



U.S. RAILROAD RETIREMENT BOARD

OFFICE OF INSPECTOR GENERAL

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The Railroad Retirement Board Should Strengthen Controls and Contractor Oversight of the Medical Opinion and Disability Determination Process

Report No. 24-06

May 15, 2024



What RMA Found

RMA Associates, LLC (RMA) determined the Railroad Retirement Act provided disability benefits for qualified individuals of the railroad community and that medical opinions added value to the Railroad Retirement Board's (RRB) disability determination process.

However, RMA identified multiple internal control issues during the audit. RMA identified that some of the RRB's actions taken in response to a 2016 disability audit report were no longer effective because the RRB's Office of Programs did not exercise sufficient supervisory actions over its claims examiners and allowed its examiners to approve payments for medical opinions without approval from the appropriate contracting officer's representative. RMA reviewed 235 accepted medical opinions. Of those opinions, RRB employees accepted 11 incomplete medical opinions, which may have impacted disability determinations of 11 claimants. If projected to the population, as many as 299 disability claims could have been processed incorrectly. The RRB paid a contractor for these incomplete opinions, resulting in potential questioned costs of \$42,443 when projected to the population.

RMA determined that the RRB did not exercise appropriate contractor oversight by failing to ensure the contractor's physicians maintained the appropriate medical licenses, insurance, or training. RMA also determined that \$59,493 could have been put to better use if the RRB had effectively used the 4-hour online consultation sessions provided by the contractor.

What RMA Recommended

RMA made 13 recommendations concerning the RRB's inadequate internal controls and contractor oversight of the medical opinion and disability determination process. RRB management concurred with 2 recommendations and did not concur with 11 recommendations.

What We Did

RRB Office of Inspector General (OIG) engaged RMA to audit the RRB's use of medical opinions and the disability determination process. RRB administered disability benefits were approaching \$1 billion in fiscal year 2022.

RMA conducted this audit in accordance with generally accepted government auditing standards. RMA is responsible for the audit report and the conclusions expressed therein. RRB OIG does not express any assurance on the conclusions presented in RMA's audit report.

The overall audit objectives were to evaluate RRB's actions taken to address prior recommendations, the effectiveness of internal controls, the value of medical opinions, and the RRB's contract oversight for the medical services contractor. For details on the five audit objectives, see the Objectives section in RMA's audit report.

The scope of the audit was all paid medical opinions and the applicable disability determination process related to medical opinions for fiscal years 2019 through 2022.

Railroad Retirement Board (RRB)
Office of Inspector General (OIG)

The Railroad Retirement Board Should Strengthen
Controls and Contractor Oversight of the Medical Opinion
and Disability Determination Process

Performance Audit Report

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April 26, 2024

RMA Associates, LLC (RMA) conducted a performance audit of the Railroad Retirement Board's (RRB) Medical Opinions and the Disability Determination Process.

Our audit objectives were to determine 1) the progress the RRB has made to address the findings and recommendations made in RRB Office of Inspector General (OIG) audit report number 16-05;¹ 2) if corrective actions taken by the agency to address recommendations made in RRB OIG audit report number 16-05² are effective; 3) the effectiveness of current internal controls for the audit subject matter; 4) if medical opinions currently add value to the disability determination process; and 5) if the RRB exercised the appropriate oversight for the medical services contractor hired during the scope of this audit.

We conducted this performance audit in accordance with generally accepted government auditing standards.³ Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This performance audit revisited the disability determination process which was the subject of an OIG audit performed in 2016.⁴ The prior audit was particularly concerned with the value of medical opinions on the disability determination process and whether RRB exercised appropriate oversight over the medical services contractor. Given its relevancy, RMA assessed the prior report's findings and implementation of recommendations.

Information on our findings and recommendations are included in the accompanying report.

Respectfully,



RMA Associates, LLC

¹ *Control Weaknesses Diminish the Value of Medical Opinions in the Railroad Retirement Board Disability Determination Process*, Railroad Retirement Board Office of Inspector General (RRB OIG) Audit Report Number 16-05, March 9, 2016.

² Ibid.

³ Government Auditing Standards, GAO-21-368G, April 2021.

⁴ *Control Weaknesses Diminish the Value of Medical Opinions in the Railroad Retirement Board Disability Determination Process*, RRB OIG Audit Report Number 16-05, March 9, 2016.

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Introduction

This report presents the results of RMA Associates, LLC's (RMA) performance audit of the Railroad Retirement Board (RRB)'s medical opinions and the disability determination process.

Objectives, Scope, and Methodology

Objectives

The objectives of this audit were to determine:

1. The progress the RRB has made to address the findings and recommendations made in RRB OIG audit report number 16-05;⁵
2. If corrective actions taken by the agency to address recommendations made in RRB OIG audit report number 16-05⁶ are effective; effectiveness is to be determined by testing a statistically valid random sample;
3. The effectiveness of current internal controls for the audit subject matter; this is to be assessed based on a separate statistically valid random sample;
4. If medical opinions currently add value to the disability determination process; and
5. If the RRB exercised the appropriate oversight for the medical services contractor hired during the scope of this audit.

Scope

All paid medical opinions and the applicable disability determination process related to medical opinions for fiscal years (FY) 2019 through 2022.

Methodology

To address and accomplish the audit objectives, we used the following evidence-gathering and evidence-analysis techniques:

- Identified criteria⁷ from applicable laws, regulations, policies, and procedures, including generally accepted government auditing standards,⁸ and the U.S. Government Accountability Office (GAO) *Standards for Internal Control in the Federal Government* (Green Book);⁹

⁵ Ibid.

⁶ Ibid.

⁷ **Appendix E** provides detailed information regarding applicable criteria.

⁸ Government Auditing Standards, GAO-21-368G, April 2021.

⁹ Green Book, GAO-14-704G, September 10, 2014.

- Reviewed the prior OIG audit findings;
- Reviewed prior RRB OIG management and performance challenges reports relevant to the subject audit;
- Reviewed agency documentation to address the audit objectives;
- Tested RRB’s compliance with internal policies and procedures related to ordering, payment of, receipt of, and review of medical opinions;
- Sampled medical opinions;¹⁰
- Interviewed applicable management, staff, and key personnel to determine whether policies, processes, and practices are current and complete;
- Interviewed half of the RRB’s Disability Benefits Division (DBD) Initial Section A/B claims examiners and half of the Post Section claims examiners to gain an understanding of the process in place for disability determinations and to determine the extent that medical opinions were used in support of disability determinations, including both contracted medical opinions and the RRB’s Chief Medical Officer’s (CMO) medical opinions;
- Reviewed Federal Acquisition Regulation (FAR) requirements for contract oversight and assessed whether the RRB complied with those requirements for the medical services contract; and
- Performed data reliability assessments as applicable and as required per the GAO’s *Assessing Data Reliability*.¹¹

RMA assessed the reliability of RRB’s computer-processed data as it relates to medical opinions and the disability determination process by reviewing existing information about the data and the systems that produced them and conducting inquiries of RRB personnel knowledgeable about the data and the systems used within the process. RMA followed GAO’s *Assessing Data Reliability*¹² and found no instances of inconsistent or incomplete data pertaining to the ordering, payment of, or usage of medical opinions. RMA determined that the data was sufficiently reliable for the purpose of this report.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We conducted our fieldwork at RMA headquarters in Arlington, Virginia from September 2022 through December 2023.

¹⁰ **Appendix B** provides specific sampling information.

¹¹ GAO, *Assessing Data Reliability*, GAO-20-283G, December 2019.

¹² *Ibid.*

Background

RRB is an independent agency in the Federal Government’s Executive Branch, which is headed by three presidentially appointed board members: the Chairman, the Management Member, and the Labor Member. The RRB was created in the 1930s to provide insurance benefit programs to railroad workers and their families under the Railroad Retirement Act (RRA)¹³ and the Railroad Unemployment Insurance Act (RUIA).¹⁴ During the 1930s, railroad workers young and old were faced with increasing uncertainty about their job security and pension plans. RRB served to administer benefits and income protection provided under the two acts, such as unemployment insurance and sickness insurance in case of death or disability.

The RRA¹⁵ provides a disability program for retired railroad workers and specific types of surviving relatives after the employee’s death. Section 231a of the RRA¹⁶ requires that disability annuities can be paid to railroad workers with at least 10 years of service (or five years of service, all of which accrues after December 31, 1995, for certain cases) and have applied to receive annuities.

As reported in the FY 2023 RRB Performance and Accountability Report,¹⁷ during FY 2022, RRB awarded approximately \$710 million in disability annuities, with \$475 million for occupational disability and \$235 million for total disability annuities. In addition, during FY 2022, 7,500 total disabled annuitants received an average monthly disability annuity of \$2,425, and 9,700 occupationally disabled annuitants received an average monthly disability annuity of \$3,612. RRB processed 1,693 initial disability applications in FY 2022, as well as over 1,400 disability freeze determinations. Due to staffing challenges, RRB saw an approximate 20% reduction in production due to an equivalent loss in staffing. Despite the staffing challenges, RRB produced more than 4,200 production items, including nearly 500 continuing disability review actions and more than 280 evidence requests.

There was one primary organization within the RRB that handled and processed medical opinions to support disability determinations during the scope of our audit – Office of Programs’ Disability Benefits Division (DBD). RRB’s DBD is tasked with promptly and accurately determining an applicant’s eligibility for a disability annuity. **Appendix C** provides information on the roles and responsibilities of employees primarily involved with this subject audit, including a high-level explanation of some key processes and an explanation of when to use medical opinions.

¹³ RRA, October 16, 1974.

¹⁴ RUIA, October 9, 1996.

¹⁵ RRA, October 16, 1974.

¹⁶ Ibid.

¹⁷ *RRB Performance and Accountability Report*, FY 2023, November 2023.

Results of Audit

RMA found RRB should strengthen internal controls¹⁸ and contractor oversight of the medical opinion and disability determination process. While RMA identified multiple internal control issues during this audit, we concluded that medical opinions added value to the disability determination process.

RMA revealed three findings regarding aspects of RRB's medical opinions and disability determination process. We identified that 1) some RRB corrective actions taken in response to the prior audit report¹⁹ were no longer effective, 2) the RRB had ineffective internal controls for the usage of medical opinions, and 3) the RRB provided inadequate contractor oversight. RMA determined that these deficiencies demonstrate that RRB's monitoring of the usage of medical opinions was not comprehensive. These findings should be addressed by the RRB through prompt implementation of the audit recommendations.

The following section details why medical opinions added value to the disability process and provides details over the three findings, including providing recommendations for remediation. Additional details regarding supplemental information are presented in the appendices.

RMA made 13 recommendations to address our findings. **Appendix A** includes the full text of management's comments to these recommendations.

Medical Opinions Added Value to the Disability Determination Process

RMA determined that medical opinions added value to the disability determination process since claims examiners relied on them to help decide a case. Medical opinions were used among examiners as the Disability Claims Manual (DCM) required that medical opinions be used to determine certain disability cases at RRB.²⁰ The DBD Director indicated that approximately 85% of medical opinions were accepted by the medical services contractor without needing clarification. RMA determined the following regarding the extent to which medical opinions are used in support of disability determinations:

- For total disability annuity cases, Initial Section claims examiners used medical opinions 85 to 90 percent of the time.
- For occupational disability annuity cases, Initial Section claims examiners used medical opinions 0 to 35 percent of the time.

¹⁸ According to the Green Book, "[i]nternal control comprises the plans, methods, policies, and procedures used to fulfill the mission, strategic plan, goals, and objectives of the entity. Internal control serves as the first line of defense in safeguarding assets. In short, internal control helps managers achieve desired results through effective stewardship of public resources."

¹⁹ *Control Weaknesses Diminish the Value of Medical Opinions in the Railroad Retirement Board Disability Determination Process*, RRB OIG Audit Report Number 16-05, March 9, 2016.

²⁰ **Appendix C** provides the instances in which claims examiners should request medical opinions.

- Post Section claims examiners indicated that they used medical opinions 60 to 100 percent of the time.
- During the scope of the audit, RRB employed one CMO for eight months.

There were 17,928 disability determinations finalized by DBD during the scope of the audit. Of the 17,928 determinations, 8,590 were initial annuity decisions, 7,130 were disability freeze determinations, and 2,208 were continuing disability review determinations.

Claims examiners reiterated that they relied on the medical opinions provided by the consultants for advice regarding interpreting medical evidence as they are not medical professionals.

Some Corrective Actions Taken in Response to RRB OIG Audit Report Number 16-05 were No Longer Effective in Fiscal Year 2023

In reviewing the progress RRB made to address the 18 recommendations from the prior audit report,²¹ RMA determined that RRB did not concur with 6 of the 18 recommendations. The OIG determined that all six non-concurred recommendations should be implemented and remained open at the time of this audit. Of the 12 recommendations to which RRB concurred with, 11 were accepted as implemented in 2017, 2019, and 2022, while the remaining recommendation, recommendation 18, was in the process of audit resolution between the Division of Acquisition Management and the OIG.

In assessing whether the corrective actions taken by RRB in response to the audit report²² continued to be effective, RMA determined that RRB implemented 11 of the 18 recommendations. Of the 11, RMA determined that actions taken in response to recommendations 4, 6, 10, and 13 continued to be effective in FY 2023.

It is important to note that OMB Circular A-50,²³ page 2, required that “[e]ach agency shall establish systems to assure the prompt and proper resolution and implementation of audit recommendations. These systems shall provide for a complete record of action taken on both monetary and non-monetary findings and recommendations.”

However, after further analysis, RMA determined that even though RRB implemented recommendations 2, 9, 11, 14, 15, 16, and 17 by revising and updating its procedures, retraining employees, and developing and strengthening internal controls, these actions were no longer effective²⁴ in FY 2023 because the DBD Director deferred to the claims examiners to ensure that each medical opinion met all requirements before accepting. The DBD Director assumed that the claims examiners would follow the DCM as written. RMA determined that supervisory reviews/Contracting Officer’s Representative (COR) reviews were not occurring as DBD did not

²¹ *Control Weaknesses Diminish the Value of Medical Opinions in the Railroad Retirement Board Disability Determination Process*, RRB OIG Audit Report Number 16-05, March 9, 2016.

²² *Ibid.*

²³ OMB Circular A-50, *Audit Follow Up*, September 29, 1982.

²⁴ RMA’s testing and analysis details are provided in **Appendix F**.

have any controls requiring them, and as such could not confirm that they were prepared and reviewed correctly. In addition, supervisory reviews/COR reviews were not occurring because DBD believed that ensuring the acceptability of medical opinions was Acquisition Management's responsibility. However, RMA found that claims examiners requested medical opinions, reviewed them for acceptability, and approved payment for those opinions without oversight from Acquisition Management.

DBD indicated that their Management Controls, issued in May 2023, included Program Evaluation and Management Services (PEMS) reviewing sample consultative medical exams and opinions and producing a report monthly. May 2023 falls out of the scope of our audit. As such, we recommend that DBD submit a closure request to the OIG through the formal audit follow-up process.

As a result of ineffective internal controls, Office of Programs (OP) could not:

- Ensure each medical opinion was prepared and reviewed correctly. When medical opinions were not prepared and reviewed correctly, management could not ensure the validity of operations within the disability determination process. In addition, the claims examiners might have relied on an incomplete or incorrect medical opinion which could have impacted the disability determination. Although the disability determination process was not entirely reliant on medical opinions, if any part of the process was suspect, then the entire outcome could be called into question.
- Confirm timeliness standards were met by the medical services contractor. When timeliness standards were not met by the medical services contractor, the Contracting Officer and the COR could not ensure that contract costs were controlled, and contract obligations were met.
- Verify that all expenditure reports were properly stored. When these reports were not stored properly, the Contracting Officer and the COR could not ensure that contract costs were controlled and that contract obligations were met.

Recommendations

RMA recommends that the Office of Programs:

1. Create a cover sheet with a checklist that allows the Contracting Officer's Representative to verify that the following requirements have been met:
 - The claims examiner signed and dated form G-137 SUP, via a written/electronic signature or a "sticky note;" and
 - Current medical evidence is included in each medical opinion.
2. Require a secondary authorizer to review each medical opinion.
3. Create controls that require the Contracting Officer's Representative to sample medical opinions and review them for acceptability on a routine basis.

4. Retrain the examiners to sign each medical opinion they review and ensure that current medical evidence is included.

Management's Comments and RMA's Response

OP did not concur with recommendation one with the following statement:

The Contracting Officer Representative (COR) with the Agency's Contracting Officer is responsible for oversight and ensuring the vendor adheres to the contract. The COR is not responsible for ensuring that claims examiners take actions to sign opinions.

In addition, whether a medical opinion is acceptable is captured on the current medical opinion forms and process. Decisions are reviewed by an authorizer. RRB Procedure, DCM 3.4.302 states "...a reviewer/authorizer is responsible for thoroughly examining all aspects of a proposed disability determination for sufficiency, accuracy, and content, including but not limited to: ...all medical opinions, determination rationale, system entries,..." RRB current procedure requires the authorizer to review that the examiner signed the G-137SUP. Authorizers, not the COR, review examiners' actions in regard to adjudication and disability processing.

On May 24, 2023, RRB provided a response that explained the application of Legal Opinion 2017-59, which allows examiners to adjudicate cases when medical is more than 12 months earlier than the adjudication date. Necessary elements of a medical opinion are in 20 CFR 220 and Statement of Work-Advisory Medical Opinions. The currency of medical evidence may not be relevant to the decision. The medical opinion is assessing the evidence submitted for review to determine a severity and answer specific questions based on records in file.

For recommendation one, RMA evaluated RRB's response and determined that it did not address the intent of the recommendation. As stated in **Table 3**, RMA found that the 15 samples that included medical evidence older than 12 months were not explained by any of the exceptions discussed. In addition, RMA acknowledges that all decisions made by the claims examiners are reviewed by an authorizer. However, since the acceptance of medical opinions results in payment of services rendered, the COR is responsible for ensuring that claims examiners sign each medical opinion. Our finding and recommendation remain as written.

OP did not concur with recommendation two with the following statement:

The final determination of disability is the decision of the examiner in accordance with 20 CFR 220.13 and 20 CFR 220.100. In addition, all decisions are reviewed by an authorizer. Authorizers review opinions and adding supervisors to the process will decrease the timeliness of decisions. Supervisors provide technical assistance as a means of managing the section and requiring them to review all opinions for acceptability will decrease their availability to manage the overall workload and monitor performance.

For recommendation two, RMA evaluated RRB's response and determined that requiring the supervisors to review all medical opinions will significantly increase their workload. As such, RMA updated the recommendation for OP to require secondary authorizers to review all medical opinions for acceptability.

OP did not concur with recommendation three with the following statement:

DBD's Management Control Techniques submitted in April 2024 include controls that ensure that terms of the contract are met, and the quality of the product is satisfactory-- Control Technique OOPDB5-15. This Technique notes that Programs Evaluation and Management Services reviews a sampling of consultative medical exams and opinions and produces a report. In addition, DBD's quality annual review includes opinion/acceptability assessment of contractor services.

For recommendation three, RMA evaluated RRB's response and determined that this action meets the intent of the recommendation. Since this action to address the identified issues was implemented outside the scope of this audit, OP should work with OIG and request closure of this recommendation after the final audit report is issued. Our finding and recommendation remain as written.

OP concurred with recommendation four and stated that they will prepare a formal training that will include a review of signature requirements for accepting contractor medical opinions.

Ineffective Internal Controls

DBD's internal controls for the usage of medical opinions in the disability determination process were partially ineffective due to incomplete medical opinions and missing Financial Management Information System (FMIS) payment screenshots.

RMA determined that RRB employees, such as DBD's claims examiners and reconsideration specialists, accepted incomplete medical opinions. The medical services contractor failed to complete all required sections of the medical opinion paperwork and did not include a clear and referenced explanation for each case referred to them. During testing, RMA identified 14 of 235 samples in which opinions were not completed entirely and 2 of 235 samples failed to include a clear and referenced explanation for the consultant's opinion regarding the case. In total, RMA identified 16 errors across 14 individual opinions, as two opinions were both incomplete and failed to include a clear and referenced opinion. Of those 14, only three opinions were rejected and returned to the medical services contractor to be corrected and the remaining 11, while incomplete, were approved and paid for by the RRB. For a medical opinion to be acceptable, DCM Part 11,²⁵ pages 18 and 19, require that "all statements have been completed and descriptions are provided" and "the referenced explanation is supported by the evidence, and is clear, legible and refers to the findings."

²⁵ Disability Claims Manual Part 11, *DPS Forms Instructions*, September 1, 2017.

RMA determined that RRB employees, such as DBD’s claims examiners and reconsideration specialists, did not upload applicable FMIS screenshots that verified payment was made for the medical opinion for each case into WorkDesk. During testing, RMA identified 55 of 235 samples that did not have an FMIS screenshot on WorkDesk to verify payment was made for the opinion. Regarding payment for medical opinions, DCM Part 4,²⁶ section 4.6.5, required that “a copy of the Medical Exam Payment Voucher entry screens that verify payment and specify what exams(s) are being paid for should be put in the file for documentation purposes.”

It is important to note that DBD indicated that medical opinions were also requested by employees with higher levels of adjudication, outside of DBD, and that DBD management had no authority over higher levels of appeals. However, DBD was responsible for providing training to RRB employees regarding disability determinations.

RMA found that several RRB employees were not trained or supervised properly by RRB management because they failed to follow the procedures provided in DCM Parts 4 and 11. RMA also determined that DBD did not create adequate training standards for RRB employees to review medical opinion documentation during fiscal years 2019 through 2022.

The acceptance of incomplete medical opinions by the RRB’s employees resulted in the processing of 11 disability claims with incomplete opinions, impacting 11 claimants. If projected to the population, it is estimated that RRB’s employees have incorrectly processed as many as 299 disability claims with incomplete and potentially questionable opinions, that may have impacted the claimants’ final disability award decisions. In addition, for the incomplete opinions paid for by RRB, RMA calculated \$1,571 in questioned costs, and a potential of \$42,443 in questioned costs when projected to the entire population, in accordance with the IG Act, as amended.²⁷ In total, 55 of the 235 tested medical opinions, or approximately 23 percent, were without adequate documentation to support payment of the opinion. Please note that these questioned costs refer to the payment of medical opinions, not the payment of disability benefits.

Recommendations

RMA recommends that the Office of Programs:

5. Work with the RRB’s Executive Committee to determine which RRB employees should be provided annual training regarding the review and acceptance of medical opinions to ensure RRB’s internal controls for the usage of medical opinions in the disability determination process are designed and operating effectively.
6. Work with the RRB’s Executive Committee to retrain applicable employees regarding the medical opinion approval process and document retention requirements to ensure the evaluation of medical opinions follows RRB’s internal controls.

²⁶ Disability Claims Manual Part 4, *Medical Evidence Development and Evaluation*, April 2, 2018.

²⁷ The IG Act of 1978, revised December 27, 2022, Section 405(a)(4)(b) defines “questioned costs” – *the term “questioned cost” means a cost that is questioned by the Office because of ... (B) a finding that, at the time of the audit, the cost is not supported by adequate documentation.*

7. Review the 11 incomplete medical opinions to determine if the missing information from the medical opinion would change the disability determination and expand the review of medical opinions if disability determinations are found to be impacted.

Management's Comments and RMA's Response

OP did not concur with recommendation five with the following statement:

DBD routinely reminds initial and post examiners through meetings and written reminders the process of review/acceptance of medical opinions. RRB procedures DCM 4.6.4 and DCM 4.11 include instructions on how to request, review, and process contractor medical opinions.

For recommendation five, RMA evaluated RRB's response and determined that this action does not meet the intent of the recommendation. We acknowledge that DBD routinely reminds examiners of the process for the review and acceptance of medical opinions, however, medical opinions are also requested by employees with higher levels of adjudication, outside of DBD. During testing, we found that some employees were not following the procedures outlined in the DCM. As such, we recommended that OP train these employees regarding the proper review and acceptance of opinions to help prevent the acceptance of incomplete medical opinions. Our finding and recommendation remain as written.

OP did not concur with recommendation six with the following statement:

DBD routinely reminds initial and post examiners through meetings and written reminders the process of review and acceptance of medical opinions. RRB procedures DCM 4.6.4 and DCM 4.11 include instructions on how to request, review, and process contractor medical opinions. However, RRB will remind the Contracting Officer Representative, and employees overseeing the medical opinion contract, of the control techniques that ensure terms of contract are met and the quality of the product is satisfactory.

For recommendation six, RMA evaluated RRB's response and determined that this action does not meet the intent of the recommendation. RMA acknowledges RRB's plan to remind the employees overseeing the medical services contract of the process for accepting medical opinions. However, we recommended that RRB retrain the employees regarding this process as we found that the current reminders are ineffective. Our finding and recommendation remain as written.

OP did not concur with recommendation seven with the following statement:

The determination of disability requires the assessment of vocational and eligibility factors that are not the expertise of medical professionals. See 20 CFR 220.112. The final determination of disability is the decision of the examiner in accordance with 20 CFR 220.13 and 20 CFR 220.100. In addition, all decisions are reviewed by an authorizer. RRB Procedure, DCM 3.4.302 states "... a reviewer/authorizer is responsible for thoroughly

examining all aspects of a proposed disability determination for sufficiency, accuracy, and content, including but not limited to: all medical opinions, determination rationale, system entries, ...” RRB current procedure requires the authorizer to certify that final determination is accurate and, if the medical opinion was substantially inaccurate, a final decision could not be made by the authorizer.

For recommendation seven, RMA evaluated RRB’s response and determined that the evidence provided was not sufficient to address the root cause of this finding. RMA acknowledges that disability determinations are not exclusively based on medical opinions. Although all opinions are reviewed by an authorizer, RMA found that these 11 opinions contained missing information, which may have affected the disability determination. Our finding and recommendation remain as written.

Inadequate Contractor Oversight

RMA determined that RRB did not exercise appropriate oversight of the medical services contractor during the scope of our audit, as they could not provide the required licenses, insurance, training documentation, or reports. These documents were required by internal policies and are necessary to ensure compliance with the terms of the contract. Additionally, RMA determined that funds spent on onsite consultations could be put to better use as RRB paid for services that were not provided. RMA also concluded that the FY 2023 process for approving payment of medical opinions was neither compliant with the FAR nor the COR appointment letter.²⁸

Specifically, DBD did not provide the appropriate technical oversight, including reviewing the acceptance of deliverables, over the medical services contractor hired during the scope of this audit. RMA determined that:

- Claims examiners authorized payment for medical opinions though only the COR, a DBD employee, has the authority to approve payment;
- DBD did not use funds effectively as they paid the medical services contractor for 4-hour, online consultation sessions, twice a week, but not all 30-minute windows within the session were used by claims examiners;
- DBD did not request or review copies of medical licenses or liability insurance periodically for each of the consultants authorized to provide medical opinions;²⁹
- DBD did not have copies of the required training the required privacy and information safeguard training certificates for consultants authorized to provide medical opinions; and
- DBD did not have copies of the necessary timeliness reports, such as the unpaid invoice report, as required by the contract, dated December 1, 2020.

²⁸ The Designation of Contracting Officer’s Representative Letter, January 30, 2017.

²⁹ Recommendations 14 and 15 from RRB OIG audit report number 16-05 require OA to review medical licenses and liability insurance information to ensure that they are current and valid.

These findings are discussed in greater detail in the corresponding sections below.

Claims Examiners Authorized Payment for Medical Opinions

Regarding the Contracting Officer and COR responsibilities associated with invoice payment, RMA considered criteria from the FAR, the COR appointment letter, and the DCM.³⁰

The Contracting Officer made the COR, a DBD employee, responsible for reviewing and approving medical exam payment vouchers (MPV) in their appointment letter.³¹ MPVs are defined as a payment made for medical opinions. However, the COR delegated the review and approval of medical opinions to the claims examiners. DBD management stated that the contract dated December 1, 2020, gave claims examiners the authority to approve medical opinions by designating claims examiners as “authorized users” but RMA found that the contract only granted authorized users the ability to order medical opinions but did not grant payment authorization of medical opinions.

As a result, the COR, a DBD employee, was unable to ensure the completeness of medical opinion services rendered by the medical services contractor due to the delegation of payment for medical opinions to the claims examiners. This indicates that DBD could not report to the RRB management the effectiveness of the medical services contract.

Disability Benefits Division Did Not Use Funds Effectively

Regarding the use of funds for the online consultation sessions provided by the medical services contractor, RMA considered the contract language and best business practices.

Per the contract with the medical services contractor, dated December 1, 2020, DBD could ask the medical services contractor to provide onsite or virtual consultation sessions up to two days a week, for four hours per day. Clause 52.216-19 of the contract required the minimum order as “four hours of professional services.” This was regardless of whether the medical services contractor used all four hours. As such, OP could have put \$59,492.50 in funds to better use, as these funds were spent on consultation sessions not used by claims examiners over an eight-month period from February 2022 to September 2022.³² RMA determined that this was the only period in which the funds could have been put to better use as it was the only period in which RRB conducted consultations online and was without a CMO who could provide the same services internally.

³⁰ **Appendix E** provides details regarding the criteria RMA considered.

³¹ The Designation of Contracting Officer’s Representative Letter, January 30, 2017.

³² Inspector General Act of 1978, revised December 27, 2022, Section 405(5).

Disability Benefits Division Did Not Regularly Review Contractor Medical Licenses or Liability Insurance

Under the terms of the contracts examined under the scope of this audit,^{33,34} physicians performing medical services for RRB must maintain active medical licenses. These physicians were also required to maintain evidence of liability insurance.

Office of Administration's (OA) Chart of Controls,³⁵ internal control number 14-3, required that "RRB COR in the Office of Programs cognizant Bureau or Division will request and obtain proof of current professional licensure from the contractor for all their physicians performing services for the RRB periodically during each performance year of the contract." In addition, internal control number 15-3 required that "RRB COR in the Office of Programs cognizant Bureau or Division will request and obtain proof of current medical liability insurance for the contractor and for all their physicians performing services for the RRB at least once during each performance year of the contract."

RMA found that DBD did not periodically or at least once during each performance year of the contract request and review contractor medical licenses and liability insurance to ensure they were current and valid because they did not consider that task a function of DBD but rather the Division of Acquisition Management's responsibility. As a result, medical opinions may have been prepared by physicians who were not properly licensed. RRB may have been held liable if proper insurance was not maintained.

Disability Benefits Division Did Not Verify That the Consultants Completed Necessary Training

Regarding training requirements, the previous contract dated September 09, 2015, required that "[a]ll contracting staff (including any sub-contractors), shall coordinate with the contracting officer's representative to receive privacy awareness training." The contract dated December 1, 2020, was revised to require that "all contracting staff (including sub-contractors) shall coordinate with the contracting officer's representative to receive Safeguarding Controlled Unclassified Information (CUI) training (initial and annual refresher training)."

RMA found that DBD did not maintain the necessary materials to verify that the necessary training occurred because they did not consider that task a function of DBD, but rather the Division of Acquisition Management's responsibility. As such, the consultants may have performed their duties without awareness of privacy requirements and may have handled CUI without proper training.

³³ RRB Contract 1, December 1, 2020.

³⁴ RRB Contract 2, September 9, 2015.

³⁵ Division of Acquisition Management Chart of Controls, April 7, 2017.

Disability Benefits Division Did Not Request the Necessary Timeliness Reports

Regarding reporting requirements, the contract dated December 1, 2020, required that the medical services contractor submit six reports concerning timeliness (Deliverables, Pending, Untimely, Reject, Consolidated, and Unpaid Invoices) on a monthly and bi-monthly basis.

RMA determined that DBD did not request the unpaid invoice report because they did not deem it necessary and accepted a general quality assurance report instead of the six required timeliness reports from the medical services contractor. Without the required reports, DBD could not provide contractual oversight of the medical services contractor's timeliness of unpaid invoices or adequately monitor the other five required reporting parameters.

Recommendations

RMA recommends that the Office of Programs:

8. Work with Office of Administration to determine if additional Contracting Officer's Representatives are required to ensure proper contractual and technical oversight and monitoring of the medical opinions contract.
9. Work with Office of Administration to revise the approval process in the Disability Claims Manual so that claims examiners do not approve payment for medical opinions and develop a new process for the Contracting Officer's Representative or the Alternate Contracting Officer's Representatives to review and approve payment for medical opinions.
10. Work with Acquisition Management to include language in the next medical services contract requiring that if consultation sessions with the consultants occur online, payments are in 30-minute increments in which consultation occurs, instead of the entire 4-hour window.
11. Work with Acquisition Management to modify the language in Contract 1, dated December 1, 2020, to require that the medical services contractor submit medical licenses, insurance, and annual training certifications on an annual basis.
12. Develop an internal control, replacing internal control number 14-3 from the Office of Administration's Chart of Controls in the Disability Benefits Division's Chart of Controls, to ensure that the medical licenses, insurance, and annual training certifications are reviewed on a timely basis.
13. Develop additional controls to ensure that the medical services contractor regularly submits the six required timeliness reports in accordance with their contract requirements.

Management's Comments and RMA's Response

OP concurred with recommendation eight and stated that the COR will determine if different and/or additional resources are necessary to ensure proper contractual and technical oversight and monitoring of the medical services contract.

OP did not concur with recommendation nine with the following statement:

The current Contracting Officer Representative will request review of appointment letter, contract award, and disability procedure to ensure consistency amongst all three documents regarding the payment of opinions. However, we must consider the overall workload to prevent negative impact to timeliness and customer service.

For recommendation nine, RMA evaluated RRB's response and determined that the evidence provided was not sufficient to address the root cause of this finding. RMA acknowledges the workload this recommendation will add, and thus has suggested that OP assign alternate CORs to help alleviate this workload. Our finding and recommendation remain as written.

OP did not concur with recommendation ten with the following statement:

Contract [1's] current option year began in December 2023 and ends in December 2025. The resources necessary to modify the contract are greater than the anticipated use of, and remaining term for, professional services. However, RRB will consider the suggested consultation increments in the absence of a CMO when the next medical opinion contract is prepared for bidding.

For recommendation ten, RMA evaluated RRB's response and determined that RRB's decision to consider the suggested consultation increments for the next medical services contract meets the intent of the recommendation. As such, we have modified the recommendation for OP to work with Acquisition Management to include the recommended language in the next medical services contract instead of modifying the current contract.

OP did not concur with recommendation 11 with the following statement:

The review of medical license, insurance and annual training certification is covered by the contract between the vendor and Agency's Contracting Officer.

For recommendation 11, RMA evaluated RRB's response and determined that the evidence provided was not sufficient to address the root cause of this finding. As explained in the finding, the OA's Chart of Controls³⁶ requires the COR to periodically, or at least once during each performance year of the contract, request and review contractor medical licenses and liability insurance to ensure they were current and valid. In addition, Contracts 1³⁷ and 2³⁸ require the contractor to coordinate with the COR to receive necessary trainings. As such, we found that the review of medical licenses, liability insurance, and training is a function of OP. Our finding and recommendation remain as written.

³⁶ Ibid.

³⁷ RRB Contract 1, December 1, 2020.

³⁸ RRB Contract 2, September 9, 2015.

OP did not concur with recommendation 12 with the following statement:

Medical license, insurance and annual training certification is covered by the contract between the vendor and Agency's Contracting Officer. Further, the medical opinion contract is utilized by more than one accessible unit. To add a control technique only to the disability process decentralizes the authority the Contracting Officer has under the Federal Acquisition Regulations.

For recommendation 12, RMA evaluated RRB's response and determined that the evidence provided was not sufficient to address the root cause of this finding. As explained in the finding, OA's Chart of Controls³⁹ requires the COR to periodically, or at least once during each performance year of the contract, request and review contractor medical licenses and liability insurance to ensure they were current and valid. In addition, Contracts 1⁴⁰ and 2⁴¹ require the contractor to coordinate with the COR to receive necessary trainings. As such, we found that the review of medical licenses, liability insurance, and training is a function of OP. Our finding and recommendation remain as written.

OP did not concur with recommendation 13 with the following statement:

DBD's Management Control Techniques submitted April 2024 include controls that ensure that terms of contract are met and the quality of the product is satisfactory—control technique OOPDB5-15.

For recommendation 13, RMA evaluated RRB's response and determined that this action meets the intent of the recommendation. Since this action to address the identified issues was implemented outside the scope of this audit, OP should work with OIG and request closure of this recommendation after the final audit report is issued. Our finding and recommendation remain as written.

³⁹ Division of Acquisition Management Chart of Controls, April 7, 2017.

⁴⁰ RRB Contract 1, December 1, 2020.

⁴¹ RRB Contract 2, September 9, 2015.

Appendix A: Management's Comments



UNITED STATES GOVERNMENT
MEMORANDUM

FORM G-115f (1-92)
RAILROAD RETIREMENT BOARD

April 17, 2024

TO: RMA Associates, LLC
c/o Ilana Gershenson

FROM: Sherita Boots
Disability Benefits Division Director

SUBJECT: Draft Report – The Railroad Retirement Board Should Strengthen Controls and Contractor Oversight of the Medical Opinion and Disability Determination Process

**SHERITA
BOOTS** Digitally signed by
SHERITA BOOTS
Date: 2024.04.17
16:07:42 -05'00'

This is in response to your email of April 10, 2024, requesting comments on the subject report. The Office of Programs' comments to OIG's Recommendations # 1 - 13 are below.

We also note that the information in the Background section, regarding eligibility for disability annuities is incorrect. RMA states "Under the RRA, disability annuities can be paid to railroad workers with at least 10 years of service." However, U.S. Code 231a states ... "if they shall have completed ten years of service (or, for purposes of paragraphs (i), (iii), and (v), five years of service, all of which accrues after December 31, 1995) and shall have filed application for annuities...."

We further observe that RMA states (pp. 13-14) because DBD did not review contractor medical licenses and liability insurance, RRB may have been held liable for physician malpractice for any opinions prepared by physicians who were not properly licensed. Since the review of licensure information is a contracted responsibility of the vendor, we would appreciate it if RMA could provide the legal basis for this statement.

Recommendation #1: Create a cover sheet with a checklist that allows the Contracting Officer's Representative to verify that the following requirements have been met:

- **The claims examiner signed and dated form G-137 SUP, via a written/electronic signature or a "sticky note;" and**
- **Current medical evidence is included in each medical opinion.**

Response: RRB does not concur with this recommendation. The Contracting Officer Representative (COR) with the Agency's Contracting Officer is responsible for oversight and ensuring the vendor adheres to the contract. The COR is not responsible for ensuring that claims examiners take actions to sign opinions.

In addition, whether a medical opinion is acceptable is captured on the current medical opinion forms and process. Decisions are reviewed by an authorizer. RRB Procedure, DCM 3.4.302 states "... a reviewer/authorizer is responsible for thoroughly examining all aspects of a proposed disability determination for sufficiency, accuracy, and content, including but not limited to: all medical opinions, determination rationale, system entries, ..." RRB current procedure requires the authorizer to review that the examiner signed the G-137SUP. Authorizers, not the COR, review examiners' actions in regard to adjudication and disability processing.

On May 24, 2023, RRB provided a response that explained the application of Legal Opinion 2017-59, which allows examiners to adjudicate cases when medical is more than 12 months earlier than the adjudication date. Necessary elements of a medical opinion are in 20 CFR 220 and Statement of Work-Advisory Medical Opinions. The currency of medical evidence may not be relevant to the decision. The medical opinion is assessing the evidence submitted for review to determine a severity and answer specific questions based on records in file.

Recommendation #2: Require a supervisory review of each medical opinion.

Response: RRB does not concur with this recommendation. The final determination of disability is the decision of the examiner in accordance with 20 CFR 220.13 and 20 CFR 220.100. In addition, all decisions are reviewed by an authorizer. Authorizers review opinions and adding supervisors to the process will decrease the timeliness of decisions. Supervisors provide technical assistance as a means of managing the section and requiring them to review all opinions for acceptability will decrease their availability to manage the overall workload and monitor performance.

Recommendation #3: Create controls that require the Contracting Officer's Representative to sample medical opinions and review them for acceptability on a routine basis.

Response: RRB does not concur with this recommendation. DBD's Management Control Techniques submitted in April 2024 include controls that ensure that terms of the contract are met, and the quality of the product is satisfactory--Control Technique OOPDB5-15. This Technique notes that Programs Evaluation and Management Services reviews a sampling of consultative medical exams and opinions and produces a report. In addition, DBD's quality annual review includes opinion/acceptability assessment of contractor services.

Recommendation #4: Retrain the examiners to sign each medical opinion they review and ensure that current medical evidence is included.

Response: RRB concurs with this recommendation. DBD routinely reminds initial and post examiners through meetings and written reminders the process of review/acceptance of medical opinions. DBD will prepare a formal training featuring reminders about reviewing opinions for requirements in 20 CFR 220 and Statement of Work-Advisory Medical Opinions. In addition, the training will review signature requirements for accepting contractor medical opinions.

Recommendation #5: Work with the RRB's Executive Committee to determine which RRB employees should be provided annual training regarding the review and acceptance of medical opinions to ensure RRB's internal controls for the usage of medical opinions in the disability determination process are designed and operating effectively.

Response: RRB does not concur with this recommendation. DBD routinely reminds initial and post examiners through meetings and written reminders the process of review/acceptance of medical opinions. RRB procedures DCM 4.6.4 and DCM 4.11 include instructions on how to request, review, and process contractor medical opinions.

Recommendation #6: Work with the RRB's Executive Committee to retrain applicable

employees regarding the medical opinion approval process and document retention requirements to ensure the evaluation of medical opinions follows RRB's internal controls.

Response: RRB does not concur with this recommendation. DBD routinely reminds initial and post examiners through meetings and written reminders the process of review and acceptance of medical opinions. RRB procedures DCM 4.6.4 and DCM 4.11 include instructions on how to request, review, and process contractor medical opinions. However, RRB will remind the Contracting Officer Representative, and employees overseeing the medical opinion contract, of the control techniques that ensure terms of contract are met and the quality of the product is satisfactory.

Recommendation #7: Review the 11 incomplete medical opinions to determine if the missing information from the medical opinion would change the disability determination and expand the review of medical opinions if disability determinations are found to be impacted.

Response: RRB does not concur with this recommendation. The determination of disability requires the assessment of vocational and eligibility factors that are not the expertise of medical professionals. See 20 CFR 220.112. The final determination of disability is the decision of the examiner in accordance with 20 CFR 220.13 and 20 CFR 220.100. In addition, all decisions are reviewed by an authorizer. RRB Procedure, DCM 3.4.302 states "... a reviewer/authorizer is responsible for thoroughly examining all aspects of a proposed disability determination for sufficiency, accuracy, and content, including but not limited to: ... all medical opinions, determination rationale, system entries, ..." RRB current procedure requires the authorizer to certify that final determination is accurate and, if the medical opinion was substantially inaccurate, a final decision could not be made by the authorizer.

Recommendation #8: Work with Office of Administration to determine if additional Contracting Officer's Representatives are required to ensure proper contractual and technical oversight and monitoring of the medical opinions contract.

Response: RRB concurs with this recommendation as it is written. The current Contracting Officer Representative will request review of appointment letter and contracting oversight demands to determine if different and/or additional resources are necessary.

Recommendation #9: Work with Office of Administration to revise the approval process in the Disability Claims Manual so that claims examiners do not approve payment for medical opinions and develop a new process for the Contracting Officer's Representative or the Alternate Contracting Officer's Representatives to review and approve payment for medical opinions.

Response: RRB does not concur with this recommendation. The current Contracting Officer Representative will request review of appointment letter, contract award, and disability procedure to ensure consistency amongst all three documents regarding the payment of opinions. However, we must consider the overall workload to prevent negative impact to timeliness and customer service.

Recommendation #10: Work with Acquisition Management to modify the language in Contract 60RRBH21D0001, dated December 01, 2020, so that if consultation sessions with the consultants occur online, payments are in 30-minute increments in which consultation occurs, instead of the entire 4-hour window.

Response: RRB does not concur with this recommendation. Contract 60RRBH21D0001's current option year began in December 2023 and ends in December 2025. The resources necessary to modify the contract are greater than the anticipated use of, and remaining term for, professional services. However, RRB will consider the suggested consultation increments in the absence of a CMO when the next medical opinion contract is prepared for bidding.

Recommendation #11: Work with Acquisition Management to modify the language in Contract 60RRBH21D0001, dated December 01, 2020, to require that the medical services contractor submit medical licenses, insurance, and annual training certifications on an annual basis.

Response: RRB does not concur with this recommendation. The review of medical license, insurance and annual training certification is covered by the contract between the vendor and Agency's Contracting Officer.

Recommendation #12: Develop an internal control, replacing internal control number 14-3 from the Office of Administration's Chart of Controls in the Disability Benefits Division's Chart of Controls, to ensure that the medical licenses, insurance, and annual training certifications are reviewed on a timely basis.

Response: RRB does not concur with this recommendation. Medical license, insurance and annual training certification is covered by the contract between the vendor and Agency's Contracting Officer. Further, the medical opinion contract is utilized by more than one accessible unit. To add a control technique only to the disability process decentralizes the authority the Contracting Officer has under the Federal Acquisition Regulations.

Recommendation #13: Develop additional controls to ensure that the medical services contractor regularly submits the six required timeliness reports in accordance with their contract requirements.

Response: RRB does not concur with this recommendation. DBD's Management Control Techniques submitted April 2024 include controls that ensure that terms of contract are met and the quality of the product is satisfactory—control technique OOPDB5-15.

cc: Arturo Cardenas, Director of Office of Programs
Jebby Rasputnis, Deputy Director of Office of Programs
Shawna Weekley, Chief Financial Officer
Jack Schreiber, Director of Office of Administration
Chiquita Lowery, Director of Audit Affairs

Appendix B: Sampling Methodology

RMA chose a simple random sampling approach to project the results of our testing over the entire population, regardless of the dollar amount. This technique allowed us to select a random sample representative of the population (this technique was based on the distribution of the items in the population; thus, the distribution of the random sample was very similar to the universe from which the sample was pulled). We determined that this population was comprised of dollar amounts (averages) and a distribution of records per year that were very similar; therefore, a simple random sampling technique was appropriate, especially to detect any errors in the population or controls not in place for a specific program. In summary, this technique was most efficient in calculating the error rate and the number of errors in the population.

As part of our sampling, we tested two populations, each containing 235 cases. The testing criteria varied for both populations based on which objective we were answering.

In the sections below, we present our sampling results by individual sampling population, while in the body of our report, we reference the total number of times we encountered an issue. As such, the numbers in the following sections may appear smaller than the numbers in the body of the report but combined, the numbers below will equal the numbers referenced in the body of the report.

Objective 2: Prior Recommendation Testing

Our first test was designed to assess the corrective actions taken in response to the recommendations issued as part of RRB OIG audit report number 16-05,⁴² specifically recommendations 2, 4, 6, 9, 10, 11, 13, 14, 15, 16, and 17. For certain recommendations that required us to test the existence of medical licenses and insurance or monthly reports, RMA did not test a sample but instead tested the entire population. The sample population was a subset of all medical opinions that had been generated between FY 2019 and FY 2022. For this sample, we reviewed the completion of recommendations to which RRB concurred on November 1, 2017 (recommendations 2, 4, 6, 10, and 11) by statistically sampling medical opinions. We sampled 235 opinions from a universe of 6,919 and found that 100 cases contained errors. Within those 100 cases, we identified 108 errors.

RMA addressed the following errors in the finding **Some Corrective Actions Taken in Response to RRB OIG Audit Report Number 16-05 were No Longer Effective in Fiscal Year 2023**:

1. 10 of the 235 medical opinions tested failed to include current⁴³ medical evidence; and
2. 95 of the 191 opinions tested consisting of G-137 SUP forms failed to include an examiner signature.

⁴² *Control Weaknesses Diminish the Value of Medical Opinions in the Railroad Retirement Board Disability Determination Process*, RRB OIG Audit Report Number 16-05, March 9, 2016.

⁴³ Medical evidence that has been developed within 12 months of adjudication of the case.

In addition, RMA identified the following errors that were not included in our findings as they were not statistically significant:

1. RRB employees authorized payment before a determination was made that the medical opinion met the contract requirements for 1 of the 235 samples tested; and
2. The consultants failed to include a clear and referenced explanation that identified medical evidence as the basis of the medical opinion for 2 of the 235 samples tested.

As a result of our sampling techniques and testing results, we have 95% confidence that this applies to the population as a whole.

Objective 3: Internal Control Testing

Our second test was designed to assess the internal controls in place for the disability determination process during the scope of the audit. We generated a list of 17 questions which were pulled from a list generated in RRB OIG audit report number 16-05,⁴⁴ as well as the Chart of Controls for the Division of Disability Benefits.⁴⁵ These questions spanned the entirety of the process for requesting, using, and paying for a medical opinion and as such, provided a representative look into the internal controls for this process. For this sample, we reviewed the effectiveness of key controls in place for the disability determination process. We sampled 235 opinions from a universe of 6,919 and found that 147 cases contained errors. Within those 147 cases, we identified 202 errors.

RMA identified the following issues in the finding **Some Corrective Actions Taken in Response to RRB OIG Audit Report Number 16-05 were No Longer Effective in Fiscal Year 2023**:

1. 13 of the 235 medical opinions were not received by RRB from the medical services contractor within five business days of the request;
2. 2 of the 6 opinions marked as urgent, were not received by RRB from the medical services contractor within two business days of the request;
3. 5 of the 235 opinions tested failed to include current⁴⁶ medical evidence; and
4. 107 of the 192 opinions tested consisting of G-137 SUP forms failed to include an examiner signature.

⁴⁴ *Control Weaknesses Diminish the Value of Medical Opinions in the Railroad Retirement Board Disability Determination Process*, RRB OIG Audit Report Number 16-05, March 9, 2016.

⁴⁵ Disability Benefits Chart of Controls, April 30, 2019.

⁴⁶ Medical evidence that has been developed within 12 months of adjudication of the case.

RMA identified the following issues in the finding **Ineffective Internal Controls**:

5. The consultants did not complete all required sections of the medical opinion for 14 of the 235 opinions tested;
6. The consultants failed to include a clear and referenced explanation that identified medical evidence as the basis of the medical opinion for 2 of the 235 opinions tested;⁴⁷ and
7. RRB employees failed to upload FMIS screenshots on WorkDesk that verified that payment was made for the medical opinion for 55 of the 235 samples tested.

In addition, RMA identified the following errors that were not included in our findings as they were not statistically significant:

8. RRB employees authorized payment before a determination was made that the medical opinion met the contract requirements for 3 of the 235 samples tested; and
9. The consultants failed to include a clearly documented conclusion statement for 1 of the 235 samples tested.

As a result of our sampling techniques and testing results, we have 95% confidence that this applies to the population as a whole.

Objective 3: Onsite Consultation Testing

Our third test assessed whether medical advice was provided by the third-party contractor for RRB during the scope of this audit. The DBD Director indicated that consultants were required to provide case notes for each case discussed during each consultation session before payment for the services could be released.

As such, for this sample, we used these case notes as confirmation that the consultations occurred. We pulled a sample of 129 dates out of a universe of 273 4-hour consultation blocks and requested the schedules for those days.

In our initial review of the file notes, RMA found that 102 consultations did not have file notes. When RMA inquired about these missing notes, we were informed that RRB did not maintain consultation schedules for in-person consultations, therefore, RMA could not determine which cases had been discussed prior to April 14, 2020. Additionally, once RRB moved the consultations online in April 2020, RRB did not record the case numbers discussed, only the claims examiners' information through the end of 2020. The onsite consultations then stopped for two years because RRB had a CMO who could provide those services.

Once the onsite consultations began again in February 2022, RRB began recording the case numbers with each consultation which allowed RMA to review the WorkDesk files and ensure that each

⁴⁷ While on its own this result was not statistically significant, we included it in **Ineffective Internal Controls** as examples for cases in which the opinions were not completed entirely.

contained file notes. RMA found that file notes existed for each appointment listed in the schedule except for two days. In those two instances, the claims examiner signed up to discuss the same case number during the following consultation slot, and those appointments produced case notes.

Appendix C: Roles, Responsibilities, Process Overview, and When to Request a Medical Opinion

This appendix presents the roles, responsibilities, process overview, and when to request a medical opinion pertaining to the subject audit.

Roles, Responsibilities, and Process Overview at the RRB

DBD consisted of a Director, operations and claims analysts, and claims examiners. The claims examiners were assigned to one of two DBD sections: Initial Section or Post Section. The claims examiners in the Initial Section were responsible for making the first decision regarding whether to award a disability annuity to the claimant. The claims examiners in the Post Section were responsible for reviewing the initial examiner's decision and coordinating with Social Security for disability freeze determinations.⁴⁸ As of November 10, 2022, DBD consisted of 18 examiners in the Initial Section, 13 examiners in the Post Section, and one claims and operations analyst.

These claims examiners processed disability applications/claims and evaluated medical evidence submitted in support of the claimed disability. RRB contracted a medical services contractor to provide medical consulting services and medical opinions regarding the disability applicant, as needed.⁴⁹ The claims examiners could also obtain medical opinions from their CMO. However, since the number of cases requiring medical opinions was substantive, the CMO could not review all cases on their own. As such, the CMO's primary responsibility consisted of providing consultations to claims examiners regarding cases.

Please note that medical opinions refer to the consultant's determination regarding the severity of the impairment for a case based on the medical evidence provided. Medical consulting services refer to the onsite or virtual consultations provided by the medical services contractor where claims examiners could ask questions about medical evidence and disability criteria, as well as clarify determinations previously provided by the consultants.

Medical opinions summarize the consultant's or the CMO's review of the documents provided for the disability applicant. Those documents could consist of medical records, medical exams, hospitalization records, RRB forms, and other records. The claims examiners request an opinion via form G-137 (**Appendix H**) and request either form G-137 SUP for physical evaluations or form SSA-2506 for mental evaluations.

The consultants return completed G-137 SUPs or SSA-2506s to the claims examiner in response to the form G-137 provided. Within the opinion, the consultant may indicate that the medical evidence received was insufficient to provide an opinion and would advise the claims examiner to provide additional medical evidence. If the consultant provided an opinion with a determination

⁴⁸ A disability freeze is established when a railroad worker's wage record is frozen such that the period during which the worker was disabled is excluded when determining benefit amounts.

⁴⁹ See **Appendix D** for price per medical opinion per year and contract information.

regarding the severity of the impairment, the claims examiner used the opinion to help decide the case.

When to Request a Medical Opinion

RMA has detailed the instances in which claims examiners should request medical opinions, as required by DCM part 4.11.1⁵⁰ below:

- A. Advice is needed concerning an examination to be scheduled, or interpretation of medical report or test results;
- B. Conflicting medical reports are contained in the evidence secured;
- C. Limiting effects of the applicant's impairments are not specifically or completely addressed in the medical reports secured, and the disability examiner needs to request that the medical consultant provide the residual functional capacity (RFC) remaining to the claimant;
- D. The case involves a joint freeze determination on Form SSA- 831-U5;
- E. A protest of a denial, or a request for reconsideration has been made, and there is new evidence or a previous opinion is not in file;
- F. In continuance cases, when a severity assessment is needed to determine if the disability should continue or terminate using the medical improvement standards; or
- G. To determine if the impairment(s) meets or equals the level of severity of impairments in the SSA Listing of Impairments.

⁵⁰ Disability Claims Manual Part 4, *Medical Evidence Development and Evaluation*, April 2, 2018.

Appendix D: Price per Medical Opinion by Option Year and Contract Background

RMA has detailed the price per medical opinion during each option year for the scope of the audit in **Table 1**.

Table 1: Price per Medical Opinion by Option Year

Contract 2 ⁵¹	Option Year 2 12/01/17-11/30/18	[REDACTED]
	Option Year 3 12/01/18-11/30/19	[REDACTED]
	Option Year 4 12/01/19-11/30/20	[REDACTED]
Contract 1 ⁵²	Base Year 12/01/20-11/30/21	[REDACTED]
	Option Year 1 12/01/21-11/30/22	[REDACTED]

Contract 1 is the contract for the medical services contractor hired to provide medical services for RRB from December 2020 to November 2025. The award profile for this contract is an Indefinite Delivery Vehicle (IDV). The medical services consist of providing medical consultation sessions, preparing medical opinions, and providing training to the DBD staff. According to USAspending.gov, the potential award amount for this contract is \$2,800,000. As of April 2024, RRB has obligated \$142,702 of that amount.

Contract 2 is the IDV contract for the medical services contractor hired to provide medical services for RRB from September 2015 to November 2020. The medical services consist of providing medical consultation sessions, preparing medical opinions, and providing training to the DBD staff. According to USAspending.gov, the potential award amount for this contract was \$2,637,685. RRB obligated \$1,333,368 of that amount.

⁵¹ RRB Contract 2, September 9, 2015.

⁵² RRB Contract 1 December 1, 2020.

Appendix E: Criteria

The overall strategy and methodology of our audit considered the criteria listed in **Table 2**. Following **Table 2**, RMA detailed the criteria used in the finding **Inadequate Contractor Oversight**.

Table 2: Criteria Considered Throughout the Audit

Time Period	Criteria
September 7, 2023	The FAR ⁵³ provides executive agencies with guidelines for the acquisition of supplies and services. In addition, the FAR provides clauses for government planning and contract administration.
December 27, 2022	Public Law 117-286 ⁵⁴ section 405, <i>Reports</i> , provides the definitions for various terms found in audit reports concerning findings and recommendations.
December 1, 2020, through November 30, 2025	Contract 1 is the contract for the medical services contractor as of March 2024. The medical services consist of providing medical consultation sessions, preparing medical opinions, and providing training to the DBD staff.
April 30, 2019	The Disability Benefits Chart of Controls ⁵⁵ provides a list of internal controls for DBD. These controls relate to the usage of medical opinions and the disability determination process.
April 2, 2018	DCM Part 4 ⁵⁶ provides the procedures regarding the use of medical evidence for evaluating disability claims. It describes acceptable medical evidence sources as well as guidelines for the proper evaluation of that evidence.
September 1, 2017	DCM Part 11 ⁵⁷ provides the general instructions for the proper completion of forms used by DBD. It also provides the purpose and the instructions for the disposition of each form.
April 7, 2017	The Procurement Chart of Controls ⁵⁸ provides a list of internal controls for the Division of Acquisition Management. These controls relate to the procurement and acquisition of goods and services.
January 30, 2017	The COR Appointment Letter ⁵⁹ was used by the Contracting Officer to appoint the DBD Director as the Administrative COR for the medical services contracts. The letter indicates that the COR is responsible for overseeing the medical services contractor to ensure that they comply with all requirements outlined in the contract.

⁵³ Federal Acquisition Regulation, <https://www.acquisition.gov/browse/index/far>, September 7, 2023.

⁵⁴ Inspector General Act of 1978, revised December 27, 2022, Section 405(5).

⁵⁵ Disability Benefits Chart of Controls, April 30, 2019.

⁵⁶ Disability Claims Manual Part 4, *Medical Evidence Development and Evaluation*, April 2, 2018.

⁵⁷ Disability Claims Manual Part 11, *DPS Forms Instructions*, September 1, 2017.

⁵⁸ Division of Acquisition Management Chart of Controls, April 7, 2017.

⁵⁹ The Designation of Contracting Officer's Representative Letter, January 30, 2017.

Time Period	Criteria
September 9, 2015, through October 31, 2020.	Contract 2 was the contract for the medical services contractor hired to provide medical services for RRB from September 2015 to November 2020. The medical services consisted of providing medical consultation sessions, preparing medical opinions, and providing training to the DBD staff.
September 9, 1982	OMB Circular A-50, <i>Audit Follow Up</i> , ⁶⁰ establishes the policies and procedures for use by executive agencies in following up on audit reports issued by the Inspectors General, other executive branch audit organizations, GAO, and non-federal auditors.

Inadequate Contractor Oversight Detailed Criteria

- FAR section 32.1007,⁶¹ *Administration and payment of performance-based payments*, required that “[t]he contracting officer responsible for administering performance-based payments for the contract shall review and approve all performance-based payments for that contract.”
- FAR section 1.602-2,⁶² *Responsibilities*, part D, required that “[c]ontracting officers shall designate and authorize, in writing and in accordance with agency procedures, a contracting officer’s representative (COR) on all contracts and orders other than those that are firm-fixed price, and for firm-fixed-price contracts and orders as appropriate, unless the contracting officer retains and executes the COR duties.”
- The Designation of Contracting Officer’s Representative Appointment Letter,⁶³ issued on January 30, 2017, indicates that the COR’s duties are to “review payment vouchers and concur with respect to the delivery of items or services specified in the vouchers.”
- DCM section 4.6.5,⁶⁴ *Processing Payment For Medical Examinations And Services*, required “[u]pon receipt of requested services, a Medical Exam Payment Voucher (MPV) entry is completed to set up payment. Both Medical Exam Order and MPV entries are centrally processed by the Disability Benefits Division (DBD).”
- FAR section 1352.201-72,⁶⁵ *Contracting Officer’s Representative (COR)*, part, required that “[t]he Contracting Officer may designate assistant or alternate COR(s) to act for the COR by naming such assistant/alternate(s) in writing and transmitting a copy of such designation to the contractor.”

⁶⁰ OMB Circular A-50, *Audit Follow Up*, September 29, 1982.

⁶¹ Federal Acquisition Regulations section 32.1007, *Administration and payment of performance-based payments*, December 26, 2007.

⁶² Federal Acquisition Regulations section 1.602-2, *Responsibilities*, June 21, 2013.

⁶³ The Designation of Contracting Officer’s Representative Letter, January 30, 2017.

⁶⁴ Disability Claims Manual Part 4, *Medical Evidence Development and Evaluation*, April 2, 2018.

⁶⁵ Federal Acquisition Regulations section 1352.201-72, *Contracting Officer’s Representative (COR)*, April 2010.

Appendix F: Status of OIG Audit Report Number 16-05 Recommendations

RMA provides details of the testing, sampling, and analysis regarding the actions taken to address the recommendations made in the RRB OIG audit report number 16-05 that were determined to be no longer effective in **Table 3**.

Table 3: Status of OIG Audit Report Number 16-05 Recommendations that RMA Determined Were No Longer Effective

No.	Prior Recommendation	Criteria	RMA's FY 2023 Testing Results	RRB's Response	Date of Closure
2	Revise procedures to instruct RRB claims examiners to ensure that all medical evidence cited is current, prior to accepting the medical opinion.	<p>DCM Part 4,⁶⁶ section 4.3.1, required that “[m]edical evidence consists of reports about the disability from acceptable medical sources. Usually only recent (last 12 months) medical evidence will be developed by the field. Older evidence will be developed for establishing that a child’s disability began before age 22, for establishing that a widow’s disability began within the prescribed period, for establishing the claimant’s alleged disability onset date, or at the request of DBD in other cases.”</p> <p>DCM Part 11,⁶⁷ page 18, required that examiners must ensure that “all cited medical evidence is current (most current twelve months), supports the onset date and claimed impairment, and does not conflict with non-medical evidence.”</p> <p>It is important to note that Legal Opinion 2017-59 states that current medical evidence must be included for cases in which the claimant does</p>	15 of the 470 samples tested failed to include current medical evidence.	OP concurred with this recommendation on February 5, 2016. Programs stated that the DCM is a reference used by examiners to adjudicate claims and the Code of Federal Regulations outlines the considerations for determining disability. Programs also pointed out that older evidence may be the most relevant for supporting the established severity. Programs agreed to remind claims examiners to confirm that any newer evidence does not conflict with the cited medical opinion evidence	OIG closed this recommendation on November 1, 2017.

⁶⁶ Disability Claims Manual Part 4, *Medical Evidence Development and Evaluation*, April 2, 2018.

⁶⁷ Disability Claims Manual Part 11, *DPS Forms Instructions*, September 1, 2017.

No.	Prior Recommendation	Criteria	RMA's FY 2023 Testing Results	RRB's Response	Date of Closure
		not meet a disability listing, but RRB regulations do not require current medical evidence to be used for cases in which the claimant meets a disability listing. "Current" medical evidence is also not required for single freeze, spouse, widow, or child cases. However, RMA found that the 15 samples that failed to include current medical evidence were not explained by these exceptions.			
9	Retrain the RRB claims examiners to thoroughly review and prepare the file, prior to ordering a medical opinion.	DCM Part 11, ⁶⁸ page 18, required that examiners must ensure that "all cited medical evidence is current (most current twelve months), supports the onset date and claimed impairment, and does not conflict with non-medical evidence."	15 of the 470 samples tested failed to include current medical evidence.	OP concurred with the recommendation on February 5, 2016. Programs stated that initial examiner training instructs claims examiners to review and prepare the file prior to ordering a medical opinion. Programs stated that reminder training will be completed for all current disability claims examiners.	OIG closed this recommendation on June 23, 2017.

⁶⁸ Ibid.

No.	Prior Recommendation	Criteria	RMA's FY 2023 Testing Results	RRB's Response	Date of Closure
11	Update the RRB procedures to instruct the RRB claims examiners to indicate their acceptance or rejection of the medical opinion, and to require them to sign and date the form.	<p>DCM Part 11,⁶⁹ page 19, required the following once form G-137 SUP had been received from the consultant:</p> <p>“When review has been completed, the DBD examiner must:</p> <ul style="list-style-type: none"> • indicate if the medical opinion is accepted or rejected in the “RRB Use Only” box; and • sign and date the form.” <p>In addition, DCM Part 11,⁷⁰ page 20, required that “[t]he examiner reviews the form G-137 SUP received with the case and if acceptable pays for the medical opinion on the FMIS system.”</p>	<p>Of the 470 medical opinions tested, 383 were provided via G-137 SUP forms. 202 G-137 SUP forms failed to include an examiner signature.</p> <p>It should be noted that when the process for requesting and reviewing medical opinions moved online in response to COVID-19, claims examiners were not provided with Adobe Pro subscriptions and thus could not sign opinions. Examiners were able to leave a “sticky note” on the WorkDesk file indicating their acceptance or rejection of the medical opinion. RMA took this into account and reviewed the G-137 SUP files for both written signatures and “sticky notes.”</p>	<p>OP concurred with the recommendation on February 5, 2016. Programs stated they have a procedure in place and would remind staff that prior to approving payments in FMIS, they must sign and date form G-137 SUP.</p>	<p>OIG closed this recommendation on June 2, 2017.</p>

⁶⁹ Ibid.

⁷⁰ Ibid.

No.	Prior Recommendation	Criteria	RMA's FY 2023 Testing Results	RRB's Response	Date of Closure
14 ⁷¹	Ensure current licenses are maintained by the medical services provider.	OA's Chart of Controls, ⁷² internal control number 14-3, required that "RRB COR in the Office of Programs cognizant Bureau or Division will request and obtain proof of current professional licensure from the contractor for all their physicians performing services for the RRB periodically during each performance year of the contract."	DBD did not request or obtain proof of medical licenses periodically during each performance year of the contract for each of the medical consultants authorized to provide medical opinions as DBD did not verify several consultants' licenses since 2021, or provide evidence of verification for several consultants' licenses during the scope of the audit.	OA concurred with the recommendation on January 19, 2016. OA stated that they will provide one copy of the updated physician licensure and the plan, with the COR in DBD, to monitor contractor maintenance of the physician licensure.	OIG closed this recommendation on June 21, 2022. Please note that RRB began submitting documentation to close this recommendation starting on January 18, 2017. However, it took DBD multiple attempts to provide proper documentation that supported their actions.

⁷¹ This issue has been assessed in **Inadequate Contractor Oversight**.

⁷² Division of Acquisition Management Chart of Controls, April 7, 2017.

No.	Prior Recommendation	Criteria	RMA's FY 2023 Testing Results	RRB's Response	Date of Closure
15 ⁷³	Ensure proper insurance is maintained.	OA's Chart of Controls, ⁷⁴ internal control number 15-3, required that "RRB COR in the Office of Programs cognizant Bureau or Division will request and obtain proof of current medical liability insurance for the contractor and for all their physicians performing services for the RRB at least once during each performance year of the contract."	DBD did not request or obtain proof of liability insurance at least once during each performance year of the contract for each of the medical consultants authorized to provide medical opinions as DBD did not provide evidence that they requested proof of insurance from 2018 to 2020 or 2021 to 2022.	OA concurred with the recommendation on January 19, 2016. OA stated that the Division of Acquisition Management will provide copies of current corporate and physician medical liability insurance. In addition, the Division will work with the COR in DBD to monitor contractor maintenance of physician licensure.	OIG closed this recommendation on June 21, 2022. Please note that RRB began submitting documentation to close this recommendation starting on January 18, 2017. However, it took DBD multiple attempts to provide proper documentation that supported their actions.

⁷³ This issue has been assessed in **Inadequate Contractor Oversight**.

⁷⁴ Division of Acquisition Management Chart of Controls, April 7, 2017.

No.	Prior Recommendation	Criteria	RMA's FY 2023 Testing Results	RRB's Response	Date of Closure
16	Strengthen the controls for determining the timeliness of individual medical opinions.	Contracts 1 ⁷⁵ and 2 ⁷⁶ indicated that the medical services contractor must achieve the timeliness standards outlined in the contract for 95% of cases (no more than 5% can be untimely).	<p>The medical services contractor met the timeliness standard outlined in the contracts in 1 timeliness report out of the 8 requested.</p> <p>In addition, testing demonstrated that these issues associated with the medical services contractor's timeliness persisted as RMA found that:</p> <ul style="list-style-type: none"> • RRB did not receive 13 of the 235 samples from the contractor within five business days of the medical opinion request. • RRB marked 6 of the 235 samples as urgent medical opinions. Of these, RRB did not receive two opinions from the contractor within two business days of the request. 	OP concurred with the recommendation on February 5, 2016. Programs stated that the FMIS COR will work with the FMIS vendor staff to determine the level of effort and time required to produce either a standard or ad hoc report to support the data requirements. OP stated that they will need to modify the current contract to find the work and then the vendor will have to allocate technical support to create the report. OP stated that once they have received all the necessary elements from the FMIS COR, they will determine whether an alternate sampling approach is needed.	OIG closed this recommendation on October 1, 2019. Please note that RRB began submitting documentation to close this recommendation starting on August 29, 2016. However, it took DBD multiple attempts to provide proper documentation that supported their actions.

⁷⁵ RRB Contract 1, December 1, 2020.

⁷⁶ RRB Contract 2, September 9, 2015.

No.	Prior Recommendation	Criteria	RMA's FY 2023 Testing Results	RRB's Response	Date of Closure
17	Develop new controls to assess the contractor's performance related to timeliness.	The Disability Benefits Chart of Controls, ⁷⁷ control technique 5-2, required that "Program Evaluation and Management Services (PEMS) tracks expenditures for contractual service and issues a monthly report."	DBD was unable to locate the November FY 2021 and April FY 2022 expenditure reports that RRB's PEMS requested from the medical services contractor.	OP concurred with the recommendation on February 5, 2016. Programs stated that the FMIS COR will work with the FMIS vendor staff to determine the level of effort and time required to produce either a standard or ad hoc report to support the data requirements. OP stated that they will need to modify the current contract to find the work and then the vendor will have to allocate technical support to create the report. OP stated that once they have received all the necessary elements from the FMIS COR, they will determine whether an alternate sampling approach is needed.	OIG closed this recommendation on October 1, 2019. Please note that RRB began submitting documentation to close this recommendation starting on August 29, 2016. However, it took DBD multiple attempts to provide proper documentation.

⁷⁷ Disability Benefits Chart of Controls, April 30, 2019.

Appendix G: Glossary of Acronyms

CMO – Chief Medical Officer

COR – Contracting Officer’s Representative

CUI – Controlled Unclassified Information

DBD – Disability Benefits Division

DCM – Disability Claims Manual

FAR – Federal Acquisition Regulations

FMIS – Financial Management Information System

FY – Fiscal Year

GAO – U.S. Government Accountability Office

Green Book – Standards for Internal Control in the Federal Government

IDV – Indefinite Delivery Vehicle

MPV – Medical Exam Payment Voucher

OA – Office of Administration

OIG – Office of Inspector General

OMB – Office of Management and Budget

OP – Office of Programs

PEMS – Program Evaluation and Management Services

RMA – RMA Associates, LLC

RRA – Railroad Retirement Act

RRB – Railroad Retirement Board

RUIA – Railroad Unemployment Insurance Act

Appendix H: G-137

MEDICAL CONSULTANT OPINION

NAME: _____ CLAIM NUMBER: _____
EXAMINER: _____ DATE: _____

MEDICAL OPINION REQUEST

A. Type of Application/Decision

Occupational T & P Child Widow(er) Single Freeze
 Dual Freeze Reconsideration Continuing Disability Review

B. Type of Request

Re-evaluation for Significant Medical Improvement Onset Date
 Severity Assessment & RFC Rep Payee Needed Alleged Onset Date: _____

C. Examiner Summary/Questions/Comments

D. Treating Source RFC(s) in file (See Below)

E. Examining Source RFC(s) in file (See Below)

Form G-137 (11-00)

PLEASE INITIAL ANY ERASURES OR WHITE-OUTS MADE ON THIS FORM