

PART 259—INITIAL DETERMINATIONS AND APPEALS FROM INITIAL DETERMINATIONS WITH RESPECT TO EMPLOYER STATUS AND EMPLOYEE STATUS

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AUTHORITY: 45 U.S.C. 231f; 45 U.S.C. 362(l).

SOURCE: 43 FR 56889, Dec. 5, 1978, unless otherwise noted.

§259.1 Initial determinations with respect to employer and employee status.

(a) All requests for a determination with respect to employer or employee status shall be filed with the Secretary to the Board.

(b) The General Counsel of the Railroad Retirement Board or his or her designee shall make the initial investigations with respect to:

(1) The status of any person as an employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act and the rules and regulations issued thereunder; and

(2) The status of any individual or group of individuals as an employee or employees of an employer covered under the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

(c) Upon completion of this investigation the General Counsel, or his or her designee, shall submit to the Board the results of the investigation together with a recommendation concerning the coverage determination. The Board shall make the initial determination with respect to the status of any person as an employer or as an employee under the Railroad Retirement Act and Railroad Unemployment Insurance Act. The Secretary to the Board shall promptly notify the party or parties, as defined in §259.2 of this part,

and other interested persons or entities of the Board's determination.

[57 FR 4366, Feb. 5, 1992]

§259.2 Parties to determinations with respect to employer and employee status.

(a) With respect to any determination under this part concerning the status of a person as an employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act, that person shall be a party to such determination and may submit written briefs or argument, as well as any documentary evidence pertinent to the matter at issue, to the decision maker to be considered in the rendition of a determination. The employees of such person may submit written briefs or argument with respect to such determination, but shall not be parties thereto.

(b) With respect to any determination under this part concerning the status of an individual or group of individuals as an employee or employees of an employer covered by the Railroad Retirement Act and the Railroad Unemployment Insurance Act, the employer alleged to be the employer of the individual or group of individuals and the individual or group of individuals shall each be considered a party to such determination and may submit written briefs or argument, and documentary evidence pertinent to the matter at issue, to the decision maker to be considered in the rendition of a determination.

§259.3 Reconsideration of initial determinations with respect to employer or employee status.

(a) A party to an initial decision issued under §259.1 shall have the right to request reconsideration of that decision. A request for reconsideration shall be in writing and must be filed with the Secretary to the Board within one year following the date on which the initial determination was issued. Where a request for reconsideration has been timely filed, the Secretary to the Board shall notify all other parties to the initial determination of such request. The party who requested reconsideration and any other party shall

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have the right to submit briefs or written argument, as well as any documentary evidence pertinent to the issue under consideration. The General Counsel or his or her designee shall review the material furnished all parties and shall submit it to the Board with a recommendation as to the determination upon reconsideration. The Board shall then issue a determination with respect to the request for reconsideration. The Secretary to the Board shall promptly notify all parties and other interested persons or entities of the determination upon reconsideration.

(b) A party who claims to be aggrieved by an initial decision of the Board but who fails to timely request reconsideration under this section shall forfeit any further right to appeal under this part.

[57 FR 4366, Feb. 5, 1992]

§ 259.4 Authority to conduct investigations.

In performing his or her responsibilities under § 259.1 or § 259.3, the General Counsel or his or her designee shall have the authority and the power to conduct any investigations he deems necessary. In addition, the General Counsel or his or her designee shall have the power to compel, by subpoena, any person, company, corporation, or other entity to produce any records or other documents pertinent to the matter under consideration.

(45 U.S.C. 231f(b)(5))

[43 FR 56889, Dec. 5, 1978, as amended at 48 FR 51447, Nov. 9, 1983; 57 FR 4366, Feb. 5, 1992]

§ 259.5 Appeals from decisions of the Board.

A party who claims to be aggrieved by a decision of the Board under this part may obtain review of such decision by filing a petition for review in the United States court of appeals for the circuit in which the party resides or has its principal place of business or principal executive office, in the United States Court of Appeals for the Seventh Circuit, or in the United States Court of Appeals for the District of Columbia. The petition for review must be filed within 90 days following the date on which the notice of the

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Board's decision was mailed to that party.

[43 FR 56889, Dec. 5, 1978. Redesignated at 57 FR 4366, Feb. 5, 1992]

§ 259.6 Finality of determinations issued under this part.

Any determination rendered by the Board at the initial or reconsideration stages shall be considered a final determination and shall be binding with respect to all parties unless reversed on reconsideration or upon judicial review. A final determination may be reopened at the request of a party who was, or could have been, a party to the final determination when the party alleges that the law or the facts upon which the final determination was based have changed sufficiently to warrant a contrary determination. Such a request shall be submitted to the Secretary to the Board, who shall consider such request as a request for an initial determination under § 259.1.

[57 FR 4366, Feb. 5, 1992]

PART 260—REQUESTS FOR RECONSIDERATION AND APPEALS WITHIN THE BOARD FROM DECISIONS ISSUED BY THE BUREAU OF DISABILITY AND MEDICARE OPERATIONS, BUREAU OF RETIREMENT BENEFITS, BUREAU OF SURVIVOR BENEFITS, OFFICE OF RETIREMENT AND SURVIVOR PROGRAMS, AND THE BUREAU OF RESEARCH AND EMPLOYMENT ACCOUNTS

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260.1 Initial decisions by the Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits and Office of Retirement and Survivor Programs.

260.2 Initial decisions by the Bureau of Research and Employment Accounts.

260.3 Request for reconsideration of initial decision of the Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits, Office of Retirement and Survivor Programs, or Bureau of Research and Employment Accounts.

260.4 Request for waiver of recovery of an erroneous payment and/or for reconsideration of an initial erroneous payment decision of the Bureau of Disability and