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Report to the Chairman, Subcommittee
on Social Security, Committee on Ways
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SOCIAL SECURITY

Many Administrative Law Judges Oppose Productivity Initiatives





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Human Resources Division

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The Honorable Andrew Jacobs, Jr.
Chairman, Subcommittee on Social Security
Committee on Ways and Means
House of Representatives

Dear Mr. Chairman:

This report presents the results of our review of (1) the causes for recent conflicts between the Social Security Administration's Office of Hearings and Appeals management and administrative law judges and (2) whether reductions in staff, especially in judges, adversely affected the adjudicative process. Our review was done between May 1988 and April 1989, and covered the Social Security Administration's Office of Hearings and Appeals and selected hearing offices.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its date of publication. At that time, we will send copies of the report to interested congressional committees; the Secretary of Health and Human Services; the Director, Office of Management and Budget; the Commissioner of Social Security; and other interested parties and we will make copies available to others upon request.

This report was prepared under the direction of Franklin Frazier, Director, Income Security Issues (Disability and Welfare), who may be reached on 275-1793 if you or your staff have any questions. Other major contributors are listed in appendix IV.

Sincerely yours,

Lawrence H. Thompson
Assistant Comptroller General

Executive Summary

Purpose

Individuals whose applications for Social Security disability or Medicare benefits have been denied may challenge such decisions before an administrative law judge (ALJ). The number of these appeals to ALJs has risen substantially over the years. ALJs are managed by the Social Security Administration's (SSA's) Office of Hearings and Appeals (OHA). In managing ALJs, OHA must ensure that its supervision does not improperly interfere with the decisional independence of ALJs. Over the years, many ALJs have opposed various management practices on grounds that they interfere with decisional independence. This has led to a series of conflicts between them and OHA management.

The Chairman of the Subcommittee on Social Security, House Committee on Ways and Means, asked GAO to determine (1) the causes for recent conflicts between OHA management and ALJs and (2) whether reductions in staff, especially in ALJs, adversely affected the adjudicative process.

Background

ALJs are unique federal employees. They conduct hearings and make decisions on administrative proceedings of the agency that employs them. To ensure ALJs' decisional independence, the Administrative Procedure Act grants them certain exemptions from normal management controls. Management is allowed, however, to supervise and review their work to ensure its efficiency and quality and adherence to SSA policies and procedures.

In August 1989, OHA had about 5,500 employees, including about 700 ALJs in headquarters and 132 hearing offices around the country. SSA's ALJs make up more than two-thirds of ALJs employed by federal agencies.

GAO obtained data and the views of management officials on OHA policy, organization, budgets, and staff. GAO also obtained information and management perspectives on OHA and field office operations and the status of relations between OHA management and ALJs through interviews and a questionnaire.

Results in Brief

The current conflict between OHA management and ALJs centers on management's actions to increase ALJs' production. Of particular concern to many ALJs are management's use of a monthly case disposition goal and efforts to place field support staff into a "pooled" arrangement rather than under direct control of individual ALJs. In recent years, the goals have been based on management's judgment of what ALJs need to

accomplish to keep up with the appeal workload. OHA has not conducted a study to determine the appropriate balance between quality and quantity of work. Without such an analysis, it is difficult to determine what the appropriate monthly disposition goal for ALJs should be.

The number of ALJs declined through attrition to its lowest level in 10 years during fiscal year 1988. (See p. 26.) Staff reductions appeared warranted through part of the most recent 4-year period because of a sharp reduction in the number of appeals. However, as the number of appeals climbed back to its previous high levels, OHA did not rehire ALJs at a rate to keep pace with the workload. This resulted in claimants having to wait longer for decisions. OHA had increased its ALJ corps to 700 ALJs at the beginning of fiscal year 1990.

GAO's Analysis

Monthly Disposition Goals Are Based on Workload

OHA's monthly disposition goals are principally determined by workload. OHA uses goals in an effort to enhance productivity and has increased or discontinued its goals when workloads increased or decreased. The average case disposition for ALJs increased from 16 to 37 per month during the period 1975-88, and the monthly disposition goals may have played some role in producing this increase. (See p. 15.)

OHA first used a monthly disposition goal in 1975, establishing a monthly average of 26 cases per ALJ. In 1982 and 1983, with further workload increases, OHA increased the monthly goal to 40 and 45 dispositions per ALJ, respectively. When the workload declined from 1984 through 1986, OHA stopped using specific goals. However, by the end of 1987, with the workload increasing, OHA reinstated a monthly goal of 35 dispositions per ALJ. The 1988 monthly goal was 37.

ALJs have complained about the monthly disposition goals. In response to a questionnaire GAO sent to all nonmanagerial ALJs, about one-half of those responding said that increased productivity has had a negative effect on their work. Thirty-four percent said that the quality of their decisions had deteriorated over the last 3 years. About 29 percent of the ALJs said that the quality of their service to the public had worsened.

Not all ALJs agreed. About 9 percent said that the monthly disposition goal has had a positive effect on their work. Twenty-seven percent said

that the quality of their decisions had improved. And about 23 percent of the ALJs said that the quality of their service to the public had improved over the last 3 years.

OHA Lacks Adequate Quality Assessment

In 1980, the Congress required SSA to conduct reviews (called Bellmon reviews) of ALJ decisions. OHA's Bellmon reviews are the only routine reviews of the quality of ALJ decisions. However, the results of these reviews are not collected, analyzed, or otherwise used to monitor the general quality of ALJ decisions or to assess the impact of increased production on decisional quality. By fiscal year 1990, OHA plans to develop a database of decisional deficiencies identified during the Bellmon reviews. OHA plans to use the information to periodically monitor the quality of ALJ decisions. Without an analysis of the relationship between quantity and quality of work or information on overall quality, GAO could not assess the effect of increased production on the quality of ALJs' decisions.

Pooling of Staff Contributes to Conflict

OHA began "pooling" resources within some hearing offices as a demonstration project in the late 1970s, and expanded it to additional hearing offices in the early 1980s. Under pooling, ALJs do not have direct control over their support staff. Some or all support staff previously assigned to individual ALJs are now placed in a common staff pool. OHA began pooling staff to improve efficiency and balance staff workload.

GAO asked ALJs for their views on the pooling of decision writers and staff attorneys in their offices. About two-thirds of the ALJs who responded said such a reconfiguration had a negative effect on hearing office operations. Conversely, many of the managers GAO spoke with said that staff pooling provided more flexibility in using staff and allowed a more balanced workload for all staff. (See pp. 18-19.)

ALJs Report Low Morale

GAO asked ALJs to characterize the general level of morale in their office. Sixty-eight percent said that morale among all staff was generally low or very low. Fifty-nine percent stated that morale among ALJs was generally low or very low. Of those ALJs, 75 percent cited too much emphasis on productivity measures as contributing to a great extent or very great extent to the low morale among ALJs. Field office chief judges, however, had a different perception of morale in their offices. As reported in a February 1989 GAO report, only 21 percent of the chief judges reported that morale in their offices was generally low or very

low in 1988; whereas 48 percent perceived morale as generally high or very high. (See pp. 19-20.)

ALJ Shortages Cause Claimants to Wait Longer for Hearings

Both the number of hearings requested (363,533) and the number of ALJs (796) peaked in fiscal year 1983. Shortly thereafter, the number of appeals began to decline, dropping by about 120,000 cases by fiscal year 1985. With the decreased workload, the ALJ and field support staff levels were allowed to decline through attrition. From fiscal year 1983 to fiscal year 1988, OHA's field support staff declined from a yearly average of 4,086 to 3,593, a reduction of 493 positions, while the number of ALJs went from a yearly average of 796 to 657, a reduction of 139. OHA had about 700 ALJs at the beginning of fiscal year 1990.

In 1987, the appeals workload returned to its 1984 level, but OHA had 88 fewer ALJs and 384 fewer field support staff. OHA's performance indicators for fiscal year 1987 showed that pending cases increased 39 percent, the average age of the pending cases increased 22 percent, and the average processing time increased 19 percent over fiscal year 1985. In 1988, performance, as measured by two of these indicators, continued to decline. (See pp. 25-26.)

Recommendation

GAO recommends that the SSA Commissioner direct OHA to conduct a study to determine the appropriate number of cases that ALJs should be expected to decide. In its determination OHA should give proper balance to the quality of decisions. The results of such a study should be used as a basis for establishing reasonable monthly production goals.

Agency Comments

The Department of Health and Human Services (HHS) provided GAO with written comments on a draft of this report. HHS agreed that OHA should study the relationship between the quality of ALJ decisions and the average production goal for case dispositions. It disagreed, however, with a prior wording of the recommendation that used the word "reasonable," suggesting that GAO gave the impression that OHA's current monthly goal was unreasonable. GAO did not intend to give such an impression, as it does not have an adequate basis to judge whether the current goal is reasonable or not. The recommendation was restated to avoid this possible misunderstanding.

Other HHS comments and suggestions were incorporated where appropriate in the report.

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Abbreviations

ALJ	administrative law judge
APA	Administrative Procedure Act
DSS	Disability Determination Service
GAO	General Accounting Office
HHS	Health and Human Services
HOCALJ	hearing office chief administrative law judge
OHA	Office of Hearings and Appeals
OPM	Office of Personnel Management
RCALJ	regional chief administrative law judge
SSA	Social Security Administration

Introduction

Individuals whose applications for Social Security disability or Medicare benefits have been denied may challenge such decisions before an administrative law judge (ALJ). The number of these appeals to ALJs has risen substantially over the years.¹

ALJs are managed by the Social Security Administration's (SSA's) Office of Hearings and Appeals (OHA). In managing ALJs, OHA must ensure that its supervision does not improperly interfere with the decisional independence of ALJs. Over the years, many ALJs have opposed various management practices on grounds they interfere with decisional independence, leading to a longstanding controversy between them and OHA management.

Appeals Process

A dissatisfied claimant for Social Security disability or Medicare benefits may appeal the decision to an ALJ at 1 of 132 hearing offices around the country.² ALJs hold hearings at which a claimant (1) has the first face-to-face interview with a decisionmaker and (2) is usually represented by an attorney or other representative. In the case of disability claims, which represent over 90 percent of the hearing workload, ALJs may assemble additional medical evidence and use expert medical and vocational witnesses at a hearing. ALJs have the dual responsibility of protecting claimants' rights while ensuring that those who fail to meet requirements do not receive benefits. ALJs issue written decisions summarizing all the evidence and giving their reasons for either granting or denying benefits.

A claimant denied benefits by an ALJ may appeal the decision to SSA's Appeals Council. The Appeals Council, acting for the Secretary of Health and Human Services, is the final level of administrative appeal. The Council may affirm an ALJ's decision, reverse it, or remand it for further consideration. Council members, assisted by a large staff of analysts, decide whether an ALJ properly applied the law and regulations, including whether the decision was supported by "substantial evidence." A Council member may affirm an ALJ's decision without consulting another member. To reverse or remand the initial ALJ decision, however, a second member must review the case and agree. Remanding

¹ ALJs hear appeals concerning retirement and survivor benefits, health insurance (Medicare) benefits, black lung benefits, and disability claims.

² ALJ hearings are *de novo*, that is, issues a claimant raises are fully reconsidered without regard to prior determinations.

the decision may require an ALJ to collect more evidence or better document the reasons for a decision.

After all administrative remedies are exhausted the claimant may appeal to a federal district court. Courts may reverse or affirm the Secretary's decision or they may remand a case for further consideration. When a court remands a case, the Appeals Council occasionally takes action on it directly, but usually the case is remanded to the original ALJ, if possible. The ALJ may supplement the evidence, often by holding a new hearing, and write a recommended decision to the Appeals Council for its final decision.

OHA Administration

OHA is headed by an Associate Commissioner who reports directly to the SSA Deputy Commissioner for Programs. OHA's Chief Judge, with assistance from a deputy, manages and administers OHA's 132 hearing offices and its 10 regional offices. In August 1989, OHA employed about 5,500 employees including 701 ALJs.

The OHA field structure consists of 10 regions headed by seven regional chief administrative law judges (RCALJs). OHA's 10 regional offices are in Atlanta, Boston, Chicago, Dallas, Denver, Kansas City, Philadelphia, New York, San Francisco, and Seattle.

RCALJs act on behalf of the Associate Commissioner and the Chief ALJ at the regional level on all matters involving the hearing process. RCALJs provide direction, leadership, management, and guidance to the regional office staff and to the hearing offices in the region, including ALJs and their staffs. Because of the small size of the Boston, Kansas City, and Seattle regions, the RCALJ in New York also serves as the RCALJ of the Boston Region and the RCALJ in Denver also serves as RCALJ for the Kansas City and Seattle regions.

Although organizational structures vary somewhat among the regional offices, each performs essentially the same managerial, administrative, program, and systemic functions. The RCALJ provides direction and guidance to the hearing offices; monitors, assesses, and coordinates hearing office activities and performance; and serves as liaison with OHA headquarters.

Each regional office has a regional management officer who administers regional office activities on a day-to-day basis and serves as principal advisor to the RCALJ on regional matters. Regional office support staff

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include program professionals (e.g., attorneys and/or analysts), management analysts, systems' staff, and clerical personnel.

Each hearing office is headed by a hearing office chief ALJ (HOCALJ), who provides leadership and guidance to the ALJs and professional staff of decision writers (attorneys and hearing analysts) in the office. In large hearing offices, a supervisory staff attorney serves as first-line supervisor of the staff attorneys and hearing analysts. Most hearing offices also have a hearing office manager, who, under the general guidance of the HOCALJ, directs the activities of the hearing office paraprofessional and clerical employees (e.g., hearing assistants, hearing clerks, typists, etc.).

Most ALJs, including HOCALJs, are employed under the government's General Schedule (GS) system as GS-15s. The regional chiefs are GS-16s.

Unique Status of ALJs

ALJs are unique federal employees. They are employed by executive branch departments and independent agencies to conduct hearings and make decisions on administrative proceedings of the agency. As the role of the federal government expanded through the use of administrative agencies such as SSA, the Congress sought to assure greater independence of the administrative decisionmaker in formal agency proceedings by passing the Administrative Procedure Act (APA) in 1946. The APA changed certain personnel practices applicable to administrative decisionmakers (including those concerning promotion and performance appraisals).

Before passage of the APA, these decision makers (then referred to as hearing examiners, officers, or referees) were described as "mere tools of the agency and subservient to the agency heads in making their proposed findings. . . ."³ The enactment of the APA made the decisionmakers "a special class of semi-independent subordinate hearing officers. . . ."⁴ In 1972, their titles were changed to administrative law judge.

The APA exempts ALJs from key portions of civil service laws. However, ALJs are agency employees and, as such, must adhere to agency rules and regulations. This includes appropriate administrative supervision and general office management to further efficiency and quality. For example, OHA management is allowed to supervise and review the ALJ

³Ramspeck v. Federal Trial Examiners Conference, 346 U.S. 128 and 131 (1963).

⁴Ibid. at 132.

decision-making process to ensure that SSA policies and procedures are followed. OHA management, however, may not interfere with an ALJ's ability to conduct full and impartial hearings.

To insure decisional independence, the APA grants ALJs certain specific exemptions from normal management controls. According to the APA, federal agencies

- cannot apply the statutory performance appraisal requirements to ALJs,
- may not reassign or transfer ALJs without approval of the Office of Personnel Management (OPM),
- may remove an ALJ only for "good cause" as determined and established by the Merit Systems Protection Board, and
- must assign cases on a rotating basis to the extent practicable.

ALJs are appointed from registers established by OPM. They receive an appointment that is not subjected to a probationary period like other federal employees. There are approximately 1,000 ALJs employed by 30 federal agencies. SSA is the largest employer of ALJs, having by far the largest ALJ workload and employing about two-thirds of the judges. The next largest employer of ALJs, the National Labor Relations Board, has approximately 93 judges. Appendix I lists the federal agencies and the number of ALJs they employ.

The role of SSA's ALJs is unique when compared with that of most other ALJs in the federal government. The SSA hearings are nonadversarial and informal; the ALJ has concurrent responsibility for developing the evidence fully and critically, and deciding the case. In contrast, most other executive branch ALJs hold hearings that are adversarial, formal, and similar to a trial. Responsibility for developing the evidence in these other hearings is left to the parties in the proceedings who are often represented by attorneys who present witnesses and documentary evidence, and cross-examine witnesses of the opposing party in order to present the facts in a light most favorable to their client.

Also, SSA has the largest workload of any agency employing ALJs. For example, SSA received 293,093 requests for hearings in fiscal year 1988. The National Labor Relations Board, the agency with the second largest number of ALJs, received 47,000 cases in the same period, a six-fold difference.

Conflicts Between ALJs and OHA Management Are Longstanding

Conflicts between OHA management and ALJs have existed for at least a decade. Some issues that divided management and ALJs in the late 1970s and early 1980s are still argued today. For example, in June 1977, five ALJs filed a lawsuit alleging that SSA's use of numerical production goals and related matters violated the APA and the Fifth Amendment to the Constitution. This case was settled in June 1979, in what is commonly referred to as the "Bono agreement,"⁵ in which SSA and the five ALJs agreed to certain policy and practice changes.

In the early 1980s, another disagreement arose over criteria OHA management used in selecting ALJ decisions for review. Commonly known as Bellmon reviews,⁶ OHA management selected cases for review based on a judge's high allowance rates. ALJs disagreed with the selection process, claiming interference with their decisional independence. In 1983, the Association of Administrative Law Judges, which represents about 50 percent of SSA's ALJs, filed suit seeking an injunction against targeted Bellmon reviews. On June 21, 1984, before the court ruled on the suit, OHA rescinded the policy of targeting for review ALJs who had high allowance rates.

More recently, some ALJs have raised several concerns about OHA's management actions to increase production, which they believe are adversely affecting the quality of ALJ decisions and the morale in their offices. While ALJs expressed a variety of concerns to us, most were particularly concerned about OHA's use of numerical production goals and the pooling of support staff. We believe these concerns are the underlying causes for the current controversy between ALJs and management and they are discussed in more detail in chapter 2.

Objectives, Scope, and Methodology

The Chairman of the Subcommittee on Social Security, House Committee on Ways and Means, asked us in October 1987 to examine the operations of OHA. Specifically, the Chairman requested that we determine (1) the causes for recent conflicts between OHA management and ALJs, (2) the impact of recent budget and staff reductions on OHA, (3) why ALJs often disagree with state agency disability determinations, and (4) ways to make the appeals process less burdensome and time consuming.

⁵Bono v. United States of America Social Security Administration, No. 77-0819-CV-W-4 (W.D. Mo., July 24, 1979).

⁶The Bellmon reviews are required by section 304(g) of Public Law 96-235, the Social Security Disability Amendments of 1980. This act required SSA to institute on-going reviews of ALJ decisions in disability cases to ensure that ALJ decisions conform to statute, regulations, and binding policy. OHA began these reviews in October 1981.

In April 1989, we reported on the difference between ALJs' and state agencies' decisions and ways to simplify the appeals process (Social Security: Selective Face-to-Face Interviews With Disability Claimants Could Reduce Appeals (GAO/HRD-89-22, Apr. 20, 1989)). In that report we found that:

- ALJs reverse Disability Determination Service (DDS) decisions in over 60 percent of the cases they decide, often disagreeing with DDS' determinations about claimants' remaining ability to work (residual functional capacity).
- Several categories of older claimants are likely to be granted benefits when they appeal to ALJs. Some of these appeals might be avoided if DDS interviewed selected claimants at the reconsideration stage.

We performed work at OHA headquarters, all 10 regional offices, and 16 hearing offices in SSA's Atlanta and Philadelphia regions. Appendix II shows the hearing offices we visited. We judgmentally selected the offices to visit in these two regions. By examining staffing, workload, and performance indicators for recent years, we selected those offices we thought would provide us with varied experiences in managing their workloads.

We obtained additional information on the ALJs employed by the Department of Agriculture, Department of the Interior, Department of Labor, the National Labor Relations Board, and the Federal Energy Regulatory Commission.

When examining the appropriateness of management actions, we considered the APA and SSA regulations. At OHA headquarters we obtained data and views of management officials on OHA policy, organization, operations, budget and staff, and the status of OHA and ALJ relations. Using structured interviews at the regional and field hearing offices, we obtained information and management perspectives on OHA and field office operations and the status of relations between OHA management and ALJs. To obtain the views of ALJs, we interviewed selected individuals at the offices we visited and sent questionnaires to all ALJs who were not serving in a managerial role. Questionnaires were not sent to HOCALJs. The response rate to the questionnaire was 82 percent. (See app. III.)

Our work was performed from May 1988 through April 1989, in accordance with generally accepted government auditing standards.

Controversy Centers on Productivity Initiatives

ALJs have complained about several productivity initiatives taken by OHA management. Two specific actions are at the core of the controversy: the setting of a monthly disposition goal and pooling staff resources.¹ Many ALJs believe these initiatives have adversely affected morale and the quality of their decisions.

OHA's monthly disposition goal has changed as workloads and the number of ALJs changed.² The goal has been based on management's judgment of what ALJs need to accomplish to keep up with their appeal workload. OHA has not conducted a study to determine the appropriate balance between the quality and quantity of its work. Such a study should provide OHA a better basis for establishing a monthly disposition goal.

OHA Increased Its Monthly Disposition Goal as Workload Increased

Historically, OHA has used a monthly disposition goal to encourage ALJs to decide more cases. OHA increased its goal as workloads increased. Generally when the goal was increased, the number of ALJ decisions rose, even if the goal was not fully met. As can be seen from table 2.1, OHA's monthly disposition goal for ALJs (column 5) often correlates closely with the level of production required to process its workload (column 4).

¹OHA also monitors ALJ production through a number of other performance indicators, including production per work year, the size and age of pending workload, processing times, and the percentage of scheduled hearings that are actually heard.

²In a recent court case, the establishment of reasonable production goals was held not to be contrary to APA because it did not improperly interfere in the decisional independence of ALJs. *Nash v. Bowen*, No. 88-6066, slip. op. at 15-16 (2d Cir. March 7, 1989).

Table 2.1: ALJ Production Needed to Meet Demand for Hearing Requests

(1) Fiscal year	(2) Average judges on duty	(3) Hearing requests	(4) Required (ALJs divided by workload)	(5) OHA's monthly goal ^a	(6) Average ALJ monthly dispositions
1975	591	154,962	22	26	16
1976	647	157,688	20	26	21
1977	629	193,657	26	26	25
1978	657	196,428	25	26	27
1979	655	226,240	29	^b	27
1980	669	252,023	31	^b	30
1981	699	281,737	34	^b	32
1982	754	320,680	35	40	34
1983	796	363,533	38	45	37
1984	763	271,809	30	•	37 ^c
1985	730	245,090	28	•	29
1986	702	230,655	27	•	27 ^d
1987	675	278,440	35	35	31
1988	657	290,393	37	37	37
1989	677 ^e	289,281 ^e	36	37	

^aThe stated goal was an objective to be achieved by the last month of the fiscal year.

^bOHA did not have stated goals in these years principally because of a court action involving production goals.

^cThis figure included about 20,000 continuing disability review cases that did not go through the normal adjudicative process at the ALJ level, but were counted as completed dispositions.

^dThis figure included about 22,000 mental impairment cases that did not go through the normal adjudicative process at the ALJ level, but were counted as completed dispositions.

^eProjected figures by OHA.

With the workload increasing, OHA first introduced a monthly disposition goal of 26 cases for each ALJ in 1975.³ Actual monthly production in fiscal years 1974 and 1975 averaged 13 and 16 cases per ALJ, respectively. In 1982 and 1983, with further workload increases, the OHA Associate Commissioner increased the monthly average production goal to 40 and 45 dispositions per ALJ, respectively. The Associate Commissioner testified in 1983 that an increase in average production was based on plans to provide increased support for ALJs.⁴

³In commenting on a draft of this report HHS stated that, in part, goals were established after court cases began challenging delays in processing of ALJ hearing requests. (See app. IV.)

⁴SSA further reported that the average case disposition per ALJ per month had increased from 14 in fiscal year 1973 to 34 in fiscal year 1982—a 143-percent increase. SSA attributed much of the increase to increased staff support for ALJs (2.2 to 1 in 1973 to 4.7 to 1 in 1982) and increased use of word processing equipment and dictating machines.

Although the goals for fiscal years 1982 and 1983 received considerable criticism from some ALJs, the Associate Commissioner defended the goals as being achievable, and pointed out that they were nationwide averages for all ALJs. Some ALJs were thought to be able to produce more than 45 cases per month without adversely affecting quality, while others might not be able to average 45 cases per month. At the time these goals were established, SSA was expecting a significant increase in appeals workload resulting from the mandated reviews of beneficiaries' continuing eligibility.⁵ In fiscal year 1983, with an average of 796 ALJs, OHA received 363,533 new hearing requests. This was a 44-percent increase over the 252,023 requests received in fiscal year 1980, when OHA employed an average of 669 ALJs.

OHA's workload declined from fiscal year 1984 through fiscal year 1986, following suspension of continuing disability reviews. According to OHA officials, the workload decline eliminated the need for a specific monthly disposition goal in these years. But, in 1987, with the workload increasing and fewer ALJs and support staff, the Associate Commissioner reinstated the use of a monthly disposition goal, establishing a monthly fiscal year-end goal of 35 dispositions for each ALJ. The next year, OHA increased its fiscal year-end goal to 37 as the workload continued to grow and the average number of ALJs further declined. Again, as columns 4 and 5 in table 2.1 indicate, the monthly goals parallel the number of cases required to keep up with the workload.

As can be seen in column 6 in table 2.1, monthly disposition goals appear to have been effective in increasing the average monthly disposition of cases per ALJ. Before goals were introduced in fiscal year 1975, ALJs disposed of an average of 13 cases in fiscal year 1974. With the advent of goals, average case disposition went up to 21 cases in fiscal year 1976, and by fiscal year 1988 average case disposition equalled the goal of 37 cases per month.

⁵In 1980, the Congress amended the Social Security Act requiring the Secretary to review all beneficiaries periodically for their continuing eligibility under the disability program.

Many ALJs Oppose Monthly Disposition Goals and Believe That the Quality of Decisions Has Deteriorated

Many ALJs oppose OHA's use of production goals, particularly a monthly disposition goal. About one-half of the ALJs responding to our questionnaire said that the current monthly disposition goal has had a negative effect on their work. Thirty-four percent of the ALJs in our study said that the quality of their decisions had deteriorated over the last 3 years. About 29 percent of the ALJs said that the quality of their service to the public had worsened.

Not all ALJs agree that the monthly disposition goal has adversely affected their work or that the quality of ALJ decisions has deteriorated. About 9 percent said the current monthly disposition goal has had a positive effect on their work. Twenty-seven percent of the ALJs said that the quality of their decisions had improved. About 23 percent of the ALJs said that the quality of their service to the public had improved over the last 3 years.

Lack of a Study to Determine Appropriateness of Performance Goals

In recent years, OHA has taken a number of initiatives to improve the quality of ALJ decisions. Several of these initiatives involve improving the legal sufficiency and defensibility of decisions. OHA management has also conducted studies of several aspects of the hearing and appeals processes that OHA officials expect will result in improvements in such areas as the ordering of consultative medical examinations for disability claimants, processing times, and court remands.

At present, however, OHA lacks a system for adequately measuring the impact of productivity changes or initiatives on quality. OHA's Bellmon reviews are the only routine reviews of the quality of ALJ decisions. According to the Appeals Council's Director of Operations, these reviews evaluate the merits of the specific cases being reviewed. However, the results of Bellmon reviews are not collected, analyzed, or otherwise used to monitor the general quality of ALJ decisions or to assess the impact of management initiatives on decisional quality.

The Appeals Council's Director of Operations told us that OHA plans to develop a database of decisional deficiencies identified during the Bellmon reviews and to use that information to monitor the quality of ALJ decisions on a recurring basis. OHA expects to develop the database in fiscal year 1990. With such a database, OHA should have a better capability to evaluate whether organizational changes or certain management initiatives affect the quality of ALJs' work. We believe that OHA should consider these data when establishing monthly disposition goals.

OHA officials said that the monthly disposition goals have been based on workload, management judgment, and past experience. They said that they have not studied ALJ production capabilities and possible effects on quality to more precisely determine monthly goals.⁶ Generally, the goals closely correlate with the number obtained by dividing the monthly workload by the number of full-time ALJs.

In our 1978 report on ALJs throughout the federal government, we identified the need for ALJ performance standards.⁷ Based on that review, we recommended that federal agencies employing ALJs establish performance standards delineating what is expected of all ALJs in terms of work quality and quantity.

While OHA has established performance goals, we believe that OHA has not conducted an adequate study of the relationship between performance goals and the quality and quantity of decisions. Without a study of the relationship between quality and quantity of case dispositions for ALJs, it is difficult to determine the point at which an increase in production may adversely affect the quality of decisions.

ALJs Oppose Management's Efforts to Pool Staff Resources in Hearing Offices

Commonly known as office reconfiguration, OHA began pooling staff resources in some hearing offices as a demonstration project in the late 1970s, and expanded this to other offices in the early 1980s. Under pooling, ALJs do not have direct control over their support staff. Support staff previously assigned to individual ALJs, such as hearing assistants, decision writers, and staff attorneys, are placed in common staff pools.

Management officials said reconfiguration was an attempt to improve hearing office operations and productivity by using support staff more efficiently and distributing the workload more equitably. Reconfiguration also expanded career opportunities for support staff. OHA initially experimented with reconfiguration in six offices. It reported that productivity increased by 37 percent in these offices during the period of May through October 1981, compared with the same period the previous year. Productivity in all other offices during that period increased by 10 percent.

⁶The OHA Associate Commissioner has recognized the importance of assessing the possible impacts on quality from OHA's productivity goals. She initiated an internal study; however, although a limited analysis was completed in February 1980, the study results have not been accepted by the Associate Commissioner. One of the principal limitations to the analysis was that it focused only on cases appealed to the courts, which represent a small percentage of all ALJ decisions.

⁷Administrative Law Process: Better Management Needed (FICD-78-25, May 1978).

While the concept was expanded to about 30 offices in 1982, OHA officials said that OHA reconsidered its policy requiring all offices to adhere strictly to the pooling concept. Presently, HOCALJs, in consultation with the regional chiefs, are allowed to choose the organizational structure they believe best meets their office needs. According to an OHA official, support staff in most hearing offices had been pooled to some extent. Responding to our questionnaire, 95 percent of the ALJs said their offices were fully or partially pooled.

While every hearing office we visited had some attributes of reconfiguration, we noted some organizational differences. For example, all support staff in the Charlotte, North Carolina, hearing office were pooled. In the Montgomery, Alabama, hearing office some support staff (hearing assistants) were pooled, while staff attorneys and hearing clerks were assigned to individual ALJs.

Concerning reconfiguration, management officials endorsed the sharing of support staff while many ALJs opposed it. Over 75 percent of the management officials we surveyed endorsed the concept. Many managers said that reconfiguration provided more flexibility in using staff and allowed a more balanced workload for all staff. We asked ALJs for their views on the pooling of decision writers and staff attorneys in their offices. Sixty-eight percent of the ALJs who responded said such a reconfiguration had a negative effect on hearing office operations while only 19 percent said it had a positive effect on office operations.

Although we did not survey the pooled staff for their views on reconfiguration, apparently many of the support staff are satisfied with the quality of their work. In our February 1989 report on the views of agency personnel on service quality,⁸ OHA support staff surveyed (hearing assistants and clerks) had a positive view of their work. Of those responding to our survey, 87 percent stated that the quality of their work was good to very good.

Many ALJs Report Low Morale

We asked ALJs to characterize the general level of morale in their office. Sixty-eight percent said that morale among all staff was generally low or very low. Too much emphasis on productivity measures was cited by 75 percent of these ALJs as contributing to a great or very great extent to

⁸Views of Agency Personnel on Service Quality and Staff Reductions (GAO/HRD-89-371R, Feb. 10, 1989).

the low morale. Fifty-nine percent of the ALJs responding to our questionnaire stated that morale among ALJs was generally low or very low. Seventy-eight percent of these judges cited too much emphasis on productivity measures as contributing to a great or very great extent to low morale. ALJs cited additional factors as contributing to the generally low level of morale in their offices, including increased workload and a lack of leadership at OHA.

HOCALJs, however, have a different perception of morale in their offices, as reported in our February 1989 report. Only 21 percent of the HOCALJs reported that morale in their offices was generally low or very low in 1988, whereas 48 percent perceived morale as generally high or very high. The hearing assistants and clerks who were also surveyed for the report had a much lower perception of morale than the HOCALJs. Fifty-five percent perceived morale as generally low or very low, and only 18 percent believed it to be generally high or very high.

Conclusions

Production goals, particularly a monthly disposition goal, and the pooling of staff have been the focus of the controversy between ALJs and OHA. OHA has exercised its authority to establish production goals for ALJs, but the ALJs have opposed such goals.

Over the past 13 years, OHA has raised its monthly disposition goals during high workload periods and lowered these goals when the workload declined. The combination of raising, lowering, and discontinuing the goals raises questions about the basis for the goals and their effect on quality. Monthly disposition goals and other productivity initiatives appear to have had a positive impact on increasing the productivity of ALJs by raising the average case disposition per month. About one-half of the ALJs we surveyed said the current monthly disposition goal of 37 cases per month has had a negative effect on their work. This level has been achieved in the past. However, OHA has no basis for judging the reasonableness of its goal.

The point at which monthly disposition goals may adversely impact the quality of decisions is unknown and continues to be controversial. OHA does not have an adequate system for assessing the quality of ALJs' decisions; however, OHA plans to establish a database that will provide a better basis for assessing the quality of ALJ decisions for fiscal year 1990.

Recommendation

We recommend that the SSA Commissioner direct OHA to conduct a study to determine the appropriate number of cases that ALJs should be expected to decide. In its determination, OHA should give proper balance to the quality of decisions. The results of such a study should be used as a basis for establishing reasonable monthly production goals.

Agency Comments

On October 20, 1989, the Department of Health and Human Services (HHS) provided us with written comments on a draft of this report. (See app. IV.) HHS agreed that OHA should study the relationship between the quality of ALJ decisions and the average production goal for case dispositions. HHS disagreed, however, with our prior wording of the recommendation, which said OHA should establish "reasonable" goals, suggesting we gave the impression that OHA's current monthly goal was unreasonable. We did not intend to give such an impression as we do not have an adequate basis to judge whether the current goal is reasonable or not. The recommendation has been restated to avoid this possible misunderstanding.

HHS also provided other comments and suggestions to clarify certain matters. We have incorporated these suggestions and made changes where appropriate in this report.

Staff Reductions Adversely Affected OHA's Performance

The ALJ corps was at its highest level in fiscal year 1983, with an average of 796 judges. By fiscal year 1988, SSA had allowed the ALJ corps to drop to an average of 657 judges, the lowest level since fiscal year 1976. The Association of Administrative Law Judges believes that SSA allowed the ALJ level to fall far below the number needed to properly handle claimants' appeals. The Association also contends that had SSA maintained an adequate number of ALJs there would not have been the need for as much management emphasis on productivity.

SSA's performance indicators suggest that staff reductions had little effect on operations until fiscal year 1987. In that year, the backlog and age of appealed claims increased significantly and claimants had to wait longer for decisions.

Trends in OHA Appeals and ALJ Staffing

OHA's workload has generally increased over the years. Only in fiscal years 1984, 1985, and 1986 did the requests for hearings decline, and this was caused by a temporary moratorium on continuing disability reviews. Similarly, OHA's staff resources followed workload trends. Figures 3.1 and 3.2 show workload and ALJ staffing trends over the 14-year period.

Chapter 3
Staff Reductions Adversely Affected
OHA's Performance

Figure 3.1: ALJ Workloads (Fiscal Years 1975-88)

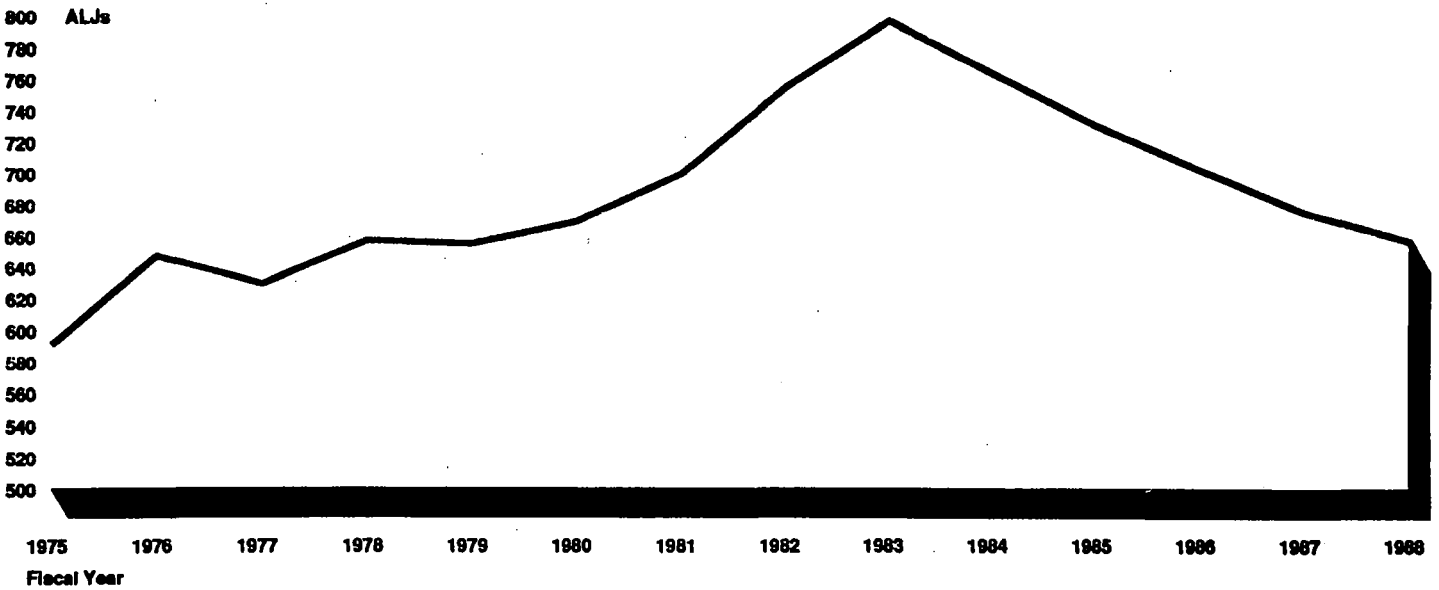
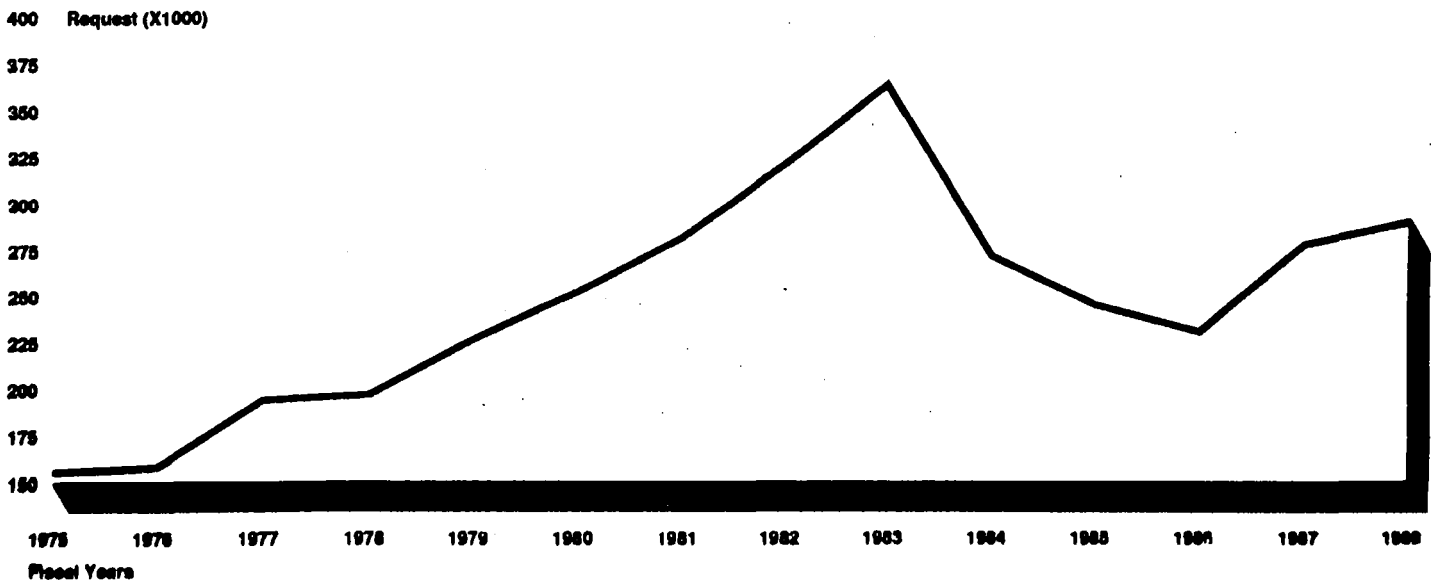


Figure 3.2: ALJ Staffing (Fiscal Years 1975-88)



Several developments accounted for the workload growth between fiscal years 1975 and 1983. SSA began processing applications under the Supplemental Security Income program in 1974. In the late 1970s, a rising Disability Determination Service (DDS) denial rate led to greater numbers of appeals to ALJs. Finally, in the early 1980s, SSA's implementation of continuing disability reviews resulted in large numbers of benefit terminations and related appeals. The workload pressure was relieved somewhat when the Secretary of Health and Human Services, reacting to public and congressional pressure, declared a moratorium on continuing disability reviews in early 1984. Continuing disability reviews resumed in January 1986. However, the resumption of the continuing disability reviews did not result in large numbers of benefit terminations and related appeals.

OHA Funding and Staffing

OHA's budget increased by \$26.8 million, or about 12 percent, over the 5-year period from fiscal years 1983 to 1988 (see table 3.1). The number of ALJs decreased 17 percent during the same period, and the number of field support personnel decreased 12 percent. OHA lost 139 ALJs and about 500 support positions in its field offices (see table 3.2).

Table 3.1: OHA Budgets
 (Fiscal Years 1983-88)

Dollars in millions		
Fiscal year	Approved budget	Change each year
1983	\$215.2	\$ 0
1984	227.0	11.8
1985	229.0	2.0
1986	226.9	-2.1
1987	229.4	2.5
1988	242.0	12.6

Table 3.2: OHA Average Field Staffing Levels
 (Fiscal Years 1983-88)

Fiscal year	ALJs		Field support staff	
	Number ^a	Change each year	Number ^a	Change each year
1983	796	0	4,086	0
1984	763	-33	3,860	-226
1985	730	-33	3,531	-329
1986	702	-28	3,503	-28
1987	675	-27	3,476	-27
1988	657	-18	3,593	+117
Total change		-139		-483

^aAverage number of staff during year

In 1985, SSA began a major initiative to decrease its work force. Every SSA component, including OHA, was involved in this effort and had to reevaluate its staffing needs. In fiscal year 1983, the number of hearings requested (363,533) and the number of ALJs (796) peaked. However, shortly after this high, the number of appeals dropped because of the moratorium placed on continuing disability reviews. ALJ workload began to decline in fiscal year 1984. By fiscal year 1985, it was down about 120,000 cases. With the workload down, ALJ and support staff levels were allowed to decline through attrition.

Before fiscal year 1987, OHA officials projected that the appeals workload would increase and more support staff and ALJs would be needed that year. However, according to a senior OHA official, OHA decided against hiring additional ALJs until the new Associate Commissioner evaluated OHA's workload and staffing needs. Consequently, in fiscal year 1987, with a workload similar to that of fiscal year 1984, OHA averaged 88 fewer ALJs and 384 fewer field support staff.

OHA had about 700 ALJs at the beginning of fiscal year 1990, which would bring the number of ALJs up to about the fiscal year 1986 level.

Impact of Staff Reductions

The number of ALJs and support staff began declining in fiscal year 1984. Because workloads were also declining, the decrease in resources appeared to have had little effect on operations until fiscal year 1987.

Workloads began increasing in 1987, and staffing remained at low levels. Table 3.3 shows OHA's performance for fiscal years 1980 through 1988, using SSA key performance indicators. The table shows that performance worsened in fiscal years 1987 and 1988. For example, the number of pending cases went from about 107,000 in each of fiscal years 1984 and 1985 to 148,400 in fiscal year 1987 and 158,300 in fiscal year 1988. The average processing time went from 167 days in fiscal year 1985 to 198 and 216 days in fiscal years 1987 and 1988, respectively.¹

¹In the draft report on which HHS commented, we presented performance data only for fiscal years 1984 through 1988. In its comments (see app. IV), HHS took exception to the draft suggesting that 1986 was a reasonable base on which to measure performance for fiscal years 1987 and 1988. We did not intend that performance be measured only in comparison to 1986. Nevertheless, we now present a 9-year perspective on the SSA performance indicators. It should be noted that 1987 and 1988 were not the only times during this 9-year period that performance worsened. The table shows fiscal year 1980 performance to be similar to that of 1985. During the approximately 3-year period of continuing disability reviews, with the large numbers of appeals through at least 1983, OHA's performance also worsened.

**Chapter 3
Staff Reductions Adversely Affected
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Table 3.3: OHA Workload and Processing Data (Fiscal Years 1980-88)

Fiscal year	Pending cases ^a	Percent of change	Average age of pending cases (days)	Percent of change	Average processing time (days)	Percent of change
1980	109.6	•	109	•	159	•
1981	128.8	17.5	119	9.2	164	3.1
1982	152.9	18.7	124	4.2	174	6.1
1983	173.4	13.4	124	0	184	5.7
1984	107.8	-37.8	126	1.6	185	0.5
1985	107.0	-0.7	113	-10.3	167	-9.7
1986	117.4	9.7	109	-3.7	172	3.0
1987	148.4	26.4	138	26.6	198	15.1
1988	158.3	6.7	134	-2.9	216	9.1

^aEnd of fiscal year.

Although OHA increased its support staff in fiscal year 1988, some hearing offices continued to have staff shortages. Ninety-four percent of the ALJs who reported that their offices lost support staff during fiscal year 1988, said that the loss of staff had a negative effect on their office's ability to process workloads. Further, over 50 percent of them said that the loss of staff led to longer processing times and poorer quality of work. Five of 16 offices we visited lost staff in fiscal year 1988. Managers in the offices that lost staff said the loss had a negative effect on their work.

Conclusions

From fiscal year 1984 through fiscal year 1988, the number of ALJs and support staff declined through attrition to their lowest levels in 10 years. Early staff reductions appeared warranted to us considering the large decline in appeals due to the moratorium placed on continuing disability reviews. However, as the number of appeals began to climb back to its pre-moratorium level, OHA did not increase its staffs, especially its ALJ corps, to keep pace with the increasing workload, causing a decline in some of OHA's performance indicators.

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ALJs in the Federal Government as of September 23, 1988

Agency	ALJs
Department of Agriculture	4
Department of Commerce	2
Commodity Futures Trading Commission	4
Environmental Protection Agency	7
Federal Communications Commission	10
Federal Energy Regulatory Commission	22
Federal Labor Relations Authority	8
Federal Maritime Commission	3
Federal Mine Safety and Health Review Commission	9
Federal Trade Commission	3
Department of Health and Human Services	
Food and Drug Administration	1
Grant Appeals Board	1
Health Care Financing Administration	1
Social Security Administration	722 ^a
Department of Housing and Urban Development	1
Department of the Interior	6
Interstate Commerce Commission	3
Department of Justice	
Drug Enforcement Administration	2
Immigration Review	2
Department of Labor	92
Merit Systems Protection Board	1
National Labor Relations Board	93
National Transportation Safety Board	5
Nuclear Regulatory Commission	2
Occupational Safety and Health Review Commission	18
Securities and Exchange Commission	4
Department of Transportation	
Coast Guard	10
Office of the Secretary	4
International Trade Commission	4
Postal Service	2
Total	1,048

Source: Office of Personnel Management.

^aOHA data indicate the number of ALJs as of September 1988 was 688.

Local Hearing Offices GAO Visited

Atlanta Region

Birmingham, Alabama
Charlotte, North Carolina
Fort Lauderdale, Florida
Jacksonville, Florida
Lexington, Kentucky
Louisville, Kentucky
Memphis, Tennessee
Middlesboro, Kentucky
Montgomery, Alabama
Nashville, Tennessee

Philadelphia Region

Harrisburg, Pennsylvania
Huntington, West Virginia
Jenkintown, Pennsylvania
Johnstown, Pennsylvania
Norfolk, Virginia
Richmond, Virginia

Summary of Responses to GAO's Survey of ALJs

SUMMARY OF RESPONSES
TO GAO'S SURVEY
U.S. GENERAL ACCOUNTING OFFICE
SURVEY OF SSA'S ADMINISTRATIVE LAW JUDGES

INSTRUCTIONS

The U.S. General Accounting Office has been asked by Congress to do a study of management operations at the Social Security Administration's Office of Hearings and Appeals. The purpose of this questionnaire is to ask for your opinions and experiences as an Administrative Law Judge (ALJ) with SSA's Office of Hearings and Appeals (OHA).

Please respond to each of the following questions for the last 12 months you have worked at OHA, unless otherwise mentioned. If you have worked less than a year, please respond for the period you have worked. In addition, please relate your responses to the hearing office for which you are currently serving.

We would first like to verify your office address. In addition, please give us your office telephone number so that we may call to clarify responses, if necessary.

Name: _____

Office Address: _____

Office Phone No.: _____

Notes:

1. N = total number of respondents.
2. All responses represent percentage.

EMPLOYEE INFORMATION

01. What is your position title? (CHECK ONE.)

1. Regional Chief ALJ
2. Hearing Office Chief ALJ
3. ¹⁰⁰ ALJ
4. Other (PLEASE SPECIFY.)

N=404

02. How long have you worked at the Office of Hearings and Appeals?

 N=404 years

03. How long have you worked in your current position at SSA?

 N=398 years

04. As part of of your current position, do you supervise employees (includes rating employees)? (CHECK ONE.)

1. ¹³ Yes
 2. ⁸⁷ No
- N=399

05. About how many decisions have you issued in the last 12 months?

 N=387 cases

06. Is your hearing office reconfigured or not? (CHECK ONE.)

1. ⁴³ Fully reconfigured
2. ⁵² Partially reconfigured
3. ⁵ Not reconfigured

**Appendix III
Summary of Responses to GAO's Survey
of ALJs**

ORGANIZATION ENVIRONMENT

07. Listed below are some administrative changes that might have occurred in the Office of Hearings and Appeals since 1980. In your opinion, how much change, if any, has occurred in each of the following.

(CHECK ONE FOR EACH CHANGE.)

ADMINISTRATIVE CHANGES	Little or No Change (1)	Some Change (2)	Moderate Change (3)	Great Change (4)	Very Great Change (5)	No Basis to Judge (6)
1. Turnover in Associate Commissioners N=373	9	20	31	27	12	
2. Turnover in Regional Office Chief Administrative Law Judges N=372	25	25	25	16	9	
3. Turnover in Hearing Office Chief Administrative Law Judges N=377	29	28	20	16	8	
4. Establish national goals for length of time to process case N=375	12	26	29	22	11	
5. Establish national goals for dispositions per month N=379	12	19	25	26	19	
6. Travel docket caseload targets per trip N=337	33	24	20	14	9	
7. Workload N=387	12	14	25	31	18	
8. Office automation N=386	4	20	27	36	13	
9. Level of concern for employees N=371	48	15	12	12	13	
10. Other (PLEASE SPECIFY.) N= 49						

**Appendix III
Summary of Responses to GAO's Survey
of ALJs**

08. For each item in the previous list (QUESTION 07) that have had 'some change' or more, please indicate if each change has improved or impaired your hearings office operations? (IF YOU CHECKED 'LITTLE OR NO CHANGE' FOR AN ITEM IN THE PREVIOUS QUESTION, PLEASE CHECK 'DOES NOT APPLY.')

(CHECK ONE FOR EACH CHANGE.)

ADMINISTRATIVE CHANGES	Greatly Improved	Somewhat Improved	Neither Improved Nor Impaired	Somewhat Impaired	Greatly Impaired	Does Not Apply
	(1)	(2)	(3)	(4)	(5)	(6)
1. Turnover in Associate Commissioners N=330	6	22	29	25	18	
2. Turnover in Regional Office Chief Administrative Law Judges N=276	2	15	48	22	13	
3. Turnover in Hearing Office Chief Administrative Law Judges N=257	7	19	36	19	19	
4. Establish national goals for length of time to process case N=328	1	22	33	26	19	
5. Establish national goals for number of dispositions per month N=327	1	18	29	25	27	
6. Travel docket caseload targets per trip N=228	0	10	46	27	17	
7. Office automation N=333	24	48	14	8	6	
8. Workload N=334	2	11	29	33	25	
9. Level of concern for employees N=195	1	17	17	26	39	
10. Other (PLEASE SPECIFY.) N= 36						

**Appendix JF
Summary of Responses to GAO's Survey
of ALJs**

09. If you indicated in question 08 that a change has 'somewhat impaired' or 'greatly impaired' your office's operations, in what way have these changes impaired your hearing office's operations?

N=258

WORK ENVIRONMENT

10. Listed below are elements of hearings and appeals work. Please indicate if you believe the quality of your office's work is better or worse than three years ago?

(CHECK ONE FOR EACH ELEMENT.)

HEARINGS AND APPEALS WORK	Much Better (1)	Better (2)	No Change (3)	Worse (4)	Much Worse (5)	Don't Know (6)
1. Quality of service to the public N=381	3	16	35	32	13	
2. Quality of ALJ decisions N=381	3	21	30	36	11	
3. Timeliness of ALJ hearings process N=373	4	26	34	26	9	
4. Other (PLEASE SPECIFY.) N= 26						

IF YOU ANSWERED 'WORSE' OR 'MUCH WORSE' ON ANY ITEM ABOVE, PLEASE GO TO QUESTION 11; IF YOU ANSWERED WITH ANY OTHER RESPONSE, GO TO QUESTION 12.

**Appendix III
Summary of Responses to GAO's Survey
of ALJs**

11. If any of the elements in QUESTION 10 related to the quality of your office's work is 'worse' or 'much worse' than three years ago, to what extent, if any, would you attribute this difference to each of the following?

(CHECK ONE FOR EACH REASON.)

REASONS FOR DIFFERENCE	Little or No Extent (1)	Some Extent (2)	Moderate Extent (3)	Great Extent (4)	Very Great Extent (5)	No Opinion (6)
1. Lack of ALJ staff N=234	26	15	18	20	22	
2. Lack of support staff N=232	15	15	21	30	20	
3. Budgetary constraints N=186	28	23	17	20	12	
4. Poor morale N=233	8	16	18	23	36	
5. Poor management procedures N=232	10	10	15	25	40	
6. Lack of management information N=202	33	12	18	15	22	
7. Lack of automation N=210	68	19	9	3	1	
8. Increased workload N=233	13	19	19	23	26	
9. Other (PLEASE SPECIFY.) _____						
N= 41						

12. Listed below are elements of hearings and appeals work. Please indicate if you believe the quality of your work is better or worse than three years ago?

(CHECK ONE FOR EACH ELEMENT.)

YOUR WORK	Much Better (1)	Better (2)	No Change (3)	Worse (4)	Much Worse (5)	Don't Know (6)
1. Quality of your service to the public N=386	4	19	48	24	5	
2. Quality of your decisions N=389	3	24	40	27	7	
3. Timeliness of your hearings process N=386	3	26	37	28	6	
4. Other (PLEASE SPECIFY.) _____						
N= 19						

IF YOU ANSWERED 'WORSE' OR 'MUCH WORSE' ON ANY ITEM ABOVE, PLEASE GO TO QUESTION 13; IF YOU ANSWERED WITH ANY OTHER RESPONSE, GO TO PAGE 7, QUESTION 14.

**Appendix III
Summary of Responses to GAO's Survey
of ALJs**

13. If any of the elements in QUESTION 12 related to the quality of your work is 'worse' or 'much worse' than three years ago, to what extent, if any, would you attribute this difference to each of the following? (CHECK ONE FOR EACH REASON.)

REASONS FOR DIFFERENCE	Little or No Extent (1)	Some Extent (2)	Moderate Extent (3)	Great Extent (4)	Very Great Extent (5)	Don't Know/No Opinion (6)
1. Lack of ALJ staff N=194	28	15	13	21	23	
2. Lack of support staff N=198	14	18	16	31	21	
3. Budgetary constraints N=155	30	18	23	17	12	
4. Poor morale N=193	12	16	18	21	33	
5. Poor management procedures N=193	11	12	14	23	40	
6. Lack of management information N=172	39	13	13	15	20	
7. Lack of automation N=173	68	19	6	5	2	
8. Increased workload N=195	12	19	16	26	27	
9. Other (PLEASE SPECIFY.) N= 31						

**Appendix III
Summary of Responses to GAO's Survey
of ALJs**

14. Listed below are OHA administrative changes which might or might not have occurred in your hearing office. For each, please indicate if the administrative changes have had a positive, negative, or no effect on your ability to do your job? (CHECK 'DOES NOT APPLY' IF THEY HAVE NOT OCCURRED.)

(CHECK ONE FOR EACH ADMINISTRATIVE CHANGE.)

ADMINISTRATIVE CHANGES	Significant Positive Effect (1)	Somewhat Positive Effect (2)	Neither Positive Nor Negative Effect (3)	Somewhat Negative Effect (4)	Significant Negative Effect (5)	Don't Know/Does Not Apply (6)
1. Reconfiguring the local hearings office by pooling the staff attorneys and decision writers who were previously assigned to specific ALJs N=330	6	13	13	26	42	
2. Setting national targets/goals for lengths of time to process cases N=367	3	15	35	26	21	
3. Giving criticism to low producing ALJs N=280	2	7	36	25	30	
4. Attempting disciplinary action for ALJ work performance N=247	2	5	29	22	43	
5. Other (SPECIFY.) N= 35						

IF YOU CHECKED 'SOMEWHAT NEGATIVE' OR 'SIGNIFICANT NEGATIVE' EFFECT FOR ANY OF THE ABOVE ADMINISTRATIVE CHANGES, GO TO QUESTION 15; OTHERWISE, GO TO QUESTION 16.

**Appendix III
Summary of Responses to GAO's Survey
of ALJs**

15. If the administrative changes have had a 'somewhat negative' or 'significant negative' effect, please explain below how the changes had a negative effect.

N=253

16. Listed below are possible production goals that might have been established in your office. In your opinion, what effect, if any, have these goals had on your work?

(CHECK ONE FOR EACH GOAL.)

GOALS	Significant Positive Effect (1)	Somewhat Positive Effect (2)	Neither Positive Nor Negative Effect (3)	Somewhat Negative Effect (4)	Significant Negative Effect (5)	Don't Know/Does Not Apply (6)
1. Process 37 cases a month N=358	2	7	43	22	27	
2. When traveling for a week, have at least 25 cases per week on a docket N=331	1	6	62	15	15	
3. When traveling over weekend, have at least 50 cases on a docket N=240	1	4	50	16	28	
5. Other (SPECIFY.) N= 19						

**Appendix III
Summary of Responses to GAO's Survey
of ALJs**

17. Consider the use of national goals and objectives. If an ALJ is not penalized or does not receive an adverse action, in your opinion, do you believe, in general, it is proper or improper for agency management to set national goals and objectives? (CHECK ONE.) N=402

- 1. ¹⁵ Very proper (GO TO QUESTION 18)
- 2. ¹⁹ Somewhat proper (GO TO QUESTION 18)
- 3. ¹⁷ Neither proper nor improper ---> (GO TO QUESTION 20)
- 4. ¹⁹ Somewhat improper (GO TO QUESTION 19)
- 5. ³⁰ Very improper

18. If you believe that it is proper for agency management to set national goals and objectives, please indicate (1) for which of the following areas you feel it would be proper to set national goals and objectives and (2) for those items that are proper, indicate, on average, the number that would be a reasonable goal or objective for ALJs to achieve. (Allow for typical postponements, delays, etc.)

MEASURE	(1)		CHECK ONE.		(2)
	Yes (1)	No (2)			
1. Length of time (days) to process a case (From date of hearing to issuance of a decision) N=132	72	28		IF YES --->	If yes, indicate the goal or objective that you believe ALJs can reasonably achieve. Less than 100 N= 90 (63) DAYS 100-149 (17) 150-199 (10) 200+ (10)
2. Number of cases processed in a month N=133	77	23		IF YES --->	Less than 100 N=100 (100) CASES
3. Number of cases on docket per trip N=132	81	19		IF YES --->	Less than 100 N=105 (100) CASES
4. Number of days one should notify ALJs of aged cases (age of pending) N=122	84	16		IF YES --->	Less than 100 N= 95 (31) DAYS 100-149 (17) 150-199 (28) 200+ (24)
5. Other (PLEASE SPECIFY.) N= 6				IF YES --->	N= 1

**Appendix III
Summary of Responses to GAO's Survey
of ALJs**

19. If you believe that goals and objectives are improper, what methods would you use to ensure efficient and timely public service? N=191

ADJUDICATION STANDARDS

20. Listed below are references/resources that ALJ's could consider when making a decision. To what extent, if at all, do you use the following in making your decisions?

(CHECK ONE FOR EACH CRITERIA/SUPPORT.)

ALJ DECISION REFERENCES/RESOURCES	Little or No Extent (1)	Some Extent (2)	Moderate Extent (3)	Great Extent (4)	Very Great Extent (5)	No Opinion (6)
1. SSA POMS N=382	78	18	3	1	1	
2. SSA Rulings N=398	4	32	31	21	12	
3. SSA Regulations N=401		5	8	36	51	
4. Social Security Act N=400	2	6	9	30	54	
5. Federal statutes N=385	16	21	14	18	32	
6. State statutes N=389	34	40	13	8	6	
7. Appeals council decisions N=393	42	31	14	9	5	
8. Previous ALJ decisions N=389	54	30	10	5	1	
9. Previous court decisions N=392	2	13	19	31	35	
10. Other (PLEASE SPECIFY.) N= 23						

**Appendix III
Summary of Responses to GAO's Survey
of ALJs**

21. In your opinion, how different, if at all, are the standards used by you to decide a case compared to those used by SSA's Appeals Council? (CHECK ONE.)

N=349

- 1. ²⁸ Little or no difference (GO TO QUESTION 23)
- 2. ²⁸ Somewhat different
- 3. ¹⁹ Moderately different
- 4. ¹⁴ Substantially different (GO TO QUESTION 22)
- 5. ¹¹ Very different
- 6. Don't know ----> (GO TO QUESTION 23)

22. If the standards are 'moderately', 'substantially' or 'very' different, please explain your perceptions of the differences below.

N=149

23. In your opinion, how different, if at all, are the standards used by you to decide a case compared to those used by the state disability service agencies? (CHECK ONE.)

N=366

- 1. ⁵ Little or no difference (GO TO QUESTION 25)
- 2. ¹¹ Somewhat different
- 3. ¹⁴ Moderately different
- 4. ⁴⁵ Substantially different (GO TO QUESTION 24)
- 5. ²⁵ Very different
- 6. Don't know ----> (GO TO QUESTION 25)

24. If the standards are 'moderately', 'substantially' or 'very' different, please explain your perceptions of the differences below.

N=291

25. In your opinion, to what extent, if at all, have the adjudication standards that are used by SSA's Appeals Council compared to those used by administrative law judges created adjudicative problems? (CHECK ONE.)

N=348

- 1. ²⁶ Little or no extent
- 2. ²⁴ Some extent
- 3. ²³ Moderate extent
- 4. ¹⁶ Great extent
- 5. ¹¹ Very great extent
- 6. Don't know

26. In your opinion, to what extent, if any, have the adjudication standards that are used by state disability service agencies compared to those used by administrative law judges created adjudicative problems? (CHECK ONE.)

N=365

- 1. ² Little or no extent
- 2. ¹² Some extent
- 3. ¹⁹ Moderate extent
- 4. ²³ Great extent
- 5. ²⁶ Very great extent
- 6. Don't know

**Appendix III
Summary of Responses to GAO's Survey
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STAFF RESOURCES

27. Compared to fiscal year 1987 (October 1, 1986 - September 30, 1987), overall, did your hearing office gain or lose non-ALJ staff resources or remain the same in fiscal year 1988? (CHECK ONE.)

- N=332
1. ²⁴ Gain (GO TO QUESTION 30)
2. ²⁸ Remain the same
3. ⁴⁸ Lose ---> (GO TO QUESTION 28)
4. Don't know --->(GO TO QUESTION 30)

28. What effect, if any, did this loss have on the ability of your hearing office to handle its caseload? (CHECK ONE.)

- N=158
1. ¹ Significant positive effect
2. ¹ Somewhat positive effect (GO TO QUESTION 30)
3. ⁴ Neither positive nor negative effect
4. ⁴³ Somewhat negative effect (GO TO QUESTION 29)
5. ⁵¹ Significant negative effect
6. Don't know ---> (GO TO QUESTION 30)

29. If the non-ALJ staff loss had a somewhat negative or significant negative effect, Please indicate to what extent, if any, the following are the reasons for this effect? (CHECK ONE FOR EACH ELEMENT.)

REASONS FOR NEGATIVE EFFECT OF STAFF LOSS	Little or No Extent (1)	Some Extent (2)	Moderate Extent (3)	Great Extent (4)	Very Great Extent (5)	No Opinion (6)
1. Lower morale N=132	11	20	20	20	30	
2. Longer time to process case N=137	7	12	29	25	27	
3. Poorer quality of work N=141	9	18	23	24	27	
4. Other (PLEASE SPECIFY.) N= 15						

PERFORMANCE GOALS

30. Does your hearing office use goals against which work performance is measured (performance goals)? (CHECK ONE.)

- N=311
 1. Yes -----> (GO TO QUESTION 31)
 2. No (GO TO QUESTION 32)
 3. Don't know

31. To what extent, if at all, do the performance goals realistically measure the work you do in your hearing office? (CHECK ONE.) N=238

1. Very great extent
 2. Great extent
 3. Moderate extent
 4. Some extent
 5. Little or no extent

32. Has OHA established production goals or quotas for the ALJs? (CHECK ALL THAT APPLY.)

1. Yes, implied production goals N=403
 2. Yes, explicit production goals N=403 (GO TO QUESTION 33)
 3. Yes, implied production quotas N=403
 4. Yes, explicit production quotas N=401
 5. None of the above ----> (GO TO QUESTION 37) N=403

33. If the Office of Hearings and Appeals has established production (1) goals or (2) quotas, please describe them below. N=364

34. Currently, what (1) production goals or (2) quotas are you performing under? (CHECK ALL THAT APPLY FOR EACH GOAL OR QUOTA. IF NOT APPLICABLE, CHECK 'DOES NOT APPLY'.)

		Goals (1)	Quotas (2)	
1. Quality	N=382	32	9	N=379
2. Timeliness	N=382	53	22	N=379
3. Quantity/volume	N=381	69	51	N=379
4. Other (PLEASE SPECIFY.)				
	N=383	3	3	N=382
5. Does not apply	N=382	17	44	N=382

35. In general, for your job, how realistic or unrealistic are the production (1) goals or (2) quotas that you are performing under? (IF NOT APPLICABLE, CHECK 'DOES NOT APPLY'.) (CHECK ONE FOR EACH.)

PERFORMANCE		Very Realistic (1)	Somewhat Realistic (2)	Neither (3)	Somewhat Unrealistic (4)	Very Unrealistic (5)	Does Not Apply (6)
1. Goals	N=318	12	29	11	25	23	
2. Quotas	N=208	6	14	11	27	42	

**Appendix III
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of ALJs**

36. Who sets these (1) goals or (2) quotas for your office? (CHECK ONE FOR EACH; IF NOT APPLICABLE, CHECK 'DOES NOT APPLY.')

LOCATION	N=240 N=155	
	Goals (1)	Quotas (2)
1. Hearing office	5	3
2. Regional office	12	18
3. Office of Hearings and Appeals headquarters	79	76
4. Don't Know		
5. Does not apply		

37. In your opinion, to what extent, if any, do ALJs work under a work measurement system? A work measurement system is a set of qualitative or quantitative measures developed to track performance. (CHECK ONE.) N=317

- 1. Very great extent
- 2. Great extent
- 3. Moderate extent
- 4. Some extent
- 5. Little or no extent
- 6. Don't know

38. Listed below are processes which OHA's top management might have implemented in the organization. In your opinion, to what extent, if at all, has OHA implemented the following?

(CHECK ONE FOR EACH PROCESS.)

PROCESSES	Little or No Extent (1)	Some Extent (2)	Moderate Extent (3)	Great Extent (4)	Very Great Extent (5)	Don't Know/Does Not Apply (6)
1. Focused its review of all ALJ decisions on a sample of ALJ decisions instead of only ALJs with high allowance rates N=193	31	29	16	15	10	
2. Increased the number of cases per month which ALJs are expected to decide N=350	5	18	19	26	33	
3. Limited decisional independence of ALJs due to acquiescence to federal court decisions N=312	43	24	15	11	8	
4. Other (PLEASE SPECIFY.) N= 20						

**Appendix III
Summary of Responses to GAO's Survey
of ALJs**

HUMAN RESOURCES

39. Currently, how would you characterize the general level of morale among ALJs in your hearing office? (CHECK ONE.)

N=395

- 1. ⁵ Very high
- 2. ¹³ Generally high (GO TO QUESTION 41)
- 3. ²³ Neither high nor low
- 4. ³² Generally low (GO TO QUESTION 40)
- 5. ²⁷ Very low
- 6. No opinion ---> (GO TO QUESTION 41)

40. If the ALJs in your hearing office have a generally low or very low level of morale, to what extent, if at all, would you attribute the low morale to the following?

(CHECK ONE FOR EACH REASON.)

REASONS FOR ALJ MORALE LEVEL	Little or No Extent (1)	Some Extent (2)	Moderate Extent (3)	Great Extent (4)	Very Great Extent (5)	No Opinion (6)
1. Lack of leadership at OHA N=211	10	17	14	22	37	
2. Too much automation N=211	63	15	9	8	6	
3. Poor promotion potential for ALJs N=210	43	16	15	11	15	
4. Uneven workload distribution among ALJs N=212	48	25	11	6	10	
5. Necessary training not available N=215	18	25	25	18	14	
6. Too much emphasis on productivity measures N=228	4	6	12	25	53	
7. Poor image of federal employee N=216	24	18	19	17	23	
8. Increased workload N=225	18	14	21	22	25	
9. Other (PLEASE SPECIFY.) N= 37						

**Appendix III
Summary of Responses to GAO's Survey
of ALJs**

41. Currently, how would you characterize the general level of morale among all staff in your hearing office? (CHECK ONE.) N=387

- 1. [] Very high
- 2. [] Generally high (GO TO QUESTION 43)
- 3. [] Neither high nor low
- 4. [] Generally low (GO TO QUESTION 42)
- 5. [] Very low
- 6. [] No opinion ---> (GO TO QUESTION 43)

42. If your hearing office has a generally low or very low level of morale, to what extent, if at all, would you attribute the low morale to the following?

(CHECK ONE FOR EACH REASON.)

REASONS FOR HEARING OFFICE MORALE LEVEL	Little or No Extent (1)	Some Extent (2)	Moderate Extent (3)	Great Extent (4)	Very Great Extent (5)	No Opinion (6)
1. Lack of leadership at OHA N=235	17	14	17	19	32	
2. Too much automation N=232	55	20	13	5	6	
3. Poor promotion potential for staff N=250	6	23	23	29	19	
4. Uneven workload distribution N=238	19	20	25	21	16	
5. Necessary training not available N=238	14	24	21	21	20	
6. Too much emphasis on productivity measures N=258	4	6	15	27	48	
7. Poor image of federal employee N=235	22	24	16	18	20	
8. Increased workload N=254	5	15	24	24	30	
9. Other (PLEASE SPECIFY.) N= 47						

**Appendix III
Summary of Responses to GAO's Survey
of ALJs**

43. To what extent, if at all, have you received verbal or written feedback on your handling of cases from higher management (hearing office chief and above)? (CHECK ONE.) N=400

- 1. ³ Very great extent
- 2. ³ Great extent
- 3. ⁸ Moderate extent
- 4. ²³ Some extent
- 5. ⁶⁴ Little or no extent

44. Which of the following situations, if any, have you ever experienced as an ALJ? (CHECK ALL THAT APPLY.)

- 1. ⁸ Been asked to discuss the criteria or method by which a decision was reached N=398
 - 2. ⁵ Been targeted for reeducation N=398
 - 3. ⁵ Been told of possible punishment in the form of a suspension N=398
 - 4. ⁵ Been told of possible punishment in the form of dismissal N=398
 - 5. ¹⁷ Other (PLEASE SPECIFY.) N=398
-
- 6. ⁷¹ None of the above N=398

45. In your opinion, in general, which of the following conduct by an ALJ, if any, would justify the suspension of an ALJ? (CHECK ONE FOR EACH FORM OF CONDUCT.)

CONDUCT	Possible Suspension (1)	Definite Suspension (2)	Neither (3)
1. Failure to issue decision within a particular timeframe (e.g., one year) N=399	26	3	71
2. Failure to issue a minimum number of decisions within a particular timeframe (e.g., 6 months) N=397	24	2	74
3. Improper personal behaviour (sexual harrassment, abuse of office, etc.) N=400	52	45	4
4. Failure to adhere to standard office procedures N=393	43	4	54
5. Subversion of standard office procedures N=396	50	14	36
6. Failure to adhere to adjudicatory standards established in the law and regulations N=393	49	21	30

**Appendix III
Summary of Responses to GAO's Survey
of ALJs**

46. In your opinion, in general, which of the following conduct by an ALJ, if any, would justify the removal of an ALJ? (CHECK ONE FOR EACH FORM OF CONDUCT.)

CONDUCT	Possible Removal (1)	Definite Removal (2)	Neither (3)
1. Failure to issue decision within a particular timeframe (e.g., one year) N=392	17	1	82
2. Failure to issue a minimum number of decisions within a particular timeframe (e.g., 6 months) N=392	18	2	80
3. Improper personal behaviour (sexual harassment, abuse of office, etc.) N=396	65	26	9
4. Failure to adhere to standard office procedures N=389	33	2	66
5. Subversion of standard office procedures N=387	45	7	48
6. Failure to adhere to adjudicatory standards established in the law and regulations N=390	47	15	38

COMMENTS

47. If you have any comments regarding the questionnaire or any of the questions, please write them in the space below. N=181

PLEASE RETURN WITHIN TEN DAYS OF RECEIPT TO:

J. Seth Patters
U.S. General Accounting Office
Operations Building
1640 Security Blvd.
Room 4-R-3
Baltimore, MD 21235

Comments From the Department of Health and Human Services



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

OCT 20 1989

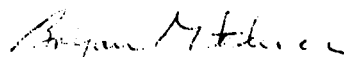
Mr. Lawrence H. Thompson
Assistant Comptroller General
United States General
Accounting Office
Washington, D.C. 20548

Dear Mr. Thompson:

Enclosed are the Department's comments on your draft report, "Social Security: Many Administrative Law Judges Oppose Productivity Initiative." The comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

The Department appreciates the opportunity to comment on this draft report before its publication.

Sincerely yours,


Richard P. Kusserow
Inspector General

Enclosure

COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES ON THE
GENERAL ACCOUNTING OFFICE DRAFT REPORT, "SOCIAL SECURITY: MANY
ADMINISTRATIVE LAW JUDGES OPPOSE PRODUCTIVITY INITIATIVES"

General Accounting Office (GAO) Recommendation

The GAO recommends that the Social Security Administration's (SSA) Commissioner direct the Office of Hearings and Appeals (OHA) to conduct a study to determine the proper balance between quality of decisions and the average production goal. The results of such a study should provide a basis for establishing reasonable production goals.

Department Comments

We agree with the GAO's recommendation that the OHA should conduct a study to determine the relationship between the quality of Administrative Law Judge (ALJ) decisions and the average production goal for ALJ dispositions. However, in suggesting that "The results of such a study should provide a basis for establishing reasonable production goals." GAO implies that OHA's current goal to achieve an average of 37 ALJ dispositions per month may be "unreasonable," and we do not believe that the facts or GAO's study support such an implication. Our own study, slated for early next fiscal year (FY), will address the totality of the ALJ process. We expect findings that will guide OHA in determining appropriate benchmarks that will continue to serve its clients.

In studying ALJ concerns about OHA's management practices, GAO has addressed an extremely important issue. GAO concludes that nothing in the Social Security Act or the Administrative Procedure Act precludes OHA from establishing national production goals as a management tool to ensure the efficiency and effectiveness of the hearings process. Indeed, as GAO notes, "...production goals have been effective in increasing the average monthly disposition of cases per ALJ." and thus, increasing service to the public. As the Second Circuit observed in the recent case of Simon Nash v. Otis R. Bowen, et. al., 869 F.2d 675, 681 (2nd Cir. 1989), cert denied, 58 U.S.L.W. 3206 (U.S. October 2, 1989) (No. 88-1906), "it was not unreasonable to expect ALJs to perform at minimally acceptable levels of efficiency. Simple fairness to claimants awaiting benefits required no less . . . [T]he decisional independence of ALJs was not in any way usurped by the Secretary's setting of monthly production goals." The bottom line of the Nash decision is the court's determination "that it was entirely within the Secretary's discretion to adopt reasonable administrative measures in order to improve its decisionmaking process." Id.

Our primary concern is that GAO's report does not discuss either OHA's extensive initiatives to improve ALJ decisional quality or the cautious steps that OHA has taken in establishing monthly production goals in light of OHA's concern about improving the

quality of ALJ decisions. OHA's first goal in its operational planning system is to "improve the legal sufficiency and defensibility" of final decisions. Not only has OHA instituted a wide variety of initiatives to achieve that goal, those initiatives have been successful in improving the rate at which the agency's final decisions have been affirmed by the courts.

The report only discusses the Appeals Council's review of ALJ decisions using its own motion authority, and does not mention or discuss these other initiatives. In addition, the report does not mention an extremely important fact--namely, that OHA has not established monthly production goals above the level that was achieved in prior years. Indeed, because of OHA's concern that setting goals higher than production levels achieved in the past might have an adverse affect on quality, the current monthly goal of 37 dispositions per ALJ is exactly the same as that which the ALJs achieved in FY 1983 and 1984.

The report also does not acknowledge an important reason why OHA established goals--and that is the court litigation beginning in 1975 challenging delays in processing of ALJ hearing requests, e.g., the Blankenship case in Kentucky and the Day case in Vermont.

Thus, we believe that the final report should acknowledge OHA's quality initiatives and that the recommendation should be revised to remove the implication that OHA's current goal is "unreasonable." To be consistent with the study itself, the recommendation should be re-phrased to direct a study of the relationship between decisional quality and production goals as a precursor to raising production goals above the levels achieved in the past.

Other Comments

In addition to commenting on the recommendation itself, we have a number of other concerns with the report. GAO's survey instrument to identify ALJ concerns about OHA's current management practices was designed to seek ALJ views on potential problems, not ALJ views on successful (or potentially useful) management practices. Thus, the questionnaire itself focused exclusively on real or perceived problems. Moreover, GAO sent the questionnaire only to "non-managerial" ALJs, and thus missed the opportunity to solicit and reflect the views of 132 ALJs with the broadest perspective on adjudication--Hearing Office Chief ALJs who hear and decide a full docket of cases in addition to their management responsibilities.

We believe that this exclusive focus on real or perceived problems discouraged some ALJs from responding, particularly those who concur in current management practices. Based on comments that OHA has received, a number of ALJs declined to

respond to the questionnaire because its negative focus prevented them from expressing their views. To ensure that readers of the report, especially those who have time to read only the executive summary, understand the basis for GAO's findings, we believe that the executive summary should include a brief description of the survey methodology, including its limitations and statistical significance. Moreover, the report should always cite the results accurately; there is a significant difference between the blanket statement that "ALJs believe" and the more precise, and accurate, statement that "X percent of the ALJs responding to our survey believe."

To ensure balance and fairness, the report must also summarize survey results completely. For example, on page 5 of the executive summary, the report states that "about half of those [ALJs] responding said that increased productivity has adversely affected hearing office operations." apparently a reference to the responses to question 8. However, that question was a follow-on to question 7 regarding whether national goals made "any change," and 12 percent of the responders said increased productivity had little or no effect. Thus, question 8 had 52 fewer responders on this item [only those who said production goals had some effect], and even then, nearly half said the direction of change was positive or neutral. Moreover, in assessing the ALJs' perceptions of the quality of their work, we believe that the full responses to question 12 ought to be cited--27 percent said quality was better, 40 percent said it was the same, and 34 percent said it was worse.

With regard to the concern about "staff pooling," the report does not describe "pooling" completely or indicate the extent to which it has been implemented across the country. As we indicated to GAO staff, OHA has not mandated any particular hearing office organizational structure nationwide. OHA has encouraged teaming (or pooling) of staff who perform like functions (hearing assistants, decision writers, and hearing clerks), especially in larger offices. However, local hearing office managers are in the best position to determine the most effective structure and operations in each office.

The report does not accurately summarize the questionnaire responses on this matter on page 6 of the executive summary which states that "Over half of the ALJs said that pooling had a negative effect on hearing office operations. They said that their loss of control over support staff adversely affected the quality of their decisions." However, only question 14 addressed "pooling" and that question only asked whether "Reconfiguring the local hearings office by pooling the staff attorneys and decision writers who were previously assigned to specific ALJs" had a positive or negative effect on office operations. Thus, the questionnaire did not address the pooling of hearing assistants or hearing clerks.

To ascertain "management views" on office configuration and other matters, the report indicates that GAO used "...structured interviews at the regional and field hearing offices." The report does not provide or describe the structured interview format, nor does it explain the criteria GAO used to select hearing offices for visits. Thus, the selected offices in Regions 3 and 4 did not constitute a cross section of OHA's hearing offices, omitting offices in large metropolitan areas or those with extensive travel responsibilities in the Mid and Far West. Moreover, we do not believe that citing anecdotes about one-time case processing problems in two of the offices that GAO visited is consistent with the tenor or approach of the report. In a large and complex system, some anecdotal instances of case mishandling or delays are inevitable.

With regard to the report's discussion of OHA budget and staffing, we have provided GAO with more current data, particularly with regard to staffing. Our primary concern with this section of the report is that it implicitly (if not explicitly) assumes that OHA's "performance indicators" for FY 1986 are a reasonable base on which to measure performance in FY 1987 and 1988. In both the budget/staffing material OHA provided and in interviews with GAO staff, OHA managers stressed the complex situation OHA faced in FY 1987 when workloads finally began to rise again. FY 1986 receipts and dispositions were the lowest since FY 1978; even after attrition, OHA still had far more production capacity than workload.

Thus, the question OHA faced in FY 1987 when workloads began to climb was whether to reverse its staffing strategy immediately (begin hiring) or to focus first on bringing production back up from the level of 26-27 dispositions per month in FY 1986. This is not an easy question to answer in a public service organization or in the private sector. As demand for goods or services rises, both private and public managers look first to meeting demand by using idle capacity before expanding capacity (which may only perpetuate the excess capacity problem). Because OHA clearly had the capacity to increase production before increasing resources, OHA chose to move in that direction early in 1987. When receipts continued to rise during that year, however, OHA began to shift resources to the hearing offices and hire additional staff, including ALJs. However, the long lead time for ALJ hiring delayed actual recruitment to December, 1987, after the close of the FY.

We are especially troubled by the assumption that measuring public service in FY 1987/1988 based on FY 1985/1986 performance is appropriate and reasonable. As the report itself acknowledges, the FY 1985/1986 period was in many respects atypical. During that time, OHA's workload dropped to 89,000 cases after all mental impairment cases were remanded to the Disability

Determination Services, the lowest pending workload level in the 1980s. Remanding these cases also artificially dropped the average age of the pending workload in FY 1986 to 109 days.

Thus, measuring FY 1987/1988 performance against these atypical years without any caveats or explication presents a distorted picture. Based on an average processing time of between 5 and 6 months, OHA's current 700 ALJs need to have a workload of 145,000 cases in the pipeline. This is not, as the report states, a "backlog" of appealed claims; rather, it is the number of cases in the various stages of development necessary to maintain full productivity.

The report does not acknowledge or discuss one of the key factors that has played a very significant role in OHA's workload and staffing projections, as well as case processing, in the FY 1987/1988 period. When the Omnibus Budget Reconciliation Act of 1986 authorized ALJ hearings under Medicare Part B, the Department decided to establish an ALJ corps in the Health Care Financing Administration (HCFA) to handle the new Part B workload and assume jurisdiction for Part A hearings and appeals as well. Thus, the FY 1989 President's Budget included funds and staffing for Medicare hearings and appeals in the HCFA's appropriation, not SSA's appropriation. OHA's staffing decisions in FY 1987/1988 were, of course, consistent with the Department's decision. In fact, when Congress failed to appropriate any funds for Medicare hearings and appeals in FY 1989, SSA had to seek the Office of Management and Budget's approval of an apportionment from the contingency reserve to handle this workload.

Medicare Part A hearing requests increased from slightly over 5,000 in FY 1986 to 14,000 in FY 1988, and the new Part B workload has added 5,000 ALJ cases to OHA's workload. At the time OHA was making staffing decisions in FY 1987, these cases were targeted for transfer to HCFA. Again, by not discussing this essential aspect of OHA's workload, the report oversimplifies the decision making process. Had the original plan to transfer jurisdiction to the HCFA gone into effect, OHA's workload and processing time statistics would have been significantly different in FY 1988, and they would be decidedly different today.

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