



UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 NORTH RUSH STREET
CHICAGO, ILLINOIS 60611-2092

OFFICE OF PROGRAMS

July 28, 2016

Brotherhood of Locomotive Engineers
And Trainmen
Dennis R. Pierce, National President
7061 East Pleasant Valley Road
Independence, OH 44131

Dear Mr. Pierce:

This letter is in response to your comments dated May 27, 2016, regarding proposed changes to the Railroad Retirement Board's (RRB) Form G-251, *Vocational Report*.

In order to improve program integrity in the RRB's disability program, the RRB has made significant enhancements to Form G-251, *Vocational Report*, based on suggestions from the RRB's Inspector General (IG). The IG suggested that the RRB: 1) assess disability applications against an applicant's permanent inability to perform the essential functions of their regular railroad job rather than a single task, and 2) seek information regarding job modifications. These changes, along with other significant form enhancements, were published in the Federal Register on March 29, 2016, for review and comment.

The comments submitted identified specific issues with some of the proposed changes. Those comments are addressed in detail below. We appreciate you taking the time to review the forms and prepare your comments. We hope the following information will answer the questions you raised and address your concerns.

Form G-251, Questions 12-15

The RRB has the authority to ask a disability applicant to provide evidence about all jobs the applicant has had in the last 15 years, including all the duties the applicant did. To collect information from the employee pertaining to the employee's work history and job duties, the RRB uses Form G-251, *Vocational Report*. Question 12 on the proposed revision is a consolidation of questions 12a and 12b on the existing form and it seeks a description of the essential job duties performed by the applicant. The current form asks the applicant to "describe your basic duties." You express concern that the use of the word "essential" rather than "basic" is subjective and could mislead an employee to inadvertently fail to list something that may be later considered significant by the RRB examiner and result in a denial of benefits.

We acknowledge that the use of either term "essential" or "basic" can be subjective. The decision was made to use the term essential rather than basic to address unsubstantiated allegations that the RRB awards disability benefits to individuals if they are incapable of performing a simple non-essential task. We believe the remainder of the text of the question, which provides examples of



the types of duties to be listed, will protect against an applicant inadvertently failing to list a duty. In addition, if a duty is unintentionally omitted we believe the additional information requested in questions 13 and 14 will capture that information. Please be assured that the RRB will continue to apply the appropriate legal standard when adjudicating an application for disability.

As with question 12, question 13 is also a consolidation of two questions on the existing form, specifically, questions 13a and 13b. On the current form, the applicant provides information regarding environmental hazards and on the proposed revision, reference is made to environment conditions. You express concern that the change in terminology from the word "hazards" to the word "conditions" is misleading and could result in lack of consideration of pertinent information by the RRB that will result in a denial of the disability claim.

Use of the term "conditions" rather than "hazards" is in no way intended to be a statement to only capture environmental hazards employees are exposed to. When adjudicating an application, a disability examiner reviews all the environmental conditions to which the applicant is exposed, not only the environmental hazards. The use of the word "conditions" is intended to be inclusive and capture the essence of all the circumstances experienced at work, whether they are hazardous or benign in nature. Please be assured that the RRB appreciates that railroad jobs can be unique and multifaceted, and that by leaving a space for a description of the environmental conditions, the claimant can list any and all relevant conditions for the disability examiner to consider. This in turn will provide the disability examiner with a better understanding of how the applicant's disability impacts their ability to perform work.

Question 14 is also a revision of a question on the current Form G-251. This question seeks information from the applicant regarding the physical activity a job involves during a typical 8-hour workday. You express concern that the information provided may not be accurate where duty periods are longer than 8 hours, and also note that many railroad operating employees do not have a routine day.

The RRB uses 8 hours as the typical work schedule to estimate the hours worked daily by an employee. However, the instructions give the employee the option to check the exact number of hours worked daily. Please be assured that the employee is not limited to 8 hours when reporting information regarding the physical action or activity involved during the workday. Furthermore, the purpose of the question is to provide the disability examiner with a general understanding of the types of physical activities required in the performance of the applicant's job.

Question 15 is a new question that we propose be added to Form G-251 and it seeks information regarding adjustments made to the applicant's job duties to accommodate restrictions. Pursuant to legal opinion L-98-15, issued June 15, 1998, by the RRB's previous General Counsel, accommodations are taken into consideration if they are essential to the performance of the employee's particular occupation – and only if the accommodated job was performed consistently for at least 5 years. The additional material requested allows the RRB to gather specific information about whether accommodations provided should be considered in accordance with the legal opinion.

You express concern that the applicant is asked to speculate about accommodations an employer has made for them, object to the tone of the question, and suggest that the question be stricken. You also assert that accommodations provided to an employee are not relevant to the employee's occupationally disabling condition. Contrary to your claim, applicants are not asked to speculate, but rather provide information about accommodations actually put into effect, and as noted above, it is possible that a work accommodation is relevant to whether an individual is disabled. Therefore, we will not be striking the question.

Thank you again for your comments. Collection of supplemental information requested on Form G-251 will provide the disability examiner with the pertinent information needed when reviewing a disability claim. Disability determinations will continue to be made based upon all evidence in the file, including relevant medical and vocational information. As noted above, we hope this response addresses your concerns.

Sincerely,

Michael A. Tyllas, Ph.D.

Michael A. Tyllas
Director of Programs

cc: John Previsich, President
SMART Transportation Division

Vince Verna, Director of Regulatory Affairs