

The National Council of Social Security Management Associations, Inc.
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FIELD HEARING
Improving Social Security Disability Insurance Claim Processing in Ohio
Subcommittee on Oversight of Government Management, the Federal Workforce,
and the District of Columbia

Monday, November 15, 2010
Akron, Ohio

Overview

On Monday, November 15, 2010, the Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia held a hearing in Akron, Ohio. Two Senators conducted the hearing: Chairman Daniel Akaka (D-HI) and Ranking Member George Voinovich (R-OH).

Four witnesses were asked to testify in a group of two panels. The written testimony of the witnesses may be found at the links included below:

Panel 1

- **The Honorable Michael Astrue** [\[view testimony\]](#)
Commissioner
Social Security Administration
- **The Honorable Patrick P. O'Carroll, Jr.** [\[view testimony\]](#)
Inspector General
Social Security Administration

Panel 2

- **Mr. Richard Warsinskey** [\[view testimony\]](#)
Cleveland Downtown District Office Manager and Past President
National Council of Social Security Management Associations
- **Mr. Randy Frye** [\[view testimony\]](#)
President
Association of Administrative Law Judges

The testimony presented by Rick Warsinskey on behalf of NCSSMA was well-received. As an attachment to this report we have included a copy of the oral statement he provided. This is a condensed version of the written testimony.

NCSSMA President Joe Dirago and NCSSMA Washington Representative Rachel Emmons attended the hearing as well. From NCSSMA's perspective the hearing went well and our testimony was on point. We spoke with Commissioner Astrue following the hearing and he expressed

appreciation of our testimony. We also spoke with Chief Administrative Law Judge Frank Cristaudo regarding the hearing and NCSSMA's testimony.

Following the hearing, we attended the Ribbon Cutting Ceremony for the new Akron Hearing Office. Speakers included Commissioner Astrue, Senators Voinovich and Akaka, Congresswoman Betty Sutton, and a representative from the office of Senator Sherrod Brown. Joe Dirago and Rick Warsinsky were recognized as NCSSMA representatives at the ceremony.

Question and Answer Session – Panel 1 (highlighted exchanges)

Senator Voinovich opened with a multi-part question for the Commissioner related to “big picture issues” dealing with: the current appropriations process and the disadvantage for the agency when the appropriations work doesn't get done and there is a Continuing Resolution (CR); the likelihood of passing legislation to deal with the furloughs in the DDSs; and the possibility of federalizing the DDSs.

Commissioner Astrue responded that in terms of the appropriations process, most agency heads are reluctant to speak up on this issue. He indicated that perhaps it was “impolitic” but he was going to speak anyway. The Commissioner voiced that waiting until mid-year to know what you have for a budget impacts a number of agency operations, such as contracting, and leads to less than prudent spending. Regarding the furlough process, the Commissioner stated that he was mistaken at the start of this issue when he assumed California would be a “one-off” situation, as between 10-15 States have had these furloughs at various points in time. In August, SSA sent OMB a legislative package that would prohibit such furloughs in the future. Finally, in terms of federalizing the DDS offices, the Commissioner indicated that this would come at a high cost to SSA since State workers make much less than federal workers. SSA has estimated that it could cost \$4 billion over 4 years to integrate the State operations back into SSA, and much of this cost would relate to increased salaries.

Senator Voinovich then asked a question regarding the high turnover rate of 15% for employees at the Ohio DDS and whether the salaries are competitive with other work. Commissioner Astrue responded that SSA is working with the States to increase salaries and decrease attrition.

Next, Senator Voinovich returned to the issue of federalizing the DDSs and indicated that SSA needs to look into this process. He stated that while it may cost SSA money up front, higher salaries may lead to lower attrition and thereby more qualified workers making better decisions. Senator Voinovich added that perhaps these better decisions could lead to savings at the back end of the process as fewer judges would be necessary to handle appealed cases.

Chairman Akaka directed the next line of questions to the Commissioner. He asked about the thousands of new employees SSA has hired using ARRA funds and how SSA has addressed the challenge of training these new employees.

Commissioner Astrue responded by saying that SSA is creating a culture of learning that encourages continuous training. In terms of specifics, the new ALJs serve in the hearing offices for a few weeks to learn about the environment before going to Falls Church for more formal training. To date, SSA has received positive feedback from the ALJs on this training. Training for the other new hires

in the hearing offices has been more decentralized and is left to the discretion of local management. As far as new claims representatives, the agency is using remote video classes as much as possible to reduce costs. The agency has also established national chat boards where new employees can communicate with one another. The Commissioner stated that this seems to be a good vehicle for SSA's younger employees. The Commissioner also indicated that SSA is sponsoring college classes at its HQ campus building in Baltimore, at employee cost, to encourage continued learning.

Chairman Akaka then posed a question regarding the critical role that the ALJs play at the agency and that they must be well qualified. He asked the Commissioner about the challenges SSA has faced in hiring new ALJs.

Commissioner Astrue responded that the process has improved. At the start of the agency's hiring in 2007/2008, SSA had a decades old list from OPM. SSA asked for a new list and OPM was very reluctant to take any steps. However, since that time OPM has twice refreshed this list and SSA has filled the over 300 ALJ positions from it.

The Commissioner went on to say that SSA is still not where the agency wants to be in terms of attaining the highest quality candidates. The Commissioner stated that he believes an independent, authoritative party needs to look at OPM's criteria for identifying ALJ candidates and determine if it continues to meet the needs of SSA and the other agencies. The Commissioner suggested that perhaps the American Bar Association or someone else could look at this.

Next, Chairman Akaka asked whether the furloughs in Hawaii and Ohio will hinder SSA's ability to meet its goals. Inspector General O'Carroll responded to this question by indicating that the agency's goals are very sensitive to even minor fluctuations in workloads. The Office of the Inspector General (OIG) found that even a 3 percent change in workloads can cause SSA to miss its backlog goals. O'Carroll indicated that he has spoken to DDS employees at NADE conferences and they seem to be aware of this. O'Carroll also indicated that he believes the DDS employees are taking this information back to their State leaders. He added that SSA will do the best it can by transferring workloads among States, but this is not a long-term solution. O'Carroll also addressed the earlier line of questioning on attrition by pointing out that it does not benefit SSA to have DDS employees leaving after 2-3 years as this is the point when their training and experience begins to pay off.

Sen. Voinovich then asked if the OPM ALJ Roster is used by all federal agencies. Commissioner Astrue responded "yes" and added that while he did not want to describe the entire process, in general, OPM proposes three ALJ names per location. Senator Voinovich stated that in this economy, an ALJ position is a good job and a lifetime appointment. He added that it's quite an incentive and that SSA should certainly have the best qualified individuals.

Commissioner Astrue responded that as he had noted earlier, things are getting better. SSA had a problem where OPM would keep the list open for only a few days without prior notice, depriving qualified candidates from applying if they did not check the OPM Website daily. The Commissioner noted that this was unfair and that the situation improved with the last refreshment since OPM put out a press release announcing when applications would be accepted.

Commissioner Astrue added that his concern is that the OPM process is one-size-fits-all. SSA's needs are so unique that the agency should have its own roster. For example, you cannot compare

SSA's ALJs, who conduct 500-700 disability hearings a year, to an ALJ at the Merit System Protection Board, who conducts maybe a dozen cases a year, and both are pulled from the same list.

Sen. Voinovich asked the Commissioner if he could work with OPM on this, or would new legislation be necessary. The Commissioner responded that SSA might need legislation as some are attached to the "status quo." Sen. Voinovich suggested that SSA might also want to consider some changes, such as 15-year ALJ terms to be renewed on review.

Commissioner Astrue responded that the majority of ALJs have embraced the agency's mission, with about 74 percent currently meeting SSA's productivity goals. The Commissioner did note that SSA has little ability to discipline ALJs due to lawsuits SSA lost after agency management overstepped its bounds in the 1970s and 1980s. The Commissioner then provided an example of an ALJ in Rhode Island who did not make a single decision in 6.5 years. When the agency pressured him, he made a few decisions, all of them being allowances just to be done with them. The Commissioner stated that he considers this theft.

Senator Voinovich asked Inspector General O'Carroll to comment on the issue. O'Carroll indicated that they conducted an audit about 5 years ago that looked at the bell curve on ALJ productivity and that they have found this curve is moving in the right direction. The OIG has also found that the support staff for ALJs, currently 4.5 per ALJ, is an important component of productivity. O'Carroll indicated that overall the agency is making progress in meeting its goals.

Next, Chairman Akaka asked about the top three factors that will determine the success of SSA. Commissioner Astrue responded that he believes these factors are the size of the appropriation, the timing of the appropriation, and the end of the recession. The Commissioner stated that if workloads increase under this recession due to high unemployment, and the agency has level funding, then SSA will start to miss its goals. The Commissioner noted that there is a clear correlation between unemployment and disability applications and that SSA's response to date is based on a fluid plan. He added that the GAO wants a rigid plan.

Inspector General O'Carroll responded to the question from Chairman Akaka by indicating that the keys factors relate to service and stewardship. With the retirement wave of baby-boomers, SSA will need to enhance its IT support as well as its staff to maintain its service levels. In addition, O'Carroll noted that the agency will need to keep an eye on improper payments and that an integrity fund associated with CDRs would be one way to improve stewardship. He also pointed out that he sees the CDI units, combining OIG, DDS and State resources, assisting with the disability process at the front-end by removing fraudulent applications.

Commissioner Astrue agreed that CDRs will assist the agency and that SSA has an increasing commitment to program integrity and, once the economy improves, he hopes to dedicate more staff to CDRs.

Sen. Voinovich then followed up with a question regarding who directs SSA's budget towards or away from CDRs. Commissioner Astrue responded that both OMB and the appropriations staff provide guidance on the SSA budget. The Commissioner then made a specific reference to the AFI initiative where the agency goes directly to banks to confirm SSA recipient assets. The Commissioner noted that this program is growing and shows great promise in terms of "weeding out" improper payments.

Question and Answer Session – Panel 2 (highlighted exchanges)

Senator Voinovich opened this portion of the hearing by asking both Rick Warsinskey and Randy Frye to comment on the DDSs, their importance to the system, the amount of training DDS employees receive, and the impact of the furloughs at a time when cases are increasing. Senator Voinovich also focused in on the 48 percent increase (in pending claims since the beginning of Fiscal Year 2009) that was cited in NCSSMA's testimony.

Warsinskey responded that the 48 percent figure was correct and that SSA has also been getting help from the component in Chicago to look at cases. He added that the DDSs are still seeing their cases increase, and that he has been tracking this. Warsinskey noted that the cases have been going up on a weekly basis, and this combined with the furloughs is not a good situation. Senator Voinovich asked if that meant there are 48 percent more cases than there were in 2008. Warsinskey responded that since the beginning of Fiscal Year 2009 there are currently 48 percent more cases pending, and this is one of the reasons why the processing time has gone up.

Senator Voinovich then asked Randy Frye to comment on the issue. Frye indicated that he has been an ALJ for 16 years, has heard cases in different parts of the country and has seen the work product from different DDSs. He added that he was at the agency when it began a process of trying to make more uniform decisions and to have the DDSs follow the Commissioner's rules and regulations. Frye voiced that there has been improvement, but not enough. He said, "I think there are times I am so frustrated that I want to call my congressional representatives and say please federalize this program because we need uniformity, and it seems to me that is the only way you are going to get it in the long term." Senator Voinovich then asked Frye if he thought it (federalizing the DDSs) was a good idea. Frye responded that he thought it was a great idea.

Senator Voinovich then pursued a line of questioning related to the furlough situation at the DDSs. Frye voiced that people should be outraged by the situation and that he thought it would be a "slam dunk" to reverse the California decision and that this was an "American tragedy". Senator Voinovich commented that part of the problem, at least that's what he's heard from Ohio, is that the State employees must be treated alike (even though SSA funds the DDSs with federal resources). Senator Voinovich asked Frye if he belonged to any national labor organization that would potentially oppose the DDSs being treated differently. Frye responded that although his organization is associated with a national labor organization they would not oppose federally funded employees doing their jobs during periods where other non-federally funded employees might have to take a furlough. He indicated that these are not like positions, they are different positions, and they are funded differently. He added that it is unfair that Governors have taken the positions they have and have hurt the people who are waiting for decisions.

Rick Warsinskey responded to the Senator's question by suggesting that there may be ways to force the States to do things other than federalizing the DDSs. Warsinskey agreed that if the DDSs were to be federalized you would see more uniformity in decisions and training and that there would definitely be advantages to it. Warsinskey also agreed with Commissioner Astrue that it would be more costly, but suggested in the long run you might save money. Warsinskey pointed out that you would possibly have fewer cases going to the hearing offices, which is expensive and has untold hardships for the public. Warsinskey suggested that perhaps Congress could hold other funding

back from the States if they furlough State employees that work on the cases where SSA pays for everything.

Senator Voinovich then redirected his line of questioning to address the “whole business” of appropriations and the Continuing Resolution. He addressed Rick Warsinskey first and noted that Rick is “on the firing line and runs a local office.” The Senator asked Warsinskey to describe what kind of havoc this plays in terms of offices and decision-making when there is a Continuing Resolution. Warsinskey responded by indicating that he is in Cleveland and these offices are very busy, with high walk-in traffic and a tremendous number of calls. They are packed with people coming in to visit and a lot of it is because of the workloads the offices have been asked to do. Warsinskey referenced SSI Redeterminations and Continuing Disability Reviews as significant workloads in addition to more people coming in to file for disability. Warsinskey indicated that if there are cut backs due to inadequate funding for the year, that SSA would probably go into a freeze and no hiring would be done, and there would be less extra hours available to work. Senator Voinovich then asked Warsinskey, “Well, where are you right now? You are on a Continuing Resolution. What does that mean to you? That you are just able to spend what you spent last time?” Warsinskey responded that this was correct at which time Senator Voinovich stated that although additional funding is anticipated because of appropriations Warsinskey has to “hold that in abeyance until the appropriation is made.” Warsinskey responded that this was correct and pointed out that we are, “treading water right now, waiting.” Warsinskey indicated that as the Commissioner mentioned, that this is very inefficient as you cannot really plan ahead. Warsinskey added that you cannot do the kind of hiring you need to do for the year – most of the time you end up hiring the second half of the year and doing the training now (late in the year), which is just not efficient.

Senator Voinovich asked Frye to comment as well. Frye offered that he has never seen a good situation come from spending resolutions at the end of the year. He noted this always results in cut backs, spending money in the most inefficient way, and more toward the end of the year. He observed that it will build more backlogs and this hurts people. Frye urged Congress to pass the budget for at least SSA or to create a higher spending level for the agency. He stated that, “It is just too tragic for the American people. I just cannot express that enough.”

Rick Warsinskey offered additional views on this issue related to SSA not really having the flexibility to cut back without directly cutting into the staff that services the people.

Next, Chairman Akaka pursued a line of questioning related to the management challenges faced by SSA if ALJs and staff who are currently eligible for retirement are not replaced. He also asked what steps have been taken to address potential skill gaps. He noted that appropriations are a key part of this, but also asked the witnesses to address the management challenges.

Rick Warsinskey responded that as a manager one of the most important things he does is hiring and being able to hire the best people you can makes a difference. Having the necessary time to recruit and hire people is important. Warsinskey indicated that he could not speak as much for the judges, but that he does know that they do hire using those (OPM’s) lists and the rule of three, and that there has been some discussion with OPM about moving away from the rule of three just for hiring in general for the Federal Government to well-qualified lists. Warsinskey indicated that this change is being made now and that John Berry (OPM Director) is doing this. He indicated that he thinks this is an improvement and will allow more flexibility in terms of who is selected off a list. Warsinskey added that he has gone to a number of recruiting fairs this year. He makes a point of

going personally to meet with people and selling them on coming to work for Social Security. Warsinskey noted that, “we work hard in our agency. I think we are one of the hardest-working agencies in Government, and you have to have good people.”

Warsinskey also addressed management at SSA and indicated that, “we have a culture to have good management. I think it is important that you don’t just manage but also, I think, have a staff that wants to work for you and have good morale. I think we really preach that.” Warsinskey noted that both Senators Voinovich and Akaka have been very interested in training and that SSA tries to do as much training as possible. He pointed out that this is sometimes challenging because people are so busy and there is so much work to do, but that you need to take that necessary time aside to train and invest in people.

Senator Akaka then addressed Randy Frye and thanked him for mentioning his ALJ leave equity bill and the fact that it would put ALJs on equal footing with other senior-level Federal employees as well as serving as a valuable recruiting tool. Senator Akaka asked Frye to comment on the challenges or frustrations the ALJ workforce at SSA have expressed regarding recruiting and retaining qualified individuals. Frye indicated that the ALJs have been frustrated over the years, just as heads of agencies have been, because of some of the problems at OPM. Frye noted that Director Berry seems to be addressing these issues and that he is impressed with the new system, although it could be more efficient and increase the qualifications required. Frye added that he believes they are now hiring the best attorneys they have hired in 30 years, due in large part to the recession.

Senator Akaka asked Frye to address the comments he made in his testimony about cutting corners because of goals. Frye voiced that it is unfair to put ALJs out as the reason goals are not met and that it would be better to measure the productivity of the group. Frye feels this would lead to a better understanding of what the problem is.

Next, Senator Voinovich addressed questions to Frye regarding starting salaries for ALJs. Frye was unable to answer the question and volunteered information about the highest salaries for ALJs.

Senator Voinovich asked Frye to discuss the type of peer pressure the Association of Administrative Law Judges exerts on judges in terms of meeting high standards and whether there are annual training sessions for members. Frye provided information about their annual education seminars and the fact that judges pay their own expenses to attend. He noted that the association encourages both quantitative and qualitative performance. He added that while their organization emphasizes performance, they do not believe that judges should be hearing cases that they are not prepared to hear. Senator Voinovich then turned to Rick Warsinskey to address the staffing levels (for the ALJs).

Warsinskey explained that SSA hires the staff people for the ALJs and that the number of people assigned to each hearing office is decided by the agency. He further explained that staffing comes down from headquarters, then goes down to the regional level. Senator Voinovich then interjected that OPM puts out the notice of job availability. Warsinskey responded that this was correct. Senator Voinovich described the hiring process and Warsinskey did note that categorical hiring was just now being implemented. There was further discussion regarding the hiring for the judges. Warsinskey clarified that there are two different lists – the one for the judges and the ones for the staff at the hearings offices.

The discussion then moved to the training for the staff and new people that are brought on. Senator Voinovich asked Rick Warsinsky about this. Warsinsky indicated that anyone who comes to work for Social Security generally does not understand the “lingo” that is used and that there is quite a bit of training. Warsinsky noted that in the field office you start out with 4 or 5 months of training, and that there is a similar amount in the hearing offices. He emphasized that this is critical and that there must be ongoing training because the jobs at SSA are very complicated and “there is no college you can go to to learn Social Security.” Warsinsky pointed out that in the hearing office there will be attorneys, senior attorneys, and the judges, making specialized legal training necessary. Senator Voinovich turned to Randy Frye to address the quality of lawyers that are available and that these lawyers are coming in and doing the staffing. Frye indicated that was correct. Senator Voinovich returned to Rick Warsinsky and asked if many of the people being hired for staff positions were attorneys. Warsinsky responded that was indeed correct and that SSA often recruits at local law schools, such as Akron University and Cleveland-Marshall. Warsinsky offered that the attorneys who are hired provide a great deal of support in the hearing offices and one of the things they do is assist the judges on decisions. Warsinsky indicated that Frye could probably talk more about this, but that this is cutting down on some of the work, although it probably results in the judges having to handle some more complicated cases on average because some of the other cases can be handled by the attorneys.

Senator Voinovich posed a question to Randy Frye regarding the percentage of cases that are represented by lawyers. Frye responded that it probably varies geographically but in the Charlotte area, they are up to about 94-95 percent. He noted that this is a very high rate, but that is not bad, and he thinks that it has been beneficial to the process. There was then some discussion about what the lawyers are paid for their representation and the hearing drew to a close.

In conclusion, Senator Voinovich has been a leader on the issue of adequate resources for SSA and due to his retirement will be missed in the next session of Congress. It was apparent though, that he was “passing the torch” so to speak to Senator Akaka on these issues and we hope that Senator Akaka will continue to be a champion on these issues.

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