



UNITED STATES GOVERNMENT

MEMORANDUM

FORM G-115f (1-92)

RAILROAD RETIREMENT BOARD

L-2017-59

December 8, 2017

TO: Michael A. Tyllas
Director of Programs

FROM: Ana M. Kocur *Ana M. Kocur*
General Counsel

SUBJECT: Development of Current Medical Evidence

I am writing in response to your October 2, 2017 memorandum, in which you asked if current medical evidence, namely evidence covering 12 months from the date in which the case is being rated, is required when making a disability allowance decision under the Railroad Retirement Act. It is my opinion that the plain language of the Railroad Retirement Board's (RRB) regulations requires the development of a complete medical history covering at least the preceding 12 months before deciding the individual *is not disabled*, but does not explicitly require the development of medical evidence covering the preceding 12 months when making a disability allowance.

Section 2(a)(3) of the Railroad Retirement Act (RRA) grants the RRB the power to prescribe what will be satisfactory proof of disability. *See* 45 U.S.C. § 231a(a)(3). As you know, it is the RRB's regulations that set forth the requirements on the agency and individuals claiming disability in the disability determination process.

The RRB regulation in question here provides, in part, that:

Before deciding that the claimant is not disabled, the Board will develop a complete medical history (i.e., evidence from the records of the claimant's medical sources) covering at least the preceding 12 months, unless the claimant says that his or her disability began less than 12 months before he or she filed an application.

20 CFR § 220.45(b). In addition, as your memorandum noted, the RRB's Disability Claims Manual 4.3.1 states that usually, only recent medical evidence of the last 12 months will be developed by the field.

I first note that the plain text of the regulation indicates that development of medical evidence covering the preceding 12 months is only required in cases where the determination will be that the claimant *is not disabled*. See 20 CFR § 220.45(b). However, although 12 months of evidence development may not be explicitly required when the determination will be that the claimant is disabled, it is clear from 20 CFR §220.46(c) that the medical evidence of record “must be complete and detailed enough to allow the Board to make a determination about whether or not the claimant is disabled.” Further, the evidence must allow the RRB to determine:

- (1) The nature and limiting effects of the claimant's impairment(s) for any period in question;
- (2) The probable duration of the claimant's impairment(s); and
- (3) The claimant's residual functional capacity to do work-related physical and mental activities.

Id.

You cite the Social Security Administration’s (SSA) regulations and Program Operations Manual System (POMS) in your memo, correctly noting their pertinence as the RRB, when making determinations regarding total and permanent disability, makes such decisions under the Social Security Act and uses the same criteria. However, I note that the SSA’s regulations similarly do not explicitly require the development of medical evidence covering the preceding 12 months, except in the case where the determination will be that a claimant is not disabled. The applicable regulation at 20 CFR § 404.1512(b) states as follows:

Before we make a determination that you are *not disabled*, we will develop your complete medical history for at least the 12 months preceding the month in which you file your application unless there is a reason to believe that development of an earlier period is necessary or unless you say that your disability began less than 12 months before you filed your application.

Id. (emphasis added).

POMS DI 24501.002 does state that “[g]enerally, the medical evaluation should cover the time from potential onset date or alleged onset date through the date of adjudication.” However, POMS DI 24515.020 also states that “[a]djudicators may process a fully favorable allowance determination without awaiting receipt of, or continuing to follow up on, requests for evidence that should not, in the judgment of the adjudicative team, affect the allowance determination.”

Based on the above, it is my opinion that under section 220.45(b) of the RRB's regulations the development of medical evidence covering the preceding 12 months may not be required when finding the claimant disabled, *provided* the record is complete and detailed enough to allow the RRB to make the disability determination. Ultimately, the decision as to whether or not to develop medical evidence covering the preceding 12 months should be made on a case-by-case basis.

