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March 6, 2009

The Honorable Frank Cristaudo
Chief Administrative Law Judge
Office of Disability Adjudication and Review
5107 Leesburg Pike, Suite 1608
Falls Church, VA 22041-3255

Dear Chief Judge Cristaudo:

On December 10, 2007, I sent you a letter expressing concern with your statement that each judge should issue 500-700 legally sufficient decisions each year. You stated that based upon historical data and judicial input this was a reasonable request. I requested this historical data, but I have never received a response to that letter. We have always been concerned that the 500-700 case disposition program is bottomed on judicial quotas. As you know, the imposition of decisional quotas and the removal of judges' scheduling authority are violative of the Administrative Procedure Act and an assault on the Due Process which is owed to claimants as a matter of law.

As you are well aware, Administrative Law Judges' (ALJ) productivity has increased each and every year for the last decade with judges achieving a record high monthly mean disposition of 42 cases per judge per month in calendar 2008, an *average* of over 500 cases per year. This fact shows that judges are working extremely hard and well within the range of dispositions indicated by the 1994 SSA study (indicating a monthly disposition range of 24 to 55).

The Agency has created a goal of 500 - 700 dispositions per years for which there is no valid basis. According to the collective bargaining agreement, benchmarks are guidelines and are not to be used as a source of any disciplinary or performance action (SSA v. Goodman, 19 M.S.P.R. 321 at 331).

Nonetheless, as the attached emails show, management has unlawfully instituted quotas under the guise of benchmarks and goals. We have received reports that this is occurring throughout the Agency.

Neither the Agency's benchmarks nor the goal of 500-700 has been validated by any study conducted by SSA or any other source.

Performance accountability measured by numerical dispositions and benchmarks is illegal, constitutes unlawful interference with judicial independence and jeopardizes the provision of due process to the claimants. The APA and SSA's own regulations empower judges to schedule hearings. Removal of this authority violates the law.

ODAR ALJ duties and responsibilities are described in an SSA Official Position Description (No. 66622). Social Security Administration (SSA) ALJs are vested with powers and responsibilities by the Administrative Procedure Act (APA). (5 USC § 551-557). ALJs' duties and responsibilities as U.S. Administrative Law Judges are carried out by virtue of the powers and duties vested directly in them by Congress pursuant to the APA, powers and duties which neither the Agency nor its managers and supervisors may divest, curb, limit or circumscribe.

ALJs are responsible for ensuring that Due Process standards are satisfied. These include ruling on preliminary motions and requests, conducting pre-hearing conferences, reading the often-voluminous record, developing the record, conducting hearings (which include written and/or oral testimony and expert witnesses), reviewing briefs, and preparing and issuing decisions. Further, judges are dependent upon the level of support provided by hearing office clerical staff and decision writers. The Agency has consistently pushed more and more clerical and writing functions onto the judges, reducing our ability to hear and decide cases. Moreover, the electronic business process continues to be a work in progress. It is well established that this model is more time-consuming than using the paper files and increases the amount of time for the judge to handle a case. Instituting quotas in the face of these realities is not only illegal, it corrupts the process.

Disciplining or threatening to discipline ALJs based on the imposition of numerical quotas and adjudication time tables constitutes an improper interference with ALJ judicial functions. This conduct also impairs the judges' ability to deliver due process to the American people. Requiring more and more dispositions reduces the amount of time judges have to handle each case, consistent with the requirements of due process and, as the number of dispositions per judge per year increases, so too does the percentage of favorable dispositions and the associated cost to the public fisc. See attached chart.

I encourage you to reconsider these recent initiatives. Brow-beating, criticizing, and intimidating ALJs, who probably care more about timely and legally sufficient dispositions than many RCALJs and HOCALJs, are counter-productive exercises in futility that will not yield proper results for the American people.

I invite you to consider undertaking a collaborative, cooperative effort with AALJ leadership with regard to case management, treatment of bargaining unit employees and management-employee relations. This issue is of such intense interest to our judges, that I invite you to join our next national executive board teleconference meeting, March 18th at 1p.m. ET. A partnership with AALJ will result in a far better remedy for addressing the backlog.

Sincerely,

Ronald G. Bernoski
President, AALJ, IFTPE

The chart below shows the average percentage of Favorable Decisions issued by judges at various levels of dispositions issued annually. Below 400 dispositions per year the average is less than 70%. As “productivity” is increased the percentage of Favorable Decisions rises alarmingly to 80% and more for those judges issuing in excess of 600 dispositions per year.

The cost to the trust fund of this emphasis on disposing of cases above all else is in the billions annually. An increase of just 10% in the average percentage of Favorable Decisions costs an additional \$11.5 billion each year.

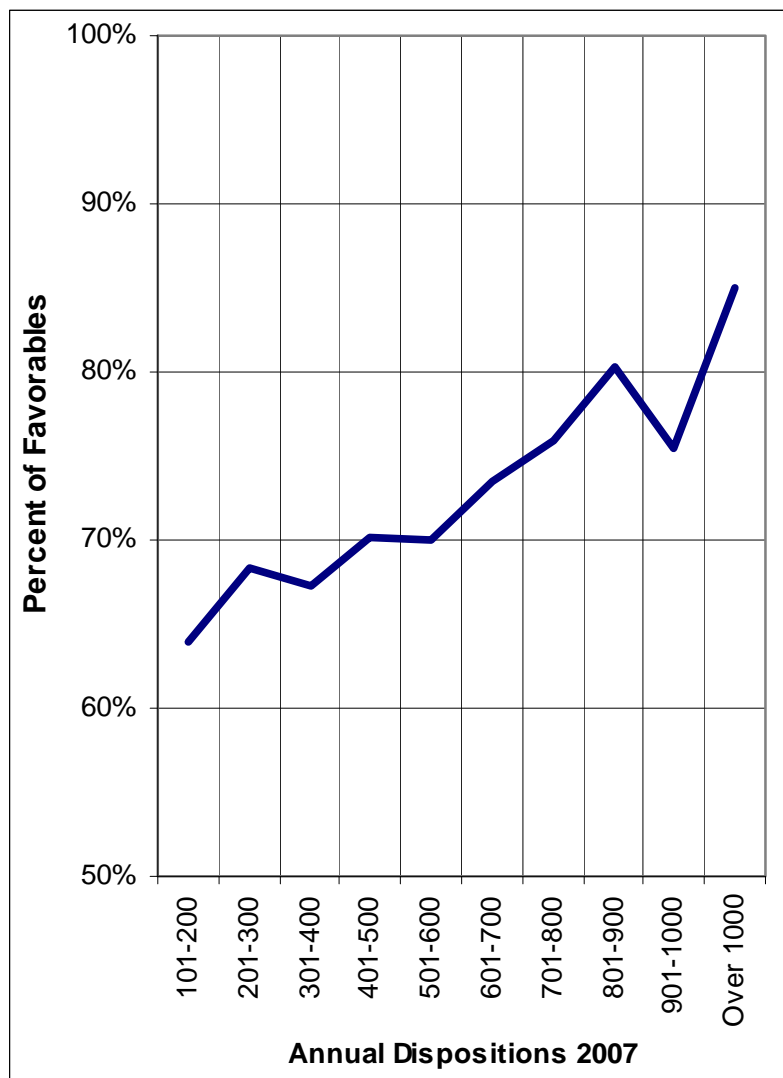


Chart Derived from SSA Dispositional Data for 2007
Source: 2009 SSA FOIA Responses, The Oregonian

Every 10% increase in the average percent of Favorable decisions costs the trust fund an additional \$ 11.5 billion per year.

From: Dadabo, Daniel
Sent: Wednesday, March 04, 2009 9:18 AM
To: #CH IL ODAR Evan ALJs
Cc: #CH IL ODAR Evan Mgmt
Subject: And Now The Rest of the Story - - ACTION - - COB - - Monday March 9, 2009 - - E-Mail Response Required

Colleagues,

Paul Harvey's famous tag line provides perfect entree for Linda's remarks to the Evanston management team.

We had a terrific February, and can feel very positive that the office currently is at 96.6% of its budgeted goal (1.9 per day). A majority of our ten ALJs clearly appear headed for a 500 disposition year. Nevertheless, our office processing pace lags behind many offices nationally.

The Office of the Chief Judge asked me to explain this week the disposition total of any Administrative Law Judge who was not projected to issue 500 dispositions. We previously also had been "on the radar" for a pattern of cases that appeared to remain in ALJ ALPO/ARPR statuses more than 100 days. The well-known benchmark, of course, is 7 days.

I will be forwarding separate e-mails to each of you advising of your disposition totals to date and the number of 850-day cases pending on your docket. This month, staff will complete scheduling all 850-day cases assigned to you.

OCALJ projects that three of our ten ALJs are clearly struggling. I will be asking each of these ALJs to prepare a plan (schedule) advising me what specific steps they contemplate taking to have a reasonable likelihood of achieving the 500-disposition goal. In short, I will ask them to project monthly scheduling and dispositions for the next seven months. I have recommended several times, increasing scheduling to sixty a month, screening, and issuing bench decisions. These suggestions remain viable and I also encourage proactive docket management, as far as clearing overlooked or underattended ALPO/ARPR. If an ALJ has more than five cases pending in this category, I again will need a plan (schedule) of when the ALJ reasonably expects to process these cases, i.e., not more than 30 days.

The HOD and group supervisors will work closely with you in identifying these cases and providing support that you direct. The Regional pending per ALJ is 776 and average processing time is 606 days. The steps we take above will ensure that we continue to contribute our fair share in holding the line and providing credible processing efficiency.

Thanks in advance for your cooperation.

From: Armstrong, Linda D. ODAR Evanston HO
Sent: Tuesday, March 03, 2009 1:00 PM
To: #CH IL ODAR Evan Mgmt
Subject: February Standing

The stats are in. Our ALJ dispo ratio was 2.07, which ranked us 93 nationally (only for this month, usually lower) . The region averaged 2.25, but still ranked 10th in the nation. We ranked 14/20 in the region.

Although February was an outstanding month for us, it seems offices across the country and some in our region are improving at a faster rate than we are.

However, please don't despair. We are gaining ground and can be optimistic that this will continue.

Thanks for all of your efforts and keep up the good work!

Linda