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tour of duty. An employee who is separated from a regular assignment shall not be regarded as standing by for or laying over between regularly assigned trips or tours of duty. An employee shall be deemed separated from a regular assignment when he is suspended or discharged from service or displaced by a senior employee or held out of service for investigation or discipline, or when his regular assignment is abolished or discontinued.

§ 332.7 Consideration of evidence.

An employee shall be requested to furnish such information as to any mileage or work restrictions or as to lay-over or stand-by status as may be necessary for the determination of his claim. An employee's statement in connection with his claim that he was not out of service because of a lay-over or stand-by rule or because of a mileage or work restriction shall, in the absence of evidence to the contrary, be accepted as sufficient for a finding on that point. An employee's report of the number of miles or hours' credit earned in rotating extra board, pool, or chain gang service shall, in the absence of evidence to the contrary, be accepted as correct for purposes of determining whether he had the equivalent of full-time work during the period covered by his claim. When it appears clear that an employee in rotating extra board, pool, or chain gang service who fails to report the number of miles or hours' credit earned on days in the period covered by his claim form was not employed on enough days to have had the equivalent of full-time work in the period, no additional information as to mileage or work restrictions shall be deemed necessary for the determination of his claim.

PART 335—SICKNESS BENEFITS

Sec.

- 335.1 General.
- 335.2 Manner of claiming sickness benefits.
- 335.3 Execution of statement of sickness and supplemental doctor's statement.
- 335.4 Filing statement of sickness and claim for sickness benefits.
- 335.5 Death of employee.
- 335.6 Payment of sickness benefits.

AUTHORITY: 45 U.S.C. 362(i) and 362(l).

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SOURCE: 54 FR 43057, Oct. 20, 1989, unless otherwise noted.

§ 335.1 General.

(a) *Statutory basis.* The Railroad Unemployment Insurance Act provides for the payment of sickness benefits to a qualified railroad employee for days of sickness within a period of continuing sickness. To establish basic eligibility for sickness benefits, a qualified employee must have at least four consecutive days of sickness with respect to each period of continuing sickness. The terms "day of sickness" and "period of continuing sickness" as used in this part, are defined in sections 1(k) and 2(a) of the Act, respectively, and paragraphs (b) and (c) of this section. As evidence of days of sickness based upon illness or injury or upon pregnancy, miscarriage or childbirth, section 1(k) requires an employee to file a statement of sickness. Other information that is required to identify an employee's days of sickness is obtained by means of an application for sickness benefits at the beginning of each period of continuing sickness and by means of a claim for sickness benefits which is filed for each registration period within a period of continuing sickness. The term "registration period", generally refers to a period of 14 consecutive days and is defined in paragraph (d) of this section.

(b) *Day of sickness.* The term "day of sickness" means, in general, any calendar day, including days that would normally be rest days, on which an employee is not able to work because of any physical or mental illness or injury. With respect to a female employee, a "day of sickness" also includes any calendar day on which she is not able to work, or working would be injurious to her health, because of pregnancy, miscarriage or childbirth.

(c) *Period of continuing sickness.* (1) The term "period of continuing sickness" refers to a period of time when an employee is not able to work on account of illness, injury, sickness or disease, including inability caused by pregnancy, miscarriage or childbirth. An employee has a period of continuing sickness under either of these circumstances:

(i) He or she has any number of "consecutive" days of sickness based on one or more infirmities; or

(ii) He or she has any number of "successive" days of sickness based on a single infirmity and there is no interruption of more than 90 "consecutive" days which are not days of sickness.

(2) Days of sickness are "consecutive" when they occur one after another continuously and without interruption by any day that is not a day of sickness. Days of sickness are "successive" when one or more days of sickness follow any day of sickness with an interval of one or more days that are not days of sickness.

Example: An employee is sick for 11 "consecutive" days from October 1 through October 11, meaning that each day in the period October 1 through October 11 is a day of sickness and there is no day in that period that is not a day of sickness. If the employee also had days of sickness on October 16, 17, 18, 21 and 22, those five days are considered "successive" days of sickness.

(3) A period of continuing sickness with respect to any employee begins with the first day of a number of consecutive days of sickness or with the first day of a number of successive days of sickness attributable to a single cause with no interval of more than 90 days that are not days of sickness. In the example given in paragraph (c)(2) of this section, October 1 begins a period of continuing sickness. The days October 16, 17, 18, 21, and 22 are in the period of continuing sickness beginning October 1, and benefits are payable for them, provided that the employee's inability to work on those five days is due to one or more of the same infirmities that caused the employee to be unable to work on the days from October 1 through October 11. Otherwise, October 16 begins another period of continuing sickness.

(4) A period of continuing sickness ends when either of these circumstances occurs:

(i) 91 consecutive days have elapsed none of which is a day of sickness resulting from the infirmity that was the basis for the preceding days of sickness; or

(ii) One or more days that are not days of sickness have elapsed and a statement of sickness is filed with re-

spect to a day of sickness based on an infirmity other than any infirmity causing inability on the preceding days of sickness. The end of a benefit year, generally the 12-month period beginning July 1 of any year and ending June 30 of the next year (see 45 U.S.C. 351(m)), does not end a period of continuing sickness. In the example in paragraph (c)(2) of this section, if the inability to work on October 16 was not due to an infirmity or infirmities that caused the inability to work on October 11, then a period of continuing sickness ends on October 11. A new application and statement of sickness would be required in order for the employee to be paid sickness benefits for days beginning October 16. See §335.2 of this part.

(5) A period of continuing sickness can be interrupted, provided that:

(i) The interruption is for not more than 90 consecutive days; and

(ii) The days of sickness after the interruption are due to one or more of the same causes as the days of sickness before the interruption. A period of continuing sickness can be interrupted any number of times so long as each interruption is not more than 90 days and the days of sickness are all due to the same cause. If a period of continuing sickness is caused by more than one infirmity, any one of the infirmities can be considered as the single continuing cause that will permit the interruption of the period of continuing sickness for not more than 90 days without ending it.

(d) *Registration period.* The term "registration period" means, with respect to any employee, the period which begins with the first day with respect to which a statement of sickness for a period of continuing sickness is filed in his or her behalf in accordance with this part, or the first such day after the end of a registration period which will have begun with a day with respect to which a statement of sickness for a period of continuing sickness was filed in his or her behalf, and ends with whichever is the earlier of:

(1) The thirteenth day thereafter; or

(2) The day immediately preceding the day with respect to which a statement of sickness for a new period of continuing sickness is filed in his or

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her behalf. However, each of the successive 14-day periods in an extended sickness benefit period shall constitute a registration period.

(e) *Liability for infirmity.* When sickness benefits are paid to an employee on the basis of an infirmity for which he or she recovers a personal injury settlement or judgment, the Board shall receive reimbursement for the sickness benefits in accordance with part 341 of this chapter.

§ 335.2 Manner of claiming sickness benefits.

(a) *Forms required for claiming benefits.* To claim sickness benefits for a period of inability to work due to an illness or injury, or in the case of a female employee, pregnancy, miscarriage, or childbirth, an employee must file the following forms:

(1) An application for sickness benefits at the beginning of each period of continuing sickness;

(2) A statement of sickness to accompany the employee's application;

(3) A claim for sickness benefits for each 14-day registration period during the employee's period of continuing sickness; and

(4) A supplemental doctor's statement, if the adjudicating office requests additional proof of the employee's inability to work.

(b) *Mailing or delivering the forms.* The forms required by paragraph (a) of this section may be mailed or delivered to any Board office. If the Board is satisfied that the employee is too sick or injured to execute the required forms, the Board may accept forms executed by someone in the employee's behalf. Instructions for completing and filing the forms are printed on the forms themselves.

(Approved by the Office of Management and Budget under control numbers 3220-0034, 3220-0039 and 3220-0045)

§ 335.3 Execution of statement of sickness and supplemental doctor's statement.

(a) *Who may execute.* A statement of sickness and any required supplemental doctor's statement shall be executed by any of the following individuals:

(1) A licensed medical doctor;

(2) A licensed dentist if the infirmity relates to the teeth or gums;

(3) A licensed podiatrist or chiropract if the infirmity relates to the feet or toes;

(4) A licensed chiropractor;

(5) A clinical psychologist;

(6) A certified nurse mid-wife;

(7) The superintendent or other supervisory official of a hospital, clinic, or group health association, or similar organization, in which all examinations and treatment are conducted under the supervision of licensed medical doctors or under the supervision of licensed chiropractors, and in which medical records are maintained for each patient;

(8) A physician assistant-certified (PAC);

(9) An accredited Christian Science Practitioner;

(10) A substance-abuse professional as defined in 49 CFR part 40.3, if the infirmity involves alcohol or controlled substances-related disorders; or

(11) A nurse practitioner.

(b) *Use of Board form or other form.* The statement of sickness and supplemental doctor's statement referred to in paragraph (a) of this section shall be completed on the forms prescribed by the Board, except that other standardized medical forms may be substituted if they provide the same information as that called for by the Board's forms.

[54 FR 43057, Oct. 20, 1989, as amended at 60 FR 40073, Aug. 7, 1995; 62 FR 44408, Aug. 21, 1997; 65 FR 66499, Nov. 6, 2000]

§ 335.4 Filing statement of sickness and claim for sickness benefits.

(a) *General requirement.* Except as provided in paragraph (e) of this section, statements of sickness and claims for sickness benefits must be filed within the time limits specified by this section. Failure to comply with the time restrictions on filing claims will result in a denial of benefits for days for which timely statements and claims are not filed, as such days would not be considered days of sickness.

(b) *Statement of sickness.* An employee shall file a statement of sickness within ten calendar days of the first day that he or she wishes to claim as a day

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of sickness. For example, if an employee wishes to claim sickness benefits for days starting November 1, the statement of sickness should reach the Board no later than November 10. If the statement of sickness is received November 11, the employee cannot be paid sickness benefits for November 1. Such day would not be considered as a "day of sickness", unless the form may be considered as timely filed under paragraph (d)(3), (4) or (5) of this section.

(c) *Claim for sickness benefits.* An employee shall file a claim for sickness benefits within 30 days after the ending date shown on the claim form, or within 30 days after the date on which the Board mails the claim form to the employee, whichever date is later. Failure to comply with this provision shall bar the payment of sickness benefits with respect to any day included within the calendar period covered by the claim form.

Example: If a form for claiming sickness benefits is mailed to an employee on July 13, for the period from July 1 to July 14, the employee must file the claim within 30 days after July 14 [on or before August 13], to be paid benefits for the period July 1 to July 14. If the claim form was not mailed to the employee until July 16, the claim must be filed within 30 days after July 16 [on or before August 15].

(d) *When form considered timely filed.* The Board will consider a statement of sickness or a claim for sickness benefits as timely filed if:

(1) The statement or form was received in a Board office within the prescribed time; or

(2) The statement or form was mailed to a Board office in accordance with instructions printed on the form and was received at such office; or

(3) The employee made a reasonable effort to file the statement of sickness or claim form within the prescribed time but was prevented from doing so by circumstances beyond his or her control, and such statement or claim was received at a Board office within a reasonable time following the removal of the circumstances that prevented the employee from filing the form. The phrase "circumstances beyond his or her control" shall not include an employee's forgetfulness or lack of knowledge of the sickness benefit program or

the time limit for filing for sickness benefits or any other lack of diligence by the employee. For the purposes of this provision, if a statement of sickness is not received within the prescribed time but is received within 30 days of the first day that an employee intends to claim as a day of sickness, the Board will consider that the employee made a reasonable effort to file the statement within the prescribed time, unless it is clear on the basis of affirmative evidence that the delay was not the result of circumstances beyond the employee's control; or

(4) The employee mistakenly registered for unemployment benefits when he or she should have applied for sickness benefits for the day or days claimed and the appropriate statement of sickness was then received at an office of the Board within a reasonable time after unemployment benefits were denied; or

(5) Notwithstanding the foregoing, any claim that is not filed within two years of the day or days claimed shall not be considered as timely filed, and such day or days shall not be considered as days of sickness.

(e) *Days for which no statement of sickness deemed filed.* A statement of sickness shall not be deemed to be filed with respect to any day in a benefit year in which the employee is not a qualified employee as defined in section 3 of the Railroad Unemployment Insurance Act or has exhausted his or her rights to sickness benefits under the Act. See part 336 of this chapter.

[54 FR 43057, Oct. 20, 1989, as amended at 57 FR 807, Jan. 9, 1992; 60 FR 40073, Aug. 7, 1995]

§ 335.5 Death of employee.

If an employee dies before filing one or more of the required forms, the form or forms may be filed by or in behalf of the person or persons to whom benefits would be payable pursuant to section 2(g) of the Railroad Unemployment Insurance Act. Such form or forms shall be filed within the time prescribed in § 335.4 of this part. Under these circumstances, the word "employee" as used in § 335.4(b) of this part and as used in § 335.4(d)(3) of this part shall include the individual or individuals by or in behalf of whom the form is filed. The order of distribution for benefits

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due but unpaid as of the date of an employee's death is the same as the order of distribution for annuities unpaid at death under the Railroad Retirement Act and may be found at §234.31 of this title.

§ 335.6 Payment of sickness benefits.

(a) *General rule.* Except as provided in this section, benefits are payable to any qualified employee for each day of sickness after the fourth consecutive day of sickness in a period of continuing sickness, as defined in §335.1(c), but excluding four days of sickness in any registration period in such period of continuing sickness.

(b) *Waiting period.* Benefits are payable to any qualified employee for each day of sickness in excess of seven during his or her first registration period in a period of continuing sickness if such period of continuing sickness is his or her initial period of continuing sickness beginning in the benefit year. For this purpose, the first registration period in a period of continuing sickness is the registration period that first begins with four consecutive days of sickness and includes more than four days of sickness. For the purpose of computing benefits under this section, a period of continuing sickness ends on the last day of a benefit year in which the employee exhausts rights to sickness benefits as provided for under part 336 of this chapter.

(c) *Computation of compensable days.*
(1) *Example 1.* An employee has an initial period of continuing sickness from June 14 through July 25, and all days in that period are days of sickness. The employee's first registration period covers June 14 to June 27, and his or her subsequent registration period covers June 28 to July 11, and July 12 to July 25. In the one-week waiting period the employee is paid benefits for days of sickness in excess of seven. In each of the two ensuing registration periods the employee is paid benefits for days of sickness in excess of four.

(2) *Example 2.* Same facts as in Example 1, but the employee later has a new period of continuing sickness based upon a different illness or impairment beginning September 17. The employee's first registration period in his or her new period of continuing sickness

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covers September 17 to September 30. The employee is paid benefits for days of sickness in excess of seven in that 14-day period because that period is his or her first registration period in a new period of continuing sickness commencing in the benefit year beginning July 1, and he or she did not previously have a waiting period in any registration period earlier in the benefit year.

(3) *Example 3.* Same facts as in examples 1 and 2, but the employee then has a new period of continuing sickness beginning January 1 in the same benefit year. January 1 to January 14 is the employee's first registration period in that period of continuing sickness. The employee is paid benefits for days of sickness in excess of four in that registration period because earlier in the benefit year he or she had a registration period, September 17 to September 30, in which he or she satisfied the initial seven-day waiting period.

(d) *Amount payable.* The gross amount of sickness benefits for any registration period in a period of continuing sickness shall be computed by multiplying the number of compensable days of sickness in such registration period by the employee's daily benefit rate, as computed under part 330 of this chapter.

[65 FR 19649, Apr. 12, 2000]

PART 336—DURATION OF NORMAL AND EXTENDED BENEFITS

Subpart A—Normal Benefits

Sec.

- 336.1 Introduction.
- 336.2 Duration of normal unemployment benefits.
- 336.3 Duration of normal sickness benefits.
- 336.4 Base year compensation.
- 336.5 Notice to employee.

Subpart B—Extended Benefits

- 336.10 Eligibility.
- 336.11 Exhaustion of rights to normal unemployment benefits.
- 336.12 Exhaustion of rights to normal sickness benefits.
- 336.13 Years of service requirement.
- 336.14 Extended benefit period.
- 336.15 How to claim extended benefits.
- 336.16 Notice to employee.

AUTHORITY: 45 U.S.C. 362(l).