

3301 Provisions of the Act

Section 2(c) of the Act provides, in part, that

"... For an employee who has ten or more years of service, who did not voluntarily retire and (in a case involving unemployment) did not voluntarily leave work without good cause, who has fourteen or more consecutive days of sickness, and who is not a "qualified employee" for the general benefit year current when such unemployment or sickness commences but is or becomes a "qualified employee for the next succeeding general benefit year, such succeeding benefit year shall, in his case, begin on the first day of the month in which such unemployment or sickness commences. Notwithstanding the other provisions of this subsection. in the case of a succeeding benefit year beginning in accordance with the next preceding sentence by reason of sickness, such sentence shall not operate to permit the payment of benefits in the period provided for in such sentence for any day of sickness beginning with the day on which age 65 is attained and continuing through the day preceding the first day of the next succeeding general benefit year. For purposes of this subsection.the Board may rely on evidence of age available in its records and files at the time determinations of age are made."

3302 Elements of the Provisions

3302.01 Qualified employee

The qualifying earnings requirements for accelerated benefits or beginning a year early are: (1) the claimant must not be a qualified employee for the current general benefit year when his or her individual benefit year is to begin, and (2) he or she must be, or become, a qualified employee for the next succeeding general benefit year.

3302.02 Fourteen consecutive days of unemployment

The 14 consecutive days of unemployment necessary for beginning a benefit year early may be in more than one registration period. The 14 days may occur before the claimant has become a qualified employee for the next succeeding general benefit year. The 14 consecutive days may not include days for which benefits were paid in an earlier benefit year. For example: a claimant's extended benefit period for BY-87 ends September 12, 1988; benefits are payable with respect to all days through September 12, 1988; the claimant is not qualified for BY-88 but is qualified for BY-89; September 12, 1988 and earlier days cannot be included as part of the 14 consecutive days of unemployment necessary for the purposes of establishing an early beginning of BY-89.

3302.03 Years of service

For purposes of early beginning of benefit year, "years of service" are years of service as defined in Section 1(f) of the Railroad Retirement Act of 1974. Service includes service before 1937, as well as service subsequent to 1936; it includes service subsequent to the base year; it includes any military service which is creditable under the Railroad Retirement Act. (See AIM-19.) In accordance with section 1(f) of the Railroad Retirement Act, 12 months of service constitute a year of service. Thus, an employee who has 120 months of service is considered to have ten years of service. The 120th month of service must have occurred before the first day of the benefit year which is begun early.

3302.04 Beginning and ending date of benefit year

The first day of a benefit year which is begun early is the first day of the month containing the first of the 14 consecutive days of unemployment. For example: a claimant who is not qualified for BY-87 but is qualified for BY-88 who meets the 14 consecutive days of unemployment requirement with the days February 29, 1988 through March 13, 1988 can begin his or her accelerated benefit year with February 1, 1988, the first day of the month containing the first of the 14 consecutive days of unemployment. The earliest possible beginning date of an accelerated benefit year is the July 1st preceding the beginning of the general benefit year. (BY-88 could not begin earlier than July 1, 1987. A benefit year which begins early ends at the same time as the general benefit year. For instance, if BY-88 is begun for an employee on February 1, 1988, it ends on June 30, 1989, unless it is extended beyond that date as a result of the establishment of an extended benefit period.

3302.05 Voluntary leaving

- a. In determining, for purposes of the early beginning of a benefit year, whether a leaving of work was "voluntary" and "without good cause", the principles established in connection with determinations under Section 4(a-2)(i) of the Railroad Unemployment Insurance Act should be followed. See AIM-15.
- b. Under some circumstances a voluntary leaving without good cause does not prevent the beginning of a benefit year early. Only a voluntary leaving which creates the need for beginning the benefit year early and which is reasonably related to the employee's unemployment at the time, affects his or her entitlement to an early beginning. When an employee has been paid compensation equal to 2.5 times the monthly compensation base for time after a voluntary leaving without good cause, it may generally be assumed that the voluntary leaving did not create the need for beginning the benefit year early.

- c. A voluntary leaving without good cause which occurs after the employee's acquisition of ten years of service and after the 14 consecutive days of unemployment does not prevent an early beginning of a benefit year and does not terminate the year. Under the provisions of section 4(a-2)(i) of the Act, however, no day beginning with the date of the voluntary leaving, and continuing until the employee has been paid creditable compensation of 2.5 times the monthly compensation base with respect to time after the date of the voluntary leaving, can be a day of unemployment.

3302.06 Voluntary retirement

- a. In determining, for purposes of the early beginning of a benefit year, whether an employee has voluntarily retired, principles established on that point in connection with determinations as to availability for work should be followed. See AIM-8. In accordance with those principles, application for a retirement annuity is not in itself to be considered as conclusive evidence of voluntary retirement. Consideration must be given to any action of the employee tending to limit his or access to the labor market.
- b. If an employee is found to have voluntarily retired, the date of retirement shall be considered to be the date on which the individual took action showing that he or she was out of the labor market. In many cases this will be the date on which the employee applied for the annuity or relinquished rights to return to service.
- c. Voluntary retirement occurring after the employee's acquisition of ten years of service and after the 14 consecutive days of unemployment does not prevent an early beginning of a benefit year and does not terminate the year. In such case, the employee may receive benefits for days before the date of retirement, provided that he or she is available for work and meets the other requirements of the Act. Benefits for days on or after the date of retirement will not ordinarily be payable since the employee ordinarily cannot meet the availability requirement.

3302.07 Effect on sickness benefits

A benefit year which begins early for the purpose of paying unemployment benefits also begins early for sickness benefit purposes. The early beginning does not affect or limit the amount of normal sickness benefits payable in the benefit year; the limit remains 130 days or benefits equal to the base year wages.

3302.08 Relation to extended benefit periods

A benefit year should not begin early for an employee until after the end of any extended unemployment or sickness benefit period to which he is entitled as a result of exhaustion of rights to normal benefits in an earlier general benefit year. If rights to normal benefits are exhausted in a benefit year which was begun

early, an extended benefit period may be established if the usual requirements are met.

3302.09 Creditable earnings after early beginning date

Creditable base year wages earned after a benefit year has been begun early are to be taken into account in determining the claimant's daily benefit rate and the maximum amount of benefits payable, and any necessary adjustments are to be made periodically.

3302.10 Registration periods

Registration periods for normal unemployment benefits in a benefit year which is begun early are established according to provisions of the Act and regulations respecting registration periods for unemployment benefits. A registration period in a benefit year which is begun early may begin with a day earlier than the first of the 14 consecutive days of unemployment on the basis of which the benefit year was begun early. The fact that a day is earlier than the first of the 14 consecutive days does not prevent it from being a day of unemployment. Registration periods for sickness benefits in a benefit year which is begun early for the purpose of paying unemployment benefits are established according to provisions of the Act and of the regulations respecting registration periods for sickness benefits. Such a registration period may begin with a day earlier than the first of the 14 consecutive days of unemployment on the basis of which the benefit year was begun early.

3303 Determining Entitlement to Early Beginning of the Benefit Year

3303.01 Authority to make determination

The division of program operations is authorized to make determinations as to the early beginning of a benefit year for the purpose of paying unemployment benefits. Some of the points to be considered when making accelerated benefit year determinations are discussed below.

3303.02 Years of service

The number of years of service show in the Board's records shall be accepted as correct unless the claimant has indicated that he has ten years of service and the records shows less than that. If there is such an indication that the claimant may have more service than is shown on the wage record, the additional service should be developed in accordance with instructions in AIM-19.

3303.03 Qualifying wages

To determine whether a claimant is a qualified employee for the next succeeding general benefit year, a record of "lag service" and compensation is to be obtained in accordance with instructions in AIM-19. If it is initially determined that the employee is not qualified for the next succeeding general benefit year but he or she later earns enough to qualify for the next succeeding general benefit year, the benefit year may begin with the first of the month in which the employee's 14 or more consecutive days of unemployment began.

3303.04 Voluntary retirement - voluntary leaving

No special inquiry is needed generally because the field office would have denied claims if the claimant had voluntarily retired or voluntarily left work without good cause. However, if there is doubt on either point, an investigation should be made.

3304 Notice to Claimant

A notice of the determination that a benefit year cannot be begun early should be sent to the claimant, showing why the benefit year cannot be begun early, in each case in which benefits are denied on the basis of such a determination. The letter should contain the claimant's review and appeal rights.

3305 Additional Base Year Earnings

3305.01 Tentative determinations

If the report of base year wages used to establish the early beginning of a benefit year was completed before the end of the base year and the base year earnings on record are less than the maximum amount of normal benefits for a benefit year, the determination should be considered as tentative. The daily benefit rate shall also be considered tentative if based on a pay rate report completed before the end of the base year.

3305.02 Review of tentative determinations

When a determination is tentative, as described above, it should be reviewed shortly after the end of the calendar year. If the claimant may have had additional creditable service in the base year, he or she should be given an opportunity to claim it by sending him or her Form Letter ID-33e (Exhibit F). In any case in which the claimant's reply to Form Letter ID-33e or information in the file indicates that the claimant was not in covered employment in the base year subsequent to the employment which had been previously reported when the initial determination of benefit rights was made consider the tentative determinations as final.

3306 Form Letters Prescribed

ID-33 (9-88) ID-33c (9-88)
 ID-33a (9-88) ID-33d (9-88)
 ID-33b (9-88) ID-33e (9-88)

3321 Provisions of the Act

Section 2(c) of the Act provides, in part, that

"...For an employee who has ten or more years of service, who did not voluntarily retire and (in a case involving unemployment) did not voluntarily leave work without good cause, who has fourteen or more consecutive days of unemployment or fourteen or more consecutive days of sickness, and who is not a 'qualified employee' for the general benefit year current when such unemployment or sickness commences but is or becomes a 'qualified employee' for the next succeeding general benefit year, such succeeding benefit year shall, in his case, begin on the first day of the month in which such unemployment or sickness commences. Notwithstanding the other provisions of this subsection...in the case of a succeeding benefit year beginning in accordance with the next preceding sentence by reason of sickness, such sentence shall not operate to permit the payment of benefits in the period provided for in such sentence for any day of sickness beginning with the day on which age 65 is attained and continuing through the day preceding the first day of the next succeeding general benefit year. For purposes of this subsection...the Board may rely on evidence of age available in its records and files at the time determinations of age are made."

3322 Elements of the Provisions

3322.01 Qualified employee

The qualifying earnings requirements for accelerated benefits or beginning a year early are: (1) the claimant must not be a qualified employee for the current general benefit year when his or her individual benefit year is to begin, and (2) he or she must be, or become, a qualified employee for the next succeeding general benefit year.

3322.02 Fourteen consecutive days of sickness

The 14 consecutive days of sickness necessary for beginning a benefit year early may be in more than one registration period. The 14 days may occur before the claimant has become a qualified employee for the next succeeding general benefit year.

The 14 consecutive days may not include days for which benefits were paid in an earlier benefit year. For example: a claimant's extended benefit year period for

BY-87 ends September 12, 1988; benefits are payable with respect to all days through September 12, 1988; the claimant is not qualified for BY-88 but is qualified for BY-89; September 12, 1988 and earlier days cannot be included as part of the 14 consecutive days of sickness necessary for the purposes of establishing an early beginning of BY-89.

3322.03 Years of service

For purposes of early beginning of benefit year, "years of service" are years of service as defined in Section 1(f) of the Railroad Retirement Act of 1974. Service includes service before 1937, as well as service subsequent to 1936; it includes service subsequent to the base year; it includes any military service which is creditable under the Railroad Retirement Act. See AIM-19. In accordance with Section 1(f) of the Railroad Retirement Act, 12 months of service constitute a year of service. Thus, an employee who has 120 months of service is considered to have ten years of service. The 120th month of service must have occurred before the first day of the benefit year which is begun early.

3322.04 Beginning and ending date of benefit year

The first day of a benefit year which is begun early is the first day of the month containing the first of the 14 consecutive days of sickness. For example: a claimant who is not qualified for BY-87 but is qualified for BY-88 who meets the 14 consecutive days of sickness requirement with the days February 29, 1988 through March 13, 1988 can begin his or her accelerated benefit year with February 1, 1988, the first day of the month containing the first of the 14 consecutive days of sickness. The earliest possible beginning date of an accelerated benefit year is the July 1st preceding the beginning of the general benefit year. (BY-88 could not begin earlier than July 1, 1987.) A benefit year that begins early ends at the same time as the general benefit year. For instance, if BY-88 is begun for an employee on February 1, 1988 it ends on June 30, 1989, unless it is extended beyond that date as a result of the establishment of an extended benefit period.

3322.05 Voluntary retirement

- a. In determining, for purposes of the early beginning of a benefit year, whether an employee has voluntarily retired, principles established on that point in connection with determinations as to availability for work should be followed. See AIM-8. In accordance with those principles, application for a retirement annuity is not in itself to be considered as conclusive evidence of voluntary retirement. Consideration must be given to any action of the employee tending to limit his or her access to the labor market.
- b. If an employee is found to have voluntarily retired, the date of the retirement shall be considered to be the date on which the individual took

action showing that he or she was out of the labor market. In many cases this will be the date on which the employee applied for the annuity or relinquished rights to return to service.

- c. Voluntary retirement occurring after the employee's acquisition of ten years of service and after the 14 consecutive days of sickness does not prevent an early beginning of a benefit year and does not terminate the year.

3322.06 Effect on unemployment benefits

A benefit year which begins early for the purpose of paying sickness benefits also begins early for unemployment benefit purposes. The early beginning does not affect or limit the amount of normal unemployment benefits payable in the benefit year; the limit remains 130 days or benefits equal to the base year wages.

3322.07 Relation to extended benefit periods

A benefit year should not be begun early for an employee until after the end of any extended unemployment or sickness benefit period to which the employee is entitled as a result of exhaustion of rights to normal benefits in an earlier general benefit year. If rights to normal benefits are exhausted in a benefit year which was begun early, an extended benefit period may be established if the usual requirements are met.

3322.08 Creditable earnings after early beginning date

Creditable base year wages earned after a benefit year has been begun early are to be taken into account in determining the claimant's daily benefit rate and the maximum amount of benefits payable, and any necessary adjustments are to be made periodically.

3322.09 Registration periods

Registration periods for normal sickness benefits in a benefit year which is begun early are established according to provisions of the Act and regulations respecting registration periods for sickness benefits. A registration period in a benefit year which is begun early may begin with a day earlier than the first of the 14 consecutive days of sickness on the basis of which the benefit year was begun early. The fact that a day is earlier than the first of the consecutive days does not prevent it from being a day of sickness. Registration periods for unemployment benefits in a benefit year which is begun early for the purpose of paying sickness benefits are established according to provisions of the Act and of the regulations respecting registration periods for unemployment benefits. Such a registration period may begin with a day earlier than the first of the 14 consecutive days of sickness on the basis of which the benefit year was begun early.

3322.10 Effect of attaining age 65

If a benefit year is begun early for the purpose of paying sickness benefits, and the employee attains age 65 before July 1 of the general benefit year, sickness benefits may not be paid for any day from the day on which the employee attained age 65 up to July 1, but unemployment benefits may be paid for days in the interim period. Sickness benefits may be paid from July 1 on. In this situation a statement of sickness is not deemed to have been filed with respect to any day from the day the employee attained age 65 up to July 1. The employee shall be advised of the denial of benefits by Form Letter ID-33k (Exhibit E). He shall be advised to file a new application and statement of sickness if he wishes to claim benefits beginning July 1. If a benefit year is begun early for the purpose of paying unemployment benefits, attainment of age 65 will have no effect on the employee's rights to normal sickness benefits in the accelerated benefit year.

Example 1. An employee has 14 consecutive days of sickness in February 1988 and as a result, BY-88 is begun for him or her early on February 1, 1988. He attains 65 years on April 2, 1988; his birthday is April 3. BY-88 accelerated sickness benefits are payable through April 1, 1988, the day before the claimant attains age 65. Sickness benefits are not payable for the days April 2, 1988 through June 30, 1988. However, they are payable from July 1, 1988 on.

Example 2. An employee has 14 consecutive days of unemployment in February 1988 and as a result, BY-88 is begun for him or her on February 1, 1988. The claimant becomes sick on March 3, 1988 and normal BY-88 sickness benefits are paid beginning March 3. He or she is 65 years old on March 31, 1988. But in this case attainment of age 65, even though occurring before the beginning of the general benefit year, does not stop the payment of sickness benefits because the benefit year was not begun early for the purpose of paying sickness benefits.

3323 Determining Age 65

An employee attains age 65 on the day before his sixty-fifth birthday. Thus, an employee born on January 15, 1923 attains age 65 on January 14, 1988. For purposes of determining an employee's rights to benefits in an accelerated benefit year, the adjudicating office may rely on evidence of age in the Board's records and files at the time the determination is made. In the absence of fraud, a determination allowing the early beginning of a benefit year shall not be disturbed although based on evidence as to age later found to be incorrect. But no additional benefits may be paid on the basis of the incorrect evidence. In determining whether an employee has attained age 65 the adjudicating office shall consider the evidence of age in the wage and service records maintained by the bureau of compensation and certification.

3324 Determining Entitlement to Early Beginning of the Benefit Year

3324.01 Authority to make determinations

The division of program operations is authorized to make determinations as to the early beginning of a benefit year for the purpose of paying sickness benefits. Some of the points to be considered when making accelerated benefit year determinations are discussed below.

3324.02 Years of service

The number of years of service shown in the Board's records shall be accepted as correct unless the claimant has indicated that he has ten years of service and the record shows less than that. If there is such an indication that the claimant may have more service than is shown on the wage record, the additional service should be developed in accordance with instructions in AIM-19.

3324.03 Qualifying wages

To determine whether a claimant is a qualified employee for the next succeeding general benefit year, a record of "lag service" and compensation is to be obtained in accordance with instructions in AIM-19. If it is initially determined that the employee is not qualified for the next succeeding general benefit year but he or she later earns enough to qualify for the next succeeding general benefit year, the benefit year may begin with the first of the month in which the employee's 14 or more consecutive days of sickness began.

3324.04 Voluntary retirement

Investigation and determination as to whether the claimant retired voluntarily is necessary only if the claimant is over 60 years of age and there is a gap of a month or more between the last day he worked and the first day of infirmity or the claimant is receiving an annuity under the Railroad Retirement Act.

3325 Notice to Claimant

A notice of the determination that a benefit year cannot be begun early should be sent to the claimant, showing why the benefit year cannot be begun early, in each case in which benefits are denied on the basis of such a determination. The letter should contain the claimant's review and appeal rights.

3326 Additional Base Year Earnings

3326.01 Tentative determinations

If the report of base year wages used to establish the early beginning of a benefit year was completed before the end of the base year and the base year earnings on record are less than the maximum amount of normal benefits for a benefit year, the determination should be considered as tentative. The daily benefit rate shall also be considered tentative if based on a pay rate report completed before the end of the base year.

3326.02 Review of tentative determination

When a determination is tentative, as described above, it should be reviewed shortly after the end of the calendar year. If the claimant may have additional creditable service in the base year, he or she should be given an opportunity to claim it by sending him or her Form Letter ID-33e (Exhibit F of AIM-33, Title I). In any case in which the claimant's reply to Form Letter ID-33e or information in the file indicates that the claimant was not in covered employment in the base year subsequent to the employment which had been previously reported when the initial determination of benefit rights was made, consider the tentative determination as final.

3327 Form Letters

ID-33f (9-88)	ID-33j
ID-33g (9-88)	ID-33k
ID-33h (9-88)	

