



United States of America
RAILROAD RETIREMENT BOARD
Debt Recovery Division
844 North Rush Street
Chicago, Illinois 60611-2092

Bureau of Fiscal Operations

April 29, 2009

Mr. [REDACTED]
Box [REDACTED]
[REDACTED]

In reply refer to
BD #B2 RP 342231401

Dear Mr. [REDACTED]:

This is concerning the overpayment described in our letter dated May 29, 2008 and your request for reconsideration.

Your request for waiver is denied and enclosed is a copy of my decision which also explains that the overpayment, including the penalty deduction, totals \$32,033.45.

Your offer to repay this debt by temporary annuity reduction of \$100.00 a month is unacceptable since repayment would take over 26 years. Therefore, since it has been determined that you must repay \$32,033.45, recovery will be made by withholding your monthly annuity payments beginning with the payment due you on August 1, 2009. This withholding will continue for a period of 79 months.

If you do not wish repayment to be made in this manner, you may make repayment by check or money order for \$31,281.60. The check or money order should be made payable to the U.S. Railroad Retirement Board and received by June 30, 2009. Forward your remittance in the enclosed envelope, along with a copy of this notice, to the following address: Railroad Retirement Board, Retirement and Survivor Debt Collections, P.O. Box 979018, St. Louis, MO 63197-9000.

If you send us a check, it will be converted into an electronic funds transfer (EFT). This means we will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours, and will be shown on your regular account statement.

You will not receive your original check back. We will destroy your original check, but we will keep the copy of it. If the EFT cannot be processed for technical reasons, you authorize us to process the copy in place of your original check. If the EFT cannot be completed because of insufficient funds, we may try to make the transfer up to 2 times.

You may also pay this debt online. To pay online, go to www.RRB.gov and select Benefit Online Services. On Benefit Online Services, choose Pay Retirement or Survivor Bill Online.

Note: Since the penalty deduction must be recovered from your annuity no matter how the overpayment is repaid, your annuity would then be withheld for a period of two (2) months to recover the penalty deduction assessed of \$752.85.

If you disagree with either this decision or the "Summary of Facts" prepared for the telephone conference held on October 29, 2008 and/or the subsequent review decision letter dated April 21, 2009, you have the right to appeal to the Bureau of Hearings and Appeals. If an appeal is made, it must be submitted on Form HA-1 and must be received at an office of the Railroad Retirement Board within 60 days from the date of this notice.

Form HA-1 may be obtained from the RRB field office located at: Leland Federal Bldg., Suite 845, 1919 Smith Street, Houston, TX 77002. The telephone number is (877) 772-5772. You may also obtain Form HA-1 by writing directly to the Director of Hearings and Appeals at the following address: Railroad Retirement Board, Bureau of Hearings and Appeals, 844 North Rush Street, Chicago, Illinois 60611 or by visiting the Railroad Retirement Board's website at www.rrb.gov and following the link to "Benefit Forms & Publications."

If a timely appeal is made to the Bureau of Hearings and Appeals, the recovery action described above will not be taken until a decision is made on your appeal.

If you need to visit one of our field offices, you are urged to call for an appointment. You will not be refused service if you do not have an appointment, but Railroad Retirement Board representatives can serve you better when an appointment is made.

Sincerely,

Joan P. Rupslauk
Debt Specialist

Enclosures:

Envelope, Decision

Photos

RB-1d (5-85) Contents, pages 7,8,9,18,19

DECISION

Mr. [REDACTED]
Box [REDACTED]

Billing Document No. B2-RP 342231401

April 29, 2009

The debt specialist has determined that waiver may not be granted and that the overpayment of \$31,280.60 must be repaid. The overpaid amount does not include the penalty deduction assessed of \$752.85 for failure to timely report earnings in excess of \$400.00 a month to the Board. A penalty deduction is not an annuity overpayment and therefore is not subject to waiver consideration. The following analysis explains how this decision was reached.

PROCEDURAL HISTORY

Based on an application filed July 31, 1985, Mr. [REDACTED] was initially awarded a total and permanent disability annuity under the provisions of the Railroad Retirement Act beginning July 1, 1984. However, his annuity beginning date was subsequently changed from July 1, 1984 to July 15, 1983 based on an application for disability benefits filed with the Social Security Administration on July 19, 1983.

Prior to January 1989, a disability annuitant under age 65 was not entitled to an annuity for any month in which earnings exceeded \$200.00. However, an annuitant could earn up to \$2,499.99 in a year without losing any benefits.

From January 1, 1989 through December 2006, a disability annuitant under full retirement age was not entitled to an annuity for any month in which earnings exceeded \$400.00. During those years, an annuitant may earn up to \$4,999.99 in a year without losing any benefits. Under this provision, one month's annuity will be lost for each \$400.00 of earnings over \$4,800.00 in a year, counting the last \$200.00 of such excess as \$400.00.

Mr. [REDACTED] was notified by letter dated May 29, 2008 that based on excess earnings during years 2000, 2001, 2002 and 2003, no annuity was due or payable for the period January 1, 2000 through December 2003 and that after considering subsequent annuity accruals due, he was overpaid \$35,798.70 under the provisions of the Railroad Retirement Act. In addition, a penalty deduction of \$752.85 was also assessed for failure to timely report earnings in excess of the \$400.00 monthly limitation to the Board. In response, Mr. [REDACTED] requested review of the facts, waiver consideration and personal conference.

Based on the "Summary of Facts" prepared by the Reconsideration Specialist, Mr. [REDACTED] was advised during the telephone conference held on October 29, 2008 that the overpaid amount after considering annuity accruals due was determined to be \$35,797.70 and that the penalty deduction was found correctly assessed.

However subsequent review indicated that the annuitant did not begin work activity until July 1, 2000. Therefore only six (6) work deduction months are chargeable for year 2000 and not 12 months. As a result, Mr. [REDACTED] was notified by the Reconsideration Specialist in her follow up decision letter dated April 21, 2009, that after considering subsequent annuity accruals due, the overpaid amount was determined to be \$31,280.60 and this amount was confirmed. In addition, the penalty deduction was found correctly assessed.

ISSUE

The issue to be considered in this decision is whether recovery of all or any part of an overpayment totaling \$31,280.60 may be waived in accordance with Section 10(c) of the Railroad Retirement Act.

Under the provisions of the Railroad Retirement Act, an overpayment must be recovered unless, in the judgment of the Board, the overpayment was made through no fault of the overpaid person and paying back the overpayment would prevent the annuitant from meeting his or her ordinary and necessary living expenses or would be unfair for some other reason.

Factors used to determine whether an individual is at fault include but are not limited to, failure to furnish to the Railroad Retirement Board information which the individual knew or should have known to be material, or an incorrect statement made by the individual which he or she knew or should have known was incorrect (including furnishing an opinion or conclusion when asked for facts), or failure to return a payment which the individual knew or should have known was incorrect.

SUMMARY AND EVALUATION OF THE EVIDENCE

The Board learned through data exchange with the Social Security Administration that Mr. [REDACTED] had excess earnings during years 2000, 2001, 2002 and 2003 in amounts of \$10,347.17, \$21,760.70, \$13,366.23 and \$32,871.35 respectively. As a result of those earnings, his annuity was not payable for the period July 1, 2000 through December 2003 and after considering subsequent annuity accruals due, Mr. [REDACTED] has been overpaid \$31,280.60 under the provisions of the Railroad Retirement Act, not including the penalty deduction assessed.

Our records indicate that when Mr. [REDACTED] filed application for a disability annuity under the provisions of the Railroad Retirement Act on July 31, 1985, he was given booklets RB-1, "Employee Annuity" and RB-1d, "Employee Disability Benefits" both of which contained important information regarding events affecting payment of his annuity and included events that he was required to report to the Board in order to avoid an annuity overpayment.

Information contained in Chapter 9 of booklet RB-1d (copy enclosed) explained in part that until Mr. [REDACTED] attained age 65, his disability annuity would be affected by earnings of more than \$200.00 a month received for work performed for any employer and that a penalty would be assessed for late reports.

The annuitant was further advised that:

"Your annuity cannot be paid and you must return your annuity payment for any month in which you work for:

- * a railroad employer,
- * your last person service employer,
- * any other employer if your earnings before deductions, commissions or payments in kind, or net self-employment earnings exceed \$200 and you are under age sixty-five."

In addition, Mr. [REDACTED] was notified that:

"It is important that you report work as soon as you start it and return annuity payments as described above. If you earn over \$200 in a month and report it to us more than two months later, you may be penalized: we withhold the amount required *plus* at least one month's annuity as penalty."

The annuitant was also informed that if he earned \$2,500.00 or more in a year, he would not be entitled to annuity payments for some months and he was further advised in Chapter 11 (copy enclosed) that:

"At age sixty-five, your entitlement to a disability annuity ends, and your entitlement to an age-and-service annuity begins. This means that your entitlement to annuity payments is no longer affected by the restrictions that apply to disability annuitants as discussed in this booklet. However, your annuity is still subject to the restrictions discussed in booklet RB-1, *Employee*

Annuity, for age-and-service annuitants. If you do not have a copy of this booklet, you should request one."

Information contained in Chapters 21 and 22 of booklet RB-1d (copy enclosed) further described the events that would affect payment of disability benefits. The annuitant was advised that he must notify the Board immediately if he performed any work, including self-employment, regardless of how much he earned and to furnish particulars regarding his work activity and earnings. Mr. [REDACTED] was further advised that:

"If, at any time after you have completed your application, you find that one of the conditions explained in Chapter 21 of this booklet applies to you, you should immediately notify the Board in writing. The notice should be sent to the Board district office at the address shown on the receipt for your application. However, if you wish, you may also call or visit that office."

Subsequently, Amendments to the Railroad Retirement Act enacted in 1988 increased the monthly earnings limitation allowed disability annuitants from \$200.00 to \$400.00 beginning January 1, 1989.

Booklet T-50, "Railroad Retirement 1988 Amendments" (copy enclosed) was mailed to the employee's home address in September 1989 to advise of changes in the law and this mail was not returned to the Board as "undeliverable". Through information contained in this booklet, Mr. [REDACTED] was notified that:

"Starting with 1989, if you are a disabled employee beneficiary under age 65, the amount you can earn without your benefit being reduced goes up from \$200 a month to \$400 a month after deduction of disability related work expenses. This means that starting with January 1989, your annuity is not payable for any month you earn more than \$400 in employment or self-employment. This disability work deduction exempt amount does not apply to survivor beneficiaries.

"As under prior law, you are still required to report all earnings promptly to the Board, regardless of the amount, to avoid overpayments and penalties."

Our records also indicate that informational pamphlet Form RL-4 (copy enclosed) was mailed to the annuitant's home address in October 1989; October 1991; October 1992; October 1993; October 1994; October 1995; October 1997; October 1998; October 1999; October 2000, October 2001, October 2002 and October 2003. None of these mailer notices was returned to the Board as "undeliverable."

These pamphlets served as a reminder to the annuitant that, among other things, all work must be reported and Mr. [REDACTED] was also advised that:

"You **MUST** return your annuity payment for any month:

- You work for a railroad employer,
- Your earnings exceed \$400 after deduction of disability related work expenses, regardless of your employer."

"*** Also the above disability work restrictions end upon attainment of full retirement age and you become subject to work and earnings restrictions based on an age and service annuity. This transition is effective no earlier than your full retirement age even if you have 30 years of service."

And, as indicated on the enclosed copy of the annuity certifications, Mr. [REDACTED] agreed to notify the Board immediately of any event affecting payment of his annuity as explained in the booklets issued. In addition, the annuitant agreed to notify the Board immediately if he performed any work and he also acknowledged that failure to report work and earnings promptly may result in a penalty deduction against his annuity.

Mr. [REDACTED] began work activity in July 2000 and had excess earnings during years 2000, 2001, 2002 and 2003. However, the annuitant failed to report work activity and earnings to the Board. In addition, the annuitant failed to return his annuity payment for the months in which his earnings exceeded the \$400.00 monthly limitation in order to prevent an annuity overpayment.

Accordingly, it has been determined that Mr. [REDACTED] is not without fault in causing this overpayment and as such, his financial situation cannot be considered to prevent recovery.

CONCLUSION

~~Waiver of recovery of an overpayment totaling \$31,280.60 is denied. The total amount~~ recoverable, including the penalty deduction is \$32,033.45.

Joan P. Rupslauk
Debt Specialist



UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 NORTH RUSH STREET
CHICAGO, ILLINOIS 60611-2092

BUREAU OF HEARINGS AND APPEALS

JAN 10 2011

Mr. Roger Curme
Attorney at Law
Suite 1100
815 Brazos
Austin, Texas 78701

In reply refer to
R.R.B. No. A-XXX-XX-4470

Appeal No. 09 403

Dear Mr. Curme:

Enclosed is a copy of my decision on Mr. [REDACTED]
appeal. The case has been returned to the appropriate office for
further action as required by my decision.

Sincerely,

Deborah A. Starzec
Hearings Officer

Enclosure

cc: Mr. [REDACTED]
Post Office Box [REDACTED]
[REDACTED], [REDACTED] [REDACTED]

DECISION OF THE HEARINGS OFFICER

Mr. [REDACTED]
Post Office [REDACTED]
[REDACTED]

Decision No. **11-114**
Appeal No. 09-403
R.R.B. No. A-XXX-XX-4470

JAN 10 2011

ISSUES

The issues in this appeal are whether the overpayment in this case in the amount of \$31,280.60 may be waived under the provisions of section 10(c) of the Railroad Retirement Act which provides that there shall be no recovery in any case where the overpaid person is without fault and recovery would be contrary to the purpose of the Act or would be against equity or good conscience and whether a penalty in the amount of \$752.85 should be applied.

FINDINGS

The hearings officer has considered the entire record in this case, which includes testimony taken at an oral hearing held by telephone conference call on September 15, 2010, and finds that the appellant was not at fault in causing the overpayment. The hearings officer further finds that recovery of the overpayment would deprive the appellant of funds needed for ordinary and necessary living expenses and would therefore be contrary to the purpose of the Act. The hearings officer also finds that the penalty should not be applied in this case.

DECISION

It is the decision of the hearings officer that since both conditions for waiver of recovery have been met, the entire overpayment in the amount of \$31,280.60 is waived in accordance with section 10(c) of the Railroad Retirement Act and the penalty in the amount of \$752.85 should not be assessed.


Deborah A. Starzec
Hearings Officer