

May 6, 1997
L-97-19

TO : Peter A. Larson
Chief Financial Officer

FROM : Catherine C. Cook
General Counsel

SUBJECT : RUIA Recovery & Workers' Compensation Payments

This is in response to your memorandum of January 29, 1997, in which, you identify five cases, discovered during an audit, where workers' compensation payments were made to individuals who received sickness benefits under the Railroad Unemployment Insurance Act (RUIA). In your memorandum, you inquire whether the Railroad Retirement Board (Board) may seek recovery of sickness benefits under sections 2(d), 2(f) or 12(o) of the RUIA. You provided the background information set out below.

BACKGROUND

Case #1

In a workers' compensation settlement agreement, dated September 14, 1995, the employer agreed to pay the employee a total sum of \$2,300 in full satisfaction of weekly wages, unpaid medical expenses, mileage claims, interest, and penalties. On October 14, 1995, the magistrate for the Bureau of Workers' Disability Compensation/Board of Magistrates approved this agreement.

Case#2

On September 29, 1995, the employee and employer entered into a workers' compensation settlement agreement in which the employee received a total sum of \$17,000 less a \$2,000 attorney fee. A Workers' Compensation Judge approved the settlement agreement.

Case #3

The parties filed a compromise and release on April 29, 1992 settling the case for \$8,000 in addition to all sums that the employer/insurance company may have paid for injuries the employee sustained during his employment. The employer assumed full responsibility for the Board's \$6,914.99 lien. On May 28, 1992, a Workers' Compensation Judge, approved the settlement agreement.

Case #4

The employer agreed to pay the employee \$10,000 to satisfy any claims for injuries that the employee may have sustained during his employment. The Workers' Compensation Judge approved this agreement January 9, 1995.

Case #5

In this case a court approved a proposed workers' compensation settlement. This settlement provided that the employer pays to the employee \$5,000 plus past and future medical expenses.

In all five cases, the RRB sent a ANotice of Lien@ (also known as a 12(o) lien) to the employer and the employee advising that the Board has a right to reimbursement of sickness benefits from any sum payable because of the employee's injury or illness.

Applicable Statute & Regulation

Section 12(o) of RUIA

Under section 12(o) of the RUIA (45 U.S.C. ' 362(o)), the RRB has a right of reimbursement from any sum or damages paid or payable to an employee because of any liability for the injury for which the Board paid the employee sickness benefits under the RUIA. Section 341.2 of the Board's regulations states in pertinent part:

(a) The term Asum or damages paid or payable@ means the amount of money that an employee recovers based upon his or her injury or illness.

(b) The term Asum or damages paid or payable@ does not include:

* * * * *

(3) workers' compensation payments.

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Section 2(f) of the RUIA

Section 2(f) of the RUIA (45 U.S.C. ' 352(f)) provides for the recovery of unemployment or sickness benefits paid under the RUIA for a period that is later determined to be one for which remuneration was payable to the employee. Section 322.2 of the Board's regulations (20 CFR 322.2) defines remuneration in pertinent part as follows:

Remuneration includes all pay for services for hire and all other earned income payable or accruing with respect to any day.

* * * * *

Examples of remuneration set forth in the regulation are vacation pay, pay for time lost, non-cash pay provided for by agreement, separation and dismissal pay, and earnings from self-employment.

Section 4(a) of the RUIA

Section 4(a-1) of the RUIA states in pertinent part:

* * * * *

There shall not be considered as a day of unemployment or as a day of sickness, with respect to any employee ---

* * * * *

(ii) any day in any period with respect to which the Board finds that he is receiving or will have received annuity payments or pensions under the Railroad Retirement Act of 1974, or insurance benefits under title II of the Social Security Act . . . or unemployment, maternity, or sickness benefits under an unemployment, maternity, or sickness compensation law other than this Act, or any other social-insurance payments under any law [Emphasis added]

* * * * *

Section 2(d) of the RUIA

Section 2(d) of the RUIA provides in pertinent part:

If the Board finds that more than the correct amount of benefits has been paid * * * recovery by adjustment in subsequent payments * * * may * * * be made under regulations prescribed by the Board.

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Analysis

Under section 12(o) of the RUIA, the Board may perfect a lien on any sum or damages paid or payable to an employee because of any liability for an injury for which the Board has paid the employee sickness benefits under the RUIA. However, as noted, section 341.2 of the Board's regulations, cited above, excludes workers' compensation payments from the definition of Damages@ from which recovery under section 12(o) is available. Accordingly, recovery may not be sought under section 12(o) of the RUIA in the cases about which you inquire.

The second theory of recovery would be pursuant to section 2(f) of the RUIA. As noted earlier, the Board's regulations define remuneration in a manner that does not specifically address workers' compensation payments. However, this office has consistently ruled over the years that workers' compensation payments, unlike settlements under the FELA, are not in the nature of remuneration as pay for time lost. See, Legal Opinions L-47-642, 47-704, 66-1 and most recently L-90-45. Consistent with this longstanding interpretation, recovery may not be sought under section 2(f) of the RUIA.

As noted earlier, section 4(a-1)(ii) of the RUIA (45 U.S.C. ' 354(a-1)(ii)) provides that sickness benefits are not payable to an employee who in any period receives any social-insurance payments under any law. In Legal Opinion L-47-642 we stated that workers' compensation benefits are considered social-insurance payments administered under state law. However, in that opinion we further stated that only periodic payments for total disability under a workers' compensation law would cause the reduction in benefits required under section 4(a-1)(ii). The rationale for that opinion is that lump-sum payments in settlement of a workers' compensation award are not made with respect to particular days; whereas, when an employee receives workers' compensation for total disability, the payments are paid with respect to a definite period related to the disability¹. Where the payments reported are workers' compensation for total disability, any sickness benefits paid with respect to the same period are recoverable directly from the employee under section 2(d) of the RUIA. Consequently, the workers' compensation payments described above are not recoverable under section 2(d).

¹See Hearings before the House Committee on Interstate and Foreign Commerce on H.R. 1362, 79th cong., 1st Sess. (1945) p. 38.