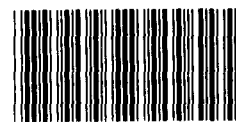


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UNITED STATES GENERAL ACCOUNTING OFFICE
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STATEMENT OF
FRANKLIN A. CURTIS, ASSOCIATE DIRECTOR
HUMAN RESOURCES DIVISION
BEFORE THE
SUBCOMMITTEE ON EMPLOYMENT AND HOUSING
HOUSE COMMITTEE ON GOVERNMENT OPERATIONS
ON
ADJUDICATION OF BLACK LUNG CLAIMS BY LABOR'S
OFFICE OF ADMINISTRATIVE LAW JUDGES
AND BENEFITS REVIEW BOARD



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We are pleased to be here today to discuss our October 26, 1984, report entitled Adjudication of Black Lung Claims by Labor's Office of Administrative Law Judges and Benefits Review Board (GAO/HRD-85-19).

Our report was prepared in response to a request from Congressman Donald Pease, who was concerned with the length of time it was taking to adjudicate black lung cases. Congressman Pease asked for information on

- increases in the backlog of cases awaiting adjudication by the OALJ and by the Board,
- the length of time it took the OALJ and the Board to dispose of these cases,
- our estimates of how long it will take to reduce these backlogs to reasonable levels, and
- proposals to reduce these backlogs.

My statement summarizes the findings contained in our report, and with your permission, I will provide a copy of the report for inclusion in the record.

In summary, our review disclosed that:

- As of September 30, 1984, the OALJ had an inventory of 20,450 black lung cases that had not been decided. On that date, the Board had over 5,230 pending black lung cases.
- Between October 1, 1983, and August 21, 1984, the OALJ disposed of over 4,800 black lung cases. Seventy-eight percent of these dispositions took more than 2 years from the time received by the OALJ. In fiscal year 1983, only 23 percent of the dispositions took more than 2 years.

- According to Board officials, the Board was taking, on the average, about 27 months to dispose of an appealed black lung case.
- For the OALJ, it would take over 35 years to reduce its backlog of 20,450 cases to a more reasonable level of about 6,000 cases, assuming 5,000 new requests for a hearing and 5,400 dispositions per year. If the OALJ is successful in implementing its plans to dispose of about 6,600 cases per year, the backlog could be reduced to reasonable levels in about 10 years.
- For the Board, which was expanded from three to nine members by the Longshore and Harbor Workers' Compensation Act Amendments of 1984, the backlog of 5,230 cases could be reduced to a reasonable level of about 800 cases by the end of fiscal year 1990. However, if the OALJ increases dispositions from 5,400 to 6,600 per year, more OALJ cases are likely to be appealed to the Board and its backlog would not be reduced to reasonable levels until fiscal year 1996.
- In September 1984, the OALJ was implementing plans that were expected to have the effect of increasing the estimated number of dispositions from 5,400 to 6,600 per year. These plans called for (1) continuing its use of "borrowed" ALJs from other federal agencies with lower than anticipated workloads and (2) contracting with retired ALJs to assist in preparing decisions.

--The expanded Board, once fully supported, is expected to dispose of about 3,360 cases per year compared to about 1,440 cases per year if it had remained a three-member Board.

Before discussing the above in more detail, I would like to mention that our October report contains background information on (1) black lung claims processing by Labor's Office of Workers' Compensation Program (OWCP), (2) rights of various parties (primarily claimants and coal mine operators) to request further administrative consideration of a claim and/or a hearing before an ALJ, (3) rights of dissatisfied parties to appeal an ALJ decision to the Board and, if still dissatisfied, to the U.S. Court of Appeals, (4) the rules and procedures governing a hearing before an ALJ, and (5) the OALJ and Board costs for adjudicating black lung claims in fiscal year 1984.

INCREASE IN OALJ BACKLOGS

Since fiscal year 1979, the backlog of cases pending before the OALJ increased from 484 cases in fiscal year 1979 to 20,450 cases at the end of fiscal year 1984. According to Labor officials, the number of cases awaiting OALJ disposition increased as a result of the 1978 amendments to the Federal Coal Mine Health and Safety Act. These amendments required Labor, and in some cases the Social Security Administration, to rereview about 200,000 previously denied and pending claims using revised criteria. As OWCP made claims decisions on these cases, many interested parties (primarily denied claimants or coal mine operators found liable for paying black lung benefits) exercised their rights to request a hearing before an ALJ.

In fiscal year 1981, the OALJ more than doubled the number of staff-years spent on hearing and deciding black lung cases in an effort to respond to the large volume of requests for hearings. And, although the number of cases disposed of in 1981 increased significantly, the number of cases referred to the OALJ in the years after 1981 continued to exceed the capability of the ALJs to dispose of these cases.

TIME FRAMES FOR DISPOSING OF
BLACK LUNG CASES AT THE OALJ

According to the Chief Administrative Law Judge, from the time the OALJ receives a case to the time the case is decided should, on the average, be about 12 months; some complex cases could take longer. About 23 percent of the OALJ dispositions in fiscal year 1983 had taken more than 2 years; 78 percent of the dispositions for the first 10-1/2 months of fiscal year 1984 had taken more than 2 years. As of June 30, 1984, over 5,000 cases that had been received by the OALJ before October 1, 1982, had not been decided.

Because the OALJ backlog increased by over 7,000 cases in the last two fiscal years (1983 and 1984), we estimated that based on the number of future dispositions anticipated by Labor, an interested party filing a request for an OALJ hearing in early fiscal year 1985 would have to wait, on the average, over 3-1/2 years for a decision.

ESTIMATES FOR REDUCING THE OALJ
BACKLOG TO REASONABLE LEVELS

In estimating the length of time it will take the OALJ to reduce its backlog, we relied extensively on Labor's estimates

of (1) how many new requests for hearing are anticipated and (2) how many cases the OALJ will be able to dispose of each year. Our estimates were based on anticipated conditions, such as the number of requests for hearings and the number of cases that can be disposed of by the OALJ. Therefore, to the extent these conditions change, the estimates of the length of time to reduce the OALJ backlog would need to be revised.

Regarding the OALJ backlog, we made two estimates. After fiscal year 1985 the OALJ expects to receive about 5,000 new requests for a hearing each year. For our first estimate, we showed that Labor expects to dispose of 5,400 cases per year. Based on these assumptions, it could take the OALJ over 35 years to reduce its backlog to a reasonable level of about 6,000 cases. Moreover, it would be the year 2011 before the average OALJ disposition time would be less than 2 years.

For the second estimate, based on Labor's plan to contract with retired ALJs and to use judges borrowed from other agencies, the OALJ could dispose of 6,600 cases annually. Using this estimate, the backlog would be reduced to a reasonable level in about 10 years, and by the end of 1989 the average disposition time would be about 2 years.

BOARD BACKLOG AND LENGTH OF
TIME TO DISPOSE OF CASES

For the Benefits Review Board, the number of pending black lung cases grew from 102 in fiscal year 1979 to over 5,230 at the end of fiscal year 1984. Since Labor estimated that about 45 percent of the OALJ black lung dispositions will be appealed

to the Board, as the number of ALJ dispositions increased, more cases were appealed to the Board than the Board could handle. If the September 1984 amendments to the Longshore and Harbor Workers' Compensation Act had not increased the size of the Board from three to nine members (five permanent and four temporary), the backlog of appealed black lung cases was expected to increase at the rate of about 1,000 cases per year (2,440 new appeals less 1,440 dispositions). According to the Board's Chairman, for cases decided by the Board last summer, it was taking about 27 months from the time the Board received the case to the time the Board finalized its decision. Without the amendments, Labor had estimated that by September 1985 the three-member Board would have had about 5 years of work. Board officials told us that the average work-in-process time for an appealed black lung case should be about 6 months.

EXPANDED BOARD SHOULD BE ABLE TO REDUCE
BACKLOG AND ESTIMATES OF TIME TO REDUCE
BACKLOG TO A REASONABLE LEVEL

As mentioned, the September 28, 1984, Longshore amendments authorized expansion in the Board from three to nine members. With a full complement of support staff (clerical, law clerks, and staff attorneys), the nine-member Board in its second year of operation is expected to decide about 1,000 more cases than it receives (3,360 dispositions vs. 2,440 new appeals). We estimated that the length of time to reduce the Board's backlog of over 5,230 black lung cases to a reasonable level of about 800 cases would be about 6 years if a fully supported nine-member Board could adjudicate 3,360 claims a year and about

2,440 claims are appealed each year. However, if the OALJ is successful in disposing of 6,600 claims per year, more claims will probably be appealed to the Board, and it will be almost 12 years before the Board reaches a reasonable backlog of about 800 cases.

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Mr. Chairman, this concludes my prepared statement. We would be pleased to respond to any questions.