

APPENDIX

APPENDIX

TABLE OF CONTENTS

Appendix A:	Court of appeals opinion, April 17, 2019.....	1a
Appendix B:	Railroad Retirement Board decision, October 5, 2017.....	5a
Appendix C	Hearings officer decision, Aug. 26, 2016.....	9a
Appendix D:	Statutory provisions	18a

APPENDIX A
IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-60702

Summary Calendar

MANFREDO M. SALINAS,
Petitioner

v.

UNITED STATES RAILROAD RETIREMENT
BOARD,
Respondent

Petition for Review from an Order of the United States
Railroad Retirement Board Agency No. 16-AP-0038

Before HIGGINBOTHAM, ELROD, and DUNCAN,
Circuit Judges.

PER CURIAM:*

Petitioner Manfredo Salinas (“Salinas”) seeks review of a decision by the United States Railroad Retirement Board (“Board”) refusing to reopen the denial of his previous application for a disability annuity under the Railroad Retirement Act, 45 U.S.C. § 231 *et seq.* Under our circuit precedent, we lack jurisdiction to review the Board’s decision not to reopen Salinas’ prior case.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

On February 28, 2006, Salinas applied for a disability annuity under 45 U.S.C. § 231a(a)(1), which was denied by the Board's Disability Benefits Division on August 28, 2006. On November 30, 2006, Salinas untimely sought reconsideration, which the Board's Reconsideration Section denied, concluding Salinas had not shown good cause for the untimely filing. Salinas did not pursue further administrative appeal, and the denial became a final decision of the Board for reopening purposes on February 9, 2007.

On December 26, 2013, Salinas filed a new application for a disability annuity. The Board granted him an annuity, but Salinas appealed the annuity's beginning date and amount. On February 15, 2015, during that appeal, Salinas asked the Board to reopen all its decisions on his prior applications, including the decision denying his February 28, 2006 application. A Board hearing officer conducted an oral hearing and concluded that Salinas' 2006 application was beyond the four-year timeframe for reopening based on new and material evidence or administrative error under the Board's regulations. *See* 20 C.F.R. § 261.2. Salinas now petitions this court to review the Board's decision not to reopen his 2006 application.¹ Under the Railroad Retirement Act and the Railroad Unemployment Insurance Act, 45 U.S.C. § 355(f), a petitioner may obtain review of certain final Board decisions in federal circuit courts. "Under the plain language of § 355(f), the jurisdiction of the federal courts of appeals is limited to the review of Board decisions on the merits of a claim for benefits after administrative appeals

¹ Salinas fails to brief whether the Board erred in determining his annuity's beginning date and amount. He has therefore abandoned any appeal of those issues. *See Milligan v. Erath Cty., Tex.*, 95 F.3d 52 (5th Cir. 1996).

have been exhausted.” *Roberts v. R.R. Retirement Bd.*, 346 F.3d 139, 140 (5th Cir. 2003). Salinas argues that the Board’s decision not to reopen his 2006 application qualifies as a final, reviewable decision under section 355(f). He acknowledges, however, that this argument is precluded by our 2003 decision in *Roberts v. U.S. Railroad Retirement Board*. In *Roberts*, we “joined several of our sister circuits in determining that we have no jurisdiction [under section 355(f)] to review the Board’s decision not to reopen a prior claim for benefits.” *Id.* at 140; *see also id.* at 141 (joining *Harris v. R.R. Retirement Bd.*, 198 F.3d 139, 142 (4th Cir. 1999); *Abbruzzese v. R.R. Retirement Bd.*, 63 F.3d 972, 974 (10th Cir. 1995); *Gutierrez v. R.R. Retirement Bd.*, 918 F.2d 567, 570 (6th Cir. 1990); *Steebe v. R.R. Retirement Bd.*, 708 F.2d 250, 254–55 (7th Cir. 1983)). We acknowledged a circuit split on this issue. *See Roberts*, 346 F.3d at 141 (recognizing divergent conclusions in *Sones v. R.R. Retirement Bd.*, 933 F.2d 636, 638 (8th Cir. 1991), and *Szostak v. R.R. Retirement Bd.*, 370 F.2d 253, 254–55 (2nd Cir. 1966)). But we sided with the majority of circuits that had found no jurisdiction to review a Board decision declining to reopen a prior benefits claim. *Roberts*, 346 F.3d at 141 (“find[ing] the reasoning of the Fourth, Sixth, Seventh and Tenth circuits persuasive” in light of *Califano v. Sanders*, 430 U.S. 99, 97 S. Ct. 980, 51 L.Ed.2d 192 (1977)).

Despite *Roberts*, Salinas invites us to follow the D.C. Circuit’s recent decision in *Stovic v. Railroad Retirement Board*, 826 F.3d 500 (D.C. Cir. 2016). *Stovic* joined the minority of circuits in holding that “the Railroad Retirement Act grants the [circuit] Court jurisdiction to review Board decisions denying requests to reopen initial benefits determinations.” *Id.* at 502; *see also id.* at 504 (disagreeing with majority of circuits, including *Roberts*). We are not at liberty to accept Salinas’ invitation to ignore

Roberts, which established our circuit's controlling precedent on this issue. The rule of orderliness prevents this panel from reconsidering that decision. *See, e.g., Vaughan v. Anderson Reg'l Med. Ctr.*, 849 F.3d 588, 591 (5th Cir.), *cert. denied*, 138 S. Ct. 101, 199 L.Ed.2d 29 (2017).

The petition is DISMISSED.

APPENDIX B
RAILROAD RETIREMENT BOARD

Appeal of October 5, 2017

Manfredo M. Salinas
R.R.B. No.
A-XXX-XX-9010

Claims Appeal Docket No.
16-AP-0338

The Board has reviewed the record in the appeal of Mr. Manfredo M. Salinas from the August 26, 2016 decision of the hearings officer and has considered the arguments and evidence contained therein. Mr. Salinas appeals the hearings officer's decision denying an earlier protective filing date for his current application for a total and permanent disability annuity under section 2(a)(1)(v) of the Railroad Retirement Act and denying reopening of prior denied applications for total and permanent disability under section 2(a)(1)(v) of the Act. The hearings officer found Mr. Salinas was granted the earliest possible annuity beginning date under law based on his December 26, 2013 application, and that previous application decisions were beyond the four-year timeframe for reopening based on new and material evidence or administrative error, and no other criteria for reopening applied. The Board affirms and adopts the decision of the hearings officer with the following comments.

Mr. Salinas filed the current application for a disability annuity under Section 2(a)(1)(v) of the Railroad Retirement Act on December 26, 2013, alleging a disability onset date of December 31, 2003 (Exhibit 44).

The application was granted on July 17, 2014 with a disability onset date of October 9, 2010, the date Mr. Salinas attained age 55, and his annuity beginning date was established as December 1, 2012, 12 months prior to the month in which the current application was filed (Exhibit 46). However, Mr. Salinas was denied a period of disability under the Social Security Act and early Medicare coverage because the date he was last insured for Social Security disability benefits was December 31, 2002, which was before his established disability onset date of October 9, 2010 (Exhibit 51). Mr. Salinas requested reconsideration on September 17, 2014, arguing that his annuity accrual amount was incorrect and that he should have received annuity payments from his disability onset date of October 9, 2010 (Exhibit 51-A). The Railroad Retirement Board (RRB) Reconsideration Section confirmed Mr. Salinas' annuity beginning date and the amount of his accrual payment in a letter dated October 28, 2014 (Exhibit 52). Mr. Salinas filed an appeal to the Bureau of Hearings and Appeals with a postmark of December 24, 2014, but used an incorrect form (Exhibit 53). The Bureau of Hearings and Appeals responded with a letter dated January 15, 2015, giving Mr. Salinas 30 days from the date of the letter to file a timely appeal on the correct form (Exhibit 54). Mr. Salinas then filed a timely appeal to the Bureau of Hearings and Appeals on February 15, 2015 (Exhibit 55).

In a letter dated May 8, 2015, the hearings officer notified Mr. Salinas that the issue on appeal was solely a question of law and no hearing would be held in accordance with RRB regulation 260.5(h) (Exhibit 63). Mr. Salinas' representative, Weldon Reeves, responded on May 12, 2015 that he would submit additional medical records from the Department of Veterans Affairs, and argued that

factual disputes existed surrounding an earlier application filed by Mr. Salinas which was final on August 28, 2006. Mr. Salinas' requested the 2006 decision be reopened and that a hearing should be held on his instant appeal (Exhibit 64). Mr. Salinas' request for a hearing was granted on October 9, 2015 (Exhibit 70).

The hearings officer held a hearing via videoconference on November 13, 2015 with Mr. Salinas and his representative Mr. Reeves appearing from Corpus Christi, Texas. On August 26, 2016, the hearings officer issued a decision finding that Mr. Salinas had been granted the earliest annuity beginning date permitted by law based on his December 26, 2013 application. The hearings officer also found that the request to reopen the RRB's final decision of August 28, 2006 was not within the four year timeframe for reopening a decision under RRB regulation 261.2(b), and none of the conditions were met for reopening a decision at any time under RRB regulation 261.2(c). This timely appeal to the Board followed on September 9, 2016.

The Board has reviewed the administrative record and the hearings officer's decision. The Board finds that the hearings officer correctly cited the relevant law and regulations (pages 6 through 9 of the August 26, 2016 decision), and thoroughly and accurately analyzed the evidence of record (pages 2 through 5 of the August 26, 2016 decision).

On appeal to the Board, Mr. Salinas argues only that the hearings officer's decision did not correctly apply the law to the facts regarding the reopening of the August 28, 2006 decision. The Board has reviewed the hearings officer's decision and agrees that the hearings officer

correctly concluded the August 28, 2006 decision was not subject to reopening under RRB regulation 261.2, and that Mr. Salinas was granted the earliest possible annuity beginning date under law based on the December 26, 2013 application. The Board places particular importance on Exhibit 33-A, Mr. Salinas' untimely request for reconsideration of the August 28, 2006 decision, as this document indicates that Mr. Salinas received the August 28, 2006 denial letter (Exhibit 33) and that Mr. Salinas' arguments before the hearings officer in this appeal that he was unable to understand his appeal rights in 2006 due to limited English proficiency and mental impairments were presented to the RRB in 2006. The RRB Reconsideration Section considered these arguments at the time and determined that Mr. Salinas had not shown good cause for filing an untimely request for reconsideration on December 11, 2006 (Exhibit 33-B). Mr. Salinas did not file any further appeal of the December 11, 2006 decision, despite demonstrating an ability to file a late appeal of the August 28, 2006 decision less than fourteen days prior and being informed of his right to request reconsideration of the December 11, 2006 determination (Exhibit 33-B).

Accordingly, because the findings of the hearings officer are well-supported by the evidence in the record and the hearings officer properly applied the relevant provisions of the Railroad Retirement Act and RRB regulations, the Board affirms and adopts the decision of the hearings officer as explained above. The appeal is denied.

Walter A. Barrows

Steven J. Anthony

APPENDIX C

DECISION OF THE HEARINGS OFFICER

Mr. Manfredo M. Salinas
3207 Clark Boulevard
Laredo, Texas 78043

AUG 26 2016

Decision No. 16-231
Appeal No. 15-0146
RRB-PSN-AI3800F

The hearings officer finds that the appellant's annuity beginning date is correct. In addition, Board regulations do not allow for priors [sic] decision to be reopened. The following is an explanation of this decision.

PROCEDURAL HISTORY

The appellant filed an application for a total and permanent disability annuity under section 2(a)(1)(v) of the Railroad Retirement Act on December 16, 2013 (Exhibit 42). The Railroad Retirement Board (Board/Agency) determined that the appellant [sic] for all regular work effective October 9, 2010, at age 55, and his annuity beginning date (ABD) was established as December 1, 2012, 12 months prior to the month in which the application was filed (Exhibit 46). The Board denied the period of disability and early Medicare coverage because the appellant did not have an insured status with the Social Security Administration (SSA) on his established disability onset date (Exhibit 51). The appellant requested reconsideration of his ABD and accrual amount. The Agency confirmed that the ABD and accrual amount paid were correct (Exhibit 52). The appellant filed a timely appeal and his representative, Mr. Weldon Ray Reeves, requested that all prior applications be reopened and requested a protective filing date prior

to the application on appeal (Exhibit 55).

The hearings officer advised Mr. Reeves the issue on appeal involved solely a question on the application or interpretation of the law and therefore, no hearing would be held, according to Board regulation 260.5(h). The hearings officer sent the draft index of the Administrative Record and copies of the listed exhibits to Mr. Reeves and he was given 45 days to review the file (Exhibit 63). The representative replied and raised a number of issues of fact that he felt needed to be resolved and requested additional information (Exhibit 64). The hearings officer sent the additional information requested that was germane to the appeal. Exhibits one through 72 were admitted into the record as evidence. And the appellant provided sworn testimony. Exhibits 33-A, 33-B, 46-A, 47-B, 47, 51-A and 53-A were included in the Administrative Record after the hearing and copies were sent to Mr. Reeves. The record is closed.

ISSUES

The general issue in this appeal is whether the prior decisions may be reopened based on the agency's regulations. The specific issue is whether the appellant's annuity beginning date and accrual amount paid to him in August 2014 are correct.

EVIDENCE CONSIDERED

The hearings officer has considered the evidence listed in the Index of the Administrative Record attached to this decision and testimony received at the hearing.

SUMMARY AND EVALUATION OF EVIDENCE

The appellant filed for an application for a total and permanent disability annuity under the provisions of the

Railroad Retirement Act on March 3, 1992, alleging disability due to cervical degenerative disc disease (Exhibits 1 and 2). The spouse of the appellant advised the Agency that he returned to work (Exhibit 5) and the application was denied on June 3, 1993 because it was determined that he was not disabled for all regular work (Exhibits 7 and 8). The appellant did not request reconsideration of the decision. A second disability application was filed on April 20, 1994 and the appellant claimed he was unable to work due to a neck and shoulder injury, herniated disc at C7, numbness in his arms and legs, and severe pain in the neck and shoulders. The appellant further mentioned previous reconstruction surgery at C5 (Exhibits 13 and 14). The application was denied because the Agency again determined that the appellant was not totally and permanently disabled (Exhibits 17 and 18). The Board did not receive a reconsideration request.

The appellant filed an application for disability on February 28, 2006, alleging that he was disabled due to an on-the-job injury to the head, shoulder, back, and leg; cervical herniation and fusion; depression; neck and lower back pain; and numbness in both arms and hands (Exhibits 27 and 28). The Board concluded that the appellant was not disabled for all regular work (Exhibits 32 and 33). In a letter dated November 30, 2006 the appellant requested reconsideration of the decision (Exhibit 33-A). The Agency denied the request because it was received more than 60 days after the August 28, 2006 denial notice and determined that the appellant failed to show good cause for failure to filing [sic] a late request for reconsideration (Exhibit 33-B). The appellant did not appeal the decision.

The appellant's representative raised the issue regarding

reopening the decision at Exhibit 33 and questioned whether the appellant received the August 28, 2006 denial notice (Exhibit 64). In accordance with § 260.1 (d) of the Agency's regulations, the denial notice dated February 28, 2006 was mailed to the appellant's last known address and there is no indication in the file that the notice was returned as undeliverable. The appellant indicated during the hearing that he received the denial notice but did not understand it. The appellant testified that he did not contact the Railroad Retirement Board because he felt like that was the end (see transcript, page 19). It appears that the appellant did not remember filing a late request for reconsideration.

Mr. Reeves indicated in his pre-hearing brief that the August 28, 2006 denial decision should be reopened because the appellant lacked the mental capacity to understand the procedures for requesting review, citing a language barrier, depression, anxiety and agoraphobia (Exhibit 72). Mr. Reeves also referenced *Shrader v. Harris* F.2d 297 (4th Cir. 1080) [sic] and *Labate-Watterson v. Colvin*, Civil Action No. 12-1110 (Exhibit 72). The appellant testified that he sometimes has difficulty reading or writing the English language . . . in dealing with long words. He stated, "I mean, sometimes I don't understand them. Just the basic ones I can understand, but some . . . the long words I can't. Like you know, some other educational words" (see transcript, p 5). The appellant also testified that he was able to communicate with Dr. Hare in English, "a little bit, if (*the doctor*) would talk to him in simple words, he would (*communicate in the English language*)." The appellant stated that he did not communicate with Dr. Hare in Spanish (see transcript, p 12).

The representative contends that a reopening of the prior

decision is warranted based on case law. Board regulation §261.1(c) provides that reopening a final decision under this part means a conscious determination on the part of the Agency to reconsider an otherwise final decision for purposes of revising that decision. The hearings officer has reviewed the regulations for reopening under section 261.2 and finds that the final decision dated February 28, 2006 may not be reopened. Administrative finality was applied to the decision more than four years ago, therefore, new and material evidence or administrative error cannot be considered. In addition, the representative's reasons for reopening do not fall into any category outlined in §261.2(c) of the Agency's regulations.

The appellant filed an application for a total and permanent disability annuity on December 16, 2013 (Exhibits 1 and 2), alleging disability due to a job injury, cervical disc herniation and fusion, neck and lower back pain, numbness in both arms and hands, and depression. The Board determined that the appellant was disabled for all regular work beginning October 9, 2010 (the day before the day he attained age 55). The Board also determined that his ABD is December 1, 2012, the first day of the twelfth month prior to the application filing date of December 16, 2013. The appellant submitted [sic] reconsideration request (Exhibit 51-A) indicating that he disagreed with the calculated accrual amount and referenced the disability allowance notice (Exhibit 46). The same letter was resubmitted on appeal (Exhibit 53). The appellant [sic] indicated that his appeal is that the Board still owes him 25 months of annuity (*presumably November 2010 through November 2012*).

Although the appellant's established disability onset date is October 9, 2010, the date that his annuity begins cannot, by law, be the same date. Board regulation § 218.9 states

that *his annuity beginning date* (ABD) is to [sic] the *later* of the following:

- (1) The day after the day the claimant last worked for a railroad employer;
- (2) The first day of the twelfth month before the month in which the application is filed;
- (3) The first day of the sixth month after the month of disability onset; or
- (4) The first day of the month of disability onset if the claimant was previously entitled to an employee disability annuity, which ended within five years of the current disability onset month.

The hearings officer has considered the aforementioned criteria and the following dates apply to situations one through three. The appellant was not previously entitled to a disability annuity and therefore, situation number four does not apply.

- The appellant last worked for the railroad November 15, 1995, according to Form AA-1d filed December 16, 2013.
- The first day of the twelfth month before the month he filed the application (December 2013) is December 1, 2012.
- The first day of the sixth month after the month of disability onset (*October 9, 2010*) is April 1, 2011.

The *later* of the above dates is December 1, 2012, and is the earliest date permitted by law. The hearings officer finds that the appellant's ABD of December 1, 2012 and the accrual paid in August 2014 are correct.

FINDINGS

After a careful consideration of the entire record, the hearings officer makes the following findings:

1. The appellant has at least 120 months of creditable railroad service and a current connection.
2. The appellant has not engaged in any substantial gainful employment since November 15, 1995.
3. The appellant filed for a total and permanent disability annuity on February 28, 2006.
4. The February 28, 2006 application was denied on August 28, 2006 because the Agency determined that the appellant was not disabled for all regular work.
5. The Appellant's request for reconsideration was received December 6, 2006.
6. The Board denied the reconsideration request because it was not timely filed.
7. Administrative finality is applied to the August 28, 2006 decision.
8. The August 28, 2006 decision may not be reopened under § 261.2 of the Agency's regulations.
9. The application on appeal was filed December 16, 2013.
10. The Board determined that the appellant is disabled for all regular work beginning October 9, 2010, the day before the day he attained age 55.
11. The appellant's annuity beginning date is December 1, 2012, the first day of the twelfth month before the month the application was filed.

17a

12. The December 1, 2012 annuity beginning date is the earliest date permitted by law.
13. The accrual paid based on the annuity beginning date of December 1, 2012 is correct.

DECISION

The denial decision dated August 28, 2006 may not be reopened. The appellant's annuity beginning date of December 1, 2012 and accrual paid to the appellant in August 2014 are correct.

The appeal is denied.

Janet W. Coleman
Hearings Officer

APPENDIX D

1. 45 U.S.C. §231f provides:

(a) Administration

This subchapter shall be administered by the Railroad Retirement Board established by the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.] as an independent agency in the executive branch of the Government and composed of three members appointed by the President, by and with the advice and consent of the Senate. Each member shall hold office for a term of five years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of the term and any member holding office pursuant to appointment under the Railroad Retirement Act of 1937 when this subchapter becomes effective shall hold office until the term for which he was appointed under such Railroad Retirement Act of 1937 expires. One member shall be appointed from recommendations made by representatives of the employees and one member shall be appointed from recommendations made by representatives of employers as defined in paragraph (i) of section 231(a)(1) of this title, in both cases as the President shall direct, so as to provide representation on the Board satisfactory to the largest number, respectively, of employees and employers concerned. One member, who shall be the chairman of the Board, shall be appointed without recommendation by either employers or employees and shall not be in the employment of or be pecuniarily or otherwise interested in any employer or organization of employees. Vacancies in the Board shall not impair the powers or affect the duties of the Board or of the remaining members of the Board, of whom a majority of those in office shall

constitute a quorum for the transaction of business. Upon the expiration of his term of office a member shall continue to serve until his successor is appointed and shall have qualified.

(b) Powers and duties

(1) The Board shall have and exercise all the duties and powers necessary to administer this subchapter. The Board shall take such steps as may be necessary to enforce such subchapter and make awards and certify payments. Decisions by the Board upon issues of law and fact relating to annuities or death benefits shall not be subject to review by any other administrative or accounting officer, agent, or employee of the United States.

(2) In the case of—

(A) an individual who will have completed ten years of service (or five or more years of service, all of which accrues after December 31, 1995) creditable under this subchapter,

(B) the wife or divorced wife or husband of such an individual,

(C) any survivor of such an individual if such survivor is entitled, or could upon application become entitled, to an annuity under section 231a of this title, and

(D) any other person entitled to benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] on the basis of the wages and self-employment income of such an individual (except a survivor of such an individual where such individual did not have a current connection with the railroad industry at the time of his death);

the Board shall provide for the payment on behalf of the Managing Trustee of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund of monthly benefits payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] which are certified by the Secretary to it for payment under the provisions of title II of the Social Security Act.

(3) If the Board finds that an applicant is entitled to an annuity or death benefit under the provisions of this subchapter then the Board shall make an award fixing the amount of the annuity or benefit, as the case may be, and shall certify the payment thereof as hereinafter provided; otherwise the application shall be denied. For purposes of this section, the Board shall have and exercise such of the powers, duties and remedies provided in subsections (a), (b), (d), and (n) of section 12 of the Railroad Unemployment Insurance Act [45 U.S.C. 362] as are not inconsistent with the express provisions of this subchapter. The Board is authorized to delegate to any member, officer, or employee of the Board any of the powers conferred upon the Board by this subchapter, excluding only the power to prescribe rules and regulations, including the power to make decisions on applications for annuities or other benefits: *Provided, however,* That any person aggrieved by a decision on his application for an annuity or other benefit shall have the right to appeal to the Board. Notice of a decision of the Board, or of an employee thereof, shall be communicated to the applicant in writing within thirty days after such decision shall have been made.

(4)(A) The Secretary of the Treasury shall serve as the disbursing agent for benefits payable under this subchapter, under such rules and regulations as the Secretary may in the Secretary's discretion prescribe.

(B) The Board shall from time to time certify—

(i) to the Secretary of the Treasury the amounts required to be transferred from the Social Security Equivalent Benefit Account and the Dual Benefits Payments Account to the disbursing agent to make payments of benefits and the Secretary of the Treasury shall transfer those amounts;

(ii) to the Board of Trustees of the National Railroad Retirement Investment Trust the amounts required to be transferred from the National Railroad Retirement Investment Trust to the disbursing agent to make payments of benefits and the Board of Trustees shall transfer those amounts; and

(iii) to the disbursing agent the name and address of each individual entitled to receive a payment, the amount of such payment, and the time at which the payment should be made.

(5) The Board shall establish and promulgate rules and regulations to provide for the adjustment of all controversial matters arising in the administration of this subchapter. All rules, regulations, or decisions of the Board shall require the approval of at least two members, and they shall be entered upon the records of the Board, which shall be a public record.

(6) The Board shall gather, keep, compile, and publish in convenient form such records and data as may be

necessary to assure proper administration of this subchapter, including subdivision (2) of this subsection. The Board shall have power to require all employers and employees and any officer, board, commission, or other agency of the United States to furnish such information and records as shall be necessary for the administration of this subchapter, including subdivision (2) of this subsection. The several district courts of the United States shall have jurisdiction upon suit by the Board to compel obedience to any order of the Board issued pursuant to this section. The orders, writs, and processes of the United States District Court for the District of Columbia in such suits may run and be served anywhere in the United States. Witnesses summoned before the Board shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. The Board shall make an annual report to the President of the United States to be submitted to Congress.

(7) Notwithstanding any other provision of law, the Secretary of Health and Human Services shall furnish the Board certified reports of wages, self-employment income, and periods of service and of other records in his possession, or which he may secure, pertinent to the administration of this subchapter, the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.],¹ the Milwaukee Railroad Restructuring Act [45 U.S.C. 901 et seq.], and the Rock Island Railroad Transition and Employee Assistance Act [45 U.S.C. 1001 et seq.].¹ The Board shall furnish the Secretary of Health and Human Services certified reports of records of compensation and periods of service reported to it pursuant to section 231h of this title, of determinations under section 231a of this title, and of other records in its possession, or which it may secure, pertinent to subsection (c) of this section or to the administration of the Social Security Act [42 U.S.C. 301 et

seq.] as affected by section 231q of this title. Such certified reports shall be conclusive in adjudication as to the matters covered therein: *Provided, however,* That if the Board or the Secretary of Health and Human Services receives evidence inconsistent with a certified report and the application involved is still in course of adjudication or otherwise open for such evidence such recertification of such report shall be made as, in the judgment of the Board or the Secretary of Health and Human Services, whichever made the original certification, the evidence warrants. Such recertification and any subsequent recertification shall be treated in the same manner and be subject to the same conditions as an original certification.

(8) Any department or agency of the United States maintaining records of military service, at the request of the Board, shall certify to the Board, with respect to any individual, the number of months of military service which such department or agency finds the individual to have had during any period or periods with respect to which the Board's request is made, the date and manner of entry into such military service, and the conditions under which such service was continued. Any department or agency of the United States which is authorized to make awards of pensions, disability compensation, or any other gratuitous benefits or allowances payable, on the periodic basis or otherwise, under any other Act of Congress on the basis of military service, at the request of the Board, shall certify to the Board, with respect to any individual, the calendar months for all or part of which any such pension, compensation, benefit, or allowance is payable to, or with respect to, the individual, the amounts of any such pension, compensation, benefit, or allowance, and the military service on which such pension, compensation, benefit, or allowance is based. Any certification made pursuant to the provisions of this subdivision shall be

conclusive on the Board: *Provided, however,* That if evidence inconsistent with any such certification is submitted, and the claim is in the course of adjudication or is otherwise open for such evidence, the Board shall refer such evidence to the department or agency which made the original certification and such department or agency shall make such recertification as in its judgment the evidence warrants. Such recertification, and any subsequent recertification, shall be conclusive, made in the same manner, and subject to the same conditions as an original certification.

(9) The Board shall maintain such offices, provide such equipment, furnishings, supplies, services, and facilities, and employ such individuals and provide for their compensation and expenses as may be necessary for the proper discharge of its functions. All positions to which such individuals are appointed, except one administrative assistant to each member of the Board, shall be in and under the competitive civil service and shall not be removed or excepted therefrom. In the employment of such individuals under the civil service laws and rules the Board shall give preference over all others to individuals who have had experience in railroad service, if, in the judgment of the Board, they possess the qualifications necessary for the proper discharge of the duties of the positions to which they are to be appointed. For purposes of its administration of this subchapter or the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.], or both, the Board may place, without regard to the numerical limitations contained in section 5108(c)(9) ² of title 5, four positions in grade GS-16 of the General Schedule established by that Act, four positions in grade GS-17 of such schedule, and one position in grade GS-18 of such schedule.

(c) Sources of payments; adjustments

(1) Benefit payments determined by the Board to be payable under this subchapter shall be made by the disbursing agent under subsection (b)(4) of this section from money transferred to it from the National Railroad Retirement Investment Trust or the Social Security Equivalent Benefit Account, as the case may be, except that payments of annuity amounts made under sections 231b(h), 231c(e), and 231c(h) of this title and under sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93-445 shall be made by the disbursing agent under subsection (b)(4) of this section from money transferred to it from the Dual Benefits Payments Account. In any fiscal year, the total amounts paid under such sections shall not exceed the total sums appropriated to the Dual Benefits Payments Account for that fiscal year. The Board shall prescribe regulations for allocation of annuity amounts which would without regard to such regulations be payable under sections 231b(h), 231c(e), and 231c(h) of this title and sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93-445 so that the sums appropriated to the Dual Benefits Payments Account for a fiscal year so far as practicable, are expended in equal monthly installments throughout such fiscal year, and are distributed so that recipients are paid annuity amounts which bear the same ratio to the annuity amounts such recipients would have received but for such regulations as the ratio of the total sums appropriated to pay such annuity amounts bear to the total sums necessary to pay such annuity amounts without regard to such regulations. Notwithstanding any other provision of law, the entitlement of an individual to an annuity amount under section 231b(h), 231c(e), or 231c(h) of this title or section 204(a)(3), 204(a)(4), 206(3), or 207(3) of Public Law 93-445 for any month in which the amount payable to such

individual is allocated under the regulations prescribed by the Board under this subsection shall not exceed the amount so allocated for that month to such individual.

(2) At the close of the fiscal year ending June 30, 1975, and each fiscal year thereafter, the Board and the Secretary of Health and Human Services shall determine the amounts, if any, which if added to or subtracted from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund would place each such Trust Fund in the same position in which it would have been if (A) service as an employee after December 31, 1936, had been included in the term "employment" as defined in the Social Security Act [42 U.S.C. 301 et seq.] and in the Federal Insurance Contributions Act [26 U.S.C. 3101 et seq.] and (B) this subchapter had not been enacted. Such determination with respect to each such Trust Fund shall be made no later than June 15 following the close of the fiscal year. If, pursuant to any such determination, any amount is to be added to any such Trust Fund, the Board shall, within ten days after the determination, certify such amount to the Secretary of the Treasury for transfer from the Railroad Retirement Account to such Trust Fund. If, pursuant to any such determination, any amount is to be subtracted from any such Trust Fund, the Secretary of Health and Human Services shall, within ten days after the determination, certify such amount to the Secretary of the Treasury for transfer from such Trust Fund to the Railroad Retirement Account. Any amounts so certified shall further include interest (at the rate determined in subdivision (3) for the fiscal year under consideration) payable from the close of such fiscal year until the date of certification. The Secretary of the Treasury is authorized and directed to transfer to the Railroad Retirement

Account from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, or the Federal Hospital Insurance Trust Fund or to any such Trust Fund from the Railroad Retirement Account, as the case may be, such amounts as, from time to time, may be determined by the Board and the Secretary of Health and Human Services pursuant to the provisions of this subdivision and certified by the Board or the Secretary of Health and Human Services for transfer from any such Trust Fund or from the Railroad Retirement Account.

(3) For purposes of subdivision (2), for any fiscal year, the rate of interest to be used shall be equal to the average rate of interest, computed as of May 31 preceding the close of such fiscal year, borne by all interest-bearing obligations of the United States then forming a part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest shall be the multiple of one-eighth of 1 per centum next lower than such average rate.

(4) After the end of each month beginning with the month of October 1983, the Board shall determine the net amount, if any, which if added to or subtracted from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund would, with respect to such month, place those Trust Funds, taken as a whole, in the same position in which they would have been if (A) service as an employee after December 31, 1936, had been included in the term "employment" as defined in the Social Security Act [42 U.S.C. 301 et seq.] and in the Federal Insurance Contributions Act [26 U.S.C. 3101 et seq.], and (B) this subchapter had not been enacted. If for any month the net amount so determined

would be subtracted from those Trust Funds, the Board shall, within ten days after the end of such month, report such amount to the Secretary of the Treasury for transfer from the general fund to the Railroad Retirement Account. Any amount so reported shall further include interest (at an annual rate equal to the rate of interest borne by a special obligation issued to the Railroad Retirement Account in the month in which the transfer is made to the Account) payable from the close of the month for which the transfer is made until the date of transfer. The Secretary of the Treasury is authorized and directed to transfer to the Railroad Retirement Account from the general fund such amounts as, from time to time, may be determined by the Board pursuant to the provisions of this subdivision and reported by the Board for transfer. For such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities issued after August 12, 1983, under section 3102 of title 31, and the purpose for which securities may be issued under section 3102 of title 31 are extended to include such purpose. Each such transfer shall be made by the Secretary of the Treasury within five days after a report of the amount to be transferred is received. Not later than December 31 following the close of each fiscal year beginning with the fiscal year ending September 30, 1984, the Board shall certify to the Secretary of the Treasury the total of all amounts transferred pursuant to the provisions of this subdivision for months in such fiscal year. Within ten days after a transfer, or transfers, pursuant to subdivision (2) for a particular fiscal year, the Board shall request the Secretary of the Treasury to retransfer from the Railroad Retirement Account to the general fund an amount equal to (A) the total of all amounts, exclusive of interest, transferred to such Account pursuant to the provisions of

this subdivision for months in such fiscal year, plus (B) interest (at the rate determined in subdivision (3) for such fiscal year) payable with respect to each amount transferred for a month during such fiscal year from the close of the month for which the transfer of the amount was made until the date of retransfer of such amount. The Secretary of the Treasury is authorized and directed to retransfer from the Railroad Retirement Account to the general fund such amounts as, from time to time, may be determined by the Board pursuant to the provisions of the preceding sentence of this subdivision and reported by the Board for retransfer.

(d) Hospital insurance benefits; certified beneficiaries; disability insurance benefits; services in Canada; exchange of information

(1) The Board shall, for purposes of this subsection, have the same authority to determine the rights of individuals described in subdivision (2) to have payments made on their behalf for hospital insurance benefits consisting of inpatient hospital services, posthospital extended care services, home health services, hospice care, and outpatient hospital diagnostic services (all hereinafter referred to as “services”) under section 226 [42 U.S.C. 426], and parts A and E of title XVIII [42 U.S.C. 1395c et seq., 1395x et seq.], of the Social Security Act as the Secretary of Health and Human Services has under such section and such parts with respect to individuals to whom such sections and such parts apply. For purposes of section 231g of this title, a determination with respect to the rights of an individual under this subsection shall, except in the case of a provider of services, be considered to be a decision with respect to an annuity.

(2) Except as otherwise provided in this subsection, every person who—

(i) has attained age 65 and (A) is entitled to an annuity under this subchapter or (B) would be entitled to such an annuity had he ceased compensated service and, in the case of a spouse or divorced wife, had such spouse's husband or wife ceased compensated service or (C) bears a relationship to an employee which, by reason of section 231b(f)(2) of this title, has been, or would be, taken into account in calculating the amount of the annuity of such employee; or

(ii) has not attained age 65 and (A) has been entitled to an annuity under section 231a of this title, or under the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.] and section 231a of this title, or could have been includible in the computation of an annuity under section 231b(f)(2) of this title, for not less than 24 months and (B) could have been entitled for 24 calendar months, and could currently be entitled, to monthly insurance benefits under section 223 of the Social Security Act [42 U.S.C. 423] or under section 202 of that Act [42 U.S.C. 402] on the basis of disability if service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act and if an application for disability benefits had been filed,

shall be certified to the Secretary of Health and Human Services as a qualified railroad retirement beneficiary under section 226 of the Social Security Act [42 U.S.C. 426].

(3) If an individual entitled to an annuity under paragraph (iv) or (v) of section 231a(a)(1) of this title would have been insured for disability insurance benefits as determined under section 223(c)(1) of the Social Security Act [42 U.S.C. 423(c)(1)] at the time such annuity began, he shall be deemed, solely for purposes of paragraph (ii) of subdivision (2), to be entitled to a disability insurance benefit under section 223 of the Social Security Act for each month, and beginning with the first month, in which he would meet the requirements for entitlement to such a benefit, other than the requirement of being insured for disability insurance benefits, if service as an employee after December 31, 1936, had been included in the term "employment" as defined in the Social Security Act [42 U.S.C. 301 et seq.] and if an application for disability benefits had been filed.

(4) The rights of individuals described in subdivision (2) of this subsection to have payment made on their behalf for the services referred to in subdivision (1) but provided in Canada shall be the same as those of individuals to whom section 226 [42 U.S.C. 426] and part A of title XVIII [42 U.S.C. 1395c et seq.] of the Social Security Act apply, and this subdivision shall be administered by the Board as if the provisions of section 226 and part A of title XVIII of the Social Security Act were applicable, as if references to the Secretary of Health and Human Services were to the Board, as if references to the Federal Hospital Insurance Trust Fund were to the Railroad Retirement Account, as if references to the United States or a State included Canada or a subdivision thereof, and as if the provisions of sections 1862(a)(4), 1863, 1864, 1868, 1869, 1874(b), and 1875 [42 U.S.C. 1395y(a)(4), 1395z, 1395aa, 1395ee, 1395ff, 1395kk(b), 1395ll] were not included in such title. The payments for services herein provided for in Canada shall

be made from the Railroad Retirement Account (in accordance with, and subject to, the conditions applicable under subsection (b) of this section, in making payment of other benefits) to the hospital, extended care facility, or home health agency providing such services in Canada to individuals to whom subdivision (2) of this subsection applies, but only to the extent that the amount of payments for services otherwise hereunder provided for an individual exceeds the amount payable for like services provided pursuant to the law in effect in the place in Canada where such services are furnished. For the purposes of section 231i of this title, any overpayment under this subdivision shall be treated as if it were an overpayment of an annuity.

(5) The Board and the Secretary of Health and Human Services shall furnish each other with such information, records, and documents as may be considered necessary to the administration of this subsection or section 226 [42 U.S.C. 426], and part A of title XVIII [42 U.S.C. 1395c et seq.], of the Social Security Act.

(e) Acceptance of gifts and bequests

The Board is authorized to accept on behalf of the United States money gifts and bequests made unconditionally to the Railroad Retirement Account, to the Railroad Retirement Supplemental Account, or to the Railroad Unemployment Insurance Account, or to the Board, or any member, officer, or employee thereof, for the benefit of such accounts or any activity financed through such accounts. Any such gift accepted pursuant to the authority granted in this subsection shall be deposited in the specific account designated by the donor or, if the donor has made no such specific designation, in the Railroad Retirement Account.

(f) Congressional copies of documents submitted or transmitted to President or Office of Management and Budget

Whenever the Board submits or transmits any budget estimate, budget request, supplemental budget estimate, or other budget information, legislative recommendation, prepared testimony for congressional hearings, or comment on legislation to the President or to the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Board to submit its budget requests or estimates, legislative recommendations, prepared testimony for congressional hearings, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

2. 45 U.S.C. § 231g provides:

Decisions of the Board determining the rights or liabilities of any person under this subchapter shall be subject to judicial review in the same manner, subject to the same limitations, and all provisions of law shall apply in the same manner as though the decision were a determination of corresponding rights or liabilities under the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.] except that the time within which proceedings for the review of a decision with respect to an annuity, supplemental annuity, or lump-sum benefit may be commenced shall be one year after the decision will have been entered upon the records of the Board and communicated to the claimant.

3. 45 U.S.C. § 355 provides:

(a) Publication of Board's regulations

Claims for benefits and appeals from determinations with respect thereto shall be made in accordance with such regulations as the Board shall prescribe. Each employer shall post and maintain, in places readily accessible to employees in his service, such printed statements concerning such regulations as the Board supplies to him for such purpose, and shall keep available to his employees copies of such printed statements. Such printed statements shall be supplied by the Board to each employer without cost to him.

(b) Findings, hearings, investigations, etc., by Board

The Board is authorized and directed to make findings of fact with respect to any claim for benefits and to make decisions as to the right of any claimant to benefits. The Board is further authorized to hold such hearings, to conduct such investigations and other proceedings, and to establish, by regulations or otherwise, such procedures as it may deem necessary or proper for the determination of a right to benefits. When a claim for benefits is filed with the Board, the Board shall provide notice of such claim to the claimant's base-year employer or employers and afford such employer or employers an opportunity to submit information relevant to the claim before making an initial determination on the claim. When the Board initially determines to pay benefits to a claimant under this chapter, the Board shall provide notice of such determination to the claimant's base-year employer or employers.

(c) Hearing and review of decisions on claims

(1) Each qualified employee whose claim for benefits has been denied in whole or in part upon an initial determination with respect thereto upon a basis other than one which is reviewable pursuant to one of the succeeding paragraphs of this subsection, shall be granted an opportunity for a fair hearing thereon before a referee or such other reviewing body as the Board may establish or assign thereto. In any such case the Board or the person or reviewing body so established or assigned shall, by publication or otherwise, notify all parties properly interested of their right to participate in the hearing and of the time and place of the hearing.

(2) Any claimant whose claim for benefits has been denied in an initial determination with respect thereto upon the basis of his not being a qualified employee, and any claimant who contends that under an initial determination of his claim he has been awarded benefits at less than the proper rate, may appeal to the Board for the review of such determination. Thereupon the Board shall review the determination and for such review may designate one of its officers or employees to receive evidence and to report to the Board thereon together with recommendations. In any such case the Board or the person so designated shall, by publication or otherwise, notify all parties properly interested of their right to participate in the proceeding and, if a hearing is to be held, of the time and place of the hearing. At the request of any party properly interested the Board shall provide for a hearing, and may provide for a hearing on its own motion. The Board shall prescribe regulations governing the appeals provided for in this paragraph and for decisions upon such appeal.

(3) Any base-year employer of a claimant whose claim

for benefits has been granted in whole or in part, either in an initial determination with respect thereto or in a determination after a hearing pursuant to paragraph (1), and who contends that the determination is erroneous for a reason or reasons other than a reason that is reviewable under paragraph (4), may appeal to the Board for review of such determination. Despite such an appeal, the benefits awarded shall be paid to such claimant, subject to recovery by the Board if and to the extent found on the appeal to have been erroneously awarded. The Board shall take such action as is appropriate to recover the amount of such benefits including if feasible adjustment in subsequent payments pursuant to the first two paragraphs of section 352(d) of this title. Upon an appeal, the Board shall review the determination appealed from and for such review may designate one of its officers or employees to receive evidence and report to the Board thereof together with recommendations. In any such case the Board or the person so designated shall, by publication or otherwise, notify all parties properly interested of their right to participate in the proceeding and, if a hearing is to be held, of the time and place of the hearing. At the request of any party properly interested the Board shall provide for a hearing, and may provide for a hearing on its own motion. The Board shall prescribe regulations governing the appeals provided for in this paragraph and for decisions upon such appeal.

(4) In any case in which benefits are awarded to a claimant in whole or in part upon the basis of pay earned in the service of a person or company found by the Board to be an employer as defined in this chapter but which denies that it is such an employer, such benefits awarded on such basis shall be paid to such claimant subject to a right of recovery of such benefits. The Board shall thereupon designate one of its officers or employees to

receive evidence and to report to the Board on whether such benefits should be repaid. The Board may also designate one of its officers or employees to receive evidence and report to the Board whether or not any person or company is entitled to a refund of contributions or should be required to pay contributions under this chapter, regardless of whether or not any claims for benefits will have been filed upon the basis of service in the employ of such person or company, and shall follow such procedure if contributions are assessed and payment is refused or payment is made and a refund claimed upon the basis that such person or company is or will not have been liable for such contributions. In any such case the Board or the person so designated shall, by publication or otherwise, notify all parties properly interested of their right to participate in the proceeding and, if a hearing is to be held, of the time and place of the hearing. At the request of any party properly interested the Board shall provide for a hearing, and may provide for a hearing on its own motion. The Board shall prescribe regulations governing the proceedings provided for in this paragraph and for decisions upon such proceedings.

(5) Final decision of the Board in the cases provided for in the preceding three paragraphs shall be communicated to the claimant and to the other interested parties within fifteen days after it is made. Any properly interested party notified, as hereinabove provided, of his right to participate in the proceedings may obtain a review of any such decision by which he claims to be aggrieved or the determination of any issue therein in the manner provided in subsection (f) of this section with respect to the review of the Board's decisions upon claims for benefits and subject to all provisions of law applicable to the review of such decisions. Subject only to such review, the decision of the Board upon all issues

determined in such decision shall be final and conclusive for all purposes and shall conclusively establish all rights and obligations, arising under this chapter, of every party notified as hereinabove provided of his right to participate in the proceedings.

(6) For purposes of this subsection and subsections (d) and (f), any base-year employer of the claimant is a properly interested party.

(7) Any issue determinable pursuant to this subsection and subsection (f) of this section shall not be determined in any manner other than pursuant to this subsection and subsection (f).

(d) Decisions of reviewing bodies; review and finality

The Board shall prescribe regulations governing the filing of cases with and the decision of cases by reviewing bodies, and the review of such decisions. The Board may provide for intermediate reviews of such decisions by such bodies as the Board may establish or assign thereto. The Board may (i) on its own motion review a decision of an intermediate reviewing body on the basis of the evidence previously submitted in such case, and may direct the taking of additional evidence, or (ii) permit such parties as it finds properly interested in the proceedings to take appeals to the Board. Unless a review or an appeal is had pursuant to this subsection, the decision of an intermediate reviewing body shall, subject to such regulations as the Board may prescribe, be deemed to be the final decision of the Board.

(e) Application of rules of evidence in law and equity; notice of findings

In any proceeding other than a court proceeding, the

rules of evidence prevailing in courts of law or equity shall not be controlling, but a full and complete record shall be kept of all proceedings and testimony, and the Board's final determination, together with its findings of fact and conclusions of law in connection therewith, shall be communicated to the parties within fifteen days after the date of such final determination.

(f) Review of final decision of Board by Courts of Appeals; costs

Any claimant, or any railway labor organization organized in accordance with the provisions of the Railway Labor Act [45 U.S.C. 151 et seq.], of which claimant is a member, or any base-year employer of the claimant, or any other party aggrieved by a final decision under subsection (c) of this section, may, only after all administrative remedies within the Board will have been availed of and exhausted, obtain a review of any final decision of the Board by filing a petition for review within ninety days after the mailing of notice of such decision to the claimant or other party, or within such further time as the Board may allow, in the United States court of appeals for the circuit in which the claimant or other party resides or will have had his principal place of business or principal executive office, or in the United States Court of Appeals for the Seventh Circuit or in the United States Court of Appeals for the District of Columbia. A copy of such petition, together with initial process, shall forth-with be served upon the Board or any officer designated by it for such purpose. A copy of such petition also shall forthwith be served upon any other properly interested party, and such party shall be a party to the review proceeding. Service may be made upon the Board by registered mail addressed to the Chairman. Within thirty days after receipt of service, or within such additional time as the

court may allow, the Board shall file with the court in which such petition has been filed the record upon which the findings and decision complained of are based, as provided in section 2112 of title 28. Upon the filing of such petition the court shall have exclusive jurisdiction of the proceeding and of the question determined therein. It shall have power to enter a decree affirming, modifying, or reversing the decision of the Board, with or without remanding the cause for rehearing. The findings of the Board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive. No additional evidence shall be received by the court but the court may order additional evidence to be taken before the Board, and the Board may, after hearing such additional evidence, modify its findings of fact and conclusions and file such additional or modified findings and conclusions with the court, and the Board shall file with the court the additional record. The judgment and decree of the court shall be final, subject to review as in equity cases.

An applicant for review of a final decision of the Board concerning a claim for benefits shall not be liable for costs, including costs of service, or costs of printing records, except that costs may be assessed by the court against such applicant if the court determines that the proceedings for such review have been instituted or continued without reasonable ground.

(g) Finality of Board decisions

Findings of fact and conclusions of law of the Board in the determination of any claim for benefits or refund, the determination of any other matter pursuant to subsection (c) of this section, and the determination of the Board that the unexpended funds in the account are available for the payment of any claim for benefits or refund under this chapter, shall be, except as provided in subsection (f) of

this section, binding and conclusive for all purposes and upon all persons, including the Comptroller General and any other administrative or accounting officer, employee, or agent of the United States, and shall not be subject to review in any manner other than that set forth in subsection (f) of this section.

(h) Benefits payable prior to final decision of Board

Except as may be otherwise prescribed by regulations of the Board, benefits payable with respect to any period prior to the date of a final decision of the Board with respect to a claim therefor, shall be paid only after such final decision.

(i) Fees for presenting claims; penalties

No claimant or other properly interested person claiming benefits shall be charged fees of any kind by the Board, its employees or representatives, with respect to such claim. Any such claimant or other properly interested person may be represented by counsel or other duly authorized agent, in any proceeding before the Board or its representatives or a court, but no such counsel or agent for a claimant shall either charge or receive for such services more than an amount approved by the Board or by the court before whom the proceedings of the Board are reviewed. Any person who violates any provision of this subsection shall be punished by a fine of not more than \$10,000 or by imprisonment not exceeding one year.