

**The National Council of Social Security Management Associations, Inc.**  
**GREYSTONE GROUP WASHINGTON REPORT**  
**Legislative Report 17-2012**  
**October 18, 2012**

**Overview**

On Thursday, September 13, 2012, the U.S. Senate Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations held a hearing to examine issues related to the quality of disability benefit awards. In advance of the hearing, the Subcommittee conducted a review on a sample of 300 case files for claimants filing under the Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) programs which included initial applications and subsequent levels of appeal.

Five witnesses were asked to testify on two panels. The written testimony of each witness may be viewed by clicking on the respective links below:

**Witnesses**

**Panel 1**

**JUDGE PATRICIA A. JONAS**

Appellate Operations Executive Director, Deputy Chair, Appeals Council,  
Office of Disability Adjudication and Review, Social Security Administration  
Falls Church, VA

[Download Testimony \(154.2 KB\)](#)

**JUDGE DEBRA BICE**

Chief Administrative Law Judge  
Office of Disability Adjudication and Review, Social Security Administration  
Falls Church, VA

[Download Testimony \(107.2 KB\)](#)

**Panel 2**

**JUDGE DOUGLAS S. STULTS**

Hearing Office Chief Administrative Law Judge  
Office of Disability Adjudication and Review, Social Security Administration  
Oklahoma City, OK

[Download Testimony \(30 KB\)](#)

**JUDGE THOMAS W. ERWIN**

Hearing Office Chief Administrative Law Judge  
Office of Disability Adjudication and Review, Social Security Administration  
Roanoke, VA

[Download Testimony \(29.3 KB\)](#)

**JUDGE OLLIE L. GARMON, III**

Regional Chief Administrative Law Judge (Region IV)  
Office of Disability Adjudication and Review, Social Security Administration  
Atlanta, GA

[Download Testimony \(42.3 KB\)](#)

**The following Senators attended the hearing:**

**Chairman Carl Levin (D-MI)**

**Ranking Member Tom Coburn (R-OK)**

**Senator Susan Collins (R-ME)**

**Opening Statements**

The opening statement of Chairman Levin may be accessed by clicking on the link below. The opening statement of Ranking Member Coburn is not available.

**Permanent Subcommittee on Investigations Chairman Carl Levin (D-MI)**

<http://www.levin.senate.gov/newsroom/speeches/speech/opening-statement-at-psi-hearing-on-social-security-disability-programs/?section=speeches>

**Permanent Subcommittee on Investigations Ranking Member Tom Coburn (R-OK)**

[Not Available](#)

**Panel 1 Opening Statements**

Following opening statements from Chairman Levin (D-MI) and Ranking Member Coburn (R-OK), Judge Patricia A. Jonas, Appellate Operations Executive Director, Deputy Chair, Appeals Council, Office of Disability Adjudication and Review (ODAR), Social Security Administration, presented her opening statement. Judge Jonas began by noting that since 1940 the Appeals Council has helped oversees the appeals process by reviewing hearing procedures and decisions. Judge Jonas indicated that she oversee approximately 75 appeals judges, who review a portion of the Administrative Law Judges' (ALJs) approvals and denials. Prior to Commissioner Astrue's arrival, very little quality review was performed at ODAR, this was due to several years of litigation and congressional reaction to the Bellmon review in the 1980s along with budget shortfalls. Given this, added Judge Jonas, the feedback from the Appeals Council to ALJs was very limited.

Currently, under Commissioner Astrue, there is better leveraging of the Appeals Council's unique position and the Federal Courts, to provide more feedback to ALJs, stated Judge Jonas. The key to this is to introduce a more balanced quality review into the hearings process. First, a serious data collection process for ODAR was developed, and then a new policy compliance tool was developed, noted Judge Jonas. These new tools helped the Appeals Council capture a significant amount of structured data, noted Judge Jonas.

In 2010, the Office of Quality Performance instituted a national review of hearings decisions, which helped to ensure a consistent review for all three levels of SSA's disability process. In 2009, Commissioner Astrue reintroduced a sample review, by the Appeals Council, of favorable appeals decisions, noted Judge Jonas. These additions and new tools have helped create better

communication and fostered better feedback to ALJs on decisions. Judge Jonas noted that the Appeals Council feels that they have identified and are addressing many of the same concerns that the Subcommittee found in their sampling of 300 disability cases. Additionally, the Appeals Council will continue to work with the Subcommittee to make improvements and address areas of policy concern, added Judge Jonas. In closing, to further help guide ongoing efforts to improve quality assurance, the Appeals Council has partnered with the Administrative Conference of the United States, noted Judge Jonas.

Following Judge Jonas, Judge Debra Bice, Chief Administrative Law Judge, Office of Disability Adjudication and Review, Social Security Administration presented opening remarks. Judge Bice began by noting that she is responsible for overseeing about 1500 ALJs. ALJs strive to make the correct decision early in the disability process, noted Judge Bice. An ALJ must use the Sequential Evaluation Process to reach a fair and legally defensible decision, stated Judge Bice. Since the Social Security Board established the hearings and appeals process in the 1940s, ALJs have sought to balance the need for accurate and fair decisions with the need to handle a large volume of claims in an expeditious manner.

Judge Bice noted that some believe the decisional independence of ALJs means they are not accountable for their work. But, under Commissioner Astrue, ALJs have been held accountable where the law permits, indicated Judge Bice. In the past, ALJs have been removed for egregious actions, but only through the lengthy MSPB process which can take several years and be expensive, added Judge Bice.

### **Panel 1 Question and Answer**

Following the opening statements, Chairman Levin (D-MI) began the question and answer portion of the hearing. Chairman Levin asked about the 2011 Final Actions report from the Division of Quality, which reviewed some 3692 disability cases and found that about 22 percent of the cases reviewed contained errors or an inadequate basis for the decision. Chairman Levin asked Judge Jonas if she was surprised by the figure of 22 percent. Jonas noted that the figure is equivalent to the 20 percent that her office has found over the past year. Judge Jonas indicated this large percentage is concerning.

Chairman Levin then asked Judge Jonas if “gridding” is used as guidance, or is it binding. Judge Jonas answered that the application of the Medical Vocational Guidelines depends on what the individual’s impairments are. If an individual has exertional limitations only, then the Medical Vocational Guidelines will direct a result. Judge Jonas also noted that if the individual has a combination of exertional and non-exertional limitations the Medical Vocational Guidelines will guide a result.

One of the tools being developed is a policy compliant tool for analyzing cases at the hearings level, noted Judge Jonas. Jonas indicated this is just one of a handful of tools that will make ALJs more effective and efficient.

Following Chairman Levin, Ranking Member Coburn asked the panel if there is someone at the Social Security Administration who is tracking individual judges, based on quality, so the agency knows who is a problem and who is not. Ranking Member Coburn questioned whether there is a management system at SSA that holds judges accountable. Judge Bice responded they have found the same type of

problems as were identified in Senator Coburn's report, and are working with judges through training to address the areas of concern. Senator Coburn responded that he knew all that, but what if there are judges, regardless of training who are not following policy, who is watching that, and where is the control? Judge Bice responded that when there is an issue with a judge, training is the first step. Following training, the judge is monitored to make sure they are complying with policy. If the judge continues to be noncompliant, then a directive is issued which states that if the judge continues to not follow the policy, disciplinary action can be taken. Judge Bice added that they don't specifically track individual judges, because they do not have valid data, but when it becomes apparent that a judge is an outlier, action is taken. Senator Coburn then followed up by asking, why the tracking of judges isn't part of some sort of management system. Judge Jonas responded that to some extent, the Bellmon review causes SSA to be cautious in what systems are used to track and monitor judges. The agency believes the random sampling of cases which does take place is helping to catch some of the issues with judges who are not following policies, noted Judge Jonas. At this point, noted Judge Bice, it would require a lot more resources than SSA has right now, to review enough cases from every ALJ to get a valid sample.

Next to question the panel was Senator Susan Collins (R-ME), Ranking Member of the full Homeland Security and Governmental Affairs Committee. Senator Collins referenced the fact that last year the Wall Street Journal was able to identify an ALJ who approved 100 percent of 700 plus cases, as well as 27 judges who awarded benefits 95 percent of the time, and questioned why SSA cannot come up with this information. Senator Collins then asked the panel whether SSA has any kind of system to identify outliers. Judge Bice responded that SSA does have a system that can track judges who are paying or denying a lot of cases. SSA can track the number of cases, but quality is much more difficult to track, noted Judge Jonas. Judge Jonas indicated it is much harder to evaluate whether a decision is correct or not, and that is where the agency does not have specific data at the office level. Senator Collins also noted she feels SSA can do more without compromising judicial independence, when it comes to tracking the quality of decisions, and also outliers.

Following the questions and comments from Senator Collins, Chairman Levin asked the panel a few more questions. He asked if they believe it would be, or was, in Judge Bice's case, when she participated in a pilot back in the early 1980s, beneficial to have a government representative in the hearing. Judge Bice responded that (during the pilot) she does not believe having a government representative present was that helpful in either the case outcomes or the timeliness of the cases.

Following Chairman Levin, Ranking Member Coburn asked another question. Ranking Member Coburn asked the panel if 500-700 cases is a reasonable number of cases for a judge to handle in a year, without putting stress on them to move cases, which may result in them making errors in their decisions. Judge Bice answered that yes, these numbers are reasonable. As of the end of Fiscal Year 2011, 77 percent of ALJs were within this range. Ranking Member Coburn then asked if there is a limit on the number of cases a judge can do in a year. Judge Bice responded that Commissioner Astrue has limited the number of cases to 1200.

### **Panel 2 Opening Statements**

Following the first panel, Judge Douglas S. Stults, Hearing Office Chief Administrative Law Judge, Office of Disability Adjudication and Review, Social Security Administration, Oklahoma City, OK, began the

second panel. Judge Stults began by noting that currently the Oklahoma City Hearing Office is staffed with 13 ALJs, supported by 59 staff. In Fiscal Year 2011, the Oklahoma City Hearing Office achieved its regionally set dispositional goal, which was 7,216 claimants served. The office also completed all of its aged cases, which are cases that are more than 750 days old. Thus far in FY 2012, they have served 6,317 claimants, noted Judge Stults. Through July of this year, their ALJ dispositions have averaged 37.8 percent fully favorable, 3.2 percent partially favorable, 41.7 percent unfavorable, and 17.2 percent dismissals. Additionally, through the end of August 2012, the office has had an average processing time of 381 days, and the average case pending per ALJ in the office is 591 days, noted Judge Stults. The average age of a pending case overall is 258 days. The hearing case heard-to-scheduled ratio per ALJ is around 75 percent, noted Judge Stults.

Next to make an opening statement was Judge Thomas W. Erwin, Hearing Office Chief Administrative Law Judge, Office of Disability Adjudication and Review, Social Security Administration, Roanoke, VA. Judge Erwin noted the Roanoke Hearing Office currently has eight ALJs. The office has had significant turnover, recently losing eight judges to transfer or retirement. In total the office has 48 employees, indicated Judge Erwin. For FY 2012, through August, the Roanoke Hearing Office received 3,690 hearing requests, an average of 335 cases per month. The office has issued 3,633 decisions, processing close to 99 percent of the cases received. There are just under 4,700 cases pending in the office, an average of over 580 cases pending per judge. The office's average processing time is 432 days, from the request for a hearing to decision. Judge Erwin added that the Roanoke Hearing Office has an allowance rate of 59 percent for FY 2012.

The last witness to speak was Judge Ollie L. Garmon, III, Regional Chief Administrative Law Judge (Region IV), Office of Disability Adjudication and Review, Social Security Administration, Atlanta, GA. Region IV, noted Judge Garmon, serves about 60 million individuals, and currently has 37 hearings offices, some 400 ALJs and overall employs about 2300 individuals. Region IV, added Judge Garmon, has about 25 percent of the agency's hearings caseload, which results in about 200,000 decisions per year. One of the hearing offices in the region is located in Montgomery, Alabama. The Montgomery Hearing Office currently has 10 judges, and two new judges are expected to report for duty on September 24 of this year, added Judge Garmon. The office has a high ALJ transfer rate. In FY 2011 the office received 8,357 cases, and issued 7,252 dispositions. In FY 2012, to date, the office has received 6,540 cases, and has issued 6,246 decisions, noted Judge Garmon. The office currently has 8,223 cases pending, and the current average processing time is 430 days. The rate of average disposition per ALJ per day is 2.37, added Judge Garmon. He closed by emphasizing he can take action to ensure ALJs move their caseloads and apply the law and policies correctly, but noted that the Administrative Procedure Act grants all ALJs qualified procedural independence.

### **Panel 2 Question and Answer**

Chairman Levin (D-MI) began the question and answer portion for the second panel by asking for the reaction of the panel to the high error rates that were reported in the 2011 Final Actions report from the Division of Quality. Judge Stults responded this report is just one of many tools out there that can be used to look at the quality of decisions. But that the best judge of quality within a hearing office, added Judge Stults, is the staff itself. Judge Erwin added that the report does not examine if the decision was correct, but rather if there was an error in the policy.

Next, Ranking Member Coburn (R-OK), asked the panel if the agency puts an inordinate amount of pressure put on ALJs to move cases. Judge Erwin responded that he does not believe there is an inordinate amount of pressure put on judges to move cases, and that 500 – 700 cases a year is a reasonable number for a judge. Ranking Member Coburn then asked the panel to discuss their management approach when it comes to an ALJ who is handling an inordinate number of cases. Judge Garmon responded when the region reviews the data, outliers do raise red flags. When a red flag comes up the region works with hearing office management to determine what is going on, stated Judge Garmon. Judge Stults added there are many different statistical reports which can give you all kinds of different information. Once that information is in hand, particular judges are counseled who are either processing a high number, or too few cases. Ranking Member Coburn next asked if there is a correlation between quality guidelines and the number of cases worked. Judge Stults responded that judges, if they simply make decisions, and do not necessarily write the decisions, can produce well above the 500-700 case range.

If you are interested in watching the video of the hearing, you can access the archived webcast by clicking on the link below:

<http://www.hsgac.senate.gov/templates/watch.cfm?id=f6a7dcd1-5056-a032-5208-4ff4b6e84d28>

Greystone Group LLC  
418 C Street, NE  
Washington, DC 20002  
202-547-8530/FAX 202-547-8532  
Contact: Rachel Emmons or Aaron Hunter  
E-mail: [rachele@greystone-group.com](mailto:rachele@greystone-group.com) or [aaronh@greystone-group.com](mailto:aaronh@greystone-group.com)