



Legal Opinion L-2005-14
May 25, 2005

U.S. Railroad Retirement Board Phone: (312) 751-7139
844 North Rush Street TTY: (312) 751-4701
Chicago Illinois, 60611-2092 Web: <http://www.rrb.gov>

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: Department of Homeland Security –
Transportation Security Administration
Current Connection

This is in reply to your request for my opinion as to whether the subject individual retained a current connection with the railroad industry following transfer from an agency listed in section 1(o) of the Railroad Retirement Act to the Department of Homeland Security. For the reasons set forth below, in my opinion the employee's current connection with the railroad industry has not been broken by reason of this employment.

The evidence is that the employee, who was born in February 1947, has been credited with a total of 366 months of service in the railroad industry through April 2001, when he left railroad service. Beginning October 2001, he worked for a private company providing security at Eppley Airfield, a public airport operated by the Omaha Airport Authority. In April 2002, he was hired by the Transportation Security Administration (TSA). The employee indicates that he intends to retire at age 60 in 2007, and requests advice as to whether his continued employment for TSA will break his current connection with the railroad industry.

Section 1(o) of the Railroad Retirement Act (45 U.S.C. 231(o)) defines a "current connection" for benefit entitlement purposes in part as follows:

- (o) An individual shall be deemed to have a "current connection with the railroad industry" at the time an annuity begins to accrue to him and at death if, in any thirty consecutive calendar months before the month in which an annuity under this Act begins to accrue to him or the month in which he dies if that first occurs, he will have been in service as an employee in not less than twelve calendar months and, if such thirty calendar months do not immediately precede such month, he will not have been engaged in any regular employment other than employment for an employer or employment with the Department of Transportation, the Interstate Commerce Commission, the Surface Transportation Board, the National Mediation Board, the National Transportation Safety Board, the State-owned railroad (as defined in the Alaska Railroad Transfer Act of 1982), so long as it is an instrumentality of the State of Alaska, or the Railroad Retirement Board in the period before such month and after the end of such thirty months. * * *

Based on available information, it appears that the thirty month interval prescribed by section 1(o) for this employee begins June 2000 and ends November 2002. Because his employment through April 2002 with the private security company falls within the prescribed period, it has no affect on his current connection. However, assuming his continued employment for the TSA after November 2002 to be regular and substantial as defined by section 216.17 of the Board's regulations (20 CFR 216.17), it would break his current connection unless that employment falls within a specified exception.



Legal Opinion L-2005-14
May 25, 2005

U.S. Railroad Retirement Board Phone: (312) 751-7139
844 North Rush Street TTY: (312) 751-4701
Chicago Illinois, 60611-2092 Web: <http://www.rrb.gov>

In this regard, Congress on November 19, 2001, created the TSA as an agency within the Department of Transportation. See section 101(a) of the Aviation and Transportation Security Act, Public Law 107-71, 115 Stat. 597, adding new section 114 to Title 49 of the United States Code (49 U.S.C. § 114). Moreover, the Security Act requires that those individuals engaged in airport security must be employees of the Federal government. See P.L. 107-71, section 110(b), 115 Stat. 614, amending 49 U.S.C. § 44901(a). The Security Act further provided at section 110(c) for a one-year phase-in period following enactment, and at section 101(g)(1) required the TSA to publish notice of its assumption of security functions. See 115 Stat. at 616 and 603, respectively. TSA published the required notice on February 20, 2002, stating that contract security screeners would be replaced by TSA employees by November 19, 2002. See: Assumption of Civil Security Functions and Responsibilities Under Chapter 449, Title 49, U.S.C., 67 Fed. Reg. 7939, 7940.

Shortly after the end of the one-year phase-in period under the Aviation and Transportation Security Act, however, Congress enacted the Homeland Security Act of 2002. See: Public Law 107-296, 116 Stat. 2135, November 25, 2002. The Homeland Security Act established a new Department of Homeland Security as an executive department of the United States government. Section 103(a) of the Act (6 U.S.C. §113) also established the post of Under Secretary for Border and Transportation Security, and section 403 of the Act (6 U.S.C. § 203) transferred to that official "the functions, personnel, assets and liabilities of * * * the Transportation Security Administration of the Department of Transportation * * *." See: 116 Stat. at 2177, 2178. Section 424 of the Act (6 U.S.C. § 234) required that the TSA continue to "be maintained as a distinct entity within the Department [of Homeland Security]" for at least two years after the date of enactment. 116 Stat. 2185. Finally, section 1517 of the Homeland Security Act (116 Stat. 2311)(codified at 6 U.S.C. § 557) provides:

Sec. 1517 REFERENCE.

With respect to any function transferred by or under this Act (including under a reorganization plan that becomes effective under section 1502) and exercised on or after the effective date of this Act, reference in any other Federal law to any department * * * the functions of which are so transferred shall be deemed to refer to the Secretary, or other official, or component of the Department to which such function is so transferred.

From the time in April 2002 when the TSA assumed the security functions at Eppley Airfield, the employee in the case submitted became employed by the United States Department of Transportation. As employment for the Department of Transportation is explicitly excluded by section 1(o) of the Railroad Retirement Act from employment which will break a current connection, the employee's service for the TSA while it was an administration of the Department of Transportation consequently will have no effect on the future determination as to whether he retains a current connection. Further, in my opinion section 1517 of the Homeland Security Act quoted above requires that the reference to the Department of Transportation in section 1(o) of the Railroad Retirement Act must be deemed to refer by name to any former component of the Department of Transportation, such as the TSA, which the Homeland Security Act transferred to the Department of Homeland Security. This means that section 1(o) of the Railroad Retirement Act must be read as if it explicitly lists the Transportation Security Administration among those Federal entities for which employment is disregarded when determining the existence of a current connection.

In accord with the foregoing discussion, in my opinion the subject employee in the case you submitted has not lost his regular current connection by reason of his continued employment for the Transportation Security Administration after the end of the thirty month interval prescribed by section 1(o) of the Railroad Retirement Act. Of course, a final determination as to whether he retains a current connection at the time his annuity begins to accrue must be made after he files his annuity application, and must consider any



Legal Opinion L-2005-14
May 25, 2005

U.S. Railroad Retirement Board
844 North Rush Street
Chicago Illinois, 60611-2092

Phone: (312) 751-7139
TTY: (312) 751-4701
Web: <http://www.rrb.gov>

other employment he might have performed. A copy of this memorandum should be filed in the Board's electronic records pertaining to the employee.