

HEARING AND REVIEW OF CLAIMS AND WAGE-RECORD CASES UNDER OLD-AGE AND SURVIVORS INSURANCE

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BETWEEN 600,000 and 900,000 claims may be filed in 1940, it is estimated, for benefits under the old-age and survivors insurance provisions of the amended Social Security Act.¹ Potential appeals from initial disallowances, or from awards in some instances, are inherent in all these cases with respect to (1) qualifying conditions, which involve questions of coverage, amount of wages, period of employment, identity, age, relationship, and dependency; and (2) factors which cause termination or suspension of benefits, such as death, divorce, marriage, failure to attend school, and, most important in this connection, reemployment. Moreover, determinations may be appealed on the grounds of errors in computation of benefits and interpretations of administrative requirements.

The amended act makes it mandatory upon the Board to maintain records of wages and, upon request, to advise individuals and their survivors of the amounts and the periods of employment credited to the wage accounts. More than 49 million applications for account numbers have been received by the Social Security Board, and wage items have been posted to almost as many individual employee accounts. By the end of May, 400,400 requests for statements of recorded wages had been received from insured workers; the number received each month has been diminishing but it may grow as interest in the insurance program and knowledge of its procedures widen. These accounts, as well as the wage items received by the Board which are not immediately identifiable and those erroneously submitted or recorded, are potential sources for appeals, although it is impossible to say what percentage will result in requests for hearings.

These wage records are declared to be evidence for the purpose of proceedings before the Board or before any court; after 4 years such records are deemed to be conclusive. Up to the fourth year,

the Board may correct such items on request of the worker or on its own account. In the latter instance, when the correction is adverse to the worker, the Board must inform him of the change. After the fourth year, the Board may revise records only to conform them to tax returns or statements filed under the Federal Insurance Contributions Act.

The initial adjudication of new claims filed under the amended act remains essentially the same as that under the 1935 act. Claims are developed by field personnel of the Bureau of Old-Age and Survivors Insurance, operating from more than 460 field offices. When applications and accompanying evidentiary documents are received in the central adjudicating office in Washington, the great majority of cases is found to be sufficiently supported and correctly prepared. Uncertain and incomplete cases are developed by the field offices. In the adjudication process, legal questions are submitted to the General Counsel's office for advisory opinions, and certain classes of difficult cases are referred to specialized units of the Claims Division. This division, in cooperation with the Accounting Operations Division, also handles questions as to the accuracy of wage records. When a protest to an original determination is filed by a claimant, the Claims Division may, at the claimant's request, reconsider the record, making every effort to adjust misunderstandings and to obtain and evaluate all evidence with regard to the disputed facts. It is believed that this type of reconsideration will continue to make satisfactory disposition of the greater proportion of all disputed claims. It will also be of assistance if hearings eventuate, in that it will have clarified the issues involved and will have indicated the evidence which the claimant will need to present.

Statutory Provisions

The original Social Security Act contained no specific statutory requirement for setting up a mechanism for hearings on appealed cases, although there was nothing in the statute to preclude them. Complaints, misunderstandings, or

*Bureau of Old-Age and Survivors Insurance, Analysis Division. Adapted from an article originally prepared as an editorial note for the *George Washington Law Review*.

¹ See "Probable Trends of Claims for Old-Age and Survivors Insurance During 1940," *Social Security Bulletin*, Vol. 3, No. 3 (March 1940), pp. 75-78.

appeals were investigated by the administrative unit responsible for the original determination.

The Social Security Act Amendments of 1939 give the Board "full power and authority to make rules and regulations and to establish procedures . . . necessary or appropriate to carry out" the provisions of the old-age and survivors insurance program. Specifically the Board is required to make findings of fact and decisions as to the rights of any individual applying for a benefit payment and also, upon request, to grant opportunity for hearing to workers and to certain relatives upon written showing that possible adverse effect on future rights may result from the first determination. The Board is also authorized to hold hearings on its own motion and may, on the basis of evidence adduced at the hearing, revise its first action. For any investigation or proceedings the Board is empowered to administer oaths and issue subpoenas. Persons called to testify may not be prosecuted because of any matter about which they are compelled to testify, provided they claim their privilege against self-incrimination. In accepting evidence, the Board is not bound by the rules of evidence applied in court procedure.

Decisions of the Board are reviewable by civil action in any United States district court. The review is on the basis of the record and the findings of the Board as to any fact are declared to be conclusive, if supported by substantial evidence. Although the court may affirm, modify, or reverse the decision, with or without remand to the Board, it would appear that reversals would in general be limited to findings of insubstantial evidence, misapplication of law, or unfair or inadequate administrative procedures. On motion of the Board before it files answer, the court shall remand the case to the Board for further action. The Board is authorized at such a time to change its findings. Court action may not be brought against a Board employee under section 24 of the Judicial Code of the United States to recover on a claim. The Board is also authorized to delegate to any of its employees any of the powers conferred on it in this section of the act.

Section 206, not present in the 1935 act, authorizes the representation of claimants by agents or other persons before the Board. This representation is not restricted to appeals. By the statute, persons other than attorneys, who can show that

they are of good character and competent to advise claimants, are to be accepted by the Board as agents; attorneys in good standing are entitled to represent claimants on showing their right to practice. So far, the Board has decided to require only a written appointment and acknowledgment of the representative as a condition precedent to his recognition. The law also authorizes the Board, after notice and hearing, to suspend any person or attorney from practicing before it, upon showing that he has violated any regulation governing such representation. Maximum fees and compensation of agents may be prescribed by the Board. Persons who knowingly mislead or threaten or who charge fees in excess of the maximum shall be deemed guilty of a misdemeanor and upon conviction are punishable by fine and imprisonment.

Basic Considerations Governing the Procedures Established

In developing a hearing and review system without benefit of experience under the old act, the Board's first task was to develop an administrative framework within the limits of the mandatory provisions of the act and the social aims of the program. The system adopted must permit prompt action in the disposition of claims; it must be simple and easily understood by claimants; at the same time the demands of fairness and accuracy must not be sacrificed to simplicity, and the facts must be fully developed so that the detailed record will support any decision questioned in court.

Certain legal considerations other than the mandatory provisions also confronted the Board. The doctrine of administrative due process, voiced in court decisions,² was relevant at certain points, although most of the objections voiced had arisen in connection with the administration of acts which are regulatory in nature, not acts under which benefits are administered and which involve adjustments of small claims between the Government and individuals.

The Appeals System

The appeals procedure adopted by the Board,³ after the Bureau of Old-Age and Survivors Insurance and the General Counsel's office had spent

² Cf. in particular 298 U. S. 468, 304 U. S. 1, 307 U. S. 183, 304 U. S. 333, 154 U. S. 447, 211 U. S. 210, 253 U. S. 287, 285 U. S. 22, and 305 U. S. 197.

³ *Basic Provisions Adopted by the Social Security Board for the Hearing and Review of Old-Age and Survivors Insurance Claims*, January 1940.

several months of study and research under the direction of a legal specialist, is designed to meet both the statutory requirements and the social purposes of the old-age and survivors insurance program.

An Appeals Council was established as a separate reviewing authority, outside the Bureau and operating directly under the Board. The Council, with headquarters in Washington, consists of three members; the chairman is administrative head but is on a par with each member in voting strength. Unanimous opinions are not required. The Council is assisted by a consulting referee, whose major function will be the review and coordination of referees' decisions. There are 12 referees, one for each of the Board's regional administrative areas. Hearings will be held in the field at places reasonably convenient to the claimant. Although the central office is in Washington, council members may occasionally travel to hear cases as referees.

In the selection of referees, the Basic Provisions stress the need for a thorough knowledge of the program and of administrative methods, as well as of the various aspects of the employer-employee relationship and adds that "legal training and experience will be very valuable if not indispensable." This observation has not compelled the selection of lawyers, however. All present referees are mature and have had prior experience, principally in the field offices of the Bureau, but only about half of them have had legal education or experience. All adjudicators who decide initially have some legal training or experience.

The philosophy of the appeals program is that it will function as a complement to the initial determination when this has not satisfied the claimant. It will not bear the relation of appellate court to court of primary jurisdiction and will not operate to review errors or decide certified questions. Rather, the proceeding is *de novo*. The decision of the Appeals Council will be the final administrative action, since there is no present provision for appeal from the Council's ruling to the Social Security Board. The chief value of such a system lies in the fact that the disputed case is considered from a new point of view and by a different technique—the oral hearing. The oral hearing results not only in an application of tests not otherwise available, but it introduces an element of obvious psychological

value in allowing the claimant to state his case and present further facts for the record. Moreover, review by officials not previously connected with the adjudication does away with any implication that the Bureau is a contesting party against the claimant and makes possible an independent check on the fairness of the administrative processes.

Filing the Request for Hearing

When the claimant receives a statement of wages recorded to his account or notification that his initial claim for benefits has been allowed or disallowed, he is informed that he may take up any questions or objections with the Claims Division, or request a hearing. If he chooses the former course, his case is reconsidered by the division, with further development of evidence if necessary, and the reconsidered determination is sent to him. This procedure does not preclude his right to a hearing. The next step is for the local office to discuss the problem with the claimant and assist him in every possible way. The reasons for the Bureau's final action are explained to him, and he is assisted in filling out the request for a hearing, which must be in writing. The manager of the local office may suggest lines of appropriate evidence or witnesses for the hearing.

From this point, the referee is responsible for the case and schedules the hearing. On the basis of the objections stated by the claimant and material in the claim file, he makes available the previous record of the claim. At the request of the claimant or on his own volition the referee may issue subpoenas for necessary witnesses whose attendance the claimant cannot otherwise ensure. The act stipulates that such witnesses shall receive from the Board the same fees and mileage as are paid in the district courts of the United States.

The Hearing

It is the Board's intention to have the hearings simple and informal. The act is explicit in stating that the Board is not to be bound by rules of evidence applicable to court procedure. The procedure developed will be largely within the referee's discretion, and his function will not be that of judge, or umpire, but more that of an examiner who leads the discussion, interrogates the parties and witnesses, and permits cross-

examination through himself. By this means he develops the facts necessary to reach a just decision and builds up a record on the disputed points which will be adequate to sustain the decision. Admissibility of evidence will rest with him, and he may also request additional investigation or allow continuances when he deems them proper.

Other agencies, such as the Veterans Administration and the Railroad Retirement Board, have placed similar powers in the guiding hearing officer.

Although it is expected that most appellants will desire oral hearings, appellants will be allowed to request record review of their cases in lieu of a hearing. Such a request would be appropriate in cases in which the disagreement does not involve the basic facts but rather the conclusions to be drawn from those facts. Realization that a new authority will be responsible for handling the case may be a factor in the claimant's decision to dispense with a hearing. The referee, however, may reject such a request if, in his opinion, an oral hearing is the best or only way to reach a proper solution. The record review will be handled by the same referee who would have conducted the oral hearing.

In addition to the claimant, parties to the hearing may include certain relatives whose rights may be prejudiced. It is interesting to note that, in contrast to developments under many State unemployment compensation laws, the employer is not considered a party, although the outcome of the case may reflect on his records and may conceivably indicate his liability for tax. Referees may make all persons who may be affected by the decision parties to the hearing.

Referees' Decisions

At the conclusion of each case, the referee will prepare a written opinion. This decision is expected to be based, ordinarily, on his own notes, although a stenographic record of the hearing will be made and will be transcribed if the case proceeds further. At the outset of the program, with certain exceptions, referees will have authority to issue opinions in their own name. If the referee is in doubt as to the correct decision or if his opinion is contrary to the determination of

the Claims Division, he will submit his findings and conclusions to the consulting referee in Washington, for review and recommendation in accordance with previous opinions and decisions. When the hearing referee disagrees with the consulting referee's judgment, the case will automatically be certified to the Appeals Council for decision. In that event, opportunity to be heard by the Appeals Council will be given the claimant.

In most of the appeals, the referee's decision will probably conclude the case. If the claimant disagrees with the decision, however, he may appeal further to the Appeals Council, which may review the case or, on the basis of the record, decline to do so. The decision of a referee which the Council has refused to review, or of the Council itself is final unless appealed to the court. The findings in a final decision of the Board are binding on all individuals who are parties.

During the development of procedures and while precedents are being established, informal review by the consulting referee of opinions which do not agree with the initial decision as well as of those which uphold it will effect coordination and consistency of decisions among the several referees. The Appeals Council may, on its own motion as well as upon request by claimants, review referees' decisions. It is uncertain as yet to what extent this practice will be utilized.

As has been stated, the Appeals Council is set up as an independent body, but it will have access to the services of the Bureau of Old-Age and Survivors Insurance, the research facilities of the Board, and the office of the General Counsel of the Federal Security Agency. Undoubtedly the latter offices will be called upon for advisory opinions and assistance in developing economic and social data when necessary for decisions. Recently, the Board decided that an individual does not have to exhaust his remedies by requesting a reconsideration by the Claims Division before he may be entitled to a hearing by a referee. The claimant may request a reconsideration or a hearing, and the award letter so indicates. When hearings are requested in cases in which new evidence not originally available has arisen, the referee may remand those cases to the Claims Division.