

PREPARED TESTIMONY OF CHARLES BRIDGES

GOOD MORNING, MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM.

My name is Charles Bridges. I am an Administrative Law Judge with the Social Security Administration, Office of Disability Adjudication and Review. I am employed in this capacity in the Harrisburg, Pennsylvania office.

I have served in the capacity of Administrative Law Judge since on or about June 4, 2010. Prior to my service as an administrative law judge, I was Hearing Office Chief Administrative Law Judge (HOCALJ) for the Harrisburg, Pennsylvania office. I served as HOCALJ for the Harrisburg, Pennsylvania office from May, 2004 until June 4, 2010.

Before serving in the Harrisburg, Pennsylvania office, I was Chief Judge for the Office of Disability Adjudication and Review office in Hartford, Connecticut from 2002 until 2004. I started my career with the Social Security Administration

as administrative law judge in the Hattiesburg, Mississippi office.

I am a native of Baltimore, Maryland, having graduated from Baltimore City College High School (with honors). I attended Morgan State University on scholarship and graduated with a degree in Chemistry.

I am a veteran whose military career includes service in Vietnam as a First Lieutenant in the U. S. Army. I also served in the Gulf War with the 24th Infantry Division (Rapid Deployment Force). My active and reserve service in the military includes numerous awards and decorations which I refer to in more detail in my Biographical Sketch that is attached to my Testimony. My last rank was that of Lt. Colonel.

After military service I attended law school at the Cleveland State University, Cleveland, Ohio, and received my Juris Doctorate. I continued with my education and have attained a Master's Degree and Doctorate in Theology from the Andersonville Theological Seminary, Camilla Georgia.

I wish to provide the following, two caveats to my Testimony presented

today:

First, the views expressed in this Testimony are mine, in my personal capacity as a private citizen. In this Testimony, I do not represent the views of the Social Security Administration or the United States Government. I am not acting as an agent or representative of the Social Security Administration or the United States Government in this activity. There is no express or implied endorsement of my view or activities by either the Social Security Administration or the United States Government.

Second, I wish to disclose that I am currently involved in litigation concerning my employment with the Social Security Administration. See Bridges v. Astrue, et al., Civil Action No. CV-2316 (E. D. Pa. 2012); also Bridges v. Astrue, et al., Appeal No. 14-1580 (3rd Cir. 2014). My Testimony will not deal with and I will not comment upon any issues or matters that are involved in this litigation.

The Office of Disability Adjudication and Review

As the Committee may know, the Social Security Administration, Office of

Disability Adjudication and Review (ODAR) is established pursuant to the Social Security Act to adjudicate entitlement to Social Security disability and supplemental income benefits when claimants who have been denied these benefits by a local office decision elect to appeal that denial.

The decision-making process for a grant of social security benefits begins at the field office level. A claimant files an application at a Social Security local field office. An employee in the local office determines if the applicant meets the non-medical requirements for benefits (age, work credits, relationship to the insured worker, etc.). If the non-medical requirements are met, the application is sent to the Disability Determination Services (DDS) for medical review, or transferred to the office in the state where the applicant resides. This office, upon receipt of a recommendation from the DDS, makes an initial decision whether an individual is disabled or, otherwise, eligible for benefits under the Social Security law. 42 U. S. C. §§ 416;423.

If the claimant is denied, he/she may, with limited exceptions, appeal this denial to ODAR. Each claimant who elects to appeal a denial is entitled to a hearing before an administrative law judge. This hearing must be *de novo* and

impartial. At this hearing, the judge is required to make a decision, based on the record established before him/her, as to whether the claimant meets the requirements of the Social Security law for receipt of benefits, and the level of benefits. See 42 U. S. C. §§ 201, *et seq.*

The record on which the judge must base his/her decision consists of medical evidence concerning the claimant and the work history (previous jobs held) of the claimant. At the hearing, the judge is given the opportunity to observe the demeanor of the claimant, and make an assessment regarding the truthfulness and candor of the claimant. The information before the judge commonly includes medical reports wherein experts make recommendations as to whether the claimant has a physical or a mental impairment that prevents this individual from engaging in substantial gainful activity in the workplace.

The medical reports may be reports of the claimant's treating physician, or of a medical expert specifically retained for the case. Also, the testimonies of vocational and medical experts are available at the hearing.

The hearing before the Social Security administrative law judge is the first

opportunity for the claimant to confront any adverse considerations involved in the field office's conclusion to deny benefits. The ODAR hearing is where the first open "due process" occurs.

Administrative Law Judges Operate in a Quasi-Judicial Capacity

Social Security Administration administrative law judges, by law, act in a quasi-judicial role to schedule hearings at which they receive evidence, evaluate testimony, apply the law, and issue a decision.

A judge is required by the federal Administrative Procedures Act (APA), 5 U. S. C. §§ 554; 556; 557; also 5 U. S. C. § 3105; 5 C. F. R. §§ 930.201-930.211, to exercise complete independence in his/her review and adjudication of a case.

See Butz v. Economou, 438 U. S. 478 (1978).

After the administrative law judge issues a decision, a claimant may seek review of this decision by the Social Security's Appeals Council. The Appeals Council may also engage in selected, post-decision review of a judge's decision. I have recently been the subject of such a review of my decisions with no adverse findings concerning my decisions.

A denied claimant may also seek federal court review before a United States district court. 42 U. S. C. § 405(g); See Brownawell v. Comm. Social Security, 554 F.3d 352 (3rd Cir. 2008); also Truglio v. Astrue, Civil Action No. 4:10-CV-2129 (M. D. Pa. 2011); 2011 U.S. Dist. LEXIS 129462.

When a decision of the Social Security Administration is appealed to federal court, that court will exercise plenary review of any legal issues that are raised. Findings of fact in the decision are reviewed by the court as to whether they are supported by substantial evidence.

At the ODAR office, the HOCALJ has overall managerial oversight and responsibility for the performance of that office. While the HOCALJ has managerial oversight responsibility for supervising the distribution of appeal cases to subordinate judges, the HOCALJ, and the judges themselves, are removed from the mechanical and physical performance of this function. The process by which judges receive cases for their adjudication is implemented through case intake technician personnel.

Since the electronic age, cases are distributed rotationally and electronically,

as far as practicable, by support management officials called “Group Supervisors” (GS). Non-electronic cases are rotationally distributed, as far as practicable, by Case Intake Technicians (CITs) based on managerial directives.

The primary objective of case assignment is to assign cases to judges on a “first-in, first out basis.” There are, however, exceptions to this process. Exceptions are based on factors such as a terminal illness of a claimant, military personnel injured in active duty, or claimants who are in “dire need.” Cases of these categories may take priority in assignment.

The Group Supervisors have the primary responsibility for the match-up, assembly, collection, organization, and preparation of the claimant’s file for the judge to hear. This process is generically called, the “working up” of the case or, preparation of the case for the scheduling of hearings with a judge.

Administrative Law Judges submit requests for cases to be assigned to him/her on a form - “Optional Form 67,” subject to HOCALJ approval. Cases are assigned to group ALJs by the GS staff based on the scheduling calendars received from the HOCALJ.

There have been recent, managerial directives to limit the amount of cases assigned to administrative law judges. Currently, and according to managerial directives, judges are limited to 840 cases per year, or, 70 cases per month.

Comparison of Cases Among Judges is Misleading and Contrary to Law

Recently, a Harrisburg, Pennsylvania CBS affiliated local television station aired a report which referenced me and in so doing cited several factually inaccurate numbers that the report associated with my record as a judge.¹

I have also been specifically mentioned in prior testimony before this Committee by employees of the Social Security Administration.

The Harrisburg CBS affiliate report has cited a figure of \$4.6 billion in, “taxpayer money,” that is attributed to my record as a judge. The numbers cited in this report are not verifiable, are factually inaccurate and, in my opinion, are an unfortunate example of irresponsible and sensationalist journalism.

¹ See Channel WHP 21, Harrisburg, Pennsylvania, May 16, 2014 Telecast: “Harrisburg Disability Judge Awards Billions in Taxpayer Money.”

As a threshold consideration, the length of time it takes for adjudication of a Social Security appeal has been the subject of recent Congressional inquiry.

In August, 2008, the Inspector General, pursuant to the request of the Hon. Michael R. McNulty, House of Representatives and Chairman, Subcommittee on Social Security Committee Ways and Means, issued a report, “Administrative Law Judge and Hearing Office Performance.” This report is cited as Congressional Response Report #A-07-08-28094 (August 8, 2008). The report provided a significant qualitative and quantitative review of the Social Security Administration offices’ performance and the roles of judges.

The object of the Congressional Response Report #A-07-08-28094 was stated as follows:

. . . to address the requests of Congressmen Michael R. McNulty and Sam Johnson regarding administrative law judge (ALJ) and hearing office performance. Specifically, the Congressmen requested information on (1) factors that affect ALJ and hearing office performance, (2) Office of Disability Adjudication and Review (ODAR) management tools, and (3) Social Security Administration (SSA) initiatives . . .

Congressional Report #A-07-08-28094, concluded in the Executive

Summary, the following:

SSA is facing the highest number of pending cases and highest average case processing times since the inception of the disability programs. As of April 2008, there were over 755,000 cases awaiting a decision at the hearings level. Further, Fiscal Year (FY) 2008 ALJ processing times averaged 505 days, as of April 2008. While the average number of cases processed per ALJ has increased from FY 2005 to FY 2007, some ALJs continue to process cases at levels below Agency expectations to increase ALJ productivity.

Congressional Report #A-07-08-28094 further concluded: “Our interviews disclosed that ALJs have varying levels of productivity due to factors such as motivation and work ethic. (Emphasis Charles Bridges). In fact, our interviews with RCALJs disclosed that motivation and work ethic were one of the main factors that contributed to higher or lower productivity. (Emphasis supplied) In fact, one RCALJ we interviewed stated a lower producing ALJ was not motivated to process more cases despite oral and written counseling, written directives, and reprimands. . .”

The extensive references to the 2008 Congressional Response Report are supportive of the first point that I present to the Committee:

First: It is misleading and factually inaccurate to suggest that there is or should be a numerical basis on which to compare administrative law judges in their decisional outcomes in the adjudication and disposition of social security appeals.

The 2008 Congressional Response Report has properly found that motivation and work ethic are some of the main factors that affect the productivity and processing times of judges. A more motivated judge with a high work ethic will likely be a more productive judge concerning the volume of cases that he/she is able to address in any fiscal year. A highly productive judge will, necessarily, have more cases on which a sample may be taken. I have been a highly productive judge in the Social Security Administration because of motivation and work ethic.

According to statistics compiled during an Administrative Law Judge and Hearing Office Performance Audit, for fiscal year 2007, the Harrisburg, Pennsylvania office, under the supervision of myself, while HOCALJ, had an average case processing time of 265 days. This 265 day processing time was the best of any Social Security Administration office in the United States. This fact placed the Harrisburg office among the most well-run in the nation during my

tenure as HOCALJ. Processing time for other offices throughout the United States ranged from 291 days for the Middlesboro, Kentucky office, to 900 days for the Atlanta, Georgia office.

Based on the foregoing, motivation and work ethic are significant factors which may be addressed regarding the productivity of administrative law judges as a basis of comparison.

Second: Apart from the issue of productivity of administrative law judges is the substantive question of decisional outcomes.

It is improper and contrary to the Administrative Procedures Act and the United States Constitution to engage in a comparison of decisional outcomes of judges. See Grant v. Shalala, 989 F.2d 1332 (3rd Cir. 1993), citing, inter alia, United States v. Morgan, 313 U.S. 409 (1941).

It is misleading and factually inaccurate to suggest to this Committee or to the public that there is or should be a numerical basis on which to compare administrative law judges in their decisional outcomes regarding the adjudication

and disposition of social security appeals.

When the public hears statements that a judge approves X% of cases assigned to him/her, or reverses a denial of benefits X% of the time, these figures are misleading to the public. They are also contrary to law.

Any judge who renders a decision on a social security appeal and considers any factors outside of the record before that judge would commit, in my opinion, a gross violation of the constitutional rights of the claimant. As the Committee is aware, the Constitution guarantees its citizenry the equal protection of the laws and due process of law. See, generally, Bowen v. New York, 476 U. S. 467 (1986). Consideration of factors outside of the record would violate these rights of the claimant and, invariably, suggests actionable bias on the part of the judge who would engage in such an act.

Under the well-established principles of separation of powers², the judge's role is to apply the facts to the law in the record before him/her and conclude

² See, generally, Free Enter. Fund v. Pub. Co. Accounting Oversight Bd., ___ U. S. ___, 130 S. Ct. 3138 (2010).

whether the applicant meets the requirements for disability under the Social Security law.

When any person uses a numerical figure on which to compare judges in their decisional outcomes, this suggests an impermissible and unlawful use of quotas.

CONCLUSION

There are mechanisms in place to insure the integrity of the social benefits provided to United States citizens under Social Security. After a claimant is successful in receiving an award of benefits there is a process in place and funded for a post-award audit and review to determine if the conditions that resulted in the award still exist.

Whether there are additional measures that may be implemented is a political question which is within the province of the Congress.

I thank the Subcommittee for the opportunity to present this Testimony.

Date: June 10, 2014

Signed: _____
Charles Bridges