

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

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April 25, 2016

Charles Mierzwa
Chief of Information Resources Management
Railroad Retirement Board
844 North Rush Street
Chicago, Illinois, 60611-2092

RE: FR Doc. 2016-04287; RRB Forms AA-1 and AA1 (d)

Dear Mr. Mierzwa,

The Brotherhood of Locomotive Engineers and Trainmen ("BLET") represent employees that will be directly affected by the proposed changes to the forms discussed below. BLET has concerns about the proposed changes to form "Application For Determination of Employee's Disability Railroad," Retirement Form AA-1(d) and Application For Employee Annuity," Form AA-1. Specifically, questions 36 and 37 on Form AA-1 (d) regarding whether or not an employee does volunteer work or engages in social or recreational activities is problematic.

This is due to the fact that examiners will be using the form to as a measure to screen for fraudulent applications. While the Railroad Retirement System needs to be free of fraud to keep the system strong and economically viable, Railroad Retirement Board Examiners ("RRBE's") could be given a prejudicial view against an applicant who has a legitimate occupational disability, yet still engages in a social life or forms of recreation. For example, a person may be completely color blind and not able to determine the color of railroad signals. This may prevent him or her from performing an essential duty of his job as a certified locomotive engineer or certified conductor by operation of Federal Railroad Administration regulations. However his or her colorblind issue may not prevent that person from regular walking or other exercise that does not depend on color discernment to the extent required to work in the industry. A RRBE could erroneously conclude that since a person can perform physical activity that their color blindness is not an issue worthy of granting an occupational disability. They could make this decision independent of the fact that the person has a genuine vision problem that prevents them from doing their railroad job. This would be a grave mistake for an examiner to make and a mistake such as this could be made more common by the changes contained in the language in questions 36 and 37.

On the "Application For Employee Annuity," Form AA-1, questions 35 (a-d) are a problematic group of questions because they present questions to an employee that he or she may not have access to the answer, or the employee's answer may be at odds with his employer's answer due to an on the job dispute over railroad carrier discipline. There are many instances where an employee is both hurt on the job and subsequently charged with a rule violation at work for the same event and then disciplined with some punitive measure. This may include a retaliatory termination, as numerous OSHA findings have held in recent years. This may lead to significant disagreement over the facts of a case and although that person may be legitimately disabled, they may still have a case being adjudicated through various stages of industrial justice. Many employees may conclude their seniority rights have been given up or taken away by their employer. The other problem is that these questions really have to do with seniority rights and not a determination as to whether or not that person should qualify for a disability. This has the potential of further complicating an RRBE's determination as to the integrity of the application.

The BLET respectfully requests that these questions be stricken from each form as they will not help an examiner make a proper determination with regard to the applicant's physical condition, nor will they help eliminate any potential fraudulent applications.

Thank you for your consideration of our comments regarding Forms AA-1 and AA-1 (d).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dan R. Kim", written in a cursive style.

National President



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June 23, 2016

Brotherhood of Locomotive Engineers
And Trainmen
Dennis R. Pierce, National President
7061 East Pleasant Valley Road
Independence, OH 44131

Dear Mr. Pierce:

This letter is in response to your comments dated April 25, 2016 regarding proposed changes to the Railroad Retirement Board's (RRB) Forms AA-1, *Application for Employee Annuity* and AA-1d, *Application for Determination of Employee's Disability*.

In order to improve program integrity in the RRB's disability program, the RRB has made significant enhancements to Forms AA-1, *Application for Employee Annuity* and AA-1d, *Application for Determination of Employee's Disability* based on suggestions from the RRB's Inspector General (IG). The IG suggested that the RRB: 1) require an explanation describing the circumstances of separation from railroad employment such as voluntary relinquishment of position through retirement, injury, etc.; 2) capture details regarding volunteer work activities; 3) capture details regarding injury and pending claims; and 4) require a statement disclosing whether a facilitator or an attorney was used to complete or aid in the completion of a current application. These changes along with other significant form enhancements, were published in the Federal Register on February 26, 2016 for review and comment.

The comments submitted identified specific issues with some of the proposed changes. Those comments are addressed in detail below. We appreciate you taking the time to review the forms and prepare your comments. We hope the following information will answer the questions you raised and address your concerns.

Form AA-1, Question 35 a-d

Under existing policy, when an employee applicant files Form AA-1, we collect information pertaining to the employee giving up his/her seniority and other rights to return to work if the employee is filing for an age and service annuity. This information is obtained because in order to be eligible for an annuity, an age and service applicant must relinquish his or her rights to return to railroad work. A disability applicant is not required to relinquish rights in order to receive an annuity and therefore application instructions currently provide that disability applicants should not complete those items related to relinquishment of rights. The proposed revision would require all employee applicants to answer questions related to the relinquishment of rights, as well as provide an explanation as to why such rights were relinquished.

The majority of the Board approved implementing this change, which was originally suggested by the RRB's IG in relation to a disability fraud scheme perpetrated on the agency. The annuitants

involved in the fraud scheme were also entitled to a private pension from their railroad employer and by combining the two benefits, the annuitants were able to equal their income from work activity. Though these individuals were not required to relinquish their rights for purposes of entitlement to a disability annuity, they were required to do so in order to receive the pension from their employer. The proposal of the additional information in Question 35 was to be able to monitor RRB records to detect and prevent similar fraud schemes in the future. However, included among the enhancements to Form AA-1 is the renaming of a section which asks questions regarding entitlement to private pensions. (See Section 16 of the proposed Form AA-1.). Taking this into consideration, the Board has agreed to remove question 35 since the question is superfluous to other questions on Form AA-1.

Form AA-1d, Questions 36-37

Under existing policy, the RRB has the authority to ask a disability applicant to provide evidence about his or her daily activities, both before and after the date the applicant says that he or she became disabled. See 20 C.F.R. § 220.45(b)(4). On the existing Form AA-1d, questions in Section 6 seek this information. The proposed revision to Section 6 adds questions regarding the performance of volunteer work and social/recreational activities. This additional information will serve to supplement information currently requested.

We agree with you that participation in social and recreational activities should never be the basis for an automatic denial of an application for a disability benefit. The RRB does not deny an application for disability benefits based on an individual participating in volunteer work and/or social/recreational activities and will not do so in the future. Participation in such activities is only one of many factors evaluated when adjudicating an application for a disability annuity and such participation does not preclude a disability allowance. This is routinely demonstrated in occupational disability cases. For example, if an employee develops a hearing loss, the employee may be considered occupationally disabled yet is fully capable of performing other social or recreational activities, such as gardening, riding a bicycle or taking care of grandchildren.

Thank you again for your comments. As noted above, we hope this response addresses your concerns.

Sincerely,



Michael A. Tyllas
Director of Programs

cc: Vince Verna, Director of Regulatory Affairs