



U.S. RAILROAD RETIREMENT BOARD

OFFICE OF INSPECTOR GENERAL

The Use of Medical Experts During Disability Determinations at the Railroad Retirement Board Can Be Improved

Report No. 19-17

September 27, 2019



What DP George & Company Found

DP George & Company (DP George) determined that the Railroad Retirement Board's (RRB) use of medical experts in the disability determination process can be improved. RRB medical experts do not always reach a consistent medical assessment based on the medical evidence. In these instances, RRB identifies if there are inconsistencies but does not have an established process for documenting and reviewing the final medical assessment to ensure that the basis for the final decision is clear.

What DP George Recommends

To address the weaknesses identified in this audit, DP George made two recommendations. The first recommendation was to establish procedures specifying how differences in medical assessments between medical experts, including the disability claims examiner, should be documented and reviewed to ensure the basis for the final decision is clearly evident in the disability case file. The second recommendation was to gather details about areas where a lack of objective findings to support medical assessments are observed for assessment performed by contracted medical experts, and establish a process for discussing and resolving common inconsistencies with the contracted medical experts.

RRB management did not concur with either of the two recommendations.

What We Did

The Office of Inspector General (OIG) for the RRB engaged DP George to conduct a performance audit of the use of medical experts in the RRB's disability determinations. This audit was conducted in accordance with the performance audit standards established by Generally Accepted Government Auditing Standards. DP George is responsible for the audit report and the conclusions expressed therein. RRB OIG does not express any assurance on the conclusions presented in DP George audit report.

The objectives were to review RRB's use of medical experts in the RRB's disability determinations to assess how the RRB relies on their input, potential changes to the process, and the efficiency and effectiveness of their involvement in the disability determination process. In order to complete this work, DP George identified criteria in laws, regulations, and best practices; identified applicable RRB policies, procedures; and gained an understanding of types of disability claims at the RRB. DP George also interviewed applicable agency staff and reviewed disability decisions.

The scope of the audit covered disability determinations made in fiscal years 2016 to 2018 where the use of a medical expert was involved.



The Use of Medical Experts
During Disability
Determinations at the
Railroad Retirement Board
Can Be Improved

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EXECUTIVE SUMMARY

September 25, 2019

Mr. Martin Dickman, Inspector General
Railroad Retirement Board
Office of Inspector General
844 North Rush Street
Chicago, IL 60611-1275

Dear Mr. Dickman,

DP George & Company, LLC (DPG) audited the Railroad Retirement Board's (RRB) use of medical experts, against Government Accountability Office internal control guidance and the RRB's policies, procedures, and practices related to the use of medical experts in the disability determination process. Performance against these criteria is the responsibility of RRB's management. DPG's responsibility is to make a determination regarding RRB's performance against the criteria.

DPG conducted the audit in accordance with Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States (2011 Revision, as amended). Those standards require that DPG plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for its findings, conclusions, and recommendations based on the audit objective. The stated objective of our audit was to:

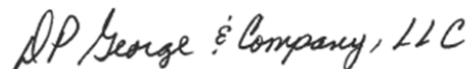
review the use of medical experts in the RRB's disability determinations to assess how the RRB relies on their input, potential changes to the process, and the efficiency and effectiveness of their involvement in the disability determination process.

The evidence obtained provides a reasonable basis for DPG's findings, conclusions, and recommendations based on the audit objectives.

Based on the test work performed, our audit determined that use of medical experts in the disability determination process can be improved. The detailed finding for the audit is presented in the Audit Results section of this report.

We appreciate the cooperation and assistance extended by RRB and the OIG staff during the audit.

Sincerely,



DP George & Company, LLC
Alexandria, Virginia

OBJECTIVE(S), SCOPE, AND METHODOLOGY

The objective of this audit was to review the Railroad Retirement Board's (RRB's) use of medical experts in the RRB's disability determinations to assess how the RRB relies on their input, potential changes to the process, and the efficiency and effectiveness of their involvement in the disability determination process.

To accomplish our objective, we:

- identified criteria provided in applicable laws, regulations, and best practices related to RRB's disability program;
- identified and reviewed applicable RRB policies and procedures related to RRB's disability program and disability determination process;
- gained an understanding of the four types of disability claims: Occupational Disability, Total & Permanent Disability, Disabled Widow, and Disabled Child;
- interviewed applicable RRB management, disability staff, and medical experts used by RRB; and
- obtained and reviewed disability decisions and continuing disability reviews involving the use of medical experts.

The scope of our audit covered disability determinations made in Fiscal Year (FY) 2016 to FY 2018 where the use of a medical expert was involved. Medical experts consist of individuals contracted by RRB to perform medical exams and individuals contracted by RRB to provide medical consultations.

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient appropriate evidence to provide a reasonable basis for our findings, conclusions, and recommendations based on the audit objective. We believe that the evidence obtained provides a reasonable basis for our findings, conclusions, and recommendations based on our audit objective.

We conducted our fieldwork from October 2018 through August 2019. During our audit, we performed site visits to RRB headquarters in Chicago, Illinois in October 2018, April 2019, and June 2019.

BACKGROUND

The RRB administers the retirement, survivor, unemployment and sickness programs mandated by the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA). The RRA provides for payment of retirement benefits based on age and service in the railroad industry and to those who are permanently disabled from work in their regular railroad occupation or who are totally disabled from any regular employment.

Under the RRB disability program which is governed by the RRA, the RRB approves and processes payments in support of total and permanent, and occupational disabilities. When evaluating disability claims, evidence from a medical source is required to determine the existence or severity of impairment. In order to have complete and accurate case records to make disability determination decisions, the RRB will obtain and consider all evidence that may or may not support the applicant's claimed impairment(s).

Key definitions pertaining to medical evidence include:

Medical Assessment – A medical assessment describes a person’s ability to do work related to activities such as sitting, standing, walking, lifting, carrying, handling objects, hearing, and speaking. In cases of mental impairment, it describes the person’s ability to reason or make occupational, personal, or social adjustments.

Medical Evidence – Medical evidence consists of reports from acceptable sources about the disability. Substantial evidence is such relevant evidence as a reasonable person would accept as adequate to support a conclusion regarding disability.

Medical Findings – Medical findings consist of symptoms, signs and laboratory findings:

1. Symptoms are the claimant’s own description of his/her physical or mental impairment.
2. Signs are anatomical, physiological, or psychological abnormalities which can be observed, apart from his/her symptoms. Signs must be shown by medically acceptable clinical diagnostics techniques. Psychiatric signs are medically demonstrable phenomenon which indicates specific abnormalities of behavior, affect, thought, memory, orientation, and contact with reality. They must all be shown by observable facts that can be medically described and evaluated.
3. Laboratory findings are anatomical, physiological, or psychological phenomena which can be shown by the use of medically acceptable laboratory diagnostic techniques. They include chemical tests, electrophysiological studies, roentgen logical studies (x-rays), and psychological tests.

An accurate disability decision requires medical evidence which shows the nature of the claimant’s impairments and the extent of the impairments from the date disability is alleged to have occurred. The compilation of evidence in the file should be sufficient to allow the disability examiner to make an independent determination as to the nature and limiting extent of the claimant’s impairment(s). In general, medical evidence should include the following information:

- a history of the impairment;
- current objective findings which support the diagnosis and document any physical or mental changes which have occurred;
- the factual medical data upon which the diagnosis and prognosis are based;
- a description of objective findings regarding the claimant’s functional limitations and remaining functional capabilities; and
- certification by the physician or physiologist submitting the medical report.

To further support medical evidence contained in the file, field office and disability benefits division staff may order consultative examinations and tests from independent medical examiners (medical expert). The results of these reports should include:

- the major or chief complaint(s) of the claimant;
- within the area of specialty of the examination, a detailed description of the history of the major complaint(s);
- a description and disposition of pertinent detailed findings based on the history, examination and laboratory tests related to the major complaint(s) and any other abnormalities reported or found during examination or laboratory testing;

- the results of requested laboratory tests performed that are necessary as a result of the physician's examination;
- diagnosis and prognosis; and
- a medical assessment which shows the ability of the individual to do work-related activities or to function in a work setting.

Lastly, disability claims examiners can refer any claim requiring medical advice to the medical consultant (medical expert). The medical consultant completes Form G-137 SUP which provides the residual functional capacity (RFC) assessment (Part I) and provides comments and a review summary of the medical records used to support the RFC (Part II). The Form G-137 SUP may also be used by the medical consultant to advise the examiner when the medical records are not sufficient to provide a RFC and to recommend what medical records to obtain.

AUDIT RESULTS

Our audit determined that RRB medical experts do not always reach a consistent medical assessment based on the medical evidence. In these instances, RRB identifies if there are inconsistencies but does not have an established process for documenting and reviewing the final medical assessment to ensure that the basis for the final decision is clear. Because of this, the use of medical experts in the disability determination process is not as effective or efficient as intended.

We provide two recommendations aimed at addressing this weakness.

Finding #1: Improved Use of Medical Experts

DPG reviewed 73 case files where the input of one or more medical experts or consultants was obtained by RRB to support the disability or continuing disability decision. Our review considered 8 cases where only a medical exam was obtained, 32 cases where only a medical consultation was obtained, and 33 cases where a medical exam and medical consultation were obtained. We identified 18 cases where the disability claim examiner and/or the medical consultants gave an indication in the file that the objective medical findings provided by the RRB medical expert did not support the medical assessment. We noted that an alternate RFC medical assessment was provided by the medical consultant and accepted by the claims examiner without additional review or specific explanation as to why one or the other medical assessment was better supported.

Existing procedures do not require the disability claims examiner to document the basis for resolving differences between medical expert assessments. Without proper documentation describing how differences in assessment or the lack of objective findings are resolved, the basis for the final decision is not evident to an independent examiner.

The Government Accountability Office's Standards for Internal Control in the Federal Government provide that management should clearly document internal control and all transactions and other significant events in a manner that allows the documentation to be readily available for examination. The documentation may appear in management directives, administrative policies, or operating manuals, in either paper or electronic form. Documentation and records are to be properly managed and maintained.

RECOMMENDATIONS

DPG recommends that the Office of Programs:

1. establish procedures specifying how differences in medical assessments between medical experts, including the disability claims examiner, should be documented and reviewed to ensure the basis for the final decision is clearly evident in the disability case file; and
2. gather details about areas where a lack of objective findings to support medical assessments are observed in medical exam reports provided by contracted medical experts, and establish a process with the contracted medical experts for discussing and improving the consistency and quality of future medical exam reports.

MANAGEMENT'S COMMENTS

The Office of Programs did not concur with Recommendations 1 and 2. For Recommendation 1 their response indicated that there are existing procedures and regulations that address the issue of reviewing and documenting differences in medical opinions. The response referenced DCM 4.3.4 Type of Medical Evidence Development, 20 CFR 220.112 Conclusions by Physicians Concerning the Claimant's Disability, and DCM 13.10.1.3 Significant Differences in Medical Findings. The Office of Programs also referenced guidance in DCM 12.5.5 and 12.5.6 as providing instructions to examiners on how to complete the final determination Form G-325B rationale to describe how they handled conflicting medical evidence.

For Recommendation 2 the Office of Programs also indicated that an existing process is in place via Federal Acquisition Regulations (FAR) for the Contracting Officer's Representative (COR) to address issues that arise concerning the contracted medical experts. Management's response also indicated that the Director of Disability interacts regularly with the contractors' points of contact and discusses cases both when issues are identified and in annual review meetings.

DPG RESPONSE

DPG response regarding Recommendation 1. The guidance referenced by the Office of Programs in its response provides instruction to examiners on how to weigh medical evidence; when to order consultative exams, functional tests, and consultative opinions; and how to complete the sections of the form G-325B documenting medical evidence. These processes focus on obtaining and reviewing medical evidence leading up to the decision. Our concern is with the clarity of the decision summary. In cases where medical assessments were inconsistent, it was not clear how the examiner determined reliance on one medical assessment over another. We view the medical assessment portion of the decision process as a key component in making the overall disability decision. Therefore, we maintain that the Office of Programs should implement Recommendation 1 to strengthen the transparency of the decision process.

DPG response regarding Recommendation 2. DPG agrees that the COR process establishes a communications channel for conducting discussions and providing feedback to the contracted medical experts. We did not observe evidence that a process exists to gather and summarize details about medical conditions where a lack of objective findings is more commonly identified. We maintain that implementing this portion of the recommendation and using it to target areas for feedback will strengthen the use of medical experts.



UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 NORTH RUSH STREET
CHICAGO, ILLINOIS 60611-1275

OFFICE OF PROGRAMS

September 20, 2019

Mr. Michael Smith
DP George & Company, LLC
Alexandria, Virginia

Re: Audit - Use of Medical Experts during Disability Determinations

Dear Mr. Smith:

We have reviewed your findings concerning the above-referenced audit, the stated purpose of which was to review the use of medical experts in the RRB's disability determinations to assess how the RRB relies on their input, potential changes to the process, and the efficiency and effectiveness of their involvement in the disability determination process.

Your audit determined that RRB medical experts do not always reach a consistent medical assessment based on the medical evidence. You state that in these instances, RRB identifies if there are inconsistencies but does not have an established process for documenting and reviewing the final medical assessment to ensure that the basis for the final decision is clear. Because of this, the use of medical experts in the disability determination process is not as effective or efficient as intended. As such, DPG recommended that the Office of Programs:

1. establish procedures specifying how differences in medical assessments between medical experts, including the disability claims examiner, should be documented and reviewed to ensure the basis for the final decision is clearly evident in the disability case file; and
2. gather details about areas where a lack of objective findings to support medical assessments are observed in medical exam reports provided by contracted medical experts, and establish a process with the contracted medical experts for discussing and improving the consistency and quality of future medical exam reports.

Following are the Office of Programs responses to these recommendations:

Recommendation 1: establish procedures specifying how differences in medical assessments between medical experts, including the disability claims examiner, should be documented and reviewed to ensure the basis for the final decision is clearly evident in the disability case file;

Non Concur

There are both procedures and regulations that address the issue of reviewing and documenting differences in medical opinions. The Disability Claims Manual (DCM) instructs examiners on how to view medical evidence. For instance, DCM 4.3.4 provides the following guidance to examiners on the how to view medical evidence from different sources:

4.3.4 Type Of Medical Evidence Development

Development of medical evidence is usually initiated by the field office, but there are some cases where DBD initiates development. The following types of medical evidence should be considered in the development process.

- A. **Personal Physician Records** - Whenever possible, personal physicians are to be contacted for evidence needed for evaluation because of their knowledge of the claimant's medical problems through diagnosis and treatment.

Greater weight is given to the opinions of personal physicians who have treated a patient over a period of time.

Because the personal physician is not always aware of the specific information necessary for our purposes, the clinical findings, as submitted, may not be sufficient to allow proper adjudication. If this is the case, it should not be assumed that the additional required information is not contained in the physician's records; rather, the needed information should be requested from the personal physician.

Medical evidence from the personal physician is acceptable in the following forms:

- Form G-250, Report of Examination,
- Form G-260, Report of Epilepsy convulsions,
- Narrative report on the physician's business stationery, and
- Copies of the physician's patient records.

Additionally, 20 CFR 220.112 explains how medical opinions are to be weighted in the determination of disability and that greater weight is given to opinions from treating sources:

§220.112 Conclusions by physicians concerning the claimant's disability.

(a) *General.* Under the statute, the Board is responsible for making the decision about whether a claimant meets the statutory definition of disability. A claimant can only be found disabled if he or she is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. (See §220.28). A claimant's impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. (See §220.27). **The decision as to whether a claimant is disabled may involve more than medical considerations; and the Board may have to consider such factors as age, education and past work experience. Such vocational factors are not within the expertise of medical sources.**

(b) *Medical opinions that are conclusive.* A medical opinion by a treating source will be conclusive as to the medical issues of the nature and severity of a claimant's impairment(s) where the Board finds that (1) it is fully supported by medically acceptable clinical and laboratory diagnostic techniques and (2) it is not inconsistent with the other substantial medical evidence of record. A medical opinion that is not fully supported will not be conclusive.

(c) *Medical opinions that are not fully supported.* If an opinion by a treating source(s) is not fully supported, the Board will make every reasonable effort (i.e., an initial request and, after 20 days, one follow-up request) to obtain from the claimant's treating source(s) the relevant evidence that supports the medical opinion(s) before the Board makes a determination as to whether a claimant is disabled.

(d) *Inconsistent medical opinions.* Where the Board finds that the opinion of a treating source regarding medical issues is inconsistent with the evidence of record, including opinions of other sources that are supported by medically acceptable clinical and laboratory diagnostic techniques, the Board must resolve the inconsistency. If necessary to resolve the inconsistency, the Board will secure additional independent evidence and/or further interpretation or explanation from the treating source(s) and/or the consultative physician or psychologist. The Board's determination will be based on all the evidence in the case record, including the opinions of the medical sources. In resolving an inconsistency, the Board will give some extra weight to the treating source's supported opinion(s) which interprets the medical findings about the nature and severity of the impairment(s).

DCM 13.10.1 discusses what significant differences in opinions are and how to approach residual functional capacity (RFC)s:

13.10.1.3 Significant Difference In Medical Findings

If the medical records reveal that there are marked differences in the treating physicians' findings, then a CE and/or functional test should be obtained.

EXAMPLE: A brakeman's medical records reveal conflicting evidence concerning the character and functional impact of an underlying low back condition. The claimant reported to his orthopedist a history of prolonged back pain of five years duration with severe symptoms for three years. The claimant reported in his history that his low back problems had kept him from participating in sports which he had participated in prior to the onset of his severe back problems three years ago. An MRI revealed degenerative disc changes.

The claims examiner reviews the claimant's entire medical record which includes medical treatment that he received from an osteopathic physician for the past three years just before he sought consultation with the orthopedic consultant. These medical records reveal a contradictory history from that provided to the orthopedist. The medical records reveal that the claimant had received medical therapy for a neck and later a low back strain following water-skiing and basketball injuries in the past two years. The claimant's stated medical history as provided to the orthopedist is not consistent with the history in his medical records with respect to the impact that the pain has had on his lifestyle.

Since the RFC from the orthopedist could reasonably be expected to be based upon the claimant's medical history (rather than objective medical evidence), the quality of the RFC is jeopardized. **In this type of situation, the claims examiner should request a consultative examination to resolve this matter and/or functional testing.**

D-Brief is a RRB's system that is used to document a disability decision. Guidance found in DCM 12.5.5 and DCM 12.5.6 provides instructions to examiners on how to complete the final determination form (G-325B) rationale to describe how they handled conflicting medical evidence:

It is important to remember the determination of disability is not strictly a medical determination. As highlighted above, 20 CFR 220.112 states "The decision as to whether a claimant is disabled may involve more than medical considerations and the Board may have to consider such factors as age, education and past work experience. Such vocational factors are not within the expertise of medical sources."

Recommendation 2: gather details about areas where a lack of objective findings to support medical assessments are observed in medical exam reports provided by contracted medical

experts, and *establish a process* with the contracted medical experts for discussing and improving the consistency and quality of future medical exam reports.

Non Concur

A process currently exists to address issues that arise concerning the contracted medical experts. The Contracting Officer Representative (COR), follows an established process for taking actions with a contracted doctor in accordance with requirements of the Federal Acquisition Regulations (FAR):

Subpart 2.101- "Contracting officer's representative (COR)" means an individual, including a contracting officer's technical representative (COTR), designated and authorized in writing by the contracting officer to perform specific technical or administrative functions.

Subpart 1.604- "A contracting officer's representative (COR) assists in the technical monitoring or administration of a contract (see 1.602-2 (d)). The COR shall maintain a file for each assigned contract. The file must include, at a minimum-

(a) A copy of the contracting officer's letter of designation and other documents describing the COR's duties and responsibilities;

(b) A copy of the contract administration functions delegated to a contract administration office which may not be delegated to the COR (see 1.602-2(d)(4)); and


(c) Documentation of COR actions taken in accordance with the delegation of authority."

The Director of Disability (Director) is the COR for the two RRB contracted medical providers. In accordance with the FAR, as COR the Director follows prescribed processes and procedures to address issues that arise concerning the contracted medical experts. The Director interacts regularly with the contractors' points of contact and discusses cases both when issues are identified and in annual review meetings. A summary of these annual reviews is shared with the Contracting Officer for the RRB.

Sincerely,

CRYSTAL
COLEMAN

Crystal Coleman
Director of Programs

 Digitally signed by CRYSTAL
COLEMAN
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