

January 4, 2000
L-2000-1

TO : Philip H. Arnold
Chief of Records, Analysis & Systems
Through: Ronald Russo
Acting Director of Policy and Systems

FROM : Steven A. Bartholow
General Counsel

SUBJECT : Eligibility of the Natural Child of an Employee Where the
Child has been Adopted by Another Individual

This is in reply to your request for a legal opinion as to the eligibility of the employee's natural son, Joseph, to a child's insurance annuity under the RRA.

The following facts are undisputed. Joseph was born June 30, 1985 in New Mexico. Following blood tests to establish paternity, the employee was adjudicated to be Joseph's father in a judgment entered November 17, 1988 by the District Court of McKinley County, New Mexico. The judgment also ordered the employee to provide monthly support for Joseph. Joseph's mother, Rhonda, married Shawn on February 9, 1991. In April of 1996, a final decree of adoption was entered in the Probate Court of Desha County, Arkansas which decreed that for all legal intents and purposes, Joseph shall be the child of Shawn and Rhonda, and his surname was changed to be that of his parents. The decree also noted that consent of the child's natural father had been filed. Six months later, on October 7, 1996, the employee died as a result of being crushed between a moving locomotive and a wagon. At the time of his death, the employee was domiciled in Texas.

Provisions governing the eligibility of survivors are found in section 2(d) of the RRA which provides, in relevant part, as follows:

(1) The following described survivors of a deceased employee who will have completed ten years of service and will have had a current connection with the railroad industry at the

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time of his death shall, * * * be entitled to annuities, if they have filed application therefor, * * *

(iii) a child (as defined in section 216 (e) and (k) of the Social Security Act) of such a deceased employee who (A) will be less than eighteen years of age, * * * and who is unmarried and was dependent upon the employee at the time of the employee's death.

Section 2(d) of the RRA further provides as follows:

(4) In determining for purposes of this subsection * * * whether an applicant is the * * * child * * * of a deceased employee as claimed, the rules set forth in section 216(h) of the Social Security Act shall be applied. * * *

Section 216(h) of the Social Security Act provides, in part, as follows:

(2)(A) In determining whether an applicant is the child * * * of a fully or currently insured individual * * * the Commissioner of Social Security shall apply such law as would be applied in determining the devolution of intestate personal property, * * * if such insured individual is dead, by the courts of the State in which he was domiciled at the time of his death * * *. Applicants who according to such law would have the same status relative to taking intestate personal property as a child * * * shall be deemed such.

As previously noted, at the time of his death, the employee was domiciled in Texas. Where inheritance by and from an adopted child is concerned, Texas law provides that "The natural parent or parents of such child and their kin shall not inherit from or through said child, but said child shall inherit from and through its natural parent or parents." Tex. Rev. Civ. Stat. Prob. Code Ann. § 40 (West 1989). Consequently, even though Joseph has been legally adopted, under the RRA, he must be considered to be the employee's child, as he has the right to inherit from and through the employee under Texas law.

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Having determined that Joseph is the employee's child, we must determine if Joseph meets the necessary age, marital status and dependency requirements for entitlement to an annuity under the RRA. The evidence shows Joseph is only 14-years-old and is unmarried. Therefore, the remaining question to be resolved is whether Joseph was dependent upon the employee at the time of his death.

Section 2(d)(4) of the RRA provides that a child shall be deemed to have been dependent upon his parent employee if the conditions set forth in sections 202(d) (3), (4), or (9) of the Social Security Act are fulfilled. Section 202 (d) of the Social Security Act provides, in pertinent part, as follows:

- (3) A child shall be deemed dependent upon his father * * *
[at the time the fully or currently insured individual dies] unless, at such time, such individual was not living with or contributing to the support of such child and -
 - (A) such child is neither the legitimate nor adopted child of such individual, or
 - (B) such child has been adopted by some other individual.

The employee was not living with Joseph at the time of his death and Joseph was adopted by another individual prior to the employee's death. Consequently, the circumstances for deemed support are not satisfied. Although a court order was issued in 1988 for the employee to provide support for Joseph, it does not appear the order was valid at the time of the employee's death because of the intervening adoption action. Texas law provides that "an order terminating the parent-child relationship divests the parent and the child of all legal rights and duties with respect to each other, except that the child retains the right to inherit from and through the parent unless the court otherwise provides." Tex. Fam. Code Ann. § 161.206 (West 1996). Therefore, the employee was divested of any legal duty to support Joseph once the adoption was finalized. Since the evidence fails to show that Joseph was dependent upon the employee at the time of the employee's death, the application for a child's annuity filed on Joseph's behalf should be denied.

cc: Director of Programs
Director of Assessment and Training
Director of Hearings and Appeals