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November 21, 2016

Patrick A. Nowakowski
President
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Jamaica, NY 11435

**Re: Oversight of Injured Employees'
Return to Work at
Long Island Rail Road
MTA/OIG #2016-20**

Dear Mr. Nowakowski:

In 2015, the Office of the Metropolitan Transportation Authority (MTA) Inspector General (OIG) conducted an examination of the procedures in place at MTA Long Island Rail Road (LIRR) to reduce the number of lost work days resulting from job-related injuries and illnesses (collectively referred to as "Injuries").¹

After reaching a five-year high in 2014, the number of LIRR employee Injuries resulting in lost work time began to decrease. Despite this positive development, we found that LIRR employees have historically experienced more lost-time Injuries annually than Metro-North Railroad (MNR) employees, even though the two MTA commuter railroads are similar in size and operation. Further, our analysis revealed that LIRR employees with lost-time Injuries typically remain out of work for longer periods than their MNR counterparts with similar Injuries. In 2014, LIRR employees injured on the job were out of work for an average of 103.4 days, 62 percent longer than MNR employees, whose absences averaged 63.7 days after an Injury.

One key difference between the railroads related to injured employees is that LIRR employees have a negotiated labor benefit referred to as "wage continuation." This provision generally allows LIRR employees to receive their full salary during Injury-related absences while using only a small part of their sick or annual leave accruals.² In contrast, to receive their salaries, MNR employees in similar circumstances must use their accumulated leave for the duration of the absence. These differing compensation structures are likely the main reason MNR

¹ Separately, we have reported to you our findings and recommendations on specific work locations and employee job titles that exhibit disproportionate levels of Injury: MTA/OIG Report #2016-19, *Monitoring Employee Lost-Time Injury Rates at Long Island Rail Road*.

² Injured LIRR employees are required to use accumulated leave to cover the first three days out of work.

employees return to work faster than LIRR employees. Nevertheless, it is important that LIRR management monitor these absences to help ensure that each employee returns to work promptly upon being cleared to do so by his or her physician. In the cases we examined, some employees returned to work four to six days later than that date; this delay, it appears, was enabled at least in part by management, which did not appropriately monitor the employees' return.

As we discuss below, the Long Island Rail Road's policy, procedures, and practices for getting healthy employees back to work need to be more consistently enforced and better coordinated.

BACKGROUND

LIRR's Medical Assessment Policy (MED-001) (the "Policy"), revised in December 2014, sets forth the essential functions of the individuals involved in managing injured employees' return to work, including staff members in the operating and Medical departments. Further, the Policy describes the detailed procedures that injured employees should follow and provides for appropriate discipline in the event of non-compliance.

Regarding an employee's return to work, the Policy requires employees to report to Medical when they are ready to return to work after having been absent. The medical staff perform medical and/or functional assessments based on the physical standards of the employee's position and inform the relevant department whether the employee is fit to return to work.

Additionally, Medical staff members meet with personnel in each operating department on a monthly basis to review employees' status and identify any individuals who have been out of work longer than expected.

FINDINGS

Appointment-Rescheduling Practices Have Hindered Prompt Return to Work

In our discussions with Medical officials we learned that once the employee's Injury has healed, the private physician documents a Clearance Date—the date the physician believes the employee can return to work—on LIRR's Medical Information Form. On or immediately following the employee's Clearance Date, Medical conducts a physical assessment to ensure his or her readiness to safely perform specific job-related tasks. After successfully completing the assessment, the employee then returns to work, occasionally proceeding directly from Medical to the job site. A Medical staff member then enters this date, labeled simply the Return-to-Work Date, into the agency's safety database (Database).

According to Medical officials, employees were permitted to reschedule their appointments at Medical simply by calling the facility, without necessarily justifying the postponement. To

determine the effect of rescheduling on the duration of employees' absences, we reviewed 10 cases in which employees rescheduled multiple appointments with Medical near their Return-to-Work Date in 2014. We examined the 10 cases in detail with Medical officials and found that seven of the 10 employees had sound reasons for rescheduling their appointments. For example, one employee was scheduled to have surgery for a condition stemming from his work-related Injury and thus was unable to attend an appointment at Medical as originally planned. He then rescheduled several times while recovering from surgery.

In contrast, we found that the remaining three employees were allowed to reschedule their physical assessment appointments with Medical—without apparent justification—for a date later than their Clearance Date. For example, one employee rescheduled a single appointment three consecutive times in two weeks, including a six-day postponement of the appointment scheduled for the very day the employee's physician had given as the employee's Clearance Date. When the employee then showed up at Medical, she passed the assessment and reported to work the same day. For at least those six days, the employee received full pay while not working although cleared to return to work. Medical's file included no explanation for the rescheduled appointments and the resultant delay in reporting for work.

We discussed our finding with Medical officials during the audit. As a result, in August 2015, Medical implemented a new rule severely restricting the rescheduling of appointments regardless of the underlying reason. Specifically, this rule prohibits an employee from rescheduling an appointment more than once and requires the rescheduled appointment to take place within three days of the original appointment. Further, an employee who has been formally instructed, in a "direct-to-medical" letter, to report to Medical by a specified date will not be allowed to reschedule an appointment for a date later than the one specified in the letter. Lastly, if an employee fails to follow the new procedure, the rule states that Medical will report the employee to his or her department for possible disciplinary action. The new rule has apparently had a beneficial impact. During the first seven months after its implementation, Medical officials told us no employees had rescheduled or canceled more than one appointment, an improvement they attributed to the procedural change.

In October 2015, Medical added a penalty to discourage employees from inappropriately delaying their return to work. Under this revision, if an employee arrives at the Medical facility for his or her physical assessment appointment with paperwork showing a Clearance Date that has already passed, the employee will be charged for the unexplained portion of the absence—that is, he or she will need to use accumulated leave to receive pay for those days. Both of these changes further LIRR's control over the appointment process and should discourage abuse.

Rule-Making Needs to Follow the Formal LIRR Process

During the course of this audit, we met with officials in LIRR's three operating departments: Transportation Services (Transportation), Maintenance of Equipment (Equipment), and Engineering. In our discussions, we learned that Medical had not notified these departments of the rules it implemented in August and October; in fact, departmental officials first learned about these rules from OIG staff. It seems clear that these officials need to be aware of and fully understand all applicable rules and procedures in advance to help carry them out. However, Medical developed and distributed these rules internally—by email to its administrative contractors responsible for rescheduling appointments—rather than through LIRR's more formal process for establishing and communicating policies and procedures.

By proceeding more formally, Medical can ensure better communication and greater compliance. Accordingly, Medical should follow LIRR's policy entitled Issuance of Corporate Policies and Procedures (BPM-001). Under its guidelines, when a unit has drafted a proposed policy, the unit's leadership must approve it and submit it for review both by the Business Process Management, Controls and Compliance Department and by a committee of senior LIRR officials. This protocol is designed to identify and resolve any concerns regarding the proposed change.

The Consequences of Missing Medical Appointments Should be Emphasized

For comparative purposes, we met with Metro-North officials and learned that MNR offers a caution to employees who might abuse the return-to-work process, stating on a key form that "failure to attend any and all medical appointments" at the agency's medical facility may result in disciplinary charges up to and including dismissal. Although not formalized in an agency-wide policy, this notice is explained on the form which the injured employee receives from his or her supervisor and then must provide when first visiting MNR's medical facility.

Notably, the LIRR Policy provision regarding Compliance *does* state that employees who fail to attend medical appointments without appropriate justification "may be subject to disciplinary action, up to and including termination and loss of benefits" and asserts that employees are thereby "on notice" of these serious consequences. However, similar cautionary language does not appear on any document provided to injured employees (e.g. the Medical Information Form). Such a warning would reinforce the importance of regularly attending medical appointments and provide more direct and timely notice of the consequences for employees who fail to do so.

Policy Enforcement by Departments Should be More Consistent

According to the Policy, each department head must designate a "Departmental Medical Liaison" (Liaison) to perform many tasks, including following up to ensure appointments are kept and taking appropriate action if employees fail to report. While this responsibility is shared

by all Liaisons in all three operating departments, their enforcement differed widely in practice.

The Equipment Department Liaison and her staff were most engaged in this oversight, consulting the Database daily to review each injured employee's status, communicating with Medical staff for updates on injured employees' expected return to work, and taking corrective action as needed. For example, an Equipment official explained that when she consulted the Database to check the appointment status of an employee who had received a direct-to-medical letter, she noticed the employee had rescheduled the appointment to a date later than ordered. The Equipment employee was held accountable for not reporting on the earlier date. The official marked the employee Absent Without Leave and the employee was not paid for three days, the elapsed time between the original mandated appointment and the later date.

In contrast to the Equipment Liaison's daily oversight practices, the Liaison for Engineering told us she typically consults the Database only weekly to monitor employees' expected return to work. The Transportation Safety liaisons follow-up on long-term injured employees and participate in monthly reviews of employees who are absent from work due to injury. However the Medical liaison in Transportation supervising this function informed us he does not use the Database for this purpose and performs no follow-up on absent employees at all.

For comparative purposes, we reviewed Metro-North's practices and learned that departmental staff members are responsible for actively monitoring employees who are out of work because of job-related Injuries. Consistently across the agency, these staff members told us they contact employees directly to learn why they need to reschedule or cancel an appointment.

In our view, LIRR's Policy provides both the mandate and the means to help ensure that injured employees attend reasonably scheduled appointments with Medical and/or their consulting physicians, and return to work as soon as they are able. We recommend that the Liaisons receive training on the Policy to improve the consistency and effectiveness of the departments' efforts.

To Promote Enforcement, Medical Should Maintain and Update the Clearance Date in the Database

As noted above, the employee's physician is responsible for completing the Medical Information Form, including the Clearance Date, which can change over time as the employee's condition evolves. Medical receives this information from the employee's physician and uses it in furtherance of the employee's eventual return to work. However the Clearance Date could also assist the operating departments when making their own arrangements for the employee's return, including the reassignment of the personnel providing coverage during the employee's absence.

Nevertheless, Liaisons explained to OIG that to ascertain the Clearance Date they had to call Medical staff members, who in turn had to refer to their paper files in order to obtain the information. Medical could help improve the process by entering that Date in the Database upon receipt of the Medical Information Form from the physician and updating it thereafter.

RECOMMENDATIONS

LIRR should:

1. Formally revise the Medical Assessment Policy to:
 - a. Incorporate Medical's recently implemented rules and procedures for managing rescheduled appointments.
 - b. Require Medical to maintain and promptly update the Database with the current physician-authorized Clearance Dates.
2. Provide training to Liaisons to reinforce that to comply with the Policy, they should monitor each employee's Clearance Date and follow up with employees in a timely manner regarding canceled or missed appointments.
3. Include on the Medical Information Form notice that if employees miss any Medical Department appointments without prior approval or provide untimely, false, and/or incomplete medical information, they may be subject to disciplinary action, up to and including termination and loss of benefits.

Agency Response

Following our submission to you of our preliminary report containing the above Findings and Recommendations, you provided the agency response in a letter dated November 3, 2016, confirming the LIRR's concurrence. Specifically, you detailed the following actions that have been taken or will be taken soon to further enhance LIRR's oversight of employees' return to work:

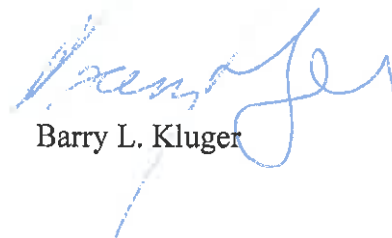
- *LIRR will revise its Medical Assessment Policy to reflect rules and procedures for managing rescheduled appointments as updated in August and October 2015. Additionally, the revised Medical Assessment Policy will require Medical to update the Database with the current clearance date following each employee's visit. This change will also be incorporated into the Policy and will be communicated by corporate management to LIRR staff.*
- *LIRR's Medical group will provide formal training to the departmental Liaisons on monitoring clearance dates and rescheduling appointments to ensure consistent oversight across the operating departments. Additionally, Medical staff has been made aware that no employee may reschedule an appointment more than once.*

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- *LIRR has now modified the Medical Information Form to include cautionary language that employees' failure to attend the LIRR Medical appointments as scheduled or to provide timely, accurate, and complete medical information may result in disciplinary action up to and including loss of benefits and/or termination. Additionally, to ensure consistency of their language, LIRR is reviewing letters from the operating departments to employees directing them to Medical.*

We appreciate your attention to the issues we raised, as well as the courtesy and cooperation afforded to us at all times by your staff. Should you have any questions regarding this final report, please contact me or Executive Deputy Inspector General Elizabeth Keating at (212) 878-0022.

Very truly yours, ,



Barry L. Kluger