



# FIGHTING DISABILITY FRAUD

## HOW THE LONG ISLAND RAIL ROAD COULD BE A MODEL FOR ALL EMPLOYERS

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Disability benefit recipients playing golf or working on their bench press at the gym? Such images of fraud may not be all that uncommon to seasoned employers, but in the case of the Long Island Rail Road, it occurred on an uncommonly massive scale. The railroad's response to the widespread disability retirement scandal that first emerged in 2008 was equally monumental, resulting in more than 30 arrests and making a bold statement in its lasting effects: A year after the initial arrests, disability applications at the LIRR were down almost 50 percent. Further, 600-700 retirees who had previously been collecting \$2 million in benefits per month had their benefits suspended and were forced to reapply.<sup>1</sup>

The investigation and prosecution of this fraud scheme provides a template for analyzing similar disability and pension systems, such as workers' compensation, where attempts at fraud by employees, health care providers, and even employers are frequent. According to the Insurance Information Institute, the exact amount of insurance fraud is difficult to determine, but health care, workers' compensation, and auto insurance are believed to be the most vulnerable lines of insurance.<sup>2</sup> Questionable insurance claims rose by 16 percent in 2011 from 100,201 to 116,171, according to the National Insurance Crime Bureau (NICB).<sup>3</sup>

With the frequency and cost of such

claims on the rise, identifying and deterring fraud may be more important than ever.

### THE INCENTIVE AND THE INVESTIGATION

According to the criminal complaint filed in the U.S. District Court in Manhattan, hundreds of LIRR employees falsely alleged disabilities to collect more pension money from ages 50 to 65, when they would otherwise qualify for full benefits.<sup>4</sup> The incentive to commit fraud was a consequence of the railroad's contract with its employees' union. The contract permitted retirement at age 50 so long as the retiree had at least 20 years of service. The LIRR, which transports passengers to points between Manhattan and Long Island, is the only railroad in the country that has such an arrangement with its workers.

The investigation itself was prompted, in part, by statistical evidence showing that the vast majority of Long Island Rail Road workers who retired in their 50s had done so due to an "occupational disability" despite the LIRR's impressive workplace safety record.<sup>5</sup> Further, Long Island Rail Road workers applied for occupational disability benefits at a rate 12 times higher than workers of Metro North Rail Road, a comparable railroad that services New York's northern suburbs.<sup>6</sup> This dissonance prompted federal agents and prosecutors to initiate a painstaking investi-

gation spanning several years and involving an extensive analysis of disability applications, medical records, employee data, and covert surveillance of benefit recipients.

### THE DOCTORS

At the center of the government's investigation were a handful of physicians. According to a press release from the Department of Justice, between the late 1990s and 2008, one particular doctor recommended that at least 734 retiring LIRR employees receive disability benefits and was responsible for treating nearly half of all LIRR employees who retired and received disability benefits in one four-year period. In effect, this doctor siphoned millions of dollars from stakeholders through his operation of a "disability mill" where prospective retirees could go to receive a medical narrative in support of their disability applications in exchange for cash.

In January 2013, that doctor plead guilty to one count of conspiracy to commit mail fraud, wire fraud, and health care fraud, and one count of health care fraud, which resulted in an eight-year prison sentence.<sup>7</sup> Later that year, after a three-week jury trial, a second doctor was convicted on all 10 counts with which he was charged. He was sentenced to three years of supervised release and ordered to forfeit \$70,947,699 and pay \$70,632,900 in restitution.

## THE RAILROAD WORKERS

The *New York Times* instigated the federal investigation with a 2008 article that began with the image of dozens of former railroad employees playing golf every day. The description of the scene made it clear that this was an open secret.

The complaint noted that there were two types of disability annuities provided by the Railroad Retirement Board (RRB). The first used standards similar to the Social Security Disability application process. The second was an “occupational disability” standard that determined whether an employee could perform their own job description with the railroad. Despite complaints that included inabilities to grasp with strength, sit, stand, walk, or even bathe, the federal investigation of the pensioners revealed that a significant number of defendant pensioners were engaged in daily activities completely inconsistent with those complaints, including golf, tennis, intense gym activity, shoveling snow, and being a volunteer firefighter.

For many, the disability benefits received by former employees were calculated using earnings from five years prior to their retirement. In the case of the Long Island Rail Road, days worked are often measured by union rules pertaining to the duties and projects completed, not time actually spent working. A common thread in the cases brought against former employees was a concerted effort to *increase* productivity despite the fact that these workers were going to claim a developing *inability* to do the work. The complaints against former employees often laid out a timeline for fraud that started months – or even years – before the claim for disability retirement was made.

## LESSONS LEARNED

Not every business has access to the investigative resources of state and federal agencies, but the Long Island Rail Road case serves as a model for larger businesses and organizations to help identify indicators for fraud.

The human resources departments of larger organizations often have to deal with the implications of systems like workers’ compensation, collectively bargained standards for disability leave or retirement, the Family Medical Leave Act, and short-term disability. It then often falls to someone within that organization to navigate the

standards and guidelines put forth by multiple jurisdictions to determine whether the facts of a particular case would meet the standards or guidelines for fraud. Understanding the ins and outs of each system and the statutes that govern them is probably an unrealistic expectation. Instead, it might be worthwhile to contemplate utilizing an analysis that targets red flags and allows an organization to identify metrics and landmarks for a faulty process.

The lessons of the LIRR fraud scheme lie in the patterns that emerged and the activities of its central figures, all of whom were in a position to spur along a multitude of claims. One defendant was a former member of the RRB who began advising ex-workers on their disability applications. Another was a former union chief who also set out to advise applicants for profit. The doctors facilitated the application process of thousands by failing to scrutinize the claims made by their patients. In the complaint, it was reported that one doctor had noted he thought he may have signed off on 100 percent of his patients’ complaints, having no reason to question their integrity.

In the end, the LIRR system provided incentive for the perversion of its intended purpose, and plenty of actors were willing to manipulate that system for monetary gain.

## WHAT SHOULD YOU LOOK FOR?

A single disability allegation may result in numerous proceedings across a number of venues. A workers’ compensation claim, for instance, may also include questions regarding a collective bargaining agreement, an application for social security disability, and potentially retirement benefits. Knowing to ask how these benefits would potentially interplay is itself an invaluable asset to analyzing whether a warped incentive has been created, inadvertently or otherwise.

It turns out that the Long Island Rail Road, in many cases, could have predicted when a claimant would retire with a disability based upon the increases in productivity that preceded many of the disability retirement applications. Hindsight is 20/20, but maintenance of the records later helped investigators put together timelines that were useful.

A common refrain for any legal action is that “every case is different.” That said, the Long Island Rail Road scandal turned

on four key players: two doctors, a former union chief, and a former RRB insider. In dealing with your own claims, you may begin to notice the same doctor, the same lawyer, or similar fact patterns starting to emerge. While that is not determinative of fraud, it is certainly the sort of indicator that should warrant further scrutiny.

When people are committing fraud of this variety, it is often due to the prospect of continued and significant income in combination with absolving themselves of the burdens of a work schedule. As noted in the history of the Long Island Rail Road disability scheme, most of the eventual defendants could be found in broad daylight engaging in activity that highlighted the fraud.

## CONCLUSION

Circumstances are going to be different as organizations, jurisdictions, agreements, and workforces differ. The LIRR scandal is instructive, however, because it demonstrates that patterns tend to emerge – and that taking action to stop fraud makes a powerful statement to would-be abusers. If you are able to recognize a fraudulent pattern and its implications, the ability to assemble a framework and strategy to address that pattern may help reduce such activity in the future.



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<sup>1</sup> [http://www.huffingtonpost.com/2013/07/02/lirr-fraud-scandal-retirees-disability-benefits\\_n\\_3534620.html](http://www.huffingtonpost.com/2013/07/02/lirr-fraud-scandal-retirees-disability-benefits_n_3534620.html)

<sup>2</sup> <http://www.iii.org/fact-statistic/fraud>

<sup>3</sup> Id.

<sup>4</sup> <http://www.post-gazette.com/news/nation/2011/10/28/Rail-workers-in-NYC-linked-to-1-billion-disability-fraud/stories/201110280173>

<sup>5</sup> <http://www.justice.gov/usao/nys/pressreleases/pcremarks/lirremarks.html>

<sup>6</sup> Id.

<sup>7</sup> Id.