

Railroad Retirement Board

§ 220.180

unless the conditions for reopening the prior decision are met.

(5) *The annuitant is currently engaging in substantial gainful activity.* If the annuitant is currently engaging in substantial gainful activity, before the Board determines whether he or she is no longer disabled because of his or her work activity, the Board will consider whether he or she is entitled to a trial work period as set out in §220.170. The Board will find that the annuitant's disability has ended in the month in which he or she demonstrated the ability to engage in substantial gainful activity (following completion of a trial work period, where it applies). This exception does not apply in determining whether the annuitant continues to have a disabling impairment(s) for purposes of deciding his or her eligibility for a reentitlement period.

(b) *Second group of exceptions to medical improvement.* In addition to the first group of exceptions to medical improvement, the following exceptions may result in a determination that the annuitant is no longer disabled. In these situations the decision will be made without a determination that the annuitant has medically improved or can engage in substantial gainful activity.

(1) *A prior determination was fraudulently obtained.* If the Board finds that any prior favorable determination was obtained by fraud, it may find that the annuitant is not disabled. In addition, the Board may reopen the claim.

(2) *Failure to cooperate with the Board.* If there is a question about whether the annuitant continues to be disabled and the Board requests that he or she submit medical or other evidence or go for a physical or mental examination by a certain date, the Board will find that the annuitant's disability has ended if he or she fails (without good cause) to do what is requested. The month in which the annuitant's disability ends will be the first month in which he or she failed to do what was requested.

(3) *Inability of the Board to locate the annuitant.* If there is question about whether the annuitant continues to be disabled and the Board is unable to find him or her to resolve the question, the Board will suspend annuity payments.

If, after a suitable investigation, the Board is still unable to locate the annuitant, the Board will determine that the annuitant's disability has ended. The month such annuitant's disability ends will be the first month in which the question arose and the annuitant could not be found.

(4) *Failure of the annuitant to follow prescribed treatment which would be expected to restore the ability to engage in substantial gainful activity.* If treatment has been prescribed for the annuitant which would be expected to restore his or her ability to work, he or she must follow that treatment in order to be paid a disability annuity. If the annuitant is not following that treatment and he or she does not have good cause for failing to follow the treatment, the Board will find that his or her disability has ended. The month such annuitant's disability ends will be the first month in which he or she failed to follow the prescribed treatment.

§ 220.180 Determining continuation or cessation of disability.

Evaluation steps. To assure that disability reviews are carried out in a uniform manner, that decisions of continuing disability can be made in the most expeditious and administratively efficient way, and that any decisions to stop a disability annuity are made objectively, neutrally and are fully documented, the Board will follow specific steps in reviewing the question of whether an annuitant's disability continues. The Board's review may cease and the disability may be continued at any point if the Board determines that there is sufficient evidence to find that the annuitant is still unable to engage in substantial gainful activity. The steps are—

(a) Is the annuitant engaging in substantial gainful activity? If he or she is (and any applicable trial work period has been completed), the Board will find disability to have ended (see §220.179(a)(5));

(b) If the annuitant is not engaging in substantial gainful activity, does he or she have an impairment or combination of impairments which meets or equals the severity of an impairment listed in appendix 1 of this part? If the annuitant's impairment(s) does meet

or equal the level of severity of an impairment listed in appendix 1 of this part, his or her disability will be found to continue;

(c) If the annuitant's impairment(s) does not meet or equal the level of severity of an impairment listed in appendix 1 of this part, has there been medical improvement as defined in § 220.177(a)? If there has been medical improvement as shown by a decrease in medical severity, see step (d). If there has been no decrease in medical severity, then there has been no medical improvement; (See step (e));

(d) If there has been medical improvement, the Board must determine whether it is related to the annuitant's ability to do work in accordance with paragraphs (a) through (d) of § 220.177, (i.e., whether or not there has been an increase in the residual functional capacity based on the impairment(s) that was present at the time of the most recent favorable medical determination). If medical improvement is not related to the annuitant's ability to do work, see step (e). If medical improvement is related to the annuitant's ability to do work, see step (f);

(e) If the Board found at step (c) that there has been no medical improvement or if it found at step (d) that the medical improvement is not related to the annuitant's ability to work, the Board considers whether any of the exceptions in § 220.178 apply. If none of them apply, disability will be found to continue. If one of the first group of exceptions to medical improvement applies, see step (f). If an exception from the second group of exceptions to medical improvement applies, disability will be found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process;

(f) If medical improvement is shown to be related to the annuitant's ability to do work or if one of the first group of exceptions to medical improvement applies, the Board will determine whether all of the annuitant's current impairments in combination are severe. This determination will consider all current impairments and the impact of the combination of those impairments on the ability to function. If the residual functional capacity assess-

ment in step (d) above shows significant limitation of ability to do basic work activities, see step (g). When the evidence shows that all current impairments in combination do not significantly limit physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature, and the annuitant will no longer be considered to be disabled;

(g) If the annuitant's impairment(s) is severe, the Board will assess his or her current ability to engage in substantial gainful activity. That is, the Board will assess the annuitant's residual functional capacity based on all of his or her current impairments and consider whether he or she can still do work that was done in the past. If he or she can do such work, disability will be found to have ended; and

(h) If the annuitant is not able to do work he or she has done in the past, the Board will consider one final step. Given the residual functional capacity assessment and considering the annuitant's age, education and past work experience, can he or she do other work? If the annuitant can do other work, disability will be found to have ended. If he or she cannot do other work, disability will be found to continue.

§ 220.181 The month in which the Board will find that the annuitant is no longer disabled.

If the evidence shows that the annuitant is no longer disabled, the Board will find that his or her disability ended in the earliest of the following months—

(a) The month the Board mails the annuitant a notice saying that the Board finds that he or she is no longer disabled based on evidence showing:

(1) There has been medical improvement in the annuitant's impairments related to the ability to work and the annuitant has the capacity to engage in substantial gainful work under the rules set out in §§ 220.177 and 220.178; or

(2) There has been no medical improvement in the annuitant's impairments related to the ability to work but the annuitant has the capacity to engage in substantial gainful work and