

Statement of Sylvester J. Schieber, Chairman
Social Security Advisory Board
To the
Subcommittee on Social Security of the
Committee on Ways and Means
U.S. House of Representatives
September 16, 2008

Chairman McNulty, Mr. Johnson, Members of the Committee. I am pleased to have this opportunity to discuss ways to improve the performance of Social Security's hearings offices.

About 18 months ago I appeared before this Subcommittee to present the Social Security Advisory Board's perspectives on the causes and possible solutions to the growing backlog of disability cases. At that time, from the Advisory Board's perspective, things had gotten pretty much out of control. Since then the agency has implemented a series of initiatives that focus on clearing out the backlogs and should help, in the near term, bring the system somewhat back into balance. But no one should expect that that these short term initiatives alone will result in fundamental change.

Under the hearings backlog reduction plan more hearings are being processed but even more are coming in the front door. The backlog of cases has climbed to over 767,000- nearly 20,000 more cases than at the start of the fiscal year. A singular focus on just one aspect of this program is not the solution to the systemic problems in the disability process.

The public is entitled to timely and high quality disability decisions but currently the agency is forced to walk a fine line in its efforts to manage personnel and process.

Much of the context in which the hearings offices operate is the result of the 1946 Administrative Procedures Act. The Act created the position of the administrative law judge and set out a number of protections to ensure their decisional independence. ALJs have, in effect, a life time appointment and may only be removed for cause by the Merit Systems Protection Board. They are excluded from the civil service performance appraisal system and newly appointed ALJs do not serve any sort of a probationary period.

There is no doubt that the judges must have decisional independence but it must be balanced with reasonable expectations for performance. When we see through data analysis, my own included, that some judges are averaging less than 300 cases per year consistently and others routinely clear upwards of 700 and even 1000 cases, and allowance rates range from 3 percent to 99 percent, we know that this is just not right.

By establishing clear performance expectations and measures as well as creating incentives that encourage the ALJs to achieve the goals, decisional independence can be preserved and the public's interest in a consistent and efficient hearings process can be achieved. Furthermore, SSA needs to be able to rely on OPM to provide candidates that can meet these expectations. We strongly urge that, at a minimum, OPM be required to establish a separate candidate register that emphasizes SSA's specific needs.

Strengthening the agency's ability to set performance expectations and changing the ALJ recruitment process addresses only part of the challenges with the hearing process. The hiring of support staff has not kept pace with the hiring for new ALJs. This lack of staff to support the hearing process properly obviously constrains productivity. However, it is not at all clear to us that either the staffing mix or the ratio of support staff to ALJs has been adequately analyzed.

Probably one of the most difficult jobs in SSA is that of the hearing office chief judge. The hearing chief is responsible for managing the work of the office, but has little authority to do so effectively. It is critical that competent leadership be in place in each hearing office, but the current process has too many disincentives to attract talented managers.

SSA is committed to using technology to improve performance and they have made impressive strides in moving into an electronic environment. From where we sit, however, the problem is that most of the work is piecemeal and lacks an overarching strategy that coordinates the projects and helps set priorities. As the agency continues to develop automation tools, they must ensure that the decisions being made for one part of the organization are the right decisions for the disability program as a whole.

SSA has massive administrative challenges ahead and while there is no magic bullet, much can be accomplished through the appropriate adaptation of technology, recruiting and retaining highly skilled staff, and instituting performance measures that ensure timely and equitable hearings is a step in the right direction.

Mr. Chairman, I hope these comments are helpful to the Subcommittee as it examines SSA's management of its hearing offices. I would be happy to answer any questions you may have.