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SEPTEMBER 1963

# Oasis



# The Bureau of Hearings and

**U**NTIL 1940, a determination made by the Bureau of Old-Age Insurance regarding a claim for social security benefits was final. However, recognizing that a claimant who disagreed with a decision was entitled to an opportunity to protect his rights, Congress, as part of the 1939 amendments, provided for a new and independent consideration of his case.

As a result, the Office of Appeals Council was established in March 1940, and was given responsibility for conducting quasi-judicial proceedings and issuing decisions which would be subject to review by the courts. The field staff consisted of a hearing officer (called referee) located in each of Social Security's 12 regional offices. His job was to conduct hearings on claims for benefits or requests for revision of wage records, make findings of fact, and render decisions.

To attain uniformity and assure correct decisions, a three-member Appeals Council was authorized to review referees' decisions. Its chairman was Joseph McElvain.

## The Issues

For the first 16 years the issues involved coverage of employees and status of claimants. With the provisions for a disability freeze and disability benefits in 1954, 1956, and 1958, the need to make determinations regarding the physical and mental impairments of claimants brought in a new element leading to a substantial increase in the work and size of the Office of Appeals Council. In 1957, Dr. Archibald Sinson became its Chief Medical Advisor, and, in August 1959, the title of the office was changed to Office of Hearings and Appeals and three new divisions were established: A Field Division to direct a field staff of 430 employees; a Program Division to give direction in the development of program policy and to provide technical guidance and advice; and an Administrative Services Division. In addition, the Chairman of the Appeals Council was redesignated Director and Chairman; the position of regional hearings representative was established and the referees became hearing examiners. The Field and Administrative Services Divisions were consolidated into a single division in 1960.

To emphasize the importance and independence of the hearings and appeals process, a Bureau of Hearings and Appeals within the Social Security Administration was established in June 1962. It also provided increased emphasis to the management needs of what had become a large organization.

If a claimant thinks the initial decision on his claim for social security benefits, or on any other right under

the Social Security Act, is not correct, and wishes to appeal, he must first request a reconsideration by SSA within 6 months of the initial determination. He is informed in writing of the reconsidered determination.

## The Hearings

If he again disagrees, he may, within 6 months, request a hearing before a BHA hearing examiner. Hearing examiners are stationed in principal cities and hearings are held reasonably close to the claimant's home. It is sometimes necessary for the hearing examiner to hold several hearings at some central place, and in this case claimants may have to travel as much as 75 miles. However, in keeping with the policy to hold hearings at times and places which are most convenient for the claimants, they are sometimes held at bedsides in private homes and hospitals, as well as in various institutions when necessary. In addition, if an essential witness lives too far away to appear at the hearing, his testimony is taken by a hearing examiner in his region.

Usually held in the order requests are received, hearings are semiformal and the strict rules of evidence applicable to court proceedings do not apply. The testimony is under oath and recorded verbatim by a reporter. The claimant has a right to be represented by a person of his choice, to bring witnesses, and to present and examine evidence on which the examiner will base his decision. In his opening statement the hearing examiner reviews the history of the case, states exactly what issues must be decided, receives in evidence the testimony of witnesses and relevant documents, and allows the claimant (or representative) to present arguments and examine witnesses. If he believes



Division of Administration top staff are (l. to r.) John George, Personnel Officer; Ruth Alexander, Chief, Management Services; Ivar Strand, Division Director; and Peter Zana, Chief, Financial and Administrative Management Branch.

# Appeals

that additional evidence is necessary for a proper decision, he may request the assistance of other components of the Administration or of a State agency.

To obtain as complete a record as possible in disability cases, arrangements have been made for physicians and vocational specialists to appear as witnesses at hearings. Their expert testimony contributes greatly. In addition, medical advisers are available to hearing examiners. The resulting hearing records and decisions should minimize requests for remands by the Department when judicial review is sought.

## The Review

If a claimant is dissatisfied with the decision, he can request a review by the Appeals Council. The Council may grant review, permit the claimant or his representative to appear, and issue a decision which affirms, modifies, or reverses the examiner's decision. On the other hand, the Appeals Council may deny the request for review and the hearing examiner's decision will stand as the Secretary's decision. In either case, the claimant is advised of his right to obtain further review through a civil action within 60 days in a district court of the United States.

The Appeals Council may initiate a review of a hearing examiner's decision when it appears not in accord with the law or regulations or it appears that the findings are not supported by substantial evidence. In this connection, the Council has instituted review of all regular benefit cases, and dismissals in disability cases; full comprehensive review of all decisions is expected to be instituted by January 1964.

The Council operates in panels of three-two members and the chairman. The panel acts for the Appeals Council and each of the three has an equal vote. One



Joseph McElvain (r.), Director, Bureau of Hearings and Appeals, and Appeals Council Chairman, talks things over with Charles Erisman, Deputy Director, BHA, and Deputy Chairman of the Appeals Council.

member (assigned on a rotation basis) has primary responsibility in the case. Any member may have a case considered by the full Council. Decisions which are treated as significant precedents are usually those which have been considered by the entire Council. In addition, any proposal to modify established Appeals Council policy is considered by the entire Council.

When a claimant files a civil action, the Federal district court reviews the case on the record and cannot accept new evidence. The finding of the Secretary as to any fact, if supported by substantial evidence, is conclusive on the court. However, upon motion of the Secretary or claimant, the court may remand the case to the Secretary for further hearing or additional evidence. Upon remand, a decision is filed with the court modifying or affirming

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Conferencees are (from left) Director James Nease; Carl Hofer, Chief, Personnel and Training; and Allen Swain, Executive Assistant.



Program Division Chiefs meet. Seated are Goldie Feder, Civil Actions Br.; Robert Hannings, Division Director; Lester Schuker, Acting Deputy Director. Standing are Carl Monk, Retirement and Survivors Br.; Lucille Covey, Policy and Procedure Br.; and Robert Sanford, Disability Br.

# Hearings

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Appeals Council members confer with Dr. Archibald Simon, Chief Medical Adviser (standing left), Council members are (seated from left) Henry Sullivan, Irving Trager, Norman Kerns, Harold O'Connell, and John Allen. Standing is Jackson Smith.



the prior decision. If he is still dissatisfied, the claimant may carry his appeal to a higher court. The Secretary has a similar right.

BHA is composed of a Director and Deputy Director, who are also Chairman and Deputy Chairman, respectively, of the Appeals Council; a six-member Appeals Council, in addition to the Chairman and Deputy Chairman; a Medical Advisory Staff; a Program Division, Field Division, and Division of Administration; and a nationwide field organization.

## The Personalities

Joseph McElvain, a lawyer with extensive experience in administrative law, has been Director of the Bureau from its inception. Born in Fort Scott, Kans., he practiced law in Montana and Wyoming from 1919 to 1928 and was the county and prosecuting attorney for Park County, Wyo., for 2 years. In 1929, he was admitted to the New York State Bar and served as associate legal adviser to the receivership department, Irving Trust Co., New York City, until September 1934, when he entered Federal Service as an attorney-in the 'Government Contracts Division of the National Recovery Administration. He was admitted to the U.S. Supreme Court in 1937 and served as Principal Attorney in the Office of General Counsel, Social Security-Board, from August 1936 to February 1940, when he was appointed to his present position.

Charles Erisman, Deputy Director since June 1962, was born in Middletown, Pa. A graduate of Benjamin Franklin University, he earned his law degree from Southeastern University, and is a member of the Bar of the District of Columbia. His 35-year career in the Federal Government includes a wide variety of assignments. His early career was spent with the War Department and the Veterans' Administration. During 27 years' service with DHEW, he served as Executive Officer, Office of Education,

and as Chief, Administrative Materials Branch, U.S. Public Health Service. He was also special investigator for the Appropriations Committee, U.S. House of Representatives. In SSA he was Senior Policy Consultant, Training Officer, Budget Officer, Chief of the Management Services Branch in the Division of Management, and Chief of the Evaluation and Review Branch in the Division of Disability Operations. From August 1955 to June 1962, he was DDO's Deputy Director. During this period, he received the DHEW Superior Service Award.

The six members of the Appeals Council are John Allen, Norman Kerns, Harold O'Connell, Jackson Smith, Henry Sullivan, and Irving Trager. All are career civil servants.

The Medical Advisory Staff, under the direction of Dr. Archibald Simon, works with the medical advisers to the hearing examiners and participates in developing and coordinating the medical aspects of disability evaluation. The Staff includes specialists in internal medicine (pulmonary and cardiovascular diseases and general medicine and surgery), orthopedic surgery, neuropsychiatry, and neurosurgery. Services of a cardiologist, psychiatrist, and pathologist are also available to the Central Office staff.

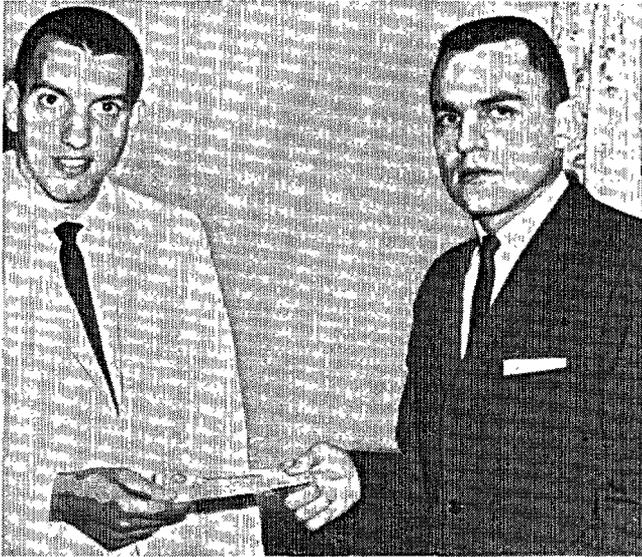
The Program Division, under its Director, Robert Hannings, and Deputy Director, Lester Schuker, develops and proposes program policies where the Appeals Council has not taken a final position and implements positions where they are taken. It also prepares regulations, procedures, and precedent decisions which provide basic information to hearing examiners to assure uniform and equitable hearings and appeals. In addition, it provides staff advice to members of the Appeals Council and furnishes information and assistance on complex legal questions and national policies related to the hearings and

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ability. Chester's father contacted the DO, and Jim took the application in the Ingle home. As a result, Chester receives a monthly check for \$78.

"Chester's story . . . illustrates the importance of social security to young people," concludes the newspaper story by Jim Repep.

Another of our beneficiaries-Antoine Cusso-recently revealed to Claims Rep Margaret McCarthy, New Orleans, La., DO, that, at age 77, he had applied for membership



Harlan Daily Enterprise Photo

CHESTER INGLE (r.), 22-year-old disabled beneficiary, is shown with Field Rep Jim Repep, Harlan, Ky., DO, who took his application for benefits.

in the Peace Corps, and is hoping for duty in Africa. "This would be a wonderful opportunity; it would open up whole new fields" "I am still a young man; perhaps the diplomatic corps will be next."

Mr. Cusso, a bachelor, retired in 1950 as export manager of a New Orleans food products firm. After 35 years with the firm, he had earned a pension; his social security benefit is also augmented by income from property in New Orleans and Spain.

"Since I'm not allowed to take any money out of Spain," he says, "I spend 2 or 3 months each year in Barcelona taking advantage of my income." He loves to travel, and has visited nearly every country in Europe and Central and South America.

If accepted by the Peace Corps, it won't be the first time he has worked for the Government. During World War I, Mr. Cusso, who is fluent in 5 languages and 10 dialects, was a cable censor for the wartime Office of Censorship.

A feature story about Mr. Cusso in the New Orleans States-Item was the result of a lead supplied by Field Rep Ed Laporte.

## Hearings

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appeals process. Its four branches are Policy and Procedure (Lucille Covey, Chief) ; Civil Actions (Goldie Feder, Chief) ; Disability (Robert Sanford, Chief) ; and Retirement and Survivors (Carl Monk, Chief).

The Division of Administration, under Ivar Strand, is responsible for management analysis and appraisal, financial and personnel management, employee-management relations, employee health, communications, procurement, and general management services. Its three branches are Financial and Administrative Management (Peter Zana, Chief) ; Personnel Management (John George, Chief) ; and Management Services (Ruth Alexander, Chief).

The Field Division, under its Director, James Nease, and Executive Assistant, Allen Swain, plans, organizes, and directs a nationwide field organization. It has an Orientation and Training Branch headed by Carl Hofer, and a Liaison and Survey Branch.

The field staff of BHA at present consists of 174 hearing examiners with a supporting staff of 358, and 7 regional hearings representatives with a supporting staff of 14. The regional hearings representatives are Herman Elegant (Regions I and II), New York, N.Y.; Eugene BeHage (Region III), Charlottesville, Va. ; Robert Ague (Region IV), Atlanta, Ga. ; Sidney Goldstein (Region V) , Chicago, Ill.; James Crow (Regions VI and VIII), Kansas City, Mo.; Walter Setzer (Region VII), Dallas, Tex.; and Martin Tieburg (Region IX), San Francisco, Calif.

Of the original 12 "circuit riding" referees, 2 are still with the Bureau: Walter Setzer, the RHR in Dallas, and John Landfair, the Administrative Hearing Examiner in Dallas.



Medical Staff (from the left) are Drs. Donald O'Brien, Allan Lee, Archibald Sinson (Chief Medical Adviser), and Harold Passes.