



SOCIAL SECURITY

Office of the Inspector General

February 14, 2012

The Honorable Sam Johnson
Chairman, Subcommittee on
Social Security
Committee on Ways and Means
House of Representatives
Washington, D.C. 20515

Dear Mr. Johnson:

In a June 16, 2011 letter, you asked that we provide you with information on administrative law judges' (ALJ) workloads, adherence to Social Security Administration (SSA) policies and procedures, and related monitoring. In this report, we identify the ALJs who were significant outliers either in terms of their productivity or decisional allowance rates, examine factors that may account for variances, and determine the effectiveness of management controls over ALJ adherence to the Agency's policies and procedures. A second report will address your concerns related to the constraints, including statutory limitations, SSA faces in reviewing the decisions of ALJs and SSA's quality review systems for ALJ decisions.

Thank you for bringing your concerns to my attention. The report highlights various facts pertaining to the issues raised in your letter. To ensure SSA is aware of the information provided to your office, we are forwarding a copy of this report to the Agency.

If you have any questions concerning this matter, please call me or have your staff contact Misha Kelly, Congressional and Intra-governmental Liaison at (202) 358-6319.

Sincerely,

Patrick P. O'Carroll, Jr.
Inspector General

Enclosure

cc:
Michael J. Astrue

CONGRESSIONAL RESPONSE REPORT

Oversight of Administrative Law Judge Workload Trends

A-12-11-01138



February 2012

Mission

By conducting independent and objective audits, evaluations and investigations, we inspire public confidence in the integrity and security of SSA's programs and operations and protect them against fraud, waste and abuse. We provide timely, useful and reliable information and advice to Administration officials, Congress and the public.

Authority

The Inspector General Act created independent audit and investigative units, called the Office of Inspector General (OIG). The mission of the OIG, as spelled out in the Act, is to:

- Conduct and supervise independent and objective audits and investigations relating to agency programs and operations.
- Promote economy, effectiveness, and efficiency within the agency.
- Prevent and detect fraud, waste, and abuse in agency programs and operations.
- Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.
- Keep the agency head and the Congress fully and currently informed of problems in agency programs and operations.

To ensure objectivity, the IG Act empowers the IG with:

- Independence to determine what reviews to perform.
- Access to all information necessary for the reviews.
- Authority to publish findings and recommendations based on the reviews.

Vision

We strive for continual improvement in SSA's programs, operations and management by proactively seeking new ways to prevent and deter fraud, waste and abuse. We commit to integrity and excellence by supporting an environment that provides a valuable public service while encouraging employee development and retention and fostering diversity and innovation.

OBJECTIVE

Our objectives were to identify the administrative law judges (ALJ) who were significant outliers either in terms of their productivity or their decisional allowance rates, examine factors that may account for variances, and determine the effectiveness of management controls over ALJ adherence to the Social Security Administration's (SSA) policies and procedures.

BACKGROUND

An ALJ conducts an independent review of evidence related to each claimant's case and issues a final decision based on this evidence. Given the nature of the hearing process, different ALJs may have different opinions on the same set of evidence. Nonetheless, the Office of Disability Adjudication and Review's (ODAR) process for assigning cases to ALJs, as well as the standards related to the disposition of those cases, should be consistently applied. These standards were designed to ensure claimants are afforded a fair process regardless of where they are located.

In a June 16, 2011 letter, members of the Social Security Subcommittee requested the Inspector General provide information on ALJs who are significant outliers either in terms of their productivity or their decisional outcomes. For those ALJs identified, the Subcommittee asked our office to determine what factors may account for any variance in decisional allowances rates and productivity, as well as to provide information regarding the allocation and related hearings on these cases. Moreover, the Subcommittee requested that we assess the use and effectiveness of management controls regarding ALJ adherence to SSA's policies and procedures as well as any constraints, including statutory limitations, which may make it difficult to ensure ALJ adherence to these policies and procedures.¹

¹ We are completing work on a separate report to evaluate (1) the constraints, including statutory limitations, SSA faces in reviewing the decisions of ALJs, and (2) SSA's quality review systems for ALJ decisions. SSA Office of the Inspector General (OIG), *The Social Security Administration's Review of Administrative Law Judges' Decisions* (A-07-12-21234).

Results of Review

In Fiscal Year (FY) 2010, 1,398 ALJs issued between 1 and 3,620 dispositions. The majority of these ALJs met or exceeded the Agency's 500 to 700-case disposition benchmark. A number of the ALJs with fewer dispositions were new to the Agency or had duties in addition to adjudicating cases. Additionally, while the average decisional² allowance rate for ALJs in FY 2010 was 67 percent, it ranged from a low of 8.6 percent to a high of 99.7 percent nationwide. We reviewed the workload trends of 24 ALJs with the highest and lowest allowance rates to better understand potential causes for these variances. We also visited the hearing offices associated with these ALJs to discuss workload processing. In our discussions with ODAR managers and visits to hearing offices, we learned that the variances in allowances can be attributed to many factors, most notably ALJ decisional independence and the demographics of claimants served by the hearing office, such as their age, education, and available work. Qualified judicial independence means that ALJs must be impartial in conducting hearings. Because of such independence, ALJs are supposed to make decisions free from agency pressure or pressure by a party to decide a case, or a particular percentage of cases, in a particular way. We also found that ODAR established a new control to ensure proper case rotation, though we identified a number of case rotation exceptions at the hearing offices related to dismissals, on-the-record (OTR) decisions, and frequency of claimant representation. While ODAR managers monitored ALJ performance, this monitoring was limited to their progress in meeting established productivity benchmarks. While we found only one instance in the last 5 years where the Agency had initiated disciplinary action related to an ALJ's workload performance, SSA has taken other disciplinary actions against ALJs for insubordination of direct orders or directives to timely process hearing cases.

PRODUCTIVITY AND DECISIONAL OUTCOMES

In our review, we found a wide variance in ALJ productivity and decisional outcomes in FY 2010. We focused our review on ALJ decisional allowance rates related to 24 ALJs—the 12 ALJs with the highest allowance rates and the 12 ALJs with the lowest.

² ALJ decisions include favorable and unfavorable decisions, but exclude dismissals. See Appendix C for more information on our ALJ selection methodology.

ALJ PRODUCTIVITY

In FY 2010, 1,398 ALJs processed 683,430 dispositions.³ Dispositions per ALJ ranged from a low of 1 to a high of 3,620. In 2007, ODAR established a benchmark for ALJs that requested they process between 500 and 700 cases annually.⁴ In FY 2010, about 59 percent of ALJs met or exceeded this benchmark (see Figure 1). A number of new ALJs as well as ALJs with other duties did not meet this benchmark.^{5,6} To ensure ALJs were not deciding an excessive number of cases, ODAR managers were instructed to limit new case assignments to 1,200 annually in FY 2012.⁷ We found 8 ALJs issued over 1,200 dispositions in FY 2010. These 8 included 1 ALJ who issued 2,102 dispositions and a second who issued 3,620 dispositions during the FY. The number of ALJs issuing more than 1,200 dispositions dropped to 4 in FY 2011.

³ While SSA processed 737,616 dispositions in FY 2010, we are not including 54,186 dispositions issued by senior attorney adjudicators.

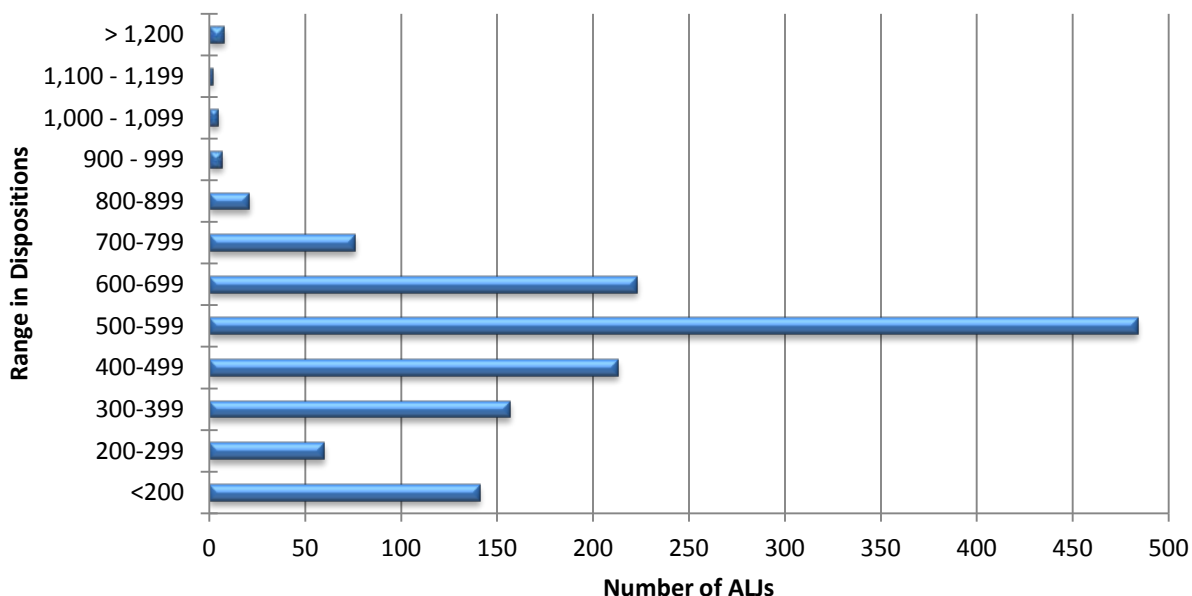
⁴ In an October 2007 Memorandum, ODAR's Chief ALJ identified expectations regarding the services ALJs provide to the public. Mainly, he asked ALJs to issue 500 to 700 legally sufficient decisions each year; act on a timely basis; and hold scheduled hearings unless there is a good reason to postpone or cancel. SSA considers the 500 minimum decisions a goal, not a quota. In a December 2007 Memorandum, the Chief ALJ followed up on the earlier Memorandum and emphasized the importance of legally sufficient hearings and decisions.

⁵ ODAR's workload reports identify ALJ full-time equivalents. As a result, ODAR's methodology would indicate that 74 percent of ALJs completed 500 or more disposition in FY 2010. However, for our review, we did not use ALJ full-time equivalents. Rather, we obtained a data file from ODAR's Case Processing and Management System (CPMS) of issued dispositions. This data file identified the number of ALJs that issued case dispositions each year. For example, the FY 2010 ODAR workload reports identified ALJ full-time equivalents as 1,154. However, the data file identified 1,398 as issuing the 683,430 case dispositions in FY 2010. These averages include dispositions issued by all ALJs each year, regardless of whether the ALJ was full-time, part-time, new, or on extended leave or retired, separated, resigned, or died in FY 2010. See Appendix C for more information on our methodology.

⁶ In our January 2010 report, *Congressional Response Report: Hearing Office Disposition Rates* (A-07-10-21015), we focused on lower performing ALJs.

⁷ *ALJ Performance: Hearing Before H. Ways and Means Subcommittee on Social Security and H. Judiciary Subcommittee on the Courts, Commercial, and Administrative Law*, 112th Cong. (July 11, 2011) (Statement of the Record of Michael J. Astrue, Commissioner of Social Security).

**Figure 1: FY 2010 ALJ Dispositions
(Relates to 1,398 ALJs)**



Note: FY 2010 CPMS closed case data and ODAR's *ALJ Disposition Data*.

Earlier OIG work highlighted ALJ and hearing office productivity. In an August 2008 report,⁸ we identified such factors as motivation and work ethic as reasons for varying levels of ALJ productivity. The report also identified disability determination services (DDS) case development, staff levels, hearing dockets, favorable rates, individual ALJ preferences, and Agency processes as factors that could impact ALJ and hearing office productivity and processing times.

ALJ ALLOWANCE RATES

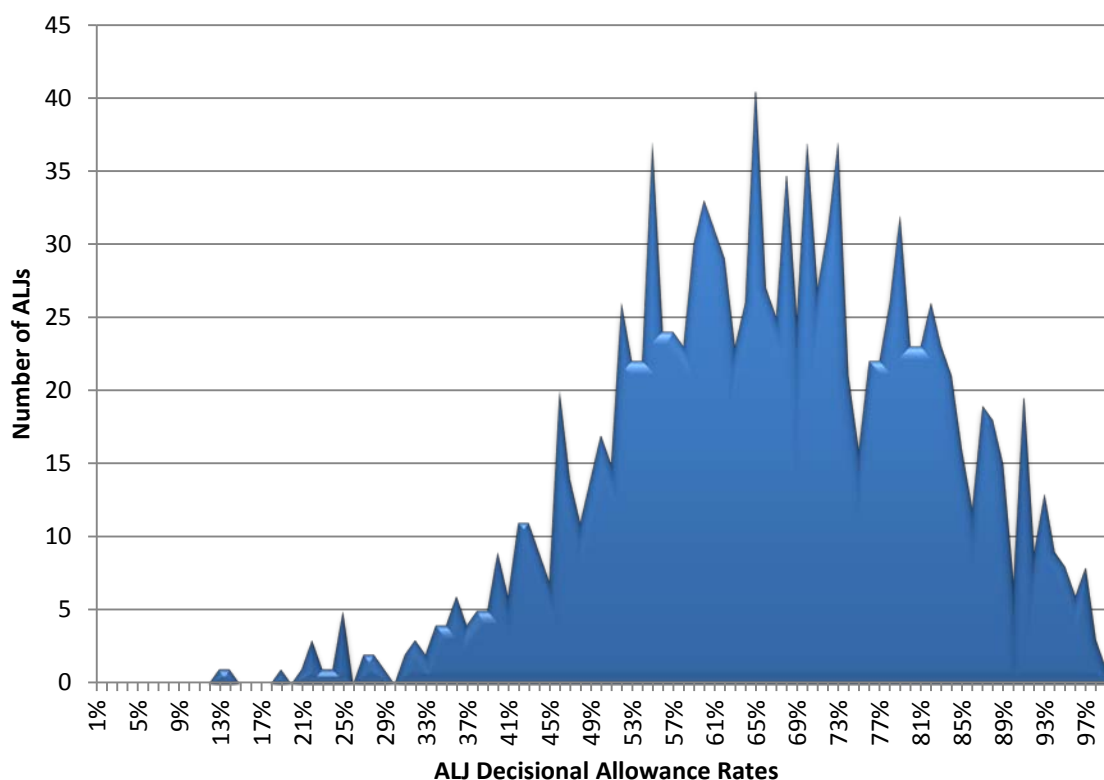
Among the 1,256 ALJs with 200 or more dispositions in FY 2010,⁹ the average decisional allowance rate was about 67 percent.¹⁰ However, ALJ allowance rates ranged from a low of 8.6 percent to a high of 99.7 percent (see Figure 2).

⁸ SSA OIG, *Congressional Response Report: ALJ and Hearing Office Performance* (A-07-08-28094), August 2008.

⁹ We excluded ALJs who had fewer than 200 dispositions to exclude ALJs who may be in a situation where lower productivity is expected, such as ALJs with administration duties or part-time schedules, as well as new ALJs and ALJs on extended leave (see Appendix C).

¹⁰ See Appendix D for additional analysis of allowance rates from FYs 2004 through 2011.

Figure 2: FY 2010 ALJ Decisional Allowance Rates
(Relates to 1,256 ALJs with at least 200 dispositions)



Source: FY 2010 CPMS closed case data and ODAR's *ALJ Disposition Data*.

To better understand factors related to the varying allowance rates, we identified the 12 ALJs with the highest allowance rates as well as the 12 ALJs with the lowest allowance rates in FY 2010.¹¹ The 12 ALJs with the highest allowance rates (between 96.3 and 99.7 percent) were located in 12 hearing offices in 4 regions. One-third of these ALJs was working in hearing offices in the New York Region and one-fourth was in hearing offices in the San Francisco Region. These ALJs issued between 371 and 967 dispositions in FY 2010.

The 12 ALJs with the lowest allowance rates (between 8.55 and 25.1 percent) were located in 11 hearing offices in 6 regions.¹² Of the 11 hearing offices, 6 were located in the Dallas Region. These ALJs issued between 322 and 1,433 dispositions in FY 2010.

¹¹ We reviewed FY 2010 workloads so we had a full FY's worth of allowances to better focus our selection of ALJs. See Appendix C for more information on the selection of these ALJs.

¹² Two of these ALJs were located in the same hearing office.

FACTORS IN ALJ DECISIONAL RATES

We gathered information and perspectives from 218 staff, managers, and ALJs in 23 hearing offices¹³ and all 10 regions to assess factors affecting ALJ allowance rates and workload processing. The majority of the staff we interviewed attributed the variance in allowance rates to ALJ decisional independence and discretion when interpreting the law as well as the demographics of the hearing office service area population.

Decisional Independence

In total, 138 respondents (63 percent) attributed variances in ALJ allowance rates primarily to ALJ decisional independence and discretion. Qualified judicial independence means that ALJs must be impartial in conducting hearings.¹⁴ Because of such independence, ALJs are supposed to make decisions free from agency pressure or pressure by a party to decide a case, or a particular percentage of cases, in a particular way.¹⁵ Congress enacted the *Administrative Procedure Act* (APA) in 1946¹⁶ to provide for judicial review of the actions of administrative agencies.¹⁷ As part of the APA, safeguards were put in place to ensure ALJ judgments were independent and ALJs would not be paid, promoted, or discharged arbitrarily.¹⁸ Hearing office staff believed decisional independence and discretion could be influenced by an ALJ's background, previous work history, political views, and predispositions. For example, one respondent stated that an ALJ with a prosecutorial background may have a different predisposition than an ALJ with a legal aid background.¹⁹

Demographics

In addition, 85 respondents (39 percent) cited regional demographics as factors that could affect ALJ allowance rates. Cited demographics included (1) unemployment and the state of the economy, (2) age and education of the population, and (3) type of disability associated with available work. For example, one Alabama ALJ stated he

¹³ Id.

¹⁴ See 75 Fed. Reg. §§ 39154, 39156, *Final Rules Setting the Time and Place for Hearing Before an Administrative Law Judge*, which discusses qualified judicial independence.

¹⁵ Id.

¹⁶ Pub. L. No. 79-404, 60 Stat. 237 (June 11, 1946) (codified in scattered sections of 5 U.S.C.).

¹⁷ 5 U.S.C. § 702.

¹⁸ 5 U.S.C. §§ 1305, 3105, 5372 and 7521.

¹⁹ SSA hearings with the public have been characterized as inquisitorial rather than adversarial. For example, in the administrative hearing, issues concerning evidence are usually more practical (the weight assigned to certain evidence) rather than legal (whether to admit certain types of evidence).

presided over cases involving disabled adult claimants with only a sixth- or seventh-grade education. He stated that ALJs approve these types of cases more frequently than other cases where similarly disabled claimants have a higher level of education. Another ALJ suggested that claimants in regions with low unemployment were more likely to be denied than similarly disabled claimants in areas with high unemployment.²⁰ A third ALJ noted that regional differences in available employment may lead to certain types of disabilities. For example, some parts of California may have more farm-related injuries than other parts of the United States.

Other Factors

Respondents cited other factors that might impact ALJ allowance rates. These factors related to

- the amount of evidence in the file and how the case was developed,
- DDS allowance rates and case development,
- use of medical and vocational experts,
- pressure to complete a certain number of cases, and
- the claimant's credibility as well as related evidence.

For instance, 7 ALJs mentioned that peers who felt pressured to meet the 500 to 700 disposition benchmark may have allowed more cases because allowances are easier to process than denials.²¹ The Agency has estimated that drafting a legally sufficient decision, absent any special circumstances, should take about 4 hours for a fully favorable decision and 8 hours for a partially favorable or unfavorable decision.²²

ANALYSIS OF WORKLOAD DATA

To determine whether the 24 ALJs were outliers in their respective offices, we compared their allowance rates to those of their peers. We found the majority of the ALJs in our sample aligned with the allowance rates of other ALJs at their location. For instance, 11 of the ALJs with high allowance rates were in offices where the average allowance rate of the other ALJs in the office was above the FY 2010 national average allowance rate of 67 percent (see Table 1). Similarly, 11 ALJs with low allowances were in offices where the average allowance rate of other ALJs in the office was below the national average. Nonetheless, we still identified large variances within the same

²⁰ SSA's *Medical-Vocational Guidelines* essentially indicate that the existence of jobs in the national economy is reflected in the disability decision rules. 20 C.F.R. § 404, Subpart P, Appendix 2, § 200.00(b). The Agency's June 2011 *Vocational Expert Handbook* also noted that vocational experts should have up-to-date knowledge of, and experience with, industrial and occupational trends in local labor markets conditions.

²¹ See Appendix D for more information on trends related to allowance rates.

²² *Summary of Initiatives to Eliminate the SSA's Hearing Backlog: Hearing Before S. Finance Committee*, 110th Cong. (May 23, 2007) (Statement of Michael J. Astrue, Commissioner of Social Security).

hearing office. For instance, one Dallas Region hearing office had one ALJ with a 9-percent allowance rate and another with a 95-percent allowance rate—a variance of 86 percentage points.

Table 1: Allowance Rates of Other ALJs in the Office
(FY 2010)

Sample Offices with High Allowance ALJ		Sample Offices with Low Allowance ALJ	
Hearing Office	Other ALJ Average Allowance Rate (Percent)	Hearing Office	Other ALJ Average Allowance Rate (Percent)
San Juan	87.92	Shreveport	37.42
Brooklyn	83.54	Dover	49.11
South Jersey	82.79	Fresno	57.50
San Rafael	76.71	San Antonio	59.09
Birmingham	74.84	Jacksonville	59.23
Oakland	74.67	Dallas (N)	59.55
Kingsport	74.33	Dallas (N)	59.94
Sacramento	73.92	Milwaukee	61.61
Buffalo	73.31	Dallas (DT)	62.70
Tampa	69.43	Creve Coeur	63.40
Orlando	68.18	Houston	63.86
Pittsburgh	59.79	Richmond	67.15

Note: The national average allowance rate for FY 2010 was about 67 percent.

We also found an alignment between productivity and allowance rates. For instance, of the 12 high-allowance ALJs, 9 (75 percent) decided more cases than the average productivity of the other ALJs in the office (see Table 2). For instance, the high-allowance ALJ in one Florida hearing office decided more cases than all but one of his peers. A similar trend existed among the low-allowance ALJs, with 8 of the 12 (67 percent) deciding fewer cases than the average of their peers. This alignment between productivity and allowance rates is consistent with earlier OIG findings.²³

²³ Our August 2008 report, *Congressional Response Report: Administrative Law Judges and Hearing Office Performance* (A-07-08-28094), stated that higher-producing ALJs had higher favorable rates than lower-producing ALJs.

Table 2: 24 ALJs' Productivity Compared to Other ALJs in the Office (FY 2010)

High Allowance ALJs			Low Allowance ALJs		
Hearing Office	High Allowance ALJ Decisions	Other ALJ Average Decisions	Hearing Office	Low Allowance ALJ Decisions	Other ALJ Average Decisions
Buffalo	382	333	Dallas (N)	269	465
South Jersey	616	433	Dallas (N)	345	460
Brooklyn	795	575	San Antonio	294	550
Sacramento	432	465	Dallas (DT)	448	504
Tampa	596	444	Milwaukee	387	343
Birmingham	465	512	Houston	421	429
San Juan	514	469	Richmond	522	396
Oakland	343	310	Fresno	372	406
Orlando	460	476	Shreveport	1,274	504
San Rafael	469	436	Dover	397	392
Pittsburgh	446	445	Jacksonville	268	444
Kingsport	750	573	Creve Coeur	385	469

Note: ALJ decisions include favorable and unfavorable decisions, but exclude dismissals.

CASE PROCESSING AND MANAGEMENT CONTROLS

ODAR has taken steps to improve the management of hearing office workloads and control case assignment. Nonetheless, our interviews with hearing office staff, as well as our data analysis, identified exceptions to case rotation, such as dismissals, OTR decisions, and a disproportionate number of cases heard by one ALJ with a single claimant representative that may indicate continuing issues with workload assignment.

Assignment of Cases

SSA's policy states the Hearing Office Chief ALJ (HOCALJ) generally assigns cases to ALJs from the master docket on a rotational basis, with the earliest (i.e., oldest) request for hearings receiving priority, unless there is a special situation which requires a change in the order in which a case is assigned.²⁴ In a September 2007 audit,²⁵ ODAR managers and ALJs highlighted to us the benefits of the rotational policy, including it

- ensures the appearance of fairness in that there is no pre-selection of ALJs by the claimant and/or his or her representative;

²⁴ SSA, Hearing, Appeals, and Litigation Law Manual (HALLEX) I-2-1-55 A—*Assignment of Service Area Cases to Administrative Law Judges* (February 12, 2009).

²⁵ SSA OIG, *Workload Activity at Five Hearing Offices in Region IV* (A-12-07-27091), September 2007.

- distributes the workload evenly thereby improving hearing office efficiency;
- adheres to the Agency's policy of public service and ensures claimants are treated fairly; and
- keeps up office morale.

In June 2011, the Acting Chief ALJ issued a memorandum to all regions highlighting new restrictions on case assignment and reassignment. This memorandum was followed by an update to CPMS²⁶ restricting the authority to assign cases from the master docket to the HOCALJs, Hearing Office Directors (HOD), and group supervisors.²⁷ While the assignment of cases was already the responsibility of the hearing office management team, CPMS did not prevent ALJs from re-assigning cases to themselves. During our hearing office visits, we found non-management staff was still delegated the task of assigning and re-assigning cases to ALJs,²⁸ though the new CPMS controls restricted ALJs from assigning themselves cases. According to ODAR, hearing office managers have the option of delegating case assignment duties to the master docket clerks and lead case technicians.

Dismissals

During our interviews, staff in seven hearing offices stated that certain types of dismissals were primarily assigned to the HOCALJ instead of being rotated. Agency policy²⁹ allows cases to be assigned out of first-in, first-out order, but states the HOCALJ generally assigns cases to ALJs from the master docket on a rotational basis. HOCALJs at three of these seven hearing offices stated that certain types of dismissals were assigned directly to them: untimely dismissals, withdrawal dismissals, or dismissals due to the absence of the reconsideration step.³⁰ Other ALJs at these seven hearing offices believed these dismissals were assigned to the HOCALJs generally to

²⁶ CPMS is ODAR's primary, Web-based system for (1) controlling and processing hearing claims and (2) generating management information.

²⁷ This new control did not impact the FY 2010 hearing decisions that were the subject of this review.

²⁸ ODAR managers stated the new CPMS controls also restricted attorney advisors from assigning cases to themselves.

²⁹ SSA, HALLEX I-2-1-55 A—*Assignment of Service Area Cases to Administrative Law Judges*. (February 12, 2009).

³⁰ *Untimely Dismissal*—The request for hearing is untimely and no good cause is found by the ALJ. *Withdrawal Dismissal*—Dismissal of the request for hearing because the claimant withdrew. HALLEX I-2-4-90—*Table of Dismissal Codes* (July 22, 2005). In the third case, the ALJ will dismiss the case when the appropriate level of appeal was the reconsideration stage and not the appeals stage. Program Operations Manual System GN 03103.220 A.2—*Hearing Dismissal* (October 11, 1996).

increase their productivity level because the HOCALJs had other administrative duties.³¹

In December 2010, we issued a report that identified wide variances in regional dismissal rates, particularly untimely dismissals.³² Based on our recommendation, SSA agreed to review these variances. This study, conducted by SSA's Office of Quality Performance (OQP), noted disagreement with 30 percent of the dismissals reviewed, with the greatest disagreement related to withdrawal dismissals. The report provided suggestions for improving dismissal quality.

OTR Decisions

We also found that OTR decisions were not always rotated among ALJs. Our analysis of the 12 high-allowance ALJs identified 3 ALJs with a high percentage of OTR dispositions. These OTR dispositions accounted for at least 72 percent of each ALJ's dispositions.³³ OTR decisions, which are generally favorable, occur when an ALJ has determined a decision can be issued without a hearing. OTR decisions can also occur when the claimant has waived the right to a hearing. All the hearing offices in our sample also had senior attorney adjudicators, who can only issue OTR decisions.³⁴

The aforementioned 3 ALJs issued more than 500 dispositions, while deciding between 72 to 97 percent of their cases as OTRs. Moreover, these rates were not consistent with other ALJs in the same office, as shown in Table 3.

Table 3: Comparison of Three ALJs' OTR Rates to Other ALJs in the Same Hearing Office (FY 2010)

ALJ	OTR Rate (Percent)	OTR Range of Other ALJs (Percent)
ALJ #1	72.3	0.9 - 37.8
ALJ #2	83.6	1.4 - 17.7
ALJ #3	96.8	1.9 - 26.7

Note: We calculated the OTR rate using ALJ decisions and not ALJ dispositions.

During our interviews, we learned that some ALJs did not like to handle OTRs and preferred full hearings on all their cases. As a result, some offices have assigned potential OTRs to specific ALJs to expedite processing. For instance, the ALJ with a

³¹ Dismissals also count toward the annual processing goal of 500 to 700 cases.

³² SSA OIG, *Office of Disability Adjudication and Review Hearing Request Dismissal* (A-07-10-20171), December 2010.

³³ The other nine ALJs had an OTR disposition rates ranging from 5 percent to 37 percent.

³⁴ SSA OIG, *Senior Attorney Adjudicator Program* (A-12-10-11018), July 2011.

72-percent OTR rate stated that while claimant representatives were requesting OTRs, not all the ALJs in the office were willing to consider an OTR.

Number of Cases with a Single Representative

Among the 24 ALJs, we found 1 ALJ with a high allowance rate who had a disproportionate number of cases with a single claimant representative, indicating a potential problem with case rotation in that office. As previously mentioned, cases should be rotated to ALJs in first-in, first-out order to ensure a fair and equitable hearing process. Because cases are assigned on a rotational basis, one ALJ should not receive a disproportionate number of cases from any single claimant representative. While this one ALJ conducted about 59 percent of his workload with one claimant representative, we determined that under normal rotation procedures, only about 11 percent of the ALJ's workload should have related to this claimant representative.

The ALJ we spoke with about this workload situation stated that the high frequency of hearings with this claimant representative was coincidental. The ALJ stated the claimant representative had submitted a high volume of cases requesting OTR decisions, which the ALJ believed was a priority workload. He also mentioned he was unavailable for other workloads involving travel to remote sites as well as hearings with another law firm. As such, the pool of cases that could be assigned to him was smaller than those of his peers. At the time of our review, the ALJ stated he had ended this practice, and OTR cases from this claimant representative were being rotated in a normal fashion.³⁵ We shared our observations with the ALJ's managers who said they would review this workload anomaly. They also stated they were developing CPMS reports that will allow them to track future anomalies. We plan to conduct a separate review to identify relationships among ALJs and representatives.

Other Exceptions

While SSA policy notes some circumstances where one ALJ's case can be reassigned to another ALJ, we identified additional circumstances during our hearing office visits. For example, Agency policy allows the HOCALJ to reassign a case if the ALJ who conducted the hearing is not available to issue the decision due to death, retirement, resignation, illness resulting in leave for at least 20 days, or other cause resulting in prolonged leave of 20 or more days.³⁶ Cases can also be reassigned if the remand states that another ALJ should conduct the remand process.³⁷ During our interviews,

³⁵ We did not detect any similar anomalies in the ALJ's FY 2012 dispositions.

³⁶ SSA, HALLEX I-2-8-40—*Administrative Law Judge Conducts Hearing but Is Unavailable to Issue Decision* (May 16, 2008).

³⁷ SSA, HALLEX I-2-8-18 B.4—*Administrative Law Judge Decisions in Court Remand Cases* (June 16, 2006).

we learned cases were also re-assigned when ALJs were absent fewer than the required 20 days or the hearing office filled an ALJ's travel docket at a remote location.

OVERSIGHT OF ALJ WORKLOAD

Management teams at the hearing offices and regions monitor ALJ productivity but do not monitor allowance rates. SSA also periodic reviews ALJ decisions and recently commissioned a study of the Agency's adjudication process. While SSA has taken a number of ALJ-related disciplinary actions in recent years, only one action was related to workload performance.

Management Information Reports

Hearing office managers monitor ALJ productivity by using CPMS and related Disability Adjudication Reporting Tools (DART) reports. For example, the hearing offices used the *Workload Summary by Status* report to keep track of the hearing office pending cases, status of the cases,³⁸ and number of cases assigned to each ALJ in the office. The offices also used the *Pending Case Listing* and *ALJ Workload and Performance* report to track the age of the case and the number of decisions issued by each ALJ. While allowances and denials are also contained in CPMS, ODAR managers told us they do not monitor ALJ allowance rates since they believe this would interfere with the ALJs' decisional independence.³⁹ Regional managers also stated that while hearing office workloads are primarily monitored by the local managers, they will intervene when an office or ALJ is not meeting productivity expectations.

ODAR managers at Headquarters stated they had created ad hoc DART reports to monitor ALJs. For example, one ad hoc report monitors the frequency of ALJ dispositions with any single claimant representative to ensure cases are being appropriately rotated. However, they noted that this type of monitoring is difficult since a single claimant representative may have more than one spelling of the firm or individual's name in the database. ODAR has taken some steps to improve the consistency of these data in CPMS but stated more work is required.

ODAR has also created an application for ALJ's called *How Am I Doing?*, which allows ALJs to view their performance against other ALJs in their hearing office, their region, and the Nation. The performance measures included ALJ disposition totals, the number of cases scheduling, and average processing time. The application also indicated

³⁸ As part of CPMS, hearing office employees assign a status code to each claim as it moves through the process. The status code identifies the processing stage and location of the claim. For example, a status code may relate to pre-hearing or post-hearing actions. CPMS uses about 40 status codes to track and process pending claims in the hearing offices.

³⁹ Regulations prohibit the agency from reviewing ALJ decisions based on the identity of the decision maker or the identity of the office issuing the decision. 20 C.F.R. §§ 404.969(b)(1) and 416.1469(b)(1).

whether hearing offices and regions were meeting workload goals. This system did not specifically measure the ALJ against the 500 to 700-case processing goal.

Electronic Business Process

ODAR also developed a standardized electronic business process (eBP) to ensure consistent case processing nationwide while creating management reports to monitor that progress. The eBP was designed to improve the business process, manage workloads, track cases, and control case assignment. To achieve these broad objectives, the eBP initiative specifically sought to (1) facilitate timely and legally sufficient hearings and decisions and (2) incorporate future improvements into the business process. ODAR believes the advantages of the standardized process include (1) providing consistent management information; (2) minimizing the need to constantly “reinvent the wheel” when improvements are introduced into the business process; (3) providing valuable information that translates “policy and procedures” into “standardized hearing office practices”; and (4) maximizing the usefulness of CPMS, DART reports, and eView⁴⁰ in controlling case assignment and tracking cases.

SSA’s OQP, which has assisted ODAR with this eBP initiative, completed a review of 12 hearing offices in 2011 to ensure they were consistently following established procedures. At the time of our review, OQP was finalizing its report. An OQP manager noted that his office plans to conduct additional reviews that will address case rotation and other controls related to the hearing process.

Review of ALJ Decisions

Various SSA components review the quality of ALJ decisions and workloads. For example, ODAR’s Office of Appellate Operations (OAO) has reviewed a sample of ALJ allowances to identify potential shortcomings in ALJ processing. In addition, OQP performs a periodic quality review of a sample of hearing decisions issued by ALJs to assess the ALJ decision rationale. However, because of the high-level review their work entails, neither the OAO nor OQP reviews are used to identify issues with particular ALJs. We are completing a separate review on SSA’s quality review system for ALJ decisions.⁴¹

In December 2011, SSA commissioned the Administrative Conference of the United States to study SSA’s adjudication process. Part of the study will review (1) the role of the Appeals Council in reducing observed variances in ALJ decisional outcomes and (2) measures the Agency can take to identify and address issues posed by “outlier”

⁴⁰ SSA’s eView is an application that enables users involved in case processing to view and/or print the disability information contained in the Electronic Folder.

⁴¹ SSA OIG, *Congressional Response Report: The Social Security Administration’s Review of Administrative Law Judge’s Decisions* (A-07-12-21234).

ALJs to reduce the observed variances and other irregularities, while also improving the quality in ALJ decisions.⁴² The study was expected to be completed in 2012.

ALJ Disciplinary Actions

In his July 11, 2011 testimony,⁴³ SSA's Commissioner informed Congress that the Agency had taken 60 disciplinary actions against ALJs since he became Commissioner in 2007.⁴⁴ Furthermore, the Commissioner stated that during his tenure, ALJs have been removed or have retired after actions were initiated (see Appendix E).

We reviewed these 60 complaints and found only 1 pending disciplinary action directly related to ALJ workload performance. Specifically, in July 2011, SSA filed an action with the Merit System Protection Board related to an ALJ's slow case processing. According to the Agency, this type of action had not been filed since the 1980s.⁴⁵ The remainder of the disciplinary actions were related to other issues, such as misuse of Government credit cards and property, insubordination, or misconduct toward claimants and coworkers. However, even these other issues can touch on workload performance. For example, we found that 3 of the 16 disciplinary actions related to insubordination involved ALJs who failed to follow directives for timely processing of hearing cases.

⁴² The study will also address issues related to treating physician rules and the role of video hearings in observed decisional variances.

⁴³ *ALJ Performance: Hearing Before H. Ways and Means Subcommittee on Social Security and H. Judiciary Subcommittee on the Courts, Commercial, and Administrative Law*, 112th Cong. (July 11, 2011) (Statement of the Record of Michael J. Astrue, Commissioner of Social Security).

⁴⁴ Michael J. Astrue was sworn in as Commissioner of Social Security on February 12, 2007 for a 6-year term that expires on January 19, 2013.

⁴⁵ Our separate report, *Congressional Response Report: The Social Security Administration's Review of Administrative Law Judge's Decisions* (A-07-12-21234), will also address some of the issues SSA managers face when addressing ALJ performance.

Conclusions

We explored factors contributing to wide variances in ALJ allowance rates. ODAR ALJs, managers, and staff attributed these variances to many factors, most notably ALJ decisional independence and the demographics of claimants served by the specific hearing office. While ODAR managers monitored ALJ performance, such monitoring was limited to their progress in meeting established productivity benchmarks and did not include a review of decisional outcomes. In addition, periodic quality reviews focus on aggregate trends, not individual ALJ workloads. We found only one instance where the Agency had initiated action specifically related to an ALJ's workload performance.

We believe greater Agency attention is needed to ensure outliers in ALJ performance, be it high or low, are monitored and the underlying work processes are periodically reviewed. The SSA-commissioned study should also be helpful in determining how to address these variances. While we believe the Agency should remain mindful of the ALJs' qualified decisional independence, it is possible that other unrelated factors could be contributing to strong variations in workloads. We believe it is important that the public have confidence in SSA's hearings process. To the extent SSA management can offer greater assurances as to the quality of this process, this confidence can be further enhanced.

Appendices

APPENDIX A – Acronyms

APPENDIX B – Scope and Methodology

APPENDIX C – Methodology for Administrative Law Judge Sample

APPENDIX D – Allowance Rates

APPENDIX E – Administrative Law Judge Disciplinary Actions

Acronyms

ALJ	Administrative Law Judge
APA	<i>Administrative Procedures Act</i>
CPMS	Case Processing and Management System
DDS	Disability Determination Services
eBP	Electronic Business Process
FY	Fiscal Year
HALLEX	Hearings, Appeals, and Litigation Law Manual
HOCALJ	Hearing Office Chief Administrative Law Judge
HOD	Hearing Office Director
ODAR	Office of Disability Adjudication and Review
OAo	Office of Appellate Operations
OIG	Office of the Inspector General
OQP	Office of Quality Performance
OTR	On-the-Record
SAA	Senior Attorney Adjudicator
SSA	Social Security Administration

Scope and Methodology

To accomplish our objective, we:

- Reviewed applicable laws and Social Security Administration (SSA) policies and procedures, including the Office of Disability Adjudication and Review's (ODAR) Hearings, Appeals, and Litigation Law Manual.
- Reviewed previous Government Accountability Office and Office of the Inspector General reports relevant to this review.
- Reviewed previous SSA studies and reviews performed by ODAR and SSA's Office of Quality Performance.
- Obtained workload statistics on administrative law judges (ALJ) from public sources and ODAR's Case Processing and Management System (CPMS). We also performed reliability tests on data and calculated ALJ allowance rates for Fiscal Years (FY) 2010 and 2011 and determined the mean and median for ALJ allowance rates. We identified 24 ALJs for further review—12 with high allowance rates and 12 with low allowance rates in FY 2010. See Appendix C for more on this methodology.
- Visited 23 hearing offices to interview the 24 ALJs as well as other ALJs, managers, and staff in these offices. The interviews focused primarily on workload procedures and factors related to allowance rates.
- Analyzed various workload trends related to the 24 ALJs and their offices, including dismissals, on-the-record decisions, and the frequency of ALJ hearings with a single claimant representative.
- Contacted ODAR managers at the regional and Headquarters levels to discuss management controls over ALJ performance, management information, ALJ disciplinary actions, and other matters.

We found that FY 2010 and 2011 data were sufficiently reliable to meet our objective. The entity audited was the Office of the Deputy Commissioner for Disability Adjudication and Review. We conducted this performance audit from June through December 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Methodology for Administrative Law Judge Sample

We examined the Office of Disability Adjudication and Review's (ODAR) administrative law judge (ALJ) disposition data for Fiscal Year (FY) 2010 to determine the allowance rates for ALJs. We also verified ODAR's ALJ disposition data against Case Processing and Management System (CPMS) data for FY 2010.

Decisional Rates

To calculate each ALJ's allowance rate, we used ODAR's published ALJ disposition data and CPMS data for FY 2010. We performed reliability tests on both sets of data for FY 2010 and found both sets to be sufficiently reliable to meet our objective.

To meet our objectives, we:

- Identified 1,398 ALJs who issued at least 1 disposition in FY 2010.
- Removed 142 ALJs who had fewer than 200 dispositions in FY 2010. We determined this cut-off number based on our August 2008 review of *ALJ and Hearing Office Performance* (A-07-08-28094). In this report, we identified ALJs with administration duties, part-time ALJs, new ALJs, and ALJs on extended leave as a factor for low productivity. More specifically, these factors were identified for ALJs who issued fewer than 200 dispositions during FY 2007.¹ This left us with 1,256 ALJs who issued 200 or more dispositions in FY 2010.
- Calculated the allowance rate (awards divided by decisions) for these ALJs to the 2nd decimal point. We used ALJ decisions rather than dispositions—decisions include favorable and unfavorable decisions, but exclude dismissals. We calculated the average allowance rates for the 1,256 ALJs to be 67.2 percent.

Count of ALJs Deciding Cases

- ODAR's workload reports identify ALJ full-time equivalents. However, for our review, we did not use ALJ full-time equivalents. Rather, we obtained a data file from ODAR's CPMS of issued dispositions. This data file identified the number of ALJs who issued case dispositions each year. For example, the FY 2010 ODAR workload reports identified ALJ full-time equivalents as 1,154. However, the data file

¹ We excluded ALJs who had fewer than 200 dispositions to exclude ALJs who may be in a situation where lower productivity is expected, such as ALJs with administration duties or part-time schedules, as well as new ALJs and ALJs on extended leave.

identified 1,398 as issuing the 683,430 case dispositions in FY 2010. These averages include dispositions issued by all ALJs each year, regardless of whether the ALJ was full-time, part-time, new, on extended leave or retired, separated, resigned, or died in FY 2010. As a result, ODAR's methodology would indicate that 74 percent of ALJs completed 500 or more disposition in FY 2010.

- In our February 2008 report, *Administrative Law Judge's Caseload Performance* (A-07-07-17072), we identified ALJs as partially available if they were reasonably expected to process fewer cases than fully available ALJs or were not employed by ODAR during the entire year. We determined that about 26 percent of the ALJs in FY 2006 were partially available because of other duties (such as, Hearing Office Chief ALJ [HOCALJ], Regional Chief ALJ [RCALJ], detail elsewhere, and union positions) or because they were present at ODAR less than the entire year (such as new hires, part-time employment, extended leave, retirement, resignation, death). Because of timeframes involved in our current audit, we were unable to reclassify all of the ALJs in ODAR during FY 2010.

Selection of 24 ALJs

Once we had a list of ALJ allowance rates, we

1. sorted the allowance rates from high to low;
2. identified the top 12 ALJs in both the highest and lowest allowance rate lists;
3. verified the identified ALJs were still with SSA and their locations; and
4. excluded 4 ALJs from the highest allowance rate list and 3 from the lowest allowance rate list because they were either no longer with the Agency or had moved to another hearing office (see tables C-1 and C-2).

Table C-1: Top 12 ALJs with the Highest Allowance Rates in FY 2010

Count	Hearing Office	Region	High Allowance Rate (Percent)
1	Kingsport	Atlanta	99.73
2	Pittsburgh	Philadelphia	98.88
3	San Rafael	San Francisco	98.08
4	Orlando	Atlanta	97.83
5	Oakland	San Francisco	97.67
6	San Juan	New York	97.28
7	Birmingham	Atlanta	97.20
8	Tampa	Atlanta	97.15
9	Sacramento	San Francisco	96.99
10	Brooklyn	New York	96.98
11	South Jersey	New York	96.43
12	Buffalo	New York	96.34

**Table C-2: Top 12 ALJs with the
Lowest Allowance Rates in FY 2010**

Count	Hearing Office	Region	Low Allowance Rate (Percent)
1	Dallas (North)	Dallas	8.55
2	San Antonio	Dallas	13.04
3	Dallas (North)	Dallas	12.24
4	Dallas (Downtown)	Dallas	13.62
5	Milwaukee	Chicago	20.67
6	Houston	Dallas	21.62
7	Richmond	Philadelphia	21.65
8	Fresno	San Francisco	23.92
9	Shreveport	Dallas	24.88
10	Dover	Philadelphia	24.94
11	Jacksonville	Atlanta	25.00
12	Creve Coeur	Kansas City	25.19

Hearing Office Interviews

To the extent possible, we interviewed nine individuals at each hearing office: three ALJs (including the ALJ in our sample), the HOCALJ, Hearing Office Director (HOD), one or two group supervisors, and two schedulers. We also interviewed 10 regional management teams. As a result, we interviewed 218 ALJs, managers, and staff (see Table C-3).

Table C-3: Total SSA Staff Interviewed

Positions	Number Interviewed
ALJs	72
HOCALJs	23
HODs	23
Group Supervisors	44
Schedulers	46
Regional Management Teams	10
Total	218

Allowance Rates

Our review of allowance rates on dispositions by administrative law judges (ALJ) and senior attorney adjudicators (SAA) found that the average allowance rate had remained relatively stable over the years, with Fiscal Year (FY) 2011 representing the lowest allowance rate between FYs 2004 and 2011 (see Table D-1). SAAs can only issue favorable on-the-record decisions.

Table D-1: Disposition and Decisional Allowance Rates
(FYs 2004 to 2011)

FY	Dispositions	Decisions ¹	Allowances	Dispositional Allowances (Percent)	Decisional Allowances (Percent)
2004 ²	561,461	479,269	336,515	59.9	70.21
2005 ²	605,003	518,489	377,625	62.4	72.83
2006 ²	563,220	484,147	348,182	61.8	71.92
2007	547,951	471,762	340,036	62.1	72.08
2008	575,380	478,851	348,447	60.6	72.77
2009	660,842	557,771	403,980	61.13	72.43
2010	737,616	640,042	447,703	60.70	69.95
2011	793,563	682,548	446,367	56.25	65.40

Note 1: Decisions are less than dispositions because they do not include dismissals. Allowance rates were calculated by dividing allowances in each year by the relevant base, be it dispositions or decisions.

Note 2: Figures include Social Security Administration and Medicare cases.

To better understand ALJ-only allowance rates, we removed the SAAs' dispositions (see Table D-2). The average ALJ allowance rate dropped slightly after the SAA program was implemented in FY 2008 and has continued to drop through FY 2011.

Table D-2: ALJ Disposition and Decisional Allowance Rates
(FYs 2004 to 2011)

FY	Dispositions	Decisions ¹	Allowances	Dispositional Allowances (Percent)	Decisional Allowances (Percent)
2004 ²	561,461	479,269	336,515	59.9	70.21
2005 ²	605,003	518,489	377,625	62.4	72.83
2006 ²	563,220	484,147	348,182	61.8	71.92
2007	547,951	471,762	340,036	62.1	72.08
2008	550,805	454,274	323,872	58.80	71.29
2009	624,476	521,405	367,614	58.87	70.50
2010	683,430	585,586	393,517	57.58	67.20
2011	740,310	629,295	393,114	53.10	62.47

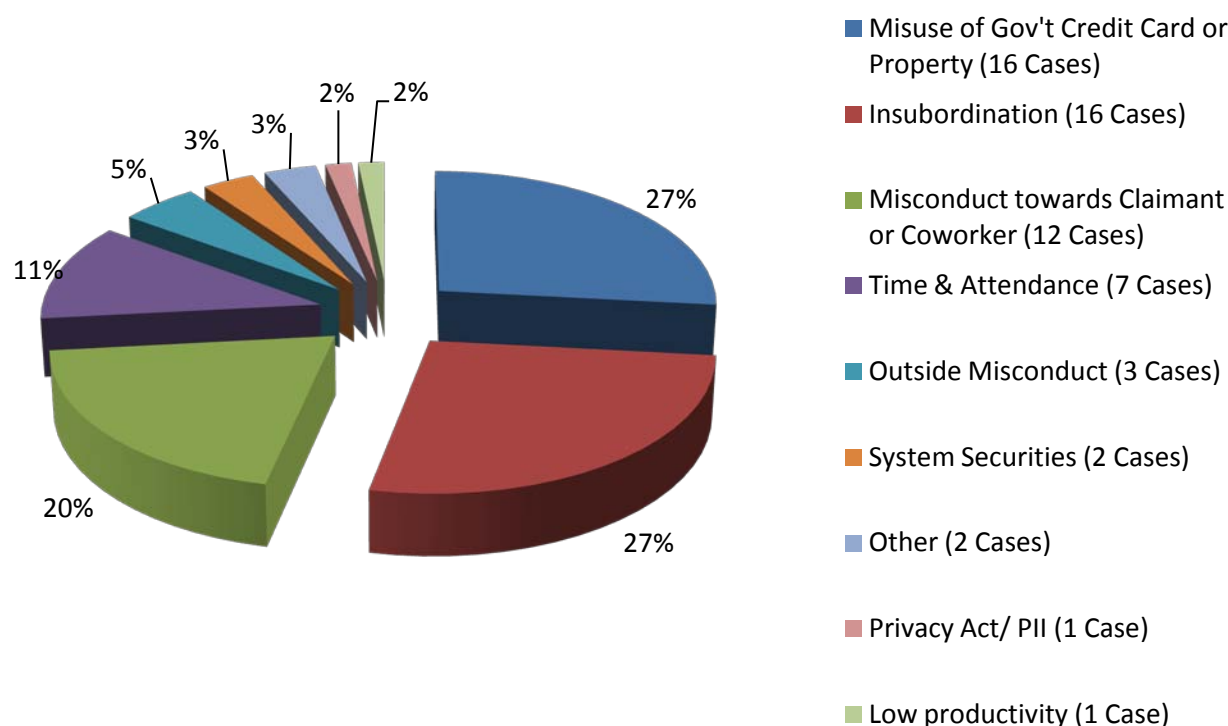
Note 1: Decisions are less than dispositions because they do not include dismissals. Allowance rates were calculated by dividing allowances in each year by the relevant base, be it dispositions or decisions.

Note 2: Figures include Social Security Administration and Medicare cases.

Administrative Law Judge Disciplinary Actions

In his July 11, 2011 testimony,¹ the Commissioner of Social Security stated that the Social Security Administration (SSA) had taken almost 60 disciplinary actions against administrative law judges (ALJ) since he became Commissioner.² Furthermore, the Commissioner stated that during his tenure, a number of ALJs had been removed or had retired after charges were filed.³ Figure E-1 illustrates the types of complaints filed against these 60 ALJs.

Figure E-1: Type of Complaints Filed against 60 ALJs



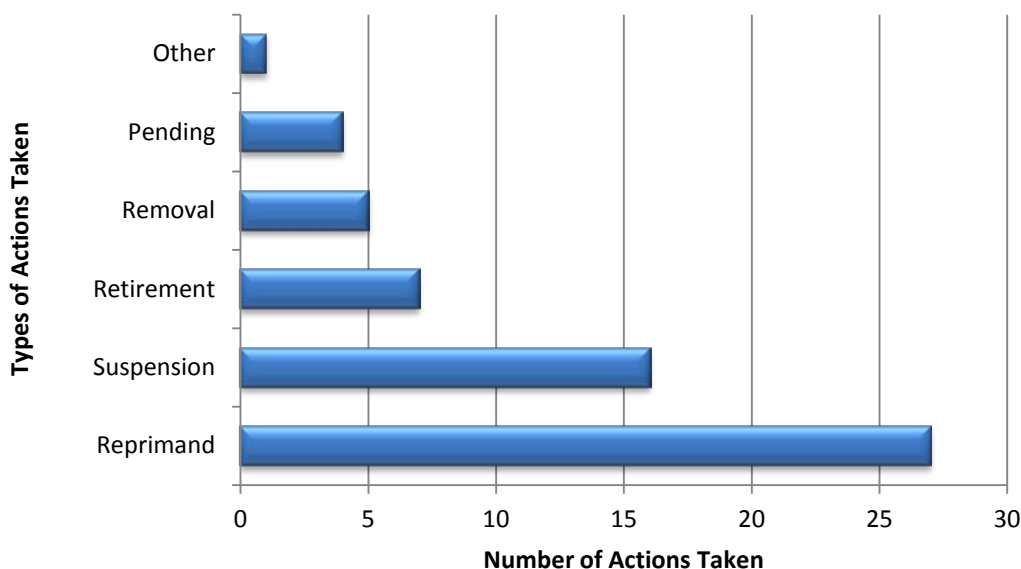
¹ *ALJ Performance: Hearing Before H. Ways and Means Subcommittee on Social Security and H. Judiciary Subcommittee on the Courts, Commercial, and Administrative Law, 112th Cong.* (July 11, 2011) (Statement of the Record of Michael J. Astrue, Commissioner of Social Security).

² Michael J. Astrue was sworn in as Commissioner of Social Security on February 12, 2007 for a 6-year term that expires on January 19, 2013.

³ We are completing work on a separate report to further analyze ALJ decisions and regulations. SSA OIG, *Congressional Response Report: SSA's Review of Administrative Law Judges' Decisions* (A-07-12-21234).

When issues arise, SSA often takes non-disciplinary action, such as providing training, providing oral or written counseling,⁴ or issuing case-processing directives.⁵ If an ALJ's conduct or performance does not change, SSA follows progressive discipline including reprimand,⁶ short-term suspension, long-term suspension, and removal. SSA can only suspend or remove an ALJ after the Merit Systems Protection Board determines that there is "good cause" for discipline. The 60 complaints had varying outcomes and disciplinary actions against the ALJs. Figure E-2 illustrates the types of disciplinary actions SSA took against the 60 ALJs.

**Figure E-2: Disciplinary Actions Taken against 60 ALJs
(Between 2007 and 2011)**



Note: In the case where the action taken was other, the Agency originally sought suspension but the case was later dismissed due to the ALJ's death.

⁴ We do not have information concerning the counseling or training given to the 60 ALJs before the more serious disciplinary actions.

⁵ When an ALJ fails to timely take action on cases, SSA managers may issue directives. For instance, SSA managers issue case-processing directives if an ALJ is not properly managing workloads. This allows the agency to remind the ALJ of the responsibility to issue timely decisions, while also specifically instructing the ALJ to move cases that have been with the ALJ longer than the expected benchmark. In our review of the complaints, we found that 3 of the 16 related to insubordination involved ALJs who failed to follow directives for timely processing of cases.

⁶ A reprimand is a written disciplinary action that specifies the reason for the action. A written reprimand specifies that the employee is subject to more severe disciplinary action upon any further occurrence of an offense. The reprimand is maintained in the employee's personnel folder for up to 1 year.

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The Office of the Inspector General (OIG) is comprised of an Office of Audit (OA), Office of Investigations (OI), Office of the Counsel to the Inspector General (OCIG), Office of External Relations (OER), and Office of Technology and Resource Management (OTRM). To ensure compliance with policies and procedures, internal controls, and professional standards, the OIG also has a comprehensive Professional Responsibility and Quality Assurance program.

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OA conducts financial and performance audits of the Social Security Administration's (SSA) programs and operations and makes recommendations to ensure program objectives are achieved effectively and efficiently. Financial audits assess whether SSA's financial statements fairly present SSA's financial position, results of operations, and cash flow. Performance audits review the economy, efficiency, and effectiveness of SSA's programs and operations. OA also conducts short-term management reviews and program evaluations on issues of concern to SSA, Congress, and the general public.

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Office of the Counsel to the Inspector General

OCIG provides independent legal advice and counsel to the IG on various matters, including statutes, regulations, legislation, and policy directives. OCIG also advises the IG on investigative procedures and techniques, as well as on legal implications and conclusions to be drawn from audit and investigative material. Also, OCIG administers the Civil Monetary Penalty program.

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