

## 215.5 General

Under the 1974 Railroad Retirement Act, military service (MS) may be used as wages or compensation in computing an annuity rate. The employee does not have to indicate whether he wants his M/S used as Social Security Act (SSA) wages for a windfall or as compensation under the Railroad Retirement Act (RRA). He must, however, indicate the MS on the application and submit proof of all creditable M/S for it to be considered. The annuity rate will be calculated using MS as wages or compensation, depending on how the MS may be credited and depending on which method produces the higher benefit.

### 215.10 Active M/S under the RRA Defined

Under the RRA, a person is considered to have performed active MS if he was:

- A. Commissioned or enrolled in the active service of the land or naval forces of the U.S. (including personnel of the U.S. Coast Guard); or
- B. Commissioned or enrolled in any reserve component of such forces which was ordered to active duty.

Annual training duty performed for a period of at least 2 weeks (usually 15 days or more) as a member of a reserve component of a uniformed service is considered active duty and may be creditable, provided the employee service requirement is met. The period of active reserve duty for training also includes authorized travel to and from any such training duty. Weekend alone or evening reserve duty is not creditable.

Reserve components of a uniformed service are:

- 1. The Army Reserve;
- 2. The Navy Reserve;
- 3. The Marine Corps Reserve;
- 4. The Air Force Reserve;
- 5. The Coast Guard Reserve;
- 6. The Reserve Corps of the Public Health Service;
- 7. The National Guard of the United States; and
- 8. Under limited circumstances, the National Guard or Air National Guard of the several states and territories and the District of Columbia. Such reserve active duty may be creditable only if the reserve unit was activated

by the Federal government. Emergency call-up of the national guard by the governor for riot or flood control would not be creditable; or

- C. Commissioned or enrolled in the active service of any of the following auxiliary branches:
1. Women's Army Auxiliary Corps (WAACS);
  2. Women's Air Force (WAFS);
  3. Women's Army Corps (WACS);
  4. Women's Reserve of the Naval Reserve (WAVES);
  5. Marine Corps Women's Reserve (MARINES); and
  6. Women's Reserve of the Coast Guard Reserve (SPARS).

NOTE: A person's service in the Army Specialist Corps, the Merchant Marine, Maritime Service or a Civilian Public Service Camp is not creditable as M/S under the RRA.

Active M/S as defined under the SSA (see FOM-1-215.40) may also be creditable under the RRA, if the RRA requirements are met.

## 215.15 Requirements for Using MS under the RRA

Credit for MS under the RRA may be allowed if, before enlistment or induction, and in the same calendar year as the enlistment or induction or in the next preceding calendar year, the employee:

- A. Performed service as an employee for compensation; or
- B. Lost time as an employee for which he received remuneration; or
- C. Was serving as an employee representative.

Although the date of enlistment or induction is to be used to meet the "same year" or "next preceding year" requirement, the first month to be counted as a month of service is the month of entry on active duty. If, however, counting the service beginning with the month of enlistment or induction would cause the applicant to gain eligibility for a benefit (e.g., 20 years of service for an occupational disability annuity), develop an application if necessary. Mark the Form G-230 (Check List for Employee, Spouse, and Divorced Spouse Annuity/HIB Applications) for MANUAL REVIEW, and show in the remarks section of the Form G-230: "Eligibility based on the month the applicant enlisted or was inducted."

## 215.20 MS Periods Which may be Credited

Credit for MS under the RRA may be granted for eligible employees who entered MS during any of the periods outlined in the following sections.

### 215.20.1 Voluntary or Involuntary Service

If an employee voluntarily entered MS before a war service period, no part of the MS performed in the enlistment period may be allowed. Any MS performed after the first enlistment period would have to be preceded by the required employee service.

Voluntary or involuntary service entered during the following periods may be credited under the RRA:

- A. April 21, 1898 through August 13, 1898 (Spanish American War);
- B. February 4, 1899 through April 27, 1902 (Philippine Insurrection);
- C. April 6, 1917 through November 11, 1918 (World War I);

NOTE: When the employee entered MS in one of the periods described in (A) through (C) above and he was required to continue in MS after the end of the period during which he entered, he may receive credit for all MS performed before his discharge or reenlistment.

- D. September 8, 1939 through June 14, 1948 (State of national emergency). This period includes the war period of World War II which began December 7, 1941, and ended December 31, 1946. The national emergency was declared ended by Congress as of 6-14-48, the date when the President approved the declaration.
- E. June 15, 1948 through December 15, 1950 (The President approved the Selective Service Act of 1948 on 6-24-48.)
  - 1. Months Prior to December 1, 1948 (MS entered into voluntarily from 6-15-48 through 6-23-48 is not creditable under the RR Act);

NOTE: If an employee entered MS as an enlisted man on or before 12-31-46 or if he was required to enter MS on or after 1-1-47, that MS is creditable through the end of the enlistment period even if it extends past June 14, 1948. Credit is allowed for all MS performed before the employee was no longer required to serve, usually the end of the immediate enlistment period. It is assumed that enlisted personnel were required to complete their current term of enlistment or induction.

An employee who voluntarily entered MS as an enlisted man during the period beginning 1-1-47 through 6-14-48 can only receive credit for such MS through 6-14-48.

If an officer voluntarily elected to remain in MS during the period 1-1-47 through 6-14-48, he may not receive credit after 6-14-48 even though he is bound by the election to remain after that date.

If an officer was in MS on 12-31-46 and continued in such service after 6-14-48, it is assumed that he was not required to continue in MS but that he voluntarily continued in MS after 6-14-48, and credit will be allowed only for M/S through 6-14-48. Tell such a person that if he could not have obtained a release from active MS until after 6-14-48, he should submit documentary proof which shows that he could not obtain a release from active duty until after 6-14-48, and the earliest date he could have been relieved from active duty after 6-14-48.

When the person submits evidence which establishes that he was required to remain in service after 6-14-48, MS will be allowed to the earliest date he could have been released from active duty. However, no MS will be allowed after the date the Military Personnel Records Center certifies on Form G-431 (Request for Record of Military Service) that the employee signed a statement electing to voluntarily remain in active MS. Examiners will develop the Form G-431 information when creditability of MS after 6-14-48 is questionable.

2. Effective December 1, 1988, voluntary MS in the June 15, 1948 through December 15, 1950, period is creditable under the RRA if the following conditions are met:

- Employee rendered creditable railroad retirement (RR) service in the year of entrance into military service or in the preceding year;
- Employee rendered creditable RR service in the year released from active military service or in the succeeding year;
- Employee did not engage in employment not covered by the RRA in the period after leaving MS and before resuming RR employment.

If these conditions are not met, the same creditability rules that are in effect for months prior to December 1, 1988, apply. See the NOTE under "1. Months Prior to December 1, 1988."

F. December 16, 1950 through September 14, 1978 (National emergency which ended 9-14-78).

NOTE: When the employee voluntarily entered MS before 9-15-78, that MS is creditable only through 9-14-78.

When the employee involuntarily entered MS during the period 12-16-50 through 9-14-78, he can receive credit for M/S after 9-14-78 only if he was required to continue in such service after 9-14-78. It is assumed that enlisted personnel

were required to complete their current term of enlistment or induction. See NOTE under D in this section if an officer claims he was required to continue military service.

- G. August 2, 1990 through Present (Gulf Wars Conflicts National Emergency including Operation Desert Shield/Desert Storm).

Note: While the employee's initial (basic) guardsman training active duty is voluntary, and, if entered when there is no declared national emergency, is not creditable as railroad service. Any subsequent recall from reserve status to active duty status is, by law, considered involuntary mandatory service.

## 215.20.2 Involuntary Service

Involuntary service entered during the following periods may be creditable under the RRA:

- A. May 9, 1916, through February 5, 1917, pursuant to the President's calls of May 9, 1916, and June 18, 1916 (Mexican Border Disturbances);
- B. June 24, 1948, through December 15, 1950, under the Universal Military Training and Service Act (formerly the Selective Service Act of 1948).

M/S entered involuntarily from 6-15-48 through 6-23-48, before the Selective Service Act was approved, is also creditable.

A person who voluntarily enlisted in the reserve military forces and who was ordered to active duty from the reserve forces between 6-24-48 and 12-15-50 is considered to have entered MS involuntarily during that period; and

- C. After September 14, 1978 - A person who entered MS involuntarily after 9-14-78 may receive credit for all service performed before his discharge.

Involuntary MS may also be creditable for any other period not shown above if the employee was required to enter and continue in such service by call of the President or by any Act of Congress or regulation, order, or proclamation. He is entitled to credit for all service performed before his discharge or re-enlistment, provided the employee service requirement was met.

If the employee entered MS to avoid being drafted, the MS may be considered involuntary service if the employee can show that he would have been inducted if he had not enlisted. The employee must prove that he was scheduled for induction. Acceptable proof would be a copy of his notice of induction or any other correspondence from the Selective Service Commission establishing the fact that the employee would have been inducted soon after his date of enlistment if he had not enlisted. Correspondence showing only that he was a candidate for induction when he enlisted will not establish that he involuntarily

entered MS. Mark the Form G-230 for MANUAL REVIEW and show in the remarks section: "Employee entered MS to avoid being drafted."

- D. Any subsequent recall from reserve status to active duty status is, by law, considered involuntary mandatory service.

## **215.25 Determining MS Enlistment Periods**

All creditable MS in a single enlistment period that was performed within a war service period may be allowed. If the MS was performed in separate enlistment periods, each period must be preceded by the required employee service.

The field office should submit proof of each enlistment period.

The MS enlistment periods are determined to be single enlistment periods or separate enlistment periods according to the following instructions.

### **215.25.1 Single Enlistment Period**

A single enlistment period begins on the date of entry into active service and ends on the date of discharge. All service of a single enlistment period within a war service period may be allowed if otherwise creditable.

### **215.25.2 Two or More Enlistment Periods Treated as Single Enlistment**

Period under certain conditions, two or more enlistment periods will be treated as a single enlistment period. In these cases only the first enlistment period must be preceded by the necessary employee service. The period is treated as a single period in crediting MS as compensation or wages.

Two or more enlistment periods are treated as a single enlistment period if:

- A. The indicated discharge was not an actual and full discharge from active service and the serviceman was required to continue in active service (e.g., the serviceman was discharged from one branch of service only because he had agreed to enlist in another branch); or
- B. The discharge was an actual and full discharge from active service (he was not required to continue in active service), but within the same war service period in which he was discharged the serviceman re-enlisted into active MS without a break in his service; or
- C. A person re-enlisted without a break in service but would have been required to continue serving in active MS regardless of the re-enlistment. The re-enlistment period and the preceding MS period are treated as a single enlistment period.

### **215.25.3 Two or More Enlistment Periods Treated as Separate Enlistment Periods**

Separate enlistment periods are two or more periods of MS which are separated by an actual discharge and release of the person from MS. To be creditable, each separate enlistment period must be preceded by the required employee service.

## **215.30 Service and Compensation Credit for MS**

### **215.30.1 Service**

An employee may be credited with a month of railroad service for each full or partial month of military service that is creditable under the RRA. If other RR service was credited in any month for which MS is creditable, the employee may not receive an MS service credit for that same month.

MS after 1956 may be included only if the service is creditable under the RRA and the employee's MS plus his RR service totals 10 or more years.

### **215.30.2 Compensation**

An employee is credited with \$160 a month for each month he was in creditable MS after 1936 through 1967, and \$260 for each month of MS performed from 1968 through 1974. For months after 1974, an employee is credited with the actual amount of MS basic pay that is creditable as SSA wages.

When the employee performed creditable MS for a month in which he has other creditable RR compensation, the MS compensation is added to the other creditable compensation, up to the monthly compensation maximum.

## **215.35 Restriction on Use of Creditable MS under the RRA**

MS may not be used to increase or provide eligibility for any annuity under the RRA if the employee on whose wage record the earnings are based:

- A. Has been convicted of certain federal offenses involving national security. Although the following list is not all inclusive, these offenses preclude the use of MS: espionage, sabotage, treason, sedition, subversive activities, interfering with armed forces, improper use of defense information and disclosure of classified information;
- B. Refuses to appear, testify or produce any paper about his service as an officer or employee of the government before a federal grand jury, federal court, court-martial, or congressional committee in proceedings regarding his relationship with a foreign government or matters of national security;

- C. Commits perjury in falsely denying commission of certain offenses listed above or in falsely testifying before these governmental bodies in matters involving national security;
- D. Willfully makes a false statement or conceals material facts in connection with federal employment, or on an application for federal employment about connections with the communist party or a similar group, about conviction of an offense listed above, or by refusing to testify; or
- E. Willfully remains outside the United States for more than 1 year to avoid prosecution for one of the described offenses.

Conviction is not required for any of the offenses listed under items B through E.

Do not question applicants about any of the offenses described above. If there is reason to believe that a case involves one of the situations described above, do not initiate any further development of the matter, but inform HQ.

## **215.40 Active MS under the SSA Defined**

Military service may be creditable as wages under the SSA if a member of the uniformed services performs full-time duty in the military or naval service. A member of a uniformed service is:

- A. Anyone appointed, enlisted or inducted into (or a retired member of):
  - 1. One of the armed services without a specified component; or
  - 2. A component of the Army, Navy, Air Force, Marine Corps or Coast Guard (including a reserve component of a uniformed service);
- B. Anyone appointed, enlisted or inducted as a commissioned officer of the National Oceanic and Atmospheric Administration (formerly the Environmental Science Service Administration), or the Regular or Reserve Corps of the Public Health Service;
- C. Anyone serving in the Army or Air Force under call or conscription;
- D. A member of the Fleet Reserve or Fleet Marine Corps Reserve;
- E. A midshipman at the U.S. Naval Academy, or a cadet at the U.S. Military, Coast Guard or Air Force Academy;
- F. A member of the Reserve Officers' Training Corps or the Naval or Air Force Reserve Officers' Training Corps, when on annual training duty for 14 days or more and while performing authorized travel to and from that duty; or

- G. Any person at, en route to or from a place for final acceptance in or for entry to active military or naval service who had been ordered or directed to proceed to such place, provided that:
1. He has been provisionally accepted for duty; or
  2. He has been selected for active military or naval service under the Universal Military Training and Service Act.

The term does not include a member of the Coast Guard Auxiliary, the temporary Coast Guard Reserve (unless service was full-time duty with pay and allowances), the Civilian Auxiliary to the Military Police or the Civil Air Patrol.

## 215.45 Crediting MS under the SSA

### 215.45.1 Military Service Before 1957

Before 1957, military service with the Armed Forces of the U.S. was not reported as social security earnings. However, for social security purposes, wage credits of \$160 for each month of active military or naval service with the Armed Forces of the U.S. during the World War II period (9-16-40 to 7-24-47) or the post-World War II period (7-25-47 to 12-31-56) may be granted to a veteran if:

- A. He was discharged or released from active service under conditions other than dishonorable, either:
1. After active service of 90 days or more; or
  2. After active service of less than 90 days, either:
    - a. Because of a disability or injury incurred or aggravated in service or in the line of duty; or
    - b. In the period 9-16-40 through 12-31-56, but after having served at least 90 consecutive days in a period beginning before 9-16-40, or before 7-25-47, or before 1-1-57, and ending on or after that date, respectively; or
- B. He is still in active service; or
- C. He died while in the active military or naval service, unless his death was inflicted as lawful punishment for a military or naval offense by other than an enemy of the U.S.

Wage credits of \$160 a month may also be granted, or insured status established, on the basis of active service performed during WWII by U.S. citizens in the Armed Forces of allied countries. Mark the Form G-230 for MANUAL REVIEW in such a case, and explain in the remarks section of the Form G-230.

## 215.45.2 Military Service After 1956

Work as a member of the uniformed services of the U.S. is reported as social security earnings beginning 1-1-57, if performed while on active duty or active duty for training. This work is not covered by social security during any period when the individual is on leave without pay or if the work is creditable under the RRA. MS performed after 1956 is creditable in the same manner as other wages. The type of discharge is immaterial.

- A. Credit for 1951-1956 period - A retired serviceman who has covered MS after 1956 may receive credit for each month of active service in the years 1951 through 1956. Wage credits of \$160 monthly may be credited even if the veteran is receiving retirement pay from the Army, Air Force, Navy, Marine Corps, etc.
- B. Deemed M/S wage credits - A veteran may also receive non-contributory or deemed wage credits for MS after 1956, in addition to the basic pay that was reported as wages. Deemed wage credits are allowed if SS entitlement is after 1967. A serviceman who enlists in a regular component of the Armed Forces after 9-7-80 must complete at least 24 months of the original enlistment period to receive deemed wage credits.

An additional \$300 per quarter is creditable for each quarter after 1956 in which wages were paid for service as a member of a uniformed service. Beginning 1-1-78 and extending through 12-31-2001, deemed M/S wages are credited in \$100 increments (up to \$1200) for each full \$300 of annually reported MS wages. The total wages may not exceed the annual maximum. Public Law 107-117 eliminated deemed MS wage credits for all years after calendar year 2001.

This provision is not used to increase compensation credit for MS. Deemed wages may be used in the annuity computation only when MS is credited as wages.

## 215.50 Restriction on Use of MS under the SS Act

### 215.50.1 Military Service Before 1957

MS before 1957 may not be used as wages under the SSA if any of the following apply:

- A. World War II credits (9-16-40 through 7-24-47) may not be used for the payment of benefits for months before September 1950 or for lump-sum death payments when death occurred before September 1950. Post-WWII credits (7-25-47 through 12-31-56) may not be used for the payment of benefits for months before September 1952 or for lump-sum death payments when death occurred before September 1952;
- B. The veteran was discharged under dishonorable conditions;

- C. The veteran has been convicted of certain offenses against the federal government such as treason, sedition, etc.;
- D. The veteran refuses upon the grounds of self-incrimination to appear, testify, produce books, etc., before a Federal grand jury, U. S. court or U.S. congressional committee concerning his work as an employee of the U.S. government or his relationship with a foreign government;
- E. A larger benefit or lump-sum death payment would be payable without the inclusion of the MS;
- F. A monthly benefit payable by another Federal agency (other than the Veterans Administration) is based on the same period of service. If MS is used in a civil service benefit, the same period of MS cannot be used as wages under the SSA or by RRB. However, if a veteran is on active duty or active duty for training after 1956, he may be granted social security wage credits for active service during the 6-year period, 1951 through 1956, even though he is receiving retirement pay from the Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey or Public Health Service, based wholly or partially on the same period of MS; or
- G. MS from that same period is being used as compensation under the RRA.

### **215.50.2 Military Service After 1956**

Military service after 1956 is not covered by social security during any period when the individual is on leave without pay, or if the service is credited as compensation under the RRA.

### **215.55 MS Creditable under RR and SS Acts**

The Social Security Administration may not use MS to establish eligibility for or increase the amount of a benefit under the SSA if the same MS was used as compensation to establish eligibility for or increase the amount of an annuity (regular or supplemental) under the RRA. If the Social Security Administration has awarded a benefit under the SSA based on such MS, they will either terminate the benefit if the MS was necessary for eligibility or reduce the benefit by excluding the MS credits, when notified that the MS was used in an RRA annuity.

If, however, MS is used as wages in computing the RRA annuity, the Social Security Administration may use that same M/ in their benefit computation.

#### **215.55.1 Military Service Before 1957**

The Social Security Administration releases an inquiry to the RRB when MS before 1957 is claimed by an applicant who appears to have 120 months of railroad service, or to be receiving an annuity under the RRA. BRC informs the Social Security

Administration if we are using MS as compensation. If an application has not been filed when the Social Security Administration's inquiry is received, we will notify them if we use MS as compensation when an annuity is later awarded.

When the Social Security Administration has not inquired about the use of MS by RRB, it is possible that the Social Security Administration may certify a payment using MS before 1957 as wage credits, even though RRB is already paying an annuity based on M/ as compensation. No further action is required in these cases until the Social Security Administration makes an inquiry to RRB.

### **215.55.2 Military Service After 1956**

All MS after 1956 is reported as social security wages. When such service is used by RRB as compensation in awarding an annuity, RRB must notify the Social Security Administration that MS after 1957 is used as compensation. No SS benefit will be certified using MS after 1956 if RRB is using MS as compensation. If MS was erroneously used by the Social Security Administration, that agency will adjust the benefit to remove the MS from the computation of the SS benefit.

### **215.60 Crediting MS When Time Lost Indicated**

Time lost from military service resulting from AWOL (absence without leave) or desertion may affect the creditability of MS under the RRA and/or the SSA in the following situations:

- A. Time lost results in a separation from active service under dishonorable conditions; or
- B. Time lost results in an unauthorized absence that extends over an entire period of active service and that absence terminates the actual military service; or
- C. An individual has been officially declared a deserter and died while in that status.

In these situations, the period of unauthorized absence and confinement under military control while awaiting disposition of the charge is not considered MS.

Time lost for other reasons does not affect the creditability of MS.

### **215.65 Effect of Type of Discharge**

A dishonorable discharge affects the creditability of MS as compensation or wages when time was lost because of AWOL or desertion. The type of discharge also affects the creditability of MS before 1957 as wages. MS before 1957 cannot be credited as wages if the discharge from service is dishonorable.

The type of discharge does not affect crediting MS before 1957 as compensation, or crediting MS after 1956 as either compensation or wages, unless time was lost.

A photocopy of the proof must be submitted when the discharge is other than honorable.

## **215.70 MS Before 1937**

In retirement cases, creditable MS before 1937 can be used under the RRA only if the employee has less than 30 years of service. Do not develop proof for MS before 1937 if the employee has 30 years of RR service.

In survivor cases, submit proof of MS before 1937 only if it is needed to give the employee 120 months.

## **215.75 Request for MS Determination**

The field office requests a determination on the credibility of MS as compensation before an annuity application has been filed by following the procedure indicated in [Section 910.5.2 of Article 9](#).

## **215.80 Claiming MS in Life Cases**

MS must be indicated on the application to be considered in the annuity computation as either compensation or wages. The MS will be used as either railroad compensation or social security wages, depending on how the MS may be credited and depending on which method produces the higher annuity rate. However, if the applicant specifically requests that the MS be used only one way, as either wages or compensation, MS will be credited as requested. The applicant may also request that the MS not be used.

Proof should be submitted for all MS claimed after 1936. Submit proof for service before 1937 only if the employee has less than 30 years of service.

## **215.85 Retroactivity of MS Claim**

If a MS term is not shown on an initial application, or the applicant is unable to provide proof of the TOS before the initial final award appeals period expires, that MS may be claimed later. The applicant must provide acceptable proof along with a signed statement requesting that the credited MS be included in the annuity calculation.

- A. An annuity increase due to added MS accrues from the ABD if the MS proof is received during the appeals period after an initial award, but benefit retroactivity is restricted if the proof is submitted after the initial appeals period.
  - 1. Effective 09-30-97, any annuity increase based on MS proof accrues only from the month after the month the proof is received. (No retroactivity.)
  - 2. 10-05-63 through 09-29-97 inclusion of the added MS credit could retroact 12 months.

3. MS was first allowed as railroad service in an annuity 10-08-40. Until 10-05-63, retroactivity of added MS credits was 6 months, but not earlier than October 1940.
- B. If creditable MS was shown on the employee's initial application, and an "initial final" annuity was awarded without MS for any documented "action pending" reason, the award paid without MS is not a final decision, because a claim remains open until a final decision is made on all parts of the application.

## 215.90 Crediting MS in Life Cases

If MS is creditable as railroad compensation, it may increase the service (and compensation in some cases) used in computing tier II. MS may also be needed as railroad service to provide the number of service months required for eligibility for an annuity. If MS is used as social security wages, it may provide eligibility for or increase the amount of a windfall benefit.

A period of MS that is used under either the SSA or the RRA may not be used under the other act. A second separate period of MS, however, may be used as wages under the SSA or as compensation under the RRA, regardless of how the first period was used. A single period of MS may not be split when it is credited; all the months in the period must be credited as either compensation or as wages.

The use of MS in the annuity computation must be consistent, as either wages or compensation. For example, if a period of MS is used as compensation in computing tier II, the same MS may not be used as wages to vest the employee for a windfall. However, if a decision to use MS as either wages or compensation was based on erroneous or incomplete information, the annuity may be recertified to change the use of MS from the annuity beginning date, as if it had never been used.

In some disability annuity cases involving MS, the disability freeze (DF) rating may affect the way MS is used in the annuity. An employee may need a DF in order to meet the quarters of coverage (QC) requirement for an insured status to be vested for a windfall benefit. However, since most disability annuities are already in pay status when the DF determination is made, the preliminary MS determination made for those cases may not be correct if the DF rating changes the way MS should be used. Since the use of MS is determined on a "conditional" basis when the disability annuity is initially awarded, the way the MS is used may be reversed when the DF rating is made.

EXAMPLE: An employee (date of birth 6-15-20) has 26 years of RR service and 21 QCs as of 12-31-74. He has 2 years of MS that may be credited as either compensation or wages, depending on which method produces the higher annuity. He will attain age 62 in 1982. Since 31 years elapse after 1950 up to but not including 1982, he would need 31 QCs to be fully insured under the SSA.

Under these conditions the employee, even though he meets the RR requirements to be vested, would not be vested as of 12-31-74. If his MS is used as wages, he will have

eight additional QCs or a total of 29 QCs. Since he needs 31 QCs to be vested, the annuity may be paid using MS as compensation.

The employee is later granted a disability freeze with an onset date of 6-1-79. The three disability freeze years, 1979-1981, are dropped as elapsed years, leaving a total of 28 elapsed years. Now the employee, still assuming he meets all the other requirements, is vested since only 28 QCs are required for the permanently insured status and he has 29 QCs if MS is used as wages. Because the use of MS was determined on a conditional basis when the disability annuity was initially awarded, the way the MS is used may be reversed. The claim may then be recertified from the annuity beginning date to remove MS as compensation, and pay the windfall using MS as wages beginning 11-1-79.

### **215.95 Use of MS to Establish Eligibility for Spouse and Supplemental Annuity**

When MS has been determined to be creditable as compensation under the RRA, that MS is included in the employee's total years of railroad service even if the MS was not used in the computation of the employee's annuity. MS may not have been used in the annuity computation if the reduction for another federal benefit caused the annuity rate to be lower than the rate that would be payable if MS had not been used in the computation. Including MS in the total years of railroad service, even though it was not used in the annuity computation, may establish eligibility for a spouse's annuity or a supplemental annuity.

**EXAMPLE:** The employee has 24 years of RR service and 2 years of MS. He is receiving a reduced age annuity, but attained age 65 in July 1980. The employee is not vested with or without M/S. His annuity rate without M/S is \$630.00; he was paid this amount because his annuity rate with M/S included as compensation, but after reduction for a VA benefit, was \$600.00. Since his total years of service including MS is 26, he is eligible for a supplemental annuity. The MS is included in his total years of railroad service, even though it was not used in the computation of his annuity rate.

### **215.100 Crediting MS in Death Cases**

Secure proof of MS whenever the employee had MS after 1936, unless proof was previously submitted. MS may be included in survivor benefits as either compensation or wages. MS that is creditable as compensation will be used as though it were employee service in determining a current connection and in computing insurance annuities, lump-sum death payments and residual lump-sums. If MS is not creditable as compensation, it may be included as wages in computing insurance annuities, if the SSA requirements are met.

Under the 1974 RRA, survivor annuities are not subject to a reduction because of other benefits paid under an act of Congress based in whole or in part on MS that is creditable under the RRA.

NOTE: A reduction for MS was required in some 1937 RRA survivor annuities when another federal benefit was paid based in whole or in part on MS which was used under the RRA. That reduction remained for annuities converted under the 1974 RRA. However, no additional reduction is applicable for adjustments effective 1-1-75 or later.

### **215.105 Military Service Reduction for Other Benefits Prior to 9-1-83**

Prior to 9-1-83, when MS was used as compensation in computing a retirement annuity, a reduction was made in the annuity if the same period of MS was used as the basis for awarding periodic benefits under another act of congress. The Railroad Retirement Solvency Act of 1983 eliminated the reduction for other MS benefits, effective 9-1-83. There is currently no restriction on the use of MS as compensation, because of the receipt of other benefits. For example, MS may be used to give an employee eligibility to both a Civil Service annuity and a railroad retirement annuity. However, the restriction on the use of MS as wages still applies: MS cannot be used as wages if a monthly federal benefit (other than Veterans Administration benefits) is based on the same period of service. [See FOM-I-215.50.1.](#)

The annuity MS reduction was removed with the 12-1-83 cost of living operation. However, this did not include cases in which the MS was not used as compensation because the reduction caused the rate without MS to be higher. Those cases cannot be identified for adjustment; if you receive an inquiry in such a case, forward it to HQ.

Prior to 9-1-83, an MS reduction could be caused by a Veterans Administration benefit (including a service connected or nonservice connected disability benefit), a benefit from the Air Force, Army, Navy, Coast Guard, Marine Corps, the Coast and Geodetic Survey, or the U.S. Public Health Service, or a Civil Service (Office of Personnel Management) annuity. If the other benefit was a Civil Service annuity, the reduction in the railroad retirement annuity was based only on the amount of the increase in the Civil Service annuity due to the MS. The reduction for other benefits was not made for any month in which the other benefit was not paid. If the employee waived his rights to receive the other benefit, the reduction was no longer made.

When a reduction was made for other federal benefits, the employee always received at least the amount that would be payable if the military service was not used in the computation, unless the MS was required for eligibility. If an employee's annuity with MS used as compensation was reduced for other benefits, the spouse's annuity and divorced spouse's annuity were also reduced proportionately. The amount of the combined reduction in the employee, spouse and divorced spouse's annuities was not limited to the amount of the other federal benefits.

If two or more MS periods were involved and the other benefits were based on a service connected disability, the reduction was limited to the period of MS on which the other benefits were based. The annuity was not reduced for periods of MS which did not serve as the basis for other benefits. If two or more M/S periods were involved and the other benefits were based on a nonservice connected disability, the reduction was based on all periods of MS that were used as compensation in the annuity computation.

## 215.110 Processing Cases with Military Service

When MS may be credited under either the RRA or the SSA, an examiner determines which use of MS is to the employee's advantage. MS may be used as wages to give the employee a vested status, or to increase the amount of a windfall benefit. MS that is creditable as compensation may be used to establish eligibility for an annuity or to increase tier II; however, the annuity is subject to reduction if the employee is receiving another federal benefit based on his MS. The rates with MS as compensation and MS as wages are compared to the rate without MS, and the higher rate is paid. If the higher rate will not be payable for more than 6 months (e.g., MS vests employee and the windfall is not payable for more than 6 months), the employee is contacted for a decision on how MS should be used.

### 215.110.1 Cases Handled by RASI

RASI (Retirement Adjudication System Initial) will make the final payment in the following cases:

- A. The MS is not needed as wages to vest the employee and is not creditable as compensation. In this case, MS will be used as wages;
- B. The MS is not needed as wages to vest the employee but is creditable as compensation, and the employee has indicated that he does not expect to receive another federal benefit based on his MS. RASI will pay the case with MS as compensation, because that usually produces the higher annuity rate. After RASI has made the final award, the examiner will also compute the rate with MS as wages to see if that rate is higher;
- C. The MS is needed as wages to vest the employee and is needed as compensation for regular annuity eligibility (e.g., MS gives the employee 10, 20, or 30 years of service). RASI will pay the case using MS as compensation, and will deny the employee the windfall based on the same MS; and
- D. If an employee has MS before 1937, RASI will pay the annuity without the prior military service. The examiner will review the award after final payment to see if use of the MS will increase the annuity rate. MS before 1937 may not be used if the employee already has 30 years of RR service.

### 215.110.2 Cases Requiring Manual Payment

These cases will be removed from computer processing when the final rate is to be paid. The examiner must manually award the final annuity based on the computation that produces a higher rate when:

- A. The MS is not needed as wages to vest the employee but is creditable as compensation, and the employee has indicated that he does expect to receive another federal benefit based on his MS. The examiner will compare the rate

with MS as wages to the rate with MS as compensation reduced for the other federal benefit and the rate without the MS, and pay the higher rate. MS cannot be credited as wages if it was used in a civil service benefit (see FOM-I-[215.50.1F](#)). A preliminary determination may be made before verification of the amount of the other federal benefit is received in response to the examiner's request for information; and

- B. The MS is needed as wages to vest the employee and is creditable as compensation. The examiner will test to see if the benefits that would be payable using MS as wages are higher than the annuities that would be payable using MS as compensation. When determining the annuities that will be payable if MS is used as compensation, the examiner will consider whether the MS will make the employee eligible for a supplemental annuity or make the 60/30 provision applicable to give the employee a full age annuity and/or qualify the spouse at an earlier age.

In some cases, using MS as wages may determine if the employee has a work deduction insured status.

1. If the windfall date of entitlement is 6 months or less from the month the case is being handled, the examiner will determine which use of MS will ultimately pay the annuitant the higher benefit and pay the case accordingly.

However, if using MS as wages will give the employee a work deduction insured status and the information in the folder indicates excess earnings, the employee will be given the opportunity to decide how the MS should be used. These cases will be handled according to the following section.

2. If the windfall date of entitlement is more than 6 months from the month the case is being handled, the annuitant will be given the opportunity to decide how his MS should be used.

The examiner will award final payment without using MS, and will release a Form G-430 (Request to Secure Decision Regarding Use of Military Service) to the field office. This form furnishes the annuity rates including MS. The rate with MS as compensation will be payable from the ABD if the employee elects to use MS as compensation. The rate with MS as wages will be payable when the employee becomes entitled to the windfall, if he elects to use MS as wages.

The examiner also attaches a letter to the Form G-430 that explains the effects of using MS as compensation or as wages. Enter the field office address in the heading, add the field office phone number to the last paragraph, and complete the signature. Release the original copy of the explanatory letter to the employee; keep the Form G-430 and the carbon copy of the letter in your file.

The employee may ask you to explain the alternatives to him, so he can decide how he wants his MS used. Provide whatever assistance may be necessary. An employee should make his decision on how to use MS under current payment provisions. He should not, for example, hesitate to use MS as wages based on an unfounded anticipation of future WF cutback. If using MS as wages is advantageous under current provisions, the employee should make that election. He can later change it, if it proves to be a disadvantage; see [FOM-I-215.115](#).

Record the annuitant's decision to use MS as wages or as compensation in item 5 of the Form G-430, and return the original copy of the Form G-430 to the unit that sent it.

## **215.115 Changing Election of Use of MS**

### **215.115.1 Change from Wages to Compensation Permitted**

An election to use MS as wages may be changed if the employee later determines that it is more advantageous to use MS as compensation. He should consider the possibility of an overpayment in a social security benefit if SSA used the MS to increase his SS benefit.

MS can be used only one way, as either wages or compensation, from the annuity beginning date. If the annuity had already been paid with MS as wages, the annuity will be recertified from the ABD to exclude MS as wages. The effective date of MS as compensation depends on when the MS election change is filed.

The retroactivity of the change of election to MS as compensation is limited to 12 months before the date the employee claims the MS as compensation. A statement from the employee is sufficient to claim the MS as compensation.

An employee who is concerned that there may be no future WF payments, and wants to use MS as compensation, even though the increase is lower, should elect to use MS as wages. He can later switch the use of MS to compensation if that is advantageous. Even though the retroactivity of MS as compensation may be limited, the employee would receive at least that increase in the unlikely event that no WF is payable.

### **215.115.2 Change from Compensation to Wages Not Permitted**

M/S cannot be used as wages once the annuity has been paid with MS as compensation. Since SSA cannot use MS if RRB used it as compensation, the use of MS cannot be switched to wages, and a windfall cannot be paid.

[FOM-I-215.90](#) explains the "conditional" M/S determination before a DF rating is made. In that situation, MS may be used as wages if the DF vests the employee, even if MS had been included in the annuity as compensation. The annuity is recomputed from the annuity beginning date to exclude MS as compensation and include it as wages.

An employee may also switch the use of MS from compensation to wages, if the original decision was based on erroneous or incomplete information.

An employee who hesitates to use MS as wages, in the unfounded anticipation of future WF cutback, will be at a disadvantage if he claims the MS as compensation. Once the annuity is paid with MS as compensation, MS cannot be used as wages. He may be better off claiming MS as wages, then switching it to compensation when he attains age 62, if no WF is payable at that time.