

Statement of Michael S. Schwartz

**Chairman
U.S. Railroad Retirement Board**

before the

**Committee on Oversight and Government Reform
Subcommittee on Government Operations
U.S. House of Representatives**

May 1, 2015

Chairman Meadows, Ranking Member Connolly, and Members of the Subcommittee, my name is Michael Schwartz, and I am Chairman of the U.S. Railroad Retirement Board (RRB). I want to thank you for this opportunity to appear today and discuss the railroad retirement disability programs. Walter Barrows representing rail labor, Steven Anthony representing rail employers and I are responsible for the agency's programs and operations.

Let me begin by saying that my fellow Board members and I share in the outrage at the physician assisted fraud perpetrated on the railroad retirement system by certain retirees of the Long Island Rail Road. We applaud the efforts of our Inspector General (IG) and the U.S. Attorney's Office for the Southern District of New York in investigating and prosecuting this fraud.

The Long Island experience has helped us recognize a number of shortcomings in the disability benefit program. We have worked tirelessly to examine every step of our disability adjudication process and identify those areas that need improvement. Today, I am pleased to report that we have made notable strides in strengthening the integrity of this program and better protecting our system from fraud. This experience has been a true catalyst for change in the way we do business, and we are sincerely committed to effecting real and measurable improvements through the initiatives we have put in place and those we plan going forward.

This morning, I will provide the Subcommittee a summary of the significant changes we are making, many of which result from recommendations made by our IG and the Government Accountability Office (GAO).

HISTORY

At the outset, I would like to offer some brief background information which I hope will put the RRB's disability programs in context. The Board administers two types of disability benefits under the Railroad Retirement Act (RRA)¹, total and permanent disability and occupational disability. Total and permanent disability is similar to a total and permanent disability under the Social Security Administration (SSA) program while an occupational disability benefit is unique to the railroad industry.

¹ 45 U.S.C. §231 et. seq.

Occupational disability was established by 1946 amendments to the Railroad Retirement Act. Its purpose was to provide annuities to railroad workers who were not totally disabled but whose impairment prevents them from doing their regular railroad jobs.

In the early 1970's, Congress directed representatives of rail employees and rail carriers to negotiate mutual recommendations for a restructuring of the railroad retirement system. Subsequent to these negotiations, the Railroad Retirement Act of 1974 was enacted, incorporating the agreements reached by labor and management and maintaining provisions governing the occupational disability program.

The entitlement requirements for an occupational disability are set forth in section 2(a)(1)(iv) of the RRA (45 U.S.C. §231a(a)(1)(iv)) which provides for an annuity for employees with a current connection with the railroad industry who are age 60 and who have at least 10 years of railroad service, or who may be any age if they have at least 20 years of railroad service. The RRB must determine that the employee is disabled from his or her regular railroad occupation, which is defined by section 2(a)(2) of the RRA (45 U.S.C. §231a(a)(2)) generally as the occupation the employee engaged in railroad service for hire in more calendar months than any other occupation in each of the last five years of earnings as an employee, consecutive or not.

The occupational disability program is also distinct with regard to its funding mechanism. Unlike disability annuities for those determined to be totally disabled, which are funded in part by a financial interchange with the social security trust funds, occupational disability annuities are paid for entirely from the Railroad Retirement Account, which is funded primarily by payroll taxes on earnings paid by covered railroad employers and employees.

PROGRAM INTEGRITY INITIATIVES

The quality and integrity of our benefit decisions are of the utmost importance to the Board and its stakeholders. To ensure the RRB has the necessary information, knowledge, tools, and training to make timely and accurate decisions, the Board developed an aggressive and meaningful plan to strengthen our processes throughout our disability programs. Specific improvements include additional focus and review of disability applications by medical professionals, creating a quality control program to focus on patterns and trends within our disability programs, partnering with other agencies to identify best practices and use of an outside contractor to evaluate our programs to identify and mitigate the potential for fraud, waste and abuse. We believe the improvements we are making provide the foundation for a higher standard of disability determination. The process is much different and more comprehensive than what was used when the LIRR scheme surfaced. The RRB carefully crafted these improvements after consideration of recommendations made by the IG and GAO during their respective reviews of the RRB's programs.

Independent Medical Exams

Independent Medical Examinations (IMEs) are independent physical examinations performed to obtain objective medical evidence to make a disability determination. The RRB will now require *all* disability applicants, with limited exceptions², to undergo an IME, which will be performed by physicians unknown to the applicant who specialize in the area of the claimed impairment. Previously, disability examiners rating an occupational disability claim could rely on medical information, records and tests provided by an applicant's treating physicians without ordering an independent exam, and in cases where IMEs were ordered, they could be performed by general internists. The new process is more comprehensive by requiring exams for nearly all applicants and by providing that the exams be performed by specialists throughout the country with expertise related to the claimed impairment.

We believe the additional level of evidentiary review by independent medical consultants is a more efficient and feasible method to address the specific suggestions the IG made in his Seven-Day letter regarding replacement of claims examiners with medical doctors. Benefits from securing these reviews contractually include: 1) the availability of a wide range of physicians who specialize in different disciplines rather than one generalist physician responsible for the program; 2) the knowledge and expertise of practicing physicians; and 3) the ability to obtain expert and specialized medical advice as needed.

Consultative Medical Opinions

Consultative medical opinions are rendered by contracted independent physicians who review all of the medical evidence in the applicants' files. These physicians will now be onsite at our headquarters building at least two times per week in the Disability Benefits Division. Disability claims examiners are encouraged to seek and obtain advice from the additional contractual physicians while on site or by phone or email when necessary. This in-house medical presence provides examiners with valuable support, including assistance with interpreting medical reports or test results, reconciling conflicting medical reports, determining the limiting effects of impairments, and providing residual functional capacity assessments as part of the adjudication process. In this way, an on-site physician can have input as to whether the applicant qualifies for a disability annuity. Additionally, consultative physicians are providing more extensive training to the disability examiners on medical conditions and interpretation of medical evidence, and will continue to do so.

Quality Assurance Unit

Per the recommendations of the GAO in its June 2014 report (GAO-14-418), the Board has approved the creation of a quality assurance unit. The responsibilities of this unit will include the assessment of (1) the quality of medical evidence; (2) the accuracy of disability determinations; (3) adherence to established procedures; (4) areas in need of improvement; and (5) subject matter appropriate for refresher training. The unit will be multidisciplinary and include individuals with extensive disability review knowledge. The quality assurance unit will be independent of the agency's Disability Benefits Division, will produce a statistically valid measure of the overall initial disability determination accuracy, and will perform an assessment of fraud potential by

² IMEs will not be requested in any case, regardless of alleged impairment, if (a) the medical evidence submitted meets (i) the Social Security Listing of Impairments, or (ii) the RRB Occupational Disability Tables; (b) the applicant has been disqualified for service by the railroad employer; or (c) the applicant has a terminal illness.

looking at unusual patterns or indicators. The unit will also work with an independent medical contractor to evaluate whether the medical limitations identified by the examiner are supported by the medical evidence in the record. A double blind annual review of a statistically valid random sample of adjudicated disability cases is currently in development. Besides the Quality Assurance Unit's statistically valid measure of the overall initial disability determination accuracy, the agency will establish procedures for documentation, validation and certification of performance information.

To date, two disability analyst positions and a third management analyst position have been created to lead the data analysts and develop internal procedures for quality reviews, including performance measures for tracking the accuracy of disability determinations. This comprehensive review of all aspects of completed disability determinations will be a permanent feature of the RRB's adjudicative procedures so that any unusual patterns can be identified quickly and dealt with appropriately.

Enhance Oversight, Fraud Awareness and Training

Also responsive to the GAO's recommendations, we are strengthening our pre-payment fraud detection measures by enhancing our fraud awareness training. Training for Field staff, Hearings and Appeals staff, along with program employees in the disability units, has already been conducted and is on-going. The RRB will continue to procure anti-fraud training from outside sources and make such training mandatory for all agency personnel. We will also employ contractual medical personnel to provide refresher training for those responsible for making or reviewing disability decisions, such as claims examiners, reconsideration specialists, hearings officers and quality assurance specialists. The Board believes that training related to fraud awareness and detection should track similar training that is mandated Government-wide for IT security purposes. To that end, we have a newly established Learning Management System training unit for serving all RRB employees and the curriculum will include annual fraud awareness and deterrence training. Medical professionals under contract with the Board have also conducted several advanced medical training sessions for disability staff.

The agency has established and filled a Director of Audit Affairs position with an audit expert to assist in tracking, implementing, and reporting audit matters. In addition, the Board created a Fraud Task Force in December 2013 that assists in implementing disability reform measures along with other benefit-related program integrity measures. The task force, which consists of high-level agency officials, has approved a number of internal modifications to procedures and forms and is driving implementation of fraud prevention and detection initiatives, many of which were recommended by the GAO and our IG.

In September 2014, the agency procured the services of an independent contractor with extensive experience in fraud prevention and detection analysis in both the public and private sectors. The contractor will provide a full review of all benefit programs and offer recommendations and a plan of action to improve program integrity and help deter and detect fraud.

Additional anti-fraud measures include:

- More frequent contact with fraud-risk populations through the expanded use of continuing disability reviews for all occupational cases and required periodic re-certification of disability
- Pursuant to recently revised procedure, a senior disability examiner performs a review of each disability case to ensure that all requirements, policies and procedures are adhered to prior to a final disability determination
- Tracking of all treating physician information to identify any suspicious activity or patterns for referral to the IG
- Review and revision of forms, including the disability application, to gather more relevant and accurate information

Improve the Quality and Timeliness of Vocational Information

In adjudicating occupational disability claims, the RRB collects vocational information from both applicants and employers relating specifically to the applicant's regular railroad job. To further bolster the disability adjudication process, we are working with rail labor and industry to update the job descriptions currently in use. The updated job descriptions will reflect changes made to the workplace over the years and will provide more specific, uniform and accurate information concerning a job's physical requirements.

Occupational Disability Advisory Committee

To further assess the quality of medical evidence, the RRB is also tasking its Disability Advisory Committee³ with reviewing the effectiveness of all contracted medical sources used during the disability adjudication process, which includes independent medical exams and consultative medical opinions. A review of our medical contracts has never been done previously by the Advisory Committee, which is comprised of two physicians with expertise in occupational health. Their recommendations will be used to enhance the quality and efficacy of existing and future contracts, as well as the overall disability program.

Review SSA Best Practices

A multi-component team from the agency has been created and tasked with reviewing SSA's best practices to take advantage of tested program integrity initiatives utilized by SSA. SSA has shared some of its analytical modeling used to detect fraud. We are studying analytics associated with these models and will modify them to fit to our program, where appropriate. We are also monitoring SSA in its review of guidelines that have a direct effect on the agency's disability processing. The RRB will seek to obtain shared training and other resources that might assist its examiners in reviewing, interpreting, and weighing medical evidence. We anticipate that this will be an ongoing partnership between the RRB and SSA as both organizations continue to focus efforts to detect and prevent fraud in their respective benefit programs.

³ The Disability Advisory Committee is provided for in RRB regulations at 20.C.F.R. §220.10(b).

CDI Program

The agency has inquired into SSA's Cooperative Disability Investigative (CDI) program. The CDI is a partnership program between SSA and its IG, and its stated mission is to obtain evidence that can resolve questions of fraud before benefits are paid. CDI units also provide information to examiners during continuing disability reviews which can be used to identify those cases where benefits should be terminated.

CONCLUSION

In summary, the initiatives I have described above were crafted by the Board with the concerns of the IG and GAO in mind. Our intent is to utilize the most accurate and specialized medical opinions and current vocational information when making disability determinations. Specialized training of all staff in fraud awareness and detection is ongoing and examiners have ready access to medical experts for guidance. Finally, we have created a quality assurance unit, and its work will be enhanced by contractual medical review. The entire disability process will be regularly analyzed and reviewed for accuracy. The Board is committed to effectuating real change to combat fraud by continuing to implement these extensive and ongoing program integrity efforts.

Thank you for your interest in the railroad retirement disability programs.



Michael S. Schwartz

The U.S. Railroad Retirement Board is composed of three members appointed by the President of the United States, with the advice and consent of the Senate. One member is appointed upon recommendations made by railroad carriers, one upon recommendation of railroad labor organizations, and the third, who is the Chairman, is appointed to represent the public interest.

Michael S. Schwartz was appointed Chairman of the Board by President Bush in 2003, and reappointed to a second term of office in 2007. A long-time official with the State of Illinois, Mr. Schwartz previously served as the Director of the Illinois Department of Central Management Services (CMS) from 1995 to 2002, and as Associate Director of CMS from 1989 to 1995. CMS, with approximately 1,400 employees and an operating budget of nearly \$3 billion, provides a wide variety of centralized services to other State and local government agencies, including procurement, data processing and data communication, personnel, property management, and administration of State employee benefit plans.

Mr. Schwartz also served the State of Illinois as Assistant Director of Personnel, Office of Governor (1988-1989); as Executive Assistant to the Director of Revenue (1986-1988); and as Assistant Director of Professional Regulation (1985-1986). Prior to his service with the State he was an elementary school teacher in New Berlin, Illinois.

A native of Illinois, Mr. Schwartz received his B.S. degree in Education from Illinois State University (1975), and his M.A. degree in Educational Administration from the University of Illinois at Springfield (1980).