

Program Letter

United States
Railroad Retirement Board



Office of Programs

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Quality Reporting Service Center

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TO: Chief Executive Officers
Unemployment and Sickness Insurance Contact Officials

SUBJECT: Employer Appeals of RUIA Benefit Determinations

INTRODUCTION

The purpose of this program letter is to review how railroad employers may exercise their rights to protest the award of unemployment and sickness benefits under the Railroad Unemployment Insurance Act (RUIA). Under Section 5 of the RUIA, the Railroad Retirement Board (RRB) provides base-year employers with notice of each claim for benefits filed by its employees. The employer then has 3 business days to submit information relevant to the claim before the RRB determines whether benefits are payable to the employee. If the RRB pays the claim, Section 5 provides that the RRB notify the base-year employer of the determination. Under the RRB's regulations, the base-year employer has 60 days from the date of the determination to file a written protest of the determination.

Although not required by statute, the RRB also sends notice of unemployment benefit applications and claims to each claimant's most recent employer, if different from the base-year employer. The most recent employer may submit relevant information about claims, but is not advised of payment determinations because only base-year employers have standing to protest such determinations.

APPEAL OF RRB DETERMINATIONS

Upon receipt of notice of the RRB's determination to pay benefits for a claim, the base-year employer of the claimant may request reconsideration of the determination. The request for reconsideration must be in writing and should explain the basis for the request, i.e. why does the employer disagree with the determination. Any documentation supporting the request for reconsideration should also be submitted. The request must be received at an office of the RRB within 60 days of the date of the Form ID-4E notice. A request for reconsideration should be mailed to the RRB office identified under the heading "Board Office" on the Form ID-4E.

Upon receipt of a request for reconsideration, the RRB office responsible for adjudication of the claim will review and issue a decision on the request for reconsideration. If an RRB **district office** is the adjudicating office, the decision will be referred to the appropriate RRB regional office for review prior to issuance. The employer will be notified in writing of the decision on reconsideration.

In accordance with Section 5(c) of the Railroad Unemployment Insurance Act, benefit payments to a claimant will continue, despite the filing of a request for reconsideration or an appeal. Benefits are subject to recovery from the claimant, however, if the decision on the request for reconsideration or appeal results in a finding that the benefits were erroneously awarded.

APPEAL OF A RECONSIDERATION DECISION

If the base year employer wants to appeal a reconsideration decision, the base year employer must do so within 60 days of the date the reconsideration decision was mailed to the base-year employer. The hearings officer will contact the railroad claimant and inform the base year employer of its right to participate in the appeal process. The appeal must be filed on RRB HA-1 EMP, Base Year Employer Appeal Under the Railroad Unemployment Insurance Act, which is available at any office of the Railroad Retirement Board (RRB) and on the RRB's website <http://www.rrb.gov>. The filing date of an appeal is the date it is received in any office of the Board. A base-year employer will lose its right to appeal if it does not file the form within the 60 day period. A hearings officer may waive the timeliness requirement if he or she finds the base-year employer had good cause for not filing the form timely.

After the appeal form HA-1 EMP is received, a hearings officer will be assigned to the appeal. The hearings officer assigned to the appeal works in the Railroad Retirement Board's Bureau of Hearings and Appeals and had no part in the initial decision or the reconsideration decision of the case.

The base-year employer will be given the opportunity to submit additional evidence after the appeal is received. The hearings officer may also develop additional evidence. The hearings officer will determine if a hearing is necessary. Where the hearings officer finds that the issues raised by the appeal can be resolved without a hearing, no hearing will be held but the base-year employer will be given the opportunity to comment on the evidence that will be evaluated by the hearings officer and may submit a written argument.

If a hearing is held, the base-year employer, the claimant and his or her representative, if he or she has one, will be notified in advance of the date, time, and place of the hearing. The hearings officer will ask any party questions and may question any witnesses that appear at the hearing. The base-year employer will have the opportunity to explain its case in person to the hearings officer.

The hearings officer will send the base-year employer and the claimant a copy of the written decision on the appeal as soon as his or her evaluation is completed.

APPEAL OF A HEARINGS OFFICER'S DECISION

If a base-year employer wants to appeal a hearings officer's decision, the base-year employer must appeal to the three member Board which heads the Railroad Retirement Board within 60 days of the date of the hearings officer's decision. The appeal must be filed on RRB Form HA-1 EMP within 60 days of the date the hearings officer's decision was mailed to the base-year employer or the base-year employer will lose its right to appeal. The three-member Board may, however, waive the timeliness requirement if they find the base-year employer had good cause for not filing the form timely. The decision of the Board will generally be made based upon the evidence in the record used by the hearings officer. A base-year employer does not have the right to submit additional evidence to the three-member Board. However, additional evidence may be allowed by the Board in accordance with the Board's regulations. No oral testimony is obtained at this step in the appeals process. A written decision will be sent to the base-year employer and the claimant after the Board's decision on the case is made.

FEDERAL COURT REVIEW

Under the Railroad Unemployment Insurance Act, if the Board denies an appeal, a further appeal may be taken to federal court within 90 days after the date of the Board's decision. This may be done by filing a petition for review in the U.S. Court of Appeals for the circuit in which the railroad has its principal place of business or principal executive offices, or the U.S. Court of Appeals for the Seventh Circuit or the U.S. Court of Appeals for the District of Columbia.

What Determinations Can Be Appealed?

Any determination made by the RRB that results in payment of either unemployment or sickness benefits to an employee may be appealed by the claimant's base-year employer.

Common determinations made by the RRB which an employer may appeal based on factual issues include the following:

Unemployment Issues

- Is **remuneration** attributable to any days claimed as days of unemployment?
- Is the employee **available for work** on days claimed as days of unemployment?
- Was the employee willing, able and ready to accept suitable work on days claimed as days of unemployment? Was the employee unemployed because he or she failed to follow prescribed procedures for recall to work? Did the employee refuse to accept suitable work? Did the employee mark back on an extra board? Did the employee fail to exercise seniority rights to suitable work?
- Did the employee **voluntarily leave work** without good cause?
- Did the employee claim benefits for days that he or she did not work because of **mileage or work restrictions**?

Sickness Issues

- Is **remuneration** attributable to any days claimed as days of sickness?
- Is the employee **able to work**, i.e., not sick or injured, on days claimed as days of sickness?

Remember the following when considering whether to request reconsideration or to appeal a determination of the RRB:

- There is no disqualification in the RUIA for unemployment related to suspension or discharge. An employee who is unemployed because of a suspension or discharge can receive unemployment benefits if he or she is otherwise eligible for benefits.
- An employee who voluntarily leaves work **with good cause** is not disqualified from receiving unemployment benefits if he or she is otherwise available for work.
- The determination as to whether an employee has sufficient service and compensation in the base-year to be qualified for benefits is made based on information provided by employers as part of their annual service and compensation reports. Remember that because of provisions for extended and accelerated benefits, not all benefit years begin July 1 and end the following June 30. Check the benefit year designation on Form ID-4E. The base year for the benefit year is the calendar year preceding the benefit year. For example, the base-year for “BY-04” is calendar year 2003.

Here are examples of how a base-year employer might request reconsideration:

Railroad A receives Form ID-4E stating that its employee has claimed and been paid unemployment benefits for May 1 through 14. Payroll records show that the employee marked off the extra board on May 2, 3, and 4. (The railroad did not inform the RRB of the employee’s mark off when the RRB sent the prepayment claims verification notice.) Railroad A sends a letter within 60 days to the RRB district office requesting reconsideration of the determination to pay unemployment benefits for May 2, 3, and 4.

The railroad explains that the employee was not available for work on the days at issue and encloses a copy of the timekeeper's record showing that the employee marked off. After investigation, the RRB determines that the employee was not available for work, recovers the appropriate benefits from the employee, and sends a notice to the railroad of the determination made on its request.

Railroad B receives Form ID-4E showing the payment of unemployment benefits to an employee for days in the employee's paid vacation period. The railroad sends a request for reconsideration to the RRB district office that documents the days to which vacation pay is attributable. Upon review, the RRB determines that the employee received remuneration for days claimed as days of unemployment, bills the employee for the amount recoverable, and notifies the railroad of the determination.

Railroad C receives Form ID-4E indicating continued payment of sickness benefits despite the railroad having recently concluded a personal-injury settlement with the employee for the same infirmity. If the railroad did not prevent the sickness benefit payment by responding to the prepayment notice, it can file a request for reconsideration to prevent further payments for the same infirmity and to cause recovery of any benefits not already recovered from the settlement under Section 12(o) of the Railroad Unemployment Insurance Act.

Railroad D receives Form ID-4E notice indicating that an employee who was discharged for failure to pay union dues was paid unemployment benefits. The railroad files a request for reconsideration on the grounds that the employee, in effect, voluntarily quit work by failing to pay union dues. The RRB's regional office issues a decision to the railroad upholding the payment of benefits.

The railroad then files Form HA-1 EMP, Base Year Employer Appeal Under the Unemployment Insurance Act, with the Bureau of Hearings and Appeals, within 60 days. The hearings officer contacts both the railroad and the claimant and holds a hearing because there are issues of fact. The hearings officer's decision is favorable to the railroad, and the employee is denied further benefits and billed for the overpayment. The employee appeals the decision to the three-member Board which notifies the railroad of the appeal. After evaluating the record, the Board sustains the hearings officer's decision.

We welcome information from employers to help ensure that benefit payments are accurate and are paid only to those who are entitled to them. Erroneous benefit payments that cannot be recovered remain charged to the base-year employer under the experience rating system. Therefore, we emphasize the importance of employers providing information in response to the RRB's prepayment claims verification notices in order to prevent erroneous payments and to avoid collection action. And, where employers disagree with an RRB determination, they should exercise their rights to request reconsideration.

If you have any questions or need additional information about your appeals of RUIA benefit determinations, please contact the manager of your local RRB district office.