

(1) He or she is not entitled to a trial work period; or

(2) His or her disability ended before the annuitant completed nine months of trial work in that period in which he or she was disabled.

Subpart O—Continuing or Stopping Disability Due to Substantial Gainful Activity or Medical Improvement

§ 220.175 Responsibility to notify the Board of events which affect disability.

If the annuitant is entitled to a disability annuity because he or she is disabled for any regular employment, the annuitant should promptly tell the Board if—

- (a) His or her impairment(s) improves;
- (b) He or she returns to work;
- (c) He or she increases the amount of work; or
- (d) His or her earnings increase.

§ 220.176 When disability continues or ends.

There is a statutory requirement that, if an annuitant is entitled to a disability annuity, the annuitant's continued entitlement to such an annuity must be reviewed periodically until the employee or child annuitant reaches full retirement age and the widow(er) annuitant reaches age 60. When the annuitant is entitled to a disability annuity as a disabled employee, disabled widow(er) or as a person disabled since childhood, there are a number of factors to be considered in deciding whether his or her disability continues. The Board must first consider whether the annuitant has worked and, by doing so, demonstrated the ability to engage in substantial gainful activity. If so, the disability will end. If the annuitant has not demonstrated the ability to engage in substantial gainful activity, then the Board must determine if there has been any medical improvement in the annuitant's impairment(s) and, if so, whether this medical improvement is related to the annuitant's ability to work. If an impairment(s) has not medically improved, the Board must consider whether one or more of the exceptions to medical

improvement applies. If medical improvement related to ability to work has not occurred and no exception applies, the disability will continue. Even the medical improvement related to ability to work has occurred or an exception applies (see §220.179 for exceptions), in most cases the Board must also show that the annuitant is currently able to engage in substantial gainful activity before it can find that the annuitant is no longer disabled.

[56 FR 12980, Mar. 28, 1991, as amended at 68 FR 39010, July 1, 2003]

§ 220.177 Terms and definitions.

There are several terms and definitions which are important to know in order to understand how the Board reviews whether a disability for any regular employment continues:

(a) *Medical improvement.* Medical improvement is any decrease in the medical severity of an impairment(s) which was present at the time of the most recent favorable medical decision that the annuitant was disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on a comparison of prior and current medical evidence showing changes (improvement) in the symptoms, signs or laboratory findings associated with the impairment(s).

Example 1: The claimant was awarded a disability annuity due to a herniated disc. At the time of the Board's prior decision granting the claimant an annuity he had had a laminectomy.

Postoperatively, a myelogram still shows evidence of a persistent deficit in his lumbar spine. He had pain in his back, and pain and a burning sensation in his right foot and leg. There were no muscle weakness or neurological changes and a modest decrease in motion in his back and leg. When the Board reviewed the annuitant's claim to determine whether his disability should be continued, his treating physician reported that he had seen the annuitant regularly every 2 to 3 months for the past 2 years. No further myelograms had been done, complaints of pain in the back and right leg continued especially on sitting or standing for more than a short period of time. The annuitant's doctor further reported a moderately decreased range of motion in the annuitant's back and right leg, but again no muscle atrophy or neurological changes were reported. Medical improvement has not occurred because there