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Cuomo Reaches Deal with Railroad in Occupational Disability Probe

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New York Attorney General Anthony Cuomo and the Long Island Rail Road have reached an agreement that appears close to resolving an 18-month investigation of federal occupational disability claims that triggered a Government Accountability Office review of eight commuter railways' disability systems last year.

Cuomo said his investigation exposed a "cottage industry that has developed among certain doctors as consultants to assist LIRR employees in exploiting the system" in an announcement Tuesday. LIRR has agreed to appoint an independent examiner to review safeguards in the system, to develop a compliance system and to monitor worker safety, accidents, injuries and medical problems, the attorney general said.

The New York Times reported that Cuomo's investigation produced only one criminal case, which was settled without a criminal prosecution in February.

Following a series of reports on the abuse of disability benefits published by The Times in 2008, the GAO reported last Sept. 9 that LIRR workers applied for occupational disability benefits at a rate 12 times higher than those at seven other commuter railroads examined across the nation.

Congressional investigators also reported that nearly all of the LIRR workers who applied for benefits based their claims on musculoskeletal impairments, such as lower-back problems. GAO said about half of the claims for retirees from the other railroads involved musculoskeletal impairments.

Cuomo said his own review showed that 90% of all LIRR retirees applied to the federal board for disability benefits.

"Taxpayers, and my office, will not put up with a culture of entitlement and unchecked systematic abuses of disparity benefits," Cuomo said in a statement.

The federal system determines disability based on whether a work-related injury prevents a railroad worker from performing the same job held when the injury occurred. Eligibility is based on the age of each worker and their time on the job.

A railroad worker is eligible to apply for an occupational disability at age 60 if the worker has 10 years of service. But workers with 20 years of service are eligible for

occupational disability at any age if they suffered an injury that renders them incapable of doing the same job – with one caveat: They must have a "current connection" to the railroad industry -- meaning they have worked for a railroad at least 12 of the last 30 consecutive months immediately prior to the start date for the occupational disability claim.

New York claimants' attorney Gabriel Hermann, who specializes in Social Security and railroad disability cases, said the federal government established a strong benefits program in the 1930s, "when railroad was king."

But he said he's seen more denials by the federal railroad board recently and has had to file more petitions for hearings.

"People are calling me earlier (in the process) with more concerns, and more of my cases are being denied," Hermann said.

Hermann said he's handled few cases for LIRR workers and hasn't seen evidence of a cottage industry of doctors who certify workers for occupational disability without merit. He didn't rule out that such a network was possible, but also said that doctors who routinely issue similar reports eventually would develop a reputation that would cause workers to stop using them for fear their claims would be routinely denied.

"If a doctor issues the same report over and over and simply changes the name at the top, that's a matter that's going to get flagged," Hermann said.

The GAO said it reviewed disability claims involving the eight commuter rail lines from 2004 through 2007 and found LIRR was "the only consistent outlier across the rail industry for each year."

In 2006, LIRR had an occupational disability rate of 17.1% compared to an industry-wide average of 3.7%, GAO said.

"While LIRR workers did receive fewer occupational disability awards in calendar year 2008 than (in) 2007, they still received twice as many awards as workers from the other seven commuter railroads combined," GAO reported.

GAO said the U.S. Railroad Retirement Board did not break down its claims decisions by railroad. But researchers said that the board approved 98% of all claims between 2004 and 2007.

The GAO reported that the Railroad Retirement Board paid more than \$1.7 billion in occupational disability benefits to about 64,000 workers in fiscal year 2007. The federal board could not be reached for comment late Thursday.

The GAO said in a follow-up report issued last month to U.S. Rep. John L. Mica that the railroad board has initiated efforts to create a new position for someone to collect,

develop and analyze data from the occupational disability program. Mica is the ranking Republican on the House Transportation and Infrastructure Committee.

The New York Times reported that following its news series, LIRR beefed up its ethics training and established a watchdog unit to monitor disability claims. It also launched a program to encourage workers to report abuse of the program.

But the Times said that as of April 2009, while the Cuomo investigation was ongoing, only three doctors were handling most of the LIRR's claims and that 64 of 66 claims were approved.

The newspaper reported that Cuomo dropped the charges against Frederick S. Kreuder, a former manager in the LIRR pension office, in exchange for his resignation, a \$1,500 fine and an agreement that he won't work in the public sector.

Cuomo alleged Kreuder charged workers \$1,000 each to coach them in how to file disability claims.

The new LIRR examiner will be required to:

- Review and revise, if necessary, the current railroad ethics training program to ensure it addresses occupational disability benefits.
- Review operations of the railroad's pension office and retrain its workers.
- Review and improve, if necessary, the compliance office created by the railroad after Cuomo launched his investigation.
- Assess the LIRR's monitoring of on-the-job safety, accident, injury, and medical issues.

"The LIRR has been doing everything in its power to ensure that federal occupational disability pensions ... are reserved for those who truly deserve them," Helena Williams, the railroad's president, said in a statement.

Cuomo said his investigation into abuse in the railroad retirement system is ongoing.

Cuomo's letter of agreement with the railroad is here:

http://www.ag.ny.gov/media_center/2010/mar/finalagletteragreement_31610.pdf.

The Feb. 4, 2010, follow-up report from the GAO is here:

<http://www.gao.gov/new.items/d10351r.pdf>.

The New York Times report on the Cuomo agreement is here:

<http://www.nytimes.com/2010/03/23/nyregion/23lirr.html?scp=2&sq=Long%20Island%20Rail%20Road&st=cse>.