

(c) For the period during which a waiver is in effect, no payment of the amount of the annuity waived can ever be made to any person. A waiver of an annuity shall not, however, have any effect on the amount of a spouse's annuity otherwise payable or on a lump sum under section 6(c) of the Act otherwise due, nor shall it serve to make an individual eligible for a lump-sum death benefit under section 6(b) of the Act or any insurance benefit under the Social Security Act on the basis of the wages of the same deceased employee.

(d) A waiver once made shall continue in effect until the annuitant requests in writing that it be terminated.

PART 250—[RESERVED]

PART 255—RECOVERY OF ERRONEOUS PAYMENTS

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- 255.15 Suspension or termination of collection action.

AUTHORITY: Secs. 9, 10, 50 Stat. 314, as amended; 45 U.S.C. 228i, 228j.

NOTE: The Board may require reimbursement for annuity or pension payments made on basis of erroneous or fraudulent information (see § 240.6(e)).

§ 255.1 Statutory provisions.

(a) If the Board finds that at any time more than the correct amount of annuities, pensions, or death benefits has been paid to any individual under this Act or the Railroad Retirement Act of 1935 or a payment has been made

to an individual not entitled thereto (including payments made prior to July 1, 1940), recovery by adjustments in subsequent payments to which such individual or, on the basis of the same compensation, any other individual, is entitled under this Act or any other Act administered by the Board may, except as otherwise provided in this section, be made under regulations prescribed by the Board. If the individual to whom more than the correct amount has been paid dies before recovery is completed, recovery may be made by setoff or adjustments, under regulations prescribed by the Board, in subsequent payments due, under this Act or any other Act administered by the Board, to the estate, designee, next of kin, legal representative, or surviving spouse of such individual, with respect to the employment of such individual.

(b) Adjustments under this section may be made either by deductions from subsequent payments or, with respect to payments which are to be made during a lifetime or lifetimes, by subtracting the total amount of annuities, pensions, or death benefits paid in excess of the proper amount from the actuarial value, as determined by the Board, of such payments to be made during a lifetime or lifetimes and recertifying such payments on the basis of the reduced actuarial value. In the latter case, recovery shall be deemed to have been completed upon such recertification.

(c) There shall be no recovery in any case in which more than the correct amount of annuities, pensions, or death benefits under this Act or the Railroad Retirement Act of 1935 has been paid to an individual or payment has been made to an individual not entitled thereto (including payments made prior to July 1, 1940) who, in the judgment of the Board, is without fault when, in the judgment of the Board, recovery would be contrary to the purpose of the Acts or would be against equity or good conscience.

(d) No certifying or disbursing officer shall be held liable for any amount certified or paid by him in good faith to any person where the recovery of such amount is waived under subsection (c) of this section or has been begun but cannot be completed under subsection

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(a) of this section. (50 Stat. 314, as amended; 45 U.S.C. 228i)

(e) Section 3, Pub. L. 89-508, 80 Stat. 308, provides:

(a) The head of an agency or his designee, pursuant to regulations prescribed by him and in conformity with such standards as may be promulgated jointly by the Attorney General and the Comptroller General, shall attempt collection of all claims of the United States for money or property arising out of the activities of, or referred to, his agency.

(b) With respect to such claims of the United States that have not been referred to another agency, including the General Accounting Office, for further collection action and that do not exceed \$20,000, exclusive of interest, the head of an agency or his designee, pursuant to regulations prescribed by him and in conformity with such standards as may be promulgated jointly by the Attorney General and the Comptroller General, may (1) compromise any such claim, or (2) cause collection action on any such claim to be terminated or suspended where it appears that no person liable on the claim has the present or prospective financial ability to pay any significant sum thereon or that the cost of collecting the claim is likely to exceed the amount of recovery. The Comptroller General or his designee shall have the foregoing authority with respect to claims referred to the General Accounting Office by another agency for further collection action. The head of an agency or his designee shall not exercise the foregoing authority with respect to a claim as to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, or a claim based in whole or in part on conduct in violation of the antitrust laws; nor shall the head of an agency, other than the Comptroller General of the United States, have authority to compromise a claim that arises from an exception made by the General Accounting Office in the account of an accountable officer.

(c) A compromise effected pursuant to authority conferred by subsection (b) of this section shall be final and conclusive on the debtor and on all officials, agencies, and courts of the United States, except if procured by fraud, misrepresentation, the presentation of a false claim, or mutual mistake of fact. No accountable officer shall be liable for any amount paid or for the value of property lost, damaged, or destroyed, where the recovery of such amount or value may not be had because of a compromise with a person primarily responsible under subsection (b).

[Board Order 41-526, 7 FR 97, Jan. 6, 1942, as amended by Board Order 67-21, 32 FR 3224, Feb. 24, 1967]

§ 255.2 Erroneous payments.

An "erroneous payment," within the meaning of this part, shall have been made in any case in which an individual receives, as a payment under the 1937 act or the 1935 act, a payment all or part of which he is not entitled to receive.

[4 FR 1501, Apr. 7, 1939]

§ 255.3 When erroneous payments to be recovered.

Erroneous payments shall be recovered in all cases except those in which recovery is waived under § 255.10 or a compromise is approved under § 255.13.

[Board Order 67-21, 32 FR 3224, Feb. 24, 1967]

§ 255.4 Methods of recovering erroneous payments.

Erroneous payments may be recovered by any one or any combination of the methods described in §§ 255.6, 255.7, 255.8.

[4 FR 1501, Apr. 7, 1939]

§ 255.5 Recovery by cash payment.

The Board shall have the right to require that erroneous payments be immediately and fully repaid in cash and any individual shall have the absolute right to repay such erroneous payments in this manner. However, if the individual is financially unable to pay the indebtedness in a lump sum, payment may be accepted in regular installments. The amount and frequency of such installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. Whenever possible installment payments should be sufficient in amounts and frequency to liquidate the debt in not more than 3 years.

[Board Order 67-21, 32 FR 3224, Feb. 24, 1967]

§ 255.6 Recovery by setoff.

An erroneous payment made to an individual may be recovered from any subsequent payment determined payable, on the basis of the same compensation, under any Act administered by the Board. In any case in which full recovery is not effected by setoff, the balance due may be recovered by one or more of the other methods described in this part. If the overpaid individual

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dies before recovery is completed, such recovery shall be made from his estate or heirs.

[Board Order 67-21, 32 FR 3224, Feb. 24, 1967]

§ 255.7 Recovery by deduction in computation of death benefit under 1937 act.

In computing the benefit under section 5(f)(2) of the 1937 act with respect to the death of an individual, the Board shall include in the benefits to be deducted from the applicable percentages of the aggregate compensation mentioned in that section all erroneous payments, not otherwise recovered, that were paid to the individual or to his spouse or to his survivors with respect to the individual's employment.

[Board Order 60-51, 25 FR 2891, Apr. 6, 1960]

§ 255.8 Recovery by adjustment in connection with subsequent payments.

Adjustment with respect to erroneous payments received by any individual may be made by subtracting the total amount of the erroneous payments from the actuarial value, as determined by the Board, of any annuity or pension payments due and becoming due to any individual on the basis of the same compensation and recertifying such annuity or pension on the basis of the reduced actuarial value. The adjustment described in this section may not be made unless all of the following conditions are shown to exist:

(a) That the person or persons whose annuities or pensions are being adjusted are alive on the date that the annuity or pension is recertified and on the due date of the first annuity or pension payment affected by the adjustment;

(b) That, on the dates mentioned in paragraph (a) of this section, there are annuities accruing or pensions becoming due to one of such persons;

(c) That the Board has waived in accordance with § 255.11, any right to recover by the methods described in §§ 255.5 and 255.6, but has not waived recovery in accordance with § 255.10.

[Board Order 67-21, 32 FR 3224, Feb. 24, 1967]

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§ 255.9 Effect of adjustment in connection with subsequent payments.

Adjustment by the method described in § 255.8 shall constitute a recovery of the amount of erroneous payments included in the adjustment.

[4 FR 1501, Apr. 7, 1939]

§ 255.10 Waiver of recovery.

Recovery of erroneous payments may be waived in whole or in part if, in the judgment of the Board, the individual who received the erroneous payments is without fault and if, in the judgment of the Board, such recovery by any of the methods described in §§ 255.5, 255.6, 255.7, 255.8 would be against equity and good conscience.

[4 FR 1501, Apr. 7, 1939]

§ 255.11 Waiver of methods of recovery.

The Board may waive any right to recover all or any part of the erroneous payments by any one or more methods without waiving the right to recover by some other method or methods if, in the judgment of the Board, the individual is without fault and if, in the judgment of the Board, recovery by the methods waived would be against equity and good conscience and recovery by such other methods would not be against equity and good conscience.

[4 FR 1501, Apr. 7, 1939]

§ 255.12 Waiver not a matter of right; factors considered.

A waiver under § 255.10 or § 255.11 is not a matter of right, but is at all times within the judgment of the Board. The following, while neither controlling nor fully measuring the discretion of the Board, indicate the character of reasons which will be considered:

(a) Whether the erroneous payment was caused by an incorrect statement made by the individual receiving such payment, and the individual knew or should have known it was incorrect;

(b) Whether the erroneous payment was caused by the failure of the individual to disclose facts or make a statement which he knew or should have known to be material;

(c) Whether, at the time or times of receipt of payments the individual knew or should have known the amount thereof to be incorrect and failed to inquire or advise the Board of the incorrectness of the amount of the payment or payments;

(d) The extent to which the individual is dependent upon the current payment of his annuity or pension for the necessities of life;

(e) Whether the individual has, by reason of the erroneous payment, changed his position in such manner as to make recovery a severe hardship.

[4 FR 1502, Apr. 7, 1939]

§255.13 Compromise of erroneous payments.

The Board or its designee may compromise an erroneous payment, provided such payment does not exceed \$20,000. Compromise of an erroneous payment may not be considered in any case in which there is an indication of fraud, the presentation of a false claim or misrepresentation on the part of the overpaid individual or his representative. Compromise is at all times within the discretionary authority of the Board or its designee.

[Board Order 67-21, 32 FR 3224, Feb. 24, 1967]

§255.14 Factors due to be considered in a compromise.

The following indicate the character of reasons which will be considered in approving a compromise:

(a) The debtor's ability to repay the full amount within a reasonable time;

(b) The debtor's refusal to pay the claim in full and the Board's inability to effect collection in full within a reasonable time by other collection methods;

(c) Doubt concerning the Board's ability to prove its case in court for the full amount because of a bona fide dispute as to the facts or because of the legal issues involved;

(d) The cost of collecting the erroneous payment does not justify the enforced collection of the full amount.

[Board Order 67-21, 32 FR 3224, Feb. 24, 1967]

§255.15 Suspension or termination of collection action.

Collection action on a Board claim may be suspended or terminated under the following conditions:

(a) Collection action on a Board claim may be suspended temporarily when the debtor cannot be located and there is reason to believe future collection action may be productive or collection may be effected by offset in the near future.

(b) Collection action may be terminated when:

(1) The debtor is unable to make any substantial payment;

(2) The debtor cannot be located and offset is too remote to justify retention of the claim;

(3) The cost of collection action will exceed the amount recoverable;

(4) The claim is legally without merit or cannot be substantiated by the evidence.

[Board Order 67-21, 32 FR 3224, Feb. 24, 1967]

PART 258—HEARINGS BEFORE THE BOARD OR DESIGNATED EXAMINERS

- Sec.
- 258.1 Hearings.
- 258.2 Witnesses.
- 258.3 Application for witnesses.
- 258.4 Service of subpoenas.
- 258.5 Exhibits.
- 258.6 Procedure when examiner appointed.
- 258.7 Board decisions and opinions and dissenting opinions.

AUTHORITY: Sec. 10, 50 Stat. 314, as amended; 45 U.S.C. 228j, unless otherwise noted.

SOURCE: 43 FR 56888, Dec. 5, 1978, unless otherwise noted.

§258.1 Hearings.

(a) To such extent as may be necessary to determine (1) the employee status of any individual or group of individuals, (2) the employer status of any person, and (3) any other matter arising out of or necessary for the administration of the Railroad Unemployment Insurance Act and the Railroad Retirement Acts of 1935, 1937, and 1974, other than those matters specifically provided for in parts 260 and 320 of this chapter, the Board may itself or through one of its members or a designated examiner, conduct hearings,