



United States Government Accountability Office  
Washington, DC 20548

September 9, 2009

The Honorable John L. Mica  
Ranking Member  
Committee on Transportation  
and Infrastructure  
House of Representatives

The Honorable Bill Shuster  
Ranking Member  
Subcommittee on Railroads, Pipelines,  
and Hazardous Materials  
Committee on Transportation  
and Infrastructure  
House of Representatives

*Subject: Railroad Retirement Board: Review of Commuter Railroad  
Occupational Disability Claims Reveals Potential Program  
Vulnerabilities*

In fall 2008, a series of news reports revealed the relatively high number of workers at one commuter railroad—the Long Island Rail Road (LIRR)—who have applied for and been approved for occupational disability benefits by the U.S. Railroad Retirement Board (RRB). According to RRB officials, a number of federal agencies, including the Federal Bureau of Investigation, Social Security Administration, and the Department of Health and Human Services, have launched investigations in response to issues raised. In addition, the New York Attorney General's office is conducting a criminal investigation.

RRB is a federal agency responsible for administering the disability and retirement benefit programs for eligible railroad workers and their families under the Railroad Retirement Act. This includes providing occupational disability annuities for workers who have physical or mental impairments that prevent them from performing their specific railroad job, regardless of whether they can perform other work. For example, a railroad engineer who cannot frequently climb, bend, and reach, as required by the job, may be found occupationally disabled. A railroad worker is eligible to apply for an occupational disability at age 60 if he or she has 10 years of service, or

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at any age with at least 20 years of service.<sup>1</sup> In fiscal year 2007, RRB paid more than \$1.7 billion in occupational disability benefits to approximately 64,000 workers.

In this context, you asked us to study the experiences of LIRR workers who submitted applications for RRB occupational disability benefits. Specifically, we focused on the following objectives: (1) determine what is known about the extent to which LIRR workers have applied for and received occupational disability benefits, compared to workers at other commuter railroads, and (2) identify the steps RRB has taken to ensure that only eligible LIRR workers receive occupational disability benefits.

We limited our review to the LIRR and the seven other commuter railroads covered by the Railroad Retirement Act.<sup>2</sup> Other railroads, such as freight railroads and Amtrak, were outside of our scope. We analyzed data from multiple RRB data systems to (1) determine the number of occupational disability benefits RRB awarded in calendar years 2004 through 2007, relative to employment, for LIRR and the other commuter railroads<sup>3</sup> and (2) determine application and approval rates for occupational disability benefits for workers at these railroads, for applications filed in fiscal year 2007.<sup>4</sup> We determined that the data are sufficiently reliable for our purposes. We also conducted in-depth interviews with management officials and claims examiners from RRB's headquarters in Chicago and its Westbury field office in Long Island, New York, as well as officials from LIRR, Metro-North Railroad, and the Metropolitan Transportation Authority Office of the Inspector General.<sup>5</sup> We also coordinated with

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<sup>1</sup>Workers also must have a "current connection" with the railroad industry, which is generally met if the employee worked for a railroad in at least 12 of the last 30 consecutive months immediately preceding the start date for the disability annuity.

<sup>2</sup>The other commuter railroads included in this review are: Massachusetts Bay Commuter Railroad, Metro-North Railroad, New Jersey Transit, Northeast Illinois Commuter Railroad, Northern Indiana Commuter Transportation District, Port Authority Trans-Hudson Corporation, and Southeastern Pennsylvania Transportation Authority.

<sup>3</sup>We used calendar years 2004 through 2007 because 2004 was the earliest year that RRB had complete data on commuter rail employees' ages and years of service. Calendar year 2007 is the most recent year for which RRB has complete railroad employment data.

<sup>4</sup>We chose fiscal year 2007 because it provided the most recent, complete data on the final outcomes of occupational disability claims.

<sup>5</sup>The Metropolitan Transportation Authority is the parent company of both the LIRR and Metro-North railroads.

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RRB's and the Social Security Administration's Offices of the Inspector General. In addition, we reviewed a statistically random, projectable sample of occupational disability claims files for the LIRR and a similar commuter railroad, Metro-North, to provide context for our analyses.<sup>6</sup> Finally, we reviewed RRB's five-point plan, effective as of October 2008, that was designed to ensure that only those LIRR workers who are eligible for occupational disability benefits receive them.

We conducted this performance audit from November 2008 to September 2009 in accordance with generally accepted government auditing standards. These 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 based on our audit objectives.

On June 30, 2009, we briefed your staff on the results of our study of LIRR workers' claims for RRB occupational disability benefits. This report formally conveys the information provided during that briefing. In summary, our analysis identified some notable differences between claims filed by LIRR workers and those filed by other commuter rail workers that reveal potential program vulnerabilities, as illustrated by the following examples:

- LIRR workers applied for occupational disability benefits at a rate 12 times higher than workers from the other commuter railroads in fiscal year 2007. However, RRB approved all commuter rail workers at the same rate—nearly 100 percent.
- Nearly all LIRR worker claims were for musculoskeletal impairments, such as lower back problems, compared to about half of workers from the other commuter railroads.
- We observed in our review of claims from LIRR and Metro-North Railroad that most LIRR workers who filed claims provided RRB with medical evidence from one of three doctors. We did not observe these same patterns for Metro-North Railroad. In our prior work, we found that numerous claims with evidence from the same doctors can be an indicator

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<sup>6</sup>We selected Metro-North because it operates in a similar geographic area and has a similar number of employees to LIRR.

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of potential fraud or abuse.<sup>7</sup> In addition, while RRB maintains data on claimants' doctors in paper claims files, these data are not currently in a format that facilitates analysis or allows the agency to detect unusual patterns.

We found that RRB has not analyzed occupational disability data by railroad or performed other analyses that could have enabled the agency to identify such unusual patterns in occupational disability applications from LIRR workers. RRB implemented a five-point plan, in October 2008, to enhance its oversight of LIRR claims, which includes ordering its own medical examinations for all LIRR claimants to supplement medical evidence provided by the claimants and conducting continuing disability reviews for all LIRR annuitants who were age 54.5 and younger as of October 21, 2008. While RRB officials stated that it is too early to assess the effect of the plan on disability decisions, the agency has approved nearly all of the occupational disability claims decided under the plan as of April 30, 2009.

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## Agency Comments and Our Evaluation

We provided a copy of this report to the Chairman, Labor Member, and Management Member of the Railroad Retirement Board for review and comment. We have reproduced the Chairman and the Labor Member's comments on our draft report in enclosure II, and the Management Member's comments in enclosure III. The board also provided one technical comment on our draft report, which we incorporated.

Two of the board members were of the opinion that the high rate of occupational disability applications from workers at the Long Island Rail Road (LIRR) was an anomaly, but stated that the agency was taking steps to identify any other unusual patterns in occupational disability applications. They acknowledged that the agency does not currently have some of the data that may be necessary to detect such unusual patterns, but noted that a newly created staff position with responsibility for quality control oversight will have authority to develop new methods of data collection nationwide.

The third board member expressed concern that there may be inherent systemic weaknesses in the occupational disability program that warrant

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<sup>7</sup>GAO, *Supplemental Security Income: Additional Actions Needed to Reduce Program Vulnerability to Fraud and Abuse* [GAO/HEHS-99-151](#) (Washington, D.C.: Sept. 15, 1999).

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further independent review of the agency's program integrity and quality assurance controls. Although our work was limited to the commuter railroads, a nearly 100-percent approval rate in a federal disability program is troubling, and could indicate lax internal controls in RRB's decision-making process, weaknesses in program design, or both. We have identified these and other areas in the occupational disability program that require further evaluation.

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As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Chairman, Labor Member, and Management Member of the Railroad Retirement Board, relevant congressional committees, and other interested parties. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-7215 or [bertonid@gao.gov](mailto:bertonid@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in enclosure IV.



Daniel Bertoni  
Director, Education, Workforce,  
and Income Security Issues

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# Enclosure I: Railroad Retirement Board Occupational Disability Benefit Program Briefing Slides

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## **Railroad Retirement Board: Review of Commuter Railroad Occupational Disability Claims Reveals Potential Program Vulnerabilities**

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**Staff Briefing for the Ranking Members of the  
Subcommittee on Railroads, Pipelines, and Hazardous Materials,  
and the  
Committee on Transportation and Infrastructure,  
House of Representatives**

**June 2009**

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## Introduction

- The U.S. Railroad Retirement Board (RRB) provides an occupational disability benefit to workers who are unable to perform their specific railroad jobs. In fiscal year 2007, RRB paid more than \$1.7 billion in occupational disability benefits to about 64,000 workers.<sup>1</sup>
- To be occupationally disabled, a worker must have a permanent physical or mental condition that prevents him or her from performing his or her railroad job. For example, a railroad engineer who cannot frequently climb, bend, and reach, as required by the job, may be found occupationally disabled.
- In fall 2008, a series of news reports raised concerns about the large number of workers from the Long Island Rail Road (LIRR) who applied and were approved for occupational disability benefits by RRB.

<sup>1</sup>The average annual occupational disability benefit was \$26,556 in fiscal year 2007.



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## Introduction continued

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- Concerns were also raised that:
    - LIRR workers were claiming the same types of musculoskeletal impairments, such as herniated discs.
    - In addition to line workers with more physically demanding jobs, white-collar LIRR management workers with potentially less physically demanding jobs also were accessing the program at high rates.
  - According to RRB officials, a number of federal agencies, including the Federal Bureau of Investigation, Social Security Administration, and the Department of Health and Human Services, have launched investigations in response to these concerns. In addition, the New York Attorney General's office is conducting a criminal investigation.
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## Objectives

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For this briefing, we focused on the following objectives:

- 1) Determine what is known about the extent to which LIRR workers have applied for and received occupational disability benefits, compared to workers at other commuter railroads.
  
- 2) Identify the steps RRB has taken to ensure that only eligible LIRR workers receive occupational disability benefits.



## Scope and Methodology

To answer our questions, we:

- Limited our review to LIRR and the seven other commuter railroads covered by the Railroad Retirement Act: Massachusetts Bay Commuter Railroad, Metro-North Railroad, New Jersey Transit, Northeast Illinois Commuter Railroad, Northern Indiana Commuter Transportation District, Port Authority Trans-Hudson Corporation, and Southeastern Pennsylvania Transportation Authority.<sup>2</sup> Commuter rail workers made up about 10 percent of total rail employment in 2007.
- Analyzed agency data on the number of workers at LIRR and the seven other commuter railroads who met the age and service requirements for occupational disability and the number of occupational disability awards for calendar years 2004 through 2007 for these railroads.<sup>3</sup>

<sup>2</sup>Amtrak is a commuter railroad, but we excluded it from our analysis because of its size (in 2007, it had three times as many employees as LIRR). It also operates and has employees across the nation, rather than in a specific region like the commuter rail agencies. Further, we excluded commuter employees of freight railroads because we had no way to differentiate them from freight workers.

<sup>3</sup>We used calendar years 2004 through 2007 because 2004 was the earliest year that RRB had complete data on commuter rail employees' ages and years of service. Calendar year 2007 is the most recent year for which the RRB has complete railroad employment data.



## Scope and Methodology continued

- Performed analyses using multiple RRB databases to determine application and approval rates for occupational disability benefits for workers at LIRR and the seven other commuter railroads, for applications filed in fiscal year 2007.<sup>4</sup>
- Assessed the reliability of RRB data and determined that the data are sufficiently reliable for our purposes.
- Conducted in-depth interviews with management officials and claims examiners from the RRB's headquarters in Chicago and its Westbury Field Office in Long Island, N.Y., as well as officials from LIRR, Metro-North Railroad, and the Metropolitan Transportation Authority Office of the Inspector General.<sup>5</sup> We also coordinated with RRB's and the Social Security Administration's Offices of the Inspector General.

<sup>4</sup>We chose fiscal year 2007 because it provided the most recent, complete data on the final outcomes of occupational disability claims.

<sup>5</sup>The Metropolitan Transportation Authority is the parent company of both the LIRR and Metro-North railroads.



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## Scope and Methodology continued

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- Reviewed a random, projectable sample of LIRR and Metro-North claims filed in fiscal year 2007 to provide context for our data analyses. However, we did not assess the quality of medical evidence provided by doctors and specialists.<sup>6</sup>
  - Reviewed RRB's new five-point plan, designed to ensure that only those LIRR workers who are eligible for occupational disability benefits receive them.

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<sup>6</sup>We selected Metro-North because it operates in a similar geographic area and has a similar number of employees.



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## Scope and Methodology continued

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- We conducted this performance audit from November 2008 to September 2009 in accordance with generally accepted government auditing standards. These 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 based on our audit objectives.



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## Summary of Results

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- In fiscal year 2007, LIRR workers applied for occupational disability benefits at a rate 12 times higher than workers from the other commuter railroads. However, RRB approved all commuter rail workers at the same rate—nearly 100 percent.
  - RRB does not analyze occupational disability data by railroad or perform other analyses that could enable them to identify unusual patterns in occupational disability applications, such as
    - inconsistencies in application and approval rates, occupations, and types of impairments; and
    - workers seeing the same doctors.
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## Summary of Results continued

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- RRB has implemented a five-point plan to enhance its oversight of LIRR claims. While RRB officials stated that it is too early to assess the effect of the plan on disability decisions, the agency has approved nearly all of the occupational disability applications decided under the plan, as of April 30, 2009.

## Background



## RRB Occupational Disability Program

- RRB is a federal agency responsible for administering the disability, retirement, sickness, and unemployment benefit programs for eligible railroad workers and their families.<sup>7</sup>
- RRB provides occupational disability benefits to workers who it determines can no longer perform their specific railroad jobs due to their impairments.
- A railroad worker is eligible to apply for an occupational disability benefit at age 60 with 10 years of service, or at any age with at least 20 years of service.<sup>8</sup>

<sup>7</sup>RRB's disability programs fall under the Railroad Retirement Act.

<sup>8</sup>Workers also must have a "current connection" with the railroad industry, which is generally met if the employee worked for a railroad in at least 12 of the last 30 months immediately preceding the start date for the disability annuity. 11



## Background



## Social Security Disability Criteria

- If a worker is found unable to perform his or her specific railroad job, RRB also determines whether the worker meets the more stringent Social Security disability criteria—whether the worker is able to perform any work in the national economy.
- Workers found eligible under Social Security criteria may qualify for early Medicare and other financial benefits, in addition to their RRB occupational disability benefits.
- RRB makes most of these decisions, but the Social Security Administration (SSA) provides most of the funding to pay benefits when an occupationally disabled rail worker is also found to be disabled under SSA disability criteria.<sup>9</sup>

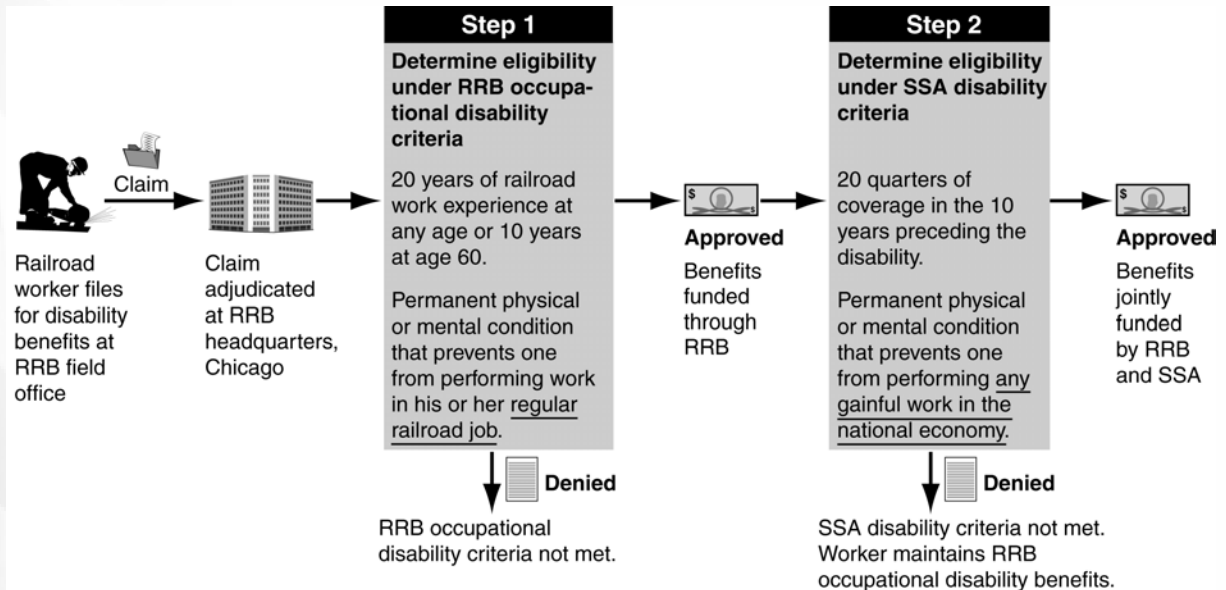
<sup>9</sup>RRB and SSA exchange funds to ensure the Social Security Trust Funds are in the same position they would be if rail workers were covered by Social Security instead of their own system. RRB sends SSA tax revenues that SSA would otherwise collect from rail workers, and SSA provides RRB the funds that SSA would otherwise pay railroad workers in benefits. However, given declining rail employment, in fiscal year 2007, RRB received about \$1.2 billion more than it sent to SSA for employee disability benefits.

Background



# The RRB Occupational Disability Determination Process at a Glance

Figure 1: The Occupational Disability Determination Process



Sources: GAO analysis of RRB procedures manual; images, Art Explosion.

## Background



# Rail Workers Can Receive Occupational Disability and Pension Benefits Concurrently

- Workers can receive occupational disability benefits from RRB, as well as non-RRB retirement benefits, such as pensions and health insurance, from their former railroad employer.
- LIRR workers hired before 1988 can retire and receive LIRR pension benefits as young as age 50 with 20 years of service (closed plan).<sup>10</sup> Workers hired after that date can retire and receive LIRR pension benefits as young as age 55 with 30 years of service.
- Officials representing rail management and labor told us that while other railroads may offer pensions, the LIRR's closed plan is more generous in terms of its age and service requirements.

<sup>10</sup>According to LIRR officials, fewer than 1,000 active LIRR employees were covered under the closed pension plan, as of January 2009.



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## Objective One

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**Determine what is known about the extent to which LIRR workers have applied for and received occupational disability benefits, compared to workers at other commuter railroads.**

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Objective One



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## **LIRR Workers Applied at a Rate 12 Times Higher Than Workers from the Other Commuter Railroads Combined**

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- In fiscal year 2007, LIRR workers filed applications at a rate 12 times higher than all of the other seven commuter railroads combined, relative to the number of workers who met the minimum age and service requirements to apply for occupational disability benefits.
- In addition, our review of occupational disability award data from calendar years 2004 through 2007 showed that LIRR workers have consistently applied at this high rate.

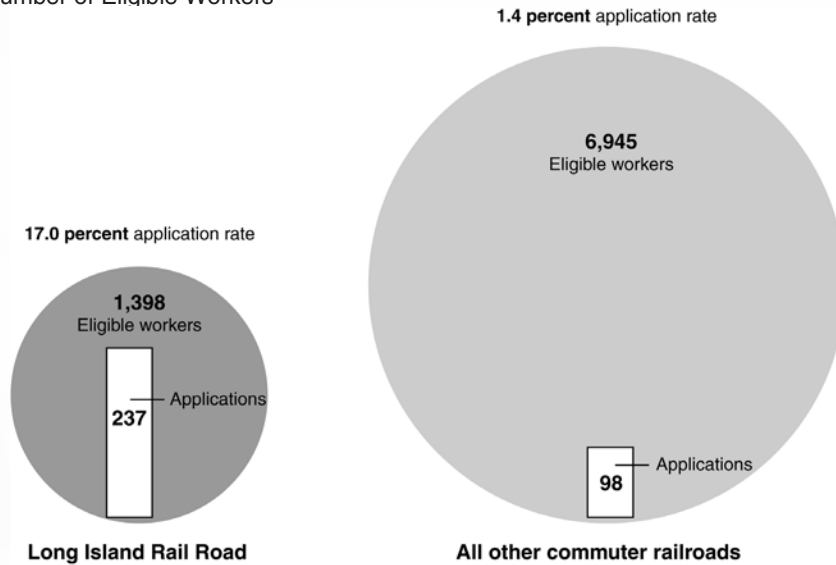


## Objective One

# LIRR Workers Applied at a Rate 12 Times Higher Than Workers from the Other Commuter Railroads Combined

continued

Figure 2: Occupational Disability Applications Filed in Fiscal Year 2007 from LIRR and the Other Commuter Railroads, Relative to the Number of Eligible Workers



Source: GAO analysis of RRB data.

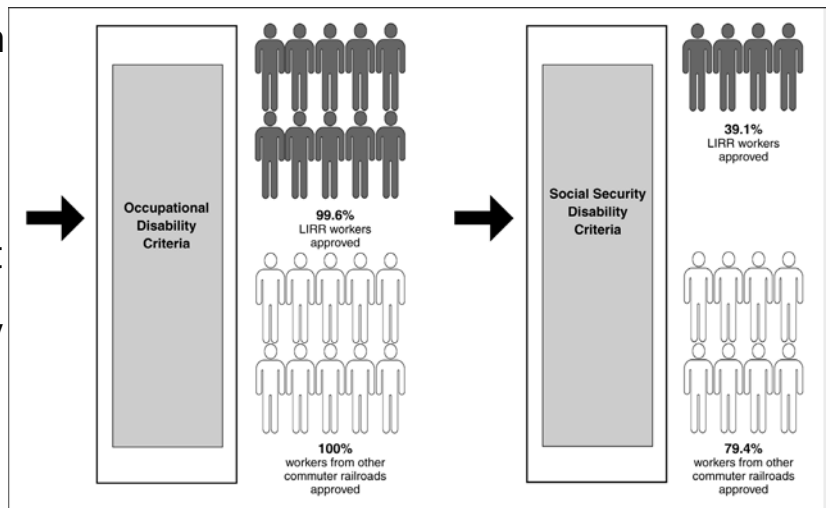
Note: The circles in the graphic were drawn for illustrative purposes. As such, the circles do not accurately reflect the magnitude of the difference in the eligible populations, which is even greater than the graphic implies. In order to determine the rate at which LIRR workers applied for occupational disability benefits, compared to the application rate for the workers from the other commuter railroads combined, we divided the LIRR application rate (17.0%) by the rate for all other commuter railroads (1.4%). We found that LIRR workers applied at a rate 12.1 times higher than the application rate for workers from all other commuter railroads combined.

Objective One

## RRB Approved Nearly All Commuter Rail Claimants for Occupational Disability Benefits, but Fewer LIRR Workers Met More Stringent Disability Standards

- RRB approved nearly all commuter rail workers who applied for occupational disability in fiscal year 2007, regardless of railroad.
- However, RRB found fewer LIRR workers met the more stringent Social Security disability criteria, compared to workers at the other commuter railroads.<sup>11</sup>

Figure 3: RRB Approval Rates for Workers from LIRR, Compared to Those from the Other Commuter Railroads



Source: GAO analysis of RRB data.

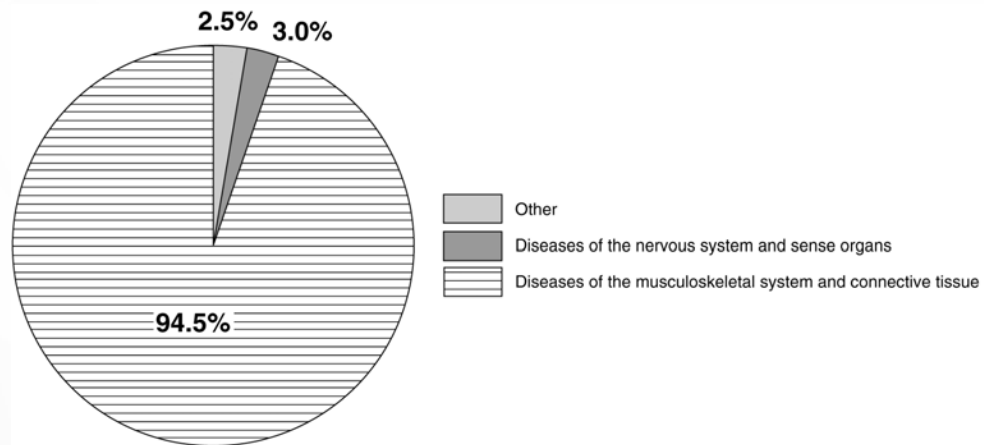
<sup>11</sup>We calculated approval rates based on those claims where this determination had been made, as of May 2009.

Objective One



## Nearly All LIRR Worker Claims Were for Musculoskeletal Impairments

Figure 4: Distribution of Impairments Claimed by LIRR Workers in Fiscal Year 2007



Source: GAO analysis of RRB data.

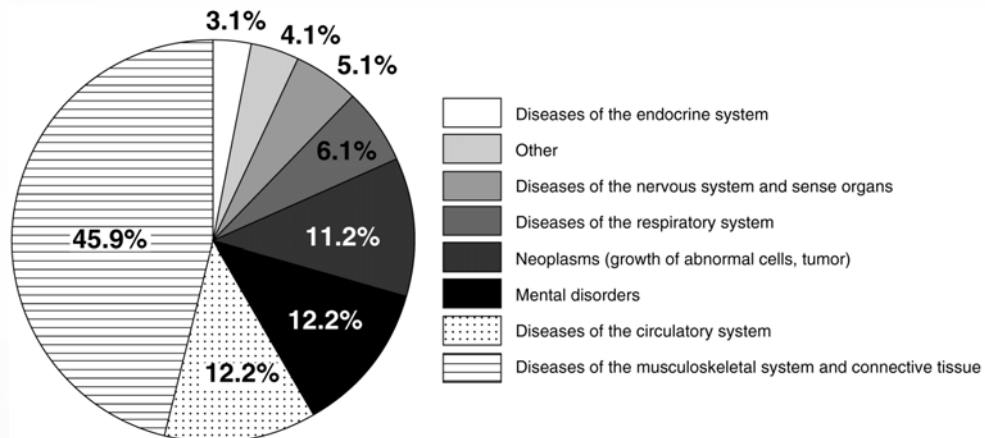


Objective One



## About Half of Worker Claims at the Other Commuter Railroads Were for Musculoskeletal Impairments

Figure 5: Distribution of Impairments Claimed by Workers from the Other Commuter Railroads in Fiscal Year 2007



Source: GAO analysis of RRB data.

Note: Percentages in the figure do not add up to 100 percent due to rounding.

## Objective One



### We Did Not Analyze Data on LIRR Claimants' Jobs Due to Data Limitations

- While RRB collects data on the jobs workers claim on their applications, the data are not useful for analysis because job titles are not standardized.
- A single type of job can be listed many different ways, such as “ticket agent,” “ticket clerk,” and “ticket seller,” that may not be easily combined or compared without detailed knowledge of the jobs.
- As a result, neither we nor RRB could perform analyses to detect unusual patterns in commuter rail workers’ applications, approval rates, and impairments by job.

## Objective One



### LIRR Workers Frequently Saw the Same Doctors

- We observed in our review of claims from LIRR and Metro-North Railroad that most LIRR workers provided RRB with medical evidence from one of three doctors. Our prior work has found that numerous claims with evidence from the same doctors is an indicator of potential fraud or abuse.<sup>12</sup>
- We did not observe these same patterns for workers from Metro-North Railroad.
- RRB does not maintain data for all railroads on claimants' doctors in a format that would facilitate analysis and allow the agency to analyze and detect unusual patterns. Currently, RRB only has information on claimants' doctors in their paper claim files.

<sup>12</sup>GAO, *Supplemental Security Income: Additional Actions Needed to Reduce Program Vulnerability to Fraud and Abuse*, GAO/HEHS-99-151 (Washington, D.C.: Sept. 15, 1999).

## Objective One



### **LIRR Workers Applied for Occupational Disability at a Younger Age Than Workers From Other Commuter Railroads, and Most Were Receiving Pensions**

- LIRR claimants were a median age of 51 in fiscal year 2007, compared to 54 for the other commuter railroads.
- RRB and rail management and labor officials told us that the LIRR's closed pension plan—which allows workers to retire at age 50 with 20 years of service—was a factor in workers' decisions to apply for occupational disability benefits because the benefits could supplement their retirement income.
- Of those who were asked when they applied for disability benefits, 100 percent of LIRR workers reported they were receiving a non-RRB pension, compared to 64 percent of workers from the other commuter railroads.<sup>13</sup>

<sup>13</sup>When workers apply for occupational disability benefits, RRB does not always ask whether they were receiving or expected to receive a railroad pension. The agency only asks this of applicants who have at least 25 years of service at 65 years old or 30 years of service at age 60 and may qualify for an RRB supplemental annuity. The supplemental annuity currently provides a maximum of \$43 a month to career railroad workers. 23

Objective One



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## RRB Has Taken Some Steps to Improve the Use of Its Occupational Disability Data, but Weaknesses Remain

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- Until recently, RRB has not regularly analyzed occupational disability data by railroad or performed other analyses that could enable it to identify unusual patterns, such as inconsistencies in application and approval rates, occupations, and types of impairments.
  - During the course of our review, RRB officials told us they are hiring a new staff member who will be responsible for analyzing data to identify trends or anomalies in the occupational disability program.
  - However, this effort might be hampered because RRB does not currently maintain data, such as data on claimants' doctors and useful data on the types of jobs rail workers held, in a format that can be easily analyzed.
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## Objective 2

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**Identify the steps RRB has taken to ensure that only eligible LIRR workers receive disability benefits.**

## Objective Two



### RRB Implemented a Five-Point Plan in October 2008 to Enhance Oversight of LIRR Claims

- RRB's five-point plan for LIRR workers is a departure from how the agency handles claims for workers from all other railroads.
  1. RRB is ordering its own medical exams for all LIRR claimants to supplement medical evidence provided by claimants.
    - Through the end of April 2009—6 months after the plan was implemented—RRB had ordered 422 exams or tests for 104 claimants.
    - RRB recently began ordering MRIs and CAT scans—diagnostic tools previously not available to claims examiners—for certain LIRR claims, where X-rays ordered by RRB conflicted with MRI reports provided by workers' doctors.<sup>14</sup>

<sup>14</sup>RRB procedures for occupational disability state that claims examiners cannot order these tests.

Objective Two



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**RRB Implemented a Five-Point Plan in October 2008 to Enhance Oversight of LIRR Claims** continued

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2. RRB plans to conduct continuing disability reviews for all 362 LIRR occupational disability annuitants who were age 54.5 and younger, as of October 21, 2008.
    - As of the end of April 2009, the agency had completed 74 continuing disability reviews. Disability benefits were continued in 73 of these cases, and in one case, RRB found the worker was deceased.
  
  3. RRB has increased its oversight of its Westbury field office in Long Island through biweekly phone calls and quarterly visits.
    - The district manager has reported that the office is seeing fewer occupational disability applications from LIRR workers.
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Objective Two



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**RRB Implemented a Five-Point Plan in October 2008 to Enhance Oversight of LIRR Claims** continued

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4. RRB is separately collecting and plans to analyze data only for LIRR claims to detect any unusual patterns, such as impairments and treating physicians that appear more frequently.
  - RRB is still collecting data, and officials reported that it is too early to analyze it.
  - Although they are not currently analyzing these data across the program, RRB officials stated that they may expand these analyses to other railroads, as necessary.

## Objective Two



# RRB Implemented a Five-Point Plan in October 2008 to Enhance Oversight of LIRR Claims continued

5. RRB has begun collecting data on the extent to which LIRR management employees are accessing the program.<sup>15</sup>

- RRB officials told us they could not use their existing occupational data to determine how many LIRR managers had applied, so they collected and analyzed data from LIRR on all managers who retired or left the railroad after January 2000.
- Of the 401 managers who retired or left the railroad during this period, 207 were receiving occupational disability benefits, as of the end of September 2008. An additional 9 had applications pending.

<sup>15</sup>While management workers are eligible to apply for occupational disability in the same way that other workers are eligible to apply, concerns were raised in the news reports about the high rate at which LIRR management workers with less physically demanding jobs were accessing the occupational disability program, in comparison to line workers with more physically demanding jobs. RRB officials told us they are collecting these data in response to these concerns.

## Objective Two



# Almost All LIRR Occupational Disability Applications Decided under the Five-Point Plan Have Been Approved

As of the end of April 2009:

- RRB had decided 66 LIRR workers' occupational disability claims. Sixty-four were approved, and two were denied. Another claim was withdrawn by the claimant.
- RRB reports that implementing the five-point plan has cost about \$248,000. Most of these costs are related to staff time for claims examiners, which have already been budgeted for in RRB's disability program operations.

Objective Two



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## RRB Has Taken Additional Steps to Oversee Its Occupational Disability Program

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- As mentioned previously, RRB recently approved hiring a new staff member, who will report to the Director of Assessment and Training, to analyze occupational disability program data.
- RRB also is undergoing a reorganization to separate its sickness and unemployment programs from its disability programs, in order to better monitor the occupational disability program.

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# Enclosure II: Comments from the U.S. Railroad Retirement Board Chairman and Labor Member

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UNITED STATES OF AMERICA  
RAILROAD RETIREMENT BOARD  
844 NORTH RUSH STREET  
CHICAGO, ILLINOIS 60611-2092

July 24, 2009

Daniel Bertoni  
Director  
Education, Workforce, and Income Security Issues  
United States Government Accountability Office  
Washington, DC 20548

Dear Mr. Bertoni:

On behalf of the United States Railroad Retirement Board, we are submitting the following comments on the proposed report titled RAILROAD RETIREMENT BOARD: Review of Commuter Railroad Occupational Disability Claims Reveals Potential Program Vulnerabilities.

As you know, the Railroad Retirement Board is responsible for payment of benefits to railroad employees and their families under the Railroad Retirement Act and the Railroad Unemployment Insurance Act. As reported in the Railroad Retirement Board's Annual Report for Fiscal Year 2008, the Railroad Retirement Board paid benefits under the Railroad Retirement Act to about 615,800 beneficiaries in fiscal year 2007 and there were approximately 568,200 beneficiaries on the rolls at the end of that fiscal year. During fiscal year 2007, benefits under the Railroad Retirement Act totaled approximately \$9.8 billion.

Among the benefits that the Railroad Retirement Board pays under the Railroad Retirement Act is an occupational disability annuity. It is this benefit that is the subject of your report. Your proposed report states that in fiscal year 2007, the Railroad Retirement Board paid occupational disability benefits to approximately 64,000 beneficiaries. While this is true, a significant percentage of these beneficiaries also meet the more rigid standard of total and permanent disability under the Social Security Act. In fiscal year 2007, of the approximately 64,000 occupational disability annuitants, all but approximately 28,600 had been rated as meeting the total and permanent disability standard under the Social Security Act.

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**Enclosure II: Comments from the U.S.  
Railroad Retirement Board Chairman and  
Labor Member**

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Looking at this from a slightly different perspective, of the 568,200 railroad retirement beneficiaries on the rolls at the end of fiscal year 2007, only 28,600 beneficiaries, or about 5 percent, were receiving benefits based solely on meeting the occupational disability standard. In recent years, approximately 70 percent of the individuals awarded occupational disability annuities have also been rated totally and permanently disabled. It is also important to note that even though a portion of an occupational disability annuity may be funded by monies transferred under the financial interchange between the railroad retirement and social security systems, funds transferred from the social security system under the financial interchange are only used to pay benefits equal to what would be paid under the social security system if there was no separate railroad retirement system.

The Railroad Retirement Act requires that the Railroad Retirement Board work with railroad labor and railroad management in establishing standards for adjudication of occupational disability. Working with rail labor and rail management, the Railroad Retirement Board, in 1998, adopted regulations and a claims manual that provide the standards. The regulations called for creation of an occupational disability advisory committee comprised of a physician representing rail labor and a physician representing rail management. It is the responsibility of this committee to periodically review the standards and claims manual and recommend revisions in these documents.

When the Board became aware of the high incidence of occupational disability claims filed by employees of the Long Island Rail Road, the Board adopted a five-step plan to address possible issues concerning the claims from Long Island Rail Road employees. This plan applies additional scrutiny to the adjudication of occupational disability annuity applications filed by Long Island Rail Road employees. The plan calls for reviewing occupational disability claims to identify other situations similar to the Long Island Rail Road and the Board will apply additional scrutiny to any such situations that warrant such scrutiny. In this same vein, the Board has created a new position to provide quality control oversight to the occupational disability program nationwide, not just to Long Island Rail Road applications. This new position will be responsible for analysis of claims to identify anomalies similar to the Long Island Rail Road situation. While your report suggests that the Railroad Retirement Board may not have sufficient information to detect such possible anomalies, the newly created position will be authorized to develop new methods of data collection needed to perform data mining and analysis of the occupational disability annuity program.

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**Enclosure II: Comments from the U.S.  
Railroad Retirement Board Chairman and  
Labor Member**

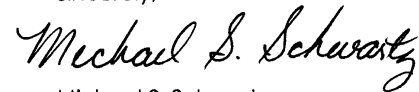
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3

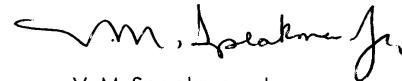
The Board has taken action to address the anomaly of the high incidence of occupational disability claims by employees of the Long Island Rail Road. As indicated previously, those receiving benefits based solely on meeting the occupational disability standard represent only 5 percent of railroad retirement beneficiaries. Nevertheless, the Board takes its administrative responsibilities for this program very seriously, and we will continue to monitor this program and take corrective action as necessary.

On behalf of the United States Railroad Retirement Board, we appreciate the opportunity to comment on your proposed report.

Sincerely,



Michael S. Schwartz  
Chairman



V. M. Speakman, Jr.  
Labor Member

cc: Secretary to the Board  
Inspector General  
Director of Programs

# Enclosure III: Comments from the U.S. Railroad Retirement Board Management Member



UNITED STATES OF AMERICA  
RAILROAD RETIREMENT BOARD  
844 NORTH RUSH STREET  
CHICAGO, ILLINOIS 60611-2092

JEROME F. KEVER  
MANAGEMENT MEMBER

OFFICE OF MANAGEMENT MEMBER

July 24, 2009

Mr. Daniel Bertoni, Director  
Education, Workforce, and Income Security Issues  
United States General Accountability Office  
Washington, DC 20548

Dear Mr. Bertoni:

On behalf of rail industry stakeholders, I wish to thank you and your team for bringing significant resources and expertise to bear in your review of the Railroad Retirement Board's occupation disability program as it relates to certain employees of commuter rail operations.

Without such comprehensive and independent reviews, it is possible for inherent systemic weaknesses to impact both the occupational disability and the disability freeze process as administered by the RRB. Until the Board has reviewed the results of further independent inquiry, as a fiduciary, I am uncomfortable relying on present outcomes as proof that program integrity and quality assurance controls, including the five point special review process developed to address the adjudication of Long Island Railroad employees' applications, are sufficient to detect and prevent program abuse.

I look forward to your further review, recommendations and findings.

Sincerely,

A handwritten signature in cursive script that reads "Jerome F. Kever".

Jerome F. Kever

cc: Secretary to the Board  
Inspector General  
Director of Programs

Printed on recycled paper



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# Enclosure IV: GAO Contact and Staff Acknowledgments

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## GAO Contact

Daniel Bertoni, (202) 512-7215 or [bertonid@gao.gov](mailto:bertonid@gao.gov)

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## Staff Acknowledgments

Jeremy Cox (Assistant Director) and Arthur T. Merriam Jr. (Analyst-in-Charge) managed all aspects of the assignment. Rachael Valliere, Martin Scire, and Jillian Fasching made significant contributions to this report, in all aspects of the work. In addition, Gregory Wilmoth, Gloria Hernandezsaunders, and Wilfred Holloway provided technical support; Jessica Botsford provided legal support; and Susan Aschoff assisted with the development of the message and report.

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