

Railroad Retirement Board

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benefits for his or her days of unemployment, if any, during such extended period. If an extended sickness benefit period terminates because the employee has attained age 65, and if at that point the employee has rights to normal sickness benefits, the employee will be paid normal sickness benefits if he or she is otherwise entitled to payment thereof.

(d) *Maximum number of compensable days.* Extended benefits may be paid for a maximum of 65 days of unemployment (or 65 days of sickness, as the case may be) within an employee's extended benefit period.

[59 FR 3996, Jan. 28, 1994, as amended at 65 FR 19649, Apr. 12, 2000]

§ 336.15 How to claim extended benefits.

An employee who has 10 or more years of railroad service who exhausts his or her rights to normal unemployment or normal sickness benefits and who wishes to claim extended unemployment or extended sickness benefits may do so by claiming benefits on the forms provided by the Board pursuant to parts 325 or 335 of this chapter. The claim forms provided for this purpose are the same as those provided for claiming normal benefits. No special application for extended benefits is required, and no waiting period applies to the payment of extended benefits.

§ 336.16 Notice to employee.

Upon determining that an employee is eligible for a period of extended unemployment or sickness benefits, the Board will notify the employee of the beginning and ending dates of such extended benefit period.

PART 337 [RESERVED]

PART 340—RECOVERY OF BENEFITS

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

SOURCE: Board Order 27-22, 32 FR 3341, Feb. 28, 1967, unless otherwise noted.

§ 340.1 Statutory provisions.

(a) Section 2(d) of the Railroad Unemployment Insurance Act provides that:

If the Board finds that at any time more than the correct amount of benefits has been paid to any individual under this Act or a payment has been made to an individual not entitled thereto (including payments made prior to July 1, 1940) recovery by adjustments in subsequent payments to which such individual is entitled under this Act or any other Act administered by the Board may, except as otherwise provided in this subsection, be made under regulations prescribed by the Board. If such individual dies before recovery is completed, recovery may be made by setoff or adjustments, under regulations prescribed by the Board, in subsequent payments due, under this Act or any other Act administered by the Board to the estate, designee, next of kin, legal representative, or surviving spouse of such individual, with respect to the employment of such individual.

Adjustments under this subsection may be made either by deductions from subsequent payments or, with respect to payments which are to be made during a lifetime or lifetimes, by subtracting the total amount of benefits paid in excess of the proper amount from the actuarial value, as determined by the Board, of such payments to be made during a lifetime or lifetimes and recertifying such payments on the basis of the reduced actuarial value. In the latter case recovery shall be deemed to have been completed upon such recertification.

There shall be no recovery in any case in which more than the correct amount of benefits has been paid to an individual or payment has been made to an individual not entitled thereto (including payments made prior to July 1, 1940) who, in the judgment of

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the Board, is without fault when, in the judgment of the Board, recovery would be contrary to the purpose of this Act or would be against equity or good conscience.

No certifying or disbursing officer shall be held liable for any amount certified or paid by him in good faith to any person where the recovery of such amount is waived under the third paragraph of this subsection or has been begun but cannot be completed under the first paragraph of this subsection.

(b) Section 2(f) of the Act provides, in part, that:

If (i) benefits are paid to any employee with respect to unemployment or sickness in any registration period, and it is later determined that remuneration is payable to such employee with respect to any period which includes days in such registration period which had been determined to be days of unemployment or sickness, and (ii) the person or company from which such remuneration is payable has, before payment thereof, notice of the payment of benefits upon the basis of days of unemployment or sickness included in such period, the remuneration so payable shall not be reduced by reason of such benefits but the remuneration so payable, to the extent to which benefits were paid upon the basis of days which had been determined to be days of unemployment or sickness and which are included in the period for which such remuneration is payable, shall be held to be a special fund in trust for the Board. * * *

(c) Section 4(a-1) of the Act provides, in part, that:

There shall not be considered as a day of unemployment or as a day of sickness, with respect to any employee—* * *

(ii) Any day in any period with respect to which the Board finds that he is receiving or will have received annuity payments or pensions under the Railroad Retirement Act of 1935 or the Railroad Retirement Act of 1937, or insurance benefits under title II of the Social Security Act, or unemployment, maternity, or sickness benefits under an unemployment, maternity, or sickness compensation law other than this Act, or any other social insurance payments under any law: *Provided*, That if an employee receives or is held entitled to receive any such payments, other than unemployment, maternity, or sickness payments, with respect to any period which include days of unemployment or sickness in a registration period, after benefits under this Act for such registration period will have been paid, the amount by which such benefits under this Act will have been increased by including such days as days of unemployment or as days of sickness shall be recoverable by the Board: *Provided further*, That, if that part of any such payment or

payments, other than unemployment, maternity, or sickness payments, which is apportionable to such days of unemployment or days of sickness is less in amount than the benefits under this Act which, but for this paragraph, would be payable and not recoverable with respect to such days of unemployment or days of sickness, the preceding provisions of this paragraph shall not apply but such benefits under this Act for such days of unemployment or days of sickness shall be diminished or recoverable in the amount of such part of such other payment or payments;

(d) Section 12(o) of the Act provides that:

Benefits payable to an employee with respect to days of sickness shall be payable regardless of the liability of any person to pay damages for such infirmity. The Board shall be entitled to reimbursement from any sum or damages paid or payable to such employee or other person through suit, compromise, settlement, judgment, or otherwise on account of any liability (other than a liability under a health, sickness, accident, or similar insurance policy) based upon such infirmity, to the extent that it will have paid or will pay benefits for days of sickness resulting from such infirmity. Upon notice to the person against whom such right or claim exists or is asserted, the Board shall have a lien upon such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimbursement.

(e) Section 3, Pub. L. 89-508, 80 Stat. 308, provides that:

(a) The head of an agency or his designee, pursuant to regulations prescribed by him and in conformity with such standards as may be promulgated jointly by the Attorney General and the Comptroller General, shall attempt collection of all claims of the United States for money or property arising out of the activities of, or referred to, his agency.

(b) With respect to such claims of the United States that have not been referred to another agency, including the General Accounting Office, for further collection action and that do not exceed \$20,000, exclusive of interest, the head of an agency or his designee, pursuant to regulations prescribed by him and in conformity with such standards as may be promulgated jointly by the Attorney General and the Comptroller General, may (1) compromise any such claim, or (2) cause collection action on any such claim to be terminated or suspended where it appears that no person liable on the claim has the present or prospective financial ability to pay any significant sum thereon or that the

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cost of collecting the claim is likely to exceed the amount of recovery. The Comptroller General or his designee shall have the foregoing authority with respect to claims referred to the General Accounting Office by another agency for further collection action. The head of an agency or his designee shall not exercise the foregoing authority with respect to a claim as to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, or a claim based in whole or in part on conduct in violation of the antitrust laws; nor shall the head of an agency, other than the Comptroller General of the United States, have authority to compromise a claim that arises from an exception made by the General Accounting Office in the account of an accountable officer.

(c) A compromise effected pursuant to authority conferred by subsection (b) of this section shall be final and conclusive on the debtor and on all officials, agencies, and courts of the United States, except if procured by fraud, misrepresentation, the presentation of a false claim, or mutual mistake of fact. No accountable officer shall be liable for any amount paid or for the value of property lost, damaged, or destroyed, where the recovery of such amount or value may not be had because of a compromise with a person primarily responsible under subsection (b).

§ 340.2 Amount recoverable.

For purposes of this part, an "amount recoverable" is an amount of unemployment, sickness, or maternity benefits paid under the Railroad Unemployment Insurance Act which is:

(a) Determined to have been paid erroneously;

(b) Recoverable under section 2(f) of the Act because remuneration is found to be payable with respect to a period which includes days which had been determined to be days of unemployment or sickness;

(c) Recoverable under section 4(a-1)(ii) of the Act because of the employee's having received or been held entitled to receive annuity payments under the Railroad Retirement Act, insurance benefits under title II of the Social Security Act, unemployment, sickness or maternity benefits under any law other than the Railroad Unemployment Insurance Act, or any other social insurance payments under any law; or

(d) Recoverable under section 12(o) of the Act by virtue of the Board's right to reimbursement from any sum or

damages payable through suit, compromise, settlement, judgment, or otherwise on account of liability based upon an infirmity, to the extent that it will have paid or will pay benefits for days of sickness resulting from that infirmity.

§ 340.3 When amounts recoverable to be recovered.

Amounts recoverable shall be recovered in all cases except those in which recovery is waived under § 340.10 or a compromise is approved under § 340.13.

§ 340.4 Methods of recovery of amounts recoverable.

An amount recoverable may be recovered by any one or a combination of the methods described in §§ 340.5, 340.6, 340.7, and 340.8.

§ 340.5 Recovery by cash payment.

The Board shall have the right to require that amounts recoverable be immediately and fully repaid in cash and any debtor shall have the absolute right to repay such amount recoverable in this manner. However if the debtor is financially unable to pay the indebtedness in a lump sum, payment may be accepted in regular installments. The amount and frequency of such installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. Whenever possible installment payments should be sufficient in amounts and frequency to liquidate the debt in not more than three years.

§ 340.6 Recovery by setoff.

An amount recoverable may be recovered by setoff against any subsequent payments to which the individual from whom the amount is recoverable is entitled under the Railroad Unemployment Insurance Act, the Railroad Retirement Act, or any other Act administered by the Board, or, in the case of that individual's death, from any payments due under those Acts to his or her estate, designee, next of kin, legal representative, or surviving spouse. In any case in which full recovery is not effected by setoff, the balance due may be recovered by one or more of the other methods described in this part. If the individual dies before