

Review of Reversals of Disability Denials
Report No. 98-13, May 11, 1998

Background

Under the authority of the Railroad Retirement Act of 1974, the Railroad Retirement Board (RRB) pays disability benefits to railroad employees and their survivors who are totally and permanently disabled, and to employees who are disabled from performing their regular railroad occupation. In fiscal year 1996, the RRB awarded about 4,900 disability annuities. Of these, 1,400 averaging about \$1,100 per month were total disability awards and 3,500 averaging around \$1,700 per month were occupational disability awards.

Disability applications are filed at the RRB field offices. The field office personnel provide application materials and assist applicants in obtaining existing medical evidence from treating physicians and hospitals. The Office of Programs' Disability Benefits Division administers the RRB's disability program. This division is responsible for evaluating medical and vocational evidence submitted in support of annuity applications, obtaining additional evidence as needed, and making the determination to award or deny benefits. When necessary, claims examiners in the division may order consultative medical exams and seek medical opinions from RRB medical contractors.

If the Disability Benefits Division denies disability benefits, an applicant has 60 days to request that the RRB reconsider the case. Claims examiners in the Office of Programs' Reconsideration Section review the existing medical evidence and may obtain additional evidence for making a reconsideration decision. The Reconsideration Section currently has two claims examiners who review disability decisions. The section reversed approximately 20 percent of the disability decisions it considered from March through July 1997.

An applicant has 60 days from the date of a reconsideration denial notice to appeal an unfavorable reconsideration decision to the Bureau of Hearings and Appeals (BHA). BHA is responsible for screening, developing, hearing and deciding appeals under the Railroad Retirement Act and other laws. BHA follows applicable Federal statutes, Social Security Administrative Law Judge Procedures, precedent court decisions and the Code of Federal Regulations. If an appeal involves questions of fact (as opposed to legal issues of interpretation), the appellant is generally entitled to a formal hearing before a hearings officer. If an appellant is dissatisfied with the BHA decision, he or she may appeal directly to the agency's three-member Board. Finally, if he or she disagrees with the Board's decision, the appellant may file suit in a Federal Appeals Court.

The Bureau of Hearings and Appeals has historically reversed many of the appealed disability denial decisions as illustrated below.

Fiscal Year

Reversal Rate

1994	80%
1995	79%
1996	76%
1997	77%

BHA reversed a total of 544 disability decisions in fiscal year 1996 and 605 cases in fiscal year 1997. The majority of these cases involved appeals for total and permanent disability under the Railroad Retirement Act and periods of disability (disability freeze) under the Social Security Act.

Each applicant who applies for a RRB disability annuity is also rated under the Social Security Act for a period of disability, commonly known at the RRB as a “disability freeze.” The disability freeze protects disabled workers and their families against loss of, or reduction in, benefits because of the worker’s disability; may increase the railroad annuity amount; may be taxed in the same manner as a social security benefit; and may be used to establish early Medicare coverage.

The OIG estimates that approximately 83 percent of applicants denied a disability annuity request reconsideration, and approximately 83 percent of applicants denied at the reconsideration level appeal to BHA. In addition, about 18 percent of applicants denied a disability freeze request reconsideration, and almost 50 percent of those applicants denied at the reconsideration level appeal to BHA.

Scope and Methodology

The objective of this review was to determine the reasons for reversals of disability decisions in the Bureau of Hearings and Appeals and to identify opportunities to improve the disability determination process. The audit focused on the reversals of disability annuity and disability freeze denials.

To accomplish the objective, the OIG:

- reviewed regulations, policies and procedures governing the reconsideration and appeals process;
- reviewed prior Office of Inspector General reports and reports prepared by the former Bureau of Audit and Investigations pertaining to reversals of disability decisions by the Bureau of Hearings and Appeals;
- reviewed reversal rate statistics for the Reconsideration Section and the Bureau of Hearings and Appeals;

- interviewed personnel in the Disability Benefits Division, the Reconsideration Section and the Bureau of Hearings and Appeals to obtain an understanding of the disability, reconsideration and appeals processes;
- reviewed claim folders for 20 randomly selected disability decisions reversed by the Reconsideration Section from February 18, 1997 to September 11, 1997 to determine why reconsideration examiners reversed the decisions;
- reviewed claim folders for 52 randomly selected disability decisions reversed in BHA between September 3, 1996 and August 26, 1997 to identify reasons why hearings officers reversed the decisions; and
- analyzed the information gathered to determine what steps can be implemented in the process to decrease the number of disability denials reversed by BHA.

The OIG conducted the audit in accordance with generally accepted government auditing standards. Auditors performed the field work at the RRB headquarters office in Chicago, Illinois from August 1997 through March 1998.

Appendix A provides the results of the OIG's samples of BHA and Reconsideration Section decisions.

RESULTS OF REVIEW

This review has shown several ways in which the RRB can significantly improve the initial determination and the appeals process. Three of the most common reasons that BHA reverses disability denials and problems associated with them are:

- differences of opinion on medical assessments - Claims examiners rely on medical assessments by RRB consulting physicians that conflict with treating physicians' assessments and do not resolve the inconsistencies in these cases.
- additional evidence of existing condition - Applicants often do not provide enough medical evidence to support their claim until after they receive a denial notification.
- new or worsened condition - Claimants develop new or worsened conditions during the lengthy appeals process. By the time hearings officers review these cases, the claims are similar to new disability claims which the hearings officers must develop and adjudicate. The last two causes are combined in the body of this report.

In addition to addressing these problems, the disability determination process would be improved if BHA provided feedback to the Disability Benefits Division and the Reconsideration Section. Feedback would help ensure that the three organizational units are using a uniform approach in developing disability cases and the same interpretation of criteria for awarding or denying benefits.

The above situations have existed for a number of years. In a 1983 audit report, the former Bureau of Audit and Investigations identified similar reasons and problems associated with the initial development and appeal of disability claims. In addition, in a 1991 audit report, the OIG identified that the two major reasons BHA reversed disability denials were difference of opinion on medical assessments and additional medical evidence obtained by BHA. Although these issues were addressed in previous reports, they continue to be a problem.

Differences of Opinion on Medical Assessments

In denial cases, initial and reconsideration examiners rely on RRB medical consultants' assessments that conflict with treating or examining physicians' assessments or evidence in the claim file. (The current contractor is Quality Time Consultants, Inc.) The examiners do not resolve the inconsistencies in these cases. The examiners placed more emphasis on the opinions of RRB medical consultants who had never examined the appellants than on examining physicians. In the sample of 52 disability denials reversed by BHA, initial and reconsideration examiners relied on RRB medical consultants' assessments 91 percent and 98 percent of the time, respectively. BHA is placing more emphasis on the examining physicians' assessments and reversing these initial disability denials.

The examiners often rely on medical assessments provided by the RRB medical consultants to be consistent with the Social Security Administration's process, while hearings officers use Federal appeals court cases as guidance in making their appeals determinations.

In the sample of 20 reconsideration cases, reconsideration examiners reversed five disability denials (25 percent) because the reconsideration examiners relied on the assessment of a different medical consultant than the consultant used by the initial examiner. In a sample of appeals cases, hearings officers reversed 31 disability denials (60 percent) because they disagreed with the medical assessment used by the initial and reconsideration examiners.

In 16 cases, the applicants' benefits were delayed for an average of 14 months while the cases were appealed. Withholding monthly payments for 14 months could create a serious hardship on disabled individuals. In the remaining 15 cases, there were no delays in benefit payments because the individuals received disability benefits while they appealed their disability freeze decisions. However, early Medicare coverage for three of these claimants was delayed. In addition the beneficial income tax treatment accorded by a disability freeze was delayed for most of the 31 cases reversed by hearings officers.

The Code of Federal Regulations [20 CFR Section 220.112(b)] states that a medical opinion by a treating source is conclusive when the Board finds that it is fully supported by medical evidence and is consistent with other substantial medical evidence of record. The CFR [20 CFR Section 220.112(d)] further states that where there is a conflict between the opinion of a treating source and evidence of record, including opinions of other sources

that are supported by medically acceptable clinical and laboratory diagnostic techniques, the Board must resolve the inconsistency. This regulation is reflected in the procedural manual used by disability examiners.

In addition, Federal appeals courts have ruled that the treating physician's diagnosis and opinion is binding on the fact finder unless contradicted by substantial evidence, and even if contradicted, the treating physician's opinion is entitled to some extra weight.

Recommendations

The Office of Programs should:

- revise the medical assessment form sent to the RRB medical consultants to require them to justify assessments that differ from those of treating or examining sources (Recommendation No. 1), and
- require claims examiners to resolve conflicts between the RRB medical consultant's assessment and assessment(s) by examining or treating physicians. This documentation is especially important when the examiners rely on the consultant's assessment to deny a disability claim (Recommendation No. 2).

Management's Response

Management concurred with the recommendations. The Office of Programs will revise the forms, work with the medical consultants, and train the claims examiners by September 30, 1998.

Additional Evidence and New or Worsened Condition

Reconsideration examiners and hearings officers reverse a significant number of disability denials, in part, because of additional medical evidence gathered at the reconsideration or appeal level. Reconsideration examiners reversed 30 percent and hearings officers reversed 44 percent of the respective sample cases, because the applicants submitted additional evidence or the RRB obtained additional evidence during reconsideration or appeals processing.

Applicants often do not provide enough medical evidence to support their claim of disability until the claims have been denied at the initial and/or reconsideration levels. Applicants and their treating physicians provide additional evidence at the reconsideration and/or appeals stages to address assertions made by the RRB in the initial and/or reconsideration denial letters.

Hearings officers are developing and granting some disability cases in which the claimants' conditions have worsened or the claimants have developed new impairments.

Eleven (21 percent) disability claims were reversed because the claimant had a new or worsened condition. Five of these 11 cases were reversed without a hearing.

The appeals process is lengthy. In a sample of reversed cases, the appeals process required an average of 15 months between the date the initial examiner denied the claim and the date the hearings officer made the reversal decision. After a disability application is initially denied, the claimant has 60 days to file an appeal with the Reconsideration Section. After Reconsideration processing and denial, the claimant has another 60 days to file an appeal with BHA. In a sample of 52 cases, the average time between the date an appellant filed an appeal and the date BHA reversed the decision was 9 months. By the time a hearings officer reviews the case, the claimant may have a worsened condition or a new impairment. When this is the case, these are in essence new disability claims which the hearings officers are developing and adjudicating.

Development and adjudication of additional evidence by GS-14 hearings officers in appeals is more costly than when performed by GS-9 or GS-11 initial claims examiners. This also diverts BHA resources away from appeals work and delays processing of appeals.

BHA officials believe that hearings officers will make decisions involving disability benefits in a more timely manner because BHA's workload has decreased. These officials believe that more timely processing will result in decreased numbers of appellants who develop new conditions or whose conditions worsen during the appeals process. BHA's overall workload decreased from 1,165 cases in September 1996 to 777 cases in February 1998. The normal working balance of appeals cases is 800 cases. BHA's workload has remained below this level for the seven months between August 1997 and February 1998.

SSA is redesigning their appeals process to address issues similar to those facing the RRB. SSA is redesigning their appeals process to substitute the reconsideration step with a pre-denial notice and to screen appeals cases so only those needing a hearing are reviewed by an administrative law judge (equivalent to hearings officers). SSA anticipates the pre-denial notice will encourage applicants to support their claim with any medical evidence not previously submitted. The screening will allow the cases that do not need a hearing to be decided in a more timely manner and at a level below the administrative law judge. The pre-denial notice and the screening of appeals cases will also shorten the appeals process for some cases.

Recommendation

The Office of Programs should monitor SSA's progress in implementing the redesign of the appeals process, and consider implementing a similar process if SSA's process is successfully streamlined (Recommendation No. 3).

Management's Response

The Office of Programs has requested that the OIG drop this recommendation. They feel that a target date for the recommendation would be difficult to set because SSA's redesign is an ongoing project. The Office of Programs also believes that this recommendation is not necessary because the RRB's practice is to monitor what SSA does to determine if they could make similar improvements. They stated that the coordination group set up to meet Recommendation 4 would monitor SSA's progress in this area to determine best practices.

OIG's Response

The OIG will keep this recommendation open so we can monitor the Office of Programs' progress in performing the above actions.

Need for Effective Communication

BHA does not provide feedback on the reasons for reversals to the Disability Benefits Division and the Reconsideration Section. BHA sends disability reversals to the retirement or survivor unit for payment. Since the Disability Benefits Division does not process payments, they are not provided an opportunity to review the reasons for reversals and develop methods for improving the disability determination process. Review and analysis of disability cases reversed by BHA may highlight weaknesses in the initial and reconsideration processes and help the RRB to focus on areas that need improvement.

The RRB's Strategic Plan for 1997-2002 states that the agency will monitor reversed denial decisions to determine if improvements can be made to the initial determination process. The OIG believes that this action is essential to improving the efficiency of both the initial determination process and the appeals process and to improving customer service. The RRB can meet this objective by developing procedures for feedback. Feedback would provide communication between BHA and the Disability Benefits Division and ensure that they use a uniform approach in developing disability cases and the same interpretation of criteria for making disability determinations. A reduction in the percentage of reversals would indicate an improvement in performance.

Recommendation

The Office of General Counsel should coordinate with the Office of Programs in establishing formal procedures for analyzing and reporting:

- disability reversal statistics,

- reasons for reversals of both the initial and reconsideration decisions, and

- recommendations for improving the disability determination process.

(Recommendation No. 4).

Management's Response

The Office of General Counsel and the Office of Programs concurred with this recommendation. The Director of Hearings and Appeals will continue to maintain disability reversal statistics and will issue a directive on May 31, 1998 requiring hearings officers to fully articulate the reasons for reversals. The Director of Hearings and Appeals will also discuss findings on reasons for reversals with designated personnel in the Office of Programs on an ongoing basis. The Office of Programs responded that they will work with the Office of General Counsel to develop the process by December 31, 1998.

APPENDIX A: SAMPLE RESULTS

BHA DECISIONS

REVERSAL REASONS	NO. OF CASES
Difference of Opinion on Residual Functional Capacity (see below)	31
Additional Evidence of an Existing Impairment	23
Testimony at Hearing (other than vocational expert)	12
New or Worsened Condition	11
Hearing Officer's Professional Discretion	7
Vocational Expert	5
Other	5

The number of cases total more than 52 because the majority (40) of the cases included multiple reasons for reversal.

Residual functional capacity refers to an individual's ability to function in a work environment despite his physical and/or mental impairments. In assessing this ability, the RRB considers the applicant's ability to walk, stand, sit bend, lift and push as well as other physical functions. The RRB also considers an individual's ability to understand, carry out and remember instructions, and to respond appropriately to co-workers, supervisors and other work pressures.

RECONSIDERATION DECISIONS

REVERSAL REASONS	NO. OF CASES
New or Worsened Condition	8
Additional Evidence of an Existing Impairment	6
Difference of Opinion on Residual Functional Capacity	5

Insufficiently Developed Initial/Freeze Determination	3
Other	2

The number of cases total more than 20 because four cases had multiple reasons for reversal.

As of the issuance date of this report, the classifications are under review and may be changed by the Office of Programs.