

Administrative Procedure in
Government Agencies.

monograph of the
Attorney General's Committee
on Administrative Procedure.

Railroad Retirement Board.

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ADMINISTRATIVE PROCEDURE IN GOVERNMENT AGENCIES

MONOGRAPH OF THE ATTORNEY GENERAL'S COMMITTEE ON ADMINISTRATIVE PROCEDURE

EMBODYING THE
RESULTS OF THE INVESTIGATIONS MADE BY THE
STAFF OF SAID COMMITTEE RELATIVE TO THE
ADMINISTRATIVE PRACTICES AND PRO-
CEDURES OF SEVERAL AGENCIES
OF THE GOVERNMENT

IN 13 PARTS
PART 8
RAILROAD RETIREMENT BOARD



UNITED STATES
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SENATE RESOLUTION NO. 248

[Reported by Mr. HAYDEN]

IN THE SENATE OF THE UNITED STATES,
April 22, 1940.

Resolved, That the monographs published by the Attorney General's Committee on Administrative Procedure embodying the results of the investigations made by the staff of said Committee relative to the practices and procedures of the Division of Public Contracts, Department of Labor; the Veterans' Administration; the Federal Communications Commission; the United States Maritime Commission; the Federal Alcohol Administration; the Federal Trade Commission; the Administration of the Grain Standards Act, Department of Agriculture; the Railroad Retirement Board; the Federal Reserve System; the Bureau of Marine Inspection and Navigation, Department of Commerce; the Administration of the Packers and Stockyards Act, Department of Agriculture; the Post Office Department; the Bureau of the Comptroller of the Currency, Treasury Department; and the Federal Deposit Insurance Corporation, be printed as a Senate document; and that one thousand three hundred additional copies be printed for the use of the Joint Committee on Printing.

Attest:

EDWIN A. HALSEY, *Secretary.*

PREFACE

ATTORNEY GENERAL'S COMMITTEE
ON ADMINISTRATIVE PROCEDURE,
DEPARTMENT OF JUSTICE,
Washington, D. C.

This monograph is one of a series of studies submitted to this Committee by the investigating staff working under the Director. The members of the staff are Walter Gellhorn, Director; and Ralph S. Boyd, Kenneth C. Davis, Robert W. Ginnane, William W. Golub, Martin Norr, and Richard S. Salant.

These staff reports represent information and recommendations submitted to the Committee. They are not an expression of committee findings or opinion. The Committee invites professional and lay criticism and discussion of the matter contained in these studies, both by written communications addressed to it at the Department of Justice, Washington, D. C., and by oral presentation at hearings which the Committee will hold in Washington on June 26, 27, and 28 and July 10, 11, and 12, 1940.

The Committee will make its report, setting forth its findings, conclusions, and recommendations after consideration of all the material submitted to it, including these reports of its staff; the record of oral examination of administrative officers; and the briefs, statements, and testimony which may be furnished by members of the bar and the public. These reports are made available in furtherance of this Committee's desire, first, that the information submitted to it by its investigators shall be public and, second, that all persons desiring to do so shall have full opportunity to criticize and supplement these reports.

The members of the Committee are Dean Acheson, Chairman, of the District of Columbia Bar, formerly Under Secretary of the Treasury; Francis Biddle, Solicitor General of the United States; Ralph F. Fuchs, professor of law, Washington University; Lloyd K. Garrison, dean of the University of Wisconsin School of Law; D. Lawrence Groner, chief justice of the Court of Appeals for the District of Columbia; Henry M. Hart, Jr., professor of law, Harvard University; Carl McFarland, of the District of Columbia Bar, formerly Assistant Attorney General; James W. Morris, associate justice of the United States District Court for the District of Columbia; Harry Shulman, Sterling professor of law, Yale University; E. Blythe Stason, dean of the University of Michigan School of Law; and Arthur T. Vanderbilt, of the New Jersey Bar, formerly president of the American Bar Association.

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APPENDIX

REOPENING OF CERTIFICATIONS OR DENIALS OF AWARDS

[Memorandum of General Counsel, August 1939]

Turning to the Railroad Retirement Act, the statutory plan is designed to secure to certain classes of individuals who have retired a minimum income for life. The general plan is carried out by empowering the Board to adjudicate each claim in accordance with the terms of the statute, and to certify as to each claimant an annuity in the amount to which he is found to be entitled, or to deny the application. Since the plan embraces the employees of virtually the entire railroad industry of the Nation, it is obvious that a great number of claims must be handled (according to the Railroad Retirement Board's Weekly Review of July 22, 1939, on June 30, 1939, more than 130,000 monthly payments were in effect; for the fiscal year ended June 30, 1939, applications for employee annuities were received at an average rate exceeding 500 per week); moreover, claims must be adjudicated promptly, since most applicants have no means and are dependent on their annuities in whole or in large part. Inasmuch as the act must be administered by human beings, it is clear that to require perfection in certification would make reasonably prompt adjudication impossible. Congress must be presumed to have been aware of the nature of the administrative task and to have intended that the basis for certification be such as would be consistent with prompt adjudication of claims on a large scale. Therefore, Congress must have intended that in the absence of fraud or other fault on the part of the claimant, certifications made on reasonable grounds shall be correct (*United States v. Great Northern Ry.*, 287 U. S. 144 (1932); *Bulle, Anaconda & Pacific Ry. v. United States*, 290 U. S. 127 (1933)); and not subject to subsequent reduction or cancelation. That is to say "correctness," under the act, is not a matter of abstract perfection, but depends upon the reasonable judgment of human beings, and a certification on reasonable grounds normally vests a right to payments for life (it is not suggested, however, that Congress could not itself revoke the right to annuities which have not yet accrued). This is further shown by the fact that, while section 2 (a) 3 of the act provides expressly for cessation of disability annuities when the disability ceases, no other provision appears in the act for revision of claims once adjudicated. Express provisions are common where it is sought to reserve power in the administrative agency to revise awards; for instance, the Director of the Veterans' Bureau is expressly empowered by the statute to review awards from time to time (see *United States v. Hines*, 25 F. (2d) 544 (App. D. C. 1928)).

On the other hand, Congress could not have intended to confer upon the Board any authority to act arbitrarily or capriciously, and thus distort the provisions of the act. The tradition that quasi-judicial bodies must act on reasonable grounds is so firmly established in our governmental system that it must be presumed that Congress intended finality to attach to Board action only when taken on a reasonable basis of evidence and law. Moreover, such a requirement would not impede reasonably prompt adjudication of a large number of claims. Hence, if the Board acts without color of law, or the action taken is not supported by evidence, such action, whether favorable or unfavorable, is erroneous and must be corrected retroactively. True, it was recognized that retroactive correction might work injustice and hardship in some cases, but provision has been made for this in section 9 of the act, authorizing waiver of recovery of erroneous payments in proper circumstances.

Other questions arise when, after rejection of claims, in whole or in part, on the basis of a reasonable regulation or interpretation of law, the regulation or interpretation involved is changed in such a way that the individual would now be entitled to certification, or to recertification in an increased amount. The same questions arise when new evidence, favorable to an individual, is presented after reasonable rejection of his claim in whole or in part.

The first thing to note is that since the denial was correct when made, the Board is under no duty to reopen the case. On the other hand, since the denial vested no right, the Board is not precluded from reopening such cases. Therefore, the matter of reopening such cases is within the discretion of the Board. In exercising its discretion, one important factor is the administrative burden that reopening might involve. For instance, a change of regulation or interpretation might affect a large number of cases; moreover the cases affected might be such that they could not be identified without examining thousands of files. These difficulties might be reduced to some extent by giving only general notice of the new ruling and reconsidering only those cases in which a specific request for reconsideration is made. Cases involving new evidence would not ordinarily present such difficulties since the evidence would usually be presented with respect to one particular case or, at most, with respect to a relatively small number of identified cases.

Another important factor involved in the exercise of the Board's discretion would be the amount of retroactive accruals that would result from reconsideration of the cases affected. In this connection, it would be proper for the Board to take into consideration the policy of the act, which is to provide for current income to annuitants or pensioners, as distinguished from payment of a large lump sum covering a past period, during which the individual had no expectation that the payment would ever be made. In these circumstances it would be reasonable for the Board to reopen only on condition that any award or increase resulting from such reopening should not be retroactive. (Denial of a claim does not, of course, prevent a new claim from thereafter accruing. For example, an individual might apply for an annuity on the basis of a claimed 30 years of service and age 60. Should the claim be denied on the ground that he had failed to establish more than 25 years of service, it is clear that the Board would be obliged to consider his claim for an annuity based on age 65 when he reaches that age.)