



Office of Disability Adjudication and Review

The Appeals Council Process

Administrative Appeals Judge
A. George Lowe

The Appeals Council

The Appeals Council (AC) is the final level of SSA's administrative review for claims filed under Titles II and XVI of the Social Security Act, as well as for some eligibility issues regarding Title XVIII entitlement.

SSA's administrative appeals system under 20 CFR 404 and 416 consists of three levels:

- ❑ **reconsideration** (except in prototype states);
- ❑ **hearing before an Administrative Law Judge (ALJ); and**
- ❑ **review by the Appeals Council (AC).**

The Appeals Council (cont.)

- ❑ Adjudicates requests for review of ALJ decisions/dismissals and processes certain court actions.
- ❑ Provides input on program policy, program guidance, as well as proposed regulatory and legislative changes.
- ❑ May use its own-motion review authority within 60 days after the ALJ's action under 20 CFR 404.969 and 416.1469.

Office of Appellate Operations

- ❑ OAO is composed of the Appeals Council (AC) and its professional and clerical support staff.
- ❑ OAO maintains and controls paper files in cases decided adversely to claimants by the ALJs and AC.
- ❑ OAO prepares the certified record of the claim for filing with the Court when a claimant brings a civil action against the Commissioner seeking judicial review of SSA's final decision.
- ❑ OAO currently provides staff for the review of claims at the Decision Review Board under 20 CFR 405.

Role of the Appeals Council

The Appeals Council will review a case if:

- ❑ There appears to be an abuse of discretion by the ALJ;
- ❑ There is an error of law;
- ❑ The action, findings, or conclusions of the ALJ are not supported by substantial evidence;
- ❑ There is a broad policy or procedural issue that may affect the general public interest; or
- ❑ New and material evidence is submitted, the evidence submitted relates to the period on or before the date of the ALJ decision, and the AC finds that the ALJ's action, findings, or conclusions is/are contrary to the weight of the evidence currently of record.

Request for Review Workload FY 2008

When an ALJ issues any decision, unfavorable or favorable, or a dismissal, the claimant has 60 days to request a review by the AC.

Receipts: 93,423

Processed: 83,407

Pending (EOY): 62,210

Average Processing Time: 238 days

Information obtained from ODAR's electronic Key Workload Indicator (eKIWI) Reports, FY 2008.

Request for Review Dispositions

FY 2008 final dispositions (83,407) by type:

- ❑ Denial of Review: 59,781 – 71.7%
- ❑ Dismissals: 2,365 – 2.8%
- ❑ Remands: 18,765 – 22.5%
- ❑ Decisions: 2,496 – 3.0%

Information obtained from ODAR's electronic Key Workload Indicator (eKIWI) Reports, FY 2008.

Request for Review Actions

- ❑ **Denial of review** – the AC declines to take action on the ALJ decision (court rights).
- ❑ **Remand to ALJ** – the AC returns the case to the ALJ for a new hearing based on deficiencies in the ALJ decision; new and material evidence.
- ❑ **Dismissal** – the AC dismisses the request (untimely, etc. – no court rights).

Request for Review Actions (cont.)

- ❑ **Favorable** – the AC issues a decision fully favorable to the claimant.
- ❑ **Unfavorable** – AC issues a denial decision (e.g. correcting a technical defect).
- ❑ **Partially Favorable** – AC issues a decision partially favorable to the claimant (e.g., later onset date).

Appeals Council Business Process

- ❑ Request for review of ALJ decision/dismissal is received.
- ❑ Support staff screens to assess timeliness, determine correct jurisdiction, obtain case file if not electronic, and take action on any pre-assignment requests (e.g., hearing recording, file exhibits).
- ❑ Case is assigned to analyst for review. A written case analysis and recommendation are prepared for the Administrative Appeals Judge (AAJ) or Appeals Officer (AO).
- ❑ If the recommended action is a denial in which the claimant has the right to file a civil action, the case is routed to the AO (or AAJ) for review and approval.
- ❑ If the recommended action is a denial in which the claimant does not have the right to file a civil action or is an order of dismissal, the case is routed to an AAJ.
- ❑ If the recommended action is a remand or Appeals Council decision, the case is routed to an AAJ. These actions usually require two AAJ signatures.

Appeals Council Vocational Issues

- ❑ AC reviews ALJ decision on various vocational factors and may direct ALJ to obtain VE opinion.
- ❑ Physical and mental demands and skill level of past relevant work (PRW) and/or other work must be identified and compared with the residual functional capacity (RFC).
- ❑ Descriptors in the *Dictionary of Occupational Titles* (DOT) can assist the AC in considering the functional requirements and skill levels for jobs cited in the hearing decision. VE testimony may supplement or clarify these issues.
- ❑ VE evidence should typically be obtained if the claimant cannot perform PRW and has an RFC for less than a full range of work at a particular exertional level.

Case Examples

- The ALJ denied the claim on the basis that the claimant could perform other work. However, the claimant moved into a different age category on the Medical-Vocational Guidelines just before the ALJ decision was issued. Consistent with the DOT, the claimant has an unskilled work history. The step 5 analysis results in a partial allowance for the claimant based on her RFC and the correct vocational profile.

Case Examples (cont.)

- The ALJ denied the claim on the basis that the claimant could perform past relevant work (PRW). However, the DOT description of the job identified by the VE does not match the claimant's actual job duties. Instead, another job listed in the DOT is more consistent with the PRW the claimant performed. Using this job description, the record supports that the claimant's impairments prevent him from performing any past relevant work. Therefore, further evaluation of the inconsistency is required.

Case Examples (cont.)

- The ALJ denied the claim on the basis that the claimant could perform PRW. The established RFC includes a limitation to occasional reaching. However, review of the claimant's reported work activities and the DOT reveals that frequent reaching, handling, and fingering are required. Thus, it appears that the claimant cannot perform PRW and additional VE evidence needs to be obtained.

Court Action Process

Individual dissatisfied with the outcome of the administrative review process may request judicial review by filing a complaint in the U.S. District Court (USDC) within 60 days after receiving a final decision notice.

- ❑ **New Court Case (NCC)** – After filing a complaint in USDC, the individual must serve the complaint timely. A notice of suit is sent to Office of General Counsel (OGC) servicing that judicial district.
- ❑ **Request for Voluntary Remand (RVR)** – In some cases, OGC will request the Appeals Council to consider whether to accept the case back for further administrative proceedings.
- ❑ **Court Remand** – Case remanded by the USDC under Sentence 4 (judgment of court ends the court jurisdiction) or Sentence 6 (court's jurisdiction continues).
- ❑ **Final Decisions after court remand (FinDec)** – If exceptions are received or remand was under Sentence 6, further action is necessary.