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**SOCIAL SECURITY:**  
Many Administrative Law Judges  
Oppose Productivity Initiatives

Statement of Gregory J. McDonald  
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Before the  
Subcommittee on Social Security  
Committee on Ways and Means  
House of Representatives



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## SUMMARY

The Social Security Administration (SSA) employs more than 700 administrative law judges (ALJs) in 132 hearing offices around the country to hear appeals of applications for social security or Medicare benefits that have been denied.

To ensure judges' independence, the Administrative Procedure Act grants ALJs certain specific exemptions from normal personnel management practices. Management is permitted, however, to supervise and review ALJs' work to ensure its efficiency, quality, and adherence to agency policies and procedures. At SSA, this supervision is provided by the Office of Hearings and Appeals.

Historically, SSA has used a monthly disposition goal to encourage ALJs to decide more cases. The goal has been based on management's judgment of what ALJs need to accomplish to keep up with their appeals workload. Monthly goals appear to have been effective in increasing the average disposition of cases per ALJ. They have also been at the core of a long-standing controversy between SSA and its judges. A large number of ALJs have complained that SSA's emphasis on productivity has had a negative effect on their work.

In our opinion, the issue of performance goals need not be divisive. As early as 1978, we recommended that federal agencies employing ALJs establish performance standards delineating what is expected of them in terms of work quality and quantity. The key in this recommendation is the link between work quality and quantity. We support SSA's need for performance goals and standards but SSA has not conducted an adequate study of the relationship between its goals and the quality of decisions. As a result, SSA lacks the ability to validate its performance goals.

In 1985, SSA began a major initiative to decrease its work force. Every SSA component had to reevaluate its staffing needs. The number of ALJs and support staff were allowed to decline through attrition until fiscal year 1988 when the ALJ corps was at a ten-year low. As the number of appeals began to climb in 1986, SSA did not increase its staffs, especially its ALJ corps, to keep pace with the increasing workload. This caused a decline in some performance indicators.

SSA began increasing its ALJ corps in fiscal year 1989 to about 700 judges, but performance has continued to decline. The average age of pending cases and average processing time reached their highest levels during the decade at 147 and 217 days, respectively, and the number of pending cases increased to 159,268. This situation has remained largely unchanged through the first 6 months in fiscal year 1990.

Although SSA has increased its support staff, some hearing offices continue to have staff shortages. According to OHA estimates, about 100 of the 132 ALJ field offices are short some support staff.

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss the activities of the Social Security Administration's (SSA's) administrative law judges (ALJs).

ALJs are unique federal employees. They conduct hearings and make decisions on administrative proceedings of the agency that employs them. SSA employs more than 700 ALJs in 132 hearing offices around the country to hear challenges from individuals whose applications for social security or Medicare benefits have been denied.

The role of SSA's administrative law judges differs from that of other ALJs in the federal government. SSA hearings are nonadversarial and informal, and the judge has responsibility for both developing the evidence and deciding the case. In contrast, most other executive branch ALJs hold formal, adversarial hearings that are 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.

To ensure their decisional independence, the Administrative Procedure Act grants ALJs certain specific exemptions from normal management controls. Under the act, federal agencies

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

Management is permitted, however, to supervise and review ALJs' work to ensure its efficiency, quality, and adherence to agency policies and procedures. At SSA, this supervision and administrative support is provided by the Office of Hearings and Appeals (OHA).

Over the years, conflict has arisen between OHA and SSA's judges over various management practices. At the Subcommittee's request, we reported late last year on the causes for recent conflicts and whether reductions in staff, especially in judges, had adversely affected the adjudicative process.<sup>1</sup>

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<sup>1</sup>Social Security: Many Administrative Law Judges Oppose Productivity Initiatives (GAO/HRD-90-15, Dec. 7, 1989).

ALJ CONTROVERSY CENTERS ON  
MONTHLY DISPOSITION GOALS

Historically, SSA has used a monthly disposition goal to encourage ALJs to decide more cases and, in part, in an attempt to reduce processing delays. The goal has been based on management's judgment of what ALJs need to accomplish to keep up with their appeal workload and has changed as the workload and number of judges has changed.

Monthly disposition goals appeared to have increased the average monthly disposition of cases per ALJ. They have also been at the core of a long-standing controversy between SSA and its judges. Each time the goal was increased, the number of ALJ decisions rose, even if the goal was not met. But many ALJs have complained that OHA's emphasis on productivity has had a negative effect on their work--either damaging morale or leading to lower quality decisions.

These views, however, were not universally held by the judges. In preparing our report last year, we sent a questionnaire to all nonmanagerial ALJs. About half of those responding complained about the productivity measures, and 34 percent said that the quality of their decisions had deteriorated over the past 3 years. Yet 27 percent said that the quality of their decisions had improved. About 29 percent of the responding ALJs said that

the quality of their service to the public had worsened, but about 23 percent of the ALJs said that it had improved.

In our opinion, the issue of performance goals need not be as divisive as it is. The desirability of good performance standards has long been established. As early as 1978, we identified the need for performance standards for all ALJs throughout the federal government. We recommended that federal agencies employing ALJs establish performance standards delineating what is expected in terms of work quality and quantity. However, the key element in this recommendation is the link between work quality and quantity. We support SSA's need for performance goals and standards. However, while SSA has established performance goals, we believe that it has not adequately studied the relationship between the quality and quantity of decisions.

As a result, SSA lacks a system for adequately measuring the impact of productivity changes or initiatives on quality and thus lacks the ability to validate its performance goals. In our December 1989 report, we recommended that the SSA Commissioner direct OHA to determine the appropriate number of cases that ALJs should be expected to decide. In making this determination, we believe OHA should give proper balance to the quality of decisions. The results of such a study should be used as a basis

for establishing and validating reasonable monthly disposition goals.

OHA told us about a year ago that it planned to develop and implement a data base of decisional deficiencies identified during its Bellmon reviews (OHA's only routine review of the quality of ALJ decisions) and to use this information periodically to monitor the quality of ALJ decisions. Such a data base would give OHA a better capability to evaluate whether organizational changes or certain management initiatives affect the quality of ALJs' work. We understand this effort has been delayed because of budget constraints.

However, OHA has begun to develop a work measurement system. In January 1990, the former Associate Commissioner of OHA established a task force to submit recommendations on a work measurement system for OHA field offices that would reflect the level of service that the public should expect. The task force gave the Deputy Commissioner for Programs its initial draft of a work measurement system in May 1990, and the Department of Health and Human Services has informed us that the task force's work should be completed this month.

STAFF REDUCTIONS ADVERSELY  
AFFECTED OHA'S PERFORMANCE

Let me turn next to the issue of staffing. In 1985, SSA began a major initiative to decrease its work force. Under this initiative, Every SSA component, including OHA, had to reevaluate its staffing needs. From fiscal year 1985 through fiscal year 1988, the numbers of ALJs and support staff were allowed to decline through attrition. By fiscal year 1988 the ALJ corps was at a 10-year low of 657 judges.

Early staff reductions appeared warranted, particularly considering the large decline in appeals that accompanied the moratorium placed on continuing disability reviews.<sup>2</sup> However, as the number of appeals began to climb back to its pre-moratorium level in 1986, OHA did not increase its staffs, especially its ALJ corps, to keep pace with the increasing workload. This caused a decline in some of OHA's performance indicators, but decreased resources appeared to have little effect on operations until fiscal year 1987. In that year the number of pending cases increased by more than 26 percent to over 148,000, and the average processing time for a case increased from 172 to 198 days. The indicators worsened further in 1988

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<sup>2</sup>Reacting to public and congressional pressure, the Secretary of Health and Human Services stopped reviewing all beneficiaries for their continuing eligibility under the disability program in early 1984 and did not resume such reviews until January 1986.



and, although OHA increased its ALJ corps in fiscal year 1989 to about 700 judges, performance continued to decline. The average age of pending cases and average processing time reached their highest levels during the decade at 147 and 217 days, respectively, and the number of pending cases increased to 159,268. This situation has remained largely unchanged through the first 6 months of fiscal year 1990.

OHA increased its support staff in fiscal year 1988, but 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 this had a negative effect on their offices' ability to process appeals. Over 50 percent of them said that the loss of staff led to longer processing times and poorer quality work. Managers in the offices that lost staff verified that the loss had a negative effect on their work.

As of May, 1990, SSA had increased its ALJ corps to 715 and, by the end of this fiscal year, OHA expects to have about 750 ALJs on duty--the highest staffing level since 1984. OHA had about 3,672 support staff on duty as of May 1990, and expects to have about 3,985 by the end of the fiscal year. According to OHA staffing estimates, about 100 of the 132 ALJ field offices are short some support staff. Because hiring is decentralized to the regional offices, OHA could not estimate the number of offices

that will continue to have staff shortages as the year progresses.

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This concludes my statement. I will be pleased to answer any questions.