



UNITED STATES RAILROAD RETIREMENT BOARD

OFFICE OF INSPECTOR GENERAL

Memorandum

February 10, 2014

TO: Michael S. Schwartz
Chairman

FROM: Martin J. Dickman Original Signed
Inspector General

SUBJECT: Seven-Day Letter to Congress

Statutory Reporting Requirements

Section 5(d) of the Inspector General Act of 1978, as amended, requires an Inspector General to immediately report to the agency head "particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of [the agency]."¹ This section also requires the agency head to transmit the Inspector General's concerns, along with the agency head's comments, to Congress within seven calendar days.

Under the above referenced statute, the Office of Inspector General (OIG) hereby alerts the Railroad Retirement Board (RRB) to particularly serious or flagrant deficiencies in the administration of the RRB's occupational disability program. Failure to properly address these deficiencies continues to unnecessarily expose the RRB's trust funds to fraud and increases the likelihood of improper payments among the RRB's \$2.3 billion in annual disability payments.

Long Island Rail Road Fraud Investigation

A number of deficiencies have been uncovered during our investigation into massive occupational disability fraud committed by individuals associated with the Long Island Rail Road (LIRR). To date, 33 people have been charged in connection with the LIRR disability fraud scheme: 28 of whom have pled guilty and 5 of whom have been convicted in Federal court. The pleas and convictions include two orthopedic doctors, a union official, and a former RRB District Manager. These judicial actions have netted the government approximately \$400 million in restitution and forfeiture. Additionally, another 44 individuals have entered into a voluntary disclosure program. These individuals avoided prosecution by (1) admitting that they submitted false information to the agency for the purpose of obtaining RRB occupational disability benefits and (2) agreeing to the termination of their occupational disability benefits.

¹ 5 U.S.C. App. 3, § 5(d).
844 N RUSH STREET CHICAGO IL 60611-2092

After systemic problems within the occupational disability program were publicly exposed, the RRB attempted to increase oversight efforts for LIRR applications through Board Order 08-63. The occupational disability approval rate for LIRR applicants; however, remains essentially unchanged and continues to be near 96%. In fact, the RRB re-adjudicated a number of subsequently indicted LIRR annuitants under the 'increased scrutiny' of Board Order 08-63. Of these individuals, 100% were re-approved despite their eventual guilty pleas to committing fraud against the RRB. This illustrates the ineffectiveness of the RRB's ability to properly adjudicate the occupational disability program and gives me little assurance of their ability to enact real and meaningful change.

Serious Occupational Disability Program Deficiencies

Serious program integrity issues remain unresolved in the administration of the RRB's occupational disability program: a program which continues to have a staggering 98% approval rate. Over the past several years, we have issued numerous recommendations aimed at increasing program integrity within the RRB's occupational disability program; however, only a few of these recommendations have been implemented. The RRB's failure to adequately address deficiencies identified by the OIG, permits ineffective adjudication and unnecessarily increases the program's exposure to fraud, waste, and abuse.

The RRB owes it to the nation's railroad workers and their families to fulfill the agency's mission to "pay benefits to the right people, in the right amounts, in a timely manner, and . [to] take appropriate action to safeguard [their] customers' trust funds."² This entails the agency being proactive and not defensive by acknowledging areas of deficiency; instituting necessary corrective systems fully utilizing existing regulations; and, when necessary, pursuing regulatory change.

Board Orders 13-33 and 13-55

As you are aware, after the plea and conviction of the two aforementioned doctors, we recommended the immediate termination of occupational disability benefits for more than 700 annuitants who had utilized those doctors to support their RRB disability applications. We estimate that those benefits cost the agency approximately \$2 million per month. The RRB originally rejected our recommendation but finally agreed to terminate those benefits. Almost 500 of these same individuals have re-filed "new" disability applications under the terms set forth in Board Orders 13-33 and 13-55.

Critical Timing

The timing of this memorandum is critical because the RRB is in the process of finalizing the adjudication process for "new" disability applications filed under Board Orders 13-33 and 13-55.

² Railroad Retirement Board, *Mission Statement*. (Chicago, Illinois: September 2003). Retrieved from <http://www.rrb.gov/general/mission.asp>. Accessed February 5, 2014.

My review of the RRB's proposed adjudication process for these "new" applications provides me with little confidence in the RRB's ability to properly adjudicate the disability program. In particular, I find it inconceivable and unacceptable that the RRB plans on utilizing the same divisional disability claims examiner structure which had ineptly adjudicated applications throughout the duration of the LIRR fraud scheme. The LIRR investigation should have acted as the RRB's wake-up call that program integrity must be a top priority. To that end, I reiterate the following recommendations, which should be utilized for the "new" applications processed under Board Orders 13-33 and 13-55 and for all future disability applications adjudicated by the RRB.

- The RRB should employ a licensed medical doctor to oversee the entire disability program. This individual should have the authority to make final award determinations.
- The RRB should replace their current disability claims examiners with licensed medical staff to adjudicate disability applications.

Oversight efforts under Board Order 08-63 proved to be ineffective at identifying fraudulent applications and simply expanding the contract for third party medical review is a waste of RRB trust funds. Implementing the above recommendations, ensures that both the adjudication process and final determinations are conducted by medically trained individuals, which in my opinion, is a better use of funds.

Three-Member Board

The Railroad Retirement Act vests power with a three member Presidentially appointed and Senate confirmed Board that, in addition to your representation of the public's interest, includes one member to represent the interests of rail labor and one member to represent the interests of rail management. I hope that the entire Board will recognize the seriousness and magnitude of this situation and agrees to take substantial and meaningful actions to protect the integrity of the occupational disability program.

Recommended Legislative Changes

If the Board is unwilling to enact such changes, I recommend either of the following legislative changes.

1. The occupational disability program should be eliminated and disabled railroad workers should apply for benefits under the sickness insurance program. If the railroad worker is physically or mentally unable to return to work when their sickness insurance benefits terminate, they should then apply for a total and permanent disability annuity.
2. The occupational disability program should be a temporary program with a maximum benefit of one year. If the railroad worker is physically or mentally unable to return to work after their temporary occupational disability benefits terminate, they should then apply for a total and permanent disability annuity.

Conclusion

The three-member Board's continued inability to effectuate substantial and meaningful change within the RRB's occupational disability program warrants closer scrutiny by Congress where they can "use the full range of tools at its disposal to prevent further waste, fraud, or abuse."³ Please transmit this memorandum to the appropriate Congressional Committees and Subcommittees within seven calendar days.

cc: Walter A. Barrows, Labor Member
Jerome F. Keever, Management Member
Karl T. Blank, General Counsel
Martha P. Rico, Secretary to the Board

³ Chairman Darrell E. Issa, House Committee on Oversight and Government Reform letter to Inspector General Martin J. Dickman, August 3, 2012.