

## § 335.4

## 20 CFR Ch. II (4-1-07 Edition)

(10) A substance-abuse professional as defined in 49 CFR part 40.3, if the infirmity involves alcohol or controlled substances-related disorders; or

(11) A nurse practitioner.

(b) *Use of Board form or other form.* The statement of sickness and supplemental doctor's statement referred to in paragraph (a) of this section shall be completed on the forms prescribed by the Board, except that other standardized medical forms may be substituted if they provide the same information as that called for by the Board's forms.

[54 FR 43057, Oct. 20, 1989, as amended at 60 FR 40073, Aug. 7, 1995; 62 FR 44408, Aug. 21, 1997; 65 FR 66499, Nov. 6, 2000]

### § 335.4 Filing statement of sickness and claim for sickness benefits.

(a) *General requirement.* Except as provided in paragraph (e) of this section, statements of sickness and claims for sickness benefits must be filed within the time limits specified by this section. Failure to comply with the time restrictions on filing claims will result in a denial of benefits for days for which timely statements and claims are not filed, as such days would not be considered days of sickness.

(b) *Statement of sickness.* An employee shall file a statement of sickness within ten calendar days of the first day that he or she wishes to claim as a day of sickness. For example, if an employee wishes to claim sickness benefits for days starting November 1, the statement of sickness should reach the Board no later than November 10. If the statement of sickness is received November 11, the employee cannot be paid sickness benefits for November 1. Such day would not be considered as a "day of sickness", unless the form may be considered as timely filed under paragraph (d)(3), (4) or (5) of this section.

(c) *Claim for sickness benefits.* An employee shall file a claim for sickness benefits within 30 days after the ending date shown on the claim form, or within 30 days after the date on which the Board mails the claim form to the employee, whichever date is later. Failure to comply with this provision shall bar the payment of sickness benefits with respect to any day included within the calendar period covered by the claim form.

*Example:* If a form for claiming sickness benefits is mailed to an employee on July 13, for the period from July 1 to July 14, the employee must file the claim within 30 days after July 14 [on or before August 13], to be paid benefits for the period July 1 to July 14. If the claim form was not mailed to the employee until July 16, the claim must be filed within 30 days after July 16 [on or before August 15].

(d) *When form considered timely filed.* The Board will consider a statement of sickness or a claim for sickness benefits as timely filed if:

(1) The statement or form was received in a Board office within the prescribed time; or

(2) The statement or form was mailed to a Board office in accordance with instructions printed on the form and was received at such office; or

(3) The employee made a reasonable effort to file the statement of sickness or claim form within the prescribed time but was prevented from doing so by circumstances beyond his or her control, and such statement or claim was received at a Board office within a reasonable time following the removal of the circumstances that prevented the employee from filing the form. The phrase "circumstances beyond his or her control" shall not include an employee's forgetfulness or lack of knowledge of the sickness benefit program or the time limit for filing for sickness benefits or any other lack of diligence by the employee. For the purposes of this provision, if a statement of sickness is not received within the prescribed time but is received within 30 days of the first day that an employee intends to claim as a day of sickness, the Board will consider that the employee made a reasonable effort to file the statement within the prescribed time, unless it is clear on the basis of affirmative evidence that the delay was not the result of circumstances beyond the employee's control; or

(4) The employee mistakenly registered for unemployment benefits when he or she should have applied for sickness benefits for the day or days claimed and the appropriate statement of sickness was then received at an office of the Board within a reasonable time after unemployment benefits were denied; or

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(5) Notwithstanding the foregoing, any claim that is not filed within two years of the day or days claimed shall not be considered as timely filed, and such day or days shall not be considered as days of sickness.

(e) *Days for which no statement of sickness deemed filed.* A statement of sickness shall not be deemed to be filed with respect to any day in a benefit year in which the employee is not a qualified employee as defined in section 3 of the Railroad Unemployment Insurance Act or has exhausted his or her rights to sickness benefits under the Act. See part 336 of this chapter.

[54 FR 43057, Oct. 20, 1989, as amended at 57 FR 807, Jan. 9, 1992; 60 FR 40073, Aug. 7, 1995]

### § 335.5 Death of employee.

If an employee dies before filing one or more of the required forms, the form or forms may be filed by or in behalf of the person or persons to whom benefits would be payable pursuant to section 2(g) of the Railroad Unemployment Insurance Act. Such form or forms shall be filed within the time prescribed in § 335.4 of this part. Under these circumstances, the word “employee” as used in § 335.4(b) of this part and as used in § 335.4(d)(3) of this part shall include the individual or individuals by or in behalf of whom the form is filed. The order of distribution for benefits due but unpaid as of the date of an employee’s death is the same as the order of distribution for annuities unpaid at death under the Railroad Retirement Act and may be found at § 234.31 of this title.

### § 335.6 Payment of sickness benefits.

(a) *General rule.* Except as provided in this section, benefits are payable to any qualified employee for each day of sickness after the fourth consecutive day of sickness in a period of continuing sickness, as defined in § 335.1(c), but excluding four days of sickness in any registration period in such period of continuing sickness.

(b) *Waiting period.* Benefits are payable to any qualified employee for each day of sickness in excess of seven during his or her first registration period in a period of continuing sickness if such period of continuing sickness is his or her initial period of continuing

sickness beginning in the benefit year. For this purpose, the first registration period in a period of continuing sickness is the registration period that first begins with four consecutive days of sickness and includes more than four days of sickness. For the purpose of computing benefits under this section, a period of continuing sickness ends on the last day of a benefit year in which the employee exhausts rights to sickness benefits as provided for under part 336 of this chapter.

(c) *Computation of compensable days—*

(1) *Example 1.* An employee has an initial period of continuing sickness from June 14 through July 25, and all days in that period are days of sickness. The employee’s first registration period covers June 14 to June 27, and his or her subsequent registration period covers June 28 to July 11, and July 12 to July 25. In the one-week waiting period the employee is paid benefits for days of sickness in excess of seven. In each of the two ensuing registration periods the employee is paid benefits for days of sickness in excess of four.

(2) *Example 2.* Same facts as in Example 1, but the employee later has a new period of continuing sickness based upon a different illness or impairment beginning September 17. The employee’s first registration period in his or her new period of continuing sickness covers September 17 to September 30. The employee is paid benefits for days of sickness in excess of seven in that 14-day period because that period is his or her first registration period in a new period of continuing sickness commencing in the benefit year beginning July 1, and he or she did not previously have a waiting period in any registration period earlier in the benefit year.

(3) *Example 3.* Same facts as in examples 1 and 2, but the employee then has a new period of continuing sickness beginning January 1 in the same benefit year. January 1 to January 14 is the employee’s first registration period in that period of continuing sickness. The employee is paid benefits for days of sickness in excess of four in that registration period because earlier in the benefit year he or she had a registration period, September 17 to September 30, in which he or she satisfied the initial seven-day waiting period.