



Legal Opinion L-2006-22
September 25, 2006

U.S. Railroad Retirement Board
844 North Rush Street
Chicago Illinois, 60611-2092

Phone: (312) 751-7139
TTY: (312) 751-4701
Web: <http://www.rrb.gov>

TO: Marie C. Leeson, Chief of Calculation, Analysis and Systems
Through: Ronald Russo, Director of Policy and Systems

FROM: Steven A. Bartholow
General Counsel

SUBJECT: Tier 2 Cost-of-Living Increases When Annuitant Has Less Than 10 Years of Service

This is in reply to your memorandum dated August 11, 2006, inquiring as to whether, when the tier 2 component is not payable until age 62 in an annuity based on less than ten years of service, the tier 2 should include all cost-of-living increases payable between the annuity beginning date and the date the employee attains age 62.

Section 2(a)(4) of the Railroad Retirement Act provides that:

An individual who is entitled to an annuity under paragraph (v) of subdivision (1), but who does not have at least ten years of service, shall, prior to the month in which the individual attains age 62, be entitled only to an annuity amount computed under section 231b(a) of this title (without regard to section 231b(a)(2) of this title) or section 231b(f)(3) of this title. Upon attainment of age 62, such an individual may also be entitled to an annuity amount computed under section 231b(b) of this title, but such annuity amount shall be reduced for early retirement in the same manner as if the individual were entitled to an annuity under subsection (a)(1)(iii) of this section.

Therefore, as you state, the tier 2 component is not payable until the annuitant is age 62 in connection with an annuity based on less than ten years of service. See also Legal Opinion L-2002-11 under "Attachment 3," regarding section 103 of P.L. 107-90, the Railroad Retirement and Survivor's Improvement Act of 2001. Legal Opinion L-81-205, regarding the issue of annuity components having different annuity beginning dates.

As you point out, section 3(g)(1) of the Railroad Retirement Act provides that tier 2 cost-of-living increases are payable if the effective date of the increase is on or after the annuity beginning date. You suggest that because tier 2 cost-of-living increases are based on the annuity beginning date, and not on the tier 2 beginning date (i.e., when the disability annuitant with less than five years of railroad service attains age 62), the tier 2 component awarded after the annuity beginning date should include all cost-of-living increases payable on or after the annuity beginning date, even if those increases are payable prior to the date the tier 2 component is payable.

Interpreting section 3(g)(1) as you suggest is not consistent with the underlying concept of cost-of-living increases. The better interpretation is, in my opinion, to read section 3(g)(1) together with section 2(a)(4) and conclude that tier II cost-of-living increases cannot begin prior to the beginning date of the tier II benefit. The language of section 2(a)(4) as amended in 2001 very clearly restricts the entitlement of an employee who has less than 10 years of railroad service. The first sentence of section 2(a)(4) prohibits the payment of a tier II to such employee until (s)he attains age 62. The second sentence of the section provides that upon attainment of age 62, a tier II component may become payable, but (unlike the tier II payable to a disabled employee-annuitant with at least 10 years of creditable railroad service) the tier II amount must be reduced for age. Section 2(a)(4) suggests that the annuity beginning date for a tier II benefit in the case of



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an annuitant under section 2(a)(1)(v) of the Act based on less than 10 years of service cannot be before age 62. The date on which the tier II benefit first becomes payable should be considered the annuity beginning date for purposes of applying tier II cost-of-living increases under section 3(g)(1). See also, Legal Opinion L-81-205.

In conclusion, when the tier 2 component is not payable until age 62 in an annuity based on less than ten years of service, the tier 2 should not include cost-of-living increases until the tier 2 component is actually payable.