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of fact, conclusions of law, and recommendations as to decision. The report may also contain such discussion of the question raised, both legal and factual, as the examiner may desire to present to the Board. A copy of the examiner's report shall be served by the examiner upon each party participating in the hearing by mailing such copy to each such party at the address stated in his or her appearance. Each party shall, within 30 days after the date of mailing to him or her of the examiner's report, file with the Board and serve upon other parties by mailing to their addresses as stated in their appearances such exceptions in writing as he or she desires to make to the examiner's findings of fact and conclusions of law. Each exception shall specifically designate the particular findings of fact or conclusions of law to which objection is taken, and shall set forth in detail the grounds for the objection. General exceptions and exceptions not specifically directed to particular findings of fact or conclusions of law will not be considered by the Board. Exceptions to findings of fact shall make specific reference by page numbers to those portions of the record upon which reliance is placed.

(b) Each party shall have 10 days after receipt of exceptions taken by other parties in which to file with the Board replies to those exceptions. Replies to exceptions to findings of fact shall make specific reference by page number to those portions of the record upon which reliance is placed.

(c) The Board may, upon the application of a party and for cause shown, extend the time for filing and serving of exceptions or filing of replies thereto. The Board will render its decision upon the record, the examiner's report, and such exceptions and replies thereto as are made.

(d) The examiner's report shall be advisory only and the Board may, in any case, exercise its right to reject or adopt the examiner's report in whole or in part or adopt such report with modifications. Findings of fact to which no exceptions are taken will, subject only to the power of the Board upon its own consideration to reject or modify, be presumed to be correct.

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(e) The decision of the Board shall be communicated to the parties participating in the hearing within 30 days of the date upon which the decision of the Board is entered upon its records.

**§ 258.7 Board decisions and opinions and dissenting opinions.**

The following shall apply to all decisions of the Board except decisions relating to matters of internal administration:

A decision made by at least two members of the Board shall constitute the decision of the Board. The decision of the Board shall be stated in a written opinion filed in the record of the proceedings. A dissenting opinion may be stated by a member of the Board who disagrees with the decision of the Board and any such dissenting opinion shall also be filed in the record of the proceedings.

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

Sec.

- 259.1 Initial determinations with respect to employer and employee status.
- 259.2 Parties to determinations with respect to employer and employee status.
- 259.3 Reconsideration of initial determinations with respect to employer or employee status.
- 259.4 Authority to conduct investigations.
- 259.5 Appeals from decisions of the Board.
- 259.6 Finality of determinations issued under this part.

AUTHORITY: 45 U.S.C. 231f; 45 U.S.C. 362(1).

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

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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 docu-

mentary 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 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

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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 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

Sec.

260.1 Initial decisions.

260.2 Initial decisions on the amount of service and compensation credited to an employee.

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260.3 Request for reconsideration of initial decision.

260.4 Request for waiver of recovery of an overpayment and/or for reconsideration of an initial erroneous payment decision.

260.5 Appeal from a reconsideration decision.

260.6 Time limits for issuing a hearing decision.

260.7 Time limits for issuing a decision when a hearing is not held.

260.8 Pre-hearing case review.

260.9 Final appeal from a decision of the hearings officer.

260.10 Determination of date of filing.

AUTHORITY: 45 U.S.C. 231f; 45 U.S.C. 231g; 45 U.S.C. 355.

SOURCE: 47 FR 36809, Aug. 24, 1982, unless otherwise noted.

### § 260.1 Initial decisions.

(a) *General.* Claims for benefits shall be adjudicated and initial decisions made by the Board concerning:

(1) Applications for benefits under the Railroad Retirement Act;

(2) The withdrawal of an application;

(3) A change in an annuity beginning date;

(4) The termination of an annuity;

(5) The modification of the amount of an annuity or lump-sum benefit;

(6) The reinstatement of an annuity which had been terminated or modified;

(7) The existence of an erroneous payment;

(8) The recovery of the amount of an erroneous payment;

(9) The eligibility of an individual for a supplemental annuity or the amount of such supplemental annuity;

(10) Whether representative payment shall serve the best interests of an annuitant as a result of that individual's incapacity to manage his annuity payments; and

(11) Who shall be designated or continued as representative payee on behalf of an annuitant.

(b) *Adjudication of claim and the issuance of initial decision.* Adjudication of a claim and the issuance of an initial decision shall be in accordance with instructions issued by the Board and shall be made upon the basis of evidence submitted by the claimant and evidence otherwise available.

(c) *Recovery of erroneous payment.* A decision to recover the amount of an erroneous payment under paragraph