

Railroad Retirement Board

§ 217.5

PART 217—APPLICATION FOR ANNUITY OR LUMP SUM

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Subpart A—General

§ 217.1 Introduction.

This part prescribes how to apply for an annuity or lump-sum payment under this chapter. It contains the rules for the filing and cancellation of an application and the period of time the application is in effect. Eligibility requirements for an annuity and for a lump-sum payment are found respec-

tively in parts 216 and 234 of this chapter.

[54 FR 13363, Apr. 3, 1989]

§ 217.2 Definitions.

The following definitions are used in this part:

Applicant means a person who signs an application for an annuity or lump sum for himself or herself or for some other person.

Application refers only to a form described in § 217.6.

Apply or *file* means to sign a form or statement that the Railroad Retirement Board accepts as an application.

Award means to process a form to make a payment. An annuity is awarded on the date the payment form is processed.

Claimant means a person who files for an annuity or lump sum for himself or herself or the person for whom an application is filed.

§ 217.3 Need to file an application.

In addition to meeting other requirements, a person must file an application to become entitled to an annuity or lump sum. Filing an application will—

(a) Permit a formal decision on whether the person is entitled to an annuity or lump sum;

(b) Protect a person's entitlement to an annuity for as many as 12 months before the application is filed; and

(c) Provide the right to appeal if the person is dissatisfied with the decision (see part 260 of this chapter).

(Approved by the Office of Management and Budget under control numbers 3220-0030, 3220-0031 and 3220-0042)

[47 FR 7647, Feb. 22, 1982, as amended at 52 FR 11017, Apr. 6, 1987]

Subpart B—Applications

§ 217.5 When an application is a claim for an annuity or lump sum.

An application is a claim for an annuity or lump sum if it meets all of the following conditions:

(a) It is on an application form completed and filed with the Board as described in § 217.6;

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(b) It is signed by the claimant or by someone described in §217.17 who can sign the application for the claimant;

(c) It is filed with the Board on or before the date of death of the claimant. (See §217.10 for limited exceptions.)

(Approved by the Office of Management and Budget under control number 3220-0002)

[47 FR 7647, Feb. 22, 1982, as amended at 52 FR 11017, Apr. 6, 1987]

§217.6 What is an application filed with the Board.

(a) *General.* An application filed with the Board is generally one that is filed on a form set up by the Board for that purpose. See part 200 of this chapter for a list of application forms.

(b) *Claim filed with the Social Security Administration.* An application filed for benefits under title II of the Social Security Act on one of the forms set up by the Social Security Administration for that purpose (except an application for a disability insurance benefit that terminated before the employee completed his or her 120th month of creditable railroad service) is also considered an application for an annuity or lump sum if it is filed as shown in §217.7.

(c) *Claim filed with the Veterans Administration.* An application filed with the Veterans Administration on one of its forms for survivor benefits under section 3005 of title 38, United States Code, is also considered an application for a survivor annuity.

§217.7 Claim filed with the Social Security Administration.

(a) *Claim is for life benefits.* An application for life benefits under title II of the Social Security Act is an application for an annuity if the conditions either in paragraphs (a)(1), (2), and (3) or in paragraph (a)(4) of this section are met:

(1) The application was filed because the applicant did not know he or she was eligible for an annuity under the Railroad Retirement Act. The Board must have or receive evidence indicating why the applicant thought that he or she lacked eligibility for an annuity.

(2) The claimant would have been entitled to and would currently be entitled to an annuity under subpart B or

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D of part 216 of this chapter if the applicant had applied for the annuity on the date the social security application was filed.

(3) The applicant asks the Board in a written statement to consider the application for social security benefits as an application for an employee or spouse annuity.

(4) The application was filed because the employee had less than 10 years of creditable railroad service, and having established entitlement to social security benefits and continued working in railroad service, subsequently acquired 10 years of railroad service.

(b) *Claim is for death benefits.* An application for death benefits under title II of the Social Security Act is an application for an annuity or lump sum if—

(1) The application is filed based on the death of an employee and the Board has jurisdiction for the payment of survivor benefits based on the compensation record of the deceased employee; and

(2) The claimant is eligible for an annuity or a lump-sum death payment on the date the application is filed.

§217.8 When one application satisfies the filing requirement for other benefits.

An annuity application filed with the Board is generally considered as an application for other benefits to which a person is or may be eligible. Therefore a claimant does not need to file another application to be entitled to any of the following types of benefits:

(a) An employee age annuity if—

(1) The employee's application for a disability annuity is denied and the employee is eligible for the age annuity on the date the application is filed; or

(2) The employee is entitled to a disability annuity in the month before the month he or she is 65 years old.

(b) An employee disability annuity if an application for an age annuity is denied and the employee is eligible for the disability annuity on the date the application is filed.

(c) An accrued employee or supplemental annuity, or a residual lump sum, if a claimant is eligible for one of these payments when he or she files an

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application for a survivor annuity or lump-sum payment under this chapter.

(d) A widow(er)'s annuity if the widow(er) was entitled to a spouse annuity in the month before the month the employee died.

(e) A widow(er)'s annuity if the widow(er) was included in the computation of the employee's annuity under the social security overall minimum provision of the Railroad Retirement Act in the month before the month the employee died.

(f) A child's annuity if the spouse of the employee had the child "in care" and was entitled to a spouse annuity in the month before the month the employee died.

(g) A child's annuity or child's full-time student annuity if the child of the employee was included in the computation of the employee's annuity under the social security overall minimum provision of the Railroad Retirement Act in the month before the month the employee died.

(h) A widow(er)'s annuity based on age if the widow(er) was entitled to a widow(er)'s annuity based on disability in the month before the month in which he or she attains age 60.

(i) A widow(er)'s annuity based on age or disability if a widow(er), who was receiving an annuity because he or she had the employee's child "in care", is eligible for an age or disability annuity when he or she no longer has an eligible child "in care".

(j) A spouse annuity based on age if a spouse, who was receiving an annuity because he or she had the employee's child "in care", is eligible for an unreduced age annuity when he or she no longer has an eligible child "in care".

(k) A widow(er)'s annuity based upon having the employee's child "in care" if during the time the widow(er) is entitled to an annuity based on disability, he or she has "in care" a child of the deceased employee.

(l) A divorced spouse annuity if the divorced spouse was entitled to a spouse annuity reduced for age in the month before the month of the effective date of the final decree of divorce.

(m) A divorced spouse annuity if the spouse claimant has remarried the employee during the six-month retro-

active period of the spouse annuity application.

(n) A divorced spouse annuity if the divorced spouse was entitled to a spouse annuity not reduced for age in the month before the month of the effective date of the final decree of divorce and would also be entitled to a divorced spouse annuity not reduced for age.

(o) A surviving divorced spouse annuity if the surviving divorced spouse was entitled to a divorced spouse annuity in the month before the month the employee died.

(p) A remarried widow(er)'s annuity if the remarried widow(er) was entitled to a widow(er)'s annuity in the month before the month of remarriage.

(q) A remarried widow(er)'s annuity or a surviving divorced spouse annuity based on age or disability if the remarried widow(er) or surviving divorced spouse, who was receiving an annuity because he or she had the employee's child "in care", is eligible for an age or disability annuity when he or she no longer has an eligible child "in care".

(r) A remarried widow(er)'s annuity or a surviving divorced spouse annuity based on age if the remarried widow(er) or the surviving divorced spouse was entitled to an annuity based on the disability in the month before the month in which he or she attains age 65.

(s) A remarried widow(er)'s annuity or a surviving divorced spouse annuity based on age if the remarried widow(er) or surviving divorced spouse, who was receiving an annuity based on disability, is 60 years old or older when he or she recovers from the disability.

(t) A benefit under title II of the Social Security Act unless the applicant restricts the application only to an annuity payable under the Railroad Retirement Act.

(u) An accrued annuity due at the death of a spouse or divorced spouse if the claimant is entitled to an employee annuity on the same claim number.

(v) A full-time student's annuity if the student was entitled to a child's annuity in the month before the month the child attained age 18.

[47 FR 7647, Feb. 22, 1982, as amended at 54 FR 13363, Apr. 3, 1989; 60 FR 21982, May 4, 1995; 66 FR 27454, May 17, 2001]

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§ 217.9 Effective period of application.

(a) *When effective period ends.* The effective period of an application ends on the date of the notice of an initial decision denying the claim. If a timely appeal is made (see part 260 of this chapter) the effective period of the application ends on the date of the notice of the decision of the referee, on the date of the notice of the final decision of the Board, or when court review of the denial has been completed. After the effective period of an application ends, the person must file a new application for any annuity or lump sum to which the claimant believes he or she is eligible.

(b) *Application filed before claimant is eligible—(1) General rule.* Except as shown in paragraph (b)(2) and paragraph (b)(3) of this section, an application for an annuity must be denied if it is filed with the Board more than three months before the date an annuity can begin.

(2) *Application for disability annuity.* If the Board determines that a claimant for a disability annuity is disabled under part 220 of this chapter, beginning with a date after the application is filed and before a final decision is made, the application is treated as though it were filed on the date the claimant became disabled. The claimant may be an employee, widow(er), surviving divorced spouse, remarried widow(er), or surviving child.

(3) *Application for spouse annuity filed simultaneously with employee disability annuity application.* When the qualifying employee's annuity application effective period is determined by the preceding paragraph (b)(2) of this section, a spouse who meets all eligibility requirements may file an annuity application on the same date as the employee claimant. The spouse application will be treated as though it were filed on the later of the actual filing date or the employee's annuity beginning date.

(c) *Application filed after the claimant is eligible—(1) Application for lump-sum death payment.* An application for a lump-sum death payment under part 234 of this chapter must be filed within two years after the death of the employee. This period may be extended under the Soldiers' and Sailors' Civil

Relief Act of 1940, or when the applicant can prove "good cause" under § 217.11 of this chapter for not filing within the time limit.

(2) *Application for annuity unpaid at death.* An application for an annuity due but unpaid at death under part 234 of this chapter must be filed within two years after the death of the person entitled to the annuity. This period may be extended under the Soldiers' and Sailors' Civil Relief Act of 1940, or when the applicant can prove "good cause" under § 217.11 of this chapter for not filing within the time limit.

(3) *Application for residual lump sum.* An application for a residual lump sum under part 234 of this chapter may be filed at any time after the death of the employee.

(4) *Application for a period of disability.* In order to be entitled to a period of disability under part 220 of this chapter, an employee must apply while he or she is disabled under part 220 or not later than 12 months after the month in which the period of disability ends except that an employee who is unable to apply within the 12-month period after the period of disability ends because his or her physical condition limited his or her activities to the extent that he or she could not complete and sign an application or because he or she was mentally incompetent, may apply no later than 36 months after the period of disability ends.

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[47 FR 7647, Feb. 22, 1982, as amended at 54 FR 13363, Apr. 3, 1989; 67 FR 42714, June 25, 2002]

§ 217.10 Application filed after death.

(a) A survivor eligible for an annuity or lump sum under this chapter may file an application to establish a period of disability if the employee dies before filing an application for a disability annuity. A period of disability is defined in part 220 of this chapter. The application must be filed within three months after the month the employee died.

(b) A person who could receive payment for the estate of a person who paid the burial expenses of the deceased employee may file an application if the person who paid the burial

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expenses dies before applying for the lump-sum death payment under part 234 of this chapter. The application must be filed within the two-year period shown in § 217.9 (c)(1).

(c) A widow(er) or surviving divorced spouse may file an application for a spouse or divorced spouse annuity after the death of the employee if the widow(er) or surviving divorced spouse was eligible for a spouse or divorced spouse annuity in any month before the month the employee died. The spouse or divorced spouse annuity is payable from the beginning date set forth in part 218 of this chapter.

(Approved by the Office of Management and Budget under control numbers 3220-0031 and 3220-0032)

[47 FR 7647, Feb. 22, 1982, as amended at 52 FR 11017, Apr. 6, 1987; 54 FR 13364, Apr. 3, 1989]

§ 217.11 "Good cause" for delay in filing application.

(a) An applicant has "good cause" for a delay in the filing of an application for a lump-sum death payment or an annuity unpaid at death, as shown in § 217.9(c)(1) and (2), if the delay was due to—

(1) Circumstances beyond the applicant's control, such as extended illness, mental or physical incapacity, or communication difficulties; or

(2) Incorrect or incomplete information furnished by the Board; or

(3) Efforts by the applicant to secure evidence without realizing that evidence could be submitted after filing an application; or

(4) Unusual or unavoidable circumstances which show that the applicant could not reasonably be expected to have been aware of the need to file an application within the set time limit.

(b) An applicant does not have good cause for a delay in filing if he or she was informed of the need to file within the set time limit but neglected to do so or decided not to file.

Subpart C—Filing An Application

§ 217.15 Where to file.

(a) *Applicant in U.S. or Canada.* An applicant who lives in the United States or Canada may file an applica-

tion at any Board office in person or by mail. An applicant may also give the application to any Board field employee who is authorized to receive it at a place other than a Board office.

(b) *Application outside U.S.* An applicant who lives outside the United States or Canada may file an application at any United States Foreign Service office. An applicant may also send the application to an office of the Board.

§ 217.16 Filing date.

An application filed in a manner and form acceptable to the Board is officially filed with the Board on the earliest of the following dates:

(a) On the date it is received at a Board office.

(b) On the date it is delivered to a field employee of the Board as described in § 217.15.

(c) On the date it is received at any office of the U.S. Foreign Service.

(d) On the date the application was mailed, as shown by the postmark, if using the date it is received will result in the loss or reduction of benefits.

(e) On the date the Social Security Administration considers the application filed, if it is filed with the Social Security Administration or the Veterans Administration.

§ 217.17 Who may sign an application.

An application may be signed according to the following rules:

(a) A claimant who is 18 years old or older, competent (able to handle his or her own affairs), and physically able to sign the application, must sign in his or her own handwriting, except as provided in paragraph (e) of this section. A parent or a person standing in place of a parent must sign the application for a child who is not yet 18 years old, except as shown in paragraph (d) of this section.

(b) A claimant who is unable to write must make his or her mark. A Board representative or two other persons must sign as witnesses to a signature by mark.

(c) A claimant's representative, as described in part 266 of this chapter, must sign the application if the claimant is incompetent (unable to handle his or her own affairs).

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(d) A claimant who is a child between the ages of 16 and 18, is competent, as defined in paragraph (a) of this section, has no court appointed representative, and is not in the care of any person, may sign the application.

(e) If it is necessary to protect a claimant from losing benefits and there is good cause for the claimant not personally signing the application, the Board may accept an application signed by someone other than a person described in paragraphs (a), (b), (c), and (d) of this section. A person who signs an application for someone else will be required to provide evidence of his or her authority to sign the application for the person claiming benefits under the following rules:

(1) If the person who signs is a court-appointed representative, he or she must submit a certificate issued by the court showing authority to act for the claimant.

(2) If the person who signs is not a court-appointed representative, he or she must submit a statement describing his or her relationship to the claimant. The statement must also describe the extent to which the person is responsible for the care of the claimant.

(3) If the person who signs is the manager or principal officer of an institution which is responsible for the care of the claimant, he or she must submit a statement indicating the person's position of responsibility at the institution.

(4) The Board may, at any time, in its sole discretion require additional evidence to establish the authority of a person to sign an application for someone else.

(Approved by the Office of Management and Budget under control numbers 3220-0002, 3220-0030, 3220-0031 and 3220-0042)

[47 FR 7647, Feb. 22, 1982, as amended at 54 FR 13364, Apr. 3, 1989]

§217.18 When application is not acceptable.

(a) *Not properly signed.* The Board will ask the applicant to prepare a corrected application if—

(1) The original application was signed by someone other than the claimant or a person described in §217.17; or

(2) The signature has been changed; or

(3) The signature is not readable or does not appear to be authentic.

(b) *Incomplete or not readable.* The Board will ask the applicant to prepare a supplemental application with certain items completed if—

(1) Any entries on the application are not readable or appear to be incorrect; or

(2) An important part of the application was not completed.

(c) *Obtaining corrected application.* If an application is not properly signed, the applicant must prepare a new application with a corrected signature. If the Board receives the corrected application within 30 days after the applicant is asked to prepare it, the Board will use the filing date of the original application to pay benefits. If the Board receives the corrected application more than 30 days after the notice to the applicant, the Board will use the filing date of the corrected application to pay benefits.

§217.19 Representative of the claimant selected after application is filed.

(a) *Before benefits awarded.* If the Board selects a representative for an incompetent claimant (see part 266 of this chapter) after an application is filed but before the benefit is awarded, a new benefit application must be filed by the representative. However, benefits will be paid using the filing date of the original benefit application.

(b) *After benefits awarded.* If the Board selects a representative after a monthly annuity was awarded to another person, the representative must apply as a substitute payee on a form specifically designed for that purpose. A new annuity application is not required.

§217.20 When a written statement is used to establish the filing date.

(a) *Statement filed with the Board.* A written statement indicating an intent to file a claim for an annuity or lump sum, filed with the Board as provided in §§217.15 and 217.16, can establish the filing date of an application. A form set up by the Board to obtain information about persons who may be eligible for an annuity or lump sum in a particular

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case is not by itself considered a written statement for the purpose of this section. The Board will use the filing date of the written statement if all of the following requirements are met:

(1) The statement gives a person's clear and positive intent to claim an annuity or lump sum for himself or herself or for some other person.

(2) The claimant or a person described in §217.17 signs the statement.

(3) The person who signed the statement files an application with the Board on one of the forms described in part 200 of this chapter within 90 days after the date a notice is sent advising the person of the need to file an application.

(4) The claimant is alive when the application is filed except as provided in §217.10.

(b) *Statement filed with the Social Security Administration.* A written statement filed with the Social Security Administration can be used to establish the filing date of an application if, assuming the statement were an application, the conditions under §217.7 are met and—

(1) The statement gives a clear and positive intent to claim benefits under title II of the Social Security Act;

(2) The claimant or a person described in §217.17 signs the statement;

(3) The statement is sent to the Board by the Social Security Administration;

(4) The person who signed the statement files an application with the Board on one of the forms described in part 200 of this chapter within 90 days after the date a notice is sent advising the person of the need to file an application; and

(5) The claimant is alive when the application is filed except as provided in §217.10.

(c) *Telephone contact with the Board.* If an individual telephones a Board office and advises a Board employee that he or she intends to file an application but cannot do so before the end of the month, the Board employee will prepare and sign a written statement which may be used to establish the filing date of an application if all of the following requirements are met:

(1) The inquirer expresses a clear and positive intent to claim benefits for

himself or herself or for some other person;

(2) The prescribed application cannot be filed by the end of the current month;

(3) The inquirer is either the potential claimant or the person who will file an application as representative payee therefor;

(4) The inquiry is received by an office of the Board no more than 3 months before eligibility exists;

(5) It appears that a loss of benefits might otherwise result;

(6) The telephone inquirer files an application with the Board on one of the forms described in part 200 of this chapter within 90 days after the date a notice is sent advising the person of the need to file an application; and

(7) The claimant is alive when the application is filed, except as provided in §217.10 of the part.

[47 FR 7647, Feb. 22, 1982, as amended at 54 FR 13364, Apr. 3, 1989]

§ 217.21 Deterred from filing.

A person who telephones or visits a Board office stating that he or she wishes to file for an annuity or lump sum, but puts off filing because of an action or lack of action by an employee of the Board, can establish a filing date based on that oral notice if the following conditions are met:

(a) There is evidence which establishes that the employee of the Board failed to—

(1) Tell the person that it was necessary to file an application on the proper form; or

(2) Tell the person that a written statement could protect the filing date; or

(3) Give the person the proper application form; or

(4) Correctly inform the person of his or her eligibility.

(b) The person files an application on one of the forms described in part 200 of this chapter within 90 days after the date a notice is sent advising the person of the need to file an application.

(c) The claimant is alive when the application is filed except as provided in §217.10.

Subpart D—Cancellation of Application

§ 217.25 Who may cancel an application.

An application may be cancelled by the claimant or a person described in § 217.17. If the claimant is deceased, the person who is or could be eligible for any annuity accrual under part 234 of this chapter may cancel the application for the annuity.

§ 217.26 How to cancel an application.

An application may be cancelled under the following conditions:

(a) *Before an annuity is awarded.* The application may be cancelled if—

(1) The applicant files a written request with the Board at a place described in § 217.15 asking that the application be cancelled or stating that he or she wants to withdraw the application;

(2) The claimant is alive on the date the written request is filed or the claimant is deceased and the rights of no person other than the person requesting the cancellation will be adversely affected; and

(3) The applicant files the written request on or before the date the annuity is awarded.

(b) *After an annuity is awarded.* The application may be cancelled if—

(1) The conditions in paragraph (a)(1) and (2) of this section are met;

(2) Any other person who would lose benefits because of the cancellation consents to the cancellation in writing; and

(3) All annuity payments already made based on the application being cancelled are repaid or will be recovered.

§ 217.27 Effect of cancellation.

When a person cancels an application the effect is the same as though an application was never filed. When an employee cancels his or her application, any application filed by the employee's spouse is also cancelled. However, a request to cancel a survivor's application will cancel only the application of the survivor named in the written request. A person who cancels an application may reapply by filing a new application under this part.

Subpart E—Denial of Application

§ 217.30 Reasons for denial of application.

The Board will deny each application filed by or for an employee, spouse or survivor for one or more of the following reasons:

(a) The claimant does not meet the eligibility requirements for an annuity or lump sum under this chapter.

(b) The applicant does not submit the evidence required under this chapter to establish eligibility for an annuity or lump sum.

(c) The applicant files an application more than three months before the date on which the eligible person's benefit can begin except if the application is for an employee disability annuity or for a spouse annuity filed simultaneously with the employee's disability annuity application.

[47 FR 7647, Feb. 22, 1982, as amended at 67 FR 42714, June 25, 2002]

§ 217.31 Applicant's right to appeal denial.

Each applicant is given the right to appeal the denial of his or her application if he or she does not agree with the Board's decision. The appeals process is explained in part 260 of this chapter.

PART 218—ANNUITY BEGINNING AND ENDING DATES

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