

*Am* 12 MAG 2355

Approved: TATIANA R. MARTINS  
Assistant United States Attorney

Before: HONORABLE JAMES C. FRANCIS IV  
United States Magistrate Judge  
Southern District of New York

----- x

UNITED STATES OF AMERICA : SEALED COMPLAINT  
- v. - : Violations of  
WILLIAM J. MCALEAVEY, : 18 U.S.C. §§ 1341, 1028A  
: COUNTY OF OFFENSE:  
Defendant. : NEW YORK

----- x

SOUTHERN DISTRICT OF NEW YORK, ss.:

ADAM M. SUITS, being duly sworn, deposes and says that he is a Special Agent with the Office of the Inspector General, Office of Investigations, United States Railroad Retirement Board, and charges as follows:

COUNT ONE  
(Mail Fraud)

1. From at least in or about 2001 until at least in or about 2008, WILLIAM J. MCALEAVY, the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, for the purpose of executing such scheme and artifice and attempting so to do, would and did place in a post office and authorized depository for mail matter, a matter and thing to be sent and delivered by the Postal Service, and would and did take and receive there from, such matter and thing, and would and did cause to be delivered by mail according to the direction thereon, and at the place at which it is directed to be delivered by the person to whom it is addressed, a matter and thing, in violation of Title 18, United States Code, Section 1341, to wit, MCALEAVEY defrauded the U.S. Railroad Retirement Board by submitting a false claim for disability benefits to which he was not entitled.

(Title 18, United States Code, Section 1341.)

COUNT TWO  
(Aggravated Identity Theft)

2. From at least in or about 2006 up to and until at least in or about 2008, in the Southern District of New York and elsewhere, WILLIAM J. MCALEAVEY, the defendant, willfully and knowingly did transfer, possess, and use, without lawful authority, a means of identification of another person, during and in relation to a felony violation enumerated in Title 18, United States Code, Section 1028A(c), to wit, MCALEAVEY transferred, possessed and used the name of another person in connection with the mail fraud charged in Count One of this Complaint.

(Title 18, United States Code, Sections 1028A.)

The bases for my knowledge and for the foregoing charge are, in part, as follows:

3. I am a Special Agent with the Office of the Inspector General, Office of Investigations, United States Railroad Retirement Board ("RRB-OIG"). I have been a Special Agent with RRB-OIG since in or about October 2010, and, since that time, I have personally been involved in an investigation into disability fraud at the Long Island Railroad ("LIRR"), as set forth below. Previously, beginning in or about 1997, I was a Special Agent at the Federal Bureau of Investigation, in a variety of capacities, including as associate division counsel, and, prior to that, I was a prosecutor with the Judge Advocate General for the United States Navy. From in or about 1994 to 1996, I also worked as a senior casualty claims adjuster/fraud investigator for a private insurance carrier. I am familiar with the facts and circumstances set forth below from my personal participation in the investigation, my examination of reports and records, and my conversations with other law enforcement officers and witnesses. This affidavit is based upon my investigation, my conversations with witnesses and other law enforcement agents, and my examination of reports, records, and consensual recordings. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements, and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

BACKGROUND ON RAILROAD BENEFITS AND OVERVIEW OF THE PREMEDITATED  
DISABILITY FRAUD

4. The RRB is an independent federal agency that administers comprehensive retirement and benefit programs, including disability benefits, for the nation's railroad workers and their families. The LIRR, founded in 1834, is one of the busiest commuter railroads in North America, carrying over 250,000 customers each week day.

5. Retiring LIRR employees are eligible to receive benefits both from the LIRR and the RRB. First, retiring LIRR workers hired before 1988 may draw a pension from the LIRR if they retire at or after the age of 50 and if they have been employed for at least 20 years as of the time of retirement. An LIRR pension is based, in part, on the average number of hours worked in the five years prior to retirement. Second, retiring LIRR workers may draw an additional pension from the RRB as of the time they reach age 65.<sup>1</sup> If, however, an LIRR worker retires and is disabled, that LIRR worker can receive a *disability* pension from the RRB, even if he or she retires before age 65. Thus, a non-disabled LIRR retiree is only eligible to receive pension benefits from both the LIRR and the RRB if, among other things, that LIRR retiree is age 65 or older. By contrast, an LIRR worker who retires and is disabled is eligible to receive benefits from both the LIRR and the RRB as early as age 50 - pension benefits from the LIRR and disability benefits from the RRB.

6. The RRB can make two types of disability findings. First, the RRB can determine that an employee is "occupationally disabled" if, among other things, he is "permanently disabled" for work in his "regular railroad occupation." Second, the RRB can determine that an employee is "totally and permanently disabled" if the employee is "permanently disabled" for any kind of "regular work". That is, an employee claiming a total and permanent disability must show that he is unable to engage in any gainful employment, inside or outside the railroad industry. An employee who qualifies for a total and permanent disability receives additional benefits such as early Medicare and special tax treatment for the disability annuity. In addition, the annuitant may receive a higher disability payment if he has any minor children.

---

<sup>1</sup> Certain LIRR workers - namely those with 30 years or more of service - are eligible to receive an RRB pension as of age 60.

7. To qualify for disability benefits, retiring railroad workers must file with the RRB an Application for Determination of Employee's Disability, known as a Form AA-1d (hereinafter referred to as a "Disability Application"). In their Disability Application, petitioning workers must describe in detail, under penalty of perjury, their disability and the limitations resulting therefrom, and state when they could no longer work because of their disability. At times, annuitants receiving disability payments are directed to file a Continuing Disability Update Report, known as a Form G-254 or G-254A (hereinafter referred to as a "Disability Recertification"), in which annuitants must certify, under penalty of perjury, their continuing inability to work.

8. WILLIAM J. MCALEAVEY, the defendant, and others known and unknown, engaged in a multi-year, systemic fraud to obtain RRB disability benefits. As part of this fraud, LIRR workers who were ready to retire -- and who were older than 50 but younger than 65 years old -- falsely claimed to be disabled, including to be occupationally disabled, i.e., unable to perform their railroad occupation, in order to receive benefits both from the LIRR and the RRB. Specifically, LIRR employees, who were eligible to retire as early as age 50 with an LIRR pension, routinely sought to supplement their LIRR pension by fraudulently procuring a separate RRB disability annuity which, when combined with their LIRR pension, resulted in a total income level that often approximated, and in some cases exceeded, their pre-retirement working income. This fraud was perpetrated with the knowing and intentional involvement of hundreds of LIRR retirees; "facilitators" who served as liaisons between retiring workers and participating doctors; and doctors themselves, who falsely declared retiring LIRR workers to be occupationally disabled. Typically, these disability doctors claimed that their LIRR patients suffered from various musculoskeletal impairments, which can involve claims of soft tissue injury that are more difficult to confirm by objective medical criteria than are other impairments, and are often diagnosed clinically, based upon pain as subjectively reported by the patient.

9. As a result of this pervasive fraud, hundreds of LIRR retirees received RRB disability benefits that they were not entitled to receive, and participating doctors received millions of dollars from patients and insurance companies. The foreseeable loss to the RRB disability funds -- if the scheme had not been uncovered and fraudulent claims had been paid out in full -- would have exceeded approximately \$1 billion. A

complaint filed on October 26, 2011 in the U.S. District Court for the Southern District of New York against certain participants in this fraud is attached hereto and is incorporated by reference herein. The defendants named in that complaint have been separately indicted in S1 11 Cr. 1091 (VM).

#### THE DEFENDANT

10. WILLIAM J. MCALEAVEY, the defendant, is a former LIRR conductor who retired on or about October 26, 2001, at the age of 50 years, 2 months, after approximately 20 years of employment. During the time that MCALEAVEY worked for the LIRR, he also worked full time as a lather, or ironworker, for construction companies and belonged to Local 46, the ironworkers' union based in Manhattan (the "Union").

11. On or about January 28, 2002, WILLIAM J. MCALEAVEY, the defendant, applied for and subsequently was awarded an RRB occupational disability annuity. In his Disability Application, he claimed that he became "disabled" on October 26, 2001, the same day that he retired.

12. On or about May 20, 2004, WILLIAM J. MCALEAVEY, the defendant, was found by the RRB to be totally and permanently disabled for all work effective October 26, 2001. The RRB's finding was based, at least in part, on letters and medical files that MCALEAVEY caused to be mailed from his attorney's offices in Manhattan. The total and permanent disability award enabled MCALEAVEY to qualify for early Medicare coverage, a higher monthly benefit, and special tax treatment for his disability benefits.

13. In his last full year with the LIRR (2000), WILLIAM J. MCALEAVEY, the defendant, earned approximately \$97,000, including overtime. The year he retired (2001), he earned approximately \$128,000 in salary and overtime for less than ten months of work. In 2011, he received approximately \$42,000 in LIRR pension payments and approximately \$37,000 from his RRB disability payments, for a total of approximately \$79,000 in benefits.

#### OVERVIEW OF MCALEAVEY'S FRAUD

14. Based on the evidence set forth below, WILLIAM J. MCALEAVEY, the defendant, deliberately defrauded the RRB by falsely claiming to be disabled. In fact, despite claiming a severe disability, MCALEAVEY worked a significant number of

overtime hours at the LIRR, including at least 2,345 overtime hours in the two years before he retired. Moreover, from at least 2006 to 2008, MCALEAVEY continued to work as an ironworker after he retired from the LIRR with a disability. Such jobs involved the type of strenuous physical activity that he represented to the RRB he could no longer do. Further, in order to disguise from the RRB the fact that he continued to work as an ironworker after claiming to be totally and permanently disabled from all employment, MCALEAVEY used his son's social security number on payroll forms and caused payroll documents to be mailed to him from the Southern District of New York and elsewhere.

#### MCALEAVEY'S PURPORTED DISABILITY

15. I am aware from reviewing RRB and other records that WILLIAM J. MCALEAVEY, the defendant, was first granted an occupational disability by the RRB, and subsequently found to be totally and permanently disabled based on an appeal and submission to the RRB of additional medical information. I base this conclusion on the following facts:

a. On January 28, 2002, MCALEAVEY submitted a Disability Application to the RRB in which he claimed to suffer from herniated and bulging disks, degenerative spondylasis, fractured ribs, and bilateral carpal tunnel syndrome. MCALEAVEY listed the date that this condition began to affect his ability to work as October 25, 2001, and the date that he could no longer work because of this condition as the following day.

b. In the Disability Application, MCALEAVEY stated that because of his condition he could not:

"bend, lift, crawl, kneel, climb, crouch, lift myself up from the ground onto the top of the engines and trains, reach, push and pull, use any physical force, carry material of any weight, without feeling pain in my neck, arms, lower back generating down into my buttocks and left leg, and both hands. Because of the above activities, which are required of me as a conductor, I can no longer perform my duties as a conductor."

c. MCALEAVEY listed the following conditions as being "hard" for him to do: sitting, standing, walking, bathing, dressing, indoor chores (meal preparation, laundry, cleaning,

etc.), outdoor chores (shopping, yardwork, etc.), driving, and using public transportation."

d. On March 11, 2002, MCALEAVEY was found to be occupationally disabled by the RRB.

e. On February 14, 2003, MCALEAVEY was informed by the RRB that he did not meet the requirements for a total and permanent disability beyond the occupational disability annuity. In its denial, the RRB informed MCALEAVEY that:

"[t]he medical evidence shows that your range of motion, gait, reflexes, sensation and motor functions are within normal limits. The objective findings indicate that you are able to lift and carry up to 50 occasionally and 25 pounds frequently. You should be able to kneel, crouch, and climb stairs frequently; stoop, crawl and climb ladders occasionally. You should be able to sit, stand and/or walk at least 6 hours in an 8-hour workday."

f. On March 25, 2003, MCALEAVEY, through a lawyer located in New York, New York, mailed a letter to the RRB requesting that the agency reconsider its denial of a total and permanent disability.

g. On June 26, 2003, MCALEAVEY mailed to the RRB a medical report from a doctor ("Doctor #1") claiming that MCALEAVEY could not perform any substantial gainful employment based on his injuries.

h. On August 4, 2003, MCALEAVEY mailed to the RRB a medical narrative from Doctor #1 claiming to further support his claim for a total and permanent disability, and informed the RRB that he was "unable to sit, stand or walk for long periods of time" and was "unable to bend, kneel squat or climb a ladder" and was "totally occupationally disabled from any job which would require these activities."

i. On December 1, 2003, MCALEAVEY mailed to the RRB an additional medical narrative from Doctor #1 which purported to show that he "continue[d] to be disabled from substantial gainful employment."

j. On December 17, 2003, the RRB informed MCALEAVEY that he had again been denied a total and permanent disability award.

k. MCALEAVEY mailed a formal appeal of the RRB's decision on February 12, 2004. In conjunction with his appeal, MCALEAVEY submitted to the RRB a narrative from Doctor #1 in which the Doctor claimed that MCALEAVEY was in "chronic" pain and "unemployable" even for "light work".

l. By letter dated May 20, 2004, the RRB granted MCALEAVEY a total and permanent disability from work retroactive to October 26, 2001.

MCALEAVEY'S DISABILITY CLAIM WAS FRAUDULENT

16. Through my investigation, I have learned that WILLIAM J. MCALEAVEY, the defendant, was not physically restricted in the ways in which he represented to the RRB. I base this conclusion on the following evidence, among other things:

a. Although MCALEAVEY retired on October 26, 2001, claiming that he suffered debilitating injuries, LIRR personnel records show that MCALEAVEY worked a significant number of overtime hours at the LIRR in the years before he retired. Specifically, in the year 2000, MCALEAVEY worked 1,020 overtime hours, earning almost the equivalent of his \$44,742 base salary in additional overtime payments. In 2001, the year he retired, MCALEAVEY worked 1,325 overtime hours in a ten-month period.

b. MCALEAVEY's Disability Application and medical files are fraught with material inconsistencies. For example, despite claiming in his Disability Application that almost all of his daily activities were "hard" for him to perform and that he could not, among other things, "bend, lift, crawl...reach, push and pull," MCALEAVEY was found by an independent medical exam conducted by the RRB on October 28, 2003 to have a "full" squat, and to need "no help changing for the exam...no help getting on and off the examining table" and to be able to "rise from the chair without difficulty." The examining doctor further found that MCALEAVEY only had a "mild limitation for sitting, standing and walking on a continuous basis."

c. Although MCALEAVEY claimed to the RRB in his appeal for a total and permanent disability award that he was unfit for any type of gainful employment, in truth and in fact, MCALEAVEY engaged in physically demanding labor as an ironworker after his retirement with a purportedly severe disability.



Based on interviews conducted by law enforcement agents and my review of records, I believe that MCALEAVEY worked on multiple ironworking jobs in 2006, 2007, and 2008. For example:

i. I have spoken to a law enforcement agent who conducted an interview on July 31, 2012 with a business agent for the Union in charge of assigning ironworking jobs to Union members (the "Business Agent"), and have reviewed notes of that interview. From those sources I have learned that MCALEAVEY called the Business Agent at his office in Manhattan sometime in 2006 and asked him to send him out on jobs.

ii. The Business Agent recalled sending MCALEAVEY on multiple ironworking jobs in 2006 and 2007. According to the Business Agent, the jobs to which he sent MCALEAVEY were all physically strenuous and involved, among other things, bending, squatting, dragging and lifting heavy objects. The Business Agent recalled that each job lasted between a few days and a few weeks.

iii. The Business Agent also stated that, in 2006, 2007 and perhaps 2008, MCALEAVEY told him that he worked on other job sites as an ironworker, in addition to those that the Business Agent had assigned to him.

d. I have spoken to a law enforcement agent who conducted an interview on August 15, 2012 with one of MCALEAVEY's former ironworker colleagues ("Ironworker-1"), and have reviewed the notes of that interview. I have also reviewed Union and other payroll records for MCALEAVEY's son. From these sources I have learned that MCALEAVEY used his son's social security number to work as an ironworker for a company based in the Southern District of New York. Specifically:

i. Union records reflect that an individual using MCALEAVEY'S son's social security number worked for two weeks in December 2007 with Ironworker-1 on an ironworking job in Queens, New York for a company based in Mt. Vernon, New York (the "Mt. Vernon Company").

ii. Records provided by the Mt. Vernon Company reflect that an individual using MCALEAVEY's son's social security number worked from November 6, 2007 to February 26, 2008 on an ironworking job.

iii. Ironworker-1 stated that he worked with MCALEAVEY on the job for the Mt. Vernon Company. According to

Ironworker-1, MCALEAVEY performed physically demanding work during the job that included repeatedly lifting steel mesh that weighed approximately 15-20 pounds per sheet, and climbing on and off scaffolding dozens of times per day. Ironworker-1 did not believe that MCALEAVEY was disabled during the time he worked for the Mt. Vernon Company.

iv. Payroll checks issued by the Mt. Vernon Company to "William J. McAleavey" were deposited into a bank account belonging to MCALEAVEY, and not his son.

v. The Mt. Vernon Company mailed a W-2 form to MCALEAVEY's residence from its offices in Mt. Vernon, New York in connection with the ironworking job performed by an individual using MCALEAVEY's son's social security number.

e. From my review of Union and other payroll records, I know that MCALEAVEY used his son's social security number on at least three other occasions in order to conceal that he continued to work as an ironworker after receiving a total and permanent disability award from the RRB. In particular, I have learned that:

i. A September 6, 2007 Form W-4 filed on behalf of "William J. McAleavey" in connection with an ironwork job for a company based in Hicksville, New York (the "Hicksville Job") listed a social security number belonging to MCALEAVEY's son. However, two payroll checks dated September 11 and 26, 2007 issued to "William McAleavey" in connection with the Hicksville Job were deposited into a bank account belonging to MCALEAVEY, and not his son.

ii. The Form W-4 and other personnel forms submitted by "William J. McAleavey" in connection with the Hicksville Job all bear the same signature. Based on my review of signatures by MCALEAVEY and his son on various payroll forms and checks, the signatures on the Hicksville Job records appear to be those of MCALEAVEY, and not his son.

iii. An April 3, 2007 Form I-9 filed on behalf of "William J. McAleavey" in connection with an ironwork job at the Corona Yard in Corona, New York (the "Corona Job") listed a social security number belonging to MCALEAVEY's son. However, the personal identification used by the employee to verify his identity was a Lifetime Rail Transportation Pass issued by the LIRR to MCALEAVEY upon his retirement (the "LIRR Pass"). A copy of the LIRR Pass, which was attached by the

employer to the Form I-9, bears a picture of MCALEAVEY, his employee number at the LIRR, and his former job title at the LIRR. I have verified that the Pass was issued to MCALEAVEY by the LIRR, and not to his son.

iv. The Form I-9, a Form W-4, as well as other personnel forms submitted by "William J. McAleavey" in connection with the Corona Job, all bore the same signature. Based on my review of signatures by MCALEAVEY and his son on various payroll forms and checks, the signatures on the Corona Job records appear to be those of MCALEAVEY, and not his son.

v. A May 23, 2006 Form I-9 filed on behalf of "William J. McAleavey" in connection with an ironwork job for a company based in Farmingdale, New York (the "Farmingdale Job") listed a social security number belonging to MCALEAVEY's son. However, the personal identification used by the employee to verify his identity was a New York State Access Pass ("NYS Pass"), which gives residents of New York State with permanent disabilities free access to, among other things, public parks and golf courses. I have verified that the NYS Pass was issued to MCALEAVEY by the New York State Office of Parks, Recreation and Historic Preservation based on his disability award from the RRB.

vi. A May 23, 2006 personnel form filed on behalf of "William J. McAleavey" in connection with the Farmingdale Job lists the employee's birth date as August 29, 1951. Based on my review of MCALEAVEY's RRB and medical files, I have learned that MCALEAVEY's birthday is August 29, 1951.

vii. The Form I-9 and other personnel forms submitted by "William J. McAleavey" in connection with the Farmingdale Job all bear the same signature. Based on my review of signatures by MCALEAVEY and his son on various payroll forms and checks, the signatures on the Farmingdale Job records appear to be those of MCALEAVEY, and not his son.

viii. A May 26, 2006 payroll check issued in connection with the Farmingdale Job was deposited into a bank account belonging to MCALEAVEY, and not his son.

f. I have spoken to law enforcement agents who conducted an interview with MCALEAVEY on April 12, 2012, and also have reviewed notes of that interview. From them, I have learned that MCALEAVEY admitted that he used his son's social

security number to obtain employment without his son's permission.

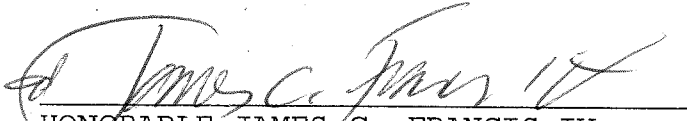
WHEREFORE, deponent respectfully requests that warrants be issued for the arrest of WILLIAM J. MCALEAVEY, the defendant, and that he be arrested and imprisoned, or bailed, as the case may be.



9/7/2012

ADAM M. SUITS  
Special Agent  
Office of the Inspector General,  
U.S. Railroad Retirement Board

Sworn to before me this  
7th day of September, 2012



HONORABLE JAMES C. FRANCIS IV  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF NEW YORK

WARRANT FOR ARREST

<b>United States District Court</b>		DISTRICT <b>SOUTHERN DISTRICT OF NEW YORK</b>	
UNITED STATES OF AMERICA v.		DOCKET NO. <b>12 MAG</b>	MAGISTRATE'S CASE NO. <b>2355</b>
<b>WILLIAM J. MCALEAVEY,</b>  Defendant.		NAME AND ADDRESS OF INDIVIDUAL TO BE ARRESTED  <b>WILLIAM J. MCALEAVEY</b>	
WARRANT ISSUED ON THE BASIS OF: Indictment <input type="checkbox"/> Information <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Order of Court		DISTRICT OF ARREST	
TO: UNITED STATES MARSHAL OR ANY OTHER AUTHORIZED OFFICER		CITY	
YOU ARE HEREBY COMMANDED to arrest the above-named person and bring that person before the United States District Court to answer to the charge(s) listed below.			
<b>DESCRIPTION OF CHARGES</b>			
Mail Fraud and Identity Theft			
IN VIOLATION OF	UNITED STATES CODE TITLE <b>18</b>	SECTION <b>§§ 1341, 1028A</b>	
BAIL		OTHER CONDITIONS OF RELEASE	
<b>JAMES C. FRANCIS IV</b>			
ORDERED BY <b>JAMES C. FRANCIS IV</b>	MAGISTRATE JUDGE	SIGNATURE (FEDERAL JUDGE/U.S. MAGISTRATE) <i>[Signature]</i>	DATE ORDERED <b>SEP 07 2012</b>
CLERK OF COURT	(BY) DEPUTY CLERK		DATE ISSUED
<b>RETURN</b>			
This warrant was received and executed with the arrest of the above-named person.			
DATE RECEIVED	NAME AND TITLE OF ARRESTING OFFICER	SIGNATURE OF ARRESTING OFFICER	
DATE EXECUTED			

Note: The arresting officer is directed to serve the attached copy of the charge on the defendant at the time this warrant is executed.