

§ 220.12

Residual functional capacity has the same meaning as found in § 220.120.

[63 FR 7541, Feb. 13, 1998]

§ 220.12 Evidence considered.

The regulations explaining the employee's responsibility to provide evidence of disability, the kind of evidence, what medical evidence consists of, and the consequences of refusing or failing to provide evidence or to have a medical examination are found in § 220.45 through § 220.48. The regulations explaining when the employee may be requested to report for a consultative examination are found in § 220.50 and § 220.51. The regulations explaining how the Board evaluates conclusions by physicians concerning the employee's disability, how the Board evaluates the employee's symptoms, what medical findings consist of, and the need to follow prescribed treatment are found in § 220.112 through § 220.115.

[56 FR 12980, Mar. 28, 1991. Redesignated at 63 FR 7541, Feb. 13, 1998]

§ 220.13 Establishment of permanent disability for work in regular railroad occupation.

The Board will presume that a claimant who is not allowed to continue working for medical reasons by his employer has been found, under standards contained in this subpart, disabled unless the Board finds that no person could reasonably conclude on the basis of evidence presented that the claimant can no longer perform his or her regular railroad occupation for medical reasons. (See § 220.21 if the claimant is not currently disabled, but was previously occupationally disabled for a specified period of time in the past). The Board uses the following evaluation process in determining disability for work in the regular occupation:

(a) The Board evaluates the employee's medically documented physical and mental impairment(s) to determine if the employee is medically disabled. In order to be found medically disabled, the employee's impairments must be severe enough to prevent a person from doing any substantial gainful activity. The Board makes this determination based on the guidelines set out in § 220.100(b)(3). If the Board

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finds that an employee has an impairment which is medically disabling, it will find the employee disabled for work in his or her regular occupation without considering the duties of his or her regular occupation.

(b) If the Board finds that the claimant does not have an impairment described in paragraph (a) of this section, it will—

(1) Determine the employee's regular railroad occupation, as defined in § 220.11, based upon the employee's own description of his or her job;

(2) Evaluate whether the claimant is disabled as follows:

(i) The Board first determines whether the employee's regular railroad occupation is an occupation covered under appendix 3 of this part. Second, the Board will determine whether the employee's claimed impairment(s) is covered under appendix 3 of this part. If claimant's regular railroad occupation or impairment(s) is not covered under appendix 3 of this part, then the Board will determine if the employee is disabled under ICE as set forth in paragraph (b)(2)(iv) of this section.

(ii)(A) If the Board determines that, in accordance with paragraph (b)(2)(i) of this section, appendix 3 of this part applies, then the Board will confirm the existence of the employee's impairment(s) using—

(1) The "highly recommended" and "recommended" tests set forth in appendix 3 of this part that relate to the body part affected by the claimant's impairment(s); or

(2) By using valid diagnostic tests accepted by the medical community as described in § 220.27.

(B) If the employee's impairment(s) cannot be confirmed because there are significant differences in objective tests such as imaging study, electrocardiograms or other test results, and these differences cannot be readily resolved, the Board will determine if the employee is disabled under ICE as set forth in paragraph (b)(2)(iv) of this section. However, if the employee's impairment(s) cannot be confirmed, and there are no significant differences in objective medical tests which cannot be readily resolved, then the employee will be found not disabled.

(iii) Once the impairment(s) is confirmed, as provided for in paragraph (b)(2)(ii) of this section, the Board will apply appendix 3 of this part. If appendix 3 of this part dictates a “D” (disabled) finding, the Board will find the claimant disabled.

(iv) If the Board does not find the employee disabled using the standards in appendix 3 of this part, then the Board will determine if the employee is disabled using ICE. To evaluate a claim under ICE the Board will use the following steps:

(A) *Step 1.* The Board will determine if the medical evidence is complete. Under this step the Board may request the claimant to take additional medical tests such as a functional capacity test or other consultative examinations;

(B) *Step 2.* If the employee’s impairment(s) has not been confirmed, as provided for in paragraph (b)(2)(i)(A)(2) of this section, the Board will next confirm the employee’s impairment(s), as described in paragraph (b)(2)(i)(A)(2) of this section;

(C) *Step 3.* The Board will determine whether the opinions among the physicians regarding medical findings are consistent, by reviewing the employee’s medical history, physical and mental examination findings, laboratory or other test results, and other information provided by the employee or obtained by the Board. If such records reveal that there are significant differences in the medical findings, significant differences in opinions concerning the residual functional capacity evaluations among treating physicians, or significant differences between the results of functional capacity evaluations and residual functional capacity examinations, then the Board may request additional evidence from treating physicians, additional consultative examinations and/or residual functional capacity tests to resolve the inconsistencies;

(D) *Step 4.* When the Board determines that there is concordance of medical findings, then the Board will assess the quality of the evidence in accordance with §220.112, which describes the weight to be given to the opinions of various physicians, and §220.114, which describes how the Board evalu-

ates symptoms such as pain. The Board will also assess the weight of evidence by utilizing §220.14, which outlines factors to be used in determining the weight to be attributed to certain types of evidence. If, after assessment, the Board determines that there is no substantial objective evidence of an impairment, the Board will determine that the employee is not disabled;

(E) *Step 5.* Next, the Board determines the physical and mental demands of the employee’s regular railroad occupation. In determining the job demands of the employee’s regular railroad occupation, the Board will not only consider the employee’s own description of his or her regular railroad occupation, but shall also consider the employer’s description of the physical requirements and environmental factors relating to the employee’s regular railroad occupation, as provided by the employer on the appropriate form set forth in appendix 3 of this part, and consult other sources such as the Dictionary of Occupational Titles and the job descriptions of occupations found in the Occupational Disability Claims Manual, as provided for in §220.10;

(F) *Step 6.* Based upon the assessment of the evidence in paragraph (b)(2)(iv)(D) of this section, the Board shall determine the employee’s residual functional capacity. The Board will then compare the job demands of the employee’s regular railroad occupation, as determined in paragraph (b)(2)(iv)(E) of this section. If the demands of the employee’s regular railroad occupation exceed the employee’s residual functional capacity, then the Board will find the employee disabled. If the demands do not exceed the employee’s residual functional capacity, then the Board will find the employee not disabled.

[56 FR 12980, Mar. 28, 1991, as amended at 63 FR 7541, Feb. 13, 1998; 74 FR 63600, Dec. 4, 2009]

§ 220.14 Weighing of evidence.

(a) *Factors which support greater weight.* Evidence will generally be given more weight if it meets one or more of the following criteria: