Experience in Appeals Under Old-Age and Survivors Insurance

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THE PROCEDURE for hearing and review of old-age and survivors insurance claims under the 1939 amendments to the Social Security Act has already involved review by the United States courts. On June 25, 1941, the United States District Court for the Northern District of Illinois (Eastern Division) examined the first decision of the Appeals Council that proceeded beyond the administrative bounds of the Social Security Board. In that case, the court upheld the Council's decision that the plaintiff, who was the receiver of a State bank and who had been appointed to that position by the Auditor of Public Accounts of the State of Illinois, did not render services as an employee within the meaning of the Social Security Act.

The administrative machinery governing hearings and review on adjudicative determinations requested by dissatisfied claimants was established in January 1940.[1] For the first 6 months attention was devoted to drafting regulations, procedures, and forms, and to training field referees responsible for the conduct of hearings and the preparation of decisions. The first request for a hearing was received in July 1940. Regulations were tentatively approved by the Social Security Board in July and adopted in October. They are designed to make hearings before authoritative officials readily available to claimants and to wage earners who disagree with the decisions of the Bureau of Old-Age and Survivors Insurance. This Bureau has primary responsibility for judging the validity of claims.

The procedure for hearing and review serves both as a safeguard against decisions on claims or wage records that may be incorrect and as an assurance to workers and their families that they have full opportunity to present their evidence and contentions. A hearing may be obtained not only with respect to an application for benefits but also with respect to matters affecting benefit payments, such as a determination of deductions from benefits and modification in the amount of benefits as provided in the act. A hearing may be granted also on the question of the dependency of a parent prior to the filing of an application for parent's insurance benefits. The Board has also directed that hearings may be held with respect to lump-sum payments under the original Social Security Act.

No hearing may be held until an initial determination has been made by the Bureau of Old-Age and Survivors Insurance. If the claimant is dissatisfied with this determination he may request reconsideration by the Bureau or, alternatively, an immediate hearing before a referee. If reconsideration is requested, the right to a hearing is not waived.

The reconsideration process, while not mandatory, is apparently filling an important role in settling a large number of cases which might otherwise be carried to a hearing—necessarily a more costly process both for claimants and for the Government. In consequence, a considerable portion of the cases heard by referees involves either debatable legal issues or close questions of fact for which the testimony of witnesses is often more revealing than documentary evidence.

To assure consistency in the decisions rendered by the referees of the 12 regions, provision was made at the outset for the coordination of decisions by channeling through a consulting referee certain types of decisions. Hearing referees were directed to submit to the consulting referee all proposed decisions which would modify or reverse previous determinations made by the Bureau, as well as cases in which they were in doubt as to the proper decision.

Who Presents Appeals?

Over 830 requests for hearing were received during the fiscal year 1940–41. These have arisen in all sections of the country. Over 100 requests

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[1] See Ladimer, Irving, "Hearing and Review of Claims and Wage-Record Cases Under Old-Age and Survivors Insurance," *Social Security Bulletin*, Vol. 3, No. 7 (July 1940), pp. 21–24.

Table 1.—*Percentage distribution of 757 cases [1] received for hearing and review, and cases as percent of claims disallowed, by type of appeal, fiscal year 1940–41*

Type of appeal	Percentage distribution	Cases as percent of claims disallowed
Total	100	(2)
Claims	93	(2)
Monthly benefits	71	4.0
Primary	29	4.7
Wife's	3	2.6
Child's	19	3.8
Widow's	3	6.6
Widow's current	11	5.3
Parent's	6	8.7
Lump-sum payments	22	(2)
Under 1939 amendments	17	2.2
Under 1935 act	5	(2)
Wage-record revision	7	(2)

[1] Denotes claims with respect to which a request for hearing has been filed, photocopies of the claims file have been received by the Appeals Council, the claimant was not denied a hearing because of ineligibility, and the claimant has not withdrawn his request.
[2] Comparable data not available.

have come from each of the two administrative regions of the Social Security Board, where the majority of the persons subject to the old-age and survivors insurance provisions are concentrated. These regions are Region II (New York) and Region VI (Illinois, Indiana, and Wisconsin). During the same fiscal year the Bureau awarded some 400,000 claims of all types.

When the appeals system was established, it was anticipated that 1 or 2 percent of all claims filed would be contested beyond the Bureau. According to this year's experience, only about 0.2 percent of all claims filed were appealed. On the basis of sample studies, about 4 percent of all claims filed were disallowed by the Bureau, and about 5 percent of the claims disallowed eventuated in appeal.

The great majority of requests for hearing and review are concerned with claims for benefits (table 1). Only 7 percent of all appeals so far have been with respect to requests for revision of a wage record by a worker who may file a claim at some time in the future. More than 71 percent are concerned with issues in claims for monthly benefits; the remaining 22 percent are divided between claims for lump-sum payments under the 1935 act and under the 1939 amendments. More than 40 percent of the cases involving monthly benefit claims relate to primary beneficiaries, that is, workers whose claims are based on their own wage records. The next largest proportion, more than 25 percent of the monthly benefit group, comes from children of wage earners, while about 15 percent comes from widows who have children entitled to monthly insurance benefits. Aged wives and widows together constitute 10 percent of the monthly benefit cases, and parents 10 percent.

The proportion of appeals from parents should be appraised in connection with the relatively small number of parents' claims. For the first calendar year, claims submitted by parents totaled about 1,700—about half of 1 percent of all claims filed. One out of every three claims presented by parents was disallowed by the Bureau during the first year of operation under the amended act. In proportion to the number of claims filed by parents, the disallowances and appeals from these disallowances by parents far exceeded those of any other type of claim. Disallowances arose chiefly because parents could not prove that they were "wholly dependent upon and supported by" the wage earner at the time of his death.

Reasons for Appeals

The classification of cases decided by referees reflects the major administrative difficulties encountered by the Bureau of Old-Age and Survivors Insurance in interpreting and applying to the facts of individual cases the law and the regulations (table 2). The first problem in adjudicating a claim is evaluating the wage earner's record to determine his "insured status," that is, his eligibility for benefits. This evaluation requires decisions as to whether the remuneration he received constitutes "wages" under the Social Security Act, whether it was distributed within periods which count toward insured status, and

Table 2.—*Percentage distribution of 757 cases [1] received for hearing and review, by issue, fiscal year 1940–41*

Issue	Percentage distribution
Total	100
Wages	28
Employment relationship	10
Survivor with prior right	9
Status of child	8
Status as widow	6
Dependency	5
Insured status	5
Agricultural labor	4
Computation of benefits	3
"Living with"	3
Government instrumentality	2
Equitably entitled	2
Family employment	1
Age	1
Miscellaneous	7

[1] See table 1, footnote 1.

whether the total is sufficient to meet the qualifying requirements.

Fully one-third of all hearing cases have come to the referees because the claims were rejected for lack of insured status or for incorrect designation of remuneration as "wages." Sworn testimony of employers and of fellow workers has been admitted in evidence at hearings to support claimants' contentions that wages actually paid were greater than the employer had reported. Sometimes the determination has depended on the evaluation of wages paid in kind, such as the use of a basement flat occupied by an apartment-house janitor, or on whether the wages paid were remuneration for the services of the claimant alone or in part for services rendered by other members of his family. Several cases have depended on whether wages which were not paid in either cash or kind may be considered as having been "constructively" paid. Claimants have frequently contended that, because their employers owed them more than they had been paid, there should be credited on their wage records the earned but unpaid amounts as well as the sums actually received. Whether and under what circumstances traveling expenses of salesmen should be counted as part of their wages has been involved in a considerable number of cases.

Other major problems which have come to the attention of the referees have dealt with coverage—i. e., whether the service performed by the wage earner is employment as defined by the Social Security Act. The case which rose to the Federal district court involves such an issue, as well as the issue whether there was any agreement or connection between the employer and the employee. In that case, the twofold question was whether the worker was an employee and whether his putative employer was a government instrumentality, services for which are excepted from the definition of employment. Among the cases regarding coverage have been those dealing with the definition of agricultural labor, such as work in a commercial hatchery, and those involving employment of a wage earner by a close relative, such as a father alleged to be employed by a partnership, of which his son is a member, rather than directly by his son. Both of these classes of service are excluded from the provisions of the Social Security Act, and wages earned in their performance cannot be counted toward benefits.

Cases involving family relationship constitute another important classification of requests for hearing.[2] About one out of every seven cases has been concerned with whether, within the meaning of the appropriate State legislation, the applicant was legally related as wife, widow, child, or parent to the wage earner. Other cases have required consideration of domestic relationships—for example, the problem which arises when two or more alleged wives or widows of the same man file claims based on his wage record. Not only must it be decided which one is the legal wife or widow, but also whether she was "living with" the wage earner. The solution of the latter question requires consideration of more than just whether the man and wife occupied the same abode. Under certain conditions, if the husband has been making regular and substantial contributions to her support or had been ordered by a court to do so, or if the absence of one spouse has been clearly temporary, they may be held to be "living with" one another. For example, the husband may be on the high seas for an extended period, while the wife maintains the home in the Middle West.

About one-sixth of the hearing requests compel inquiry into the various relationships and agreements between employer and employee. One of the most difficult technical problems is the application of the definition of "employment." When is an individual an independent contractor and when is he in the employ of another? When is the position of a salesman one of genuine independence, signifying that his remuneration is not wages, and when is his activity so controlled as to warrant regarding his remuneration as attributable to employment and hence as wages? Some cases turning upon this issue have required lengthy and exhaustive inquiry into such details as the hours of work required, territorial restrictions, controlling of itineraries, prescribed selling methods, demonstrations of products, furnishing of leads, reports of calls made, reports of prospects' credit rating, liability for customers' defaults, and restrictions upon sale of competitive or noncompetitive lines of goods.

Value of Appealing

Since the beginning of the appeals program, hearing referees have submitted to the consulting

[2] For a discussion of the problems involved in determining family relationships, see pp. 24–32.

referee 262 proposed decisions which differed from the Bureau's. In 180 of these the consulting referee approved the proposed decisions. In 65 others, the proposed decisions were disapproved and in about half of these cases the decisions recommended by the consulting referee were adopted and issued by the hearing officers. The remaining 11 of the 262 proposals were pending with the consulting referee on June 30. Twenty-five of the 65 cases in which the proposed decisions were disapproved were certified by the hearing referees to the three-member Appeals Council for its decision and one case was remanded to the Bureau, which revised its previous determination on the basis of new evidence. The referees also certified 10 of the 186 cases in which the consulting referee had approved their suggested decisions since, despite such approval, they desired additional consideration of the issues. With the approval of the Appeals Council, 11 cases were certified by the referees directly to the Council without prior submission of the proposed decisions to the consulting referee.

In addition to certified cases (in which the decision of the Appeals Council is both the initial and the final administrative decision resulting from a hearing), the Appeals Council has received claimants' requests for review of referees' decisions in 79, or 84 percent, of the 94 cases decided adversely to the claimants' contentions. About one out of every four cases, when initially decided—either by the referee or the Council—has resulted in the reversal or modification of the determination originally issued by the Bureau. About one in five of the cases decided by the Appeals Council upon review of a referee's decision has had a similar effect.

It is interesting to compare this record of affirmation and reversal with the record for claims reconsidered by the Bureau at the instance of claimants who protested initial determinations. A sample study of about 1,800 reconsiderations handled during the first 4 months of 1941 revealed that the Bureau reversed itself in 15 percent of the cases and that only 5 percent of the cases which it did not reverse were subsequently appealed.

According to procedure, a case may reach the Appeals Council either by continued objection on the part of the appellant or by the referee's certification. The cases certified to the Appeals Council have involved, on the whole, a narrower range of issues than the cases which claimants have brought to the Council on the basis of disagreement with referee decisions. Many of the certified cases have required extensive legal study. Some which involved interpretation of the act or regulations and about which there was considerable conflict of opinion were cleared, before being decided, with the interdepartmental coordinating committee. This committee is composed of members of the legal staffs of the Federal Security Agency and the Bureau of Internal Revenue.

Among the more important issues in these certified cases have been those regarding the interpretation of the Federal instrumentality exception and the application of certain of the Board's regulations concerning wages, particularly those with reference to traveling expenses and constructive payment. Others of the certified cases have turned upon the weighing of evidence as to the particular factual situation. For example, one claim for parent's benefits necessitated a finding as to whether the aged mother was dependent upon the deceased daughter, with whom she and two other daughters maintained a common household, or upon all three of the daughters jointly. The issue in another case was whether continued payment of wages to a bedridden worker was sick pay "under a plan or system," [8] and, as such, excluded by the act from wages. Several of the certified cases in which the facts have been quite clear have depended upon the correct interpretation and application of State laws and court decisions regarding such matters as common-law marriage, equitable adoption of children, or the determination of a person's last domicile.

Cases which claimants have requested the Appeals Council to review after unfavorable decisions by referees have less often than the certified cases been concerned with difficult or close questions of law or fact. In several instances, claimants, in requesting such reviews, have said that they did not expect a reversal of the referee, recognizing that his findings of fact were correct and that his application of the law was sound, but that they "hoped" the Appeals Council "might see things differently" or would give consideration to their evident "need" for the benefits sought. In some

[8] For a discussion of sick pay as taxable wages, see the Bulletin, July 1941, pp. 54-58.

cases and particularly in lump-sum claims, for which the act prescribes the relative priority of various possible claimants, the appeal has been to "fairness." The claim of a person who may have paid the burial expenses of a deceased wage earner may have been denied because of the existence of a survivor with a prior legal right to the lump sum, although such survivor may never apply for it or may have been unfriendly to the wage earner during his lifetime.

The effect of prosecuting appeals without legal merit in view of the particular facts is reflected in the proportion of decisions which favored appellants in the certified and the appealed cases. Whereas the decisions in 14 of the 25 certified cases in which decisions were issued by the end of the fiscal year differed from the determinations rendered by the Bureau, only 7 of the 39 cases reviewed on the request of the appellant reversed previous actions of the Bureau and the referee.

Favorable decisions of the Council frequently provide a basis for making monthly benefit payments to individuals other than the claimant in the case. Decisions with respect to primary insurance benefits affect benefits to which the wage earner's wife, if she satisfies other requirements of age and relationship, may be entitled. The rights of his children, if they are under 18 years of age, may also be concerned. In a case involving coverage or employment relationship, many other wage earners of the same or similar concerns may benefit by a determination which will be controlling in their own cases. This influence has been felt in certain decisions regarding the employees of a water users' association which, prior to the decision of the Appeals Council, had been held to be a Federal instrumentality by virtue of its relationship to the United States Bureau of Reclamation. Likewise, employees of building and loan associations holding memberships in the Federal Home Loan Bank System stand to benefit from a decision under which they were held to be employees under the Social Security Act, reversing previous determinations.

Conduct of Hearings

In the first year of operation, plans for the conduct of hearings crystallized into regular practice. In the early months of the fiscal year, referees received from the consulting referee a memorandum accompanying each case, analyzing the particular issue involved, suggesting suitable lines for the development of evidence, and calling attention to guiding opinions rendered by the Office of the General Counsel of the Federal Security Agency. This practice was continued later in an abbreviated form by furnishing only a list of pertinent Board actions, General Counsel opinions, and previous decisions by other referees or the Appeals Council. Extensive instructions regarding development of cases were discontinued.

The task of preparing the file for the purpose of informing the claimant prior to the hearing of all previous actions in his case has been minimized to the extent that only a descriptive summary of the evidence is now sent to the field office, where it may be read by the claimant. If in any case the claimant wishes to examine his complete file, a photographic copy is then obtained for his inspection. Originally, complete transcripts were made of the stenographic record of each hearing. This practice has been supplanted by mere recording in most cases, transcriptions being ordered only in cases which go to the Appeals Council or when the referee is unable to prepare a decision on the basis of his own notes. Whenever a case goes beyond the referee, however, the claimant receives every opportunity to study the evidence adduced at the hearing, in order that he may present to the Council carefully considered contentions regarding the interpretation of such evidence.

An innovation in hearing procedures is the narration, in the course of the opening remarks by the referee, of the procedural history of the case, a statement of the issues involved, and information as to the referee's authority and the degree of finality attaching to his decision. By this means the claimant becomes fully informed of the purpose of the hearing and also learns that his case may be decided by the Appeals Council instead of by the referee, if it involves an unusually difficult question of law, and that he may request a review of the referee's decision by the Council. Thus, the appellant is informed of the importance of the hearing as a vehicle for carrying—through the record of testimony—all pertinent evidence which he may have to present before the higher body, should such action become advisable.

Claimants may be represented by qualified agents in all cases heard before the referees or the Appeals Council. In about 15 percent of the cases

heard by referees, claimants have been thus represented—for the most part by attorneys. In the other cases, relatives, personal friends, and, on a few occasions, employers, spoke on behalf of the claimants. In general, the presence of representatives at hearings has not interfered with their orderly conduct. In some cases the questioning of witnesses by representatives and the submitting of attorneys' briefs relating to certain legal questions have been distinctly helpful. There has been little inclination on the part of attorneys or agents to ask unreasonable fees.

The Board empowers referees to admit to hearings, besides claimants themselves, such other persons as the referees may deem necessary and proper. Experience of the first year has shown that few individuals appear at hearings other than the parties concerned, the witnesses, and field-office officials whose testimony is needed. Some employers, although not parties in interest, have appeared when the issue was one of coverage or wage-record revision. The decisions, they evidently felt, might have a subsequent bearing on the question of their tax liability, not only with regard to the present claimant but possibly with regard to other employees. For this reason, employers occasionally have wished to submit evidence, examine witnesses, and file briefs. Others have attempted to obtain copies of decisions of the referee. It has been the practice of the referees to admit employers to hearings, even though they were not witnesses, if they attended as friends or advisers of the claimants. The principle that the records of the Social Security Board are confidential has, however, been zealously observed.[4] Employers and their representatives have been refused information regarding the decision, and they have not been permitted to inspect any portion of a hearing record other than that containing their own testimony. It is interesting, however, that some employers who learn of referees' decisions through the claimants themselves have assisted them in prosecuting appeals from adverse decisions. Apparently they have recognized that it is to their interest to obtain social insurance benefits for their past employees.

Summary

The nature as well as the volume of cases comprising active requests for hearing has subjected the hearing system to a test which should have revealed any fundamental defects. Although not all dissatisfied claimants have availed themselves of the privilege of review, either through reconsideration by the Bureau or through hearings before referees, those cases which have required redetermination have not revealed any serious difficulty in the procedures for review. The year's experience has substantiated the belief that the Board's basic provisions for hearing and review of claims, and the regulations and procedures designed to ensure fair hearings and decisions resulting from thoughtful deliberation, adopted for the purpose of being informative as well as determinative of the claimant's rights, were constructed on a solid foundation.

[4] See Merriam, Ida C., "The Protection and Use of Information Obtained Under the Social Security Act," *Social Security Bulletin*, Vol. 4, No. 5 (May 1941), pp. 13–19.