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Description of document: Transcripts of Railroad Retirement Board (RRB) Orders, 2011-2013

Requested date: 11-November-2013

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Source of document: FOIA Request  
General Counsel/Chief FOIA Officer  
U.S. Railroad Retirement Board  
844 North Rush Street  
Chicago, IL 60611-2092  
Fax: (312) 751-7102  
Email: [foiarequest@rrb.gov](mailto:foiarequest@rrb.gov)

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

**GENERAL COUNSEL**

**JAN 21 2014**

Re: Freedom of Information Act  
Request dated November 11, 2013,  
C. 0509-14

This is in response to your letter dated November 11, 2013 to the Railroad Retirement Board (hereinafter the Board) wherein you requested "An electronic/digital copy of each (recent) Board Order issued with a 2013, 2012 and 2011 prefix (i.e. 13-, 12-, 11-) and any Board Orders issued with a 14-prefix." You made your request pursuant to the Freedom of Information Act.

Pursuant to your request, please find enclosed copies of the transcripts of Board Orders for the time periods you requested. In processing your request, the Board has withheld the names of individual railroad employees. This is done in accordance with the sixth exemption of FOIA, 5 U.S.C. § 552(b)(6), because public disclosure of this information would constitute a clearly unwarranted invasion of personal privacy.

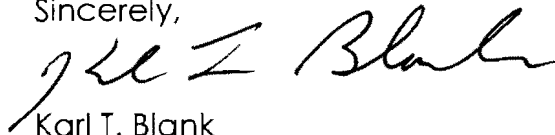
I trust that this information is helpful.



Appeal Rights.

The regulations of the Railroad Retirement Board provide that you may appeal the denial of a requested record by writing to the Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092, within 20 days following your receipt of this letter. A letter of appeal must include reference to, or a copy of, this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Karl T. Blank". The signature is written in a cursive style with a large initial "K".

Karl T. Blank  
General Counsel

Enclosures

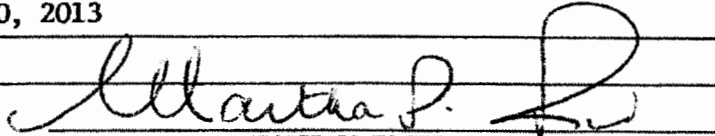
**THIS FORM IS TO BE USED ONLY BY THE SECRETARY TO THE BOARD OR AS OTHERWISE SPECIFICALLY DIRECTED BY THE BOARD.**

**FORM NO. G-21 (9-83)**  
UNITED STATES OF AMERICA  
RAILROAD RETIREMENT BOARD  
**TRANSCRIPT OF BOARD ORDERS**

**TRANSCRIPT NO.**  
**4-13**  
PAGE 1 OF 7 PAGES  
**DATE TRANSCRIPT RELEASED**  
**November 20, 2013**

I CERTIFY THAT THE FOLLOWING IS A TRUE AND CORRECT TRANSCRIPT

OF BOARD ORDER(S) NUMBERED 13-55  
ISSUED BY THE BOARD ON September 30, 2013

  
SECRETARY TO THE BOARD

Adopted the following Board Order:

B.O. 13-55

TERMINATION OF DISABILITY ANNUITIES AWARDED BASED ON MEDICAL EVIDENCE FROM DR. PETER LESNIEWSKI

**ARTICLE I. PURPOSE.**

The Railroad Retirement Board (RRB) hereby establishes the policy set forth in this Order to govern the adjudication of all disability annuities paid under section 2(a) of the Railroad Retirement Act, where the decision that the applicant is disabled was based in whole or in part upon evidence furnished by Dr. Peter Lesniewski. The purpose of this policy is to protect the Railroad Retirement Account from fraudulent claims while ensuring payment of valid disability claims.

**ARTICLE II. FINDINGS.**

A. In section 7 of the Railroad Retirement Act, Congress granted to the Railroad Retirement Board all powers and duties necessary to administer the Railroad Retirement Act. Congress declared in that provision that decisions by the Railroad Retirement Board upon issues of law and fact relating to annuities shall not be subject to review by any other administrative or accounting officer, agent or employee of the United States. Further, by incorporating section 5 of the Railroad Unemployment Insurance Act, section 7 requires that findings of fact and conclusions of law of the Board in the determination of any claim for benefits shall be binding and conclusive for all purposes and upon all such administrative or accounting officer, agent or employee.

B. Pursuant to the authority granted by section 7 of the Railroad Retirement Act, the Railroad Retirement Board makes the following findings of fact and conclusions of law:

1. The Long Island Rail Road, a covered railroad employer under the Railroad Retirement Act, had established a private pension plan for employees which provided for early retirement with a full pension at age 50 with 20 years of Long Island Rail Road service. This plan has subsequently been superseded by another. Long Island Rail Road retirees under this subsequent plan are not subject to this Order.

2. A substantial number of Long Island Rail Road employees who retired under the now replaced Long Island Rail Road pension plan also applied for an occupational disability annuity under section 2(a)(1)(iv) of the Railroad Retirement Act.

3. On October 27, 2011, the United States Attorney for the Southern District of New York filed fraud charges against two physicians, Dr. Peter Lesniewski and Dr. Peter J. Ajemian, one of their office managers, two individuals (facilitators) acting as liaison between the physicians and applicants for disability annuities under the Railroad Retirement Act, and seven railroad retirement disability annuitants (including one of the physicians' liaisons) who were also recipients of Long Island Rail Road pensions. The U.S. Attorney charged that the physicians, facilitators and disability annuitants falsely claimed to be disabled at the time of early retirement under the Long Island Rail Road pension plan in order to receive extra benefits to which they were not entitled. Additional indictments subsequently issued through July 2013 bring the total number of defendants to 33.

4. On December 20, 2011, an Indictment Order was entered finding that there was sufficient evidence to prosecute Dr. Lesniewski. The Grand Jury found that there was sufficient evidence that Dr. Lesniewski may have committed: (1) Conspiracy to commit mail fraud, wire fraud and healthcare fraud, (2) Conspiracy to defraud the United States Railroad Retirement Board, and (3) Healthcare fraud.

5. On May 22, 2012, the United States Attorney for the Southern District of New York announced the creation of a Voluntary Disclosure and Disposition Program, which was offered to former Long Island Rail Road employees who were awarded a disability annuity under the Railroad Retirement Act. Employee

Annuitants who were accepted into the Program by the U.S. Attorney were required to sign the following statement:

I hereby attest that in connection with my application for Railroad Retirement Board disability benefits, I or doctors or others on my behalf made what I understood to be false and/or misleading statements with respect to my health condition, ability to work, and/or my eligibility for RRB disability benefits. I declare under penalty of perjury that my statements in this document are true and correct, pursuant to Title 28, United States Code, and Section 1746.

A total of 44 railroad retirement disability annuitants were accepted by the U.S. Attorney into the Voluntary Disclosure and Disposition Program.

6. On May 22, 2012, the Railroad Retirement Board issued Board Order 12-29, which set forth the processing of Agreements signed under the Voluntary Disclosure Program. Pursuant to Board Order 12-29, a disability annuitant who signed an Agreement was considered to have cancelled his or her disability application. Board Order 12-29 considered that payments made under the cancelled application were recovered by a compromise in exchange for information provided to the U.S. Attorney by the annuitant.

7. Several former Long Island Rail Road employees who have pled guilty to making false statements regarding their abilities furnished medical evidence from Dr. Lesniewski to support their benefit claims.

8. In the transcript testimony by Dr. Peter Ajemian in the guilty plea proceeding on January 18, 2013, in the case entitled United States of America v. Peter Ajemian, et al., U.S. District Court, Southern District of New York, No. 11 Cr. 1091, Dr. Ajemian testified under oath that sometime about 2002 he began seeing large numbers

of employees of the Long Island Rail Road, and during the period 2004 to 2008 he prepared narratives reciting a medical basis for disability annuity claims when "in truth and in fact these employees were not in fact disabled."

9. On May 7, 2013, a Superseding Indictment was filed finding sufficient evidence to charge Dr. Lesniewski with committing: (1) Conspiracy to commit mail fraud, and health care fraud, (2) Conspiracy to defraud the United States Railroad Retirement Board, (3) Health care fraud, (4) Mail fraud, and (5) Wire fraud.

10. On May 24, 2013, the District Court sentenced Dr. Ajemian to eight years for conspiracy and health care fraud. The Board notes that Dr. Ajemian was ordered to make restitution of \$116.5 million.

In the Statement by the Court Regarding the Defendant's Sentence, the Court noted that Dr. Ajemian engaged in the charged offenses for more than 10 years, from 1997 to 2008. Dr. Ajemian submitted medical reports compiled for each claimant over a period of time during which he performed unnecessary or bogus medical tests and fabricated treatments and narrative paper work, all pre-planned and packaged to justify what essentially amounted to a predetermined recommendation that the employee was disabled.

11. On June 27, 2013, the Railroad Retirement Board issued Board Order 13-33. Based on findings set forth in that Order, the Board determined that any application by any applicant of at least age 50 with at least 20 years of creditable railroad service which includes medical evidence supplied by Dr. Peter J. Ajemian was invalid and must be re-filed.

12. On July 15, 2013, the trial began in the matter of United States of America v. Peter Lesniewski, U.S. District Court, Southern District of New York, No. 11 CR 1091.

13. During the trial, Joseph Del Favero, Deputy Assistant Inspector General for Investigations, Railroad Retirement Board Office of Inspector General (RRB OIG), testified on behalf of the United States of America. Agent Del Favero stated

that he and Louis Rossignuolo, Assistant Inspector General for Investigation, RRB OIG, interviewed Dr. Lesniewski on October 29, 2008. Agent Del Favero testified that Dr. Lesniewski admitted that he knew that he was seeing Long Island Rail Road (LIRR) patients so that they could receive disability benefits under the Railroad Retirement Act (RRA). Agent Del Favero also testified that during the October 29 interview, Dr. Lesniewski executed a signed statement in which he admitted that in order to ensure that the LIRR patients would receive an occupational disability annuity under the RRA, he would put a phrase in his narrative reports that said, "it can be stated with a reasonable degree of medical certainty that the patient is disabled for his occupation with the Long Island Railroad." Dr. Lesniewski further admitted that although the MRI tests had minimal findings, he would insert subjective, not objective, findings of pain. Dr. Lesniewski also admitted that he knew that by inserting this language he would also aid the LIRR patients in receiving an occupational disability annuity under the RRA. Agent Del Favero further testified that Dr. Lesniewski stated he charged LIRR patients a fee ranging from \$850.00 to \$1,000.00 for fraudulent assessments and narratives. Dr. Lesniewski's signed statement, with hearsay evidence redacted, was entered into evidence in the trial.

14. On behalf of the U.S. Government, Dr. Otis Alton Barron, Jr., an orthopedic surgeon, testified as an expert medical witness at the trial. Dr. Barron testified that he reviewed medical reports completed by Dr. Lesniewski, MRI reports and other tests results. Dr. Barron found that Dr. Lesniewski's diagnoses contradicted the objective evidence. Dr. Barron further testified that there was no evidence of physical examinations to support Dr. Lesniewski's diagnoses. In Dr. Barron's opinion, Dr. Lesniewski did not provide "meaningful" treatments. Dr. Barron also testified that in some cases, some impairments were non-disabling and could, in most cases, be treated.

15. On August 6, 2013, based on testimony and evidence including that summarized above, Dr. Lesniewski was convicted of one count of conspiracy to commit mail fraud, wire fraud, health care fraud, and conspiracy to defraud the RRB. Dr. Lesniewski was also convicted of two counts of



health care fraud, two counts of mail fraud, and four counts of wire fraud.

16. Section 5 of the Railroad Retirement Act requires that an application for any payment under the Act shall be made and filed in such manner and form as the Board may prescribe.

17. Dr. Lesniewski recommended more than 130 LIRR employees for disability benefits under the RRA. As Dr. Lesniewski was convicted of conspiracy to defraud the RRB, the Board therefore finds that any application by any applicant of at least age 50 with at least 20 years of creditable railroad service which includes medical evidence supplied by Dr. Lesniewski is invalid and must be re-filed.

#### ARTICLE III. DIRECTIONS TO AGENCY STAFF

1. The Director of Programs shall review the claims of Long Island Rail Road pension recipients who are currently receiving an annuity under the Railroad Retirement Act on the basis of disability, and shall identify the claims filed at age 50 or later with 20 years of railroad service which considered medical evidence from Dr. Lesniewski. Disability annuities are converted to retirement annuities based on age when the annuitant attains "full retirement age" as defined under the Social Security Act.

2. The Director of Programs shall notify each employee annuitant that pursuant to this Order, the employee annuitant's payment will end the last day of the month following the third month following the date of the notice. Where the employee annuitant has been determined to be entitled to Medicare, the employee annuitant shall be notified that Medicare entitlement will end as well. Where a spouse annuity has been awarded, the spouse annuitant shall be notified that payment will end with the month the employee annuity payment ends.

3. The Director of Programs shall notify each employee annuitant that if he or she believes that he or she is disabled or is otherwise eligible for an age and service annuity, a new application may be filed. In a determination based on a new application, the Director of Programs shall not consider any evidence furnished by Dr. Lesniewski.

All benefit determinations will be made under the law on the basis of the new application, except that an employee annuity applicant determined to have a "current connection" as defined by the Railroad Retirement Act at the time of the initial application shall be determined to have retained the current connection at the time a new application is filed under this Order.

4. Without regard to whether the employee annuitant pursues an administrative appeal of the termination of the disability annuity based on Dr. Lesniewski's evidence, or files a new application based on current evidence, payments for months prior to the month of termination of entitlement based upon the first application shall not be reopened.

**ARTICLE IV. DELEGATION OF AUTHORITY**

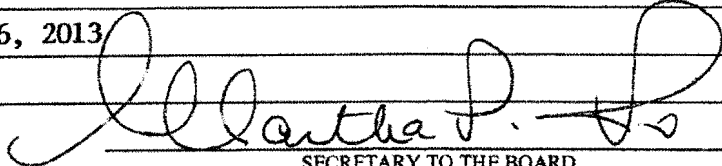
The Director of Programs is authorized to issue such internal agency procedure and guidance as necessary to implement this Order. # # # #

THIS FORM IS TO BE USED ONLY BY THE SECRETARY TO THE BOARD OR AS OTHERWISE SPECIFICALLY DIRECTED BY THE BOARD.

FORM NO. G-21 (9-83)  
UNITED STATES OF AMERICA  
RAILROAD RETIREMENT BOARD  
TRANSCRIPT OF BOARD ORDERS

TRANSCRIPT NO.  
3-13  
PAGE 1 OF 20 PAGES  
DATE TRANSCRIPT RELEASED  
October 23, 2013

I CERTIFY THAT THE FOLLOWING IS A TRUE AND CORRECT TRANSCRIPT  
OF BOARD ORDER(S) NUMBERED 13-33 to 13-54, incl. & B.C.D. 13-18 to 13-32, incl.  
ISSUED BY THE BOARD ON September 26, 2013

  
SECRETARY TO THE BOARD

Adopted the following Board Orders:

B.O. 13-33

TERMINATION OF DISABILITY ANNUITIES AWARDED BASED ON MEDICAL EVIDENCE FROM DR. PETER AJEMIAN

**ARTICLE I. PURPOSE.**

The Railroad Retirement Board (RRB) hereby establishes the policy set forth in this Order to govern the adjudication of all disability annuities paid under section 2(a) of the Railroad Retirement Act, where the decision that the applicant is disabled was based in whole or in part upon evidence furnished by Dr. Peter Ajemian. The purpose of this policy is to protect the Railroad Retirement Account from fraudulent claims while ensuring payment of valid disability claims.

**ARTICLE II. FINDINGS.**

A. In section 7 of the Railroad Retirement Act, Congress granted to the Railroad Retirement Board all powers and duties necessary to administer the Railroad Retirement Act. Congress declared in that provision that decisions by the Railroad Retirement Board upon issues of law and fact relating to annuities shall not be subject to review by any other administrative or accounting officer, agent or employee of the United States. Further, by incorporating section 5 of the Railroad Unemployment Insurance Act, section 7 requires that findings of fact and conclusions of law of the Board in the determination of any claim for benefits shall be binding and conclusive for all purposes and upon all such administrative or

accounting officer, agent or employee.

B. Pursuant to the authority granted by section 7 of the Railroad Retirement Act, the Railroad Retirement Board makes the following findings of fact and conclusions of law:

1. The Long Island Rail Road, a covered railroad employer under the Railroad Retirement Act, had established a private pension plan for employees which provided for early retirement with a full pension at age 50 with 20 years of Long Island Rail Road service. This plan has subsequently been superseded by another. Long Island Rail Road retirees under this subsequent plan are not subject to this Order.

2. A substantial number of Long Island Rail Road employees who retired under the now replaced Long Island Rail Road pension plan also applied for an occupational disability annuity under section 2(a)(1)(iv) of the Railroad Retirement Act.

3. On October 27, 2011, the United States Attorney for the Southern District of New York filed fraud charges against two physicians and one of their office managers, two individuals (facilitators) acting as liaison between the physicians and applicants for disability annuities under the Railroad Retirement Act, and seven railroad retirement disability annuitants (including one of the physicians' liaisons) who were also recipients of Long Island Rail Road pensions. The U.S. Attorney charged that the physicians, facilitators and disability annuitants falsely claimed to be disabled at the time of early retirement under the Long Island Rail Road pension plan in order to receive extra benefits to which they were not entitled. Additional indictments were issued through September 2012, bringing the total number of defendants to 32.

4. On May 22, 2012, the United States Attorney for the Southern District of New York announced the creation of a Voluntary Disclosure and Disposition Program, which was offered to former Long Island Rail Road employees who were awarded a disability annuity under the Railroad Retirement Act. Employee annuitants who were accepted into the Program by the U.S. Attorney were required to sign

the following statement:

I hereby attest that in connection with my application for Railroad Retirement Board disability benefits, I or doctors or others on my behalf made what I understood to be false and/or misleading statements with respect to my health condition, ability to work, and/or my eligibility for RRB disability benefits. I declare under penalty of perjury that my statements in this document are true and correct, pursuant to Title 28, United States Code, Section 1746.

A total of 44 railroad retirement disability annuitants were accepted by the U.S. Attorney into the Voluntary Disclosure and Disposition Program.

5. On May 22, 2012, the Railroad Retirement Board issued Board Order 12-29, which set forth the processing of Agreements signed under the Voluntary Disclosure Program. Pursuant to Board Order 12-29, a disability annuitant who signed an Agreement was considered to have cancelled his or her disability application. Board Order 12-29 considered that payments made under the cancelled application were recovered by a compromise in exchange for information provided to the U.S. Attorney by the annuitant.

6. Fourteen former Long Island Rail Road employees who have pled guilty to making false statements regarding their abilities furnished medical evidence from Dr. Ajemian to support their benefit claims.

7. In the transcript testimony by Dr. Peter Ajemian in the guilty plea proceeding on January 18, 2013, in the case entitled United States of America v. Peter Ajemian, U.S. District Court, Southern District of New York, No. 11 Cr. 1091, Dr. Ajemian testified under oath that sometime about 2002 he began seeing large numbers of employees of the Long Island Rail Road, and during the period 2004 to 2008 he prepared narratives reciting a medical basis for disability annuity claims when "in truth and in fact these employees were not in fact disabled."

8. In a memorandum addressed to the Board dated February 1, 2013, entitled "Immediate Benefit

Termination of Disability Annuitants Affiliated with Dr. Peter J. Ajemian," the Inspector General of the Railroad Retirement Board cited the unreported case of United States of America v. Danny Joe Dillard, No. 10-2672, (U. S. Court of Appeals, Eighth Circuit, August 3, 2011). The Inspector General stated:

This opinion is relevant because [Dr.] Ajemian's clients acted illegally by causing to be submitted or knowingly submitting fraudulent medical documents to the RRB which were material to the RRB's adjudication process. In fact, Ajemian's fraudulent medical documentation formed the foundation of the RRB's decision to approve and pay these disability benefits. Since the RRB approved and paid these benefits based upon the annuitants' illegal actions, the RRB must immediately terminate benefits (including Railroad Medicare coverage, if applicable) for all annuitants whose disability awards were based upon Ajemian's fraudulent medical documentation.

It is imperative that the RRB take immediate action to terminate these benefits because failure to act will cost the RRB approximately \$2 million dollars (sic) per month in improper benefits.

In a later memorandum to the Board dated April 1, 2013, the Inspector General stated:

This memorandum reiterates, once again, my position that if [Dr.] Ajemian's name appears in any RRB disability application or on any supporting documentation, the entire RRB disability application is tainted by Ajemian's admitted fraud and is nullified in its entirety regardless of any other additional medical documentation by a different physician. It is my view that the benefits must be terminated without exception.

9. On May 24, 2013, the District Court sentenced Dr. Ajemian to eight years for conspiracy and health care fraud. The Board notes that Dr. Ajemian was ordered to make restitution of \$116.5 million.

In the Statement by the Court Regarding the Defendant's Sentence, the Court noted that Dr. Ajemian engaged in the charged offenses for more than 10 years, from 1997 to 2008. Dr. Ajemian submitted medical reports compiled for each claimant over a period of time during which he performed unnecessary or bogus medical tests and fabricated treatments and narrative paper work, all pre-planned and packaged to justify what essentially amounted to a predetermined recommendation that the employee was disabled.

10. Section 5 of the Railroad Retirement Act requires that an application for any payment under the Act shall be made and filed in such manner and form as the Board may prescribe.

11. As Dr. Ajemian admitted he provided false medical records in hundreds of cases, the Board therefore finds that any application by any applicant of at least age 50 with at least 20 years of creditable railroad service which includes medical evidence supplied by Dr. Ajemian is invalid and must be re-filed.

### **ARTICLE III. DIRECTIONS TO AGENCY STAFF**

1. The Director of Programs shall review the claims of Long Island Rail Road pension recipients who are currently receiving an annuity under the Railroad Retirement Act on the basis of disability, and shall identify the claims filed at age 50 or later with 20 years of railroad service which considered medical evidence from Dr. Ajemian. Disability annuities are converted to retirement annuities based on age when the annuitant attains "full retirement age" as defined under the Social Security Act.

2. The Director of Programs shall notify each employee annuitant that pursuant to this Order, the employee annuitant's payment will end the last day of the month following the third month following the date of the notice. Where the employee

annuitant has been determined to be entitled to Medicare, the employee annuitant shall be notified that Medicare entitlement will end as well. Where a spouse annuity has been awarded, the spouse annuitant shall be notified that payment will end with the month the employee annuity payment ends.

3. The Director of Programs shall notify each employee annuitant that if he or she believes that he or she is disabled or is otherwise eligible for an age and service annuity, a new application may be filed. In a determination based on a new application, the Director of Programs shall not consider any evidence furnished by Dr. Ajemian. All benefit determinations will be made under the law on the basis of the new application, except that an employee annuity applicant determined to have a "current connection" as defined by the Railroad Retirement Act at the time of the initial application shall be determined to have retained the current connection at the time a new application is filed under this Order.

4. Without regard to whether the employee annuitant pursues an administrative appeal of the termination of the disability annuity based on Dr. Ajemian's evidence, or files a new application based on current evidence, payments for months prior to the month of termination of entitlement based upon the first application shall not be reopened.

5. Where an employee annuitant has previously received a notice that his or her disability annuity payment has terminated, and that annuitant (and any spouse whose annuity entitlement has also been terminated pursuant to the employee annuitant's notice), requested reconsideration of the termination of payment, the Director of Programs is to issue the notice described in paragraphs 3 and 4 of this Article as a decision on the request for reconsideration. Where such an annuitant has not requested reconsideration, the Director of Programs is to issue a new decision in accordance with paragraphs 3 and 4 of this Article of this Order.

#### **ARTICLE IV. DELEGATION OF AUTHORITY**

The Director of Programs is authorized to issue such internal agency procedure and guidance as necessary to implement this Order.



B.O. 13-34

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 13-AP-0010, [REDACTED], A-  
\*\*\*-\*\*- [REDACTED]

The Board affirms and adopts the decision of the hearings officer that found that Mr. [REDACTED] did not dispute his compensation and earnings record within the four-year time frame specified in section 9 of the RRA. Accordingly, the Board denies Mr. [REDACTED] request to credit him with railroad service for the month of June 1981. The appeal is denied.

B.O. 13-35

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0068, [REDACTED], D-\*\*\*-\*\*-  
[REDACTED]

A majority of the Board finds that the hearings officer appropriately found that Ms. [REDACTED] requested and received a residual lump sum amount in lieu of her widow's annuity in 1993. A majority of the Board finds that there is insufficient evidence to show that Ms. [REDACTED] was not competent to request and retain the lump sum amount in lieu of the widow's annuity in 1993. The appeal is denied. LMO dissents with an opinion.

B.O. 13-36

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 13-AP-0006, [REDACTED], A-\*\*\*-\*\*-  
[REDACTED]

The Board finds that the hearings officer is correct that the administrative record, including Mr. [REDACTED] own testimony, indicates that he never had a break in substantial earnings for any 12 month period and engaged in work above the substantial gainful earnings level less than one year after leaving railroad employment. The Board finds that the hearings officer was correct in finding Mr. [REDACTED] not disabled for all regular work at step one of the disability evaluation process. The Board further finds that Mr. [REDACTED] argument on appeal is not persuasive since the administrative record clearly demonstrates his

ability to work and earn at levels of income over the substantial gainful activity level. The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 13-37

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0030, [REDACTED], A-\*\*\*\*-\*\*\*-  
[REDACTED]

Mr. [REDACTED] earnings from 2001 through 2007 were over the allowable earnings amount. The Board finds that the overpayment and penalty was calculated correctly, and agrees with the hearings officer's decision that Mr. [REDACTED] failed to use reasonable care with respect to notification that he was working and most importantly he failed to notify the Board of his earnings. Thus, the Board finds that Mr. Sparks was not without fault in causing the overpayment, he does not meet the first condition for waiver of recovery. Therefore, the Board affirms the decision to deny waiver of recovery of the overpayment.

The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

While waiver of recovery of the overpayment is not permissible and the appeal is denied, the Board recognizes that recovery of overpayment made to Mr. [REDACTED] at the proposed monthly rate of \$2,464.00 for a period of 48 months will result in the withholding of over ninety percent (90%) of his monthly annuity. Therefore, the Board refers this case to the Chief of the Treasury, Audit, Debt Recovery and Financial Systems Division of the Bureau of Fiscal Operations for review to determine if a more lenient repayment plan is permissible and if so, to offer such plan to Mr. [REDACTED]

B.O. 13-38

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 13-AP-0019, [REDACTED], MA-\*\*\*\*-\*\*\*-  
[REDACTED]

After review of the record and hearings officer's decision, the Board finds that Ms. [REDACTED] was without fault in causing the overpayment. Ms. [REDACTED] disclosed her work for the Treasury Department in her application and indicated that

she anticipated a PSP when she would retire in January 2010. When she received her CRS booklet, she sent the information to the RRB along with a cover letter and summary. The Board now turns to the second prong of the standard for waiver of recovery. In this case, there is no evidence to show that Ms. [REDACTED] relinquished a significant or valuable right or changed her position to her substantial detriment because of the error. Since recovery is not contrary to the purpose of the RRA nor is it against equity or good conscience. Ms. Greer does not meet the requirements for waiver of recovery of the overpayment. The appeal is denied.

B.O. 13-39

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0071, [REDACTED] A-\*\*\*-\*\*-  
[REDACTED]

After review of the evidence of record, a majority of the Board finds that Mr. [REDACTED] is not without fault in causing the overpayment of his annuity and therefore, he does not meet the first condition for waiver of recovery. As Mr. [REDACTED] raises no new argument on appeal to the Board, a majority of the Board agrees that the \$129,303.38 is recoverable from Mr. [REDACTED] but suggests that the Board offer Mr. [REDACTED] a very lenient repayment schedule in light of his limited family income. A majority of the Board affirms and adopts the decision of the hearings officer. The appeal is denied. LMO dissents.

B.O. 13-40

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0058, [REDACTED] A-\*\*\*-\*\*-  
\*\*- [REDACTED]

The Board finds that the overpayment for 2007 was properly calculated by the Office of Programs. After review of the evidence of record, the Board finds that Mr. [REDACTED] is not without fault in causing the overpayment of his annuity and therefore, he does not meet the first condition for waiver of recovery. As Mr. [REDACTED] raises no new argument on appeal to the Board, the Board finds that the correct amount of overpayment to Mr. [REDACTED] is \$8,105.88 and finds further that the overpayment and the accompanying penalty of \$690.07 are recoverable from Mr. [REDACTED]. Accordingly,

while the Board affirms the decision to deny waiver of recovery of the 2007 overpayment, the Board disagrees with the hearings officer as to the amount of the overpayment from reasons explained in the decision. The appeal is denied.

B.O. 13-41

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 13-AP-0017, [REDACTED], A-  
\*\*\*-\*\*-\*\*\*\*

Based upon the evidence of record and the hearings officer's review of Ms. [REDACTED] employment, the Board concurs with the hearings officer's findings in the case. The Board affirms and adopts the hearings officer's finding that Ms. [REDACTED] did not perform service for an employer covered under the Acts. Since L.P.M Holding Company, is not a covered employer, she cannot be credited with service or compensation under the Acts for the years 2001 through 2011. The appeal is denied.

B.O. 13-42

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 13-AP-0024, [REDACTED], A-\*\*\*-\*\*-  
[REDACTED]

The Board finds that Mr. [REDACTED] had ample notice of the appeal period and possessed previous experience of the general administrative appeals processes of the Board to understand the appeal time period. Further, the Board finds that he has not demonstrated that he had good cause for not timely filing a form HA-2 with the three-member Board. For these reasons, the Board dismisses Mr. [REDACTED] appeal as not timely filed. The appeal is dismissed.

B.O. 13-43

SELECTION OF ATTORNEYS IN THE OFFICE OF  
GENERAL COUNSEL

The Railroad Retirement Board (RRB) hereby establishes the policy set forth in this Order to govern the hiring of attorneys for positions in the RRB's Office of General Counsel. Up until this point, attorneys have been hired into the competitive civil service as prescribed below:

Section 7(b)(9) of the Railroad Retirement Act of 1974 as amended (RRA) [45 U.S.C. §231f(b)(9)] authorizes the RRB to "employ such individual[s] and provide for their compensation and expenses as may be necessary for the proper discharge of its functions" and provides further that "All positions to which such individuals are appointed, except one administrative assistant to each member of the Board, shall be in and under the competitive civil service and shall not be removed, or excepted therefrom." Section 12(1) of the Railroad Unemployment Insurance Act (RUIA) incorporates RRA section 7(b)(9) by reference for purposes of administration of the RUIA as well. Moreover, section 7(b)(9) of the RRA of 1974 carries forward identical language from section 10(b)(4) of the prior Railroad Retirement Act of 1937, as amended. Pursuant to these provisions, all attorney positions in the Office of General Counsel or predecessor offices have been filled through the competitive civil service.

The Office of Personnel Management (OPM) has determined that the RRB can no longer hire attorneys through the competitive process as provided for in section 7(b)(9) of the RRA. Nevertheless, it is critical to the administration of the RRA and RUIA to maintain a legal staff that is nonpartisan, nonpolitical and independent, as has been the case under the competitive civil service.

Accordingly, the RRB delegates to the General Counsel the authority to hire attorneys for positions in the Office of General Counsel subject to the guidelines and restrictions set out in this Board Order.

1. The General Counsel shall determine the selection of all candidates for hire for any attorney position in the Office of General Counsel through the excepted service process.

2. The General Counsel shall submit the name of a selected candidate to the three-member Board for approval. Only upon unanimous approval of the selection by the Board shall the candidate be hired.

3. For purposes of this Board Order, if the three-member Board chooses to modify or terminate the terms of this Board Order, such action must be

by unanimous consent. This Order shall not apply to any attorney hired under the competitive service by the Railroad Retirement Board for an attorney position in the Office of General Counsel prior to 2013.

The attached appendices provide additional information on this matter, including a discussion on the history of hiring attorneys on a competitive basis and the stakeholders' desire to preserve such practice.

Attachments:

Appendix A:

White Paper on the Railroad Retirement Board's Authority to Hire Attorneys in Competitive Service dated July 2012

Appendix B:

Stakeholders' letter dated December 28, 2012 addressed to the three-member Board of the Railroad Retirement Board, signed by W. Dan Pickett, Chairman of the Railroad Retirement Committee and Edward R. Hamberger, President and CEO of the Association of American Railroads.

B.O. 13-44

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 13-AP-0009, [REDACTED] A-\*\*\*-\*\*\*-  
[REDACTED]

On appeal to the Board, Ms. [REDACTED] argues that her disability onset date should go back to September 2008 when she was last insured. She argues that the lack of success of her business is evidence that she was suffering from post-traumatic stress disorder in 2007 and that her hand problems started before February 2009. These issues were not addressed when Ms. [REDACTED] case was previously reviewed and as a result, she did not know to provide medical evidence stemming from that period of time. As a result, the Board remands this case to the Bureau of Hearings and Appeals for a hearing on the merits to determine whether she was disabled for all substantial gainful activity prior to February 2009. The appeal is remanded.

B.O. 13-45

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0012, [REDACTED], A-\*\*\*\*-\*\*\*-  
[REDACTED]

In 2007 the Office of Programs determined the RRB did not have survivor jurisdiction because Mr. [REDACTED] did not have a current condition with the railroad industry. The decision that Mr. [REDACTED] did not have a current connection with the railroad industry became administratively final when he did not appeal that decision in 60 days. While the Board may reverse a jurisdiction decision when evidence is received by the Board indicating that the original decision was incorrect, the Board notes that Ms. [REDACTED] has not submitted evidence indicating that the original decision was incorrect. Rather, she argues that the current connection test itself is unconstitutional. As no evidence has been submitted that would indicate that the current connection determination made in 2007 was incorrect, the Board declines to reverse the jurisdiction determination and the appeal is dismissed.

B.O. 13-46

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 13-AP-0007, [REDACTED], A-\*\*\*\*-\*\*\*-  
[REDACTED]

Upon appeal to the Board, Mr. [REDACTED] argues that the hearings officer made his decision in haste and raises concerns regarding the timeliness of the hearings officer decision as well as how the decision was mailed. The Board notes that there is a significant amount of evidence in the record that the hearings officer had to review and analyze. Although process may have taken more time than Mr. [REDACTED] anticipated, the Board finds no evidence that anything inappropriate occurred on the part of the hearings officer.

Mr. [REDACTED] also argues on appeal that his 2008 decision should be reopened as he was unable to file a timely request for reconsideration because he was bedridden since 2004 and his mental capacity was diminished. This is the first time he raises the argument that the Board should consider a late reconsideration request regarding the decision on

his 2008 application due to incapacity. The record shows that Mr. [REDACTED] was self-employed making firearm accessories and working 40 to 60 hours per month in 2008 and 20 hours per month in 2007. There are also medical records from this period of time showing that he was able to maintain appointments and follow directions. As a result, the Board does not find that he has shown good cause to accept an untimely reconsideration request due to incapacity regarding the February 2009 decision. The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 13-47

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 13-AP-0002, [REDACTED], WA-\*\*\*-  
\*\*- [REDACTED]

The Board has reviewed the record and the hearings officers' decision regarding Ms. [REDACTED] request for waiver of recovery of the overpayment and finds that the hearings officer applied the correct statutes and regulations to the facts of this case. As Ms. [REDACTED] raises no new argument on appeal to the Board, the Board agrees with the hearings officer and finds that the overpayment in the amount of \$8,759.04 is recoverable from Ms. [REDACTED]. The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 13-48

**ORDER APPLYING RULING AS TO CREDITABILITY OF  
SERVICE PERFORMED FOR HIDE POWER & EQUIPMENT CO.  
WITHOUT RETROACTIVE EFFECT WITH RESPECT TO  
CONTRIBUTIONS ACCRUED PRIOR TO APRIL 7, 2011**

The opinion and recommendation of the General Counsel contained in his memorandum of September 9, 2013, (Legal Opinion L-2013- 22) relative to relief of Hide Power Equipment Co. from payment of contributions under the Railroad Unemployment Insurance Act is approved and adopted.

Pursuant to the recommendation therein, it is hereby ordered that the ruling of B.C.D. 11-49, holding Hide Power & Equipment Co. to be an employer covered under the Railroad Unemployment Insurance Act shall be applied without retroactive effect to the extent of relieving the company from



payment of contributions under the Act which had accrued prior to April 7, 2011.

B.O. 13-49

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 13-AP-0034, [REDACTED], A-\*\*\*-  
\*\*\*-[REDACTED]

The Board finds that Mr. [REDACTED] has not demonstrated that he had good cause for not timely filing a form HA-1 with the Bureau of Hearings and Appeals. The Board affirms and adopts the hearing's officer's decision that Mr. [REDACTED] did not have good cause for the late filing of his appeal and that he forfeited his right to a review of the reconsideration decision dated February 24, 2011. The appeal is denied.

B.O. 13-50

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0079, [REDACTED], A-\*\*\*-  
\*\*- [REDACTED]

The Board finds that based upon the hearings officer's residual functional capacity (RFC), Mr. [REDACTED] does not retain the ability to perform all parts of his past relevant work. The Board concurs with Mr. [REDACTED] argument on appeal and finds that the hearings officer's denial of Mr. [REDACTED] application at step 4 of the sequential evaluation process was inappropriate. It is the opinion of the Board that the hearings officer's analysis should have continued to step 5 where a determination of whether Mr. [REDACTED] can vocationally adjust to work other than his past relevant work should be made. Mr. [REDACTED] case is remanded to the hearings officer for additional findings consistent with this decision of the Board. The appeal is remanded.

B.O. 13-51

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0052, [REDACTED], A-  
\*\*\*-\*\*\*-[REDACTED] & A-\*\*\*-\*\*\*-[REDACTED]

Based on the evidence of record before the Board, including the submissions of additional evidence by Mr. [REDACTED], and the 33-page decision of the hearings officer which set forth in great detail of her findings and an exhaustive explanation of the

██████ overpayment calculations, the Board affirms and adopts the May 31, 2012 decision of the hearings officer. The appeal is denied.

B.O. 13-52

APPROVAL OF FUNDING IN THE AMOUNT OF \$400,000

Requisition Number 050013008 in the amount of \$400,000 to Digitize the OGC's Legal Opinions, is approved (13-BU-0013).

B.O. 13-53

APPROVAL OF FUNDING IN THE AMOUNT OF \$153,000

Requisition Number 160013027 in the amount of \$153,000 to provide additional funding for CGI training services for FMIS user training from July through September 2013, is approved (13-BU-0014).

B.O. 13-54

APPROVAL OF FUNDING IN THE AMOUNT OF \$609,279.24

Requisition Number 900013090 in the amount of \$340,264.20 for the renewal of the desktop services contract and requisition number 900013103 in the amount of \$269,015.04 for the yearly contract review of the RRB's Disaster Recovery services, is approved (13-BU-0015).

And adopted the following coverage rulings:

B.C.D. 13-18

COVERAGE DETERMINATION -MCM RAIL SERVICES, LLC (MCM)  
d/b/a BALTIMORE INDUSTRIAL RAILROAD

The evidence of record establishes that MCM is a rail carrier operating in interstate commerce. Accordingly, it is determined that MCM Rail Services, LLC, (MCM) d/b/a Baltimore Industrial Railroad became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. §231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act effective September 17, 2012, the date as of which

it commenced railroad operations and its 16 railroad employees were first compensated (13-CO-0013).

B.C.D. 13-19

COVERAGE DETERMINATION - HEART OF TEXAS RAILROAD, LP

The evidence of record establishes that HTR is a rail carrier operating in interstate commerce. Accordingly, it is determined that the Heart of Texas Railroad, LP (HTR) became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. §231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act effective January 29, 2013, the date as of which it commenced operations and its four employees were first compensated (13-CO-0016).

B.C.D. 13-20

COVERAGE DETERMINATION - PROGRESSIVE RAIL INCORPORATED d/b/a CRAB ORCHARD & EGYPTIAN RAILWAY (COER)

The evidence of record establishes that COER is a carrier operating in interstate commerce subject to STB jurisdiction. Accordingly, it is determined that COER is an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of December 20, 2012, the date it began operations (13-CO-0019).

B.C.D. 13-21

COVERAGE DETERMINATION - WOODLAND RAIL, LLC

The Board has held that Woodland Rail, LLC is functioning as a private carrier, and is not a rail carrier employer under the Acts administered by the Board (12-CO-0034).

B.C.D. 13-22

COVERAGE DETERMINATION - CHESSIE LOGISTICS COMPANY, LLC (CLC)

The evidence of record establishes that CLC is a carrier operating in interstate commerce subject to STB jurisdiction. Accordingly, it is determined that CLC is an employer within the meaning of

section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of January 21, 2013, the date it began operations (13-CO-0020).

B.C.D. 13-23

COVERAGE DETERMINATION - D&W RAILROAD, LLC (DWR)

The Board has held D & W Railroad Inc.'s (DWR) legal successor, is not an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act (13-CO-0018).

B.C.D. 13-24

COVERAGE DETERMINATION - OREGON INTERNATIONAL PORT OF COOS BAY (OIPCB)

The Board had held OIPCB not to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts (13-CO-0021).

B.C.D. 13-25 AND 13-25.1

COVERAGE DETERMINATION - MODOC NORTHERN RAILROAD (MNRR) AND MODOC RAILWAY AND LAND COMPANY (M&RL)

The evidence of record establishes that both MNRR and M&RL no longer possess the characteristics of an operating railroad company. The Board therefore finds that effective May 5, 2009, the date Union Pacific terminated the MNRR's contract and took back over the operation of the Modoc Line from Kalamath Falls, Oregon to Alturas, California, Modoc Northern Railroad and Modoc Railway and Land Company, LLC ceased being covered employers under the Railroad Retirement and Railroad Unemployment Insurance Acts (13-CO-0017).

B.C.D. 13-26

COVERAGE DETERMINATION - BUCKEYE EAST CHICAGO RAILROAD, LLC (BECR)

The evidence of record establishes that BECR is a carrier operating in interstate commerce subject to STB jurisdiction. Accordingly, it is determined that BECR is an employer within the meaning of

section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of December 16, 2012 the date it began operations (13-CO-0023).

B.C.D. 13-27

COVERAGE DETERMINATION - ARIZONA CENTRAL RAILROAD, INC.

The Board has held Arizona Central Railroad, Inc. ceased to be a covered employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on July 1, 1997, when rail operations were discontinued and were assumed by Clarkdale Arizona Central Railroad, LLC (13-CO-0025).

B.C.D. 13-27.1

COVERAGE DETERMINATION - NORTH CENTRAL OKLAHOMA RAILWAY, INC.

The Board has held North Central Oklahoma Railway, Inc. ceased to be an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on October 1, 1984. The corporation was not dissolved but is defunct and non-operational (13-CO-0025).

B.C.D. 13-27.2

COVERAGE DETERMINATION - R.J. CORMAN RAILROAD GROUP

The Board has held R.J. Corman Railroad Group and R.J. Corman Railroad Company/Bardstown Line is the same company with employer identification number (EIN). Kentucky Secretary of State records show that there was a name change (13-CO-0025).

B.C.D. 13-28

COVERAGE DETERMINATION - AIKEN RAILWAY COMPANY, LLC (AIKR)

The evidence of record establishes that AIKR is a rail carrier operating in interstate commerce. Accordingly, it is determined that Aiken Railway Company, LLC became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and its corresponding provision of the Railroad

Unemployment Insurance Act effective December 1, 2012, the date on which AIKR began operations (13-CO-0026).

B.C.D. 13-29

COVERAGE DETERMINATION - MICHIGAN AIR-LINE RAILWAY COMPANY (MALR)

The Board finds that effective December 31, 2011, the date that MALR last compensated employees, Michigan Air-Line Railway Company ceased being a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts (13-CO-0027).

B.C.D. 13-30

COVERAGE DETERMINATION - MAUMEE & WESTERN RAILROAD COMPANY (MAW)

The Board finds that effective December 28, 2012, the date of acquisition and consummation by MSO, Maumee & Western Railroad Corporation ceased being a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts (13-CO-0028).

B.C.D. 13-31

COVERAGE DETERMINATION - WTTN CORPORATION (WTTN)  
d/b/a WEST TENNESSEE RAILROAD CORPORATION (WTRC)

The evidence of record establishes that WTTN, d/b/a WTRC, no longer possesses the characteristics of an operating railroad company. The Board therefore finds that effective January 10, 2012, the date of dissolution, WTTN Corporation, d/b/a West Tennessee Railroad Corporation, ceased being a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts (13-CO-0033).

B.C.D. 13-32

COVERAGE DETERMINATION - CARRIZO GORGE RAILWAY, INC (CGRY)

The Board has held that Carrizo Gorge Railway, Inc. no longer possesses the characteristics of an operating rail carrier covered under the RRA and the RUIA. Effective December 20, 2012, the date CGRY assigned its operation rights to PIR, CGRY ceased being covered under the RRA and the RUIA (13-CO-0022).

THIS FORM IS TO BE USED ONLY BY THE SECRETARY TO THE BOARD OR AS OTHERWISE SPECIFICALLY DIRECTED BY THE BOARD.

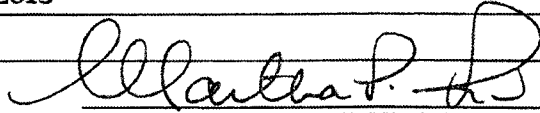
FORM NO. G-21 (9-83)  
UNITED STATES OF AMERICA  
RAILROAD RETIREMENT BOARD  
TRANSCRIPT OF BOARD ORDERS

TRANSCRIPT NO.  
2-13  
PAGE 1 OF 14 PAGES  
DATE TRANSCRIPT RELEASED  
July 16, 2013

I CERTIFY THAT THE FOLLOWING IS A TRUE AND CORRECT TRANSCRIPT

OF BOARD ORDER(S) NUMBERED 13-12 to 13-32, incl. & B.C.D. 13-07 to 13-17.3, incl.

ISSUED BY THE BOARD ON June 19, 2013



SECRETARY TO THE BOARD

Adopted the following Board Orders:

B.O. 13-12

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0009, [REDACTED], WA-\*\*\*-  
\*\*- [REDACTED]

Upon review of the hearings officer's decision and administrative record on appeal, the Board finds that the hearings officer was correct in her findings and determination that Ms. Patrick cannot qualify for a remarried widow's annuity. The Board finds that Ms. [REDACTED] claim for a remarried widow's annuity under the Railroad Retirement Act was properly denied. The evidence in the Administrative Record demonstrates that Ms. [REDACTED] cannot be considered disabled before May 30, 2009, her date of marriage, because she performed substantial gainful activity throughout 2009 and well into 2010. The Board affirms the decision of the hearings officer. The appeal is denied.

B.O. 13-13

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0023, [REDACTED], A-\*\*\*-\*\*\*-  
[REDACTED]

The Board reopens its decision of October 2, 2012 regarding Mr. [REDACTED] to correct the annuity beginning date. This reopened decision will supersede the Board's previous decision dated October 2, 2012 (B.O. 12-68).

Mr. [REDACTED] was receiving compensation under a wage continuation plan through March 4, 2008. The Board finds that April 1, 2008, is the first day of the month following in which Mr. [REDACTED] ceased

compensated service due to the wage continuation plan. Under section 2(e)(1) of the Railroad Retirement Act, April 1, 2008 is the first day Mr. [REDACTED] would be eligible to receive an annuity. However, a review of the file shows that Mr. [REDACTED] filed his application for a disability annuity on July 21, 2009. Section 5 of the Railroad Retirement Act provides in relevant part that a disability annuity cannot begin earlier than the day of the twelfth month before the month in which the application was filed. Accordingly, under the Railroad Retirement Act, the earliest annuity beginning date for Mr. [REDACTED] would be July 1, 2008. The appeal is granted.

B.O. 13-14

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0029, [REDACTED] WD-  
\*\*\*-\*\*- [REDACTED]

Ms. [REDACTED] is the surviving divorced spouse of [REDACTED] who died on April 21, 1995. Ms. [REDACTED] was first eligible for a surviving divorced spouse annuity when she attained age 60 in October of 2009. Consequently, October 1, 2009 is the latest of the two dates determined at step 1 of the process. Ms. [REDACTED] was deemed to have filed an application in April of 2011. April 1, 2011 is later than October 1, 2009 - the first day of the month in which Ms. [REDACTED] attained age 60. Consequently, the established annuity beginning date of April 1, 2011 is the earliest annuity date allowed by law. The appeal is denied.

B.O. 13-15

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0045, [REDACTED], A-\*\*\*-\*\*- [REDACTED]

The Board finds that the overpayment up to this point in the administrative process has been calculated using the fact that Mr. [REDACTED] would have had 360 service months up to and including the month of November 2007. Mr. [REDACTED] service record has been adjusted to reflect service credit from January 2007 through November of 2007 which brought him up to 360 service as he requested. The Board notes that the proper steps were taken to limit the overpayment to only those months he received an annuity that were counted as service months up to 360. This action resulted in the overpayment being



reduced from \$14,778.41 to \$8,621.52. Upon further review by the Board, it has been determined that in addition to the above consideration. Mr. [REDACTED] has reported earnings in the month of December 2007 that exceed the earnings an employee disability annuity can receive. Mr. [REDACTED] reported earnings of \$2,084.85 for the month of December 2007.

This additional earnings amount would cause Mr. [REDACTED] to be ineligible to receive an annuity accrual for December of 2007. Since Mr. [REDACTED] received an annuity payment for his December 2007 annuity accrual, the Board remands the case for a recalculation based upon the fact that the annuity accrual payment for December 2007 was also an overpayment since he received an annuity payment for that same month. The appeal is remanded to determine the proper overpayment amount.

B.O. 13-16

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0067, [REDACTED] - \*\*\*-\*\*\*-  
[REDACTED]

The Board finds that the overpayment of \$11,512.19 for 2005, 2006 and 2009-2011 was properly calculated. In addition, the Board finds that Mr. [REDACTED] was without fault regarding his first claim for unemployment benefits covering the period of July 1 through July 15, 2005 but recovery would not cause financial hardship or be against equity or good conscience. Therefore, he does not meet both conditions for waiver of recovery of the portion of the overpayment. Regarding the remainder of Mr. [REDACTED] overpayment, the Board finds that he is not without fault in causing the overpayment and therefore, he does not meet the condition for waiver of recovery. As Mr. [REDACTED] raises no further argument on appeal to the Board, the Board agrees with the hearings officer that the \$11,512.19 overpayment is recoverable from Mr. [REDACTED]. The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 13-17

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0053, [REDACTED], A-\*\*\*-\*\*\*-  
[REDACTED]

Due to the duration of Ms. [REDACTED] employment with

Recycler Core Company, the substance of her work, and the amount of her earnings, a majority of the Board agrees with the hearings officer's finding that Ms. [REDACTED] engaged in substantial gainful activity and therefore, she was not continuously disabled since before age 22. As a result, she is not eligible for a disabled child's annuity. The appeal is denied. LMO dissents with an opinion.

B.O. 13-18

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 13-AP-0008, [REDACTED], MA-  
\*\*\*-\*\*- [REDACTED]

The Board finds that Ms. [REDACTED] had ample notice of the appeal period and possessed previous experience of the general administrative appeals processes of the Board to understand the appeal time period. Further, the Board finds that she has not demonstrated that she had good cause for not timely filing a form HA-2 with the three-member Board. For these reasons, the Board dismisses Ms. [REDACTED] appeal as not timely filed. The appeal is dismissed.

B.O. 13-19

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0079, [REDACTED] GRUBER, A-\*\*\*-  
\*\*- [REDACTED]

On appeal to the Board, Mr. [REDACTED] submits additional medical records from 2012. The hearings officer found that Mr. [REDACTED] met the disability requirement effective January 1, 1999 but that he was not entitled to a period of disability because he lacked the necessary qualifying quarters. The hearings officer properly cited 20 CFR \$404.130, \$404.131, and \$404.320 which discuss the qualifying quarters requirement for a period of disability. Because there is no dispute that Mr. [REDACTED] is currently disabled, the Board does not find Mr. [REDACTED] recent medical records or argument on appeal persuasive. As Mr. Gruber raises no other new arguments, the Board agrees with the hearings officer that Mr. [REDACTED] disability onset date is January 1, 1999 and he does not have the necessary qualifying quarters to be eligible for a period of disability. Therefore, his claim was properly denied. The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 13-20

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 13-AP-0026, [REDACTED], A-\*\*\*-  
\*\*- [REDACTED]

The Board finds that Mr. [REDACTED] has not demonstrated that he had good cause for not timely filing a request for reconsideration. The hearings officer properly found that Mr. [REDACTED] argument is based on events that are not persuasive in excusing a delay of almost two years in filing his request. The offered evidence does not rise to the level of providing good cause for failing to file his reconsideration request within the 60-day period required by the cited regulation. For the reasons stated above, the Board affirms and adopts the hearings officer's decision that denied Mr. [REDACTED] appeal. The appeal is denied.

B.O. 13-21

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0024, [REDACTED], A-\*\*\*-\*\*\*-  
[REDACTED]

It is the judgment of the majority of the Board that the hearings officer correctly found that Mr. [REDACTED] is not without fault in causing the overpayment. Mr. [REDACTED] provided no real evidence that he was misled by the RRB field representative besides his own claimed lack of understanding of the rules. Mr. [REDACTED] was provided with adequate written and oral notice about the earnings regulations and never called the RRB to inquire if he had any confusion about which earnings would qualify during this initial annuity year. Because a majority of the Board finds that Mr. [REDACTED] was at fault, waiver of recovery must be denied.

The Board has reviewed the administrative record and a majority of the Board finds that the hearings officer's decision and findings are supported by the evidence in the record. A majority of the Board affirms and adopts the decision of the hearings officer that Mr. [REDACTED] was overpaid \$15,059.00. The appeal is denied. LMO dissents with an opinion.

B.O. 13-22

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 13-AP-0016, [REDACTED] WA-  
\*\*\*-\*\*\*-[REDACTED]

The issue before the Board on appeal is whether Ms. [REDACTED] is receiving the proper annuity rate as a surviving divorced spouse under the Railroad Retirement Act. Upon review of the hearings officer's decision and the administrative record on appeal, the Board finds that the hearings officer was correct in his findings and determination that Ms. [REDACTED] cannot qualify for a higher annuity rate because she is currently receiving the highest rate allowed by law. The Board finds that Ms. [REDACTED] arguments on appeal are not relevant to the manner in which the law is applied and that an age reduction must be applied to her Survivor Tier I Primary Insurance Amount of \$2,364.90 which results in an annuity rate of \$1,690. The evidence in the Administrative Record demonstrates that Ms. [REDACTED] is receiving this payment rate. The administrative record further reflects that accrual payments were made to the bank account supplied by Ms. [REDACTED] and absent any evidence to the contrary, the Board properly paid Ms. [REDACTED] the accruals due to her. The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 13-23

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0060, [REDACTED] XA-\*\*\*-\*\*\*-  
[REDACTED]

Based on evidence in the record, in a decision dated July 18, 2012, the hearings officer determined in Ms. [REDACTED] was overpaid \$14,144.00 due to her receipt of a social security benefit while also receiving a railroad retirement divorced spouse annuity. The hearings officer further found Ms. [REDACTED] to be not without fault in causing the overpayment to occur. The Board agrees with the decision of the hearing officer. Having found Ms. [REDACTED] at fault in causing the overpayment to occur, waiver of recovery of the \$14,144.00 overpayment cannot be considered. See section 10(c) of the Railroad Retirement Act (45 U.S.C. 231i(c)). Waiver of recovery is not available

where the beneficiary is found to have been at fault in causing the overpayment. The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 13-24

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0038, [REDACTED]  
[REDACTED] A-\*\*\*-\*\*-1302

The evidence of record shows that Ms. [REDACTED] knew or should have been aware of her responsibilities as representative payee. The Board agrees with the hearing officer's decision that Ms. [REDACTED] actions render her not without fault in causing the overpayment. Having found Ms. [REDACTED] at fault in causing the overpayment to occur, waiver of recovery of the overpayment cannot be considered. See section 10(c) of the Railroad Act (45 U.S.C. 231i(c)). Waiver of recovery is not available where the beneficiary is found to have been at fault in causing the overpayment. Having found Ms. [REDACTED] at fault in causing the overpayment to occur, the Board need not consider whether recovery would be contrary to the purpose of the Act or would be against equity or good conscience. The appeal is denied.

B.O. 13-25

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0023, TOMMY J. DUNN, A-\*\*\*-\*\*-  
[REDACTED]

On appeal, Mr. [REDACTED] also argues that he should be entitled to additional benefits because he has a disabled daughter. Section 229 of the Board's regulation details the Social Security overall minimum guarantee which is the amount of total family benefits which would be paid under the Social Security Act if the employee's railroad service had been covered by that Act. In order to qualify for the overall minimum, the employee must be fully insured based on railroad and social security earnings at the time that he is found be disabled. To meet this requirement, Mr. [REDACTED] must have been credited with 20 quarters of coverage in 40 consecutive calendar quarters. See 20 CFR §229.20. The record shows that Mr. Dunn's 40 quarter-period begins January 1988 and ends December 1997 (Exhibit 17 through 19). Since Mr.

█████ disability onset date is subsequent to December 31, 1997, the overall minimum is not payable and no additional benefits are payable to him on the basis that he has a disabled daughter. Therefore, this argument on appeal is denied. The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 13-26

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0066, ██████████, A-\*\*\*-  
\*\*-█████

On appeal to the Board, Mr. ██████ challenges medical records in the administrative record. The hearings officer found that Mr. ██████ was no longer disabled because he was able to engage in substantial, gainful activity. She properly cited to 20 CFR §220.176 which states that a disability will end without a finding of medical improvement if he has engaged in substantial gainful activity. The Board does not find Mr. ██████ argument on appeal persuasive. As Mr. O'Gara raises no other new arguments, the Board agrees with the hearings officer that Mr. ██████ engaged in substantial gainful activity and therefore, his disability annuity and period of disability were properly terminated. The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 13-27

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 13-AP-0013, ██████████, WCA-\*\*\*-\*\*\*-  
█████

In this case, Ms. ██████ did not contact the RRB regarding filing an annuity, the Social Security Administration provided information regarding Ms. ██████ disability to the RRB. RRB policy states that every effort should be made to protect the interests of each child eligible for benefits (Field Operations Manual 420.20.2) and as a result, the RRB contacted Ms. Victory. The RRB sent Ms. ██████ a request letter and application and also sent a follow-up inquiry. There was no response to these inquiries and on September 18, 2007, efforts to contact her regarding possible submission of an application were abandoned. When Ms. ██████ did apply for an annuity in 2011, she was granted a

protected filing date of September 2007 based on the previous attempt to contact her. Since neither Ms. [REDACTED] nor her representative contacted the RRB regarding the filing of a child's disability prior to 2011, a majority of the Board finds no basis for establishing an earlier application date than her protected filing date of September 2007 and was not deterred from filing prior to that time. A majority of the Board affirms and adopts the decision of the hearings officer. The appeal is denied. LMO dissenting with an opinion.

B.O. 13-28

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0047, [REDACTED], SR., A-  
\*\*\*-\*\*- [REDACTED]

The Board has reviewed the administrative record and the hearings officer's decision. The Board finds that the hearings officer correctly cited the relevant law and regulations, thoroughly and accurately discussed the medical evidence of record, and made reasonable conclusions based on the medical evidence of record. The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 13-29

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0076, [REDACTED] A-\*\*\*-\*\*-  
[REDACTED]

The evidence of record shows that Mr. [REDACTED] knew or should have been aware of his responsibility to report his LPE earnings to the Board prior to the 2008 through 2011 overpayment. The Board agrees with the hearings officer that Mr. [REDACTED] failure to provide the required information renders him not without fault in causing the overpayment. Having found Mr. [REDACTED] at fault in causing the overpayment to occur, waiver of recovery of the overpayment cannot be considered. See section 10(c) of the Railroad Retirement Act (45 U.S.C. 231i(c)). Waiver of recovery is not available where the beneficiary is found to have been at fault in causing the overpayment. Having found Mr. [REDACTED] at fault in causing the overpayment to occur, the Board need not consider whether recovery would be contrary to the purpose of the Act or would be against equity or good conscience. The

appeal is denied.

B.O. 13-30

APPROVAL OF FUNDING IN THE AMOUNT OF \$2,011,340.01

Requisition Number 160013027, in the amount of \$2,011,340.01 to release the balance of funds for the initial contract award for the FMIS implementation and migration services, is approved (13-BU-0010).

B.O. 13-31

APPROVAL OF FUNDING IN THE AMOUNT OF \$7.5 MILLION

Requisition Number 200013013 in the amount of \$7.5 million. The additional funds will be used to fund performance of the SMAC through September 30, 2013, is approved (13-BU-0011).

B.O. 13-32

APPROVAL OF FUNDING IN THE AMOUNT OF \$520,000

Requisition Number 900013067 in the amount of \$520,000. The funds will be used for the purchase and installation of a virtual tape library (VTL), is approved (13-BU-0012).

And adopted the following coverage rulings:

B.C.D. 13-07

COVERAGE DETERMINATION - ADAMS-WARNOCK RAILWAY, INC.

The evidence of record establishes that AWRY is a carrier operating in interstate commerce subject to STB jurisdiction. Accordingly, it is determined that AWRY is an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of August 1, 2012, the date it began operations (13-CO-0007).



B.C.D. 13-08

COVERAGE DETERMINATION - DENVER & RIO GRANDE  
RAILWAY d/b/a DENVER RIO GRANDE RAILWAY, LLC

The evidence of record establishes that D&RGHF is a line haul rail carrier operating in interstate commerce. Accordingly, it is determined that the Denver & Rio Grande Railway Historical Foundation (D&RGHF) d/b/a Denver & Rio Grande Railroad, L.L.C., became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. §231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act effective May 26, 2009, the date as of which it commenced operations (13-CO-0008).

B.C.D. 13-09

COVERAGE DETERMINATION - APPALACHIAN RAILCAR  
SERVICES, INC.

The information contained in the file indicates that Appalachian Railcar Services (ARS) is not a common carrier, but operates as a private carrier which performs intraplant switching for a customer located exclusively in the company's industrial site. ARS does not hold itself out as providing services from this facility to any and all who would like to use it - the number of clients is finite, i.e., the power plant customer located at the client's own industrial site. Consistent with earlier decisions of the Board, we hold that Appalachian Railcar Services, Inc. is not an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts (13-CO-0009).

B.C.D. 13-10

NOTICE REFLECTING NAME CHANGE - ROGUE VALLEY  
TERMINAL RAILROAD CORPORATION

Name change from WCTU Railway Company & WCTU  
Railway, LLC effective March 15, 2013.

B.C.D. 13-11

EMPLOYEE SERVICE DETERMINATION - MICHAEL RENNICKE

Effective January 1, 2012, Mr. Rennicke was put on the payroll of PVR and his compensation will be

reported to the Board in accordance with section 9 of the Railroad Retirement Act. Thus, the issue for the Board to address is whether the evidence supports a conclusion that Mr. Rennicke was performing employee service prior to January 1, 2012. The evidence of record shows that between 2003 and 2011, Mr. Rennicke provided services for RDS and his compensation was reported on IRS Form W-2 for those years. Mr. Rennicke reported that he worked as a General Manager involved in warehouse management during that period. Mr. Rennicke stated that the change in work from RDS to PVR occurred when the operations manager for PVR retired and there was a need for him to become more directly involved in the railroads matters. Accordingly, beginning January 1, 2012, Mr. Rennicke became Vice President and General Manager of PVR and RDS.

Based on the facts as stated above, the Board finds that Mr. Rennicke's service for RDS, prior to beginning his service January 1, 2012 for PVR, did not constitute employee service under the Railroad Retirement and Railroad Unemployment Insurance Acts (13-CO-0006).

B.C.D. 13-12

COVERAGE DETERMINATION - BOMBARDIER TRANSPORTATION SERVICES USA CORPORATION (BTS)

Accordingly, it is determined that BTS will be an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of April 1, 2013, the date it began to compensate employees. See Rev Ruling 82-100, 1982-1 C.B. 155 (13-CO-0010).

B.C.D. 13-13

COVERAGE DETERMINATION - AMERICAN RAIL HERITAGE, LTD. d/b/a CRAB ORCHARD EGYPTIAN RAILROAD COMPANY (COER)

The Board finds that effective with the close of business December 19, 2012, the last day in which there were operations and employees had compensated service, American Rail Heritage, Ltd. d/b/a Crab Orchard and Egyptian Railroad Company, ceased being a covered employer under the RRA and the RUIA. Cf. Rev. Ruling 82-99, 1982.1 C.B. 154 (13-CO-0009).

B.C.D. 13-14

COVERAGE DETERMINATION - RG STEEL RAILROAD  
HOLDING, LLC.

The Board finds that effective with the close of business September 15, 2012, the day after the sale of assets and the date of the final payment of employee's salaries, RG Steel Railroad Holding, LLC ceased being a covered employer under the RRA and the RUIA (13-CO-0011).

B.C.D. 13-15

COVERAGE DETERMINATION - AFFTON TERMINAL SERVICES  
RAILROAD, LLC

The evidence of record establishes that Affton is a rail carrier operating in interstate commerce. Accordingly, it is determined that Affton Terminal Services Railroad, LLC became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and its corresponding provision of the Railroad Unemployment Insurance Act effective April 1, 2012, the date on which Affton began operations(13-CO-0012).

B.C.D 13-16

COVERAGE DETERMINATION - OHIO TERMINAL RAILWAY  
COMPANY (OTRC)

The evidence of record establishes that OTRC is a rail carrier operating in interstate commerce. Accordingly, it is determined that Ohio Terminal Railway Company (OTRC) became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. §231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act effective January 27, 2013, the date as of which it commenced railroad operations (13-CO-0014).

B.C.D. 13-17

COVERAGE DETERMINATION - ATLANTIC AND EAST COAST  
TERMINAL COMPANY

The Board had held the Atlantic and East Coast Terminal Company ceased being an employer under the jurisdiction of the Railroad Retirement and

Railroad Unemployment Insurance Acts of June 29, 2000, due to Articles of Dissolution filed with Florida Department of Stat Division of Operations (13-CO-0015).

B.C.D. 13-17.1

COVERAGE DETERMINATION - GENESSEE & WYOMING INDUSTRIES, INC.

The Board had held the Genessee & Wyoming Industries, Inc. name changed per Secretary of State to Genessee & Wyoming, Inc. Not a covered employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts. See B.C.D. 03-06, not covered (13-CO-0015).

B.C.D. 13-17.2

COVERAGE DETERMINATION - KNOX & KANE RAILROAD COMPANY

The Board had held the Knox & Kane Railroad Company ceased to be a covered employee under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on March 19, 2010 when Surface Transportation (STB) approved abandonment (13-CO-0015).

B.C.D. 13-17.3

COVERAGE DETERMINATION - RAILROAD CONCRETE CROSSTIE CORPORATION

The Board had held the Railroad Concrete Crosstie Corporation ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on September 22, 2000. Administration Dissolution by Florida Department of State of Corporations (13-CO-0015).

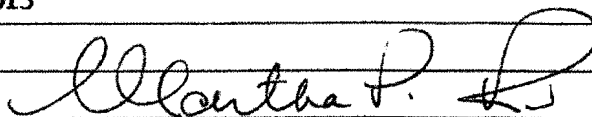
THIS FORM IS TO BE USED ONLY BY THE SECRETARY TO THE BOARD OR AS OTHERWISE SPECIFICALLY DIRECTED BY THE BOARD.

FORM NO. G-21 (9-83)  
UNITED STATES OF AMERICA  
RAILROAD RETIREMENT BOARD  
TRANSCRIPT OF BOARD ORDERS

TRANSCRIPT NO.  
1-13  
PAGE 1 OF 7 PAGES  
DATE TRANSCRIPT RELEASED  
July 16, 2013

I CERTIFY THAT THE FOLLOWING IS A TRUE AND CORRECT TRANSCRIPT

OF BOARD ORDER(S) NUMBERED 13-01 to 13-11, incl. B.C.D. 13-01 to 13-06, incl.  
ISSUED BY THE BOARD ON March 6, 2013



SECRETARY TO THE BOARD

Adopted the following Board Orders:

B.O. 13-01

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0062, [redacted] A-\*\*\*-\*\*- [redacted]

The Board finds that the hearings officer appropriately found that Mr. [redacted] retains the ability to perform unskilled sedentary work, with certain additional restrictions and therefore is not entitled to a disability annuity or a period of disability or early Medicare. The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 13-02

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0057, [redacted] A-\*\*\*-\*\*- [redacted]

After review of the record and the hearings officers' decision, the Board finds that the overpayment of \$12,136.14 for 2007 and 2009 was properly calculated. In addition, the Board finds that Mr. [redacted] is not without fault in causing the overpayment of his annuity and therefore, he does not meet the first condition for waiver of recovery. As Mr. [redacted] raises no new argument on appeal to the Board, the Board agrees with the hearings officer that the \$12,136.14 overpayment and the accompanying penalty of \$1,911 are recoverable from Mr. [redacted]. The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 13-03

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0048, ██████████ MA-\*\*\*-  
\*\*-██████

After review of the record and the hearings officer's decision, the Board finds the overpayment was properly calculated and that Ms. ████████ is not without fault in causing the overpayment of her annuity. Therefore, she does not meet the first condition for waiver of recovery. As Ms. ████████ raises no new argument on appeal to the Board, the Board agrees with the hearings officer that Ms. ████████ has been overpaid \$1,869.06 and the recovery may not be waived. The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 13-04

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0074, ██████████, A-  
\*\*\*-\*\*-██████

The Board finds that Ms. ████████ has not demonstrated that she had good cause for not timely filing a request for reconsideration. The hearings officer properly found that Ms. ████████'s argument is based on events that are not persuasive in excusing a two-year delay in filing a request for reconsideration. The offered evidence does not rise to the level of providing good cause for failing to file her request within the 60-day time period proscribed by the cited regulation. For reasons stated above, the Board affirms the hearings officer's decision that denied Ms. ████████ appeal which sought an extension of the time period to file her request for reconsideration. The Board's decision renders any discussion of the merits of the appeal moot. The appeal is denied.

B.O. 13-05

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0059, [REDACTED], A-\*\*\*-  
\*\*- [REDACTED]

The Board finds that the hearings officer appropriately found that Mr. [REDACTED] did not have medically determinable impairment which would preclude his performance of basic work activity prior to December 2009. The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 13-06

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0061, [REDACTED], A-\*\*\*-\*\*- [REDACTED]

The Board finds that the hearings officer appropriately found that Mr. [REDACTED]'s disability annuity beginning date should have been May 1, 2010 rather than June 1, 2010. The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 13-07

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0065, [REDACTED], XA-\*\*\*-\*\*-  
[REDACTED]

The Board finds that the hearings officer properly reviewed Ms. [REDACTED] claim that Medicare was being deducted from both her Railroad Retirement Annuity and her Social Security benefit and found no support in the record for this claim. After review of the record and the hearings officer's decision, the Board finds that the Divorced Spouse Annuity was properly calculated. The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 13-08

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0064, [REDACTED], MA-\*\*\*-  
\*\*- [REDACTED]

After review of the record and the hearings officer's decision, the Board finds that Ms. [REDACTED] did not submit a written statement indicating that

she intended to file an application for a spouse benefit nor did she contact the Railroad Retirement Board by phone or in person regarding her eligibility for a spouse annuity. As Ms. [REDACTED] raises no new argument on appeal to the Board, the Board agrees with the hearings officer that Ms. Ellis was not deterred from filing and her annuity beginning date of August 1, 2010 is correct. The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 13-09

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0037, [REDACTED] A-[REDACTED]  
[REDACTED]

Although the Board is not reopening the initial award based on 158 creditable military service months, the Board notes that Mr. [REDACTED] military service was again miscalculated in August 2008 and he was credited with another 24 months of military service for a total of 182. (Exhibit 8). He was notified of an increase in his annuity in a letter dated September 2, 2008. This calculation includes service from 1967 through 1969 but his first service month with a railroad employer is November 1971. As a result, these months do not qualify as "years of service" in accordance with section (3)(i)(2) of the RRA. 45 USC §231b(i)(2). Because Mr. [REDACTED] did not rely on the 2008 error in deciding to apply for his annuity in 2008, the Board reopens this adjustment and finds that those 24 months were erroneously credited to Mr. [REDACTED] and that they are not to be included in his creditable months of service. The Board reverses the decision of the hearings officer and refers this case to the Director of Retirement Benefits for appropriate action. The appeal is granted.

B.O. 13-10

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0055, [REDACTED] MA-[REDACTED]  
[REDACTED]

After review of the record and the hearings officer's decision, the Board finds that Ms. [REDACTED] annuity beginning date was properly determined and that she was not deterred from filing her application under Board regulations. Therefore, she is not entitled to an earlier



annuity beginning date as requested. As Ms. [REDACTED] raises no new argument on appeal to the Board, the Board agrees with the hearings officer that Ms. [REDACTED] annuity beginning date of April 1, 2010 is correct and the earliest date permitted by law. The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 13-11

APPROVAL OF FUNDING IN THE AMOUNT OF \$2.5 MILLION

Funding in the amount of \$2.5 million for requisition number 200013013 for the Speciality Medicare Administrative Contract (SMAC) for the period February 1, 2013 through March 27, 2013, is approved (13-BU-0003).

And adopted the following coverage rulings:

B.C.D. 13-01

COVERAGE DETERMINATION - CATERPARROTT RAILNET, LLC  
(CPR)

The evidence of record establishes that CPR is a carrier operating in interstate commerce subject to STB jurisdiction. Accordingly, it is determined that CPR is an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of June 3, 2012, the date it began operations (12-CO-0035).

B.C.D. 13-02

COVERAGE DETERMINATION - IOWA TRACTION RAILWAY  
COMPANY

The evidence of record establishes that Iowa Railway is a carrier operating in interstate commerce subject to STB jurisdiction. Accordingly, it is determined that Iowa Railway is an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of October 1, 2012, the date it began operations (13-CO-0002).

B.C.D. 13-03

COVERAGE DETERMINATION - PECOS VALLEY PERMAIN  
RAILROAD, LLC (PVR) d/b/a PECOS VALLEY SOUTHERN  
RAILWAY COMPANY

The evidence of record establishes that PVR is a carrier operating in interstate commerce subject to STB jurisdiction. Accordingly, it is determined that PVR is an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of September 1, 2012, the date it began operations (13-CO-0001).

B.C.D. 13-04

COVERAGE DETERMINATION - SLA Property Management,  
Ltd. (SLAP)

SLA Property Management, Ltd. (SLAP) - The Board finds that effective July 24, 2012 the date that Sisseton Milbank Railroad Company acquired all of SLAP's assets, SLAP, Ltd., ceased being a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts (13-CO-0003).

B.C.D. 13-05

COVERAGE DETERMINATION - PIC RAILROAD, LLC d/b/a  
COMSTOCK MOUNTAIN LION RAILROAD, INC. (CMRR)

The evidence of record establishes that PIC d/b/a CMRR is a carrier operating in interstate commerce subject to STB jurisdiction. Accordingly, it is determined that PIC is an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of November 1, 2011, the date it began compensating employees. Cf. Rev. Rul. 82-100, 1982-1 C.B. 155, wherein the IRS ruled that a company becomes an employer under the Railroad Retirement Tax Act on the date the company first hires employees to perform functions directly related to its carrier operations (13-CO-0005).

B.C.D. 13-06

NOTICE REFLECTING NAME CHANGE - ANN ARBOR RAILROAD,  
INC.

Name change from Ann Arbor Acquisition Corporation  
effective December 5, 2012.

THIS FORM IS TO BE USED ONLY BY THE SECRETARY TO THE BOARD OR AS OTHERWISE SPECIFICALLY DIRECTED BY THE BOARD.

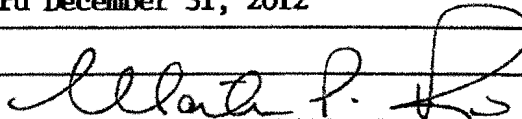
FORM NO. G-21 (9-83)  
UNITED STATES OF AMERICA  
RAILROAD RETIREMENT BOARD  
TRANSCRIPT OF BOARD ORDERS

TRANSCRIPT NO.  
5-12  
PAGE 1 OF 5 PAGES  
DATE TRANSCRIPT RELEASED  
01/31/13

I CERTIFY THAT THE FOLLOWING IS A TRUE AND CORRECT TRANSCRIPT

OF BOARD ORDER(S) NUMBERED 12-79 to 12-84, incl. & B.C.D. 12-42 to 12-49

ISSUED BY THE BOARD ON November 15 thru December 31, 2012



SECRETARY TO THE BOARD

Adopted the following Board Orders:

B.O. 12-79

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0031, [REDACTED] A-\*\*\*-  
\*\*-[REDACTED]

Given that the administrative record supports the hearings officer's finding that Mr. [REDACTED] retains the ability to perform work activity at the sedentary level and given that newly admitted evidence does not contradict that finding, a majority of the Board concludes that the hearings officer's finding that Mr. [REDACTED] retains the ability to perform work at the sedentary level of work activity is to be upheld. Based on a final finding at step 5 of the evaluation process, the hearings officer concluded that Mr. [REDACTED] was not disabled for all regular work. A majority of the Board agrees with this finding at step 5 based upon the number of jobs in existence as testified to by the vocational consultant. Since an application for an employee disability annuity under the Railroad Retirement Act is also an application for a period of disability under the Social Security Act, a majority of the Board must also conclude that Mr. [REDACTED] is not entitled to a period of disability under the provisions of the Social Security Act. The appeal is denied. Labor Member offers a dissenting opinion.

B.O. 12-80

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0046, [REDACTED] \*\*\*-\*\*\*-  
[REDACTED]

The Board upholds the hearings officer's decision that Mr. [REDACTED] was not without fault for the

overpayment and that waiver of recovery cannot be considered under section 2(d) of the Railroad Unemployment Insurance Act. The Board finds that the hearings officer correctly applied the law to the facts in the record and upholds the decision of the hearings officer. The appeal is denied.

B.O. 12-81

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0029, [REDACTED] WCA-\*\*\*-\*\*-  
[REDACTED]

While the evidence does show that Mr. [REDACTED] has not performed substantial gainful activity, it does not show that the reason for this is because he was prevented from doing so by a mental impairment which existed since before age twenty-two and which was accompanied by deficits in adaptive functioning which initially manifested before age twenty-two. As noted, the hearings officer denied Mr. [REDACTED] appeal at step 2 of the sequential evaluation process, finding that Mr. [REDACTED] failed to prove that he had an impairment or combination of impairment(s) that prevented him from working since before March of 1983 when he was age twenty-two through October of 2008, when he filed his application for a disabled child's annuity. The Board concurs with this finding. The appeal is denied.

B.O. 12-82

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0021, [REDACTED] A-\*\*\*-  
\*\*- [REDACTED]

For reasons discussed in the decision, a majority of the Board affirms the hearings officer's decision of February 24, 2012, which determined that Mr. [REDACTED] is not disabled for all substantial gainful work activity and is not entitled to a period of disability (disability freeze) and early Medicare coverage under section 216(i) of the Social Security Act. The appeal is denied. LMO provides a dissenting opinion.

B.O. 12-83

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0042, [REDACTED] A-\*\*\*-\*\*\*-  
[REDACTED]

The Board finds that Mr. [REDACTED] is not without fault in causing the overpayment of his annuity and therefore, he does not meet the first condition for waiver of recovery. The Board reaches this finding because Mr. [REDACTED] did not exercise the standard of reasonable care expected of a recipient of a Railroad Retirement Annuity. The Board agrees with the hearings officer that the net overpayment of \$11,592.65 and penalty of \$861.73 are recoverable from Mr. [REDACTED]. The Board affirms the decision of the hearings officer. The appeal is denied.

B.O. 12-84

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0040, [REDACTED] (REP.  
PAYEE FOR [REDACTED]), WA-\*\*\*-\*\*\*- [REDACTED]

Ms. [REDACTED] was not entitled to any of the monies in the December 1, 2011 check, her representative payee is not entitled to reimbursement for withholding from that check. That money was never Ms. [REDACTED] under the law and to "reimburse" Mr. [REDACTED] for the Medicare premium would be to give him money that was never payable to him. The Board finds that Mr. [REDACTED] is not entitled to reimbursement for the Medicare premium withheld from the annuity payment for November 2011 issued December 1, 2011, as the annuity was not payable. The appeal is denied.

And adopted the following coverage rulings:

B.C.D. 12-42

COVERAGE DETERMINATION - CENTRAL COLUMBIANA &  
PENNSYLVANIA RAILWAY, INC. (CCPR)

The Board had held the Central Columbiana & Pennsylvania Railway, Inc. ceased being a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective August 3, 2011, the date that CCPR was dissolved through bankruptcy (12-CO-0029).

B.C.D. 12-43

COVERAGE DETERMINATION - ROARING FORK RAILROAD  
HOLDING AUTHORITY (RFRHA)

The Board had held the Roaring Fork Railroad Holding Authority no longer possesses the characteristics of an operating railroad company. The Board, therefore, finds that effective November 15, 2001, the date of dissolution. RFRHA ceased being a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts (12-CO-0028).

B.C.D. 12-44

COVERAGE DETERMINATION - BIG SPRING RAIL SYSTEM,  
INC. (BSRS)

The Board finds the Big Spring Rail System is a rail carrier operating in interstate commerce. Accordingly, it is determined that BSRS, Inc. became an employer within the meaning of Section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. §231 (a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act effective August 27, 2012, the date BSRS first began training its employees (12-CO-0030).

B.C.D. 12-45

COVERAGE DETERMINATION - PERMAIN BASIN RAILWAYS,  
INC. (PBR)

The Board finds that the Permian Basin is under common control with a covered employer and provides service in connection with railroad transportation within the meaning of section 1(a)(1)(ii) of the RRA and the corresponding section of the RUIA. In accordance with the above discussion we find that Permian Basin Railways, Inc. became an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective May 16, 2011, the date Permian Basin's employees began providing direct services to covered employers (12-CO-0027).

B.C.D. 12-46

COVERAGE DETERMINATION - GEORGIA MIDLAND RAILROAD,  
INC. (GMR)

The Board had held that Georgia Midland Railroad, Inc., no longer possesses the characteristics of a

railroad employer. The Board, therefore, finds that effective December 16, 2009, the date of the closing of the Agreement, GMR, ceased being a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts (12-CO-0031).

B.C.D. 12-47

COVERAGE DETERMINATION - SAN ANTONIO CENTRAL RAILROAD, LLC. (SACR)

The Board finds that the San Antonio Central Railroad, LLC is a class III rail carrier operating in interstate commerce. According, it is determined that SACR is an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of September 1, 2012 the date as of which it first compensated employees (12-CO-0032).

B.C.D. 12-48

COVERAGE DETERMINATION - SISSETON MILBANK RAILROAD COMPANY (SMRC)

The evidence of record establishes that SMRC is a rail carrier operating in interstate commerce. Accordingly, it is determined that the Sisseton Milbank Railroad Company became an employer within the meaning of Section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act effective July 24, 2012, the date SMRC first began operations (12-CO-0033).

B.C.D. 12-49

COVERAGE DETERMINATION - SISSETON MILBANK RAILROAD, INC. (SMRI)

The Board therefore finds that effective July 24, 2012, the date that SMRC acquired all of SMRI's assets, Sisseton Milbank Railroad, Inc. ceased being a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts (12-CO-0033).



THIS FORM IS TO BE USED ONLY BY THE SECRETARY TO THE BOARD OR AS OTHERWISE SPECIFICALLY DIRECTED BY THE BOARD.

FORM NO. G-21 (9-83)  
UNITED STATES OF AMERICA  
RAILROAD RETIREMENT BOARD  
TRANSCRIPT OF BOARD ORDERS

TRANSCRIPT NO.  
4-12

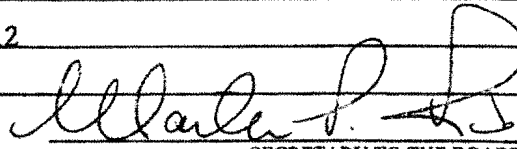
PAGE 1 OF 16 PAGES

DATE TRANSCRIPT RELEASED  
December 3, 2012

I CERTIFY THAT THE FOLLOWING IS A TRUE AND CORRECT TRANSCRIPT

OF BOARD ORDER(S) NUMBERED 12-48 to 12-78, incl. & B.C.D. 12-28 to 12-41

ISSUED BY THE BOARD ON November 14, 2012



SECRETARY TO THE BOARD

Adopted the following Board Orders:

B.O. 12-48

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0024, [REDACTED], MA-\*\*\*-  
\*\*- [REDACTED]

The factors which led the hearings officer to conclude that the work at issue was not self-employment are summarized in the last paragraph of page 5 of the hearings officer's decision and do not include any stipulation on the part of Ms. [REDACTED] that the work she performed was not self-employment. The Board finds that the hearings officer thoroughly and accurately assessed the evidence of record and affirms and adopts the decision. The appeal is denied. As noted, in the hearings officer's decision, work deductions should be removed from Ms. [REDACTED] annuity effective April 1, 2009. The case is referred to the Director of Retirement Benefits for appropriate action.

B.O. 12-49

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0015, [REDACTED], MA-\*\*\*-  
\*\*- [REDACTED]

The Board agrees with the hearings officer's determination that the record supports a finding that Ms. [REDACTED] was at fault in causing the overpayment. The Board finds that Ms. [REDACTED] knew or should have known that an increase in her social security benefit would require a reduction in the amount of her railroad retirement benefit. Having found Ms. [REDACTED] at fault in causing the overpayment to occur, waiver of recovery of the overpayment is not available. Based on the evidence of record, the Board affirms and adopts

Adopted the following Board Orders:

B.O. 12-48

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0024, ██████████, MA-\*\*\*-  
\*\*-██████

The factors which led the hearings officer to conclude that the work at issue was not self-employment are summarized in the last paragraph of page 5 of the hearings officer's decision and do not include any stipulation on the part of Ms. ██████████ that the work she performed was not self-employment. The Board finds that the hearings officer thoroughly and accurately assessed the evidence of record and affirms and adopts the decision. The appeal is denied. As noted, in the hearings officer's decision, work deductions should be removed from Ms. ██████████'s annuity effective April 1, 2009. The case is referred to the Director of Retirement Benefits for appropriate action.

B.O. 12-49

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0015, ██████████ MA-\*\*\*-  
\*\*-██████

The Board agrees with the hearings officer's determination that the record supports a finding that Ms. ██████████ was at fault in causing the overpayment. The Board finds that Ms. ██████████ knew or should have known that an increase in her social security benefit would require a reduction in the amount of her railroad retirement benefit. Having found Ms. ██████████ at fault in causing the overpayment to occur, waiver of recovery of the overpayment is not available. Based on the evidence of record, the Board affirms and adopts

the decision of the hearings officer concerning fault and denying waiver of recovery of the \$16,707.00 overpayment. The appeal is denied.

B.O. 12-50

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0026, [REDACTED] A-\*\*\*-  
\*\*- [REDACTED]

The Board affirms and adopts the decision of the hearings officer with respect to the overpayment of \$34,470.05 and affirms the assessment of a penalty deduction in the amount of \$34,470.05. However, in view of Mr. [REDACTED] and his wife's medical and financial situations, the Board remands this case to the Board's Debt Recovery Division to work out a lenient repayment method with Mr. [REDACTED] to recover the overpayment. The appeal is denied.

B.O. 12-51

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0041, [REDACTED] A-\*\*\*-  
\*\*- [REDACTED]

The Board concurs in the hearings officer's analysis that Mr. Humphreys is not without fault in causing the overpayment and due to this finding recovery of the overpayment may not be waived. Mr. [REDACTED] did not exercise the reasonable care expected of an annuitant under full retirement age in receipt of a retirement annuity. The Board concurs with the hearings officer's recalculation of the overpayment which found that the overpayment should have been assessed as \$14,003.00 instead of the previous figure of \$14,005.00. Additionally, we uphold the hearings officer's determination that Mr. [REDACTED] timely filing of his W-2 tax forms with the IRS for tax years 2007 and 2008 constitutes timely reports of his earnings under Social Security Rules. The Board further concurs with the hearings officer that there is not evidence of intent to receive additional benefits through fraudulent means by Mr. [REDACTED]. Given these findings, the Board affirms the hearings officer's revocation of the penalty. The appeal is denied.

B.O. 12-52

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0044, [REDACTED] A-\*\*\*-\*\*\*-  
[REDACTED]

The Board agrees with the hearings officer that the law does not allow for [REDACTED] (annuitant's son) to currently be taken into consideration when computing Mr. [REDACTED]'s annuity rate and that the special guaranty provision does not presently apply to his annuity. The Board finds the decision of the hearings officer to be in accordance with applicable law and affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 12-53

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0033, [REDACTED] A-\*\*\*-\*\*\*-  
[REDACTED]

After a thorough review of the record, the Board affirms the hearings officer's decision that Mr. [REDACTED] has failed to establish good cause for failing to file his form HA-1 appeal form within the 60-day period prescribed by regulation in order to properly appeal the denial of a waiver of recovery of an overpayment decision. Further, the Board affirms the findings of the hearings officer that determined that Mr. Becker did not demonstrate good cause for filing the HA-1 form late. The appeal is denied.

B.O. 12-54

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0018, [REDACTED] A-\*\*\*-  
\*\*-[REDACTED]

The Board finds that Mr. [REDACTED] knew or should have known to notify the Board of his employment and that if earnings were not reported timely he would be overpaid. Therefore, the Board agrees with the decision of the hearings officer that Mr. [REDACTED] was at fault in causing the overpayment to occur. Because he was at fault, waiver of recovery may not be granted. The Board affirms and adopts the decision of the hearings officer with respect to the overpayment \$9,415.97. The appeal is denied.

B.O. 12-55

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0039, ~~DEBRA BOOZE~~, MA-\*\*\*-\*\*\*-

It is the judgment of the Board that Ms. Booze is not without fault in causing the overpayment. Since Ms. [REDACTED] has been found to be not without fault, Ms. [REDACTED]'s financial situation cannot be considered in order to prevent recovery. For reasons stated in the decision, Ms. [REDACTED] does not have good cause for failing to report her correct earnings to the Board. Because the Board finds that Ms. [REDACTED] was at fault, waiver of recovery an overpayment of \$16,697.83 must be denied. The appeal is denied.

B.O. 12-56

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0011, [REDACTED], MA-\*\*\*-\*\*\*-

It is the judgment of the Board that Ms. [REDACTED] is not without fault in causing the remaining \$9,027.00 overpayment. Since Ms. [REDACTED] has been found to be not without fault as to that amount, Ms. Huey's financial situation cannot be considered in order to prevent recovery of the \$9,027.00. For the same reasons as stated in the decision. Ms. [REDACTED] does not have a good cause for failing to report her updated Last Pre-retirement earnings to the Board. Because the Board finds that Ms. [REDACTED] was at fault as far as the \$9,027.00, waiver of recovery must be denied for that amount. The appeal is affirmed in part and denied in part.

B.O. 12-57

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0020, [REDACTED], A-\*\*\*-\*\*\*-

The Board finds that Mr. [REDACTED] is not without fault in causing the overpayment of his annuity and therefore, he does not meet the first condition for waiver of recovery of an overpayment. The Board reaches this finding because Mr. [REDACTED] did not exercise the reasonable standard of care expected of a recipient of an RUIA benefit. The Board agrees with the hearings officer that \$16,292.23 for reimbursement of sickness benefits paid under the RUIA is recoverable from Mr. [REDACTED]. The Board

affirms and adopts the decision of the hearings officer.

B.O. 12-58

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0076, [REDACTED] A-\*\*\*-\*\*\*-  
[REDACTED]

The Board moves to the hearings officer's findings at Step 5 of the evaluation process. The hearings officer developed a detailed list of 16 work related functions that Mr. [REDACTED] would not be significantly limited in his ability to perform. Additionally, the hearings officer developed a list of 4 work related functions that Mr. [REDACTED] would only experience moderate limitations in performing. Given these detailed limitations, the vocational consultant cited to 4 different job categories that totaled 4,000 jobs in the local economy that could be performed by Mr. [REDACTED], considering his unskilled, sedentary work capability with additional limitations as listed by the hearings officer. The hearings officer concluded that these existing jobs represented a significant number which precluded Mr. [REDACTED] from being considered disabled for all regular work at step 5 of the evaluation process. Additionally, the Board agrees with the hearings officer that the 70% disability rating from the Veterans Administration awarded Mr. Evans does not compel a finding that he meets requirements for a disability annuity under the Railroad Retirement Act. Mr. [REDACTED] is also not entitled to a period of disability under the Social Security Act. The appeal is denied.

B.O. 12-59

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0034, [REDACTED] A-\*\*\*-  
\*\*\*-[REDACTED]

Mr. [REDACTED] had ninety days to file an application from the date he received the letter from the Board advising him of the need to file an application in order to receive a disability annuity. Mr. [REDACTED] failed to do so. Agency regulations provide that Mr. [REDACTED] inquiry regarding filing a disability can only preserve the annuity application if filed within 90 days of receiving a notice from the Board. Therefore, Mr. [REDACTED] was not entitled to a disability annuity beginning date of January 14,

2007 and the hearings officer properly awarded him a period of disability beginning September 1, 2008. The appeal is denied.

B.O. 12-60

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0044, ██████████, MA-\*\*\*-  
\*\*-██████

Ms. ██████████ was furnished adequate information regarding work and earnings and its effect on her entitlement to a widow's annuity at the time she filed her application for a disability annuity in April 2008. Thus, the Board finds that Ms. ██████████ knew or should have known to notify the Board of her excess earnings in 2008 and also knew that if earnings were not reported timely she would be overpaid. Therefore, the Board agrees with the decision of the hearings officer that Ms. ██████████ was at fault in causing the overpayment to occur. Having found Ms. ██████████ at fault in causing the overpayment to occur, waiver of recovery of the overpayment is not available. The Board affirms and adopts the decision of the hearings officer with respect to the overpayment in the amount of \$1,600.00. The appeal is denied.

B.O. 12-61

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0014, ██████████, A-\*\*\*-  
\*\*-██████

The Board upholds the hearing officer's decision that Mr. ██████████ was not without fault for the overpayment and that waiver of recovery cannot be considered under section 2(d) of the Railroad Unemployment Insurance Act. The Board finds that the hearings officer correctly applied the law to the facts in the record and upholds the decision of the hearings officer. The appeal is denied.

B.O. 12-62

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0016, ██████████ A-\*\*\*-\*\*-██████

The Board upholds the hearings officer's decision that Mr. ██████████ was not without fault for the overpayment and that waiver of recovery cannot be considered under section 2(d) of the Railroad

Unemployment Insurance Act. The Board finds that the hearings officer correctly applied the law to the facts in the record and upholds the decision of the hearings officer. The appeal is denied.

B.O. 12-63

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0022, [REDACTED] A-\*\*\*\*-  
\*\*- [REDACTED]

The Board finds that Mr. [REDACTED] is not without fault in causing the overpayment of his annuity and therefore, he does not meet the first condition for waiver of recovery. The Board reaches this finding because Mr. [REDACTED] did not exercise the reasonable standard of care expected of a recipient of a Railroad Retirement annuity. The Board agrees with the hearings officer that the \$28,309.40 overpayment stemming from payments made to the annuitant when he had unreported earnings in excess of the restriction is recoverable from Mr. [REDACTED]. The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 12-64

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0036, [REDACTED] A-\*\*\*\*-  
\*\*- [REDACTED]

The Board affirms the hearings officer's decision of March 28, 2012, which determined that Mr. [REDACTED] was not entitled to a period of disability (disability freeze) and early Medicare coverage. The appeal is denied.

B.O. 12-65

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0043, [REDACTED] \*\*\*\*-\*\*-  
[REDACTED]

The Board agrees with the hearings officer that the wide variety of explanations offered by Mr. [REDACTED] casts a pall on the credibility of any individual explanation. Additionally, the Board agrees with the hearings officer's finding that none of these explanations falls under the heading of "good cause" per 45 U.S.C. §§ 354(c), (d). The Board finds the evidence fails to show that Mr. [REDACTED] was qualified for unemployment benefits as of



September 21, 2010. The appeal is denied.

B.O. 12-66

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0050, [REDACTED] \*\*\*-\*\*\*-  
[REDACTED]

The Board finds that Mr. [REDACTED] has not demonstrated that he had good cause for not timely filing a request for reconsideration. Mr. [REDACTED] documentation and argument for an extension is based on events that occurred over one year prior to the deadline to file his request. The Board does not find his argument persuasive and finds that he has not offered evidence of good cause for failing to file his request within the 60-day time period prescribed by the cited regulation. For the reasons stated above, the Board affirms the hearings officer's decision that denied Mr. [REDACTED] appeal which sought an extension of the time period to file his request for reconsideration. The Board's decision renders any discussion of the merits of the appeal moot. The appeal is denied.

B.O. 12-67

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0007, [REDACTED] A-\*\*\*-\*\*\*-  
[REDACTED]

Based on Mr. [REDACTED] wage record, his date last insured was March 31, 2000. Therefore, based on a disability onset date of June 20, 2010, Mr. James does not meet the earnings requirement for a period of disability. The Board affirms the hearings officer's decision of November 29, 2011, which determined that Mr. [REDACTED] is not entitled to a period of disability (disability freeze). The appeal is denied.

B.O. 12-68

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0023, [REDACTED] A-\*\*\*-\*\*\*-  
[REDACTED]

The Board's findings that Mr. [REDACTED] testimony of severe pain is credible and is backed up by objective medical evidence leaves the Board with the clear conclusion that Mr. [REDACTED] is disabled for

all regular work activity at step 5 of the disability evaluation since the Board cannot identify jobs in significant numbers that Mr. [REDACTED] could perform, given his impairments, pain, and work restrictions. The Board finds that Mr. [REDACTED] disability onset date is February 14, 2007 as alleged. Mr. [REDACTED] was receiving compensation under a wage continuation plan through March 4, 2008. Thus, his annuity beginning date is April 1, 2008, the first day of the month following the month in which Mr. [REDACTED] ceased compensated service. See section 9(e)(1) of the Railroad Retirement Act. The appeal is granted.

B.O. 12-69

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0001, [REDACTED] A-\*\*\*\*-  
\*\*-\*\*

The Board reviewed the evidence in this appeal and has considered the arguments raised by Mr. [REDACTED]. Mr. [REDACTED] appeals his dismissal for his request for reconsideration, because it was filed outside of the 60-day time limit. A majority of the Board grants Mr. [REDACTED] appeal for the following reasons. Mr. [REDACTED] request was less than a month late. At the time his request was due, he was dealing with the death of his daughter. In addition, psychiatric reports that he has marginal ability in dealing with everyday affairs. A majority of the Board returns the case to the appropriate adjudicating unit with instructions to accept Mr. [REDACTED] request for reconsideration as timely filed. The appeal is granted.

B.O. 12-70

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0090, [REDACTED] A-  
\*\*\*-\*\*-\*\*

The Board notes that Ms. [REDACTED] attained age 50 in August of this year. (DOB August 1962). Under Board regulations, at that age she is considered a "person approaching advanced age." See 20 CFR 220.128(c). At such an age Medical-Vocational Rule 201.14 would mandate a finding of "disabled". Therefore, the Board finds Ms. [REDACTED] disabled for all regular employment with an onset date of August 1, 2012 and a period of disability under the

Social Security Act commencing that date. The file is returned to the Director of Programs for adjudication consistent with this decision. The appeal is denied in part and granted in part.

B.O. 12-71

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0051, [REDACTED], A-\*\*\*-\*\*- [REDACTED]

Mr. [REDACTED] overpayment was incurred in 2007 when his [REDACTED] security was increased. Therefore, the debt [REDACTED] repetition debt which is discharged in the bankruptcy proceeding. In accordance with Board policy, the Board is therefore dismissing Mr. [REDACTED] appeal without prejudice, due to the discharge of the debt in the bankruptcy.

B.O. 12-72

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0010, [REDACTED] \*\*\*-\*\*- [REDACTED]

Mr. [REDACTED] applied for sickness benefits in an application dated April 25, 2011. In a cover letter, he stated that his application for sickness benefits was based on the birth of a child. Mr. [REDACTED] argues in his appeal that the RUIA should have been revised over 18 years ago to correspond with the Family Medical Leave Act (FMLA) and that it discriminates based on gender. The FMLA is a separate Federal law that does not control nor contradict provisions in the RUIA. Because the purposes and goals of the FMLA and RUIA are different, the Board does not find Mr. [REDACTED] argument persuasive. Moreover, the Board must administer the law as enacted by Congress. The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 12-73

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0099, [REDACTED] A-\*\*\*-\*\*- [REDACTED]

The Board finds that Mr. [REDACTED] is not without fault in causing the overpayment of his annuity and therefore, he does not meet the first condition for waiver of recovery. The Board reaches this finding because Mr. [REDACTED] did not exercise the reasonable standard of care expected of a recipient of a

Railroad Retirement annuity. The Board agrees with the hearings officer that the \$47,563.38 overpayment is recoverable from Mr. [REDACTED]. The Board denies Mr. [REDACTED] request for waiver. However, a majority of the Board grants Mr. Benson's request for extended repayment of recovery. The appeal is remanded to the Debt Recovery Division to consider Mr. [REDACTED] request for an extended recovery repayment plan.

B.O. 12-74

APPROVAL OF FUNDING IN THE AMOUNT OF \$1,114,675

Funding in the amount of \$1,114,675 requisition number 900012106, which will provide funding for contractual services for the Medicare system improvements under IRMAA (12-BU-0017).

B.O. 12-75

APPROVAL IN THE AMOUNT OF \$623,033.64 FOR (2) IT REQUISITIONS

The Board approved requisition number 900012115, which provides funding in the amount of **\$290,396.16** for the yearly contract renewal of the RRB's Disaster Recovery services. Requisition 90012127 was also approved which will provide funding in the amount of **\$332,637.48** for the renewal of the desktop support services contract (12-BU-0018).

B.O. 12-76

APPROVAL OF FUNDING IN THE AMOUNT OF \$160,000

Funding in the amount of \$160,000 for requisition number 2000123032A, which will provide funding for the new Specialty Medicare Administrative Contractor (SMAC), is approved (12-BU-0024).

B.O. 12-77

APPROVAL OF RRB FORMS AA-1sum, AA-3sum and AA-17sum

RRB Form AA-1sum, Application Summary For Employee Annuity, RRB Form AA-3sum, Application Summary for (a Spouse Annuity/a Divorced Spouse Annuity/Medicare and AA-17sum, Applications Summary for (a Widow(er)'s Annuity/a Full-Time Young Mother/Father's Annuity a/Child's Annuity/a Disabled Child's Annuity /a Full-Time Student's Annuity/a Parent's Annuity/Medicare/a Medicare

Special Enrollment Period (12-GE-0051).

B.O. 12-78

APPROVAL OF RRB FORMS G-88A.1 AND G-88A.2

Forms G-88A.1 (Internet), Request for Verification of Date Last Worked and G-88A.2 (Internet), Notice of Retirement and Request for Service Needed for Eligibility (12-GE-0067).

And adopted the following coverage rulings:

B.C.D. 12-28

COVERAGE DETERMINATION - BROOKHAVEN RAIL, LLC

The Board finds that the Brookhaven Rail, LLC is a rail carrier operating in interstate commerce. Accordingly, it is determined that Brookhaven Rail, LLC became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and its corresponding provision the Railroad Unemployment Insurance Act effective December 2, 2011, the first day of the month in which Brookhaven began operations (12-CO-0017).

B.C.D. 12-29

COVERAGE DETERMINATION - SWAN RANCH RAILROAD, LLC

The Board finds that the Swan Ranch Railroad (SRR), LLC is a carrier subject to the jurisdiction of the Surface Transportation Board. Accordingly, it is determined that SRR is an employer with the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of January 2, 2012, the date of which it first began operations (12-CO-0018).

B.C.D. 12-30

COVERAGE DETERMINATION - ATLAS RAILROAD CONSTRUCTION, LLC

The Board has held that the Atlas Railroad Construction, LLC is not performing a service in connection with railroad transportation as that phrase has been interpreted by the Board. Accordingly, Atlas Railroad Construction, LLC is

not an employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act (11-CO-0014 - Issue #4).

COVERAGE DETERMINATION -

B.C.D. 12-31 BIRMINGHAM SOUTHERN RAILROAD COMPANY  
B.C.D. 12-32 BIRMINGHAM TERMINAL RAILWAY, LLC

Birmingham Southern Railroad Company (BSRC), Birmingham Terminal Railway, LLC (BRT) Based on the information summarized in the decision it indicated that due to the purchase of BSRC on January 31, 2012, the evidence of record establishes that BSRC no longer possesses the characteristics of an operating railroad company. The Board therefore finds that effective January 31, 2012, the effective date of the sale of BSRC, BSRC ceased being a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Act. Additionally, the Board finds that Birmingham Terminal Railway (BTR), LLC became a covered rail employer under the Railroad Retirement and Railroad unemployment Insurance Acts effective February 1, 2012, the date railroad operations began (12-CO-0015).

B.C.D. 12-33

COVERAGE DETERMINATION - MISSOURI & VALLEY PARK RAILROAD CORPORATION (MVPR)

The Board has held that the Missouri & Valley Park Railroad Corporation (MVPR) ceased being a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective November 13, 2009, the date that MVPR was dissolved (12-CO-0021).

B.C.D. 12-34

COVERAGE DETERMINATION - MOREHEAD & SOUTH FORK RAILROAD, CO., INC. (MHSF)

The Board has held that the Morehead & South Fork Railroad Co., Inc (MHSF) no longer possesses the characteristics of an operating railroad company. The Board, therefore, finds that effective February 5, 2010, the date operating rights were assigned to CLNA and employees were last compensated. MHSF ceased being a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts (12-CO-0022).

B.C.D. 12-35

COVERAGE DETERMINATION - FOSTER TOWNSEND RAIL LOGISTICS, INC. (FTRL)

The information contained in the file indicates that Foster Townsend Rail Logistics, Inc. (FTRL) is not a common carrier, but operates as a private carrier which performs intraplant switching for customers located exclusively in the company's industrial site. FTRL does not hold itself out as providing services from this facility to any and all who would like to use it - the number of clients is finite, i.e., the industrial clients located at the clients' own industrial site. Consistent with earlier decisions of the Board, we hold that FTRL, Inc. is not an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts (12-CO-0019).

B.C.D. 12-36

COVERAGE DETERMINATION - SANTA TERESA SOUTHERN RAILROAD, LLC (STSR)

The evidence of record establishes that Santa Teresa Southern Railroad (STSR) is a rail carrier subject to the jurisdiction of the Surface Transportation Board. Accordingly, it is determined that STSR is an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of June 1, 2012 the date as of which it first began operations (12-CO-0020).

B.C.D. 12-37

NOTICE REFLECTING NAME CHANGE - RG STEEL, LLC

Name change from SSP Railroad Holding, LLC effective April 27, 2011.

B.C.D. 12-38

COVERAGE DETERMINATION - MANNING RAIL, INC (MRI)

The evidence of record establishes that MRI is a carrier operating in interstate commerce subject to STB jurisdiction. Accordingly, it is determined that MRI is an employer within the meaning of

section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of May 4, 2012, the date it began operations (12-CO-0023).

B.C.D. 12-39

COVERAGE DETERMINATION - KINGMAN TERMINAL RAILROAD, LLC (KTRR)

The evidence of record establishes that KTRR is a rail carrier operating in interstate commerce. Accordingly, it is determined that Kingman Terminal Railroad, LLC became an employer within the meaning of Section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act effective July 1, 2012, the date KTRR first began compensating employees. Cf. Rev. Ruling 82-100, 1982-1 C.B. 155, wherein the IRS ruled that a company becomes an employer subject to RRTA taxes on the date the company first hires employees to perform functions directly related to its carrier operations (12-CO-0024).

B.C.D. 12-40

COVERAGE DETERMINATION - COLUMBUS & CHATTAHOOCHEE RAILROAD, INC. (CCR)

The evidence of record establishes that CCR is a rail carrier operating in interstate commerce. Accordingly, it is determined that CCR, Inc. became an employer within the meaning of Section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act effective June 4, 2012, the date CCR first began compensating employees. Cf. Rev. Rul. 82-100, 1982-01 C.B. 155, wherein the IRS ruled that a company becomes an employer subject to RRTA taxes on the date the company first hired employees to perform functions directly related to its carrier operations (12-CO-0025).



B.C.D. 12-41

NOTICE REFLECTING NAME CHANGE - GEORGIA & FLORIDA  
RAILWAY, LLC

Name change from Georgia & Florida Railway, Inc.  
effective October 1, 2011.

THIS FORM IS TO BE USED ONLY BY THE SECRETARY TO THE BOARD OR AS OTHERWISE SPECIFICALLY DIRECTED BY THE BOARD.

FORM NO. G-21 (9-83)  
UNITED STATES OF AMERICA  
RAILROAD RETIREMENT BOARD  
TRANSCRIPT OF BOARD ORDERS

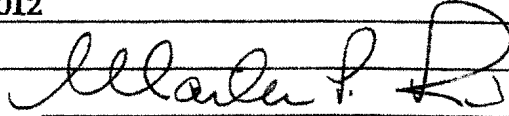
TRANSCRIPT NO.  
3-12  
PAGE 1 OF 20 PAGES  
DATE TRANSCRIPT RELEASED  
September 11, 2012

I CERTIFY THAT THE FOLLOWING IS A TRUE AND CORRECT TRANSCRIPT  
12-26 to 12-47, incl. & B.C.D. 12-12 to 12-27.7

OF BOARD ORDER(S) NUMBERED

ISSUED BY THE BOARD ON

August 8, 2012



SECRETARY TO THE BOARD

Adopted the following Board Orders:

B.O. 12-26

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0002, [REDACTED] A-\*\*\*-  
\*\*- [REDACTED]

The Board finds that Mr. [REDACTED] was no longer unable to work in all regular employment due to his impairment and that the termination of Mr. [REDACTED] disability annuity and period of disability due to work and earnings showing substantial gainful activity is correct. The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 12-27

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0088, [REDACTED] A-\*\*\*-  
\*\*- [REDACTED]

The Board finds that Mr. [REDACTED] was not without fault in causing the overpayment. The evidence in the administrative record indicates that Mr. [REDACTED] received information that made him aware of the requirement to report any event that would effect his annuity, such as work. Additionally, it is common sense that a railroad employee cannot simultaneously receive an annuity for being disabled from working at the railroad while he continues to work there. The Board finds that Mr. [REDACTED] failed to notify the agency of his return to work or of the fact that his annuity beginning date was incorrect. The appeal is denied.

B.O. 12-28

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0062, ██████████, A-\*\*\*\*-\*\*\*-  
██████████

The Board finds that the hearings officer appropriately found that Mr. ██████ satisfied steps 1 and 2 of the sequential disability evaluation and the Board substitutes its findings for those of the hearings officer at step 3 of the analysis. The Board further agrees with the hearing officer's finding at Step 4 of the process that Mr. ██████ is not able to perform his past relevant work based upon both the subjective complaints of pain and the objective medical findings in the record. At Step 5, the Board concurs with the hearings officer that for the period after December 31, 2007, Mr. ██████ does retain the residual functional capacity to perform sedentary work. Based upon this finding, the board further finds it is unnecessary to re-open Mr. ██████ prior application since it alleged the same disability onset date. The appeal is allowed in part and denied in part.

B.O. 12-29

This is the statement of the Railroad Retirement Board regarding agency processing of Agreements under the Long Island Railroad Voluntary Disclosure and Disposition Program of the United States Attorney for the Southern District of New York.

I. EARLY AGREEMENT FORM PROCESSING

A. DISABILITY ANNUITY ENTITLEMENT

1. Current Disability Application.

The Board will consider an executed Early Agreement form to be a request to cancel the disability application under section 217.26 of the Board's regulations, without regard to the provision requiring consent of other potential annuitants which is otherwise required by 217.26(b)(2). Cancellation renders all annuity payments based on that application to be erroneous. Recovery of the total amount of erroneous annuity payments will be determined to be compromised by agreement to \$0.00.

The Board will also discontinue the employee's participation in early Medicare based on the cancelled disability application. The Board makes no representation regarding recovery of payments made to medical providers as a result of the cancelled application.

2. Future Disability Application.

The Board will determine an applicant's entitlement to disability based upon any future disability annuity application filed in accordance with sections 2(a)(1)(iv) and (v) of the Railroad Retirement Act. In determining credibility of claimed disabling impairments in a future application, the Board will weigh the applicant's declaration under penalty of perjury that he or she made false or misleading statements with respect to his or her health condition in the cancelled disability annuity application.

The Board will determine that filing a new disability application voids the agreement to compromise recovery of the erroneous payment caused by cancellation of the earlier application. If the Board determines that the applicant meets the conditions for entitlement to a new disability annuity, no payment will be made to the annuitant until the entire amount of the erroneous payment under the cancelled application is recovered by full offset against the disability annuity payable under the later application. If the Board determines that the applicant does not meet the conditions for entitlement to a new disability annuity, the Board will nevertheless pursue recovery of the entire amount of erroneous payment as a debt due the United States.

Without regard to whether the Board determines the employee to be entitled to a disability annuity based upon a new application, or the recovery by the Board of erroneous payments based on the cancelled application, the Board will also notify the United States Attorney for the Southern District of New York that the claimant filed a new application for a disability annuity. The U.S. Attorney may take action as deemed appropriate.

B. AGE AND SERVICE ANNUITY ENTITLEMENT.

An employee who cancels his or her disability annuity by an Early Agreement form may file an application for any age and service annuity under section 2(a)(1) of the Railroad Retirement Act at any time after meeting the eligibility requirements provided by law. The Board will determine entitlement to the age and service annuity, and will not consider the application to void or to have any other effect upon the agreement to compromise recovery of the erroneous payments made under the cancelled disability annuity application.

II. STANDARD AGREEMENT FORM PROCESSING.

A. DISABILITY ANNUITY ENTITLEMENT

1. Current Disability Application.

The Board will consider an executed Standard Agreement form to be a request to cancel the disability application under section 217.26 of the Board's regulations, without regard to the provision requiring consent of other potential annuitants which is otherwise required by 217.26(b)(2). Cancellation renders all annuity payments based on that application to be erroneous. Recovery of the total amount of erroneous annuity payments will be determined to be compromised by agreement to 50 percent of the total disability annuity payments based on the cancelled application. The compromised amount will be recovered from the employee in installments as specified in the Agreement form, including directly by assignment from payments due to the employee under the Long Island Railroad pension plan. The Board will also discontinue the employee's participation in early Medicare based on the cancelled disability application. The Board makes no representation regarding recovery of payments made to medical providers as a result of the cancelled application.

2. Future Disability Application.

The Board will determine an applicant's entitlement to disability based upon any future disability annuity application filed in accordance with sections 2(a)(1)(iv) and (v) of the Railroad Retirement Act. In determining credibility of claimed disabling impairments in a future application, the Board will weigh the applicant's declaration under penalty of perjury that he or she made false or misleading statements with respect to his or her health condition in the cancelled disability annuity application. The Board will determine that filing a new disability application voids the agreement to compromise the amount of recovery of the erroneous payment caused by cancellation of the earlier application.

If the Board determines that the applicant meets the conditions for entitlement to a new disability annuity, no payment will be made to the annuitant until the entire remaining balance of the erroneous payment under the cancelled application is recovered by full offset against the disability annuity payable under the later application. If the Board determines that the applicant does not meet the conditions for entitlement to a new disability annuity, the Board will nevertheless pursue recovery of the entire remaining balance of erroneous payment as a debt due the United States. Without regard to whether the Board determines the employee to be entitled to a disability annuity based upon a new application, or the recovery by the Board of erroneous payments based on the cancelled application, the Board will also notify the United States Attorney for the Southern District of New York that the claimant filed a new application for a disability annuity. The U.S. Attorney may take action as deemed appropriate.

B. AGE AND SERVICE ANNUITY ENTITLEMENT.

An employee who cancels his or her disability annuity by a Standard Agreement form may file an application for any age and service annuity under section 2(a)(1) of the Railroad Retirement Act at any time after meeting the eligibility requirements provided by law. The Board will determine entitlement to the age and service annuity, and will not consider the application to void the agreement to compromise recovery at 50 percent of the erroneous payments made under the cancelled

disability annuity application. However, the Board will deduct the monthly installment repayment of the cancelled disability annuity from the employee's age and service annuity. The employee's repayment by assignment from the Long Island Railroad pension will cease effective with the month repayment deductions begin from the age and service annuity under the Railroad Retirement Act.

### III. CURRENT CONNECTION.

If the employee enters into either an Early Form or a Standard Form Agreement, the Board will not consider earnings from non-railroad employment performed between the employee's last date worked for the Long Island Railroad and the beginning date of any annuity based on a subsequent application as regular employment for purposes of determining whether the employee has a current connection pursuant to section 1(o) of the Railroad Retirement Act.

B.O. 12-30

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0005, [REDACTED] A-\*\*\*-  
\*\*- [REDACTED]

The hearings officer found that because he did not see a physician, his depression was not so severe that he was not able to care for his own needs. Although he did not see a physician, he sought treatment at a New York State Office of Mental Health licensed outpatient program, was seen by a licensed clinical social worker for therapy, and was prescribed medication by a nurse practitioner to treat depression, anxiety, and the inability to sleep. The regulations do not require that good cause can only be found if a serious illness is treated by a medical doctor. The records submitted support Mr. [REDACTED] claim of depression preventing him from filing a timely reconsideration request. Based on the Board's review of the record, the Board finds that Mr. [REDACTED] established good cause for his failure to file a timely appeal and therefore, waives the requirement of timeliness. The appeal is granted and the case is remanded to the Reconsideration Section for further action.

B.O. 12-31

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0006, [REDACTED] MA-  
\*\*\*-\*\*- [REDACTED]

Ms. [REDACTED] appealed the decision of the hearings officer, which held that she is at fault in causing the overpayment in the amount of \$9,566.34. The deadline for Ms. [REDACTED] to file her appeal with the three-member Board was November 29, 2011. Ms. [REDACTED] filed her appeal with the Board on January 19, 2012, almost two months late. She did not provide any explanation for not filing the appropriate appeal form within the allowable 60-day period. Accordingly, the Board dismisses Ms. [REDACTED] appeal for late filing. See, Railroad Retirement Board Regulations, 20 CFR 260.9(C). The appeal is dismissed.

B.O. 12-32

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0008, [REDACTED] A-\*\*\*-\*\*-  
[REDACTED]

The Board agrees with the decision of the hearings officer that Mrs. [REDACTED] is not eligible to receive a spouse annuity under the Railroad Retirement Act until Mr. [REDACTED], the employee upon whose service the spouse annuity is based, attains age 62. In the present case, December 2018 is the earliest date for Mrs. [REDACTED] to receive a spouse annuity under the law. The appeal is denied.

B.O. 12-33

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0003, [REDACTED] A-\*\*\*-\*\*-  
\*\*- [REDACTED]

The hearings officer properly defined medium work and took administrative notice of the numerous jobs which existed in both the national and local economy. The Board affirms the hearings officer's finding that the occupational titles set forth in the hearings officer's decision represent a significant number of jobs which bars Mr. [REDACTED] from being found to be disabled for all regular work. The board affirms the hearings officer's decision of November 17, 2011, which determined



that Mr. [REDACTED] was not entitled to a period of disability (disability freeze) and early Medicare coverage. The appeal is denied.

B.O. 12-34

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0025, [REDACTED], JR., A-\*\*\*-  
\*\*-0012

On appeal, Mr. [REDACTED] argues that his pain medication has side effects that make it difficult for him to work, stay awake, and concentrate. The Board has considered this argument but finds that the hearings officer pointed out and properly considered the different medications being taken by Mr. [REDACTED]. There is no evidence that his pain medications is so debilitating to make him unable to perform work at the level reflected by the hearings officer's findings. Mr. [REDACTED] does not meet the requirements for a disability annuity under the Railroad Retirement Act. Mr. [REDACTED] is also not entitled to a period of disability under the Social Security Act. The appeal is denied.

B.O. 12-35

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0019, [REDACTED], \*\*\*-\*\*-  
[REDACTED]

The Board upholds the hearings officer's decision that Mr. [REDACTED] was not without fault for the overpayment, that the fraud penalty should not be applied, and that waiver of recovery cannot be considered under section 2(d) of the Railroad Unemployment Insurance Act. The Board finds the hearings officer correctly applied the law to the facts in the record and upholds the decision of the hearings officer. The appeal is denied.

B.O. 12-36

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0053, [REDACTED] A-\*\*\*-\*\*-  
[REDACTED]

The Board finds that Mr. [REDACTED] was overpaid \$14,288.96 in railroad retirement annuities for the year 2006. Furthermore, Mr. [REDACTED] was not without fault in causing the overpayment and therefore, he does not satisfy the requirements for

waiver of recovery of the overpayment made to him. Finally, the Board finds that Mr. [REDACTED] was properly assessed a penalty of \$1,786.12 for his failure to properly report his earnings. The appeal is denied.

B.O. 12-37

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0089, [REDACTED], \*\*\*-\*\*\*-

Mr. [REDACTED] received unemployment insurance benefits under the Railroad Unemployment Insurance Act. However, the Board determined that Mr. [REDACTED] worked for a non-railroad employer during the same period for which he was paid unemployment benefits. As a result, Mr. [REDACTED] incurred two overpayments. The first overpayment was in the amount of \$1,037.00 and a second in the amount of \$1,088.00. For the reasons set forth in the decision of the hearings officer, the Board finds that Mr. [REDACTED] failed to show good cause for his failure to timely request reconsideration, and therefore forfeited his right to further review of both overpayments. The appeal is denied.

B.O. 12-38

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0028, [REDACTED] MA-\*\*\*-\*\*\*-

The Board finds that the hearings officer was accurate in his analysis that there was an overpayment and that the overpayment amount of \$7,773.49 is correct. The Board has reviewed the administrative record and finds that the hearings officer's decision, calculation and findings are supported by the evidence in the record. The Board affirms and adopts the decision of the hearings officer that Mrs. [REDACTED] was overpaid \$7,773.49 and that recovery of the overpayment should continue according to prior recovery efforts. The appeal is denied.

B.O. 12-39

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0004, [REDACTED] A-\*\*\*-\*\*\*-  
[REDACTED]

The hearings officer found that Mr. [REDACTED] did not have good cause for not filing a timely appeal. The hearings officer did not substitute her lay view of depression for that of a treating psychiatrist nor did she make any finding about whether Mr. [REDACTED] is disabled under the RRB. Based on the Boards review of the record, the Board agrees with the decision of the hearings officer that Mr. [REDACTED] did not establish good cause for his failure to file a timely appeal and therefore, he forfeited his right to appeal the decision of reconsideration. The appeal is denied.

B.O. 12-40

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0061, [REDACTED] A-\*\*\*-  
\*\*- [REDACTED]

The Board reviewed the record in the appeal of Ms. [REDACTED] from the decision of the hearings officer and has considered the argument and evidence contained therein. Ms. [REDACTED] appealed the decision of the hearings officer upholding the denial of her application for a disability annuity under the Railroad Retirement Act (RRA) (45 U.S.C. § 231 et seq.). The Board reverses the decision of the hearings officer for the time period beginning October 1, 2010. The appeal is grand in part.

B.O. 12-41

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0017, [REDACTED] MA-\*\*\*-  
\*\*- [REDACTED]

Ms. [REDACTED] appealed the hearings officer's denial of waiver of recovery of \$15,105.00 for an overpayment of spouse annuity benefits. The Board finds that Ms. [REDACTED] was without fault in causing the overpayment but that recovery of the overpayment is not against the purpose of the Act or against good equity or good conscience. The Board affirms the decision of the hearings officer denying the request for waiver. The appeal is denied.

B.O. 12-42

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0097, [REDACTED] A-\*\*\*-\*\*\*-

Ms. [REDACTED] had appealed the decision of the hearings officer, in which her application for a widow's annuity was denied because the deceased railroad employee did not have a current connection with the railroad industry as required by the Railroad Retirement Act (RRA) (45 U.S.C. § 231 et seq.). The Board agrees with the hearings officer that Mr. [REDACTED] did not have a current connection with the railroad industry at the time of his death. Consequently, the Board finds that no survivor benefits are payable to Ms. Merchant. The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 12-43

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0077, [REDACTED], A-\*\*\*-\*\*\*-

Mr. [REDACTED] applied for his annuity in 1998. The Agency had notice of his settlement agreement with the Canadian National/Illinois Central Railroad. That agreement credited Mr. [REDACTED] with additional service months for June through December 1998 and March and April 1999. The Agency added those months to Mr. [REDACTED] service record, but did not adjust his annuity beginning date until years later after his wife applied for an annuity on April 25, 2009. Based on the specific and unique circumstances of this case, a majority of the Board finds that recovery of the overpayment would be against equity and good conscience and that recovery should be waived. A majority of the Board reverses the decision of the hearings officer. The appeal is granted.

B.O. 12-44

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0027, [REDACTED] WD-\*\*\*-\*\*\*-

The Board affirms and adopts the decision of the hearings officer. The hearings officer properly cited RRB regulations regarding when a widow's

annuity begins. The hearings officer also found that Ms. [REDACTED] was not deterred from filing an application after her 60<sup>th</sup> birthday according to the Board's regulations. The hearings officer found that Ms. [REDACTED] lack of knowledge of the annuity and fragile mental state at the time did not entitle her to an earlier annuity beginning date when she did not meet the requirements for filing an application for an annuity as described in the RRB's regulations. The appeal is denied.

B.O. 12-45

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 12-AP-0032, [REDACTED] A-\*\*\*\*-  
\*\*- [REDACTED]

The Board concurs in the hearings officer's analysis that Mr. [REDACTED] overpayment and penalty provision were properly calculated and assessed given the evidence in the administrative record. Mr. [REDACTED] did not exercise the reasonable care expected of an annuitant in receipt of a disability annuity. Additionally, the Board upholds the hearings officer's determination that Mr. [REDACTED] failed to timely notify the Board of income, which lead to the proper assessment of a penalty of one month's annuity. The Board upholds the overpayment calculation of \$7,435.82 (overpayment plus penalty), and direct the overpayment be recovered. The appeal is denied.

B.O. 12-46

The Board approved requisition number 90012063, which will provide funding for contractual services (\$100,600) with Booz, Allen and Hamilton (BAH) to complete the project to incorporate the old dBase calculations into the ROC system (12-BU-0009).

B.O. 12-47

A majority of the Board approved the recommendation of RRB Form G-346sum, Employee's Certification Summary Form (12-GE-0029).

And adopted the following coverage rulings:

B.C.D. 12-12

COVERAGE DETERMINATION - PIEDMONT & NORTHERN RAILWAY, LLC (P&N)

The Board finds that the Piedmont & Northern Railway, LLC (P&N) is a rail carrier operating in interstate commerce. Accordingly, it is determined that Piedmont and Northern Railway, LLC became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and its corresponding provision of the Railroad Unemployment Insurance Act effective March 1, 2012, the date on which P & N began operations (12-CO-0002).

B.C.D. 12-13

NOTICE REFLECTING NAME CHANGE - WELLSBORO & CORNING RAILROAD, LLC

Name changed from Wellsboro & Corning Railroad Company, effective February 3, 2012.

B.C.D. 12-14

COVERAGE DETERMINATION - ARIZONA STATE LEGISLATIVE BOARD OF RAILWAY BROTHERHOODS

The Board has held the Arizona State Legislative Board of Railway Brotherhoods ceased from being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on October 30, 2010 (12-CO-0003).

B.C.D. 12-14.1

COVERAGE DETERMINATION - CANADIAN NATIONAL RAILWAY-NIAGRA FRONTIER

The Board has held the Canadian National Railway-Niagra Frontier ceased from being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on September 25, 1934 (12-CO-0003).

B.C.D. 12-14.2

COVERAGE DETERMINATION - NEW ENGLAND DEMURRAGE  
COMMISSION

The Board has held the New England Demurrage Commission ceased from being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 1961 (12-CO-0003).

B.C.D. 12-14.3

COVERAGE DETERMINATION - SUPERINTENDENTS'  
ASSOCIATION OF KANSAS CITY

The Board has held the Superintendents' Association of Kansas City ceased from being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on April 29, 1975 (12-CO-0003).

B.C.D. 12-14.4

COVERAGE DETERMINATION - TRANS-ACTION ASSOCIATES,  
INC.

The Board has held the Trans-Action Associates, Inc. ceased from being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on July 1, 1986 (12-CO-0003).

B.C.D. 12-15

COVERAGE DETERMINATION - CADDO VALLEY RAILROAD  
COMPANY (CVRC)

The Board has held the Caddo Valley Railroad Company (CVRC) ceased from being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on November 10, 2011 (12-CO-0004).

B.C.D. 12-16

COVERAGE DETERMINATION - SAGINAW BAY SOUTHERN RAILWAY COMPANY (SBS)

The Board has held the Saginaw Bay Southern Railway Company (SBS) ceased from being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 2011 (12-CO-0005).

B.C.D. 12-17

COVERAGE DETERMINATION - CYBERNETICS & SYSTEMS

The Board has held the Cybernetics & Systems ceased from being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on October 20, 2008 (12-CO-0008).

B.C.D. 12-18

COVERAGE DETERMINATION - HILTON & ALBANY RAILROAD, INC. (HAL)

The Board finds that the Hilton & Albany, Railroad, Inc (HAL) is a rail carrier operating in interstate commerce. Accordingly, it is determined that Hilton & Albany Railroad, Inc. (HAL) became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and its corresponding provision of the Railroad Unemployment Insurance Act effective January 1, 2012, the date on which HAL began operations (12-CO-0007).

B.C.D. 12-19

COVERAGE DETERMINATION - NORTHWESTERN PACIFIC RAILROAD COMPANY (NWPCO)

The Board finds that the Northwestern Pacific Railroad, company is a rail carrier operating in interstate commerce. Accordingly, it is determined that Northwestern Pacific Railroad, Company became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and its corresponding provision of the Railroad Unemployment Insurance Act effective July 13, 2011, the date on which NWPCO began operations (12-CO-0009).



B.C.D. 12-20

COVERAGE DETERMINATION - TYBURN RAILROAD COMPANY

The Board has held the Tyburn Railroad Company that effective with the close of business, August 31, 2011 the last day in which employees had compensated service. Tyburn Railroad company, ceased being a covered employer under the RRA and RUIA Cf. Rev. Ruling 82-99, 1982, 1 C.B. 154 (12-CO-0010).

B.C.D. 12-21

COVERAGE DETERMINATION - TYBURN RAILROAD, LLC

The Board finds that the Tyburn Railroad, LLC is a rail carrier operating in interstate commerce. Accordingly, it is determined that Tyburn Railroad, LLC became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and its corresponding provision of the Railroad Unemployment Insurance Act as of September 1, 2011, the date on which it first began operations (12-CO-0010 - ISSUE #2).

B.C.D. 12-22

COVERAGE DETERMINATION - SARATOGA AND NORTH CREEK, RAILWAY, LLC

The Board finds that the Saratoga and North Creek, Railway, LLC is a rail carrier subject to the jurisdiction of the Surface Transportation Board. Accordingly, it is determined that Saratoga & North Creek Railway, LLC is an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and its corresponding provision of the Railroad Unemployment Insurance Act as of July 18, 2011, the date as of which it first began operations (12-CO-0011).

B.C.D. 12-23

COVERAGE DETERMINATION - WISCONSIN NORTHERN  
RAILROAD COMPANY, LLC D/B/A PROGRESSIVE RAIL, INC.

The Board finds that Wisconsin Northern Railroad Company, LLC (WNRC)d/b/a/ Progressive Rail, Inc. (PGR) is a rail carrier operating in interstate commerce. Accordingly, it is determined that WNRC, LLC d/b/a PGR, Inc. became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231 (a)(1)(i)) and its corresponding provision of the Railroad Unemployment Insurance Act as of November 28, 2004, the date as of which it began operations (12-CO-0012).

B.C.D. 12-24

COVERAGE DETERMINATION - PORTLAND VANCOUVER  
RAILROAD, LLC (PVJR)

The Board finds that the evidence establishes that Portland Vancouver Railroad, LLC (PVJR) is a rail carrier operating in interstate commerce. Accordingly, it is determined that PVJR, LCC became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and its corresponding provision of the Railroad Unemployment Insurance Act effective February 2, 2012, the date on which PVJR began operations (12-CO-0016).

B.C.D. 12-25

COVERAGE DETERMINATION - DULUTH, MISSABE AND IRON  
RANGE RAILWAY (DMIR)

The Board has held the Duluth, Missabe and Iron Range Railway (DMIR) no longer possess the characteristics of an operating railroad company. The Board, therefore finds that effective December 31, 2011, the effective date of the Certificate of Merger filed with the State of Delaware, the DMIR ceased being covered employers under the Railroad Retirement and Railroad Unemployment Insurance Acts. (12-CO-0014).

B.C.D. 12-26

COVERAGE DETERMINATION - DULUTH, WINNIPEG & PACIFIC RAILWAY COMPANY

The Board has held the Duluth, Winnipeg & Pacific Railway Company (DWPR) no longer possess the characteristics of an operating railroad company. The Board, therefore finds that effective December 31, 2011, the effective date of the Certificate of Merger filed with the State of Delaware, the DWPR ceased being covered employers under the Railroad Retirement and Railroad Unemployment Insurance Acts. (12-CO-0014).

B.C.D. 12-27

COVERAGE DETERMINATION - BELT LINE RAILWAY COMPANY

The Board has held the Belt Line Railway Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on February 1, 1943, the date it merged with Atlantic Coast Line Railroad Company (12-CO-0013).

B.C.D. 12-27.1

COVERAGE DETERMINATION - JACKSONVILLE TERMINAL COMPANY

The Board has held the Jacksonville Terminal Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on February 16, 1978, due to voluntary dissolution (12-CO-0013).

B.C.D. 12-27.2

COVERAGE DETERMINATION - PRODUCTIVITY FUND OF THE PORT TERMINAL RAILROAD ASSOCIATION

The Board has held the Productivity Fund of the Port Terminal Railroad Association ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 1999 the date the bank termination of fund (12-CO-0013).

B.C.D. 12-27.3

COVERAGE DETERMINATION - ROSSLYN CONNECTING  
RAILROAD COMPANY

The Board has held the Rosslyn Connecting Railroad Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 1972, when parent company was terminated (12-CO-0013).

B.C.D. 12-27.4

COVERAGE DETERMINATION - SIOUX CITY TERMINAL  
RAILWAY COMPANY

The Board has held the Sioux City Terminal Railway Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on April 30, 1987, when corporation status expired (12-CO-0013).

B.C.D. 12-27.5

COVERAGE DETERMINATION - SIOUX FALLS STOCKYARDS  
COMPANY

The Board has held the Sioux Falls Stockyards Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on September 12, 2011 due to dissolution(12-CO-0013).

B.C.D. 12-27.6

COVERAGE DETERMINATION - THE MILWAUKEE ROAD, INC.

The Board has held The Milwaukee Road, Inc., ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 1985, the date merged out of business(12-CO-0013).

B.C.D. 12-27.7

COVERAGE DETERMINATION - TRITON TRANSPORTATION,  
INC.

The Board has held the Triton Transportation, Inc., ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts. See L-90-5.1, found not to be covered (12-CO-0013).

THIS FORM IS TO BE USED ONLY BY THE SECRETARY TO THE BOARD OR AS OTHERWISE SPECIFICALLY DIRECTED BY THE BOARD.

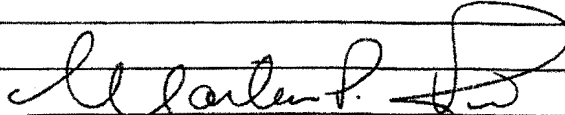
FORM NO. G-21 (9-83)  
UNITED STATES OF AMERICA  
RAILROAD RETIREMENT BOARD  
TRANSCRIPT OF BOARD ORDERS

TRANSCRIPT NO.  
2-12  
PAGE 1 OF PAGES  
DATE TRANSCRIPT RELEASED  
June 7, 2012

I CERTIFY THAT THE FOLLOWING IS A TRUE AND CORRECT TRANSCRIPT

OF BOARD ORDER(S) NUMBERED 12-13 to 12-25, incl. & B.C.D. 12-4 to 12-11

ISSUED BY THE BOARD ON March 28, 2012

  
SECRETARY TO THE BOARD

Adopted the following Board Orders:

B.O. 12-13

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-██████, ██████████ (FOR ██████████  
██████████, WCA-\*\*\*-\*\*-██████████

The Board finds that the hearing officer properly applied the Act to determine the annuity beginning date. Finally, the Board finds that there is no evidence in the administrative record to support a finding that any Board employee engaged in any conduct that deterred ██████████ from filing the application. The law and regulations have been properly applied in this case to award ██████████ ██████████ a disabled child's annuity effective with the earliest date allowed by law. The appeal is denied.

B.O. 12-14

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0022, ██████████, A-\*\*\*-\*\*-██████████

It is the opinion of the Board that the hearings officer accurately assessed the evidence of record and that such evidence indicates that Ms. ██████████ is engaging in regular employment and thus is not disabled regardless of the severity of her impairments. The appeal is denied.

B.O. 12-15

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0035, [REDACTED], A-\*\*\*-\*\*-  
[REDACTED]

Mr. [REDACTED] has insufficient quarters of coverage within the 40 quarter period beginning March 1988, the Board finds that the hearings officer correctly determined that Mr. [REDACTED], at the time of his disability onset in February 1998, did not meet the earnings requirement for insured status for a period of disability under the Social Security Act. The appeal is denied.

B.O. 12-16

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0081, [REDACTED], XA-\*\*\*-\*\*-  
[REDACTED]

The Board finds that Ms. [REDACTED] is not without fault in causing the overpayment of her annuity and therefore, she does not meet the first condition for waiver of recovery. The Board reaches this finding because Ms. [REDACTED] did not exercise the standard of reasonable care expected of a recipient of a Railroad Retirement Annuity. The Board agrees with the hearings officer that the \$2,992.10 overpayment is recoverable from Ms. [REDACTED]. The Board affirms the decision of the hearings officer. The appeal is denied.

B.O. 12-17

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0086, [REDACTED], A-\*\*\*-\*\*-  
[REDACTED]

The Board finds that Mr. [REDACTED] is not without fault in causing the overpayment of his annuity and therefore, he does not meet the first condition for waiver of recovery. The Board reaches this finding because Mr. [REDACTED] did not exercise the reasonable standard of care expected of a recipient of a railroad retirement annuity. The Board agrees with the hearings officer that the \$15,366.47 overpayment stemming from payments made to the annuitant when he had unreported earnings in excess of the restriction and \$2,251.77 penalty is recoverable from Mr. [REDACTED]. The Board affirms and

adopts the decision of the hearings officer. The appeal is denied.

B.O. 12-18

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0098, [REDACTED] MA-\*\*\*-\*\*-  
[REDACTED]

The Board finds that the evidence in the record and the lack of argument on appeal do not rebut the presumption that [REDACTED] (son) earnings represent substantial gainful activity in the years cited in the decision. Given that [REDACTED] has engaged in substantial work and this his earnings record demonstrates that he was able to engage in gainful employment after attaining age 22, [REDACTED] is not entitled to a spouse annuity based upon having a disabled child in her care. The appeal is denied.

B.O. 12-19

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0092, [REDACTED], MA-\*\*\*-\*\*-  
[REDACTED]

Mrs. [REDACTED] argues on appeal that she did not receive a letter that was sent to her by the Board dated May 28, 2009, advising her and Mr. [REDACTED] that she might be eligible for an annuity. While the Board did send a letter to Mrs. [REDACTED] advising her of her potential entitlement, the Board is not required to provide such notice. See Cole v. Railroad Retirement Board, 289 F.2d 65 (1961). The Board agrees with the decision of the hearings officer that the earliest annuity beginning date allowed for Mrs. [REDACTED] spouse annuity is September 1, 2010. The appeal is denied.

B.O. 12-20

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0006, [REDACTED] A-\*\*\*-\*\*-  
[REDACTED]

While this appeal was pending before the Board, Mr. [REDACTED] counsel submitted a document dated September 5, 2011 and entitled "Long Term Disability Claim Physician's Statement." The Board accepts such statement into evidence. This case is remanded to the hearings officer to issue a



supplemental decision discussing in detail the new evidence of record, as well as any other evidence of record, regarding Mr. ██████'s impairment of obesity.

B.O. 12-21

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0082, ██████ A-\*\*\*-  
\*\*-█████

The Board finds that Mr. ██████ was overpaid \$26,410.67 in railroad retirement annuities for the years 2008 and 2009. Furthermore, Mr. ██████ was not without fault in causing the overpayment and therefore, he does not satisfy the requirements for waiver of recovery of the overpayment made to him. Finally, the Board finds that Mr. ██████ was properly assessed a penalty of \$3,211.64 for his failure to properly report his earnings. The appeal is denied.

B.O. 12-22

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0040, ██████, A-\*\*\*-\*\*\*-  
█████

A majority of the Board finds that Mr. ██████ left his railroad job involuntarily and without fault. Mr. ██████ was constructively discharged, as he had no opportunity whatsoever to return to work for the railroad and had no choice but to take his pension after both his vacation and unemployment benefits ran out. A majority of the Board therefore, finds that Mr. ██████ meets the criteria for a deemed current connection. The decision of the hearings officer is reversed and this case is remanded to Programs for action consistent. The appeal is allowed. Management Member is dissenting.

B.O. 12-23

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0063, ██████  
█████, A-\*\*\*-\*\*\*-█████

The Board finds that the hearings officer accurately assessed the evidence of record and the Board agrees with the hearings officer's conclusion that the evidence indicates Mr. ██████ engaged in substantial gainful employment during

calendar years 1978, 1980 and 1985, and therefore is not entitled to a disabled child's annuity. The appeal is denied.

B.O. 12-24

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0065, [REDACTED] JR., A-\*\*\*-  
\*\*- [REDACTED]

The Hearings Officer issued a decision on July 6, 2011, and Mr. [REDACTED] appealed that decision to the Board August 8, 2011. By letter dated September 20, 2011, Mr. [REDACTED] attorney submitted 243 pages of medical records to the Board on appeal. Regulation of the Board at 20 CFR 260.9(e) provides that the appellant shall have no right to submit additional evidence upon final appeal to the Board. The Board declines to add the additional medical records to the Administrative Record in this case. If Mr. [REDACTED] believes that his condition has changed, he may file a new application. The Board affirms the hearings officer's decision of July 6, 2011, which determined the Mr. [REDACTED] was not entitled to a period of disability (disability freeze) and early Medicare coverage. The appeal is denied.

B.O. 12-25

APPROVAL OF RRB FORMS G-88p & G-88r

The following forms are hereby approved:

RRB Form G-88p, Employer's Supplemental Pension Report and RRB Form G-88-r, Request for Information About New or Revised Employer Pension Plan (12-GE-0002)

And adopted the following coverage rulings:

B.C.D. 12-4

COVERAGE DETERMINATION - ANTHRACITE RAILWAY, INC.

The Board had held the Anthracite Railway Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 1989, when Reading Northern took over the lines (12-CO-0001).

B.C.D. 12-4.1

COVERAGE DETERMINATION - BOSTON & MAINE RAILROAD  
TRAINMEN'S ASSOCIATION

The Board had held the Boston & Maine Railroad Trainmen's Association ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on April 29, 1964. Termination of Boston & Maine Railroad (12-CO-0001).

B.C.D. 12-4.1

COVERAGE DETERMINATION - BOSTON & MAINE RAILROAD  
TRAINMEN'S ASSOCIATION

The Board had held the Boston & Maine Railroad Trainmen's Association ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on April 29, 1964. Termination of Boston & Maine Railroad (12-CO-0001).

B.C.D. 12-4.2

COVERAGE DETERMINATION - CHICAGO PRODUCE TERMINAL  
COMPANY

The Board had held the Chicago Produce Terminal Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on March 31, 1976. When Chicago River & Indiana Railroad company terminated (12-CO-0001).

B.C.D. 12-4.3

COVERAGE DETERMINATION - CHICAGO, MADISON &  
NORTHERN RAILWAY COMPANY

The Board had held the Chicago, Madison & Northern Railway Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on February 28, 1982. The date it ceased operation (12-CO-0001).

B.C.D. 12-4.4

COVERAGE DETERMINATION - FORT DODGE, DES MOINES &  
SOUTHERN RAILWAY COMPANY

The Board had held the Fort Dodge, Des Moines & Southern Railway Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on November 1, 1995. When parent company Chicago & Northwestern was terminated (12-CO-0001).

B.C.D. 12-4.5

COVERAGE DETERMINATION - HOUSTON BELT & TERMINAL  
RAILWAY COMPANY

The Board had held the Houston Belt & Terminal Railway Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on August 14, 1991, with BA number 1020 being formed in its place with no employees (12-CO-0001).

B.C.D. 12-4.6

COVERAGE DETERMINATION - ORANGE TERMINAL  
ASSOCIATION

The Board had held the Orange Terminal Association ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on March 2, 1956. Parent company Orange & Northwestern Railroad Company was terminated (12-CO-0001).

B.C.D. 12-4.7

COVERAGE DETERMINATION - STOCK YARD DISTRICT  
AGENCY

The Board had held the Stock Yard District Agency ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 1976, when the parent company General Managers Association of Chicago terminated (12-CO-0001).

B.C.D. 12-4.8

COVERAGE DETERMINATION - MOUNT HOPE MINERAL  
RAILROAD COMPANY

The Board had held the Mount Hope Mineral Railroad Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 1976. Parent company assets were transferred to Conrail (12-CO-0001).

B.C.D. 12-5

COVERAGE DETERMINATION - COMMERCIAL TRANSLOAD OF  
MINNESOTA

The Board had held the Commercial Transload of Minnesota is performing trucking activities and falls within the trucking service exception contained in the Act. As this decision is specifically limited to the unique facts as set forth in the decision, this ruling should not arbitrarily be relied upon as precedent. (11-CO-0053).

B.C.D. 12-6

NOTICE REFLECTING NAME CHANGE - WISCONSIN &  
SOUTHERN RAILROAD, LLC

Name changed from Wisconsin & Southern Railroad Company, effective December 27, 2011.

B.C.D. 12-7

NOTICE REFLECTING NAME CHANGE - SOUTH CAROLINA  
CENTRAL RAILROAD COMPANY, LLC

Name changed from South Carolina Central Railroad Company, Inc, effective September 29, 2009.

B.C.D. 12-8

NOTICE REFLECTING NAME CHANGE - NORTH CAROLINA &  
VIRGINIA RAILROAD COMPANY, LLC

Name changed from North Carolina & Virginia Railroad Company, Inc, effective September 30, 2009.

B.C.D. 12-9

EMPLOYEE STATUS DETERMINATION - WARNER E.  
BIEDENHARN, JR.

This is the decision of the Railroad Retirement Board regarding the status of Warner E. Biedenbarn, Jr. an employee of a covered railroad employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Upon review, a majority of the Board finds that Mr. Biedenbarn is functioning as an employee of the United Transportation Union within the definitions of employee in sections 1(d)(1)(i)(A) and 1(d)(i)(B) of the RRA from his official retirement in October of 2006 to the present. Furthermore, a majority of the Board finds that the services performed by Mr. Biedenbarn for the United Transportation Union are within the definitions of employee in section 1(d)(1)(A) and 1(d)(1)(i)(B). The Labor Management's office provided a dissenting opinion.

B.C.D. 12-10

NOTICE REFLECTING NAME CHANGE - TEXAS NEW MEXICO  
RAILROAD

Name changed from Austin & Northwestern Railroad,  
Texas - New Mexico Division effective June 9, 2003.

B.C.D. 12-11

NOTICE REFLECTING NAME CHANGE - BALLARD TERMINAL  
RAILROAD COMPANY, LLC

Name changed from Ballard Terminal Railroad,  
Company LLC d/b/a Meeker Southern Railroad  
effective January 2, 2000.

THIS FORM IS TO BE USED ONLY BY THE SECRETARY TO THE BOARD OR AS OTHERWISE SPECIFICALLY DIRECTED BY THE BOARD.

FORM NO. G-21 (9-83)  
UNITED STATES OF AMERICA  
RAILROAD RETIREMENT BOARD  
TRANSCRIPT OF BOARD ORDERS

TRANSCRIPT NO.

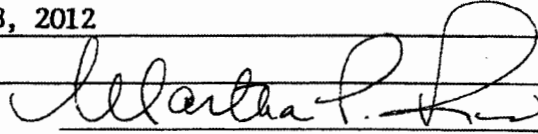
1-12  
PAGE 1 OF PAGES

DATE TRANSCRIPT RELEASED  
February 23, 2012

I CERTIFY THAT THE FOLLOWING IS A TRUE AND CORRECT TRANSCRIPT

OF BOARD ORDER(S) NUMBERED 12-1 to 12-12, incl. & B.C.D. 12-1 to 12-3

ISSUED BY THE BOARD ON January 18, 2012



SECRETARY TO THE BOARD

Adopted the following Board Orders:

B.O. 12-1

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0068, [redacted], A-\*\*\*-  
\*\*- [redacted]

The Board affirms and adopts the decision of the hearings officer with respect to the \$43,576.29 overpayment caused by Ms. [redacted] failure to report her divorce on July 29, 1992. The appeal is denied.

B.O. 12-2

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0042, [redacted] A-\*\*\*-\*\*\*-  
[redacted]

The Board finds that the Mr. [redacted] is not without fault in causing the overpayment of his annuity and therefore, he does not meet the first condition for waiver of recovery. The Board reaches this finding because Mr. [redacted] did not exercise the reasonable standard of care expected of a recipient of a Railroad Retirement annuity. The Board agrees with the hearings officer that the \$22,990.66 overpayment stemming from payments made to the annuitant when he had unreported earnings in excess of the restriction is recoverable from Mr. [redacted]. The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 12-3

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0027, ██████████ A-\*\*\*-\*\*\*-██████████

The Board notes that the hearings officer indicates in her decision that the March 18, 2008, car accident was the result of a high speed chase involving law enforcement. However, the record is silent as to whether Mr. ██████████ was charged with a crime subsequent to the accident. Section 223(d)(6) of the Social Security Act (42 U.S.C. § 423(d)(6)) provides that a disability determination must be made disregarding any felony related impairment. The Board remands this case to the hearings officer with instructions.

B.O. 12-4

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0066, ██████████ A-\*\*\*-\*\*\*-██████████

In Mr. ██████████ appeal he argued that the current appeal should be granted because he had filed paperwork to apply for a disability for his son, ██████████. This information represents an argument that was not before the hearings officer. The Board points out to Mr. ██████████ that this current appeal only applies to the termination of the special guaranty provision. Future adjustment to Mr. ██████████ annuity rate, if any, may be made in connection with the separate application filed to claim his son's disability. An adjustment, if any, will be communicated to Mr. ██████████ by the Disability Benefits Division of the Railroad Retirement Board. The appeal is dismissed.

B.O. 12-5

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0069, ██████████ MA-\*\*\*-  
\*\*-██████████

The Board's regulations are clear that when a spouse who is receiving a spouse annuity becomes divorced from the railroad employee, the now ex-spouse must report that event to the Railroad Retirement Board. The board finds that Ms. ██████████ failed to notify the Railroad Retirement of her



divorce. Ms. [REDACTED] is not without fault in causing the overpayment. Since Ms. [REDACTED] has been found to be not without fault in causing the overpayment, Ms. [REDACTED] financial circumstances have been rendered moot. The appeal is denied.

B.O. 12-6

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0080, [REDACTED], A-\*\*\*-\*\*- [REDACTED]

The Board having reviewed the entire record before it, agrees with the decision of the hearings officer that Mr. [REDACTED] has not provided good cause for his failure to submit a timely request for reconsideration within the prescribed time period. Consequently, Mr. [REDACTED] has forfeited his right to further agency review of the decision dated November 29, 2010. The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 12-7

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0075, [REDACTED], A-\*\*\*-\*\*- [REDACTED]

The Board affirms the hearings officer's findings that Mr. [REDACTED] has been engaging in substantial gainful activity and is not disabled for all regular employment under the Railroad Retirement Act. Since Mr. [REDACTED] is not entitled to a disability under the Railroad Retirement Act, he is also not entitled to a period of disability under the provisions of the Social Security Act. The appeal is denied.

B.O. 12-8

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0009, [REDACTED] JR., A-\*\*\*-\*\*- [REDACTED]

A majority of the Board finds that Mr. [REDACTED] qualifies for a special relief. Because Mr. [REDACTED] meets the conditions for this relief, his overpayment shall be reduced to the amount of the earnings he received from his work for the United Transportation Union during the same period he was also receiving an annuity under the Railroad Retirement Act. A majority of the Board remands his case to the Board's Director of Programs to

recalculate Mr. [REDACTED] overpayment. The recalculated overpayment is not subject to waiver consideration. The Management Member provides a dissenting opinion.

B.O. 12-9

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0084, [REDACTED] A-  
\*\*\*-\*\*- [REDACTED]

The Board finds that the overpayment of \$1,390.76 was correctly computed. The fact that the Board delayed in adjusting Mr. [REDACTED] annuity does not negate the fact that he has been overpaid. The appeal is denied.

B.O. 12-10

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0083, [REDACTED], A-  
\*\*\*-\*\*- [REDACTED]

The Board notes that, on appeal, the only issue Mr. ~~Eyerley~~ affirmatively argued for was a reduction to the monthly amount withheld from his annuity to satisfy the overpayment calculated in his case. Mr. [REDACTED] initially offered \$100 per month. Federal debt collection standards generally require collection of a debt within a four-year period. However, the Debt Recover Division has some flexibility in this regard and the matter is returned to that Division for resolution. The appeal is denied.

B.O. 12-11

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0091, [REDACTED] A-\*\*\*-\*\*-  
[REDACTED]

A majority of the Board agrees with the hearings officer that Mr. [REDACTED] knew or should have known to report information concerning receipt of a social security benefit to the Board and that his failure to provide the required information renders him not without fault in causing the overpayment. Having Mr. [REDACTED] at fault in causing the overpayment to occur, waiver of recovery of the overpayment cannot be considered. The appeal is denied. Labor Member provided a dissenting opinion.

B.O. 12-12

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0078, [REDACTED], \*\*\*-  
\*\*- [REDACTED] (UI)

A majority of the Board finds that acceptance of work which would have required Mr. [REDACTED] to travel 187 miles each way on a daily basis would not have been reasonably appropriate to his circumstances. Therefore, he is found to have been available for work from February 3 through February 12, 2010. A majority of the Board reverses the decision of the hearings officer. The appeal is granted. The Management Member is dissenting for the record.

And adopted the following coverage rulings:

B.C.D. 12-1

COVERAGE DETERMINATION - FOUR RIVERS FINANCE  
COMPANY, INC.

The Board finds that the Four Rivers Finance Company, Inc. (FRFC) has been performing services in connection with the transportation of passengers or property by railroad. The Board holds the FRFC became an affiliate employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective October 30, 2003, when it began operations and first compensated employees (11-CO-0041).

B.C.D. 12-2

COVERAGE DETERMINATION - PENNSYLVANIA NORTHEASTERN  
RAILROAD, LLC.

The Board finds that the Pennsylvania Northeastern Railroad, LLC (PNR) is an employer within the meaning of Section 1(a)(1)(i) of the Railroad Retirement (45 U.S.C. Section 231(a)(1)(i)) and corresponding provision of the Railroad Unemployment Insurance Acts effective August 13, 2011, the date on which PNR began operations. (11-CO-0052).

B.C.D. 12-3

COVERAGE DETERMINATION - INDIANA BOXCAR CORPORATION  
- RECONSIDERATION

A majority of the Board finds on reconsideration that Indiana Boxcar Corporation is an employer under the Acts and the correct dates of coverage are May 28, 1999, through April 1, 2000, and from April 24, 2003 through the present (11-CO-0037).

THIS FORM IS TO BE USED ONLY BY THE SECRETARY TO THE BOARD OR AS OTHERWISE SPECIFICALLY DIRECTED BY THE BOARD.

FORM NO. G-21 (9-83)  
UNITED STATES OF AMERICA  
RAILROAD RETIREMENT BOARD  
TRANSCRIPT OF BOARD ORDERS

TRANSCRIPT NO.

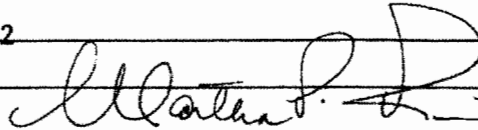
5-11  
PAGE 1 OF PAGES

DATE TRANSCRIPT RELEASED  
February 23, 2012

I CERTIFY THAT THE FOLLOWING IS A TRUE AND CORRECT TRANSCRIPT

OF BOARD ORDER(S) NUMBERED 11-90 to 102, incl. & B.C.D. 11-94 to 11-95.22

ISSUED BY THE BOARD ON January 18, 2012



SECRETARY TO THE BOARD

Adopted the following Board Orders:

B.O. 11-90

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0038, [REDACTED] A-\*\*\*-\*\*\*  
[REDACTED]

The Board affirms and adopts the decision of the hearings officer that found that Ms. [REDACTED] did not protest her record of service and compensation within the required four-year period, and further, that Ms. [REDACTED] did not provide any credible basis for the reopening of her final service and compensation record. The appeal is denied.

B.O. 11-91

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0025, [REDACTED] A-\*\*\*-  
\*\*-[REDACTED]

The Board agrees with the decision of the hearings officer that Mr. [REDACTED] either knew or should have known to report information regarding his earnings to the Board. Accordingly, the Board agrees with the hearings officer that Mr. [REDACTED] cannot be without fault in causing the overpayment he received. Since Mr. [REDACTED] is not without fault in causing the overpayment to occur, waiver of recovery of the overpayment is not available, regardless of financial hardship. The appeal is denied.

B.O. 11-92

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0023, [REDACTED] A-\*\*\*-\*\*\*-  
[REDACTED]

Mr. [REDACTED] reasons for filing his appeal late do not fall under the exceptions, such as a serious illness, a death in the family, destruction of records, failure to be notified of the decision, unusual circumstances preventing the filing of the request, or the claimant's impression that his representative had filed a request. 20 C.F.R. §260.3(d)(1)-(6). After a thorough review of the record, the Board finds that Mr. [REDACTED] has failed to establish good cause for failing to file his appeal within the required 60-day period. The appeal is denied.

B.O. 11-93

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0057, [REDACTED] MA-\*\*\*-\*\*\*-  
[REDACTED]

The Board finds that Ms. [REDACTED] was overpaid \$24,866.83 in railroad annuities for the years 2006, 2007, 2008 and 2009. Furthermore, Ms. Taylor was not without fault in causing the overpayment and therefore, she does not satisfy the requirements for waiver of recovery of the overpayment made to her. The Board finds the decision of the hearings officer correct and sufficiently addressed all issues regarding Ms. [REDACTED] claim and to be a correct and sound interpretation of the pertinent law and regulations. The appeal is denied.

B.O. 11-94

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0055, [REDACTED] A-\*\*\*-\*\*\*-  
[REDACTED]

The Board finds that the Appellant is not without fault in causing the overpayment of his annuity and therefore, he does not meet the first condition for waiver of recovery. The Board reaches this finding because Mr. [REDACTED] did not exercise the reasonable standard of care expected of a recipient of a Railroad Retirement annuity. The Board agrees with

the hearings officer that the \$35,516.21 overpayment stemming from payments made to the annuitant when he had unreported earnings in excess of the restriction and the accompanying penalty of \$2,675.88 is recoverable from Mr. [REDACTED]. The appeal is denied.

B.O. 11-95

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0060, [REDACTED], A-\*\*\*-  
\*\*-[REDACTED]

The Board affirms and adopts the decision of the hearings officer with respect to the overpayment of \$33,600.00 and affirms the assessment of a penalty deduction in the amount of \$1,795.00. However, in view of Mr. [REDACTED] medical and financial situation, the Board remands this case to the Board's Debt Recovery Division to work out a lenient repayment method with Mr. [REDACTED] to recover the overpayment. The appeal is denied.

B.O. 11-96

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0071, [REDACTED], II, WCA-  
\*\*\*-\*\*\*-6070

The Board agrees with the hearings officer that Mr. [REDACTED]'s frustration is understandable, the Board cannot be prevented from following its law and regulations, Gressly v. Califano, 609 F.2d 1265, 1267 (7<sup>th</sup> Cir. 1979). The Board affirms and adopts the decision of the hearings officer that the adjustment to Mr. [REDACTED] annuity was correct and in accordance with the law. The appeal is denied.

B.O. 11-97

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0070, [REDACTED], A-\*\*\*-\*\*\*-  
[REDACTED]

The Board affirms and adopts the decision of the hearings officer that found that Mr. [REDACTED] did not meet the minimum requirements for an employee annuity, and further, that he did not protest his record of service and compensation within the time limit set by the Railroad Retirement Act. The appeal is denied.

B.O. 11-98

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0058, [REDACTED], WCA-  
\*\*\*-\*\*- [REDACTED]

The Board finds the evidence fails to show that Ms. [REDACTED] has been continuously disabled as defined by the Railroad Retirement Board's regulations since before attaining the age of twenty-two to the time of her application for annuity. The hearings officer finds that Ms. [REDACTED] was not eligible for a disabled child's annuity under the Railroad Retirement Act (RRA). 45 U.S.C. § 231 et. seq. The decision of the hearings officer is affirmed.

B.O. 11-99

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0054, [REDACTED], A-\*\*\*-  
\*\*- [REDACTED]

The Board finds that Ms. [REDACTED] knew that she was overpaid \$4,038.90 in railroad retirement benefits within the same week that the Social Security Administration paid her an accrual payment. However, Ms. [REDACTED] did not take action to repay the Railroad Retirement Board by using that accrual amount. The Board agrees with the hearings officer that Ms. Hubbard was not without fault in causing the overpayment she received. Accordingly, Ms. [REDACTED] is not eligible for waiver of recovery of the \$4,038.90 overpayment. The appeal is denied.

B.O. 11-100

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0052, [REDACTED] A-\*\*\*-\*\*- [REDACTED]

The Board finds that Mr. [REDACTED] retains the functional capacity to perform sedentary work and that a significant number of jobs exist in the national and local economy so that a finding of not disabled for all regular work is necessary. Mr. [REDACTED] is also found not to be entitled to Medicare coverage based upon the findings of the Board. The appeal is denied.



B.O. 11-101

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0064, [REDACTED], A-\*\*\*-\*\*-  
[REDACTED]

The Board agrees with the hearings officer's finding at step 4 of the process that Ms. [REDACTED] is not able to perform her past relevant work as a secretary as she described her duties; however, the Board agrees that Ms. [REDACTED] could perform the job of secretary as it is customarily performed in the National Economy at the sedentary level of exertion. As stated earlier, since Ms. Pasion did not offer any new medical evidence on appeal or make any new substantive argument on appeal, the Board upholds the substantive findings of the hearings officer as legally sufficient. Finally, the Board also finds Ms. [REDACTED] not to be entitled to early Medicare coverage based upon the findings of the Board. The appeal is denied.

B.O. 11-102

APPROVAL OF RRB FORM'S BA-3 AND BA-11

Annual Report of Creditable Compensation BA-3  
and Report of Gross Earnings BA-11  
(Internet) (11-GE-0078)

And adopted the following coverage rulings:

B.C.D. 11-94

COVERAGE DETERMINATION - ATLAS RAILROAD  
CONSTRUCTION, LLC.

The Board finds that the Atlas Railroad Construction, LLC is an employer within the meaning of Section 1(a)(1)(i) of the Railroad Retirement (45 U.S.C. Section 231(a)(1)(i)) and corresponding provision of the Railroad Unemployment Insurance Acts as of July 1, 2010, the date of which it was acquired by RailAmerica, Inc. (11-CO-0014).

B.C.D. 11-95

COVERAGE DETERMINATION - ASSOCIATED RAILROADS OF PENNSYLVANIA

The Board had held the Associated Railroads of Pennsylvania ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on May 12, 1969. Termination of Penn State (11-CO-0050).

B.C.D. 11-95.1

COVERAGE DETERMINATION - BLANDBURG WATER COMPANY

The Board had held the Blandburg Water Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on May 12, 1969. Merged (11-CO-0050).

B.C.D. 11-95.2

COVERAGE DETERMINATION - DETROIT CAR INTERCHANGE INSPECTION ASSOCIATION

The Board had held the Detroit Car Interchange Inspection Association ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on January 31, 1968. New York Central was terminated (11-CO-0050).

B.C.D. 11-95.3

COVERAGE DETERMINATION - HOWARD TERMINAL RAILWAY

The Board had held the Howard Terminal Railway ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on June 7, 2011. Dissolved (11-CO-0050).

B.C.D. 11-95.4

COVERAGE DETERMINATION - IOWA RAILWAY ASSOCIATION

The Board had held the Iowa Railway Association ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 1974. No record located and all individuals deceased or retired (11-CO-0050).

B.C.D. 11-95.5

COVERAGE DETERMINATION - JOINT CAR INSPECTION ASSOCIATION OF EL PASO & C JURAEZ, MX

The Board had held the Joint Car Inspection Association of El Paso & C Juraez, MX ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on January 3, 1941. Dissolved (11-CO-0050).

B.C.D. 11-95.6

COVERAGE DETERMINATION - KANSAS CITY CAR INTERCHANGE BUREAU

The Board had held the Kansas City Car Interchange Bureau ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 1913. Parent company terminated (11-CO-0050).

B.C.D. 11-95.7

COVERAGE DETERMINATION - NEBRASKA RAILROAD ASSOCIATION

The Board had held the Nebraska Railroad Association ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on March 2, 1970. Merged with Burlington Northern (11-CO-0050).

B.C.D. 11-95.8

COVERAGE DETERMINATION - PENNSYLVANIA VOLUNTARY  
RELIEF DEPARTMENT

The Board had held the Pennsylvania Voluntary Relief Department ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on November 18, 1938. Cancelled (11-CO-0050).

B.C.D. 11-95.9

COVERAGE DETERMINATION - PEORIA & PEKIN JOINT CAR  
INSPECTION BUREAU

The Board had held the Peoria & Pekin Joint Car Inspection Bureau ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on September 30, 1943. No longer provided service (11-CO-0050).

B.C.D. 11-95.10

COVERAGE DETERMINATION - RAILWAY TICKET PROTECTIVE  
BUREAU

The Board had held the Railway Ticket Protective ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 1969. Company no longer in business (11-CO-0050).

B.C.D. 11-95.11

COVERAGE DETERMINATION - SAN ANTONIO CAR  
INTERCHANGE ASSOCIATION

The Board had held the San Antonio Car Interchange Association ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on March 2, 1956. Date International-Great Northern Railroad Company was merged into Missouri Railroad Company (11-CO-0050).

B.C.D. 11-95.12

COVERAGE DETERMINATION - SHORE GRAPHIC CORPORATION

The Board had held the Shore Graphic Corporation ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on April 6, 1987. Voluntary Dissolution (11-CO-0050).

B.C.D. 11-95.13

COVERAGE DETERMINATION - STOCKLAND UNION STOCKYARDS COMPANY

The Board had held the Stockland Union Stockyards Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 2010. No longer providing service (11-CO-0050).

B.C.D. 11-95.14

COVERAGE DETERMINATION - TEXAS NORTH ORIENT CORPORATION

The Board had held the Texas North Orient Corporation ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on May 21, 2010. Forfeited existence for non-payment of franchise tax (11-CO-0050).

B.C.D. 11-95.15

COVERAGE DETERMINATION - THE SIOUX CITY STOCKYARDS COMPANY

The Board had held the Sioux City Stockyards Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on April 30, 2002. Ceased operations (11-CO-0050).

B.C.D. 11-95.16

COVERAGE DETERMINATION - TIDEWATER BITUMINOUS COAL  
STATISTICS BUREAU

The Board had held the Tidewater Bituminous Coal Statistics Bureau ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on January 1, 1971. Parent company Trunk-Line Central Territory railroads tariff bureau was terminated (11-CO-0050).

B.C.D. 11-95.17

COVERAGE DETERMINATION - TOLLESTON CORPORATION

The Board had held the Tolleston Corporation ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on July 1, 2002. Administrative Dissolution (11-CO-0050).

B.C.D. 11-95.18

COVERAGE DETERMINATION - TOPS ON LINE-SERVICES,  
INC.

The Board had held the Tops on Line-Services, Inc. ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on February 18, 1988. Corporation was dissolved (11-CO-0050).

B.C.D. 11-95.19

COVERAGE DETERMINATION - VERMONT STATE RAILROAD  
ASSOCIATION

The Board had held the Vermont State Railroad Association ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 1961. Last Report received (11-CO-0050).

B.C.D. 11-95.20

COVERAGE DETERMINATION - WESTERN MARYLAND WAREHOUSE  
COMPANY

The Board had held the Western Maryland Warehouse Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 30, 1988. Merged into CSX Transportation, Inc. (11-CO-0050).

B.C.D. 11-95.21

COVERAGE DETERMINATION - WESTERN PASSENGER  
ASSOCIATION

The Board had held the Western Passenger Association ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 1995. Parent company terminated (11-CO-0050).

B.C.D. 11-95.22

COVERAGE DETERMINATION - WOOD STREET POTATO  
TERMINAL AGENCY

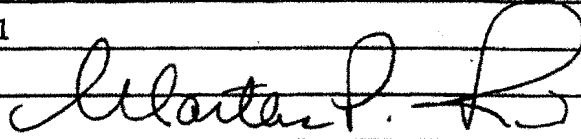
The Board had held the Wood Street Potato Terminal Agency ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on March 31, 1976. Parent company terminated (11-CO-0050).

THIS FORM IS TO BE USED ONLY BY THE SECRETARY TO THE BOARD OR AS OTHERWISE SPECIFICALLY DIRECTED BY THE BOARD.

FORM NO. G-21 (9-83)  
UNITED STATES OF AMERICA  
RAILROAD RETIREMENT BOARD  
TRANSCRIPT OF BOARD ORDERS

TRANSCRIPT NO.  
4-11  
PAGE 1 OF PAGES 21  
DATE TRANSCRIPT RELEASED  
November 14, 2011

I CERTIFY THAT THE FOLLOWING IS A TRUE AND CORRECT TRANSCRIPT  
OF BOARD ORDER(S) NUMBERED 11-67 to 11-89, incl. & B.C.D. 11-68 to 11-93, incl.  
ISSUED BY THE BOARD ON October 26, 2011



SECRETARY TO THE BOARD

Adopted the following Board Orders:

B.O. 11-67  
DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0028, [REDACTED] A-\*\*\*-\*\*\*-  
[REDACTED]

Mr. [REDACTED] did not apply for sickness benefits because he did not know he was entitled to it, his reason falls squarely within section 335.4(d)(3) of the Board's regulations. As a result, the Board finds that the record does not show that circumstances beyond Mr. [REDACTED] control prevented him from filing his sickness benefit application within 10 days of January 18, 2010 and the RRB properly determined that he was not eligible for benefits prior to February 23, 2010. The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 11-68

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0039, [REDACTED] WA-\*\*\*-  
\*\*-4888

The record shows that Ms. [REDACTED] had knowledge of the annual earnings limit by phone, on her application and in written materials. The Board finds that the Appellant is not without fault in causing the overpayment of her annuity and therefore, she does not meet the first condition for waiver of recovery. The Board reaches, this finding because Ms. [REDACTED] did not exercise the standard of reasonable care expected of a recipient of a Railroad Retirement Annuity. The Board agrees with the hearings officer that the \$2,096.00 overpayment is recoverable from the Appellant. The Board affirms the decision of the hearings officer.



The appeal is denied. The Labor Member provided a dissenting opinion.

B.O. 11-69

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0032, [REDACTED] A-\*\*\*-\*\*\*-[REDACTED]

The Board affirms and adopts the decision of the hearings officer that found that Ms. [REDACTED] did not protest her record of service and compensation within the required four-year period, and further, that Ms. [REDACTED] did not provide any credible basis for the reopening of her final service and compensation record. The appeals is denied.

B.O. 11-70

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0031, [REDACTED] A-\*\*\*-\*\*\*-[REDACTED]

The Board finds that the administrative record supports the finding that the Appellant's Tier 1 annuity was properly calculated, including the reductions due to his social security earnings. The Board affirms the hearings officer's decision. The appeal is denied.

B.O. 11-71

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0014, [REDACTED] A-\*\*\*-\*\*\*-[REDACTED]

The problem in this case is that we really do not know what happened on October 27, 1992. Ms. Garcia understandably does not remember much. She thinks she accompanied her husband, but we have no solid evidence of that. What we do know is that for over 20 years Ms. [REDACTED] made no effort to inquire or learn about her eligibility for benefits. Consequently, the Board must agree with Hearings Officer that deterred from filing has not been established in this appeal. The appeal is denied.

B.O. 11-72

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0062, [REDACTED] A-\*\*\*-\*\*\*-[REDACTED]

The hearings officer found that Mr. [REDACTED] was not without fault in causing the overpayment. Although the hearings officer decision has some support in the record, the Board finds, that as a whole, the evidence suggests the Mr. [REDACTED] was understandably confused between the arcane LPE restrictions and the normal work deductions which proved a threshold limit that an individual can earn before suffering a reduction in his annuity. Consequently, the Board finds that Mr. [REDACTED] was without fault in causing the overpayment. Based on the facts of this case, it would be contrary to the purpose of the RRA to recover the remaining \$31,496.35 overpayment. The Board reverses the hearing officer's decision and remands this case to the Office of Programs for appropriate action in accordance with the decision. The appeal is allowed. The Management Member provided a dissenting opinion.

B.O. 11-73

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0064, [REDACTED] A-\*\*\*-\*\*\*-  
[REDACTED]

The Board finds that Ms. [REDACTED] acted in good faith in reporting her graduation dates and in waiting for the RRB to contact her regarding her annuity as the letter dated three days after her graduation said would happen. The Board does not believe Ms. [REDACTED] should have realized that she was not entitled to her annuity between June and October, 2009. The Board also finds that it would be against the purpose of the Railroad Retirement Act to recover the overpayment considering Ms. [REDACTED] minimal earnings and lack of family ability to refund the overpayment. The Board reverses the Hearing Officer's decision and remands this case to the Office of Programs for appropriate action in accordance with the decision. The appeal is allowed.

B.O. 11-74

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0011, [REDACTED], JR., A-  
\*\*\*-\*\*\*-[REDACTED]

The Board finds that the administrative record supports the finding that the Appellant had earnings in the year 2006 which exceeded the

earnings limits for an individual in 2005, 2006, 2007, and 2008 which were from his LPE. These earnings were the proper subject of an adjustment to the Appellant's annuity for the described years and properly resulted in an overpayment calculation of \$18,282.01. The Board agrees with the hearings officer's determination that the correct amount of overpayment in this case is \$18,282.01. The appeal is denied.

B.O. 11-75

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0033, [REDACTED], A-\*\*\*\*-\*\*-\*\*\*\*

The Board affirms and adopts the decision of the hearings officer with respect to the \$9,357.81 overpayment and affirms the assessment of a penalty deduction in the amount of \$1,871.56. However, in view of Mr. [REDACTED] medical and financial situation the Board remands this case to the Board's Debt Recovery Division to work out a lenient repayment method with Mr. [REDACTED] to recover the overpayment. The appeal is denied.

B.O. 11-76

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0037, [REDACTED], A-\*\*\*\*-\*\*-\*\*\*\*

The hearings officer found Mr. [REDACTED] lacked diligence in filing his application in a timely manner, thus failing to gain entitlement to benefits beginning on June 27, 2010. This finding falls under the lack of diligence clause in section 335.4(d)(3) of the Railroad Retirement Board's regulations. The Board agrees with the hearings officer and finds that the record does not show that circumstances beyond Mr. [REDACTED] control prevented him from filing his sickness benefits within 10 days of June 27, 2010. The appeal is denied.

B.O. 11-77

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0036, [REDACTED], A-\*\*\*\*-\*\*-\*\*\*\*

The Board finds that the Appellant failed to exercise the reasonable care expected of an

applicant for an annuity to review the rules governing the receipt of that annuity especially since those rules so clearly indicate that the Board must be informed that any application for a Social Security benefit must be reported and that such a benefit would directly affect the receipt of a divorced spouse annuity. The appeal is denied.

B.O 11-78

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0034, [REDACTED] MA-\*\*\*-\*\*\*-[REDACTED]

The Board finds that Ms. [REDACTED] was not without fault in causing the overpayment because she did not exercise the reasonable care expected of an individual in receipt of an annuity under the RRB. The Board affirmed the hearings officer that Ms. [REDACTED] economic situation and economic hardship claim, cannot be considered. The appeal is denied.

B.O. 11-79

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0047, [REDACTED] A-\*\*\*-  
\*\*- [REDACTED]

The Board has reviewed the record in the appeal of Mr. [REDACTED] from the decision of the hearings officer of May 12, 2011 and has considered the argument and evidence contained therein. Mr. [REDACTED] appeals the hearings officer's denial of waiver of recovery of \$2,141.86 for an overpayment of unemployment benefits under the Railroad Unemployment Insurance Act (45 USC §351 et.seq.). The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 11-80

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0030, [REDACTED] A-\*\*\*-\*\*\*-  
[REDACTED]

The Board has reviewed the record in the appeal of [REDACTED] from the decision of the hearings officer issued on March 30, 2011. The Board finds that Mr. [REDACTED] clearly knew of the deadline date, and therefore, the Board agrees with the determination of the hearings officer that there is no evidence to support a finding that there exists good cause for failure to file the appeal timely.

The appeal is denied.

B.O. 11-81

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0045, FREDERICK COOK, A-\*\*\*-\*\*-4816

The Board finds that the hearings officer accurately assessed the evidence of record and upholds the hearings officer's conclusion that Mr. Cook is entitled to a disability annuity with an onset date of June 1, 2009. Mr. Cook had argued for a disability onset date of August 2, 2007. The decision of the hearings officer is affirmed and adopted. The appeal is denied.

B.O. 11-82

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0041, JULIAN VELA, A-\*\*\*-\*\*-5964

The Board agrees with the hearings officer's finding that Mr. Vela is not without fault in causing the overpayment of his annuity and therefore, he does not meet the first condition for waiver of recovery. The Board finds that Mr. Vela did not exercise the reasonable standard of care expected of a recipient of a Railroad Retirement annuity in reporting his return to health. The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 11-83

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0059, BARBARA A.M. MARTIN, A-\*\*\*-\*\*-1535

The administrative record and the summary tables clearly demonstrate that Ms. Martin's social security PIA remains greater than her benefit under a divorced spouse annuity. By law, the Board can come to no other conclusion than to find that Ms. Martin is not entitled to a divorced spouse annuity provided for in section 2(c)(4) of the RRA. The decision of the hearings officer is affirmed. The appeal is denied.

B.O. 11-84

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0050, [REDACTED], A-\*\*\*-  
\*\*- [REDACTED]

The Board concurs in the hearings officer's analysis that Mr. Hernandez is not without fault in causing the overpayment and due to this finding, recovery of the overpayment may not be waived. Mr. [REDACTED] did not exercise the reasonable care expected of an annuitant in receipt of a disability annuity. The Board upholds the overpayment calculation of \$39,119.89 (overpayment plus penalty), and direct the overpayment to be recovered. The appeal is denied.

B.O. 11-85

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0042, [REDACTED] A-\*\*\*-\*\*\*-  
[REDACTED]

The Board finds that because Mr. [REDACTED] was not without fault in causing the overpayment made to him, his financial circumstances are not relevant. The Board finds the denial of Mr. [REDACTED] request for waiver of recovery of the overpayment made to him to be in accordance with applicable law and affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 11-86

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0049, [REDACTED] WA-\*\*\*-  
\*\*- [REDACTED]

The Board finds that Ms. [REDACTED]'s claim for a widow's disability annuity under the Railroad Retirement Act was properly denied. The evidence in the Administrative Record demonstrates that Ms. [REDACTED] cannot be considered disabled before the end of her prescribed period due to her documented record of substantial gainful activity throughout that same period. The SSA disability decision confirms that her disability onset occurred after the end of the prescribed period. The Board affirms the decision of the hearings officer. The appeal is denied.

B.O. 11-87

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0046, [REDACTED], A-  
\*\*\*-\*\*- [REDACTED]

The Board agrees with the decision of the hearings officer that Ms. [REDACTED] knew or should have known to report information regarding her minor child attaining age 18 in March 2005 to the Board. Having found Ms. [REDACTED] at fault in causing the overpayment to occur, waiver of recovery of the overpayment is not available, regardless of financial hardship. Accordingly, the Board affirms and adopts the decision of the hearings officer with respect to the \$29,100.90 overpayment. The appeal is denied.

B.O. 11-88

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0043, [REDACTED], WD-\*\*\*-  
\*\*- [REDACTED]

The Board agrees with the decision of the hearings officer that Ms. [REDACTED]'s failure to provide the required information renders her not without fault in causing the overpayment. Having found Ms. [REDACTED] at fault in causing the overpayment to occur, waiver of recovery of the overpayment cannot be considered. The appeal is denied. The Labor Member provided a dissenting opinion.

B.O. 11-89

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0056, [REDACTED] JR., A-  
\*\*\*-\*\*- [REDACTED]

The Board affirms the finding of the hearings officer that Mr. [REDACTED] was not deterred from filing an application for an employee annuity by any action of a board employee. The Board overturns the hearings officer's finding that an October 19, 2008 letter does not express a clear intent to file an application for an annuity. The Board finds that the letter did express an intent to file for an annuity; however, the Board also finds that Mr. [REDACTED] did not file his application within 90 days as required by 20 CFR 217.20(a)(3). The appeal is denied.

And adopted the following coverage rulings:

B.C.D. 11-68

COVERAGE DETERMINATION - COLUMBIA & COWLITZ  
RAILWAY COMPANY

The Board had held the Columbia & Cowlitz Railway Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 2010, the date on which the corporation was dissolved (11-CO-0027).

B.C.D. 11-69

COVERAGE DETERMINATION - COLUMBIA & COWLITZ  
RAILWAY, LLC

The Board finds that the Columbia & Cowlitz Railway, LLC is an employer within the meaning of Section 1(a)(1)(i) of the Railroad Retirement (45 U.S.C. Section 231(a)(1)(i)) and corresponding provision of the Railroad Unemployment Insurance Acts as of December 31, 2010, the date of which it began operations and first compensated employees (11-CO-0027).

B.C.D. 11-70

COVERAGE DETERMINATION - DEQUEEN & EASTERN  
RAILROAD COMPANY

The Board had held the DeQueen & Eastern Railroad Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 2010, the date on which it ceased operations and the last date on which it paid its employees (11-CO-0028).



B.C.D. 11-71

COVERAGE DETERMINATION - DEQUEEN & EASTERN  
RAILROAD, LLC

The Board finds that the DeQueen & Eastern Railroad, LLC is an employer within the meaning of Section 1(a)(1)(i) of the Railroad Retirement (45 U.S.C. Section 231(a)(1)(i)) and corresponding provision of the Railroad Unemployment Insurance Acts as of December 31, 2010, the date of which it began operations and first compensated employees (11-CO-0028).

B.C.D. 11-72

COVERAGE DETERMINATION - PATRIOT WOODS RAILROAD,  
LLC

The Board finds that the Patriot Woods Railroad, LLC is an employer within the meaning of Section 1(a)(1)(i) of the Railroad Retirement (45 U.S.C. Section 231(a)(1)(i)) and corresponding provision of the Railroad Unemployment Insurance Acts as of December 31, 2010, the date of which it began operations (11-CO-0029).

B.C.D. 11-73

COVERAGE DETERMINATION - PROFESSIONAL LOCOMOTIVE  
SERVICES, INC.

The Board had held the Professional Locomotive Services, Inc. is clearly not a carrier by rail. Further, the available evidence indicates that it is not under common ownership with any rail carrier not controlled by officers or directors who control a railroad. Therefore, PLS is not a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts (11-CO-0036).

B.C.D. 11-74

COVERAGE DETERMINATION - WITHEROW LOCOMOTIVE  
SERVICE, INC.

The Board had held the Witherow Locomotive Service, Inc. ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts, effective March 1, 2010, the date articles of dissolution was

filed with the State of Florida (11-CO-0032).

B.C.D. 11-75

COVERAGE DETERMINATION - LAMOILLE VALLEY RAILROAD  
COMPANY

The Board had held the Lamoille Valley Railroad Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 1995. The last day of the year in which it ceased operations (11-CO-0034).

B.C.D. 11-76

COVERAGE DETERMINATION - CAMDEN & SOUTHERN  
RAILROAD, INC.

The Board finds that the Camden & Southern Railroad, Inc. is an employer within the meaning of Section 1(a)(1)(i) of the Railroad Retirement (45 U.S.C. Section 231(a)(1)(i)) and corresponding provision of the Railroad Unemployment Insurance Acts as of May 9, 2011 the date it commenced operations (11-CO-0035).

B.C.D. 11-77

COVERAGE DETERMINATION - GREAT WESTERN RAILWAY  
COMPANY OF IOWA, LLC

The Board had held the Great Western Railway Company of Iowa ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on January 14, 2009. The date on which the corporation was dissolved (11-CO-0040).

B.C.D. 11-78

COVERAGE DETERMINATION - YCR CORPORATION

The Board finds that the YCR Corporation is an employer within the meaning of Section 1(a)(1)(i) of the Railroad Retirement (45 U.S.C. Section 231(a)(1)(i)) and corresponding provision of the Railroad Unemployment Insurance Acts as of December 22, 2009, the date as of which it began operations (11-CO-0030).

B.C.D. 11-79

COVERAGE DETERMINATION - THREE NOTCH RAILROAD  
COMPANY, INC.

The Board had held the Three Notch Railroad Company of Iowa ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on May 11, 2011. The date its assets were acquired by RailAmerica Transportation Corporation (11-CO-0043).

B.C.D. 11-80

COVERAGE DETERMINATION - THREE NOTCH RAILWAY, LLC

The Board finds that the Three Notch Railway, LLC is an employer within the meaning of Section 1(a)(1)(i) of the Railroad Retirement (45 U.S.C. Section 231(a)(1)(i)) and corresponding provision of the Railroad Unemployment Insurance Acts as of May 11, 2011, the date as of which it began operations and first compensated employees (11-CO-0043).

B.C.D. 11-81

COVERAGE DETERMINATION - WIREGRASS CENTRAL  
RAILROAD COMPANY, INC.

The Board had held the Wiregrass Central Railroad Company, Inc. ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on May 11, 2011. The date its assets were acquired by RailAmerica Transportation Corporation (11-CO-0042).

B.C.D. 11-82

COVERAGE DETERMINATION - WIREGRASS CENTRAL  
RAILWAY, LLC

The Board finds that the Wiregrass Central Railway, LLC is an employer within the meaning of Section 1(a)(1)(i) of the Railroad Retirement (45 U.S.C. Section 231(a)(1)(i)) and corresponding provision of the Railroad Unemployment Insurance Acts as of May 11, 2011, the date as of which it began operations and first compensated employees (11-CO-0042).

B.C.D. 11-83

COVERAGE DETERMINATION - MAINE NORTHERN RAILWAY  
COMPANY

The Board finds that the Maine Northern Railway Company is an employer within the meaning of Section 1(a)(1)(i) of the Railroad Retirement (45 U.S.C. Section 231(a)(1)(i)) and corresponding provision of the Railroad Unemployment Insurance Acts as of June 15, 2011, the date as of which it began operations and first compensated employees (11-CO-0038).

B.C.D. 11-84

COVERAGE DETERMINATION - CONECUH VALLEY RAILROAD  
COMPANY, INC.

The Board had held the Conecuh Valley Railroad Company, Inc. ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on May 11, 2011. The date its assets were acquired by RailAmerica Transportation Corporation (11-CO-0044).

B.C.D. 11-85

COVERAGE DETERMINATION - CONECUH VALLEY RAILWAY,  
LLC

The Board finds that the Conecuh Valley Railway, LLC is an employer within the meaning of Section 1(a)(1)(i) of the Railroad Retirement (45 U.S.C. Section 231(a)(1)(i)) and corresponding provision of the Railroad Unemployment Insurance Acts as of May 11, 2011, the date as of which it began operations and first compensated employees (11-CO-0044).

B.C.D. 11-86

COVERAGE DETERMINATION - GEORGE'S CREEK VALLEY,  
LLC

The Board finds the George's Creek Railway, LLC is an employer within the meaning of Section 1(a)(1)(i) of the Railroad Retirement (45 U.S.C. Section 231(a)(1)(i)) and corresponding provision of the Railroad Unemployment Insurance Acts as of April 2, 2010, the date as of which it began operations and first compensated employees (11-CO-0045).

B.C.D. 11-87

COVERAGE DETERMINATION - PORT OF MONTANA PORT  
AUTHORITY

The Board had held the Port of Montana Port Authority is not an employer with the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. Section 231(a)(1)(i)) and corresponding provision of the Railroad Unemployment Insurance Act (11-CO-0025).

B.C.D. 11-88

COVERAGE DETERMINATION - ST. MARYS RAILWAY WEST,  
LLC (RECONSIDERATION)

This decision on reconsideration of the Railroad Retirement Board of a part of its determination dated April 29, 2010 (B.C.D. 10-38) concerning the status of St. Marys Railway West, LLC as employers under the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

As an employer covered by the Railroad Retirement and Unemployment Insurance Acts, SMRW is required to file returns of service and make such contributions as are required of employers under the Acts. In that respect, SMRW's request for an extension of time to file its annual report of creditable service and compensation of employees who performed compensated service is granted. SMRW may file its annual report following the issuance of this decision without fine or penalty for late filing. B.C.D. 10-38 is affirmed in part and modified in part (11-CO-0039).

B.C.D. 11-89

NOTICE REFLECTING NAME CHANGE - LOUISIANA AND NORTH WEST RAILROAD COMPANY, INC.

Name changed from Louisiana and North West Railroad Company effective September 16, 2008.

B.C.D. 11-90

COVERAGE DETERMINATION - C&J RAILROAD COMPANY, INC.  
D/B/A/ C&J RAILROAD

The Board had held the C&J Railroad Company, Inc., ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on July 1, 1986. Revocation of corporation status (11-CO-0046).

B.C.D. 11-90.1

COVERAGE DETERMINATION - DAYTON AND UNION RAILROAD COMPANY

The Board had held the Dayton and Union Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on September 30, 1982. Company was dissolved (11-CO-0046).

B.C.D. 11-90.2

COVERAGE DETERMINATION - DENVER JOINT CAR INTERCHANGE & INSPECTION BUREAU

The Board had held the Denver Joint Car Interchange & Inspection Bureau ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on January 1, 1982. Colorado & South Railway Company took over the employees when merged (11-CO-0046).

B.C.D. 11-90.3

COVERAGE DETERMINATION - LOCAL FREIGHT AGENTS OF ST. LOUIS & EAST ST. LOUIS

The Board had held the Local Freight Agents of St. Louis & East St. Louis ceased being an employer under the jurisdiction of the Railroad Retirement

and Railroad Unemployment Insurance Acts on September 1, 1988. Due to merger (11-CO-0046).

B.C.D. 11-90.4

COVERAGE DETERMINATION - LOUISIANA RAILROAD ASSOCIATION

The Board had held the Louisiana Railroad Association ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 1969. Disbanded (11-CO-0046).

B.C.D. 11-90.5

COVERAGE DETERMINATION - LOUISVILLE TERMINAL FREIGHT AGENTS ASSOCIATION

The Board had held the Louisville Terminal Freight Agents Association ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 1982. Louisville & Nashville Railroad Company merged with Seaboard System and the Chessie System (11-CO-0046).

B.C.D. 11-90.6

COVERAGE DETERMINATION - MILWAUKEE LIVESTOCK HANDLING COMPANY

The Board had held the Milwaukee Livestock Handling Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 15, 1981. Articles of dissolution (11-CO-0046).

B.C.D. 11-90.7

COVERAGE DETERMINATION - MODESTO INTERURBAN RAILWAY COMPANY

The Board had held the Modesto Interurban Railway Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on November 14, 1996. Merger (11-CO-0046).

B.C.D. 11-90.8

COVERAGE DETERMINATION - NAPIERVILLE JUNCTION  
RAILWAY COMPANY

The Board had held the Napierville Junction Railway ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on January 18, 1991. When purchased by Canadian Pacific (11-CO-0046).

B.C.D. 11-90.9

COVERAGE DETERMINATION - NIAGARA FRONTIER CAR  
INSPECTION ASSOCIATION

The Board had held the Niagara Frontier Car Inspection Association ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on January 31, 1968. Parent company terminated and merged into another entity (11-CO-0046).

B.C.D. 11-90.10

COVERAGE DETERMINATION - OKLAHOMA RAILWAYS  
ASSOCIATION

The Board had held the Oklahoma Railways Association ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on August 12, 1988. Merger (11-CO-0046).

B.C.D. 11-90.11

COVERAGE DETERMINATION - PENNSYLVANIA & ATLANTIC  
RAILROAD COMPANY

The Board had held the Pennsylvania & Atlantic Railroad Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 1976. Merger (11-CO-0046).



B.C.D. 11-90.12

COVERAGE DETERMINATION - PHILADELPHIA, READING & POTTSVILLE TELEGRAPH COMPANY

The Board had held the Philadelphia, Reading & Pottsville Telegraph Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on April 26, 1986. Termination of parent company (Reading Company) (11-CO-0046).

B.C.D. 11-90.13

COVERAGE DETERMINATION - PUEBLO JOINT INTERCHANGE BUREAU

The Board had held the Pueblo Joint Interchange Bureau ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on May 21, 1997. Parent company ceased operation -Rio Grande. (11-CO-0046).

B.C.D. 11-90.14

COVERAGE DETERMINATION - SOUTHERN PACIFIC EQUIPMENT COMPANY

The Board had held the Southern Pacific Equipment ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 1996, when company merged (11-CO-0046).

B.C.D. 11-90.15

COVERAGE DETERMINATION - SOUTHWESTERN PASSENGER ASSOCIATION

The Board had held the Southwestern Passenger Association ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on January 1, 1961. Company operations were transferred to Chicago, Illinois Western Traffic Association (11-CO-0046).

B.C.D. 11-90.16

COVERAGE DETERMINATION - THE KANSAS CITY CONNECTING  
RAILROAD COMPANY

The Board had held the Kansas City Connecting Railroad Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on May 13, 1983. Company was dissolved (11-CO-0046).

B.C.D. 11-90.17

COVERAGE DETERMINATION - TRANS-CONTINENTAL WESTERN  
PASSENGER ASSOCIATION

The Board had held the Trans-Continental Western Passenger Association ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 1969. Consolidated into another company (11-CO-0046).

B.C.D. 11-90.18

COVERAGE DETERMINATION - TRUNK LINE FREIGHT  
INSPECTION BUREAU

The Board had held the Trunk Line Freight Inspection Bureau ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on July 1, 1949, when the company was terminated (11-CO-0046).

B.C.D. 11-90.19

COVERAGE DETERMINATION - WILKES-BARRE CONNECTING  
RAILROAD COMPANY

The Board had held the Wilkes-Barre Connecting Railroad Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on Jun 30, 1968, when the operator of company was terminated (11-CO-0046).

B.C.D. 11-91

COVERAGE DETERMINATION - NORTH LOUISIANA & ARKANSAS RAILROAD, INC.

The Board finds that the North Louisiana & Arkansas Railroad, Inc. is an employer within the meaning of Section 1(a)(1)(i) of the Railroad Retirement (45 U.S.C. Section 231(a)(1)(i)) and corresponding provision of the Railroad Unemployment Insurance Acts as of August 15, 2011 the date of which it began operations (11-CO-0047).

B.C.D. 11-92

COVERAGE DETERMINATION - COOS BAY RAILROAD OPERATING COMPANY, LLC d/b/a COOS BAY RAIL LINK

The Board finds that the Coos Bay Railroad Operating Company, LLC b/d/a Coos Bay Rail Link is an employer within the meaning of Section 1(a)(1)(i) of the Railroad Retirement (45 U.S.C. Section 231(a)(1)(i)) and corresponding provision of the Railroad Unemployment Insurance Acts as of September 28, 2011 the date of which it began operations (11-CO-0048).

B.C.D. 11-93

COVERAGE DETERMINATION - TECUMSEH BRANCH CONNECTING RAILROAD COMPANY

The Board finds that the Tecumseh Branch Connecting Railroad Company is an employer within the meaning of Section 1(a)(1)(i) of the Railroad Retirement (45 U.S.C. Section 231(a)(1)(i)) and corresponding provision of the Railroad Unemployment Insurance Acts as of November 1, 2001, the date of which it began operations, until October 9, 2009, when its rail line was acquired by ADBF. It is further determined that during the period it was operating, TBCR never had any employees, with all services provided by employees of ADBF (11-CO-0049).

THIS FORM IS TO BE USED ONLY BY THE SECRETARY TO THE BOARD OR AS OTHERWISE SPECIFICALLY DIRECTED BY THE BOARD.

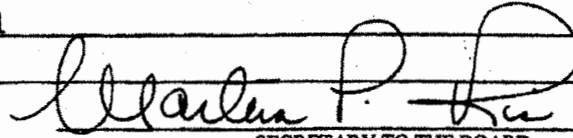
FORM NO. G-21 (9-83)  
UNITED STATES OF AMERICA  
RAILROAD RETIREMENT BOARD  
TRANSCRIPT OF BOARD ORDERS

TRANSCRIPT NO.  
3-11  
PAGE 1 OF PAGES 25  
DATE TRANSCRIPT RELEASED  
August 24, 2011

I CERTIFY THAT THE FOLLOWING IS A TRUE AND CORRECT TRANSCRIPT

OF BOARD ORDER(S) NUMBERED 11-41 to 11-66, incl. & B.C.D. 11-53 to 11-67, incl.

ISSUED BY THE BOARD ON July 21, 2011

  
SECRETARY TO THE BOARD

Adopted the following Board Orders:

B.O. 11-41

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0001, [REDACTED] R.R.B. NO.  
A-\*\*\*-\*\*\*-[REDACTED]

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED] from the decision of the hearings officer and had considered the argument and evidence presented therein, the Board unanimously renders the decision set forth in the opinion of the Board affirming the decision of the hearings officer. Labor Member Speakman concurred in a separate opinion.

B.O. 11-42

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0004, [REDACTED] R.R.B.  
NO. A-\*\*\*-\*\*\*-[REDACTED]

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED] from the decision of the hearings officer and had considered the argument and evidence presented therein, the Board unanimously renders the decision set forth in the opinion of the Board affirming the decision of the hearings officer.

B.O. 11-43

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0008, [REDACTED], R.R.B.  
NO. A-\*\*\*-\*\*- [REDACTED]

The Board finds the Appellant's reason for her failure to file her appeal in a timely manner does not fall under any of the examples explained in the decision. The Board cannot excuse a delay in filing an appeal due simply to Appellant's failure to carefully read the letter informing her of her appeal rights. The Board affirms the hearings officer's decision that the Appellant has failed to establish good cause for failing to file her appeal within the 60-day period. The appeal is denied.

B.O. 11-44

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0005, [REDACTED] R.R.B.  
NO. A-\*\*\*-\*\*-5312

The Board finds that the hearings officer's decision is legally sufficient and that the Appellant's claim for a widow's disability annuity under the Railroad Retirement Act was properly denied. The evidence in the Administrative Record demonstrates that the Appellant cannot be considered disabled before the end of her prescribed period. The recent SSA disability decision confirms that her disability onset occurred after the end of the prescribed period. The Board affirms the decision of the hearings officer.

B.O. 11-45

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0015, [REDACTED] FOR  
[REDACTED], R.R.B. NO. A-\*\*\*-\*\*-0066

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED] for [REDACTED] from the decision of the hearings officer. Given the totality of the circumstances, the marriage between Ms. [REDACTED] and the employee was not for a minimum of 9 months. The Board further finds that none of the conditions have been met to allow the Board to deem that the marriage lasted for 9 months. The Board unanimously renders the decision set forth in the opinion of the Board affirming the decision of the hearings officer.

B.O. 11-46

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0043, [REDACTED] III, R.R.B.  
NO. A-\*\*\*-\*\*- [REDACTED]

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED] and the decision of the hearings officer. In summary, the evidence establishes that the appellant received more than he was entitled to receive because his annuity was not properly reduced for his work activity. The Board also waived part of the recovery of the overpayment. The appeal is allowed in part, and denied in part.

B.O. 11-47

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0003, [REDACTED] R.R.B.  
NO. A-\*\*\*\*-\*\*\*-[REDACTED]

The Board finds that the Appellant is not without fault in causing the overpayment of this annuity and therefore, he does not meet the first condition for waiver of recovery. The Board reaches this finding because Mr. [REDACTED] did not exercise the reasonable standard of care expected of a recipient of a Railroad Retirement annuity. The Board agrees with the hearings officer that the \$4,059.00 overpayment stemming from payments made to the annuitant when he had unreported earnings in excess of the restriction is recoverable from the Appellant. The Board affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 11-48

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0032, [REDACTED] R.R.B. NO.  
A-\*\*\*\*-\*\*\*-[REDACTED]

A majority of the Board finds the Mr. Fisher was overpaid \$76,950.62 in railroad retirement disability annuities for the period February 1, 2001 through December 31, 2007. Furthermore, Mr. [REDACTED] was not without fault in causing the overpayment and therefore, he does not satisfy the requirements for waiver of recovery of the overpayment made to him. Finally, the Board finds that Mr. [REDACTED] was properly assessed a penalty of \$2,038.73 for his failure to properly report his earnings for February 2001. The appeal is denied. However, the Management Member dissents, in part.

B.O. 11-49

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0010, [REDACTED] R.R.B.  
NO. A-\*\*\*-\*\*- [REDACTED]

The Board affirms the hearings officer's findings that the Appellant's impairments prevent him from performing his past relevant railroad occupation, but that the Appellant retains the functional capacity to perform light work as defined by the Social Security Administration. Further, the Board affirms that sufficient jobs exist in the national and local economy that conform to the physical restrictions of the Appellant to prevent a finding of total disability. The appeal is denied.

B.O. 11-50

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0016, [REDACTED] R.R.B. NO.  
A-\*\*\*-\*\*- [REDACTED]

The Board finds that the administrative record supports the finding that the Appellant's Tier 1 annuity was properly calculated, including the reductions due to his social security earnings and the resulting overpayment. The hearings officer's determination that these deductions were proper and were properly assessed, is legally sufficient. The appeal is denied.

B.O. 11-51

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0019, [REDACTED] R.R.B. NO.  
A-\*\*\*-\*\*- [REDACTED]

The Board agrees with the hearings officer's finding that the Appellant is not without fault in causing the overpayment of his annuity and therefore, he does not meet the first condition for waiver of recovery. The Board finds that the Appellant did not exercise the reasonable standard of care expected of a recipient of a Railroad Retirement annuity in reporting his additional income. The Board affirms and adopts the decision of the hearings officer. The appeal is denied.



B.O. 11-52

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0013, [REDACTED] R.R.B.  
NO. A-\*\*\*-\*\*- [REDACTED]

The Board affirms and adopts the decision of the hearings officer that found that the Appellant did not protest his record of service and compensation within the required four-year period, and further, that the Appellant did not provide any credible basis for the reopening of his final service and compensation record pursuant to Section 216.11 of the Board's regulations. The appeal is denied.

B.O. 11-53

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0058, [REDACTED] R.R.B.  
NO. A-\*\*\*-\*\*- [REDACTED]

The Board finds that the evidence indicates that the Appellant has more than adequate means to repay the overpayment. The Board finds that recovery of the overpayment at a rate of \$43.00 per month would not deny the Appellant of funds needed for ordinary and necessary living expenses. Furthermore, the Board finds that evidence does not show that, in reliance on receipt of the monthly \$43.00 supplemental annuity payments he did receive, Mr. [REDACTED] relinquished a valuable right or change his position to his substantial detriment. Consequently, the Board finds the denial of the Appellant's request for waiver of recovery of the \$946.00 overpayment to be in accordance with applicable law. The appeal is denied.

B.O. 11-54

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0020, [REDACTED]  
R.R.B. NO. A-\*\*\*-\*\*- [REDACTED]

The Board finds that the Appellant broke his current connection with railroad industry by working for the subchapter "S" corporation. The Board further finds that the Appellant exceeded the earnings thresholds from 2006 through the present and must be considered to be engaged in substantial gainful activity. The Board affirms the hearings officer's findings that the Appellant has been engaging in substantial activity and is not disabled for all regular employment under the Railroad Retirement Act. The appeal is denied.

B.O. 11-55

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0053, [REDACTED]  
R.R.B. NO. A-\*\*\*-\*\*- [REDACTED]

The Board finds that the hearings officer appropriately found that the Appellant satisfied steps 1 and 2 of the sequential disability evaluation. The Board also substituted its findings at step 3 of the analysis by determining that the administrative record does not support a finding that the Appellant was medically disabled in June of 2007, but is medically disabled as of January 27, 2010. The Board further agrees with the hearings officer's finding at step 4 of the process that the appellant is not able to perform his past relevant work. Finally, the Board substitutes its findings on appeal at step 5 of the evaluation process. The appeal is denied, in part, and granted, in part.

B.O. 11-56

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0018, [REDACTED], R.R.B.  
NO. A-\*\*\*-\*\*- [REDACTED]

The Board finds that the Appellant is not without fault in causing the overpayment of his annuity and therefore, he does not meet the first condition for waiver of recovery. The Board reaches this finding because Mr. [REDACTED] did not exercise the reasonable standard of care expected of a recipient of a Railroad annuity. The Board agrees with the hearings officer that the \$14,519.96 overpayment stemming from payments made to the annuitant when he had unreported earnings in excess of the restriction and \$1,613.33 and in accompanying penalties, is recoverable from the Appellant. The Board affirms and adopts the decision of the hearings officer. The appeal is denied. Labor Member provides his dissenting opinion.

B.O. 11-57

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0012, [REDACTED] R.R.B.  
NO. A-\*\*\*-\*\*- [REDACTED]

The Board finds that the hearings Officer's decision of December 9, 2010 which determined that the Appellant was not entitled to a period of disability (disability freeze) and early Medicare coverage is legally sufficient. The hearings officer's decision is affirmed. The appeal is denied. Labor Member provided a dissenting opinion.

B.O. 11-58

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0026, [REDACTED] R.R.B. NO.  
A-\*\*\*-\*\*- [REDACTED]

The Board finds that Mr. [REDACTED] has not provided an explanation of good cause for the late filing of his appeal to the Board. The appeal is dismissed for late filing.

B.O. 11-59

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0035, [REDACTED], R.R.B.  
NO. MA-\*\*\*\*-\*\*- [REDACTED]

The Board finds that the Appellant is not without fault in causing the overpayment. Since the Appellant has been found to be not without fault, the Appellant's financial situation cannot be considered in order to waive recovery. For the same reasons as stated above, the Appellant does not have a good cause for failing to report her LPE earnings to the Board. Because the Board finds that the Appellant was at fault, waiver of recovery must be denied. The appeal is denied.

B.O. 11-60

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0017, [REDACTED] R.R.B.  
NO. A-\*\*\*\*-\*\*- [REDACTED]

The Board finds that Mr. ~~McFadden~~ was not without fault in causing the overpayment made to him, his financial circumstances are not relevant. The Board finds the denial of Mr. [REDACTED] request for waiver of recovery of the overpayment made to him to be in accordance with applicable law and affirms and adopts the decision of the hearings officer. The appeal is denied.

B.O. 11-61

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0021, [REDACTED] R.R.B.  
NO. A-\*\*\*-\*\*- [REDACTED]

Mr. [REDACTED] appeal to the Board in which he submitted page one of a letter dated December 10, 2009, from SSA in which SSA states that it has determined the months of November 2004, January through July 2005, and May 2006, to be all trial work months. The hearings officer explained, pursuant to section 220.170(d)(2) of this agency's regulations, since Mr. [REDACTED] was in a second period of disability, and was not subject to a waiting period he was not entitled to a trial work period. The Board agrees with the hearings officer that the evidence shows Mr. [REDACTED] disability annuity was correctly terminated effective March 31, 2005. The appeal is denied.

B.O. 11-62

APPROVAL OF FUNDING IN THE AMOUNT OF \$672,535

Funding in the amount of \$672,535, for payment of postage costs for the remainder of Fiscal Year 2011, is approved (11-BU-0014).

B.O. 11-63

APPROVAL OF FUNDING IN THE AMOUNT OF \$2,631,564

The Board approved funding in the amount of \$2,631,564 for various requisitions to provide for the operation and maintenance of the Headquarters for Fiscal Year 2011, submitted by Director of Administration on May 6, 2011(11-BU-0015).

B.O. 11-64

APPROVAL OF FUNDING IN THE AMOUNT OF \$120,500

The Board approved requisition 900011080 received from Bureau of Information Services. The requisition will provide funds to purchase (3) Virtual Host Servers and software for the servers (11-BU-0018).

B.O. 11-65

APPROVAL OF FUNDING IN THE AMOUNT OF \$119,690

The Board approved requisition 90011078 received from Bureau of Information Services. The requisition will provide funds for contractor services to support that will continue the .NET development to support the remaining forms (ID-6 & ID-6Y) and one form (G-88a2) of Phase 6 of the Employer Reporting System (ERS) project of modernizing annual service compensation reporting forms (11-BU-0019).

B.O. 11-66

APPROVAL OF FUNDING IN THE AMOUNT OF \$37,730

The Board approved a request received from the Chief Financial Officer to transfer funds from the agency reserve and payroll to the Bureau of Fiscal Operations dated June 16, 2011 (11-BU-0020).

And adopted the following coverage rulings:

B.C.D. 11-53

COVERAGE DETERMINATION - WESTERN WAREHOUSING  
COMPANY

The Board had held the Western Warehousing Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on January 1, 1980. Parent company terminated (11-CO-0017).

B.C.D. 11-53.1

COVERAGE DETERMINATION - THE MOBILE & GULF  
RAILROAD COMPANY

The Board had held the Mobile & Gulf Railroad Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on May 8, 1990. Company has dissolved (11-CO-0017).

B.C.D. 11-53.2

COVERAGE DETERMINATION - ST. JOHNSBURY & LAMOILLE  
COUNTY RAILROAD

The Board had held the St. Johnsbury & Lamoille County Railroad ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 2001. Converted into a recreational trail by State of Vermont (11-CO-0017).

B.C.D. 11-53.3

COVERAGE DETERMINATION - NORTH SALT LIVESTOCK  
COMPANY

The Board had held the North Salt Lake Livestock Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 1984. Company was dissolved (11-CO-0017).

B.C.D. 11-53.4

COVERAGE DETERMINATION - TOLEDO ASSOCIATION OF RAILROAD SUPERINTENDENTS

The Board had held the Toledo Association of Railroad Superintendents ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 1961. Company no longer in existence. (11-CO-0017).

B.C.D. 11-53.5

COVERAGE DETERMINATION - LOUISIANA MIDLAND RAILWAY

The Board had held the Louisiana Midland Railway Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance acts on July 1, 1986. Bankruptcy-sale of assets (11-CO-0017).

B.C.D. 11-53.6

COVERAGE DETERMINATION - MUNICIPALITY OF EAST TROY (WISCONSIN)

The Board had held the Municipality of East Troy (Wisconsin) ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on January 31, 1995. Purchased by Troy Railroad Museum (11-CO-0017).

B.C.D. 11-53.7

COVERAGE DETERMINATION - INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS, INC.

The Board had held the International Organization of Masters, Mates & Pilots, Inc. ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on July 1, 1976. Ceased to represent employees in railroad industry (11-CO-0017).



B.C.D. 11-53.8

COVERAGE DETERMINATION - NEW YORK STATE ASSOCIATION  
OF RAILROADS

The Board had held the New York State Association of Railroads ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 1976. Ceased operations (11-CO-0017).

B.C.D. 11-53.9

COVERAGE DETERMINATION - WHARTON & NORTHERN  
RAILROAD COMPANY

The Board had held the Wharton & Northern Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 1976. Assets transferred to Conrail (11-CO-0017).

B.C.D. 11-53.10

COVERAGE DETERMINATION - UNITED NEW JERSEY RAILROAD  
& CANAL COMPANY

The Board had held the United New Jersey Railroad & Canal Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on March 31, 1976. Assets transferred to Conrail (11-CO-0017).

B.C.D. 11-53.11

COVERAGE DETERMINATION - VENANGO RIVER TERMINALS  
CORPORATION

The Board had held the Venango River Terminals Corporation ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 30, 1991. Admin-Dissolved (11-CO-0017).

B.C.D. 11-53.12

COVERAGE DETERMINATION - CHICAGO SWITCHING  
COMMITTEE

The Board had held the Chicago Switching Committee ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on February 1, 1974. Illinois Freight Association ceased operations (11-CO-0017).

B.C.D. 11-53.13

COVERAGE DETERMINATION - NEW YORK CONNECTING  
RAILROAD COMPANY

The Board had held the New York Connecting Railroad Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on October 24, 1978, when parent company was terminated (11-CO-0017).

B.C.D. 11-53.14

COVERAGE DETERMINATION - ERIE & KALAMAZOO RAILROAD  
COMPANY

The Board had held the Erie & Kalamazoo Railroad Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on March 31, 1976, when assets were conveyed to Conrail (11-CO-0017).

B.C.D. 11-53.15

COVERAGE DETERMINATION - GOODWIN RAILROAD, INC.

The Board had held the Goodwin Railroad, Inc. ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on November 1, 1988, when company was dissolved (11-CO-0017).

B.C.D. 11-53.16

COVERAGE DETERMINATION - LORAIN & WEST VIRGINIA RAILWAY COMPANY

The Board had held the Lorain & West Virginia Railway Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on February 7, 1983, when company was dissolved (11-CO-0017).

B.C.D. 11-53.17

COVERAGE DETERMINATION - DANVILLE & WESTERN RAILWAY COMPANY

The Board had held the Danville & Western Railway Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on June 1, 1988, when parent company Carolina & Northwestern Railway Company was terminated (11-CO-0017).

B.C.D. 11-53.18

COVERAGE DETERMINATION - BLUE RIDGE RAILWAY COMPANY

The Board had held the Blue Ridge Railway Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on January 2, 1982. Parent company Carolina & Northwestern Railway Company merged into Norfolk Southern and Western Railway (11-CO-0017).

B.C.D. 11-53.19

COVERAGE DETERMINATION - MINNEAPOLIS INDUSTRIAL RAILWAY COMPANY

The Board had held the Minneapolis Industrial Railway Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on October 1, 1995. Date parent company merged into Union Pacific (11-CO-0017).

B.C.D. 11-53.20

COVERAGE DETERMINATION - WASHINGTON, IDAHO &  
MONTANA RAILWAY COMPANY

The Board had held the Washington, Idaho & Montana Railway Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on March 4, 1981. Date paid last employer (11-CO-0017).

B.C.D. 11-53.21

COVERAGE DETERMINATION - VIRGINIA BLUE RIDGE  
RAILWAY

The Board had held the Virginia Blue Ridge ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 1980. Line was abandoned (11-CO-0017).

B.C.D. 11-53.22

COVERAGE DETERMINATION - GRAHAM COUNTY RAILROAD  
COMPANY

The Board had held the Graham County Railroad Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on May 6, 1982 (11-CO-0017).

B.C.D. 11-53.23

COVERAGE DETERMINATION - CHIPPEWA RIVER RAILROAD  
COMPANY

The Board had held the Chippewa River Railroad Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 1981. Company notified board of termination (11-CO-0017).

B.C.D. 11-53.24

COVERAGE DETERMINATION - COTTON PLANT-FARGO RAILWAY COMPANY

The Board had held the Cotton Plant-Fargo Railway Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 1978, date of final report received (11-CO-0017).

B.C.D. 11-53.25

COVERAGE DETERMINATION - BOSTON TERMINAL CORPORATION

The Board had held the Boston Terminal Corporation ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on July 7, 1980 (11-CO-0017).

B.C.D. 11-53.26

COVERAGE DETERMINATION - CLEVELAND UNION TERMINAL COMPANY

The Board had held the Cleveland Union Terminals Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 14, 1989, due to dissolution (11-CO-0017).

B.C.D. 11-53.27

COVERAGE DETERMINATION - DAYTON UNION RAILWAY COMPANY

The Board had held the Dayton Union Railway Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on September 30, 1982, date of dissolution (11-CO-0017).

B.C.D. 11-53.28

COVERAGE DETERMINATION - DESPATCH SHOPS, INC.

The Board had held the Despatch Shops, Inc., ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on June 3, 1987, merged out of existence (11-CO-0017).

B.C.D. 11-53.29

COVERAGE DETERMINATION - CURTIS BAY RAILROAD COMPANY

The Board had held the Curtis Bay Railroad Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 16, 1988, merged into CSX (11-CO-0017).

B.C.D. 11-53.30

COVERAGE DETERMINATION - SOUTH CAROLINA RAILROAD ASSOCIATION

The Board had held the South Carolina Railroad Association ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on October 10, 1987, date Horry County Railroad was terminated (11-CO-0017).

B.C.D. 11-53.31

COVERAGE DETERMINATION - EAST ST. LOUIS RELAY PASSENGER STATION ASSOCIATION

The Board had held the East St. Louis Relay Passenger Station Association ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on May 1, 1971. Amtrak began operation on May 1, 1971 (11-CO-0017).

B.C.D. 11-53.32

COVERAGE DETERMINATION - GRAND TRUNK MILWAUKEE CAR  
FERRY COMPANY

The Board had held the Grand Trunk Milwaukee Car Ferry Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on January 10, 1980, due to dissolution (11-CO-0017).

B.C.D. 11-53.33

COVERAGE DETERMINATION - ST. LOUIS & OHIO RIVER  
RAILROAD COMPANY

The Board had held the St. Louis & Ohio River Railroad Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on November 30, 1948. Sold to Alton & Southern Railroad (11-CO-0017).

B.C.D. 11-53.34

COVERAGE DETERMINATION - CHICAGO, ST. PAUL,  
MINNEAPOLIS & OMAHA RAILWAY COMPANY

The Board had held the Chicago, St. Paul, Minneapolis & Omaha Railway Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on June 1, 1972. Assets were transferred to Chicago Northwestern Railway Company (11-CO-0017).

B.C.D. 11-53.35

COVERAGE DETERMINATION - ST. LOUIS SOUTHWESTERN  
RAILWAY COMPANY OF TEXAS

The Board had held the St. Louis Southwestern Railway Company of Texas ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on March 1, 1954. Company was merged (11-CO-0017).

B.C.D. 11-54

COVERAGE DETERMINATION - MADISON TERMINAL RAILWAY,  
LLC

The Board finds that the Madison Terminal Railway is an employer within the meaning of Section 1(a)(1)(i) of the Railroad Retirement (45 U.S.C. Section 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Acts as of April 25, 2011. The date as of which it first began operations (11-CO-0019).

B.C.D. 11-55

COVERAGE DETERMINATION - AUTAUGA NORTHERN RAILROAD,  
LLC

The Board finds that the Autauga Northern is an employer within the meaning of Section 1(a)(1)(i) of the Railroad Retirement (45 U.S.C. Section 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of April 09, 2011. The date as of which it first began operations (11-CO-0018).

B.C.D. 11-56

COVERAGE DETERMINATION -DRAKE SWITCHING COMPANY,  
LLC

The Board finds that the Drake Switching Company is an employer within the meaning of Section 1(a)(1)(i) of the Railroad Retirement (45 U.S.C. Section 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Acts as of January 8, 2010. The date as of which it first began operations (11-CO-0020).



B.C.D. 11-57

COVERAGE DETERMINATION - MISSISSIPPI & SKUNA VALLEY  
RAILROAD COMPANY

The Board had held the Mississippi & Skuna Valley Railroad Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 2010. The date of which the corporation was dissolved (11-CO-0021).

B.C.D. 11-58

COVERAGE DETERMINATION - MISSISSIPPI SKUNA VALLEY  
RAILROAD, LLC

The Board finds that the Mississippi & Skuna Valley Railroad, LLC is an employer within the meaning of Section 1(a)(1)(i) of the Railroad Retirement (45 U.S.C. Section 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Acts as of December 31, 2010. The date as of which it first began operations (11-CO-0021).

B.C.D. 11-59

COVERAGE DETERMINATION - LANCASTER & CHESTER  
RAILWAY COMPANY

The Board had held the Lancaster & Chester Railway Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on November 30, 2011. The date of which it sold all of its assets (11-CO-0022).

B.C.D. 11-60

COVERAGE DETERMINATION - LANCASTER & CHESTER  
RAILROAD, LLC

The Board finds that the Lancaster & Chester Railroad, LLC is an employer within the meaning of Section 1(a)(1)(i) of the Railroad Retirement (45 U.S.C. Section 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Acts as of December 01, 2010. The date as of which it first began operations and first compensated employees (11-CO-0022).

B.C.D. 11-61

NOTICE REFLECTING NAME CHANGE - SACRAMENTO VALLEY  
RAILROAD, LLC

Name changed from Sacramento Valley Railroad, Inc effective November 30, 2010.

B.C.D. 11-62

COVERAGE DETERMINATION - HONEY CREEK RAILROAD  
COMPANY, INC.

The Board had held the Honey Creek Railroad Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on October 28, 2010. The date of which it sold all of its operating track and assets (11-CO-0024).

B.C.D. 11-63

COVERAGE DETERMINATION - HC RAILROAD, LLC

The Board had held the HC Railroad, LLC is not a common carrier, consistent with earlier decisions of the Board, we hold that HC Railroad, LLC, is not an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts (11-CO-0024).

B.C.D 11-64

COVERAGE DETERMINATION - GOLDEN TRIANGLE RAILROAD  
COMPANY

The Board had held the Golden Triangle Railroad Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 2010, the date of which the corporation was dissolved (11-CO-0026).

B.C.D. 11-65

COVERAGE DETERMINATION - GOLDEN TRIANGLE RAILROAD,  
LLC

The Board finds that the Golden Triangle Railroad, LLC is an employer within the meaning of Section 1(a)(1)(i) of the Railroad Retirement (45 U.S.C. Section 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Acts as of December 31, 2010, the date as of which it first began operations and first compensated employees (11-CO-0026).

B.C.D. 11-66

COVERAGE DETERMINATION - TEXAS, OKLAHOMA & EASTERN  
RAILROAD COMPANY

The Board finds that the Texas, Oklahoma & Eastern Railroad Company ceased being an employer under the jurisdiction of the Railroad Retirement and Railroad Unemployment Insurance Acts on December 31, 2010, the date of which it ceased operations and for which it paid its employees (11-CO-0023).

B.C.D. 11-67

COVERAGE DETERMINATION - TEXAS, OKLAHOMA & EASTERN  
RAILROAD, LLC

The Board finds that the Texas, Oklahoma & Eastern Railroad, LLC is an employer within the meaning of Section 1(a)(1)(i) of the Railroad Retirement (45 U.S.C. Section 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Acts as of December 31, 2010. The date as of which it first began operations and first compensated employees (11-CO-0023).

THIS FORM IS TO BE USED ONLY BY THE SECRETARY TO THE BOARD OR AS OTHERWISE SPECIFICALLY DIRECTED BY THE BOARD.

FORM NO. G-21 (9-83)  
UNITED STATES OF AMERICA  
RAILROAD RETIREMENT BOARD  
TRANSCRIPT OF BOARD ORDERS

TRANSCRIPT NO.  
2-11  
PAGE 1 OF 18 PAGES  
DATE TRANSCRIPT RELEASED

I CERTIFY THAT THE FOLLOWING IS A TRUE AND CORRECT TRANSCRIPT  
OF BOARD ORDER(S) NUMBERED 11-28 to 11-40, incl. & B.C.D. 11-12 to 11-52, incl.  
ISSUED BY THE BOARD ON April 27, 2011

*Beatrice Ezyski*  
SECRETARY TO THE BOARD

Adopted the following Board Orders:

B.O. 11-28

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0054, [REDACTED], R.R.B. NO.  
WD-\*\*\*\*-\*\*\*-[REDACTED]

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED] from the decision of the hearings officer and had considered the argument and evidence presented therein, the Board unanimously renders the decision set forth in the opinion of the Board affirming the decision of the hearings officer.

B.O. 11-29

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0057, [REDACTED], R.R.B. NO.  
A-\*\*\*\*-\*\*\*-[REDACTED]

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED] from the decision of the hearings officer and had considered the argument and evidence presented therein, the Board unanimously renders the decision set forth in the opinion of the Board affirming the decision of the hearings officer.

B.O. 11-30

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0055, [REDACTED] R.R.B. NO.  
XA-\*\*\*\*-\*\*\*-[REDACTED]

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED] from the decision of the hearings officer and had considered the argument and evidence presented therein, the Board unanimously renders the decision set forth in the opinion of the Board affirming the decision of the hearings officer.

B.O. 11-31

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0060, [REDACTED] R.R.B. NO.  
A-\*\*\*\*-\*\*\*-[REDACTED]

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED] from the decision of the hearings officer and had considered the argument and evidence presented therein, a majority of the Board renders the decision set forth in the opinion of the Board affirming the decision of the hearings officer. Labor Member Speakman dissents for the reasons set forth in his dissenting opinion.

B.O. 11-32

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0061, [REDACTED] R.R.B. NO.  
A-\*\*\*\*-\*\*\*-[REDACTED]

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED] from the decision of the hearings officer and had considered the argument and evidence presented therein, the Board unanimously renders the decision set forth in the opinion of the Board affirming the decision of the hearings officer.

B.O. 11-33

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0034, [REDACTED] R.R.B.  
NO. A-\*\*\*-\*\*- [REDACTED]

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED] S. [REDACTED] from the decision of the hearings officer and had considered the argument and evidence presented therein, the Board unanimously renders the decision set forth in the opinion of the Board affirming the decision of the hearings officer.

B.O. 11-34

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0063, [REDACTED] R.R.B. NO.  
A-\*\*\*-\*\*- [REDACTED]

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED] from the decision of the hearings officer and had considered the argument and evidence presented therein, the Board unanimously renders the decision set forth in the opinion of the Board affirming the decision of the hearings officer.

B.O. 11-35

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0059, [REDACTED] R.R.B. NO.  
A-\*\*\*-\*\*- [REDACTED]

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED] from the decision of the hearings officer and had considered the argument and evidence presented therein, the Board unanimously renders the decision set forth in the opinion of the Board affirming the decision of the hearings officer.

B.O. 11-36

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0004, [REDACTED] R.R.B.  
NO. A-\*\*\*\*-\*\*- [REDACTED]

The Board has reviewed the record in the appeal of Mr. [REDACTED] from the decision of the hearings officer and has considered the argument and evidence contained therein. Mr. Spradlin appeals the decision of the hearings officer upholding the denial of his application for a disability annuity under the Railroad Retirement Act.

The Board remands the appeal to the hearings officer for consideration of SSR 83-12. The Board affirms and adopts the hearings officer's finding on insured status under the Social Security Act.

The appeal is granted in part.

B.O. 11-37

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0002, [REDACTED], R.R.B. NO.  
WCA-\*\*\*\*-\*\*- [REDACTED]

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED] from the decision of the hearings officer and had considered the argument and evidence presented therein, a majority of the Board renders the decision set forth in the opinion of the Board affirming the decision of the hearings officer. Labor Member Speakman dissents for the reasons set forth in his dissenting opinion.



B.O. 11-38

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0056, [REDACTED]  
R.R.B. NO. A-\*\*\*\*-\*\*\*-5132

Mr. [REDACTED] appeals the decision of the hearings officer which held that Mr. Schildknecht was at fault in causing an overpayment in the amount of the \$14,141,46. The Board has reviewed the evidence in the record and a majority of the Board affirms in part and remands this case to the Board's Director of Programs to recalculate Mr. [REDACTED] overpayment. The recalculated overpayment is not subject to waiver consideration. Management Member Kever dissents for the reasons set forth in his dissenting opinion dated April 7, 2011.

B.O. 11-39

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 11-AP-0007, [REDACTED] R.R.B. NO.  
MA-\*\*\*\*-\*\*\*-7829

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED] from the decision of the hearings officer and had considered the argument and evidence presented therein, the Board unanimously renders the decision set forth in the opinion of the Board affirming the decision of the hearings officer. Labor Member Speakman concurred in a separate opinion.

B.O. 11-40

APPROVAL OF FUNDING IN THE AMOUNT OF \$213,700

Funding in the amount of \$213,700 for various requisitions to provide for the payment of postage costs incurred through April 8, 2011, is approved (11-BU-0008).

And adopted the following coverage rulings:

B.C.D. 11-12

NOTICE REFLECTING NAME CHANGE - CENTRAL RAILROAD COMPANY OF INDIANAPOLIS D/B/A CHICAGO FT. WAYNE & EASTERN RAILROAD

Name changed from Central Railroad Company of Indianapolis, an Indiana Corporation, effective June 2, 2004.

B.C.D. 11-13

COVERAGE DETERMINATION - NEBRASKA NORTH WESTERN RAILROAD, INC.

The Board has held Nebraska North Western Railroad, Inc., to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective April 1, 2010 (11-CO-0001).

B.C.D. 11-14

COVERAGE DETERMINATION - RAIL-TERM CORPORATION (RECONSIDERATION DECISION)

This is the decision on reconsideration of the Railroad Retirement Board of its determination dated April 6, 2010, pursuant to 20 CFR 259.3(a) concerning the status of Rail-Term Corporation (Rail-Term) as an employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

The Board affirms on reconsideration its initial decision of April 6, 2010, and concludes that Rail-Term is a covered employer with respect to its train dispatching services.

On reconsideration, the Board's initial decision is affirmed. Management Member Kever dissents for the reasons set forth in his dissenting opinion dated January 21, 2011 (10-CO-0037).

B.C.D. 11-15

COVERAGE DETERMINATION - BPM RAIL, INC. D/B/A  
LOUISVILLE, NEW ALBANY & CORYDON RAILROAD

The Board has held the BPM Rail, Inc. d/b/a  
Louisville, New Albany & Corydon Railroad ceased to  
be a covered employer under the Railroad Retirement  
and Railroad Unemployment Insurance Acts effective  
December 28, 2008 (11-CO-0002).

B.C.D. 11-16 TO B.C.D. 11-33

NOTICES REFLECTING NAME CHANGES

Great Northwest Railroad, LLC (B.C.D. 11-16)  
(From Great Northwest Railroad, Inc.)  
(Effective December 9, 2010)

Eastern Idaho Railroad, LLC (B.C.D. 11-17)  
(From Eastern Idaho Railroad, Inc.)  
(Effective December 9, 2010)

Kansas & Oklahoma Railroad, LLC (B.C.D. 11-18)  
(From Kansas & Oklahoma Railroad, Inc.)  
(Effective December 9, 2010)

KAW River Railroad, LLC (B.C.D. 11-19)  
(From KAW River Railroad, Inc.)  
(Effective December 9, 2010)

Louisiana Southern Railroad, LLC (B.C.D. 11-20)  
(From Louisiana Southern Railroad, Inc.)  
(Effective December 10, 2010)

Arkansas Southern Railroad, LLC (B.C.D. 11-21)  
(From Arkansas Southern Railroad, Inc.)  
(Effective December 10, 2010)

Alabama Southern Railroad, LLC (B.C.D. 11-22)  
(From Alabama Southern Railroad, Inc.)  
(Effective December 10, 2010)

Austin Western Railroad, LLC (B.C.D. 11-23)  
(From Austin Western Railroad, Inc.)  
(Effective December 10, 2010)

Boise Valley Railroad, LLC (B.C.D. 11-24)  
(From Boise Valley Railroad, Inc.)  
(Effective December 9, 2010)

Mississippi Southern Railroad, LLC (B.C.D. 11-25)  
(From Mississippi Southern Railroad, Inc.)  
(Effective December 9, 2010)

Palouse River & Coulee City Railroad, LLC (B.C.D. 11-26)  
(From Palouse River & Coulee City Railroad, Inc.)  
(Effective December 10, 2010)

Pennsylvania Southwestern Railroad, LLC (B.C.D. 11-27)  
(From Pennsylvania Southwestern Railroad, Inc.)  
(Effective December 10, 2010)

Stillwater Central Railroad, LLC (B.C.D. 11-28)  
(From Stillwater Central Railroad, Inc.)  
(Effective December 9, 2010)

Timber Rock Railroad, LLC (B.C.D. 11-29)  
(From Timber Rock Railroad, Inc.)  
(Effective December 10, 2010)

Vicksburg Southern Railroad, LLC (B.C.D. 11-30)  
(From Vicksburg Southern Railroad, Inc.)  
(Effective December 10, 2010)

Watco Transportation Services, LLC (B.C.D. 11-31)  
(From Watco Transportation Services, Inc.)  
(Effective December 14, 2010)

Yellowstone Valley Railroad, LLC (B.C.D. 11-32)  
(From Yellowstone Valley Railroad, Inc.)  
(Effective December 10, 2010)

Mission Mountain Railroad, LLC (B.C.D. 11-33)  
(From Mission Mountain Railroad, Inc.)  
(Effective December 9, 2010)

B.C.D. 11-34

COVERAGE DETERMINATION - CALUMET WESTERN RAILWAY COMPANY

The Board has held the Calumet Western Railway Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective December 31, 2009 (11-CO-0005).

B.C.D. 11-35

COVERAGE DETERMINATION - AMSTERDAM, CHUCTANUNDA & NORTHERN RAILROAD COMPANY

The Board has held the Amsterdam, Chuctanunda & Northern Railroad Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective January 31, 1968 (11-CO-0003).

B.C.D. 11-35.1

COVERAGE DETERMINATION - ATHENS BELT LINE RAILROAD

The Board has held the Athens Belt Line Railroad ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective November 4, 1982 (11-CO-0003).

B.C.D. 11-35.2

COVERAGE DETERMINATION - BUFFALO CREEK RAILROAD COMPANY

The Board has held the Buffalo Creek Railroad Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective March 30, 1976 (11-CO-0003).

B.C.D. 11-35.3

COVERAGE DETERMINATION - CENTRAL VERMONT TRANSPORTATION COMPANY

The Board has held the Central Vermont Transportation Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective February 4, 1995 (11-CO-0003).

B.C.D. 11-35.4

COVERAGE DETERMINATION - DELPRO COMPANY

The Board has held the Delpro Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective March 30, 1983 (11-CO-0003).

B.C.D. 11-35.5

COVERAGE DETERMINATION - DURHAM & SOUTH CAROLINA RAILROAD COMPANY

The Board has held the Durham & South Carolina Railroad Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective December 31, 1987 (11-CO-0003).

B.C.D. 11-35.6

COVERAGE DETERMINATION - ELMIRA & WILLIAMSPORT RAILROAD COMPANY

The Board has held the Elmira & Williamsport ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective December 31, 1972 (11-CO-0003).

B.C.D. 11-35.7

COVERAGE DETERMINATION - JACKSON INDUSTRIAL DEVELOPMENT CORP.

The Board has held the Jackson Industrial Development Corp. ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective March 22, 1993 (11-CO-0003).

B.C.D. 11-35.8

COVERAGE DETERMINATION - KALAMAZOO, ALLEGAN & GRAND RAPIDS RAILROAD

The Board has held the Kalamazoo, Allegan & Grand Rapids Railroad ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective March 30, 1976 (11-CO-0003).

B.C.D. 11-35.9

COVERAGE DETERMINATION - LEHIGH & NEW ENGLAND RAILWAY COMPANY

The Board has held the Lehigh & New England Railway Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective March 29, 1976 (11-CO-0003).

B.C.D. 11-35.10

COVERAGE DETERMINATION - MANOR REAL ESTATE COMPANY

The Board has held the Manor Real Estate Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective May 14, 1979 (11-CO-0003).

B.C.D. 11-35.11

COVERAGE DETERMINATION - OKLAHOMA CITY JUNCTION  
RAILWAY COMPANY

The Board has held the Oklahoma City Junction Railway Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective August 15, 1944 (11-CO-0003).

B.C.D. 11-35.12

COVERAGE DETERMINATION - PHILADELPHIA & READING  
RELIEF ASSOCIATION

The Board has held the Philadelphia & Reading Relief Association ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective January 1, 1943 (11-CO-0003).

B.C.D. 11-35.13

COVERAGE DETERMINATION - RAIL FLEET CORPORATION

The Board has held the Rail Fleet Corporation ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective January 1, 1943 (11-CO-0003).

B.C.D. 11-35.14

COVERAGE DETERMINATION - ROCHESTER & GENESSEE  
VALLEY RAILROAD COMPANY

The Board has held the Rochester & Genessee Valley Railroad Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective January 28, 1985 (11-CO-0003).



B.C.D. 11-35.15

COVERAGE DETERMINATION - TEXAS & PACIFIC COACHES,  
INC.

The Board has held the Texas & Pacific Coaches, Inc., ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective October 14, 1976 (11-CO-0003).

B.C.D. 11-35.16

COVERAGE DETERMINATION - THE LITTLE MIAMI RAILROAD  
COMPANY

The Board has held The Little Miami Railroad Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective March 30, 1976 (11-CO-0003).

B.C.D. 11-35.17

COVERAGE DETERMINATION - W. H. HODGES & COMPANY,  
INC.

The Board has held the W. H. Hodges & Company, Inc., ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective September 2, 1975 (11-CO-0003).

B.C.D. 11-35.18

COVERAGE DETERMINATION - WASHINGTON RAILROAD  
ASSOCIATION

The Board has held the Washington Railroad Association ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective December 31, 2000 (11-CO-0003).

B.C.D. 11-36

COVERAGE DETERMINATION - TOWANDA-MONROETON SHIPPERS' LIFELINE, INC.

The Board has held the Towanda-Monroeton Shippers' Lifeline, Inc., ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective December 31, 2009 (11-CO-0006).

B.C.D. 11-37

COVERAGE DETERMINATION - CENTRAL ILLINOIS RAILROAD COMPANY

The Board has held the Central Illinois Railroad Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective September 15, 2010 (11-CO-0007).

B.C.D. 11-38

EMPLOYEE STATUS DETERMINATION - RAILROAD INDUSTRIES INCORPORATED

This is the decision of the Railroad Retirement Board regarding whether the services performed by certain employees of Railroad Industries, Incorporated (RII) for Grenada Railway, LLC (Grenada) and Natchez Railway, LLC (Natchez) is creditable service under the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

It is the determination of the Board that the individuals provided by RII to provide services to Grenada and Natchez are employees of those rail employers for purposes of the Railroad Retirement and Railroad Unemployment Insurance Acts (10-CO-0032).

B.C.D. 11-39

COVERAGE DETERMINATION - RIVERPORT MORTGAGE, LLC

The Board has held Riverport Mortgage, LLC, to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective May 1, 2010 (11-CO-0008).

B.C.D. 11-40

COVERAGE DETERMINATION - JACKSON & LANSING RAILROAD COMPANY

The Board has held Jackson & Lansing Railroad Company to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective October 21, 2010 (11-CO-0010).

B.C.D. 11-41

COVERAGE DETERMINATION - FRONTIER RAIL CORPORATION

The Board has held Frontier Rail Corporation not to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts (11-CO-0004).

B.C.D. 11-42

NOTICE REFLECTING NAME CHANGE - SDR HOLDING COMPANY  
D/B/A DAKOTA SOUTHERN RAILWAY

Name changed from Dakota Southern Railway, effective October 1, 2009.

B.C.D. 11-43

COVERAGE DETERMINATION - WESTERN FUELS ASSOCIATION,  
INC.

The Board has held Western Fuels Association, Inc., not to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts (11-CO-0012).

B.C.D. 11-44

COVERAGE DETERMINATION - BROWN'S MACHINE WORKS AND CONSTRUCTION, INC.

The Board has held Brown's Machine Works and Construction, Inc., not to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts (11-CO-0009).

B.C.D. 11-45

COVERAGE DETERMINATION - MIDDLETOWN & NEW JERSEY RAILWAY COMPANY, INC.

The Board has held the Middletown & New Jersey Railway Company, Inc., ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective March 31, 2009 (11-CO-0013).

B.C.D. 11-46

COVERAGE DETERMINATION - MIDDLETOWN & NEW JERSEY RAILROAD, LLC

The Board has held Middletown & New Jersey Railroad, LLC, to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective April 6, 2009 (11-CO-0013).

B.C.D. 11-47

COVERAGE DETERMINATION - REGIONAL RAIL, LLC

The Board has held Regional Rail, LLC, not to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts (11-CO-0013).

B.C.D. 11-48

NOTICE REFLECTING NAME CHANGE - GRAND ELK RAILROAD,  
INC.

Name changed from Grand Elk Railroad, LLC, effective April 13, 2009.

B.C.D. 11-49

COVERAGE DETERMINATION - DELAWARE COAST LINE RAILROAD COMPANY

The Board has held Delaware Coast Line Railroad Company to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective January 2000 (11-CO-0015).

B.C.D. 11-49.1

COVERAGE DETERMINATION - HIDE POWER & EQUIPMENT COMPANY

The Board has held Hide Power & Equipment Company to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective January 2000 (11-CO-0015).

B.C.D. 11-50

COVERAGE DETERMINATION - U.S. RAIL CORPORATION OF NEW JERSEY

The Board has held U.S. Rail Corporation of New Jersey to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective December 20, 2009 (11-CO-0016).

B.C.D. 11-51

NOTICE REFLECTING NAME CHANGE - FLORIDA EAST COAST RAILWAY, LLC

Name changed from Florida East Coast Railway Company, effective September 15, 2000.

B.C.D. 11-52

NOTICE REFLECTING NAME CHANGE - FLORIDA EAST COAST  
DELIVERIES, LLC

Name changed from Florida East Coast Deliveries,  
Inc., effective December 27, 2007).

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THIS FORM IS TO BE USED ONLY BY THE SECRETARY TO THE BOARD OR AS OTHERWISE SPECIFICALLY DIRECTED BY THE BOARD.

FORM NO. G-21 (9-83)  
UNITED STATES OF AMERICA  
RAILROAD RETIREMENT BOARD  
TRANSCRIPT OF BOARD ORDERS

TRANSCRIPT NO.  
1-11  
PAGE 1 OF 21 PAGES  
DATE TRANSCRIPT RELEASED  
**FEB 18 2011**

I CERTIFY THAT THE FOLLOWING IS A TRUE AND CORRECT TRANSCRIPT

OF BOARD ORDER(S) NUMBERED 11-1 to 11-27, incl. & B.C.D. 11-1 to 11-11, incl.  
ISSUED BY THE BOARD ON January 19, 2011

*Beatrice Egan*  
SECRETARY TO THE BOARD

Adopted the following Board Orders:

B.O. 11-1

DECISION IN RAILROAD UNEMPLOYMENT INSURANCE ACT  
CLAIMS APPEAL DOCKET NO. 10-AP-00036, [REDACTED]  
[REDACTED] S.S.A. NO. \*\*\*-\*\*-0210

This is an appeal of the April 26, 2010 decision by the hearings officer that Mr. [REDACTED] was properly denied Sickness Benefits under the Railroad Unemployment Insurance Act because he failed to timely file an application for Sickness Benefits and failed to demonstrate that circumstances beyond his control prevented his filing more than a month beyond the filing deadline.

Based on the evidence in the record, the Board reverses the hearings officer's decision of April 26, 2010 and remands this case to the Office of Programs for action consistent with this decision.

The appeal is allowed.

B.O. 11-2

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0046, [REDACTED] R.R.B. NO.  
A-\*\*\*-\*\*- [REDACTED]

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED] from the decision of the hearings officer and had considered the argument and evidence presented therein, the Board unanimously renders the decision set forth in the opinion of the Board affirming the decision of the hearings officer.

B.O. 11-3

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0045, [REDACTED] R.R.B.  
NO. A-\*\*\*-\*\*\*-[REDACTED]

The Board has reviewed the record in the appeal of [REDACTED] from the decision of the hearings officer and has considered the argument and evidence contained therein. Ms. [REDACTED] appeals the decision of the hearings officer upholding the denial of her application for a disability annuity under the Railroad Retirement Act.

The Board remands the case to the hearings officer for further consideration under 20 CFR §220.100(b)(3) as amended. Labor Member Speakman dissents for the reasons set forth in his dissenting opinion.

B.O. 11-4

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 09-AP-0054, [REDACTED] R.R.B. NO.  
A-\*\*\*-\*\*\*-[REDACTED]

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED] from the decision of the hearings officer and had considered the argument and evidence presented therein, the Board unanimously renders the decision set forth in the opinion of the Board affirming the decision of the hearings officer.

B.O. 11-5

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0052, [REDACTED] R.R.B. NO.  
A-\*\*\*-\*\*\*-[REDACTED]

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED]. ~~Laker~~ from the decision of the hearings officer and had considered the argument and evidence presented therein, the Board unanimously renders the decision set forth in the opinion of the Board dismissing the appeal.



B.O.11-6

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0027, [REDACTED], R.R.B.  
NO. A-\*\*\*-\*\*- [REDACTED]

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED] from the decision of the hearings officer and had considered the argument and evidence presented therein, a majority of the Board renders the decision set forth in the opinion of the Board affirming the decision of the hearings officer. Labor Member Speakman dissents for the reasons set forth in his dissenting opinion.

B.O. 11-7

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0022, [REDACTED] R.R.B.  
NO. A-\*\*\*-\*\*- [REDACTED]

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED] from the decision of the hearings officer and had considered the argument and evidence presented therein, the Board unanimously renders the decision set forth in the opinion of the Board affirming the decision of the hearings officer.

B.O. 11-8

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0047, [REDACTED], R.R.B.  
NO. A-\*\*\*-\*\*- [REDACTED]

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED] from the decision of the hearings officer and had considered the argument and evidence presented therein, the Board unanimously renders the decision set forth in the opinion of the Board affirming the decision of the hearings officer.

B.O. 11-9

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0051, [REDACTED] R.R.B. NO.  
WD-\*\*\*-\*\*-\*\*\* [REDACTED]

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED] from the decision of the hearings officer and had considered the argument and evidence presented therein, a majority of the Board renders the decision set forth in the opinion of the Board affirming the decision of the hearings officer. Labor Member Speakman dissented from this decision.

B.O. 11-10

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0006, LOUIS W. PHILLIPS, JR. [REDACTED]  
R.R.B. NO. A-\*\*\*-\*\*-\*\*\* [REDACTED]

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED], from the decision of the hearings officer and had considered the argument and evidence presented therein, the Board unanimously renders the decision set forth in the opinion of the Board affirming the decision of the hearings officer.

B.O. 11-11

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0048, [REDACTED] R.R.B. NO.  
A-\*\*\*-\*\*-\*\*\* [REDACTED]

This is an appeal of the June 24, 2010 decision by the hearings officer that Mr. [REDACTED] is not disabled for all work activity and is not entitled to a disability annuity under section 2(a)(1)(v) of the Railroad Retirement Act. A majority of the Board remands the decision to the hearings officer to evaluate the appellant's case by including an explanation of the weight given to each medical report discussed. In addition, the hearings officer should correct the five-step evaluation criteria to reflect the disability regulations in effect

since December 4, 2009. Labor Member Speakman dissents for the reasons set forth in his dissenting opinion.

B.O. 11-12

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 09-AP-0063, [REDACTED] R.R.B. NO.  
A-\*\*\*-\*\*\*-[REDACTED]

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED] from the decision of the hearings officer and had considered the argument and evidence presented therein, the Board unanimously renders the decision set forth in the opinion of the Board affirming the decision of the hearings officer.

B.O. 11-13

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0028, [REDACTED], R.R.B.  
NO. A-\*\*\*-\*\*\*-[REDACTED]

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED] Owens, Jr., from the decision of the hearings officer and had considered the argument and evidence presented therein, the Board unanimously renders the decision set forth in the opinion of the Board affirming the decision of the hearings officer.

B.O. 11-14

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0041, [REDACTED] R.R.B. NO.  
WD-\*\*\*-\*\*\*-[REDACTED]

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED] McPague from the decision of the hearings officer and had considered the argument and evidence presented therein, a majority of the Board renders the decision set forth in the opinion of the Board affirming the decision of the hearings officer.

In her appeal to the Board, Ms. [REDACTED] asks if the recovery of her overpayment could be limited to a monthly deduction of \$500.00. Considering the amount of the overpayment, and in light of the fact that Ms. [REDACTED] is not requesting compromise, but rather consideration as to the manner of collection of the overpayment, the Board recommends that the Debt Recovery Division give consideration to Ms. [REDACTED] request. Labor Member Speakman dissents for the reasons set forth in his dissenting opinion.

B.O. 11-15

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0049, [REDACTED]  
R.R.B. NO. WCA-\*\*\*-\*\*- [REDACTED]

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED] from the decision of the hearings officer and had considered the argument and evidence presented therein, a majority of the Board renders the decision set forth in the opinion of the Board affirming the decision of the hearings officer. Labor Member Speakman dissents for the reasons set forth in his dissenting opinion.

B.O. 11-16

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0024, [REDACTED] R.R.B.  
NO. A-\*\*\*-\*\*- [REDACTED]

This is an appeal of the February 11, 2010 decision by the hearings officer that Mr. [REDACTED] has been totally and permanently disabled from January 23, 2009, but was not disabled prior to that date. The Board remands the decision to the hearings officer to explain the basis of his finding that Mr. Thompson could not perform his past relevant work.

The appeal is remanded.

B.O. 11-17

DECISION IN RAILROAD UNEMPLOYMENT INSURANCE ACT  
CLAIMS APPEAL DOCKET NO. 10-AP-0025, [REDACTED]  
[REDACTED], S.S.A. NO. \*\*\*-\*\*-\*\*\*\*

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED] from the decision of the hearings officer and had considered the argument and evidence presented therein, the Board unanimously renders the decision set forth in the opinion of the Board affirming the decision of the hearings officer.

B.O. 11-18

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 09-AP-0017, [REDACTED], R.R.B.  
NO. MA-\*\*\*\*-\*\*\*\*

The Board has reviewed the record in the appeal of Ms. [REDACTED] from the decision of the hearings officer and has considered the argument and evidence presented therein. Ms. [REDACTED] appeals the decision of the hearings officer that Ms. [REDACTED] was in last pre-retirement employment (LPE) with Robert Cottingham Property Management Company for the period March 1, 2005 through December 31, 2005, and that work deductions were applied to her annuities correctly.

The evidence of record indicates that the services provided by Ms. [REDACTED] for the period January 1, 2008 through December 31, 2008, are the same as those provided for the period March 1, 2005 through December 31, 2005. Therefore, for consistency, the Board finds Ms. [REDACTED] was self-employed for the period January 1, 2008 through December 31, 2008, as well.

The Board reverses the decision of the hearings officer and remands this case to the Office of Programs for appropriate action to correct Ms. [REDACTED] employee annuity as well as her spouse annuity.

B.O. 11-19

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0008, ROY L. [REDACTED], R.R.B. NO.  
A-\*\*\*-\*\*- [REDACTED]

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED] from the decision of the hearings officer and had considered the argument and evidence presented therein, the Board unanimously renders the decision set forth in the opinion of the Board affirming the decision of the hearings officer. Labor Member Speakman concurred in a separate opinion.

B.O. 11-20

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0040, [REDACTED], R.R.B. NO.  
MA-\*\*\*-\*\*- [REDACTED]

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED] from the decision of the hearings officer and had considered the argument and evidence presented therein, the Board unanimously renders the decision set forth in the opinion of the Board affirming the decision of the hearings officer.

B.O. 11-21

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0029, [REDACTED], R.R.B.  
NO. A-\*\*\*-\*\*- [REDACTED]

The Board has reviewed the record in the appeal of [REDACTED] from the decision of the hearings officer and has considered the argument and evidence contained therein. Mr. [REDACTED] appeals the decision of the hearings officer dated March 22, 2010 upholding the denial of his application for a disability annuity under the Railroad Retirement Act. The Board affirms the denial of Mr. [REDACTED] application for the period through September 16, 2008, and remands the case for additional action as it applies to the period after September 16, 2008.

B.O. 11-22

DECISION IN RAILROAD RETIREMENT ACT CLAIMS APPEAL  
DOCKET NO. 10-AP-0050, WILLYN M. HILSON FOR R [REDACTED]  
[REDACTED] R.R.B. No. WCD-\*\*\*-\*\*-5522

Each member of the Board having reported that he had examined the record in the appeal of [REDACTED] for [REDACTED] from the decision of the hearings officer and had considered the argument and evidence presented therein, the Board unanimously renders the decision set forth in the opinion of the Board affirming the decision of the hearings officer.

B.O. 11-23

APPROVAL OF RRB FORM G-252

The following form is hereby approved:

RRB Form G-252, Self-Employment/Corporate Officer Work and Earnings Monitoring (10-GE-0042)

B.O. 11-24

APPROVAL OF FUNDING IN THE AMOUNT OF \$175,000

Requisition Number 341011019, in the amount of \$175,000, for postage costs associated with the mailing of the annual rate adjustment letters is approved (10-BU-0030).

B.O. 11-25

APPROVAL OF FUNDING IN THE AMOUNT OF \$203,056

Requisition Number 360011003, in the amount of \$203,056, to fund the Facilities Maintenance Contract for the headquarters facility through March 4, 2011, is approved (11-BU-0002).

B.O. 11-26

APPROVAL OF FUNDING IN THE AMOUNT OF \$259,428

Requisition Number 360011002, in the amount of \$259,428, to fund the Janitorial Services Contract for the headquarters facility through March 4, 2011, is approved (11-BU-0001).

B.O. 11-27

APPROVAL OF FUNDING IN THE AMOUNT OF \$515,000

Funding in the amount of \$515,000 for various requisitions to provide for the payment of postage charges for mailings released by the Railroad Retirement Board for fiscal year 2011, through March 4, 2011, is approved (11-BU-0003).



And adopted the following coverage rulings:

B.C.D. 11-1

COVERAGE DETERMINATION - ROCKY MOUNTAIN RAILCAR & REPAIR, INC.

The Board has held Rocky Mountain Railcar & Repair, Inc., not to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts (10-CO-0028).

B.C.D. 11-2

COVERAGE DETERMINATION - PORT HARBOR RAILROAD, INC.

The Board has held Port Harbor Railroad, Inc., to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective June 10, 2010 (10-CO-0026).

B.C.D. 11-3

NOTICE REFLECTING NAME CHANGE - MOUNT VERNON TERMINAL RAILWAY, LLC

Name changed from Mount Vernon Terminal Railway, Inc., effective December 30, 1998.

B.C.D. 11-4

COVERAGE DETERMINATION - AUSTIN STEAM TRAIN ASSOCIATION

The Board has held Austin Steam Train Association not to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts (10-CO-0029).

B.C.D. 11-5

NOTICE REFLECTING NAME CHANGE - MORRISTOWN & ERIE RAILWAY, INC.

Name changed from Morristown & Erie Railroad Company, effective January 1, 1982.

B.C.D. 11-6

COVERAGE DETERMINATION - ATHENS TERMINAL COMPANY

The Board has held the Athens Terminal Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective July 1, 1967 (10-CO-0030).

B.C.D. 11-6.1

COVERAGE DETERMINATION - BIRMINGHAM BELT RAILROAD COMPANY

The Board has held the Birmingham Belt Railroad Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective January 13, 1969 (10-CO-0030).

B.C.D. 11-6.2

COVERAGE DETERMINATION - CAROLINA, CLINCHFIELD & OHIO RAILWAY

The Board has held the Carolina, Clinchfield & Ohio Railway ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective January 1, 1983 (10-CO-0030).

B.C.D. 11-6.3

COVERAGE DETERMINATION - CHICAGO CAR INTERCHANGE BUREAU

The Board has held the Chicago Car Interchange Bureau ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective December 31, 1995 (10-CO-0030).

B.C.D. 11-6.4

COVERAGE DETERMINATION - DETROIT TERMINAL RAILROAD COMPANY

The Board has held the Detroit Terminal Railroad Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective May 25, 1984 (10-CO-0030).

B.C.D. 11-6.5

COVERAGE DETERMINATION - FORT WAYNE & JACKSON RAILROAD COMPANY

The Board has held the Fort Wayne & Jackson Railroad Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective December 31, 1981 (10-CO-0030).

B.C.D. 11-6.6

COVERAGE DETERMINATION - FREIGHT AGENTS ASSOCIATION OF SPOKANE WASHINGTON

The Board has held the Freight Agents Association of Spokane Washington ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective December 31, 1995 (10-CO-0030).

B.C.D. 11-6.7

COVERAGE DETERMINATION - GALVESTON TERMINAL RAILWAY COMPANY

The Board has held the Galveston Terminal Railway Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective December 31, 1985 (10-CO-0030).

B.C.D. 11-6.8

COVERAGE DETERMINATION - HOLYOKE & WESTFIELD RAILROAD COMPANY

The Board has held the Holyoke & Westfield Railroad Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective October 20, 1980 (10-CO-0030).

B.C.D. 11-6.9

COVERAGE DETERMINATION - JEFFERSON SOUTHWESTERN RAILROAD COMPANY

The Board has held the Jefferson Southwestern Railroad Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective March 31, 1932 (10-CO-0030).

B.C.D. 11-6.10

COVERAGE DETERMINATION - JOINT TARIFF DEPARTMENT-TRANS CONTINENTAL FREIGHT BUREAU-WESTERN LINE COMMITTEE

The Board has held the Joint Tariff Department-Trans Continental Freight Bureau-Western Line Committee ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective December 31, 1995 (10-CO-0030).

B.C.D. 11-6.11

COVERAGE DETERMINATION - LAFAYETTE UNION RAILWAY COMPANY

The Board has held the Lafayette Union Railway Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective November 12, 1991 (10-CO-0030).

B.C.D. 11-6.12

COVERAGE DETERMINATION - LOCAL FREIGHT AGENTS  
ASSOCIATION OF TACOMA, WASHINGTON

The Board has held the Local Freight Agents Association of Tacoma, Washington ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective December 31, 1995 (10-CO-0030).

B.C.D. 11-6.13

COVERAGE DETERMINATION - NASHVILLE & DECATUR RAIL-  
ROAD COMPANY

The Board has held the Nashville & Decatur Railroad Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective December 20, 1990 (10-CO-0030).

B.C.D. 11-6.14

COVERAGE DETERMINATION - NIAGARA JUNCTION RAILWAY  
COMPANY

The Board has held the Niagara Junction Railway Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective July 29 1987 (10-CO-0030).

B.C.D. 11-6.15

COVERAGE DETERMINATION - NORTH BROOKFIELD RAILROAD  
COMPANY

The Board has held the North Brookfield Railroad Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective January 31, 1968 (10-CO-0030).

B.C.D. 11-6.16

COVERAGE DETERMINATION - NORTH COAST LINES, INC.

The Board has held the North Coast Lines, Inc., ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective June 30, 1985 (10-CO-0030).

B.C.D. 11-6.17

COVERAGE DETERMINATION - OSHKOSH TRANSPORTATION COMPANY

The Board has held the Oshkosh Transportation Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective October 1, 1995 (10-CO-0030).

B.C.D. 11-6.18

COVERAGE DETERMINATION - PENNSYLVANIA READING SEASHORE LINES

The Board has held the Pennsylvania Reading Seashore Lines ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective March 29, 1976 (10-CO-0030).

B.C.D. 11-6.19

COVERAGE DETERMINATION - SAINT PAUL UNION DEPOT COMPANY

The Board has held the Saint Paul Union Depot Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective March 2, 2000 (10-CO-0030).

B.C.D. 11-6.20

COVERAGE DETERMINATION - SARATOGA & SCHENECTADY  
RAILROAD COMPANY

The Board has held the Saratoga & Schenectady Railroad Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective January 18, 1991 (10-CO-0030).

B.C.D. 11-6.21

COVERAGE DETERMINATION - STATISTICAL BUREAU WESTERN  
LINES

The Board has held the Statistical Bureau Western Lines ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective December 31, 1995 (10-CO-0030).

B.C.D. 11-6.22

COVERAGE DETERMINATION - STONY BROOK RAILROAD  
CORPORATION

The Board has held the Stony Brook Railroad Corporation ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective April 29, 1964 (10-CO-0030).

B.C.D. 11-6.23

COVERAGE DETERMINATION - THE CLEVELAND & PITTSBURGH  
RAILROAD COMPANY

The Board has held The Cleveland & Pittsburgh Railroad Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective December 31, 1972 (10-CO-0030).

B.C.D. 11.6.24

COVERAGE DETERMINATION - THE DELAWARE RAILROAD COMPANY

The Board has held The Delaware Railroad Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective December 31, 1972 (10-CO-0030).

B.C.D. 11-6.25

COVERAGE DETERMINATION - THE LAKE ERIE & EASTERN RAILROAD COMPANY

The Board has held The Lake Erie & Eastern Railroad Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective June 14, 1912 (10-CO-0030).

B.C.D. 11-6.26

COVERAGE DETERMINATION - TRANSCONTINENTAL FREIGHT BUREAU

The Board has held the Transcontinental Freight Bureau ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective December 31, 1995 (10-CO-0030).

B.C.D. 11-6.27

COVERAGE DETERMINATION - TRANSIT ICE COMPANY

The Board has held the Transit Ice Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective January 19, 1994 (10-CO-0030).



B.C.D. 11-6.28

COVERAGE DETERMINATION - TRENTON PRINCETON TRACTION  
COMPANY

The Board has held the Trenton Princeton Traction Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective March 15, 1986 (10-CO-0030).

B.C.D. 11-6.29

COVERAGE DETERMINATION - TROY & GREENBUSH RAILROAD  
ASSOCIATION

The Board has held the Troy & Greenbush Railroad Association ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective January 31, 1968 (10-CO-0030).

B.C.D. 11-6.30

COVERAGE DETERMINATION - VALLEY STOCKYARDS COMPANY,  
INC.

The Board has held the Valley Stockyards Company, inc., ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective April 16, 2006 (10-CO-0030).

B.C.D. 11-6.31

COVERAGE DETERMINATION - WESTERN CONTACT COMMITTEE  
FOR NATIONAL RAILROAD ADJUSTMENT BOARD

The Board has held the Western Contact Committee for National Railroad Adjustment Board ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective December 31, 1995 (10-CO-0030).

B.C.D. 11-6.32

COVERAGE DETERMINATION - WESTERN TRUNK LINE COMMITTEE

The Board has held the Western Trunk Line Committee ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective December 31, 1995 (10-CO-0030).

B.C.D. 11-6.33

COVERAGE DETERMINATION - YORK TERMINAL RAILWAY COMPANY

The Board has held the York Terminal Railway Company ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective December 1, 1999 (10-CO-0030).

B.C.D. 11-7

COVERAGE DETERMINATION - GRANDLUXE RAILWAY, LLC

The Board has held the Grandluxe Railway, LLC, ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective August 31, 2008 (10-CO-0031).

B.C.D. 11-8

COVERAGE DETERMINATION - COLUMBIA & READING RAILWAY COMPANY, LLC

The Board has held Columbia & Reading Railway Company, LLC, to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective January 20, 2010 (10-CO-0034).

B.C.D. 11-9

COVERAGE DETERMINATION - SHIPCARSNOW, INC.

The Board has held ShipCarsNow, Inc., to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective January 1, 2011 (10-CO-0035).

B.C.D. 11-10

COVERAGE DETERMINATION - TISHOMINGO RAILROAD COMPANY, INC.

The Board has held the Tishomingo Railroad Company, Inc., ceased to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective December 31, 2009.

B.C.D. 11-11

COVERAGE DETERMINATION - PORT OF IVORY, LLC

The Board has held Port of Ivory, LLC, to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective August 7, 2009 (10-CO-0027).