

OFFICE OF INSPECTOR GENERAL

Audit Report

Audit of Unilateral Disability Freeze Determinations

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RAILROAD RETIREMENT BOARD

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INTRODUCTION

This report presents the results of the Office of Inspector General's (OIG) audit of unilateral disability freeze determinations at the Railroad Retirement Board (RRB).

Background

The RRB is an independent agency in the executive branch of the Federal government. The RRB administers the retirement/survivor and unemployment/sickness insurance benefit programs for railroad workers and their families under the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA). These programs provide income protection during old age and in the event of disability, death, temporary unemployment, or sickness.

An applicant filing for disability benefits submits their claim to the RRB's Office of Programs, which coordinates all claims processing operations.

The Office of Programs is responsible for processing both initial disability claims and claimant requests for reconsideration after an initial denial. If the claim for disability benefits is denied by the Office of Programs at both the initial and reconsideration levels, the applicant may request an appeal through the RRB's Bureau of Hearings and Appeals (H&A). H&A reviews appeals and conducts hearings for individuals who disagree with the Office of Program's decisions reached in their cases. On occasion, a claim may also be appealed to the RRB's three-member Board.

Disability Freeze

Under the RRA, every application for a disability annuity is also an application under the Social Security Act for a period of disability, commonly termed a "freeze." The freeze portion of the Social Security Act protects disabled workers and their families against the loss of, or the reduction in, benefits because of the worker's disability. When a freeze is established, the worker's wage record is frozen and the period during which he is disabled and not likely to have earnings, is excluded to the worker's advantage when determining the insured status and benefit amounts.¹ In fiscal years (FY) 2008 and 2009, the Office of Programs made 5,214 and 4,126 total disability freeze decisions, respectively.

To be eligible for a disability freeze, the applicant must meet both a disability and an earnings requirement. See Appendix I for definitions.

¹ The RRB uses the freeze provision to potentially increase the benefit amount, to make a portion of the benefit taxable like a social security benefit, and to establish early Medicare. In survivor cases, the freeze may produce higher monthly benefit rates that would otherwise not be payable.

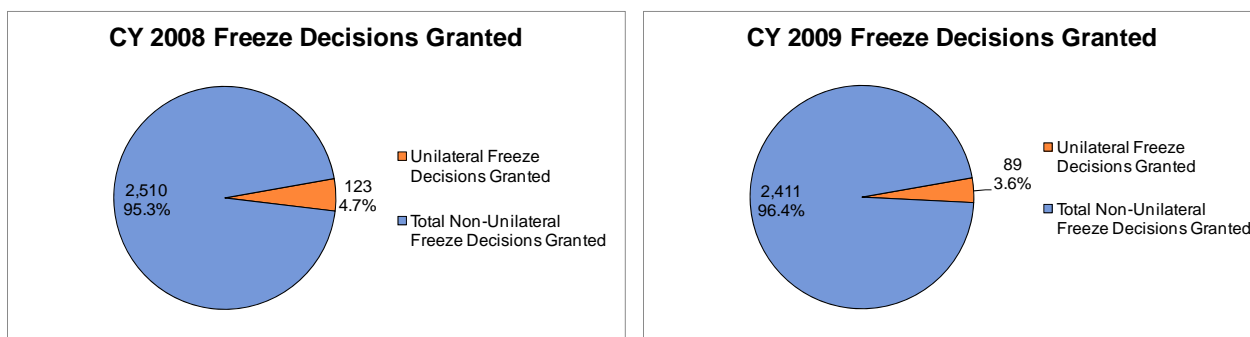
A grant of a disability freeze is advantageous to the annuitant in that it:

- preserves the individual's earnings record;
- provides that a portion of the annuity will be taxed in the same manner as a social security benefit;
- may increase the monthly annuity rate payable to the individual and their survivors;
- may allow dependents to be considered in the individual's annuity payments; and
- may provide early Medicare coverage.

Without a disability freeze, the applicant may not be eligible for the benefits listed above.

In general, the RRB's Office of Programs makes freeze decisions jointly with the Social Security Administration (SSA) when there is potential entitlement to social security benefits. If, after attempts to resolve differences, a disagreement still exists between the RRB and the SSA, the RRB's Claims Examiners may decide to make an independent determination to grant the freeze, referred to as a unilateral freeze decision. The grant of a disability freeze by H&A or the three-member Board would also be considered a unilateral freeze decision.

Although unilateral freeze decisions represent a relatively small portion of all disability freezes granted by the RRB (as shown in the illustration below), this audit was performed to answer questions raised about the RRB's unilateral disability freeze process after the press criticized the RRB's decisions to grant disability benefits to some Long Island Rail Road (LIRR) employees.



This audit also supports the RRB's mission to administer retirement/survivor and unemployment/sickness insurance benefit programs for railroad workers and their families under the RRA and the RUIA, and the agency's underlying objectives to pay benefits to the right people, in the right amounts, in a timely manner, and to take appropriate action to safeguard the customers' trust funds.

Audit Objectives

The objectives of this audit were to determine the:

- statutory authority under which the RRB grants a period of disability (disability freeze);
- circumstances under which the freeze determination process results in a unilateral award;
- consistency of policies and procedure requirements that apply to single, joint and unilateral freeze awards; and
- impact of unilateral freeze decisions on the RRA trust funds.

Scope

The scope of the audit was limited to the agency's disability freeze decisions from January through September 2008. Our audit concentrated on unilateral disability freeze awards granted by both the Office of Programs and H&A. It also included a limited number of single, joint or dual, denial, termination, and LIRR freeze decisions to determine if procedures were consistent among the types of decisions. We did not review the process related to the initial grant of the disability annuity or the occupational disability program as these were not the objectives of our audit. See Appendix I for definitions.

Methodology

To accomplish our objectives, we:

- identified and reviewed the laws, policies, and procedures, applicable to disability freeze awards;
- reviewed the Memorandum of Understanding (MOU) between the SSA and the RRB related to granting disability freezes;
- interviewed responsible agency officials to obtain an understanding of the process for adjudicating freeze cases;
- performed a review of the entire universe of 79 unilateral freeze cases (decisions) awarded between January and September 2008 to:
 - verify the consistency of processing awards;
 - determine if the unilateral freeze decisions were properly authorized;
 - determine if appropriate documentation existed to validate the decision made;
 - determine the reasons why the RRB and the SSA disagreed on certain freeze decisions; and

- determine the impact of unilateral freeze decisions on the RRA's trust funds. See Appendix II for the testing methodology and results for the test of unilateral disability freeze decisions.
- obtained overall statistics for freeze awards and denials for comparison purposes; and
- performed a review of a total of 22 (5 single, 5 joint or dual, 5 denial, 2 termination, and 5 LIRR) randomly selected non-unilateral disability freeze decisions to measure consistency in the application of processing decisions. See Appendix V for the testing methodology and results for the test of non-unilateral disability freeze decisions.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We conducted our fieldwork at the RRB's headquarters in Chicago, Illinois from January 2009 to August 2009 and obtained updated statistical data in April 2010.

RESULTS OF AUDIT

Our audit found that:

- the RRB has the authority to unilaterally award disability freezes;
- there were common circumstances leading to unilateral freeze determinations;
- procedures for unilateral freeze determinations were consistent with other types of freeze determinations; and
- generally, the RRB bears the cost of benefits awarded unilaterally.²

However, the RRB's MOU with the SSA was outdated, procedures for granting unilateral freezes were not complete, coordination with the SSA needed improvement, RRB system coding errors could result in the RRB bearing unnecessary costs, and some controls needed strengthening.

The details of our findings and recommendations for corrective action follow. The full text of Management's response is included in this report as Appendix VI.

The RRB Has the Authority to Unilaterally Award Disability Freezes

Our audit disclosed that the RRA provides the RRB with the statutory authority to determine a "period of disability" also known as a disability freeze.

In 1958, the RRA of 1937 was amended to provide the RRB with express authority to render "disability freeze" determinations pursuant to the Social Security Act for railroad employees. The Senate Report accompanying the 1958 amendments to the RRA explained that the amendments were intended to facilitate and improve the administration of the RRA by effecting changes that have been shown by the experience of the RRB in administering the acts to be desirable. The Senate Report further explained that the bill transferred to the RRB the authority to make disability freeze determinations under the Social Security Act for career railroad workers, whose benefits or whose survivors' benefits under the RRA might be affected by such a determination under the "overall social security minimum" provision, and would remedy the situation in which the SSA was given the exclusive authority to make freeze determinations for career railroad workers whose rights to benefits otherwise were exclusively within the jurisdiction of the RRB.³

Although the RRA of 1974 completely restructured the RRA of 1937, as amended, the Senate Report accompanying the 1974 amendments explained that the powers and duties of the RRB with regards to disability freeze determinations remained the same.

² The RRB bears the entire cost for decisions made at the initial and reconsideration levels, and a portion of the cost for decisions made at the H&A and the three-member Board levels.

³ The social security overall minimum guarantee is the amount of total family benefits which would be paid under the Social Security Act if the employee's railroad service had been covered by that act.

In 1987, the RRB entered into a MOU with the SSA. This MOU established an agreement between the RRB and the SSA regarding the agencies' responsibilities for coordinating disability decisions under the relevant sections of the RRA and the Social Security Act. According to this MOU, the decisions to be coordinated were those involving career railroad workers and their dependents.

This MOU states that the SSA and the RRB agree that unilateral disability freeze cases are defined as disability claims reversed as a result of the RRB appeals process that were initially denied by either RRB or jointly with the SSA; or those where RRB makes an independent decision.

The MOU further states that if, after coordination of joint eligibility cases, a disagreement still exists between the RRB and the SSA, the RRB may decide to make an independent determination (unilateral decision). In this situation, it is stated that the RRB will formally advise the SSA of its decision, including any additional evidence and/or supporting rationale it may choose to provide.

Circumstances Leading to Unilateral Freeze Determinations

Our review of the 79 unilateral freeze decisions revealed that there were 3 common circumstances leading to unilateral freeze determinations. These circumstances are outlined below. See Appendix III for additional detail.

Medical Assessment Disagreement of Condition

The medical assessment is based on the physical and/or mental limitations of the claimant in a work setting.

A conflict based on the medical assessment occurs when the SSA and the RRB have differing opinions on the severity of the claimant's condition. If the RRB Claims Examiner determines that there is a medically determinable severe impairment, but the Social Security (SS) Listing of Impairments (also referred to as "the Listing") is not met or equaled, a Residual Functional Capacity (RFC) assessment is made. In an RFC assessment, symptoms are considered in terms of any additional functional limitations they impose beyond those clearly demonstrated by the objective medical finding alone. If the claimant has several impairments, the RRB Claims Examiners will consider all of his or her impairments. See Appendix I for definitions of RFC and SS Listing of Impairments.

Vocational Disagreement

A vocational disagreement occurs when the SSA and the RRB have differing opinions on the duties that were required for the applicant's prior vocation. Non-medical factors (e.g., age, education, and work experience) are considered when determining the ability of the claimant to perform any regular work. A claimant's vocational background is

considered along with his or her RFC in arriving at a disability decision. The RFC is determined before the vocational factors are considered. Then the interaction of the RFC with the other factors affecting vocational adaptability, as stated above, are analyzed. Other considerations may be descriptions by the contacting officials (such as field office representatives) or the person himself concerning his or her appearance, conduct at the interview, work limitations, etc.

Onset Date Disagreement

An onset date disagreement occurs when the SSA and RRB disagree on the date the disability started. For example, in one case (decision), the RRB determined that the claimant was “disabled” for the purposes of a freeze earlier than the SSA, based on the medical evidence in the file.

Policy and Procedures Exist and Are Consistent for Different Types of Freezes

We also found that policies and procedures exist for granting unilateral freezes and that the procedures for processing unilateral freeze cases are similar, if not identical, to the procedures for single, joint or dual, LIRR, denial, and termination freeze decisions. The only difference we found is that all unilateral decisions made at the initial level (not the reconsideration level or by H&A) must be approved by a supervisory or senior disability claims examiner in the Office of Programs.

The RRB Bears the Cost for Unilateral Freeze Determinations

Our audit found that unilateral freeze determinations made at the initial and reconsideration levels result in the RRB bearing the entire cost of benefits granted.

When the SSA concurs with the RRB's decision to grant a freeze, some or all of the benefits awarded are considered social security equivalents. Normally, through the Financial Interchange (FI), the Social Security trust funds bear the cost for any benefits awarded under the RRA if the benefits are considered Social Security equivalents. See Appendix I for a definition of the Financial Interchange.

When the SSA does not concur, as is the case in the RRB's unilateral freeze determinations, none of the benefits are considered Social Security equivalents and, as a result, the Railroad Retirement program bears the entire cost.

General Exception

Our review of the policies and procedures related to disability freeze decisions identified the following general exception.

Memorandum of Understanding Needs to be Updated

The MOU between the RRB and the SSA needs to be updated. Our audit found that the MOU had not been modified since 1987 and that some aspects of the coordination process for disability freezes outlined in the MOU did not match current procedures. For example, although the MOU states that the “RRB will formally advise the SSA of its (unilateral freeze) decision...,” the RRB had no procedure in place to do so and had not been notifying the SSA of the RRB’s unilateral freeze decisions at the time of our audit. The SSA OIG also raised the issue of the outdated MOU in a May 2009 evaluation report entitled “Processing of Railroad Worker Disability Claims.”

According to the U.S. Government Accountability Office (GAO) Internal Control Standards, transactions [documentation] should be promptly recorded to maintain their relevance and value to management in controlling operations and making decisions.

During the audit, the RRB added a procedure to notify the SSA by e-mail when they make a unilateral freeze decision. However, no changes were made to the MOU. RRB personnel did not have a specific reason as to why the MOU had not been revised. Lack of coordination and communication between the RRB and SSA and outdated procedures may result in additional unilateral freeze awards being granted by the RRB. Also, there is a risk that other issues in need of correction may not be detected.

Recommendation

We recommend that the Office of Programs:

1. work with the SSA to review and update the MOU between the agencies.

Management’s Response

The Office of Programs concurred with this recommendation and has advised us that the RRB started the process to update the MOU with the SSA in April 2009 and an updated version was sent to the Board on April 30, 2010. They expect it to be completed by December 31, 2010.

Exceptions Identified During the Review of Unilateral Disability Freeze Decisions

The following sections outline the internal control issues we identified as a result of our review of the unilateral disability freeze decisions. Of the 79 cases reviewed, we identified 28 decisions that had exceptions. See Appendix IV for specific results.

Procedures Are Incomplete

Agency procedures for handling unilateral freeze determinations were not complete.

According to the GAO Internal Control Standards all transactions and other significant events [including procedures] need to be clearly documented and the documentation should be readily available for examination. The documentation should appear in management directives, administrative policies, or operating manuals. All documentation should be properly managed and maintained. PRISM, the agency's online procedural manual, indicates that the adjudication manuals in PRISM should make up the single authorized means for issuing official written program policy and operating instructions in the RRB.

We found that the procedures contained in the Disability Claims Manuals in PRISM were not comprehensive in that they did not always reflect the RRB's practices for handling unilateral freeze determinations. In addition, the procedures lacked details on authorizations and support that should be included in case folders. For example:

- During our review of the 79 unilateral freeze determinations awarded from January to September 2008, we found that, although the Disability Claims Manuals contained in PRISM said that all unilateral decisions must be approved by a supervisory or senior disability claims examiner, 9 decisions did not show this approval. All nine decisions involved an onset date conflict between the SSA and RRB of exactly one month. The conflict results from a difference in how the RRB and the SSA treat age attainment. See Appendix IV for detailed findings.

RRB staff advised us that based on agency practices, these cases (decisions) do not require approval by a supervisory or senior disability claims examiner. However, there is no written procedure for when a lead examiner's approval is or is not required. These decisions were coded in the system as unilateral decisions. Therefore, we take exception to the lack of approvals for these nine cases based on the procedures outlined in PRISM.

We then performed a further review on the Disability Claims Manuals in PRISM and found them to be difficult to follow and incomplete with regards to disability claims processing. When we inquired as to why this might be, the Office of Programs staff advised us that the Disability Unit has relied on informal communications, such as e-mails and in-house training documents instead of updating the formal written procedures in PRISM. They have also relied on the knowledge and experience of supervisors and the two Senior Disability Examiners who approve unilateral freeze determinations.

The lack of comprehensive updated procedures increases the risk of inconsistent or improper handling of unilateral freeze cases.

Recommendation

We recommend that the Office of Programs:

2. update the procedures in the Disability Claims Manuals in PRISM to ensure that unilateral freeze procedures are current, comprehensive, and provide sufficient detail to facilitate consistent handling.

Management's Response

The Office of Programs concurred with this recommendation and has advised us that they are currently in the process of updating the Disability Claims Manuals which will include the recommended changes. They expect to complete that process by December 31, 2011.

Better Coordination with the SSA Could Help to Resolve Some Differences

During our audit, we found that better coordination with the SSA in some areas might help to resolve some differences, thereby reducing the number of unilateral freeze determinations. According to PRISM, the agency's online procedural manual, initial joint decisions made by either the SSA or the RRB are binding, and all decisions should be coordinated between the two agencies.

As described previously, the RRB has the authority to make unilateral freeze determinations if differences in opinion with the SSA cannot be resolved. However, there are certain areas of disagreement that might benefit from improved communication and coordination with the SSA prior to a unilateral freeze determination. For example:

Differences in Opinion Involving Vocational Issues

Our audit found that 11 of the 79 decisions indicated a difference of opinion between the SSA's claims examiners and the RRB's claims examiners involving vocational issues,

such as which job descriptions to use and what weight, if any, to give to the applicant's description of the job versus the published description. The Office of Programs advised us that vocational differences occur because the job as described by the claimant is interpreted differently between the RRB and the SSA examiners. Both agencies use the Dictionary of Occupational Titles (D.O.T.), which has not been updated more than 20 years; therefore, certain jobs are not easily identifiable in the D.O.T.

Major Differences in Medical Opinion on Severity of the Condition

Our audit found that 5 of 79 decisions indicated that there was a major difference in the medical opinions of the SSA and RRB doctors and there was no apparent attempt to reconcile the differences. RRB personnel informed us that they would only question the SSA's doctors if there was additional medical evidence that was submitted later, if there was medical evidence that was inadvertently missed during the initial review, or if there was an obvious error. A joint freeze allowance is preferred over a unilateral because the RRB receives a partial cost recovery from the SSA's Disability Insurance Trust Fund (through the FI) when a joint freeze is granted. Conversely, RRB would bear the entire cost of unilateral decisions. See Appendix IV for detailed findings.

RRB advised us that they have an interagency work group with the SSA that meets regularly to discuss common issues.

Recommendation

We recommend that the Office of Programs:

3. establish procedures for addressing differences with SSA regarding vocational issues and medical opinions in joint freeze cases.

Management's Response

The Office of Programs agreed that the process for addressing differences between the RRB and the SSA needs to be evaluated and has advised us that they plan to revisit this issue after the new MOU is finalized. They expect to complete their work in this area by December 31, 2011.

RRB System Coding Errors Could Result in the RRB Bearing Unnecessary Costs

Our audit found three cases (decisions) that were erroneously coded in the system as unilateral freeze cases. See Appendix IV.

According to GAO, Application Control is designed to help ensure completeness, accuracy, authorization, and validity of all transactions during application processing. Control should be installed at an application's interfaces with other systems to ensure

that all inputs are received and are valid and outputs are correct and properly distributed.

The three decisions identified should all have been coded as joint freeze decisions. The SSA agreed with the disability freeze for a later onset date than what RRB believed it should be. The decisions were initially correctly coded as a unilateral freeze, but should have been switched to a joint freeze once the SSA's onset date was reached. Management indicated that the RRB systems do not automatically update to reflect a freeze change, and there are currently not any procedures or mechanisms to change the code when a disability freeze decision changes. Currently, freeze changes need to be manually entered to overlay the prior decision.

To ensure that the RRB receives the accurate amount of funds that it is entitled to through the FI, each decision needs to be coded correctly. Decisions coded as unilateral freezes at the initial and reconsideration levels are paid solely by the RRB, while the expense for joint freeze decisions is shared between the SSA and the RRB. The Bureau of Actuary verifies the codes for all FI sample cases. However, the errors noted above involve cases that were not included in the FI sample; therefore, were not reviewed. If these cases would have been part of the FI sample, the Bureau of Actuary would have had to manually identify and change the coding appropriately to ensure the accurate amount of funds were transferred.

Therefore, there is an increased risk that the RRB may not be receiving all the funds that it is entitled to through the FI because cases coded incorrectly need to be manually identified and the coding changed.

Recommendations

We recommend that the Office of Programs:

4. correct the coding for decisions noted above to indicate a joint freeze; and
5. develop a mechanism and procedures to update the unilateral freeze codes in the Payment Rate and Entitlement History (PREH) system when the RRB obtains new information that changes the status of the freeze.

Management's Response

In response to recommendation 4, the Office of Programs has advised us that they have reviewed the 3 cases identified by the audit and has agreed to do further analysis of these cases in conjunction with recommendation 5 to determine the best course of action for handling cases of this type. They expect to complete this effort by December 31, 2011.

In response to recommendation 5, the Office of Programs has agreed to investigate cases in which the type of freeze changes after the initial decision is made and to

determine the best course of action for handling such cases. They expect to complete this effort by December 31, 2011.

Exceptions Identified During the Review of Non-Unilateral Disability Freeze Decisions

Our review of five single, five joint or dual, five denial, and two termination disability freeze decisions revealed that they were consistently handled when compared to unilateral freeze decisions. However, our review identified two exceptions related to internal controls. The details of these exceptions are outlined in the following sections. See Appendix V for our sampling methodology.

Dual Eligibility Freeze Decision Coded as “Allow,” but Denied by the SSA

One decision we reviewed was denied by the SSA, but coded the same as decisions where the SSA agreed with the period of disability. GAO’s Internal Control Standards state that application controls should be designed to help ensure completeness, accuracy, authorization, and validity of all transactions during application processing. Since the applicant in this decision applied at both the SSA and the RRB, the case is considered a dual eligibility freeze case. RRB systems do not have a way to differentiate between joint, dual, or single freeze cases. This may impact the amount transferred between the SSA and the RRB through the FI. With an incorrect code of “allow,” the SSA could have erroneously paid for a portion of the benefit even though they denied the case.

The proper handling of this decision cannot be determined because the MOU allows independent determinations but does not give specific guidance on how the decision should be coded for the FI.

Recommendation

We recommend that the Office of Programs:

6. develop a programming or procedural change to identify cases involving dual eligibility where both RRB and the SSA agree to the period of disability, and when the SSA denies the period of disability.

Management’s Response

The Office of Programs has agreed to investigate the types of cases identified by the audit to determine the best course of action for handling such cases. They expect to complete this effort by December 31, 2011.

Denial Freeze Decision Had Inaccurate Statement on Claimant's Letter

In one folder, we found an inaccurate statement in the denial letter sent to the claimant. The denial letter erroneously stated that the denial was based on the fact that the medical condition did not meet the SSA's definition for the disability when in fact the denial was based on earnings, not on the medical condition. GAO's Internal Control Standards state that transactions should be promptly recorded to maintain their relevance and value to management in controlling operations and making decisions. Control activities help to ensure that all transactions are completely and accurately recorded. The inaccurate statement in the denial letter was an oversight by Office of Programs personnel. The denial was proper. However, we brought this issue to management's attention because we believe that the inaccurate statement might have confused the claimant and because we believe that a better review process would help to prevent similar occurrences from happening in the future.

Recommendation

We recommend that the Office of Programs:

7. develop a procedure to review letters before they are sent to the claimants.

Management's Response

The Office of Programs has agreed to investigate the cause of this situation and determine the appropriate course of action by September 30, 2010.

Review of Long Island Rail Road Disability Freeze Decisions

Our review of the five LIRR decisions revealed that all five decisions were handled consistently when compared to all other types of disability freeze decisions reviewed and it does not appear that LIRR employees had more unilateral freezes granted when compared to the overall RRB employee population. Overall, 66% of disability freeze claims submitted were granted, while only 34% of LIRR disability freeze claims submitted were granted. Of the 1664 disability freezes granted, 79 (4.7%) were unilaterals, while 2 (4.2%) of 48 LIRR disability freezes granted were unilaterals. See illustration below for details.

	Grants	Denials	No Decision	Terminations	TOTAL
Overall Freeze Decisions (January through September 2008)	1664	433	405	6	2508
	66.3%	17.3%	16.1%	0.2%	
LIRR Freeze Decisions (January through September 2008)	48	85	9	0	142
	33.8%	59.9%	6.3%	0.0%	

	LIRR	TOTAL
Unilaterals Granted	2	79
Overall Freeze Decisions Granted	48	1664
	4.2%	4.7%

Definitions

Disability and Earnings Requirements Defined

The Disability Requirement – A worker must have a *permanent medical condition* that prevents the worker from performing ANY *substantial gainful work*.⁴

Another way to meet this requirement is for the worker to be at least 55 and unable, because of blindness, to perform substantial gainful work that they used to do with some regularity over a period of time.

The Earnings Requirement – A worker must meet ONE of the following:

1. If the worker's disability began at age 31 or later, they need to meet two provisions. First, they must have earned railroad retirement or social security work credits for each year after the later of 1950 or age 21 up to the year severe disability began. Second, unless they are at least 55 and meet the definition of blindness, they must have earned credit for 20 calendar quarters of railroad retirement or social security work during a 40 quarter period ending in or after the quarter in which severe disability began.
2. If the worker was previously entitled to a period of disability which began before age 31, they must have earned railroad retirement or social security work credits for half of the calendar quarters between the first quarter after age 21 and the quarter in which the current severe disability began (excluding the prior period(s) of disability).
3. If the worker's disability began between ages 24 and 31, they must have earned railroad retirement or social security work credits for half of the calendar quarters between the first quarter after age 21 and the quarter in which severe disability began.

Types of Disability Freeze Decisions Defined

Unilateral Disability Freeze Cases

SSA and RRB agree that unilateral disability freeze cases are defined as disability claims reversed as a result of the RRB appeals process that were initially denied by either RRB or jointly with SSA, or those where RRB makes an independent decision.

⁴ A *permanent medical condition* means that the condition has lasted, or is expected to last, for 12 consecutive months. *Substantial gainful work* is any work generally done for pay or profit, involving the performance of significant physical or mental duties.

Single Disability Freeze Cases – Single disability freeze decisions are made solely by the RRB in cases not requiring a joint decision with the SSA. Single freeze cases involve disabled career railroad employees who do not have actual or potential entitlement to social security benefits.

Joint Eligibility Freeze Cases – Joint disability freeze decisions by the RRB and the SSA are made for career railroad employees when there is potential entitlement to social security benefits. A joint decision is made when a disability annuity is granted by the RRB and one or more of the following conditions exist:

1. The employee does not have a current connection with the railroad industry;
2. The employee has sufficient earnings to be eligible for a retirement benefit from the SSA; or
3. The case is included in the Financial Interchange (FI) sample. (See Definition Below.)

Joint disability freeze decisions are not required by law or regulation, but are the results of interagency policy formed in September 1958 to protect certain railroad employees and their families against the possible adverse effect of independent and/or conflicting disability freeze decisions made by two agencies based on the same provisions of law. Joint decisions also eliminate any potential administrative problems for both agencies due to uncoordinated decisions. All joint disability freeze decisions are coordinated with the SSA by claims examiners in the RRB's Office of Programs.

Dual Eligibility Freeze Cases – Dual disability freeze cases are processed with a “dual” decision, from both the SSA and the RRB. RRB prepares and signs the railroad disability determinations for career railroad workers or their dependents and the SSA prepares and signs the social security determinations for the same claimants. The RRB and the SSA decisions are coordinated to prevent different decisions from being effectuated. Dual eligibility cases are insured jointly from the SSA and the RRB trust funds.

Other Terms Defined

Financial Interchange (FI) – In 1951, Congress enacted amendments that increased benefit levels under the RRA. This legislation guaranteed that benefits paid under the RRA would never be less than what would have been payable if the worker's railroad earnings had been credited as Social Security employment instead of RRA covered compensation. As part of that same legislative package, Congress established the FI between the SSA and Railroad Retirement systems as an additional funding source. The FI is one of the major funding sources that supports the RRA trust fund. For 2009, the FI accounted for approximately 43% of the total financing sources (excluding transfers and the decrease in investments).

The FI is a collective term that describes a series of legally mandated periodic fund transfers between the RRB and the SSA, the RRB and Centers for Medicare and Medicaid Services (CMS), and between the RRB and the Treasury. The amounts transferred are the result of a complex statistical projection based on the scenario “what if the RRA had never been enacted.”

FI amounts are computed by the Bureau of the Actuary using statistical methods including large samples of RRB beneficiaries and currently employed railroad workers. All calculations are performed under the provisions of the Social Security Act.

Residual Functional Capacity (RFC) – The claimant’s impairment(s) may cause physical and mental limitations that affect what the claimant can do in a work setting. RFC is what the claimant can do despite his or her limitations. RFC is a medical assessment of a person’s maximum sustained capability for work.

Social Security (SS) Listing of Impairments (Listing) – The SS Listing of Impairments is a listing which contains examples of medical conditions which generally prevent an individual from engaging in substantial gainful activity.

An impairment “meets” the Listing only when it manifests the specific findings described in the set of medical criteria for that listed impairment.

To determine if an impairment or combination of impairments “equals” the Listing a comparison must be made of the medical findings (the set of symptoms, signs, and laboratory findings) in the claimant’s medical evidence and the medical findings specified for the listed impairment most like the claimant’s impairment(s). The claimant’s impairment(s) can be considered “equal” to the Listing only if the medical findings are at least equivalent in severity to those specified in the Listing.

TESTING METHODOLOGY AND RESULTS

Unilateral Disability Freeze Decisions

We performed non-sampling tests (100% review) of unilateral disability freeze decisions.

Audit Objective

The objective of our test was to determine if the unilateral disability freeze awards (decisions) were processed consistently with applicable laws, policies, and procedures.

Scope

We reviewed every unilateral disability freeze granted from January through September 2008. A total of 79 unilateral disability freezes were granted within the scope of our review.

Review Methodology

For each of the unilateral disability award decisions, we reviewed the award document and other evidence contained in the claim files to verify the consistency of processing unilateral disability freeze decisions; to determine if the unilateral freeze decisions were properly authorized; to determine if there was adequate documentation in the file to validate the unilateral decision made; to determine the reasons why the RRB and the SSA disagreed on the freeze decision; (resulting in the RRB's unilateral freeze decision) and to determine the impact of unilateral freeze decisions on the RRA's trust funds.

An exception was defined as a unilateral disability freeze decision that was not authorized by a supervisory or senior disability claims examiner; a case where there was not adequate documentation in the claims file to justify a unilateral decision; a decision where better coordination with the SSA might have helped to resolve some differences; and cases that were coded improperly leading to the RRB possibly bearing unnecessary costs.

Results of Non-Sampling Tests

Our review of the 79 unilateral disability freeze decisions determined that unilateral disability freeze decisions were handled consistently with applicable laws and that appropriate documentation existed to validate the decision made. In addition, we determined that there were three common circumstances leading to unilateral freeze determinations. The three circumstances are medical assessment disagreement, onset date disagreement, and vocational disagreement. See Appendix III for the breakout of

the circumstances identified. Lastly, we determined that in general, the RRB bears the cost of benefits awarded unilaterally.

However, our review also identified 28 exceptions related to the 79 case files reviewed. These 28 exceptions were related to lack of documentation for unilateral authorizations; differences in opinion between the RRB and the SSA that could have been resolved with better coordination, and coding errors that could result in the RRB bearing unnecessary costs. See the chart in Appendix IV for a breakout of the exceptions identified.

Audit Conclusion

Overall, unilateral disability freeze awards (decisions) were processed consistently with applicable laws. However, policies, procedures, and controls related to the authorization for unilateral freeze decisions, coordination with the SSA, and the coding of disability freeze decisions needed improvement. The details of our findings and recommendations are outlined in the body of this report.

Circumstances Leading to Unilateral Freeze Determinations

Of the 79 unilateral decisions we reviewed, 51 decisions (65%) resulted from a medical assessment disagreement of the disability between the SSA and the RRB, 15 decisions (19%) resulted from a disagreement in the onset date of the disability, 5 decisions (6%) resulted from a disagreement on the vocational assessment of the claimant, and 8 decisions (10%) had more than one circumstance that led to the disagreement.

Results of Unilateral Freeze Decision Review

Of the 79 unilateral freeze cases awarded between January and September 2008, we identified a total of 28 decisions with exceptions. See the following table for a breakdown of the exceptions identified.

Test	Issue Identified		No. Tested	No. of Non-Exceptions	No. of Exceptions	Misc. Comments
Consistency of Processing and Appropriate Documentation	Procedures are Incomplete	No authorization in folder	79	70	9	
Reasons for Disagreement with the SSA/ Circumstances Leading to Unilateral Decision	Better Coordination with the SSA Could Help to Resolve Some Differences – Differences In Opinion Involving Vocational Issues	<u>Vocational</u> issues - Difference of opinion between the SSA and CEL (e.g., which job descriptions to use, what weight to give to the applicant's description of the job, etc.)	79	70	9	
		<u>Vocational</u> issue, consistency used in the rationale and an exception for inadequate support in the folder	79	78	1	Also a consistency issue
		<u>Vocational</u> issue and consistency used in the rationale	79	78	1	Also a consistency issue
		Subtotal			11	
	Better Coordination with the SSA Could Help to Resolve Some Differences – Major Difference in Medical Opinion	<u>Major</u> difference in Medical Opinions Unresolved	79	76	3	
		<u>Major</u> difference in Medical Opinions Unresolved & Consistency used as part of Rationale	79	77	2	Also a consistency issue
		Subtotal			5	
Impact of Unilateral Decisions on the RRA Trust Funds	RRB System Coding Errors Could Result in the RRB Bearing Unnecessary Costs	System Coding Error (FI) - Onset Date	79	76	3	
		TOTALS	79	51	28	

TESTING METHODOLOGY AND RESULTS

Non-Unilateral Disability Freeze Decisions

We used non-statistical sampling test to measure the consistency of processing non-unilateral (single, joint or dual, denial, termination and LIRR) disability freeze decisions.

Audit Objective

The objective of our test was to determine if the procedures for processing non-unilateral disability freeze decisions were consistent with the procedures for processing unilateral disability freeze decisions.

Scope

Using the RRB Master Benefit File, we identified 10,154 disability records that were awarded to employees between January and September 2008. We then judgmentally selected a total of 22 (5 single, 5 joint or dual, 5 denial, 5 LIRR, and 2 termination) non-unilateral disability freeze decisions made during that same time period to review.

Review Methodology

For each of the 22 non-unilateral disability freeze decisions, we reviewed the award document and other evidence contained in the claim file to verify the consistency of processing between the different types of non-unilateral disability freeze decisions and to determine if procedures were consistent with unilateral disability freeze decisions.

Results

We found no exceptions related to the consistency of processing non-unilateral disability freeze decisions.

Audit Conclusion

Overall, procedures for processing non-unilateral disability freeze decisions were consistent with the procedures for processing unilateral disability freeze decisions. However, two controls needed improvement. The details of our findings and recommendations are outlined in the body of this report.



UNITED STATES
GOVERNMENT

MEMORANDUM

FORM G-115f (1-92)

RAILROAD RETIREMENT BOARD

AUG 10 2010

TO: Diana Kruei
Assistant Inspector General for Audit

FROM: Catherine A. Leyser *Catherine A. Leyser*
Director of Assessment and Training

THROUGH: Dorothy Isherwood *D. Isherwood*
Director of Programs

SUBJECT: **Draft Report – Audit of Unilateral Disability Freeze Determinations**

Audit of Unilateral Disability Freeze Determinations

Recommendation 1 We recommend that the Office of Programs work with the SSA to review and update the MOU between the agencies.

Office of Programs Response We concur. The RRB started this process in April 2009 and an updated version of the MOU was sent to the Board on April 30, 2010. We expect it to be completed by December 31, 2010.

Recommendation 2 We recommend that the Office of Programs update the procedures in the Disability Claims Manuals in PRISM to ensure that unilateral freeze procedures are current, comprehensive, and provide sufficient detail to facilitate consistent handling.

Continued on next page

Draft Report – Audit of Unilateral Disability Freeze Determinations, Continued

Office of Programs Response	We concur. We are currently in the process of updating the Disability Claims Manuals which will include the recommended changes. We expect to complete that process December 31, 2011.
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Recommendation 3	We recommend that the Office of Programs establish procedures for addressing differences with SSA regarding vocational issues and medical opinions in joint freeze cases.
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Office of Programs Response	We agree that the process for addressing differences between RRB and SSA needs to be evaluated and we plan to revisit this issue after the MOU is finalized. We expect to complete our work in this area by December 31, 2011.
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Recommendation 4	We recommend that the Office of Programs correct the coding for decisions noted above to indicate a joint freeze.
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Office of Programs Response	We reviewed the 3 cases identified by the audit. We will do further analysis of these cases in conjunction with recommendation 5 to determine the best course of action for handling cases of this type. We expect to complete this effort by December 31, 2011.
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Draft Report – Audit of Unilateral Disability Freeze Determinations, Continued

Recommendation 5	We recommend that the Office of Programs develop a mechanism and procedures to update the unilateral freeze codes in the Payment Rate and Entitlement History (PREH) system when the RRB obtains new information that changes the status of the freeze.
Office of Programs Response	We will investigate cases in which the type of freeze changes after the initial decision is made to determine the best course of action for handling such cases. We expect to complete this effort by December 31, 2011.
Recommendation 6	We recommend that the Office of Programs develop a programming or procedural change to identify cases involving dual eligibility where both RRB and the SSA agree to the period of disability, and when the SSA denies the period of disability.
Office of Programs Response	We will investigate the types of cases identified by the audit to determine the best course of action for handling such cases. We expect to complete this effort by December 31, 2011.
Recommendation 7	We recommend that the Office of Programs develop a procedure to review letters before they are sent to the claimants.
Office of Programs Response	We will investigate the cause of this situation and determine an appropriate course of action by September 30, 2010.

cc: Chief Actuary
 Director of Policy and Systems
 Director of Operations
 Chief Information Officer