



SOCIAL SECURITY

MEMORANDUM

Date: May 12, 2009

Refer To:

To: The Commissioner

From: Inspector General

Subject: Quick Response Evaluation: Processing of Railroad Worker Disability Claims (A-05-09-29119)

The attached final quick response evaluation presents the results of our review. Our objectives were to determine the risks, if any, to the Social Security Administration's Disability Insurance Trust Fund due to allegations related to Railroad Retirement Board disability claims from Long Island Rail Road employees.

If you wish to discuss the final report, please call me or have your staff contact Steven L. Schaeffer, Assistant Inspector General for Audit, at (410) 965-9700.

A handwritten signature in black ink, appearing to read "Patrick P. O'Carroll, Jr." with a stylized flourish at the end.

Patrick P. O'Carroll, Jr.

Attachment

QUICK RESPONSE EVALUATION

Processing of Railroad Worker Disability Claims

A-05-09-29119



May 2009

Mission

By conducting independent and objective audits, evaluations and investigations, we inspire public confidence in the integrity and security of SSA's programs and operations and protect them against fraud, waste and abuse. We provide timely, useful and reliable information and advice to Administration officials, Congress and the public.

Authority

The Inspector General Act created independent audit and investigative units, called the Office of Inspector General (OIG). The mission of the OIG, as spelled out in the Act, is to:

- Conduct and supervise independent and objective audits and investigations relating to agency programs and operations.
- Promote economy, effectiveness, and efficiency within the agency.
- Prevent and detect fraud, waste, and abuse in agency programs and operations.
- Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.
- Keep the agency head and the Congress fully and currently informed of problems in agency programs and operations.

To ensure objectivity, the IG Act empowers the IG with:

- Independence to determine what reviews to perform.
- Access to all information necessary for the reviews.
- Authority to publish findings and recommendations based on the reviews.

Vision

We strive for continual improvement in SSA's programs, operations and management by proactively seeking new ways to prevent and deter fraud, waste and abuse. We commit to integrity and excellence by supporting an environment that provides a valuable public service while encouraging employee development and retention and fostering diversity and innovation.

OBJECTIVE

To determine the risks, if any, to the Social Security Administration's (SSA) Disability Insurance (DI) Trust Fund due to allegations related to Railroad Retirement Board (RRB) disability claims from Long Island Rail Road (LIRR) employees.

BACKGROUND

The RRB is a Federal agency that administers comprehensive income security programs for the nation's railroad employees, retirees, and their families under the *Railroad Retirement (RRA)* and *Railroad Unemployment Insurance Acts*.¹ The RRB administers the RRA, which provides for two types of disability annuities —occupational disability and total and permanent disability (hereafter referred to as “permanent disability”). Occupational disability benefits, funded solely by RRB, are paid to workers who are unable to perform the work of their regular railroad occupation. Permanent disability benefits are paid to workers who are totally disabled for all types of employment. SSA and RRB use the same definition of permanent disability, which is more stringent than the criteria for establishing an occupational disability.² In addition, both SSA and RRB fund the RRB permanent disability program.³

An example of an occupational disability situation would be a railroad engineer, whose work often requires that he climb, bend, stretch, reach, crouch and kneel, injuring his leg. If, based on medical evidence, the engineer is precluded from performing these actions, the engineer would be determined to be occupationally disabled. However, if his condition is not severe enough to prevent him from performing other substantial gainful work elsewhere in the economy, he would not meet SSA's definition of permanent disability.⁴

¹ In this report, we are only focusing on disability benefits.

² The non-medical eligibility for an occupational disability is more stringent than for a permanent disability. See Appendix B for more information on the eligibility criteria for both programs.

³ RRB funding comes from a variety of sources, including SSA reimbursement (see Appendix C).

⁴ In addition, if an employee is found disabled under the RRA, the RRB will determine whether the employee is disabled under the Social Security Act to qualify for a period of disability (disability freeze).

DISABILITY WORKLOADS

In September 1983, SSA's Great Lakes Program Service Center (GLPSC) in Chicago was given the responsibility for processing railroad workers' disability claims.⁵ The GLPSC-Disability Processing Branch (DPB) serves as a de facto disability determination services (DDS)⁶ for this program. The DPB and RRB process a number of workloads, including the following.

- **Dual Eligibility Claim:** Relates to a career railroad worker's claim that originated in an SSA field office (see Appendix D).
- **Joint Freeze:**⁷ Relates to a career railroad worker's claim that originated with the RRB. The claimant's medical evidence is reviewed by both SSA and RRB for concurrence for a period of disability that may relate to benefits under both programs (see Appendix E).
- **Unilateral Freeze:** Relates to a career railroad worker's claim that originated with the RRB. The claim went through the Joint Freeze process whereby RRB coordinates the decision with SSA. In this case, SSA does not agree with RRB's approval, but RRB independently decides to approve the claim and fund the disability benefits from its own resources (see Appendix F).
- **Single Freeze:** Relates to a career railroad worker's claim that originated with RRB. In general, RRB makes an independent decision on the claim without SSA's review of the decision (see Appendix F).⁸

⁵ The GLPSC also performs the other primary missions of a program service center, including (1) processing Social Security claims and post-adjudicative changes after beneficiaries have been entitled and (2) performing formal and informal reconsideration of determinations.

⁶ DDSs in each State perform disability determinations of claimants' medical eligibility for SSA programs and ensure that adequate evidence is available to support its determinations.

⁷ A "freeze" is a determination of eligibility for permanent disability benefits.

⁸ As we discuss later in this section, Single Freeze cases in the 1-percent sample are reviewed by both agencies as part of the Financial Interchange process.

FINANCIAL INTERCHANGE

While RRB and SSA are separate entities, they closely coordinate the financing of permanent disability benefits. Under the *Financial Interchange*, SSA reimburses RRB for permanent disability benefit payments in excess of collected payroll and income taxes. RRB's trust fund is reimbursed from SSA's DI Trust Fund (see Appendix C).⁹ The Financial Interchange is based on a 1-percent sample of railroad workers in the economy, including those receiving SSA's Title II disability benefits or RRB's permanent disability benefits (considered as Title II equivalent).

LIRR

In September 2008, Federal agents searched the Westbury, New York, RRB office on Long Island. News articles alleged the RRB made medical determinations for occupational disability cases based on questionable medical evidence submitted to the Westbury office by applicants. While SSA does not reimburse RRB for occupational disability benefits, the allegations highlighted potential vulnerabilities within the RRB's overall disability process. Following the media attention, the RRB initiated changes to the occupational disability process (see Appendix G).

⁹ These amounts are adjusted for certain costs, such as administrative expenses and interest.

Results of Review

We found the risk to SSA's DI Trust Fund depends on the controls in the SSA and RRB disability review processes. The two agencies have established various disability determination processes, each of which has its own risks. In addition, we found that RRB initiated the occupational and permanent disability processes with the same medical evidence. Moreover, SSA does not see all of the cases that will be reimbursed by the DI Trust Fund but instead reviews a 1-percent sample. In this regard, we identified a number of areas related to program oversight as well as policies and procedures where stronger controls and better documentation could help mitigate the risk to the DI Trust Fund.

REVIEW OF MEDICAL EVIDENCE

In our review of the RRB disability process, we determined that both RRB and SSA initially rely on medical evidence developed for an RRB occupational disability claim. Moreover, SSA does not review all of the permanent disability decisions made by RRB. Instead, SSA based its financial transfers to RRB on a 1-percent sample of cases reviewed by both SSA and RRB.

SOURCE OF MEDICAL EVIDENCE

RRB and SSA have agreed to provide each other with copies of medical evidence received in connection with disability claims to avoid duplication of development. Railroad workers file one application with RRB to qualify for either occupational or permanent disability benefits.¹⁰ In general, RRB starts with this same medical evidence when making a permanent disability decision under the Single Freeze process,¹¹ which may lead to SSA's funding of the disability case. Moreover, during the Joint Freeze process where SSA also reviews the case, SSA obtains all medical evidence from RRB rather than independently. Finally, even if SSA receives an application directly from a railroad worker at a field office under the Dual Eligibility process, SSA requests from RRB any medical evidence of record that it may have on former RRB workers. If the medical evidence of record is complete and sufficient for SSA to make a disability determination, SSA will rely on the medical evidence received from RRB to make its determination. If not, SSA will further develop the claim by requesting additional medical evidence or scheduling a medical examination.

¹⁰ Not all applicants are eligible to receive both types of benefits. It is possible that an individual does not have enough time with the RRB to qualify for occupational disability but is still eligible for a permanent disability decision.

¹¹ A finding of permanent disability requires sufficient evidence that indicates a greater degree of impairment.

As a result, SSA relies on RRB's internal controls over medical evidence for many of the permanent disability cases that will eventually be reimbursed as part of the Financial Interchange. This being the case, it is essential SSA ensures that RRB maintains credible internal controls over its process for collecting this medical evidence.

SSA REVIEW OF FREEZE DECISIONS

Most career railroad workers' permanent disability cases are not sent to SSA for an independent review. As an independent Federal agency, RRB has the authority under the RRA to make decisions regarding railroad workers' eligibility for permanent disability benefits.¹² Currently, RRB makes an independent decision, commonly called a Single Freeze, for approximately two-thirds of railroad workers' permanent disability benefit applications that are subject to reimbursement through the SSA and RRB Financial Interchange. RRB shares the remaining one-third of the applications with SSA as part of the Joint Freeze process.¹³

The one-third of applications shared with SSA under the Joint Freeze includes sample cases used as part of the Financial Interchange process.¹⁴ This sample comprises cases where the two terminal digits of the railroad workers' Social Security number end in "30."¹⁵ As a result, approximately 1 percent of all cases, whether they were originally slated for a Single Freeze or a Joint Freeze, undergoes a review by both agencies before being used in the Financial Interchange process to determine the volume of transfers between SSA and RRB. For FY 2007, approximately \$418 million in monetary transfers through the Financial Interchange was dependent on a 1-percent sample of permanent disability cases.¹⁶ SSA actuaries stated it is necessary to maintain the same Social Security number selection criterion from year to year to ensure consistent treatment regarding periodic revisions of benefits.

¹² Disability decisions are categorized as a Single or Joint Freeze based on set criteria.

¹³ In Fiscal Year (FY) 2008, the GLPSC reported it processed approximately 1,956 Joint Freeze cases from RRB. We did not independently verify this number, and neither SSA nor RRB could provide additional support for the number of Joint Freeze awarded versus denied.

¹⁴ See Appendix C for more on the Financial Interchange process.

¹⁵ SSA, Program Operations Manual System (POMS) DI 44001.025, § A.4.b—*Joint Determination Cases*.

¹⁶ In the FY 2007 determination, the Financial Interchange sample contained 329 items related to an estimated universe of 34,312 permanently disabled cases. We did not independently verify these numbers.

PROGRAM OVERSIGHT

We identified a number of areas where stronger program oversight could help mitigate the risk to the DI Trust Fund, including greater monitoring of (1) Dual Eligibility decisions and (2) sample cases used as part of the Financial Interchange.

OVERSIGHT OF GLPSC-DPB DECISIONS

DPB performs the same functions of a State DDS but is not subject to the same requirements. In addition, SSA's guidance is inconsistent on the oversight of the DPB workload. DPB has jurisdiction for disability claims filed by railroad workers.¹⁷ These cases are adjudicated in the DPB and approved by the Regional Medical Consultant Staff (RMCS).¹⁸ However, unlike the DDSs, the DPB claims are not subject to quality assurance (QA) reviews.¹⁹ QA reviews involve an independent review of a sample of disability decisions. These reviews determine whether individual State DDSs perform acceptably in terms of decisional accuracy and documentation requirements.

During our review, we also found contradictory policies regarding GLPSC's responsibilities to perform QA reviews for railroad workers' claims. One SSA POMS section requires that SSA perform quality reviews of railroad workers' claims.²⁰ Specifically, POMS states, "Periodically, SSA does a [QA] review of the Social Security disability determinations on railroad claims in the Disability Quality Branch (DQB) in the Chicago Office of Regional Program and Integrity Reviews."

Another POMS section indicates that the railroad worker's claims will not routinely be reviewed even though they are selected for quality review.²¹ Specifically this reference states, "Since the Chicago [RMCS] will have already evaluated the medical evidence, impairment severity, and when applicable, residual functional capacity, it will not routinely review railroad claims selected for quality review." Moreover, in a March 1988 memorandum, SSA's Associate Commissioner for Program and Integrity Reviews²² issued a directive to

¹⁷ SSA, POMS, DI 44001.005, § A—*General*. This section also indicates that the GLPSC has jurisdiction over disabled dependents of deceased career railroad workers.

¹⁸ RMCS staff is contracted by the GLPSC to perform medical reviews of disability claims. In general, RMCS staff also performs QA reviews at State DDSs.

¹⁹ SSA, POMS, DI 30005.005—*Types of Federal Quality Reviews*.

²⁰ SSA, POMS, GN 04442.001—*Overview-Background of Quality Assurance Review of Railroad Disability Claims*.

²¹ SSA, POMS, GN 04442.110, § A.2—*Medical Review Policy*.

²² This component is now called the Office of Quality Performance.

discontinue ongoing quality reviews of railroad disability determinations at the GLPSC. However, the directive indicated the ongoing quality reviews were to be substituted with short-term reviews twice a year. GLPSC representatives stated there are no records of any short-term reviews being done or any directives concerning them.

The least amount of oversight by SSA relates to the Dual Eligibility cases²³ since only SSA staff adjudicates these claims for railroad workers. By comparison, the Joint Freeze claims are reviewed by medical consultants at both SSA and RRB. Because SSA does not perform QA reviews, it lacks assurance the Dual Eligibility claims are being processed and approved in accordance with SSA's guidelines. We believe SSA should subject its own operations to the same level of review used at the State DDS level. SSA management said the Agency is initiating steps for an ongoing quality review.

FINANCIAL INTERCHANGE

The Financial Interchange sample data have not been reviewed for about 7 years. The last review was completed in June 2002 and related to the 1996 – 1997 Financial Interchange determinations. Such reviews assess the accuracy of non-medical issues, such as benefit calculations, entitlement, work deductions, and clerical errors. GLPSC conducted the June 2002 review and examined 540 cases,²⁴ of which 55 had errors affecting the Trust Funds for historical actions taken through the 1997 determination, for a case accuracy rate of 89.8 percent.²⁵ According to the RRB Actuary, the 540 cases represented a judgmental sample of more difficult cases with a greater potential for error and consisted largely of retirement and survivor cases charged to the Old-Age and Survivors Insurance Trust Fund. Neither the GLPSC staff nor Office of the Actuary staff knows when the next Financial Interchange review will take place. Given the importance of this process in verifying the underlying transfers from SSA's Trust Funds, the Agency should establish a schedule for ensuring these reviews regularly occur.

²³ In FY 2008, the DPB reported it processed approximately 1,237 dual eligibility cases. We did not independently verify this number.

²⁴ The 540 sample cases included retirement and disability cases.

²⁵ According to the review document, about half of these errors represented adjustment amounts (before inflation) of less than \$100. Overall, SSA owed RRB approximately \$19,000 as a result of the detected errors. The review also covered years outside the scope of the review and identified another \$57,000 due to SSA, for a net effect (with the above amount) of \$38,000 due to the SSA Trust Funds.

POLICIES AND PROCEDURES

We identified a number of areas where improved policies and procedures could help mitigate the risk to the DI Trust Fund, including reviews of (1) the disability Memorandum of Understanding (MOU) between SSA and RRB, (2) POMS, and (3) RRB changes to the occupational disability process.

DISABILITY AND FINANCIAL INTERCHANGE MOUs

We found the disability process documented in an MOU between SSA and RRB had not been modified since 1987, and portions of the MOU were not being followed during our review period. For example, we learned that RRB was not sharing management information with SSA related to its decision to grant Unilateral Freeze benefits to railroad workers denied by SSA.²⁶ According to the 1987 MOU with SSA, RRB may make a Unilateral Freeze decision if an agreement with SSA cannot be reached. The MOU also states that RRB must notify SSA when a Unilateral Freeze decision is made. In FYs 2007 and 2008, RRB estimates it granted 85 and 82 Unilateral Freezes, respectively, at the initial and reconsideration levels, of the total initial decisions of 5,786 for FY 2007 and 5,214 for FY 2008.²⁷

Since we began our review, RRB has updated its procedures regarding its notification of Unilateral Freeze cases. In a January 20, 2009 *Office of Programs Procedure Transmittal*, RRB stated it will formally advise SSA of its decision regarding Unilateral Freeze cases, including any additional evidence or supporting rationale it may choose to provide.

We also found that the disability MOU was not consistent with other RRB documents. The MOU states, "Unilateral and single disability freeze claims are awarded by the RRB or the RRB appeals process and are certified solely from RRB funds." However, in our discussions with RRB staff involved in the Financial Interchange process, we were told that this MOU statement is incorrect, and SSA reimburses RRB for the Single Freeze awards. While we were able to confirm this statement using other internal documents from RRB, we were not able to find specific mention of Single or Unilateral Freezes in the Financial Interchange document.²⁸ Actuary staff at both SSA and RRB agreed that the

²⁶ Any disability benefits rendered to a railroad worker because of an approval of a Unilateral Freeze is paid by RRB, and SSA should not reimburse RRB through the Financial Interchange process for those benefits.

²⁷ These figures were provided by RRB. We did not independently verify these numbers.

²⁸ See Appendix C for some of the language in the Financial Interchange document.

Financial Interchange itself does not have a formal MOU outlining the interchange procedures, to include issues regarding which cases SSA has agreed to reimburse. The staff stated that the annual document serves as the MOU.

A periodic review of the disability MOU by both agencies may detect other issues that may be in need of correction. Moreover, a second MOU to cover the Financial Interchange process may also be useful since it could document the existing process for calculating the amounts interchanged, highlight past and present changes due to new legislation and other factors, and ensure a single set of procedures is readily available to current and future staff responsible for the Financial Interchange process. SSA management stated that the Agency has taken steps to (1) clarify and update the Financial Interchange process; (2) review and update policies and procedures, including the MOU; and (3) initiate an information exchange agreement with RRB.

POMS

The POMS sections describing the DPB processing of railroad claims was not current at the time of our review. A clear set of updated and published procedures will be necessary if SSA is to hold the DPB accountable in future QA reviews.²⁹ Moreover, POMS is a public document that makes the SSA process more transparent to interested parties, including the RRB. The DPB has a business process document for performing its workload. However, the DPB business process has not been formalized and incorporated into the POMS. While the field office procedures related to railroad workers was updated in 2008, an SSA representative acknowledged the GLPSC-related POMS had not been updated since March 1986. The SSA representative stated she was using the DPB business process document to update the DPB disability process in the POMS. SSA management noted that the Agency has initiated steps to review and update policies and procedures, including POMS, and train personnel on the identification and proper handling of these claims.

CHANGES TO THE OCCUPATIONAL DISABILITY PROCESS

RRB has initiated greater controls over portions of the occupational disability review process but has not modified the permanent disability review process. As a result of the LIRR allegations, RRB is reevaluating its controls over the occupational disability review process and has implemented some changes. On October 21, 2008, the Chairman to the RRB issued the transcript of the Board's order to consider several recommendations concerning occupational disability claims, including a recommendation that "...the RRB will develop and implement a program to conduct independent medical reviews of present and future

²⁹ As noted earlier, some POMS sections are contradictory on such issues as the need for QA reviews.

occupational disability applications. The independent medical evaluators must be RRB-approved physicians, not specifically labor or management affiliates, who are familiar with railroad injuries.”

Other recommendations relating to the LIRR allegations include (1) reevaluating dubious disability claims, (2) greater oversight controls over the Long Island RRB office and its employees, (3) program changes that would trigger internal investigations, and (4) stringent reviews of management employees accessing the occupational disability program.³⁰

RRB staff informed us they were not aware of any adjustments to the occupational or permanent disability process beyond the LIRR employees.³¹ We believe SSA may benefit from discussions with the RRB concerning these changes to determine whether they should be expanded beyond the LIRR employees to the rest of the disability process, since this same medical evidence is used to initiate both occupational and permanent disability claims. SSA management stated the Agency has an initiative to possibly reopen those LIRR cases potentially impacting SSA’s DI Trust Fund.

³⁰ See Appendix G for more information on these recommendations to the RRB.

³¹ RRB staff also stated that any decision on program changes would most likely occur after the completion of the multiple audits of their program. At the time of our review, in addition to our SSA Office of the Inspector General (OIG) review, RRB’s disability process was being reviewed by the RRB OIG and the Government Accountability Office.

Matters for Consideration

Railroad disability claims received by SSA often started as part of the occupational disability application process in RRB, the same process involved in the recent allegations involving LIRR employees. As a result, the risk to the DI Trust Fund is dependent on the controls in SSA and RRB's disability review processes. Our review has identified a number of areas related to program oversight as well as policies and procedures where stronger controls could help mitigate the risk to the DI Trust Fund. We believe SSA could improve the underlying policies and procedures to ensure they are well documented, adhered to, and periodically reviewed by the two agencies. Moreover, we believe SSA should consider increased oversight of the SSA/RRB disability determination and Financial Interchange processes to ensure consistency and accuracy between the two agencies. SSA management noted the Agency is initiating steps in a number of these areas to improve the overall process.

Appendices

APPENDIX A – Acronyms

APPENDIX B – Railroad Retirement Board

APPENDIX C – Social Security Administration and Railroad Retirement Board Financial Interchange Process

APPENDIX D – Railroad Worker Claim Processing – Social Security Administration

APPENDIX E – Railroad Worker Claim Processing – Joint Freeze

APPENDIX F – Railroad Worker Claim Processing – Railroad Retirement Board

APPENDIX G – Occupational Disability Process Changes

APPENDIX H – Scope and Methodology

APPENDIX I – OIG Contacts and Staff Acknowledgments

Acronyms

| | |
|-------|------------------------------------|
| DCM | Disability Claims Manual |
| DDS | Disability Determination Services |
| DI | Disability Insurance |
| DPB | Disability Processing Branch |
| DQB | Disability Quality Branch |
| FO | Field Office |
| FY | Fiscal Year |
| GLPSC | Great Lakes Program Service Center |
| LIRR | Long Island Rail Road |
| MOU | Memorandum of Understanding |
| OASI | Old-Age and Survivors Insurance |
| OIG | Office of the Inspector General |
| OQP | Office of Quality Performance |
| RMCS | Regional Medical Consultant Staff |
| POMS | Program Operations Manual System |
| QA | Quality Assurance |
| RRA | <i>Railroad Retirement Act</i> |
| RRB | Railroad Retirement Board |
| SSA | Social Security Administration |
| SSEB | Social Security Equivalent Benefit |

Railroad Retirement Board

The Railroad Retirement Board (RRB), as an independent agency in the Executive Branch of the Government, is responsible for administering the *Railroad Retirement (RRA)* and *Railroad Unemployment Insurance Acts*. The RRB is headed by three Board Members appointed by the President, with the advice and consent of the Senate. The Board Members' terms of office are 5 years and are scheduled to expire in different years. The role of the RRB includes determining and paying benefits under the railroad retirement, survivor and disability insurance programs. The RRB has a field structure comprised of 53 offices nationwide, and it is headquartered in Chicago, Illinois.

The RRB was created by 1930's legislation establishing a retirement benefit program for the nation's railroad workers. Legislation was enacted in 1934, 1935, and 1937 to establish a railroad retirement system separate from the Social Security Administration (SSA) program legislated in 1935. While the railroad retirement system has remained separate from the SSA system, the two systems are closely coordinated with regard to earnings credits, benefit payments, and taxes. The financing of the two systems is linked through a Financial Interchange under which, in effect, the portion of railroad retirement annuities that is equivalent to SSA benefits is coordinated with the SSA system (see Appendix C for more information on the Financial Interchange).

Legislation enacted in 1974 restructured railroad retirement benefits into two tiers to coordinate them more fully with SSA benefits. Tier One benefits are based on combined SSA and RRB credits, using SSA's Old-Age, Survivors and Disability Insurance benefit formulas.¹ Tier Two benefits are based on railroad service only and these benefits are comparable to the private pensions paid over and above SSA benefits in other industries. RRB and SSA share jurisdiction over the payment of disability benefits.

¹ Railroad employees are taxed under Tier One at the same SSA and Medicare rates as employees in other industries.

OCCUPATIONAL DISABILITY BENEFITS

The occupational disability program is funded entirely from the RRB's trust fund, which is funded from taxes imposed on all railroad employees and railroad companies. SSA Trust Fund money or revenues are not used to fund the occupational disability program.

To receive an RRB occupational disability annuity, a worker must be unable to work in his or her regular job. Specifically, the worker must

- have a current connection with the railroad industry; and
- have 240 months of creditable railroad service, or 120 months of creditable railroad service and be at least 60; and
- be permanently disabled for work in his or her regular railroad occupation.

TOTAL AND PERMANENT DISABILITY BENEFITS

Permanent disability benefits are paid to workers who are totally disabled for all types of employment. RRB uses SSA's definition of permanent disability in deciding claims. The RRB total and permanent disability program is funded by both SSA and RRB.

To receive a total and permanent disability annuity, a worker must be totally disabled for all work. Specifically, the worker must

- stop all work; and
- have 120 months of creditable railroad service, or at least 60 months of creditable railroad service after 1995; and
- be permanently disabled for any kind of regular work.

Social Security Administration and Railroad Retirement Board Financial Interchange Process

The Financial Interchange process places the Social Security Administration's (SSA) Disability Insurance (DI) Trust Fund in the same position it would be in if railroad service was covered by the SSA program instead of the Railroad Retirement Board (RRB) program.¹ Every year, estimates are made of the additional benefits and administrative expenses that would have been paid from the DI Trust Fund as well as the additional payroll taxes and income taxes that would have been received by the Trust Fund. The amounts transferred are the result of a complex statistical projection summarized in a document prepared by the RRB with input from SSA and the Centers for Medicare & Medicaid Services.²

For example, as of September 2007, the RRB's Social Security Equivalent Benefit (SSEB)³ Account was due approximately \$417.6 million from the DI Trust Fund.⁴ A breakout of this amount is provided in Table C-1.

¹ This is also true with the Old-Age and Survivors Insurance (OASI) Trust Fund, but in this review we are focusing on the DI Trust Fund.

² The latest report is *RRB-SSA-CMS Financial Interchange: Calculations for Fiscal Year 2007 With Respect to OASI, DI, and [Health Insurance] Trust Funds*, Summary and Documentation, 56th Determination, RRB, 2008.

³ The SSEB Account, established in Fiscal Year (FY) 1985, pays the portion of railroad retirement benefits equivalent to a SSA benefit from various income sources related to these benefits.

⁴ This includes interest through June 2, 2008.

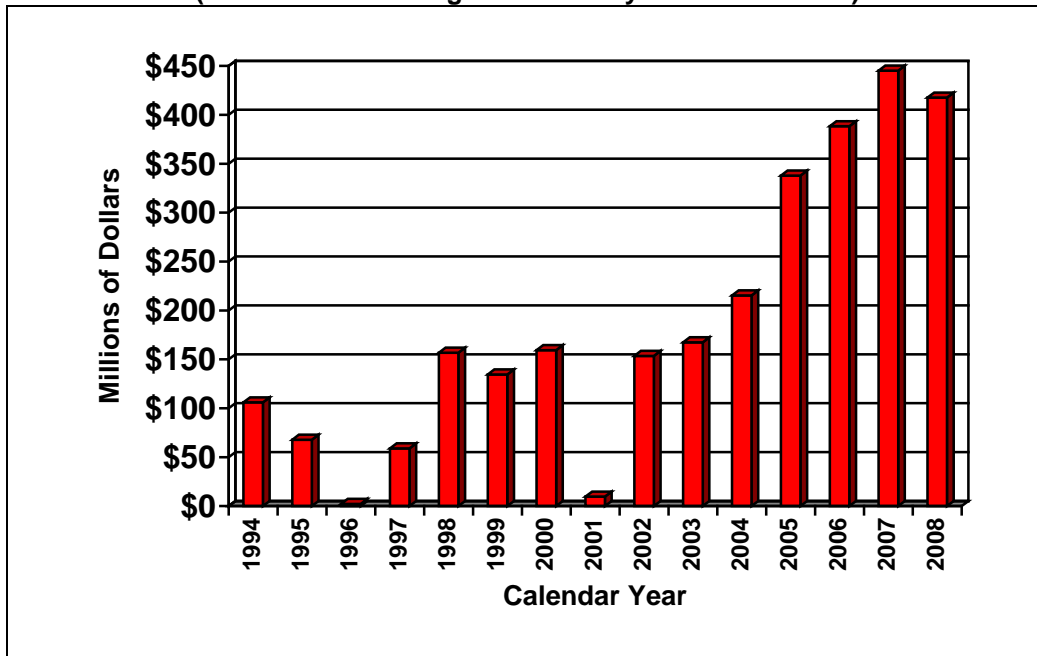
Table C-1: Calculation of SSA DI Trust Fund Transfer to RRB SSEB Account

| Type of Balance | Description | Subtotal | Total |
|-----------------------------------|---|-----------------|--------------------------|
| Prior Balance | September 30, 2006 Amount Due to RRB | | \$431 million |
| Plus RRB Expenses | Benefit Payments ¹ | \$664.4 million | |
| | Administrative Expenses ² | \$8.6 million | |
| | Interest | \$33.9 million | \$706.9 million |
| Less RRB Revenues | Payroll Taxes ³ | \$282.7 million | |
| | Income Taxes ⁴ | \$6 million | (\$288.7 million) |
| Less Prior Transfer to RRB | Transferred to SSEB Account on June 4, 2007 | | (\$445.2 million) |
| Amount Due to RRB | September 30, 2007 Amount Due to RRB (includes \$13.6 million in interest through June 2, 2008) | | \$417.6 million |

- Notes:** (1) Estimated benefit amounts that would have been payable if the railroad workers were receiving benefits from SSA.
 (2) Estimated administrative costs to maintain the benefit program.
 (3) Estimated payroll taxes collected from railroad workers.
 (4) Estimated income taxes liability on benefits paid to railroad workers.

SSA DI Trust Fund transfers to RRB have increased over the years. See Figure C-1 for SSA transfers over the past 15 years.

**Figure C-1: DI Trust Fund Transfers from SSA to RRB
 (Financial Interchange Amounts by Year of Transfer)**



Note: Reduced amounts in 1996 and 2001 related to adjustments due to military credits.

The Financial Interchange provides SSA with the tax revenues that would otherwise be collected directly from railroad workers, while SSA provided to RRB the funds that would otherwise be paid directly to railroad beneficiaries.⁵ When benefit payments exceed payroll and income taxes, the difference, with an allowance for interest and administrative expenses, is transferred from the DI Trust Fund to the SSEB Account. If taxes exceed benefit payments, a transfer would be made in favor of the DI Trust Fund.

The Financial Interchange is based on a 1-percent sample of railroad workers. The sample control group is constant in that only railroad workers with a certain two-digit identifier (“30”) in their Social Security number are in the sample. In FY 2007, the DI Trust Fund transfer to RRB was based on a 1-percent sample that included 329 cases associated with a universe of 34,312 permanent disability cases.⁶ Benefit payments per case were estimated from the 329 sample items and then applied to RRB’s entire universe of 34,312 permanent disability cases. RRB actuary staff noted that the sample and universe were expected to be proportional, noting any significant variances would be investigated.

For example, the FY 2007 Financial Interchange document defines the benefit calculation as follows.

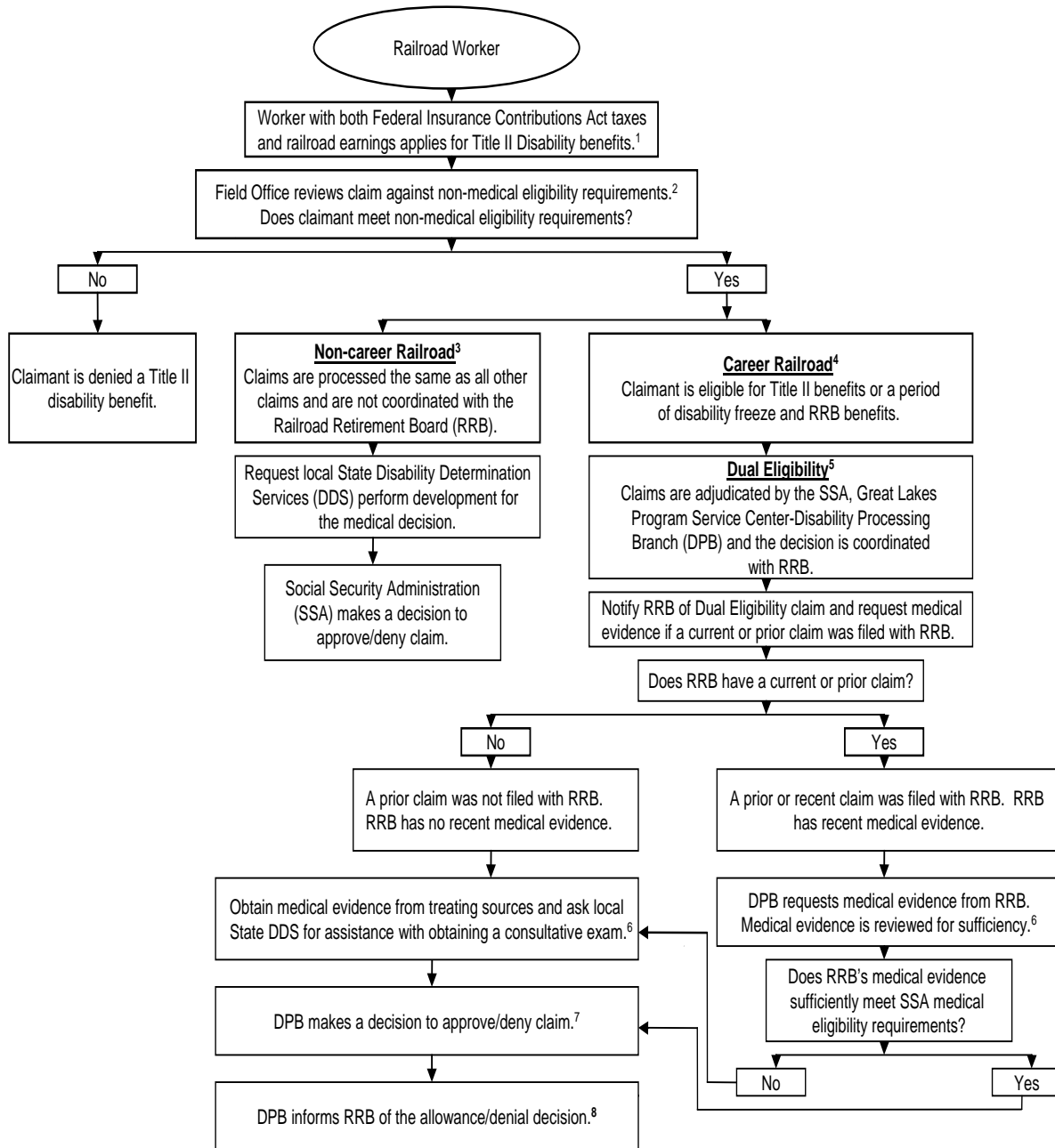
The railroad beneficiary universe for the calendar year, to which sample amounts are inflated, consists of all accounts on which a monthly benefit was in force (payable or withheld) under the Railroad Retirement Act (RRA) for at least one month of the year and on which a monthly benefit might have been payable under the [SSA] eligibility conditions. Also included are those on which an SSA lump sum based on death in the year would have been payable. The corresponding one-percent sample consists of cases carried over from earlier determinations and new cases in the universe with employee SSA account numbers ending in the digits “30.”

The 65-page FY 2007 Financial Interchange document contains extensive calculations, estimates and projections. In addition, SSA provides input based on its own program experience. For example, SSA prepares unit cost factors for the DI program related to the maintenance of earnings accounts, initial enrollment of wage earners, initial enrollment of auxiliaries, and maintenance of the rolls.

⁵ RRB has multiple sources of funding to pay the Tier One (SSA equivalent benefits) and Tier Two benefits, including payroll taxes, Financial Interchange transfers, the National Railroad Retirement Investment Trust transfers, federal income taxes, interest on investments and general appropriations.

⁶ We did not independently verify these numbers.

Railroad Worker Claim Processing – Social Security Administration



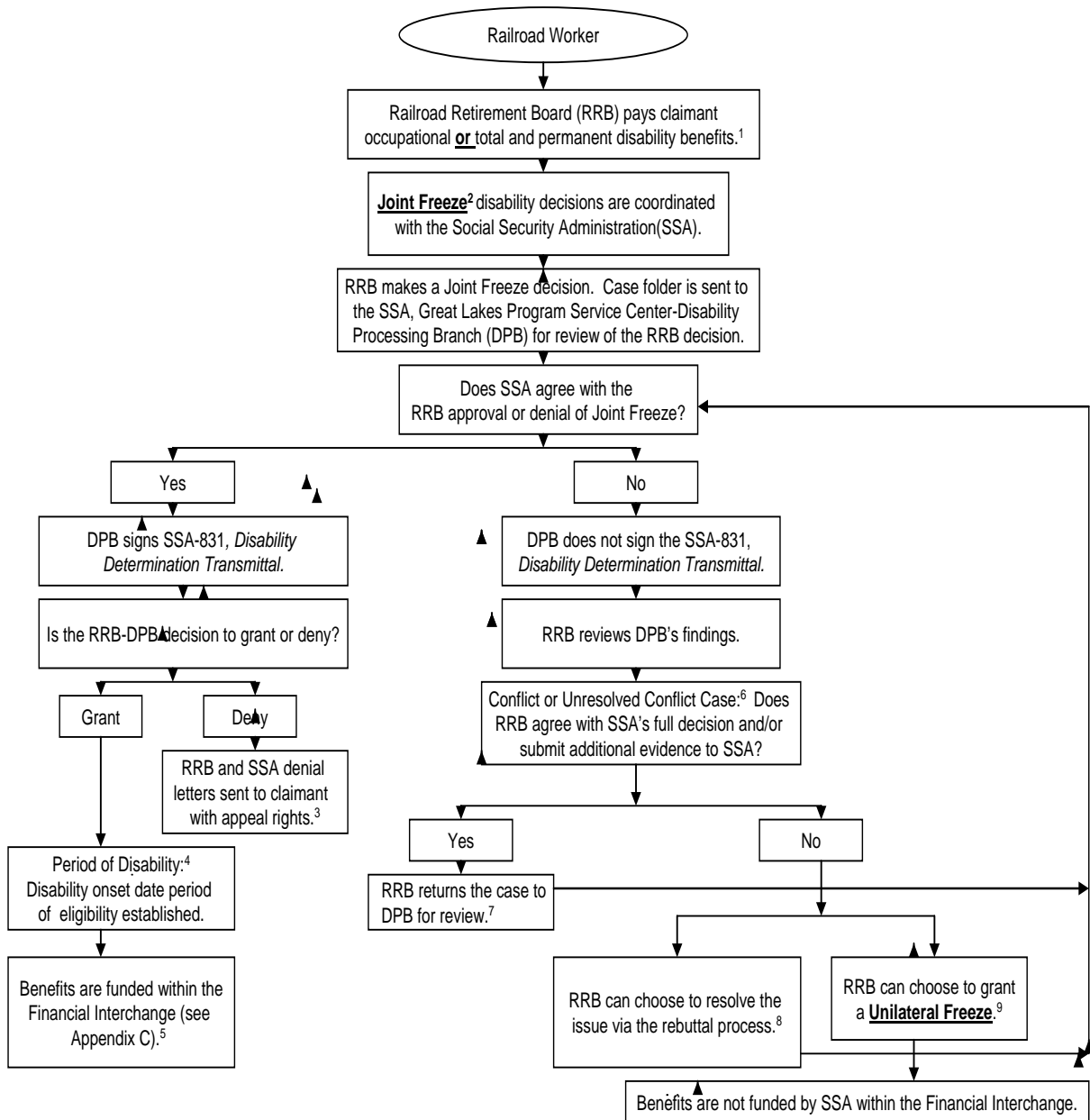
Railroad Worker Claim Processing – SSA Notes

1. There are two ways a career railroad worker may file a disability application: Dual Eligibility benefits with the Social Security Administration (SSA) or a railroad disability annuity application with the Railroad Retirement Board (RRB), which is deemed an SSA application for freeze only purposes. See SSA, Program Operations Manual System (POMS), DI 44001.010—*Initial Processing*.
2. Applications and non-medical development are initiated in the SSA field office (FO). Information provided by the claimant to the FO during the disability interview is critical to the Disability Determination Services' (DDS) medical development. See SSA, POMS, DI 11005.001 Introduction—*Disability Interviews*. At this time, SSA will also consider an individual's eligibility for Supplemental Security Income payments, which is unrelated to the RRB program.
3. If the claimant is a non-career railroad worker as defined in Note 5, the disability claim is processed at an SSA FO in the same manner as non-railroad cases. See SSA, POMS, DI 11050.010—*Jurisdiction of Disability Applications Filed by Non-Vested Railroad Employees and Auxiliary Dependent Railroad Annuitants*.
4. A worker is considered career railroad if he or she has at least 120 months of railroad service (or 60 months after December 31, 1995), or has been awarded a retirement or disability annuity under the *Railroad Retirement Act*. See SSA, POMS, DI 11050.005, § A—*Categories of Railroad Related Claims*.

The Great Lakes Program Service Center's (GLPSC) Disability Processing Branch (DPB) has jurisdiction of claims involving career railroad workers and dependent railroad survivor annuitants. If one of these two criteria is not met, the case should go to the DDS in the claimant's State of residence. See GLPSC-DPB, *Training Career Railroad cases 2008—Dual Eligibility Claims*, page 4.

5. After a FO action, a disability claim that fits the career railroad criteria is then forwarded to DPB instead of the DDS. After making the decision, DPB routes Title II allowance determinations to the GLPSC module for effectuation. However, DPB returns Title II denials and all Title XVI determinations to the FO for effectuation. See SSA POMS DI 11050.015—*Jurisdiction of Disability (DIB) and Freeze Applications for Career Railroad (RR) Employee and Surviving Dependent RR Annuitant*.
6. The DPB contacts the RRB and requests copies of all medical, vocational, and any other pertinent evidence from the RRB file. If evidence is insufficient to adjudicate the current disability claim(s), the DPB develops the medical evidence directly from the treating sources. The DPB contacts the appropriate State DDS before adjudicating the claim if a consultative examination is needed. See SSA, POMS, DI 11050.045, § B—*GLPSC-DPB Actions in Developing Medical Evidence for Railroad Cases*.
7. Coordination cannot be completed until the DPB disability examiner and SSA medical consultant sign the *Disability Determination Transmittal* (SSA-831). At this point, a *Notice of Disability Determination and Transmittal* (SSA-415) is prepared and sent to RRB advising them of the decision. See SSA, POMS, DI 44001.020—*Other Communications and Coordination with RRB*.
8. A copy of the medical and non-medical evidence supporting the DPB decision is also sent to RRB. If no answer is received from RRB in 30 days, DPB will effectuate the decision. See SSA, POMS, DI 44001.020—*Other Communications and Coordination with RRB*.

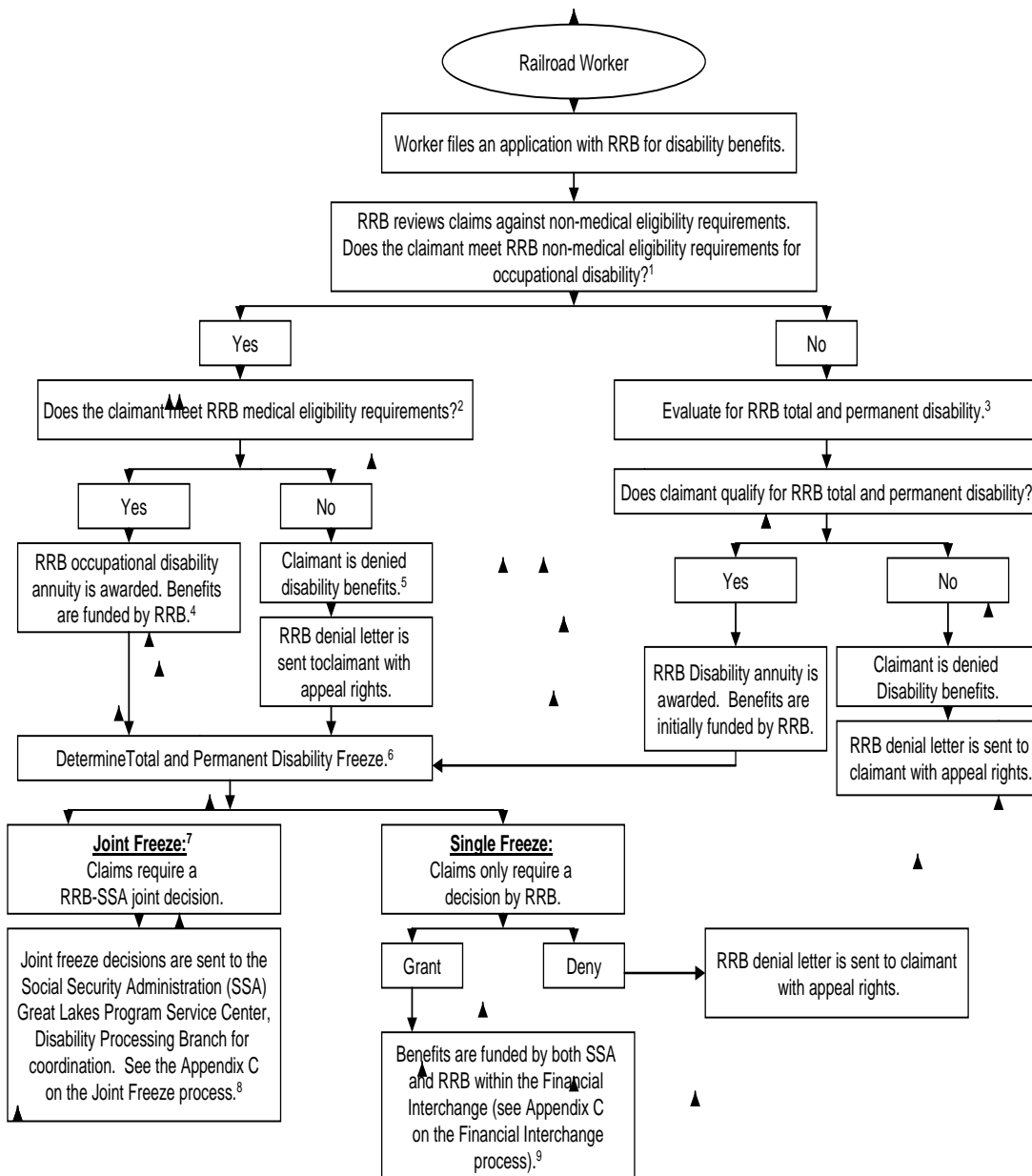
Railroad Worker Claim Processing – Joint Freeze



Railroad Worker Claim Processing – Joint Freeze Notes

1. Disability awards are based on either occupational disability or total and permanent disability. See Appendix F for a flowchart on this process.
2. Joint Freeze decisions protect certain railroad employees and their families against the possible adverse effect of independent and/or conflicting disability freeze decisions made by two agencies. Joint decisions also eliminate any potential administrative problems for both agencies because of uncoordinated decisions. See Railroad Retirement Board (RRB), Disability Claims Manual (DCM), Section 6.7.1—*Introduction to Joint Freeze*.
3. In Joint Freeze decisions, a Social Security Administration (SSA) letter and an RRB denial letter with appeal instructions are sent to claimants. See RRB, DCM, Section 6.4.6—*Disability Freeze Notices*.
4. The Great Lakes Program Service Center-Disability Processing Branch (DPB) must verify the accuracy of the disability onset date, if an allowance is granted. See SSA, Program Operations Manual System (POMS), DI 44001.025—*Joint Determination Cases*. RRB and SSA may agree to grant a disability freeze, but there are times when a conflict exists as to the appropriate disability onset date. While the agencies try to resolve the conflict, if one still remains, the RRB will use the RRB's own date—for purposes of taxation and Medicare determinations. However, the benefits are funded by SSA via the Financial Interchange starting with the SSA onset date. See RRB, DCM, Section 6.7.5—*RRB/SSA Disability Onset Date Conflict In Joint Freeze Decisions*.
5. The purpose of the Financial Interchange is to place SSA's Trust Funds in the same position they would be in if railroad service were covered by the SSA program instead of the RRB program. See Appendix C for more on the Financial Interchange.
6. A conflict case is a Joint Freeze case in which SSA either believes there is insufficient evidence to make a determination, or disagrees with RRB's determination. An unresolved conflict case is a case in which, after RRB submits additional evidence and/or a supporting rationale for its determination, the DPB still believes there is insufficient documentation or still disagrees with RRB's determination. See SSA, POMS, DI 44095.001—*Overview*.
7. The DPB reviews the decision for concurrence. Any differences between agencies are worked out before the DPB representative certifies the decision on the *Disability Determination Transmittal* (SSA-831). See RRB, DCM, Section 6.7.4—*Making Joint Decisions*.
8. There is a three-level rebuttal process when the RRB decision differs with the proposed decision of the DPB or with the request by the DPB for additional documentation. The first level rebuttal is RRB to the DPB, the second level rebuttal is RRB to the Chicago Region's Disability Quality Branch, and the third level rebuttal is RRB to SSA's Office of the Associate Commissioner for Quality Performance (formerly the Office of the Associate Commissioner for Program and Integrity Reviews). See SSA, POMS, DI 44095.001, § F—*Description of Formal Rebuttal Process*.
9. Unilateral claims are awarded by the RRB or the RRB reconsideration process. These claims are paid solely from RRB funds.

Railroad Worker Claim Processing – Railroad Retirement Board



Railroad Worker Claim Processing – Railroad Retirement Board Notes

1. Non-medical and vocational factors are considered when determining the ability of the employee to perform his or her regular railroad occupation. See Railroad Retirement Board (RRB), Disability Claims Manual (DCM), Part 5, Non-Medical and Vocational Factors, Section 5.1.1—*Purpose of Chapter*.
2. Medical evidence is furnished by the claimant. RRB may also ask the claimant to be examined at RRB's expense if more evidence is needed to make the medical determination or to resolve conflicts or differences in evidence already on file. See RRB, *Employee Disability Benefits*, Form RB-1d (03-08).
3. The annuity for total and permanent disability is payable under the full retirement age for any employee with at least 120 months of railroad service, or with 60 months of railroad service after 1995, as long as the individual's combined credits for work under SSA and the RRB program meet the eligibility requirements for SSA disability benefits.
4. Many employees who are disabled for all employment are initially awarded occupational disability annuities to expedite payments.
5. The RRB sends a notice explaining why disability benefits were denied.
6. Joint Freeze cases are claims for disability filed with RRB by a career railroad worker. See SSA, Program Operations Manual System (POMS), DI 44001.001—*Introduction*.
7. Joint Freeze disability decisions are made for career railroad employees when there is potential entitlement to SSA benefits. A joint decision is made in one of the following situations: (a) the employee does not have a current connection with the railroad industry; (b) the employee has sufficient wage quarters to be eligible for a SSA Disability Insurance benefit as of the alleged quarter of disability onset; (c) SSA reports wages of over \$5,000 but does not identify the quarters of coverage for that year; or (d) the case is included in the Financial Interchange sample.
8. Joint Freeze cases are reviewed by the Great Lakes Program Service Center's Disability Processing Branch to ensure the freeze decision was made based on SSA program standards. See SSA, POMS, DI 44001.001—*Introduction*. See Appendix E for more on this process.
9. The purpose of the Financial Interchange is to place SSA's Trust Funds in the same position they would be in if railroad service were covered by the SSA program instead of the RRB program. See Appendix C for more on the Financial Interchange.

Occupational Disability Process Changes

On October 20, 2008, the Railroad Retirement Board issued Board Order 08-63 to implement five recommendations related to the Long Island Railroad (LIRR) and its employees.

Board Order 08-63

Implementation Plan for Long Island Employers

On October 10, 2008, the three Board Members met with Sen. Schumer, Cong. Bishop and staff from other members of the New York Congressional Delegation. The Board Members agreed to consider several recommendations concerning occupational disability claims. The Board has adopted and will implement five recommendations. These five recommendations relate solely to the Long Island Rail Road and its employees who file for an occupational disability annuity or who are currently receiving an occupational disability annuity.

To increase oversight of new occupational disability applications, the Railroad Retirement Board (RRB) will establish a sub-unit within the initial section of the disability division. This sub-unit will consist of two [General Schedule]-11 disability examiners who will be responsible for adjudicating all new Long Island occupational disability applications. Centralizing this function will allow the examiners to more easily detect any unusual patterns that may occur and will facilitate data gathering that will be essential after the recommendations are implemented.

The Director of Programs will conduct a cost analysis to cover the implementation of these recommendations. Moreover, she will be directed to submit to the Board a monthly status report on the implementation of these recommendations.

A description of the implementation plan for each recommendation follows.

Recommendation 1: The RRB will develop and implement a program to conduct independent medical review of present and future occupational disability applications. The independent medical evaluators **must** be RRB-approved physicians, not specifically labor or management affiliates, who are familiar with railroad injuries.

The RRB currently has a nationwide contract with QTC [Management, Inc.] that provides consultative examinations (CE) when requested by the RRB. The QTC physicians are all either Board-eligible or Board-certified and are well-versed in the necessary protocols required in the occupational disability program. These physicians have no affiliation with either rail labor or rail industry.

CEs will be ordered in present and future Long Island occupational disability cases when it is clear that the applicant is not totally and permanently disabled, does not suffer from a terminal illness or does not suffer from cancer. The usual procedure will be followed when ordering a CE in these Long Island cases.

Recommendation 2: The RRB will develop and implement a program to re-evaluate dubious disability claims. This program should create a mechanism that will allow for more regular and frequent re-evaluations of disability annuitants.

The RRB currently has a program in place to review cases awarded an occupational disability that is codified in the RRB's regulations. The post section of the disability division, which consists of the more experienced disability claims examiners, currently conducts a continuing disability review (CDR) on employees receiving an occupational disability annuity who are totally and permanently disabled for all work. The post section will expand its review of occupational disability cases for Long Island retirees and begin reviewing those Long Island cases where the employee is occupationally disabled and not totally and permanently disabled. The disability staff will follow procedures already in place when conducting these reviews.

Recommendation 3: The RRB will outline how it will institute greater oversight controls over the Long Island regional RRB office and its employees.

The Board will direct the Director of Programs to assign the district manager of the Newark office, who is the Network Manager over the Westbury office, to conduct on-site quarterly office reviews. Additionally, the Network Manager will also conduct scheduled biweekly telephone meetings with the Westbury district manager and her staff to ensure that [the] office is operating efficiently.

Recommendation 4: The RRB will institute programmatic changes that will trigger internal investigations into high numbers of particular ailment claims.

The Board will direct the Director of Programs to assign this task to the Director of Assessment and Training, who will coordinate her efforts with the disability divisions and any other unit she deems necessary. Her task will be, on an ongoing basis, to collect data and analyze information that identifies the diagnoses of each pending and future Long Island case to ascertain if there are any unusual patterns. The Director of Assessment and Training will also be charged with analyzing relevant data collected from the increased number of CDRs that will be conducted for those Long Island employees who have been already awarded an occupational disability, as described in our plan for Recommendation 2. The focus of these analyses will be on those cases where the main diagnosis is degenerative arthritis but will also look for unusual patterns involving other diagnoses as well.

Recommendation 5: The RRB will institute more stringent review of management employees accessing the occupational disability program.

The Board will direct the Director of Programs to assign this task to the Director of Assessment and Training, who will coordinate her efforts with the disability division and any other unit she deems necessary. Her task will be, on a continuing basis, to identify those Long Island employees receiving an occupational disability annuity who retired from the Long Island as non-bargaining managers, collect data and analyze this information to ascertain if there are any unusual patterns in this area. This ongoing effort will also apply to those individuals with pending applications as well as those who file in the future.

Scope and Methodology

To accomplish our objective, we:

- Reviewed applicable laws, regulations and Social Security Administration (SSA) policies and procedures, including sections of SSA's Online Handbook and Program Operations Manual System. We also reviewed applicable sections of the *Rail Road Retirement Act*, Railroad Retirement Board (RRB) Handbook and RRB policies and procedures.
- Reviewed prior SSA and RRB Office of the Inspector General (OIG) and Government Accountability Office reports.
- Reviewed a sample of Joint Freeze, Unilateral Freeze, and occupational case files maintained by SSA and RRB to obtain a general understanding of the RRB and SSA disability claims process.
- Interviewed and held discussions at SSA with representatives from the Great Lakes Program Service Center's Disability Processing Branch, Office of Financial Policy and Operations, Office of Quality Performance, and the Office of the Chief Actuary.
- Interviewed and held discussions at RRB with representatives from the OIG Office of Audit, Office of Programs and the Bureau of the Actuary to learn more about the railroad worker disability claims process.

This review did not entail a review of the (1) reliability of the SSA and RRB workload counts or (2) internal controls related to the Financial Interchange. The SSA entities reviewed were the Offices of the Deputy Commissioner for Retirement and Disability Policy and the Chief Actuary. We performed our review in Chicago, Illinois, between January and March 2009 in accordance with the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency.

OIG Contacts and Staff Acknowledgments

OIG Contacts

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Acknowledgments

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Social Security Advisory Board

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OA conducts financial and performance audits of the Social Security Administration's (SSA) programs and operations and makes recommendations to ensure program objectives are achieved effectively and efficiently. Financial audits assess whether SSA's financial statements fairly present SSA's financial position, results of operations, and cash flow. Performance audits review the economy, efficiency, and effectiveness of SSA's programs and operations. OA also conducts short-term management reviews and program evaluations on issues of concern to SSA, Congress, and the general public.

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