

701 Provisions of the Act

701.01 Section 1(k)(1)

of the Act provides, in part, that: "a day of unemployment, with respect to any employee, means a calendar day on which he is able to work..."

701.02 Section 1(k)(2)

of the Act provides, in part, that: "a day of sickness, with respect to any employee, means a calendar day on which because of any physical, mental, psychological, or nervous injury, illness, sickness, or disease he is not able to work, or, with respect to a female employee, a calendar day on which, because of pregnancy, miscarriage, or the birth of a child, (i) she is unable to work or (ii) working would be injurious to her health..."

702 Analysis of Requirements

702.01 "Able" and "work" considered separately

In determining whether an employee is "able to work" or "not able to work", there are two primary matters of consideration: (a) factors relating to the physical and mental condition of employees, and (b) activities which would, in general, constitute work and in which, in specific cases, employees might be expected to engage. For purposes of this article, the terms "able" and "ability" refer to considerations relating to physical and mental condition and the term "work" refers to considerations relating to activities in which employees might be expected to engage for hire. Thus, an employee is considered "able to work" if, in consideration of the factors under "able", he or she can perform the duties of an occupation or group of occupations which would be considered as "work".

702.02 "Injury, illness, sickness, or disease" as cause

In connection with the requirements as to "day of sickness", consideration has been given to: (1) the conditions under which "physical, mental, psychological, or nervous injury, illness, sickness, or disease" may be held to exist, and (2) the conditions under which they may be held to be the cause of the condition of being not able to work. These points are discussed in Section 728 of this article.

702.03 "Pregnancy, miscarriage, or the birth of a child" as cause

The conditions under which days of sickness may result from pregnancy, miscarriage, or the birth of a child are discussed in AIM-7, Section 736.

702.04 Applicability of determinations

A determination with respect to an individual's ability to work shall be applicable alike in connection with either claims for unemployment benefits or claims for sickness benefits during any period in which there is no substantial change in his or her circumstances.

703 "Ability"

703.01 General

The application of the term "able" has to do with determinations as to the physical and mental conditions of employees. It involves such considerations as (a) whether an employee has any physical or mental infirmity which would limit his or her capacity to perform what would be considered as "work"; (b) whether his or her condition is such that performance of work might aggravate illness or injury; and (c) whether his or her condition is such that performance of work would retard recovery from illness or injury. Such determinations of ability are to be based upon available standards of medical experience showing the conditions under which individuals are not able to work or are not able to work without the probability of aggravating illness or injury or retarding recovery.

703.02 Comparative physical and mental condition

The physical and mental condition of an employee shall be compared with the conditions of individuals engaged in "work", and the possibility of the employee's performing "work" shall be considered in the light of any performance of service by others with physical and mental conditions substantially similar to his or hers.

703.03 Probability of aggravating illness or injury

The probability of an employee's aggravating an illness or injury by working shall be considered. An employee shall be held not able to work in an occupation where it is probable that working would increase the severity of his or her illness or injury.

703.04 Probability of retarding recovery

The probability of an employee's retarding his or her recovery from illness or injury shall be considered. An employee shall be held not able to work during a reasonable period of convalescence. It shall not be required that he or she resume work or profess willingness to work at the earliest possible moment, thereby prolonging convalescence and incurring a possible risk to his or her health.

704 "Work"

704.01 General

The application of the term "work" has to do with determination of the occupation or group of occupations in connection with which an employee's "ability" shall be considered. "Work" does not refer to the whole field of gainful employment. As applied in connection with a particular employee, "work" includes only services:

- a. Which are performed for hire,
- b. Which are in a recognized occupation,
- c. Which are substantial, not trifling and
- d. Which (disregarding any question of "ability") the employee can reasonably be expected to perform.

704.02 Services which employee can reasonably be expected to perform

In determining what services an employee can reasonably be expected to perform (disregarding any question of "ability") consideration shall be given to whether any infirmity the employee may have is temporary or permanent. An employee who has an infirmity from which there appears to be no prospect of further recovery shall be considered to have a permanent infirmity.

a. Employee having temporary infirmity

An employee would not ordinarily be expected to change his occupation or working habits because of a temporary infirmity. In determining the services which an employee having such an infirmity can reasonably be expected to perform, consideration shall be given to:

1. The employee's training, experience and qualifications;
2. His or her ordinary occupation;
3. His or her prior earnings;
4. The length of his or her unemployment;
5. His or her prospects for employment.

b. Employee having permanent infirmity

An employee having a permanent infirmity would be expected, unless the impairment were such that he or she could never engage in any occupation, to adapt to the change of circumstances resulting from the infirmity. To do this, he

or she might have to change his or her working habits and occupation. In determining the services which such an employee can reasonably be expected to perform, consideration shall be given to his or her age training, experience, and qualifications.

704.03 Determinations with respect to "work"

In applying the criteria for determining the "work" against which an individual's ability shall be measured, these results might be expected:

- a. For an employee with a temporary infirmity who was employed when he or she became sick or injured, "work" would ordinarily consist of the duties of the occupation in which he or she was engaged when he or she became sick or injured.
- b. For an employee with a temporary infirmity who was, at the time when he or she became sick or injured, temporarily absent from employment which he or she expected to resume, "work" would ordinarily consist of the duties of the occupation which he or she expected to resume.
- c. For an employee with a permanent infirmity "work" would consist of the duties of any occupation for which the employee had the necessary training, experience, and qualifications.

712 Claimant's Certification of Ability to Work

712.01 Initial proof

Accept a claimant's certification on a claim for unemployment benefits, in the absence of evidence to the contrary, as initial proof of ability to work.

712.02 Conditions where explanation is required

Do not accept the claimant's certification without explanation if there is information covered in the following paragraphs:

a. Statement by claimant that he or she is not able to work

The claimant makes a general statement that he is not able to work or not able to work during a period including days for which he or she registered. Statements such as "sick", or "cold" and the like, made with respect to not more than four days in a registration period, may be assumed to indicate a temporary condition not requiring consideration of ability to work. (Consideration of availability may be required.)

b. Leaving work

There is information that within thirty days before a day claimed as a day of unemployment the claimant left work because of physical or mental infirmity, or to prevent an anticipated onset of infirmity.

c. Being held out of service

There is information that within thirty days before a day claimed as a day of unemployment a person or company for whom the claimant performed work held him or her out of service because of physical or mental infirmity.

d. Failure to hire

There is information that within thirty days before a day claimed as a day of unemployment a person or company to whom the claimant applied for work did not hire him or her because of physical or mental infirmity.

e. Failure to apply for, or to accept, work

Within thirty days before a day claimed as a day of unemployment the claimant failed to apply for, or to accept, work offered to him or her, stating that he or she was not able to perform the work.

f. Receipt of sickness benefits

There is information that the claimant previously received sickness benefits under the Act and there is no evidence of his or her subsequent recovery. The exception to this rule is in the case of an employee who has a permanent partial disability that prevents him or her from ever returning to his or her railroad occupation. An employee in that situation who has been re-trained and has the skills to perform and is able to perform that work should be considered able to work, even though his or her physical condition is unchanged.

g. Applying for, or receiving, benefits based on partial disability

There is information that the claimant has applied for, or is receiving, benefits based on partial disability, such as an occupational disability annuity under the Railroad Retirement Act or benefits for partial disability under a workmen's compensation law.

712.03 Explanation revalidating certification

When a claimant's certification cannot be accepted because of any of the circumstances stated in .02 of this section, Form Letter ID-7j is to be sent to him or her. Upon reply to Form Letter ID-7j the claimant's certification that he or she is able to work is to be considered acceptable as proof of ability to work if he or she furnishes:

- a. An explanation that he or she has recovered from his infirmity;
- b. An explanation that he or she has performed substantial work while affected by his or her infirmity and that there has been no significant change in his or her physical or mental condition;
- c. An explanation that he or she is affected by a chronic infirmity or has a permanent disability; or
- d. An explanation showing otherwise that the information in possession of the adjudicating office is not inconsistent with his or her certification that he or she is able to work.

713 Consideration of Ability to Work

713.01 Conditions for consideration

The question whether a claimant was, or was not, able to work on days for which he or she registered is to be considered under any of the conditions stated below:

a. There is information as set forth in section 712.02,

and the claimant does not furnish in reply to Form Letter ID-7j an explanation showing that such information is not inconsistent with his or her certification that he or she is able to work.

b. Statement by other person that claimant is not able to work

A person who is reported to have seen the claimant makes a general statement that the claimant is not able to work or a statement that he or she was not able to work during a period including days for which he or she registered. Statements such as "sick", "cold" and the like, made with respect to not more than four days in a registration period, may be assumed to indicate a temporary condition not requiring consideration of ability to work. (Consideration of availability may be required.)

c. Applying for, or receiving, benefits based on total disability

There is information that the claimant has applied for, or is receiving, benefits based on total disability, such as an annuity for total and permanent disability under the Railroad Retirement Act or benefits for total disability under a workmen's compensation law or from a railroad relief association.

d. Specified disabilities

There is information that the claimant has any of these disabilities:

1. Loss of (or permanent loss of use of) both feet;
2. Loss of (or permanent loss of use of) both hands;
3. Loss of (or permanent loss of use of) one hand and one foot;
4. Permanent industrial blindness (corrected vision of twenty-two-hundredths or less in both eyes);
5. Permanent total loss of hearing in both ears (inability to hear the conversational tone of voice at any distance) unless offset or capable of being offset by some practicable device;
6. Aphonia (complete loss of vocalization, (phonetic) from organic, i.e., non-functional cause.); or
7. Any other impairment listed in Appendix I, Part A, of Part 220 of the RRB's regulations.

713.02 Finding

When consideration of a question with respect to a claimant's ability to work is completed, a finding is to be made under Section 714. Such finding will govern later determinations and redetermination of claims made by the claimant.

714 Evidence of Ability to Work

714.01 Performance of substantial work

Consider a claimant able to work during any period of time in which he or she has performed substantial work and in which there has been no significant change in his or her physical or mental condition. In the absence of evidence to the contrary, sufficient indication of the performance of substantial work may be given by:

- a. Information that a claimant performed service for hire in a recognized occupation for as many as thirty hours in each of two consecutive weeks;
or
- b. Information that a claimant worked on any eight days in a period of fourteen consecutive days, or
- c. The date of last employment as shown on Form UI-1 or Form UI-3.

714.02 Permanent impairment

Consider a claimant able to work if he or she has a permanent physical or mental impairment, from the temporary effects of which he or she has recovered, provided:

- a. Such impairment would not prevent him or her from engaging in substantial employment for which he or she is fitted by training and experience; and
- b. There is no evidence of disability other than such impairment.

714.03 Other evidence of ability to work

A claimant who cannot perform work which he or she has recently performed or which has been offered to him or her to be considered able to work if:

- a. He or she furnishes information concerning other work which he or she believes he or she can perform and which he or she would perform if it were offered;
- b. He or she has the training, experience and qualifications necessary to perform such work;
- c. Evidence relating to his or her physical and mental condition indicates that he or she is able to perform such work; and
- d. He or she could otherwise reasonably be expected to perform such work.

714.04 Medical evidence

When consideration of a question of ability to work is required and the adjudicating office does not have evidence sufficient to show ability to work, any medical evidence readily obtainable is to be procured as promptly as possible. Such evidence is to be considered, and the claimant held to be able to work or not able to work.

715 How to Investigate Ability to Work

715.01 Obtaining information about claimant's ability

Investigation should be made by a field office representative in a personal interview with the claimant, or any other person who may be able to furnish information about the claimant's ability to work, when practicable. When investigation by personal interview is not possible, investigation may be made by correspondence. A standard list of questions is found in DPOM/FOM-II-307 Appendix A. If information on additional points is required in a particular case, other questions may be included.

715.02 Obtaining medical evidence

If medical evidence is required and there is information that the claimant has been examined by a doctor, efforts are to be made to obtain such evidence unless the claimant has applied for an annuity based on disability.

- a. A claimant who has been examined by a doctor may be requested to obtain medical information from the doctor. In such case, provide Form SI-7 to the claimant for completion by his or her doctor.
- b. If there is no information that a claimant has been examined by a doctor, arrange for a medical examination and for a report in accordance with instructions on "Medical Examinations". (DPOM/FOM-II-640.)

716 Notification to Claimant

716.01 Sickness benefits not payable

If a finding is made that a claimant was not able to work on a day or days for which he or she registered, and there were not enough days of inability for sickness benefits to be payable, send Form Letter ID-7.

716.02 Sickness benefits payable

If it is found that a claimant was not able to work on days for which he or she registered, and there were enough days of inability for sickness benefits to be payable, send Form Letter ID-7i. Send Form SI-1a or Form SI-1b, or both if needed, with the letter.

717 Determinations by SUBS

The Sickness and Unemployment Benefits Section (SUBS) is authorized to make determinations as to ability and inability to work.

718 Form Letters Prescribed

The following form letters are prescribed.

ID-7
ID-7i
ID-7j

727 Procedure for Considering Ability to Work

727.01 Statements of Sickness

Steps in the consideration of ability to work in connection with statements of sickness are as follows:

a. Consideration of evidence

Consider the evidence as to ability to work submitted with a statement of sickness.

b. Finding with respect to ability to work

On the basis of the evidence, make a finding on ability to work.

c. Estimate of duration

If an employee is not able to work, estimate the probable duration of the illness or injury.

d. Request for additional evidence in connection with claim to be sent

Consider whether additional medical evidence will be required in connection with any claim form to be sent.

727.02 Claims

Consider ability to work in connection with claims for sickness benefits as follows:

a. Consideration of new evidence

Consider any new evidence as to ability to work submitted in connection with a claim for sickness benefits.

b. Reconsideration of estimate of duration

If the evidence indicates that the duration of an illness or injury will probably be greater or less than previously estimated, make a revised estimate or a new estimate.

c. Request for additional evidence in connection with claim to be sent

Consider whether additional medical evidence will be required in connection with any claim form to be sent.

728 Consideration of "Ability"**728.01 Requirement of Medical Evidence**

Medical evidence is required to determine ability in connection with a statement of sickness or claim for sickness benefits.

a. Evidence as of time of illness or injury

Information furnished by an employee's doctor is not sufficient for a determination as to ability unless the doctor examined the employee during the period of his or her illness or injury, except for information furnished by a railroad's chief medical officer regarding an employee in the railroad's employee assistance program for treatment of alcoholism or chemical dependency. To determine the number of days a claimant has after becoming sick or injured to be examined or treated by a qualified doctor, see Appendix D.

b. Evidence as to ability during unclaimed period

A new statement of sickness is not required after a period in which no days are claimed as days of sickness if the RRB is satisfied that the employee was not able to work during such period. This requirement is met if information as to the claimant's condition when compared with available standards of medical experience indicates the probability that inability to work continued through the period in question, and if the claimant's reason for failure to file claims gives no indication of possible ability to work during the period in question.

c. Statement of sickness executed by Christian Science practitioner

See Appendix C.

728.02 Consideration of Evidence

Consider all pertinent elements of medical evidence. Consider medical evidence of infirmity in the light of medical experience with that infirmity or with similar infirmities. Summaries of medical experience prepared for use of persons not medically trained are available in medical reference manuals. Also, the disability norms in the RUCS Diagnosis/Disability Norms Table reflect medical experience with infirmities.

728.03 Total and Permanent Disability

Consider an employee not able to work if (1) it has been determined, in accordance with the provisions of the Railroad Retirement Act, that his or her permanent physical or mental condition is such that he or she is unable to engage in any regular employment, or (2) he or she has one of the disabilities specified below except that, if he or she has performed substantial work on or after the date the determination was made or the disability incurred, he or she is to be considered able to work unless medical evidence indicates that the illness or injury has been aggravated or an additional illness or injury has occurred after the date of performance of work.

These disabilities are considered, in the absence of evidence to the contrary, to be total and permanent:

1. Loss of (or permanent loss of use of) both feet;
2. Loss of (or permanent loss of use of) both hands;
3. Loss of (or permanent loss of use of) one hand and one foot;
4. Permanent industrial blindness (corrected vision of twenty two-hundredths or less in both eyes);
5. Permanent total loss of hearing in both ears (inability to hear the conversational tone of voice at any distance) unless offset or capable of being offset by some practicable device;
6. Aphonia (complete loss of vocalization, (phonetic) from organic, i.e., nonfunctional cause.)

728.04 Permanent, but not Total, Disability

A claimant shall be considered able to work if he or she has a permanent physical or mental impairment and if he or she has recovered from the temporary effects of any injury, illness, sickness or disease causing such impairment, provided:

- a. Such impairment would not prevent the employee from engaging in substantial employment for which he or she is fitted by training and experience;
- b. it is not unreasonable to expect the employee to engage in such employment in view of factors such as age, previous earnings, and the conditions of his or her previous work; and
- c. the employee has no other injury, illness, sickness or disease causing inability to work.

When a claimant is held unable to work, because of any infirmity, and it is found that he or she will have a resulting permanent impairment, he or she is to be considered unable to work during the period of convalescence from the temporary effects of the infirmity. When the convalescence has been completed, a determination is to be made under this subsection with respect to the claimant's ability to work after the end of the period of convalescence.

In the following cases, a claimant who has a permanent, but not total, disability will be considered unable to work even after recovering from the temporary effects of an infirmity:

1. The claimant is a career railroad employee (ten or more years of service) and is age 50 or older. In such situations, it is extremely unlikely the claimant will possess the skills, training and experience to perform non-

- railroad work compatible with his or her physical limitations. Unless positive evidence is presented to the contrary, the claimant should be considered as remaining unable to work, and sickness benefits should continue.
2. The claimant is a career railroad employee, is age 40 or older, and is within three months of complete exhaustion of benefits (exhausting rights in the current benefit year and not qualified for benefits in the following benefit year). Experience indicates that the claimant will not be able to perform non-railroad work compatible with his or her physical limitations without extensive re-training. Thus, the claimant should be considered unable to work up to the period of exhaustion of benefits.

729 Consideration of Work Which Employee Can Most Reasonably Be Expected to Perform

729.01 Making a Finding

When a finding is required as to the work an employee can most reasonably be expected to perform, it shall be made, in the absence of information to the contrary, in accordance with the rules stated below. No such finding will be required if medical evidence indicates that an employee is totally incapable, either permanently or temporarily, of performing any employment.

a. Employment at time of, or after, onset of illness or injury

If an employee was engaged in work when he or she became sick or was injured or has worked after the onset of illness or injury, the last work performed may be considered to be the work which the employee he could most reasonably be expected to perform.

b. Work for covered employer within 90 days

If, in circumstances other than those described in a. above, an employee worked for a covered employer within 90 days prior to the onset of the injury or illness, the work he or she then performed may be considered to be the work which he or she could most reasonably be expected to perform.

c. Other cases

In circumstances other than those described in a. and b. above, the work an employee last performed may be considered to be the work he or she could most reasonably be expected to perform.

730 Cause of Inability

730.01 Infirmary

A physical, mental, psychological, or nervous condition shall be considered to be an "injury, illness, sickness or disease" if it is recognized as such in any summary of, or according to any source of, medical experience employed to provide standards for making determinations as to ability. If medical evidence submitted in connection with an application or claim for sickness benefits indicates that the employee's injury, illness, sickness, or disease was sufficient to have caused inability to work, it shall be considered that the injury, illness, sickness, or disease was, in fact, the cause of the inability.

730.02 Pregnancy

Pregnancy is not an injury, illness, sickness or disease. It may, however, be complicated by an injury, illness, sickness or disease, which may cause inability to work. In the absence of information as to any such complication, determinations with respect to statements of sickness and claims for sickness benefits based on pregnancy shall be made in accordance with instructions in Section 736.

730.03 Alcohol or Drug Abuse (Dependency)

Sickness benefits are payable for days of sickness caused by alcoholism or chemical dependency on the same basis that sickness benefits are payable for days of sickness caused by any other infirmity. See Appendix B.

731 Estimate of Duration

731.01 Beginning Date of Disability

In determining the beginning date of a period of disability there shall be considered:

- a. Date employee last worked.
- b. Date employee became sick or injured.
- c. Date of first examination.
- d. Date of change in employee's condition, if any is reported.

731.02 Basis for Estimate

The probable length of a period of disability shall be estimated from the beginning date of the disability. In making an estimate, consideration shall be given to all of the evidence in the possession of the RRB.

- a. Key to Diagnosis Code and Computer EEI, which may be found in the RUCS Diagnosis/Disability Norms Table, is a table showing the diagnosis code, the meaning for each code, the number of weeks used in determining the estimated end of inability and the morbidity code. This table is a part of the computer program and is used by the computer in determining the initial estimated end of inability.
- b. A doctor's unsupported prognosis or opinion as to the length of the period of disability is not ordinarily to be considered by itself. With respect to some atypical, unpredictable infirmities, an unsupported prognosis or opinion may be acceptable because it is impractical to insist on better evidence. Lack of a definitely stated opinion of the probable date of recovery is not a serious defect in a doctor's report. The medical evidence is more important. Medical evidence includes a report of:
 1. Diagnosis - The normal period of inability of some infirmities can be reasonably and even accurately determined by the diagnosis alone.
 2. Objective findings - The findings help confirm the diagnosis and afford a measure of the relative seriousness of an infirmity.
 3. Complications - The presence of complicating or secondary injuries or infirmities or sensitivity to drugs may prolong the period of inability.
 4. Surgical procedures - Rather definite periods of inability can normally be expected to follow various operations, injections, treatments, and the like.
 5. History - General physical condition, the number and frequency of previous attacks, and the rate of previous recovery may give a basis for a prognosis.
 6. Response to treatment - The amount and rate of improvement indicates whether inability is likely to be relatively short or prolonged.

731.03 Revision of Estimate of Duration

An estimate of the duration of a period of disability may be revised under the circumstances described below:

- a. There is new medical evidence.
- b. The initial estimate of the period of disability may be revised once on the basis of little if any additional evidence other than the doctor's unsupported statement that the claimant continues to be unable to work. The revision may be for a period less than or reasonably exceeding the

Disability Norms. Any determination that a claimant's disability significantly exceeds the disability norm must be supported by adequate medical evidence of individual difference in the objective findings, complications or response to treatment.

- c. There is information that an employee who has been held out of service because of physical or mental condition was not permitted or will not be permitted by the employer to return to work until after the estimated end of the period of disability. In such case, if the interval between the estimated end of the period of disability and the date of return to work is reasonable (approximately 14 days or less), the period of disability may be estimated to end with the latter date.

731.04 Ending Date of Disability

When the probable length of a period of disability has been estimated, the ending date of the period shall be recorded. In the absence of evidence to the contrary, this day is to be considered a day of sickness. If the estimate is based on a recovery date stated by a doctor, the ending date of the period of disability will be the recovery date.

731.05 Payment Beyond Estimate of Duration

An ending date of disability based on a report of treatment or examination which took place before the ending date is necessarily an approximation. When the estimated ending date falls on any one of the last ten days of a registration period, and a supplemental doctor's statement has not been filed, the absence of such statement shall not cause denial of benefits.

732 Requests for Additional Medical Information

732.01 Additional Information from Original Source

If medical evidence furnished by an employee's doctor or other person executing a statement of sickness is not sufficient for a determination of ability, efforts may be made to obtain additional information from the doctor or other person. In such case, Form Letter ID-7e may be sent to the employee requesting him or her to have the doctor or other person furnish additional information by completing Form SI-7.

732.02 Special Medical Examination

Refer to AIM Article 31, Medical Examinations, and Section 3102, Examination Required, of Article 31.

733 Requirement of Supplemental Doctor's Statement

733.01 Sending Form to Claimant

A supplemental doctor's statement is to be sent to the claimant at the same time a claim is mailed for the second to last claim period supported by existing medical evidence.

733.02 Registration Period Ending After EEI

When the form for supplemental doctor's statement is sent in addition to a claim form for a registration period ending after the estimated end of disability, the instruction on the form for supplemental doctor's statement shall ordinarily show that it is to be completed if the claimant wants to claim any day after the end of the registration period.

733.03 Determinations

With respect to days claimed as days of sickness on a claim form in connection with which a form for supplemental doctor's statement was sent as provided above but was not returned, benefits may nevertheless be payable in accordance with section 731.05.

734 No Claim Form Sent

No claim form is to be sent for a registration period if there are less than five days before the date on which the claimant is found to be able to work, since the claim would neither satisfy the waiting period requirement nor be compensable.

735 Notice to Claimant When no Claim Form is to be Sent

When it is determined that an applicant or claimant for sickness benefits is able to work and that, as a result, no claim form is to be sent, notice shall be given as follows:

- a. When a claim is paid as provided in section 733.02, no notice need be sent to the claimant, unless he or she protests or inquires, in which case Form Letter ID-7K is to be sent.
- b. If a claimant is held able to work although apparently not able to resume his or her usual occupation, Form Letter ID-7n is to be sent to him or her. A copy of the letter is to be forwarded to the appropriate field office.
- c. If it is determined, before any claim form is sent, that there are less than five days of sickness in a registration period, Form Letter ID-7h is to be sent.

- d. If benefits are payable for the claim but one or more days are claimed after the date on which, according to the medical information the claimant became able to work, Form Letter ID-7p is to be sent.
- e. In any other case a special letter is to be sent, except that, where the claimant has indicated that he or she has returned to work, no notice is to be sent.

736 Pregnancy, Miscarriage, and Birth of a Child

736.01 General

Forms SI-1a/b, SI-7, and SI-3, in the case of pregnancy, miscarriage and childbirth are the same as for sickness benefits based on injury, illness, sickness or disease.

736.02 Consideration of Evidence

Medical evidence as to pregnancy, miscarriage or childbirth is required for a finding as to inability to work or injury to health. Information called for on Form SI-1a/b is ordinarily sufficient for this purpose.

736.03 Pregnancy

Medical evidence with respect to a claimant's pregnancy will ordinarily include a doctor's statement as to the predicted date of delivery and as to the first day during pregnancy when the claimant was (or will be) unable to work or working would be injurious to her health. This is sufficient evidence for a finding of inability beginning with such first day, and sickness benefits may be paid accordingly. Form SI-7 will be sent to the claimant as for sickness benefits and pending return of this form, benefits may be paid up to four weeks after the predicted date of delivery. Benefits will not be paid thereafter without additional evidence. If additional evidence shows that the pregnancy has terminated, a finding as to inability is to be made as in .04 below. If the evidence shows that the pregnancy continued more than four weeks after the predicted date of delivery, a finding as to continuing inability is to be made on that basis. In any case in which the doctor does not give a specific date as the first day during pregnancy when the claimant was or will be unable to work or working would be injurious to her health, the claimant shall be notified that benefits cannot be paid without a doctor's specific statement as to such first day.

736.04 Childbirth or Miscarriage

Medical evidence with respect to childbirth or miscarriage will ordinarily include a doctor's statement as to the date of delivery or miscarriage and the date when the claimant can safely resume normal activities. This is sufficient evidence for a finding of inability with respect to the period from the earlier to the latter date.

Benefits are not to be paid for days after the latter date without additional evidence, on a supplemental doctor's statement or in some other form, as to the claimant's continuing inability to work. In any case in which there is evidence of childbirth or miscarriage but no doctor's statement as to the date when the claimant can safely resume normal activities, the claimant is to be advised that benefits cannot be paid without such specific information.

737 Determinations by SUBS

The Sickness and Unemployment Benefits Section (SUBS) is authorized to make determinations as to ability and inability to work.

738 Form and Form Letters Prescribed

The following are prescribed:

ID-7h ID-7p
 ID-7k ID-7n
 ID-7

Appendices

Appendix A - Ability To Work In Problem Cases

This appendix provides guidance on the handling of certain types of sickness benefit cases that present an ability to work problem.

A. Statement of the Problem

The ability to work issues addressed in this appendix arise in the context of these three problem situations:

1. The claimant is reported able to perform "light duty;"
2. The claimant's personal physician says the claimant can return to work but the railroad doctor holds the claimant out of service; and
3. The claimant claims unemployment benefits after exhausting his sickness benefits, or vice versa.

In reading the following discussion, keep in mind that determinations of inability to work are the responsibility of the division of program operations and that medical evidence is required for a finding that a claimant is "not able to work."

B. General Statement of Adjudication Policy

The payment of sickness benefits under the Railroad Unemployment Insurance Act is conditioned, in part, on the submission of a properly-executed "statement

of sickness." Such statement is to provide substantial medical evidence that the claimant is "not able to work" with respect to days claimed as "days of sickness."

It is the claimant's responsibility to provide a properly-executed statement of sickness (Form SI-1b) or supplemental doctor's statement (Form SI-7). If either form does not provide the necessary medical proof of inability to work, the RRB can require the claimant to undergo a special examination by a doctor designated by the RRB.

1. Claimant Becomes Unable to Work Because of the Onset of Illness or Injury

A claimant's ability to work is to be judged initially on the basis of his ability to do his usual railroad job. Assuming that the claimant has satisfied all of the conditions for receipt of sickness benefits, such benefits are to be paid throughout the period of time necessary for him to recover fully from the effects of a temporary infirmity. Substantial medical evidence verifying the duration of such period is, of course, required.

2. Claimant May have a Permanent Infirmity Following Onset of Illness or Injury

When a claimant is initially unable to work because of the onset of an illness or injury and it is later reported that he or she has a permanent infirmity that may impair his or her ability to return to his or her usual railroad job, the issue of continued inability to work may eventually have to be considered. But that issue does not require resolution while the claimant is convalescing from the temporary effects of his infirmity. During such period of convalescence, sickness benefits would normally remain payable. After such period has passed, an ability to work determination is required if the claimant is still claiming sickness benefits. A claimant remains permanently "not able to work" under circumstances described in Article 7, Title III of the Adjudication Instruction Manual.

3. Claimant has a Permanent Infirmity but May Become Able to do Other Work

Under other circumstances, a claimant having a permanent impairment but no other disabling condition may be considered "able to work" and possibly eligible for unemployment benefits after reaching maximum recovery from the temporary effects of the infirmity. This applies if the permanent infirmity is not totally disabling. Eligibility for unemployment benefits will then be judged on the basis of ability to do other substantial work for which the claimant may be suited by training and experience and his or her availability for such other work. See AIM-728.04 and 804.02 in this regard.

4. Claimants Who Require Rehabilitation

Some claimants with severe and permanent infirmities may require both physical and vocational rehabilitation before they will be able to return to

gainful employment. Such claimants are "not able to work." Nor are they available for work merely by reason of their participation in a vocational rehabilitation program. AIM-804.30a, relating to the availability for work of a claimant who is enrolled in a technical or trade school or a vocational training program, does not apply to a claimant who is not able to work and who requires rehabilitation before he or she will be able to obtain new employment.

C. Claimant is Able to Perform Light Duty

A claimant's sickness benefits are not to be terminated merely because the medical evidence shows ability to perform "light duty" if in fact he or she remains unable to return to his or her usual job. Remember that Forms SI-1b and SI-7 do not ask for a report of the date when the claimant can perform "light duty" as such information is irrelevant.

In many railroad occupations, there is no such thing as "light duty," especially in certain occupations where the claimant must be fully physically qualified to work, as determined by the railroad medical department. In other situations, a railroad might offer to create a "light duty" job for a particular claimant, in which case the claimant decides whether to accept the job. If he or she accepts the job on a permanent basis, the job in time becomes his or her usual railroad job. The claimant's ability or inability to work is then judged with reference to the new job.

D. Personal Physician Approves Claimant for Return to Work But Railroad Medical Department Withholds Approval

In general, a claimant who has been off work for an extended period because of sickness or injury may not be allowed to return to work until the railroad medical department is satisfied that the claimant can perform the duties of his or her job. The railroad medical department may make its decision on the basis of a report from the treating physician or on the basis of an independent physical examination. The following examples illustrate the problem that arises when the claimant's personal physician approves the claimant for return to work but the railroad medical department holds the claimant out of service for an additional period of time. Guidance on solving the problem follows each example.

Example 1: The claimant's personal doctor releases the claimant for return to work on March 9, and Form SI-7 is received so stating. Sickness benefits therefore terminate with payment for days through March 8. Later, it is learned that the claimant did not actually return to work until March 23, because the railroad doctor did not approve the claimant's return to service any earlier. The claimant then requests sickness benefits for days through March 22.

Solution: The claimant's request should be granted. In a case where the claimant returns to work within 14 days of the return-to-work date reported initially by the personal physician, the EEI date may be extended for up to 14 additional days.

Example 2: Same basic facts as in example 1 except that the railroad doctor holds the claimant out of service for a period longer than 14 additional days or indefinitely. The claimant tries, without success, to get an updated medical report and then requests that sickness benefits be extended for however long the railroad holds him out of service.

Solution: The claimant's request cannot be granted in the absence of medical confirmation of the date that the railroad doctor released him for return to work or medical confirmation that he remains unable to return to his railroad job. The claimant should be so advised. The claimant should also be advised that he may register for unemployment benefits. But he should not be directed to do so if he asserts a right to sickness benefits for the days in question and declares his intention to obtain the necessary medical verification.

Except in a situation where it may be necessary for the claimant to be examined by an RRB - designated medical examiner, it is the claimant's responsibility to provide medical evidence of his inability to work. RRB employees should not intervene with a doctor or hospital or railroad medical department for the purpose of obtaining a medical report in behalf of a claimant who cannot get the report on his own. We should simply advise the claimant as to the requirements for receipt of benefits.

E. Claimant Claims Unemployment Benefits After Exhausting Sickness Benefits or Sickness Benefits After Exhausting Unemployment Benefits

In any such situation, a careful review of the medical evidence on record together with current medical information will be required for a determination relating to the claimant's ability to work. A key point to keep in mind in conducting the review is whether there has been a significant change in the claimant's physical or mental condition that would explain a switch from sickness to unemployment benefits, or vice versa.

For instance, if a claimant exhausts sickness benefits based upon medical evidence establishing that he cannot do his usual job because of a chronic infirmity that does not lend itself to further improvement, he shall continue to be

considered "not able to work" with respect to any subsequent period of time during which his physical condition remains substantially unchanged. In other words, if a claimant establishes through the submission of medical evidence that his infirmity is such as to make him "not able to work" for sickness benefit purposes, he cannot later maintain that the same medical evidence is adequate to show for unemployment benefit purposes that his condition, though unchanged, is now not so severe as to make it theoretically possible for him to engage in some form of "light duty." A claimed ability to perform employment that is essentially trifling or theoretical does not establish ability to work. The other facts of the case should be considered in light of the adjudication principles set forth in AIM-7, as summarized in this appendix.

Appendix B- Guidance To Alcohol and Drug Abuse Cases

This appendix provides guidance on the disposition of claims for unemployment or sickness benefits received from an employee who is not working because of alcoholism or drug abuse.

What is Alcoholism and Drug Abuse?

Taber's Cyclopedic Medical Dictionary defines alcoholism as an illness characterized by preoccupation with alcohol and loss of control over its consumption. It is associated with physical disability and impaired emotional, occupational and/or social adjustments. Symptoms and signs of alcoholism include malnutrition, vitamin deficiency, alcoholic cirrhosis of the liver, gastritis, pancreatitis and neurologic disorders such as tremulousness, hallucinosis, seizures and delirium tremens. Taber's says that drug abuse is the use or overuse, usually by self-administration, of any drug in a manner that deviates from the prescribed pattern.

Rail labor and management personnel policies recognize that alcohol and drug abuse impair an employee's job performance. Through their cooperative efforts, counseling and treatment programs have been established to aid affected employees. Most railroad companies now have employee assistance counselors whose job it is to evaluate an employee referred for assistance under the program and to recommend medical treatment, more extensive counseling, or an education program, as appropriate.

Federal Regulations on Control of Alcohol and Drug Use

The Federal Railroad Administration (FRA), United States Department of Transportation, has issued regulations for the purpose of controlling alcohol and drug use by railroad 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 prohibit employees from using, possessing, or being impaired by alcohol or any controlled substance while on duty, and the railroads are required

to exercise due diligence to prevent such conduct. The regulations authorize railroads to require breath or urine samples for testing under conditions constituting "reasonable cause" and to make post-accident testing and employee assistance programs mandatory.

Determining Eligibility for Sickness Benefits

In adjudicating claims for sickness benefits, keep in mind that alcoholism is an illness within the meaning of section 1(k) of the Railroad Unemployment Insurance Act. Section 1(k) provides, in pertinent part, that:

". . . a 'day of sickness,' with respect to any employee means a calendar day on which because of any physical, mental, psychological, or nervous injury, illness, sickness or disease he is not able to work . . . and with respect to which . . . a statement of sickness is filed . . . "

Accordingly, sickness benefits are payable for days of sickness caused by alcoholism on the same basis that sickness benefits are payable for days of sickness caused by any other infirmity, that is, on the basis of medical evidence establishing that the employee is "not able to work." Alcoholism may or may not cause inability to work. In reviewing medical reports, certain key factors must be considered in making a finding as to the claimant's ability or inability to work. They are:

1. Is the claimant hospitalized or confined to an institution?
2. Is the claimant under treatment by a doctor (as opposed to merely seeing a counselor)?
3. Does the claimant have a related medical condition indicating that damage to the internal organs of the body may have occurred, i.e. cirrhosis of the liver? Such condition itself may be a cause of inability to work;
4. Does the medical evidence show that the claimant is not working because of his or her physical condition or because the employer is holding him or her out of service?

While the foregoing points are clues as to a claimant's ability to work, they should be evaluated with care. A claimant may be unable to work due to alcoholism even though not hospitalized and even though there is no damage to any of the internal organs of the body. Claims examiners should bring any questionable cases to the attention of their supervisors.

In alcoholism cases, the employer may require an employee to participate in and complete the employer's counseling and rehabilitation program as a condition for return to service. The employee's progress is monitored by an employee assistance program counselor, who is authorized to decide when the employee may return to service. The chief medical officer of one large railroad has

reported that employees participating in counseling and rehabilitation are out of service an average of 10 months.

If otherwise eligible, such employees may receive sickness benefits provided that the railroad medical officer or other licensed doctor or hospital representative executes a statement of sickness confirming that the employee suffers from alcoholism and is either taking part in the employer's counseling program or is receiving medical treatment. An initial estimated end of inability (EEI) of at least three months should be established if the medical evidence shows that the employee is in an employee assistance program, unless an earlier recovery date is indicated. If there is no indication that the claimant is taking part in an employee assistance program, the initial EEI date should be one month.

In drug abuse cases, the situation is less clear. While it has become common for some railroads to conduct random urine testing of employees, the tests do not necessarily indicate whether the use of a drug has impaired the person's ability to work. Individual metabolism varies from one person to another, and evidence of drug use may remain in the body for weeks after the drug was last used, depending on the drug used and the frequency of use. Also, the tests themselves are recognized as having some margin for error. Both prescription and over-the-counter non-prescription medications may produce a positive urine test result. An employee who is removed from service as a result of testing positive for drugs 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.

In summary, a claimant's claim to a day as a "day of sickness" must be supported by substantial medical evidence. Otherwise, he or she may not be considered as "not able to work," and no sickness benefits may be paid.

Acceptable Proof of Sickness

Section 12(l) of the Railroad Unemployment Insurance Act provides, in part, that proof of sickness is to be supplied in the form of a statement of sickness executed by any licensed doctor, or by an official of a hospital, clinic or other medical institution. Section 12(l) also provides that the statement of sickness is to provide "substantial evidence" of the employee's days 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 certified by one of the following certifying bodies below:

- the National Association of Alcohol and Drug Abuse Counselors (NAADAC),
- the Certified Employee Assistance Professionals (CEAP),
- the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC) or the
- National Board for Certified Counselors, Inc. and Affiliates/Master Addictions Counselor (NBCC).

Establishing Eligibility for Unemployment Benefits

Pursuant to regulations issued by the Federal Railroad Administration, an employer may remove an employee from service if the employee is found to be using alcohol or drugs. In this type of case, the employee may be eligible for unemployment benefits. Specifically, if an employer holds an employee out of service but leaves open the possibility for him or her to return to service upon satisfying the employer's requirements, the employee has good prospects for employment. This, together with active participation in the employer's counseling program (usually an employer requirement in this type of case), would be a satisfactory substitute for work-seeking efforts that might otherwise be required.

If an employee has been discharged outright for alcohol or drug abuse, he or she would be eligible for unemployment benefits on the same basis as any other discharged employee, that is, if the labor representative is actively handling a claim for reinstatement or if the employee is making other reasonable efforts to obtain employment. Remember that there is no misconduct disqualification in the Railroad Unemployment Insurance Act, and we should not ordinarily inquire into the reasons for an employee's discharge. See also AIM-804.07.

In non-discharge cases, periodic follow-up (including contacts with the employer's employee assistance counselor) would be necessary to ascertain the claimant's continued eligibility. So long as the claimant is doing what it takes to return to service, the payment of unemployment benefits would be permissible. If the claimant, however, is not meeting employer requirements necessary to return to service, the claimant would then have to show evidence that he or she is making reasonable efforts to obtain new employment.

If, at the end of three months' participation in the counseling program, the employee still has not satisfied his employer's requirements for return to service, the case should be submitted through channels to the program policy and review section for consideration. In submitting the case, there should be included information from the employer and the employee as to why the employee has not returned to work, whether there remains any prospect of return to work and what the employee's plans are with regard to finding and accepting new employment. Any claims received in the interim may be paid while the case is under review.

Drug or Substance Abuse

The general principles discussed in this training memorandum apply equally to employees who are not working because of drug or substance abuse. Sickness benefits may be payable provided there is sufficient proof of sickness, as reported on an acceptable statement of sickness or supplemental doctor's statement. Unemployment benefits may be payable in other circumstances. 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.

Here are a number of sample situations that have arisen, along with a discussion of the guidelines to follow in each one. Request advice on any cases that cannot be resolved by reference to this appendix.

1. **Situation**

Claimant has been discharged or suspended for Rule G violation.

Discussion

Employees who are discharged for Rule G violation are usually able to work and may be paid unemployment benefits if they are available for work. In considering availability, find out if the claimant is actively seeking reinstatement. If not, is he or she actively seeking new employment?

2. **Situation**

Claimant has been removed from service because of alcohol or drug addiction and agrees to participate in the railroad's employee assistance program rather than contest the removal action under collective-bargaining procedures.

Discussion

So long as the claimant is fully participating in the program and has prospects for return to service upon satisfactory completion of the program, he may be considered available for work.

If the claimant's alcoholism or drug addiction is so severe as to be disabling, he may be paid sickness benefits upon filing an acceptable application and statement of sickness. The duration of sickness benefits will depend on the medical evidence submitted.

3. **Situation**

Claimant has failed a drug screen urinalysis and is removed from service or not permitted to return to service.

Discussion

Failure to pass such a test should not be taken as evidence that the claimant is either not able to work or not available for work. Additional facts will need to be developed. The claimant may deny using drugs, or he may have a serious drug problem that requires medical attention.

If the claimant denies using drugs and contests the railroad's action in removing him from service, he may be available for work. If he voluntarily enters a drug treatment program, is not under a doctor's care, and has good prospects for return to service, he may also be available for work.

4. Situation

Claimant voluntarily enters an employee assistance program as a condition for retaining or returning to employment but is dropped from the program for not participating in it as required and is then discharged.

Discussion

The proper determination will depend on full knowledge of all the facts and circumstances of the case. It would help to interview the claimant and contact the appropriate labor and management officials for more information about the case. Remember that nothing in the Railroad Unemployment Insurance Act requires a claimant to participate in an employee assistance program or to submit to alcohol or drug testing. Nor should we draw any particular inference from an employee's refusal to submit to such testing or inability to pass a test. As the Railroad Unemployment Insurance Act does not impose a disqualification for job-related misconduct, it may be sufficient if the claimant makes a reasonable effort to find new employment. If a claimant decides not to enter or complete an employee assistance program, the claimant may be showing that he or she is not ready and willing to satisfy employer requirements. If he or she is not attempting to meet those requirements but is attempting to find new employment, the employee may be available for work. Any district office having such a case should bring it to the attention of the Bureau of Field Service.

Appendix C - Statements Of Sickness Executed By Christian Science Practitioners

Designation of Christian Science practitioners

Section 12(i) of the Railroad Unemployment Insurance Act provides that the Board shall issue regulations for the qualification of certain persons to execute

statements of sickness. Christian Science practitioners are not among those persons who may be so qualified. However, section 12(i) provides that the Board may designate others to execute statements of sickness, and in Board Order 61-146 the Board has designated duly authorized and accredited Christian Science practitioners.

"Duly authorized and accredited"

When the letters "C.S.", "C.S.B.", or "C.S.D." appear after the signature on a Form SI-1b, it may be considered, in the absence of evidence to the contrary, that the form was executed by a duly authorized and accredited Christian Science practitioner.

Considering information on statement of sickness

When a duly authorized and accredited Christian Science practitioner fills out Form SI-1b, he may make in the space for "Diagnosis" an entry describing a condition recognized as an injury, illness, sickness, or disease. However, Christian Science practitioners do not give diagnoses. Accordingly, there may be a statement indicating that the description of infirmity is not a diagnosis. Such a statement might be worded as follows: "Based upon my observation and without attempting any diagnosis, it is my opinion that the claimant is suffering from . . ." the qualifying statement indicating that no diagnosis is made does not affect the validity of the information describing the employee's condition.

Information not sufficient

If a Form SI-1b executed by a Christian Science practitioner does not contain information showing on what day or days the employee was affected by infirmity, or does not contain information showing that the employee's infirmity was sufficient to cause inability to work, the employee shall be asked to have the practitioner furnish such information on the form prescribed for supplemental statements. If the practitioner does not furnish such information in a supplemental statement, a medical examination shall be requested. The letter notifying the employee that a medical examination is required shall include an explanation stating in what respect the information furnished by the Christian Science practitioner is insufficient. If the practitioner then furnishes the necessary information, it shall be given the same consideration as though furnished in the original statement. It shall not in any case be considered that the employee's claim for benefits is based upon an examination requested in accordance with this instruction. Accordingly, no charge shall be deducted from the employee's benefits for such examination. The employee's claims shall be considered as based upon an acceptable statement of sickness executed by a Christian Science practitioner.

Action after end of estimated period of inability

If, after the end of the period of inability estimated on the basis of an acceptable statement of sickness executed by a Christian Science practitioner, an employee wishes to continue to claim sickness benefits on the basis of the infirmity described in the statement of sickness, a medical examination shall be requested. Additional sickness benefits are to be paid for the same infirmity only on the basis of medical evidence.

Limitation on medical examinations

No medical examination except as indicated above shall be requested in the case of any employee whose statement of sickness is executed by a Christian Science practitioner.

Appendix D - Timeliness of Doctors Examination or Treatment

Number of days the claimant has to be examined or treated by a doctor after becoming sick or injured

This text provides guidance on adjudicating the examination or treatment date shown on the statement of sickness form (SI-1b). A claimant must be examined or treated by a doctor within 15 days of the first day she/he wishes to claim sickness benefits unless evidence exists that would warrant a delay in the initial medical treatment of the claimant. See example 1 below.

If the date of examination or treatment is greater than 15 calendar days, but not more than 30 calendar days, a claims examiner must determine whether the medical treatment date is acceptable or attempt to develop earlier treatment or examination dates. If the claims examiner is able to develop an earlier date of treatment/examination, the file should be documented with all information developed and the statement of sickness processed. If an earlier date(s) of treatment cannot be obtained but the claims examiner determines the medical information is acceptable, the case needs to be referred to the supervisor for approval before the statement of sickness can be processed. See example 2 below.

If the earliest date of examination or treatment is greater than 30 days from the first day a claimant wishes to claim sickness benefits but the claims examiner determines the initial medical treatment date is acceptable, the case must be submitted for approval through the supervisor to the Chief of SUBS. See example 3 below.

If the medical evidence is questionable and/or a determination cannot be made, refer the case to Policy and Systems for an opinion.

Example 1:

Last Day Worked * 11-15-2014
First Day of Infirmity *11-15-2014

First Examination*11-20-2014
Most recent Examination*12-07-2014

Diagnosis & Chemical Dependency
Si-1ab received *12-13-2014

Sickness benefits can begin 11-16-2014 because the examination date is within 15 calendar days of the first day of infirmity.

Example 2:

Last Day Worked *10-04-2014
First Day of Infirmity* 10-05-2014

First Examination*10-30-2014
Most recent Examination*10-30-2014

Diagnosis* Lumbar Sprain
Si-1ab received* 11-06-2014

Sickness benefits can begin 10-06-2014. This case needs supervisor's approval because the examination date is more than 15 calendar days after the first day of infirmity.

Example 3:

Last Day Worked * 11-04-2014
First Day of Infirmity* 11-05-2014

First Examination*12-10-2014
Most recent Examination *12-10-2014

Diagnosis *Influenza
Si-1ab received *12-16-2014

Sickness benefits can begin 11-05-2014. This case needs the Chief of SUBS's approval because the examination date is more than 30 calendar days after the first day of infirmity.

