

## Railroad Retirement Board

## § 348.2

(b) The central register shall be subdivided by class and craft of prior employment and shall be updated periodically to reflect current employee availability.

(c) Upon request, listings of employees named in the central register and selected on the basis of job experience, location of residence, claimed hiring preference, last railroad employer or other available selection criteria will be furnished to railroads. Railroads may provide written notice of job vacancies to selected employees listed on the register. The railroad notice to the employees should contain job qualification requirements and application instructions. If the railroad requests, the Board shall notify the employees of the vacancy.

[53 FR 3201, Feb. 4, 1988]

### PART 348—REPRESENTATIVE PAYMENT

Sec.

348.1 Introduction.

348.2 Recognition by the Board of a person to act in behalf of another.

AUTHORITY: 45 U.S.C. 355, 45 U.S.C. 231k.

SOURCE: 61 FR 42377, Aug. 15, 1996, unless otherwise noted.

#### § 348.1 Introduction.

(a) *Explanation of representative payment.* This part explains the principles and procedures that the Board follows in determining whether to make representative payment and in selecting a representative payee. It also explains the responsibilities that a representative payee has concerning the use of the funds which he or she receives on behalf of a claimant. A representative payee may be either a person or an organization selected by the Board to receive benefits on behalf of a claimant. A representative payee will be selected if the Board believes that the interest of a claimant will be served by representative payment rather than direct payment of benefits. Generally, the Board will appoint a representative payee if it determines that the claimant is not able to manage or direct the management of benefit payments in his or her interest.

(b) *Statutory authority.* Section 12 of the Railroad Retirement Act, which is also applicable to the Railroad Unemployment Insurance Act, provides that every claimant shall be conclusively presumed to have been competent until the date on which the Board receives a notice in writing that a legal guardian or other person legally vested with the care of the person or estate of an incompetent or a minor has been appointed: *Provided, however,* That despite receiving such notice, the Board may, if it finds the interests of such claimant to be served thereby, recognize actions by, conduct transactions with, and make payments to such claimant.

(c) *Policy used to determine whether to make representative payment.* (1) The Board's policy is that every claimant has the right to manage his or her own benefits. However, due to mental or physical condition some claimants may be unable to do so. If the Board determines that the interests of a claimant would be better served if benefit payments were certified to another person as representative payee, the Board will appoint a representative payee in accordance with the procedures set forth in this part. The Board may appoint a representative payee even if the claimant is a legally competent individual. If the claimant is a legally incompetent individual, the Board may appoint the legal guardian or some other person as a representative payee.

(2) If payment is being made directly to a claimant and a question arises concerning his or her ability to manage or direct the management of benefit payments, the Board may, if the claimant has not been adjudged legally incompetent, continue to pay the claimant until the Board makes a determination about his or her ability to manage or direct the management of benefit payments and the selection of a representative payee.

#### § 348.2 Recognition by the Board of a person to act in behalf of another.

The provisions of part 266 of this chapter shall be applicable to the appointment of a representative payee under this part to the same extent and

in the same manner as they are applicable to the appointment of a representative payee under the Railroad Retirement Act.

## **PART 349—FINALITY OF DECISIONS REGARDING UNEMPLOYMENT AND SICKNESS INSURANCE BENEFITS**

Sec.

349.1 Reopening and revising decisions.

349.2 Conditions for reopening.

349.3 Change of legal interpretation or administrative ruling.

349.4 Late completion of timely investigation.

349.5 Notice of revised decision.

349.6 Effect of revised decision.

349.7 Time and place to request a review and/or hearing on revised decision.

349.8 Discretion of the three-member Board to reopen or not to reopen a final decision.

AUTHORITY: 45 U.S.C. 355 and 362(1).

SOURCE: 65 FR 66499, Nov. 6, 2000, unless otherwise noted.

### **§ 349.1 Reopening and revising decisions.**

(a) This part sets forth the Board's rules governing finality of decisions with respect to benefits under the Railroad Unemployment Insurance Act. After the expiration of the time limits for review as set forth in part 320 of this chapter, decisions may be reopened and revised only under the conditions described in this subpart, by the bureau, office or entity that made the earlier decision or by a bureau, office, or other entity at a higher level which has the claim properly before it. Whether a final decision is reopened or not reopened is solely within the discretion of the Board.

(b) A *final decision*, as that term is used in this part, means any decision under § 320.5 of this chapter where the time limit for review, as set forth in part 320 of this chapter or in the Railroad Unemployment Insurance Act, has expired.

(c) *Reopening* a final decision under this part means a conscious determination on the part of the agency to reconsider an otherwise final decision for purposes of revising that decision.

(d) *New and material evidence*, as that phrase is used in this part, means evi-

dence which was unavailable to the agency at the time the decision was made, and which the claimant could not reasonably have been expected to have submitted at that time.

### **§ 349.2 Conditions for reopening.**

A final decision may be reopened:

(a) Within 12 months of the date of the notice of such decision, for any reason;

(b) Within four years of the date of the notice of such decision:

(1) If there is new and material evidence; or

(2) If the decision was not reasonably consistent with the evidence of record at the time of adjudication.

(c) At any time if:

(1) The decision was obtained by fraud or similar fault;

(2) The decision was that the claimant was not a qualified employee, and he or she is now qualified because compensation was credited to the employee's record of compensation in accordance with part 211 of this chapter:

(i) To correct errors apparent on the face of the compensation record;

(ii) To enter items transferred by the Social Security Administration which were credited under the Social Security Act when they should have been credited to the employee's railroad retirement compensation record; or

(iii) To correct errors made in the allocation of earnings to individuals or periods which would have made him or her a qualified employee at the time of the decision if the earnings had been credited to his or her earnings record at that time;

(3) The decision is wholly or partially unfavorable to a claimant, but only to correct a clerical error or an error that appears on the face of the evidence that was considered when the decision was made.

### **§ 349.3 Change of legal interpretation or administrative ruling.**

A change of legal interpretation or administrative ruling upon which a decision is based does not render a decision erroneous and does not provide a basis for reopening.