



Legal Opinion L-2001-17
November 13, 2001

U.S. Railroad Retirement Board Phone: (312) 751-7139
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TO : Philip H. Arnold
Chief of Records Analysis and Systems
Through: Ronald Russo
Director of Policy and Systems

FROM : Steven A. Bartholow
General Counsel

SUBJECT : Payment of Remarried Widow Annuity following Residual Lump Sum Payment

This is in reply to your memorandum of October 10, 2001, requesting my opinion as to whether, and under what conditions, the remarried widow of a railroad employee may receive an annuity after payment of the residual lump sum.

The railroad employee in the case you have submitted died in August 1978. His widow, who was under age 60, filed an election to receive the residual lump sum pursuant to section 6(c)(1) of the Railroad Retirement Act on March 20, 1979, and was issued payment the following month (April 1979). She did not inform the Board that she had remarried March 13, 1979. Her second husband died in June 1999. She filed an application in March 2001 for a remarried widow's annuity under section 2(d)(1)(v) of the Act. She stated on her annuity application that "Back when Bob died and I was to remarry, I was told that I had to take the lump sum of Bob's retirement, but I was not told I was to forfeit all rights to anything that would come up in Railroad Benefits."

Eligibility requirements for the residual lump sum payment are set forth at section 6(c)(1) of the Railroad Retirement Act, which currently provides in part as follows:

Whenever it shall appear, with respect to the death of an employee, that no benefits, or no further benefits (other than benefits payable to a widow, widower, or parent under either this Act or the Social Security Act upon attaining the age of eligibility therefore at a future date) will be payable under this Act or under the Social Security Act, a lump sum in an amount computed under subdivision (2) of this subsection shall be paid to such person or persons as the deceased employee may have designated by a writing filed with the Board prior to his or her death, or if there be no designation, to the following person * * * --

(i) the widow or widower of the deceased employee who was living with such employee at the time of such employee's death, * * *

Provided, however, That if the employee is survived by a widow * * * who may upon attaining the age of eligibility be entitled to benefits under this Act or the Social Security Act, such lump sum shall not be paid unless such widow * * * makes and files with the Board an irrevocable election, in such form as the Board may prescribe, to have such lump sum be paid in lieu of all benefits to which such widow * * * might otherwise become entitled under this Act on the basis of the deceased employee's compensation and years of service or under the Social Security Act on the basis of the deceased employee's wages from * * * [such railroad service credits as may be transferred for use under the Social Security Act pursuant to section 18 of the Railroad Retirement Act]. Any election made and filed by a widow * * * shall be legally effective according to its terms. After a lump sum with respect to the death of an employee is paid pursuant to an election filed with the Board under the provisions of this subsection, no further benefits shall be paid * * * under this Act or the Social Security Act on the basis of such employee's compensation and service under this Act
* * *

As the remarried widow applicant in the particular case under discussion filed her election to receive the residual lump sum in 1979 but filed for a monthly annuity in 2001, I should note that section 6(c)(1) of the Railroad Retirement Act of 1974 originally restated the language of section 5(f)(2) of the Railroad Retirement Act of 1937 as in effect December 31, 1974 (see Public Law 93-445, 88 Stat. 1305, 1334), and therefore did not in 1979 include



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the last sentence in the above quote regarding no further payment of benefits. This language was added by the 1981 amendments to the 1974 Act (Public Law 97-35, section 1121(c)(1), 95 Stat. 357, 637). The amendment was effective retroactive to January 1, 1975 (see P.L. 97-35, section 1129(b)(2)), (95 Stat. 357, 642); however, the House Conference report explained that the amendment was intended to clarify rather than modify existing law. See House Rep. No. 208, 97th Cong., 1st Sess., at 869, reprinted in 1981 U.S. Code, Cong. & Ad News at 1010, 1231. Moreover, the current regulation of the Board, promulgated in 1986, explains that a widow's election to receive a residual lump sum in lieu of future annuities is irrevocable in essentially the same terms as previous regulation issued under the 1937 Act¹. The prohibition against monthly annuity payments on an employee's compensation record following payment of a residual lump sum must be interpreted in the same manner in 2001 as it would have been in 1979. See, e.g., Legal Opinions L-77-338 (election by widow to receive residual in 1971 prevents payment to her of a widow's annuity under the 1974 Act) and L-83-41 (election to receive residual in 1975 by second wife as the employee's widow prevents payment in 1983 to employee's surviving divorced wife by earlier marriage).

Opinions of this office under both the 1937 and 1974 Acts over the years have found a few exceptional circumstances where payment of a residual lump sum does not prevent all future payment of monthly annuities, despite the general prohibition. Initially, the opinions distinguish between instances where the residual was paid to an applicant who was required to file an election, and cases where no election was required because it appeared at time of payment no future beneficiaries existed. Thus, payment of the residual to the administrator of the employee's estate did not bar subsequent payment of a widow's annuity in Legal Opinions L-60-87 and L-60-144. Payment of a residual to an applicant did not bar that applicant's subsequent annuity entitlement on the basis of an amendment to the Act in L-51-557 and L-54-592. Payment of the residual to a remarried widow because no further benefits were payable at that time also did not prevent her from receiving a widow's annuity when the remarriage was subsequently annulled ab initio. See Legal Opinion L-64-15.

In contrast, Legal Opinion L-56-377 advised that where the widow elected to receive the residual in lieu of an annuity at age 65, she could not revoke her election when the Act was later amended to lower eligibility to age 60. Legal Opinion L-62-202 also advised that where the widow elected the residual but shortly afterward adopted a child, the child could receive a child's annuity but the widow's election prevented her entitlement to a young widow's annuity.

To prohibit a residual lump sum recipient from later annuity entitlement on the basis of a residual election, the election itself must also be valid. A preliminary consideration is whether the election was in fact a necessary condition precedent to payment of the residual to the applicant. Several opinions of this office have advised that where a widow of the employee remarries prior to age 60 and no other individuals are potentially eligible for annuities, she is not required to file an election form in order to receive the residual because her second marriage will be presumed to be valid and permanent. See Legal Opinion L-81-205 (execution of an election by a remarried widow whose remarriage terminates her entitlement to a widow's annuity is a nullity); to the same effect see also L-79-281, L-81-237 and L-83-41.

If an election to receive the residual in lieu of future monthly annuity is required in a particular case, the election is nevertheless invalid if the widow did not make a fully informed decision. See Board Order 01-81, affirming a decision of the hearings officer that a widow had not established that she was misinformed or that she was incapable of understanding the furnished information; Legal Opinion L-55-469, which advised that when the claimant made an election after receiving the usual letters of explanation regarding the effect of electing the residual in lieu of future annuities, the claimant will be presumed to have made an informed decision and will be barred from future annuity payments; and *Scammerhorn v. Railroad Retirement Board of the U.S.*, 748 F. 2d 1008, (5th Cir., 1984), where the Court affirmed the Board's decision that a claimant's residual election was irrevocable where it was made after a series of letters providing estimates of the future widow's annuity. On the other hand, where the Board had erroneously informed a widow that she could not receive a widow's annuity under the 1937 Act and a retirement insurance benefit on her own earnings under the Social Security Act, the residual election was invalid. See Legal Opinion L-63-70.

¹ Compare current regulation 234.47 (c) (" * * * Once the RLS check is negotiated, the election cannot be revoked.") with former 238.6 (e) as amended through March 11, 1964 (" An election to have the residual lump sum awarded * * * is legally effective according to its terms and is irrevocable after payment to the entitled person. * * * ").



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In the case described in your memorandum, the employee's widow remarried seven days prior to filing an election to receive the residual lump sum. Although no explanation for her omission of her marital status has been furnished, in my opinion the omission is not material: absent any other eligible individuals, the residual would have been payable to her in either event. Moreover, she was remarried at the time she signed the election to receive the residual. The election form was invalid because it was unnecessary. See Legal Opinions L-81-205 and L-83-41, noted earlier. On these facts, it is therefore my opinion that her receipt of the residual lump sum does not prevent the payment of a remarried widow's annuity to the applicant in question.

I trust that the foregoing discussion will be of assistance to you.