



HEARING BEFORE

**THE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS**

UNITED STATES SENATE

SEPTEMBER 13, 2012

STATEMENT

OF

JUDGE THOMAS ERWIN

**HEARING OFFICE CHIEF ADMINISTRATIVE LAW JUDGE
ROANOKE, VIRGINIA HEARING OFFICE
OFFICE OF DISABILITY ADJUDICATION AND REVIEW
SOCIAL SECURITY ADMINISTRATION**

Mr. Chairman, Ranking Member Coburn, Members of the Subcommittee:

My name is Thomas Erwin, and I serve as the Chief Administrative Law Judge (ALJ) for the Roanoke, Virginia hearing office (HO). I have a little more than 3 years of experience as an ALJ and 1 ½ years as a hearing office chief ALJ (HOCALJ). Prior to becoming an ALJ, I was an attorney advisor in the Roanoke, Virginia Office of Disability Adjudication and Review (ODAR) office for three years. Before joining the Social Security Administration, I served as a U. S. Navy JAG attorney on active duty for five years in San Diego and Port Hueneme, California, and was appointed as the Officer in Charge of the Naval Legal Service Office Branch Office in Port Hueneme. One of my duties in the Navy was to serve as criminal defense counsel in courts-martial cases; so yes, Tom Cruise did play me in the movie A Few Good Men. I then worked in private practice in Southern California as a certified specialist in family law prior to joining the Social Security Administration in 2006.

The Roanoke, Virginia HO serves a broad area of Southwest Virginia and Southeast West Virginia. This service area is a part of a cultural region commonly known as Appalachia. The region's economy, once highly dependent on mining, forestry, agriculture, chemical industries, and heavy industry, has become more diversified in recent times.

The Roanoke Hearing Office has eight ALJs, three of whom have fewer than two years of experience on the job. The newest judge has been with the office only since June of this year. The office has had significant ALJ turnover over the past several years, and has lost eight judges to retirement or transfer. SSA has assigned eight new judges in the same period; seven of these judges were new to the position or had less than one year of experience as an ALJ when they reported. The office has 48 employees.

For fiscal year 2012, through August, the Roanoke hearing office has received 3,690 hearing requests, an average of 335 cases per month. We have issued 3,643 decisions, so we have processed close to 99% of total receipts. We have just under 4,700 cases pending in our office, an average of over 580 cases pending per judge. Our average processing time is 432 days from the request for hearing to decision.

The Roanoke hearing office has an allowance rate of 57% for fiscal year 2012. The judges have an allowance rate of 55%, with most judges having an allowance rate between 45 and 57%. The difference in allowance percentage between the overall office rate and the judges represents favorable decisions processed by our senior attorneys.

As a HOCALJ, it is my job to make sure that the office functions smoothly, and that we process cases fairly and efficiently. I strive to ensure that my hearing office handles hearing requests in an orderly manner. I work with three other office managers to make sure cases are worked up and ready for a hearing, that they are assigned to judges to allow them to hold hearings, and that writers draft legally sufficient decisions. I monitor the workloads of the judges to make sure they have sufficient cases at various stages of the process to allow them to review cases before scheduling, hold hearings, and issue decisions.

A hearing office has many working parts, all of which need to operate smoothly to maintain both quality and productivity. The senior case technicians prepare the files and get them ready for hearing; the judges hold the hearings; and then the writers must draft, based on directions they receive from the judges, legally sufficient and defensible decisions. As HOCALJ, I work with my fellow supervisors to manage performance, quality, and productivity at each phase of a case's development and resolution.

I work with the ALJs in the office to make sure they are aware of monthly and yearly goals, that they move cases through each stage of the process in a timely manner, and that they issue quality decisions as quickly as possible. If the judges are having a problem, I help them resolve the issue so that they can continue doing their job. I try to lead by example.

Let me emphasize that while I can take actions to ensure that ALJs move their caseloads and apply the law and our policies correctly, the Administrative Procedure Act grants all ALJs "qualified decisional independence." "Qualified decisional independence" means that ALJs must be impartial in conducting hearings. They must decide cases based on the facts in each case and in accordance with the agency's policy, as set out in the regulations, rulings, and other policy statements. It also means, however, that ALJs make their decisions free from agency pressure or pressure by a party to decide a particular case, or a particular percentage of cases, in a particular way. If I see a performance or quality issue with an ALJ that I need to address, I will discuss the issue with the judge as soon as possible to ensure that the ALJ's actions are consistent with the agency's policy, and that the ALJ is performing at an acceptable level of productivity. While I exercise appropriate management oversight over the ALJs in my office and can take a number of actions to help ALJs improve their performance, I cannot and do not interfere with or influence the ultimate decision in any case.

Thank you for the opportunity to be here today. I would be happy to answer any questions that you may have.