. Check and resolve conflicts or discrepancies. Weigh the complete evidence and set forth in the determination, the findings, rationale and conclusion.

NOTE: When evaluating an occupational disability reconsideration with a filing date prior to January 1, 1998, use the Provisional Occupational Disability Rating Schedule (PODRS) (See [DCM 3.4.2](#)). If the filing date is January 1, 1998 or later use the Occupational Disability Standards as described in the Disability Manual. (See [DCM 13](#).)

### 7.3.2 Development Techniques

Reconsideration examiners should use any development technique for handling reconsideration that will provide the best documentation such as mail, telephone calls and contact with field offices. To handle expedited cases, it may be necessary to call the field office, claimant, physician, employers, or other individuals knowledgeable about the claimant's situation.

The following is a suggested outline to resolve the problems presented in a case for reconsideration development.

- A. Analyze the information obtained in the initial development and any new information obtained by any source as it relates to the claimant's disability determination.
- B. Solicit medical evidence from prior or newly identified sources which could document the claimant's condition.
- C. Secure a consultative examination (CE) and/or work history to fill in any remaining gaps in the medical and/or vocational evidence.
- D. Have the field office arrange for a face-to-face interview whenever doubts remain about any fact which could affect the decision if the Reconsideration examiner believes that direct contact would help resolve the issue(s).
- E. Follow instructions in [DCM 4.3.8](#) when tracing for evidence necessary to complete the reconsideration decision.

### 7.3.3 New Medical Documentation Needed

- A. Claimant's Medical Sources - The claimant for a disability annuity is responsible for providing evidence of the claimed disability. The Board will assist the claimant, when necessary, in obtaining medical evidence. All medical sources

from which the claimant has received examination or treatment since the initial decision should be obtained. Also any medical evidence not developed as part of the initial decision should be requested. These sources of evidence should be developed in the most expeditious manner.

- B. Worsening of Condition or New Allegations - Often new allegations are made or new evidence presented on reconsideration which indicates a worsening of the claimant's condition. When this occurs, Reconsideration examiner should obtain the additional information needed to provide a clear picture of the claimant's current condition. This information may be available from the claimant's medical sources or through a CE.
- C. Consultative Examination - CE's should be obtained when needed, but not routinely. A CE should not, if possible, be performed by the same physician used in the initial claim.
- D. Signing of Medical Reports - If reconsideration permits allowance, the case can be paid while the signature is being obtained. Medical evidence obtained by telephone during the reconsideration process must be sent to the medical source(s) for confirming signature. Unsigned reports secured in connection with the initial decision which are material to the reconsideration determination must also be sent to the medical source(s) for signature. The confirming signatures are necessary to perfect the record in case of future appeal if the reconsideration determination affirms an initial denial or cessation (including partial denials such as disability onset established later than alleged).

### 7.3.4 Vocational Documentation Required

In cases in which the severity of an impairment does not meet a "D" finding in the Occupational Disability Tables (January 1, 1998 or later) or meet or equal the disqualifying criteria for the claimant's appropriate family group as identified in the PODRS (prior to January 1, 1998) or the Listings or Impairments, as shown in RRB or Social Security Administration (SSA) regulations, a finding of "disabled" cannot be made on medical considerations alone. When this occurs, full consideration must be given to the vocational factors. (See DCM 4 for a discussion of sequential evaluation.)

The folder should always contain complete vocational development including a full description of the claimant's work history during at least the 15 years prior to alleged onset (or past the alleged onset date if the claimant is still working). The information secured should include the job titles, types of business (both railroad or non-railroad), dates worked, usual job in the last 5 years (both railroad or non-railroad), which job claimed as regular railroad occupation, physical demands, basic duties, nature and extent of supervision, independent judgment required and the types of tools, machinery and equipment used, if any.

If more than one job was performed during this 15-year period, separate descriptions of each job must be secured. Use Form G-251 (Vocational Report) for obtaining additional vocational history.

See DCM [Chapter 5](#) for additional information about vocational development.

## 7.4 Reconsideration Determinations

### 7.4.1 Preparation Of The Reconsideration Determination

When the development of the reconsideration request has been finished, prepare a new determination revising or affirming the original determination as appropriate. This requires careful attention to the following:

- A. Examination of the file in detail to ensure that all required elements are present and all pertinent allegations are properly documented.
- B. Determination that evidence in file is sufficient, without conflict and not subject to different conclusions.
- C. Analysis of the total evidence, resolving conflicts and discrepancies, weighing the complete evidence and setting forth the findings and conclusions in the disability decision rationale.

### 7.4.2 Affirming A Previous Determination

A previous denial determination may be affirmed as written if any of the following conditions are satisfied:

- A. There is no allegation of a worsening of any previously documented impairment;
- B. There is no allegation of any new impairment;
- C. There has been no treatment of any impairment subsequent to the prior determination;
- D. The prior denial determination was substantively and technically correct;
- E. The rationale for the prior denial determination was correctly presented and it resolved all the pertinent issues to be adjudicated.
- F. The applicant failed to submit additional evidence.

In the event a previous denial determination is affirmed and the rationale for the reconsideration determination would merely be a verbatim repetition, the following statement may be considered as an adequate rationale for the file:

The original (or prior) determination of \_\_\_(date)\_\_\_ for \_\_\_(claimant)\_\_\_ is hereby affirmed as written.

The letter should also include railroad retirement claim number, date of affirmation and name of disability examiner involved in decision.

### 7.4.3 Revision Of Prior Determinations

In the event the reconsideration examiner revises any part of a prior determination, the revision must be explained in the rationale or letter to the claimant. The criteria for reconsideration case rationale are generally the same applicable criteria for initial case rationale.

The rationale may include the following elements:

- A. A review of the claimant's allegations, including his/her basis for requesting a reconsideration. This should include worsening of documented impairments; new impairment; different onset date; no medical recovery; sheltered employment; new evidence, etc.
- B. A discussion of any technical issues which have arisen since the prior determination.
- C. A discussion of the findings produced by the sequential evaluation process.
- D. A statement of the basis for the revised disability determination (cite any specific listing, standard, rule, etc. that supports the revision).

### 7.4.4 Points To Consider In The Reconsideration Process

- A. Treating Source Opinion Differs - When the total evidence does not support an opinion furnished by the claimant's treating physician that he or she is "unable to work," "disabled," etc., cite the findings or evidence which rebut(s) the treating source opinion.
- B. Inconsistencies Material to the Decision - Explain any inconsistencies material to the decision, i.e., evidence which might indicate a different decisional outcome.
- C. Pain-Related Issues - Any allegation(s) or report(s) of pain must be considered in (1) determining whether the claimant has a severe impairment, and (2) at each step in the sequential evaluation process. If there are inconsistencies in the evidence concerning pain, i.e., the claimant alleges limitations or restrictions greater than that reasonably expected based on the objective medical findings, there are conflicts in the evidence, etc. Then these differences must be reconciled and explained in the file.
- D. Closed Period Cases - In closed periods of disability, explain how medical improvement is demonstrated.

- E. Vocational Rule - In a medical vocational decision, if no vocational rule is met, but the vocational rules are used as a framework for the decision, explain what rules have been considered.
- F. Consideration of Jobs and Incidence - In unfavorable decisions, a citation of jobs may be stated. For example, "You are considered able to perform your past work..." or "You are considered able to perform medium..." etc.
- G. Court Cases - Explain any specific issues as required by court decision that impacts either positively or negatively on reconsideration determination, e.g., RRB's legal opinion on alcoholism L79-232.

## 7.5 Reconsideration Rationale Preparation

### 7.5.1 General

The rationale is a statement of the fundamental reasons serving to account for the reconsideration determination of disability. It is used as a supporting statement for a disability decision and contains a complete, concise discussion of the analysis and opinions used as a basis for a decision. It also includes citation of applicable rules and codes. The rationale for a disability reconsideration decision must be written, keeping the audience that will be reading it in mind, so that a clear picture of the case can be obtained. The rationale should follow an orderly pattern and show clearly how specific evidence leads to a conclusion. Any significant inconsistencies in medical and non-medical factors must be reconciled. Reasonable inferences may be drawn, but presumptions, speculations and suppositions must not be used.

If a reconsideration request results in a reversal of a disability determination a formal rationale should be prepared on the form G-325.1. If the initial disability decision is being sustained the rationale for sustaining that decision is included in the letter to the annuitant.

The purpose of the disability determination/reconsideration decision rationale is multi-fold: to identify all the medical and non-medical factors which have been considered; to explain the thought process which was used to arrive at the determination; and to provide a permanent evidentiary record of the reasons underlying the conclusion. The rationale further serves to inform subsequent reviewers, including quality assessment groups, of the basis for the determination.

When a favorable determination or decision is based on meeting a "D" in the Tables of the Occupational Disability Standards, or equaling the disqualifying criteria in the PODRS, or the listing of impairments, the applicable criteria must be cited. Also, state the medical findings that support that decision.

If the reconsideration determination is based on medical vocational rules, the rationale should include the claimant's age, education level, work experience and the impairment severity level (i.e. heavy, medium, light or sedentary work). The impairment severity

level is determined by the claimants RFC and must be supported by objective medical evidence.

A reversal based on a mere conclusion that the claimant is "not able to perform a regular railroad job or to engage in SGA" is insufficient. The rationale must state fully the reasons that the claimant cannot perform his/her regular railroad occupation or engage in SGA and it must be based on the evidence of record, the applicable regulations and the determinative step in the sequential evaluation process.

If a decision is sustained no rationale is provided. However, a letter to the applicant, or his representative, provides the rationale for the decision to be sustained. In this letter a conclusion that "the applicant's impairment(s) is not severe enough to prevent him or her from performing a regular railroad occupation or from engaging in SGA" is insufficient. If the evidence establishes that the impairment(s) is "not severe," the rationale must show that the impairment(s) would not significantly affect the performance of a regular railroad job or a basic work-related function. If a denial may not be made on this basis, the rationale must reflect the remainder of the sequential evaluation process.

Remember that you are to consider the effect of all the claimant's medically documented impairments in a disability determination.

## **7.5.2 Processing Of Joint Freeze Cases Involving Reconsideration**

- A. No formal action will be taken by the agency that did not receive the request for reconsideration or appeal, unless the other agency decides that its previous decision should be revised. In the event, before a final decision is made, the other agency will be given an opportunity to review its decision in the light of new evidence or information received at whatever level the "protest" is being handled.
- B. The Great Lakes Program Service Center (GLPSC) - Disability Review Section (DRS) has the responsibility for handling claims of career railroad workers who request reconsideration of initial and continuing disability determinations on claims filed through any SSA district office and on those claims which were jointly coordinated and rated. CE may be obtained from SSA.

We should coordinate our reconsideration decision with SSA before our decision is finalized. While they are not bound by our decision, nor are we bound by theirs, an attempt to coordinate is required.

## **7.6 Personalized Reconsideration Disability Letters**

### **7.6.1 General**

The law requires that when a totally or partially unfavorable disability decision is rendered, the determination letter must be written in understandable language discussing the evidence and stating the RRB's determination and the reasons for it.

Where a written personalized explanation has been provided explaining why the individual is not or will no longer be entitled to disability benefits and/or disability freeze - early Medicare entitlement (e.g., disability cessation, adverse reopenings), it will not be necessary to repeat the same information in the initial determination notice. Personalized letters should be brief and understandable to the claimant or his/her representative.

### 7.6.2 Personalized Explanation Requirements

- A. Basic Tests - A personalized explanation sent to annuitants must meet two basic tests. First, it must be legally sufficient and secondly, it must not be offensive in any way.
1. The first test will be consistently met by following the instructions contained in this chapter for preparation of personalized explanations in the various claims affected.
  2. The second test involves what is written and how it is written. Abbreviations, acronyms, jargon, technical terms and complex medical phrases must not be used unless they are properly qualified. The information provided must be relevant, concise and meaningful. Dates may be abbreviated numerically (e.g., 12/14/92), if necessary, to save space. The reconsideration examiner must be sensitive to the claimant or annuitant's feelings and needs. Information in the personalized explanations must not be offensive to the applicant in any manner. The personalized explanations should be written in the third person when it is to a person filing on behalf of a claimant or a representative payee for an annuitant.
- B. Clarity - In addition to meeting the two basic tests it is equally important that the personalized explanation be written as simply and clearly as possible, i.e., understandable to anyone with a least a 6th grade education. Proper wording is also important to avoid conveying an unintended negative message to the claimant or annuitant. Poorly written letters can have a negative impact on RRB and impair its ability to serve the railroad public interest.
- C. Impairments Addressed - The personalized explanation should address alleged impairments and other impairments which are discovered during the course of the evaluation provided that the impairments are known by the claimant. Closely related impairments may be grouped by body system.
- D. Letter Preparation
1. The reconsideration examiner is responsible for preparing the personalized explanation for reconsideration since they are responsible for making the reconsideration determination.

2. The personalized explanation may be typewritten from the Form G-835 (PC Assembly Form for Disability Notices), or a personal computer.
3. The reconsideration disability determination rationale will continue to be prepared based on instructions in DCM [7.5](#).

### 7.6.3 Explanations In Reconsideration Denials

#### A. General

1. The reconsideration examiner will prepare a personalized explanation with a denial letter for reconsideration based on medical and/or medical/vocational issues.
2. When an insured status or a prescribed period is last met prior to the date of the determination, the explanation should reflect the period of time considered and specify the date through which the insured status or the prescribed period was met.
3. Medical reports and non-medical reports listed on the initial personalized explanation do not need to be repeated.
4. The wording of a personalized reconsideration explanation should not be the same as that of the initial notice even if the denial is sustained on the same basis. The wording should be rephrased to avoid the erroneous impression that the claim was not independently review on the reconsideration level.
5. The Reconsideration examiner will notate in the decision notice that all medical evidence in the file has been reviewed;
6. When the medical sources were unresponsive, a disclaimer statement may be provided, e.g., additional reports were not obtainable; however, we had enough information to evaluate the claimant's condition;
7. (Optional) Give a statement that "the determination on your claim was made by the RRB. It was not made by your own doctor or by other people, hospitals, or agencies writing reports about you. However, any evidence they gave the RRB was used in making this determination. Doctors and other people employed by the RRB who are trained in disability evaluations reviewed the evidence and made the determination according to the Railroad Retirement law and regulations;"
8. Provide a list of the impairments evaluated. Do not use technical terms unless the claimant or annuitant uses and appears to understand them. When information in file suggests that the claimant or annuitant has terminal illness, mental impairment or is unaware of the exact nature of his or her condition, the reconsideration examiner will use good judgment as

to what will be listed in the explanation concerning the impairments. If the claimant or annuitant is unaware of an impairment, use general terms such as the reports do not show any other conditions which would significantly limit your ability to work;"

9. Furnish a brief description of medical severity as of the month of cessation in closed period of disability allowances or a brief description of the medical or medical/vocational basis for the established onset date in unfavorable onset date allowances. However, care must be taken in discussing medical evidence (address unconfirmed allegations by stating that evidence does not reveal any other disabling condition).
10. When vocational factors are considered in a closed period of disability allowance, a brief description must be given of the job the railroad claimant can return to, or a statement must be provided advising that although the person cannot do any of the work he or she did during the period evaluated he or she still has the capacity to do other work which is less demanding (exertion, mental, skill levels) or has the ability to do less physical work (specify in general terms, e.g., lighter work) based on his or her age, education and past work experience. Do not cite other jobs;
11. When vocational factors were considered in an unfavorable onset date allowance, explain why the vocational factors permit the claimant to work prior to the onset date; and
12. If the claimant's work activity is the reason for the closed period of disability or unfavorable onset determination, that information must be covered in the letter.

#### B. Special Situations

1. Insufficient evidence, failure/refusal to submit to a CE, does not wish to continue development of claim.

You will prepare a personalized explanation based on the instructions in DCM 7.5.4.A (items 6-8). The explanation should also include:

- a. A brief description of the evidence needed to adjudicate the claim; and
  - b. A brief description of the attempts to obtain evidence and the response received (if any).
2. Failure to follow prescribed treatment, which can restore the claimant's ability to work, without good reason.

You will prepare a personalized explanation based on the instructions in DCM 7.5.4.A (items 6-8). The explanation should also include:

- a. A description of vocational limitations (e.g., age, education) if vocational factors are considered; and
- b. A description of the prescribed treatment the claimant refuses to follow and what the treatment will allegedly accomplish.

## Appendices

### Appendix 1 - AB-25 Reconsideration And Appeal Rights

If you believe that this decision is not correct, you may request that the decision be reconsidered. If you wish this reconsideration, you must request it in writing and your request must be received by the Board within 60 days from the date of this notice. You may file your request at any district office of the Board. If you wish any additional evidence to be considered, please include it with your request.

If you disagree with the reconsideration decision, you may then appeal to the Bureau of Hearings and Appeals within 60 days from the date of the reconsideration decision.

If you do not request a reconsideration within 60 days from the date of this notice, you may not file an appeal at a later date.

### Appendix 2 - RECON - Initial Denial Affirmed

#### Sample Letter

In reply refer to

R.R.B. No.

(EE's Name)

Dear

This refers to your letter requesting reconsideration of the denial of (insert 1).

We have again carefully reviewed all of the medical evidence in your file and are still of the opinion that you are not disabled for (insert 2).

(Narrative insert)

If you disagree with this decision, you have the right to appeal to the Bureau of Hearings and Appeals. If an appeal is made, it must be submitted on Form HA-1 and must be received at an office of the Railroad Retirement Board (RRB) within 60 days from the date of this notice. A Form HA-1 may be obtained from any field office of the RRB or by writing directly to the Director of Hearings and Appeals at the following address:

Railroad Retirement Board, Bureau of Hearings and Appeals, 844 North Rush Street,  
Chicago, Illinois 60611.

If you need to personally visit one of our field offices, you are urged to call for an appointment. You will not be refused service if you do not have an appointment, but Railroad Retirement Board representatives can serve you better when an appointment is made. Most Railroad Retirement Board offices are open to the public from 9:00 a.m. to 3:30 p.m., Monday through Friday.

Very truly yours,

John R. Feldheim  
Director of Disability  
and Medicare Operations

cc: Field Office

**G-835 Items To Complete**

A-1 Recon . . . Denial

Check RECON box at top.

Check DENIAL box in RECON section

Enter the name/address of any other party that will be sent a copy of this letter next to OTHER.

Enter employee's name next to EE NAME.

Enter the addressee's name to ADDRESSEE NAME if other than the employee.\*

Enter the address in the lines below ADDRESS.

Enter claim number next to RRB CLAIM NO.

Enter the salutation next to DEAR.

INSERT 1 - Enter the type of claim that is being reconsidered, e.g., an occupational disability annuity, a total and permanent disability annuity, a "period of disability," etc.

INSERT 2 - Enter either "your regular railroad occupation" or "all regular work."

Check the box next to NARRATIVE INSERT ON REVERSE and write your personalized rationale for sustaining denial decision on the reverse side of the worksheet. Note that this narrative will appear as the third paragraph in your denial letter.

Enter your name under DPS-EXAMINER NAME on the reverse side.

Enter the date under DATE on the reverse side.

\* This letter can only be addressed directly to the claimant and cannot be addressed to a representative of the claimant. However, a carbon copy could be sent to the representative, if appropriate.

### **Appendix 3 - RECON - Allowance Wholly Favorable**

#### **Sample Letter**

In reply refer to

R.R.B. No.

(EE's Name)

Dear

This is to advise you that we have reconsidered our decision regarding your disability application. Based on the evidence in file, you qualify for (insert 1) effective (insert 2). You will receive another notice in the mail with specific details about your annuity rate and beginning date.

Very truly yours,

John R. Feldheim

Director of Disability

and Medicare Operations

cc: Field Office

**G-835 Items To Complete**

A-3 Recon . . . Allowance (Wholly Favorable)

Check RECON box at top.

Check ALLOWANCE (Wholly Favorable) box in RECON section.

Enter the name/address of any other party that will be sent a copy of this letter next to OTHER.

Enter employee's name next to EE NAME.

Enter the addressee's name to ADDRESSEE NAME if other than the employee.\*

Enter the address in the lines below ADDRESS.

Enter claim number next to RRB CLAIM NO.

Enter the salutation next to DEAR.

INSERT 1 - Enter the type of annuity claimant qualifies for, e.g., an occupational disability annuity, a total and permanent disability annuity, etc. . .

INSERT 2 - Enter the effective date (annuitant's alleged onset date).

Enter your name under DPS-EXAMINER NAME on the reverse side.

Enter the date under DATE on the reverse side.

\* This letter can only be addressed directly to the claimant and cannot be addressed to a representative of the claimant. However, a carbon copy could be sent to the representative, if appropriate.

**Appendix 4 - RECON - Partially Favorable Decision**

**Sample Letter**

In reply refer to

R.R.B. No.

(EE's Name)

Dear

This refers to your letter requesting reconsideration of the denial of (insert 1).

We have carefully reviewed all of the medical evidence in your file and are now of the opinion that you are disabled for (insert 2) effective (insert 3).

(Narrative insert)

If you disagree with this decision, you have the right to appeal to the Bureau of Hearings and Appeals. If an appeal is made, it must be submitted on Form HA-1 and must be received at an office of the Railroad Retirement Board (RRB) within 60 days from the date of this notice. A Form HA-1 may be obtained from any field office of the RRB or by writing directly to the Director of Hearings and Appeals at the following address: Railroad Retirement Board, Bureau of Hearings and Appeals, 844 North Rush Street, Chicago, Illinois 60611.

You will receive another notice in the mail with specific details about your annuity rate and beginning date.

If you need to personally visit one of our field offices, you are urged to call for an appointment. You will not be refused service if you do not have an appointment, but Railroad Retirement Board representatives can serve you better when an appointment is made. Most Railroad Retirement Board offices are open to the public from 9:00 a.m. to 3:30 p.m., Monday through Friday.

Very truly yours,

John R. Feldheim

Director of Disability

and Medicare Operations

cc: Field Office

**G-835 Items To Complete**

A-4 Recon . . . Allowance (Partially Favorable)

Check RECON box at top.

Check ALLOWANCE (Partially Favorable) box in RECON section.

Enter the appropriate field office below FIELD OFFICE.

Enter the name/address of any other party that will be sent a copy of this letter next to OTHER.

Enter employee's name next to EE NAME.

Enter the addressee's name to ADDRESSEE NAME if other than the employee.\*

Enter the address in the lines below ADDRESS.

Enter claim number next to RRB CLAIM NO.

Enter the salutation next to DEAR.

INSERT 1 - Enter the type of annuity claimant qualifies for, e.g., an occupational disability annuity, a total and permanent disability annuity, etc. . .

INSERT 2 - Enter either "your regular railroad occupation" or "all regular work."

INSERT 3 - Enter the effective date (other than annuitant's alleged onset date).

Check the box next to NARRATIVE INSERT ON REVERSE and write your personalized rationale advising why a partially favorable decision was made regarding the effective date on the reverse side of the worksheet.

Enter your name under DPS-EXAMINER NAME on the reverse side.

Enter the date under DATE on the reverse side.

\* This letter can only be addressed directly to the claimant and cannot be addressed to a representative of the claimant. However, a carbon copy could be sent to the representative, if appropriate.

**Appendix 5 - RECON - No Change In Initial Decision Based On New Evidence -**

**Sample Letter**

In reply refer to

R.R.B. No.

(EE's Name)

Dear :

This refers to your letter requesting reconsideration of your annuity beginning date of (insert 1) and/or your disability freeze onset date of (insert 2).

We have carefully reviewed all of the medical evidence in your file and are still of the opinion that you are disabled for (insert 3) and/or disability freeze as of (insert 4).

(Narrative insert)

If you disagree with this decision, you have the right to appeal to the Bureau of Hearings and Appeals. If an appeal is made, it must be submitted on Form HA-1 and must be received at an office of the Railroad Retirement Board (RRB) within 60 days from the date of this notice. A Form HA-1 may be obtained from any field office of the RRB or by writing directly to the Director of Hearings and Appeals at the following address: Railroad Retirement Board, Bureau of Hearings and Appeals, 844 North Rush Street, Chicago, Illinois 60611.

If you need to personally visit one of our field offices, you are urged to call for an appointment. You will not be refused service if you do not have an appointment, but Railroad Retirement Board representatives can serve you better when an appointment is made. Most Railroad Retirement Board offices are open to the public from 9:00 a.m. to 3:30 p.m., Monday through Friday.

Very truly yours,

John R. Feldheim

Director of Disability

and Medicare Operations

cc: Field Office

**G-835 Items To Complete**

A-5 Recon . . . Allowance (Wholly Favorable)

Check RECON box at top.

Check ALLOWANCE NO CHANGE IN ONSET DATE box in RECON section.

Enter the appropriate field office below FIELD OFFICE.

Enter the name/address of any other party that will be sent a copy of this letter next to OTHER.

Enter employee's name next to EE NAME.

Enter the addressee's name to ADDRESSEE NAME if other than the employee.\*

Enter the address in the lines below ADDRESS.

Enter claim number next to RRB CLAIM NO.

Enter the salutation next to DEAR.

INSERT 1 - Enter the disability date used for allowance (other than annuitant's alleged onset date.)

INSERT 2 - Enter the established onset date based on initial medical evidence.

INSERT 3 - Enter the type of annuity, e.g., an occupational disability, a total and permanent disability annuity, etc.

INSERT 4 - Enter the disability date based on all medical evidence.

Check the box next to NARRATIVE INSERT ON REVERSE and write your personalized rationale advising why a partially favorable decision was made regarding the effective date on the reverse side of the worksheet.

Enter your name under DPS-EXAMINER NAME on the reverse side.

Enter the date under DATE on the reverse side.

\* This letter can only be addressed directly to the claimant and cannot be addressed to a representative of the claimant. However, a carbon copy could be sent to the representative, if appropriate.

