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Inside ExploreLI

TOP STORIES

LIRR disability claims plunge

Experts disagree over impact of fraud convictions

BY ALFONSO A. CASTILLO
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Far fewer Long Island Rail Road employees are being awarded federal disability benefits since dozens of former workers admitted making fraudulent claims more than 10 years ago.

Experts, however, are divided over whether the fraud prosecutions triggered the dramatic decline.

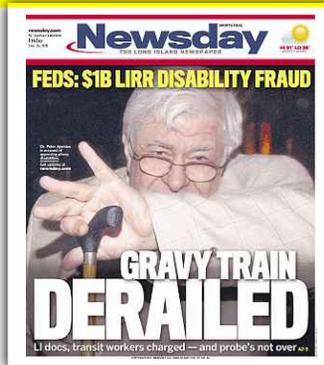
The U.S. Railroad Retirement Board, which oversees all insurance claims for rail workers, granted disability benefits to 29 LIRR retirees last year, compared with 216 in 2007 — an 86.5 percent drop, statistics show. In the first eight months of this year, the board approved disability benefits for four LIRR retirees.

The board approved 147 LIRR retiree disability applications in 2008, when the fraud was revealed through news stories. The government prosecuted more than two dozen former LIRR employees, along with doctors and a retirement board employee, on charges that included fraud and perjury. Eventually, 33 pleaded guilty or were convicted. The U.S. attorney's office in Manhattan has estimated that the excessive disability payouts could have topped more than \$1 billion.

Federal investigators discovered that several ex-LIRR employees with disability pensions, which averaged \$33,000 a year, were out playing golf, competing in bicycle races, teaching martial arts classes and training to become firefighters.

Experts see the impact of the fraud prosecutions differently. There is even disagreement inside the railroad retirement agency on what is behind the drop in disability awards.

Board officials see the decline as a testament to how it has “greatly strengthened its



OCT. 28, 2011

How Newsday covered the story

program integrity efforts” to combat fraud, including through additional training for claims examiners and closer tracking of doctors and disability applications by employees of specific railroads, said Michael Freeman, a spokesman for the agency.

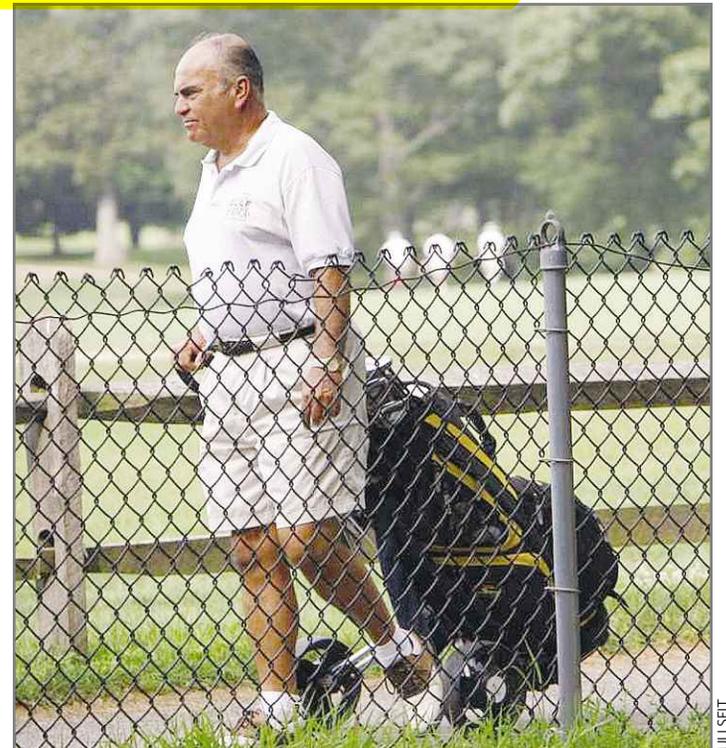
“These two systems were not in place 10 years ago,” Freeman said. “If they existed at that time, the agency would have been better able to identify and respond to the instances of physician-assisted fraud, then associated with LIRR disability applicants.”

But the board's watchdog, inspector general Martin Dickman, described the measures as “window dressing.”

Dickman said the number of disability benefits granted has plummeted, but the percentage of applications being approved remains high. Of 581 occupational disability claims processed from January through July, 569 were approved — 98 percent, according to Dickman's office.

“It's still the same old, same old. They bend over backwards to give these people occupational disability,” said Dickman, who credited the drop in applications to the “deterrent effect” from the federal fraud prosecutions. “It's nothing that the board's ever done.”

The LIRR says it has done its own work to combat fraud. The railroad, said spokesman Aaron Donovan, has bolstered the ethics training it requires workers to take. The training stresses that only those who de-



Former LIRR conductor Joseph Rutigliano was among those convicted.

Total vs. LIRR railroad retirements

	2007	2015	2016	2017	2018
Total applications	3,795	2,064	1,957	1,871	916
Total awarded	2,541	1,015	988	729	126
LIRR applications	222	61	65	61	23
LIRR awarded	216	35	46	29	4

UNITED STATES RAILROAD RETIREMENT BOARD

serve disability benefits should apply for them, he said.

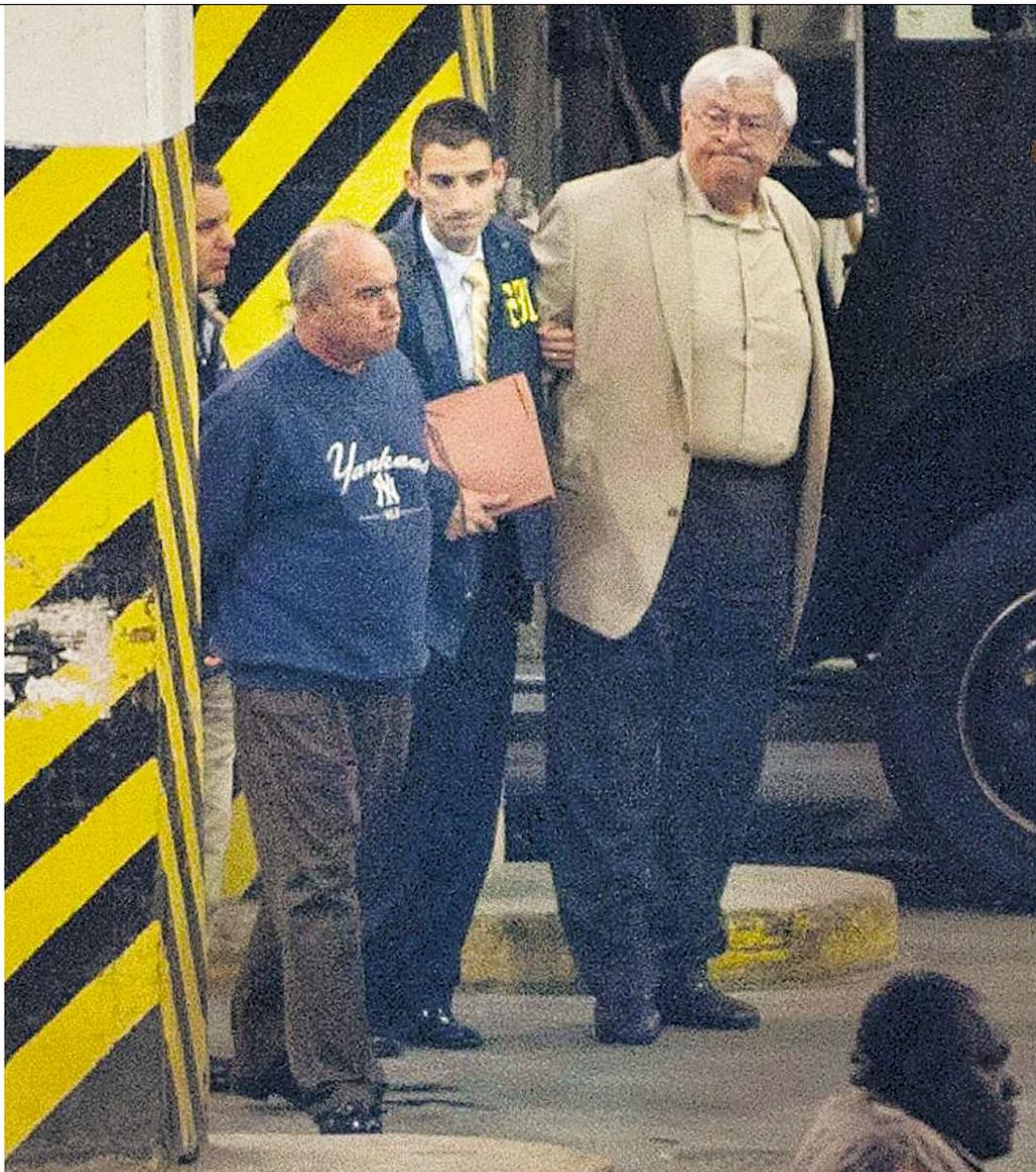
LIRR stats also show a drop in the rate of retiring workers who apply for occupational disability benefits. According to the railroad, the percentage of LIRR retirees covered under the 1980s pension plan who have applied for disability has steadily fallen, from 72 percent in 2010 to 26 percent last year.

“The bottom line is that workers who are injured on the job deserve just compensation and disability benefits, and those that try to scam the system should be punished — because that only undermines things for everyone

else,” said U.S. Sen. Chuck Schumer (D-N.Y.), who pushed for increased scrutiny of applications and praised the changes. “The LIRR disability system was in bad shape and had too much waste, fraud and abuse.”

For Washington-based insurance expert William Arnone, the federal prosecution of LIRR retirees had a “chilling effect” on those who might not be entitled to disability benefits.

“People realized that there's a spotlight now. ‘Why should I even bother if I can wait a little bit and go into the retirement system?’” said Arnone, chief executive of the nonprofit National



FBI agents escorted two defendants arrested in the LIRR disability fraud case in October 2011.

Academy of Social Insurance, which studies insurance and pension issues. "They say, 'My neighbors are going to call me a fraud' or 'People will say I'm taking advantage of a broken system.' And they haven't even applied."

Arnone, though, points out that an upbeat economy also could be a factor in the reduction in railroad disability claims as the Social Security Administration also has seen a drop in disability claims. "When the economy is better, fewer people apply for disability," he said.

Prosecutors have said LIRR employees hired before 1988 took advantage of a loophole in their contract that created an incentive to retire at age 50, collect a full LIRR pension and subsequently apply for federal disability benefits, which they could collect until they were eligible for federal retirement benefits.

To some extent, the steady decline in disability cases involving LIRR retirees over the last decade reflects the gradual

attrition of LIRR workers covered under the pre-1988 pension plan, experts have said.

Dickman, the retirement board's watchdog, has long criticized the board's lax standards for approving disability claims, most for musculoskeletal injuries. Dickman said the three-member retirement board, under pressure from unions to leave the system as is, has effectively made disability benefits an entitlement for all railroaders. In 2017, according to Dickman, the board paid out about \$1 billion in disability awards, which are funded by taxes paid by railroad employees and their employers.

"It's not that these people are so injured or anything," Dickman said. "The fraud continues in these cases, but they're very difficult to prove."

The International Association of Sheet Metal, Air, Rail and Transportation Workers, LIRR's largest union, declined to comment.

As evidence of the gaps in the

system, Dickman pointed to the more than 90 percent of LIRR retirees who lost their disability benefits because their doctors were convicted of fraud, later reapplied and won back their benefits — even under more stringent screening standards.

The high reapproval rate, uncovered by Newsday in 2014, formed the basis of the appeals of three men serving eight-year prison terms for fraud. An appeals panel last year refused to reverse the convictions.

"The government found it easier to find a few scapegoats than to criticize the structural nature of the program . . . and the reissuance of all the disabilities after the second review is proof of that," said Thomas Durkin, the defense attorney for Dr. Peter Lesniewski, who was convicted of falsifying medical records. Lesniewski is set to be released in 2020. "I don't think locking up Dr. Lesniewski for eight years was anything close to justice," Durkin said.

LIRR performs dismally in Aug.

BY ALFONSO A. CASTILLO
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The Long Island Rail Road's latest performance figures confirm what many customers have already expressed: It was a particularly hellish summer to be a commuter.

According to statistics published online Sunday by the LIRR, 87.4 percent of trains ran on time in August — well below the railroad's 93.8 percent on-time performance in August 2017.

It was the second straight month that the LIRR's performance fell compared with the same period last year. And it was the second-worst month of 2018 — below only January, when the LIRR reported an 83.9 percent on-time performance. That was the lowest of any month in 22 years.

The August numbers bring the LIRR's on-time performance in the first eight months of 2018 to less than 90 percent, keeping it on pace for its worst year since 1999. The railroad has performed worse than last year in four out of eight months so far in 2018.

August was an especially trying month for LIRR commuters, who endured multiple rush hours snarled by issues ranging from lightning striking a railroad electrical substation to technical glitches in the installation of a new switch and signal system for the railroad's just-completed Double Track project. The LIRR said "infrastructure-related issues" resulted in 20 separate incidents causing 230 late trains.

The railroad said special events also had a hand in disruptions, including delays caused by large crowds of people its trains carried to the U.S. Open tennis tournament in Queens.

In a statement Sunday, LIRR president Phillip Eng said the railroad is "undertaking an aggressive slate of actions that fights the root causes of delays across every component of railroad operations" and also pointed to \$6.6 billion in planned investments in the railroad. "There is a new sense of urgency with everything we are doing, and step by step, each action will bring the railroad back from years of underinvestment," Eng said.

At a Friday meeting of the Long Island Association, Eng outlined some of the LIRR's recent efforts to tackle its most persistent problems. Since his arrival



LIRR riders at Penn on Aug. 1 after a derailment in Woodside.

in April, Eng said the LIRR has already installed new safety devices at nearly 300 grade crossings to prevent accidents on the tracks, insulated a dozen manholes along its Atlantic Avenue tunnel in Brooklyn to prevent corrosive water from falling on its tracks, improved drainage systems on its Far Rockaway branch, and replaced some of its least-reliable track switches.

"The key thing here is that we didn't wait. We are doing things now," Eng said Friday. "It's about taking actions and measures. It's not just about talking about them."

Statistics show that August railroad service was particularly woeful during the evening rush hour, when just 81.7 percent of trains ran on time. The railroad considers a train on time if it arrives at its destination within 5 minutes and 59 seconds of its scheduled time.

Of the 21,373 trains that were scheduled in August, 2,699 were late, 106 were canceled and 48 were terminated before finishing their runs, according to LIRR statistics. The average delay was about 14 minutes, but 536 trains were more than 15 minutes late.

Sen. Elaine Phillips (R-Flower Hill) said Sunday that she was "outraged" over the new statistics, and that they provide "even more reason for a fare increase not to happen in 2019."

Sen. Todd Kaminsky (D-Long Beach) said Sunday the August figures are "not any surprise to riders." He added: "At some point we just have to come to grips with the fact that there's an aging system and an agency that doesn't seem to be particularly well equipped at making it run efficiently."

CHARLES ECKERT

JEFF BACHNER