

practice emphasizes health promotion and maintenance, disease prevention, and the diagnosis and management of acute and chronic diseases. Nurse practitioners are registered nurses with advanced education and clinical expertise that qualifies them to diagnose and treat illnesses and injuries. Under current regulations, the Board does not accept a statement of sickness or supplemental statement of sickness from a nurse practitioner. A claimant who submits a statement of sickness signed by a nurse practitioner is informed that the statement may not be accepted and is required to get a new one signed by an individual listed in § 335.3(a). This is administratively costly and delays the payment of sickness benefits. Thus, the Board is adding "nurse practitioner" to the list of individuals from whom it will accept a statement of sickness.

The Board published this rule as a proposed rule on May 5, 2000 (65 FR 26161), and invited comments by July 5, 2000. No comments were received.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action for purposes of Executive Order 12866. Therefore, no regulatory analysis is required. The information collections contemplated by this part have been approved by the Office of Management and Budget under control number 3220-0039.

List of Subjects in 20 CFR Part 335

Railroad employees, Railroad unemployment insurance, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Railroad Retirement Board amends title 20, chapter II of the Code of Federal Regulations as follows:

PART 335—SICKNESS BENEFITS

1. The authority citation for part 335 continues to read as follows:

Authority: 45 U.S.C. 362(i) and 362(l).

2. Section 335.3(a) is amended as follows:

(a) remove "or" at the end of paragraph (a)(9),

(b) remove the period and add "; or" at the end of paragraph (a)(10), and

(c) add a new paragraph (a)(11) to read as follows:

§ 335.3 Execution of statement of sickness and supplemental doctor's statement.

(a) * * *

(11) A nurse practitioner.

* * * * *

Dated: October 27, 2000.

By Authority of the Board,

Beatrice Ezerski,

For the Board, Secretary to the Board.

[FR Doc. 00-28316 Filed 11-3-00; 8:45 am]

BILLING CODE 7905-01-P

RAILROAD RETIREMENT BOARD

20 CFR Part 349

RIN 3220-AB25

Finality of Decisions Regarding Unemployment and Sickness Insurance Benefits

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board adopts regulations pertaining to the finality of decisions under the Railroad Unemployment Insurance Act (Act). The present rules dealing with finality of decisions under that statute are incomplete and are contained in a Board Order which is not readily available to the public. Therefore, the Board has determined that the present rules should be revised and published as a regulation.

EFFECTIVE DATE: This rule is effective November 6, 2000.

FOR FURTHER INFORMATION CONTACT:

Marguerite P. Dadabo, Senior Attorney, Railroad Retirement Board, (312) 751-4945, TTD (312) 751-4701.

SUPPLEMENTARY INFORMATION: The Board's rules and procedures regarding the finality of decisions with respect to benefits under the Railroad Unemployment Insurance Act are presently contained in a Board Order, which is not readily available to the public. Also the Board Order does not contain any time limits on reopening. The regulation addresses the finality of benefit decisions. This final rule is similar to part 261 of the Board's regulations on reopening of decisions under the Railroad Retirement Act (20 CFR 261).

Section 349.1 describes who may open a final decision issued by the agency. Section 349.2 describes when a final decision may be reopened. A final decision may be reopened within 12 months of the date of notice of such decision for any reason. A final decision may also be reopened within 4 years of the date of notice if new and material evidence is furnished or if the decision was not reasonably consistent with the evidence of record at the time the decision was made. A decision may be reopened at any time if the decision was obtained by fraud or similar fault, or if the decision was that the employee was

not a qualified employee and is later found to be one because of a correction in his or her record of compensation, or if the decision was wholly or partially unfavorable to a claimant, but only to correct clerical error or an error that appears on the face of the evidence that was considered when the decision was made. See § 349.2(c).

Section 349.3 provides that a change of legal interpretation or administrative ruling upon which a decision was based is not a basis for reopening.

Section 349.4 provides that a decision may be reopened after the 1 year and 4 year time limits set forth in § 349.2 if the Board had begun an investigation within those time limits. However, if the Board does not diligently pursue the investigation, the agency will not reopen the decision if the decision was favorable to the claimant.

Sections 349.5-349.7 are procedural and provide that if a decision is reopened, the claimant will be given notice and will have a right to reconsideration and/or a hearing. Any hearing shall be conducted in accordance with part 320 of the Board's regulations (20 CFR 320).

Finally, § 349.8 provides that the three-member Board has the discretion to reopen or not to reopen any decision under these regulations.

The Board published this rule as a proposed rule on April 20, 2000 (65 FR 21164-21165) and invited comments by June 19, 2000. No comments were received. Accordingly, the proposed rule is adopted as a final rule without change.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 349

Railroad employees, Railroad unemployment insurance.

For the reasons set out in the preamble, the Railroad Retirement Board adds a new part 349 to 20 CFR Chapter II as follows:

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(l).

§ 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 evidence 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.

§ 349.4 Late completion of timely investigation.

(a) A decision may be revised after the applicable time period in §§ 349.2(a) or (b) expires if the Board begins an investigation into whether to revise the decision before the applicable time period expires and the agency diligently pursues the investigation to the conclusion. The investigation may be based on a request by a claimant or on action by the Board.

(b) *Diligently pursued* for purposes of this section means that in view of the facts and circumstances of a particular case, the necessary action was undertaken and carried out as promptly as the circumstances permitted. Diligent pursuit will be presumed to have been met if the investigation is concluded and, if necessary, the decision is revised within six months from the date the investigation began.

(c) If the investigation is not diligently pursued to its conclusion, the decision will be revised if a revision is applicable and if it is favorable to the claimant. It will not be revised if it would be unfavorable to the claimant.

§ 349.5 Notice of revised decision.

(a) When a decision is revised, notice of the revision will be mailed to the parties to the decision at their last known address. The notice will state the basis for the revised decision and the effect of the revision. The notice will also inform the parties of the right to further review.

(b) If a hearings officer or the three-member Board proposes to revise a

decision, and the revision would be based only on evidence included in the record on which the prior decision was based, all parties will be notified in writing of the proposed action. If a revised decision is issued by a hearings officer, any party may request that it be reviewed by the three-member Board, or the three-member Board may review the decision on its own initiative.

§ 349.6 Effect of revised decision.

A revised decision is binding unless:

(a) The revised decision is being reconsidered or appealed in accord with part 320 of this chapter;

(b) The three-member Board reviews the revised decision; or

(c) The revised decision is further revised consistent with this part.

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

A party to a revised decision may request, as appropriate, further review of the decision in accordance with the rules set forth in part 320 of this chapter. Further review or a hearing will be held according to the rules set forth in part 320 of this chapter.

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

In any case in which the three-member Board may deem proper, the Board may direct that any decision, which is otherwise subject to reopening under this part, shall not be reopened or direct that any decision, which is otherwise not subject to reopening under this part, shall be reopened.

Dated: October 26, 2000.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 00-28211 Filed 11-3-00; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8862]

RIN 1545-AI32

Stock Transfer Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to Treasury Decision 8862, which was published in the **Federal Register** on Monday, January 24, 2000