

Approved: Edward A. Imperatore **12 MAG 2354**
EDWARD A. IMPERATORE
Assistant United States Attorney

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

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UNITED STATES OF AMERICA : SEALED COMPLAINT
- v. - : Violations of
18 U.S.C. §§ 1341, 1349
KEVIN NEVILLE, :
County of Offense:
Defendant. : NEW YORK

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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 ("RRB"), and charges as follows:

COUNT ONE

(Mail and Health Care Fraud Conspiracy)

1. From at least in or about 2007, up to and including in or about 2012, in the Southern District of New York and elsewhere, KEVIN NEVILLE, the defendant, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with others to commit mail fraud and health care fraud in violation of Sections 1341 and 1347 of Title 18, United States Code, to wit, NEVILLE defrauded the RRB by submitting a false claim for disability benefits to which he was not entitled.

2. It was a part and an object of the conspiracy that KEVIN NEVILLE, the defendant, and others known and unknown, 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.

3. It was further a part and an object of the conspiracy that KEVIN NEVILLE, the defendant, and others known and unknown, willfully and knowingly would and did execute and attempt to execute a scheme and artifice to defraud health care benefit programs and obtain, by means of false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, health care benefit programs, in connection with the delivery of and payment for health care benefits, items and services, in violation of Title 18, United States Code, Section 1347.

OVERT ACTS

4. In furtherance of the conspiracy and to effect the illegal objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. On or about January 4, 2007, March 1, 2007, May 24, 2007, September 17, 2007, and October 30, 2007, KEVIN NEVILLE, the defendant, met with Dr. Peter J. Ajemian, an indicted co-conspirator.

b. On or about March 5, 2011, KEVIN NEVILLE, the defendant, mailed a disability recertification to the RRB in New York, New York.

(Title 18, United States Code, Section 1349.)

COUNT TWO (Mail Fraud)

5. From at least in or about 2007 until at least in or about 2011, KEVIN NEVILLE, 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, NEVILLE defrauded the RRB by submitting a false claim for disability benefits to which he was not entitled.

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

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

6. 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 RETIREMENT BENEFITS AND
OVERVIEW OF THE PREMEDITATED DISABILITY FRAUD

7. 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.

8. 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 65.¹ 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.

9. 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.

10. KEVIN NEVILLE, 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

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

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.

11. 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

12. KEVIN NEVILLE, the defendant, is a former LIRR crew dispatcher who retired on or about November 1, 2007, at the age of 50 years and one month, after approximately 30 years of employment. NEVILLE's duties and responsibilities as a crew dispatcher involved assigning and staffing LIRR engineers, conductors, ticket clerks, and other LIRR workers. On December 13, 2007, NEVILLE applied for and was awarded an RRB occupational disability annuity. In his Disability Application, he claimed that he became "disabled" on October 27, 2007, one month after he became eligible to retire.

13. In his last year with LIRR (2007), KEVIN NEVILLE, the defendant, earned \$134,272, including \$58,388 in overtime payments.

The previous year, he earned \$136,107, including \$66,048 in overtime payments. In 2011, NEVILLE received approximately \$76,295 in LIRR pension payments and approximately \$43,336 from his RRB disability payments, for a total of \$119,631 in payments. He continues to receive RRB disability payments through the present.

OVERVIEW OF NEVILLE'S FRAUD

14. Based on the evidence set forth below, there is probable cause to believe that KEVIN NEVILLE, the defendant, deliberately defrauded the RRB by falsely claiming to be disabled. Ten months before he retired and his disability allegedly began, NEVILLE planned a particular date on which he would retire and, in fact, ultimately retired on that date with a purported disability. NEVILLE visited co-conspirator Peter J. Ajemian, who has been separately indicted and who, in only ten months, diagnosed NEVILLE with a disability in order to allow him to claim he was "disabled" as of his planned last day of work. As part of this arrangement, NEVILLE paid Ajemian \$1000 for a narrative and other forms in support of his Disability Application.

15. In the ten months before he retired with a "disability," KEVIN NEVILLE, the defendant, worked 60 to 100 hours per week and logged 1192 hours of overtime. He applied for an occupational disability because, as he admitted before a grand jury, he "had nothing to lose," and his purported "disability" did not factor into his decision to retire. Despite claiming in his Disability Application that he cannot sit, stand, or walk for prolonged periods of time or do outdoor chores at all, and that "benching, stretching, and reaching" cause "severe pain," NEVILLE plays golf regularly, "exercise[s] as much as possible," and performs labor-intensive outdoor chores such as shoveling snow.

NEVILLE'S PURPORTED DISABILITY

16. I am aware that KEVIN NEVILLE, the defendant, had been contemplating early retirement for more than ten months prior to his actual retirement. I base this conclusion on the fact that on or about January 26, 2007, NEVILLE submitted an Application for Pension Estimate in which he anticipated that his retirement date would be November 1, 2007. As noted above, NEVILLE in fact retired on that date because, according to NEVILLE, less than a week earlier he had become disabled.

17. I have reviewed a Disability Application, dated

December 13, 2007, in which KEVIN NEVILLE, the defendant, stated the following, among other things, knowing that he could be prosecuted for false statements:

a. NEVILLE listed the medical condition causing him to file for disability as "bulging discs," "bilateral knee patellofemoral chondromalacia, and "early arthritic changes at the stenoclavicular joint."

b. NEVILLE identified that this condition began to affect his ability to work on October 26, 2007, and that he could no longer work because of this condition on the following day, October 27, 2007. As noted above, NEVILLE retired four days later, on November 1, 2007.

c. In response to a question asking NEVILLE to describe how his condition prevented him from working, NEVILLE stated:

"Sitting and constant use of the computer aggravates my neck injury and my lumbar spine and causes severe neck pain which radiates down my arms and into my hands. Walking on uneven terrain when moving around the rail shops and yards causes severe lower back pain which radiates to my knees. My knees are in pain whenever I must climb, bend, kneel or crouch while carrying out my job duties."

d. In response to a question about his daily activities, NEVILLE stated:

"I do not sleep well due to the pain and discomfort I have in both my neck and lower back. . . . I can no longer do the physical things I enjoyed, i.e. bowling, softball and skiing. I usually have lunch and dinner out. I would rather cook my own meals but find it difficult to stand and lift pots due to pain."

e. NEVILLE stated that the following daily activities were "Hard" for him to do: sitting, standing, walking, bathing, dressing, "other bodily needs," "indoor chores (meal preparation, laundry, cleaning, etc.)," driving a motor vehicle, and using public transportation. He stated that he could not do "outdoor chores (shopping, yardwork, etc.)" at all and explained that "bending, stretching and reaching causes severe pain."

f. In response to a question asking how his treating physician had restricted his daily activities, NEVILLE stated: "Do not bend, crouch, kneel, reach or climb. No pushing, pulling, carrying or lifting weights over 10 lbs."

18. KEVIN NEVILLE, the defendant, first saw Dr. Peter J. Ajemian, an indicted co-conspirator, on or about January 4, 2007 for various claimed ailments. In his progress notes, Ajemian catalogued NEVILLE's purportedly deteriorating condition, culminating in a narrative dated October 30, 2007, in which Ajemian concluded that NEVILLE was occupationally disabled. In that narrative, Ajemian reported the following:

a. "This otherwise active, healthy, 49-year old" has incurred the following "problems over a number of years": "right shoulder and right hand pain, back pain and left and right knee pain." "He presents here now because of discomfort and soreness which is not improved."

b. NEVILLE "says that his right shoulder . . . had an injury a number of years ago and he says the clavicle broke three times in the past, with mild discomfort." NEVILLE also had "discomfort and tightness and pain and tingling involving his right hand with pins and needles as well, and difficulty holding onto things as well."

c. During an examination on May 24, 2007, following a magnetic resonance imaging of his back and an EMG-never conduction study of his extremities, Ajemian advised NEVILLE "to work within his limitations" and reported that NEVILLE "clearly understands what he has to do and what he cannot do in order to continue working in his current capacity."

d. During an examination on September 17, 2007, Ajemian made NEVILLE "aware that he has significant problems that unfortunately collectively over time have made him worse." Ajemian did not report any restrictions on NEVILLE's ability to work at that time, however.

e. On October 30, 2007, NEVILLE saw Ajemian for the last time before he retired. He reported "without substantial improvement or noticeable change." On the basis of his examination on that date, Ajemian "recommended at this time occupational disability retirement on behalf of this patient."

19. In further support of the Disability Application filed by KEVIN NEVILLE, the defendant, Ajemian submitted to the RRB a "Statement of Sickness," dated October 30, 2007, diagnosing NEVILLE with "cervical and lumbar radiculopathy, chondromalacia of patella, sprain/strain of sternum." In the Statement of Sickness, Ajemian stated that NEVILLE "became sick or injured" on November 1, 2007, a date that had not yet occurred. Ajemian further stated that he believed NEVILLE would be able to return to work on or about May 1, 2008. Although Ajemian explained that NEVILLE was scheduled for another examination on or about December 1, 2007, NEVILLE did not in fact return to Ajemian again until January 20, 2009, more than a year later.

20. Ajemian's billing records for KEVIN NEVILLE, the defendant, reflect that on September 17, 2007, NEVILLE paid Ajemian \$1000 to complete a narrative and other forms diagnosing a disability. That is, NEVILLE paid for the disability narrative more than one month before the examination in which Ajemian reported reaching the conclusion that he was disabled.

21. According to payment records that I have reviewed, KEVIN NEVILLE, the defendant, paid Marie Baran, an indicted co-conspirator who was at all relevant times a "facilitator," \$1200 on or about November 15, 2007 to retain her as a consultant in connection with his Disability Application.

22. In 2011, KEVIN NEVILLE, the defendant, mailed a Disability Recertification to RRB's offices in New York, New York. In the Disability Recertification, dated March 5, 2011, NEVILLE certified that, during the period from April 1, 2008 until March 5, 2011, his condition had become "worse."

NEVILLE'S DISABILITY CLAIM WAS FRAUDULENT

23. Through my investigation, I have learned that KEVIN NEVILLE, the defendant, was not physically restricted in the ways in which he and his doctor, Peter J. Ajemian, represented to the RRB. Specifically, among other things:

a. On May 5, 2008, the RRB retained an independent physician to examine NEVILLE. The physician observed that NEVILLE could lift objects weighing up to 10 pounds, stand for at least six hours in an eight-hour workday, and sit for at least six hours in an eight-hour workday, and concluded that "medical improvement [was]

possible."

b. Ajemian's notes from his five examinations of NEVILLE before NEVILLE retired did not state that NEVILLE's condition restricted his ability to work. Only once NEVILLE was ready to retire did Ajemian first indicate that NEVILLE's condition affected his ability to work.

c. Although NEVILLE retired on November 1, 2007 claiming he was disabled as of October 27, 2007, NEVILLE worked 3128 hours, including 1372 overtime hours, in 2006 and he worked 2805 hours, including 1192 overtime hours, from January 1, 2007 until his retirement on November 1, 2007.

d. On April 21, 2011, KEVIN NEVILLE, the defendant, testified before a grand jury in the United States District Court for the Southern District of New York. Based upon my review of a transcript of that testimony, I learned that NEVILLE testified, in sum and substance, as follows:

i. NEVILLE retired because "when [he] turned fifty," he "was tired" and "wanted to enjoy the little life [he had] left."

ii. Until he retired, NEVILLE worked "a lot of overtime." "[O]nce you work overtime, you kind of get hooked on the money. And, you know, just to sustain my lifestyle, I felt I needed to work." NEVILLE worked "an average between sixty and sometimes a hundred hours a week," in addition to traveling "fifteen to twenty hours a week getting back and forth to work."

iii. NEVILLE decided to apply for a disability because he believed he "had nothing to lose, so why not apply for it."

iv. According to NEVILLE, "if you apply for this, this benefit, you just get your retirement pension a few years early." "If you're not healthy enough, or don't plan on working again, then you would apply for it."

v. Asked whether there was any date he felt he could no longer work because of his back problems, NEVILLE responded: "I never viewed myself that I was unable to do anything."

vi. NEVILLE did not tell any doctor during his

last year of work that he was unable to perform his job. "I don't believe I ever said I can't work anymore, my back is bad."

vii. NEVILLE decided to retire "whether or not [he] was able to work with [his] back or not." "I was already in the mind-set that I was retiring at age fifty, or shortly thereafter. So [my back] wasn't a real paramount thing on my mind."

viii. NEVILLE "stayed on an extra month or two" after his fiftieth birthday "to help [with] some transition things." But "knowing what I know now, I would have left sooner" and "retired as soon as I was able to." When asked why, NEVILLE responded, "the quality of life."

ix. Since retiring, NEVILLE stated that he exercises regularly. He works out with a personal trainer, swims, and plays golf approximately twice a week in the summertime.

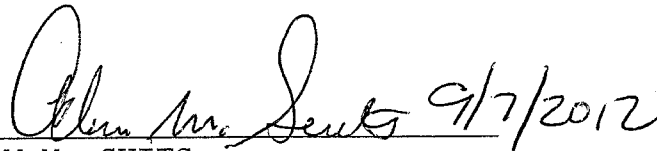
x. Asked whether he takes any medicine, NEVILLE responded: "I was never really one for medicine."

xi. NEVILLE hired co-conspirator Marie Baran and paid her "several hundred dollars" to help him submit his Disability Application. Asked whether he had already decided by the time he met Baran that he was going to apply for a disability, NEVILLE responded: "Yes. I knew I wasn't going to work afterwards. So yes, prior to my retirement, I was going to apply for it, sure."

e. Three months after he retired, NEVILLE applied for and was granted an "access pass" to public golf courses by the New York State Office of Parks, Recreation, and Historic Preservation and, according to his grand jury testimony, golfed regularly.


f. On or about January 28, 2011, other law enforcement agents conducted surveillance of NEVILLE, in which they observed him shoveling snow, breaking patches of ice with a shovel, and plowing snow while driving an all-terrain vehicle registered in his name. NEVILLE did all of these activities with apparent ease and with no apparent discomfort, despite his claims that standing and walking were "hard" for him to do, that "movement of a vehicle causes pain," and that he was "not at all" capable of performing any outdoor chores.

WHEREFORE, deponent asks that a warrant be issued for the arrest of KEVIN NEVILLE and that he be 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


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

WARRANT FOR ARREST

United States District Court		DISTRICT SOUTHERN DISTRICT OF NEW YORK	
UNITED STATES OF AMERICA v. KEVIN NEVILLE, Defendant.		DOCKET NO. 12 MAG 2354 12 Mag.	MAGISTRATE'S CASE NO.
WARRANT ISSUED ON THE BASIS OF: <input type="checkbox"/> Order of Court <input type="checkbox"/> Indictment <input type="checkbox"/> Information <input checked="" type="checkbox"/> Complaint		NAME AND ADDRESS OF INDIVIDUAL TO BE ARRESTED KEVIN NEVILLE	
TO: UNITED STATES MARSHAL OR ANY OTHER AUTHORIZED OFFICER		DISTRICT OF ARREST	
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.		CITY	
DESCRIPTION OF CHARGES			
Mail and health care fraud conspiracy; mail fraud			
IN VIOLATION OF	UNITED STATES CODE TITLE 18	SECTION 1349, 1341	
BAIL	OTHER CONDITIONS OF RELEASE		
ORDERED BY JAMES C. FRANCIS IV UNITED STATES MAGISTRATE JUDGE SOUTHERN DISTRICT OF NEW YORK	SIGNATURE (FEDERAL JUDGE/U.S. MAGISTRATE) <i>[Signature]</i>		DATE ISSUED SEP 07 2012
CLERK OF COURT	(BY) DEPUTY CLERK		DATE ISSUED
RETURN			
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.