

REPORT BY THE

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Comptroller General

OF THE UNITED STATES

Most Civil Service Disability Retirement Claims Are Decided Fairly, But Improvements Can Be Made

GAO analyzed a sample of applications for benefits under the Office of Personnel Management disability retirement program for the 1-year period ending March 4, 1982. At least 90 percent of OPM's decisions were consistent with program eligibility criteria. However, GAO believes that some improvements can be made. In particular OPM should develop better psychiatric criteria, use revised claims forms and instructions, and inform applicants of specific reasons for the denial of their initial claims.

Additionally, in fiscal years 1981 and 1982, the Merit Systems Protection Board reversed about 50 percent of the 1,172 appealed disability decisions. Although OPM has proposed some actions to alleviate this situation, it needs further strategies for evaluating and defending disability decisions that are appealed to the Board.

OPM management already has made substantial progress toward improving its disability retirement program; it plans still further actions.



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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-207561

The Honorable Barney Frank
Chairman, Manpower and Housing
Subcommittee
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

This report responds to the former Chairwoman's December 14, 1981, request that we review the Office of Personnel Management's (OPM's) civil service disability retirement program.

As arranged with the Subcommittee's office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 7 days from the date of the report. We will then send copies to interested parties and make copies available to others upon request.

Sincerely yours,

A handwritten signature in cursive script that reads "Charles A. Bowsher".

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE SUBCOMMITTEE
ON MANPOWER AND HOUSING,
COMMITTEE ON GOVERNMENT
OPERATIONS, HOUSE OF
REPRESENTATIVES

MOST CIVIL SERVICE DISABILITY
RETIREMENT CLAIMS ARE DECIDED
FAIRLY, BUT IMPROVEMENTS CAN
BE MADE

D I G E S T

In April 1980 the Office of Personnel Management (OPM) tightened eligibility criteria for civil service disability retirement benefits. This action prompted concern about the maintenance of fairness.

The Subcommittee on Manpower and Housing, House Committee on Government Operations, asked GAO to (1) review OPM's consistency in applying its criteria and (2) assess the reasons for the increase in the number of OPM claims decisions that have been reversed by the Merit Systems Protection Board (MSPB). (See p. 1.)

Federal employees are entitled by law to disability retirement benefits if, after 5 years of creditable service, a disease or injury prevents them from providing useful and efficient service in positions at their current grade in the same agency and commuting area.

Applicants, whose claims are initially denied, may submit new evidence and ask OPM to reconsider its decision. If the claim is still not approved, applicants can ask MSPB to review their cases and submit additional evidence for consideration. (See p. 2.)

In making its assessment, GAO did not question OPM's medical judgments, but it did assess OPM's consistency in documenting all the required criteria for approving disability retirement.

GAO analyzed 160 cases randomly drawn from a total of 14,436 applications for disability retirement benefits for the 1-year period ending March 4, 1982. (See p. 3.)

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APRIL 13, 1983

Tear Sheet

MOST CASES DECIDED CONSISTENTLY

GAO estimates that at least 90 percent of OPM's initial disability retirement decisions during that time were in fact based on its criteria. However, GAO also identified problems within the review system that could cause inconsistencies in claims decisionmaking.

For example, two disability claims were denied because some OPM reviewers believed that the involved agencies could retain the disabled persons either by accommodating the medical conditions in their current positions or through reassignments to other positions. They reached these decisions despite the fact that the employing agencies certified that their reassignment and accommodation efforts were not successful. The reviewers did not verify that the accommodation efforts were questionable. GAO believes that denying claims because OPM reviewers assume that the disabled persons could be accommodated is improper and inconsistent with OPM criteria. (See p. 5.)

OPM also needs to develop better criteria for determining disability in the area of psychiatric illness and, at the same time, to expand its psychiatric assessment capabilities. The agency did not have a psychiatrist on its staff, nor had it referred mental disorder cases to a psychiatrist for evaluation. (See p. 6.)

At the start of GAO's review, OPM had no systematic review process for assuring that claims were decided consistently and in accordance with OPM criteria. OPM relied instead on occasional spot checks by supervisors. It began an internal review of the disability claims process in July 1982, which, if continued on a regular basis, should help ensure that claims are decided fairly. (See p. 9.)

NEW FORMS AND INSTRUCTIONS COULD
EXPEDITE APPROVALS

Inadequacies in the disability application forms and instructions hindered OPM in making its initial decisions. OPM, aware of these problems, formed a task force in 1981 to revise the forms and instructions. Newly proposed forms and instructions will address the problems GAO found. (See p. 9.)

EXPLANATIONS FOR INITIAL
DECISIONS TOO GENERAL

GAO found that OPM was not telling applicants specifically why their initial claims were denied. In 71 sample cases, the applicants were notified by a form letter stating simply that total disability for useful and efficient service in the employee's position had not been established. No further explanation was given. Without specific information, applicants did not know whether with additional evidence they could request reconsideration of their claims. As a matter of fact, claims often were approved during reconsideration if they contained additional information.

OPM has recently developed a procedure for explaining more specifically its initial denial decisions, but it has not yet implemented the process because of clerical-staff shortages. However, OPM has begun using a more descriptive form letter. (See p. 11.)

OPM HAS NOT FULFILLED
APPEAL RESPONSIBILITIES

In fiscal years 1981 and 1982, MSPB reversed about 50 percent of OPM's disability decisions that were appealed. GAO analyzed 126 such decisions rendered by MSPB during the 10-month period that ended March 31, 1982. Case files showed that OPM made virtually no effort to defend its decisions. (See p. 17.)

GAO found that, of 25 appealed cases it reviewed in depth, 15 had arguable deficiencies or inconsistencies in the case documentation. These 15 cases will total about \$1.4 million in disability payments. OPM officials said they had not actively defended appealed decisions because they gave priority to reducing the backlog of claims and improving the forms, decision criteria, and processing procedures. (See pp. 20 to 22.)

At the completion of GAO's work, OPM management was considering a strategy to reduce the number of cases lost through appeals. This strategy, which would cost about \$150,000 annually, includes attending selected hearings, using MSPB procedures to discover additional evidence, communicating OPM decision criteria to MSPB, and writing better decision explanations. OPM officials were delaying a decision on carrying out this strategy pending future reductions in the claims backlog and procedural improvements. (See p. 22.)

RECOMMENDATIONS

GAO recommends that the Director, OPM:

- Develop better criteria for mental illness cases, using generally accepted psychiatric principles and practices, and provide psychiatric expertise as necessary.
- Use the revised claims forms and instructions.
- Supply applicants with specific reasons for denial of initial claims.
- Carry out the proposed strategy for evaluating and defending disability decisions appealed to MSPB.

AGENCY COMMENTS

OPM generally agreed with the findings, conclusions, and recommendations in the report (see app. I) and has taken several actions toward implementing the recommendations, and they expect to take further steps.

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ABBREVIATIONS

GAO General Accounting Office
MSPB Merit Systems Protection Board
OPM Office of Personnel Management

CHAPTER 1

INTRODUCTION

At the end of fiscal year 1982, the Office of Personnel Management (OPM) was paying 348,500 civil service disability annuitants annual benefits of about \$3.5 billion--almost 20 percent of the total amount paid to retired employees. The average monthly disability annuity was \$819.

During the last several years, we have issued a number of reports recommending the tightening of eligibility standards used by OPM in administering the civil service disability retirement program. ^{1/} And, in April 1980, OPM began applying stricter eligibility criteria for disability retirement, requiring that a direct relationship be shown between a deficiency in job performance and a specific medical problem. Previously, a claimant was granted medical disability retirement regardless of whether the condition affected job performance. OPM estimated that the April 1980 change could reduce outlays from the retirement fund by as much as \$6 billion over the next 20 years.

In 1981, the House Committee on Government Operations issued a report on the need to improve administration of the program. ^{2/} That report concluded that OPM's decision to grant disability retirement only when medical conditions keep employees from performing their jobs has dramatically reduced the number of applications for disability retirement. Also, according to the report, some OPM decisions have been overturned by the Merit Systems Protection Board (MSPB) because OPM is not represented at MSPB hearings. The report implies that, had OPM actively participated, MSPB might have upheld more of OPM's decisions.

^{1/}See GAO reports: "Civil Service Disability Retirement: Needed Improvements" (FPCD-76-61, Nov. 19, 1976); "Disability Provisions of Federal and District of Columbia Employee Retirement Systems Need Reform" (FPCD-78-48, July 10, 1978); "Minimum Benefit Provisions of the Civil Service Disability Retirement Program Should Be Changed" (FPCD-80-26, Nov. 30, 1979); and "Civil Service Disability Retirement Program" (FPCD-81-18, Dec. 15, 1980).

^{2/}"Improving the Administration of the Civil Service Disability Retirement Program." House Committee on Government Operations, 97th Congress, 1st Sess., No. 97-412 (Dec. 15, 1981).

The Subcommittee on Manpower and Housing, House Committee on Government Operations, became concerned that, with the tightening of standards and the rise in denial rate (from about 2 to 15 percent), the disability retirement program might not be fair. The subcommittee requested us to examine OPM's consistency in applying its eligibility criteria and to assess the reasons for the increase in the number of OPM claims decisions reversed by MSPB.

REQUIREMENTS FOR DISABILITY RETIREMENT

Federal employees with 5 years of creditable service are entitled to disability retirement if they become unable, because of disease or injury, to provide useful and efficient service in their present positions and are not qualified for reassignment to vacant positions at the same grade in the same agency. (See 5 U.S.C. 8337.)

When Federal employees announce their intention to file for disability retirement, it is the employing agency's responsibility to attempt to accommodate the disabilities in their current position or to find suitable employment within the agency, at the same grade level, and within the local commuting area. The grade level and commuting area provisions were implemented by OPM in March 1981. Previously, employees only had to be unable to perform the duties of their current positions.

If an agency is unable to place the employees, the applicants must submit to OPM medical reports from their doctors along with job performance statements from their superior officers. OPM reviews the applications and either approves or denies the claims.

Applications are reviewed for medical diagnoses and analyses by one of seven OPM physicians. In 1982, OPM hired 11 disability claims specialists to assist the doctors in processing disability claims. Their duties included developing the cases and writing comprehensive letters explaining the reason(s) for denying the claims.

Applicants whose claims are initially denied, may submit new evidence and ask OPM to reconsider the denial. If they do not receive a favorable reconsideration decision, they can ask MSPB to review the case and again submit additional evidence for consideration.

MSPB, in deciding cases after May 28, 1981, had to use the criteria of the Board's decision in the Chavez case. ^{3/} The Chavez ruling (1) required greater consideration of subjective evidence, (2) clarified that the "burden of proof" is on the appellant and not on OPM, and (3) stated that MSPB will consider new evidence supplied after OPM's decision. The MSPB presiding official's decision is binding, unless overturned by the full Board.

DISABILITY APPLICATIONS AND
BACKLOG OF UNDECIDED CASES

The number of disability applications has been reduced as shown in the following table.

<u>Fiscal year</u>	<u>No. of disability claims filed</u>
1980	26,562
1981	16,891
1982	13,760

On October 1, 1980, OPM had 2,258 initial claims and 327 reconsideration claims awaiting decisions. During fiscal year 1981, OPM made quicker initial decisions, but requests for reconsiderations increased. Although, at the beginning of fiscal year 1982, OPM had more claims awaiting decisions than they had the year before, the mix had shifted to 1,260 initial claims and 2,714 reconsideration claims. Then, as OPM added claims specialists, the backlog of reconsideration claims began to decline; as of October 1, 1982, only 786 reconsideration claims were awaiting review. Reducing the initial claims backlog (1,120 cases on October 1, 1982) has been somewhat slower because OPM is taking more time to thoroughly review and document its analyses of these claims.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our objectives were (1) to review OPM's consistency in deciding claims as it applied stricter eligibility criteria and (2) to assess the reasons for increases in the number of OPM claims decisions reversed by MSPB.

In making our assessment, we did not evaluate or question OPM's medical judgments, but, rather, we determined OPM's consistency in documenting all the criteria required for approving

^{3/}Chavez v. Office of Personnel Management, MSPB Docket No. DA831L09003, (May 28, 1981).

disability retirement. We reviewed in detail a total of 160 cases selected at random from the 14,436 disability retirement applications filed during the 1-year period ending March 4, 1982--the date OPM further tightened eligibility criteria. These cases were selected from one or more of the following applicant universes:

<u>Universe (note a)</u>	<u>Sample</u>
14,436 initial applications	69 cases (initial decisions)
9,800 to 12,100 initial approvals	70 cases (including 53 from initial application sample)
2,300 to 4,600 initial denials	71 cases (including 16 from initial application sample)
1,400 to 3,600 reconsideration applications	69 cases (including 50 from initial denial sample)

a/The initial applicant universe was based on OPM statistics. Other universe sizes are estimates based on our sample findings and rounded to the nearest hundred.

Since random samples were selected, results can be projected to the appropriate universes, and approximate sampling errors can be computed. Sample sizes were preselected to permit maximum sampling errors of plus or minus 10 percent at the 90-percent level of statistical confidence for attributive estimates.

We analyzed the 126 reversal decisions MSPB rendered during the 10-month period ending March 31, 1982. This period was selected because MSPB cases decided after May 28, 1981, were to use the criteria of the Board's decision in the Chavez case.

In 50 of the 126 reversal cases, MSPB decisions specifically noted OPM's absence from the hearings. We reviewed in further detail 25 of these 50 cases; we felt this was a sufficient number on which to decide whether OPM's presence at the hearings would more forcefully help the case for the Government.

We conducted our review from January through August 1982 at OPM and MSPB headquarters offices in Washington, D.C. In addition to reviewing case files, we interviewed OPM and MSPB officials and reviewed OPM and MSPB policies and procedures for handling disability retirement claims. This review was made in accordance with generally accepted Government audit standards.

CHAPTER 2
DISABILITY RETIREMENT CRITERIA AND
PROCEDURES NEED IMPROVEMENT

To approve a disability claim, OPM reviewers must ascertain that all aspects of the legal criteria for disability retirement are documented and that the medical conclusions are consistent with generally accepted medical principles and practices. On the basis of our analyses of samples of OPM decisions, we estimate that, based on the evidence available at the time, at least 90 percent of OPM's initial disability retirement decisions were consistent with the eligibility criteria.^{4/} However, OPM could have avoided delays associated with reconsidering applications had it given applicants an opportunity to submit additional support. Also, OPM claims forms and instructions were inadequate, and the form letters used to communicate initial denial decisions were too general.

OPM, recognizing that improvements were needed, has (1) started an internal review of the disability claims process, (2) revised claims forms and instructions, and (3) developed procedures for writing detailed initial denial decisions. However, neither the new forms and instructions nor the detailed initial denial process had been implemented at the time of our review.

PROBLEMS IN DECIDING CLAIMS CONSISTENTLY

Our assessment of 70 OPM approval decisions identified 3 claims where we disagreed with the reviewers' decisions or explanations. These three claims were based on deficiencies in job performance or attendance but lacked employee documentation. Because we found that only 3 of 70 (4 percent) initially approved decisions had not been fully supported, we can project that at least 90 percent of OPM's initial approvals during our sample period were adequately supported.

We used a similar assessment methodology to identify three initially denied claims that we thought should have been approved: all aspects of the criteria had been documented. Two of the claims related to problems with OPM's changing psychiatric criteria, and the third related to employing-agency efforts to accommodate an employee's disability in her current

^{4/}As indicated on p.3, we did not evaluate or question OPM's medical judgments.

position or through reassignment (both issues are discussed in the following sections). Because we believe only 3 of 71 (4 percent) sampled initial denials were inadequately supported and should have been approved, we can project that at least 90 percent of OPM's initial denials during our sample period were appropriate.

Although most of OPM's decisions were reasonable, we identified a need for adequate quality control and problem areas where improved procedures and criteria can narrow the scope of reviewer discretion.

Agency accommodation efforts questioned

Despite OPM guidance not to question agency certification of attempts to retain an employee through accommodation of the medical condition, some claims reviewers were denying applications if they thought job accommodations could have been made. Employing agencies are required only to certify that they made such efforts. They are not required to describe them. Claims reviewers have been told not to question an agency's certification, because OPM believes the agency is the best judge of whether position requirements can be adjusted.

Two claims initially denied because the OPM claims reviewer thought inadequate accommodation efforts were made are discussed below.

- A kitchen worker with a severe skin condition had difficulty doing her job because the job required that her hands be in water when preparing food, washing dishes or utensils, and cleaning. Medical evidence showed that water aggravated the skin condition, as did wearing protective gloves. Although the agency certified that another position was not available and that the job could not be restructured, the reviewer decided that the applicant could be functional with assignment accommodation.
- A foreign national employed by the Government developed a severe mental disorder; however, the agency certified that there were no facilities for treatment in his country. The reviewer's position was that, since the condition was amenable to treatment, the agency could be responsible for transferring him to a place where treatment was available.

Psychiatric criteria and assessment

Disability claims based on mental disorders are some of the most difficult for OPM reviewers to decide. We found considerable variation in reviewer judgment for these cases. One reason for this was that OPM policy on psychiatric illnesses that qualify for disability frequently changed. This made it difficult for reviewers to decide these claims with any consistency. The problem was further exacerbated because: reviewers did not use the psychiatric community's published diagnostic criteria, OPM did not have a psychiatrist on its staff, and OPM did not use psychiatric consultants in reviewing claims or developing policy.

To be eligible for disability retirement, applicants must prove the presence of a disease or injury that prevents them from satisfactorily doing their jobs. For example, people could suffer from certain types of mental disorders (such as adjustment or personality disorders) that are not totally disabling but that interfere with their ability to render useful and efficient service, at least for some period of time. OPM is trying to determine what specific mental disorders could call for disability retirement.

OPM's internal policy on mental disorders vacillated during our sample period. First, it excluded all personality, character, and behavior or adjustment disorders from the disability criteria. Then, it allowed personality and adjustment disorders in cases in which the applicants might cause harm to themselves or others. Finally, OPM's policy reverted to its original position, which did not allow disability for any personality or adjustment disorders. However, OPM has continually considered as disabled employees with serious mental illnesses (e.g., schizophrenia) and affective disorders (e.g., paranoia).

Moreover, OPM had not provided claims reviewers with the necessary diagnostic tools. OPM's policy at the time of our review was that disability cases would be reviewed to ensure that a diagnosis or clinical impression was justified, that it was in accordance with established medical diagnostic criteria, and that the physician's conclusions and recommendations were consistent with generally accepted medical principles and practices.

The psychiatric profession has established specific diagnostic criteria--generally accepted principles and practices--in a manual entitled, "Diagnostic and Statistical Manual of Mental Disorders--Third Edition 1980." However, OPM reviewers did not

have copies of the manual to use in assessing psychiatric diagnoses or in explaining to applicants why their diagnosed problems were not considered severe enough to be disabling. Furthermore, none of OPM's claims reviewers are psychiatrists, nor did OPM refer mental disorder cases to psychiatrists for evaluation. ^{5/}

The following cases from our sample illustrate reviewers' inconsistencies in deciding claims based on mental disorders. These cases show that the stated diagnoses appeared to be the determining factor, irrespective of the history and documentation of the condition.

--An applicant was diagnosed by a psychiatrist as having anxiety reaction with possible personality disorder. He had a history of psychiatric hospitalizations and had been previously diagnosed as schizophrenic. The claimant's psychiatrist, supervisor, and an official in higher management agreed that he was disabled. The supervisor's report stated that the applicant's stress was characterized by uncontrollable rage precipitated by normal events. The OPM staff medical officer who reviewed the case said that, while the psychiatrist indicated medication could control stress, the person was a potential "walking time bomb." However, the OPM reviewer denied the claim because the OPM policy in effect at that time did not consider anxiety reaction or personality disorder as allowable disabilities.

--In contrast, there is the case of an applicant who originally claimed disability due to a hand injury and chronic cough. Her claim was disallowed because of lack of documentation. Additional information, which she submitted on reconsideration, included medical documentation from a rheumatologist who had not seen her for 4 months. He noted that her cough had abated but indicated that she unknowingly turns psychological problems into physical symptoms, and that she suffers from intermittent anxiety and depression. He suggested that additional psychiatric evaluation could be helpful. No

^{5/}Since our review, OPM has purchased copies of the psychiatric diagnostic reference manual and has retained the services of a recognized psychiatric expert. (See app. I.)

additional psychiatric evaluation was sought by OPM. Instead, OPM allowed the claim, classifying it as a permanent psychiatric disability. An OPM claims review supervisor agreed with our observation that this case should have been disallowed due to insufficient documentation.

Absence of quality control

When we started our review, OPM had no systematic review process for assuring that claims decisions were consistent and in accordance with OPM criteria. Instead, OPM relied on occasional spot checks by supervisors.

OPM's Quality Assurance Division began an internal review of the disability claims process in July 1982 and planned to examine sample cases after we completed our review. We discussed our methodology and findings with them, and staff members said they would review on a sample basis the adequacy of decision documentation and case processing. Further, they planned to make such reviews every 12 to 18 months. We believe this systematic review is needed.

INADEQUATE FORMS AND INSTRUCTIONS DELAY CLAIM APPROVALS

OPM's disability retirement forms and instructions were not up to date when it implemented more rigid documentation requirements. As a result, some claims have been denied or delayed because insufficient evidence was submitted initially. OPM, recognizing these deficiencies, organized a task force to revise the forms and instructions. The task force held its first meeting on September 22, 1981, and the target for completion was before the end of fiscal year 1982. As of December 27, 1982, the proposed forms and instructions had not been approved for use. However, because of OPM's effort, we did not do an extensive analysis of the forms or instructions; but we did note several problems with the forms that physicians and supervisors must complete.

The physician's form did not ask for all the information OPM must have to decide a case. For example, it did not specifically ask for laboratory test results, response to treatment, assessment of risk to self or others if continuing in the position, limitations caused by the medical condition, prognosis, or, in psychiatric cases, mental status examination and psychological test results. Therefore, some physicians completed the form with minimal explanation of their findings, resulting in OPM's rejecting the claim for insufficient evidence.

The supervisor's form also was deficient. It asked for a list of the duties and responsibilities that the applicant could not perform, as well as observations on how the applicant's disability interfered with his or her performance. However, it did not ask the supervisor to state in fact that the applicant's performance was neither useful nor efficient. Nor was the supervisor asked whether the employee had received a promotion, a within-grade increase, or a merit pay increase during the same period when the employee supposedly was not performing critical job elements. OPM is not always given this performance information in the data it receives. (Such information could indicate that job performance was fully satisfactory or better.) In some cases, OPM claims reviewers obtained data about pay increases or promotion from other agency records, which conflicted with the supervisors' description of deficient service.

The form did ask the supervisor to indicate the amount of sick leave taken by the applicant during the 2-year period before application. But, it did not ask the supervisor if the absence was related to the medical condition now being claimed as a disability.

The new documentation requirements OPM proposes should correct these deficiencies. Physicians will no longer complete a form. They will be asked to write a letter addressing the specific elements of the medical documentation criteria, including a statement of what duties the applicants cannot perform as a result of their medical condition. Also, the new supervisor's form asks supervisors to document that attendance and performance are unacceptable. It also requires them to list any awards, promotions, or step increases received after the unacceptable performance began.

We found that not having all necessary evidence at the initial decision point caused delays. OPM usually would make decisions based solely on the evidence submitted and, if the evidence was insufficient, would deny the claim. In our sample of 69 reconsideration cases, 51 were approved by OPM after more documentation had been submitted. The time between the receipt of initial application and initial denial decision in these 51 cases averaged 22 days. There was a further delay averaging 44 days between this decision and OPM's receipt of the reconsideration application. The reconsideration decision then took an average of 75 days. Thus, these cases took an average of 141 days between initial application and approval.

In nine cases that were initially approved, reviewers allowed the applicants to submit additional evidence before rendering decisions. Processing time for these cases averaged 92 days.

EXPLANATIONS FOR INITIAL
DECISIONS TOO GENERAL

Prior to our review, OPM was not giving applicants specific reasons for denying their claims. In the 71 sample cases initially denied, OPM notified applicants of denial by a form letter stating that the application had not been approved because total disability for useful and efficient service in the employee's position had not been shown. The notice further stated that the applicant had not established the fact that a disability was severe enough to prevent useful, efficient, and safe performance of essential duties. No other information was offered.

In reviewing the case files, we found that some OPM claims reviewers noted in the files the specific deficiency in the evidence submitted. OPM could have used these notations as well as other data in the case files to give the applicant a more specific reason for denying the claim. Some reasons noted in the files follow.

--The physical findings are normal and do not support the diagnosis.

--No rationale is provided to explain how medical condition interfered with job performance.

--The treating physician said the patient could be functional with administrative reassignment.

OPM used general form letters to notify applicants of claims denial because this was a quick way to finish processing the heavy load of initial claims. Before the claims specialists were hired in early 1982, the full rationale for the decision often was not well documented, and there was no one to write notifications tailored to individual cases. However, with the arrival of the specialists, more systematic case reviews are now made. Staff physicians write brief explanations of the rationale behind their decisions. Claim specialists use these explanations in addition to their own case summary sheets to give applicants the reasons for the disapproval of their claims.

During our review, OPM developed a procedure for writing a detailed explanation to inform applicants of initial denials but, as of February 28, 1983, had not implemented it. Officials said that, because of clerical-staff reductions, typing these narratives would delay issuing the decisions. However, OPM has started using a new form letter with a check list to inform applicants of the criteria that were not met by the claim submitted.

CONCLUSIONS

OPM has recognized the need to improve the disability claims process and is taking steps to do so. But it still must set up a system to insure fair and prompt decisions. In our opinion, it is unfair as well as improper and inconsistent with OPM criteria to deny a claim because the reviewer assumes that the agency's accommodation efforts are questionable.

We believe that OPM needs to develop better criteria for psychiatric illness claims and to expand its psychiatric assessment capabilities. Specifically, we suggest the use of generally accepted psychiatric principles and practices and psychiatric expertise in deciding these claims.

Because several of OPM's forms and instructions do not ask the right questions, necessary information is often lacking. The proposed forms and instructions will aid the applicant, the employing agency, and the physician in providing the necessary information on the initial submission and, therefore, should be adopted.

OPM needs to give applicants specific reasons for rejecting their claims. This will help applicants decide whether additional evidence could be provided and whether to request reconsideration of their claims.

Telling applicants only that they have failed to establish a disability claim delays approval of legitimate claims. The applicant does not know what specific criteria were not satisfied or what documentation must be submitted to receive approval. Using a standard denial letter that is more specific is an improvement, but a fuller explanation would be a greater improvement and should be provided.

RECOMMENDATIONS

We recommend that the Director, OPM:

- Develop better criteria for deciding mental illness cases, using generally accepted psychiatric principles and practices, and provide psychiatric expertise as necessary.
- Use the revised claims forms and instructions.
- Notify applicants of the specific reasons for denial of their initial claims.

AGENCY COMMENTS AND OUR EVALUATION

OPM generally agreed with our findings, conclusions, and recommendations concerning its disability retirement criteria and procedures. (See app. I.) OPM advised us that they have already implemented some of our recommendations and are planning further action.

In our draft, we suggested that, until the new forms and instructions are available, OPM give applicants an opportunity to provide additional supporting evidence before an initial decision is made. The forms and instructions used by OPM during our review did not sufficiently apprise applicants of the documentary evidence and related information necessary to support a disability retirement claim. As a result, a significant number of claims were denied at the initial decision stage, only to be allowed on reconsideration following the submission of additional evidence. Following the initial decision and upon inquiry of the applicant, OPM would provide more definitive guidance on the documentation necessary to support a claim.

OPM felt that this proposal would require the expenditure of more staff hours per case decision. OPM also observed that because of its stricter application of disability criteria during the first quarter of fiscal year 1983, substantially fewer allowances were made on reconsideration than during the period covered by our review. According to OPM, this was the case even though applicants whose claims were disallowed at the initial decision stage were apprised at the time of disallowance of what would be required to support the claim on reconsideration. Although our sample did not include cases decided during the first quarter of fiscal year 1983, we do not believe a higher disallowance rate at the reconsideration stage or the reasons advanced by OPM for that rate detract from the principle that disability claimants should have sufficient guidance on the information and evidence necessary to support their applications. We do not understand OPM's observations on the current reconsideration disallowance statistics to be at odds with this principle.

Our proposal was directed at the problem of insufficient information on which to base initial decisions and the lack of sufficient guidance on the evidence that should accompany initial disability retirement applications. OPM has developed new forms and instructions that are responsive to this concern, and the use of the new forms and instructions is imminent. We have, accordingly, dropped the proposal that until the new forms and instructions become available, OPM give applicants an opportunity to provide additional supporting evidence before an initial decision is made.

In our draft, we also proposed that OPM claims reviewers verify questionable agency accommodation efforts before denying claims. OPM has already reinforced its guidance to reviewers on that issue and, until the new application forms come into use, OPM will not question agency certification on these points. Information required on the new forms should enable OPM to determine adequacy of reassignment and accommodation efforts. We believe OPM's actions and plans will accommodate the concerns addressed in our proposal and, therefore, have dropped the proposal from the report.

CHAPTER 3

OPM IS NOT ADEQUATELY EVALUATING AND

DEFENDING APPEALED DECISIONS

MSPB reversed almost 50 percent of OPM disability decisions appealed in fiscal years 1981 and 1982. Our review showed that the rate could be lower if OPM fulfilled its role and defended its decisions. In some cases, OPM did not supply case files to MSPB on time, while in others, it neither questioned nor evaluated new information. For example, in 15 of the 25 cases we reviewed in depth, OPM, by not evaluating the new information, lost the appeal in spite of arguable deficiencies or inconsistencies in the applicants' documentation. These 15 cases will cost the retirement fund an additional \$1.4 million.

OPM officials had not given priority to defending appealed cases because they wanted to first reduce the backlog of undecided new claims and then implement the improvements in criteria, forms, and procedures discussed in chapter 2.

During fiscal year 1981, MSPB reversed OPM in 428 out of 867 disability retirement appeals (49 percent). In fiscal year 1982, OPM lost 159 appeals out of a total of only 305 appeals (52 percent).^{6/} OPM points out that MSPB's reversal rate began to fall in mid-fiscal year 1982; the OPM reversal rate was 37 percent in the last half of that year, and then fell 23 percent in the first quarter of fiscal year 1983.

THE APPEALS PROCESS AND OPM'S ROLE

The MSPB appeals process is designed to render a decision based on a full review of the case within 120 days of the appeal request. MSPB regulations allow the applicant and OPM to provide new evidence and to fully explain and defend their

^{6/}In the fourth quarter of fiscal year 1981, there was a reduction in the number of appeals handled by MSPB, the result of insufficient funds and a heavy workload. The backlog of disability cases awaiting MSPB action reflects this trend, standing at 426 cases as of October 1, 1982, up from a backlog of only 110 cases the year before.

positions both before and during an appeal hearing. If OPM does not participate in the hearing, the MSPB decision is based only on the applicant's submissions and the OPM case file.

Disability applicants must appeal to MSPB within 20 calendar days after receipt of an OPM reconsideration decision denying them disability retirement benefits. Applicants initiate the appeals process by sending petitions for appeal to their nearest MSPB regional office. That petition should include any relevant documents supporting the claim. Moreover, applicants should indicate whether they want a hearing, and they must identify any witnesses they plan to call. Then MSPB notifies OPM, requesting copies of the case file and OPM's response to the appeal. MSPB provides OPM with copies of new evidence submitted by the applicant so that OPM can evaluate and comment on it.

OPM must respond to MSPB within 15 days. If OPM is late, MSPB notifies OPM that, if the file is not delivered by a specific date (usually 10 days later), the presiding official will proceed without OPM's response. The official will schedule a hearing, or adjudicate the case on the existing record, whichever course of action the presiding official deems appropriate.

In addition to commenting on newly submitted evidence, OPM has the right to ask applicants for copies of any additional evidence they plan to submit at the hearing. OPM can also request that the applicant's doctor or employing agency clarify inconsistencies in information previously presented. It can also ask the applicant to respond to specific questions bearing on the person's eligibility.

Once all the information is gathered, and if no hearing is to be held, the MSPB presiding official will close the record and decide the case. At the time of our review, if the applicant requested a hearing, MSPB scheduled one either at an office in a Federal regional city or at another Federal installation near the applicant. Since November 5, 1982, MSPB has scheduled hearings at fixed neutral hearing sites with alternate accommodations available if necessary.

At the hearing, the applicant can testify and present depositions or testimony from physicians, employer, friends, co-workers, and family. OPM representatives can explain OPM's

rationale for deciding the claim, cross-examine the applicant's witnesses, and present its own witnesses. At the conclusion of the hearing, the MSPB presiding official may permit both the applicant and OPM to submit posthearing briefs or written arguments. However, according to an MSPB official, OPM must be present to do so.

The decision rendered by the MSPB regional presiding official is binding on the applicant and OPM unless, within 35 days, one of the parties petitions the full Board to reopen the case or unless MSPB reconsiders the case on its own.

OPM HAS NOT FULFILLED ITS
RESPONSIBILITIES IN THE APPEALS PROCESS

In an attempt to understand why OPM was losing almost 50 percent of these appeals, we analyzed 126 MSPB reversal decisions issued during the 10-month period from June 1, 1981, to March 31, 1982, 87 of which involved hearings. We found that OPM made virtually no effort to defend its decisions, which meant that there was no assurance that MSPB was deciding these cases properly. OPM had not

- provided the case files to MSPB within the days allowed;
- adequately explained its reasons for denying cases in its reconsideration decision letters, nor had OPM clarified its reasoning when notified of an appeal;
- evaluated and commented on new evidence presented with the appeal;
- attempted to reconcile inconsistencies in documents furnished by physicians or employers; or
- questioned witnesses or clarified data presented at any of the 87 MSPB hearings.

Inadequately explaining denial
reasoning in reconsideration
decisions or appeal responses

OPM has been ineffective in communicating its reasons for denying disability claims to MSPB. We found that OPM was relying almost entirely on its reconsideration decision letters

to explain its position. And, based on our review of MSPB decisions and discussions with MSPB officials, OPM's letters were inadequate for appeal purposes because

--they did not explain how OPM weighed evidence in reaching its denial conclusion, and

--they frequently contained unexplained terms or unreferenced assertions regarding medical criteria.

The result was that MSPB presiding officials often discounted or disregarded OPM's analyses.

In a precedent-setting decision in May 1981, ⁷/ MSPB directed its presiding officials to weigh all relevant information, both objective and subjective, before deciding on a person's disability. We found that OPM's reconsideration decision letters did not indicate that OPM reviewers had analyzed all the evidence. Although the letters listed the documentation reviewed, they did not explain why certain information was accepted as support and other information discounted. In addition, the OPM reviewers often wrote that the applicant had not supplied "sufficient objective medical evidence" or "had not established the presence of an organic disease." And, because OPM reviewers had not supplemented these phrases with explanations on how the data in the file had been evaluated (i.e., relating the phrases to the criteria), some MSPB officials interpreted these phrases to mean that OPM had not considered all the evidence.

The following quotations from decisions by two MSPB presiding officials illustrate these weaknesses in OPM's reconsideration decisions:

"In the reconsideration decision, OPM's Medical Director wrote that the duties of appellant's last position were noted; that the statements furnished with the reconsideration request were evaluated; but that 'total record does not show sufficient disability to conclude applicant is totally disabled.' The only medical evidence summarized consists of quotes from Dr. [X's] report in which he expressed his opinion that

⁷/Chavez v. Office of Personnel Management, MSPB Docket No. DA831L09003 (May 28, 1981).

appellant is not totally disabled. The decision contains no analysis of Dr. [Y's] reports, nor an explanation of why OPM considered Dr. [X's] report to be more credible and/or dispositive of the question of appellant's disability." [The presiding MSPB official went on to show why he gave more weight to Dr. Y's statements that supported disability than to Dr. X's report, which did not.]

"* * * it is not clear what is meant by 'documentation of present organic disease' but it sounds like OPM assumes a finding of disability must be based strictly on objective evidence. This is contrary to the holding in Chavez v. supra, and subsequent cases."

Some OPM reviewers based their denial of claims on criteria, but did not explain them. Two such criteria were "situational reaction," which was used to deny mental disorders, and the "absence of end organ damage," which was used to deny disability for claims based on high blood pressure. Because these criteria were offered without explanation, MSPB officials either refuted or disregarded them.

New evidence not evaluated

In analyzing the 126 reversal decisions, we found that OPM made little effort to evaluate new evidence submitted with the appeal. In the one case in which OPM had made such an effort, its response was late and, therefore, disregarded by MSPB.

We found that applicants submitted new medical or employment evidence in 75 percent of the 126 reversal decisions. Because of OPM's inaction, the MSPB officials, who are attorneys, had to interpret the medical data without the benefit of OPM's medical expertise. MSPB officials told us that, in the absence of any evaluation from OPM, they had to give substantial weight to the conclusions and opinions of the treating physician, without knowing whether they were consistent with generally accepted medical principles and practices. In its comments on our draft report, MSPB stated that, even in the absence of an OPM challenge, the treatment given such evidence may differ according to its credibility and substance. For example, the presiding official may give very little weight to evidence that clearly appears, even to a layman in medicine, inconsistent or trivial.

We believe that when MSPB officials made their decisions, they would have benefited by OPM's evaluations of evidence. We believe this is clearly indicated in 14 of the 126 decisions because the MSPB officials specifically noted the absence of OPM's evaluations. If OPM officials had evaluated the new information, they could have provided a reasonable basis for MSPB to deny the claim or OPM could have approved the claim, thereby eliminating the cost of further MSPB processing. Regardless of the result, OPM's participation would have ensured more reliable analyses of medical evidence.

Not resolving inconsistencies
in employment and medical data

OPM did not attempt to clarify inconsistencies or to obtain information in addition to that provided by the applicants in any of the 126 decisions. OPM's inaction, its poorly explained decisions, and its failure to attend hearings forced MSPB to base its decisions on information that tended to prove the applicants' cases, which left inconsistencies and gaps unaddressed. For example:

--In one case, a supervisor claimed that an applicant's absence during the 14 months preceding May 7, 1980, interfered with or prevented the applicant from performing his assigned duties. However, the OPM case file showed that the applicant had been given a within-grade increase on May 1, 1980, indicating that, during the period under consideration, the applicant's performance was considered fully satisfactory. OPM did not ask the agency for a statement to clarify the record. MSPB ruled for the applicant, and this ruling may have been correct. However, because of OPM's inaction, the issue was never considered.

Not attending hearings may
have increased appeal losses

In the 87 cases we analyzed involving hearings, OPM did not attend any of the hearings. As a result, OPM lost the opportunity to evaluate and clarify new evidence presented at the hearing by the applicant, as well as the opportunity to explain the rationale for its decision.

In 50 cases, MSPB specifically noted OPM's absence. We reviewed the hearing transcripts and case files for 25 of the 50 cases and found that, at the hearings, applicants had

supplemented their personal testimony with additional evidence. In 24 cases, OPM had not seen the additional evidence. Specifically,

- 22 cases had additional medical reports or physician testimony,
- 8 cases added employment (leave) records or supervisor testimony,
- 7 cases had relatives or friends testify, and
- 2 cases provided evidence of disability that had been approved by either the Veterans Administration or the Department of Labor.

In 10 of the 25 cases, the new evidence and supporting explanations answered objectives raised in OPM's reconsideration decisions and appeared to legitimize the approvals. However, we found that 15 of 25 cases contained various arguable deficiencies, such as questionable evidence of a medical condition, a service deficiency, or a bona fide attempt to reassign or otherwise accommodate medical conditions. Our analysis showed, however, that in 14 of the 15 cases, a deficiency cited in OPM reconsideration had not been answered. In 6 of the 15 cases, we also found arguable deficiencies in the new evidence submitted by the applicant.

Deficiencies we noted in the 15 cases included

- missing evidence for a negative prognosis for effective treatment,
- lack of justification for physician-imposed employment restrictions, or supervisor's lack of an explanation for agency inability to accommodate applicant's medical restrictions,
- lack of evidence to refute OPM's assertion that the disability was a situational reaction,
- lack of a supervisory statement that performance or attendance was unsatisfactory, or
- contradiction of supervisory assertions of unsatisfactory performance by the applicants' employment records showing receipt of within-grade increases (evidence of fully

satisfactory performance) for the same period that performance was supposedly deficient.

The following is an example of how OPM's absence (1) left issues such as performance deficiency and eligibility for other jobs unresolved and (2) allowed MSPB to disregard OPM's reason for denying a claim because it was a situational reaction (i.e., caused by an adverse relationship between the applicant and others).

An employee applied for disability based on a shoulder and neck injury that caused her pain and prevented her from writing. OPM denied the claim on reconsideration because (1) emotional problems stemming from supervisor and co-worker relationships were large factors in producing the symptoms, and (2) the agency supervisor had said performance was satisfactory, but absences for doctors' appointments were a problem.

MSPB reversed OPM's decision because at the hearing the applicant presented considerable evidence of her deteriorated physical and emotional state together with examples of how she had difficulty completing her work. The MSPB official did not develop evidence to refute OPM's reasons for denial. Instead, the official focused on the words "lack of sufficient objective medical evidence" in OPM's reconsideration letter, noting that subjective evidence of pain must also be considered because it is not disputed in the records.

We reviewed the hearing transcript and found that testimony by the applicant and her psychiatrist clearly pointed out that the underlying cause of the performance problem was the adverse relationship between the applicant and a co-worker and the applicant and her supervisor. Both the applicant and her psychiatrist claimed that these adverse relationships produced sufficient emotional stress to aggravate the applicant's previous physical problems to the point where they damaged her performance--precisely the point made by OPM.

The record also showed that, before the applicant began work in this location, she worked with award-winning quality in the agency's other locations where she had more responsibility and was under more emotional stress. This high quality performance had occurred after the accident in which she injured her neck and shoulder. This evidence

further supported the "situational" nature of her problem, indicating that her neck and shoulder condition was not previously disabling.

OPM's contention that the supervisor's statement said performance was satisfactory--that is, there was no service deficiency--was not refuted at the hearing. The applicant addressed the issue indirectly, pointing out her attendance deficiencies and her difficulty in performing certain tasks.

We noted that the agency coordinator for handicapped employees certified that the employee's physical and/or mental conditions precluded reassignment or a trial detail. However, the employee testified that during the period of alleged disability, she had applied for a transfer to comparably graded jobs in other locations 12 times and had made the best qualified list for some of them. She also noted two cases in particular where she was led to believe by former supervisors that she would be selected. The inconsistency between the applicant's testimony and the agency's certification was not addressed by MSPB.

The person in the preceding case can receive \$225,000 in disability benefit payments by the time she becomes eligible for normal retirement. We computed benefit payments in a similar way for the 14 other cases with arguable deficiencies and found that the total payments for the 15 cases would be \$1.4 million. We cannot say that OPM's presence would have made these payments unnecessary, but we do feel that if OPM officials had attended the hearing, they could have made MSPB aware of these arguable issues before it made its decision.

OPM NEGLECTED DEFENDING PAST APPEALS
BUT HAS DEVELOPED A DEFENSE STRATEGY

OPM officials chose not to actively defend appealed cases because they believed priority should be given to reducing the backlog of initial and reconsideration claims and improving disability claim forms, decision criteria, and processing procedures. In addition, the officials said they were uncertain about who should represent OPM and how much such representation would cost.

As OPM completed the reorganization of its disability claims processing division and its training of new claims examiners in March 1982, it began to look for ways to reduce MSPB reversals.

In May 1982, OPM assigned the responsibility for providing case files to MSPB to its record center in Boyers, Pennsylvania, where the files are stored. Previously, claims reviewers at OPM headquarters had been responsible. OPM believes this change will reduce the time it takes to furnish these records.

Also, responsibility for defending OPM's decisions was shifted from one doctor to the newly formed reconsideration claims unit consisting of two doctors and five claims specialists. After we completed our work in August 1982, the group began using various types of appeal responses designed to better explain OPM's reasons for claims denial. The effectiveness of these initial efforts was hampered because OPM sometimes missed getting these analyses to MSPB within the allowed time. The responsible OPM official attributed missed deadlines to too short response time allowed by MSPB, too few claims reviewers to handle both appeal responses and the reconsideration workload, and too few typists to get the work out on time. This official also was concerned because he had not seen any MSPB decisions in which these responses were cited.

The OPM official responsible for appeals processing accompanied us, in an unofficial capacity, to an MSPB hearing in June 1982. Based on this experience and on information we obtained from MSPB, the official found that OPM need not be represented by a physician, because any OPM representative should be able to obtain MSPB permission to submit a posthearing closing argument, which could be prepared with a physician's assistance.

OPM management was considering a four-point strategy for reducing appeal losses

- attending selected hearings (about 15 hearings, in Washington, D.C., and at least 1 in each of MSPB's 10 regional locations),
- Obtaining copies of new evidence that the applicant will submit at hearings,
- communicating OPM decision criteria to MSPB, and
- writing better decision explanations (for both initial decisions and reconsiderations).

OPM officials said they were delaying a decision on carrying out this strategy until there are further reductions in the claims backlog and procedures are improved.

We feel that OPM needs to act quickly on the proposed strategy to avoid unnecessary reversals by MSPB. As of October 1, 1982, there were 426 disability retirement appeals awaiting MSPB action. We believe many of these cases will have deficiencies similar to those in the cases we reviewed. These cases received reconsideration decisions just before the start of OPM's revised decision process and are based on evidence collected from forms known to be deficient.

The resources needed for an active defense would not be substantial. An official estimated that, in fiscal year 1983, OPM would need about \$150,000 to carry out the strategy, including attending hearings. On the basis of the 25 sample cases, we estimate that travel costs would average about \$330 for each case. We cannot project how much OPM would save by carrying out the four-point strategy, but we noted that in the 15 cases we found still arguable, the extra disability costs averaged \$93,000 per case. Thus, with only a few successes, the savings could far exceed the cost of carrying out the strategy.

CONCLUSIONS

OPM decided in fiscal year 1982 to use additional available resources on long-term improvements in forms, procedures, criterion development, and on processing initial and reconsideration decisions. We believe that these changes can reduce the number of MSPB appeals in two ways: by making faster decisions on legitimate claims, and by clearly showing applicants with unsupported claims that they will not receive approval if they are unable to supply necessary documentation. However, OPM presently faces a large number of MSPB appeals based on its previous reconsideration process, which has been recognized as deficient.

We believe that OPM has developed a reasonable strategy, which, if carried out, should reduce the number of decisions reversed. The new strategy will give MSPB the benefit of OPM's expertise in evaluating any new evidence. Although OPM management wants the initial claims backlog and procedural improvements to take precedence, we believe the potential for unwarranted benefit payments in fiscal year 1983 and beyond is too large to ignore.

RECOMMENDATION

We recommend that the Director, OPM, carry out OPM's proposed strategy for evaluating and defending disability decisions appealed to MSPB.

AGENCY COMMENTS AND OUR EVALUATION

OPM generally agreed with our findings, conclusions, and recommendation concerning evaluating and defending appealed decisions, and is moving to implement this recommendation. (See app. I.) OPM said its action plan incorporates the features described in the report, except that it plans to begin attending hearings in Washington, D.C. only. Then, it will evaluate the results before making a decision about expanding to other geographical areas. The cost of this strategy should be lower than that described in the report.

In its comments, MSPB suggested some corrections and clarifications to Chapter 3, which have been incorporated in the report. (See app. II.)



United States
**Office of
 Personnel Management**

Washington, D.C. 20415

JAN 25 1983

In Reply Refer To

Your Reference:

Honorable Charles A. Bowsher
 Comptroller General
 General Accounting Office
 Washington, D.C. 20548

Dear Mr. Bowsher:

We have reviewed your draft report to the Chairwoman, Subcommittee on Manpower and Housing, House Committee on Government Operations, on the Office of Personnel Management's disability retirement program (GAO/FPCD-83-1).

Considering that the report is based largely on data concerning cases processed between March, 1981, and March, 1982, and that very significant changes have been made in the handling of disability cases since that time, the report overall presents an accurate picture of the recent improvements we have achieved in the disability retirement program and some of those we plan for the near future. We would like to update or correct the report on a few relatively minor points; the last section of this response provides that information. First, however, we will focus on the six recommendations contained in the report.

GAO Recommendation

Require that claims reviewers confirm questionable agency accommodation efforts before denying claims.

OPM Comments

On page 6, it is accurately noted that OPM guidance to reviewers was that they should not question agency certification of attempts to retain employees through accommodation or reassignment. This guidance has been recently reinforced, especially through new requirements for reviewers to document the bases for the claims decision. Until the proposed new disability retirement application forms come into use, we will not look behind agency certification on these points. Agency and applicant responses to items on the new forms should enable us to determine adequacy of reassignment and accommodation efforts without further confirmation.

We feel that this first recommendation has, in effect, already been implemented.

(GAO Note: Page references have been changed to agree with the final report.)

GAO Recommendation

Develop criteria for mental illness cases using generally accepted psychiatric principles and practices and provide psychiatric expertise as necessary.

OPM Comments

As suggested by the GAO team, we have purchased copies of the standard psychiatric diagnostic reference manual, "Diagnostic and Statistical Manual of Mental Disorders--Third Edition 1980" (DSM-III). We have made contact with a recognized psychiatric expert and have begun preliminary discussions about how he can assist us in developing criteria for cases involving mental conditions. We also retained him to provide expert input on one case.

We are well on our way toward implementing this GAO recommendation.

GAO Recommendation

Use the revised claim forms and instructions.

OPM Comments

The proposed forms have been sent, along with thoroughly revised Federal Personnel Manual (FPM) material, to agencies and unions for comments, due January 31, 1983. Immediately upon final issuance of the package, the old application forms will be obsolete and the new ones required.

We are eager to implement this GAO recommendation.

GAO Recommendation

Until the new forms and instructions are in use, give applicants an additional opportunity to provide lacking support prior to the initial decision.

OPM Comments

We believe that implementation of this recommendation would fail to achieve the expressed purpose--reduction in the time it takes to approve cases. Since the time of the GAO survey, we have worked to reduce processing time of reconsideration cases through aggressive production management efforts. Reviewing cases twice in the initial decision stage, as would be required if we gave applicants an additional opportunity to provide lacking information, would obviously require considerably more staff hours per case decision. This GAO recommendation is based on the assumption that additional information provided by the applicant is likely to result in allowance of the claim. This premise is supported by the survey

data showing that 51 of the 69 reconsideration cases (74%) were allowed after more documentation had been submitted (page 10). If the additional documentation had been solicited in the initial decision process, only 18 of the cases would have had to go through the more time-consuming reconsideration process. However, the current situation is quite different from the one on which GAO based this recommendation. Because of stricter application of criteria, in the first quarter of the current fiscal year, only approximately 22% of reconsideration cases were allowed, even though we have been giving applicants, whose initial claims are disallowed, more detailed information on what kind of documentation is needed to support an allowance on reconsideration. Consequently, of 69 cases, 53 rather than 18, would have to go through reconsideration, even though they had been reviewed twice in the initial stage.

Now that the odds are against the likelihood that additional applicant opportunity to provide information will result in allowance, we cannot justify the expenditure of reviewer staff hours in the extra review cycle that would be required by this recommendation. In any case, we agree with GAO that use of the new forms will obviate the necessity to seek additional information in the initial stage.

(GAO COMMENT: As stated on page 14 of this report, the proposal has not been retained in the final report.)

GAO Recommendation

Notify applicants of the specific reasons their initial claims are disallowed.

OPM Comments

The report reflects that preparation of individual letters explaining the reasons for disallowance of initial claims is our ultimate objective but that we are unable to implement it at this time. The new disallowance notification form is a more significant improvement than the report indicates, for it specifies the criteria which were not met by the claim submitted. It would state, for example, (1) that the evidence failed to demonstrate that the documented service deficiency was caused by the documented medical condition and (2) that the reconsideration request should contain an explanation of the impact of the medical condition on the applicant's life activities both on and off this job, if that were the case.

We plan to implement this GAO recommendation within the next 6 months.

GAO Recommendation

Carry out without further delay the proposed strategy for evaluating and defending disability decisions appealed to MSPB.

OPM Comments

Although we still believe that limited resources are best utilized in upgrading the quality of case decisions and of documentation and explanation of the bases for those decisions, we have already begun to implement an action plan similar to the proposal described in the report. These efforts have already resulted in reduction of the percentage of OPM decisions reversed by MSPB. The report described a reversal rate of 49% in FY '81 and 52% in FY '82. Actually, the rate began to fall in mid '82. In the last half of '82, it was 37%. For the first quarter of FY '83, it has been reduced to 23%.

The action plan we have begun to implement contains four primary goals: (1) improve decision quality, (2) improve internal procedures for appeals processing, (3) communicate to MSPB our program objectives, decision criteria, and decision policies, and (4) provide OPM representation at selected MSPB hearings. It incorporates the features described in the report except that we plan to begin attending hearings only in Washington, D.C., in order to develop representational expertise, and then to evaluate the results of these local efforts before expanding to other geographical areas. The cost, therefore, of our strategy is significantly lower than that described in the report.

We are moving quickly to implement this recommendation.

Other Corrections and Update Information

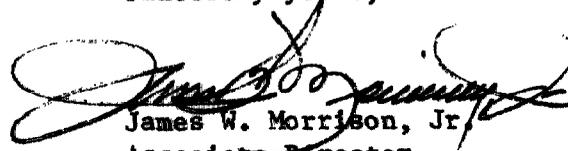
-- On page 16, the report inaccurately indicates that if OPM fails to deliver the case file within the specified time frame, the MSPB may rule for the appellant as a sanction for OPM's failure to defend. A decision of the Board (Miller v. OPM, MSPB Order No. CH831L8010103 (August 25, 1981)) held that if OPM fails to provide the file, the MSPB will decide the appeal based solely upon the evidence furnished by the appellant. In such a case, the appellant must still demonstrate that the requirements for disability retirement have been met.

-- Through attrition, we now have seven physicians on staff, rather than nine. We also have increased the number of disability claims specialists from 10 to 11 (page 2).

(GAO NOTE: The report has been changed to reflect OPM's corrections and comments to the text.)

Thank you for the opportunity to review this draft. I look forward to inclusion of our comments in your final report.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "James W. Morrison, Jr.", is written over the typed name.

James W. Morrison, Jr.
Associate Director
for Compensation



U.S. MERIT SYSTEMS PROTECTION BOARD
Washington, D.C. 20419

January 27, 1983

Mr. Clifford I. Gould
Director
Federal Personnel and
Compensation Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Gould:

Having reviewed the GAO Draft Report on the Office of Personnel Management's Disability Retirement Program, I have a few recommendations for your consideration.

First, on page 15 of the report, reference is made to the backlog of disability cases awaiting action by this Board on October 1, 1981 and October 1, 1982. The figures cited do not comport with our records. Our data shows 110 and 426 disability cases pending on October 1, 1981 and October 1, 1982, respectively. You may wish to adjust your figures accordingly.

Second, page 16 addresses the selection of a hearing site. The report was prepared on the basis of information gathered prior to the establishment of our new hearing site policy. We now schedule hearings at fixed neutral hearing sites. A list of these sites was published in 47 Fed. Reg. 50,386 (1982). (Alternate accommodations may be made if circumstances so indicate.) The report may be modified to reflect this policy change.

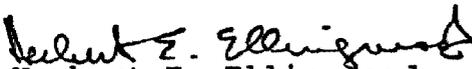
Lastly, page 19 refers to the weight given, by presiding officials, to the medical evidence offered by appellant's treating physician. The report suggests that in the absence of contradictory evidence from OPM, the presiding official is bound by all the conclusions and opinions presented by the appellant's physician. This should not be presented as a mandatory course.

(GAO NOTES: The report has been changed to reflect MSPB's corrections and comments to the text. The page references have been changed to agree with the final report.)

Even in the absence of OPM challenge, the treatment given such evidence may differ according to the credibility and substance of the evidence. The presiding official may give very little weight to evidence which clearly appears, even to a layman in medicine, to be inconsistent or trivial.

I appreciate the opportunity to review the GAO Draft Report. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,


Herbert E. Ellingwood
Chairman

24785

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