

Statement of Thomas J. Dagley
Inspector General
To The
Public Safety/Management Fiscal Policy Committees
Montgomery County Council
September 11, 2008

Thank you for giving me the opportunity to brief both Committees on our review of the County's disability retirement program. With me today is Chris Giusti, Deputy Inspector General. As Inspector General, my role within County government includes independently reviewing the efficiency and effectiveness of programs funded by the Council, proposing ways to increase accountability, and preventing and detecting fraud, waste, and abuse. For me and other Inspectors General, this role often involves evaluating higher-risk programs like the County's disability retirement program that do not have an audit history to build upon.

Service-connected disability retirements (SCDRs) are an important benefit for employees who receive incapacitating injuries during County employment. SCDRs approved for employees provide a tax-exempt pension with a higher percentage of an employee's final earnings. As a result, the SCDR component is a higher-risk to the County, especially if internal controls and/or management oversight deficiencies provide an opportunity for the program to be abused. Today's hearing is an initial opportunity for the OIG as well as management to provide you with a better understanding of these issues.

After our review of County policies and procedures, interviews with County subject matter experts, analysis of County data and disability retirement files, and benchmarking with other municipalities, we concluded that insufficient internal controls and management oversight exist to protect SCDRs from abuse.

In our review of the SCDR data covering July 1, 2004 to March 1, 2008, we learned that of the 58 police officers approved for a SCDR, 9 were classified by the Police Department as in a full-duty work status with no work restrictions or limitations at the time of the SCDR application. For example, an officer who applied for and received a permanent SCDR was in a full-duty work status with no restrictions when he left County employment, first under normal retirement before being approved for a permanent SCDR. We found that this individual was not on any type of restricted duty in the three years prior to his retirement; however, when this information was communicated to County personnel involved in the SCDR process, the response was that this type of information would not impact the decision-making process.

In two other cases we studied, police officers were in a full-duty work status with no restrictions when their police powers were suspended by management incident to an investigation into allegations of serious misconduct while in office. One officer applied for a SCDR approximately four months after the suspension took effect and the other applied for a SCDR about three months after the suspension was effective. Without returning to work, both officers pled guilty to criminal charges, and were subsequently approved for a temporary SCDR. The officers' official full-duty work status, from a medical examination standpoint, did not change throughout these activities.

Our ongoing review of SCDRs is clearly an emotionally charged project – we recognized this earlier this year when we analyzed County retirement data on a preliminary basis and matched it with allegations of fraud, waste, and abuse received by our office. As with other reviews of County programs conducted by the Office of Inspector General, we requested and analyzed the best County data available on disability retirements before deciding that an independent evaluation was warranted.

By applying standards similar to those used when we conducted a recent review of County government’s overtime compensation, we made every effort to ensure our decision to focus, at least initially, on retired police officers was justified and that our approach was objective and fact-based. Recognizing that the policies, procedures, and internal controls related to the disability retirement program generally, and SCDRs specifically, had never been audited, we approached the challenges of this independent evaluation as a project that appeared to be long overdue.

Throughout our field work, the value of conducting this review was reinforced by current and former County employees who reported to us that the disability retirement system, especially decisions that approved SCDRs, was broken. In August, incident to the Executive’s press release and related media coverage regarding SCDR concerns, additional allegations of fraud, waste, and abuse were received. This new information has reinforced the value of conducting this review. Although there is clearly some agreement on issues in our report, especially with regard to Finding 2, little information is provided in the management response regarding our finding that Office of Human Resources internal controls and oversight are not sufficient to protect the County against abuse. In our view, follow-up is needed to increase accountability for corrective action, including a look back at certain SCDRs already approved to determine if facts or circumstances have changed.

In the management response, concern was expressed regarding our use of the term “abuse.” Abuse, as defined by Government Auditing Standards issued by the Comptroller General of the United States, involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practices given the facts and circumstances. Abuse does not necessarily involve fraud, or violations of laws or regulations.

In addition to our conclusion that the SCDR component of the retirement system is vulnerable to abuse, we found deficiencies in the design and implementation of the Police Department’s medical examination program. The deficiencies need to be addressed to ensure the program effectively assesses the health status and functional capabilities of all police officers.

Notwithstanding a point in the management response that the percentage of officers in CY 2007 who reported for a scheduled medical examination was significantly higher than in the first six months of CY 2008, there appears to be general agreement on this finding and recommendation. With regard to our decision to not interview members of the Disability Retirement Board, it is important to state that from the beginning of our review, we determined that interviewing these County’s contract physicians and evaluating employee medical records used by the Panel was neither necessary nor appropriate to accomplish our objectives. Our review to date has been an evaluation of the effectiveness of management controls and oversight practices, not a review of the performance of these contractors.

I believe our report provides a necessary independent and objective evaluation of a County program and related management processes that need increased accountability. The current program lacks the checks and balances needed to protect the interest of the County and taxpayers. Because this is the first independent review of the County's disability retirement program, our findings and recommendations are likely to generate as many new questions as they answer, at least in the short-term. This can lead to a better understanding of underlying causes, as well as best practices in other County government organizations. Both are needed before systematic improvements can be designed and implemented.

We learned during our review that the County Executive started a work group in December 2007 to study the disability retirement system because of his concerns about the process, especially as regards SCDRs. I believe the work group and its recommendations are important steps to improve the disability retirement program. While the work group's efforts and our review were separate projects with different objectives and methods, they provide the Council and Executive with an initial baseline of information to address the program's challenges.

Factors contributing to today's concerns have in all likelihood been present for several years. A systematic approach has not been used to manage all key aspects of the disability retirement program and improvements to key processes are not evident.

The OIG is committed to assisting the Council and Executive with the corrective actions needed.

Thank you.