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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

FEDERAL PERSONNEL AND
COMPENSATION DIVISION

B-201442

DECEMBER 15, 1980

The Honorable Jule M. Sugarman
Deputy Director, Office of Personnel
Management



113973

Dear Mr. Sugarman:

Subject: Civil Service Disability Retirement Program
(FPCD-81-18)

In reports issued in 1976 and 1978, we recommended several changes to the disability retirement program which would serve to retain marginally disabled yet potentially productive employees. Those reports concluded that (1) benefits may have been paid unnecessarily to many retirees, (2) disabled Federal employees were not being effectively reassigned, and (3) economically and medically recovered annuitants were not always being removed from the disability retirement rolls.

We have enclosed the results of our followup review of the Office of Personnel Management's (OPM's) actions on our previous recommendations.

We commend OPM's actions to improve its administration of the disability retirement program. We are recommending, however, that more be done to reduce the number of annuitants added to the rolls and to reduce disability retirement costs. These recommendations include (1) retaining more potentially productive employees through reassignment and reemployment, (2) more effectively removing the economically and medically recovered disability annuitants from the rolls, and (3) discontinuing the policy of advising employees to use extended sick leave before filing applications for disability retirement.

We believe these concerns warrant OPM's immediate attention. Resolving them could help considerably in strengthening the civil service disability retirement program.

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As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

We are sending copies of this report to the Chairman, House Committee on Post Office and Civil Service, and its Subcommittee on Compensation and Employee Benefits; the Chairman, Senate Committee on Governmental Affairs, and its Subcommittee on Civil Service and General Services; and the Director, Office of Management and Budget.

Sincerely yours,

H. L. Krieger

H. L. Krieger
Director

Enclosure

IMPROVING THE ADMINISTRATION AND OPERATION OF THE
CIVIL SERVICE DISABILITY RETIREMENT PROGRAM

Many Federal employees retire on disability. In fact, disability retirements account for over one-fourth of all retirements under the civil service system. Under the civil service retirement system, employees may retire on disability at any age if they have completed at least 5 years of service.

Disability provisions are an integral part of any responsible employer's compensation program. Employees who suffer physical or mental impairments causing a partial or complete loss of income need the financial support that disability programs provide.

The disability retirement program has grown significantly over the years. In 1975, the system paid approximately \$1 billion to about 258,000 disabled annuitants. In 1979, 333,000 annuitants received disability benefits totaling over \$2.5 billion.

OPM is responsible under the law for administering the civil service retirement program, including the disability provisions.

In reviewing the civil service disability retirement program, we have become concerned that benefits may have been paid unnecessarily to many retirees. We have reported that (1) some disability applications were approved without sufficient medical evidence, (2) some disability retirees were probably capable of performing other types of work at the time of retirement, (3) some were receiving disability benefits while performing jobs similar to their prior Government jobs, and (4) some had been able to earn more than the pay for their prior Government jobs but continued to receive disability benefits because of the program's liberal economic recovery provisions. In general, we reported that many reforms were needed to reduce the growing costs of the program and to insure that benefits were only paid to the truly disabled. 1/

1/See GAO reports, "Civil Service Disability Retirement: Needed Improvements" (FPCD-76-61, Nov. 19, 1976); "Disability Provisions of Federal and District of Columbia Employee Retirement Systems Need Reform" (FPCD-78-48, July 10, 1978); and "Minimum Benefit Provision of the Civil Service Disability Retirement Program Should Be Changed" (FPCD-80-26, Nov. 30, 1979).

To determine the extent to which OPM has addressed these problems, we did a followup review of the overall policies, procedures, and administration of the program. We examined the processes used in adjudicating disability retirement claims and monitoring the disability rolls. We also reviewed a sample of disability annuitants reporting income from other employment during 1976 to 1979.

OPM'S ACTIONS ON OUR RECOMMENDATIONS

In April 1980, OPM implemented new claims review procedures to reduce the number of disability retirement claims. In the past, OPM did not seek to establish a relationship between the claimant's medical problem and his or her performance deficiency. This aspect of the disability definition received little attention, and a claimant could obtain disability retirement for a medical condition irrespective of whether it affected job performance. The revised procedures, effective April 25, 1980, specify five criteria which are to be used to judge all new disability retirement claims: (1) documentation of an employee's deficiency in service, (2) documentation of a medical condition, (3) indication or evidence that the medical condition has caused the deficiency, (4) the expected duration of the medical condition, and (5) incompatibility of the presence of the medical condition with function or retention in the position.

Although it is too early to adequately assess their effectiveness, the new procedures have already reduced the number of disability claims OPM has allowed. Since the new procedures, the rejection rate has climbed from between 8 and 12 percent to as high as 47 percent. It averaged approximately 33 percent during May through August 1980. OPM estimates that, if as much as 20 percent of all claims is disallowed, the retirement system's normal cost will be reduced by .27 percent of payroll--about \$140 million on the basis of the 1980 payroll--and outlays from the fund could be reduced by as much as \$6 billion over the next 20 years.

We believe this action by OPM clearly shows the effect that tightening up of the disability retirement program can have on Government operations and costs.

OPM is also considering other changes to the disability retirement program which it planned to have finalized and included in the Code of Federal Regulations by December 1980. These changes were the result of a study OPM completed in September 1979 and are intended to strengthen the disability retirement definition and further reduce the number of disability annuitants added to the rolls each year.

The civil service retirement law defines disability as "totally disabled for useful and efficient service in the grade or class of position last occupied." In the past, OPM has interpreted this provision very liberally and would consider employees to be totally disabled if they could not perform key or primary duties in their jobs.

In our previous reviews of the disability retirement program, we found little evidence of agency efforts to use job details, restructuring, or reassignments to retain disabled employees in productive employment. We had recommended that agencies be authorized to reassign employees and actively seek alternative positions for disabled employees who were qualified and could perform in other positions. OPM's proposed regulations attempt to address this problem and would expand the disability definition from deficiency in service in the immediate position to all vacant positions the employee qualifies for in the same grade within the same agency and geographic area. They would also require agencies to identify actions taken to place the employee in other positions.

ADDITIONAL CHANGES ARE NEEDED

OPM officials believe that its steps to improve the disability program can be accomplished quickly. Although the changes should reduce disability retirement costs significantly, we believe that several of OPM's actions do not go far enough. Additional actions discussed below could further increase the effectiveness of the disability retirement program.

Stricter definition needed for disability retirement

Although the proposed regulation emphasizes a stricter interpretation of the disability definition, it may do little to retain marginally disabled employees. The regulation requires agencies to document placement efforts, but it does not require agencies to provide otherwise disabled employees with the same reassignment opportunities available to recovered disability annuitants or other displaced employees.

OPM requires agencies to maintain priority placement programs for separated employees and recovered disability annuitants. In addition, such displaced employees receive priority placement assistance to other agencies. We question the inconsistency of reassigning separated employees and recovered disability annuitants to other agencies while not

providing the same opportunity to the potentially productive employees being considered for disability retirement.

The failure to afford disabled employees the same placement rights afforded to recovered annuitants could limit the effective reassignment of disabled employees.

Restricting disabled employees' reassignment opportunities to the same agency within a geographic area contradicts a 1961 White House policy. This policy states that agencies should consider disability retirement only after making every feasible effort to reassign disabled employees. Limiting reassignments to a particular agency precludes other employment opportunities. OPM believes it might be administratively difficult to reassign disabled employees to other Federal agencies. However, we believe not doing so reduces the Government's opportunity to effectively use marginally disabled employees.

The proposed regulation would not authorize reassignment of disabled employees to suitable positions in a lower pay grade. This restriction may severely limit a disabled employee's placement opportunities. The effect of demotions is minimized by the special grade and pay retention provisions of the Civil Service Reform Act for employees involuntarily downgraded. Under those special provisions, a downgraded employee will never suffer a reduction in pay. Because of these special protection features, we believe that agencies should not be precluded from reassigning employees to a lower grade. Failing to require downgrades without loss of pay may cause the Government to lose employees capable of productive work. If a statutory change is required to permit disabled employees to be assigned to lower grades without loss of pay, OPM should seek such legislative authority.

Improved policing of the disability retirement rolls is needed

OPM's economic and medical policing allow potentially productive disability retirees to remain on annuitant rolls. Current procedures identify only a small number of recovered annuitants each year.

Economic reviews determine whether annuitants under age 60 have been restored to an earnings capacity fairly comparable to the current rate of pay of their former positions. Economic reviews solicit earnings data but do not ask for current position duties. Medical reviews, directed primarily toward disability annuitants found temporarily disabled under

age 60, determine whether annuitants are still disabled for their former Federal positions. These reviews solicit current medical information, earnings data, and a description of any positions annuitants presently hold.

Because of delays in records processing and OPM's not conducting medical reviews for any permanent annuitants, regardless of their earnings level, OPM is not fully identifying annuitants who may be capable of performing work similar to their former Federal positions. This could deprive the Government of experienced personnel and increase compensation costs.

More timely reviews needed

OPM's 1979 survey of about 140,000 annuitants reporting 1978 earnings resulted in approximately 17,000 annuitants not responding. Normally, according to OPM representatives, these annuitants would have been identified and second notices sent within 1979. However, the contractor which keypunched the information onto computer tape did not provide OPM a readable tape. According to OPM, the contractor had to keypunch the information several times before OPM could use the data. As a result, OPM did not get an accurate computer listing until January 1980.

When the second notices were finally sent in mid-1980, OPM representatives estimated they received responses from approximately 8,000 of the 17,000 annuitants who did not respond. The remaining annuitants are to be sent a third notification before the end of 1980, approximately 1 year behind schedule. The third notification will give annuitants one last chance to respond before their annuity payments are suspended. At the end of October 1980, the third notices were not yet mailed.

We believe two notices give annuitants enough time and opportunity to respond. Therefore, OPM should consider dropping from the rolls annuitants not responding to second notices. According to a responsible OPM representative, this would not be contrary to any OPM policies. Furthermore, he thought sending only two notices would be a good idea. We believe this would reduce program administration costs and could prevent unnecessary payment of annuities.

OPM's annual medical reviews of temporary disability annuitants have experienced similar delays. The medical reviews had been backlogged 7 months when they were suspended in September 1979 because of the heavy workload involving

initial disability claims. OPM did not resume medical reviews of temporary disabilities until May 1980, resulting in a 15-month backlog. During the suspension, OPM did not medically review over 1,300 temporary disability retirement cases. The Director of OPM's Records Retention Center, which solicits and receives the requested medical information from the retirees, stressed the need to resume the medical reviews in a January 1980 memo to the Operations Support Division. The memo identified examples of temporary annuitants who had recovered from their disabilities and requested to be removed from the retirement rolls. According to the Director,

"* * * we cannot continue to ignore statements coming in from annuitants who say they have recovered sufficiently to resume duty or their doctors say they have recovered sufficiently to return to work."

In an attempt to reinstate timely medical reviews of temporary disability annuitants, OPM began reviewing March through May 1980 cases in June 1980 with the assistance of a paraprofessional on a temporary basis. In addition, the Director of the Medical Division requested the Records Retention Center to send him the cases where the annuitants had recovered from their disability. At the time of our review, medical evaluations had been completed on approximately 300 cases. However, it is unknown when OPM will solve the current timeliness problem, in light of the fact that the Medical Division plans to request updated medical information for all cases prior to March 1980. We believe that a permanent assignment of a paraprofessional would help to avoid such backlogs in the future.

Additional medical reviews needed

Effective roll policing may also suffer because OPM does not, as a policy, conduct medical reviews of annuitants whose disabilities are determined to be permanent, since it assumes that recovery is unlikely.

Earnings surveys for an average of 140,000 annuitants a year have consistently identified about 4,000 annuitants exhibiting a strong earnings potential from 1976 through 1979, but only identified between 100 and 175 annuitants each year who were restored to earnings capacity and dropped from the rolls. Annuitants are deemed economically recovered if their incomes exceed 80 percent of their former salary adjusted to the current rate for 2 consecutive years.

The leniency of OPM's economic reviews allows annuitants to manipulate their incomes (earn more than 80 percent one year and less than 80 percent the next) and remain on the disability rolls without OPM determining whether they are capable of returning to duty. OPM's final staff report issued with the proposed regulatory changes recommended two statutory remedies for this manipulation:

- Reduce the 2-year earnings test period to 1.
- Allow OPM access to social security earnings information so that income reported by disability annuitants can be confirmed.

OPM's recommendations, if implemented in law, would strengthen economic policing but would overlook annuitants' ability to return to duty. While OPM's recommendations may eliminate annuitants exceeding the 80-percent limit during one year and dropping below 80 percent the next, as well as those failing to report income, the recommendations overlook annuitants earning less than 80 percent each year. In a sample of 4,000 annuitants reporting earnings from 1976 through 1979, we found the vast majority were classified as permanently disabled and did not exceed the 80-percent limit but displayed individual annual earnings from 50 to 75 percent of what they would have earned if still employed in their former Federal positions. We believe a medical review determining an annuitant's ability to return to duty, whether the disability is termed temporary or permanent, should be made when the annuitant displays a strong earnings trend.

DISABLED EMPLOYEES' SICK
LEAVE POLICY QUESTIONABLE

Federal employees who extensively use sick leave immediately before disability retirement could cost the Government millions of dollars in payroll costs and adversely affect agencies' operations. Government operating costs are rising, and agencies annually spend millions of dollars for sick leave. OPM could save some of these millions and at the same time improve the program's effectiveness by revising the disability retirement regulations, such as

- eliminating the requirement to counsel employees to reduce their sick leave balances to 60 days before filing for disability retirement and
- separating employees immediately once the disability retirement has been approved.

Sick leave policy

OPM's sick leave policy allows disabled employees to exhaust their accumulated sick leave before retiring. The Federal Personnel Manual instructs Federal agencies to encourage "incapacitated" employees who are contemplating disability retirement to use all but about 60 days of their sick leave before filing their retirement application. While the application is being processed, employees may opt to remain on the job or go on sick leave or annual leave; most employees take sick leave. After OPM has approved the employees' disability retirement, they are permitted to use any remaining sick leave before retiring from Federal service. The manual points out that it is advantageous for the employee to retire after his or her sick leave expires.

Allowing employees to use extended sick leave in conjunction with disability retirement could increase Government payroll costs and adversely affect agency operations. Since existing Federal regulations entitle the disabled employee to exhaust sick leave while remaining eligible to receive additional annual and sick leave benefits, the effect upon payroll costs could be substantial.

Disabled employees who are on extended sick leave pending disability retirement are, by regulation, excluded from agency personnel ceilings. But limited funds may preclude agencies from hiring additional employees to replace those on sick leave. Paying two employees to perform one job is expensive. Consequently, some work may be deferred, the workload of employees on duty may increase, and overtime and hiring of temporary employees may take place.

Our report, "DOD Civilian Employees' Use of Sick Leave Before Retirement is Still High," FPCD-79-66, reviewed sick leave usage of 813 disability retirees at 5 agencies. We found that, before retirement, these employees used, on the average, 73 days of sick leave and retired with an ending balance of 2.4 days. In a recent sample of 3,000 disability annuitants reporting income in 1979, we found more than half of the annuitants had a zero balance when they retired.

We do not believe that disability retirement applicants should be permitted to routinely exhaust their sick leave. Those who are actually disabled should be placed on sick leave and separated from active service as soon as possible after their disability retirement application has been approved.

OPM's proposed policy changes

OPM's September 1979 staff paper on civil service disability retirement recognized the increased payroll costs associated with the current sick leave policy affecting disability retirement. In response to this problem, OPM has proposed a regulatory revision which will prohibit agencies from retaining employees after the disability retirement has been approved "solely for the purpose of exhausting sick leave." The proposed regulatory revisions do not provide for changing the sick leave usage section of the regulations which permit employees to reduce their sick leave balance to 60 days before filing for a disability retirement. We believe the revised regulations should exclude this provision so employees are discouraged from reducing their sick leave balances before filing for disability retirement.

CONCLUSIONS

OPM's proposed regulatory revisions provide for retaining marginally disabled employees through reassignment, but stronger reform should be instituted to make sure disabled employees are more effectively used. We question the inconsistency of not giving disabled employees similar placement considerations as those given recovered annuitants or the opportunity to hold a lower grade position in which the employee can perform satisfactorily. Increasing disabled employees' reassignment opportunities would enable employees to be productive and provide the Government with experienced personnel.

The lack of timely earnings and medical reviews has resulted in OPM's paying annuities without reestablishing annuitants' earnings or medical eligibility. We agree with OPM's interim measure of temporarily detailing a paraprofessional to assist the physician in reducing the disability medical review backlog. We believe OPM should continue this arrangement while the backlog exists.

Failing to medically review annuitants displaying strong individual annual earnings causes OPM to overlook potentially recovered disability retirees. A medical review in such cases would indicate the disability retirees' real abilities.

OPM's proposed regulatory revision, which would prohibit agencies from retaining employees after the disability retirement has been approved, is a positive step in improving the effectiveness of the disability retirement program. However,

extensive use of sick leave before filing for a disability retirement continues to be a problem which could cost the Government millions of dollars.

RECOMMENDATIONS

We recommend that the Director of OPM

- amend the proposed regulatory revisions to (1) establish the same placement rights for disabled employees as those available to recovered disability retirees, (2) include reassignment of disabled employees across agency lines, and (3) discontinue advising employees to reduce their sick leave balance to 60 days before filing for disability retirement;
- include, as part of the placement policy, the downgrading of potential disability retirees to jobs with duties they can perform, and seek a statutory change, if necessary, to enable this action;
- develop procedures which will establish complete and timely earnings and medical reviews of disability annuitants; and
- develop disability case review procedures which provide for medical reviews of annuitants classified as permanently disabled but who display strong individual annual earnings.