

## Railroad Retirement Board

## §212.2

conclusive as to amount, or if no compensation was reported for such period, then as to the employee's having received no compensation for such period, unless the error in the amount of compensation or the failure to make return of the compensation is called to the attention of the Board within four years after the date on which the compensation was required to be reported to the Board as provided for in §209.6 of this chapter.

(b) *Correction after 4 years.* (1) The Board may correct a report of compensation after the time limit set forth in paragraph (a) of this section where the compensation was posted or not posted as the result of fraud on the part of the employer.

(2) Subject to paragraph (c) of this section, the Board may correct a report of compensation after the time limit set forth in paragraph (a) of this section for one of the following reasons:

(i) Where the compensation was posted for the wrong person or the wrong period;

(ii) Where the earnings were erroneously reported to the Social Security Administration in the good faith belief by the employer or employee that such earnings were not covered under the Railroad Retirement Act and there is a final decision of the Board under part 259 of this chapter that such employer or employee was covered under the Railroad Retirement Act during the period in which the earnings were paid;

(iii) Where a determination pertaining to the coverage under the Railroad Retirement Act of an individual, partnership, or company as an employer, is retroactive; or

(iv) Where a record of compensation could not otherwise be corrected under this part and where in the judgment of the three-member Board that heads the Railroad Retirement Board failure to make a correction would be inequitable.

(c) *Limitation on crediting service.* (1) Except as provided in paragraph (b)(1) of this section, no employee may be credited with service months or tier II compensation beyond the four year period referred to in paragraph (a) of this section unless the employee establishes to the satisfaction of the Board that all employment taxes imposed by sections

3201, 3211, and 3221 of title 26 of the Internal Revenue Code have been paid with respect to the compensation and service.

(2) The limitation on the creditability of service months and tier II compensation in paragraph (c)(1) of this section shall not affect the creditability, for purposes of computing the tier I component of a railroad retirement annuity, of compensation payments with respect to which taxes have been paid under either the Railroad Retirement Tax Act or the Federal Insurance Contributions Act.

[62 FR 3790, Jan. 27, 1997]

## PART 212—MILITARY SERVICE

Sec.

- 212.1 General.
- 212.2 Military service defined.
- 212.3 Crediting of military service.
- 212.4 Periods of creditable military service.
- 212.5 Verification of military service.
- 212.6 Board's determination for use of military service.

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### §212.1 General.

In determining an individual's entitlement and amount of benefits under the Railroad Retirement Act, an individual's military service creditable under the Railroad Retirement Act is used. This part defines military service as used under this Act and sets forth the criteria to determine the creditability of military service.

### §212.2 Military service defined.

Military service is the performance of active service by an individual in the armed forces of the United States. An individual is considered to be in active military service when commissioned or enrolled in the land, naval or air forces of the United States until resignation or discharge therefrom. The service of an individual in any reserve component of the land, naval or air forces of the United States, during any period in which ordered to active duty, even though less than thirty days, is also considered active service. However, service in the Army Specialist Corps