

Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE: AUGUSTUS MARTIN

CASE NUMBER: WAS1400051Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 06/18/2014 **TO:** 09/10/2014

RELATED CASE NUMBERS:

REPORTED BY: KEVIN HUSE

FIELD DIVISION: PHILADELPHIA

OFFICE: WASHINGTON DC

STATUS OF CASE: INVESTIGATION CLOSED REPORT

SYNOPSIS:

This is the final report of investigation pertaining to United States Office of Special Counsel (OSC) File no. DI-13-4045.

ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

Refer to all previous reports of investigation for additional information, the most recent of which was submitted on September 7, 2014.

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INVESTIGATIVE ACTIVITY:

Summary of the information with respect to which the investigation was initiated:

On April 10, 2014, the Honorable Carolyn N. Lerner, Special Counsel, OSC, referred a whistleblower disclosure to the Honorable Carolyn W. Colvin, Commissioner of the Social Security Administration (SSA). The referral alleged that employees of the SSA, Office of Disability Adjudication and Review (ODAR), Office of the Chief Administrative Law Judge (OCALJ), National Hearing Center (NHC), Baltimore NHC, may have engaged in violation of law, rule, or regulation and of gross mismanagement. These allegations were made by Scott Wiltrout (Wiltrout), a former Legal Assistant in the Baltimore NHC. (Attachment 1)

The OSC requested that the SSA investigate the whistleblower's allegation and report the findings to the OSC within 60 days of the agency's receipt of the OSC referral letter. Specifically, the OSC requested that the following allegations be investigated:

- *“NHC management and administrative law judges (ALJs) directed employees to assemble evidence for disability hearings without properly reviewing it for accuracy, in violation of agency policy; and*
- *NHC employees were responsible for numerous instances of neglect in handling and preparing evidentiary files, which resulted in a denial of claimants' hearing rights.”*

On June 18, 2014 the SSA, Office of General Counsel (OGC) requested that the Office of the Inspector General (OIG) conduct an investigation into the allegation. On this date, I was assigned to investigate the allegations in the OSC referral letter, referencing OSC File No. DI-13-4045. Attorney Jennifer Herrmann of the OIG, Office of Counsel to the Inspector General (OCIG), and Auditor Parham Price of the OIG, Office of Audit (OA), were assigned to assist with the investigation.

Per its policy, the OSC required that the SSA interview the whistleblower, Wiltrout, at the onset of the investigation into his disclosures in order to obtain additional information and explanation of his allegations. In accordance, I contacted Wiltrout on June 24, 2014 to schedule an interview and request that Wiltrout provide any documentation in support of his allegations. On June 25, 2014, Wiltrout began providing me with emails and exhibits that he referenced or presented during his discussions with the OSC.

On June 26, 2014, Attorney Herrmann, Auditor Price, and I interviewed Wiltrout at the SSA/OIG Washington Office. At the onset of the interview, Wiltrout provided a copy of his referral to the OSC. (Attachment 2) We reviewed this referral with Wiltrout and discussed his disclosures of alleged misconduct at the Baltimore NHC. (Attachment 18)

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Wiltrout explained that Legal Assistants in the Baltimore NHC are responsible for the case workup of an electronic claim file. The case workup, or case pulling, is the process by which all documents, requests, and evidence received on behalf of a claimant are reviewed, entered, and exhibited in the electronic file. Wiltrout stated that the policies and procedures regulating this process are established through the Hearings, Appeals, and Litigation Law Manual (HALLEX), and through Chief Judge Bulletins (CJBs).

According to Wiltrout, section I-2-1-15 of the HALLEX (Attachment 6), in correlation with CJB 08-02 (Attachment 4) and its successor CJB 10-03 (Attachment 5), provide the policy guidelines for exhibiting evidence in advance of a hearing. CJB 08-02, entitled *Modified Exhibiting for Certified Electronic Folders (CEFs)*, was issued on February 1, 2008 to all ODAR hearing level employees. CJB 08-02 introduced the following minimally acceptable “Streamlined CEF Folder Assembly Steps,” beginning with Section A of the CEF:

- *“Open each document within the section in order to determine appropriate metadata (sources, dates, document types).*
- *Key in all metadata.*
- *Do not rearrange the pages in chronological order.*
- *Download any missing documents from ORS.*
- *Scan in queries/paper documents as necessary into the appropriate sections.*
- *When finished, select all relevant documents and click the “Add to Exhibit List” button. Continue the process with Sections B, D, E, and F.*
- *Do not exhibit duplicates from a prior adjudication level.*
- *In CPMS, delete any electronic folder transactions for items scanned.”*

Based on these instructions, Wiltrout opined that, *“Baltimore NHC clerical employees were supposed to open and review every page of every document in every electronic file that they worked up.”* (Attachment 2)

On April 21, 2010, CJB 10-03, entitled *Folder Assembly for Certified Electronic Folders (CEFs)*, replaced CJB 08-02. The CJB was composed by the ODAR/OCALJ following a national review of component work products related the assembly of CEFs. Under CJB 10-03, staff should:

- *“Open each document within Section A*
 - *Determine the appropriate metadata (sources, dates, document types).*
 - *Verify the document does not contain personally identifiable information (PII) for another individual and remove pages as appropriate.*
 - *Remove documents which are duplicates of another document already being exhibited. EXCEPTION: Remember that documents placed in the CEF from a prior adjudication level must be retained in their original section in the CEF. Do*

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- not move them to Section C.
- *There is no need to rearrange pages in a document.*
- *Split commingled documents into individual documents.*
- *Delete the barcode.*
- *Update page numbers.*
- *Key in all necessary metadata.*
- *When finished, select all relevant documents in Section A and click the Add to Exhibit List button. There is no need to arrange them in chronological order.*
- *Continue the process with Sections B, D, E, and F.*
- *In CPMS, delete any To Do Items for completed actions.”*

Wiltrout alleged that, despite receiving training on these policies, management in the Baltimore NHC instructed employees to use improper procedures in an effort to expedite case workups. Specifically, Wiltrout alleged that management instructed staff to exhibit documents in the CEF without a prior or complete review of those documents. Wiltrout recalled that, on May 19, 2010, approximately one month after the dissemination of CJB 10-03, the Baltimore NHC received training in the “*Modified Streamlined Folder Assembly*” process, presented by David Hash (Hash), a former Case Manager in the Baltimore NHC. This process called for the exhibiting of all documents in the A, B, D, and E sections of the CEF, and an abbreviated review of medical records. (Attachment 3)

Wiltrout further alleged that employee negligence and failure to perform proper case workups might have resulted in violations of claimants’ hearing rights. Specifically, Wiltrout stated that employees failed to review every page of every document contained in an electronic claim file, delayed the timely processing of mail, willfully ignored telephone inquiries, and failed to address items requiring further action, such as change of address notifications, representative appointments, and video teleconference waiver requests. Wiltrout estimated that these actions resulted in the Baltimore NHC incorrectly processing thousands of disability claims, which potentially caused a case dismissal or other violation of the claimant’s due process rights.

Summary of investigative findings:

During the course of this investigation, we interviewed OCALJ management, current and former Baltimore NHC staff, and reviewed ODAR policies and procedures. We also conducted audits of Baltimore NHC workloads and pulled cases.

The ODAR launched the NHC initiative in December 2007 in an effort to address and reduce the backlog of SSA disability claims pending a hearing before an ALJ. The NHCs focus on electronic claims and host remote hearings via teleconference. According to SSA’s Program Operations Manual System (POMS), the electronic claim folder, or CEF, is “*an electronic disability repository that stores the claimant’s disability file information.*” The CEF is created when a SSA field office enters a claim for disability benefits into the Electronic Disability Collect System. At all stages of the application process, documents and evidence are entered into the CEF and reviewed. Those claims

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escalating to the hearing level have generally received development prior to reaching the office responsible for the hearing. The policies regulating ODAR's actions once it receives a request for hearing and the corresponding CEF are outlined in the HALLEX, CJBs, POMS, and the Standardized Electronic Business Process.

On August 18, 2014, Attorney Herrmann, Auditor Price, and I interviewed Ray Meisels (Meisels), Director of the SSA/ODAR/OCALJ/NHC/Central Office, and Samuel Martinez (Martinez), Branch Chief of the Central Office, Workload Control Branch. The Central Office is responsible for ensuring that hearing offices are in compliance with the HALLEX and the Electronic Business Process. According to Meisels and Martinez, CEFs routed to a NHC have already received a case workup and are generally ready to schedule. When reviewing documents to propose as exhibits, Legal Assistants should look at every page of every document to determine its relevance to the CEF. However, there is no requirement to read and analyze every page. (Attachment 34)

On September 3, 2014, I discussed ODAR policies with Susan Swansiger (Swansiger), Director of the SSA/ODAR/OCALJ/Office of Field Procedures (OFP). The OFP oversees ODAR field practices and authors policy in the HALLEX. Swansiger advised that, to complete properly a case workup, it is necessary for case technicians to look at every page of every document when preparing it for exhibit. However, Swansiger explained that HALLEX I-2-1-15 and CJB 08-02 refer to exhibiting documents, not reviewing them. She explained that exhibiting is essentially the numbering of pages. Swansiger pointed out that the documents selected for exhibiting during the case workup are proposed exhibits. It is ultimately the responsibility of the ALJ to review and approve of every exhibit. (Attachment 36)

Before highlighting the findings of this investigation, it should be noted that SSA field procedures for generating CEFs, and ODAR's own interpretation of its policy, suggest that Wiltout's allegations are predicated upon a mischaracterization of policy. Throughout his disclosure, Wiltout states that HALLEX I-2-1-15, CJB 08-02, and CJB 10-03 provide the procedures for exhibiting documents in a CEF prior to the hearing. While this is true, Wiltout's assertions incorrectly imply that Legal Assistants must "*review every page of every indexed claimant document during case work ups, scrutinizing them for relevance and importance.*" (Attachment 1) As noted above, every page of every document must be viewed, but it does not necessarily require analysis. Such analysis occurs at subsequent stages of the hearing process. Legal Assistants must only view pages to determine relevance, identify metadata, and ensure that the PII of others is not contained in the file.

Allegation from OSC referral:

"NHC management and administrative law judges (ALJs) directed employees to assemble evidence for disability hearings without properly reviewing it for accuracy, in violation of agency policy."

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Finding:

With respect to NHC management and ALJs directing employees to perform case workup without properly reviewing evidence for accuracy, this investigation found that the Baltimore NHC did provide training and instruction to staff in a process that was inconsistent with policy. Specifically, in May 2010, the Baltimore NHC provided training that instructed employees to exhibit all documents in particular sections of the CEF and conduct an abbreviated review of documents for appropriate metadata.

Wiltrout alleged that, in 2009, Baltimore NHC Chief ALJ Augustus Martin (Martin) instructed clerical staff to exhibit all documents in the CEF, without the appropriate review required by policy. According to Wiltrout, Martin referred to this as the “*simplified method*.” This process was implemented to expedite cases to the hearing docket, facilitating a greater number of dispositions. Although this process was short-lived, similar instructions were communicated to the Baltimore NHC during mandatory training provided in May 2010.

This investigation was unable to fully substantiate the allegation that ALJ Martin instructed staff to exhibit all documents in the CEF without a full and proper review. ALJ Martin passed away in February 2013, and those that recalled his “*simplified method*” had differing recollections. Despite this, employees did confirm that ALJ Martin instructed staff members to exhibit all documents in the CEF. However, multiple employees noted that ALJ Martin never instructed staff to exhibit all documents without first reviewing them.

On April 21, 2010, the OALJ issued CJB 10-03, which instructed staff to determine the appropriate metadata, split commingled documents, and verify that the document does not contain the personally identifiable information (PII) of another individual. Accordingly, this policy implies that, at a minimum, every page of every document be reviewed for commingled documents and the PII of another individual (CJB 08-02 did not require a similar review for PII). Furthermore, in accordance with HALLEX I-2-1-15, employees must confirm that the document is material to the issues of the case.

On May 19, 2010, Hash provided training to the Baltimore NHC, advising staff to exhibit all documents in Sections A, B, D, and E of the CEF, and to conduct an abbreviated review of documents contained in Section F to determine the necessary metadata. This abbreviated review is inconsistent with the HALLEX I-2-1-15 requirement that proposed exhibits be reviewed for materiality to the case, and the CJB 10-03 requirement to review every page for commingled documents and PII.

On August 5, 2014, I interviewed Hash. Hash worked as a Case Manager in the Baltimore NHC from approximately October 2009 through June 2011, and is no longer employed by the SSA. Hash

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confirmed that he presented training to the Baltimore NHC staff in the “*Modified Streamline Folder Assembly*” process. Hash asserted that the training was consistent with ALJ Martin’s “*simplified method,*” and was approved by ALJ Martin and the Administrative Officer, Michael Polvino (Polvino). Hash explained that, in his training, he advised staff to review the beginning, middle, and end of medical evidence to determine the appropriate metadata and date range only. Hash confirmed that he did not review every page of every document. (Attachment 29)

Hash reported that some of the Baltimore NHC managers took issue with his training, arguing that policy required the staff to look at every page of every document. Hash stated that his method, under the authorization of ALJ Martin, attempted to streamline the process, taking into consideration the multiple layers of CEF review following the initial workup. He explained that, at a minimum, the Case Manager and the ALJ would both review the CEF in advance of the hearing, thereby ensuring that nothing would be overlooked.

On August 20, 2014, I interviewed Polvino. Polvino was detailed to the Baltimore NHC as the Administrative Officer for approximately one year, beginning in February 2010, and has since retired. Polvino was familiar with Hash’s “*Modified Streamline Folder Assembly*” process, but did not specifically recall approving of it. Polvino recalled that the intention of the “*Modified Streamline*” process was to provide a means of reviewing the pertinent information without rearranging and ordering records spanning multiple years. It was not intended to be an alternative to reviewing documents altogether. Polvino further confirmed that each page of every document would need to be reviewed for misplaced documents and PII. (Attachment 35)

Although we found that the training provided by Hash was inconsistent with policy, the investigation did not substantiate its widespread use and implementation. Wiltout proclaimed that a review of cases worked up during this period would reflect “*a sudden increase in the number of case files worked up and a drastic decline in the quality of cases.*” (Attachment 2) To assess the accuracy of this statement, the OIG/OA, conducted a review of the Baltimore NHC workload, beginning in Fiscal Year 2010, the first full year of operation. The analysis compared the Baltimore NHC to four other NHCs also in operation during that time.

Cases Pulled per Year

	Baltimore	Falls Church	Chicago	Albuquerque	St. Louis
FY 2013	4,757	2,681	5,513	3,705	10,357
FY 2012	7,815	8,508	7,188	5,409	9,652
FY 2011	4,336	5,388	7,225	4,331	9,566
FY 2010	8,070	6,897	9,256	3,419	871

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Average Cases Pulled per Available Resource

	Baltimore	Falls Church	Chicago	Albuquerque	St. Louis
FY 2013	580.12	397.77	534.21	880.05	631.14
FY 2012	663.98	881.66	430.68	788.48	897.03
FY 2011	338.22	501.68	404.54	847.55	409.85
FY 2010	531.97	545.65	1271.43	1075.16	635.77

ALJ Dispositions

	Baltimore	Falls Church	Chicago	Albuquerque	St. Louis
FY 2013	5704	6996	7169	3137	9771
FY 2012	8220	6239	8380	3526	9,253
FY 2011	6362	6443	8199	3573	8747
FY 2010	5850	6326	6647	3606	319

(Attachment 15)

The OIG/OA also conducted an analysis of pulled cases at the Baltimore NHC. The audit sample consisted of 50 cases from 2009 and 50 cases from 2010. All cases were assigned to either ALJ Martin or ALJ David Pang, the judge presiding over Hash's unit. The audit found the following:

FY 2009:

- 45 out of 50 cases were worked up properly.
- 4 out of 50 cases were worked up, but were missing some dates and were not exhibited.
- 1 out of 50 cases had an incomplete electronic folder that did not contain any medical records or an ALJ Decision, and was therefore inconclusive. (Attachment 16)

FY 2010:

- 50 out of 50 cases were worked up properly. (Attachment 17)

Contrary to Wiltrot's assertion, the data does not reflect a "sudden increase" in workload and "drastic decline" in quality. Although the Baltimore NHC accomplished a significant amount of pulled cases in 2010, the average per resource is consistent with subsequent years. In addition, the sample suggests that the quality of case workups improved from 2009 to 2010. Accordingly, the data is not indicative of widespread use and implementation of the improper procedures.

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Allegation from OSC referral:

"NHC employees were responsible for numerous instances of neglect in handling and preparing evidentiary files, which resulted in a denial of claimants' hearing rights."

Findings:

Wiltout alleged violations of due process resulting from claimants not receiving reasonable notice for hearings and the failure to ensure fair evidentiary hearings. He asserts that employees failed to review every page of every document in the CEF, delayed the timely processing of mail, willfully ignored telephone inquiries, and failed to address items requiring further action, such as change of address notifications, representative appointments, and video teleconference waiver requests. Despite these claims, this investigation found no substantiated evidence that a claimant's hearing rights were violated.

As the audit findings suggest, cases heard in the Baltimore NHC did ultimately receive the proper and required workup prior to the hearing. The HALLEX builds into policy several redundancies to ensure dispositions are rendered based upon a complete evidentiary analysis of the disability claim. For example, it is standard practice for the Case Manager to periodically review the CEF from the time the hearing is scheduled until the actual hearing date. The Case Manager will ensure all documents received in the interim are processed and exhibited accordingly. Furthermore, the HALLEX requires that claimants be afforded multiple opportunities to review evidence, be notified of hearing dates, and that hearings are not dismissed without a determination of cause.

It is required that the ALJ provide the claimant an opportunity to review the proposed exhibits before and on the day of the hearing. Consequently, multiple opportunities exist to address any information potentially overlooked during the initial workup. HALLEX I-2-1-35 requires that the claimant or their representative be provided the opportunity to examine all proposed exhibits, and the contents of the entire CEF, prior to the hearing. If a representative does not have online access to the record, an encrypted compact disc containing the proposed exhibits is generally provided. (Attachment 7) Furthermore, HALLEX I-2-6-34 requires that the claimant or their representative be afforded the opportunity to review all records that constitute evidence of record on the day of the hearing. (Attachment 13) The claimant retains the right to identify any deficiencies and object to any proposed exhibit.

The scheduling of a hearing occurs after the CEF receives workup by a Legal Assistant. At the onset of this process, HALLEX I-2-3-10 states that the *"hearing office staff will generally contact hearing participants to ascertain availability before scheduling the hearing."* (Attachment 8) This allows the hearing office to identify a hearing date that is conducive for all parties, and it reduces the likelihood of rescheduling. On September 4, 2014, I interviewed Supervisory Case Manager

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Angela Delillye (Delillye), the Baltimore NHC manager responsible for scheduling. Delillye confirmed that the Baltimore NHC staff will attempt to contact the claimant or their representative by telephone before scheduling any hearing. (Attachment 37)

According to HALLEX I-2-3-15, a notice of hearing time and date must be provided to the claimant at least 20 days prior to the date of the hearing. Taking the potential for claimant relocation into consideration, I-2-3-15 states:

“To ensure the notice of hearing is sent to the last known address, HO staff will check the following Personal Communications (PCOM) system queries for updated addresses:

- *the Full Master Beneficiary Record (FACT) for title II cases,*
 - *the Supplemental Security Income Display (SSID) for title XVI cases,*
 - *the Modernized Development Worksheet (MDW) for either title,*
 - *the Customer Service Record (CSR) for either title, and*
 - *the Prisoner Update Processing System (PUPS) for either title.”*
- (Attachment 9)

Policy instructs ODAR employees to use sources other than the claim folder to obtain the claimant’s last known address. If mail is returned as undeliverable, staff reported that they will develop the address through the U.S. Postal Service and other sources. Accordingly, the failure of an employee to properly identify or process a change of address request would not necessarily result in the denial of the claimant’s hearing rights.

Furthermore, each notice of hearing includes an Acknowledgment of Hearing Notice, Form HA-504, which is to be returned to the hearing location by the claimant and the claimant’s representative. Follow-up is required if the form is not returned to the SSA within seven days. HALLEX I-2-3-20 states:

“If the acknowledgment form is not returned within 7 days, send a written Reminder to Return Acknowledgment Form, or telephone the claimant or representative, if any, to ask whether he or she plans to attend the hearing...NOTE:If HO staff intends to give notice by telephone, HO staff must personally speak to the claimant or representative, if any, to satisfy the notification requirement.”

(Attachment 10)

Should a claimant fail to appear at a scheduled hearing, an ALJ cannot dismiss a case based solely on that failure, as alleged by Wiltout. The ALJ must consider multiple circumstances, as directed by HALLEX I-2-4-25, which states in part:

“Before dismissing an RH [request for hearing] for failure to appear, the ALJ must determine whether there is evidence in the record that shows the claimant was properly

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notified of the time and place set for the hearing as described in HALLEX I-2-3-20 C. The ALJ will consider the following:

- o If the claimant has an appointed representative, notification to the representative is sufficient to establish notification to the claimant.*
- o If the follow up contact was made by telephone, the ALJ must ensure the proper documentation is in the file, as noted in HALLEX I-2-3-20 C.*
- o If the claimant alleges he or she reported a new address to another agency component such as the field office or teleservice center but the notice of hearing was sent to an outdated address, the ALJ will review the queries noted in HALLEX I-2-3-15 B and carefully consider the allegation.*

If the record does not show there was proper notification of the scheduled hearing, the ALJ must reschedule the hearing and provide proper notification of the rescheduled hearing.”

(Attachment 11)

Furthermore, a claimant has the ability to request that an ALJ vacate a dismissal order within 60 days of the date of dismissal notice, or if the claimant proved the dismissal was erroneous, as outlined in HALLEX I-2-4-10. (Attachment 12)

As a failsafe to ensure and protect claimants’ hearing rights, claimants denied at the hearing level may file for a request for review with the Appeals Council of the ODAR, Office of Appellate Operations (OAO). Upon review of the facts and good cause, the Appeals Council can remand an ALJ’s decision or dismissal.

Since the occurrence of events disclosed by Wiltrout, the ODAR has taken additional steps to improve its customer service and quality assurance. For example, in 2013, the Baltimore NHC relocated to Towson, Maryland and replaced its antiquated telephone system. The former system consisted of individual telephone lines for each employee, and lacked the ability to route overflow calls to available staff. Consequently, as Wiltrout alleged, callers to the Baltimore NHC frequently failed to reach a representative. The new system allows for management oversight to ensure the lines are monitored, and routes overflow calls to a manager. In addition, in September 2010, the OAO, Division of Quality, launched an initiative to sample unappealed hearing decisions. The initiative created Quality Review Branches responsible for ensuring consistent and legally sufficient decision making. These quality assurance reviews provide an opportunity for ODAR to identify deficiencies in policy and procedure and help shape future training for the staff.

Despite the efforts to ensure that ALJ decisions are rendered upon fair evidentiary hearings, this investigation did identify one area of concern. Wiltrout provided documentation that he was instructed to destroy mail received in the Baltimore NHC after cases were closed. On March 9, 2010,

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Supervisory Paralegal Specialist (Case Manager) Sonya Napier (Napier) instructed Wilttrout go through the mail “*and see if the case is still open. If so, distribute mail, if not destroy.*” (Attachment 38) Napier was interviewed on August 11, 2014. She reported that it is acceptable to shred mail received on closed cases that received a fully favorable decision, as it would have no impact on the disposition. (Attachment 30) However, the ODAR has the authority to reopen any determination under certain circumstances. For example, upon a finding of fraud or similar fault, the ODAR can reopen the case at any time. (Attachment 14) Accordingly, it is important that the record be complete. The ODAR Standardized Electronic Business Process, Section 1.2.C.9, requires that all mail received on cases closed in the Case Processing Management System (CPMS) be barcoded, scanned into CPMS, and associated with the CEF. The document can only be destroyed if the evidence is an exact duplicate of a record on file. (Attachment 39) While the impact of these actions could not be determined through this investigation, it is recommended that ODAR evaluate its policies and training related to the appropriate processing and handling of mail. (Note: On September 9, 2014, OIG requested additional policy interpretation from the SSA/ODAR/OCALJ/Office of Field Procedures. A response was not received in time for the submission of this report.)

Summary of Evidence Obtained from Investigation:

The following exhibits were acquired or compiled during the course of the investigation and are attached hereto.

ATTACHMENTS

1. Letter from OSC to SSA, April 10, 2014
2. Wilttrout Disclosure to OSC
3. Modified Streamlined Folder Assembly
4. Chief Judge Bulletin 08-02
5. Chief Judge Bulletin 10-03
6. HALLEX I-2-1-15
7. HALLEX I-2-1-35
8. HALLEX I-2-3-10
9. HALLEX I-2-3-15
10. HALLEX I-2-3-20
11. HALLEX I-2-4-25
12. HALLEX I-2-4-10
13. HALLEX I-2-6-34
14. HALLEX I-2-9-60
15. OIG/OA – National Hearing Center Workload Comparisons
16. OIG/OA – FY 2009 50 Sample Cases for ALJ Pang and ALJ Martin
17. OIG/OA – FY 2010 50 Sample Cases for ALJ Pang and ALJ Martin
18. ROI – Interview of Scott Wilttrout

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19. ROI – Interview of Earnest Baskerville Jr.
20. ROI – Interview of Tomika Greene
21. ROI – Interview of Michael Joyner
22. ROI – Interview of Angela Delillye 1
23. ROI – Interview of Rosina Randolph
24. ROI – Interview of ALJ Pang
25. ROI – Interview of Wynette Brogden
26. ROI – Interview of John Stasik
27. ROI – Interview of ALJ Farnes
28. ROI – Interview of ALJ Dummer
29. ROI – Interview of David Hash
30. ROI – Interview of Sonya Napier
31. ROI – Interview of Renea Bowles
32. ROI – Interview of Stephanie Meilinger
33. ROI – Interview of Millicent Janey
34. ROI – Interview of Ray Meisels and Samuel Martinez
35. ROI – Interview of Michael Polvino
36. ROI – Interview of Susan Swansiger
37. ROI – Interview of Angela Delillye 2
38. Email from Sonya Napier to Scott Wilttrout, March 9, 2010
39. Standardized Electronic Business Process, Section 1.2
40. Memorandum from Wilttrout to ALJ Dummer, March 21, 2011

The OIG investigation into the allegations referred to the SSA by the OSC in the April 10, 2014 letter, referencing OSC File No. DI-13-4045, is complete. With this report, the matter is referred back to the SSA/OGC for any actions deemed appropriate.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: AUGUSTUS MARTIN Address: ODAR OCALJ NHC Baltimore, MD 21204

Subject: ODAR OCALJ NHC Address: 849 Fairmont Avenue Baltimore, MD 21204

JUDICIAL ACTION:

N/A

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N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: KEVIN HUSE 09/10/2014

APPROVED BY: MICHAEL MCGILL 09/10/2014

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**PAGES 1-3 of 25 AND 24-25 of 25 CONTAINED PERSONAL
INFORMATION OF WHISTLEBLOWER AND WERE NOT PROVIDED**

Attorney Phone numbers: Fax

Attorney Phone numbers: Fax Ext

Attorney Phone numbers: Other

Attorney Phone numbers: Other Ext

Attorney Email: Email

Other sources(s) (please explain):

Please identify the U.S. government department or agency involved in your disclosure
Social Security Administration

Please identify the organizational unit of the department or agency involved
Baltimore National Hearing Center, Office of the Chief Administrative Law Judge, Office of Disability Adjudication and Review

Address of the organizational unit
2709 North Rolling Rd., Suite 106, Baltimore, MD 21244

Please identify the type of agency wrong doing that you are alleging
Violation of law, rule or regulation

Violation of law, rule or regulation (please specify):
Due Process Clause of the Fifth Amendment to the U.S. Constitution; Social Security Act § 1631(c) (1)(A), 42 U.S.C. § 1383(c)(1)(A); 20 C.F.R. §§ 404.938 and 416.1438; HALLEX I-2-1-15; ODAR Office of the Chief Administrative Law Judge Chief Judge Bulletin (CJB) 08-02 (later replaced by CJB 10-03); ODAR Office of the Chief Administrative Law Judge Chief Judge Bulletin (CJB) 10-03; HALLEX I-2-3-10; HALLEX I-2-6-1; 18 U.S.C. § 1001; and the Standards of Ethical Conduct for Employees of the Executive Branch § 2635.101(b)(11), 5 C.F.R. § 2635.101(b)(11).

Please identify the type of agency wrong doing that you are alleging
Gross mismanagement

Please identify the type of agency wrong doing that you are alleging
Gross waste of funds

Please identify the type of agency wrong doing that you are alleging

Please identify the type of agency wrong doing that you are alleging

Please identify the type of agency wrong doing that you are alleging

Please describe the agency wrong doing that you are disclosing
WHISTLEBLOWER DISCLOSURE REGARDING THE SOCIAL SECURITY
ADMINISTRATION'S BALTIMORE NATIONAL HEARING CENTER

INTRODUCTION

The Social Security Administration's Baltimore National Hearing Center violated rules, regulations, and laws. The Baltimore NHC processed thousands of disability cases incorrectly. In addition, NHC employees failed to scan thousands of important documents into claimants' files in a timely manner, if at all. When documents did make it into claimants' files, employees often did not take the correct actions relating to those documents. Furthermore, Baltimore NHC employees failed to answer thousands of phone calls from claimants and their representatives during the first two years the office was open. These factors undermined the legal sufficiency of decisions issued by the Baltimore NHC. The NHC violated the due process rights of claimants, many of whom were disabled.

Baltimore NHC employees also falsified official government time records in violation of 18 U.S.C. § 1001, and management likely committed an ethics violation by not reporting this to the appropriate authorities. Furthermore, there was a tremendous amount of waste at the NHC. The NHC's conduct clearly evidences gross mismanagement.

It is particularly important to report the NHC's actions, as a great many claimants for disability benefits were mistreated. Claimants for disability benefits should be treated with courtesy and respect. At the very least, they must be treated fairly. The Baltimore NHC failed utterly in this regard.

Claimants may file an appeal if they are denied disability benefits at the hearing level, but the appeals process is meant to deal with honest mistakes. It is not designed to deal with a situation where an office intentionally processed thousands of cases incorrectly. The appeals process is also not designed to deal with gross mismanagement. In order to remedy the NHC's mistreatment of claimants, the Social Security Administration must review all unfavorable decisions and dismissals that were issued by the Baltimore NHC. The Social Security Administration must process every one of these cases correctly from start to finish.

THE SOCIAL SECURITY ADMINISTRATION'S BALTIMORE NATIONAL HEARING CENTER PROCESSED THOUSANDS OF DISABILITY CASES INCORRECTLY.

The Social Security Administration's Baltimore National Hearing Center processed thousands of disability cases incorrectly. Baltimore NHC management directed employees to process thousands of cases in a manner that was contrary to SSA procedures. Management also encouraged employees to violate SSA procedures by rewarding employees who processed cases incorrectly and punishing employees who processed cases correctly.

By processing claimants' cases incorrectly, the Baltimore NHC was able to issue a large number of dispositions. This made management appear highly efficient and productive. Claimants, on the other hand, suffered. Members of management then tried to create the appearance of legitimacy by sending e-mails and holding meetings in which they told employees to process cases correctly.

The Baltimore National Hearing Center conducts video hearings for claimants who have been denied disability benefits. The rules, regulations, and laws involved in the hearing process come from several sources. The Due Process Clause of the Fifth Amendment to the U.S. Constitution requires the U.S. Government to provide due process of law before permanently depriving a person of property. The Social Security Administration must provide claimants with procedural due process, reasonable notice and a fair hearing, before permanently depriving them of disability benefits, which are considered a property interest. While the Social Security Administration does not need to provide a hearing prior to

an initial determination of disability benefits, a claimant is entitled to reasonable notice and a fair evidentiary hearing before a final determination.

In regard to a claimant's right to notice and a hearing, the Social Security Act § 1631(c)(1)(A), 42 U.S.C. § 1383(c)(1)(A), provides the following:

The Commissioner of Social Security shall provide reasonable notice and opportunity for a hearing to any individual who is or claims to be an eligible individual or eligible spouse and is in disagreement with any determination under this subchapter with respect to eligibility of such individual for benefits, or the amount of such individual's benefits, if such individual requests a hearing on the matter in disagreement within sixty days after notice of such determination is received, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing affirm, modify, or reverse the Commissioner's findings of fact and such decision.

The regulations at 20 C.F.R. §§ 404.929 and 416.1429 also discuss a claimant's right to a hearing. In addition, the regulations at 20 C.F.R. §§ 404.938 and 416.1438 require that SSA provide claimants with proper notice of their hearings. A violation of these regulations would deprive a claimant of procedural due process.

The Hearings, Appeals and Litigation Law (HALLEX) manual defines procedures for carrying out policy and provides guidance for processing and adjudicating claims at the hearing level. HALLEX I-2-1-15 provides procedures for exhibiting evidence prior to scheduling disability hearings. When the Baltimore NHC opened in 2009, however, ODAR offices could opt to exhibit Certified Electronic Folders (CEFs) in the streamlined method outlined in Chief Judge Bulletin 08-02 (CJB 08-02) rather than the more rigorous and time consuming traditional method. CJB 08-02 provided the minimum acceptable standard for exhibiting evidence at that time. It was necessary for employees to follow certain procedures when exhibiting evidence in order to ensure that each claimant received a fair hearing.

The process of exhibiting evidence prior to scheduling hearings was referred to as "case workup" or "case pulling." In July and August 2009, legal assistants at the Baltimore NHC received training in case workup. The training materials included Chief Judge Bulletin 08-02 (CJB 08-02), which instructed, "Begin folder assembly by opening each section one at a time beginning with Section A" and "[o]pen each document within the section in order to determine appropriate metadata (sources, dates, document types)." Essentially, Baltimore NHC clerical employees were supposed to open and review every page of every document in every electronic file that they worked up. They were also supposed to properly label and date these documents.

During the first couple of months that the Baltimore NHC was open, much of the clerical staff worked up cases in a manner consistent with CJB 08-02. Former Baltimore NHC Chief Administrative Law Judge Augustus Martin, however, later ordered employees work up cases in a manner that violated SSA procedures. During a clerical meeting that I attended at the end of 2009, Judge Martin directed members of the clerical staff not to open any of the documents in claimants' files while working up cases. He said that we should simply select all documents and then exhibit all documents. Judge Martin referred to this as his "simplified method." I would estimate that at least one thousand cases were processed in this manner.

Judge Martin's "simplified method" was contrary to both CJB 08-02 and HALLEX I-2-1-15. Employees were supposed to open and review every page of every document during workup, but

Judge Martin ordered employees not to open any documents. Employees were supposed to properly label and date every document in the file, but Judge Martin ordered them not to label or date any of the documents. This method of processing cases allowed the NHC to hold more hearings and issue more dispositions, making Judge Martin and other members of management appear more efficient and productive.

For obvious reasons, Judge Martin never put his "simplified method" in writing. However, it was later referenced in e-mails, wherein a supervisor stated that the practice should be discontinued. The other employees who were members of the clerical staff at the end of 2009 should be able to corroborate the fact that the meeting with Judge Martin took place. In addition, a review of case files worked up during this time period should show a sudden increase in the number of case files worked up and a drastic decline in the quality of cases.

In January 2010, supervisors instructed employees to discontinue working up cases using Judge Martin's "simplified method." On January 22, 2010, Supervisory Paralegal Specialist Angela Delillye sent an e-mail stating, "Effective today, and until further notice start working up all cases in the streamline method." On January 22, 2010, former Paralegal Specialist (Case Manager) Donna Hopson inquired, "What exactly are they calling streamline method? Please respond." On January 22, 2010, former Supervisory Paralegal Specialist Sonya Napier forwarded a response from Supervisor Angela Delillye stating, "The way we were pulling cases prior to Judge Martin's simplified method of pulling." On January 23, 2010, Ms. Delillye sent another e-mail stating, "The streamline pulling I am referring to is the pulling everyone was doing before we began the Judge Martin simplified method."

However, several paralegal specialists (case managers) did not comply with this instruction. In addition, Judge Martin continued to encourage employees to disregard SSA procedures on case workup. On several occasions, Judge Martin instructed me to get direction on case workup from a friend of his, former Paralegal Specialist (Case Manager) David Hash.

On a couple of occasions, I asked Mr. Hash how he worked up cases. He told me that he exhibited all documents in the A thru E sections of each case file without opening any of the documents. Mr. Hash also said that he only looked at the first page and last page of the medical records in the F section. He told me that he entered only the dates found on these two pages of each document as the date range.

Unfortunately, the pages within many medical records were not in chronological order. As such, the dates from the first and last pages of medical records often did not accurately represent the date ranges of medical treatment. I saw several cases that Mr. Hash had worked up in this manner, and the date ranges listed for several of the medical records were incorrect. Mr. Hash's method of working up cases, which was endorsed by Judge Martin, involved mislabeling the date ranges of medical records. Administrative law judges may have made incorrect decisions based on these mislabeled records.

Mr. Hash informed me that he had worked up hundreds of cases in this manner. He told me that he was able to work up over 20 cases per day. In addition, he bragged that he once worked up over 140 cases in a single month. It would have been virtually impossible for a person to legitimately work up that many cases in a month.

On April 21, 2010, the ODAR Office of the Chief Administrative Law Judge issued Chief Judge Bulletin 10-03 (CJB 10-03), which replaced CJB 08-02. It was consistent with provisions of HALLEX I-2-1-15. Under CJB 10-03, the procedures contained therein "must be performed for every case that is scheduled for hearing." ODAR adopted the process outlined by CJB 10-03 because it

“provides an exhibited folder that meets the requirements of our governing regulations, the quality standards of our judges, and the requirements of subsequent appellate levels.”

One day shortly after CJB 10-03 was issued, I noticed Judge Martin at David Hash’s cubicle. They greeted me, and the conversation turned to the subject of case workup. Mr. Hash again told me of his method of exhibiting all documents in the A thru E sections of each case file without opening any of the documents. He again went on to describe how he only looked at the first page and last page of the medical records in the F section. Mr. Hash also said that he entered only the dates found on these two pages as the date range.

Judge Martin then told me that I should follow Mr. Hash’s instructions. I replied that Mr. Hash’s instructions contradicted written procedures on case workup. As I explained this, Judge Martin’s face gradually turned red. He curtly told me that Mr. Hash would hold a meeting and would give me something in writing. He then stomped off.

On May 18, 2010, Acting Administrative Officer Michael Polvino sent an e-mail instructing all clerical employees to attend a mandatory training session on case workup. Mr. Polvino also sent this e-mail to Judge Martin and all supervisors.

On May 19, 2010, former Paralegal Specialist (Case Manager) David Hash conducted a “training session” on case workup for the legal assistants and case managers. I attended this training session. Acting Administrative Officer Michael Polvino was also in attendance. Mr. Hash told employees to exhibit all documents in the A thru E sections of each case file and open only a few of the documents.

This contradicted CJB 10-03, which instructed, “Open each document within Section A” and “[c]ontinue the process with Sections B, D, E and F.” Baltimore NHC clerical employees were supposed to open every document in every electronic file that they worked up, but Mr. Hash, under Judge Martin’s authority, directed employees not to open many of the documents in claimants’ files while working up cases. I would estimate that employees processed thousands of cases incorrectly.

One day in September 2010, I went for a walk around the outside of the Baltimore National Hearing Center during my lunch break. Another employee accompanied me on this walk. Judge Martin approached me at the far end of the building and said that he felt comfortable being blunt with me since we were outside the building. He then stated, “You need direction in terms of your workup numbers. You should take direction from Dave [Hash]. We don’t care about performance appraisals. We don’t care about the Chief ALJ Memo. ODAR cares about numbers.” These remarks embodied ODAR’s disregard for SSA procedures and the due process rights of claimants.

Judge Martin made these remarks to me only hours after I had found out that I had been denied a promotion. He was letting me know that I had been denied a promotion because I had refused to violate SSA procedures in order to help him reach his monthly goals. Essentially, NHC management punished me because I had refused to mistreat claimants, many of whom were disabled.

Baltimore NHC management also rewarded employees who worked up cases incorrectly. In 2010, I viewed a fairly large number of claimants’ files when I burned exhibit CDs for hearing sites. I also viewed quite a few claimants’ files when I responded to phone inquiries from claimants and their representatives. I noticed that Wynnette Brogden, Judge Martin’s paralegal specialist (case manager) at that time, had worked up a large number of cases, and she had worked up a number of them in a manner inconsistent with CJB 10-03. She had failed to exhibit several important documents, and she

had failed to properly label a number of documents. It was some of the sloppiest work I had seen, and I fixed what I could.

Ms. Brogden had worked up a number of cases incorrectly, and this allowed the office to schedule more hearings and issue more dispositions. This made management appear efficient and productive. NHC management promoted Ms. Brogden to a supervisory position in 2010. She was rewarded for working up cases in a manner contrary to SSA procedures.

As a supervisor, Ms. Brogden encouraged employees to work up cases in a manner inconsistent with CJB 10-03. On March 18, 2011, Ms. Brogden sent employees an e-mail requesting that they "strive to pull at least 6 cases a day." Later that evening, I spoke with Ms. Brogden regarding the e-mail. I asked her if I should work up cases in a manner consistent with recent training sessions at the Baltimore NHC. Ms. Brogden replied, "No, do whatever you need to do to get me six cases a day." She then directed me not to open many of the documents while working up cases.

Shortly after I spoke with Ms. Brogden, she discussed case workup procedures with Paralegal Specialist (Case Manager) John Stasik. I was able to hear the conversation, as Mr. Stasik's cubicle was directly next to my cubicle. Ms. Brogden asked Mr. Stasik, "Can you work up six cases a day?" Mr. Stasik replied, "Yes, but they will be shitty cases." He went on to explain why it was necessary to open every document in the electronic folders. Ms. Brogden retorted, "Well, we don't have time for that."

On the morning of March 21, 2011, I met with Administrative Law Judge Rosanne Dummer. Baltimore NHC Chief Administrative Law Judge Milagros Farnes had to attend training that week, and she had left Judge Dummer in charge of the Baltimore NHC. I explained to Judge Dummer that my supervisor, Ms. Brogden, had directed me to work up cases in a manner that was inconsistent with recent training, CJB 10-03, and the due process rights of claimants.

I asked for guidance, as I was expected to work up cases for that entire week. Judge Dummer advised me to keep working up cases in a manner consistent with CJB 10-03 until I received other direction in writing. She also said she would speak with Ms. Brogden.

Later that day, Paralegal Specialist (Case Manager) Loanda Carter came over to my cubicle and said that Wendy needed to see me. I went to Ms. Brogden's cubicle. She told me that she had gotten into trouble because I had spoken with Judge Dummer. Ms. Brogden said that I should not have spoken with Judge Dummer. She also reminded me that she, Ms. Brogden, would give me my next performance review.

She told me that most of my performance review would be based on my workup numbers. She also said that she did not think that I would be able to get high enough workup numbers to do well on my next performance review without using her "shortcuts," which employees were no longer allowed to use because I had complained to Judge Dummer.

Ms. Brogden's remarks were plainly a threat of retaliation. She made it clear that she would give me a negative performance review because I had reported her conduct to Judge Dummer. I told Ms. Brogden that I hoped that she was not planning to retaliate against me. I also explained that I would not violate Agency policy, and I would not mistreat disabled people.

As a result of Ms. Brogden's threat, I went to speak with Acting Administrative Officer Renea

Bowles on the evening of March 21, 2011. I explained that Ms. Brogden had directed me to act in a manner that was contrary to CJB 10-03. I also presented Ms. Bowles with a copy of a short memorandum that I had written for Judge Dummer.

In addition, I explained that Ms. Brogden had threatened to retaliate against me for speaking with Judge Dummer. I mentioned how Ms. Brogden had brought up the subject of my performance review during our recent discussion in her cubicle. I also shared Ms. Brogden's statement that my performance review would be based mostly on my workup numbers. Ms. Bowles told me that this was not true. I also later spoke with Baltimore NHC Chief ALJ Milagros Farnes.

As a result of my actions, NHC management cultivated the appearance of processing cases correctly. Ms. Bowles directed employees to fill out a checklist when working up cases. Baltimore NHC Chief ALJ Milagros Farnes also conducted a small audit of case quality. For awhile, Ms. Brogden even instructed employees to process cases according to CJB 10-03. These measures were designed to give the appearance of legitimacy. In reality, management continued to encourage employees to work up cases incorrectly.

At the same time that employees were supposed to fill out checklists to ensure that they were working cases up correctly, Ms. Bowles gave at least one employee a prize for working up cases incorrectly. On April 4, 2011, Ms. Bowles sent an e-mail offering prizes to employees who worked up more than 50 cases during the month. She offered employees their choice of either a mirrored ball or a lava lamp. At the end of April, I saw David Hash exiting the NHC with a mirrored ball. We spoke briefly, and he said that Ms. Bowles had given him a mirrored ball as a prize for working up more than 50 cases during April.

I later viewed several of the cases Mr. Hash had worked up during April, and I noticed that he had not added date ranges to many of the medical records. This was inconsistent with CJB 10-03, which required employees to properly date medical records. Dating medical evidence was one of the most important parts of processing files, as the dates of treatment were relevant in making disability determinations. It was also the most time consuming part of working up files. Mr. Hash had processed a large number of cases by not performing this step, and that helped the office schedule more hearings and issue a larger number of dispositions. This made management appear efficient and productive. Ms. Bowles had given Mr. Hash a prize for processing cases incorrectly.

NHC management also punished employees who worked up cases correctly. My April 2011 Performance Discussion Form stated, "However at the present time, he is not producing his fair share of work according to supervisory expectations in regards to working up cases." On May 3, 2011, I spoke with Acting Administrative Officer Renea Bowles in order to understand the basis for this remark, and she informed me that she had directed supervisors to put similar remarks in the performance discussions of all clerical employees who had worked up an average of less than 30 cases per month.

Employees who had worked diligently and had followed SSA procedures, but who had worked up less than 30 cases per month, received a negative remark. On the other hand, employees who were able to work up a very large number of cases by violating SSA procedures would not have received this negative remark. This suggested that NHC Management punished employees for following SSA procedures. In addition, many employees had to spend most of their time performing work duties other than case workup. I submitted a rebuttal explaining this, and the negative remark has not appeared in any of my subsequent performance discussions.

The most important thing to NHC management was reaching the monthly goal of hearing dispositions. At the end of one month in 2011, I overheard Ms. Bowles discussing the monthly goal with Supervisory Paralegal Specialist Stephanie Meilinger, who sat near me. Ms. Bowles then told Ms. Meilinger that a particular ALJ would sign anything; she didn't even have to look at it. I took this to mean that the ALJ was willing to sign disability decisions without looking at them, because that would help the office reach the monthly goal.

On another occasion, when the office had issued a large number of dispositions for the month, members of NHC management formed a conga line with employees and danced around the office. The office had issued a large number of dispositions by processing claimants' cases incorrectly. I found it appalling that management and other employees were dancing around the office to celebrate that they had made themselves look good by mistreating claimants, many of whom were disabled.

In addition, it appeared that NHC management rewarded another employee for working up cases incorrectly. On October 14, 2011, Supervisor Wynnette (Wendy) Brogden sent an e-mail stating, "Gift cards are up for grabs...it will be worth the effort!!!" I believe that management later gave a gift card to a particular legal assistant for working up a large number of cases. Subsequently, I noticed that this legal assistant had worked up several cases without exhibiting entire sections of files, and that was inconsistent with CJB 10-03, which required employees to properly exhibit all sections of each file. In August 2012, NHC management promoted her to a paralegal specialist (case manager) position. It appeared that management had rewarded her with a promotion for working up cases incorrectly.

All three of the employees who were rewarded for working up cases incorrectly worked under Supervisory Paralegal Specialist Angela Delillye while they were working up cases incorrectly. Each paralegal specialist (case manager) worked under a supervisor, but was also assigned to an administrative law judge. For example, David Hash worked under Ms. Delillye, but he was also assigned to Judge David Pang. Before her promotion, Wynnette (Wendy) Brogden worked under Ms. Delillye, but she was also assigned to Judge Augustus Martin. Before her promotion, the legal assistant who worked up cases incorrectly only reported to Ms. Delillye. Ms. Delillye's employees worked up a very large number of cases incorrectly, and this allowed the office to schedule more hearings and issue more dispositions.

The Social Security Administration's Baltimore National Hearing Center processed thousands of disability cases incorrectly. Baltimore NHC management directed employees to process thousands of cases in a manner that was contrary to SSA procedures. Management also encouraged employees to violate SSA procedures by rewarding employees who processed cases incorrectly and punishing employees who processed cases correctly.

By processing claimants' cases incorrectly, the Baltimore NHC was able to issue a large number of dispositions. This made management appear highly efficient and productive. Claimants, on the other hand, suffered. The procedural due process implications of the NHC processing thousands of cases incorrectly will be discussed later.

NHC EMPLOYEES FAILED TO SCAN THOUSANDS OF IMPORTANT DOCUMENTS INTO CLAIMANTS' FILES IN A TIMELY MANNER, IF AT ALL.

NHC employees failed to scan thousands of important documents into claimants' files in a timely

manner, if at all. Claimants and their representative often submitted changes of address, Appointments of Representative, video declination letters, medical evidence, and other important correspondence to the Baltimore NHC through the mail. Once the mail was received, legal assistants had to open the mail and date stamp the documents; query CPMS for status and jurisdiction; generate barcodes; scan documents into the correct claimants' files; and clear the scanners. NHC employees often failed to perform these tasks correctly and in a timely manner. This undermined the legal sufficiency of decisions issued by the NHC.

Legal assistants had to open the mail and date stamp the documents, but they failed to do this in a timely manner. Legal assistants routinely let mail pile up on their desks, sometimes for weeks, before bothering to open it. At least one employee hid large stacks of unopened mail in his desk.

In 2010, I witnessed Legal Assistant Michael Joyner stuffing large stacks of unopened mail in his desk. I noticed that there were already very large stacks of unopened mail in his desk. On March 9, 2010, Supervisor Sonya Napier sent me an e-mail indicating that Mr. Joyner had been piling stacks of mail on her desk. When I spoke with Ms. Napier, she explained that Mr. Joyner had left piles of unopened mail on her desk right before taking some time off. I believed that these were the large stacks of unopened mail I had previously observed Mr. Joyner hiding in his desk.

Ms. Napier assigned three employees to process this mail because there was so much of it. Tangelia Taylor and Terri Brown opened the mail, and I then queried CPMS for status and jurisdiction. If the case was not assigned to an ALJ, I generated barcodes for the documents and scanned them into the correct claimant's file. If the case was assigned to an ALJ, I gave the documents to the ALJ's paralegal specialist (case manager).

Many of these important documents were more than a month old. As a result of Mr. Joyner not opening mail in a timely manner, important documents did not make it into claimants' files in a timely manner. A number of the cases had already been closed. ALJs had made decisions without considering evidence that claimants and their representatives had submitted. This undermined the procedural due process rights of claimants and the legal sufficiency of decisions issued by the NHC. Even after this incident, management allowed Mr. Joyner to continue handling claimants' files.

Once NHC employees had opened mail, they had to query CPMS for status and jurisdiction, and generate barcodes. Employees were then supposed to scan the documents into the correct claimants' files. NHC employees failed to perform these tasks correctly. In several instances, employees did not match up barcodes with documents correctly, and they consequently scanned documents into the wrong claimants' files. I frequently came across documents that had been scanned into the wrong claimants' files.

In April 2012, I discovered that an NHC employee had scanned documents pertaining to seven different claimants' cases into the wrong files. I noticed that at least six of the seven documents had been faxed to the NHC on April 2, 2012. Legal Assistant Michael Joyner had been assigned to handle the faxes from that day. I provided this information to Supervisor Wynnette (Wendy) Brogden.

Management later stopped assigning fax duty to a specific legal assistant each day. Management started collecting the faxes and distributing them among legal assistants. I believe that management did this to avoid holding employees accountable. If management assigned a particular legal assistant to handle faxes on a given day and those faxes were scanned into the wrong claimants' files, management would have a good idea as to who was responsible. Management would then have to

take appropriate action. If, on the other hand, management collected the faxes and distributed them among legal assistants, it would be very difficult to ascertain which employee had scanned the faxes into the wrong claimants' files. Management would then not have to hold anyone accountable.

Employees were also supposed to manually index documents that had been saved in the office scanners on a daily basis. When employees did not use barcodes or used unreadable barcodes when scanning documents, the documents were saved in the scanners rather than routed to claimants' files. The NHC also provided claimants' representatives with barcodes that they could use to fax documents directly into claimants' files through the fax server. When claimants' representatives did not use barcodes or used unreadable barcodes when faxing documents to the fax server, the documents were saved in the scanners rather than routed to claimants' files. Employees then had to manually index the documents, that is, manually send them to the correct claimants' files.

NHC employees failed to manually index thousands of documents from the office scanners in a timely manner. Employees were supposed to manually index the documents in the scanners on a daily basis to ensure that the documents were routed to the correct claimants' files in a timely manner. Employees often failed to do this. There were often many old documents saved in the scanners. In several instances, I observed that there were more than 100 documents saved in the scanners, and the oldest document was more than a month old. This occurred repeatedly over several years.

When I checked one of the scanners on July 24, 2013, I noticed that there were 228 documents in the scanner's memory, and some of the documents were more than 9 months old. This evidence did not make it into claimants' files in a timely manner, and that likely impacted ALJs' disability decisions.

Even when employees did manually index documents in the office scanners, they often did not do so correctly. When the NHC opened in 2009, NHC management failed to provide new employees with proper instruction regarding manual indexing. As a result, employees often left one or more of the indexing values blank while manually indexing documents. In particular, employees left the "Request ID" field blank. When employees did not use the correct indexing values, documents were not sent to claimants' folders within a few minutes of indexing, as they should have been.

I made former Administrative Officer Millicent Janey aware of the problem in September 2011, and she had Hearing Office Systems Administrator Tamara Ramsey send an e-mail to employees with instructions on how to manually index documents correctly. Of course, this did nothing for the thousands of claimants whose cases had already been decided. In addition, as of 2013 there are still employees do not know how to manually index documents correctly.

NHC employees failed to scan thousands of important documents into claimants' files in a timely manner, if at all. Employees often failed to open the mail in a timely manner. In several instances, employees scanned documents into the wrong claimants' files. Employees also often failed to clear the office scanners correctly and in a timely manner.

This undermined the legal sufficiency of disability decisions issued by the Baltimore NHC. Administrative law judges could not consider the evidence that did not make it into claimants' files, and this likely impacted their decisions. The NHC's failure to ensure that documents made it into claimants' files in a timely manner had further implications in terms of procedural due process, but this will be discussed later.

WHEN DOCUMENTS DID MAKE IT INTO CLAIMANTS' FILES, EMPLOYEES OFTEN DID

NOT TAKE THE CORRECT ACTIONS RELATING TO THOSE DOCUMENTS.

When documents did make it into claimants' files, employees often did not take the correct actions relating to those documents. NHC employees often failed to update claimants' addresses in the CPMS database in a timely manner. Employees also often failed to add claimants' representatives in the CPMS database in a timely manner. In addition, employees often failed to exhibit new evidence in a timely manner. NHC employees also often failed to process objections to video hearings in a timely manner. Furthermore, in at least some cases, employees failed to process dire need requests in a timely manner.

It was crucial that employees add the correct information to the CPMS database in a timely manner, because correspondence that employees generated through SSA's Document Generation System (DGS) showed whatever information was listed in CPMS. When employees failed to update information in CPMS, correspondence generated through DGS showed incorrect information. NHC employees often failed to add the correct information to CPMS in a timely manner.

NHC employees often failed to update claimants' addresses in the CPMS database in a timely manner, and this resulted in the NHC sending several hearing notices to incorrect addresses. When an employee received a change of address for a claimant via mail or fax, that employee was supposed to scan the change of address into the correct claimant's file and then add the claimant's new address in CPMS. If an employee noticed a change of address in a claimant's file during workup, that employee was supposed to add the claimant's new address in CPMS. If there was an Electronic Folder Transaction (EFT) showing that a change of address had been scanned into a claimant's file, an employee was supposed to check the file for the change of address, exhibit it if the file had already been worked up, and add the new address in CPMS. Employees often failed to perform these steps in a timely manner, if at all.

When employees failed to update claimants' addresses in CPMS, correspondence generated through DGS showed incorrect addresses. The NHC then sent correspondence to incorrect addresses. As a result, a number of claimants did not receive important correspondence relating to their cases. In several cases, hearing notices were sent to the wrong addresses because claimants' addresses had not been updated in CPMS. In some instances, claimants' cases were dismissed because they did not show up at the hearings of which they had not been properly notified. This was a clear violation of claimants' procedural due process rights, as they had not received proper notice of their hearings.

Employees also often failed to add claimants' representatives to the CPMS database in a timely manner, and this resulted in the NHC not sending important correspondence to representatives. When an employee received an Appointment of Representative (Form 1696), that employee was supposed to scan the 1696 into the correct claimant's file and then add the representative to the claimant's case in CPMS. If an employee noticed a 1696 in a claimant's file during workup, that employee was supposed to add the representative in CPMS. If there was an EFT showing that a 1696 had been scanned into a claimant's file, an employee was supposed to check the file for the 1696, exhibit it if the file had already been worked up, and add the representative in CPMS. Employees often failed to perform these steps in a timely manner.

When employees failed to add representatives to claimants' cases in CPMS, correspondence generated through DGS was not mailed to representatives. In addition, representatives who had not been added to their clients' cases in CPMS could not access those clients' files electronically. The NHC failed to provide representatives with timely access to their clients' exhibit files, and this

hindered their ability to represent their clients.

As a result of employees not adding representatives to claimants' cases in CPMS, the NHC also scheduled several hearings without contacting representatives. This was inconsistent with HALLEX I-2-3-10, which states, "The HO [hearing office] staff should telephone hearing participants to ascertain availability before scheduling the hearing." In addition, the NHC failed to send hearing notices to several representatives. This was inconsistent with HALLEX I-2-6-1, which states, "The regulations at 20 CFR §§ 404.938, 416.1438, require that a notice of the hearing to be provided to the claimant and the representative, if one is of record, at least 20 days before the hearing."

NHC employees also often failed to exhibit new evidence in a timely manner, and this resulted in representatives not being able to view the evidence in claimants' files in a timely manner. When an employee received new evidence for a claimant via mail or fax, that employee was supposed to scan the evidence into the correct claimant's file. If there was an EFT showing that new evidence had been scanned into a claimant's file, and if the case had been worked up and/or scheduled, an employee was supposed to review, label, date, and exhibit the evidence. Employees often failed to perform these steps in a timely manner.

Representatives could not generally view evidence until it was exhibited. When the NHC opened, employees were supposed to burn exhibit CDs for most representatives, but these CDs only included evidence that had been exhibited. More recently, many representatives obtained Certified Electronic File (CEF) access, which allowed them to view their clients' files electronically. They could not, however, view the evidence until it had been exhibited. When employees failed to exhibit evidence in a timely manner, representatives could not view that evidence in a timely manner. This further hindered representatives' ability to represent their clients.

In addition, NHC employees often failed to process objections to video hearings in a timely manner, and this led to delays in claimants receiving disability hearings. Under 20 C.F.R. §§ 404.936(e) and 416.1436(e), claimants had an absolute right to object to a video hearing and have an in-person hearing instead. Claimants' representatives could decline video hearings on behalf of claimants. Several representatives routinely declined video hearings with the Baltimore NHC. I believe that this was because of the low quality of service that the NHC provided to claimants.

Unfortunately, the Baltimore NHC often did not process these requests and transfer the cases for in-person hearings in a timely manner. The Baltimore NHC kept cases over which it had no jurisdiction for long periods of time, and it consequently took longer for these claimants to receive hearings. In a number of instances, the NHC failed to process video declinations that had been submitted months earlier. This delayed those claimants' disability hearings by months. Many of the claimants whose hearings were delayed were suffering due to their medical conditions and lack of income.

NHC management has been aware of this problem for quite some time, but management has not corrected the problem. On July 22, 2013, while covering the Baltimore NHC public phone line, I received a call from a representative's assistant. She indicated that the representative had submitted a letter objecting to a video hearing, and she wanted to know if we had transferred the claimant's case to a local hearing office for an in-person hearing. When I checked the claimant's file, I noticed a letter objecting to a video hearing dated March 16, 2013. The letter had been scanned into the claimant's electronic folder on March 21, 2013. The Baltimore NHC had then transferred the case to the Falls Church National Hearing Center on July 16, 2013.

Upon receipt of the letter objecting to a video hearing, the Baltimore NHC should have transferred this claimant's case to a local hearing office for an in-person hearing. Instead, the Baltimore NHC held the claimant's case for more than three months and then transferred the case to the Falls Church NHC, which only conducted video hearings. As of July 22, 2013, it had been four months since the Baltimore NHC had scanned the letter objecting to a video hearing into the claimant's file, and neither of the NHCs involved had transferred the claimant's case to a local hearing office for an in-person hearing. As a result, it will likely take the claimant an extra four months to receive a disability hearing.

In at least some cases, NHC employees also failed to process dire need requests in a timely manner. According to HALLEX I-2-1-40, "A dire need situation exists when a person has insufficient income or resources to meet an immediate threat to health or safety, such as the lack of food, clothing, shelter or medical care." Employees were supposed to bring these cases to management's attention immediately. If dire need was found upon review, the claimant's hearing would be expedited. NHC employees failed to process at least some dire need requests in a timely manner, and I believe that this caused claimants who were in difficult circumstances to suffer more than necessary.

Baltimore NHC employees often did not take the correct actions relating to the documents that made it into claimants' files. NHC employees often failed to update claimants' addresses in the CPMS database in a timely manner, if at all. Employees also often failed to add claimants' representatives in the CPMS database in a timely manner. In addition, employees often failed to exhibit new evidence in a timely manner. NHC employees also often failed to process objections to video hearings in a timely manner. Furthermore, in at least some cases, employees failed to process dire need requests in a timely manner.

BALTIMORE NHC EMPLOYEES FAILED TO ANSWER THOUSANDS OF PHONE CALLS FROM CLAIMANTS AND THEIR REPRESENTATIVES DURING THE FIRST TWO YEARS THE OFFICE WAS OPEN.

Baltimore NHC employees failed to answer thousands of phone calls from claimants and their representatives during the first two years the office was open. Employees also failed to return voice messages in a timely manner, if at all.

Claimants and their representatives could only contact the NHC through the public phone line when at least one NHC employee was logged into the public phone line. In order to log into the public phone line, an employee had to press the UCD button on that employee's phone. When an employee was logged in, a small arrow appeared next to the UCD button on that employee's phone.

During the first two years the NHC was open, several employees often did not log into the public phone line on their assigned days. On many occasions, I did not hear these employees answering calls on their assigned days. When I walked past their cubicles, I noticed that the UCD buttons on their phones were turned off. When no employees were logged in, claimants and representatives were unable to contact the Baltimore NHC. There were many days when employees failed to answer a large number of calls. There were also days when employees did not answer any calls.

In addition, NHC employees often failed to return voice messages in a timely manner, if at all. I can remember several instances when the voice mailbox, which held over 100 messages, was full and had not been checked for days. I can also remember several instances when there were voice messages that were more than a week old.

While I was assigned to answer the public phone line, claimants and representatives often called and complained that they had left multiple messages, but no one had bothered to call them back. The claimants and representatives seemed very credible. At least one representative's office also submitted written complaints.

In a few instances, I noticed that a large number of voice messages had been cleared, but I did not hear the employees who had been assigned to clear the messages calling any of the claimants or representatives back. My impression was that employees had simply deleted the voice messages, and they had not bothered to return the calls.

On one occasion, while I was assigned to answer the public phone line, a representative called and informed me that he had left five messages and nobody had returned his call. He was furious because he had been trying to contact the office to let someone know that his client had a heart attack and could not attend his scheduled hearing. There is no telling how many claimants with medical emergencies were unable to contact the office to have their hearings postponed. There is no telling how many of these cases were dismissed when the claimants did not show up at their hearings.

THESE FACTORS UNDERMINED THE LEGAL SUFFICIENCY OF DECISIONS ISSUED BY THE BALTIMORE NHC. THE NHC VIOLATED THE DUE PROCESS RIGHTS OF CLAIMANTS, MANY OF WHOM WERE DISABLED.

These factors undermined the legal sufficiency of decisions issued by the Baltimore NHC. The NHC violated the due process rights of claimants, many of whom were disabled. The Baltimore NHC failed to ensure that claimants and their representatives received reasonable notice of hearings. The NHC also failed to ensure that claimants received fair evidentiary hearings.

The Baltimore NHC failed to ensure that claimants and their representatives received reasonable notice of hearings. Under the Social Security Act § 1631(c)(1)(A), 42 U.S.C. § 1383(c)(1)(A), "The Commissioner of Social Security shall provide reasonable notice and opportunity for a hearing to any individual" who is entitled to a hearing. The regulations at 20 C.F.R. §§ 404.938 and 416.1438 state, "After we set the time and place of the hearing, we will mail notice of the hearing to you at your last known address, or give the notice to you by personal service, unless you have indicated in writing that you do not wish to receive this notice."

The NHC failed to ensure that claimants received reasonable notice of their hearings. When the NHC received changes of address for claimants, employees did not reliably scan these changes of address into the correct claimants' files in a timely manner. Even when changes of address were properly scanned into the correct files, NHC employees often did not update claimants' addresses in the CPMS database in a timely manner, and this resulted in the NHC sending several hearing notices to incorrect addresses. At least some of these cases were dismissed when claimants did not attend the hearings of which they had not received proper notice. In addition, claimants could not reliably contact the NHC during the first two years that it was open to update their addresses, because NHC employees failed to answer thousands of calls.

The NHC also failed to ensure that representatives received reasonable notice of their clients' hearings. When the NHC received Appointments of Representative, employees did not reliably scan those Appointments of Representative into the correct claimants' files in a timely manner. Even when employees did scan Appointments of Representative into the correct files, they often did not add the

representatives to their clients' cases in CPMS in a timely manner, and this resulted in the NHC failing to send hearing notices to several representatives.

In addition, the Baltimore NHC failed to ensure that claimants received fair evidentiary hearings. Employees failed to follow case workup procedures designed to ensure that each claimant received a fair hearing. ODAR had adopted the process outlined by CJB 10-03 because it "provides an exhibited folder that meets the requirements of our governing regulations, the quality standards of our judges, and the requirements of subsequent appellate levels." Former Baltimore NHC Chief ALJ Augustus Martin, however, through former Paralegal Specialist (Case Manager) David Hash, directed employees to work up cases in a manner inconsistent with CJB 10-03. I would estimate that employees processed thousands of cases incorrectly.

Prior to this, Judge Martin personally ordered members of the clerical staff not to open any of the documents in claimants' files while working up cases. He said that we should simply select all documents and then exhibit all documents. Judge Martin referred to this as his "simplified method." I would estimate that at least one thousand cases were processed in this manner.

Judge Martin's method of processing cases undermined claimants' right to a fair hearing. HALLEX I-2-6-1 states, "The ALJ must inquire fully into all matters at issue and conduct the administrative hearing in a fair and impartial manner." As a result of Judge Martin's orders, exhibit lists frequently contained documents that were unlabeled, undated, and in the wrong sections of the electronic folders. This hindered the ability of administrative law judges to "inquire fully into all matters at issue and conduct the administrative hearing in a fair and impartial manner."

David Hash may have further undermined claimants' right to fair hearing when he entered only the dates found on the first page and last page of the medical records in the F section. The dates from the first and last pages of medical records often did not accurately represent the date ranges of medical treatment. Mr. Hash's method of working up cases involved often mislabeling the date ranges of medical records. The date ranges of medical treatment were relevant in making disability determinations, and administrative law judges may have made incorrect decisions based on these mislabeled records.

In addition, the NHC undermined claimants' right to a fair hearing by failing to scan thousands of documents into claimants' files in a timely manner, if at all. Administrative law judges made decisions based on incomplete files. ALJs could not consider the evidence that did not make it into claimants' files, and this impacted their ability to "inquire fully into all matters at issue and conduct the administrative hearing in a fair and impartial manner."

The NHC also undermined claimants' right to a fair hearing by failing to provide their representatives with timely access to their files. When employees failed to add representatives to their clients' cases in CPMS in a timely manner, there was a delay in these representatives being able to view the evidence in their clients' files. This hindered their ability to represent their clients. In addition, NHC employees often failed to exhibit new evidence in a timely manner, and this also resulted in representatives not being able to view evidence in their clients' files in a timely manner. This further hindered representatives' ability to represent their clients.

The NHC violated the due process rights of claimants, many of whom were disabled. The Baltimore NHC failed to ensure that claimants and their representatives received reasonable notice of hearings. The NHC also failed to ensure that claimants received fair evidentiary hearings.

BALTIMORE NHC EMPLOYEES FALSIFIED OFFICIAL GOVERNMENT TIME RECORDS IN VIOLATION OF 18 U.S.C. § 1001, AND MANAGEMENT LIKELY COMMITTED AN ETHICS VIOLATION BY NOT REPORTING THIS TO THE APPROPRIATE AUTHORITIES.

Baltimore NHC employees falsified official government time records in violation of 18 U.S.C. § 1001, and management likely committed an ethics violation by not reporting this to the appropriate authorities. 18 U.S.C. § 1001 states:

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully -

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years...

Falsification of U.S. Government time records constitutes a violation of 18 U.S.C. § 1001. In fact, the timesheets even cite 18 U.S.C. § 1001.

I noticed that NHC employees had falsified the time records. I noticed that at least one employee had written an earlier arrival time on the timesheet than he had actually arrived. In addition, quite a few employees took long breaks and did not use leave or work extra hours to compensate for these long breaks. This was a very common occurrence at the Baltimore NHC.

On a couple of occasions, once in 2010 and once in October 2011, I witnessed a legal assistant enter the building, and I later noticed that he had written an earlier arrival time on the timesheet. An administrative assistant, who was a timekeeper for the office, informed me that she had also observed this legal assistant stealing time and had reported it to the administrative officer. In addition, a paralegal specialist (case manager) informed me that she had noticed the same legal assistant stealing time on a number of occasions in 2011, and she had reported it to management.

In addition, quite a few employees took lunch breaks lasting 1 to 2.5 hours and did not use leave or work extra hours to compensate for these long breaks. This was a very common occurrence at the Baltimore NHC. If I had to give an estimate, I would estimate that more than 2,000 hours were lost over the last four years due to these long lunch breaks. This is a very conservative estimate based on a loss of only 10 hours per week. The NHC likely lost far more than 2,000 hours.

On March 21, 2011, Administrative Officer Renea Bowles sent an e-mail stating, "I have noticed some employees are not signing in properly...and/or signing in at a time earlier than your arrival time." The e-mail also stated, "Please Be Aware: Willful falsification of time records may result in Severe Disciplinary Action. It says so, right on the time sheet." In addition, Baltimore NHC Chief Administrative Law Judge Milagros Farnes sent an e-mail using the same language on July 27, 2011. This showed that management was aware that employees had falsified the time records.

In July 2012, representatives from the Office of Budget, Facilities and Security (OBFS) came to the NHC and reviewed the time records as part of a larger routine audit. Management also conducted a training session on time and attendance. Even so, Judge Farnes later sent an e-mail on April 3, 2013 stating, "I have noticed some employees are not signing in properly...and/or signing in at a time earlier than the actual arrival time." This indicated that employees continued to falsify the time records, even after the audit and training session. I asked Supervisory Paralegal Specialist Stephanie Meilinger why management had not reported these violations to the Office of the Inspector General. She replied that OIG would not bother to conduct an investigation.

The Standards of Ethical Conduct for Employees of the Executive Branch § 2635.101(b)(11), 5 C.F.R. § 2635.101(b)(11), states, "Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities." By sending the above mentioned e-mails, Ms. Bowles and Judge Farnes admitted that management was aware that employees had falsified the NHC time records for more than two years.

Given that falsifying the time records constituted a criminal violation of 18 U.S.C. 1001, members of management who were employees of the executive branch were required to report specific violations they were aware of to a government office authorized to investigate criminal activity. The response that I received from Ms. Meilinger, when I asked her why management had not reported these violations, indicated that management had not reported the specific employees who had committed fraud to OIG.

The e-mail warnings, training session, and routine audit did not abrogate management's ethical responsibility to report the specific criminal activity they were aware of to OIG or another appropriate authority. If management failed to report this fraud to an appropriate authority, as the facts suggest, it would likely constitute an ethics violation. In addition, the e-mails from management show that management was aware that employees falsified time records for more than two years. This is very clear evidence of mismanagement.

THERE WAS A TREMENDOUS AMOUNT OF WASTE AT THE BALTIMORE NHC.

There was a tremendous amount of waste at the Baltimore NHC. Employees spent a great deal of time on tasks other than their work. In addition, quite a few employees took long breaks and did not use leave or work extra hours to compensate for these long breaks. This was a very common occurrence at the Baltimore NHC. This waste also evidences mismanagement.

Employees spent a great deal of time on tasks other than their work. I can think of several employees who each spent hundreds of hours on personal phone calls when they were supposed to be working. I would estimate that NHC employees spent more than 1,000 hours on personal calls rather than working, and this is a very conservative estimate. Management failed to prevent this waste.

In addition, quite a few employees took lunch breaks lasting 1 to 2.5 hours and did not use leave or work extra hours to compensate for these long breaks. This was a very common occurrence at the Baltimore NHC. If I had to give an estimate, I would estimate that more than 2,000 hours of productivity were lost over the last four years due to these long lunch breaks. This is a very conservative estimate based on a loss of only 10 hours of productivity per week. The NHC likely lost far more than 2,000 hours of productivity.

Between the time that employees spent on personal calls and the time that employees spent taking

long breaks, I would estimate that the Baltimore NHC lost more than three 3,000 hours of productivity. These 3,000 hours could have been used to work up many cases correctly. These 3,000 hours could have been used to scan many important documents into claimants' files correctly and take the proper actions. These 3,000 hours could have been used to answer many phone calls from claimants and their representatives.

It is also possible to come up with a rough estimate as to how much money was wasted when the NHC paid employees to make personal calls and take long breaks. Most of the clerical employees at the NHC made more than \$20 per hour, if you divide their salaries by the number of hours they were supposed to work. If employees who made \$20 per hour spent more than 3,000 hours not doing their jobs, the Social Security Administration wasted more than \$60,000 that should have been used to process disability cases correctly.

Supervisors could easily have prevented employees from spending more than 1,000 hours on personal calls. They merely needed to walk around the office periodically and tell employees to hang up their personal calls. They could have then disciplined the employees if the problem persisted. Instead, supervisors allowed employees to spend hours per day on personal calls.

In addition, NHC management could have prevented employees from taking more than 2,000 hours of extra break time. An electronic timekeeping system would have paid for itself several times over. In lieu of an electronic timekeeping system, management could have required employees to at least write their break periods on the timesheets. It is my understanding that supervisors in several other components of the Social Security Administration require employees to do this.

There was a tremendous amount of waste at the Baltimore NHC. Employees spent a great deal of time on tasks other than their work. In addition, quite a few employees took long breaks and did not use leave or work extra hours to compensate for these long breaks. This was a very common occurrence at the Baltimore NHC. This waste evidences mismanagement.

THE NHC'S CONDUCT CLEARLY EVIDENCES GROSS MISMANAGEMENT.

The NHC's conduct clearly evidences gross mismanagement. The actions of management at the Baltimore National Hearing Center created a substantial risk of significant adverse impact upon the Social Security Administration's ability to accomplish its mission. Furthermore, the conclusion that the National Hearing Center erred is not debatable among reasonable people.

The Social Security Administration's mission statement is: "Deliver Social Security services that meet the changing needs of the public." The mission of the Office of Disability Adjudication and Review (ODAR), the component of SSA that the Baltimore NHC falls under, is: "Administer the hearings and appeals programs for SSA, providing timely and quality service to the public." Both of these missions include service to the public. In addition, ODAR has the following service principles:

1. Adherence to the law and policy
2. Quality – in every phase of the hearings and appeals process
3. Commitment to best demonstrated practices
4. Cultural sensitivity
5. Integrity
6. Prevention of waste, fraud, and abuse
7. Protection of privacy and personal information

8. Safety of the public and our employees
9. Communicate with the public in a clear and plain manner

The Baltimore NHC processed thousands of disability cases in a manner inconsistent with SSA procedures designed to ensure that each claimant received a fair hearing. This plainly did not provide good service to the public. In addition, the NHC violated the following ODAR service principles by processing cases incorrectly: adherence to the law and policy; quality – in every phase of the hearings and appeals process; commitment to best demonstrated practices; integrity; and protection of privacy and personal information. The conclusion that the National Hearing Center erred by processing thousands of disability cases incorrectly is not debatable among reasonable people.

Baltimore NHC employees also failed to scan thousands of important documents into claimants' files in a timely manner, if at all. This did not provide good service to the public. In addition, the NHC violated the following ODAR service principles by failing to ensure that documents were scanned into the correct claimants' files in a timely manner: adherence to the law and policy; quality – in every phase of the hearings and appeals process; commitment to best demonstrated practices; integrity; and protection of privacy and personal information. The conclusion that the National Hearing Center erred by failing to scan thousands of documents into the correct claimants' files in a timely manner is not debatable among reasonable people.

When documents did make it into claimants' files, Baltimore NHC employees often failed to take the correct actions relating to those documents. This did not provide good service to the public. In addition, the NHC violated the following ODAR service principles by often failing to take the correct actions relating to documents that had been scanned into claimants' files: adherence to the law and policy; quality – in every phase of the hearings and appeals process; commitment to best demonstrated practices; and integrity. The conclusion that the National Hearing Center erred by often failing to take the correct actions relating to documents that had been scanned into claimants' files is not debatable among reasonable people.

In addition, Baltimore NHC employees failed to answer thousands of phone calls from claimants and their representatives during the first two years the office was open. This was not good service to the public. The NHC also violated the following ODAR service principles by failing to answer thousands of calls: quality – in every phase of the hearings and appeals process; commitment to best demonstrated practices; and communicate with the public in a clear and plain manner. The conclusion that the National Hearing Center erred by failing to answer thousands of calls is not debatable among reasonable people.

Baltimore NHC employees also falsified time records. Furthermore, I would estimate that NHC employees wasted more than 3,000 hours that should have been used to perform their duties. This did not constitute good service to the public. The NHC violated the following ODAR service principles by falsifying time records and wasting more than 3,000 hours that should have been used to process claimants' cases correctly: adherence to the law and policy; integrity; and prevention of waste, fraud, and abuse. The conclusion that the National Hearing Center erred by falsifying time records and wasting more than 3,000 hours is not debatable among reasonable people.

The NHC's conduct clearly evidences gross mismanagement. The actions of management at the Baltimore National Hearing Center created a substantial risk of significant adverse impact upon the Social Security Administration's ability to accomplish its mission. Furthermore, the conclusion that the National Hearing Center erred is not debatable among reasonable people.

CONCLUSION

The Social Security Administration's Baltimore National Hearing Center violated rules, regulations, and laws. The Baltimore NHC processed thousands of disability cases incorrectly. In addition, NHC employees failed to scan thousands of important documents into claimants' files in a timely manner, if at all. When documents did make it into claimants' files, employees often did not take the correct actions relating to those documents. Furthermore, Baltimore NHC employees failed to answer thousands of phone calls from claimants and their representatives during the first two years the office was open. These factors undermined the legal sufficiency of decisions issued by the Baltimore NHC. The NHC violated the due process rights of claimants, many of whom were disabled.

Baltimore NHC employees also falsified official government time records in violation of 18 U.S.C. § 1001, and management likely committed an ethics violation by not reporting this to the appropriate authorities. Furthermore, there was a tremendous amount of waste at the NHC. The NHC's conduct clearly evidences gross mismanagement.

It is particularly important to report the NHC's actions, as a great many claimants for disability benefits were mistreated. Claimants for disability benefits should be treated with courtesy and respect. At the very least, they must be treated fairly. The Baltimore NHC failed utterly in this regard.

Claimants may file an appeal if they are denied disability benefits at the hearing level, but the appeals process is meant to deal with honest mistakes. It is not designed to deal with a situation where an office intentionally processed thousands of cases incorrectly. The appeals process is also not designed to deal with gross mismanagement. In order to remedy the NHC's mistreatment of claimants, the Social Security Administration must review all unfavorable decisions and dismissals that were issued by the Baltimore NHC. The Social Security Administration must process every one of these cases correctly from start to finish.

I would also recommend that the Social Security Administration require claimants' consent before transferring their cases to National Hearing Centers for video hearings. Currently, a hearing office may transfer a claimant's case to an NHC without first obtaining the claimant's consent. The claimant then has the burden of declining a video hearing. The Baltimore NHC often took months to transfer claimants' cases back to hearing offices when they declined video hearings. Consequently, it took these claimants longer to receive hearings. Essentially, claimants were punished for declining video hearings. This problem could be remedied by requiring claimants' consent before transferring their cases to National Hearing Centers for video hearings.

Other Actions You Are Taking On Your Disclosure: Inspector General of department / agency involved

Other Actions You Are Taking On Your Disclosure: Inspector General of department / agency involved Date

Other Actions You Are Taking On Your Disclosure: Other office of department / agency involved

Other Actions You Are Taking On Your Disclosure: Other office of department / agency involved Date

Modified Streamlined Folder Assembly

Modified Streamlined Folder Assembly

- I. Exhibiting
- II. Queries
- III. CD and Transmittal Letter with Barcode
- IV. Case Fact Sheet

I. Exhibiting

1. Exhibit all documents in the A section;
2. Exhibit all documents in the B section:
 - Ensure hearing request is present. If not, import from ORS;
 - If a 1696 is present, check whether the representative's appearance is listed in CPMS. If not, update. Repeat for fee agreement;
3. Exhibit all documents in the D section:
 - Ensure application is present. If not, import from ORS.
4. Exhibit all documents in the E section;
5. **Source and date all documents in the F section:**
 - Delete barcodes, releases, and invoices;
 - Split commingled documents onto separate documents;
 - Update number of pages using "Refresh Documents" button;
 - There is no need to rearrange pages in a document,
 - Label and move duplicates to section C.;

II. Queries

Certified Earnings Record (ICERS);

Dibwiz

- New Hire, Wage, and Unemployment Query (NDNH);

Modified Streamlined Folder Assembly

- Detailed Earnings Query (DEQY),
- Sequential Earnings Query (SEQY);
- No queries are necessary for child cases;

Scan these queries into the D section using a barcode labeled, "Misc/Non Disability Development." In the "Note" box, type "ICERS / DIBWIZ";

III CD and Transmittal Letter (if necessary);

IV Case Fact Sheet

- Note prior applications,
- Note any suspected earnings, employment, or unemployment insurance activity occurring after the AOD;
- Perform spell check.

References

CJB 10-03, *Folder Assembly for Certified Electronic Folders*

Instruction

For Historical Reference Only

Archive Date: 01/14/2011

Comments: This CJB was archived and superseded by CJB 10-03

Identification Number **CJB 08-02**

Effective Date:

02/01/2008

Intended Audience: All ODAR Hearing Level Employees
ODAR Office of the Chief Administrative
Originating Office: Law Judge

Title: **Modified Exhibiting for Certified
Electronic Folders (CEFs)**

Type: Chief Judge Bulletins

Program: Disability

Link To Reference:

Document:

Retention Date: Indefinite

Streamlined Folder Assembly for Certified Electronic Folders (CEFs)

In May 2007, we introduced a voluntary streamlined folder assembly process for paper cases in an attempt to decrease the time it takes to prepare a case for hearing. We are extending voluntary streamlined folder assembly to certified electronic folders (CEFs).

Streamlined CEF Folder Assembly Procedures:

Preliminary Steps

- Lock case
- Open the Case Documents Tab
- Click "Update page numbers"
- Begin folder assembly by opening each section one at a time beginning with Section A.

Streamlined CEF Folder Assembly Steps

- Open each document within the section in order to determine appropriate metadata (sources, dates, document types).
- Key in all metadata. Do not rearrange the pages in chronological order.
- Download any missing documents from ORS
- Scan in queries/paper documents as necessary into the appropriate sections.
- When finished, select all relevant documents and click the "Add to Exhibit List" button.
- Continue the process with Sections B, D, E and F.
- Do not exhibit duplicates from a prior adjudication level.
- In CPMS, delete any electronic folder transactions for items scanned.

Evidence Submitted After Folder Assembly

- If additional evidence is submitted after creation of the Exhibit List, follow the guidelines above to exhibit the new evidence.

The above procedures alone will significantly assist the file assemblers if they do not rearrange

the pages in chronological order within the document. The drop/drag and cut/paste tasks have been blamed by users for causing much of the delays in assembling (pulling) CEFs.

Regional and local managers should continue to work with their counterparts in their servicing DDSs to improve items entered into the CEF that may contain missing metadata and/or incorrectly named documents.

One of the challenges in the streamlined CEF process will be identifying commingled documents that need to be split into multiple documents. We believe this issue is due in part to adjusting to the electronic process and should improve.

Differences Between Streamlined Exhibiting for Paper Files Versus CEFs

Paper Files	CEFs
Sequentially number the pages in each section of the folder.	The CEF will automatically display the number of pages of each exhibit.
Duplicates need not be removed.	Same as paper.
Documents need not be re-ordered.	The system orders documents based on metadata in CEF when the initial Exhibit List is created.
If additional evidence is submitted after folder preparation, continue with sequential numbering of the additional pages.	Additional evidence is added to the exhibit list as received and is automatically numbered. The number of pages are displayed when the document is moved to the appropriate section of the file.
A streamlined exhibit list must be prepared.	In a CEF, the system creates the Exhibit List.

As with streamlined paper folder assembly procedures for case development, preparation of the cover sheet and a case analysis remain unchanged. For either CEF or paper streamlined folder assembly, enter **STEX** as a CPMS case characteristic. **It is extremely important that the cases are properly identified as a streamlined case if we are to determine the viability of the process.**

Direct all program-related and technical questions to your RO support staff. RO support staff may refer questions or unresolved issues to their Headquarters' contacts in my office.

Link to this document:
<http://policynet.ba.ssa.gov/referencearchive.nsf/lrx/02012008042204PM>

CJB 08-02 - Modified Exhibiting for Certified Electronic Folders (CEFs) - 02/01/2008

Instruction

Identification Number **CJB 10-03**

Effective Date: 04/21/2010

Intended Audience: All ODAR Hearing Level Personnel
ODAR Office of the Chief Administrative Law
Judge

Title: **Folder Assembly for Certified Electronic Folders (CEFs)**

Type: Chief Judge Bulletins

Program: **Disability**

Link To Reference: **CJB 08-02**

Retention Date: Indefinite

Folder Assembly for Certified Electronic Folders (CEFs)

CJB 08-02 effective February 1, 2008 is being replaced to reflect the folder assembly process for Certified Electronic Folders (CEFs). This folder assembly process must be used for all CEFs.

Background

As we gained experience working with electronic folders, we developed and used various folder assembly processes. We reviewed the work product of staff across the country and listened to their concerns. We have also considered how folder assembly functions have affected other components and our service to the public.

We determined the CEF folder assembly procedures described below allow us to maximize both the quality and quantity of the folders we assemble. These procedures ensure that essential functions such as updating page numbers, splitting commingled documents, and adding appropriate document descriptions (metadata) are performed. This process provides an exhibited folder that meets the requirements of our governing regulations, the quality standards of our judges, and the requirements of subsequent appellate levels.

CEF Folder Assembly Procedures

The following tasks must be performed for every case that is scheduled for hearing.

Preliminary Steps

- Obtain current queries and place in the CEF:
 - Informational/Certified Earnings Record System (ICERS)
 - Detailed Earnings Query (DEQY)
 - Summary Earnings Query (SEQY)
 - New Hire, Wage and Unemployment Query (NDNH)
- In eView, select Edit (Lock Case).
- Open the Case Documents Tab.
- Select Refresh Documents.

- Download any missing documents from the Online Retrieval System (ORS).
- Begin folder assembly by opening each section one at a time beginning with Section A.

CEF Folder Assembly Steps

- Open each document within Section A
 - Determine appropriate metadata (sources, dates, document types).
 - Verify the document does not contain personally identifiable information (PII) for another individual and remove pages as appropriate.
 - Remove documents which are duplicates of another document already being exhibited. EXCEPTION: Remember that documents placed in the CEF from a prior adjudication level must be retained in their original section in the CEF. Do not move them to Section C.
 - There is no need to rearrange pages in a document.
 - Split commingled documents into individual documents.
 - Delete the barcode.
 - Update page numbers.
- Key in all necessary metadata.
- When finished, select all relevant documents in Section A and click the Add to Exhibit List button. There is no need to arrange them in chronological order.
- Continue the process with Sections B, D, E and F.
- In CPMS, delete any To Do Items for completed actions.

After Moving Documents to the Exhibit Tab

- eView automatically:
 - Orders the documents according to the "Sort By" function selected by the user (e.g. Exhibit number, Description, Source or Date).
 - Displays the exhibit number for each document.
 - Displays the number of pages for each exhibit.

- Displays the page number for each page.
- Creates an exhibit list.

Evidence Submitted After Folder Assembly

- If additional evidence is submitted after creation of the Exhibit List, follow the guidelines above to exhibit the new evidence.
- When adding new documents after a hearing, indicate whether the evidence was submitted during the hearing or subsequent to the hearing by selecting the appropriate radio button on the Edit Exhibit Information screen.
- Make sure exhibits are permanently marked immediately after a hearing reflecting the documents admitted into evidence by the ALJ.
- Permanently mark exhibits that are submitted post hearing upon approval of the ALJ.

This is the method of folder assembly that must be used for all CEF cases. The CPMS case characteristic STEX now applies only to paper cases. It should no longer be used for CEF cases.

Preparation and completion of the DGS "Cover Sheet" is still required. When the cover sheet has been completed, select the Send to eFolder button to upload the document to the Private Section of the CEF.

Regional and local managers should continue to work with their counterparts in their servicing field offices and DDSs to improve items entered into the CEF by entering missing metadata, correctly naming documents, separating commingled documents, and preventing duplicate entries.

Direct all program-related and technical questions to your RO support staff. RO support staff may refer questions or unresolved issues to their Headquarters' contacts.

CJB 10-03 - Folder Assembly for Certified Electronic Folders (CEFs) - 04/21/2010

Link to this document:
<http://policy.net.ba.ssa.gov/reference.nsf/lnx/04212010021742PM>

I-2-1-15. Exhibits

Last Update: 6/9/14 (Transmittal I-2-110)

A. General

Hearing office (HO) staff will select proposed exhibits and prepare a proposed exhibit list for an administrative law judge's (ALJ) approval. HO staff will propose a document as an exhibit when it is material to the issues in a case.

NOTE: As explained in Hearings, Appeals, and Litigation Law (HALLEX) manual I-2-6-58, evidence is material if it is relevant, i.e., involves or is directly related to issues being adjudicated.

Exhibits relied on by an ALJ must be clearly identified for any reviewing component. Therefore, exhibits must be selected, arranged, and marked in all cases. See HALLEX I-2-1-20.

Regardless of the information in HALLEX I-2-1-15 B below, HO staff will generally not propose exhibiting the following:

- Miscellaneous working papers, transmittal forms or route slips, and internal communications;
- Documents pertaining solely to an auxiliary claimant who is not a party to the hearing; and
- Documents classified by the source as "Confidential" that are still under restriction. Similarly, HO staff will not propose to admit any determinations, analyses, or reports that refer to the confidential document or contain excerpts from it.

B. Exhibited Documents

Though not inclusive, HO staff will generally propose exhibiting the documents noted below. For detailed information about the organization of a claim(s) file, how documents are filed within each part of a paper modular disability folder, or a list of standardized claim file forms, see Program Operations Manual System (POMS) DI 70005.005.

1. Part A- Payment Documents/Decisions

HO staff will generally exhibit:

- SSA-831 (Disability Determination and Transmittal);
- Disability Determination Explanation (DDE);
- SSA-832 and SSA-833 (title II and XVI Cease/Continue Disability Determination and Transmittal);
- Previous decisions, dismissals, and revised determinations (including Appeals Council action documents);
- The ALJ or senior attorney decision in the pending case; and
- Representative fee authorization(s).

2. Part B — Jurisdictional Documents/Notices

HO staff will generally exhibit:

- Initial determination form and notice;
- Request for reconsideration and notice;
- Request for hearing;
- A cessation notice of planned action;
- An initial notice of overpayment;
- Representative appointment and fee agreement;
- Notice of withdrawal of representative (submitted prior to finalized exhibit list);
- Waiver of right to appear;
- Substitute party form; and
- Withdrawal of a request for hearing.

If received, the HO will also add the following documents to the B section but will generally not exhibit the documents:

- Representative fee petition request;
- Notice of withdrawal of representative received after ALJ issues decision;
- Acknowledgement of request for hearing and any attachments;
- Continuance of hearing;
- Notice of hearing;
- Professional Qualification Statements sent with notice of hearing; and
- Request for Appeals Council review. (For instructions on referring the request to the Office of Appellate Operations, see the hearing office electronic business process Section 1.3 B.7.c.)

3. Part C — Current Development/Temporary

This section is reserved for working papers only. HO staff will not add material identified as an exhibit in this section.

HO staff will commonly file requests for medical evidence in this section, or other printouts, queries, or systems screens that were not necessary for adjudication purposes.

4. Part D — Non-Disability Development

HO staff will generally exhibit:

- The application;
- A written statement or record of oral inquiry indicating an intent to claim benefits (for protective filing purposes);
- Birth certificate or other proof of age;
- Earnings records and proof of any non-posted wages or self-employment income;

- Workers' Compensation, Department of Veterans Affairs, or other relevant federal agency award information (with any medical records from these sources filed in Part F).
- Evidence of death and relationship in auxiliary and survivor cases (for purposes of non-disability development);
- Verification of any work activity engaged in by the claimant after the alleged onset date;
- Pertinent statements or reports of contact (not disability related); and
- Congressional inquiries and responses

5. Part E — Disability Related Development and Documentation

HO staff will generally exhibit:

- SSA-3368 (Disability Report - Adult);
- SSA-3369 (Work History Report);
- SSA-3441 (Disability Report-Appeal);
- SSA-3820 (Disability Report-Child);
- SSA-454 (Report of Continuing Disability);
- SSA-455 (Disability Update Report);
- SSA-821 (Work Activity Report- Employee);
- SSA-820 (Work Activity Report-Self Employed);
- School records (including teacher evaluations);
- Supplemental requests for more information about activities of daily living, pain, seizures, medication, recent medical treatment, or work history;
- Letters from employers, family members, or other individuals describing the claimant's impairments and limitations;
- Vocational expert interrogatories and the received response;
- A written summary of the case, or written statements about the facts and law material to the case, submitted by the claimant or the claimant's representative;
- Pertinent reports of contact related to disability development;
- Unsuccessful attempts to obtain necessary disability documentation;
- Any other documentation relating to development of disability;
- State vocational reports;
- Disability Determination Services worksheet(s); and
- Electronic Disability Collect System (EDCS) routing form.

6. Part F — Medical Records

HOs will generally exhibit:

- A Cooperative Disability Investigations Unit Report of Investigation (filed on top in a paper claim(s) file);
- Treatment records (with cover letter if not otherwise identified);
- Hospital records;

- Laboratory/imaging reports and findings;
- Outpatient notes;
- Consultative examination reports;
- Medical opinions, analyses, and residual functional capacity assessments;
- School records of multi-discipline evaluations and/or psychologist evaluations.
- Letters of unsuccessful attempts to obtain medical evidence;
- SSA-4734 (Residual Functional Capacity Assessment);
- SSA-2506 (Psychiatric Review Technique - PRT Form);
- Death certificate (for the purposes of assessing disability);
- Medical expert interrogatories and received responses; and
- Professional Qualification Statements attached to medical evidence, SSA-831 or SSA-833.

C. Preparing the Exhibits

1. Numbering the Exhibits

HO staff will sequentially number documents identified as exhibits in each part of the claim(s) file. Documents are exhibited beginning with the number 1 and followed by the letter applicable to each part (e.g., the first exhibit of part A would be 1A, the second exhibit 2A, etc.).

NOTE: For each subsequent hearing record, HO staff will use the next letter in the alphabet as a prefix to the exhibit number. For example, for a second hearing level claim, HO staff would number the first exhibit in part A "B1A." For a third hearing level claim, HO staff would number the first exhibit in part A "C1A."

Exhibiting a paper claim(s) file can present some unique circumstances. HO staff will also consider the following when preparing and numbering proposed exhibits in a paper claim(s) file:

- If the exhibit has only one page, HO staff will place an exhibit number in the lower right hand corner of the page. If the exhibit has more than one page, HO staff places an exhibit number in the lower right hand corner of the first page and, on each subsequent page, adds the exhibit number, page number, and total number of pages in the exhibit. To illustrate, for exhibit 15 in part F, page 2 of 5 pages, the exhibit would read "Ex. 15F, page 2 of 5" or "Ex. 15F, 2/5."
- HO staff will tape any exhibit smaller than average letter size to a sheet of 8 1/2 x 11 inch paper (copying back of page if necessary).
- HO staff will combine all initial, reconsidered and revised determinations into one multi-page exhibit. If there are other documents in the same section/part of the file, the HO staff will make the other documents a separate exhibit.
- Medical records are organized by source according to the dates of treatment, with the record of oldest treatment on the bottom and the most recent record of treatment on top. After the records are organized chronologically (with most recent treatment on top), HO

staff will exhibit together the records from the source. For example, all records pertaining to one period of hospitalization, including an admission summary, laboratory reports, progress notes, surgical procedures and a discharge summary would be included in one exhibit. Likewise, HO staff will combine in one exhibit any treating physician records that include laboratory reports or x-rays, or multiple records from one physician that cover a period of time, in chronological order with the most recent treatment on the top.

- HO staff will not write on, highlight or otherwise markup exhibits, except for stamping and numbering them.

2. Prepare the Exhibit List

HO staff will follow the instruction in HALLEX I-2-1-20.

D. Prior Claim(s) File Exhibits

HO staff will follow the instruction in HALLEX I-2-1-13 D.

Version effective Sept. 28, 2005

I-2-1-15. Exhibits

A. Selection of Proposed Exhibits

The hearing office (HO) staff will select exhibits and prepare an exhibit list for the ALJ's approval. The criterion for selecting a document as an exhibit is whether the document is material to the issues in the case. See I-2-1-15E, Examples of Documents Identified As Proposed Exhibits.

NOTE: The documents selected by the HO staff will be considered "proposed exhibits" until the ALJ formally admits them into evidence.

B. Documents Not Normally Made Exhibits

1. Miscellaneous working papers, transmittal forms or route slips, intra-departmental communications, and documents pertaining solely to an auxiliary claimant who is not a party to the hearing.
2. Documents classified as "Confidential" by the source (Department of Veterans Affairs, local government unit, etc.), when efforts to obtain release of the restrictions have been unsuccessful. Similarly, any determinations, analyses, or reports, which refer to the confidential document or contain excerpts from it, may not be admitted as evidence.

C. Exhibit Folders – Policy – Hearing Office Actions

1. Modular Disability Folder.

The Modular Disability Folder (MDF) was created to deal with the increased complexity of the disability program and to promote uniform folder assembly for all components within SSA that process disability claims. With the implementation of the MDF, Hearing Office (HO) staff will no longer remove documents from the claim file (CF) in order to create a separate exhibit file. With the exception of I-2-1-15C(2), all CF material will be housed in a specific part of the MDF.

The MDF is designed to facilitate the location of related materials (e.g., all medical records are filed together), to encourage the users to discard extraneous or duplicate material, and to provide for uniform folder assembly by all users.

The MDF requires that all documentation be housed in a specific section (or part). The parts are named as follows:

Part A -	Payment Documents/Decisions - Yellow (Front)
Part B -	Jurisdictional Documents/Notices - Red
Part C* -	Current Development/Temporary - Green
Part D -	Non-Disability Development - Orange
Part E -	Disability Related Development and Documentation -Blue
Part F -	Medical Records -Yellow (Back)

*No exhibits are to be housed in this section, since it is for working papers only.

2. Concurrent Title II or Multiple Claims Housed – Two-Part Folders

a. Two- Part Folders.

In concurrent Title II/Title XVI claims or multiple claims under Title II, a two part folder will house the additional claims. The Title II claim will usually be in the MDF.

These two-part folders will be named as follows:

Part	Description
SSI	Supplemental Security Income
DWB	Disabled Widow's/Widower's Benefits
CDB	Child's Disability Benefits

When the HO receives the claim file, all documentation will be housed in its designated part of the MDF, arranged in the specified order.

NOTE: Prior to the hearing level, Field Office (FO) and Disability Determination Services (DDS) employees are responsible for filing the documentation relative to all levels of claims processing.

b. Identification of Proposed Exhibits

In concurrent and multiple filing cases, the Title II portion will be housed in the MDF. Any other claim will be in the standard two-part claim file and attached to the MDF. All material in these folders will remain in these folders and will not be reassembled.

D. Description of MDF Format

The MDF contains six sections, and each is color-coded and labeled to facilitate filing. The divider tabs list examples of the documents to be filed in each section. (The lists are not all-inclusive.) You will need to exercise judgment as to where some documents not listed should be filed.

Materials in three of the six sections (i.e., Yellow (Front), Red and Blue) are to be filed in chronological order (i.e., oldest document on the bottom and newest on the top). In most cases chronological filing will occur naturally as documents are filed as received.

Materials in the Green section can be filed in any order since these materials will eventually be purged or moved to another section.

Materials in the Orange and Yellow (Back) sections are to be filed according to instructions in DI 70005.005.B.4. and DI 70005.005.B.6.

NOTE: Some sections of the MDF will have relatively few documents while others may be quite full.

1. Yellow (Front), Part A -- Payment Documents/Decisions

This section serves primarily to house documents pertaining to entitlement and payment of benefits. Examples of documents to be filed here are the SSA-831, SSA-101, ALJ decision, etc. Most documents to be filed here have holes for top filing.

2. Red, Part B -- Jurisdictional Documents/Notices

This section documents the current level of adjudication by containing notices and appeal requests. Appointment of Representative documents (SSA-1696, etc.) are also filed here.

3. Green, Part C -- Current Development/Temporary

The purpose of this section is to encourage users to discard extraneous material as actions are taken. In essence, this is the "work in progress" section. For example, a letter requesting medical records from a treating source would be filed in the Green section. When the records are received, the request letter would then be discarded. If the records are not received by the time the disability determination is made, the request letter will be moved to the Yellow/Back section (Medical Records) to document the attempt.

NOTE: Each user is responsible for determining what is pertinent and what can be discarded. Guidelines for determining what is extraneous are provided in DI 22520.001 for DDSs, GN 01050.150B. and GN 01050.240 - GN 01050.245 for Title II claims, and GN 00301.295 - GN 00301.300 for all claims.

NOTE: When the folder is sent to another location for processing or filing, the Green section should normally be empty.

4. Orange, Part D -- Non-Disability Development:

This section houses claims applications, evidence, earnings records, essential queries, documentation of earnings, non-disability postentitlement development, congressional inquiries/responses, etc. See GN 01050.190A.1. - GN 01050.190A.8. for Title II assembly order that is applicable for the MDF or the two part brown folder.

NOTE: Requests for appeal are filed in the Jurisdictional Documents/Notices section.

5. Blue, Part E -- Disability Related Development and Documentation:

This section is for disability questionnaires such as the SSA-3368, SSA-3441, and SSA-820/821s. It is also for disability related correspondence and forms such as SSA-827s.

The materials in this section will be filed in chronological order, except that the HO will place all usable SSA-827 on the top.

6. Yellow (Back), Part F -- Medical Records:

All medical evidence will be filed in this section. This includes hospital records, laboratory reports, physician's records, outpatient notes, RFC forms, comments and analyses of program physicians and psychologists, etc. Keep cover letters together with the accompanying records, as they help identify the source. DDSs will place their worksheets and development records on top of this section.

NOTE: An Office of Inspector General (OIG) Cooperative Disability Investigation (CDI) Report of Investigation (ROI) should be filed on top of all medical material.

E. Examples of Documents Identified as Proposed Exhibits

The following are examples of documents that are usually identified as proposed exhibits:

1. Example 1. Part A-- Payment Documents/Decisions - Yellow (Front)

(Filed in chronological order - most recent on top).

- a. SSA-831 (Disability Determination and Transmittal).

NOTE: Any PRTF or RFCAs forms (previously attached to the SSA-831) are no longer considered attachments. These are considered medical/evidentiary documents and will be housed in Part F (Medical Records).

- b. SSA-832 and SSA-833 (Cessation or Continuance of Disability/Blindness Determination for Title XVI and Title II).
- c. Previous decisions or dismissals or revised determinations rendered by an ALJ.

2. Example 2. Part B -- Jurisdictional Documents/Notices - Red

(Filed in chronological order - most recent on top).

- a. SSA/SSI Notice of Disability/Blindness (Denial/Award).
- b. SSA-561 (Request for Reconsideration).
- c. Notice of Reconsideration (Denial/Award).
- d. HA-501 (Request for Hearing by ALJ).
- e. The initial determination form and the notice of initial determination.
- f. In cessation cases, the notice of planned action, the cessation determination form and the initial termination notice.
- g. In overpayment cases, the initial notice of overpayment.
- h. The request for reconsideration in those states which are not prototype states. (See I-2-4-98, Exhibit – Prototype States and Case Processing.)
- i. The reconsideration determination and notice of the reconsideration determination in those states which are not prototype states. (See I-2-4-98, Exhibit – Prototype States and Case Processing.)
- j. In Appeals Council remand cases (including remands following claimants' request for review and remands based on court orders), the Appeals Council remand order.

3. Example 3. Part C -- Current Development/Temporary - Green

This section is reserved for working papers only. There should be no material which would be identified as an exhibit in this section.

4. Example 4. Part D -- Non-Disability Development - Orange

- a. The application (paper or computer printouts), and any written statement or record of oral inquiry indicating an intent to claim benefits which serves as a protective filing.
- b. Birth Certificate or other proof of age.
- c. Earnings records and proof of any non-posted wages or self-employment income.
- d. Workers' Compensation and Department of Veterans Affairs or other federal agency award information.
- e. Evidence of death and relationship (in auxiliary and survivor cases).
- f. Verification of any work activity engaged in by the claimant after the alleged onset date.
- g. Pertinent statements or reports of contact (not disability related).

5. Example 5. Part E -- Disability Related Development and Documentation -Blue

(Filed in chronological order - most recent on top).

- a. SSA-3368 (Disability Report - Adult).
 - b. SSA-3369 (Work History Report).
 - c. SSA-3441 (Disability Report-Appeal).
 - d. SSA-3820 (Disability Report-Child).
 - e. SSA-454 (Report of Continuing Disability).
 - f. SSA-455 (Disability Update Report).
 - g. School Records (Teacher Evaluations Only).
 - h. Supplemental Questionnaires (Activities of Daily Living Forms).
 - i. Unsuccessful Attempts to Obtain Necessary Disability Documentation.
 - j. Any Other Documentation Relating to Development of Disability.
 - k. State Vocational Reports.
 - l. SSA-821 (Work Activity Report- Employee).
 - m. SSA-820 (Work Activity Report-Self Employed).
 - n. DDS worksheet.
 - o. Electronic Disability Collect System (EDCS) Routing Form.
 - p. SSA-3341 (Disability Report—Appeal).
- NOTE:** Form HA-4486, which was supplanted by Form SSA-3341, may be seen in pending cases for some time.
- q. Pain Questionnaires.
 - r. Seizure Questionnaires.
 - s. Pertinent reports of contact.

- t. A written summary of the case, or written statements about the facts and law material to the case, submitted by the claimant or the claimant's representative.
- u. Letters from employers or other individuals describing the claimant's impairments and limitations.

6. Example 6. Part F -- Medical Records

(Filed in treatment-date order).

- a. CDI Report of Investigation (when in file)-must be filed on top.
- b. Treatment Records.
- c. Hospital Records.
- d. Laboratory/Imaging Reports.
- e. Outpatient Notes.
- f. Clinic Notes.
- g. Physician's Records and Reports.
- h. Cover Letters from treatment source if Medical Evidence not otherwise identified.
- i. X Ray Findings.
- j. Examination Reports.
- k. Medical opinions, analyses, and residual functional capacity assessments by physicians or mental health professionals.
- l. School Records (Multi-Discipline Evaluations and/or Psychologist Evaluations).
- m. Professional Qualifications (PQs) of all health care professionals whose reports, analyses, assessments, or judgments are being entered into the record of exhibits. (See I-21-30, Professional Qualifications of Health Care Professionals.)
- n. SSA-5002 (Report of Contact) - Disability Related.
- o. Letters of Unsuccessful attempts to obtain M/E.
- p. SSA-4734 (Residual Functional Capacity Assessment) (DDS Physician).
- q. SSA-2506 (Psychiatric Review Technique - PRT Form) (DDS Physician).
- r. Capability Opinions - Completed by the DDS Physician.

F. Description of Filing Medical Records

Medical records, filed in the Yellow (Back), should be filed in treatment-date order, according to user preference, at the ALJ level.

1. Treatment-Date Order

Treatment-date order means that medical records are filed according to the dates of treatment, with the record of oldest treatment on the bottom and the most recent on top. This does not

mean, however, that every single piece of medical evidence will be filed as a separate document. For example:

- Hospital records pertaining to one period of hospitalization should be kept together. This may include an admission summary, laboratory reports, progress notes, surgical procedures and a discharge summary.

If a hospital provides records for multiple periods of hospitalization, the records for each stay should be treated as separate records and interfiled with other records in treatment-date order.

- If a claimant has been seen only as an outpatient at a hospital (such as in a clinic or emergency room), the records should be kept together with the oldest on bottom and the newest on top.
- Treating physician records that include laboratory reports or x-rays should all be filed as one document.
- Multiple records from one physician that cover a period of time should be kept together with the oldest treatment date on the bottom.

NOTE: The most recent date of treatment in the topmost record of each set is the controlling date for interfiling records. (See EXAMPLE.)

2. EXAMPLE: The proper filing for the following set of medical records is:

- On Bottom - Hospital records from County Hospital for a stay 7/24/91 through 7/31/91.
Medical reports from Dr. Kildare with attached laboratory reports that cover a period from 7/2/91 through 8/1/92.
Hospital records with EKG that covers a hospital stay at County Hospital from 9/15/92 through 9/19/92.
VA Hospital outpatient records covering 7/29/92 through 10/14/93.
- On Top - A consultative examination performed by Dr. Casey on 8/9/94.

G. Description of Extraneous Materials

For maximum efficiency and productivity, it is vital that duplicate or unnecessary material not be filed in the folder. If unsure whether material needs to be retained, file it in the Current Development/Temporary Section (Green), Part C.

When all actions are complete, purge the Green Part C section by either discarding the material or filing it in another section for documentation purposes. Because duplicate medical records are the most common source of extraneous material, each incoming medical record should be checked against existing records to determine if it is already wholly or partially in file. If so, the duplicate material should be discarded, keeping the most legible copy. Ensure that the copy being discarded does not contain additional entries or annotations.

H. Process – When the MDF is Full

If an MDF becomes full, any additional medical records will be filed in a brown two-part folder. That folder will be annotated with the NH's name and SSN and be stapled directly to the back of the MDF. Concurrent claims (SSI/DWB/CDB) should be stapled to the back of the overflow folder.

The most recent medical records will be placed in the two-part folder to eliminate excessive re-filing of material.

The following exhibit will be used when the MDF is full and additional medical records are going to be filed in an attached brown folder. Place this flag on top of the Medical Records section of the MDF and annotate below the period of time covered by the records in that section.

DO NOT FILE ANY MORE RECORDS HERE

More Recent Medical Records are in a Brown Folder Attached to this Folder

This Section is full – file any additional medical records in a two-part brown folder and attach it to the back of this folder. Continue to file the most recent records on top in the brown folder.

This section contains medical records for the period (date) through (date) .

I. List of Standardized Claim File Forms – Prior OHA Levels

The following is a partial numerical list of standardized Title II and Title XVI claim file forms and the section of the MDF in which they are filed.

An asterisk (*) identifies Title XVI forms. If you are working on a Title XVI only claim, these forms will be filed in the MDF. If you are working on a concurrent claim, these forms will remain in a separate brown folder housing the Title XVI non-medical material.

Form Number	Document Name	Color
SSA-3	Marriage Certification	Orange
HA-L8	Letter to Vocational Expert Requesting Attendance at a Hearing	Red
HA-L9	Letter to Medical Expert Requesting Attendance at a Hearing	Red

Form Number	Document Name	Color
SSA-11	Request to Be Selected As Payee	Orange
SSA-16	Application for Disability Insurance Benefits	Orange
HA-L34	Notice of Change in the Time or Place of Hearing	Red
SSA-101	Determination of Award	Yellow (Front)
SSA-L106	Letter to Custodian of School Records (Discard upon receipt of requested evidence; otherwise, move to Blue section.)	Green
SSA-392	Medical Consultant's Review of Residual Functional Capacity Assessment (Physical/Mental)	Yellow (Back)
SSA-416	Office of Disability, Office of Medical Evaluation (Medical Note)	Yellow (Back)
SSA-450SI*	SSI Data Input and Determination	Orange
SSA-454	Report of Continuing Disability Interview	Blue
SSA-455	Disability Update Report	Blue
HA-501	Request for Hearing by ALJ	Red
HA-504	Acknowledgment of Notice of Hearing	Red
HA-520	Request for Review of Hearing Decision	Red

Form Number	Document Name	Color
HA-526	Professional Qualifications-DDS Physician	Yellow (Back)
HA-526	Professional Qualifications-Treating Physician	Yellow (Back)
SSA-538	Childhood Disability Evaluation Form	Yellow (Back)
SSA-546	Workers' Compensation/Public Disability Benefit Questionnaire	Orange
SSA-561	Request for Reconsideration	Red
SSA-632	Request for Waiver of Overpayment Recovery or Change in the Repayment Rate	Orange
SSA-633	Agreement to Refund Overpayment	Orange
SSA-635	Waiver Determination	Yellow (Front)
HA-649, 652, 653, 655, 656, 657, 658, 659, 660, 661, 662	Requests for Consultative Examination and Evaluation (Discard upon receipt of all requested evidence; otherwise, move to the Yellow (Back) section.)	Green
SSA-704	Certification of Contents of Documents or Records Certification (stays with the document being certified in its respective section)	
SSA-765	Response to Notice of Revised Determination	Red

Form Number	Document Name	Color
SSA-769	Request for Change in Time/Place of Disability Hearing	Red
SSA-770	Notice Regarding Substitution of Party upon Death of Claimant-Reconsideration of Disability Cessation	Red
SSA-773	Waiver of Right to Appear-Disability Hearing	Red
SSA-789	Request for Reconsideration-Disability Cessation	Red
SSA-795	Statement of Claimant or Other Person (Non-Disability)	Orange
SSA-795	Statement of Waiver of Advance Notice of Disability Hearing	Red
SSA-795	Statement of Claimant or Other Person (Disability Related)	Blue
SSA-820	Work Activity Report (Self-Employed Person)	Blue
SSA-821	Work Activity Report (Employee)	Blue
SSA-824	Report on Individual With Mental Impairment	Yellow (Back)
SSA-827	Authorization for Source to Release Medical Information to SSA (Not dated or dated within the last 6 months. It is imperative that expired SSA-827's be purged from the file.)	Blue
SSA-828	Request for Medical Information from Records of Veterans' Administration (If Part III-A contains evidence related to a medical condition or if Part III-B is completed, file in Yellow (Back))	Blue

Form Number	Document Name	Color
SSA-829	Request for Medical Information from Military Facilities or Record Center	Blue
SSA-831	Disability Determination and Transmittal (with rationale)	Yellow (Front)
SSA-832	Cessation or Continuance of Disability or Blindness Determination and Transmittal (with rationale) Title XVI	Yellow (Front)
SSA-833	Cessation or Continuance of Disability or Blindness Determination and Transmittal (with rationale) Title II NOTE: A professional qualification (PQ) for a DDS physician should be filed in the medical records section Yellow (Back)	Yellow (Front)
SSA-847	SSA Request for Case Action	Blue
SSA-882	Report of Field Review of Continuing Disability	Blue
SSA-887	Summary of Evidence	Blue
SSA-888	Reconsideration/Disability Hearing Process	Red
SSA-899	Continuing Disability Review (CDR)	Blue
SSA-L991*	Supplemental Security Income Information	Orange
SSA-1128	Representative Involved (Staple to Bottom Right Corner--Front of File)	
SSA-1129	Attorney Fee Case-Past Due Benefit Summary	Yellow

Form Number	Document Name	Color
		(Front)
SSA-1203	Determination of Benefits Payable After Offset	Yellow (Front)
SSA-1204	Disability Hearing Officer's Report of Disability Hearing	Red
SSA-1205	Disability Hearing Officer's Report of Disability Hearing	Red
SSA-1207	Disability Hearing Officer's Decision	Red
SSA-1272	Subpoena-Disability Hearing	Red
SSA-1323	Report on Individual with Childhood Impairment	Yellow (Back)
SSA-1560	Petition to Obtain Approval of a Fee	Red
SSA-L1674	Disability Hearing Decision Cover Letter-without benefit continuation	Red
SSA-L1675	Disability Hearing Decision Cover Letter-Benefit Continuation Elected at Reconsideration and offered again at ALJ Hearing Level	Red
SSA-L1677	Disability Hearing Decision Cover Letter-Benefit Continuation Not Elected at Reconsideration and Offered Again at ALJ Level	Red
SSA-L1678	Disability Hearing Decision Cover Letter-Without Payment Continuation	Red

Form Number	Document Name	Color
SSA-L1679	Disability Hearing Decision Cover Letter-Payment Continuation Not Elected at Reconsideration and Offered Again at ALJ Hearing Level	Red
SSA-L1680	Disability Hearing Decision Cover Letter-Payment Continuation Elected at Reconsideration and Offered Again at ALJ Hearing Level	Red
SSA-1696	Appointment of Representative	Red
SSA-1697	Notice to Representative of Claimant Before the Social Security Administration	Red
SSA-1709	Request for Workers' Compensation/Public Disability Benefit Information	Orange
SSA-1719s*	SSI Post-entitlement Direct Input (Discard)	
SSA-1774	Request for Corrective Action (Consistency Review)	Blue
SSA-2506	Psychiatric Review Technique (PRT) Form Completed by DDS Physician or by Treating Physician	Yellow (Back)
SSA-2514	Record of Claimant's Intent to File	Orange
SSA-2640	Disability Hearing Case	Red
SSA-3023	Medical Consultant's Review of Psychiatric Review Technique Form	Yellow (Back)
SSA-3094	Quality Assurance Review	Blue

Form Number	Document Name	Color
SSA-3341	Disability Report - Appeal	Blue
SSA-3367	Disability Report (Field Office)	Blue
SSA-3368	Disability Report-Adult	Blue
SSA-3369	Work History Report	Blue
SSA-3371*	Pain Report Child	Blue
SSA-3375*	Function Report (Child – Birth to 1 st Birthday)	Blue
SSA-3376*	Function Report (Child – Age 1 to 3 rd Birthday)	Blue
SSA-3377*	Function Report (Child – Age 3 to 6 th Birthday)	Blue
SSA-3378*	Function Report (Child – Age 6 to 12 th Birthday)	Blue
SSA-3379*	Function Report (Child – Age 12 to 18 th Birthday)	Blue
SSA-3428	Determination of Disallowance Coding Sheet	Yellow (Front)
SSA-3441	Disability Report-Appeal	Blue
SSA-3462*	Record of SSI Inquiry	Orange
SSA-3820	Disability Report (Child)	Blue
SSA-3826	Medical Report (General)	Yellow

Form Number	Document Name	Color
		(Back)
SSA-3827	Medical Report (Individual with Childhood Impairment)	Yellow (Back)
SSA-3881	Questionnaire for Children Claimant SSI Benefits	Blue
SSA-3885	Government Pension Questionnaire	Orange
SSA-L4201	Letter to Employer Requesting Wage Information	Orange
SSA-4268	Explanation of Determination (Attached to notice)	Red
SSA-4268	Explanation of Determination (Attached to SSA-831– Disability Determination Transmittal)	Yellow (Front)
HA-4632	Claimant's Medications	Blue
SSA-4734	Residual Mental/Physical Functional Capacity (RFC) Assessment – (Completed by DDS Physician)	Yellow (Back)
SSA-4815	Medical Report on Child with Allegation of HIV Infection	Yellow (Back)
SSA-5002	Report of Contact (Non-Disability e.g. P.O.A., AUX INFO)	Orange
SSA-5002	Report of Contact (Non-Medical, e.g., ADL, School Report)	Blue
SSA-5002	Report of Contact (Disability Related, e.g., Lab Findings)	Yellow

Form Number	Document Name	Color
	from T/P)	(Back)
SSA-8000* SSA-8001*	Application(s) for Supplemental Security Income	Orange
SSA-8006*	Statement of Living Arrangements, In-kind Support and Maintenance	Orange
SSA-8010*	Statement of Income and Resources	Orange
SSA-8011*	Statement of Household Expenses and Contributions	Orange
SSA-8019*	Third Party Liability Statement	Orange
SSA-8551	Programmatic Fraud Referral	Blue
No form number	Electronic Disability Collect System (EDCS) Routing Form	Blue (filed by DDS)
(This is a report. No form number is assigned.)	Report of Investigation (CDI) Place this report on top of ALL documents, including the DDS worksheet.	Yellow (Back)

J. List of Documents Received/Generated by HO

The following is a list of documents received or generated by the hearing office subsequent to request for hearing and the section of the MDF in which they are filed. (Listed in alphabetical order.)

Briefs	Part E
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Case History, CPMS	Part A
Cassette (Hearing) & Cassette Envelope	Part A
Certificates:	
Birth	Part D
Death	Part D
Congressional Inquiries and Responses	Part D
Correspondence:	
Disability Related	Part E
Non-Disability Related	Part D
Decision/Dismissal:	
ALJ	Part A
Senior Attorney	Part A
Earnings, Proof of (Certified Earnings Record, Employer Statement, W2, tax return, DEQY/SEQY)	Part D
Evidence:	
*Request for	Part C
Additional Medical	Part F

Fees:	
Agreement or Contract	Part B
Order or Authorization	Part A
Petition, Form SSA-1560	Part B
Hearing:	
Acknowledgement of Request/Attachments	Part B
Continuance of Hearing	Part B
Notice of Hearing (Claimant, Rep., ME, VE)	Part B
Waiver of Right to Appear	Part B
Information:	
Release Form SSA-827	Part E
Interrogatories:	
Medical Expert (ME)	Part F
Vocational Expert (VE)	Part E
Printouts, Systems Screen (Not Pertinent)	Part C
Proffer:	

ME, request and response	Part F
VE, request and response	Part E
Professional Qualification Statements (PQs):	
Attached to Notice of Hearing (ME/VE)	Part B
Attached to Medical Evidence	Part F
Attached to SSA-831-833	Part F
Psychiatric Review Technique (PRT) Form	
Completed by DDS Physician	Part F
Completed by ALJ	Part F
Completed by Treating Physician	Part F
Queries	Part C
Questionnaires, Disability:	
Activities of Daily Living (ADL)	Part E
Claimant's Medication	Part E
Recent Medical Treatment	Part E
Work History	Part E
Reports of Contact:	

Disability Related	Part F
Not Disability Related	Part D
Representative:	
Appointment of SSA-1696	Part B
Withdrawal of	Part B
Resume (see Professional Qualifications Statement)	
Substitute Party Form	Part B
Workers' Compensation Information	Part D

* Request will be placed in Part C Current Development/Temporary pending receipt of evidence. If the evidence is not received, the original request and documentation regarding follow-up attempts should be transferred to Part E, Disability Related Development and Documentation, prior to release of the file.

In addition, locally developed forms should be placed in the folder in accordance with guidelines provided in DI 70005.005B.

K. List of Documents Received/Generated by Appeals Council

NOTE: The Appeals Council will continue to use an Appeals File (AF) to house its working papers.

Additional Evidence	
Briefs	
Non-medical	Part D
Medical	Part E

Cassette	
Cassettes	Part A
Cassette Envelopes	Part A
Search Requests	AF
Certifications	Part A
Congressional Correspondence	
Inquiries	Part D
Interim Responses	AF
Final Responses	Part D
(Other) Correspondence	
Disability Related	Part E
Non-Disability Related	Part D
Interim Correspondence	AF
Dispositions	
Decision by AC	Part A
Dismissal by AC	Part A
Notice Denying R/R	Part A

Remand by AC	Part A
Fees	
Agreement or Contract	Part B
Order or Authorization	Part A
Petition	Part B
MSS Comments	
Made AC Exhibit	Part F
Not Made AC Exhibit	AF
Order Entering Exhibits	Part D
PRTF	
(Part of AC Decision)	Part A
Representative	
Notice of Appointment	Part B
Withdrawal	Part B
Request for Review	Part B
Substitute Party Form	Part B
Appeals Council Notice(s) – Own Motion, Reopening and Proposed to Find	Part B

L. Prior Hearing Exhibits

When a prior hearing decision and the exhibits on which that decision was based are material to the current claim as determined by the ALJ, obtain the prior decision, exhibits and exhibit list, and include them as proposed exhibits for the current case along with the following:

1. The certified transcript (if one was prepared).
2. The claimant's request for Appeals Council review of the hearing decision (if one was filed).
3. A copy of the Appeals Council's final action on the prior claim (if any).
4. A copy of any documents related to a civil action (if any), including the final action of the court.

NOTE: Do not renumber the exhibits on which a prior decision was based. Prior hearing documentation will remain intact in the existing folder. These documents will not be incorporated into the MDF. The exhibit list from the prior hearing will be attached to the exhibit list for the MDF. If there is a prior claim that was not appealed to the hearing level, the prior file will remain in its folder and be attached to the back of the current claim MDF. Exhibits relating to second or third hearings, etc., would be prefaced with the letters "B", "C", etc.

EXAMPLES:

- B-1A = 2nd hearing, Exhibit 1, part A
- C-1DWB = 3rd hearing, Exhibit 1, DWB File

M. Preparing the Exhibits

Documents identified as exhibits within each section and part of the claim file will be numbered sequentially. The HO staff will number exhibits in each part beginning with the number 1. The alpha letter applicable to each part, e.g., Part A, must also be included when numbering the exhibits.

1. Prepare and number the exhibits as follows:
 - a. If the exhibit has only one page, place an exhibit number in the lower right hand corner of the page. If the exhibit has more than one page, place an exhibit number in the lower right hand corner of the first page and, on each subsequent page, place the exhibit number, page number, and total number of pages in the exhibit. For example: Exhibit No. 15, Page 2 of 5.
 - b. Tape all exhibits smaller than letter size to a sheet of 8-1/2 x 11 inch paper.
 - c. Combine all initial, reconsidered (only in non-prototype states) and revised determinations (SSA-831s and SSA- 833s) into one multi-page exhibit. If there are other documents in the same section/part of the file, these should also be made separate exhibits marked as described above.
2. Prepare the exhibit list. (See I-2-1-20, Preparation of Exhibit List.)

NOTE: Do not write on, highlight or otherwise mark up exhibits except for stamping and numbering them.

NOTE: In order to clearly identify the exhibits for any reviewing component which the Administrative Law Judge (ALJ) relied on in making a Decision, exhibits must be selected, arranged and marked in **ALL** Decision cases. However, in Fully Favorable Decisions, the Exhibit List does not need to be prepared. Thus, in all Fully Favorable Decisions exhibits will still be required to be selected, arranged and marked.

I-2-1-35. Examination of Proposed Exhibits and Other Claim File Material

Last Update: 8/29/14 (Transmittal I-2-116)

A. General

The administrative law judge (ALJ) or the hearing office (HO) staff must provide the claimant or representative, if any, an opportunity before the hearing to examine the material that constitutes or will constitute the evidence of record. The claimant or representative has the right to examine all material in the file, not just the material the HO staff has selected as "proposed exhibits." See Hearings, Appeals and Litigation Law (HALLEX) manual I-2-1-15.

NOTE: If the claim(s) file is paper and the case is being transferred to another HO, see HALLEX I-2-1-57 B.1.

B. Providing the Opportunity To Examine the Proposed Exhibits and Other Claim(s) File Material

When an electronic claim(s) file is involved, the HO staff will generally burn an encrypted compact disc (CD) of the claim(s) file for unrepresented claimants. When a claimant is represented, HO staff will generally provide a CD to a representative who is not registered for online access to the folder, or to representatives who enrolled for online access before November 1, 2010, and have not informed the agency that they no longer want to receive CDs. For more information, see the HO electronic business process section 3.2 S.

NOTE: CDs for claimants and representatives are typically prepared during workup after the case is exhibited and on the evening before or on the day of the hearing.

After providing the CD, HO staff must annotate in the messages tab in eView that a CD was provided, the exhibits included on the CD, and the date the CD was burned. This is necessary to determine whether fees are required for additional copies under HALLEX I-2-1-35 C below.

For a paper claim(s) file, if a claimant or representative requests to examine the file or proposed exhibits before the hearing, HO staff will inform the person that he or she can examine the file and proposed exhibits at the HO. When the person indicates review at the HO is not possible, HO staff will inform the person that he or she can review the file and proposed exhibits at the field office (FO). If the person agrees to review in the FO, HO staff will send the paper file and proposed exhibits to the FO closest to the claimant's residence or the representative's place of business, following the general procedures set forth in HALLEX I-2-7-30 G. If review at neither location is possible, HO staff must send photocopies of proposed exhibits and other claim(s) file material to the person.

NOTE 1: An ALJ or HO staff may suggest that a claimant or representative review a paper file and proposed exhibits at

the HO or FO, but the ALJ or HO staff cannot require the claimant or representative do so.

NOTE 2: When the request is unclear, HO staff should request that a claimant or representative clarify whether he or she wants a copy of all material in the file (including route slips, file copies of correspondence, etc.) or only a copy of all proposed exhibits.

After sending a copy of the paper claim(s) file, HO staff will annotate on a Report of Contact (ROC) that a copy was mailed to the person requesting the file. The ROC should include the name, address, exhibits, and the date the copy was mailed. In part, this is necessary to determine whether fees are required for additional copies under HALLEX I-2-1-35 C below.

C. Charging Fees for CDs or Photocopies

Per provisions in the Privacy Act, the HO will provide one free copy of a file to the claimant when access is for program purposes (i.e., for the purpose of obtaining a Social Security benefit). A representative is also entitled to a free copy of the claim(s) file, unless the claim(s) file is electronic and the representative is registered for online access to the claim(s) file. See HALLEX I-2-1-35 B above.

When the HO sends the free copy of the claim(s) file, it will annotate the record, as noted in HALLEX I-2-1-35 B above. If the HO has already provided a free copy of the claim(s) file, see HALLEX I-1-4-3 D.2.

NOTE: The HO may also waive fees for subsequent copies of the claim(s) file when the cost of copying all the materials is less than the cost of separating materials not yet released to the claimant.

If there is any question whether the HO should charge a fee for a subsequent copy, HO staff should contact the appropriate Office of Disability Adjudication and Review regional office for guidance.

NOTE: HO staff may not provide a claim(s) file to any person, even an employee of a representative, without proper authorization for the release of information to the individual.

D. Action When Claim(s) File Contains Sensitive Material

If the claim(s) file contains material that may be harmful to the claimant or another person, follow the procedures in HALLEX I-2-7-30 F.

If the file contains material that a source has identified as sensitive or confidential, and efforts to obtain release of the restriction have been unsuccessful, the ALJ may not admit the material into the record as evidence for decision or disclose the material to any other person. See HALLEX I-2-1-15 B.

I-2-3-10. Scheduling Hearings

Last Update: 8/29/14 (Transmittal I-2-117)

Citations:

20 CFR 404.936, 404.999a-d, 416.1436, and 416.1495-416.1499

Unless the agency exercises its authority under the pilot program in 20 CFR 404.936 and 416.1436 that began on August 9, 2010, the administrative law judge (ALJ) sets the time and place for the hearing. The ALJ may change the time and place, if necessary. The objective is to hold a hearing as soon as possible after the request for hearing (RH) is filed, at a site convenient to the claimant. The hearing office (HO) staff will generally contact hearing participants to ascertain availability before scheduling the hearing.

NOTE: If a claimant threatens violence against the general public or HO personnel, or has been banned from entering a Federal or Social Security facility, see the instructions for scheduling a hearing in 20 CFR 404.937 and 416.1437 and in Chapter I-1-9-0 of the Hearings, Appeals and Litigation Law (HALLEX) manual.

A. Determining the Time and Place for Hearing

When an ALJ sets the time and place for a hearing, the ALJ will consider:

- The number and types of cases to be set for hearing,
- The proximity of the hearing site to the claimant's residence, and
- The availability of the claimant, representative, and witnesses on the proposed hearing date.

To the extent possible, the location of the hearing site will be within 75 miles of the claimant's residence. The ALJ will also consider scheduling the hearing by video teleconferencing (VTC) or, in certain extraordinary circumstances, by telephone. See HALLEX I-2-0-15.

1. Determining the Claimant's Manner of Appearance

The ALJ determines the claimant's manner of appearance at the hearing, and will notify the claimant of the manner of appearance in the notice of hearing. See 20 CFR 404.936 and 416.1436. However, in determining how the claimant will appear at the hearing, the ALJ must approve a claimant's timely submitted objection to appearing by VTC (unless the claimant changes residences while the request for hearing is pending), as explained in HALLEX I-2-0-15 and I-2-0-21. Regardless of a claimant's manner of appearance at the hearing, the ALJ must inquire fully into all matters at issue and conduct the hearing in a fair and impartial manner. See HALLEX I-2-6-1.

A claimant or other party to the hearing will not be denied the right to a hearing because of geographic considerations. See HALLEX I-2-1-45 D.

a. Appearance in Person

An ALJ will schedule a claimant to appear in person at the hearing when:

- An in-person hearing will be more timely and efficient than a hearing by VTC; or
- The claimant properly objected to a hearing by VTC, as described in HALLEX I-2-0-21, and the claimant has not changed his or her residence while the request for hearing is pending.

NOTE 1: See HALLEX I-2-3-11 B for circumstances when an ALJ will honor a claimant's objection to appearing via VTC even if he or she changed residences while the request for hearing is pending.

NOTE 2: A claimant's confinement in a prison or other institution may require an ALJ to schedule the hearing at the place of confinement, unless other arrangements can be made. See HALLEX I-2-3-10 A.1.b below.

b. Appearance by VTC

An ALJ will schedule a claimant to appear at a hearing by VTC when:

- VTC equipment is available to conduct the appearance;
- Use of VTC to conduct the appearance would be more efficient than conducting the appearance in person; and
- There is no circumstance in the particular case that prevents the use of VTC to conduct the appearance.

NOTE 1: Though an ALJ will do so whenever practicable, an ALJ is not required to honor a claimant's request to appear by VTC.

The ALJ may determine a VTC appearance is not appropriate when:

- It is more efficient to hold an in-person hearing because the claimant's residence is closer to the HO than a VTC-equipped site;
- An ALJ is available at a remote site for another reason;
- An ALJ would have to travel to another office to access the VTC equipment and such travel would be at a greater expense than traveling to the remote site;
- The claimant presents a threat of violence and there is insufficient security at the remote site;
- The claimant has a visual or auditory impairment of a type that could adversely affect his or her ability to appear and participate in the hearing through VTC;
- The claimant alleges bias on the part of an expert witness and the ALJ determines that the claimant should have the opportunity to cross examine the witness in person; or

- The existing evidence indicates that in-person observation of the claimant is required to evaluate the claim properly.

NOTE 2: When a claimant is confined in a prison or other institution, and the institution has VTC technology, ALJs are encouraged to hold the hearing by VTC for security reasons and to reduce delays in the hearing that may otherwise occur.

c. Appearance by Telephone

The claimant or any party to the hearing may request to appear at the hearing by telephone. The ALJ will grant the request to appear by telephone if the ALJ determines that extraordinary circumstances prevent the claimant or other party from appearing in person or by VTC. See 20 CFR 404.936 and 416.1436. Extraordinary circumstances at the claimant's request are generally limited to incarceration, institutionalization, natural disasters, or very unusual circumstances directly related to a claimant's impairments.

Additionally, an ALJ may direct that a claimant or other party appear at the hearing by telephone due to extraordinary circumstances. When the claimant is incarcerated, the ALJ will direct that a claimant appear by telephone only if an in person or VTC hearing is not possible.

NOTE: Since an ALJ will direct a claimant's appearance by telephone only under extraordinary circumstances, the claimant is not given an opportunity to object to this manner of appearance. See HALLEX I-2-3-12 A.

2. Determining the Manner of Appearance by Other Necessary Persons

The ALJ will determine whether any person other than the claimant, including a medical or vocational expert, will appear at the hearing in person, by VTC, or by telephone. The notice of hearing will inform the claimant of the manner of these appearances.

The ALJ will direct a person other than the claimant to appear by VTC or telephone when the ALJ determines the following:

- VTC or telephone equipment is available;
- Use of VTC or telephone equipment would be more efficient than conducting an examination of a witness or medical or vocational expert in person; and
- There is no other reason that VTC or telephone should not be used.

If the claimant objects to any other person appearing by VTC or by telephone, the ALJ will decide the issue, either in writing or at the hearing. See HALLEX I-2-3-12.

For further information regarding testimony by a medical or vocational expert, see HALLEX I-2-6-70 or I-2-6-74 respectively.

B. Estimating the Time Required for the Hearing

When an ALJ schedules several hearings in succession, the ALJ will estimate the time required for each hearing to ensure that the schedule allows sufficient time for each hearing.

C. Adjourning, Postponing, or Continuing the Hearing

Before the time set for a hearing, an ALJ may postpone the hearing, or an ALJ may adjourn a hearing that is in progress and continue it at a later date. In either circumstance, the ALJ will give the claimant reasonable notice of postponement or continuance of a hearing. See HALLEX I-2-3-35.

3-10. Scheduling Hearings

Last Update: 5/24/11 (Transmittal I-2-82)

Citations:

20 CFR 404.936, 416.1436, 404.999a-d, and 416.1495-416.1499

Unless the agency exercises its authority under the 3-year pilot program in 20 CFR 404.936 or 416.1436 (68 FR 5218, Feb. 3, 2003, as amended at 75 FR 39160, July 8, 2010) that began on August 9, 2010, the Administrative Law Judge (ALJ) sets the time and place for the hearing. The ALJ may change the time and place, if necessary. The objective is to hold a hearing as soon as possible after the request for hearing (RH) is filed, at a site convenient to the claimant. The HO staff should telephone hearing participants to ascertain availability before scheduling the hearing.

NOTE:

If a claimant threatens violence against the general public or hearing office personnel, or has been banned from entering a federal or Social Security facility, please refer to the instructions for scheduling a hearing in 20 CFR 404.937 and 416.1437 (see 76 FR 13508, Mar. 14, 2011), and HALLEX I-2-1-37, Claimant Threatens Violence.

A. Determining the Time and Place for Hearing

When an ALJ sets the time and place for a hearing, the ALJ will consider the number and types of cases to be set for hearings during the period under consideration, the proximity of the hearing site to the claimant's residence, and the availability of the claimant, representative and witnesses on the proposed hearing date. To the extent possible, the location of the hearing site will be within **75 miles** of the claimant's residence. The ALJ should also give consideration to conducting the hearing through the use of video teleconferencing technology.

1. A claimant should not be required to travel a significant distance to the hearing office (HO) or another hearing site if a closer hearing site exists and there are no other circumstances that prevent an ALJ from conducting the hearing at the closer hearing site.
2. A claimant should not be required to appear at the HO or another hearing site if personal circumstances prevent the claimant from doing so. For example, a claimant's confinement in a prison or other institution may require an ALJ to schedule the hearing at the place of confinement, unless other arrangements can be made. Some institutions have video teleconferencing technology that can be used to conduct hearings. An ALJ is encouraged to pursue this avenue for security reasons, as well to reduce delays in the hearing that may otherwise occur. Telephone hearings may be held for a claimant held in a place of confinement if all of the requirements below are met:
 - a. There would otherwise be significant delay in adjudicating the case (based on an evaluation of the circumstances of the case, including when the claimant will be released from the confinement facility and how long the claimant has been waiting for a hearing);
 - b. No other means of conducting a hearing is immediately available, including video teleconferencing;
 - c. Telephone hearings are permitted by the confinement facility;
 - d. The claimant has been informed of the right to an in-person hearing as well as other available options including:

- a decision based on the information in the case file,
 - waiting for an in-person hearing or hearing by video teleconferencing,
 - designating a representative to appear on the claimant's behalf at an in-person hearing or hearing by video teleconferencing at a location other than the place of confinement, or
 - withdrawing the request for hearing;
- e. The claimant is informed that although he or she will have the same rights to present evidence, testify, and question any witnesses, he or she is waiving the opportunity to see or be seen by the ALJ in person; and
- f. The claimant, or appointed representative on behalf of the claimant, affirmatively agrees in writing that he or she has been notified of the available options and affirmatively elects to proceed with a telephone hearing, and this writing is associated with the file as an exhibit.

NOTE:

There are circumstances in which the only alternative for scheduling a hearing for a confined claimant is waiting until the period of confinement ends.

3. A claimant or other party to the hearing should not be denied the right to a hearing because of geographic considerations. For example, if a person whose rights may be adversely affected by the decision resides in a different HO service area than the claimant, the ALJ may conduct a primary hearing for the claimant that filed the RH, and arrange for the other person to attend the hearing or a supplemental hearing by video teleconferencing.

B Estimating the Time Required for the Hearing

When an ALJ schedules several hearings in succession, the ALJ should estimate the time that will be required for each hearing to ensure that sufficient time is allotted.

C. Adjourning, Postponing or Continuing the Hearing

An ALJ may postpone a hearing before the time set for the hearing or adjourn a hearing in progress to continue it at a later date. The ALJ will give the claimant reasonable notice of postponement or continuance of a hearing. See [I-2-3-35](#), [Adjournment and Continuance of Hearing](#).

D. Claimant Objects to the Time or Place of the Hearing

A claimant may object to the time or place of a hearing by notifying the ALJ of the reasons for the objection at the earliest possible opportunity, and the time and place he or she would prefer the hearing to be held. When the hearing is scheduled by video teleconferencing, the claimant has an absolute right to request the hearing be postponed and re-scheduled in favor of an in-person hearing. See [20 CFR 404.936\(e\)](#) and [416.1436\(e\)](#) ([68 FR 5218](#), Feb. 3, 2003, as amended at [75 FR 39160](#), July 8, 2010); [I-5-1-16 III.C.](#), [Claimant's Right to Object to VTC Hearing](#). As explained in section A., a hearing by telephone for a confined claimant may not be held if he or she objects in any manner.

Whenever possible, the claimant or the claimant's representative should submit the objection in writing. However, if necessary, the claimant may object by telephone. If a claimant notifies the HO of an objection by telephone, the HO staff must prepare a report of contact and associate it with the claim folder. When a proposed exhibit list is created, the report of contact should be made an exhibit to the claim folder.

E. Determining Whether a Claimant Has Good Cause for Objecting to the Time or Place of the Hearing

1. The ALJ must find good cause for changing the time or place of a scheduled hearing if:
 - a. the claimant or the claimant's representative is unable to attend or travel to the scheduled hearing because of a serious physical or mental condition, incapacitating injury, or death in the family;
 - b. severe weather conditions make it impossible to travel to the hearing; or
 - c. the claimant objects to the hearing being held by video conferencing technology. See I-5-1-16 III.C., Claimant's Right to Object to VTC Hearing.
2. The ALJ may also find good cause for changing the time or place of a scheduled hearing, based on other circumstances. When determining whether a claimant has good cause for objecting to the time or place of his or her hearing based on other circumstances, the ALJ will consider the claimant's reason(s) for objecting, the facts supporting the reason(s), and the effect of the proposed change on the efficient administration of the hearing process.

Examples of other circumstances a claimant may give for requesting a change in the time or place of a scheduled hearing include, but are not limited to, the following:

- a. the claimant has attempted to obtain a representative, but needs additional time;
- b. the representative was appointed within 30 days of the scheduled hearing and needs additional time to prepare for the hearing;
- c. the representative has a prior commitment to be in court or at another administrative hearing on the date scheduled for the hearing;
- d. a witness who will testify to facts material to the case would be unavailable to attend the scheduled hearing and the evidence cannot be otherwise obtained;
- e. transportation is not readily available for the claimant to travel to the hearing;
- f. the claimant lives closer to another hearing site; or
- g. the claimant is unrepresented and illiterate and, as a result, unable to respond to the notice of hearing.

When determining the impact that changing the time or place of the hearing would have on the efficient administration of the hearing process, factors the ALJ should consider include, but are not limited to: the impact on other cases awaiting hearing, the cost of implementing the change (e.g., higher expert witness fees or travel expenses), whether the ALJ granted the claimant an earlier change, and whether a change would unnecessarily delay the hearing.

F. ALJ Finds Good Cause To Change the Time or Place of the Hearing

When the ALJ finds that there is good cause to change the time or place of the hearing, the ALJ will reschedule the hearing. The ALJ or the HO staff will notify the claimant and representative of the finding by sending a new notice of hearing at least 20 days before the hearing. See I-2-3-15, Notice of Hearing.

G. ALJ Does Not Find That There Is Good Cause to Change the

Time or Place of the Hearing

When the ALJ does not find that there is good cause to change the time or place of the hearing, the ALJ will reschedule the hearing. The ALJ or the HO staff will notify the claimant and representative of the finding and rationale for the finding before the hearing. The notification could be either by written notice or via telephone by HO staff, documented in a Report of Contact. Such notice documentation should be made an exhibit to the administrative record.

NOTE:

The place of a hearing may not be changed simply because another site would be more convenient to the representative. See I-2-0-70, Hearing Office Service Area.

H. Reimbursement of Travel Expenses

In addition to the cited regulatory references, additional directives concerning the payment of travel expenses can be found in the Administrative Instructions Manual System, Financial Management Manual, Chapter 07, Instruction No. 26 (AIMS.FMM.07.26).

I. Claimant and unsubpoenaed witness

- a. The designated hearing office personnel may authorize reimbursement for the travel expenses of a claimant or unsubpoenaed lay or medical witness whose appearance the ALJ determines is "reasonably necessary" for a fair hearing, when such person must travel more than 75 miles one way to attend the hearing. Reimbursable expenses typically include the ordinary expenses of public or private transportation as well as unusual costs due to special circumstances. See 20 CFR 404.999c and 416.1498.

NOTE:

When a change in the location of the hearing is made at the claimant's or representative's request, and the new hearing site is farther from the claimant's residence than the initial location, any additional travel expenses will not be reimbursed (i.e., eligibility and the amount of reimbursement will be based on the initial location of the hearing).

- b. For claimants traveling from a foreign destination, see I-2-0-72, Assigning and Processing Requests for Hearing Filed by Claimants Who Do Not Reside in the United States.

J. Subpoenaed witness

- a. A subpoenaed witness is reimbursed the same fees and allowances paid to witnesses in U. S. District Court, including:
 - a fee for each day's attendance (including a fee for the necessary time to travel to and from the place of attendance);
 - the actual cost of transportation by the most economical and expeditious mode; and
 - a subsistence allowance on the same basis that Social Security Administration employees are currently authorized.
- b. These expenses must be recorded on a Public Voucher for Fees and Mileage of Witnesses, SF-1156, and Claim for Fees and Mileage of Witness, SF-1157, which must be signed by the subpoenaed

witness and a certifying officer. The certifying officer may not be the ALJ at whose hearing the witness testified. The regional office will process these vouchers and forward them to the appropriate servicing fiscal office for payment.

3. representatives

- a. A representative may request reimbursement if travel from the representative's office to the place where the hearing is held exceeds 75 miles one way.
- b. The amount of reimbursement a representative receives cannot exceed the maximum amount allowable for travel to the place where a hearing is held. The maximum amount allowable for travel to each individual hearing site is calculated by completing attachment B in Chapter 7, Instruction No. 26 in AIMS. This information should be maintained by each hearing office for each hearing site in its jurisdiction (including the hearing office and all remote sites). As this information is established or updated by the hearing office, the hearing office should forward a copy of this information to the Office of Disability Adjudication and Review (ODAR) regional office.

NOTE 1:

If the distance between the place where a hearing is held and the farthest point in the entire hearing office geographic service area does not exceed 75 miles, representative travel expenses are not reimbursed.

NOTE 2:

Do not take into consideration whether the representative traveled from outside the service area of the hearing office. As a representative cannot receive more than the maximum amount allowable for a particular hearing site, it is irrelevant whether the travel occurred in or out of the service area.

NOTE 3:

When a change in the location of the hearing is made at the claimant's or representative's request, and the new hearing site is further from the representative's office than the initial location, any additional travel expenses will not be reimbursed (i.e., eligibility and the amount of reimbursement will be based on the initial location of the hearing).

- c. Subject to the maximum amount allowable, ordinary expenses of public or private transportation are typically reimbursable. As appropriate, designated personnel may also consider unusual costs due to special circumstances. See 20 CFR 404.999c and 416.1498. However, the combined reimbursement of ordinary and unusual costs cannot exceed the maximum amount allowable for the site where the hearing is held.
- d. If actual reimbursement for a representative's travel is less than the maximum amount allowable for travel to a hearing site, reimbursement is based on actual travel expenses and not the maximum amount allowable.

Added to this file 05/24/2011

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link to this document: <http://policynet.ba.ssa.gov/hallex.nsf/links/10203010>

I-2-3-10. Scheduling Hearings

Last Update: 8/15/05 (Transmittal I-2-60)

The Administrative Law Judge (ALJ) sets the time and place for the hearing. The ALJ may change the time and place, if necessary. The objective is to hold a hearing as soon as possible after the request for hearing (RH) is filed, at a site which is convenient to the claimant.

A. Determining the Time and Place for Hearing

When determining the time and place for a hearing, the ALJ will consider the number and types of cases to be set for hearings during the period under consideration, the proximity of the hearing site to the claimant's residence or place of business, and the availability of the claimant, representative and witnesses on the proposed hearing date. To the extent possible, the location of the hearing site will be within **75 miles** of the claimant's residence or place of business. The ALJ should also give consideration to conducting the hearing through the use of videoconference technology.

1. Do not require a claimant to travel a significant distance to the hearing office (HO) or another hearing site if a closer hearing site exists and there are no other circumstances which prevent the ALJ from conducting the hearing there.
2. Do not require a claimant to appear at the HO or another hearing site if personal circumstances prevent the claimant from doing so. For example, a claimant's confinement in a prison or other institution may require the ALJ to schedule the hearing at the place of confinement, unless other arrangements can be made. Some institutions have videoconference technology which can be utilized to conduct hearings. The Judge is encouraged to pursue this avenue for security reasons, as well to reduce delays in the hearing which may otherwise occur.
3. Do not deny any claimant the right to a hearing because of geographic considerations. For example, if a claimant other than the claimant that filed the RH resides in a distant HO service area, the ALJ may conduct a primary hearing for the claimant that filed the RH, and arrange for the other claimant to attend the hearing or a supplemental hearing in the distant service area by video conference.

NOTE:

The HO staff should telephone hearing participants to ascertain availability before scheduling the hearing.

B. Estimating the Time That Will be Required for the Hearing

When scheduling several hearings in succession, the ALJ should estimate the time that will be required for each hearing to ensure that sufficient time is allotted.

C. Adjourning, Postponing or Continuing the Hearing

An ALJ may postpone a hearing before the time set for the hearing or adjourn a hearing in progress to continue it at a later date. The ALJ will give the claimant reasonable notice of postponement or continuance of a hearing. (See I-2-3-35, Adjournment and Continuance of Hearing.) The letter used to respond to a request to reschedule a hearing can be accessed through the Document Generation System (DGS), by clicking on "Notices" and then clicking on "HO13-Letter Responding to request to Reschedule Hearing."

D. Claimant Objects to the Time or Place of the Hearing

A claimant may object to the time or place of a hearing by notifying the ALJ, at the earliest possible opportunity before the time set for the hearing, of the reasons for the objection, and the time and place he or she would prefer the hearing to be held. When the ALJ schedules the hearing to be held by videoconference, the claimant has an absolute right to request that the hearing be postponed and re-scheduled in favor of an in-person hearing. See 20 CFR §§ 404.936(e) and 416.1436 9e); I-5-1-16 III.C., Claimant's Right to Object to VTC Hearing.

Whenever possible, the claimant or the claimant's representative should submit the objection in writing. However, if necessary, the claimant may object by telephone. If a claimant notifies the HO of an objection by telephone, the HO staff must prepare a report of contact. The report of contact should be made an exhibit to the claim folder. To access a Report of Contact, go to DGS, click on "Correspondence", click on "Prehearing" and then click on "Other."

E. Determining Whether a Claimant Has Good Cause for Objecting to the Time or Place of the Hearing

1. The ALJ must find good cause for changing the time or place of a scheduled hearing, and change the time or place of the hearing, if:
 - a. the claimant or the claimant's representative is unable to attend or travel to the scheduled hearing because of a serious physical or mental condition, incapacitating injury, or death in the family;
 - b. severe weather conditions make it impossible to travel to the hearing; or
 - c. the claimant objects to the hearing being held by videoconference technology. See I-5-1-16 III.C., Claimant's Right to Object to VTC Hearing.
2. The ALJ may also find good cause for changing the time or place of a scheduled hearing, and change the time or place of the hearing based on other circumstances. When determining whether a claimant has good cause for objecting to the time or place of his or her hearing based on other circumstances, the ALJ will consider the claimant's reason (s) for objecting, the facts supporting the reason(s), and the impact changing the time or place of the hearing would have on the efficient administration of the hearing process. Examples of other circumstances a claimant may give for requesting a change in the time or place of a scheduled hearing include, but are not limited to, the following:
 - a. the claimant has attempted to obtain a representative, but needs additional time;
 - b. the representative was appointed within 30 days of the scheduled hearing and needs additional time to prepare for the hearing;
 - c. the representative has a prior commitment to be in court or at another

- administrative hearing on the date scheduled for the hearing;
- d. a witness who will testify to facts material to the case would be unavailable to attend the scheduled hearing and the evidence cannot be otherwise obtained;
 - e. transportation is not readily available for the claimant to travel to the hearing;
 - f. the claimant lives closer to another hearing site; or
 - g. the claimant is unrepresented and illiterate and, as a result, unable to respond to the notice of hearing.

When determining the impact that changing the time or place of the hearing would have on the efficient administration of the hearing process, factors the ALJ should consider include, but are not limited to, the impact a change would have on processing other cases awaiting hearing, the cost of implementing the change (e.g., higher expert witness fees or travel expenses), whether the ALJ granted the claimant an earlier change, and whether a change would unnecessarily delay the hearing.

F. ALJ Finds That There Is Good Cause to Change the Time or Place of the Hearing

When the ALJ finds that there is good cause to change the time or place of the hearing, the ALJ will reschedule the hearing. The ALJ or the HO staff will notify the claimant and representative of the finding by issuing a new notice of hearing at least 20 days before the hearing. (See I-2-3-15, Notice of Hearing.) To access letter finding "good cause" for changing the time and place of a hearing, access DGS, click on "Notices" and then click on "HO14 – Change Place and Time of Hearing."

G. ALJ Does Not Find That There Is Good Cause to Change the Time or Place of the Hearing

The ALJ will not change the time or place of the hearing without first finding that the claimant has "good cause" for such a request. The ALJ or the HO staff will notify the claimant and representative of the finding and rationale for it before the hearing. The notification could either be by written notice or via telephone or email by HO staff which should be documented in a Report of Contact. Such notice documentation should be made an exhibit to the administrative record.

NOTE:

The ALJ or HO staff may not change the place of a hearing simply because another site would be more convenient to the representative. (See I-2-0-70, Hearing Office Service Area.)

H. Reimbursement of Travel Expenses

1. Claimant, representative and unsubpoenaed witness

- a. An ALJ may authorize reimbursement of reasonable travel expenses to a claimant,

representative or unsubpoenaed lay or medical witness whose appearance the ALJ determines is "reasonably necessary" for a fair hearing, when such person must travel more than 75 miles one way to attend the hearing.

- b. Directives concerning the payment of these travel expenses can be found at Chapter 07, Instruction No. 26, Administrative Instructions Manual System (AIMS). (See I-2-0-72 E., Foreign Claimant Travel — Residence and Reimbursement of Travel Expenses; and I-2-0-93 Exhibit - ENCLOSURE — REIMBURSEMENT OF TRAVEL EXPENSES.)

2. Subpoenaed witnesses

- a. Subpoenaed witnesses are reimbursed the same fees and allowances paid to witnesses in U. S. District Court, i.e.:
 1. a fee for each day's attendance (including a fee for the necessary time to travel to and from the place of attendance);
 2. the actual cost of transportation by the most economical and expeditious mode; and
 3. a subsistence allowance on the same basis that Social Security Administration employees are currently authorized.
- b. These expenses must be recorded on a Public Voucher for Fees and Mileage of Witnesses, SF-1156, and Claim for Fees and Mileage of Witness, SF-1157, which must be signed by the subpoenaed witness and a certifying officer. The certifying officer may not be the ALJ at whose hearing the witness testified. The regional office will process these vouchers and forward them to the appropriate servicing fiscal office for payment.

Added to this file 08/12/2005

Last Updated: 08/12/2005

Link to this document: <http://policy.net.ba.ssa.gov/hallex.nsf/links/10203010>

I-2-3-15. Notice of Hearing

Last Update: 8/29/14 (Transmittal I-2-117)

A. When To Mail the Notice of Hearing

The administrative law judge (ALJ) or hearing office (HO) staff must send notice of the hearing to the claimant and representative at least 20 days before the hearing, unless the claimant has waived the right to advance notice. See the Hearings, Appeals and Litigation Law (HALLEX) manual I-2-3-25 for more information about a waiver of advance notice of hearing. HO staff will also add a copy of the notice of hearing to the claim(s) file.

NOTE: In region 1, the notice of hearing must be issued 75 days in advance unless the claimant agrees to a shorter notice period. See 20 CFR 405.316(a).

B. Verifying the Claimant's Address

It is important to check for any update to the claimant's address before sending a notice of hearing. In addition to querying the Case Processing and Management System (CPMS), the HO staff will check the Personal Communications (PCOM) system queries, including:

- The Full Master Beneficiary Record (FACT) for title II cases;
- The Supplemental Security Income Display (SSID) for title XVI cases;
- The Modernized Development Worksheet (MDW) for either title;
- The Customer Service Record (CSR) for either title; and
- The Prisoner Update Processing System (PUPS) for either title.

NOTE: In some cases, newly submitted medical evidence or correspondence may include an address change. Therefore, whenever possible, the HO should check any newly submitted medical evidence or correspondence for a possible address change.

To reduce the likelihood of a remand from the Appeals Council for an address issue, HO staff will associate any queries obtained in the D section of the file. HO staff must associate a copy of the notice of hearing with the file.

C. Notice of Hearing Forms

1. In General

HO staff can generate notice of hearing templates from the Document Generation System (DGS). DGS includes the standardized notices of hearing we use in all case types, as well as our standardized amended notices of hearing and notices of continued hearing.

NOTE: DGS includes a Spanish version of each template. See HALLEX I-2-3-45 for more information on when to send a Spanish version of the notice of hearing.

For blind or visually impaired claimants, see HALLEX I-2-3-50 for special notice options.

2. Special Video Teleconferencing (VTC) and Telephone Considerations

Appropriate language options are available in DGS for a variety of situations including when hearing participants will appear via VTC or telephone. The available options include:

- Claimant only appears before the ALJ by VTC or telephone;
- Claimant and appointed representative appear before the ALJ by VTC or telephone;
- Only a witness or witnesses appear by VTC or telephone;
- The claimant and at least one expert witness appear by VTC or telephone (from the same or a different site); or
- The claimant and all witnesses appear by VTC or telephone (from the same or different sites).

When a claimant is scheduled to appear by VTC or telephone, HO staff will prepare the notice of hearing using the "Remarks" section in DGS to advise the claimant if a witness(es) will appear by VTC or telephone, and that the claimant will see, hear, and speak with the expert through the VTC equipment or by telephone.

D. Information to Include on the Notice of Hearing

All notices of hearing must include:

- The claimant's proper name, applicable Social Security number(s), proper names of expert witnesses, the HO or National Hearing Center address, and the time and place set for the hearing.
- A statement of whether the claimant, any party to the hearing, or other witness(es) will appear at the hearing in-person, via VTC, or by telephone.
- A statement of the issues to be decided and the claimant's right to object to those issues. See generally HALLEX I-2-2-0.
- A statement informing the claimant of his or her right to designate a representative.
- A statement informing the claimant that he or she may be reimbursed for travel expenses under certain circumstances.
- An explanation of the procedures for requesting a change in the time and place of the hearing.
- A statement that the ALJ may dismiss the request for hearing if the claimant fails to appear at the scheduled hearing without "good cause."
- A reminder to submit additional evidence as soon as possible for consideration by the ALJ.

NOTE 1: If the claim is pending in region 1, a statement must be included that the ALJ may decline to consider additional evidence if it is submitted later than 5 business days before the date of the hearing.

- A statement of the claimant's right to request the issuance of a subpoena. See HALLEX I-2-5-78.
- Any other information about the scheduling and conduct of the hearing that the ALJ believes the claimant should have.

NOTE 2: If the claimant is scheduled to appear by VTC, the notice of hearing must also explain that the scheduled place for the hearing is a VTC site.

If the claimant is appearing by telephone, the notice of hearing will state the claimant's phone number of record that the ALJ will use to call the claimant. It will also provide the claimant the opportunity to submit an alternate phone number if the information is inaccurate.

E. Documenting the Hearing Information

HO staff will follow the instructions in the HO electronic business process section 4.2 for documenting hearing information in CPMS, including the:

- Time and date of the hearing;
- Time zones of the claimant and other participants;
- Site selection, including off-network conferencing, multi-point bridge, or Representative Video Project involvement;
- Need for a language interpreter under HALLEX I-2-1-70 and I-2-6-10; and
- Need for a sign language interpreter or real time court reporter under HALLEX I-2-1-72 and I-2-6-12.

I-2-3-15. Notice of Hearing

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Last Update: 8/15/05 (Transmittal I-2-60)

A. When to Mail the Notice of Hearing

The ALJ or the HO staff must send notice of the hearing to the claimant and representative at least 20 days before the hearing.

B. Notice of Hearing Forms

1. Form HA-507-U5 (Notice of Hearing)
Use this form when preprinted forms are not appropriate. (See I-2-2-90 through I-2-2-101 Sample of Language Which May Be Appropriate in the Notice of Hearing.)
2. Form HA-508-U6 (Amended Notice of Hearing)
3. Form HA-513-U6 (Notice of Continuance of Hearing)
4. Form HA-4637-U6 (Notice of Hearing - Disability) — Titles II and XVI Claim Continuance of Period of Disability, Disability Insurance Benefits, and Supplemental Security Income (Work Activity Not Involved)
5. Form HA-4637-U5-SI — Title XVI Claim for Continuance of Supplemental Security Income (Work Activity Not Involved)
6. Form HA-5071-U5 — Title II Claim for Period of Disability and Disability Insurance Benefits
7. Form HA-5072-U5 — Title II Claim for Disabled Widow(er)/Surviving Divorced Spouse
8. Form HA-5075-U5 — Title II Claim for Continuance of Disability Insurance Benefits (Work Activity Not Involved)
9. Form HA-5076-U5 — Title II Claim for Continuance of Disability Insurance Benefits (Work Activity Involved)
10. Form HA-5077-U6 — Titles II and XVI Claim for Period of Disability, Disability Insurance Benefits, and Supplemental Security Income (Disability-Adult)
11. Form HA-5078-U5 — Title XVI Claim for Supplemental Security Income (Disability-Adult)

NOTE:

There is a Spanish version of each of these forms. The form number is the same, except "SP" is added to the Spanish version. For example, the Spanish version of Form HA-5078-U5 is HA-5078-U5-SP. (See I-2-3-45 Spanish Language Translations of Forms and Notices.)

C. Information to Include on the Notice of Hearing

All notices of hearing must show:

1. The claimant's proper name, applicable Social Security number(s), proper names of expert witnesses, the HO address, and the time and place set for the hearing.
2. A statement of the issues to be decided. (See I-2-2 ff, Issues Before the Administrative Law Judge)
3. A statement that the claimant has a right to object to those issues.
4. A statement informing the claimant of the right to designate a representative.
5. A statement informing the claimant that reimbursement of travel expenses may be made under certain circumstances.
6. An explanation of the procedures for requesting a change in the time and place of the hearing.
7. A reminder that the ALJ may dismiss the request for hearing if the claimant fails to appear at the scheduled hearing without "good cause."
8. A reminder to submit additional evidence as soon as possible for consideration by the ALJ.
9. The claimant's right to request the issuance of a subpoena. (See I-2-5-78, Use of Subpoenas - General).
10. Any other information about the scheduling and conduct of the hearing that the ALJ believes the claimant should have.

NOTE:

The information provided to the claimant and others about the hearing must be complete, technically correct, and worded in a manner that can easily be understood.

D. Distribution of Notice of Hearing

The Notice of Hearing, or a copy thereof, should be mailed to the claimant and to the representative, if any. Also, a copy of the Notice of Hearing should be placed in the administrative record and in the HO file.

Link to this section:

<http://policynet.ba.ssa.gov/hallex.nsf/lnx/10203015>

*I-2-3-15 - Notice of Hearing - 08/12/2005
Added to this file 08/12/2005
Last Updated: 08/12/2005*

I-2-3-20. Acknowledgment of Notice of Hearing

Last Update: 2/7/14 (Transmittal I-2-103)

A. Acknowledgment Form

With each notice of hearing, hearing office (HO) staff will send a Form HA-504 (Acknowledgment of Notice of Hearing) or the Spanish version, HA-504-SP, to the claimant and representative, if any.

B. Acknowledgment Form Not Returned

If the acknowledgment form is not returned within 7 days, send a written Reminder to Return Acknowledgment Form, or telephone the claimant or representative, if any, to ask whether he or she plans to attend the hearing. To generate the Reminder to Return Acknowledgement Form, HO staff will access the template in the Document Generation System (DGS) by selecting "Notices" and "Notice of Hearing Reminder."

NOTE: If HO staff intends to give notice by telephone, HO staff must personally speak to the claimant or representative, if any, to satisfy the notification requirement. HO staff may notify the claimant by telephone at any time prior to the date set for the hearing. HO staff must also document the contact on a Form SSA-5002, Report of Contact, and associate it with the file to satisfy the notification requirement.

The notification requirement is not satisfied if the HO staff leaves a message on an answering machine or with anyone other than the claimant or representative. Further, an automated courtesy call before the hearing does not constitute notification because the claimant may not be the person who answers the phone call.

1. Claimant or representative received the notice of hearing

If the claimant or representative received the notice of hearing and plans to attend the scheduled hearing, HO staff will ask him or her to return the HA-504 confirming the intent to appear.

If the claimant or representative received the notice of hearing and does not plan to attend the scheduled hearing, but would like to attend a hearing at another time, the ALJ must consider whether there is good cause to postpone the hearing using the instructions in Hearings, Appeals, and Litigation Law (HALLEX) manual I-2-3-10 E.

- If the ALJ finds good cause and postpones the hearing, HO staff will send a new Notice of Hearing and Form HA-504. HO staff may access the appropriate documents in DGS by selecting "Correspondence," then "Pre Hearing" and "PH-36G-Good Cause Found" or "PH37G - Postponement."

- If the ALJ does not find good cause to postpone the hearing, HO staff will notify the claimant or representative that the hearing will be held as scheduled, and that failure to attend may result in a dismissal. In the notice, the ALJ must explain the reasons for not finding good cause, and associate the notice with the file. If the HO staff verbally communicates with the claimant or representative, if any, regarding the issue, HO staff must record the conversation on a Report of Contact and associate it with the file. If neither the claimant nor the representative, if any, appear at the time and place set for the hearing, see the instructions in HALLEX I-2-4-25.

2. Claimant or representative did not receive the notice of hearing

If the claimant or representative states that he or she did not receive the notice of hearing, HO staff will verify the address and send a new notice by certified mail with return receipt requested. HO staff will send any subsequent correspondence in the same manner and retain the return receipt(s) in the file.

NOTE 1: A notice is "received" if either the claimant or the representative receives it.

NOTE 2: If a claimant or representative does not receive a notice of hearing, and it is necessary to send a new notice, HO staff must send the "new" notice at least 20 days before the hearing, unless the claimant waives the right to 20-day notice. For more information when the claimant waives the right to 20-day notice, see HALLEX I-2-3-25.

NOTE 3: The certified mail and return receipt procedure may also be appropriate where there is a high incidence of non-receipt of mail in a specific locality. However, the Regional Chief ALJ must approve this procedure in advance.

I-2-3-20. Acknowledgment of Notice of Hearing

Last Update: 8/15/05 (Transmittal I-2-60)

A. Acknowledgment Form

With each Notice of Hearing, send a Form HA-504 (Acknowledgment of Notice of Hearing) or the Spanish version, HA-504-SP.

B. Administrative Law Judge's (ALJ's) Name on Acknowledgment Form

To ensure that the acknowledgment form is routed to the proper ALJ when it is returned to the hearing office (HO), the HO staff should set forth the ALJ's name and address on each form.

C. Acknowledgment Form Not Returned

If the acknowledgment form is not returned within 7 days, send a written Reminder to Return Acknowledgment Form) or telephone the claimant or representative (if any) and ask whether they plan to attend the hearing. To access the Reminder to Return Acknowledgement Form, access DGS. Go to "Notices" and then click on "Notice of Hearing Reminder."

1. Claimant or representative received the notice of hearing

- a. If the claimant or representative received the notice of hearing and plans to attend the scheduled hearing, ask them to return the HA-504 confirming their intentions.
- b. If the claimant or representative received the notice of hearing and does not plan to attend the scheduled hearing, but would like to attend a hearing at another time, consider whether there is good cause to postpone the hearing.
 - If the ALJ finds good cause and postpones the hearing, send a new Notice of Hearing and Form HA-504. (See I-2-3-10 E., ALJ Finds Claimant Has "Good Cause" for Objecting To Time or Place Set for the Hearing.) To access letters to be used to find "good cause" to postpone or move the date and time of hearing, access DGS, click on "Prehearing" and then click on "PH-366-Good Cause Found" or "PH376 - Advisement of Postponement."
 - If the ALJ does not find good cause to postpone the hearing, notify the claimant and representative that the hearing will be held as scheduled, and that failure to attend may result in a dismissal. Include in this notice an explanation of the ALJ's reasons for not finding good cause, and document the file (i.e., retain a copy of any written notice or prepare and retain a report of contact of any oral notice). (See I-2-4-25, Dismissal Due to Claimant's Failure to Appear.)

2. Claimant or representative did not receive the notice of hearing

If the claimant or representative say that they did not receive the notice of hearing, verify the address and send a new notice by certified mail with return receipt requested. Also send all subsequent correspondence in the same manner. Retain the return receipt(s) in the administrative record.

NOTE 1:

We consider a notice to be "received" if either the claimant or the representative receives it.

NOTE 2:

If a claimant or representative do not receive a notice of hearing, and it is necessary to send a new notice, the "new" notice must be sent at least 20 days before the hearing, unless the claimant waives the right to 20-day notice. (See I-2-3-25, Waiver of Advance Notice of Hearing.) to the waiver of written notice form can be accessed through DGS by clicking on "Correspondence," clicking on "Prehearing," and then clicking on "Waive Written Notice," or by clicking on "Notices" and then selecting "Waiver of Written Notice of Hearing."

NOTE 3:

The certified mail and return receipt procedure may be appropriate where there is a high incidence of nonreceipt of mail in a specific locality. However, the Regional Chief ALJ must approve this procedure in advance.

Link to this section:

<http://policynet.ba.ssa.gov/hallex.nsf/lnx/10203020>

*I-2-3-20 - Acknowledgment of Notice of Hearing - 08/12/2005
Added to this file 08/12/2005
Last Updated: 08/12/2005*

I-2-4-25. Dismissal Due to Claimant's Failure to Appear

Last Update: 2/7/14 (Transmittal I-2-104)

A. Failure to Appear — Introduction

An administrative law judge (ALJ) may generally dismiss a request for hearing (RH) based on failure to appear in the following circumstances, except when a parent or guardian appears at the hearing on behalf of a claimant who is a minor. An ALJ's attempts to develop good cause, and any responses received, must be associated in the B section of the claim(s) folder.

1. Neither Claimant Nor Representative Appears

An ALJ may dismiss an RH when neither the claimant nor the appointed representative, if any, appears at the time and place of a scheduled hearing and neither shows good cause for the absence. For authority, see 20 CFR 404.957(b), 416.1457(b) and 405.380. Except in the circumstances set forth in this provision, an ALJ will develop whether there is good cause for the failure to appear.

2. Neither Claimant Nor Representative Appears on Time

An ALJ may also dismiss an RH on the basis of failure to appear when an unrepresented claimant, or the claimant and his or her representative, fails to appear on time for the hearing. However, the ALJ must first develop whether there is good cause for the tardiness.

NOTE: If a claimant appears at the hearing office (HO) after the time set for hearing, HO staff will document the appearance on the Form SSA-5002 found in Hearings, Appeals, and Litigation Law (HALLEX) manual I-2-4-91, and associate the completed form in the B section of the file. Whenever possible, staff must notify the ALJ while the claimant is still at the HO. In this situation, the ALJ has discretion to make a finding of good cause and proceed with the hearing, or to develop good cause using the procedures in this section. If the ALJ does not find good cause, he or she must exhibit the completed Form SSA-5002 and make specific reference to its contents in the dismissal order.

3. Third Party Appears on Behalf of Minor or Age 18 Claimant

Occasionally, a claimant may fail to appear at the hearing, but a parent or guardian who has not been appointed as a representative will appear at the hearing on the claimant's behalf. If an appointed representative

is present, the ALJ will proceed as noted in HALLEX I-2-4-25 D below. If the parent or guardian indicates the claimant is late, the ALJ will proceed as noted in HALLEX I-2-4-25 A.2.

The ALJ will not proceed with the hearing if:

- The claimant is age 18 or older, and
- The claim is an initial application for adult disability benefits or based on the continuation thereof.

If the hearing cannot proceed, the next appropriate action depends on whether the claimant returned the acknowledgement of hearing form. See HALLEX I-2-3-20 C. If the claimant responded and indicated he or she would appear at the hearing, the ALJ may dismiss the request for hearing. If the claimant was not the person who responded to the acknowledgement of hearing form, or the acknowledgement form was not returned, see the procedures noted in I-2-4-25 C below.

NOTE: If the claimant is a minor, a parent or guardian may appear at the hearing on the claimant's behalf.

B. Definition of Good Cause for Failure to Appear

The term "good cause" refers to a reasonable explanation for failing to comply with a requirement. When determining whether good cause exists for failure to appear, the ALJ must base the decision on the circumstances of each individual case. In doing so, the ALJ must consider any physical, mental, educational, or linguistic limitations that may have prevented the claimant from appearing at the scheduled time and place of the hearing, akin to the requirements for consideration of good cause for late filing in 20 CFR 404.911, 416.1411, 405.20, and Social Security Ruling 91-5p.

C. Considering Good Cause for Failure to Appear

1. Circumstances That Generally Establish Good Cause

There are no set criteria for determining what constitutes good cause for failure to appear at the time and place of a scheduled hearing.

However, good cause generally exists in any one of the following three circumstances.

a. No Proper Notification of the Scheduled Hearing

Good cause for failure to appear at the scheduled time and place of hearing generally exists when the claimant did not receive proper notification of the scheduled hearing.

Before dismissing an RH for failure to appear, the ALJ must determine whether there is evidence in the record that shows the claimant was properly notified of the time and place set for the hearing, as described in HALLEX I-2-3-20 C. The ALJ will consider the following:

- If the claimant has an appointed representative, notification to the representative is sufficient to establish notification to the claimant.

- If the follow up contact was made by telephone, the ALJ must ensure the proper documentation is in the file, as noted in HALLEX I-2-3-20 C.
- If the claimant alleges he or she reported a new address to another agency component such as the field office or teleservice center but the notice of hearing was sent to an outdated address, the ALJ will review the queries noted in HALLEX I-2-3-15 B and carefully consider the allegation.

If the record does not show there was proper notification of the scheduled hearing, the ALJ must reschedule the hearing and provide proper notification of the rescheduled hearing.

If the claimant or appointed representative received proper notification and neither appears at the time of the scheduled hearing, see HALLEX I-2-4-25 C.3.a. below.

NOTE: Regardless of a failure to appear, if a preponderance of the evidence supports a fully favorable decision on every issue, the ALJ will consider whether it is appropriate to issue a fully favorable decision instead of dismissing the RH.

b. Unforeseeable Event

Good cause for failing to appear at the scheduled time and place of hearing generally exists when an unforeseeable event occurred that did not provide the claimant or the appointed representative enough time to notify the ALJ and request a postponement before the scheduled hearing.

c. Withdrawal of Representation Without Sufficient Notice

Good cause for failure to appear at the scheduled time and place of hearing generally exists when the appointed representative:

- Withdrew representation shortly before the scheduled hearing (approximately a week or less before the scheduled hearing), or appeared at the hearing and withdrew as representative, and
- There is no indication in the record that the claimant was aware the representative would not be appearing at the hearing on his or her behalf.

In this circumstance, the ALJ must develop for good cause. See HALLEX I-2-4-25 D below.

NOTE: Depending on the circumstances, an ALJ may also find that special circumstances support a finding of good cause when the representative withdrew more than a week before the hearing and the claimant was unaware of the withdrawal.

2. Procedures to Develop Good Cause

To develop good cause, the HO will:

- Send a Form HA-L90, Request To Show Cause For Failure To Appear, to the claimant and the appointed representative, if any;
- Give the claimant and appointed representative 10 days from the date of the Form HA-L90 to respond; and
- Provide an additional 5 days for mailing time before proceeding.

It is important to check for any update to the claimant's address before sending the Form HA-L90 and associate the updated queries in the D section of the file. In addition to querying the Case Processing and Management System (CPMS), the HO staff must check the Personal Communications (PCOM) system queries, including:

- the Full Master Beneficiary Record (FACT) for title II cases,
- the Supplemental Security Income Display (SSID) for title XVI cases,
- the Modernized Development Worksheet (MDW) for either title,
- the Customer Service Record (CSR) for either title, and
- the Prisoner Update Processing System (PUPS) for either title.

NOTE: In some cases, an updated address may also be found on medical evidence. Additionally, when applicable, the HO will use the instructions in HALLEX I-2-5-69 C for verifying inmate information on the Internet.

3. When Developing Good Cause Is Not Necessary

If neither the claimant nor the appointed representative, if any, appears at the scheduled hearing, the ALJ may dismiss the RH without developing good cause in the following circumstances.

a. Claimant Received the Notice of Hearing

The ALJ need not develop good cause if the record shows that the claimant received the Notice of Hearing and the claimant does not have a physical, mental, educational, or linguistic limitation that may affect his or her ability to understand the Notice of Hearing. If those criteria are met, the ALJ can generally presume the claimant fully understands the possible consequences of his or her failure to appear at the time and place of a scheduled hearing. The Notice of Hearing notifies a claimant that the RH may be dismissed without further notice if neither the claimant nor the appointed representative, if any, appears at the scheduled hearing.

NOTE: For instruction when the representative appears without the claimant, see HALLEX I-2-4-25 D below.

b. Claimant Did Not Return Acknowledgment Form

It is unnecessary to develop good cause when:

- the claimant did not return the acknowledgment form sent with the Notice of Hearing,
- the contact procedures required by 20 CFR 404.938 and 416.1438 were followed (as described in HALLEX I-2-3-20 C), and

- there is no indication of good cause for failure to appear.

Any documentation generated to comply with the regulatory procedures must be associated in the B section of the claim(s) folder and exhibited if the ALJ issues a dismissal. Documentation may include copies of letters sent to the claimant, reports of contact documenting telephone calls, and re-mailed copies of the Notice of Hearing and acknowledgement form.

An ALJ may not use a Form HA-L90 after the fact as an alternative to following proper notice procedures prior to the hearing. A Form HA-L90 is unnecessary if the ALJ followed all the contact procedures prior to the hearing.

c. Claimant's Whereabouts Are Unknown

If the Notice of Hearing is returned to the HO as undeliverable, all attempts to contact the claimant by other means are unsuccessful, and it is concluded that the claimant's whereabouts are unknown, the ALJ may dismiss the RH after:

- Verifying that the address used on the Notice of Hearing and any other contact correspondence is the most recent address in CPMS and on the PCOM system queries, including the FACT for title II cases, the SSID for title XVI cases, the MDW for either title, the CSR for either title, and the PUPS for either title; and
- Ensuring that all attempts to contact the claimant are clearly documented in the B section of the claim(s) folder and the documentation is exhibited. For example, any envelopes returned by the post office as undeliverable must be associated with the claim(s) folder, as well as any statements made by individuals regarding the absence or disappearance of the claimant.

An ALJ may not dismiss the RH until after the time scheduled for the hearing because the claimant may learn of the scheduled hearing in another way and appear. If the claimant does not appear at the scheduled hearing, the ALJ may dismiss the RH but must describe all efforts to contact the claimant in the dismissal order.

D. Appointed Representative Appears at Hearing Without the Claimant

1. Representative Withdraws From Representing the Claimant at the Hearing

In some cases, an appointed representative will appear at the time and place of the scheduled hearing but will withdraw as representative if the claimant does not appear. If the claimant did not appear at the hearing but notified the HO that he or she is aware the representative was going to withdraw, the ALJ may dismiss the RH. However, if the HO did not receive notification from the claimant indicating he or she was aware the representative was going to withdraw at the hearing, the ALJ must develop good cause for failure to appear.

If the claimant alleges he or she did not appear at the hearing because the claimant believed the representative was appearing on his or her behalf, or the claimant otherwise indicates he or she wants to proceed with the hearing, the ALJ will generally find good cause for failure to appear, and the ALJ will reschedule the hearing. However, if the claimant does not respond to the Form HA-L90, the ALJ may dismiss the RH.

NOTE 1: If a preponderance of the evidence supports an on-the-record fully favorable decision on every issue, the ALJ will consider whether it is more appropriate to issue a decision under 20 CFR 404.948 and 416.1448 rather than dismiss the RH.

NOTE 2: In egregious situations, a representative's failure to notify the claimant of the withdrawal before the hearing may constitute misconduct or may establish a pattern of possible misconduct under 20 CFR 404.1740 and 416.1540. For more information on making referrals for alleged representative misconduct, see HALLEX I-1-1-50.

2. Representative Continues to Represent the Claimant During the Hearing

If an appointed representative appears at the scheduled hearing without the claimant and continues to represent the claimant during the hearing, dismissal is never appropriate. However, the ALJ may determine that the claimant has constructively waived the right to appear at the hearing if:

- The representative is unable to locate the claimant;
- The Notice of Hearing was mailed to the claimant's last known address; and
- The contact procedures required by 20 CFR 404.938 and 416.1438, as described in HALLEX I-2-3-20 C, have been followed.

a. Constructive Waiver of Right to Appear

If the ALJ finds that the claimant has constructively waived the right to appear at the hearing, the ALJ need not proceed with the hearing and may choose to issue a decision on the record. However, if medical expert or vocational expert testimony is needed to resolve the case, the ALJ may choose to proceed with the hearing, accepting the testimony of the witness(es) and allowing the appointed representative to question the witness(es) and make arguments on the claimant's behalf.

In any event, the ALJ will advise the appointed representative, either on the record during the hearing or in writing thereafter, that he or she will not send a Request to Show Cause for Failure to Appear to the claimant because the claimant has constructively waived the right to appear at hearing. When done in writing, the ALJ must associate the writing with the record.

b. No Constructive Waiver

If the ALJ finds that the claimant has not constructively waived the right to appear at the hearing, the ALJ may choose to proceed with the hearing, accepting the testimony of the witness(es) and allowing the appointed representative to question the witness(es) and make arguments on the claimant's behalf. The ALJ will advise the appointed representative that a Request to Show Cause for Failure to Appear will be sent to the claimant to ask why he or she did not appear at the scheduled hearing and whether a supplemental hearing should be held. After the 10-day comment period expires (with an additional five days for mailing time), the ALJ will either:

- Determine that the claimant has constructively waived his or her right to appear for a hearing (if the claimant fails to respond to the Request to Show Cause for Failure to Appear or fails to show good cause for failure to appear at the scheduled hearing), and issue a decision based on the evidence of record; or
- Offer the claimant a supplemental hearing to provide testimony if the claimant establishes good cause for failure to appear at the scheduled hearing.

E. Claimant Requests Change in the Time or Place of the Hearing

Subject to 20 CFR 404.936, 405.317, or 416.1436, if a claimant or his or her appointed representative, if any, requests that the ALJ change the time or place set for the hearing, the ALJ will consider whether the claimant or representative has good cause for requesting the change.

- If the ALJ finds there is not good cause for changing the time or place of the scheduled hearing, the ALJ will notify the claimant or appointed representative, if any, of his or her finding.
- If the ALJ finds there is good cause for changing the time or place of the scheduled hearing, the ALJ will notify the claimant of the time and place of the rescheduled hearing.

If, after proper notification of the scheduled hearing (see HALLEX I-2-3-20 and I-2-4-25 C above), neither the claimant nor the representative appears at the time and place set for the hearing, the ALJ must determine whether the claimant or representative received the notice of hearing. If the ALJ finds that the claimant or representative did receive the notice, the ALJ may dismiss the RH for failure to appear under the circumstances noted in I-2-4-25 C.3. above.

F. Claimant Waived Right to Oral Hearing — ALJ Nevertheless Scheduled Hearing

The ALJ may not dismiss an RH for failure to appear if the claimant waived the right to an oral hearing and the ALJ nevertheless scheduled a hearing. In this situation, the ALJ must decide the case based on the evidence of record.

Version Effective 7/22/2005

I-2-4-25. Dismissal Due to Claimant's Failure to Appear

A. Failure to Appear — General

An Administrative Law Judge (ALJ) may dismiss a request for hearing (RH) when neither the claimant who requested the hearing, nor the claimant's representative, appears at a scheduled hearing and neither shows good cause for the absence.

B. Establishing Good Cause for Failing to Appear

To establish good cause for failure to attend a scheduled hearing, a claimant must show that neither the claimant nor the claimant's representative was properly notified of the scheduled hearing, or that an unexpected event occurred that did not provide them enough time in advance of the scheduled hearing to notify the ALJ and request a postponement. (See I-2-4-10, Vacating an Order of Dismissal, which defines good cause.) Any contact with the claimant and/or representative prior to the hearing pursuant to the contact provisions of 20 CFR §§ 404.938 and 416.1438 must be documented as a record of contact and made a part of the record as an exhibit. Any such documentation should make specific note of whether the claimant and/or the representative received the Notice of Hearing. Before dismissing an RH for failure to appear, the ALJ must:

1. Determine if the claimant was properly notified of the time and place set for the hearing, e.g., determine whether the claimant or representative returned the acknowledgement form sent with the Notice of Hearing (See I-2-3-20 C., Acknowledgement Form Not Returned), or whether there is any other evidence which shows that they received the hearing notice. Again, documentation of actions taken by hearing office employees to comply with the contact provisions of 20 CFR §§ 404.938 and 416.1438 must be exhibited in the B section of the claims folder. Copies of letters sent to the claimant or reports of contact documenting telephone contacts must be made exhibits in the B section of the claims folder.

If the claimant or representative alleges that there was no proper notification of the scheduled hearing and there is no evidence to show that they received the hearing notice, the ALJ should find good cause for failure to appear.

2. If the claimant and representative indicate that they received the hearing notice, but failed to appear at the scheduled hearing because of another reason, determine whether the other reason is sufficient to establish good cause. (See I-2-0-60, Good Cause for Late Filing.)

NOTE: If the evidence of record appears to support a fully favorable decision and thus the hearing may not be necessary, the ALJ should consider whether he or she can issue a fully favorable decision instead of dismissing the RH.

C. Notice to Show Cause for Failure to Appear

1. When a Show Cause Notice is Needed

If it is necessary to develop good cause, send a form HA-L531, Notice to Show Cause for Failure to Appear, to the claimant and the claimant's representative. This Notice may be created in the Document Generation System (DGS). Give the claimant and the claimant's representative 10 days from the date of the notice to respond, and allow an additional 5 days for mailing time.

NOTE: Before dismissing a claimant's RH for failure to appear, the ALJ must ensure that the claimant fully understood the possible consequences of his or her failure to appear. This requires documentation in the record that the claimant received the Notice of Hearing.

2. When a Show Cause Notice is not Needed

If neither the claimant nor the claimant's representative appears at the scheduled hearing, the ALJ may dismiss the RH without sending a show cause notice if:

- a. the record shows that the claimant received the Notice of Hearing and was therefore notified that the RH could be dismissed without further notice if neither the claimant nor the representative appeared at the scheduled hearing (See [I-2-3-90](#), Sample 1, Reminder to Return Acknowledgement Card.), or, the claimant has not returned the acknowledgment card and the contact procedures of [20 CFR §§ 404.938](#) and [416.1438](#) have been followed, and there is no indication of "good cause;" or
- b. the claimant's whereabouts are unknown (*e.g.*, the Notice of Hearing is returned to the HO as undeliverable, all attempts to contact the claimant by other means are unsuccessful, and it is concluded that the claimant cannot be located). However, before dismissing an RH because the claimant's whereabouts are unknown:
 - check the PCOMS system queries, including FACT for Title II cases, SSID for Title XVI cases, and the Modernized Development Worksheet for either title, for the claimant's latest address and ensure that the latest address was correctly used on the Notice of Hearing and in all other attempts to contact the claimant; and
 - ensure that all attempts to contact the claimant are clearly documented in the claim file. For example, document the claim file with any envelopes returned by the post office as undeliverable and reports of any statements made by individuals regarding the absence or disappearance of the claimant. Include these documents in the B section of the claims folder.

NOTE 1: A show cause order cannot be used as an alternative to following proper notice procedures, unless there is evidence establishing that notice was actually received. (See [I-2-3-15](#), Notice of Hearing, and [I-2-3-20](#), Acknowledgement of Notice of Hearing.)

NOTE 2: Even if you are unable to locate the claimant, do not dismiss the RH until after the time scheduled for the hearing. The claimant may learn of the scheduled hearing

in another way and appear. If the claimant does not appear at the scheduled hearing, dismiss the RH. In the dismissal order, describe all efforts to contact the claimant.

NOTE 3: Under the provisions of [I-2-4-25.C.2.](#), if the acknowledgment card is not returned but the procedures set forth herein have been followed, a show cause order is not required.

3. Queries for Claimant Address

In addition to querying CPMS, the following systems queries can be used to determine if the claimant reported a change of address to another component of SSA.

Title II	FACT	PCOMS Main Menu—A	#9, #2
Title XVI	SSID	PCOMS Main Menu—A	#9, #10
Title II/XVI	MDW	PCOMS Main Menu—A	#24

D. Claimant's Representative Appears at Hearing Without the Claimant— Constructive Waiver of Right to Appear at Hearing

If a claimant's representative appears at a scheduled hearing without the claimant, the ALJ must determine whether the claimant is an essential witness for a proper determination of the case.

1. The ALJ may determine that the claimant has constructively waived the right to appear at the hearing if the representative is unable to find the claimant, the notice of hearing was mailed to the claimant's last known address, and the contact procedures of [20 CFR §§ 404.938](#) and [416.1438](#) have been followed.

If the hearing includes expert witnesses, the ALJ may choose to proceed with the hearing, accepting the testimony of the witnesses and allowing the claimant's representative to question the witnesses and make arguments regarding the claimant's application.

The ALJ should advise the claimant's representative that a Notice to Show Cause will be issued asking the claimant why he or she did not appear, and why a supplemental hearing should be held. If the claimant fails to respond to the Notice to Show Cause or fails to provide good cause for failure to appear at the scheduled hearing, the ALJ may then determine that the claimant has constructively waived his or her right to appear for a hearing, and the ALJ may issue a decision on the record.

2. If the claimant provides good cause for failure to appear, the ALJ will offer the claimant a supplemental hearing to provide testimony.

NOTE: If a representative appears at a scheduled hearing without the claimant, dismissal is never appropriate.

E. Claimant Requests Change in the Time or Place of the Hearing

If a claimant or representative requests the ALJ to change the time or place set for the hearing, the ALJ will consider whether the claimant or representative has good cause for requesting the change. If the ALJ finds that the person requesting the change does not have good cause, the ALJ must notify the person of his or her finding. If the ALJ notifies the person of his or her finding, and neither the claimant nor the representative appears at the time and place set for the hearing, the ALJ must determine if the claimant or representative received the notice. If so, the ALJ may dismiss the RH for failure to appear without sending a notice to show cause.

F. Claimant Waived Right to Oral Hearing — ALJ Nevertheless Scheduled Hearing

The ALJ may not dismiss an RH for failure to appear if the claimant waived the right to an oral hearing and the ALJ nevertheless scheduled a hearing. In this situation, the ALJ must decide the case on the evidence of record.

G. Failure to Appear on Time for Scheduled Hearing

An ALJ may dismiss an RH on the basis of failure to appear if the claimant or representative fail to appear on time for the hearing, and the ALJ decides that good cause does not exist for such tardiness.

I-2-4-30. Dismissal — No Right to a Hearing

The Administrative Law Judge (ALJ) may dismiss a request for hearing (RH) if it was not filed by a proper claimant or there is otherwise no right to a hearing.

A. Proper Claimant (See [I-2-1-45](#), Parties to the Hearing.)

Generally, the ALJ will consider an RH to have been filed by a “proper claimant” if it was filed by:

1. a claimant to the initial, reconsideration or revised determinations;
2. an individual who was not a claimant to the initial, reconsideration or revised determinations, but who shows in writing that his or her rights may be adversely affected;
3. a duly appointed representative on behalf of a proper claimant; or
4. an individual who has filed an application for and pursued a claim on behalf of a proper claimant because that claimant is a minor child, mentally incompetent, or physically unable to file an RH.

B. Actions Which Must Precede a Right to a Hearing

A claimant has a right to a hearing if the claimant has received:

1. in non-prototype states, a notice of a reconsideration or revised reconsideration determination; notice of revised initial determination in non-disability cases; or an ALJ's notice of proposed revised decision based on new evidence in a Title II and/or Title XVI claim; or
2. in prototype states, a notice of initial determination; notice of revised initial determination in non-disability cases, or an ALJ's notice of proposed revised decision based on new evidence in a Title II and/or Title XVI claim; or
3. an initial determination on the issue of waiver of overpayment if the field office (FO) is unable to conduct the personal conference or the claimant declines the personal conference to request an ALJ hearing in a combined overpayment reconsideration or waiver situation.

NOTE 1: When an ALJ determines that the claimant has not exhausted all earlier administrative procedures (i.e., the claimant has not received the required initial and reconsidered or revised determinations), the ALJ must find that the claimant does not have the right to a hearing and dismiss the RH.

NOTE 2: If a n RH includes or is based on issues for which the Social Security Administration (SSA) does not have jurisdiction, *e.g.*, issues which are within the jurisdiction of a State agency (See [I-2-2-10](#), Notice of Issues.) or the Internal Revenue Service (See [I-2-2-35](#) Earnings Related Issues the Administrative Law Judge May and May Not Address—Jurisdiction.), the ALJ must rule on the issues for which SSA has jurisdiction, and dismiss the RH with respect to the issues for which SSA does not have jurisdiction.

NOTE 3: If a hearing is requested on an issue listed in [20 CFR §§ 404.903](#) and [416.1403](#), “Administrative actions that are not initial determinations,” the claimant does not have a right to a hearing under the administrative review process and the RH should be dismissed. These administrative actions include a number of SSA actions, including (but not limited to) suspension of benefits pending an investigation, determining the fee that a representative may charge, and denying a request to readjudicate a claim and apply and Acquiescence Ruling.

C. Dismissal Orders

1. Use DGS to prepare the Order of Dismissal, selecting “No Reconsideration” for the dismissal order when there has been no reconsideration in a Title II case.
2. In other cases, use DGS, selecting the blank order to prepare the dismissal as needed. Exercise care to include the appropriate facts, pertinent statutory and regulatory authority, and supporting rationale.

I-2-4-10. Vacating an Order of Dismissal at the Request of a Claimant

Last Update: 2/7/14 (Transmittal I-2-104)

A. General

A claimant may request that an administrative law judge (ALJ) vacate a dismissal order within 60 days of the date of receiving the dismissal notice, unless the Appeals Council (AC) has jurisdiction. The AC has jurisdiction if the claimant has requested the AC review the order of dismissal or if the AC is reviewing the dismissal on its own motion. Subject to the timeframe and jurisdiction, an ALJ may vacate a dismissal order if the claimant shows the ALJ's dismissal of the request for hearing (RH) was erroneous.

NOTE: If the claimant files a second request for hearing on the same application within 60 days, the ALJ will treat it as a request to vacate the prior dismissal.

A claimant may not submit both a request to the ALJ to vacate the order and a request to the AC asking it to review the dismissal order. If this occurs, the ALJ must take the action most favorable to the claimant. The ALJ will either:

- Immediately notify the AC (via email to |||ODAR OAO) if the ALJ intends to vacate the order, or
- Respond in writing to the claimant indicating the ALJ will not review the request because the AC is reviewing the request, and associate a copy of the writing with the record.

B. Determining Whether to Vacate an Order of Dismissal

The regulations at 20 CFR 404.960 and 416.1460 require that when requesting that an ALJ vacate an order of dismissal, the claimant must state why the dismissal of the request for hearing was erroneous. To determine whether the dismissal was erroneous, the ALJ generally considers whether the claimant establishes a "good cause" reason to vacate the dismissal order. There are no set criteria for determining what constitutes good cause to vacate a dismissal order but the concepts in HALLEX I-2-0-60 and I-2-4-25 B-C will generally apply to vacate requests.

1. Good Cause Is Not Established

If the ALJ concludes that the claimant has not established a good cause reason to vacate the dismissal order, the ALJ will:

- Inform the claimant, in writing, of the reasons for the conclusion;
- Advise the claimant that the ALJ's refusal to vacate the dismissal order is not subject to review by the AC; and
- Document the file by associating the claimant's request and a copy of the ALJ's letter to the claimant.

2. Good Cause Is Established

If the ALJ concludes that the claimant established a good cause reason to vacate the dismissal order, the ALJ will vacate the dismissal order, proceed with the actions necessary to complete the record, hold a hearing (if applicable), and issue a decision.

C. Preparing a Vacate Order

The Document Generation System (DGS) does not include a template for vacating a dismissal order. To prepare a vacate order, the user will select the "Blank Order" in the DGS Findings Integrated Templates Dismissal template.

I-2-6-34. Examination of Proposed Exhibits on Date of Hearing

Last Update: 8/29/14 (Transmittal I-2-119)

Citations: 20 CFR 404.935 and 416.1435.

If the claimant or the representative has not examined the administrative record that constitutes or will constitute the evidence of record for a decision, including any proposed exhibits, the administrative law judge (ALJ) or hearing office (HO) staff must give them the opportunity to examine the material before the hearing. See Hearings, Appeals and Litigation Law (HALLEX) manual I-2-1-35.

If the claimant or the representative has objections or comments regarding a proposed exhibit, wants additional material from the administrative record included as evidence, or has other evidence to submit, the HO staff will inform the ALJ before the hearing begins. The ALJ will receive the objections, comments, or additional evidence on the record at the beginning of the hearing. The ALJ will rule on any objections to the proposed exhibits at the beginning of the hearing by rendering an order after the hearing or by addressing the objection in the decision.

NOTE:

If possible, the evidence or a summary of the evidence that the claimant wishes to have considered at the hearing should be submitted with the request for hearing or within 10 days after filing the request. 20 CFR 404.935 and 416.1435. See HALLEX I-2-6-15 A.3. for situations where the claimant is appearing by video teleconferencing and submits evidence at the hearing.

I-2-9-60. Reopening at Any Time

Last Update: 9/28/05 (Transmittal I-2-65)

Citations:

- 20 CFR §§ 404.988(c) and 416.1488(c)

A. Title II Cases

An Administrative Law Judge (ALJ) has the authority to reopen a determination or hearing decision which is otherwise final at any time if:

1. the determination or hearing decision was obtained by fraud or similar fault (for a definition of fraud or similar fault, see I-2-9-65); or
2. another person files a claim on the same earnings record and allowance of that claim adversely affects the earlier claim; or
3. a person previously determined to be dead, and on whose earnings record entitlement is based, is later found to be alive; or
4. the claim was denied because the claimant did not prove that a person died, and the death is later established by a presumption of death under 20 CFR § 404.721(b) or by location or identification of his or her body; or
5. the Railroad Retirement Board has awarded duplicate benefits on the same earnings record; or
6. the determination or hearing decision either:
 - denies the person on whose earnings record the claim is based gratuitous wage credits for military or naval service because another Federal agency (other than the Department of Veterans Affairs) has erroneously certified that it has awarded benefits based on the service; or
 - credits the earnings record of the person on which the claim is based with gratuitous wage credits and another Federal agency (other than the Department of Veterans Affairs) certifies that it has awarded benefits based on the same period of service for which the wage credits were granted; or
7. the claimant was denied for lack of insured status, but earnings for the appropriate period of time were later credited to the claimant's earnings record under the conditions described in 20 CFR § 404.988(c)(7); or
8. the determination or hearing decision is wholly or partially unfavorable to a party, but only to correct clerical error or an error that appears on the face of the evidence that was considered when the determination or decision was made ; or
9. a claimant is found entitled to monthly benefits or to a lump-sum death payment based on the earnings of a deceased person, and it is later established that:
 - the claimant was convicted of a felony or an act in the nature of a felony for intentionally causing that person's death; or

- if the claimant was subject to the juvenile justice system, the claimant was found by a court of competent jurisdiction to have intentionally caused that person's death by committing an act which, if committed by an adult, would have been considered a felony or an act in the nature of a felony; or
10. the determination or hearing decision either:
- denies the person on whose earnings record the claim is based deemed wages for internment during World War II because of an erroneous finding that a benefit based upon the internment has been determined by an agency of the United States to be payable under another federal law or under a system established by that agency; or
 - awards the person on whose earnings record the claim is based deemed wages for internment during World War II and a benefit based upon the internment is determined by an agency of the United States to be payable under another federal law or under a system established by that agency; or
11. the determination or hearing decision is incorrect because:
- the claimant was convicted of a crime that affected his or her right to receive benefits or his or her entitlement to a period of disability; or
 - the claimant's conviction of a crime that affected his or her right to receive benefits or his or her entitlement to a period of disability is overturned.

B. Title XVI Cases

An ALJ has the authority to reopen a determination or hearing decision which is otherwise final at any time if such determination or hearing decision was obtained by fraud or similar fault (for a definition of fraud or similar fault, see I-2-9-65).

FY 2009 50 Sample Cases from ALJ PANG and ALJ Martin

Purpose: To document our analysis of 50 sampled cases that were processed from FY 2009 for ALJ Martin and ALJ Pang
Source: CPMS

Conclusion We found that 45 out of 50 cases had been worked up properly in the electronic folder for case processing.
 4 out of 50 cases had been worked up but were missing some dates and did not have records exhibited.
 1 out of 50 cases was had a incomplete electronic folder that did not contain any medical records or an ALJ decision, therefore we were unable to come to a conclusion for that case.

Reviewer	Number	Cases Worked up properly ?	Notes	OWNER_ALJ_ID	CLAIMANT_SSN	CONTROL_SSN	BIC	TITLE_16_DISPOSITION_CODE1	TITLE_2_DISPOSITION_CODE	FINAL_DISPOSITION_DATE
FAK	1	Yes		2696			A	FREV	FREV	7/21/2009
FAK	2	Yes		2696			A	UAFF	UAFF	4/20/2009
FAK	3	Yes		2696			A	FREV	FREV	3/19/2009
FAK	4	Yes		2696			A	WDDI	WDDI	5/18/2009
FAK	5	NO	No exhibits, dates missing	2696			A	FREV	FREV	11/12/2008
FAK	6	Yes		2696			A	FREV	FREV	6/16/2009
FAK	7	No	No exhibits, dates missing	2696			A		FREV	10/8/2008
FAK	8	Yes		2696				FREV		6/19/2009
FAK	9	Yes		2696			A		FREV	9/10/2009
FAK	10	yes		2696				UAFF		1/30/2009
FAK	11	Yes		2696			A		FREV	2/6/2009
FAK	12	Yes		2696			A		FREV	7/22/2009
FAK	13	Yes		2696			A	FREV	FREV	3/27/2009
FAK	14	Yes		2696				UAFF		4/6/2009
FAK	15	Yes		2696			A		UAFF	5/22/2009
FAK	16	Yes		2696			A		DXDI	2/18/2009
FAK	17	Yes		2696				WDDI		12/23/2008
FAK	18	Yes		2696			A		UAFF	12/23/2008
FAK	19	Yes		2696			A	UAFF	UAFF	3/27/2009
FAK	20	Yes		2696				UAFF		5/13/2009
FAK	21	Yes		2696				ABDI		5/22/2009
FAK	22	Yes		2696			A	UAFF	UAFF	7/22/2009
FAK	23	Yes		2696			A	UAFF	UAFF	4/7/2009
FAK	24	Yes		2696			A	UAFF	UAFF	3/18/2009
FAK	25	Yes		2696				UAFF		10/31/2008
FAK	26	Yes		2757			A	UAFF	UAFF	4/7/2009
FAK	27	no	No exhibits, dates missing	2757			A		FREV	10/21/2008
FAK	28	Yes		2757			A	UAFF	UAFF	11/19/2008
FAK	29	Yes		2757				UAFF		2/24/2009
FAK	30	Yes		2757			A		UAFF	11/24/2008
FAK	31	Yes		2757			A	FREV	FREV	9/1/2009
FAK	32	no	No exhibits, dates missing	2757			A		UAFF	11/19/2008
FAK	33	Yes		2757				UAFF		10/21/2008
FAK	34	Yes		2757			A	FREV	FREV	5/26/2009
FAK	35	Yes		2757			A	UAFF	UAFF	1/21/2009
FAK	36	Yes		2757			A	UAFF	UAFF	12/8/2008
FAK	37	Yes		2757			A	FREV	OTDI	6/11/2009
FAK	38	Yes		2757			A		FREV	11/17/2008

FAK	39	Yes		2757			A	FREV	FREV	7/16/2009
FAK	40	Yes		2757				WDDI		5/26/2009
FAK	41	Yes		2757			A		UAFF	1/20/2009
FAK	42	Yes		2757				UAFF		5/14/2009
FAK	43	Yes		2757			A	UAFF	UAFF	12/19/2008
FAK	44	Yes		2757			A		ABDI	3/24/2009
FAK	45	Yes		2757				UAFF		5/6/2009
FAK	46	Yes		2757				UAFF		11/14/2008
FAK	47	Yes		2757			A		UAFF	4/28/2009
FAK	48	Yes		2757				FREV		7/2/2009
FAK	49	Unable to determine-	File Incomplete	2757			A	FREV	FREV	3/16/2009
FAK	50	Yes		2757				ABDI		2/12/2009

FY 2010 50 Sample Cases from ALJ PANG and ALJ Martin

Purpose: To document our analysis of 50 sampled cases that were processed from FY 2010 for ALJ Martin and ALJ Pang

Source: CPMS

Conclusion We found that 50 out of 50 cases had been worked up properly in the electronic folder for case processing.

Reviewer	Number	Cases Worked Up properly ?	Notes	DISPOSITION_AU_ID	CLAIMANT_SSN	CONTROL_SSN	BIC	TITLE_16_DISPOSITION_SWITCH1	TITLE_2_DISPOSITION_SWITCH	FINAL_DISPOSITION_DATE
FAK	1	Yes		2696	[REDACTED]	[REDACTED]	A		FREV	5/27/2010
FAK	2	yes		2757	[REDACTED]	[REDACTED]	A	UAFF	UAFF	4/26/2010
FAK	3	Yes		2696	[REDACTED]	[REDACTED]	A	ABDI	ABDI	1/6/2010
FAK	4	Yes		2757	[REDACTED]	[REDACTED]		FREV		3/22/2010
FAK	5	yes		2757	[REDACTED]	[REDACTED]	A	UAFF	UAFF	12/16/2009
FAK	6	Yes		2757	[REDACTED]	[REDACTED]		ABDI		9/14/2010
FAK	7	Yes		2696	[REDACTED]	[REDACTED]		UAFF		8/20/2010
FAK	8	Yes		2757	[REDACTED]	[REDACTED]		ABDI		3/12/2010
FAK	9	Yes		2757	[REDACTED]	[REDACTED]	A		FREV	9/9/2010
FAK	10	Yes		2696	[REDACTED]	[REDACTED]		ABDI		1/26/2010
FAK	11	Yes		2696	[REDACTED]	[REDACTED]	A	FREV	FREV	4/28/2010
FAK	12	Yes		2757	[REDACTED]	[REDACTED]		FREV		8/24/2010
FAK	13	Yes		2757	[REDACTED]	[REDACTED]	A	FREV	FREV	8/12/2010
FAK	14	Yes		2696	[REDACTED]	[REDACTED]	A	UAFF	UAFF	5/27/2010
FAK	15	Yes		2696	[REDACTED]	[REDACTED]	A		FREV	1/20/2010
FAK	16	Yes		2757	[REDACTED]	[REDACTED]	A	ABDI	ABDI	6/23/2010
FAK	17	Yes		2757	[REDACTED]	[REDACTED]	A		FREV	1/15/2010
FAK	18	Yes		2757	[REDACTED]	[REDACTED]	A	ABDI	ABDI	9/20/2010
FAK	19	Yes		2696	[REDACTED]	[REDACTED]	A		UAFF	8/6/2010
FAK	20	Yes		2696	[REDACTED]	[REDACTED]		UAFF		7/16/2010
FAK	21	Yes		2696	[REDACTED]	[REDACTED]	A	FREV	FREV	6/23/2010
FAK	22	Yes		2696	[REDACTED]	[REDACTED]		ABDI		5/20/2010
FAK	23	Yes		2757	[REDACTED]	[REDACTED]	A		FREV	5/19/2010
FAK	24	Yes		2696	[REDACTED]	[REDACTED]		ABDI		3/23/2010
FAK	25	Yes		2757	[REDACTED]	[REDACTED]	A	FREV	FREV	7/28/2010
FAK	26	Yes		2696	[REDACTED]	[REDACTED]	A	ABDI	ABDI	8/6/2010
FAK	27	Yes		2696	[REDACTED]	[REDACTED]	A	UAFF	UAFF	9/17/2010
FAK	28	Yes		2696	[REDACTED]	[REDACTED]		ABDI		10/30/2009
FAK	29	Yes		2696	[REDACTED]	[REDACTED]	A		UAFF	1/20/2010
FAK	30	Yes		2696	[REDACTED]	[REDACTED]	A	FREV	UAFF	1/20/2010
FAK	31	Yes		2696	[REDACTED]	[REDACTED]	A	FREV	FREV	6/23/2010
FAK	32	Yes		2757	[REDACTED]	[REDACTED]	A	ABDI	ABDI	4/30/2010
FAK	33	Yes		2696	[REDACTED]	[REDACTED]	A	FREV	FREV	4/8/2010
FAK	34	Yes		2696	[REDACTED]	[REDACTED]	A	UAFF	UAFF	2/26/2010
FAK	35	Yes		2757	[REDACTED]	[REDACTED]	A		FREV	10/30/2009
FAK	36	Yes		2696	[REDACTED]	[REDACTED]	A	ABDI	ABDI	1/11/2010
FAK	37	Yes		2757	[REDACTED]	[REDACTED]	A		WDDI	8/10/2010
FAK	38	Yes		2757	[REDACTED]	[REDACTED]	A	ABDI	ABDI	3/5/2010
FAK	39	Yes		2696	[REDACTED]	[REDACTED]	A	ABDI	ABDI	3/3/2010

FAK	40	Yes	2696				FAFF		1/28/2010
FAK	41	Yes	2757				FREV		1/14/2010
FAK	42	Yes	2696			A	UAFF	UAFF	10/22/2009
FAK	43	Yes	2757			A		FREV	10/14/2009
FAK	44	Yes	2757				UAFF		12/17/2009
FAK	45	Yes	2696			A	DXDI	DXDI	1/11/2010
FAK	46	Yes	2757			A	FREV	FREV	4/7/2010
FAK	47	Yes	2696			A	UAFF	UAFF	6/24/2010
FAK	48	Yes	2696			A	WDDI	WDDI	11/24/2009
FAK	49	Yes	2696			A	FREV	FREV	7/30/2010
FAK	50	Yes	2757			A	UAFF	UAFF	12/11/2009

National Hearing Center Workload Comparisons

We are providing initial analysis of the Baltimore National Hearing Center (NHC) workload in Fiscal Years (FY) 2010-2013. Our analysis includes:

1. ALJ Dispositions at NHC;
2. ALJ Dispositions per Day;
3. Closed Pending per ALJ;
4. Average Processing Time at NHCs;
5. Cases Pulled Per Year at NHCs; and
6. Average Pulled Cases per Available Resource; and

We used the Caseload Analysis Reports from the Agency’s Case Management and Processing system (CPMS) Management Information Reports system to analyze cases pulled by a five NHCs in FYs 2010-2013.¹ Our analysis concluded that the Baltimore NHC was not an outlier in terms of the measures pulled, but instead was more often in the middle of the group. However, in terms of particular trends, while staff office productivity increased over time, ALJ productivity and related timeliness declined over the same period.

Dispositions

We found that in FYs 2010-FY2013, the Baltimore NHC produced between 5,700 and 8,300 dispositions. When comparing the Baltimore NHC to the other four NHCs, the Baltimore NHC ranked 3rd in 2010 and 2012 and 4th in FYs 2011 and 2013.

Observation: The Baltimore NHC was a mid-size office in terms of dispositions.

Table 1: ALJ Dispositions

FY	Baltimore	Falls Church	Chicago	Albuquerque	St. Louis
FY 2013	5704	6996	7169	3137	9771
FY 2012	8220	6239	8380	3526	9,253
FY 2011	6362	6443	8199	3573	8747
FY 2010	5850	6326	6647	3606	319

Daily ALJ Dispositions

We found that in terms of daily dispositions by an ALJ, the Baltimore NHC ranked 4th in all of the FYs except for FY 2010, when it ranked 3rd highest. **Observation:** ALJ productivity decreased slightly over time.

¹ The St. Louis NHC opened in FY 2010.

Table 2: ALJ Dispositions Daily per Available ALJ

FY	Baltimore	Falls Church	Chicago	Albuquerque	St. Louis
FY 2013	2.51	2.52	2.30	3.12	2.57
FY 2012	2.51	2.86	2.48	3.28	2.72
FY 2011	2.66	2.93	2.57	3.41	2.75
FY 2010	2.83	3.00	2.70	3.35	1.98

Pending per ALJ

We found that compared to the other NHCs, the Baltimore NHC had the 2nd highest closed cases pending per an ALJ in FYs 2010 and the highest in 2012. In the other FYs, the Baltimore NHC ranked 3rd. **Observation:** Pending per ALJ fluctuated over time, but it tended to be higher than average.

Table 3: Pending Per Duty ALJ

FY	Baltimore	Falls Church	Chicago	Albuquerque	St. Louis
FY 2013	293.91	352.00	273.42	421.00	241.67
FY 2012	551.42	372.92	317.31	463.00	372.57
FY 2011	440.62	448.89	452.20	405.40	434.78
FY 2010	399.55	321.20	456.64	394.80	164.81

Average Processing Time

We found that in FY 2010 the Baltimore NHC had the best average processing time at only 459 days. In FY 2011, Baltimore dropped to 4th in the processing time, and recovered to 2nd best in FY 2012. However, by FY 2013, the Baltimore NHC had the worst average processing time among the NHCs at 540 days. **Observation:** While processing time fluctuated over the years, the Baltimore NHC went from the best to the worst over the four years.

Table 4: Average Processing Time (Hearing Held to Disposition)

FY	Baltimore	Falls Church	Chicago	Albuquerque	St. Louis
FY 2013	540	429	367	383	363
FY 2012	413	417	419	410	468
FY 2011	403	394	416	323	401
FY 2010	459	526	471	522	496

Cases Pulled Per Year

Case pulling relates to the preparation of cases for an adjudicator's review. In FY 2010 the NHC was 2nd in cases pulled, but in FY 2011 the Baltimore NHC dropped to 4th in the rankings. In both FY 2012 and 2013, the NHC ranked 3rd. **Observation:** The Baltimore NHC averaged about 3rd in case pulling over the years.

Table 5: Cases Pulled per Year

FY	Baltimore	Falls Church	Chicago	Albuquerque	St. Louis
FY 2013	4,757	2,681	5,513	3,705	10,357
FY 2012	7,815	8,508	7,188	5,409	9,652
FY 2011	4,336	5,388	7,225	4,331	9,566
FY 2010	8,070	6,897	9,256	3,419	871

Cases Pulled per Available Resource

Our analysis found that in FY 2010 and FY 2011, the Baltimore NHC had the lowest average of cases pulled per available resource. In FY 2012 its ranking was 4th out of the 5 NHCs and in FY 2013, the Baltimore NHC moved up to 3rd in average cases per available resource. **Result:** Staff productivity increased slightly over time.

Table 6: Average Cases per Available Resource

FY	Baltimore	Falls Church	Chicago	Albuquerque	St. Louis
FY 2013	580.12	397.77	534.21	880.05	631.14
FY 2012	663.98	881.66	430.68	788.48	897.03
FY 2011	338.22	501.68	404.54	847.55	409.85
FY 2010	531.97	545.65	1271.43	1075.16	635.77

Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE: AUGUSTUS MARTIN

CASE NUMBER: WAS1400051Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 06/26/2014 **TO:** 06/26/2014

RELATED CASE NUMBERS:

REPORTED BY: KEVIN HUSE

FIELD DIVISION: PHILADELPHIA

OFFICE: WASHINGTON DC

STATUS OF CASE: INITIAL REPORT

SYNOPSIS:

The Social Security Administration (SSA), Office of the Inspector General (OIG), received a whistleblower disclosure referral from the United States Office of Special Counsel (OSC). The referral alleged that employees of the SSA, Office of Disability Adjudication and Review (ODAR), Office of the Chief Administrative Law Judge (OCALJ), National Hearing Center (NHC), in Baltimore, Maryland, may have engaged in violation of law, rule, or regulation and gross mismanagement. On June 26, 2014, the whistleblower, Scott Wilttrout (Wilttrout), was interviewed by the SSA/OIG.

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ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

Refer to allegation number W14003257 and the OSC referral for additional information.

INVESTIGATIVE ACTIVITY:

On June 26, 2014, Attorney Jennifer Herrmann from the SSA/OIG/Office of Counsel to the Inspector General, Auditor Parham Price from the SSA/OIG/Office of Audit, and I interviewed whistleblower Wiltout at the SSA/OIG Washington Office. I advised Wiltout that the interview is voluntary and Wiltout agreed to proceed.

Wiltout provided a copy of his disclosure to the OSC, which was reviewed during the interview. A copy of the disclosure is retained in the case file and in the SSA/OIG National Investigative Case Management System (NICMS). Refer to this disclosure for additional detailed information.

Wiltout explained that the SSA created NHCs to address the backlog of disability claims pending in the regional Hearing Offices (HOs). NHCs hear cases from all over the country and conduct hearings through video teleconference. The NHC in Baltimore, Maryland opened during the summer of 2009 and relocated to its current location in 2013.

Wiltout served as a legal assistant at the Baltimore NHC. He has since relocated to the regional HO in Washington, D.C. Policies and procedures in ODAR are established through the Hearings, Appeals, and Litigation Law Manual (HALLEX), and through Chief Judge Bulletins (CJBs). Despite receiving proper training in the policies and procedures, management in the Baltimore NHC instructed employees to use improper procedures in an effort to expedite the case workups. Wiltout estimates that these improper procedures resulted in the NHC incorrectly processing thousands of disability claims.

Legal assistants in the NHC are responsible for the case workup of an electronic claim file. Case workup is the process by which all documents, requests, and evidence received on behalf of a claimant are reviewed, entered, and exhibited in the electronic file. Legal assistants are required to review every page of every document, barcode and scan each document, and properly label, sort, and date the documents in the electronic claim file. In addition, any documents requiring action, such as an address change or teleconference waiver request, must be appropriately processed. Case workup can be time consuming, and Wiltout estimates a legal assistant can properly workup approximately three cases per day.

Wiltout observed several issues at the Baltimore NHC related to case workup. Chief Administrative Law Judge (ALJ) Augustus Martin order staff to utilize the “simplified” method for working up cases. Through this process, legal assistants would merely upload and exhibit all documents into the electronic file without first opening the document and reviewing the content. Wiltout explained that this method often resulted in the failure to identify and process requests such as address changes and

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notification of attorney representation. According to Wiltrout, this method contradicts HALLEX policy I-2-1-15, which regulates exhibiting for case workup. In 2010, the NHC ceased using ALJ Martin's "simplified" method, opting instead to use the "streamline" method, which was a process that utilized the minimally acceptable standard for case workup at that time. Despite this, ALJ Martin continued to encourage the improper workup of cases.

Wiltrout recalled a training session in 2010 hosted by David Nash (Nash), a former case manager in the Baltimore NHC. Nash explained that he worked up cases using a "modified streamline folder assembly" method. Using this method, Nash exhibited all documents, but did not open and review every one. Additionally, Nash only reviewed the first and last page of the medical records. The method was allegedly condoned by ALJ Martin and the Acting Administrative Officer. Nash is currently employed as an auditor for the United States Department of Treasury, OIG.

NHC management encouraged the expeditious working up of cases and hosted competitions for the staff. Rewards, often in the form of a gift card, were offered to the staff with the greatest number of cases worked up. Management would promote the use of incorrect workup methods, despite disseminating instructions in writing of the appropriate procedures. In addition, Wiltrout observed that the number of cases worked up was often used as a metric for promotion and performance assessment. Wiltrout is unaware of the incentives received by management for processing more cases.

NHC employees took other measures to increase production numbers. Wiltrout observed employees failing to open mail, failing to clear misrouted scanned documents, and failing to log into the telephone system to receive income calls. By not opening mail, documents pertinent to a claimant's hearing failed to reach the claim file. In some circumstances, address changes, video teleconference waivers, attorney appointments, and other dire need requests were not processed in a timely manner. Consequently, the NHC received numerous complaints from attorneys, law firms, and claimants, who were often denied their due process rights. Wiltrout recalled that he received instruction from a supervisor to process mail left unopened by another employee. In an email, Supervisory Paralegal Specialist Sonya Napier (Napier) instructed Wiltrout to open the mail and determine if the related case is still open. If the case was closed, Napier instructed Wiltrout to destroy the document.

Wiltrout believes he was punished for adhering to ODAR policy rather than the office culture. Wiltrout recalled a conversation with ALJ Martin in 2010, soon after Wiltrout was denied a promotion. According to Wiltrout, ALJ Martin explained that ODAR cares only about numbers, not about policy or performance. On an April 2011 mid-year performance assessment, Wiltrout received a notation that he was failing to produce a fair share of worked up cases. He was advised by his manager that all employees that failed to workup a set number of cases received the same message on their assessment.

Wynette Brogden (Brogden), the former case manager for ALJ Martin, was promoted to a supervisory position in 2010. Wiltrout alleged that Brogden ignored ODAR policy, thus allowing her

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to workup more cases. It appeared as if she was rewarded for breaking the rules. On March 18, 2011, while Brogden was supervising Wiltrout, she encouraged him to workup at least six cases per day, regardless of the rules. On March 21, 2011, Wiltrout reported this to ALJ Rosanne Dummer. ALJ Dummer instructed Wiltrout to continue following policy. ALJ Dummer allegedly addressed the issue with Brogden. In return, Brogden met with Wiltrout and reminded him that she is responsible for his performance appraisal. Brogden informed Wiltrout that she will base appraisals on workup numbers, and she did not expect his numbers to be sufficient. That same evening, Wiltrout reported this incident to Renea Bowles, the Acting Administrative Officer. Wiltrout was subsequently reassigned to another manager. However, in 2013, Wiltrout returned to Brogden's chain-of-command. Brogden provided Wiltrout an appraisal score of 14, four points lower than the prior appraisal year. Wiltrout believes this reduction was a direct retaliation resulting from his disclosures.

Wiltrout provided several documents to corroborate his claims. In addition, he agreed to provide copies of his performance appraisals from the prior three years. Wiltrout accepted a position at another organization and will be leaving the SSA effective July 18, 2014. However, his last day in the RHO was July 3, 2014. Wiltrout provided telephone number [REDACTED] for any future correspondence.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: AUGUSTUS MARTIN Address: ODAR OCALJ NHC Baltimore, MD 21204

Subject: ODAR OCALJ NHC Address: 849 Fairmont Avenue Baltimore, MD 21204

JUDICIAL ACTION:

N/A

DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: KEVIN HUSE 07/04/2014

APPROVED BY: MICHAEL MCGILL 07/07/2014

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Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE: AUGUSTUS MARTIN

CASE NUMBER: WAS1400051Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 07/09/2014 **TO:** 07/09/2014

RELATED CASE NUMBERS:

REPORTED BY: KEVIN HUSE

FIELD DIVISION: PHILADELPHIA

OFFICE: WASHINGTON DC

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

On July 9, 2014, representatives from the Social Security Administration (SSA), Office of the Inspector General (OIG), visited the SSA, Office of Disability Adjudication and Review (ODAR), Office of the Chief Administrative Law Judge (OCALJ), Baltimore National Hearing Center (NHC), in Towson, Maryland.

ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

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The SSA/OIG received a whistleblower disclosure referral from the United States Office of Special Counsel (OSC). The referral alleged that employees of the Baltimore NHC may have engaged in violation of law, rule, or regulation and gross mismanagement. Refer to the previous report of investigation, submitted on July 4, 2014, for additional information.

INVESTIGATIVE ACTIVITY:

On July 9, 2014, Attorney Jennifer Herrmann (Herrmann) from the SSA/OIG/Office of Counsel to the Inspector General, Auditor Parham Price (Price) from the SSA/OIG/Office of Audit, and I traveled to the Baltimore NHC in Towson, Maryland. During the visit, we met with Earnest E. Baskerville, Jr. (Baskerville) the Baltimore NHC Administrative Officer (AO). Baskerville introduced us to Christopher Dillon (Dillon), the Baltimore NHC Chief Administrative Law Judge (ALJ), who became the Chief ALJ earlier that week on July 7, 2014. I provided Dillon and Baskerville an brief overview of the OSC referral.

Herrmann, Price and I then met separately with Baskerville to obtain an overview of office practices and discuss the information alleged in the OSC referral. Baskerville provided the following information in substance:

Baskerville became the AO at the Baltimore NHC on approximately September 27, 2013, shortly before the office relocated to its current location in October 2013. Prior to this assignment, he worked in the NHC Central Office in Falls Church, Virginia.

Upon assignment to the Baltimore NHC, Baskerville addressed several "issues" that were occurring in the office. These issues were personnel related, and he believes they have been resolved. Baskerville is aware of complaints made by Scott Wiltrout (Wiltrout), the whistleblower identified in the OSC referral, however he is not familiar with the details. Wiltrout previously worked at the Baltimore NHC and had a dispute with his manager. Wiltrout expressed his concerns about retaliation to Baskerville. Baskerville encouraged Wiltrout to discuss and disclose any issues he observed.

The Baltimore NHC does not use a streamlined process for working up case folders. Since approximately 2013, the office utilizes the ODAR Electronic Business Process (eBP) for processing and working up case folders. The eBP establishes the guidelines and processes for reviewing and exhibiting documents. Weekly eBP training is provided to the Baltimore NHC employees.

Case folders processed in the NHC may be reviewed under a quality review process. An employee in St. Louis, Missouri is currently reviewing cases in all five of the NHCs.

Baskerville advised that establishing case workup metrics upon which the staff's performance will be evaluated is prohibited by the union contract. Baskerville explained that management can discuss performance expectations with the staff, but they are not allowed to associate a specific metric with those expectations. The Baltimore NHC support employees are members of the American

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Federation of Government Employees (AFGE), and the attorneys are members of the National Treasury Employees Union (NTEU).

Baskerville agreed to provide any information requested by the OIG related to this investigation. Following the discussion, Baskerville arranged for Case Manager Cassondra Smith (Smith) to provide a case workup demonstration. During the workup, I observed Smith appropriately identify each document contained in the case folder, review each page of each document, and input document dates accordingly.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: AUGUSTUS MARTIN Address: ODAR OCALJ NHC Baltimore, MD 21204

Subject: ODAR OCALJ NHC Address: 849 Fairmont Avenue Baltimore, MD 21204

JUDICIAL ACTION:

N/A

DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: KEVIN HUSE 07/16/2014

APPROVED BY: MICHAEL MCGILL 07/21/2014

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Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE: AUGUSTUS MARTIN

CASE NUMBER: WAS1400051Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 07/09/2014 **TO:** 07/09/2014

RELATED CASE NUMBERS:

REPORTED BY: KEVIN HUSE

FIELD DIVISION: PHILADELPHIA

OFFICE: WASHINGTON DC

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

This report is in reference to the July 9, 2014 interview of Tomika Greene (Greene), a GS-09/05 Case Manager in Social Security Administration (SSA), Office of Disability Adjudication and Review (ODAR), Office of the Chief Administrative Law Judge (OCALJ), Baltimore National Hearing Center (NHC), in Towson, Maryland.

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The SSA/OIG received a whistleblower disclosure referral from the United States Office of Special Counsel (OSC). The referral alleged that employees of the Baltimore NHC may have engaged in violation of law, rule, or regulation and gross mismanagement. Refer to all previous reports of investigation for additional information, the most recent of which was submitted on July 16, 2014.

INVESTIGATIVE ACTIVITY:

On July 9, 2014, Attorney Jennifer Herrmann (Herrmann) from the SSA/Office of the Inspector General (OIG)/Office of Counsel to the Inspector General, Auditor Parham Price (Price) from the SSA/OIG/Office of Audit, and I interviewed Greene at the Baltimore NHC in Towson, Maryland. Prior to the interview and in the presence of Herrmann and Price, I presented Greene the SSA/OIG Form OI-15, Warnings and Assurances to Employee Requested to Provide Information on a Voluntary Basis (Garrity). Greene acknowledged these rights and signed the waiver on the Form OI-15. A copy of this waiver is retained in the case file. Greene declined to have a union representative present for the interview. During the interview, Greene provided the following information in substance:

Greene began working in the Baltimore NHC as a Legal Assistant sometime between February and April 2011. At that time, Milagros Farnes (Farnes) was the Chief Administrative Law Judge (ALJ). Greene received Legal Assistant training at the West Des Moines, Iowa Hearing Office in approximately February 2009. Greene explained that each Hearing Office works up cases differently, dependent upon ALJ discretion. Since reporting to the Baltimore NHC, she has never used a "simplified" method for working up cases, as described in the whistleblower disclosures provided to the OSC by former Baltimore NHC employee Scott Wiltrout (Wiltrout), where documents are simply exhibited in the electronic case folder without prior review. However, Greene acknowledged that a "simplified" process has been used.

Case Managers receive a list of cases to workup from their supervisor. Greene stated that she will generally review every page of every document contained in an electronic folder when working up a case. However, on extremely long medical records, Greene will skim through all the pages. Every document in the folder is dated.

In the last four to five weeks, management has provided weekly training sessions for the office. Prior to this, training was rare.

While Chief ALJ Farnes was head of the Baltimore NHC, Greene stated that Case Managers were expected to work up approximately 20 cases per month, while Legal Assistants were expected to work up approximately 40 cases per month. These expectations were communicated to the staff during office meetings. However, staff expectations are communicated less now that Earnest Baskerville (Baskerville) is the NHC Administrative Officer.

Greene confirmed that staff competitions were held for working up cases. Low value gift cards were

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given as reward. Greene stated that she won a lot of the competitions. Greene believes that inter-unit competitions were the motivation for management to offer the rewards.

Incoming mail is divided equally between the Legal Assistants. The Legal Assistants are required to open all mail and scan case documents. Scanned documents are routed to the appropriate case folder. If a case folder has been worked up, a message is added to the electronic to-do list of the responsible Case Manager. To remove the item from their to-do list, the Case Manager must review the document, add it to the folder, and update the source and date of the document. Greene explained that Case Managers have the capability to remove items from their to-do list by adding the document to the case folder without updating the source and date or exhibiting the document.

I provided Greene with a copy of a March 9, 2010 email from Supervisory Paralegal Specialist Sonya Napier (Napier) to Wiltrout. In the e-mail, Napier advises that she received numerous returned envelopes and instructs Wiltrout to go through the mail and determine if the related case is still open. The email reads "If so, distribute the mail, if not destroy." Greene stated that no documents should be destroyed prior to scanning, and explained that the situation described in the email should not have happen. Greene stated that she never witnessed documents being destroyed and was never instructed to do so.

The current telephone system utilized by the Baltimore NHC allows for managers to see who is logged onto the system. If the telephone is not answered, the call will route to a manager and ring in their office. Prior to this system, employees were scheduled to be logged into the telephone system. Employees on the calendar were responsible for clearing out the voice mailbox.

Greene advised that there have been several personnel issues in the Baltimore NHC. She recalled several arguments and altercations, and believes this office culture was facilitated by the office management. Greene stated that she confronted Chief ALJ Milagros on her lack of professionalism. Chief ALJ Milagros was later transferred to the Baltimore Hearing Office. The issues have decreased since Baskerville became the Administrative Officer.

While recalling one issue, Greene alleged that Case Manager Tangela Taylor (Taylor) accessed Greene's computer, copied an instant messenger conversation, and emailed it to herself from Greene's email account. Taylor then provided the conversation to Case Manager Cassondra Smith. Greene stated that she filed a complaint, but she does not know if any disciplinary action was taken. She recalled meeting with two individuals, whom allegedly were looking into the matter. At the time, she believed they were from the SSA/OIG, however she later determined that they were from the SSA Office of General Counsel (OGC). (Agent Note: This matter was discussed with Baskerville following the interview. Baskerville advised that, in consultation with OGC, a verbal reprimand was issued to Taylor.)

Greene stated that the Baltimore NHC receives a lot of requests for Video Teleconference (VTC) waiver. She suspects the attorneys are "judge shopping." Greene further advised that some law firms

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are requesting that cases be kept open post-adjudication for "non-disability" related matters. This allows the firms to continue to bill beneficiaries, despite their case being closed. Once the final notice of award is released, the firms file a fee petitions for payments in excess of amounts allowed through the fee agreement. Since the amount exceeds the fee agreement, an ALJ must approve the petition. Greene alleges that some ALJs will authorize the funds, while others will not. Greene stated that the Burchett Law Firm in Kentucky frequently files these requests and provided two examples.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: AUGUSTUS MARTIN Address: ODAR OCALJ NHC Baltimore, MD 21204

Subject: ODAR OCALJ NHC Address: 849 Fairmont Avenue Baltimore, MD 21204

JUDICIAL ACTION:

N/A

DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: KEVIN HUSE 07/17/2014

APPROVED BY: MICHAEL MCGILL 07/21/2014

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Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE: AUGUSTUS MARTIN

CASE NUMBER: WAS1400051Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 07/09/2014 **TO:** 07/09/2014

RELATED CASE NUMBERS:

REPORTED BY: KEVIN HUSE

FIELD DIVISION: PHILADELPHIA

OFFICE: WASHINGTON DC

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

This report is in reference to the July 9, 2014 interview of Michael Joyner (Joyner), a GS-09/03 Case Manager in the Social Security Administration (SSA), Office of Disability Adjudication and Review (ODAR), Office of the Chief Administrative Law Judge (OCALJ), Baltimore National Hearing Center (NHC), in Towson, Maryland.

ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

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The SSA/OIG received a whistleblower disclosure referral from the United States Office of Special Counsel (OSC). The referral alleged that employees of the Baltimore NHC may have engaged in violation of law, rule, or regulation and gross mismanagement. Refer to all previous reports of investigation for additional information, the most recent of which was submitted on July 17, 2014.

INVESTIGATIVE ACTIVITY:

On July 9, 2014, Attorney Jennifer Herrmann (Herrmann) from the SSA/Office of the Inspector General (OIG)/Office of Counsel to the Inspector General, Auditor Parham Price (Price) from the SSA/OIG/Office of Audit, and I interviewed Joyner at the Baltimore NHC in Towson, Maryland. Prior to the interview and in the presence of Herrmann and Price, I presented Joyner the SSA/OIG Form OI-15, Warnings and Assurances to Employee Requested to Provide Information on a Voluntary Basis (Garrity). Joyner acknowledged these rights and signed the waiver on the Form OI-15. A copy of this waiver is retained in the case file. Joyner declined to have a union representative present for the interview. During the interview, Joyner provided the following information in substance:

Joyner has worked for ODAR since 2006. He began working at the Baltimore NHC when it opened in 2009. Joyner explained that, when the office opened, there was an expedited need to get cases prepared for the hearing level. Office meetings were held to discuss and identify ways to work up cases faster. Due to the immediate need for cases, decisions were made on what needed to be worked up and what did not, however they never blindly exhibited all documents without review. Joyner recalled switching back to the "streamline method," which required workup of all sections.

Case workup expectations vary between ODAR offices. For example, in the Falls Church NHC, employees can be expected to work up one and one half cases per day. However, in the Baltimore NHC, employees are expected to work up three to five cases per day.

Joyner recalled a training session hosted by Case Manager David Hash (Hash). He described Hash as a "super number puller," adding that it was impossible to work up the number of cases Hash was producing if he were doing it correctly. Joyner was surprised that Hash was selected to host the training since Hash had to be working up cases incorrectly.

When working up cases, employees must complete the following:

- View every document
- Separate unrelated exhibits.
- Sort documents to the appropriate section.
- Determine the document source.
- Determine the document date.
- Sort for duplicate documents.

Joyner stated that case managers do a quality review of cases before they reach the administrative

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law judges (ALJs).

Joyner believes the ALJs have a hearings quota.

Office competitions for working up cases were held in the Baltimore NHC. The competitions were intended to motivate people whom were pulling cases too slowly. Joyner believes that the target pull numbers were arbitrarily set by supervisors. Joyner does not know how the awards were funded, but it may have been through funds collected for office parties. Joyner explained that office parties were hosted, where employees were asked to contribute to the cost. However, the parties offerings never seemed to add up to the total cost collected.

Legal Assistants in the Baltimore NHC are responsible for opening all mail. Joyner acknowledged that mail can sit on a desk for a few days, resulting in a hearing being postponed. However, Joyner clarified that Acknowledgment of Hearing mailings tend to sit the longest, which have no evidentiary impact on the case. While Joyner was a Legal Assistant, he attempted to address all other mail more expeditiously.

All documents received in the mail was scanned and routed to the appropriate electronic case folder. Employees were assigned on a rotational basis to address misrouted documents remaining in the scanner queue. Joyner explained that they were instructed to address all documents within a particular time frame. Management has "cracked down" on misrouted documents in the scanner queue.

I provided Joyner with a copy of a March 9, 2010 email from Supervisory Paralegal Specialist Sonya Napier (Napier) to then Legal Assistant Scott Wilttrout (Wilttrout). In the e-mail, Napier advises that she received numerous returned envelopes from Mike [Joyner] and instructs Wilttrout to go through the mail and determine if the related case is still open. The email reads "If so, distribute the mail, if not destroy." Joyner acknowledged that he had given mail to Napier. However, he explained that it was returned mail sent from the SSA and had no evidentiary value to the case. Joyner believes that Napier was not instructing Wilttrout to destroy evidence.

Joyner stated that there were instances in the Baltimore NHC where documents were exhibited prior to review. This usually occurred to give a claimant's attorney representative access to the case documents prior to the hearing. Despite this, the cases were still worked up prior to the hearing. Joyner added that this was not common practice.

Joyner has not witnessed an time and attendance fraud in the Baltimore NHC, although he also never looked for it.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: AUGUSTUS MARTIN Address: ODAR OCALJ NHC Baltimore, MD 21204

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Subject: ODAR OCALJ NHC Address: 849 Fairmont Avenue Baltimore, MD 21204

JUDICIAL ACTION:

N/A

DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: KEVIN HUSE 07/17/2014

APPROVED BY: MICHAEL MCGILL 07/31/2014

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Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE: AUGUSTUS MARTIN

CASE NUMBER: WAS1400051Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 07/10/2014 **TO:** 07/10/2014

RELATED CASE NUMBERS:

REPORTED BY: KEVIN HUSE

FIELD DIVISION: PHILADELPHIA

OFFICE: WASHINGTON DC

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

This report is in reference to the July 10, 2014 interview of Angela Delillye (Delillye), a GS-11/08 Supervisory Case Manager in Social Security Administration (SSA), Office of Disability Adjudication and Review (ODAR), Office of the Chief Administrative Law Judge (OCALJ), Baltimore National Hearing Center (NHC), in Towson, Maryland.

ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

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The SSA/OIG received a whistleblower disclosure referral from the United States Office of Special Counsel (OSC). The referral alleged that employees of the Baltimore NHC may have engaged in violation of law, rule, or regulation and gross mismanagement. Refer to all previous reports of investigation for additional information, the most recent of which was submitted on July 17, 2014.

INVESTIGATIVE ACTIVITY:

On July 10, 2014, Attorney Jennifer Herrmann (Herrmann) from the SSA/Office of the Inspector General (OIG)/Office of Counsel to the Inspector General, Auditor Parham Price (Price) from the SSA/OIG/Office of Audit, and I interviewed Delillye at the Baltimore NHC in Towson, Maryland. Prior to the interview and in the presence of Herrmann and Price, I presented Delillye the SSA/OIG Form OI-15, Warnings and Assurances to Employee Requested to Provide Information on a Voluntary Basis (Garrity). Delillye acknowledged these rights and signed the waiver on the Form OI-15. A copy of this waiver is retained in the case file. Delillye is not a member of the bargaining unit. During the interview, Delillye provided the following information in substance:

Delillye started working in the Baltimore NHC in approximately September 2009. At that time, Augustus Martin (Martin) was the Chief Administrative Law Judge (ALJ). When the office first opened, ALJ Martin did encourage an abbreviated process for working up cases because there was a need for hearing-ready cases. In disclosures to the OSC, whistleblower Scott Wiltrout (Wiltrout) identified ALJ Martin's case workup technique as the "simplified method," which allowed for the exhibiting of documents in the electronic case folder without proper review. Delillye is not familiar with the "simplified method," nor does she recall ALJ Martin referring to any case workup process by that name. Delillye supervised David Hash, who was identified by Wiltrout as a user of the "simplified method." Delillye explained that attorneys should go through every page of case documents, unless the document is very large, however the exhibiting of documents without review could have occurred.

Supervisory Case Managers in the Baltimore NHC each oversee approximately four Case Managers and four Legal Assistants. The bulk of the cases in the office are worked up by the Legal Assistants, who are also responsible for opening mail and answering telephone calls. The Baltimore NHC currently uses the Electronic Business Process to workup cases. This process requires users to open each document in each section of the electronic case folder. Each document is dated and the source is determined and noted. The length of time needed to workup a case can range from two to three hours to one day or more.

Delillye stated that there are several reviews before a case reached an ALJ, so anything missed during workup should be found. A quality review is performed by Case Managers when the workup is completed by Legal Assistants. There is no quality review when the Case Manager performs the case workup. The ALJs will complain if a case is not pulled and worked up correctly. If this occurs, the case is returned to the employee that performed the case workup to address the deficiencies.

Competitions to drive case workup numbers were held in the Baltimore NHC because the production

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of work was inconsistent. Delillye explained that some employees worked up two case per month while others worked up 25. The office managers each contributed to the awards. Delillye explained that case workups are no longer driven by production numbers; they are now driven by quality.

Delillye explained that the Baltimore NHC Administrative Officer is responsible for her performance evaluation. She believes that bonuses and amounts are determined at headquarters.

Delillye stated that incoming mail would be scanned and routed appropriately. She recalled that employees used to be assigned on a rotational basis to clear any misrouted scanned documents. Delillye stated that misrouted scanned documents are now forwarded to Orphaned Documents in CPMS (Case Processing and Management System). Items in the Orphaned Documents section of CPMS can then be associated with the appropriate case folder.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: AUGUSTUS MARTIN Address: ODAR OCALJ NHC Baltimore, MD 21204

Subject: ODAR OCALJ NHC Address: 849 Fairmont Avenue Baltimore, MD 21204

JUDICIAL ACTION:

N/A

DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: KEVIN HUSE 07/18/2014

APPROVED BY: MICHAEL MCGILL 07/31/2014

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Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE: AUGUSTUS MARTIN

CASE NUMBER: WAS1400051Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 07/10/2014 **TO:** 07/10/2014

RELATED CASE NUMBERS:

REPORTED BY: KEVIN HUSE

FIELD DIVISION: PHILADELPHIA

OFFICE: WASHINGTON DC

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

This report is in reference to the July 10, 2014 interview of Rosina (Cindy) Randolph (Randolph), a GS-11/03 Supervisory Case Manager in Social Security Administration (SSA), Office of Disability Adjudication and Review (ODAR), Office of the Chief Administrative Law Judge (OCALJ), Baltimore National Hearing Center (NHC), in Towson, Maryland.

ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

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The SSA/OIG received a whistleblower disclosure referral from the United States Office of Special Counsel (OSC). The referral alleged that employees of the Baltimore NHC may have engaged in violation of law, rule, or regulation and gross mismanagement. Refer to all previous reports of investigation for additional information, the most recent of which was submitted on July 18, 2014.

INVESTIGATIVE ACTIVITY:

On July 10, 2014, Attorney Jennifer Herrmann (Herrmann) from the SSA/Office of the Inspector General (OIG)/Office of Counsel to the Inspector General, Auditor Parham Price (Price) from the SSA/OIG/Office of Audit, and I interviewed Randolph at the Baltimore NHC in Towson, Maryland.

Prior to the interview and in the presence of Herrmann and Price, I presented Randolph the SSA/OIG Form OI-15, Warnings and Assurances to Employee Requested to Provide Information on a Voluntary Basis (Garrity). Randolph acknowledged these rights and signed the waiver on the Form OI-15. A copy of this waiver is retained in the case file. Randolph is not a member of the bargaining unit. During the interview, Randolph provided the following information in substance:

While Augustus Martin (Martin) was the Chief Administrative Law Judge (ALJ) of the Baltimore NHC, he ran a trial process for working up cases without document exhibiting. This process lasted only a short time, and was intended to get cases ready for the hearing. Randolph explained that, using this process, employees working up cases would view every document, but would not date them or update the document name. In addition, the scan barcodes were removed. Randolph never heard of Martin's process referred to as the "simplified method."

Randolph remembers a training session presented by David Hash (Hash). Randolph does not recall Hash instructing staff to exhibit documents without reviewing them first. She noted that Section A of the case folder did not require much for workup at that time, but it now needs greater review. Randolph never received complaints from the ALJs regarding problems with cases worked up by Hash.

While serving as a Case Manager, Randolph never received a specific goal for the number of cases to work up from the Supervisory Case Managers. However, Randolph explained that pulling upwards of twenty cases per month would keep the employee off the supervisor's radar.

The Baltimore NHC receives a weekly pull report from the Central Office. The supervisors wanted to increase the office production numbers and hosted case pulling competitions. Randolph won one of the competitions and received a gift card; however the gift card did not work. Performance and production in the office were not driven by bonuses. The goal was to keep the ALJs happy. Randolph believes a performance ration of 4.0 or higher may result in a bonus.

Randolph could not recall any timeliness issues with the mail at the Baltimore NHC. All mail requiring action, such as a dire need request, was brought to the Case Manager by the Legal Assistant. If mail comes in after a case is closed, that mail is transmitted to the current location of the folder. Randolph

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never instructed anyone to destroy mail.

Randolph heard rumors of time and attendance issues in the Baltimore NHC. Randolph believes some employees were disciplined for cheating time, but she does not know anyone specific. If she identified a time and attendance issue, Randolph advised that she would notify that employee's supervisor.

Randolph stated that daily training sessions are provided to the Baltimore NHC staff. The sessions are voluntary. A log of training attendees is provided to Earnest Baskerville, the Baltimore NHC Administrative Officer.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: AUGUSTUS MARTIN Address: ODAR OCALJ NHC Baltimore, MD 21204

Subject: ODAR OCALJ NHC Address: 849 Fairmont Avenue Baltimore, MD 21204

JUDICIAL ACTION:

N/A

DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: KEVIN HUSE 07/18/2014

APPROVED BY: MICHAEL MCGILL 07/31/2014

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Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE: AUGUSTUS MARTIN

CASE NUMBER: WAS1400051Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 07/10/2014 **TO:** 07/10/2014

RELATED CASE NUMBERS:

REPORTED BY: KEVIN HUSE

FIELD DIVISION: PHILADELPHIA

OFFICE: WASHINGTON DC

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

This report is in reference to the July 10, 2014 interview of David Pang (Pang), an AL-03/E Administrative Law Judge (ALJ) in Social Security Administration (SSA), Office of Disability Adjudication and Review (ODAR), Office of the Chief Administrative Law Judge (OCALJ), Baltimore National Hearing Center (NHC), in Towson, Maryland.

ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

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INVESTIGATIVE ACTIVITY:

On July 10, 2014, Attorney Jennifer Herrmann (Herrmann) from the SSA/Office of the Inspector General (OIG)/Office of Counsel to the Inspector General, Auditor Parham Price (Price) from the SSA/OIG/Office of Audit, and I interviewed ALJ Pang at the Baltimore NHC in Towson, Maryland.

Prior to the interview and in the presence of Herrmann and Price, I presented ALJ Pang the SSA/OIG Form OI-15, Warnings and Assurances to Employee Requested to Provide Information on a Voluntary Basis (Garrity). ALJ Pang acknowledged these rights and signed the waiver on the Form OI-15. A copy of this waiver is retained in the case file. ALJ Pang is not a member of the bargaining unit. During the interview, ALJ Pang provided the following information in substance:

Pang began working in the Baltimore NHC when it opened in 2009. At that time, Augustus Martin (Martin) was the Chief ALJ. When Martin left, Pang became the Acting Chief ALJ until a replacement was named. From September 2013 through July 7, 2014, Pang again served as the Acting Chief ALJ.

Pang recalled discussions about Martin's streamlined method for pulling cases. Pang did not remember the specific details of the process, but explained that it is not uncommon for ALJs to request cases that have not been pulled. The ALJs are not pushing workup numbers in the office, nor are they establishing workup number expectations. Pang explained that ALJs are not concerned with case pulling; they are concerned with achieving case dispositions.

Pang recalled that Glenn Sklar, the Deputy Commissioner for the SSA/ODAR, sent out a "see something, say something" notice encouraging whistleblower disclosures. Following the notice, Pang sent an email notification to the Baltimore NHC staff. Scott Wiltrot (Wiltrot), a Legal Assistant in the office, responded to the email. Wiltrot subsequently met with Pang to discuss multiple observations. Amongst them, Wiltrot alleged that the staff was not performing their duties, mail was being hidden, and documents were not properly routed in the system. As a result, Wiltrot believed cases were not adjudicated appropriately. During their meeting, Wiltrot explained that he made prior disclosures, however he did not specify to whom. Wiltrot was also hesitant to identify whom specifically his complaints targeted as he was concerned about retaliation.

Following the meeting with Wiltrot, Pang met with Earnest Baskerville (Baskerville), the Administrative Officer of the Baltimore NHC. They were unable to find evidence supporting Wiltrot's claims. However, Baskerville did advise the staff that the alleged behaviors are unacceptable and provided training. Pang believed Wiltrot's concerns had been addressed. However, in November 2013, Pang was copied on an email from Wiltrot regarding performance

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evaluations. The email was in regard to Wilttrout's performance score and his prior disclosures of misconduct.

Wilttrout also informed Pang that Martin previously approached him in the parking lot regarding his workup numbers. Pang believes that Wilttrout viewed that encounter as a complaint regarding his performance.

When the NHCs first opened, there were quality issues with case workups. During ALJ meetings at the Baltimore NHC, there were complaints that cases were not being worked up correctly. Typical complaints included duplicate documents in the case folder, and documents not being properly exhibited. However, Pang stated that it is difficult to distinguish between mistakes and improper workup. Pang explained that he still sees mistakes from time to time in worked up folders, and it is common to see documents not make it to exhibiting.

The old telephone system used by the Baltimore NHC was antiquated. Telephone were not always covered and calls were frequently missed. The currently telephone system addressed these issues.

Pang has not received any complaints that applicants did not receive due process related to their hearings. During hearings, it is common practice for Pang to verify with the applicant's attorney that the case folder is complete and all documents are present.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: AUGUSTUS MARTIN Address: ODAR OCALJ NHC Baltimore, MD 21204

Subject: ODAR OCALJ NHC Address: 849 Fairmont Avenue Baltimore, MD 21204

JUDICIAL ACTION:

N/A

DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: KEVIN HUSE 07/18/2014

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APPROVED BY: MICHAEL MCGILL 07/31/2014

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Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE: AUGUSTUS MARTIN

CASE NUMBER: WAS1400051Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 07/10/2014 **TO:** 07/10/2014

RELATED CASE NUMBERS:

REPORTED BY: KEVIN HUSE

FIELD DIVISION: PHILADELPHIA

OFFICE: WASHINGTON DC

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

This report is in reference to the July 10, 2014 interview of Wynette (Wendy) Brogden (Brogden), a GS-11/04 Supervisory Case Manager in Social Security Administration (SSA), Office of Disability Adjudication and Review (ODAR), Office of the Chief Administrative Law Judge (OCALJ), Baltimore National Hearing Center (NHC), in Towson, Maryland.

ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

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INVESTIGATIVE ACTIVITY:

On July 10, 2014, Attorney Jennifer Herrmann (Herrmann) from the SSA/Office of the Inspector General (OIG)/Office of Counsel to the Inspector General, Auditor Parham Price (Price) from the SSA/OIG/Office of Audit, and I interviewed Brogden at the Baltimore NHC in Towson, Maryland. Prior to the interview and in the presence of Herrmann and Price, I presented Brogden the SSA/OIG Form OI-15, Warnings and Assurances to Employee Requested to Provide Information on a Voluntary Basis (Garrity). Brogden acknowledged these rights and signed the waiver on the Form OI-15. A copy of this waiver is retained in the case file. Brogden is not a member of the bargaining unit. During the interview, Brogden provided the following information in substance:

Brogden began working at the Baltimore NHC in approximately September 2009. At that time, Augustus Martin (Martin) was the Chief Administrative Law Judge (ALJ). Brogden was assigned to Martin.

When the Baltimore NHC opened, there were no cases ready for hearing. Consequently, there was a need for pulled cases. Martin believed the staff knew what was necessary for an ALJ to adjudicate a claim. However, Martin still wanted the cases worked up correctly. Brogden is not aware of Martin's "simplified method" for pulling cases. She was never told to exhibit all documents in a file.

Brogden recalled training presented to the Baltimore NHC by David Hash (Hash). Hash instructed the staff to concentrate on working up Section F of the case folder, and to just exhibit documents in the other sections. Hash may have convinced Martin that this was the best way to pull cases. Brogden believes that Hash's method was a means to meet the need for cases when the office first opened, and it was short-lived. She never followed Hash's process for case workup.

The current process for working up cases requires the opening of every document. Employees must clean up the file and follow appropriate procedures. In general, the ALJs have not complained about the pulled case files. Any complaints were usually related to newer employees.

The Baltimore NHC staff does not receive pressure to pull more cases. They are motivated by personal ambition. The offices receive nationwide statistics, and they want to be perceived favorably. Management could not set numerical requirements for case pulling because the employees have other responsibilities beyond case pulling. Competitions were held in the office to motivate employees who did not think pulling cases was important. However, there are no metrics for case pulling in any position description or performance evaluation standard.

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Brogden tells her staff to strive to pull one case when they arrive to work and one case before they leave. She acknowledged that she requested that her staff pull six cases per day. Brogden believes her request was justified because, at that time, the office was fully staffed and Case Managers were only pulling cases. Brogden stated that her request was reasonable. Brogden stated that she aims high for performance to motivate employees to work.

The former Baltimore NHC telephone system was antiquated. The staff did the best they could to answer calls. Managers now have oversight to see who is logged into the telephone system. The Legal Assistants are responsible for answering the telephones, and overflow call are routed to the supervisors. There is a general voice mailbox, which the Legal Assistants are required to check.

Legal Assistants are required to open all office mail. The supervisors divide the mail equally between the Legal Assistants. Documents received in the mail are scanned and routed to the case folders. The Legal Assistants are responsible for clearing misrouted documents in the scanner memory, however there is no scheduled rotation for this task. Brogden explained that documents are frequently routed to the incorrect file, however they usually come to the NHC that way. When documents are received after the case has been worked up, whoever scans the document is responsible for cleaning and exhibiting it.

Brogden has heard rumors of time and attendance abuse in the Baltimore NHC. These rumors likely sparked the emails from management regarding the appropriate time and attendance procedures and the consequences for violations. Brogden stated that the rumors were hearsay, and she never disciplined an employee for time and attendance related issues.

Brogden supervised Scott Wiltrout (Wiltrout), a former Legal Assistant in the Baltimore NHC. Brogden recalled Wiltrout producing fair to average work. Wiltrout complained about everything Brogden did. Wiltrout made Brogden uncomfortable, and she often avoided him in the office to avoid problems. Wiltrout may have complained to someone about her because he was later moved out of her group. Brogden believes Wiltrout had a problem with her being a black female, because he did not make similar complaints about other supervisors.

I asked Brogden if she had a conversation with Case Manager John Stasik regarding his ability to work up six cases per day. During the conversation, Stasik allegedly reported that he could, but they would be poorly done. Stasik purportedly went on to explain to Brogden the importance of opening and reviewing all documents in the folder, to which Brogden replied "Well, we don't have time for that." Brogden did not recall the specific conversation, but acknowledged that it could have occurred. Brogden explained that her comments were in reference to interruptions, and that there was no time for them because there are only eight hours in the workday.

Brogden does not recall meeting with ALJ Roseanne Dummer (Dummer) in regards to Wiltrout or instructing Wiltrout to ignore policy. Brogden stated that she never instructed anyone to do anything incorrectly.

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In 2011, Brogden provided Wilttrout a mid-years PACS (Performance Assessment and Communication System) review. In the review, Brogden included a comment regarding Wilttrout's production not meeting supervisory expectations. Brogden explained that she was instructed by the Administrative Officer to include this comment on the mid-year reviews of all low producers, without making reference to a specific metric. Shortly thereafter, Wilttrout was moved to the group supervised by Stephanie Meilinger (Meilinger). Brogden is not aware of any issues Wilttrout had with Meilinger. Wilttrout was subsequently transferred back to Brogden's group when Meilinger left the office.

Brogden provided two PACS final appraisals to Wilttrout, for fiscal years 2011 and 2013. When determining PACS scores, managers are told to compare the performances of all their employees. Brogden stated that they are provided examples of what would constitute a score of five (the highest rating), which she described to be "like Jesus" and difficult to achieve. At the time of the 2013 final appraisals, Brogden had only supervised Wilttrout for a short time during the appraisal period. Because of this, she consulted with Meilinger before determining Wilttrout's score. Brogden reported that Meilinger did not offer much information. Brogden recalled that a few people in her group complained about their score, but overall the group had fairly high PACS ratings.

Brogden stated that she did not lower Wilttrout's PACS score as a result of any disclosure made by Wilttrout, or in retaliation for any reprimand Brogden received as a result of Wilttrout's disclosures.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: AUGUSTUS MARTIN Address: ODAR OCALJ NHC Baltimore, MD 21204

Subject: ODAR OCALJ NHC Address: 849 Fairmont Avenue Baltimore, MD 21204

JUDICIAL ACTION:

N/A

DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: KEVIN HUSE 07/18/2014

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APPROVED BY: MICHAEL MCGILL 07/31/2014

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Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE: AUGUSTUS MARTIN

CASE NUMBER: WAS1400051Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 07/30/2014 **TO:** 07/30/2014

RELATED CASE NUMBERS:

REPORTED BY: KEVIN HUSE

FIELD DIVISION: PHILADELPHIA

OFFICE: WASHINGTON DC

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

This report is in reference to the July 30, 2014 interview of John Stasik (Stasik), a GS-09/07 Case Manager in Social Security Administration (SSA), Office of Disability Adjudication and Review (ODAR), Office of the Chief Administrative Law Judge (OCALJ), Baltimore National Hearing Center (NHC), in Towson, Maryland.

ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

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INVESTIGATIVE ACTIVITY:

On July 30, 2014, Attorney Jennifer Herrmann (Herrmann) from the SSA/Office of the Inspector General (OIG)/Office of Counsel to the Inspector General, Auditor Parham Price (Price) from the SSA/OIG/Office of Audit, and I interviewed Stasik at the Baltimore NHC in Towson, Maryland. Prior to the interview and in the presence of Herrmann and Price, I presented Stasik the SSA/OIG Form OI-15, Warnings and Assurances to Employee Requested to Provide Information on a Voluntary Basis (Garrity). Stasik acknowledged these rights and signed the waiver on the Form OI-15. A copy of this waiver is retained in the case file. Stasik did not request a bargaining unit representative to be present during the interview. During the interview, Stasik provided the following information in substance:

Stasik began working in the Baltimore NHC approximately one year after it opened. Prior to this, Stasik worked in the Baltimore Hearing Office in Baltimore, MD. Stasik worked at the Baltimore NHC while Augustus Martin (Martin) was the Chief Administrative Law Judge (ALJ).

Stasik is familiar with Martin's "simplified method" for working up cases. Stasik described the method as essentially the "streamlined method" with less concern for sourcing and dating documents. The process involves the exhibiting of all documents contained in a file. The ALJs asserted that they knew what information they needed to use for the hearings. The "simplified method" was not in practice for long. Stasik explained that the process was not being used when he first arrived at the NHC, and it ended before Martin left the office. The method was implemented because not enough cases were worked up and there was a need for hearing-ready cases. Prior to Martin, Stasik used this method only one time at the instruction of ALJ [Kathleen] Scully-Hayes.

Stasik explained that processes change every few years. The Baltimore NHC is currently using the eBusiness Process for pulling cases. This process requires the following:

- Opening each document.
- Verifying the document belongs in the claim folder.
- Dating and sourcing each document.
- Screen for action items.
- Exhibiting the necessary documents.
- Moving documents to the appropriate folder sections.

Stasik attended the training presented by David Hash (Hash) in 2011. Hash and Martin were close. Hash was pulling more than ten cases per day and Martin asked Hash to provide instruction to the

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staff. During the training, Hash advised the staff to look at the first and last page of a document to determine a date range. Stasik recalls several employees having an issue with that technique since documents are not always in order. However, Martin approved of that method and some members of the staff began using that process. Stasik could not estimate the number of cases worked up using this method, but stated that it was only used for approximately six months. It was understood that it was only a temporary process. Stasik stated that the attorneys and the ALJs reviewed the cases prior to the hearing and were able to determine what needed to be addressed during the hearing, as long as the documents got exhibited.

No metrics for the number of cases to pull were ever established in the Baltimore NHC, however there was an expectation to perform. The staff was cognizant of their individual pull numbers and would receive performance reports. Stasik explained that, without a metric, it was difficult to get staff to pull cases. Management would hold competitions as a clever way to encourage staff to perform. Stasik does not know how management established the goal numbers for the competitions. Today, there is a stronger emphasis on quality work, rather than the quantity of cases pulled.

Stasik had a vague recollection of a conversation with Supervisory Case Manager Wynette Brogden (Brogden) regarding the ability to pull six cases per day. Stasik thought that Brogden's motivation for requesting that six cases be pulled may have come from her supervisors. Brogden is still Stasik's supervisor.

Stasik estimates that, with no other responsibilities, he can potentially work up eight cases per day on average. With other duties, four cases would be a fair estimate. Stasik stated that, with other duties, pulling six cases per day would be "pushing it." Because of his other responsibilities, there are some weeks where Stasik would not be able to pull any cases.

It can take up to four weeks from case workup to scheduled hearing. Once a case is worked up, it enters the "Ready to Schedule" status. From there, cases are scheduled by hearing site and enter the "Scheduled" status. Case managers run hearing itineraries and will review all cases at least two weeks prior to the scheduled hearing.

Stasik is not aware of any systemic issues with the handling of mail in the Baltimore NHC, however it is not always processed as timely as he would like. Incoming mail is scanned and routed to the appropriate folder. The Legal Assistants are responsible for clearing the scanner memory should the scanner not be able to properly route the document. When mail is received after a case has been worked up, the folder is reviewed to determine if it has been assigned to an ALJ. If the case is assigned, the Case Manager will get a "to-do" list item. Each "to-do" item is linked to a specific claim. The Case Manager should review and exhibit the document. If the case is not assigned to an ALJ, the document will remain in the electronic case folder until the case is assigned. Once assigned, the Case Manager should review and exhibit the document prior to the hearing. Stasik explained that "to-do" items can be removed from the list without actually or properly processing the document.

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Stasik stated that he is not aware of any time and attendance fraud in the Baltimore NHC. However, Stasik clarified that he is not tracking any employees. Employees used to record their arrival time on a sign-in sheet. Presently, the employees utilize WebTA to record their arrival and departure. WebTA provides an explanation box where employees can explain any discrepancies with their normal schedule.

On his 2013 PACS (Performance Assessment and Communication System) appraisal, Stasik believes he received a score of 19, consisting of five for three of the performance rating categories (on a scale of one to five), and a four for the fourth category. Prior to Brogden, Stasik was supervised by Stephanie Meilinger. Stasik found no difference in his performance rating between the two supervisors.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: AUGUSTUS MARTIN Address: ODAR OCALJ NHC Baltimore, MD 21204

Subject: ODAR OCALJ NHC Address: 849 Fairmont Avenue Baltimore, MD 21204

JUDICIAL ACTION:

N/A

DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: KEVIN HUSE 08/04/2014

APPROVED BY: MICHAEL MCGILL 08/20/2014

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Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE: AUGUSTUS MARTIN

CASE NUMBER: WAS1400051Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 07/30/2014 **TO:** 07/30/2014

RELATED CASE NUMBERS:

REPORTED BY: KEVIN HUSE

FIELD DIVISION: PHILADELPHIA

OFFICE: WASHINGTON DC

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

This report is in reference to the July 30, 2014 interview of Milagros Farnes (Farnes), an AL-03/F Administrative Law Judge (ALJ) in Social Security Administration (SSA), Office of Disability Adjudication and Review (ODAR), Philadelphia Region 3, Baltimore Hearing Office (HO), in Baltimore, Maryland.

ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

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The SSA/OIG received a whistleblower disclosure referral from the United States Office of Special Counsel (OSC). The referral alleged that employees of the SSA, ODAR, Office of the Chief Administrative Law Judge (OCALJ), Baltimore National Hearing Center (NHC), may have engaged in violation of law, rule, or regulation and gross mismanagement. Refer to all previous reports of investigation for additional information, the most recent of which was submitted on August 4, 2014.

INVESTIGATIVE ACTIVITY:

On July 30, 2014, Attorney Jennifer Herrmann (Herrmann) from the SSA/Office of the Inspector General (OIG)/Office of Counsel to the Inspector General, Auditor Parham Price (Price) from the SSA/OIG/Office of Audit, and I interviewed Farnes at the Baltimore HO in Baltimore, Maryland. Prior to the interview and in the presence of Herrmann and Price, I presented Farnes the SSA/OIG Form OI-15, Warnings and Assurances to Employee Requested to Provide Information on a Voluntary Basis (Garrity). Farnes acknowledged these rights and signed the waiver on the Form OI-15. A copy of this waiver is retained in the case file. Farnes did not request a bargaining unit representative to be present during the interview. Farnes provided the following information in substance:

The Baltimore NHC opened during the summer of 2009. Farnes began working at the NHC in approximately September 2009. Farnes became the Chief ALJ of the Baltimore NHC in approximately February 2011, and served in that position until her transfer to the Baltimore HO on September 30, 2013.

During the early stages of the NHC, no hearings could be scheduled because cases were not worked up. The Baltimore NHC received the oldest cases from across the county, which were not worked up by the originating office. To complicate matters, NHCs were newly established and had no specific procedures. In addition, the NHCs were interacting with different regional hearing offices, which had different regional policies.

When Farnes arrived at the Baltimore NHC, the staff was using the electronic business (eBusiness) process to perform case workups. This process is still being utilized. All staff received training on utilizing the eBusiness process. Farnes explained that there are random quality assurance checks to ensure that the eBusiness process is being followed. Additionally, an ALJ would send cases back to the Case Managers if the case folders were worked up incorrectly.

Farnes explained that an ALJ should check every document contained in a case folder, whether the document is exhibited or not. It is standard practice to make sure the folder and entire record are complete. Farnes stated that hearings cannot be dismissed if a claimant fails to appear for a scheduled hearing. Should that occur, the hearing is postponed and rescheduled.

Farnes stated that the mail processing in the Baltimore NHC was a "nightmare." Due to the NHC being a remote hearing office, with all hearings conducted via video teleconference, the Baltimore

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NHC received an excessive amount of mail. Farnes attempted multiple processes to address the identified problems. Farnes explained that all scanned mail documents eventually made in to the claim folder. However, if a document was determined to be missing, the ALJs always afforded the opportunity for the claimant to produce the document at the time of the hearing. If the opportunity was not afforded and the document was not considered, the Appeals Council would remand the decision. Each ALJ had a fax machine in their office to which missing documents could be faxed directly to them. This occurred more frequently in the NHCs since all cases heard in an NHC involve an electronic case folder.

Farnes stated that the Baltimore NHC received target disposition production numbers from the region [Central Office]. She believes the targets are dependent upon staffing numbers and hearing schedules. The staff was periodically motivated to pull more cases. In order to adjudicate more cases, more hearing ready cases needed to be worked up. Despite this, Farnes explained that there was no consequence for not meeting the target numbers.

I discussed with Farnes an email sent from Supervisory Case Manager Wynette Brogden (Brogden) to Legal Assistants Michael Joyner (Joyner) and Scott Wiltout (Wiltout) on March 18, 2011. In the email, Brogden requests that Joyner and Wiltout "strive to pull at least 6 cases a day." Farnes stated that, had Brogden discussed the email with her prior to sending it, she would have recommended that Brogden not include a specific metric. Farnes does not recall receiving a copy of a memorandum prepared by Wiltout to ALJ Roseanne Dummer regarding the directive from Brogden. Furthermore, Farnes does not recall having a specific conversation with Renea Bowles, the acting Administrative Officer, regarding Wiltout's disclosure of the directive. However, Farnes qualified that she was dealing with several issues at that time. Farnes explained that Wiltout complained about different things at different times. Farnes recalled that she eventually told Wiltout to come directly to her with his concerns. Wiltout and Brogden did not get along and Farnes reassigned Wiltout to another supervisor.

Farnes believed that Brogden needed to work on her management style and methods for promoting morale. Brogden was a staff member that was promoted to management. As a result, she was friends with employees she then had to supervise. Farnes spoke to Brogden about her management style and sent Brogden to supervisor trainings.

Farnes stated that Wiltout was very thorough, which may have limited his production numbers. Farnes did not instruct managers to comment on low performance during mid-year PACS (Performance Assessment and Communication System) reviews. Those instructions would have come from the Administrative Officer, as the second-level supervisor.

Farnes stated that she spent a lot of time stressing to the Baltimore NHC to pull cases correctly. Farnes did not leave the Baltimore NHC for any reason related to production numbers. Her transfer to the Baltimore HO was a personal choice.

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Farnes stated that there are time and attendance issues in all offices. She explained that she spent a lot of time instructing the staff to sign in appropriately. Problems may have occurred in the Baltimore NHC, but Farnes could not recall any significant or specific issues. The Administrative Officer may have counseled the staff on time and attendance issues.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: AUGUSTUS MARTIN Address: ODAR OCALJ NHC Baltimore, MD 21204

Subject: ODAR OCALJ NHC Address: 849 Fairmont Avenue Baltimore, MD 21204

JUDICIAL ACTION:

N/A

DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: KEVIN HUSE 08/04/2014

APPROVED BY: MICHAEL MCGILL 08/20/2014

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Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE: AUGUSTUS MARTIN

CASE NUMBER: WAS1400051Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 07/31/2014 **TO:** 07/31/2014

RELATED CASE NUMBERS:

REPORTED BY: KEVIN HUSE

FIELD DIVISION: PHILADELPHIA

OFFICE: WASHINGTON DC

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

This report is in reference to the July 31, 2014 interview of Roseanne Dummer (Dummer), an AL-03/E Administrative Law Judge (ALJ) in Social Security Administration (SSA), Office of Disability Adjudication and Review (ODAR), Office of the Chief Administrative Law Judge (OCALJ), Falls Church National Hearing Center (NHC), in Alexandria, Virginia.

ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

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INVESTIGATIVE ACTIVITY:

On July 31, 2014, Auditor Parham Price (Price) from the SSA/Office of the Inspector General (OIG)/Office of Audit, and I interviewed Dummer at the Falls Church NHC in Alexandria, Virginia. Attorney Jennifer Herrmann (Herrmann) from the SSA/OIG/Office of Counsel to the Inspector General, participated in the interview via telephone conference. Prior to the interview and in the presence of Price, I presented Dummer the SSA/OIG Form OI-15, Warnings and Assurances to Employee Requested to Provide Information on a Voluntary Basis (Garrity). Dummer acknowledged these rights and signed the waiver on the Form OI-15. A copy of this waiver is retained in the case file. Dummer did not request a bargaining unit representative to be present during the interview. Dummer provided the following information in substance:

Dummer began working in the Baltimore NHC during fiscal year 2009, sometime after the office opened in June of that year. She transferred to the Falls Church NHC in September 2011. ALJ Augustus Martin (Martin) was the Chief ALJ of the Baltimore NHC when Dummer began working in that office.

When the Baltimore NHC first opened, there were not enough cases worked up for hearings. As a result, the office utilized a streamlined case pulling process, where documents were exhibited without a full workup. Through this process, the case documents were numbered, but the file lacked the extra detail that makes it easier to review. Dummer does not believe the lack of full workup resulted in her missing any information because she was responsible for reviewing every page. Any issues identified by the ALJ could be easily addressed. Dummer explained that these cases may have taken more time to review, but it did not impact the ALJ's decision or the claimant's rights. This "quick exhibiting" process was utilized only on a temporary basis.

Dummer stated that there is a protocol for everything in ODAR. The exhibiting of documents without any review should not have occurred, not would she have instructed employees to do so. I provided Dummer a copy of Chief Judge Bulletin (CJB) 08-02, which directs the process for a "Streamlined Folder Assembly for Certified Electronic Folders." CJB 08-02 instructs all ODAR Hearing Level Employees to "open each document within the section in order to determine the appropriate metadata (sources, dates, document types)." Dummer stated that she was not aware of the CJB "line and verse" at the time, but in retrospect, the exhibiting of documents without metadata should not have occurred.

Dummer does not recall any specific recurring issues with case workups in the Baltimore NHC. If an

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issue were identified with a specific employee, Dummer would report the issue to that employee's supervisor. Dummer does not recall hearing any complaints by attorney representatives regarding the processing of cases. She did recall complaints regarding the office telephone system and the lack of calls being returned by the office.

Dummer stated that there was always a concern that a document did not make it into the claimant's file in time for the hearing. During the hearing, Dummer asks the claimant if they have a chance to review the exhibits for completeness. If a document is missing, it does not impact the decision. Dummer stated that she will keep the record open until the document missing documentation is received. Dummer explained that ODAR has moved away from achieving production numbers and is now more focused on quality.

Office productivity goals for monthly dispositions and pulled cases are established at ODAR headquarters (HQ). Dummer is not certain how HQ determined the target goal numbers. The goals were communicated by HQ to the Chief ALJ and the office supervisors. The ALJs did not pressure the staff to meet these goals. As an ALJ, Dummer would receive a report on the number of dispositions she completed. Information on other employees was not included in the report.

Dummer recalled that there were issues with the office mail, but could not recall what those issues were.

Dummer is not aware of any time and attendance issues in the Baltimore NHC. However, she recalled that the employee sign-in sheet was moved to the front of the office, near a supervisor's desk. Dummer witnessed one instance where an employee, Rodney Lewis (Lewis), entered the incorrect time on the sign-in log. Dummer stated that she addressed the issue with Lewis and informed him that she would notify his supervisor if it occurred again.

Dummer served for brief periods as the Acting-Chief ALJ of the Baltimore NHC. While serving in an Acting-Chief capacity, Dummer stated that Scott Wiltout (Wiltout), a Legal Assistant in the Baltimore NHC, came to her to report a lengthy issue. Dummer could not recall the specifics, but remembered that the issue had office-wide ramifications. Dummer advised Wiltout that, because of the ramifications, she would not take any action regarding his concern in the absence of the permanent Chief ALJ.

I provided Dummer with a copy of a memorandum prepared by Wiltout on March 21, 2011. The memorandum is addressed to Dummer and is in regard to alleged instructions given to Wiltout by his supervisor, Wynette Brogden. Brogden allegedly instructed Wiltout to pull cases in a manner inconsistent with policy. Dummer reviewed the document and advised that she does not recall ever receiving it. Dummer acknowledged that, at some point, the staff was taking short-cuts because her cases did not include all of the line information (metadata) that she was used to receiving.

Dummer stated that she does not recall addressing any issues with Brogden following her interactions

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with Wiltout. Dummer added that she does not recall speaking with anyone following their conversation. She explained that Wiltout's concerns did not seem to be big issues to him. Furthermore, she recalled that, at that time, he did not seem to have any concerns related to the impact on claimants. He seemed more concerned with having to work six cases per day. Dummer recalled that Wiltout was not a very fast worker. She explained that, in ODAR, if an employee is not a "workhorse," they probably will not get promoted. Dummer stated that Wiltout seemed to have potential with the SSA, and recalled that Martin tried to get Wiltout to work on his speed.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: AUGUSTUS MARTIN Address: ODAR OCALJ NHC Baltimore, MD 21204

Subject: ODAR OCALJ NHC Address: 849 Fairmont Avenue Baltimore, MD 21204

JUDICIAL ACTION:

N/A

DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: KEVIN HUSE 08/05/2014

APPROVED BY: MICHAEL MCGILL 08/20/2014

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Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE: AUGUSTUS MARTIN

CASE NUMBER: WAS1400051Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 08/05/2014 **TO:** 08/05/2014

RELATED CASE NUMBERS:

REPORTED BY: KEVIN HUSE

FIELD DIVISION: PHILADELPHIA

OFFICE: WASHINGTON DC

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

This report is in reference to the August 5, 2014 interview of David Hash (Hash), a former Case Manager in the Social Security Administration (SSA), Office of Disability Adjudication and Review (ODAR), Office of the Chief Administrative Law Judge (OCALJ), Baltimore National Hearing Center (NHC).

ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

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The SSA/OIG received a whistleblower disclosure referral from the United States Office of Special Counsel (OSC). The referral alleged that employees of the Baltimore NHC may have engaged in violation of law, rule, or regulation and gross mismanagement. Refer to all previous reports of investigation for additional information.

INVESTIGATIVE ACTIVITY:

On August 5, 2014, Special Agent (SA) Adrienne Messer and I interviewed Hash, an auditor with the United States Department of Treasury (Treasury), Office of the Inspector General (OIG). The interview was conducted at the Treasury/OIG office located at 740 15th Street NW, Washington, D.C. SA Messer and I identified ourselves to Hash and presented our credentials. Hash consented to be interviewed and provided the following information in substance:

Hash was employed as a Paralegal Case Manager in the Baltimore NHC from approximately October 2009 through June 2011. Prior to that position, Hash worked in both the Baltimore and Washington, D.C. Hearing Offices. While at the Baltimore NHC, Hash was assigned to Administrative Law Judge (ALJ) David Pang (Pang). Hash wrote affirmative decisions for Pang, engaged in post-hearing administrative work, and performed case workups.

ALJ Augustus Martin (Martin) was the Chief ALJ when the Baltimore NHC opened. Martin and Hash were friends, in addition to colleagues. They became friends while working together in the Washington, D.C. Hearing Office. Martin transferred to the Baltimore NHC and was in need of pulled cases. As a result, he gave Hash a promotion and brought him to the Baltimore NHC. Outside of work, Martin and Hash participated in martial arts together. Martin left the Baltimore NHC during the fall of 2010, when he transferred to Hearing Office in Charleston, South Carolina. Martin subsequently died in a car accident.

Instructions for the Baltimore NHC staff to pull cases using a streamlined method came directly from Martin. He instructed this because there was a need for hearing-ready cases. Martin understood that there were multiple layers of review for the case folders, so he was comfortable assuming the risks associated with streamlining the workup. Martin never instructed anyone to simply exhibit all documents without looking at them. To do so would be "reckless."

Using the streamlined method, staff would simply determine a date range for documents. Alternate methods also required that the documents and pages be arranged in order. Martin instructed the staff to determine the date range, but not worry about ordering the pages. To determine the date range, Hash skimmed through the beginning, middle, and end of each document. Hash stated that he did not look at every page.

I provided Hash a copy of Chief Judge Bulletin (CJB) 08-02, which outlines the procedures for the Streamlined Folder Assembly for Certified Electronic Folders. Hash reviewed CJB 08-02, and

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noted that these procedures are different than the process utilized in the Baltimore NHC. At the NHC, the medical evidence was exhibited using a date range.

I provided Hash a copy of a document outlining procedures for the "Modified Streamlined Folder Assembly." He reviewed the document and acknowledged that this may be the handout he distributed during a training session provided to the Baltimore NHC staff. Hash confirmed that this was the process he utilized for case workup and recalled also using the process at one time in the Washington, D.C. Hearing Office. Hash stated that he briefed Martin and the Administrative Officer at the time, Mike, last name unknown, prior to the training at the Baltimore NHC. Both Martin and Mike approved of the "Modified Streamlined Folder Assembly" process, the content of the handout, and the PowerPoint presentation used by Hash during the training.

Hash recalled some of the office supervisors having concerns with the Martin's policy. Specifically, Harriet, last name unknown, argued that policy required the staff to look at every page of every document. Martin superseded, explaining that reviewing every page would take too long. Hash did not understand the concerns because Martin carried the ultimate responsibility for use and implementation of the policy. Angela Delillye, Hash's supervisor, did not take issue with the policy. Hash stated that he used this process the entire time he worked at the Baltimore NHC, even after Martin transferred to South Carolina and ALJ Milagros Farnes became chief.

Hash does not recall any complaints related to the Baltimore NHC mail. He explained that the Case Technicians, also called Legal Assistants, were responsible for the mail. One to two Legal Assistants were dedicated to mail processing and delivered the mail to the appropriate Case Manager. The Case Managers were responsible for scanning the documents to the electronic case folders. Hash was not familiar with the scanner memory, or any scanned items not being routed to the folders. The Case Manager would know if a scanned item never made it to the file. However, if the Legal Assistants were scanning the mail, Hash explained that the Case Manager would not know if a document was missing or misrouted. Hash stated that mail should not be destroyed. He understood why mail might be destroyed if the case is closed, but explained that the document can still be associated to a closed file.

When documents were received after workup, they would be associated with the file and exhibited. Hash was instructed to check for new evidence every morning. Prior to a hearing, the Case Managers checked the case folders to make sure all the documents are received and exhibited. Hash explained that the ALJs would also review the files prior to the hearing and would complain if items were not exhibited.

I provided copies of exhibit lists from cases allegedly pulled in the Baltimore NHC. The personally identifiable information of the claimants was redacted. Hash reviewed the lists and identified multiple issues, including missing dates. Hash stated that every exhibit should have a date. Even if a date was not discerned from the document, the date it was scanned should still be present. In regards to these lists, he exclaimed that "somebody messed up and didn't do a good job." I explained to Hash that

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these lists are alleged to be from cases that he worked up. Hash stated that, if they are from his cases, he is embarrassed by the quality of work. Hash stated that he always dated every document and did not understand why the dates would be missing. Hash claimed that Pang would have complained if he did not. These documents were printed on May 2, 2011. Hash explained that this was a few weeks prior to his departure from the SSA, at approximately the same time he stopped pulling cases.

Hash explained that supervisors have the capability to generate a report of all the cases pulled in the office. Hash stated that competitions were held at the Baltimore NHC to encourage the staff to perform case workups. He recalled that the Administrative Officer at the time, Renea, last name unknown, organized a 1970's themed office party. During the party, Renea offered a disco ball prize to anyone that was able to pull 50 or more cases. Hash confirmed that he won a disco ball. Hash believes the office management was motivated to host competitions by their personal ambition. They hoped to distinguish themselves amongst their colleagues to get promoted.

Hash explained that it is not difficulty to perform a case workup. He believes that the Baltimore NHC could get by with half of its current staff if everyone did their work.

Case Managers in the Baltimore NHC were writing decisions for the ALJs. However the Case Managers did not necessarily have a college degree or a legal background. CPMS (Case Processing and Management System) included a decision template with blank fields designated for decision write-ups. Hash recalled hearing that one Case Manager left the CPMS fields blank and wrote a decision without any reference to the evidence. Hash recalled another instance where Pang approved a case, but Hash could not identify any medical evidence to support or validate the decision. He reported this to Pang and subsequently received an email from Pang expressing disappointment. The case was ultimately reassigned to one of Pang's attorneys.

Hash is not aware of any overt time and attendance issues. He stated that there was a sign-in sheet, but explained that you could enter any time as long as it was not earlier than the prior person. Hash stated that the supervisors started reviewing the sign-in sheet. Periodically, a supervisor would review the sheet and draw a line below the last person on the list. If someone entered an arrival time prior to the time the line was drawn, the supervisor would know that entry was false.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: AUGUSTUS MARTIN Address: ODAR OCALJ NHC Baltimore, MD 21204

Subject: ODAR OCALJ NHC Address: 849 Fairmont Avenue Baltimore, MD 21204

JUDICIAL ACTION:

N/A

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DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: KEVIN HUSE 08/07/2014

APPROVED BY: MICHAEL MCGILL 08/20/2014

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Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE: AUGUSTUS MARTIN

CASE NUMBER: WAS1400051Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 08/11/2014 **TO:** 08/11/2014

RELATED CASE NUMBERS:

REPORTED BY: THOMAS GOLDMAN

FIELD DIVISION: ATLANTA

OFFICE: NASHVILLE

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

Supervisory Case Manager Sonya Napier was interviewed regarding conduct at the Baltimore National Hearing Center (NHC).

ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

This report is in response to a collateral investigation request from the SSA-OIG Washington, DC Office of Investigations.

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INVESTIGATIVE ACTIVITY:

On August 11, 2014, Supervisory Case Manager Sonya Napier was interviewed at the Franklin, Tennessee Office of Disability and Adjudication Review (ODAR). Prior to questioning, Special Agent Johnnie Thomas and I displayed our credentials and explained the nature of the interview. Napier also read and signed SSA-OIG Form OI-15 (Garrity Warning).

Ms. Napier reported she worked at the Baltimore NHC as a Paralegal Supervisor between September 2009 and May of 2010. Napier described the proper process of performing a case workup as follows: The legal or paralegal assistant would go through the case file, "exhibit" relevant documents, delete duplicate documents, better describe the documents, and contact parties to get additional medical evidence as needed. Napier was not familiar with CJB-08-02 or 10-03, but was aware of the HALLEX policy for a case workup. According to Napier, the office staff was not in compliance with HALLEX, specifically in regards to culling through exhibits. Napier thought employees frequently did a "select all and add to the exhibit list" when retrieving from the Electronic Case File (ECF). They did not pull or remove duplicate documents or attempt to determine the relevance of each piece of evidence. Napier said she and supervisor Harriet Caldwell attempted to train the office in proper procedure, but the other employees were not receptive.

When asked to clarify which employees were not receptive, Napier indicated that Administrative Law Judge (ALJ) Martin was friends with several paralegals in the office. Napier believed those paralegals spoke with ALJ Martin about Napier's attempt to change procedure. As a result, ALJ Martin indicated to Napier the "select all and add to exhibit list" method was appropriate. Specifically, ALJ Martin felt the correct process took too long.

Ms. Napier believed the "simplified method" was an official method of case workup. The simplified method involved not renaming documents, removing duplicate documents, and not placing the documents in date order. Napier indicated that the "simplified method" was not used at the Baltimore NHC. Napier was not familiar with the "modified streamlined folder assembly process."

According to Napier, she did not recall attending training presented by David Hash. She described Hash as being a friend of ALJ Martin. Napier was unaware of any metrics used for pulled cases and did not know of any competitions to pull cases.

Telephone monitoring occurred on a rotating basis, with most of the calls handled by the schedulers. Napier was unaware of any complaints from the public related to telephone calls.

Opening mail was also assigned on a rotating basis, usually by the legal assistants. Napier was unaware of any "priority" mail not being opened in a timely manner. When asked specifically about the e-mail sent on March 9, 2010 regarding the destruction of mail, Napier indicated it would be "OK" for an employee to shred mail if it was for a case adjudicated as an allowance, since the document would have no impact on a decision. Napier further indicated under no circumstances

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would it be "OK" to shred mail for a case that was a denial, since that document could be used for an appeal.

Napier said she was unaware of any other major violations in the Baltimore NHC, with the exception of "flex-time" calculations. According to Napier, some employees who came from other ODAR locations used flex-time in a manner not consistent with policy. Napier felt it was a training issue and she was able to correct actions through verbal counseling.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: AUGUSTUS MARTIN Address: ODAR OCALJ NHC Baltimore, MD 21204

Subject: ODAR OCALJ NHC Address: 849 Fairmont Avenue Baltimore, MD 21204

JUDICIAL ACTION:

N/A

DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: THOMAS GOLDMAN 08/11/2014

APPROVED BY: WAYNE WARREN 08/11/2014

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Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE: AUGUSTUS MARTIN

CASE NUMBER: WAS1400051Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 08/08/2014 **TO:** 08/08/2014

RELATED CASE NUMBERS:

REPORTED BY: SHANE HENLEY

FIELD DIVISION: ATLANTA

OFFICE: JACKSON

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

Renea Bowles (Bowles), a GS-13/05 Group Supervisor, with the Social Security Administration (SSA), Office of Disability Adjudication and Review (ODAR) in Tupelo, Mississippi, was interviewed.

ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

Reference is made to a collateral request report dated August 1, 2014.

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INVESTIGATIVE ACTIVITY:

On August 8, 2014, I (SA Shane Henley) interviewed Bowles at the ODAR office in Tupelo, MS, located at 1150 South Green Street, Suite 3A, Tupelo, MS 38804. Abby May, also with the Tupelo ODAR office, was present during the interview. After being advised of the identity of the interviewing agent and the nature of the interview, Bowles agreed to the interview and signed a Garrity Waiver (FORM OI-15). Prior to the interview I advised Bowles via email that if she desired to have a union representative present she would need to arrange it. Bowles did not have a union representative at the time of the interview. Bowles provided the following information.

Bowles advised that she has served two (2) temporary details at the Baltimore National Hearing Center (BNHC) – January to June in 2011, and again in 2013 for the period June 1st to September 17th. Bowles stated that she served as the Administrative Officer/Director of the BNHC during her details. Bowles informed me that her supervisor during this time was Milagras Farnes, Chief Judge.

Bowles provided the following information in response to the questions previously provided by our office in Washington, D.C.

- Bowles advised that the proper process for performing a case workup is as follows: Separating duplicate medical records, putting the records in chronological order, exhibiting the documents, labeling the documents, write for medical records, mail correspondence...develop the file in its entirety.
- Bowles advised that to her knowledge, the BNHC processed cases consistent with the policies outlined in HALLEX and CJB 08-02 and 10-03.
- Bowles stated that to her knowledge, the BNHC was not pulling cases and exhibiting documents without prior or proper review.
- Bowles advised that management did not instruct employees to not open or review any document when performing a case work, to her knowledge.
- Bowles stated that she is not aware of any complaints related to violation of due process at the BNHC.
- Bowles advised that she has never heard of the “simplified method.”
- Bowles stated that she has “no idea” if the “simplified method” was used in the BNHC.
- Bowles stated that the “streamlined method” is when the cases went electronic; this was a National Directive – in policy. Bowles advised that this methodology did not take away from the details of working up a case.
- Bowles stated that she does not think the “streamlined method” was used at the BNHC, but she is not sure.
- Bowles advised she does not know what the “Modified Streamlined Folder Assembly” process is – never heard of it.
- Bowles stated that she never heard of this process being used at the BNHC.
- Bowles does not recall attending a training held on May 19, 2010 by David Hash.
- Bowles advised she does not recall any memo related to her staff pulling six cases per day.

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- Bowles stated that she does not remember discussing any allegations with anyone.
- Bowles advised that the management staff held operations meetings, however, she did not recall any meetings regarding allegations brought forth by anyone.
- Bowles stated that she does not remember telling the staff to use a checklist.
- Bowles advised that management did establish goals for the staff in terms of productivity, but stated that this goal changed month to month. Furthermore, there was never any reprimand for those staff members who did not reach the set goal.
- Bowles advised that the Regional Office set the goals, and these metrics were in turn passed along to the staff through the appropriate channels (i.e., email).
- Bowles advised that she does not remember the number of cases (goal) per week, but stated that she does remember that there were a lot of employees not working, and that she remembers telling the supervisors to tell their employees that they need to produce their “Fair Share” of work. The line level supervisors were instructed to tell their employees to do their fair share.
- Bowles advised that the management tried to find a way to motivate the employees. Bowles stated the office did things to try to make them happy to come to work. Bowles stated that she does not recall a competition but stated the supervisors may have done it to motivate their group.
- Bowles stated that any awards (i.e., pizza) came out of the supervisors’ pockets.
- Bowles stated that the opening and scanning of mail at the BNHC was done on a rotational basis.
- Bowles stated, “it’s possible,” that some mail was not processed in a timely manner.
- Bowles stated that she does not know of any employees being counseled or disciplined for not addressing mail in a timely fashion.
- Bowles advised that if they find mail was incorrectly scanned, or misrouted, they correct the problem.
- Bowles does not know of any such incidents (incorrectly scanned mail).
- Bowles stated that it’s possible some documents were not routed to the claims folder, and it’s also possible some documents were routed to the incorrect claims folder. However, Bowles stated that this would have never been intentional, and if discovered, the problems with the case files were corrected.
- Bowles advised the answering of telephones was done on a rotational.
- Bowles advised that she was aware of complaints from the public related to the telephone calls – everyone complained about not being able to get through.
- Bowles stated that she never caught anyone cheating time, but stated that she had a suspicion it was happening.

A sworn, written statement was not requested.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: AUGUSTUS MARTIN Address: ODAR OCALJ NHC Baltimore, MD 21204

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Subject: ODAR OCALJ NHC Address: 849 Fairmont Avenue Baltimore, MD 21204

JUDICIAL ACTION:

N/A

DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: SHANE HENLEY 08/11/2014

APPROVED BY: MARVIN MAULDIN 08/12/2014

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Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE: AUGUSTUS MARTIN

CASE NUMBER: WAS1400051Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 08/08/2014 **TO:** 08/08/2014

RELATED CASE NUMBERS:

REPORTED BY: KEVIN HUSE

FIELD DIVISION: PHILADELPHIA

OFFICE: WASHINGTON DC

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

This report is in reference to the August 8, 2014 interview of Stephanie Meilinger (Meilinger), a former Supervisory Case Manager (ALJ) in Social Security Administration (SSA), Office of Disability Adjudication and Review (ODAR), Office of the Chief Administrative Law Judge (OCALJ), Baltimore National Hearing Center (NHC), in Towson, Maryland. Meilinger is currently employed in the SSA, Office of Data Exchange and Policy Publications, Office of Data Exchange, Agreements and Liaison Branch.

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ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

The SSA/OIG received a whistleblower disclosure referral from the United States Office of Special Counsel (OSC). The referral alleged that employees of the Baltimore NHC may have engaged in violation of law, rule, or regulation and gross mismanagement. Refer to all previous reports of investigation for additional information.

INVESTIGATIVE ACTIVITY:

On August 8, 2014, Attorney Jennifer Herrmann of the SSA/Office of the Inspector General (OIG)/Office of Counsel to the Inspector General (OCIG) and I interviewed Meilinger, a former Supervisory Case Manager in the SSA/ODAR/OCALJ/Baltimore NHC. The interview was conducted at the SSA/OIG/OCIG located at 6300 Security Boulevard, Woodlawn, Maryland. Prior to the interview and in the presence of Herrmann, I presented Meilinger the SSA/OIG Form OI-15, Warnings and Assurances to Employee Requested to Provide Information on a Voluntary Basis (Garrity). Meilinger acknowledged these rights and signed the waiver on the Form OI-15. A copy of this waiver is retained in the case file. Meilinger did not request a bargaining unit representative to be present during the interview. Meilinger subsequently provided the following information in substance:

Meilinger began working as an Administrative Assistant in the Baltimore NHC when it opened in July 2009. In approximately June 2012, she was promoted to Supervisory Case Manager, and remained in that position until her transfer to the Falls Church NHC in July 2013.

Meilinger is familiar with the "Simplified Method" for case workup. She explained that there were no cases pulled and ready for hearing when the Baltimore NHC first opened. Due to a need to schedule hearings, Chief Administrative Law Judge (ALJ) Augustus Martin (Martin), in conjunction with other ALJs, instructed the Baltimore NHC staff to exhibit all documents in the case folder. The ALJ, prior to the hearing, would be responsible for reviewing the case. Martin called this process "Streamlined Pulling." Meilinger recalled receiving training in this process from Baltimore NHC employee David Hash. Once the office pulled a sufficient amount of cases for scheduling, the use of this process ended. Meilinger estimated that it was used for six months to one year. She is not aware of anyone in the office using the method after being instructed to stop.

Each ALJ in the NHC has a Case Manager that is responsible for reviewing cases assigned to the ALJ. The Case Manager will generally review the case periodically until the day of the hearing, and will perform a review the day prior to the hearing. In addition, each ALJ will have two attorneys, whom will also conduct a review of the folder prior to the hearing.

Meilinger stated that the Baltimore NHC received both electronic and physical mail. Meilinger is not certain who was responsible for handling the Baltimore NHC mail when the office first opened, however the office was utilizing a rotational schedule to process incoming mail at the time she was promoted to supervisor. Each day, the mail was divided amongst a group of assigned Legal

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Assistants. Whoever scanned the mail was also responsible for ensuring it reached the claim folder. The office had an additional rotational schedule to clear the scanner memory. Meilinger explained that scanned items would enter a queue while the scanner indexes the document. The queued items would need to be cleared to make sure they were released to the folder. Staff would open the documents to determine if they were properly routed. If an item appears on the scanner queue index list, it does not mean the document was not routed to the folder.

It is unlikely that a case would be dismissed by an ALJ if a document was missing from the case folder. However, if that occurred and the document was later received or found, the ALJ would re-open the case. If a claimant failed to appear for a hearing, the office would send a "with-cause" letter prior to dismissing the case. In addition, the staff would check all addresses on record, call the claimant, and develop address changes through the United States Post Office. The ALJ may ultimately decide to dismiss or reschedule the hearing.

The Baltimore NHC did have target disposition numbers. There was no similar target for the number of cases to pull. Meilinger explained that the Baltimore NHC staff was responsible for duties other than case pulling, so establishing a target metric was not feasible. However, managers could set an expectation based on the known workloads and responsibilities of their staff.

Managers in the Baltimore NHC offered incentives to encourage the staff to pull cases. These included "Pulling Parties," and competitions. The competition goals were established based on the number of pulled cases needed per judge. Managers paid for the competition rewards with personal funds. Meilinger explained that case pulling is a small percentage of the office work.

Meilinger stated that staff production was not a rating factor for the employees' PACS (Performance Assessment and Communication System) appraisal. She did not use pull numbers to rate her employees. However, Meilinger explained that employee production was considered during evaluations, but only as a factor of the employee's total responsibilities. Meilinger stated that the supervisors would meet to evaluate their employees together to ensure the ratings parameters for the office were consistent. However, the actual appraisal rating was still up to the discretion of the direct supervisor.

Meilinger supervised Scott Wiltrout (Wiltrout), a former Legal Assistant in the Baltimore NHC. She described Wiltrout as a "go-to" employee who was always willing to participate. However, Wiltrout was very particular about pulling cases. Meilinger stated that case workup is intended to give the ALJ a snapshot of the exhibited documents. The documents should be ordered, numbered, and dated. There is no need for an analysis of the document when pulling the case. Meilinger believes Wiltrout was analyzing each document, which may have slowed his production.

Meilinger supervised Wiltrout during fiscal year 2013, until she transferred from the office. Wiltrout was subsequently reassigned to the group supervised by Wynette Brogden (Brogden). Meilinger expressed that Brogden and Wiltrout had "issues," but she does not know what they were. Meilinger

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stated that she did not consult with Brogden about Wiltout's performance before Brogden issued his final appraisal for 2013. Meilinger stated that she would not have rated Wiltout with a score of five [the highest rating] for all assessment categories, however she would not have lowered his scores from any previous rating. Meilinger explained that there is a misconception that a score of five is average, however very few people should receive that score. A score of three means you are doing your job well. Meilinger estimated that she rated her employees an average score of four.

Meilinger explained that the telephone system at the Baltimore NHC was "horrible." Each employee had an individual telephone line and were not able to answer calls to the main telephone number from their desk. However, many of the problems were alleviated when the office moved to Towson, Maryland and a new telephone system was installed.

Meilinger stated that there were some instances of time and attendance misuse, but nothing pervasive. She recalled an instance or two where she witnessed time and attendance issues. Meilinger explained that she verbally addressed the issues immediately after they occurred.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: AUGUSTUS MARTIN Address: ODAR OCALJ NHC Baltimore, MD 21204

Subject: ODAR OCALJ NHC Address: 849 Fairmont Avenue Baltimore, MD 21204

JUDICIAL ACTION:

N/A

DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: KEVIN HUSE 08/13/2014

APPROVED BY: MICHAEL MCGILL 08/20/2014

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Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE: AUGUSTUS MARTIN

CASE NUMBER: WAS1400051Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 08/08/2014 **TO:** 08/08/2014

RELATED CASE NUMBERS:

REPORTED BY: KEVIN HUSE

FIELD DIVISION: PHILADELPHIA

OFFICE: WASHINGTON DC

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

This report is in reference to the August 8, 2014 interview of Stephanie Meilinger (Meilinger), a former Supervisory Case Manager (ALJ) in Social Security Administration (SSA), Office of Disability Adjudication and Review (ODAR), Office of the Chief Administrative Law Judge (OCALJ), Baltimore National Hearing Center (NHC), in Towson, Maryland. Meilinger is currently employed in the SSA, Office of Data Exchange and Policy Publications, Office of Data Exchange, Agreements and Liaison Branch.

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ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

The SSA/OIG received a whistleblower disclosure referral from the United States Office of Special Counsel (OSC). The referral alleged that employees of the Baltimore NHC may have engaged in violation of law, rule, or regulation and gross mismanagement. Refer to all previous reports of investigation for additional information.

INVESTIGATIVE ACTIVITY:

On August 8, 2014, Attorney Jennifer Herrmann of the SSA/Office of the Inspector General (OIG)/Office of Counsel to the Inspector General (OCIG) and I interviewed Meilinger, a former Supervisory Case Manager in the SSA/ODAR/OCALJ/Baltimore NHC. The interview was conducted at the SSA/OIG/OCIG located at 6300 Security Boulevard, Woodlawn, Maryland. Prior to the interview and in the presence of Herrmann, I presented Meilinger the SSA/OIG Form OI-15, Warnings and Assurances to Employee Requested to Provide Information on a Voluntary Basis (Garrity). Meilinger acknowledged these rights and signed the waiver on the Form OI-15. A copy of this waiver is retained in the case file. Meilinger did not request a bargaining unit representative to be present during the interview. Meilinger subsequently provided the following information in substance:

Meilinger began working as an Administrative Assistant in the Baltimore NHC when it opened in July 2009. In approximately June 2012, she was promoted to Supervisory Case Manager, and remained in that position until her transfer to the Falls Church NHC in July 2013.

Meilinger is familiar with the "Simplified Method" for case workup. She explained that there were no cases pulled and ready for hearing when the Baltimore NHC first opened. Due to a need to schedule hearings, Chief Administrative Law Judge (ALJ) Augustus Martin (Martin), in conjunction with other ALJs, instructed the Baltimore NHC staff to exhibit all documents in the case folder. The ALJ, prior to the hearing, would be responsible for reviewing the case. Martin called this process "Streamlined Pulling." Meilinger recalled receiving training in this process from Baltimore NHC employee David Hash. Once the office pulled a sufficient amount of cases for scheduling, the use of this process ended. Meilinger estimated that it was used for six months to one year. She is not aware of anyone in the office using the method after being instructed to stop.

Each ALJ in the NHC has a Case Manager that is responsible for reviewing cases assigned to the ALJ. The Case Manager will generally review the case periodically until the day of the hearing, and will perform a review the day prior to the hearing. In addition, each ALJ will have two attorneys, whom will also conduct a review of the folder prior to the hearing.

Meilinger stated that the Baltimore NHC received both electronic and physical mail. Meilinger is not certain who was responsible for handling the Baltimore NHC mail when the office first opened, however the office was utilizing a rotational schedule to process incoming mail at the time she was promoted to supervisor. Each day, the mail was divided amongst a group of assigned Legal

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Assistants. Whoever scanned the mail was also responsible for ensuring it reached the claim folder. The office had an additional rotational schedule to clear the scanner memory. Meilinger explained that scanned items would enter a queue while the scanner indexes the document. The queued items would need to be cleared to make sure they were released to the folder. Staff would open the documents to determine if they were properly routed. If an item appears on the scanner queue index list, it does not mean the document was not routed to the folder.

It is unlikely that a case would be dismissed by an ALJ if a document was missing from the case folder. However, if that occurred and the document was later received or found, the ALJ would re-open the case. If a claimant failed to appear for a hearing, the office would send a "with-cause" letter prior to dismissing the case. In addition, the staff would check all addresses on record, call the claimant, and develop address changes through the United States Post Office. The ALJ may ultimately decide to dismiss or reschedule the hearing.

The Baltimore NHC did have target disposition numbers. There was no similar target for the number of cases to pull. Meilinger explained that the Baltimore NHC staff was responsible for duties other than case pulling, so establishing a target metric was not feasible. However, managers could set an expectation based on the known workloads and responsibilities of their staff.

Managers in the Baltimore NHC offered incentives to encourage the staff to pull cases. These included "Pulling Parties," and competitions. The competition goals were established based on the number of pulled cases needed per judge. Managers paid for the competition rewards with personal funds. Meilinger explained that case pulling is a small percentage of the office work.

Meilinger stated that staff production was not a rating factor for the employees' PACS (Performance Assessment and Communication System) appraisal. She did not use pull numbers to rate her employees. However, Meilinger explained that employee production was considered during evaluations, but only as a factor of the employee's total responsibilities. Meilinger stated that the supervisors would meet to evaluate their employees together to ensure the ratings parameters for the office were consistent. However, the actual appraisal rating was still up to the discretion of the direct supervisor.

Meilinger supervised Scott Wiltrout (Wiltrout), a former Legal Assistant in the Baltimore NHC. She described Wiltrout as a "go-to" employee who was always willing to participate. However, Wiltrout was very particular about pulling cases. Meilinger stated that case workup is intended to give the ALJ a snapshot of the exhibited documents. The documents should be ordered, numbered, and dated. There is no need for an analysis of the document when pulling the case. Meilinger believes Wiltrout was analyzing each document, which may have slowed his production.

Meilinger supervised Wiltrout during fiscal year 2013, until she transferred from the office. Wiltrout was subsequently reassigned to the group supervised by Wynette Brogden (Brogden). Meilinger expressed that Brogden and Wiltrout had "issues," but she does not know what they were. Meilinger

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stated that she did not consult with Brogden about Wiltout's performance before Brogden issued his final appraisal for 2013. Meilinger stated that she would not have rated Wiltout with a score of five [the highest rating] for all assessment categories, however she would not have lowered his scores from any previous rating. Meilinger explained that there is a misconception that a score of five is average, however very few people should receive that score. A score of three means you are doing your job well. Meilinger estimated that she rated her employees an average score of four.

Meilinger explained that the telephone system at the Baltimore NHC was "horrible." Each employee had an individual telephone line and were not able to answer calls to the main telephone number from their desk. However, many of the problems were alleviated when the office moved to Towson, Maryland and a new telephone system was installed.

Meilinger stated that there were some instances of time and attendance misuse, but nothing pervasive. She recalled an instance or two where she witnessed time and attendance issues. Meilinger explained that she verbally addressed the issues immediately after they occurred.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: AUGUSTUS MARTIN Address: ODAR OCALJ NHC Baltimore, MD 21204

Subject: ODAR OCALJ NHC Address: 849 Fairmont Avenue Baltimore, MD 21204

JUDICIAL ACTION:

N/A

DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: KEVIN HUSE 08/13/2014

APPROVED BY: MICHAEL MCGILL 08/20/2014

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Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE: AUGUSTUS MARTIN

CASE NUMBER: WAS1400051Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 08/11/2014 **TO:** 08/11/2014

RELATED CASE NUMBERS:

REPORTED BY: KEVIN HUSE

FIELD DIVISION: PHILADELPHIA

OFFICE: WASHINGTON DC

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

This report is in reference to the August 11, 2014 interview of Millicent Janey (Janey), the former Administrative Officer of the Social Security Administration (SSA), Office of Disability Adjudication and Review (ODAR), Office of the Chief Administrative Law Judge (OCALJ), Baltimore National Hearing Center (NHC), in Towson, Maryland.

ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

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INVESTIGATIVE ACTIVITY:

On August 11, 2014, Special Agent (SA) Matthew Deuchler and I interviewed Janey, the former Administrative Officer at the Baltimore NHC. The interview was conducted at Janey's residence located [REDACTED]. SA Deuchler and I identified ourselves to Janey and presented our credentials. Janey consented to be interviewed and provided the following information in substance:

Janey transferred to the Baltimore NHC from New York on July 3, 2011. She served as the Administrative Officer until she retired in May 2013. Milargros Farnes (Farnes) was the Chief Administrative Law Judge (ALJ) the entire time Janey was at the Baltimore NHC.

Janey recalled that, in approximately 2009 or 2010, ODAR introduced a streamline process for performing case workups. She explained that the case folder had one all-inclusive exhibit document for the F-Section [Medical Records]. This process was not utilized in New York. When she arrived at the Baltimore NHC, Janey was informed that a similar streamline method for case workup was being used. Employees were skimming through documents prior to exhibiting. Janey made the decision to end the use of that process. In the NHCs, each ALJ seemed to have discretion on how they wanted their cases worked up. In the Hearing Offices, the Chief ALJ made that determination for the office.

In a NHC, Case Managers and Legal Assistants are managed by the supervisors and ultimately the Administrative Officer. However, the Case Managers are assigned to an ALJ. Due to this structure, any issues arising between an ALJ and the administrative staff must be escalated and addressed through the Administrative Officer and Chief ALJ. In the NHC, ALJs supervise a staff of attorneys. Janey explained that the ALJs made it clear that the Administrative Officer is not a Hearing Office Director, and should not direct the attorneys.

The policies outlined in HALLEX (Hearings, Appeals, and Litigation Law Manual) and Chief Judge Bulletins are mandatory. Although they are not supervised by an ALJ, Janey believes that administrative employees would likely obey an ALJ if the ALJ issued a directive that did not comply with policy. Janey recalled having policy related issues with ALJ Mary Joan McNamara (McNamara). According to Janey, McNamara had her own process and would occasionally give directives that were not in HALLEX. Janey stated that she brought the issues to the attention of Farnes to address with McNamara.

The NHC Central Office established scheduling and disposition performance goals for the NHCs.

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Once per month, the managers would have a conference call with Deputy Commissioner Glenn Sklar (Sklar). During the call, Sklar would discuss the goals, which were later transmitted in writing by the Central Office. Ray Meisels (Meisels), the NHC Director, would monitor the office case loads in CPMS (Case Processing and Management System). If a workload issue was identified, Meisels communicated the issue to the NHC.

Case pulling competitions were held in the Baltimore NHC. Janey explained that the competitions were intended to be a fun way to push more case workups. The supervisors would give prizes to the winners. Janey does not believe that the competitions were establishing specific performance metrics for the staff.

If an ALJ had issues with the staff or the case workups, they would notify Farnes, who in-turn would communicate the information to Janey. Janey does not recall any ALJ complaining that cases were pulled incorrectly. The staff, at a minimum, would check the case the day prior to a hearing. Janey recalled only one ALJ, Susan Wakshul, complaining that cases were not being updated prior to the hearings.

Janey stated that it could take two to three months from case workup to hearing date. Once the hearing is scheduled, the NHC must give a 20-days notice of hearing to the applicant. During this time, additional documents can be received and added to the case folder.

Janey acknowledged receiving a few complaints regarding the Baltimore NHC from external stakeholders, to include the Olinsky Law Group (Olinsky) in Syracuse, New York. She acknowledged consulting with Meisels regarding the issues alleged by Olinsky. In addition, Janey met with the Baltimore NHC supervisors and staff to communicate the concerns. If any alleged issues were corroborated, Janey stated that she corrected them immediately. Janey did not directly respond to Olinsky and believes that Meisels may have done so. It is Janey's opinion that Olinsky did not like the ALJs in the Baltimore NHC and lodged complaints in an effort to get their cases transferred.

Mail was handled on a rotational basis in the Baltimore NHC. At least three Legal Assistants per week were assigned mail duties. The supervisors would pick up the mail and deliver to the responsible employee to open. If an employee is absent on an assigned day, the mail was distributed to the next person on the rotation list. The mail was never left for the absent employee. After the mail was opened, the Legal Assistants scanned the documents so it could be associated with the claim folder. If the case is already assigned to an ALJ, the Case Manager for that claim would receive a notice on their "to-do" list and would be responsible for reviewing and exhibiting that document. If the case was unassigned, the Legal Assistant was responsible for exhibiting the document. Janey stated that is possible to clear items from the "to-do" list without actually reviewing and exhibiting the document.

If mail was received for a closed case, it should have been forwarded to the office that retains the folder. I presented to Janey an email sent on March 9, 2010, from Supervisory Paralegal Specialist

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Sonya Napier (Napier) to Legal Assistant Scott Wilttrout (Wilttrout). The email was in regard to returned mail that was given to Napier by another employee. Napier instructs Wilttrout to go through mail "and see if the case is still open. If so, distribute mail, if not destroy." Janey stated that Napier's instructions were incorrect and no mail should be destroyed. Based on the context of the email, Janey believes the returned mail to which Napier was referring was undeliverable mail. Janey explained that, when mail is returned, effort should be made to locate and contact the applicant. Despite receiving returned mail, the hearing could still be scheduled and an ALJ could dismiss the case if the applicant failed to appear.

Janey recalled that there were infrequent issues with queued items in the scanner, explaining that she would address them when discovered. Janey stated that Wilttrout brought the scanner and other issues to her attention. Janey believes that Wilttrout did not want to open mail for other employees when they were out of the office. Wilttrout also complained that employees were not answering the telephone, were leaving callers queued on hold, and were not responding to messages left on the office voicemail. He explained to Janey that, when he was assigned to the telephone, he was having to return calls that should already have been addressed. Janey stated that she began monitoring the telephones and observed no more than five callers in the hold queue at a time. Janey was not at the Baltimore NHC when the new telephone system was implemented.

Prior to Janey's transfer to the Baltimore NHC, Wilttrout was reassigned from to supervisor Stephanie Meilinger (Meilinger) from supervisor Wynette Brogden (Brogden). Janey does not know why this occurred. Janey stated that she observed no issues between Wilttrout and Meilinger. Janey stated that, as the Administrative Officer, she had a role in PACS (Performance Assessment and Communication System) appraisal scores. She would approve the scores proposed by the supervisors. Janey stated that Wilttrout never came to her with any issues related to his PACS score, nor did she hear complaints about Wilttrout's performance.

Janey stated that there may have been a few issues with time and attendance misuse. Most of the issues were related to the attorneys and their completion of time sheets. On a few occasions, she witnesses employees sign-in with an earlier time than their actual arrival. Each time, she verbally addressed the issue with the employee. Janey stated that there was not procedure to sign-in or sign-out for lunch breaks.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: AUGUSTUS MARTIN Address: ODAR OCALJ NHC Baltimore, MD 21204

Subject: ODAR OCALJ NHC Address: 849 Fairmont Avenue Baltimore, MD 21204

JUDICIAL ACTION:

N/A

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DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: KEVIN HUSE 08/14/2014

APPROVED BY: MICHAEL MCGILL 08/26/2014

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Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE: AUGUSTUS MARTIN

CASE NUMBER: WAS1400051Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 08/18/2014 **TO:** 08/18/2014

RELATED CASE NUMBERS:

REPORTED BY: KEVIN HUSE

FIELD DIVISION: PHILADELPHIA

OFFICE: WASHINGTON DC

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

This report is in reference to the August 18, 2014 interview of Ray Meisels (Meisels), the GS-15 Director of the Social Security Administration (SSA), Office of Disability Adjudication and Review (ODAR), Office of the Chief Administrative Law Judge (OCALJ), National Hearing Center (NHC), Central Office (CO), and Samuel Martinez (Martinez), the GS-14 Branch Chief of the SSA/ODAR/OCALJ/NHC/CO/Workload Control Branch.

ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

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INVESTIGATIVE ACTIVITY:

On August 18, 2014, Attorney Jennifer Herrmann (Herrmann) from the SSA/Office of the Inspector General (OIG)/Office of Counsel to the Inspector General, Auditor Parham Price (Price), of the SSA/OIG/Office of Audit, and I interviewed Meisels and Martinez at the SSA/ODAR Headquarters, located at One Skyline Tower, 5107 Leesburg Pike, Falls Church, Virginia. Prior to the interview and in the presence of Herrmann and Price, I presented Meisels and Martinez the SSA/OIG Form OI-15, Warnings and Assurances to Employee Requested to Provide Information on a Voluntary Basis (Garrity). Meisels and Martinez acknowledged these rights and signed the waiver on the Form OI-15. Copies of these waivers are retained in the case file. During the interview, Meisels and Martinez provided the following information in substance:

The first NHC opened in approximately 2008. The NHCs and Hearing Offices handle the same workload, but have different management structures. Meisels became the Director of the NHC in 2009. Martinez began working for the NHC on May 10, 2010. The NHC/CO is responsible for overseeing workloads, spotting trends, and providing administrative functions such as: hiring, budgeting, personnel actions, and labor relations. In addition, the NHC/CO is responsible for ensuring that offices are in compliance with the Electronic Business Process and HALLEX (Hearings, Appeals, and Litigation Law Manual).

A claimant's electronic folder contains documents related to their case. In an NHC, the Legal Assistants will pull the folder prior to the scheduling of a hearing. The Legal Assistant should look at every page of every document to determine its relevance to the folder. However, it is not necessary for the Legal Assistant to read and analyze every page.

I provided a copy of a document outlining the "Modified Streamline Folder Assembly" process. This document was allegedly prepared and presented to the Baltimore NHC staff during a training session facilitated by David Hash, a former Case Manager. Meisels and Martinez reviewed the document and agreed that the procedure is fairly similar to agency policy. However, they noted that the procedure is not the Streamline Folder Assembly process because it requires the exhibiting of all documents in some sections. They posited that, if this was the sole policy utilized in the NHC, relevant information in the case folder could be missed. However, if this policy was complementary to training, it is less likely that anything in the folder would be overlooked.

Policies may be implemented differently in different offices, stemming primarily from the first-line supervisors who assign the work. However, they do not suspect that cases were being dismissed as a result of missing or overlooked information. The culture for scheduling in the NHCs is to give five

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days for the notice to print, five days for the mail to deliver, and 20 days notice for hearing. In that 30 days, it is likely that all relevant documents would reach the electronic folder.

If an employee is not following policy and procedure in an NHC, the NHC/CO will address the issue once it is brought to their attention. The NHC/CO can identify issues and irregularities in multiple ways, such as performance trend analysis or NHC complaints. For example, some offices pull cases for other offices. If those cases were incorrectly worked up, the receiving office would complain. The NHC/CO is not aware of any pervasive culture of policy violations in any NHC.

The NHC/CO provides training to the NHCs in pulling and scheduling cases. To further ensure that cases are correctly pulled, the case should receive additional reviews once it has been pulled. Prior to the interview, Meisels and Martinez reviewed numerous cases pulled in 2010. They reported that, of these cases, 95% reflected that the case was reviewed. The records do not identify the reviewer. In approximately January 2014, ODAR instituted a quality assurance unit responsible for reviewing cases.

In addition to the initial case workup, a claimants electronic folder may be reviewed multiple times in an NHC. An on-the-record (OTR) review is completed without case workup, where a review of the records indicates sufficient evidence to support a favorable decision. A pre-hearing review of the folders may also be conducted at the discretion of the ALJ. An attorney will also review the folder post-hearing when completing the decision write-up for the ALJ. Meisels noted that Case Managers can also write fully-favorable decisions.

The ODAR/OCALJ establishes the targets and goals for the NHCs. These metrics are usually based on the number of ALJs assigned to an office. Target metrics for pulled cases are established within each NHC, and not at the OCALJ level. The NHC/CO provides to each NHC the statistical data on the number of cases pulled. However, this information is for managerial purposes only, and is not intended for dissemination to the bargaining unit employees.

The NHC allowance rate is lower than the rate amongst hearing offices. In addition, some law firms did not want their hearings conducted via video teleconference. Because of this, Martinez believes there may be some bias between claimant representatives and the NHC ALJs. Martinez is aware of complaints from the Olinsky Law Group (Olinsky) in Syracuse, New York. He recalled transferring most of their cases to the Falls Church NHC. Meisels did not recall sending a response to Olinsky regarding their complaints.

Meisels recalled speaking about alleged issues at the Baltimore NHC with Scott Wilttrout (Wilttrout), a former Legal Assistant. Following his discussion, Meisels addressed Wilttrout's disclosures with the Baltimore NHC management team and instructed them to "tighten things up." Meisels stated that Wilttrout's PACS (Performance Assessment and Communication System) score was not discussed. Meisels noted that the Baltimore NHC Chief ALJ was also aware of the complaints lodged by

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Wiltrout. Subsequent to his discussion with Wiltrout, Meisels recalled being copied on an email from Wiltrout regarding Wiltrout's PACS (Performance Assessment and Communication System) score.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: AUGUSTUS MARTIN Address: ODAR OCALJ NHC Baltimore, MD 21204

Subject: ODAR OCALJ NHC Address: 849 Fairmont Avenue Baltimore, MD 21204

JUDICIAL ACTION:

N/A

DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: KEVIN HUSE 08/26/2014

APPROVED BY: MICHAEL MCGILL 08/27/2014

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Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE: AUGUSTUS MARTIN

CASE NUMBER: WAS1400051Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 08/20/2014 **TO:** 08/20/2014

RELATED CASE NUMBERS:

REPORTED BY: KEVIN HUSE

FIELD DIVISION: PHILADELPHIA

OFFICE: WASHINGTON DC

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

This report is in reference to the August 20, 2014 interview of Michael Polvino (Polvino), the former Administrative Officer of the Social Security Administration (SSA), Office of Disability Adjudication and Review (ODAR), Office of the Chief Administrative Law Judge (OCALJ), Baltimore National Hearing Center (NHC), in Towson, Maryland.

ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

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The SSA/OIG received a whistleblower disclosure referral from the United States Office of Special Counsel (OSC). The referral alleged that employees of the Baltimore NHC may have engaged in violation of law, rule, or regulation and gross mismanagement. Refer to all previous reports of investigation for additional information, the most recent of which was submitted on August 26, 2014.

INVESTIGATIVE ACTIVITY:

On August 20, 2014, Special Agent (SA) Chrisoula Mousadakos and I interviewed Polvino, the former Administrative Officer at the Baltimore NHC. The interview was conducted at Polvino's residence located [REDACTED]. SA Mousadakos and I identified ourselves to Polvino and presented our credentials. Polvino consented to be interviewed and provided the following information in substance:

The Baltimore NHC opened in approximately September 2009. At that time, Polvino was the Hearing Office Director in the Brooklyn Hearing Office in Brooklyn, New York. In February 2010, Polvino was assigned to the Baltimore NHC on a 60-day detail. The detail was extended five times, resulting in Polvino working in the Baltimore NHC for approximately one year. There was no Administrative Officer prior to Polvino's assignment.

When Polvino arrived at the Baltimore NHC, there was a tremendous need for hearing-ready cases. This occurred because there were no incoming cases. Polvino explained that there was no Administrative Officer to assess the operational needs of the office as a whole. He worked to network with numerous hearing offices to solicit casework.

The goal at ODAR was to workup all cases with a standard pull. The Streamline Folder Assembly (Streamline) method, if conducted in accordance with Chief Judge Bulletin (CJB) 08-02, is not much different than a full workup, as all pertinent section are completely reviewed. The goal of the Streamline method was to quickly assess and process volumes of information. Polvino recalled some complaints and unhappiness from the Administrative Law Judges (ALJs) related to the Streamline method and incomplete workups. However, this was not the fault of the process, it was the fault of the employee conducting the workup and their implementation of the policy.

I presented a copy of a document outlining the "Modified Streamline Folder Assembly" process to Polvino. This document was allegedly prepared and presented to the Baltimore NHC staff in 2010 during a training session facilitated by David Hash, a former Case Manager. Polvino was familiar with the process, but did not specifically recall approving of it while serving as the Administrative Officer. Polvino explained that the goal of the Modified Streamline process was to review the pertinent information without rearranging and ordering records spanning multiple years, not to skip the review of documents altogether. Each page of every document would need to be reviewed for misplaced documents and personally identifiable information. However, there is not necessarily a need to read every page. Polvino further explained that exhibiting all documents in the A and B sections of the case folder, as directed under the Modified Streamline process, is in actuality a complete workup. In

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general, all of the documents in those sections would be exhibited. Polvino stated that the Modified Streamline process, as a replacement for policy, would not be acceptable. However, as a supplement to policy, the process could be appropriate.

The employees staffing the Baltimore NHC when it first opened had diverse backgrounds. Some employees transferred from various regional hearing offices, some had no experience with ODAR, and others were newly hired. In general, the hearing office transfers were good workers. However, the Baltimore NHC received little assistance from the SSA/ODAR/OCALJ/NHC/Central Office to train the remaining staff, despite the expectation for support. This dynamic sometimes created differing opinions in the office. Polvino recalled supervisor Harriet Caldwell (Caldwell) having issues with the Modified Streamline process introduced by Hash. Polvino explained that the disagreement occurred because Caldwell was attempting to apply a regional policy in a new office. At the same time, Hash was incorrectly "fluffing off" sections of the folder during workup.

The Legal Assistants in the Baltimore NHC were responsible for processing the office mail. They must scan all documents into the file and address any items requiring action. If the case is unassigned, the Legal Assistant would exhibit the document. Otherwise, they would forward a to-do list alert to the group of the assigned ALJ. The Legal Assistant can annotate if the document does not require immediate review.

Scott Wilttrout (Wilttrout), a former Legal Assistant in the Baltimore NHC, alleged abuses of the mail processing. Amongst his complaints, Wilttrout claimed to have observed Michael Joyner (Joyner), another Baltimore NHC Legal Assistant (later promoted to Case Manager), concealing large piles of unopened mail at his desk. Polvino acknowledged that he would not be surprised to learn Joyner did that, however he is not aware of anyone concealing mail. Polvino stated that he would have fired any employee doing so.

Wilttrout further alleged that Baltimore NHC management instructed him to destroy mail that was received after a case is closed. I presented to Polvino an email sent on March 9, 2010, from Supervisory Paralegal Specialist Sonya Napier (Napier) to Wilttrout. The email was in regard to returned envelopes given to Napier by another employee, "Mike." Napier instructs Wilttrout to go through the mail "and see if the case if still open. If so, distribute mail, if not destroy." Polvino stated that mail should not be destroyed. Evidence can be added to a claim folder years after a decision is made. Polvino stated that, of all the superiors in the Baltimore NHC at that time, Napier had the least experience. Polvino stated that he did not instruct Napier to destroy any mail, nor is he aware of any other mail being destroyed. Polvino stated that the only time mail should be destroyed or deleted from the claim folder is upon receipt of a duplicate document.

The office document scanner indexes and organizes scanned documents and directs them to the appropriate electronic claim folder. If scanned documents do not process correctly, they will remain in the scanner memory until manually addressed. When Polvino was first assigned to the Baltimore NHC, he was notified of a backlog in the scanner queue. Some of these documents were awaiting

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indexing, while others could not be processed. If a document appeared in the index queue, it meant it was not immediately routed to the claim folder, not that it was never routed. Other items needed to be manually viewed and addressed. Polvino assigned the three supervisors, Angela Delillye (Delillye), Caldwell, and Napier to clear the scanner queue on a rotational basis.

The Case Managers should be reviewing their to-do lists every day to identify and address action items. However, the Case Managers could delete action item alerts to create the appearance that they were completing work. It is possible that this has happened in every office, but the case could not continue until all of the action items are addressed. The first line supervisors would audit pulled cases as needed, and may conduct a random review if necessary.

Polvino is not aware of any cases being dismissed because of missed items or documents, but he is sure it has happened. If this occurred, the case would likely be remanded back to an ALJ on appeal. Remanded cases are referred back to the origination hearing office and were not handled in the Baltimore NHC. The length of time it would take a case to be returned to the hearing office upon remand is dependent upon the actual filing of an appeal and the time necessary for the Office of Appellate Operations to review the case.

Polvino described the telephone system utilized at the Baltimore NHC as "terrible." Each employee had an individual telephone line, which prohibited overflow calls from routing to another extension. With only one employee assigned to the reception desk, callers either received a busy signal or voicemail if an employee was unable to answer the call. In addition, employees frequently relocated their office or desk, but did not re-route their telephone extension. Polvino recalled having to assign Delillye the task of relocating all of the telephone lines to the appropriate locations. It took Delillye approximately one month to complete the assignment.

Polvino receive complaints from the Rochester Bar Association (RBA) related to communication issues with the Baltimore NHC. The RBA complaints alleged the following:

- Calls were not reaching employees.
- Calls were not returned.
- No communication was received regarding scheduling.
- Attorneys were unable to obtain copies of their files.
- Attorneys were unable to scan evidence.

Polvino stated that he had to reassign his staff duties to address these issues. He recalled assigning two employees to take income calls, and two additional employees to return missed calls.

Disposition goals were established for each office by the OCALJ. These goals were fairly uniform across the county. Polvino described the goals as "soft and mushy," where there was no real consequence for failing to meet them. Any pressures from the ALJs to meet the goals was directed at

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the Administrative Officer. Polvino stated that there was constant pressure, adding that it was part of the job and basic operations management. Polvino reported that he was able to increase the Baltimore NHC disposition rate from approximately 2,000 dispositions per year to 6,000. He did this by ensuring the office had enough work, that the staff performed their work properly, that the office worked as a team, and by keeping the process simple.

Polvino was surprised to hear that pulling competitions were held in the Baltimore NHC. These did not occur while he was the Administrative Officer, as he discouraged competition between the staff. Polvino stated that it was philosophy of Renea Bowles, his successor as the Baltimore NHC Administrative Officer, that competitions were team building exercises. Polvino disagrees with this philosophy, arguing that management should not turn staff against each other from a workload perspective.

Polvino stated that management could not establish a specific metric for the number of cases to pull. I presented to Polvino an email dated March 18, 2011, from Supervisory Paralegal Specialist Wynette Brogden (Brogden) to Wiltrot and Joyner. In the email, Brogden states that "it is imperative that next week during your WKUP week, you strive to pull at least 6 cases a day." Polvino does not believe this email established a specific metric, as it only requests that they strive to achieve that number. Polvino added that six cases per day is not a high target. Polvino advised that there were issues between Brogden and Wiltrot, however he was unable to recall the specifics. Polvino remembers Brogden seeking guidance on how to handle the issue. Wiltrot never brought any concerns to Polvino's attention.

Reports on individual pull statistics could be generated. These statistics could be used as a management tool to identify potential issues. Management could assess trends and workloads to identify areas of concern. Polvino stated that case pulling statistics were a factor of PACS (Performance Assessment and Communication System) appraisal ratings. However, Polvino stated that the statistic should never be used as a sole metric for a PACS score, and should only be considered as a factor of an employee's overall responsibilities.

Polvino recalled issues related to long lunch breaks at the Baltimore NHC. He is not aware of any other time and attendance related issues.

Despite the allegations made by Wiltrot, Polvino explained that a case folder is reviewed multiple times after the initial workup. The scheduler will look at the case when preparing the hearing schedule. A few weeks prior to the hearing, the Case Manager will review the case when copying exhibits to a compact disc for the claimant's attorney. An attorney for the ALJ may review the file prior to hearing and address any remaining loose mail. The ALJ will also review the folder as part of the hearing process. Polvino believes the chances of an erroneous dismissal based on reasons alleged by Wiltrot are small.

SUBJECT(S) AND/OR DEFENDANT(S):

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Subject: AUGUSTUS MARTIN Address: ODAR OCALJ NHC Baltimore, MD 21204

Subject: ODAR OCALJ NHC Address: 849 Fairmont Avenue Baltimore, MD 21204

JUDICIAL ACTION:

N/A

DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: KEVIN HUSE 08/27/2014

APPROVED BY: MICHAEL MCGILL 08/28/2014

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Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE: AUGUSTUS MARTIN

CASE NUMBER: WAS1400051Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 09/03/2014 **TO:** 09/03/2014

RELATED CASE NUMBERS:

REPORTED BY: KEVIN HUSE

FIELD DIVISION: PHILADELPHIA

OFFICE: WASHINGTON DC

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

This report is in regard to policy discussions with Susan Swansiger (Swansiger), Director of the Social Security Administration (SSA), Office of Disability Adjudication and Review (ODAR), Office of the Chief Administrative Law Judge (OCALJ), Office of Field Procedures (OFP).

ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

The SSA/OIG received a whistleblower disclosure referral from the United States Office of Special

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Counsel (OSC). The referral alleged that employees of the SSA/ODAR/OCALJ/National Hearing Center (NHC)/Baltimore National Hearing Center (NHC) may have engaged in violation of law, rule, or regulation and gross mismanagement. Refer to all previous reports of investigation for additional information, the most recent of which was submitted on August 28, 2014.

INVESTIGATIVE ACTIVITY:

Whistleblower Scott Wilttrout (Wilttrout), a former Legal Assistant in the Baltimore NHC, alleged that Baltimore NHC management instructed the staff to workup cases in a manner inconsistent with policy, resulting in potential violations of claimants' hearing rights. The SSA/ODAR/OCALJ/OFP oversees field practices and authors policy in the Hearings, Appeals, and Litigation Law Manual (HALLEX). On September 3, 2014, I spoke with Swansiger, Director of the SSA/ODAR/OCALJ/OFP, via telephone to discuss the ODAR policies for case workup, mail, and the scheduling of hearings. I advised Swansiger of the allegations lodged by Wilttrout and the nature of the Office of the Inspector General investigation. Swansiger provided the following information in substance:

To properly complete a case workup, it is necessary for case technicians to look at every page of every document when preparing it for exhibit. Swansiger believes Wilttrout's assertion that every page of every document be reviewed is a semantics issue, pointing out that HALLEX I-2-1-15 and Chief Judge Bulletin (CJB) 08-02, which regulate the exhibiting process, refer to exhibiting documents, not reviewing them. She stated that exhibiting is essentially numbering all of the pages. Swansiger stated that the case technician must look at every page, but they do not need to read each page for substance. Swansiger added that the case technicians propose the exhibits for the hearing; it is the responsibility of the Administrative Law Judge (ALJ) to review and confirm those exhibits.

Swansiger stated that hearing notices are sent prior to hearings. Each notice includes a Acknowledgment of Hearing notice that should be returned by the claimant to the hearing office. It is possible for a hearing to be dismissed if a claimant does not return the acknowledgment notice and fails to appear for the hearing. However, at some point, the claimant will find out about the dismissal and the case can be re-heard.

I informed Swansiger that a manager in the Baltimore NHC instructed staff to destroy mail that was received on closed cases. Swansiger could not recall the specific policy for the destruction of mail, but stated that there was guidance issued for addressing "trailer mail," which she described as the mail that is received after the hearing.

Swansiger stated that HALLEX polices are routinely revised, and historical policies can be obtained from the SSA/ODAR/Office of Appellate Operations (OAO). She advised that HALLEX I-2-1-15 was recently updated. The SSA/ODAR/OAO led the revisions for that policy.

SUBJECT(S) AND/OR DEFENDANT(S):

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Subject: AUGUSTUS MARTIN Address: ODAR OCALJ NHC Baltimore, MD 21204

Subject: ODAR OCALJ NHC Address: 849 Fairmont Avenue Baltimore, MD 21204

JUDICIAL ACTION:

N/A

DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: KEVIN HUSE 09/06/2014

APPROVED BY: MICHAEL MCGILL 09/09/2014

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Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE: AUGUSTUS MARTIN

CASE NUMBER: WAS1400051Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 09/04/2014 **TO:** 09/04/2014

RELATED CASE NUMBERS:

REPORTED BY: KEVIN HUSE

FIELD DIVISION: PHILADELPHIA

OFFICE: WASHINGTON DC

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

This report is in reference to the September 4, 2014 interview of Angela Delillye (Delillye), a Supervisory Case Manager in the Social Security Administration (SSA), Office of Disability Adjudication and Review (ODAR), Office of the Chief Administrative Law Judge (OCALJ), National Hearing Center (NHC), Baltimore NHC, in Towson, Maryland.

ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

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The SSA/OIG received a whistleblower disclosure referral from the United States Office of Special Counsel (OSC). The referral alleged that employees of the Baltimore NHC may have engaged in violation of law, rule, or regulation and gross mismanagement. Refer to all previous reports of investigation for additional information, the most recent of which was submitted on September 6, 2014.

INVESTIGATIVE ACTIVITY:

On September 4, 2014, Resident Agent-in-Charge Joseph Aiosa and I interviewed Delillye at the Baltimore NHC. Delillye was previously interviewed on July 10, 2014 (refer to the Report of Investigation, Form OI-4, submitted on July 18, 2014 for additional information pertaining to that interview). Delillye is the scheduling manager at the Baltimore NHC. This interview was conducted to ascertain the scheduling process utilized in the Baltimore NHC. During the interview, Delillye provided the following information:

Following the case workup, the case enters the "Ready to Schedule" (RTS) status. The Legal Assistants responsible for scheduling will obtain the claimant's contact information from the system and attempt to contact the claimant or their representative. If successful, the scheduler will identify a suitable hearing date. If they are unable to reach the claimant, the scheduler will leave a message when possible. For claimants with a representative, the scheduler will make one additional attempt to contact the representative. For claimants without a representative, the scheduler will make no additional attempts to contact. At this time, the scheduler will place the hearing on the docket and send out the hearing notice.

The schedulers primarily obtain contact information for the claimant from CPMS (Case Processing and Management System), as it contains updated information for the claim. SSA field offices cannot update the information in CPMS. Because of this, an alert will appear in CPMS when a change of address request or other update is received in a field office. Information is also obtained from eView. All information should be updated prior to scheduling.

Every case that is scheduled receives a notice of hearing. A copy of the notice is available in eView. Notices are mailed to claimants in batches, based on the hearing date. The batching date is recorded in CPMS. The notice mailings include a form letter for the claimants to return to the NHC. The letter contains check-boxes where the claimant can indicate if they will or will not attend the hearing, if they are requesting an in-person hearing, and includes space for address updates and any additional information. Delillye did not know if there is a time requirement for the forms to be returned. Delillye stated that most claimants return the form, however the NHC does receive undeliverable mail. Undelivered mail is scanned and the record is updated to show that the notice of hearing was not received. Copies of the returned form should be present in the B Section of the claim folder.

Approximately two to three weeks prior to the hearing, a reminder notice is mailed to the claimant. In

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addition, approximately one week prior to the hearing, the claimant will receive an automated telephonic reminder from the electronic telephone system.

I discussed section I-2-3-20 of the Hearings, Appeals, and Litigation Law Manual (HALLEX) with Delillye. This section regulates the process and requirements for the Acknowledgment of Notice of Hearing, Form HA-504. HALLEX I-2-3-20 requires that the hearing office call or mail a written reminder to any claimant that failed to return the Form HA-504 within seven days of receipt.

Delillye explained that, once the hearing notice is mailed, the claim enters the "Scheduled" status and is assigned to an Administrative Law Judge (ALJ). All subsequent actions on the claim are handled by a Case Manager assigned to the ALJ. Delillye stated that she is not certain if the Case Managers are following-up with the claimants after seven days, but believes that the reminder notice sent to the claimants two to three weeks before the hearing may be this required notification. If a Case Manager receives a request to change the hearing date, the case is placed back into RTS status and returned for additional scheduling.

If the Form HA-504 is not returned to the Baltimore NHC, and the claimant fails to show for the hearing, the Case Manager will send a notice to show cause to the claimant. The claimant has 30 days to reply to the notice to show good cause for missing the hearing. If no response is received, or the ALJ does not find good cause, the case can be dismissed. Delillye is not aware of any cases being dismissed as a result of scheduling issues, but acknowledged that it could happen. However, the case would be remanded upon appeal and rescheduled. Remanded cases from an NHC used to be returned to originating hearing offices. However, remanded cases are now heard by the NHC.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: AUGUSTUS MARTIN Address: ODAR OCALJ NHC Baltimore, MD 21204

Subject: ODAR OCALJ NHC Address: 849 Fairmont Avenue Baltimore, MD 21204

JUDICIAL ACTION:

N/A

DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

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SUBMITTED BY: KEVIN HUSE 09/07/2014

APPROVED BY: MICHAEL MCGILL 09/09/2014

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Huse, Kevin

From: Huse, Kevin
Sent: Wednesday, June 25, 2014 3:18 PM
To: Herrmann, Jennifer; Price, Parham
Subject: FW: mail

From: Wiltout, Scott
Sent: Wednesday, June 25, 2014 9:23 AM
To: Huse, Kevin
Subject: FW: mail

From: Napier, Sonya
Sent: Tuesday, March 09, 2010 8:15 AM
To: Wiltout, Scott
Subject: mail

Good Morning Scott

Mike has been piling stacks of returned envelopes to me. We need to go through this stuff. I am having Terri and Tangelia open it for you. Please go through and see if the case is still open. If so, distribute mail, if not destroy.

Sorry, but thanks

Sonya A Napier

Supervisory Paralegal Specialist
Office of Disability Adjudication and Review
National Hearing Center-Baltimore
R R C C
Baltimore, MD 21244

1.2 Process Incoming Paper Mail

Process Steps	Tasks
<p>1.2 Process Incoming Paper Mail</p>	<p><i>Incoming paper mail for CEF cases should be scanned into the cases upon receipt and should not be routed through the office, held in bins or “drop filed” in paper Docket Files for later processing. Barcodes should be run for each document as the case is looked up in CPMS, and batch processing of scanning should be used to the extent possible to save valuable time. Contract scanning can also be used.</i></p> <p><i>If mail is received for a case that has been transferred to a different hearing office, do not forward the document to the new hearing office by mail or fax. Instead, create a barcode and scan the document to the CEF.</i></p> <p><i>Note: Encourage representatives who continue to submit paper documents to use Electronic Records Express (ERE), contract scanners, or facsimile with your FECS number (Reminder On Submitting Documents to Electronic Cases).</i></p> <ol style="list-style-type: none"> A. Open and date stamp mail B. Query CPMS for status and jurisdiction C. For all paper mail with associated CPMS claims, generate barcode, check box to suppress the To Do Item if appropriate, and associate barcode with that piece of mail <ol style="list-style-type: none"> 1. For claimant change of address and/or phone number <ol style="list-style-type: none"> a. Check CPMS to verify if pertinent information has already been added. If so, no action is necessary. b. If the CPMS information is not correct, <ol style="list-style-type: none"> i. First, notify the field office of the change using an electronic assistance request (ODAR Assistance Request User Guide). You must send the request to the FO servicing the prior address. ii. Then update the CPMS <ol style="list-style-type: none"> 1. Parties of Interest screen (CPMS will now show when the screen was last updated and by whom) 2. FO and DDS code 3. Hearing Site code iii. Consider proper jurisdiction and transfer case if appropriate. If claimant is incarcerated, refer to CALJ Memo “Prisoner Cases – Information” prior to transfer. 2. For 1696, withdrawal of representation, fee agreements, and fee petitions on pending cases

Process Steps	Tasks
<p>1.2 Process Incoming Paper Mail (Continued)</p>	<ul style="list-style-type: none"> a. Check CPMS to verify if pertinent information has already been added – if not, update CPMS. Update the representative in CPMS only if the principal representative has changed (Multiple Representatives Desk Guide). b. Notify the field office of the change in representation using an electronic assistance request (ODAR Assistance Request User Guide). c. Do not add a “Representative Involved” flag in eView. After the field office has recorded the information on the mainframe system and completed the update after transfer (UAT) in EDCS, the flag will automatically be added. The Mainframe was not updated if the flag is not there. <ol style="list-style-type: none"> 3. For 1695s, follow the instructions in the 2012 OCALJ Memo "New Hearing Office Procedures for Form SSA-1695" and EM-12004-REV. 4. For “Acknowledgement of Receipt (Notice of Hearing)” forms, update the Scheduling screen with the Acknowledgement received date. <ul style="list-style-type: none"> a. If the claimant simply indicates they will appear, no further action is necessary b. If the claimant provides any other response, change the To Do Item from “Unassigned” and select the appropriate staff member per management instructions. 5. For requests for critical case processing, create a To Do Item assigned to the appropriate management official (HALLEX I-2-1-40). 6. At one time, scan all barcoded mail for that day 7. For all mail on active claims, after verifying that documents have been successfully added to the CEF, shred documents. 8. Documents received in a foreign language must be translated (HALLEX I-2-5-76). 9. If the case is closed in CPMS: <ul style="list-style-type: none"> a. If the evidence received is an exact duplicate of evidence contained in the CEF, was considered at the time the ALJ made the decision, and is not accompanied by a request for reopening or other such request, destroy the duplicate documents and take no further action. b. Documents received in a foreign language must be translated (HALLEX I-2-5-76). c. If there is an active appeal pending with any

Process Steps	Tasks
<p>1.2 Process Incoming Paper Mail (Continued)</p>	<p>component other than a hearing office:</p> <ul style="list-style-type: none"> i. Create a barcode and add identifying information in the Note field such as “PC, FO, or AC Action Necessary” ii. Scan the document into eView, review the scanned document to verify scanning accuracy, and then shred the paper document. iii. Create a File Transmittal Sheet (Form HA-L48), which you can find in the Document Generation System (DGS), Correspondence, Other folder. Under Attachment(s) check the “Other” box and key in “None” and then add a remark describing the type of document you have added to eView and where you have placed it. iv. E-mail, fax or mail the File Transmittal Sheet to appropriate component. For the Appeals Council, use any of the following: <ul style="list-style-type: none"> 1. Mail: Appeals Council, 5107 Leesburg Pike, Falls Church, VA 22041 2. Fax: 703-605-7101 3. E-mail: ODAR OAO <p>d. If the case is closed in CPMS and you receive an HA-520, Request for Review, you must take the following action because the AC does not get an electronic alert when we scan documents into the folder:</p> <ul style="list-style-type: none"> i. Complete the acknowledgement section of the form, ii. Scan the document and any attachments into Section B of the CEF, review the scanned document to verify scanning accuracy, and then shred the paper document. iii. Create a File Transmittal Sheet as described in #2 above and add a Remark stating, “Unprocessed Request for Review in Section B of the CEF.” iv. Send the transmittal to the Appeals Council (AC) using one of the methods in item 7.b.iv. above. <p>e. If a less than favorable decision was rendered and the new evidence constitutes either an actual or implied request for reopening or request to vacate, scan the document into the appropriate section of the CEF,</p>

Process Steps	Tasks
<p>1.2 Process Incoming Paper Mail (Continued)</p>	<p>review the scanned document to verify scanning accuracy, and then shred the paper document. Follow procedures set forth in HALLEX I-2-9 and HALLEX I-2-4-10, as applicable, and Section 7.1</p> <p>f. If the document is non-medical, post-entitlement material that requires action by another component to effectuate a favorable decision:</p> <ul style="list-style-type: none"> i. Create a barcode and add identifying information in the Note field such as “PC, FO, or AC Action Necessary” ii. Scan the document into eView, review the scanned document to verify scanning accuracy, and then shred the paper document. iii. Create a File Transmittal Sheet as described in #2 above. iv. If the document requires action by a Program Center (PC), fax the form into the Paperless Processing Center system (POMS DI 80830.060) (See Paperless Fax Numbers found on the Division of Electronic Document Management Systems Paperless Training site). v. If the document requires action by a component other than a PC, such as a field office, fax, e-mail or mail the <i>File Transmittal Sheet</i> to that component. <p>g. If the document is a fee petition</p> <ul style="list-style-type: none"> i. Immediately upon receipt, scan, review and shred the document ii. In the CPMS Representative Fee Summary Information screen, click the link to “Add a fee petition,” and add the “Fee petition receipt date.” iii. Change the To Do Item from “Unassigned” and select the appropriate staff member per management instructions. <p>10. When a prior paper folder is received for a current CEF:</p> <ul style="list-style-type: none"> a. Add the Case Characteristic type “Other” – “Prior Paper Filing on Electronic Claim (EFPP)” b. Create a To Do Item to retrieve the file from holding cabinet at case closure. c. In Status/History tab in eView, the Hearing Case Status Summary section, add a checkmark in the “A paper folder for a prior filing is being sent” box. d. Create a message in eView indicating “Prior paper

Process Steps	Tasks
<p>1.2 Process Incoming Paper Mail (Continued)</p>	<p>file”</p> <ul style="list-style-type: none"> e. Store prior file in a central location so that it can be easily retrieved for processing with the CEF. <p>D. For mail submitted on a CD,</p> <ul style="list-style-type: none"> 1. Give the CD to a supervisor who will review the information on the CD to determine whether it can be uploaded using Electronic Records Express (ERE). The supervisor will either: <ul style="list-style-type: none"> a. Upload the information to the CEF through ERE (Guide to Uploading Evidence from a CD). b. Return the CD to the sender if not considered appropriate for inclusion in the CEF c. Or process as described in E. below. 2. Add a Remark stating to whom you have given the CD <p>E. For a DVD, video, or CD as referenced in D.1</p> <ul style="list-style-type: none"> 1. Add a Remark stating the item was received 2. Create a To Do Item to retrieve the item from holding cabinet at case closure. 3. Place item in an envelope and two-part folder and route to the employee with jurisdiction of the case <p>F. If the case is not in CPMS:</p> <ul style="list-style-type: none"> 1. Look in eView then MSSICS/MCS to determine owning office 2. Forward immediately to the appropriate owning office via Optional Form (OF) 41, Routing and Transmittal Slip (do not hold pending future receipt of a case). <p>G. Process To Do items generated by newly scanned documents as appropriate (change from “Unassigned” to appropriate employee as necessary).</p> <p>H. For correspondence that is returned as undeliverable:</p> <ul style="list-style-type: none"> 1. Open, date stamp envelope, and query CPMS for status and jurisdiction. As necessary: <ul style="list-style-type: none"> a. Scan the envelope and the page showing the address into the CEF, using the Section E bar code entitled Post Office Returned Mail. Do not suppress the To Do Item. b. Shred the documents c. Change the To Do Item from “Unassigned” and select the appropriate staff member per management instructions. This individual will: <ul style="list-style-type: none"> i. Verify address with CPMS, eView and Mainframe queries including the Customer Service Record (CSR) (See SM 01605.001 Customer Service Record Query Response)

Process Steps	Tasks
1.2 Process Incoming Paper Mail (Continued)	<ul style="list-style-type: none"> ii. Call claimant, representative or other contact listed in the file and ask for new address iii. Verify the address with the Post Office using an SSA-L2001. <ul style="list-style-type: none"> 1. Set a development item in CPMS 2. Scan the SSA-L2001 into the CEF when returned from the post office. I. For insufficient postage notifications on documents sent through <i>Central Print</i>, route to a manager who will scan and e-mail copies of the documents to the ^ODAR HQ DGS Support mailbox. J. For hand-delivered or faxed correspondence, review item promptly to determine level of urgency, then process accordingly. <p>NOTE: Take appropriate action on To Do List Item(s) (Edit/Delete) prior to changing CPMS status codes</p>

TO: Administrative Law Judge Rosanne Dummer
FROM: Scott Wiltrout
DATE: March 21, 2011
RE: Proper Folder Assembly for Certified Electronic Folders

The issue is proper folder assembly for certified electronic folders at the Baltimore National Hearing Center. On March 18, 2011 Supervisory Paralegal Specialist Wynnette Brogden directed employees at the Baltimore NHC to assemble certified electronic folders in a manner inconsistent with Chief Judge Bulletin 10-03. Compliance with Ms. Brogden's instructions would violate SSA policy and the procedural due process rights of claimants.

On March 18, 2011, Ms. Brogden sent employees an e-mail requesting that they "strive to pull at least 6 cases a day." Later that evening, I spoke with Ms. Brogden regarding the e-mail. I asked her if I should work up cases in a manner consistent with recent training sessions at the Baltimore NHC. Ms. Brogden replied, "No, do what you need to do to get me six cases a day." She then directed me not to open every document while working up cases.

Shortly after I spoke with Ms. Brogden, she discussed case workup procedures with Paralegal Specialist John Stasik. I was able to hear the conversation, as Mr. Stasik's cubicle was directly next to my cubicle. Ms. Brogden asked Mr. Stasik, "Can you work up six cases a day?" Mr. Stasik replied, "Yes, but they will be shitty cases." He went on to explain why it was necessary to open every document in the electronic folders. Ms. Brogden retorted, "Well, we don't have time for that."

The proper procedure for assembling certified electronic folders is outlined in Chief Judge Bulletin 10-03. Under CJB 10-03, the procedures contained therein "must be performed for every case that is scheduled for hearing." ODAR adopted the process outlined by CJB 10-03

because it "provides an exhibited folder that meets the requirements of our governing regulations, the quality standards of our judges, and the requirements of subsequent appellate levels." This indicates that compliance with CJB 10-03 is necessary to meet procedural due process requirements.

Over the last several months, Baltimore NHC management has instructed employees to comply with CJB 10-03. On October 20, 2010, former Acting Administrative Officer Michael Polvino sent an e-mail in which he stated, "Cases should be worked up in accordance with CJB 10-03." On December 3, 2010, former Acting Chief Administrative Law Judge David Pang held meetings with the clerical staff. During these meetings, he directed members of the clerical staff to process cases in accordance with CJB 10-03. Judge Pang even handed out copies of CJB 10-03 to employees.

At the beginning of December, Baltimore NHC management required employees to attend training sessions on the electronic business process. This training was consistent with CJB 10-03. On March 17, 2011, the clerical staff attended training sessions on case workup. This training was also consistent with CJB 10-03.

On March 18, 2011, Ms. Brogden instructed employees to act contrary to the requirements of CJB 10-03. She sent employees an e-mail requesting that they "strive to pull at least 6 cases a day." When I asked Ms. Brogden if I should work up cases in a manner consistent with recent training sessions at the Baltimore NHC, she replied, "No, do what you need to do to get me six cases a day."

In addition, Ms. Brogden directed employees to work up cases without opening all of the documents in the electronic folders. This directly contradicts CJB 10-03, which instructs, "Open each document within Section A" and "[c]ontinue the process with Sections B, D, E and F."

Ms. Brogden's request for six cases per day is also likely incompatible with CJB 10-03. If an employee has specific days set aside for only case workup and he or she adheres to CJB 10-03, that employee may process an average of approximately three cases per day. If the electronic folders contain large amounts of medical evidence, an employee may only process one or two cases per day. If the electronic folders contain small amounts of medical evidence, an employee may process four cases per day. It is unlikely that employees will often be able to process six cases per day while adhering to CJB 10-03.

Chief Judge Bulletin 10-03 instructs employees on the proper method for assembling **certified electronic folders**. In addition, the procedure outlined in CJB 10-03 ensures that due **process requirements** are met. Ms. Brogden directed employees at the Baltimore NHC to **assemble certified electronic folders** in a manner inconsistent with CJB 10-03. Compliance with Ms. Brogden's **instructions** would violate SSA policy and the procedural due process rights of claimants.