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FORM NO. G-21 (9-83)
UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
TRANSCRIPT OF BOARD ORDERS

TRANSCRIPT NO.

Special

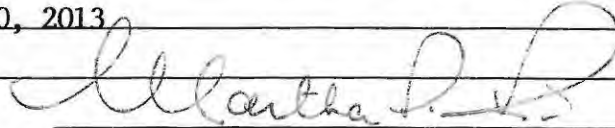
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DATE TRANSCRIPT RELEASED

I CERTIFY THAT THE FOLLOWING IS A TRUE AND CORRECT TRANSCRIPT

OF BOARD ORDER(S) NUMBERED 13-55

ISSUED BY THE BOARD ON September 30, 2013



SECRETARY TO THE BOARD

BOARD ORDER 13-55

Termination of Disability Annuities

Awarded Based on Medical Evidence from Dr. Peter Lesniewski

ARTICLE I. PURPOSE.

The Railroad Retirement Board (RRB) hereby establishes the policy set forth in this Order to govern the adjudication of all disability annuities paid under section 2(a) of the Railroad Retirement Act, where the decision that the applicant is disabled was based in whole or in part upon evidence furnished by Dr. Peter Lesniewski. The purpose of this policy is to protect the Railroad Retirement Account from fraudulent claims while ensuring payment of valid disability claims.

ARTICLE II. FINDINGS.

A. In section 7 of the Railroad Retirement Act, Congress granted to the Railroad Retirement Board all powers and duties necessary to administer the Railroad Retirement Act. Congress declared in that provision that decisions by the Railroad Retirement Board upon issues of law and fact relating to annuities shall not be subject to review by any other administrative or accounting officer, agent or employee of the United States. Further, by incorporating section 5 of the Railroad Unemployment Insurance Act, section 7 requires that findings of fact and conclusions of law of the Board in the determination of any claim for benefits shall be binding and conclusive for all purposes and upon all such administrative or accounting officer, agent or employee.

B. Pursuant to the authority granted by section 7 of the Railroad Retirement Act, the Railroad Retirement Board makes the following findings of fact and conclusions of law:

1. The Long Island Rail Road, a covered railroad employer under the Railroad Retirement Act, had established a private pension plan for employees which provided for early retirement with a full pension at age 50 with 20 years of Long Island Rail Road service. This plan has subsequently been superseded by another. Long Island Rail Road retirees under this subsequent plan are not subject to this Order.

2. A substantial number of Long Island Rail Road employees who retired under the now replaced Long Island Rail Road pension plan also applied for an occupational disability annuity under section 2(a)(1)(iv) of the Railroad Retirement Act.

3. On October 27, 2011, the United States Attorney for the Southern District of New York filed fraud charges against two physicians, Dr. Peter Lesniewski and Dr. Peter J. Ajemian, one of their office managers, two individuals (facilitators) acting as liaison between the physicians and applicants for disability annuities under the Railroad Retirement Act, and seven railroad retirement disability annuitants (including one of the physicians' liaisons) who were also recipients of Long Island Rail Road pensions. The U.S. Attorney charged that the physicians, facilitators and disability annuitants falsely claimed to be disabled at the time of early retirement under the Long Island Rail Road pension plan in order to receive extra benefits to which they were not entitled. Additional indictments subsequently issued through July 2013 bring the total number of defendants to 33.

4. On December 20, 2011, an Indictment Order was entered finding that there was sufficient evidence to prosecute Dr. Lesniewski. The Grand Jury found that there was sufficient evidence that Dr. Lesniewski may have committed: (1) Conspiracy to commit mail fraud, wire fraud and healthcare fraud, (2) Conspiracy to defraud the United States Railroad Retirement Board, and (3) Healthcare fraud.

5. On May 22, 2012, the United States Attorney for the Southern District of New York announced the creation of a Voluntary Disclosure and Disposition Program, which was offered to former Long Island Rail Road employees who were awarded a disability annuity under the Railroad Retirement Act. Employee

Annuitants who were accepted into the Program by the U.S. Attorney were required to sign the following statement:

I hereby attest that in connection with my application for Railroad Retirement Board disability benefits, I or doctors or others on my behalf made what I understood to be false and/or misleading statements with respect to my health condition, ability to work, and/or my eligibility for RRB disability benefits. I declare under penalty of perjury that my statements in this document are true and correct, pursuant to Title 28, United States Code, and Section 1746.

A total of 44 railroad retirement disability annuitants were accepted by the U.S. Attorney into the Voluntary Disclosure and Disposition Program.

6. On May 22, 2012, the Railroad Retirement Board issued Board Order 12-29, which set forth the processing of Agreements signed under the Voluntary Disclosure Program. Pursuant to Board Order 12-29, a disability annuitant who signed an Agreement was considered to have cancelled his or her disability application. Board Order 12-29 considered that payments made under the cancelled application were recovered by a compromise in exchange for information provided to the U.S. Attorney by the annuitant.

7. Several former Long Island Rail Road employees who have pled guilty to making false statements regarding their abilities furnished medical evidence from Dr. Lesniewski to support their benefit claims.

8. In the transcript testimony by Dr. Peter Ajemian in the guilty plea proceeding on January 18, 2013, in the case entitled United States of America v. Peter Ajemian, et al., U.S. District Court, Southern District of New York, No. 11 Cr. 1091, Dr. Ajemian testified under oath that sometime about 2002 he began seeing large numbers of employees of the Long Island Rail Road, and during the period 2004 to 2008 he prepared narratives reciting a medical basis for disability annuity claims when "in truth and in fact these employees were not in fact disabled."

9. On May 7, 2013, a Superseding Indictment was filed finding sufficient evidence to charge Dr. Lesniewski with committing: (1) Conspiracy to commit mail fraud, and health care fraud, (2) Conspiracy to defraud the United States

Railroad Retirement Board, (3) Health care fraud, (4) Mail fraud, and (5) Wire fraud.

10. On May 24, 2013, the District Court sentenced Dr. Ajemian to eight years for conspiracy and health care fraud. The Board notes that Dr. Ajemian was ordered to make restitution of \$116.5 million. In the Statement by the Court Regarding the Defendant's Sentence, the Court noted that Dr. Ajemian engaged in the charged offenses for more than 10 years, from 1997 to 2008. Dr. Ajemian submitted medical reports compiled for each claimant over a period of time during which he performed unnecessary or bogus medical tests and fabricated treatments and narrative paper work, all pre-planned and packaged to justify what essentially amounted to a predetermined recommendation that the employee was disabled.

11. On June 27, 2013, the Railroad Retirement Board issued Board Order 13-33. Based on findings set forth in that Order, the Board determined that any application by any applicant of at least age 50 with at least 20 years of creditable railroad service which includes medical evidence supplied by Dr. Peter J. Ajemian was invalid and must be re-filed.

12. On July 15, 2013, the trial began in the matter of United States of America v. Peter Lesniewski, U.S. District Court, Southern District of New York, No. 11 CR 1091.

13. During the trial, Joseph Del Favero, Deputy Assistant Inspector General for Investigations, Railroad Retirement Board Office of Inspector General (RRB OIG), testified on behalf of the United States of America. Agent Del Favero stated that he and Louis Rossignuolo, Assistant Inspector General for Investigation, RRB OIG, interviewed Dr. Lesniewski on October 29, 2008. Agent Del Favero testified that Dr. Lesniewski admitted that he knew that he was seeing Long Island Rail Road (LIRR) patients so that they could receive disability benefits under the Railroad Retirement Act (RRA). Agent Del Favero also testified that during the October 29 interview, Dr. Lesniewski executed a signed statement in which he admitted that in order to ensure that the LIRR patients would receive an occupational disability annuity under the RRA, he would put a phrase in his narrative reports that said, "it can be stated with a reasonable degree of medical certainty that the patient is disabled for his occupation with the Long Island Railroad." Dr. Lesniewski further admitted that although the MRI tests had minimal findings, he would insert subjective, not objective, findings of pain. Dr.

Lesniewski also admitted that he knew that by inserting this language he would also aid the LIRR patients in receiving an occupational disability annuity under the RRA. Agent Del Favero further testified that Dr. Lesniewski stated he charged LIRR patients a fee ranging from \$850.00 to \$1,000.00 for fraudulent assessments and narratives. Dr. Lesniewski's signed statement, with hearsay evidence redacted, was entered into evidence in the trial.

14. On behalf of the U.S. Government, Dr. Otis Alton Barron, Jr., an orthopedic surgeon, testified as an expert medical witness at the trial. Dr. Barron testified that he reviewed medical reports completed by Dr. Lesniewski, MRI reports and other tests results. Dr. Barron found that Dr. Lesniewski's diagnoses contradicted the objective evidence. Dr. Barron further testified that there was no evidence of physical examinations to support Dr. Lesniewski's diagnoses. In Dr. Barron's opinion, Dr. Lesniewski did not provide "meaningful" treatments. Dr. Barron also testified that in some cases, some impairments were non-disabling and could, in most cases, be treated.

15. On August 6, 2013, based on testimony and evidence including that summarized above, Dr. Lesniewski was convicted of one count of conspiracy to commit mail fraud, wire fraud, health care fraud, and conspiracy to defraud the RRB. Dr. Lesniewski was also convicted of two counts of health care fraud, two counts of mail fraud, and four counts of wire fraud.

16. Section 5 of the Railroad Retirement Act requires that an application for any payment under the Act shall be made and filed in such manner and form as the Board may prescribe.

17. Dr. Lesniewski recommended more than 130 LIRR employees for disability benefits under the RRA. As Dr. Lesniewski was convicted of conspiracy to defraud the RRB, the Board therefore finds that any application by any applicant of at least age 50 with at least 20 years of creditable railroad service which includes medical evidence supplied by Dr. Lesniewski is invalid and must be re-filed.

ARTICLE III. DIRECTIONS TO AGENCY STAFF

1. The Director of Programs shall review the claims of Long Island Rail Road pension recipients who are currently receiving an annuity under the Railroad Retirement Act on the basis of disability, and shall identify the claims filed at age 50 or later with 20 years of railroad service which considered medical evidence from Dr. Lesniewski. Disability annuities are converted to retirement annuities based on age when the annuitant attains “full retirement age” as defined under the Social Security Act.

2. The Director of Programs shall notify each employee annuitant that pursuant to this Order, the employee annuitant’s payment will end the last day of the month following the third month following the date of the notice. Where the employee annuitant has been determined to be entitled to Medicare, the employee annuitant shall be notified that Medicare entitlement will end as well. Where a spouse annuity has been awarded, the spouse annuitant shall be notified that payment will end with the month the employee annuity payment ends.

3. The Director of Programs shall notify each employee annuitant that if he or she believes that he or she is disabled or is otherwise eligible for an age and service annuity, a new application may be filed. In a determination based on a new application, the Director of Programs shall not consider any evidence furnished by Dr. Lesniewski. All benefit determinations will be made under the law on the basis of the new application, except that an employee annuity applicant determined to have a “current connection” as defined by the Railroad Retirement Act at the time of the initial application shall be determined to have retained the current connection at the time a new application is filed under this Order.

4. Without regard to whether the employee annuitant pursues an administrative appeal of the termination of the disability annuity based on Dr. Lesniewski’s evidence, or files a new application based on current evidence, payments for months prior to the month of termination of entitlement based upon the first application shall not be reopened.

ARTICLE IV. DELEGATION OF AUTHORITY

The Director of Programs is authorized to issue such internal agency procedure and guidance as necessary to implement this Order.###