

OTHER INCOME: INTEREST, REFUNDS, MISCELLANEOUS RECEIPTS

Date	Source of Income	Type of Receipt	Amount

Total Other Income:

Check if additional pages have been attached.

IN-KIND CONTRIBUTIONS

Date	Name and Contributor Information	Description of Contribution	Market Value

Total In-Kind Contributions:

MAKE AS MANY COPIES OF THIS PAGE AS YOU NEED.

LOANS

Check if additional pages have been attached.

West Virginia Code: §3-8-5f. Loans to candidates, organizations or persons for election purposes.

"Every candidate, financial agent, person or association of persons or organization advocating or opposing the nomination or election of any candidate or the passage or defeat of any issue or item to be voted upon may not receive any money or any other thing of value toward election expenses except from the candidate, his or her spouse or a lending institution. All loans shall be evidenced by a written agreement executed by the lender, whether the candidate, his or her spouse, or the lending institution. Such agreement shall state the date and amount of the loan, the terms, including interest and repayment schedule, and a description of the collateral, if any, and the full names and addresses of all parties to the agreement. A copy of the agreement shall be filed with the financial statement next required after the loan is executed."

The loan agreement must include all items asked for in the statute. (See above.) The loan agreement does not have to follow a certain format; generally, if all the required information is listed, any format is acceptable.

Candidates or political committees that take out a loan for the campaign through a bank or other commercial lending institution must include a copy of the loan agreement executed with that bank or institution. Candidates should not take out loans which are partially for personal use and partially for the campaign. It is almost impossible to keep reporting straight in this case.

Any money a candidate contributes to his or her campaign committee with the hope of repayment must be treated as a loan and reported in this section. When a candidate determines that no further repayment can be expected, the loan can be reported as repaid in this section by entering the amount left to repay in the repayments column and reporting the same amount as a contribution from the candidate on Page 2. These loans must be executed in writing. Caution: Candidates may not carry outstanding loans from one campaign to the next. Each campaign is separate. Funds from a current campaign cannot be used to repay a loan from a previous campaign.

How to report loans

1. Each loan for your campaign should be listed on a separate line. (Each time you loan money to the campaign or get a loan, it is considered to be a separate loan.) Include the following information on the form below:
 - a. loan(s) from prior reporting periods and the balance of each loan (Col. A.) If a payment was made on the loan, list that in Col. C. Any loan that was repaid in previous reporting periods does not need to be listed.
 - b. new loans, the amount (Col. B), any repayments (Col. C), and the balance (Col. D.)
2. Attach a copy of the loan agreement for each loan received during the reporting period.

LOANS

(A copy of the loan agreement for each loan secured during this filing period must accompany this report)

Bank Loans: List name & address of financial institution Candidate or Candidate's Spouse Loans: List name, residence and mailing address of person(s) making or cosigning loan	Column A	Column B		Column C		Column D
	Balance of previous loan at end of period	Amount of new loan received during period		Repayments during period		Balance outstanding at end of period
	Amount	Date	Amount	Date	Amount	Amount
Amy Daugherty [Redacted] Huntington, WV 25701	18,700.00	10/01	2,000	10/15	\$1,000.00	\$19,700
2.						
3.						
4.						
5.						
		Loans Received		Repayment of Loans		Outstanding Loans
		\$ 2,000		\$ 1,000		19,700
Totals:						

PROMISSORY NOTE

\$ 2,000.00

Date: Oct. 1, 2008

For value received, the undersigned Committee to elect Amy Daugherty (the "Borrower"), at [REDACTED] Huntington, West Virginia 25701, promises to pay to the order of Amy Daugherty, (the "Lender"), at [REDACTED] Huntington, West Virginia 25701, (or at such other place as the Lender may designate in writing) the sum of \$2,000.00 with no interest.

The unpaid principal shall be payable in full on December 31, 2008 (the "Due Date").

All payments on this Note shall be applied first in payment of accrued interest and any remainder in payment of principal.

If any payment obligation under this Note is not paid when due, the remaining unpaid principal balance and any accrued interest shall become due immediately at the option of the Lender.

The Borrower reserves the right to prepay this Note (in whole or in part) prior to the Due Date with no prepayment penalty.

If any payment obligation under this Note is not paid when due, the Borrower promises to pay all costs of collection, including reasonable attorney fees, whether or not a lawsuit is commenced as part of the collection process.

If any of the following events of default occur, this Note and any other obligations of the Borrower to the Lender, shall become due immediately, without demand or notice:

- 1) the failure of the Borrower to pay the principal and any accrued interest in full on or before the Due Date;
- 2) the death of the Borrower or Lender;
- 3) the filing of bankruptcy proceedings involving the Borrower as a debtor;
- 4) the application for the appointment of a receiver for the Borrower;
- 5) the making of a general assignment for the benefit of the Borrower's creditors;
- 6) the insolvency of the Borrower;

7) a misrepresentation by the Borrower to the Lender for the purpose of obtaining or extending credit.

If any one or more of the provisions of this Note are determined to be unenforceable, in whole or in part, for any reason, the remaining provisions shall remain fully operative.

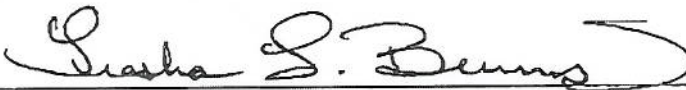
All payments of principal and interest on this Note shall be paid in the legal currency of the United States. The Borrower waives presentment for payment, protest, and notice of protest and nonpayment of this Note.

No renewal or extension of this Note, delay in enforcing any right of the Lender under this Note, or assignment by Lender of this Note shall affect the liability or the obligations of the Borrower. All rights of the Lender under this Note are cumulative and may be exercised concurrently or consecutively at the Lender's option.

This Note shall be construed in accordance with the laws of the State of West Virginia.

Signed this 1 day of October 2008, at Huntington, WV,

Borrower:
Committee to elect Amy Daugherty

By: 
Committee to elect Amy Daugherty

Receipt of a Transfer of Excess Funds

Check if additional pages have been attached.

Date	Candidate Committee Name and Year	Amount
Total Receipts of Transfers of Excess Funds:		

Disbursements of Excess Funds

Date	Name of candidate committee and election year disbursing excess funds	Purpose of Disbursement	Amount
Total Disbursements of Excess Funds:			

MAKE AS MANY COPIES OF THIS PAGE AS YOU NEED.

State of West Virginia Campaign Financial Statement (Short Form) in Relation to the 2008 Election Year

IF YOUR ANSWER TO ANY OF THE FOLLOWING QUESTIONS IS "YES," YOU CANNOT USE THIS FORM. YOU MUST USE THE LONG FORM (FORM F-7) TO FILE YOUR CAMPAIGN FINANCE REPORT.

1. Has your committee received any loans?
2. Has your committee held any fundraisers?
3. Has your committee received any miscellaneous receipts, such as refunds or checking account interest?
4. Does your committee have any unpaid bills?
5. Have you or anyone else given an in-kind contribution to your campaign?
6. Has your committee given or received a transfer of excess campaign funds?

Candidate or Committee Name AMY DAUGERTY		Candidate or Committee's Treasurer TRESHA BURNS	
Political Party (for candidates) Democrat		Treasurer's Mailing Address (Street, Route or P.O. Box) [REDACTED]	
Office Sought (for candidates) Magistrate	District/Division Cheek	City, State, Zip Code Huntington, WV 25701	Daytime Phone # 607-0880

Election Cycle Reporting Period (check one):

- | | | |
|---------------------------------------------------------------------------------|---------------------------------------------------------------------------|-----------------------------------------------------------------------------------|
| <input type="checkbox"/> Primary - First Report
Due March 29 - April 4, 2008 | <input type="checkbox"/> Pre-primary Report
Due April 28 - May 2, 2008 | <input type="checkbox"/> Post-primary Report
Due May 26 - 30, 2008 |
| <input type="checkbox"/> General - First Report
Due Sept. 22 - 26, 2008 | <input type="checkbox"/> Pre-general Report
Due Oct. 20 - 24, 2008 | <input checked="" type="checkbox"/> Post-general Report
Due Nov. 17 - 21, 2008 |

Check if Applicable:

- Amended Report
You must also check box of appropriate reporting period
- Final Report
Zero balance required.
PAC must also file Form F-6 Dissolution

Non-Election Cycle Reporting Period:

- Annual Report Due In ___ Calendar Year
Due last Saturday in March or within 6 days thereafter

REPORT TOTALS

(Fill in totals after you have completed page 2)

CASH BALANCE SUMMARY

Beginning Balance (ending balance from previous report) 1.			394.98
Total Contributions (from Page 2) 2.	+		0
Subtotal (lines 1+2) 3.	=		394.98
Total Expenditures (from Page 2) 4.	-		0
Ending Balance (lines 3-4)	=		394.98
<i>*Cannot have a negative ending balance</i>			

**TOTAL CONTRIBUTIONS
ELECTION YEAR-TO-DATE**
(Add line 2 from all reports)

17,790

**TOTAL EXPENDITURES
ELECTION YEAR-TO-DATE**
(Add line 4 from all reports)

37,095.05

CONTRIBUTORS OF:

\$250 or less

More than \$250

Date	Full Name	Amount	Date	Full Name: Address:	Amount
				Contributor's job: (Individual) Where contributor works: (Individual) Affiliation: (Political committee)	
				Contributor's job: (Individual) Where contributor works: (Individual) Affiliation: (Political committee)	
				Contributor's job: (Individual) Where contributor works: (Individual) Affiliation: (Political committee)	
				Contributor's job: (Individual) Where contributor works: (Individual) Affiliation: (Political committee)	

Check if additional pages have been attached.

Total Contributions: (add both columns)

0

ITEMIZED EXPENDITURES (Itemize 3rd party expenditures/ reimbursements)

Date	Full name, residence address (if person); business address (if firm)	Purpose	Amount

MAKE AS MANY COPIES OF THIS PAGE AS YOU NEED.

Total Expenditures:

0

OATH OR AFFIRMATION

I, Tresha Burns, swear or affirm that the attached statement is true and correct, to the best of my knowledge, for all financial transactions occurring within the period covered by this statement, as required by West Virginia Code §3-8-5a.

Tresha Burns Signature of Candidate, Agent, or Treasurer

Date November 17, 2008

Office Use Only

Received By: _____

LOANS

Check if additional pages have been attached.

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	Balance of previous loan at end of period	Amount of new loan received during period		Repayments during period		Balance outstanding at end of period
	Amount	Date	Amount	Date	Amount	Amount
Any Donahue's [REDACTED]	19,700		∅		∅	19,700
2.						
3.						
4.						
5.						
		Total Received		Repayment of Loans		Outstanding Loans
		∅		∅		19,700

KAREN S. COLE
 CABELE COUNTY
 CLERK

PETTY CASH VOUCHER

CASH OUT DATE: 1/20/10 AMOUNT: 100⁰⁰

TO WHOM: Lance Brown

FOR: _____

SIGNATURE: _____

*****CASH IN*****

CASH BACK DATE: _____ AMOUNT: _____

RECEIPT(S) FOR: Santa Fe Gas 456²²

PETTY CASH VOUCHER

CASH OUT DATE: 1/22/10 AMOUNT: 70⁰⁰

TO WHOM: Ken Sturgis
Joe Dumpster

FOR: Ashland 50- Ram Gas

SIGNATURE: _____

*****CASH IN*****

CASH BACK DATE: _____ AMOUNT: _____

RECEIPT(S) FOR: _____

ROC/CAS/OTS AWARDS NOMINATION FORM

FOR ALL NON-BARGAINING UNIT EMPLOYEES

NOMINEE (Individual or Group): Gregory Hall

Position: Group Supervisor Component: OHA Region III _____

Location: Huntington HO Period Covered: 10/1/00 to 9/30/01

Description of employee's accomplishments and contributions:

Mr. Hall has made major contributions to the efficient running of the Huntington Hearing Office. Since his arrival the excessive use of leave without pay has decreased and employees who were using excessive amounts of leave have changed their leave usage. Mr. Hall has also adapted very quickly to the process of OHA from his experience in the District Office. He has demonstrated an ability to learn new work processes quickly and effectively. His efforts have contributed to increased efficiency and public service.

(If more space is needed, continue on reverse)

Nominated by (Name): Charlie P. Andrus Position: HOCALJ

Component: OHA _____ Region:
III _____

Phone: (304) 529-5531 _____ Extension: 348 _____ Date:
4/1/02 _____

TYPE OF AWARD

XX ROC I would recommend a cash award as Mr. Hall is due shortly for a WIGI

_____ CAS/OTS

Homeland Security & Governmental Affairs
Committee
EXHIBIT #53

Receipt acknowledged by: _____

Date:

First-Line Supervisor

ROC/ECSA/ERA AWARDS NOMINATION FORM

(NBUE and NFFE)

NOMINEE (Individual or Group): Greg Hall

Position: HOD Component: SSA:ODAR

Location: Huntington, WV Period Covered: October 2005 to September 2006

TYPE OF AWARD: (check one) QSI ROC ECSA ERA

Description of employee's accomplishments and contributions:

Mr. Hall assumed his duties as HOD and was immediately put into a difficult position as our IDA certification was moved up nine months. Mr. Hall organized the staff to meet this new challenge and lead the office to some of the highest scores on the evaluation, in an extremely short time, with numerous changes to the process while this was going on. Mr Hall is a tireless worker, yet he always has time to assist employees with their problems. Mr Hall is also an excellent supervisor making sure that the office functions smoothly and he keeps me well informed as to his actions. He insures that our reports are timely and accurate, and his use of management information is excellent. With all of his expertise, he still thinks of the morale in the office. He has provided imaginative football and basketball season "kickoff" parties for the staff with games prizes and lunch. His wry sense of humor can defuse most situations and most importantly he has that rare ability to know when to be serious and when a touch of humor is appropriate. He is a pleasure to work with and is an example of the best in federal management.

(If more space is needed, continue on reverse)

Nominated by (Name): Charlie Paul Andrus Position: HOCALJ

ROC/ECSA/ERA AWARDS NOMINATION FORM

(NBUE and NFFE)

Region/Component: Region III ODAR

Phone: 304.529.5531 Extension: 348 Date: 11/9/2004

Receipt acknowledged by: _____ Date: _____
First-Line Supervisor



SOCIAL SECURITY

MEMORANDUM

Date: March 18, 2009 Refer To:

To: All Region III HOCALJs

From: Jasper J. Bede /s/
Regional Chief Administrative Law Judge – Region III

Subject: Designation of Assistant Regional Chief Administrative Law Judges and Special Assistant to the Regional Chief Administrative Law Judge

I am very pleased to announce that Judges David G. Hatfield and Charlie Paul Andrus have accepted assignments as Assistant Regional Chief Administrative Law Judges for the Philadelphia Region. They will serve in this capacity in addition to maintaining their regular duties as Hearing Office Chief Administrative Law Judges for the Seven Fields and Huntington Hearing Offices.

Judge Hatfield was appointed Administrative Law Judge and was assigned to the Pittsburgh Hearing Office in October 1995. He served as the Hearing Office Chief Judge of the Pittsburgh Hearing Office from November 1999 to February 2001. He served as the Acting Deputy Chief Judge and as Acting Chief Judge. On October 16, 2006, he was appointed Hearing Office Chief Administrative Law Judge of the Seven Fields, Pennsylvania Hearing Office. Judge Hatfield received his B.A. from Indiana University and Juris Doctorate from the George Mason University School of Law.

Judge Andrus was appointed Administrative Law Judge in March 1986. He has served as the Hearing Office Chief Judge of the Huntington Hearing Office since August 1997. Judge Andrus received his B.A. and Juris Doctorate from Indiana University Bloomington, Indiana.

I have also asked Judge Therese Hardiman to be the Special Assistant to the RCALJ for electronic business process initiatives. This assignment will include training, mentoring and advising ALJs in all technical areas involving electronic case processing including CPMS, eFile/eView and PCOM tools. It will also include computer skills enhancement for ALJs in areas such as Outlook, Word, and FIT/DGS. In addition she will be involved in the development and coordination of any new electronic initiatives. Judge Hardiman received her B.A. from Mount Saint Mary's University and Juris Doctorate from Thomas M. Cooley Law School.

In addition to their experience as HOCALJs, all three bring to their new assignment a wealth of management and leadership experience. Judges Hatfield, Andrus and Hardiman have served as instructors and mentors for new ALJs.

While Judge Hardiman assumes her new role, Judge Edward Brady has agreed to serve as the Acting HOCALJ in the Wilkes-Barre Hearing Office beginning March 30.

Please join me in congratulating Judges Hatfield, Andrus, Hardiman and Brady on their new assignments.

cc: Frank A. Cristaudo, Chief Judge
Regional Chief Judges
Hearing Office Directors, Region III



Tel:
Fax:

MEMORANDUM

Date: May 10, 2001

To: Charlie Andrus, HOCALJ
Huntington, West Virginia

From: Gregory A. Hall, Group Supervisor
Huntington, West Virginia

Subject: Absence of Judge David B. Daugherty

Yesterday, May 9, 2001 I received a call from our security guard, Arlie Mullins, as to the whereabouts of Judge Daugherty. It was about 10:40 AM and the judge was scheduled for hearings, but could not be found. I was acting HOD for the week as Harriette Cyrus was in a meeting in Falls Church, Va. The judge had hearings scheduled at 10:00 AM; 10:30 AM; and another scheduled for 11:00 AM. The 10:00 AM and 10:30 AM hearings were waiting and Arlie was just concerned as the 11:00 AM hearing was drawing close.

I searched the building and could not find the judge. His auto was not where it usually is parked. I called his house and he was there. He stated he had forgotten about the hearings. He then came immediately into the office and conducted the three hearings.

On Thursday, May 10, 2001 I noticed that Judge Daugherty had shown eight (8) hours worked and also some credit hours worked. There was no mention of leave. He may have later changed the timesheet to reflect leave I do not know.

I point this out to you only because we are holding people accountable for their leave and the fact that many people knew we were looking for Judge Daugherty and he was not here.

Message0005

Subject: RE: Judge Daugherty
From: Cristaudo, Frank
Date: 6/20/2002 7:53:25 AM
To: Hamel, Gregory; Loughran, Valerie

Message Body

Greg,

Please see the message I sent to Judge Andrus, SCS, etc., on both of these Daugherty matters. Thanks.

Frank A. Cristaudo
Regional Chief Judge
215-597-4106

frank.cristaudo@ssa.gov

<http://ro.ba.ssa.gov/oha/philadelphia/>

Philadelphia Region - Committed to Providing Quality Due Process Hearings and Decisions

[Timely Hearing & Decision - Adequately Developed Record - Fair Hearing - Legally Sufficient Written Decision]

-----Original Message-----

From: Hamel, Gregory
Sent: Thursday, June 20, 2002 6:53 AM
To: Loughran, Valerie; Cristaudo, Frank
Subject: Judge Daugherty

There's not much to add to Val's detailed and accurate summation. This reminds me a little bit of the situation Judge Bukes has reported regarding some of the Pittsburgh employees. As in the that case, the IG is not going to get involved here. I'm not sure we need SCS's involvement at this stage, but since Sarah H. and I are discussing the other Daugherty matter (the incident in which he reportedly raised his voice at a staff member) I can mention this situation to her. However, I see nothing wrong with Judge Andrus' doing a memo as would/should be done with any employee engaged in the behavior noted. I'm sure Howard would help draft such a memo.

Greg

-----Original Message-----

From: Loughran, Valerie
Sent: Wednesday, June 19, 2002 3:24 PM
To: Cristaudo, Frank; Hamel, Gregory
Subject: RE:

First of all, the IG should not and will not get involved in Time and Leave problems. This is absolutely absurd. This is a clear cut administrative action and the responsibility of the HOCALJ. Second, bargaining unit employees and that includes other judges, and security guards do not investigate time and leave problems, nor should they be asked to document abuse by other employees. This is a management issue and responsibility. (period, period, period.) As I said previously, if this judge's conduct is so egregious and occurs so frequently that everyone else observes it, it should be very simple for management to document it. He allegedly goes to breakfast every morning. Please---how hard can this be. I believe that Judge Andrus wants someone else to do

**Homeland Security & Governmental Affairs
Committee**

EXHIBIT #56

PSI-SSA-96D2-003356

his job. This is not going to happen. And even if it did, it would not hold up anywhere. I believe if Judge Andrus wanted to do something, he could have done it long ago. But he doesn't. He is just waiting for something to happen and/or trying to shift the responsibility to someone else. It simply won't work. I also believe that the mitigating factors in the recent outburst by this judge, weakens the case considerably. As far as I recall there have been no actions against this judge in many years, so there is no progressive pattern of behavior here (that is documented.) Judge Andrus needs to counsel him and put it in writing. That is my recommendation. We have many bigger fish to fry than this and we do little in the big cases, what are the chances in this one, particularly when the HOCALJs only role is to duck any real responsibility to take appropriate action.

-----Original Message-----

From: Cristaudo, Frank
Sent: Wednesday, June 19, 2002 2:52 PM
To: Loughran, Valerie; Hamel, Gregory
Subject: FW:
Importance: High

In the event I did not send this to you previously. How do you think we should handle this?

Frank A. Cristaudo
Regional Chief Judge
215-597-4106
frank.cristaudo@ssa.gov
<http://ro.ba.ssa.gov/oha/philadelphia/>
Philadelphia Region - Committed to Providing Quality Due Process Hearings and Decisions
[Timely Hearing & Decision - Adequately Developed Record - Fair Hearing - Legally Sufficient Written Decision]

-----Original Message-----

From: Andrus, Charlie Paul
Sent: Tuesday, June 18, 2002 9:32 AM
To: Cristaudo, Frank
Subject: FW:
Importance: High

Judge Cristaudo,

Judge Kemper sent me this today. I checked with him and he is willing, as is Judge Showalter and perhaps Judge Paris to give specifics and to provide signed statements. Prior to this, while he was willing to tell me about this in general, he did not want to give specifics, or he did not want to be a witness. I guess Judge Daugherty has finally got them angry enough to do this.

I checked with the IG a few days ago and they declined to get involved and suggested that I go through you. Before we start down this road, which I am willing to travel, we need to decide how serious Special Counsel and the Associate Commissioner plan to be about this. I have to live in this town and if we do an investigation with documentation we had better be willing to do something.

I would like to know how to proceed to get the detailed facts that we would need. I am not comfortable with using other BUEs as investigators, and I don't think this is within the job description of the guard. This is going to have to be detailed as he will just allege that he was in some other part of the office. Perhaps you could talk to the IG. They would be ideal and it wouldn't take a lot of time to video tape him leaving and where he goes. I

PSI-SSA-96D2-003357

have been told that we can't use the security videos (and the contract also provides this). If I am the only one who does this, he will claim that it is just a vendetta as he has "helped" those who filed EEO complaints, etc.

Please let me know what you want me to do.

Judge Andrus

-----Original Message-----

From: Kemper Jr, James D.

Sent: Tuesday, June 18, 2002 8:53 AM

To: Andrus, Charlie Paul

Cc: Showalter, Judith

Subject:

For your information, when I signed in today, I noticed that Judge Showalter had signed in at 7:15 and directly under her name was Judge Daugherty's initials reportedly showing that he had signed in at the same time.

When I drove by the 3rd Avenue entrance at 7:35, I noticed Daugherty's car was parked in the handicap spot and after parking my car and coming to the front entrance, I noticed his car was gone. I spoke to Judge Showalter about this and she assured me that he was nowhere in sight when she signed in at 7:15. At exactly 8:10, Judge Showalter went downstairs and informed me that his car was still gone.

This is the usual procedure he follows every day. When Judge Paris is here, he usually signs in at 6:30 and if no one signs in earlier than about 7:15, Daugherty will sign in directly below Judge Paris' name at the same time of 6:30. If you will speak with Judge Paris, I am sure he will tell you that he never sees Daugherty when he comes in. One of us will be sending you periodic E-mails to show you this pattern of cheating on time and attendance which, by the way, Judges Gitlow, Chwalibog, and I have consistently informed you about through the years. .

Outlook Header Information

Subject: RE: Judge Daugherty

From: Cristaudo, Frank

Sender Name: Cristaudo, Frank

To: Hamel, Gregory; Loughran, Valerie

Delivery Time: 6/20/2002 7:53:25 AM

Creation Time: 6/20/2002 7:53:25 AM

Modification Time: 6/20/2002 7:53:26 AM

Submit Time: 6/20/2002 7:53:25 AM

Importance: Normal

Priority: Normal

Sensitivity: Normal

Flags: 1 = Read

Size: 13861

PSI-SSA-96D2-003358

Message0029

Subject: RE: Judge Daugherty
From: Hamel, Gregory
Date: 9/23/2002 5:07:11 PM
To: Cristaudo, Frank

Message Body

Will do.

-----Original Message-----

From: Cristaudo, Frank
Sent: Monday, September 23, 2002 5:02 PM
To: Hamel, Gregory
Cc: Loughran, Valerie
Subject: RE: Judge Daugherty

Thanks for sending this Greg. In the future with status requests to George's office you may wish to phrase them something like, "If we do not hear from you by _____, we shall assume that your office does not wish to proceed with a reprimand or suspension, thus we will consider issuing a counseling memo...." or something like that. The language would need to be better than what I just wrote. Thanks again.

Frank A. Cristaudo
Regional Chief Judge
215-597-4106
frank.cristaudo@ssa.gov
<http://ro.ba.ssa.gov/oha/philadelphia/>

-----Original Message-----

From: Hamel, Gregory
Sent: Monday, September 23, 2002 4:02 PM
To: Lowe, George
Cc: Butler, Jesse; Cristaudo, Frank; Loughran, Valerie; Kennedy, Ted; Humphreys, Sarah
Subject: FW: Judge Daugherty

George,

I am writing primarily to inquire if SCS plans to take any action regarding Judge Daugherty's reported conduct in conjunction with a telephone call a staff member (Carol Huff) took for him. I believe your office received some correspondence and other materials on this matter earlier in the summer.

Can you also let us know if you have any recommendations or comment with regard to two other matters involving Judge Daugherty. One, also referenced below in Judge Cristaudo's note, involves an apparent time and attendance abuse on the part of Judge Daugherty, and the other involves an incident in which Judge Daugherty apparently cancelled a hearing trip and instead indicated that he would decide 30 of the 35 affected cases favorably with on-the-record decisions. I spoke with Sarah about this latter issue, and she has e-mails from Judge Cristaudo on the topic.

Could you let us know within a week of whether your staff intends to take action in these matters? Please let me know if you need more information. Your assistance and comment as always is appreciated.

Greg

Homeland Security & Governmental Affairs
Committee

EXHIBIT #57

PSI-SSA-96D2-003146

Gregory M. Hamel
OHA Regional Attorney - Region III
(215) 597-4111

-----Original Message-----

From: Butler, Jesse
Sent: Wednesday, June 19, 2002 4:56 PM
To: Humphreys, Sarah
Subject: FW: Judge Daugherty

Sarah I know George is out so am directing this to you. See the attached message from Judge Cristaudo. I don't remember that we discussed this case on Friday, June 7 and I was not here on June 14 if there was a meeting with your staff. Can you advise Judge Cristaudo and myself about any plans to take action against this judge.

-----Original Message-----

From: Cristaudo, Frank
Sent: Wednesday, June 19, 2002 3:54 PM
To: Andrus, Charlie Paul
Cc: Butler, Jesse; Lowe, George; Loughran, Valerie; Hamel, Gregory;
Goldberg, Howard
Subject: RE: Judge Daugherty

Thanks Charlie. I believe you need to investigate this matter by doing some checking yourself based on the allegations you have received. If it is as routine as alleged it should not be that difficult to determine first hand the violations. If you are satisfied that Judge Daugherty is violating the rules of conduct, I suggest you work with Howard Goldberg to draft a counseling memo that you would present to Judge Daugherty both orally and in writing. If Judge Daugherty engages in further time and attendance abuses, we will have a better chance of having the Associate Commissioner or Chief Judge issue a letter of reprimand. And if the problem persists beyond that, it is more likely that the agency would consider a suspension and eventually a termination action. I think we need to proceed progressively here. I do not recall if we counseled or reprimanded Judge Daugherty in the past for time and attendance abuses. If we have, the progressive discipline should be moved to the next level, i.e., reprimand or suspension.

By copy of this message I am asking George Lowe and Howard Goldberg if they have other thoughts on how to proceed here. If they do, they should let us know. If they think we should take a more severe approach they should let us know. I want us to take the appropriate action here.

I realize that Judge Daugherty may file a complaint, but I think as HOCALJ you have the responsibility to deal with the serious allegations that have been presented below.

On the other matter where we received a complaint from an employee in your office about Judge Daugherty's conduct involving a telephone call, by copy of this message I am asking Jesse and George to advise us if they have decided to take any action against Judge Daugherty. If not, I am advising you Charlie that you once again need to work with Howard Goldberg to draft a separate counseling memo which you need to present to Judge Daugherty both orally and in writing on that matter also.

If you have any questions or suggestions, please let us know. Thanks again.

Frank A. Cristaudo

PSI-SSA-96D2-003147

Regional Chief Judge

215-597-4106

frank.cristaudo@ssa.gov

<http://ro.ba.ssa.gov/oha/philadelphia/>

Philadelphia Region - Committed to Providing Quality Due Process Hearings and Decisions

[Timely Hearing & Decision - Adequately Developed Record - Fair Hearing - Legally Sufficient Written Decision]

-----Original Message-----

From: Andrus, Charlie Paul

Sent: Tuesday, June 18, 2002 9:32 AM

To: Cristaudo, Frank

Subject: FW:

Importance: High

Judge Cristaudo,

Judge Kemper sent me this today. I checked with him and he is willing, as is Judge Showalter and perhaps Judge Paris to give specifics and to provide signed statements. Prior to this, while he was willing to tell me about this in general, he did not want to give specifics, or he did not want to be a witness. I guess Judge Daugherty has finally got them angry enough to do this.

I checked with the IG a few days ago and they declined to get involved and suggested that I go through you. Before we start down this road, which I am willing to travel, we need to decide how serious Special Counsel and the Associate Commissioner plan to be about this. I have to live in this town and if we do an investigation with documentation we had better be willing to do something.

I would like to know how to proceed to get the detailed facts that we would need. I am not comfortable with using other BUEs as investigators, and I don't think this is within the job description of the guard. This is going to have to be detailed as he will just allege that he was in some other part of the office. Perhaps you could talk to the IG. They would be ideal and it wouldn't take a lot of time to video tape him leaving and where he goes. I have been told that we can't use the security videos (and the contract also provides this). If I am the only one who does this, he will claim that it is just a vendetta as he has "helped" those who filed EEO complaints, etc.

Please let me know what you want me to do.

Judge Andrus

-----Original Message-----

From: Kemper Jr, James D.

Sent: Tuesday, June 18, 2002 8:53 AM

To: Andrus, Charlie Paul

Cc: Showalter, Judith

Subject:

For your information, when I signed in today, I noticed that Judge Showalter had signed in at 7:15 and directly under her name was Judge Daugherty's initials reportedly showing that he had signed in at the same time. When I drove by the 3rd Avenue entrance at 7:35, I noticed Daugherty's car was parked in the handicap spot and after parking my car and coming to the front entrance, I noticed his car was gone. I spoke to Judge Showalter about this and she assured me that he was nowhere in sight when she signed in at 7:15. At exactly 8:10, Judge Showalter went downstairs and informed me that his car was still gone.

PSI-SSA-96D2-003148

This is the usual procedure he follows every day. When Judge Paris is here, he usually signs in at 6:30 and if no one signs in earlier than about 7:15, Daugherty will sign in directly below Judge Paris' name at the same time of 6:30. If you will speak with Judge Paris, I am sure he will tell you that he never sees Daugherty when he comes in. One of us will be sending you periodic E-mails to show you this pattern of cheating on time and attendance which, by the way, Judges Gitlow, Chwalibog, and I have consistently informed you about through the years. .

Outlook Header Information

Subject: RE: Judge Daugherty
From: Hamel, Gregory
Sender Name: Hamel, Gregory
To: Cristaudo, Frank
Received By: Cristaudo, Frank
Delivery Time: 9/23/2002 5:07:11 PM
Creation Time: 9/23/2002 5:07:11 PM
Modification Time: 9/23/2002 5:07:11 PM
Submit Time: 9/23/2002 5:07:11 PM
Importance: Normal
Priority: Normal
Sensitivity: Normal
Flags: 1 = Read
Size: 16479

PSI-SSA-96D2-003149

Message0024

Subject: RE: Cheating on Time and Attendance
From: Cristaudo, Frank
Date: 7/1/2002 10:19:58 AM
To: Andrus, Charlie Paul
CC: Loughran, Valerie; Goldberg, Howard; Polito, Gerri

Message Body

Charlie,

As we discussed, please confront Judge Daugherty this morning about your observations of this morning about apparent failure to comply with the time and attendance rules, and send us an email today outlining your observations and the results of your investigatory discussion with Judge Daugherty. By copy of this message I am asking Gerri to arrange a conference call for tomorrow with you, Val, Howard, and me to discuss the action we think should be taken. Thanks. Frank

Frank A. Cristaudo
Regional Chief Judge
215-597-4106

frank.cristaudo@ssa.gov

<http://ro.ba.ssa.gov/oha/philadelphia/>

Philadelphia Region - Committed to Providing Quality Due Process Hearings and Decisions

[Timely Hearing & Decision - Adequately Developed Record - Fair Hearing - Legally Sufficient Written Decision]

-----Original Message-----

From: Andrus, Charlie Paul
Sent: Friday, June 28, 2002 4:48 PM
To: Cristaudo, Frank
Subject: FW: Cheating on Time and Attendance

Judge Cristaudo,

I did not ask these judges to do any investigation, but I did receive this memo. I checked the serial time and attendance sheet and Judge Daugherty signed out without accounting for this absence. I was in hearings this week, and I have not had the opportunity to investigate the allegations that Judge Daugherty left the office after signing in to go to breakfast. I plan to do so starting Monday unless you advise me not to (cell phone [REDACTED] home phone [REDACTED]). I plan to arrive early and personally observe whether or not the judge leaves after signing in without notation on the sign-in sheet.

I will advise you as to the results.

Judge Andrus

-----Original Message-----

From: Kemper Jr, James D.
Sent: Friday, June 28, 2002 4:32 PM
To: Andrus, Charlie Paul
Cc: Gitlow, William H.; Showalter, Judith

**Homeland Security & Governmental Affairs
Committee**

EXHIBIT #58

PSI-SSA-96D2-003391

Subject: Cheating on Time and Attendance

This is the another memo sent to you regarding Judge Daugherty's continuing practice of cheating on time and attendance. On this date (June 28, 2002) I arrived at the office at 7:15 a.m. and noted that Judge Showalter had signed in at 7:05 and Daugherty had signed in just below her name at the same time. She did not see him when she arrived. His car was not parked in front and he was not in his office when I arrived at 7:15. I turned out his light at that time. Thereafter, Judge Gitlow noted that Daugherty was not in his office when he signed in at 7:30. At 7:50, I went downstairs and noted that his car was still not in front. At 8:30 Judge Gitlow and Judge Showalter informed me that the car was not in front and he was still not in his office (light was still off). At 9:15 Judge Showalter noted that his car was still not parked in front or anywhere on either side of the street. Finally, at 9:30, he was seen in the building. It is clear, therefore, that he was gone from the office from between at least 7:15 to 9:15, a period of over two hours. Will he be taking leave or use credit hours like everyone else is required to do?

Outlook Header Information

Conversation Topic: Cheating on Time and Attendance
Subject: RE: Cheating on Time and Attendance
From: Cristaudo, Frank
Sender Name: Cristaudo, Frank
To: Andrus, Charlie Paul
CC: Loughran, Valerie; Goldberg, Howard; Polito, Gerri
Delivery Time: 7/1/2002 10:19:58 AM
Creation Time: 7/1/2002 10:17:59 AM
Modification Time: 7/1/2002 10:19:59 AM
Submit Time: 7/1/2002 10:19:59 AM
Importance: Normal
Priority: Normal
Sensitivity: Normal
Flags: 1 = Read
Size: 9605

PSI-SSA-96D2-003392

Message0133	
Subject:	Time and Attendance Compliance of Judge Daugherty
From:	Cristaudo, Frank
Date:	11/8/2002 7:08:45 AM
To:	Andrus, Charlie Paul
CC:	Loughran, Valerie; Hamel, Gregory; Goldberg, Howard
Message Body	
<p>Charlie,</p> <p>You have often mentioned that Judge Daugherty fails to comply with time and attendance rules. We asked you to monitor his compliance with the time and attendance rules and to deal with any failures to comply. Please let me know the status of his compliance with the time and attendance rules.</p> <p>Only by actually documenting incidents of unapproved absences will there be any opportunity to take action for such abuse. Therefore I am asking you to monitor the timesheet and whereabouts of Judge Daugherty. If he cannot be located in his private office or elsewhere in the office environment, you should leave a note in his office asking him to see you as soon as he returns. You of course should keep detailed notes to document periods of absence and times you left notes for him, etc. If he cannot be located in the office and has no approved leave for that time period, you need to direct someone from the management team to watch for his return to the office. The first time he is absent without approved leave, you should give him a leave slip and caution him that further time and attendance abuse will lead to AWOL assessments and disciplinary action. It is very important that you document each instance with notes and copies of leave slips as well as a summary of each incident and the discussion with him. If he persists with abuse of the time and attendance rules, with the record you will have created we will seek disciplinary action against him.</p> <p>This message mentions only Judge Daugherty by name as he is the only one from your office about whom you have complained about failures to comply with time and attendance. However, the rules apply to everyone and the approach outlined above should be applied to anyone who does not comply.</p> <p>If this message needs to be corrected or amplified, by copy of this message I am asking the others to let us know.</p> <p>Please let me know if you would like to discuss this further. Greg Hamel is the staff contact on this issue. Thanks again. Frank</p> <p>Frank A. Cristaudo Regional Chief Judge 215-597-4106 frank.cristaudo@ssa.gov http://ro.ba.ssa.gov/oha/philadelphia/</p>	

Outlook Header Information
Conversation Topic: Time and Attendance Compliance of Judge Daugherty
Subject: Time and Attendance Compliance of Judge Daugherty
From: Cristaudo, Frank
Sender Name: Cristaudo, Frank
To: Andrus, Charlie Paul
CC: Loughran, Valerie; Hamel, Gregory; Goldberg, Howard

**Homeland Security & Governmental Affairs
Committee
EXHIBIT #59**

PSI-SSA-96D2-003589

November 18, 2002

To: Assistant IG for Investigations

Attn: Mr. Paul Ragland (Fax: 304 347-5495)

Subject: Criminal Misconduct in Huntington, WV Office of Hearings & Appeals

On Thursday, November 7, 2002, at about 7:35, I drove past our Office Building at 1108 3rd Avenue in Huntington, West Virginia and noted that Judge Daugherty's car was not parked in front of the building. He routinely parks his car in a handicapped spot directly in front of the Office building, within a few feet of the front door. He has a dark gray, [REDACTED]. For many years, Daugherty has been known to abuse his time and attendance by placing the wrong time that he actually arrives on the time sheet, particularly if no one has arrived at the Office before him. He usually signs in at about 6:30 if he is the first to sign in. He then spends several minutes in the Office and either goes to breakfast or elsewhere for hours at a time. Knowing this, I decided that I would briefly park my car and sign in to keep him honest for at least an hour or so. I signed in at 7:40. As I was going down the elevator again to park my car in my assigned place, I saw Judge Daugherty park his car in his usual spot and enter the front door. I then parked my car and came back at about 7:45. I then saw Daugherty again on the first floor going towards his car. He said something to me about getting something from his car. I then went up in the elevator. At 8:45, Judge Gitlow arrived. I asked him whether he had seen Daugherty's car parked in front of the building when he entered the front door of the building. Judge Gitlow stated that the car was not there. Later that day, I noticed his car was gone at 12:00 when I went to lunch, after 1:00, when I returned, at 2:30 when I checked again, and at 4:40 when I checked the last time. When I signed out at 5:35, I noted that Daugherty had signed out at 5:10, claimed a full 8 hour work day, and one credit hour. There were no leave slips on the table that he had filled out. I made a copy of the time and attendance sheet for my own record of this event which is being faxed along with this memo.

The following day, on November 8, 2002, I decided to again check on Daugherty's arrival and departure time. I arrived in front of the building at 7:30, went upstairs to the sixth floor to look at the time and attendance sheet. No one had signed in at that point. I looked into Daugherty's Office and it was empty. Without signing in, I went back downstairs, got in my car, and parked across the street from the Office building where I could be in a position to see Daugherty drive up in front of the building and park in his usual handicap, metered space. My assigned day-to-day parking space, for which I pay \$35.00 per month, is one block away from the Office and where I would be unable to see the front of the building where Daugherty usually parks. I sat in my car across the street and waited until Daugherty arrived. At 7:40 he pulled up in front of the building and walked in. I waited until almost 8:00 to see if he would leave the building. When he did not, I parked my car, came back to the building and went upstairs to sign in. There on the first line, I noted that Daugherty has signed in at 6:40, exactly one hour earlier than he actually arrived according to my own observations. I signed below his name at 8:00 am.

At exactly 8:40, I walked downstairs to see if Daugherty's car was still there. It was gone. I checked again at 10:00 and his car was still gone. I did not see his car at 12:30 or again at 2:00. I later saw him in the Office at about 3:00. He signed out at 3:40 and claimed that he worked a full 8 hour day, plus ½ credit hour.

It should be noted that when Judge Paris is in Huntington, he enters the office and signs in at 6:30. Judge Showalter usually comes and signs in between 7:00 and 7:30. During these times, Daugherty is forced to sign in at a later time, directly below their names, usually at exactly the same time as they signed. Neither Judge Showalter nor Judge Paris were in Huntington during the week of November 4th 2002. I was gone on November 6, 2002 and was in Prestonsburg, Ky the week of November 12-15. While Judge Daugherty abuses time and attendance throughout the month, the most egregious times he commits such acts are when Chief Judge Andrus is out of the Office for hearings or on vacation or when Judge Daugherty is not required to be present in Huntington to hold hearings. These last two days are examples of such occasions.

These are not isolated incidences, but represent an ongoing act of falsifying the time and attendance records in this Office and leaving the office without signing for annual or sick leave. I have reported these acts to Chief Judge Andrus on numerous occasions as have other judges. He in turn, to the best of my knowledge, has reported these offenses to the regional chief judge. As far as I know, Daugherty has been counseled, but nothing further has been done. He continues to commit these acts of fraud whenever he has the opportunity. As an example, in April 1998, he forged my initials on the time and attendance sheet. I promptly reported this to our Chief Judge (see memorandum to Charles Andrus dated April 18, 1998). Other than "counseling," it appears that no further action was taken.

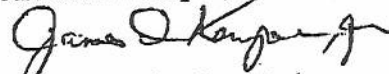
It appears that the primary reason that no action has been taken is because Judge Daugherty puts out the largest number of cases in the Office. How does he do this? He grants, or finds an individual disabled and entitled to permanent disability benefits, on many cases without ever seeing the individual claimant at a hearing. When he does have hearings, the vast majority of such hearings are held in less than 10 minutes, hardly enough time to evaluate any individual properly. His "numbers" therefore make the administration look good. At the end of the fiscal year, he signed over 100 cases in a one month period. Most of these were favorable, and a large number of these were decided on-the-record, without ever seeing the claimant. The average number of cases decided by a judge in this office and elsewhere across the nation is less than ½ that figure. Why should management go after such an individual? On the other hand, how can management simply ignore criminal conduct? At the top of the time and attendance sheet it specifically says that "willful falsification of time records may result in severe disciplinary action including a fine of \$10,000 or imprisonment or both (18 U.S.C. 287, 1001)." Furthermore, how must other employees feel who are making less than ¼ th the income that Judge Daugherty is making, when they are held to strict time and attendance standards? This also puts supervisors of such employees in an untenable position. What about the impact of such behavior on the reputation of the remaining judges in the office who adhere to the time and attendance rules and perform their duties as honestly and

effectively as they can? Judge Daugherty is supposed to be in the Office working. What do people in the community think when they observe him on so many occasions trooping through the golf course, shopping, or performing other private activities on official time? It makes a mockery of the entire Huntington Office and government employees in general. He is also violating the very code of professional ethics that he swore on oath that he would follow. See Standards of Ethical Conduct for Employees of the Executive Branch, OGC (1999), Subpart A-General Provisions, Section 2635.101 (Basic Obligations of public service) and Subpart G—Misuse of Position, Section 2635.705 (Use of Official Time).

This matter should be fully investigated and disciplinary action taken if found appropriate. It is recommended that a surveillance of this Office be conducted for several days at the times it would be most likely that Daugherty would abuse the time and attendance (when Andrus is not present and when Daugherty is not scheduled for hearings in Huntington) so that the investigators can see for themselves when he arrives and when he leaves and compare these observations with the times he enters on the time and attendance sheet.

If possible, I would rather not have my name mentioned as the source of this information unless it is contemplated that action will in fact be taken against Judge Daugherty and I will be required to make a statement or testify against him. I see no point in revealing my name if this matter is simply going to be dropped as it has been in the past.

James D. Kemper, Jr.



Administrative Law Judge
Office of Hearings & Appeals
Huntington, WV 25705
Tel: (304) 529-5531 (Ext. 332).

Message0517

Subject: RE: Judge Kemper and Complaints about Leave Abuse by Judge Dougherty
From: Cristaudo, Frank OHA Philadelphia RO
Date: 4/28/2005 2:21:13 PM
To: Loughran, Valerie OHA Philadelphia RO

Message Body

What if I call Kemper and ask him for suggestions on how to deal with this problem?

>
> _____
> From: Loughran, Valerie OHA Philadelphia RO
> Sent: Thursday, April 21, 2005 9:40 AM
> To: Cristaudo, Frank OHA Philadelphia RO
> Subject: RE: Judge Kemper and Complaints about Leave Abuse by Judge Dougherty

> We can discuss this at our next LMR meeting. The other reason that Judge Andrus said he didn't want to do anything, was that he was subjected to false allegation that he was sniffing or smoking cocaine in his office!

>
> _____
> From: Cristaudo, Frank OHA Philadelphia RO
> Sent: Thursday, April 21, 2005 9:27 AM
> To: Loughran, Valerie OHA Philadelphia RO
> Subject: RE: Judge Kemper and Complaints about Leave Abuse by Judge Dougherty

> Perhaps we need to have the call with him and Harriette and then require him to file weekly or periodic reports on the actions he has taken.

>
> _____
> From: Loughran, Valerie OHA Philadelphia RO
> Sent: Thursday, April 21, 2005 9:20 AM
> To: Cristaudo, Frank OHA Philadelphia RO
> Subject: RE: Judge Kemper and Complaints about Leave Abuse by Judge Dougherty

> Judge Andrus went on and on about how he has tried to do something but no one supports him. I told him that nothing has ever been documented sufficiently to address this matter. He is a master at wiggling out of things he doesn't want to do and aggressive in getting into things he does want to do. My only concern is not the outcome, but that we on record that we have attempted to address it.

>
> _____
> From: Cristaudo, Frank OHA Philadelphia RO
> Sent: Wednesday, April 20, 2005 5:31 PM
> To: Loughran, Valerie OHA Philadelphia RO
> Subject: RE: Judge Kemper and Complaints about Leave Abuse by Judge Dougherty

> Thanks Val. I agree something needs to be done. I have directed Judge Andrus on several occasions to take care of this. He is either unwilling or unable to handle the situation. I'm not sure the call will be helpful, but I am willing to do it. Should we ask Judge Kemper if he wants to be appointed the Acting HCJ to deal with this situation if Judge Andrus refuses to do so?

> From: Loughran, Valerie OHA Philadelphia RO
> Sent: Tuesday, April 19, 2005 8:20 AM
> To: Cristaudo, Frank OHA Philadelphia RO
> Cc: Loughran, Valerie OHA Philadelphia RO
> Subject: RE: Judge Kemper and Complaints about Leave Abuse by Judge Dougherty

> The timesheets are right outside Greg Hall's office, and he could see someone signing in, but I stood at the sign in sheet twice this morning and he did not notice me. I think we might want to ask that Greg at least for some period of time, note exactly when Judge Dougherty signs in. Unless he stays late he is not going to be able to see him sign out.

> From: Loughran, Valerie OHA Philadelphia RO
> Sent: Monday, April 18, 2005 3:46 PM
> To: Cristaudo, Frank OHA Philadelphia RO
> Cc: Loughran, Valerie OHA Philadelphia RO
> Subject: Judge Kemper and Complaints about Leave Abuse by Judge Dougherty

> Judge Kemper asked to speak to me after speaking with Barbara. He says that he has talked to Judge Andrus, you and OIG and no one has ever done anything about this blatant fraud.

> He says that Judge Dougherty continues to do as he has always done. He falsifies timesheets; when he does come in he disappears for long stretches without signing out and without charge to leave; and no one really seems to care. He feels that this is a totally wrong and unfair situation since no one else in the office is allowed to do this. (Not to mention, it is illegal.)>

> He says that Judge Dougherty parks in the alley, where he really isn't supposed to park, comes in and then leaves. One assumes that if his car is gone, then he is gone as well. I think we need to do something.

> I had suggested that the timesheets be moved to where they can be visible to someone in management, but that has not happened. This might keep him from falsifying the time sheets. We have an allegation that an employee is leaving the office regularly without charge to leave. We need to have someone establish whether this is true or not true and if its true, we need to take appropriate action. If it is not true, we need to document our findings and close the book. But we need to make this a federal case, and ensure that it is done this time. I think you, Judge Andrus, Harriette, and Howard and I need to discuss this.

Outlook Header Information

Conversation Topic: Judge Kemper and Complaints about Leave Abuse by Judge Dougherty
Subject: RE: Judge Kemper and Complaints about Leave Abuse by Judge Dougherty
From: Cristaudo, Frank OHA Philadelphia RO
Sender Name: Cristaudo, Frank OHA Philadelphia RO
To: Loughran, Valerie OHA Philadelphia RO
Delivery Time: 4/28/2005 2:21:13 PM
Creation Time: 4/28/2005 2:21:13 PM
Modification Time: 4/28/2005 2:21:13 PM
Submit Time: 4/28/2005 2:21:13 PM
Importance: Normal
Priority: Normal
Sensitivity: Normal
Flags: 1 = Read
Size: 10337

PSI-SSA-96D2-004395

Message0525

Subject: RE: Complaint about Judge Daugherty's Time and Attendance

From: Cristaudo, Frank OHA Philadelphia RO

Date: 5/25/2005 4:09:22 PM

To: Andrus, Charlie Paul

CC: Loughran, Valerie OHA Philadelphia RO; Cyrus, Harriette M.; Hamel, Gregory OHA Philadelphia RO; Goldberg, Howard RO Philadelphia

Message Body

Thank you for discussing this matter with us today. I know you are busy closing cases the last week of the report period. I am very concerned that we handle this matter appropriately because of the prior complaints. If you need more time than outlined below, or if you have any other suggestions, please let me know. Thanks again Charlie. Frank

Frank Cristaudo
Regional Chief Judge
(215) 597-1700
<http://ssahost.ba.ssa.gov/oharegion3/>
Philadelphia Region: Committed to Providing Quality
Due Process Hearings and Decisions [Timely Hearing and Decision-
Adequately Developed Record-Full and Fair Hearing-Legally Sufficient Decision]

>
> _____
> From: Cristaudo, Frank OHA Philadelphia RO
> Sent: Monday, May 23, 2005 2:55 PM
> To: Andrus, Charlie Paul
> Cc: Loughran, Valerie OHA Philadelphia RO; Hamel, Gregory OHA Philadelphia RO; Goldberg, Howard
RO Philadelphia
> Subject: Complaint about Judge Daugherty's Time and Attendance

>
>
> Charlie,

>
> Nice seeing you again last week Charlie. Congratulations on your HOMT Team Spirit award. As we
discussed, we have received another complaint about Judge Daugherty's alleged abuse of the time and
attendance rules. As you know, this is not the first time we have received such a complaint. I realize sometimes
people who believe others are violating the time and attendance rules do not know that the suspected individual
in fact has taken leave. However, I am very concerned that these allegations continue to surface.

>
> I would like to schedule a conference call on this issue with your HOMT, and folks here in the RO including
Val, Greg, Howard, and me. Please let me know if any day this week works for you.

>
> While you are primarily responsible for requiring the judges to comply with the standards of conduct, all
members of the HOMT share in the responsibility and can assist you by being observant and reporting
concerns to you for the necessary action if any. If you are not in the HO when they suspect a violation of one
of the standards of conduct, they should first attempt to contact you to discuss the appropriate course of action
to take. If they cannot reach you, they should call me, or if I am not available, Judge Slahta or Val.

> Once we have the call to discuss this matter, I would like you to investigate this matter for me and send me a written report of your findings and recommendations. In addition to speaking with the complainant and taking any other actions you believe necessary to fully investigate this matter, you will need to advise Judge Daugherty of the complaint and discuss the matter with him. As disciplinary action may result if the allegations are accurate, he should be advised of his right to representation. I would like your report by June 3 if possible. If you need more time, please let me know.

>
> I would also like you to discuss your expectations in regard to compliance with the time and attendance rules at a meeting of the judges. I would like that meeting to occur in June if possible. Please let me know when you have held that meeting.

>
> If you have any questions, or if you would like to discuss this further, please let me know. Thanks Charlie.
Frank

>
>

Outlook Header Information

Conversation Topic: Complaint about Judge Daugherty's Time and Attendance
Subject: RE: Complaint about Judge Daugherty's Time and Attendance
From: Cristaudo, Frank OHA Philadelphia RO
Sender Name: Cristaudo, Frank OHA Philadelphia RO
To: Andrus, Charlie Paul
CC: Loughran, Valerie OHA Philadelphia RO; Cyrus, Harriette M.; Hamel, Gregory OHA Philadelphia RO; Goldberg, Howard RO Philadelphia
Delivery Time: 5/25/2005 4:09:22 PM
Creation Time: 5/25/2005 4:09:22 PM
Modification Time: 5/25/2005 4:09:22 PM
Submit Time: 5/25/2005 4:09:22 PM
Importance: Normal
Priority: Normal
Sensitivity: Normal
Flags: 1 = Read
Size: 11512

PSI-SSA-96D2-004409

Message0536

Subject: RE: Time and Attendance Re Judge Daugherty
From: Loughran, Valerie
Date: 7/15/2005 1:55:09 PM
To: Cristaudo, Frank

Message Body

I think you might want to say something more: Thank you for investigating the alleged time and attendance policy violations on the part of one of your judges and your assurance that the matter has been taken care of. If a judge..

>
> _____
> From: Cristaudo, Frank
> Sent: Friday, July 15, 2005 1:51 PM
> To: Loughran, Valerie; Hamel, Gregory; Goldberg, Howard RO Philadelphia
> Subject: FW: Time and Attendance Re Judge Daugherty

> My proposed response to Judge Andrus to close out this matter:

> Judge Andrus,

> Thank you for looking into this matter for me. As you know, we expect the judges and all agency employees to comply with the agency's time and attendance policy. If a judge or any employee arrives late, leaves early, takes an extended lunch, or is otherwise absent from work without approval, we expect the individual to submit the proper leave request. Please continue to monitor this situation and advise me if you need our assistance in dealing with any of these issues. Thank you again.

> Frank Cristaudo
> Regional Chief Judge
> (215) 597-1700
> <http://ssahost.ba.ssa.gov/oharegion3/>
> Philadelphia Region: Committed to Providing Quality
> Due Process Hearings and Decisions [Timely Hearing and Decision-
> Adequately Developed Record-Full and Fair Hearing-Legally Sufficient Decision]

> _____
> From: Andrus, Charlie Paul
> Sent: Thursday, June 16, 2005 9:58 AM
> To: Cristaudo, Frank
> Cc: Goldberg, Howard RO Philadelphia
> Subject: Time and Attendance Re Judge Daugherty

> Judge Cristaudo,

> I have conducted an investigation into the allegations made by Judge Kemper regarding Judge Daugherty signing in at the wrong time. Judge Daugherty related that he had come in and started working at his computer and forgot to sign in on the roster. He then went to the sign in sheet and signed in for the time he arrived in the office.

> I spoke with him on the importance of accuracy in the sign in sheet and that the incident had been brought to my attention. I also reviewed his 7B file and there were no current memos in the file. The last time we had

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Committee

EXHIBIT #63

> Unless there is something more you wish me to do, this concludes my action regarding this matter. I will keep a memory jogger of the incident.

>

> Charlie Paul Andrus

> Hearing Office Chief Judge

Outlook Header Information

Conversation Topic: Time and Attendance Re Judge Daugherty
Subject: Time and Attendance Re Judge Daugherty
From: Cristaudo, Frank
Sender Name: Cristaudo, Frank
To: Andrus, Charlie Paul
CC: Loughran, Valerie; Hamel, Gregory; Goldberg, Howard RO Philadelphia
Delivery Time: 7/15/2005 2:52:51 PM
Creation Time: 7/15/2005 2:52:51 PM
Modification Time: 7/15/2005 2:52:51 PM
Submit Time: 7/15/2005 2:52:51 PM
Importance: Normal
Priority: Normal
Sensitivity: Normal
Flags: 1 = Read
Size: 9369

PSI-SSA-96D2-004419

Message0553

Subject: FW: Complaint
From: Kemper Jr, James D.
Date: 5/1/2007 10:29:41 AM
To: Gitlow, William H.

Message Body

From: Habermann, Robert S.
Sent: Monday, April 30, 2007 4:09 PM
To: Kemper Jr, James D.
Subject: RE: Complaint

Dan,

I fully understand and concur with you assessment.

Hope all is well - I am looking forward to seeing you in Providence this summer.

Bob

From: Kemper Jr, James D.
Sent: Monday, April 30, 2007 4:01 PM
To: Habermann, Robert S.
Subject: RE: Complaint

Dear Bob,

Thank you for your assistance in this matter. I have decided after reading the response from your colleague and discussing my proposal with every judge in this Office, not to pursue this any further. Unfortunately, there were a lot of complaints from several of the judges here in the past, but no one has the backbone (I would like to use a less delicate term) to back me up if push comes to shove. I will be retiring about October 1, 2007 so if no one cares about Daugherty's conduct but me, then so be it. As far as your colleague's comment about personal animosity, if by reporting fraudulent conduct (putting out 100 cases per month and spending less than 30 hours in the Office, cheating on time and attendance, etc.) amounts to personal animosity, than I am guilty of this. However, I would do the same whether the judge was Daugherty, John Doe, or your colleague if I observed such behavior on a daily basis. You certainly saw the manner in which Daugherty conducts "hearings" when you were with him in Prestonsburg, Ky. several years ago. His conduct has not changed, as evidenced by my most recent trip there last week. People coming in and out of the hearing room in five minute intervals after being told that their case would be granted. As far as falsifying his time and attendance, everyone in this Office has seen him do this. (Entering the earliest possible time on arrival and the latest time on departure and leaving the Office for hours at a time without reporting annual leave. Several years ago, he forged my initials on a time and attendance sheet when I was the first one in the Office at 8:00 a.m. He tore off the original sheet that showed me as the first in the Office that morning, put his initials on line one of the new sheet, entered his

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Committee

EXHIBIT #64

PSI-SSA-95-032853

arrival time as 6:30, and forged my initials on line 2 as coming in at 8:00). Unfortunately, in the long run, this type of performance and conduct by a judge, whether it be Daugherty or anyone else, can only hurt the reputation of ALJ's everywhere. More importantly, it hurts the integrity of the entire disability program. Dan

From: Habermann, Robert S.
Sent: Monday, April 16, 2007 9:05 AM
To: Kemper Jr, James D.
Subject: Complaint

Good Morning Dan,

I sent your letter to one of my colleagues prior to responding to your proposed complaint with the IG. The following is his reply. I have hearings this morning.

Please let me know what you think.

Bob

" I have just a few comments. Are other ALJs in the hearing office also complaining about ALJ Daugherty? Unless other ALJs in the hearing office support filing a formal complaint against ALJ Daugherty, I would advise a solitary ALJ to seriously consider whether to do so. If only a solitary ALJ in a hearing office complains, the first question raised is whether personal animosity or bad blood between the two ALJs is the genesis of the complaint.

By way of comparison, the complaints against prior HOCALJ Johnson were filed jointly by four ALJs. Also, the four ALJs initially filed a complaint with CALJ Washington and then AC Thurmond about HOCALJ Johnson. It was only after CALJ Washington and AC Thurmond failed to take any remedial action that the four ALJs filed a complaint with the SSA Office of Inspector General (OIG). If an OIG complaint is filed, the OIG will conduct an investigation. How rigorous any OIG investigation will be is hard to determine in advance. OIG investigations have confidentiality restrictions. See Article 5 ("Employee Rights"), Section 4 (D), SSA/AALJ collective bargaining agreement (CBA).

Concerning the issues of ALJ Daugherty's high number of dispositions and high pay ratio, I would tend to wait until the SSA OIG Audit division completes its currently ongoing investigations and issues reports related to ALJ productivity and pay ratios before filing any formal complaint. Attached is a summary of the 2007 SSA OIG Workplan discussing currently ongoing and pending SSA OIG Audits. With respect to high number of dispositions, you might have noticed at page 6 of Jim Hill's 04/12/2007 Senior Attorney Adjudicator (SAA) proposal on behalf of NTEU the statement that a September 2006 Social Security Advisory Board (SSAB) Report included "findings" that "over 100 ALJs had a payment rate over 90% and over 300 ALJs had a payment rate of over 80%." [The reference to the September 2006 SSAB Report by Jim Hill is probably incorrect. The correct SSAB report is probably the May 2006 SSAB Report "Disability Decision Making: Data and Materials".]

Similarly, the January 2007 report of ALJ dispositions indicates that 62% of all ALJs dispositions are favorable. 25% of Appeals Council (AC) appeals are remanded. Given that a high percentage of AC remands are paid, the overall nationwide ALJ favorable disposition rate probably exceeds 70%. The January 2007 report of ALJ dispositions is published in NOSCCR's Social Security Forum, Volume 29, No. 3 (March 2007) at page 15. My point is that using high ALJ dispositions and favorable pay ratios as basis for an OIG complaint may be difficult to sustain since nationwide ALJ statistics in that regard appear to be extremely high.

PSI-SSA-95-032854

Complaints against ALJs that would involve the SSA Office of Special Counsel (OSC) are discussed in the CBA at Article 5, Section 7 ("Complaints Regarding a Judge") and Article 21 ("Records"), Section 4 ("Bias and Misconduct Complaints"). Article 21, Section 4 discusses the ALJ bias and misconduct complaint process established in the SSA Notice published in the Federal Register at 57 Fed. Reg. 49,186 (1992). Unless there is indisputable evidence that ALJ Daugherty has falsified time records, I would not make that allegation. Also, allegations that ALJ Daugherty does not provide sufficient explanation to writers of the reasons for his decisions does not appear to be an issue that OIG or OSC would attempt to determine.

One final thought. All SSA ALJs are members of the AALJ bargaining unit (regardless of whether the ALJ is dues paying or non-dues paying). ALJ Daugherty may request assistance from AALJ as exclusive bargaining representative if a complaint is filed against him-even though the complaint is being filed by a fellow ALJ bargaining unit member. That is basically what occurred in the Ft. Wayne, IN hearing office where one ALJ filed a complaint against another ALJ.

As discussed at a recent NEB telephone conference, the NEB is apparently of the opinion that AALJ should not get involved with filing or supporting complaints against ALJ bargaining unit members. However, individual ALJs are free to file complaints pro se against other ALJs in the bargaining unit at any time and without any restriction by AALJ.

I hope some of the ruminations above are of some assistance. You may want to solicit additional opinions or suggestions from other NEB members about this situation. "

Outlook Header Information

Conversation Topic: Complaint
Subject: FW: Complaint
From: Kemper Jr, James D.
Sender Name: Kemper Jr, James D.
To: Gitlow, William H.
Received By: Gitlow, William H.
Delivery Time: 5/1/2007 10:29:41 AM
Creation Time: 5/1/2007 10:29:40 AM
Modification Time: 5/1/2007 10:29:41 AM
Submit Time: 5/1/2007 10:29:41 AM
Importance: Normal
Priority: Normal
Sensitivity: Normal
Flags: 1 = Read
Size: 20475

PSI-SSA-95-032855

From: Randolph, Sarah
Sent: Tuesday, October 14, 2008 3:33 PM
To: Andrus, Charlie Paul
Subject: ALJ Sign out sheet

FYI, An employee was looking for ALJ Daugherty to sign something at 3:20 today. I went to the sign out sheet and he had signed out at 3:30 and it was only 3:20. Apparently someone was looking for him on Friday also, Vicky mentioned that that DBD forgot to sign out on Friday, however, she could not find him all day and he claimed 8 hours. I have notified Jerry and John of the situation..

Tracking:

Homeland Security & Governmental Affairs
Committee
EXHIBIT #65



www.ShredAllDocuments.com
P. O. Box 2894 • Pikeville, KY 41502
606-437-1032 Fax 606-478-7093
877-35-SHRED

info@shredalldocuments.com

Add to QB + Schedule TRBM

SHRED-ALL Documents Customer Service Agreement
PO Box 2894, Pikeville, KY 41502

Date: May 13, 2010

Customer Billing Information: Eric C. Conn Law Offices
Attn: Jamie
Stanville, KY

Physical Location: US 23
Eric C. Conn Law Complex
Stanville, KY

Phone: Email: ericconnlaw@gmail.com

Scheduled June 8 June @ 1:00

SHRED-ALL Documents Information Destruction Service will provide the following services:

Service: X Free NAID "Compliance Toolkit" application.

XX Secure cleanout services off-site at secured plant
First 1000 lbs minimum charge \$150.00
Amount after first 1000lbs cost equals (.12) twelve cents per pound.

Authorized client employee may view destruction in comfortable viewing office on closed circuit monitors, this option cuts the shredding time to less than half the time of on-site shredding.

NOTE: Regular route customers are not charged the minimum.

Secure cleanout services mobile on-site destruction
First 1000 lbs minimum charge \$200.00
Amount after 1000lbs costs equals (.18) eighteen cents per pound
Labor charges apply for any wait time lapse or stairs or difficult access to materials during clean outs to be agreed to before labor occurs by parties of both companies.
\$ 60.00 per hour per employee.

**Homeland Security & Governmental Affairs
Committee
EXHIBIT #66**

Secure Route Services

Bin Sizes

95 Gallon - holds approx 300lbs

65 gallon - holds approx 200lbs

Console - holds approx. 100lbs- perfect for small offices/reception areas.

BUD (bin under desk) - secure personal size container for convenience.

1 Pickup per calendar month minimum

(2nd Tuesday of each month, for example)

ALL Materials Recycled at no additional cost!

You may add this service to any "Going Green" initiatives/marketing because ALL of your destroyed information material is recycled.

"SHRED-ALL Shred GREEN!

Protect your Customer, your Company and the Planet!"

Secure route services cost:

Secure information destruction (paper) and bin service

\$50.00 includes FIRST bin per stop	\$ 50.00
Includes secure shredding and free recycling	
Additional bins at same site	\$ 18.00 per bin
Unscheduled Stop requests	\$ 50.00
Cleanout Situations	\$ 0.12 per lbs
Additional bins during cleanouts (no charge)	\$ 0.00
Fuel Surcharge	\$ 0.00 per mile from base
Plastics/cd/dvd destruction	\$ 0.38 per lbs
Hard Drive destruction	\$ 35.00 per unit
Computer/monitor destruction	\$ 35.00 per unit

Options:

For Route service:

Charge for additional material outside containers= \$ 0.12 per lb

Containers furnished remain the property of SHRED-ALL at all times.

1 Key furnished with each container upon request at no charge

Replacement for lost keys or additional keys=\$ 5.00 each

Request for additional key must be made in writing by authorized employee.

Notarized Certificate of Destruction provided with each invoice

Shred-ALL Technicians are all bonded and insured.

NAID Compliance Toolkit authorized agent, be certain that your information destruction policies comply with the latest regulations at NO additional Cost!

Terms: 30 days available upon approval

SHRED-ALL Documents liability insurance certificates available upon request.
Member National Association for Information Destruction (www.naidonline.org)
Accredited Member Better Business Bureau.

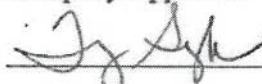
Authorized Signature:



Representative

Date: 5/13/10

Company Approval:



Date: May 13, 2010

Company approved representative must be at site of removal to sign removal ticket.
Please include their name below, any changes must be completed before removal begins and the above company representative from SHRED-ALL Documents must be informed and give acknowledgment.

 approved removal rep.

Additional contact information:

Additional Directions:

WWW.SHREDALLDOCUMENTS.COM
CONFIDENTIAL DOCUMENT



www.ShredAllDocuments.com

P. O. Box 2894 • Pikeville, KY 41502

606-437-1032 Fax 606-478-7093

877-35-SHRED

info@shredalldocuments.com

Confidential Document Destruction Agreement

This Confidential Document Destruction Agreement is entered into as of this 13th, day of May, 2010 by and between SHRED-ALL Documents, having a place of business at Pikeville, KY 41501 and Eric C. Conn Law Offices having a place of business at Stanville, KY.

1. SERVICES

1.1 Services to be Furnished. Company will provide the services for the secure destruction of records ("Services") described on Exhibit A "service agreement" attached hereto and made a part hereof. Company will furnish a Certificate of Destruction to Customer, upon request by Customer. The Services may, at Customer's option and as indicated on Exhibit A, be performed as part of a regular schedule or pursuant to specific directions which Customer shall give Company from time to time. Customer may also request custom Services not set forth on Exhibit A, in which case Company will consult with Customer as to the terms and conditions of the Services requested.

1.2 Services to Affiliates and Subsidiaries. Customer's related, affiliated and subsidiary companies (including subsidiaries of affiliates) may acquire Services pursuant to this Agreement. Any such acquisition of Services will be evidenced by an Order executed by an authorized representative of the applicable affiliate or subsidiary in its own corporate name and referencing this Agreement. Invoices for such Services shall be directed to and be payable by such affiliate or subsidiary.

1.3 Services by Third Parties. Company may procure the services of any responsible third party to perform all or part of the Services, insofar as said third party complies with all security standards and procedures required of Company by Customer, and further that said third party shall accept in writing the fiduciary responsibility requisite of the transfer of custody. Company will remain liable for all Services performed for Customer. Company will record all custody transfers and/or the use of any subcontractor to render contracted services to the Customer, and make Customer aware of any use of any subcontractor, including their identity.

2. RESPONSIBILITIES

2.1 Right to Rely on Instructions. Company may act in reliance upon any instruction, instrument, or signature reasonably believed by Company to be genuine, and may assume that any of Customer's employees or any employee of Customer's affiliates or subsidiaries giving any written notice, request, or instruction has the authority to do so.

2.2 Compliance with Contracts, Laws and Regulations. Customer shall be responsible for, and warrant compliance with, all contractual restrictions and all applicable laws, rules and regulations, including but not limited to environmental laws and contractual restrictions and laws governing the

confidentiality, retention and disposition of information contained in any materials delivered to Company. Company shall comply with applicable laws, statutes, regulations and ordinances.

- 2.3 Cooperation and Assistance. Customer shall cooperate with Company with regard to the performance of the Services, subject to normal security requirements and in a manner that is not unnecessarily disruptive to Customer's business operations, by providing to Company such information, data, access to premises, management decisions and approvals as may be reasonable to permit Company to perform the Services hereunder.
- 2.4 Hazardous Substances. Customer shall not deliver to Company any material considered toxic or dangerous or which is regulated under any federal or state law or regulation relating to hazardous materials. In the event of the accidental or negligent custodial transfer of hazardous or regulated waste, including bio-hazard, Customer agrees to arrange to appropriately, safely and legally assume custody of such hazardous materials at their expense. And further to indemnify the Company from any property damage or personal injury resulting from such transfer of material.
- 2.5 Performance of Services. All Services performed by Company will be in a professional manner in accordance with NAID standards and practices. (Or as are described in the policies and procedure described in Exhibit "A " Service Agreement)
- 2.6 Material Descriptions: Itemized lists or descriptions of contents of materials submitted by the Customer to the Company shall be generally considered for recordkeeping, reconciliation, and reference purposes only, and are not to be considered proof that said documents contained on such lists and descriptions are in fact contained in the materials accepted. Company will make provision for validation of such document contents in advance and under special terms and fees at the request of the Customer.
- 2.7 Negotiable Items: Customer agrees to make Company aware in writing and in advance of any instance in which negotiable instruments, including but not limited to checks, bearer bonds, travel checks, or coupons will be sent to a single facility in a single service where the total combined amount of said instruments will be in excess of \$100,000.
3. **FEES AND PAYMENTS** - All standard charges for Services under this Agreement shall be as specified on Exhibit A. The prices set forth in Exhibit A shall remain in effect for the first twelve (12) months of this Agreement. Thereafter, price adjustments shall be made only after thirty (30) days' prior written notice. For any service requested by Customer that is not listed on Exhibit A, the charges will be as agreed to in writing by Customer and Company prior to the rendering of such Service. Invoices shall be due and payable within thirty (30) days from receipt of the applicable invoice. Amounts due and not paid within thirty (30) days after Customer's receipt of the invoice shall bear interest at the rate of one and one-quarter per cent (1.25%) per month.
4. **CONFIDENTIALITY** - "Confidential Information" means any information relating to Customer's property, business and affairs. Unless such Confidential Information was previously known to Company free of any obligation to keep it confidential, is subsequently made public by Customer or by a third party having a legal right to make such disclosure, or was known to Company prior to receipt of same from Customer, it shall be held in confidence by Company and shall be used only for

the purposes provided in this Agreement. Company shall use the same degree of care to safeguard your Confidential Information as it uses to safeguard its own. However, Company may comply with any subpoena or similar order related to materials delivered to Company; provided that it shall, unless prohibited by law, notify Customer promptly of any such subpoena or notice. Customer shall pay Company's reasonable costs for such compliance.

5. TERM AND TERMINATION

5.1 Term. This Agreement shall commence on the Effective Date set forth above and, unless otherwise terminated in accordance with Section 5.2, shall continue in effect for one year, with automatic renewal for successive one-year terms, unless written notice of non renewal is delivered by either party to the other not less than ninety (90) days prior to the date of expiration of such term.

5.2 Termination. Either party may terminate this Agreement if the other is in material or repeated breach of any of its obligations hereunder and the breaching party has not cured the breach within sixty (60) days after written notice from the non breaching party. In the event of any such termination, all amounts due for Services rendered up to the effective date of termination shall become due and payable. Upon termination, Customer shall return (or permit Company to retrieve) all Company bins and other property kept at Customer's site, and Company shall have no obligation to provide further Services to Customer.

6. CLAIMS AND DISPUTE RESOLUTION

6.1 Time for Presenting Claims. Customer must present any claim with respect to any Service in writing to Company within a reasonable time and in no case later than three (3) months after the occurrence of the event on which the claim is based.

6.2 Arbitration. Any claim, controversy, or dispute arising out of or relating to this Agreement, or any interpretation or breach of this Agreement or performance under this Agreement, including without limitation any dispute concerning the scope of this Article 6, that cannot be resolved within fifteen (15) days by informal discussions between the parties, shall be resolved by submission to final, binding and nonappealable arbitration, without any right by either party to trial de novo in any court. Such arbitration and all pre-hearing, hearing, and post-hearing arbitration procedures, including for discovery, disclosure of arbitrator's interests, and challenge of designation of any arbitrator, shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association. A single arbitrator shall be selected by the American Arbitration Association.

6.3 Services during Arbitration. During any arbitration proceedings, Company shall continue to provide Services, and Customer shall continue to make payments to Company, in accordance with this Agreement. The fact that arbitration is or may be allowed shall not impair the exercise of any termination rights under this Agreement.

7. LIABILITY AND WARRANTY

7.1 Limitation of Liability. Company shall not be responsible or liable in any manner whatsoever for the release or loss of any materials deposited in bins or otherwise delivered to it for secure destruction unless the release or loss is due to Company's negligence or willful misconduct. Company's maximum liability for any and all claims arising with respect to the Services provided under this Agreement shall not exceed the aggregate amounts paid by Customer with

respect to the Services provided at the particular Customer location during the six (6) months preceding the event which gives rise to a claim. In no event shall Company be liable for any consequential, incidental, special or punitive damages, regardless of whether the action is brought in tort, contract or any other theory.

7.2 Ownership Warranty. Customer warrants that it is the owner, legal custodian or otherwise has the right to deliver for confidential destruction any and all materials Customer provides Company hereunder. Customer shall reimburse Company for any expenses reasonably incurred by Company (including reasonable legal fees) by reason of Company complying with its obligations under this Agreement to destroy such materials in the event of a dispute concerning the destruction of the materials provided by Customer to Company.

8. MISCELLANEOUS

8.1 Notices. All notices hereunder shall be in writing and addressed to either party at its address set forth above (or to such other address as either party may specify by notice given in accordance with this Section). Notices to Company shall be sent to the attention of its General Manager.

8.2 Binding Nature and Assignment. This Agreement shall be binding on the parties and their respective successors and assigns. Except as permitted by Section 1.3 above, neither party may assign this Agreement, except to an affiliate, without the prior written consent of the other party, which consent shall not be unreasonably withheld.

8.3 Force Majeure. Each party shall be excused from any delay or failure in performance under this Agreement for any period if and to the extent that such delay or failure is caused by acts of God, governmental actions, labor unrest, riots, unusual traffic delays or other causes beyond its control.

8.4 Relationship of Parties. Company is acting as an independent contractor hereunder and has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed all work to be performed by Company under this Agreement.

8.5 Entire Agreement. This Agreement constitutes the entire agreement between Company and Customer with respect to the subject matter of this Agreement. No change, waiver, or discharge of this Agreement shall be valid unless in writing and executed by the party against whom such change, waiver, or discharge is sought to be enforced. Except as provided in Section 3, this Agreement may be amended only by an amendment in writing signed by Customer and Company.

8.6 Invalidity. If any provision of this Agreement is declared invalid by any tribunal of competent jurisdiction, then such provision shall automatically be adjusted to the minimum extent necessary to the requirements for validity as declared at such time and as so adjusted shall be deemed a provision of this Agreement as though originally included herein. In the event that the provision invalidated is of such a nature that it cannot be so adjusted, the provision shall be deemed deleted from this Agreement as though such provision had never been included herein. In either case, the remaining provisions of this Agreement shall remain in effect.

8.7 Exclusivity: Customer agrees to retain Company on an exclusive basis at all facilities covered by this agreement for the term of this contract.

IN WITNESS WHEREOF, each of the parties have caused this Agreement to be executed by its duly authorized representative as of the Effective Date first set forth above.

CUSTOMER

By: 

By: Tracy Syck, President
SHRED-ALL Documents

Title: _____

Date: _____

Date: May 13, 2010

Rock Solid Records Management and Secure Storage also available.

Shred Innovations, Inc.

Shred-ALL Documents
Rock Solid Records Mgmt Svcs & Storage
PO BOX 2894
Pikeville KY. 41502

Invoice

Date	Invoice #
6/30/2010	5773

Bill To
Eric C Conn Law PO Box 308 Stanville, KY 41659

PAID

P.O. No.	Terms	Project
	Net 30	

Quantity	Description	Rate	Amount
5,612	Secure Information Destruction by Shredding Per lb Jamie Slone 6/8/10 Certificate Of Destruction: Shred-ALL Documents hereby certifies that all materials for confidential destruction throughout the proceeding schedule of services was confidentially handled, completely destroyed beyond recognition and recycled. Tracy Syck, notary, My commission expires August 18, 2012	0.12	673.44
	Sales Tax	0.00%	0.00
		0.00	0.00T
All work is complete!		Total	\$673.44
		PSI-Shred_All_Docs-01-0009	



D005809

Customer: CONN - Eric C Conn Law Offices

Requestor: *POB 308*

Address:

Stanville, KY *41659*

Phone:

Desc: SCHEDULED SERVICE

Notes: Schedule Id = 5643

Comments: 80 boxes

See Jamie



Status: Open

Due: 06/08/10

Site:

Route: PMC TUESDAYS

Priority: S

Trans Code: TRX

Bin #	Service Type	Description	Bin Type	Code	Service Type	CBAD #
-------	--------------	-------------	----------	------	--------------	--------

SHP

Shred Per lbs off-site

5,612

*# 5773
log*

Signature:

Jamie Stone
Eric C Conn Law Offices

Date:

6/8/10

Signature:

[Signature]
Shred-All Documents

Date:

6/8/10

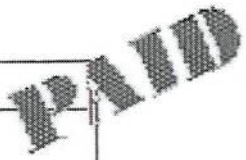
Shred Innovations, Inc.

Shred-ALL Documents
Rock Solid Records Mgmt Svcs & Storage
PO BOX 2894
Pikeville KY. 41502

Invoice

Date	Invoice #
9/30/2010	6319

Bill To
Eric C Conn Law PO Box 308 Stanville, KY 41659



P.O. No.	Terms	Project
	Net 30	

Quantity	Description	Rate	Amount
5,881	Secure Information Destruction by Shredding Per lb Signature on file 9/15/10	0.12	705.72
	Certificate Of Destruction: Shred-ALL Documents hereby certifies that all materials for confidential destruction throughout the proceeding schedule of services was confidentially handled, completely destroyed beyond recognition and recycled. Tracy Syck, notary, My commission expires August 18, 2012	0.00	0.00T
	Sales Tax	0.00%	0.00

All work is complete!

Total \$705.72
PSI-Shred_All_Docs-01-0011



D006760

Customer: CONN - Eric C Conn Law Offices

Status: Open

Requestor:

Due: 09/15/10

Address:

Site:

Stanville, KY

Route: 1ST OFF WEDNESD

Priority: S

Phone:

Trans Code: TRX

Desc: SCHEDULED SERVICE

Notes: Schedule Id = 6468

Comments: Approximately 100 boxes.

Scheduled for 11am.

Bin #	Service Type	Description	Bin Type	Code	Service Type	CBAD #
	SHP	Shred Per lbs off-site				

#6319
Cor

5881 lbs

Signature:

[Handwritten Signature]

Eric C Conn Law Offices

Date:

9-15-10

Signature:

[Handwritten Signature]

Shred-All Documents

Date:

7/15/10

Shred Innovations, Inc.

Shred-ALL Documents
Rock Solid Records Mgmt Svcs & Storage
PO BOX 2894
Pikeville KY. 41502

Invoice

Date	Invoice #
11/30/2010	6655

Bill To
Eric C Conn Law PO Box 308 Stanville, KY 41659

PAID

P.O. No.	Terms	Project
	2% 10 Net 30	

Quantity	Description	Rate	Amount
7,256	Secure Information Destruction by Shredding Per lb	0.12	870.72
	Signature on file 11/15/10		
	Certificate Of Destruction: Shred-ALL Documents hereby certifies that all materials for confidential destruction throughout the proceeding schedule of services was confidentially handled, completely destroyed beyond recognition and recycled. Tracy Syck, notary, My commission expires August 18, 2012	0.00	0.00T
	Sales Tax	0.00%	0.00

All work is complete!

Total \$870.72
PSI-Shred_All_Docs-01-0013



D007321

Customer: CONN - Eric C Conn Law Offices
 Requestor:
 Address: Stanville, KY
 Phone:
 Desc: SCHEDULED SERVICE
 Notes: Schedule Id = 6943
 Comments: 44-am

Status: Open
 Due: 11/15/10
 Site:
 Route: CALL-IN
 Priority: S
 Trans Code: TRX

Bin #	Service Type	Description	Bin Type	Code	Service Type	CBAD #
	SHP	Shred Per lbs off-site				

#655
let

(7256 lbs)
R

Signature:

Eric C Conn Law Offices

Date:

11-15-10

Signature:

SB

Shred-All Documents

Date:

11-15-10



Shred-ALL Documents

Invoice

Rock Solid Records Mgmt & Storage
PO Box 2894
Pikeville, KY 41502

Date	Invoice #
6/30/2011	5846

PAID
07/31/2011

Bill To
Eric C. Conn Law Offices
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Stanville, KY 41659

P.O. No.	Terms	Project
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Quantity	Description of Services	Bin Size	Rate	Serviced	Approved by:	Amount
26,532	Secure shredding off-site at our plant Certificate Of Destruction: Shred-ALL Documents hereby certifies that all materials for confidential destruction throughout the proceeding schedule of services was confidentially handled, completely destroyed beyond recognition and recycled. Tracy Syck, notary, My commission expires August 18, 2012		0.12 0.00	6/23/2011	Jeanna Newsome	3,183.84 0.00

Thank you for your business.	Total	\$3,183.84
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P.O. No.	Terms	Project
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Quantity	Description of Services	Bin Size	Rate	Serviced	Approved by:	Amount
8,821	Secure shredding off-site at our plant Certificate Of Destruction: Shred-ALL Documents hereby certifies that all materials for confidential destruction throughout the proceeding schedule of services was confidentially handled, completely destroyed beyond recognition and recycled. Tracy Syck, notary, My commission expires August 18, 2012	Purge items	0.12 0.00	1/9/2012	Amy Slone	1,058.52 0.00
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**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD**

SOCIAL SECURITY ADMINISTRATION, Agency,)	
)	Docket No.
)	
v.)	
)	
ALGERNON W. TINSLEY)	Date:
Respondent.)	
)	
)	

STATEMENT OF CHARGES AND SPECIFICATIONS

The Social Security Administration (“SSA” or “Agency”) hereby proposes that Algernon W. Tinsley (“Respondent”), an Administrative Law Judge (“ALJ”) in the employ of SSA, appointed pursuant to 5 U.S.C. § 3105, be suspended for thirty (30) days, as the Agency believes that good cause supports Respondent’s suspension. In accordance with 5 U.S.C. § 7521 and corresponding regulations, the Agency refers this matter to the Merit Systems Protection Board (“MSPB” or “Board”) to determine if there is good cause to suspend Respondent.

General Background

Respondent is an ALJ assigned to the Huntington, West Virginia Hearing Office of SSA’s Office of Disability Adjudication and Review (ODAR). The Huntington, West Virginia Office is one of approximately 140 hearing offices throughout the nation under the direction of ODAR, the component within SSA that administers the nationwide hearings and appeals program for SSA. The principal management official in the hearing office is the Hearing Office

Chief Administrative Law Judge (“HOCALJ”), who is responsible for the overall management and administration of that office. The HOCALJ is also the first-line supervisor of the ALJs in that particular office and is responsible for providing leadership and administrative direction to the ALJs and other employees under his or her supervision.

The Charge against Respondent is as follows:

Charge: Making a False Entry on an Agency Serial Time and Attendance Roster (SSA-30)

Specification: On or about May 16, 2007, Respondent made a false entry on an Agency Serial Time and Attendance Roster (SSA-30) when he stated that his “Time Out” was 5:30 p.m.

Specification: On or about May 18, 2007, Respondent made a false entry on an Agency Serial Time and Attendance Roster (SSA-30) when he stated that his “Time Out” was 5:30 p.m.

Specification: On or about August 24, 2007, Respondent made a false entry on an Agency Serial Time and Attendance Roster (SSA-30) when he stated that his “Time Out” was 5:30 p.m.

Specification: On or about October 18, 2007, Respondent made a false entry on an Agency Serial Time and Attendance Roster (SSA-30) when he stated that his “Time Out” was 5:45 p.m.

NARRATIVE

May 16, 2007, and May 18, 2007

Respondent was scheduled to hold hearings at the Huntington Hearing Office’s remote site in Prestonsburg, Kentucky on Tuesday, May 15, Wednesday, May 16, and Friday, May 18, 2007. *See* Exhibit A. Although he was originally scheduled to hear four cases on Wednesday, May 16, Respondent, on his own, moved the Wednesday hearings to Tuesday, May 15, 2007, and heard no cases on Wednesday. Instead, Respondent allegedly prepared four (4) cases for hearings scheduled on Friday, May 18, 2007. Upon review, the four cases were routine. Furthermore, records show that his last hearing on Friday, May 18, 2007, ended at 3:40 p.m. *See* Exhibit B.

Upon Respondent's return to the Huntington office, he submitted to HOCALJ Charlie Paul Andrus SSA-30 forms (SSA Serial Time and Attendance Roster) for the previous week. *See Exhibit C.* Respondent submitted a separate sheet showing when he started work (Time In) and when he finished work (Time Out) each day. *Id.* The form SSA-30 that he completed for Wednesday, May 16, 2007, shows that he worked from 8:30 a.m. - 5:30 p.m. *Id.* The form SSA-30 that he completed for Friday, May 18, 2007, shows that he worked from 8:00 a.m. - 5:30 p.m. *Id.*

At the remote site in Prestonsburg, Kentucky, the last SSA employee to leave for the day is required to lock the door and set the building alarm. The security guards at the Prestonsburg office do not have the code to set the building alarm, nor do they have keys to the building. Therefore, the guards are instructed to stay at their post until 5:30 p.m., or until the last SSA employee leaves for the day, whichever comes sooner. The guards at the Prestonsburg office keep a log book to show when they leave their duty station. The log book shows that the last security guard on duty on May 16, 2007, left his post at 5:15 p.m., and the last guard on duty on May 18, 2007 left his post at 4:15 p.m. The guards would not have left before 5:30 p.m. on either day, if an SSA employee, like Respondent, remained in the building. Furthermore, HOCALJ Andrus confirmed these facts when he interviewed the guards. Thus, contrary to his statements on the Serial Time and Attendance Rosters, Respondent could not have remained at work at the Prestonsburg office until 5:30 p.m. on either day. Consequently, Respondent made false entries on the SSA-30 forms for Wednesday, May 16, 2007, and Friday, May 18, 2007, when he claimed to be working until 5:30 p.m.

August 24, 2007

Respondent was again scheduled to hold hearings at Huntington's remote site in Prestonsburg, Kentucky during the week of August 20, 2007. On Friday, August 24, 2007, Respondent recorded his time of departure on the SSA-30 form as 5:30 p.m. *See* Exhibit D. However, the last security guard on duty confirmed that he left the site at approximately 4:00 p.m. on Friday, August 24, 2007, or about 1 ½ hours before the time Respondent claimed he left. *See* Exhibit E. Furthermore, Amanda Hall, a hearing reporter, set the building alarm when she left at approximately 4:00 p.m. on Friday, August 24, 2007, and the alarm system remained on without incident for the rest of the day. *See* Exhibit F. It would have been impossible for any SSA employee, including Respondent, to exit the location after Ms. Hall's departure without tripping the alarm. Thus, Respondent made a false entry on the SSA-30 form for Friday, August 24, 2007, when he claimed to be working until 5:30 p.m. that day.

On or about September 16, 2007, HOCALJ Andrus spoke with Respondent and his union representative about Respondent's false entries on the SSA-30 form. Respondent could not provide an acceptable explanation for the August 24, 2007 incident, and said only that he could not remember, but that "he was there if he said he was." *See* Exhibit E.

October 18, 2007

Respondent was again scheduled to hold hearings at Huntington's remote site in Prestonsburg, Kentucky from October 14, 2007, through October 18, 2007. On Thursday, October 18, 2007, Respondent recorded his time of departure on the SSA-30 form as 5:45 p.m. *See* Exhibit G. However, the last security guard on duty confirmed that he left the site at approximately 4:28 p.m. on Thursday, October 18, 2007, or about 1 ¼ hours before the time Respondent claimed he left. Thus, contrary to the entry he made on the Serial Time and Attendance Roster, Respondent did not remain at work at the Prestonsburg office until 5:45 p.m.

Thus, Respondent made a false entry on the SSA-30 form for Thursday, October 18, 2007, when he claimed to be working until 5:45 p.m. that day.

CONCLUSION

As an Administrative Law Judge, Respondent holds a significant position with the United States Government. There are few positions within the Federal Government that carry with them the prestige and level of responsibility of the ALJ position. The Federal Government rightfully expects that Respondent fulfill his responsibilities with a considerable amount of independence. Further, in order for the Agency to meet its mission to advance the economic security of the Nation's people, it is essential that Agency ALJs follow all Agency rules and regulations and discharge their duties with honesty, integrity, responsibility, and trust.

Respondent's misconduct is serious because he failed to discharge his duties with honesty, integrity, responsibility, and trust when he made false entries on four (4) Serial Time and Attendance Rosters. The Merit Systems Protection Board (Board) regards falsification as a serious offense that "affects an employee's veracity, trustworthiness, and ethical conduct" *Seas v. U.S.P.S.*, 73 MSPR 422 (1997). Respondent's repeated failure to record his true departure time demonstrates an intentional and substantial disregard for the interests and mission of the Agency and his duties as an ALJ. When faced with an employee who provides false information on an official attendance record, the Agency's trust in that employee is diminished. The Agency is burdened, because it cannot rely on the individual to behave at a level of professionalism required of any employee, particularly an ALJ.

Respondent is an experienced ALJ with over twenty-eight (28) years of Federal service. Falsifying information is inconsistent with the honesty and integrity required in such a position of authority and trust. Respondent should have been well aware of the responsibilities associated with his position, and he was on notice of his duty to accurately complete his official attendance record. The SSA-30, Serial Time and Attendance Roster, is plainly and visibly marked with a warning against falsification. It states, "WILLFUL FALSIFICATION OF TIME RECORDS MAY RESULT IN SEVERE DISCIPLINARY ACTION INCLUDING A FINE OF NOT MORE THAN \$10,000.00 OR IMPRISONMENT OR BOTH (18 USC 287, 1001)."

Board case law has established that proof of falsification will almost always warrant severe discipline. *See e.g., Kirkpatrick v. U.S.P.S.*, 74 MSPR 583, 591 (1997); *Scott v. DOJ*, 69 MSPR 211, 242-44 (1995); *Haack v. U.S.P.S.*, 68 MSPR 275, 283 (1995). Accordingly, the Agency believes that a thirty (30)-day suspension is necessary to impress on Respondent the seriousness of his offense and to deter future misconduct. Thus, the Agency believes there is good cause to suspend Respondent for thirty (30) days.

PRAYER FOR RELIEF

Accordingly, for the reasons specified, the Agency requests that the Merit Systems Protection Board authorize the Social Security Administration to suspend Respondent, Algernon W. Tinsley, for thirty (30) days without pay from his position as an ALJ.

Respectfully submitted,

Date

Frank Cristaudo
Chief Administrative Law Judge
Office of Disability Adjudication and Review

AFFIDAVIT

STATE OF: West Virginia

COUNTY OF: Cabell

I, Charlie Paul Andrus, make the following statement freely and voluntarily to Maria Moran, who has identified herself to me as a Contract EEO Investigator for the Social Security Administration, investigating a complaint of discrimination filed by Algernon Tinsley, knowing that this statement may be used in evidence. I understand that this statement is not confidential and may be shown to the interested parties (those with a legal right to know). I hereby solemnly swear or affirm:

1. My name is Charlie Paul Andrus. I am the Hearing Office Chief

Administrative Law Judge for Huntington, West Virginia, a position I have held since August 1997. My first-line supervisor is Jasper Bede, Regional Chief Judge in Philadelphia, and my second-line supervisor is Frank Cristaudo. Judge Cristaudo was my first-line supervisor since I started in 1997, and he became my second-line supervisor when he became Chief Judge – I can't recall when. Judge Bede has been the Acting Regional Chief Judge or the Regional Chief Judge for the last two or three years.

2. I first met Judge Tinsley in person when he was in training in Dallas when

he became an ALJ, and that was four years ago, I believe in June or July. I had talked to him on the telephone about four weeks prior to that.

3. I was aware of Judge Tinsley's race before I first met him. I had done a

Google search of his name when I found out he was coming to Huntington, to try and find an alternative way to get hold of him, as when I called the number given to me by my regional office, I just kept getting voicemail. One of the articles I saw mentioned

Page ___ of ___

Initials _____

that he was African-American. This was just prior to the Dallas training. I first became aware of Judge Tinsley's approximate age shortly after he was hired because I had received his application information showing his date of birth.

4. I first worked with Judge Tinsley as soon as he became a judge. I still currently supervise him. When Judge Tinsley started, our relationship was cordial, as it is now, and on a professional basis. I have not associated with him socially other than to occasionally have lunch during a business day. I was mentoring him on some of the job duties for an ALJ along with other judges, and then, as now, he was a very pleasant, professional, personable person, and always has been with me.

5. I was one of his instructors in ALJ training, so I was working with him that one week of the training, as his instructor. After he got back here, my other duties made it difficult to do that full time, so I asked other judges to assist. I was still mentoring him in Huntington occasionally, however, and on occasion he would come to me with questions. I answer questions for all of the judges, but I stopped being his mentor under the formal mentoring program, to the best of my knowledge, about four or five months after he started. Of course, if any of the judges come talk to me, I am always willing to do that. I told him verbally that he could go to others. I know he went to Judge Chwalibog, Judge Dougherty, Judge Quinlivan, and Judge Kemper (now retired) with questions. They mentioned that they've talked to him and worked with him, but I wasn't there when they did it.

6. I don't know when Judge Tinsley first met Judge Bede. Judge Bede wasn't the Regional Chief when Judge Tinsley came on duty. I have no personal

knowledge of how they met. The only time that I recall that Judge Bede and Judge Tinsley were together was at a judicial conference. I believe that would also have been the first time they would have met. We had a conference in Baltimore, a little over a year ago if I'm not mistaken, for the judges in regions 1, 2 and 3. There were meetings involving various judges and he would have been involved. I have no real recollection of introducing them, but I'm sure I probably did. I can't remember if I pointed him out.

7. Regarding an incident at a conference when Judge Bede had to wake Judge Tinsley up. I have no first-hand knowledge, because Judge Tinsley was sitting behind me. The only information I have from that is from a conversation I had with Judge Bede. I was not aware personally of Judge Tinsley sleeping – if I had been, I would have woken him up myself. I cannot recall any other judges sleeping, but I'm not saying it didn't happen, I just don't recall seeing anyone else. Judge Bede told me that one of the personnel from the Chief Judge's office who was responsible for the meeting had come to him and told him that Judge Tinsley was asleep and about ready to fall out of a chair, and that he went and awakened him. I don't know if Judge Bede made physical contact with Judge Tinsley or not. I understand that Judge Bede woke him up. I don't know if Judge Tinsley objected – Judge Bede did not mention it. I had no communications with Judge Tinsley about it. I would have known if there had been any recrimination or writing up because I would have had to do it, and there was none.

8. It is correct that Judge Tinsley was charged with falsifying a serial time and attendance sheet. I was the person who first became aware of it, which was in May 2007. There were three occurrences, one in May and two others between May

and October. One of my management support assistants who was charged with preparing Judge Tinsley's travel voucher, Matt Day, came to me and indicated he could not prepare the voucher as Judge Tinsley had requested because of some inconsistencies that he saw. What brought his attention to it was that Judge Tinsley had been on an authorized hearing trip, and that he moved his hearings set for Wednesday to Tuesday and had no hearings on Wednesday, which abrogated any need for him to be in Prestonsburg on Wednesday. He was to be on preapproved sick leave on Thursday for a doctor's appointment and then was to return to Prestonsburg on Thursday evening to complete his hearings on Friday. When I looked at the time and attendance records he had submitted, it seemed strange, it just didn't match up with when we normally get our hearings done.

9. I conducted an investigation. The first thing I did was go into the electronic file and ascertain what time the hearings ended, and I also looked at the itinerary and case schedule and the notes made by the hearing reporter, which indicated that the Wednesday hearings were moved to Tuesday, and then I noted that the times didn't match what was on the sign-in sheet. The hearings ended early on Friday, yet Judge Tinsley said he was working until much later, and then claimed travel compensation time, said he left Prestonsburg at 5:30 p.m. on Friday. The hearing ended about 4 p.m.

10. I know that Judge Tinsley was not working in the work space at the Prestonsburg location at that time. Our hearing site has a security alarm to it. The guard does not have a code to activate or deactivate it, nor does he have a key. So he

leaves when the last SSA employee or contract hearing reporter leaves. His sign out sheet indicated that he left before 5:30. He would have stayed until 5:30 if someone had been in the building. I talked to the security officer and he related that his sign out logs indicated that everyone was out of the building about 4:30 p.m.

11. On the two subsequent occasions, he also left the building prior to the time he said he had left it on the time and attendance sheet. Prior to talking to the guard, I had my hearing office director, Mr. Hall, contact the alarm system to find out if I needed to talk to the security guard. I got either a paper printout or what Mr. Hall had written down, I don't remember which, but I remember that it indicated that Judge Tinsley had set the alarm and left earlier than he indicated on his sign out sheet. We had a printout for each of the occasions. The guard's log and the guard himself also verified the information, as in the first instance.

12. Under the contract we have with AALJ/IFPTE, we don't use security systems to prove time and attendance issues, but Huntington is small and Prestonsburg is smaller, and it was fairly apparent to me that if I talked to anyone about the comings and goings of a judge, it was going to be talked about quite a bit. If I had found that the times matched, I wouldn't have mentioned it to anyone and would have saved Judge Tinsley unnecessary embarrassment. So when I did find out that there might be a problem, the other thing to do was to go to the guard.

13. It was based on the guard's record that I made my recommendation to the regional office. I told them I could show them that he was not in the office at the time he said it was. Then Judge Tinsley said he would conduct hearings by videoconference

in, I think, June and July, and he went back down in person in August, and the other two instances occurred after that. At that time I recommended that we request a suspension.

14. I first spoke with Judge Tinsley about his actions in June 2007, right after the first incident. I believe it was after I spoke with the guard. If there was no problem shown I wouldn't have bothered talking to Judge Tinsley. He couldn't remember what he was doing but if he said he was there, he was there. I spoke with him after each time and asked him about the discrepancies. He said he didn't remember.

15. Regarding the argument that he was working in a hotel room or elsewhere at those times, his attorney did make comments to that effect when he was questioning me during the MSPB hearing, but the problem was that I have told all the judges that you don't inaccurately put down time on the time and attendance sheet, and we aren't allowed to claim credit hours for working in the hotel room to begin with. He wasn't at the hearing site when he said he was. By doing that, it's a felony. In addition, the times he falsified the time sheets were Friday afternoons, after he had checked out of the hotel. He never admitted doing it.

16. I told him that if you are going to claim credit hours for when you are working, you have to fill out a time and attendance sheet, and that the place where we earn credit hours is at the hearing site. I told him that before he started going to Prestonsburg, and I tell it to other judges. So far, he's been the only judge in twenty-three years that has ever claimed credit hours while in travel status. Credit hours are similar to compensation time, and are controlled by statute. Judges don't use a sign-in,

sign-out sheet, in travel status unless they are claiming credit hours. I don't recall if there were ever any issues with Judge Tinsley's time and attendance in Huntington or at any other location.

17. It is appropriate for me to make recommendations about penalties, as the Hearing Office Chief Judge. With Judge Tinsley, I sent the report of the first incident to the Regional Chief Judge without a specific recommendation as to what action should be taken. I believe I recommended that if the action is less than a suspension, i.e. a reprimand or counseling, it should be delivered in person by Chief Judge Cristaudo to give it additional weight because it is a very serious offense. Every time a record is falsified, it's a felony. I reported it each time. After the third time, I recommended suspension. I don't have access to what they've done in any similar situations, and I don't know what Judge Bede recommended. I was told that when the matter was filed with MSPB that Judge Cristaudo recommended thirty days. I remember it took a very long time, from the time I filed a report with the regional office until the thirty-day suspension was completed. The suspension ended in May 2009.

18. In the regional office, I sent information to Howard Goldberg, in Employee Relations, and to Judge Bede. I talked about it with Judge Bede at least three or four times that I recall. I don't recall exactly what the substance of those conversations was, exactly. We were talking about it one time after the second incident and I was getting the paper evidence and logs together, and we discussed that. One of the things I know we discussed was how long it was taking, just what information I had to get for them and, I believe, whom to send it to.

19. Since those three instances in 2007, I have not been watching Judge Tinsley's timesheets more closely because I have found no need to do so. Judge Tinsley has not submitted time sheets for the time he is in travel status and there has been no specific information given to me that there is a problem with his time and attendance in Huntington. Regarding whether others have been watching Judge Tinsley's timesheets; I have no knowledge.

20. Time and attendance issues have come up before with other judges, but not involving travel status. It came up with Judge Dougherty in Huntington several years ago, before 2001. I conducted an investigation in a comparable way to the investigation I conducted with regard to Judge Tinsley, except that I didn't have to contact the alarm service because it was before we had an alarm system. I personally observed it. Judge Dougherty did not refute it, he admitted it. I forwarded it to Judge Cristaudo, who was then the Regional Chief Judge, and from our conversations, I understand he sent it to Judge Boyer, then the National Chief Judge. I did not recommend a penalty as I was asked to just submit a report. Nothing happened after that, to my knowledge. I have no idea if there was any recrimination. It has not come up since. Allegations have been made about Judge Dougherty, but when I go to check the time and attendance records, there is no evidence of abuse.

21. I don't agree that security devices have been used to monitor Judge Tinsley's time and attendance records in violation of the contract with AALJ/IFPTE. I knew that printouts from the alarm system were security devices, which is why I didn't use them; I used the guard's log. . I know exactly what was intended in the contract, I

wrote that article, and I knew I wasn't going to be able to use security device information. However, if I did not have to even inquire about the time he left the Prestonsburg site, I could avoid embarrassment to a judge. I used the security device information to see if I had to investigate. I had the information from the disparity between when his hearings last ended and when he said he left. My choices were to go to the guard immediately, or to make sure that I needed to go to the guard, and I thought it would be better not to embarrass somebody, because if I found out that he had indeed not left until 5:30, no further action would be needed, and I'd be the only one that knew about the allegations. I testified to this effect at the hearing, and the ALJ at MSBP found I did not violate the contract by doing this.

22. Regarding the third issue in Judge Tinsley's claim, I can't understand exactly what he is alleging. Judge Tinsley never came to me about this, never complained. I was first aware of this allegation in the EEO notice. There are paralegal advisors and attorney advisors who write up decisions according to a judge's instructions, who go to judges to talk to them if they find a problem. If they find that they cannot write the decision given the instructions they have, we (management) tell them, that they should go to the judge and ask for clarification. I assume they have done that with Judge Tinsley as they have done that with me. That's the only thing I can think of that could even come close to what he's talking about. Sometimes a writer will come to me and say that they have problems with a piece of evidence which seems to show something contrary to my instructions. Sometimes I say, yes, change it. Other times I say, yes, I saw that, but this is why I decided the case the way I did, and

write it up that way. I don't know if they've done that to Judge Tinsley. For my cases, if I'm not available, my instructions for my cases are that if they can't write a decision, if they find something totally insurmountable, to take it to the acting chief judge, or write it the best they can and attach a note that my instructions were not followed and why.

23. Judges are told in training and in mentoring that the writers may come to them and ask for clarification and come in and talk to them, and if they choose to, they should encourage that. They are told that this would make them more effective at this job. We also tell the judges and the writers that the judge has the ultimate decision in the case. If the Judge and the writer disagree, the judge should tell the writer to go ahead and write it the way it was instructed. I would think it would be tactless for an employee to come to the judge and say that the decision is wrong and the outcome must be different. I haven't had anyone come to me and say, "you're wrong." Some have come and brought my attention to an exhibit, how and ask how they should handle it.

24. There may have been times where I said a decision was not within my authority, although I can't recall any specific instances, but I do not remember ever saying something was "above my pay grade." There are some things that judges want that I cannot authorize, such as the use of hand-held metal detectors before they were authorized. Regarding the issue about Judge Tinsley's time and attendance records, the ultimate decision as to what action to take was beyond my authority, and I may well have told him that, and that I had forwarded the matter to the Regional Chief Judge.

25. Judge Tinsley never told me that he felt he was being treated disparately

because of his race or because of his age. Regarding whether I personally treated Judge Tinsley differently because of his race or age: absolutely not. I also have no reason to believe that Judge Tinsley has received disparate treatment in the office.

26. I have not personally harassed Judge Tinsley, nor have I heard of any incidents from anyone else doing so. In no way would I characterize Judge Tinsley's work environment as hostile. I would imagine that when he found that charges had been filed to suspend him that he was not terribly happy about it, but we did not try and make him feel bad, we just enforced the regulations regarding time and attendance. Throughout this whole process, he has been the same personable, enjoyable professional man that he has always been.

27. If a judge believes they are being harassed or are experiencing a hostile work environment, they should come to me. If they feel that I'm the cause, they should go to Judge Bede.

28. Regarding whether Judge Tinsley is being treated differently because there are very few black employees: I don't feel he's being treated differently, and it certainly not because he's African-American. I haven't treated him differently than any of the other judges, and to my knowledge, none of the staff, including other judges, have treated him differently. There is currently only one other African-American employee as two other African-American employees left for either a promotion or a hardship transfer. We did hire the only African-American applicant for our case technician position.

29. Regarding whether I ever called Judge Tinsley by the name of another

African-American employee, the only other black male employee while Judge Tinsley was here was Arthur Weathersby, who was a group supervisor. He went by "Arthur," and Judge Tinsley goes by "Al." I can't recall ever calling Judge Tinsley by the incorrect name. It certainly wasn't intentional, if it happened.

30. I know of no insensitivity towards minorities in the office. Since I became Hearing Office Chief Judge in 1997, there have been no requests by black employees requesting transfers out of the Huntington office because of disparate treatment based on their race. Mr. Weathersby accepted a position as a District Office Manager in New Jersey, a promotion. The other African-American employee, Ms. [REDACTED] requested a hardship transfer to our [REDACTED] hearing office to be closer to her son who plays basketball at the [REDACTED]. Regarding whether the Huntington office did not, at one time, have any posters up about how to file an EEO complaint, I really don't know. I don't know if there are right now as I expect Mr. Hall to insure that we are in compliance with all posting requirements.

31. I would suggest Howard Goldberg, Judge Bede and Judge Cristaudo as witnesses, but it's correct that they got all of their information from me. I discussed that there were some charges pending with my hearing office director, Mr. Hall, because he needed to know. I have spoken with the other managers when Mr. Hall wasn't here as they had to perform his duties. I have spoken with the guard. There were two government attorneys from the Office of the General Counsel who represented the government. I have no idea, however, whether they would have any first-hand knowledge about these matters.

32. I would like to add that I am very sensitive to make sure that all of our employees are treated equally without regard to race. If I had heard any comments from any of my staff or judges that could be considered any kind of racial slur or anything of that nature, I would have put a stop to it immediately.

I have read this statement, consisting of ___ pages, and it is true, complete, and correct to the best of my knowledge and belief.

Signature

Date

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

ALGERNON W. TINSLEY,

Plaintiff,

v.

CIVIL ACTION NO. 3:09-0600

MICHAEL J. ASTRUE, Commissioner
Social Security Administration,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending before the Court is Defendant Michael J. Astrue's Motion for Summary Judgment and his Motion to Dismiss Plaintiff's Whistleblower Claim for Lack of Subject Matter Jurisdiction. [Doc. Nos. 37 and 47]. Also pending is Defendant's First Motion in Limine [doc. no. 50], Defendant's Motion to Strike Jury Trial [doc. no. 51], and Plaintiff's Motion to Allow Briefing of Race Discrimination Issues [doc. no. 59]. On November 29, 2010, the Court held a Pretrial Conference and entertained arguments on the motions.¹ For the following reasons, the Court **GRANTS** Defendant's Motion for Summary Judgment on Plaintiff's race and age discrimination claims, **DENIES** Defendant's Motion to Dismiss Plaintiff's Whistleblower Claim, and **DENIES** the Motion in Limine, Motion to Strike Jury Trial, and Motion to Allow Briefing.

¹Plaintiff's Motion to Allow Briefing of Race Discrimination Issues was filed after the hearing.

**I.
FACTUAL AND PROCEDURAL HISTORY**

Plaintiff Algernon W. Tinsley is an African American male who was employed by the Social Security Administration, Office of Disability Adjudication and Review, in Huntington, West Virginia, as an Administrative Law Judge (“ALJ”). On or about March of 2008, Plaintiff received a thirty-day suspension from his employment for making false entries on the Agency’s “Serial Time and Attendance Rosters” (SSA Form 30), on four separate occasions. Plaintiff challenged the suspension before the Merit Systems Protection Board (MSPB), alleging, inter alia, that he was being discriminated against on the basis of age and race. He also raised an affirmative defense under the Whistleblower Protection Act.

On August 26, 2008, a hearing was held before MSPB ALJ William N. Cates. At the hearing, Charlie Paul Andrus, the Hearing Office Chief ALJ for the Huntington office and Plaintiff’s first-line supervisor, testified. Amongst his duties, ALJ Andrus stated he is in charge of keeping track of the other ALJ’s time and attendance. ALJ Andrus explained that, if an ALJ chooses to work hours different than 8:00 a.m. to 4:30 p.m., they must sign in and out on a SSA Form 30. He further explained that the ALJs in the Huntington office each hear cases one week per month in Prestonsburg, Kentucky. When they travel to Prestonsburg, they are considered to be in travel status so they do not normally complete an SSA Form 30.

ALJ Andrus testified that the problems for Plaintiff began in May of 2007 when there was an issue with a travel voucher he submitted after hearing cases in Prestonsburg. In checking into the voucher, ALJ Andrus discovered that on May 18, 2007, Plaintiff signed out of the building

at 5:30 p.m. and claimed two hours of travel compensation to return to Huntington. ALJ Andrus said that he had information Plaintiff actually left the building around 4 or 4:30, which would have allowed him time to get back to Huntington without claiming travel compensation. In addition, ALJ Andrus stated that the building's alarm system had been armed before Plaintiff signed out. ALJ Andrus explained the alarm system is set after everyone has left the building. ALJ Andrus said he spoke to Plaintiff about the incident and Plaintiff told him he could not remember exact times, but if he said he was at the office working that is what he was doing. Thereafter, Plaintiff agreed to stay in Huntington and do hearings via teleconferencing.

Plaintiff held hearings by teleconferencing until August, when he returned to Prestonsburg for four days. Given the problems with the May time sheet, ALJ Andrus decided to investigate Plaintiff's August time sheet by again comparing his times to those of the alarm service. After learning there was a discrepancy with when the alarm was set and Plaintiff's sign out time, ALJ Andrus checked the guards' checkout sheet to see what time they left the building. ALJ Andrus stated that guards cannot leave the building if members of the public are present. However, if only employees or contractors are in the building, guards may leave at 5:30. If the last employee or contractor leaves before 5:30, then the guards leave at the same time because they do not have a key to lock the building or the code to set the alarm system. ALJ Andrus stated that Plaintiff's time sheet stated he checked out at 5:30, but the guards signed out earlier and Plaintiff did not say that he traveled back to Huntington until 6:00.²

²It appears in the testimony of Ray Burton, a security guard at the building, that the security guard on duty on August 24 left the building at 4:00 p.m.

Plaintiff returned to Prestonsburg in September and October. ALJ Andrus found no problems with his September records, but he did find a discrepancy with his October time sheets between the time Plaintiff said he left and the time the office closed. Given the problems with Plaintiff's records, he received a thirty-day suspension from his job.

During cross-examination, ALJ Andrus stated that it is the Agency's policy that a judge working at a remote site may work on cases in a hotel room, but they cannot claim credit hours for time spent outside the building where the hearings are held. When pressed on the issue, ALJ Andrus further stated he did not know if the policy was written down anywhere and he had no knowledge of the policy ever being disseminated in writing to the ALJs. He did say, however, that he orally advised Plaintiff he must be at the hearing building to earn credit hours.

When questioned as to whether ALJ Andrus was aware of discrepancies in the time sheets of any other ALJs, he said he found problems with three or four time sheets of ALJ David B. Daugherty, a white male. ALJ Andrus stated he conducted an investigation, and he sent a report to the Chief ALJ Frank Cristaudo. ALJ Andrus testified he handled ALJ Daugherty's case the same way he handled Plaintiff's case, but he stated ALJ Daugherty received no formal disciplinary action. ALJ Andrus stated he was unaware of any ALJs younger than Plaintiff who engaged in similar misconduct and was not punished for it.

Chief ALJ Cristaudo also testified at the hearing. He said that he believed the thirty-day suspension was appropriate in Plaintiff's case because he was told a number of times about the

rules, yet he ignored the policy. In addition, he held a position which encompassed expectations of honesty and integrity, and his actions failed to meet those standards. He also said that Plaintiff was one of the least productive judges in the nation. He asserted Plaintiff's race and age played no role in his decision. In fact, he testified he was not even sure how old Plaintiff was. In addition, Chief ALJ Cristaudo testified that he was unaware Plaintiff made certain disclosures to the Office of the Inspector General against the Agency. Chief ALJ Cristaudo further related that, when he worked as a Regional Chief ALJ he knew about attendance violations by Judge Daugherty, but he had no authority at the time to discipline Judge Daugherty. He did forward the information to his superiors, but he did not believe his superiors suspended Daugherty. Chief ALJ Cristaudo stated it was not until about two years ago that he was given the authority to discipline ALJs.

After considering the testimony and the arguments of the parties, ALJ Cates upheld Plaintiff's suspension on October 21, 2008. In his decision, ALJ Cates noted that Chief ALJ Cristaudo denied treating Plaintiff any differently on the account of his race or age. Chief ALJ Cristaudo specifically stated he had proposed discipline against non-African American judges and against judges younger than what he thought Plaintiff was. He further said he would have issued a disciplinary action against ALJ Daugherty if he had the authority to do so at the time. Moreover, ALJ Andrus had treated Plaintiff and ALJ Daugherty exactly the same, by conducting an investigation and making reports to his superior. ALJ Andrus further asserted he did not know of any judge younger than Plaintiff who engaged in similar conduct who was not disciplined based upon that individual's age.

With respect to Plaintiff's affirmative defense that he was disciplined in violation of the Whistleblower Protection Act, ALJ Andrus testified he had no knowledge or indication that Plaintiff had spoken to the Office of the Inspector General until he was prepared for his deposition. Likewise, Chief ALJ Cristaudo had no recollection of Plaintiff making a report to the Inspector General. Therefore, ALJ Cates found no evidence to support Plaintiff's claim. Accordingly, as ALJ Cates found the uncontested evidence established Plaintiff had falsified his time on the SSA 30 Form³ and there was no evidence of discrimination or a violation of the Whistleblower Protection Act, ALJ Cates found Plaintiff was suspended for good cause and his suspension was appropriate.

Plaintiff appealed the decision, but it was affirmed by the MSPB on February 20, 2009. Plaintiff then appealed the decision to the Equal Employment Opportunity Commission, Office of Federal Operations ("EEOC, OFO"). On April 29, 2009, the OFO affirmed the decision. Therefore, on June 2, 2009, Plaintiff, acting pro se, filed a Complaint in this Court, alleging he was unlawfully discriminated against in his employment because of race, age, and retaliation for disclosure of fraud and conspiracy. Nearly a year later, Plaintiff retained counsel.

II. DISCUSSION

"The ultimate question in every employment discrimination case involving a claim of disparate treatment is whether the plaintiff was the victim of intentional discrimination." *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 153 (2000). Title VII declares that "[i]t shall be

³ALJ Cates specifically found that the Agency had met its burden of proof that Plaintiff made false entries on May 18, August 24, and October 18, 2007. He found the Agency had not met its burden with respect to May 16, 2007.

an unlawful employment practice for an employer . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race" 42 U.S.C. § 2000e-2 (a)(1) (2006). Under Title VII, a plaintiff can survive a summary judgment motion by offering direct or circumstantial evidence raising a genuine issue of material fact that race motivated an adverse employment decision or, in the alternative, an employee may proceed under the *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), framework. *Hill v. Lockheed Martin Logistics Mgmt., Inc.*, 354 F.3d 277, 284-85 (4th Cir. 2004).

Under the *McDonnell Douglas* framework, the employee first must establish a prima facie case of racial discrimination. *McDonnell Douglas*, 411 U.S. at 802. Depending upon the facts presented, the elements of a prima facie case will differ. *Id.* at 802, n.13. In situations like this case, where Plaintiff has alleged disparate discipline based upon race, he must prove that: (1) "he is a member of the class protected by Title VII" or the Age Discrimination in Employment Act (ADEA); (2) "the prohibited conduct in which he engaged was comparable in seriousness to misconduct of employees outside the protected class;" and (3) "the disciplinary measures enforced against him were more severe than those enforced against those other employees." *Cook v. CSX Transp. Corp.*, 988 F.2d 507, 511 (4th Cir.1993) (citation omitted). If the plaintiff establishes a prima facie case, the burden then shifts to the employer to demonstrate a legitimate, non-discriminatory reason for the disciplinary action. *McDonnell Douglas*, 411 U.S. at 802. The plaintiff then "must demonstrate[] that the employer's proffered permissible reason for taking an adverse employment action is actually a pretext for discrimination." *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 318 (4th

Cir. 2005) (internal quotation marks and brackets omitted). It is well established that, even under the *McDonnell Douglas* burden-shifting scheme, the ultimate burden of persuasion remains on the plaintiff at all times. *Texas Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 253 (1981) (citations omitted).

In its motion for summary judgment, Defendant argues that Plaintiff cannot show that his race played a role in the decision-making process or influenced the outcome. Specifically, the only employee Plaintiff points to as receiving more favorable treatment than him for committing similar misconduct is ALJ Daughtery, a white male who is approximately 73 years old. However, as discussed at the Pretrial Conference, ALJ Daughtery is not a “similarly situated” employee for comparison purposes because the decision maker involved in ALJ Daughtery’s case is not the same decision maker who disciplined Plaintiff in this case.

It is not refuted that at the time ALJ Daughtery was found to have committed similar infractions, Chief ALJ Cristaudo had no authority to suspend him as that authority was vested with someone else. Instead, Chief ALJ Cristaudo did the only thing he had the authority to do and that was forward the reports to his superiors. Chief ALJ Cristaudo specifically stated that, if he would have had the authority to discipline ALJs at the time, he would have disciplined ALJ Daughtery based on the information he was given. On the other hand, at the time Plaintiff was found to have made false entries on his time sheets, there had been a restructuring of the Agency, and Chief ALJ Cristaudo was given authority to discipline ALJs. Thus, it is clear there were different decision makers involved in determining whether Plaintiff and ALJ Daughtery should be disciplined, and

Plaintiff cannot rely upon ALJ Daughtery as a comparable employee. *See Forrest v. Transit Mgmt. of Charlotte, Inc.*, 245 Fed. Appx. 255, 257 (4th Cir. 2007) (per curiam) (citing *Plair v. E.J. Brach & Sons, Inc.*, 105 F.3d 343, 350 n.3 (7th Cir. 1997); *Shumway v. United Parcel Serv., Inc.*, 118 F.3d 60, 64 (2d Cir. 1997)) (stating “[i]f different decision-makers are involved, employees are generally not similarly situated”); *Heyward v. Monroe*, 166 F.3d 332 (4th Cir. 1998) (per curiam) (same).

At the Pretrial Conference, Plaintiff raised for the very first time that another ALJ would testify that ALJ Daugherty continued to violate the time and attendance policy during the same time period as Plaintiff was found to have violated the policy. However, Plaintiff neither deposed the other ALJ nor obtained an affidavit from him. Likewise, Plaintiff made no mention of this proffered testimony in the Pretrial Order or in his Response to Defendant’s Motion for Summary Judgment. Plaintiff orally moved the Court at the Pretrial Conference to allow him to obtain and submit an affidavit from the other ALJ, but the Court denied the motion as it would require reopening discovery on the eve of trial. Plaintiff now has filed a written motion to allow further briefing on the issue by asserting that his own deposition testimony indicates ALJ Daughtery was committing infractions during the time period Chief ALJ Cristaudo had the authority to discipline him.

The Court has reviewed the pages of Plaintiff’s deposition he references in his motion and finds they do not support his position. The pages referenced involve Plaintiff’s meeting with employees of the Office of the Inspector General. At the meeting, Plaintiff states he raised concerns about the time and attendance of ALJ Daughtery. However, he does not give a time frame of when

those infractions allegedly occurred. Additionally, there is no evidence that his supervisors were made aware of his allegations that ALJ Daughtery was violating the time and attendance policy. In fact, Plaintiff's own testimony is that he did not know if that information was ever reported to ALJ Andrus or anyone else in his office. Thus, the deposition pages cited by Plaintiff are entirely insufficient to demonstrate that there were ongoing violations or that Plaintiff's supervisor knew of any ongoing violations. Plaintiff simply has no evidence to show ALJ Daughtery is a comparable employee. Moreover, as the Court made clear at the Pretrial Conference, it will not allow Plaintiff to raise an entirely new allegation on the eve of trial which will require reopening discovery.

Accordingly, as Plaintiff cannot show any other ALJ, who is a comparable employee, was treated differently than himself, his claim of race discrimination fails because he has no evidence to meet his burden of proof on an essential element of his case.⁴ *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986) (stating "the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial"); *Fed. R. Civ. P. 56(c)*. Therefore, the Court **GRANTS** Defendant's motion with respect to his race discrimination claim and **DENIES** Plaintiff's Motion to Allow Briefing on Race Discrimination Issues.

⁴Plaintiff contends that Article 6(a) of the Labor Agreement prohibits disciplining a judge for time and attendance violations based upon information gathered from a security device. Although Plaintiff argues ALJ Andrus' check of when the alarm system set was illegal and demonstrates pretext in the Agency's actions, the Court does not even reach this evidence because Plaintiff failed established a prima facie case.

Turning next to Plaintiff's age discrimination claim⁵ under the *McDonnell Douglas* framework,⁶ the Court finds Plaintiff has no evidence that anyone outside the protected class was treated any differently than he was. In fact, the only person Plaintiff points to is ALJ Daughtery who is approximately 73 years old and actually older than Plaintiff. As Plaintiff cannot show anyone outside the protected class was treated differently or more favorably than he was, the Court **GRANTS** Defendant's motion on Plaintiff's age discrimination claim and **DENIES as moot** Defendant's Motion to Strike Jury Trial on the ADEA claim. The Court also **DENIES as moot** Defendant's First Motion in Limine to prohibit Plaintiff from introducing any evidence of his nondiscrimination claims during a trial on his race and age claims.

With regard to Plaintiff's claim for a violation of the Whistleblower Protection Act, the Court **DENIES** Defendant's Motion to Dismiss this Claim for Lack of Subject Matter Jurisdiction. As explained at the Pretrial Conference, the Court finds Plaintiff did not abandon his claim merely because he "may have made an obvious error"⁷ in another MSPB case in which he denied he raised the issue as an affirmative defense in this case. As Plaintiff raised the issue below,

⁵Under the ADEA it is illegal for an employer to discriminate against an employee due to the employee's age. 29 U.S.C. § 623(a) (2006).

⁶*See Reeves*, 530 U.S. at 142 (assuming that the McDonnell Douglas burden-shifting framework applies to ADEA claims); *Mereish v. Walker*, 359 F.3d 330, 334 (4th Cir.2004) (applying *McDonnell Douglas* framework to ADEA claims). In *Gross v. FBL Financial Services, Inc.*, 129 S. Ct. 2343 (2009), the United States Supreme Court recently stated that "[t]o establish a disparate-treatment claim under the plain language of the ADEA, . . . a plaintiff must prove that age was the 'but-for' cause of the employer's adverse decision." 129 S. Ct. at 2350. *Gross* also expressly left open the question of "whether the evidentiary framework of [*McDonnell Douglas*], utilized in Title VII cases[,] is appropriate in the ADEA context." *Id.* at 2349, n.2.

⁷*Plaintiff's Response to Defendant's Motion to Dismiss Whistleblower Claim*, at 2.

exhausted his administrative remedies, and raised the issue in the Complaint filed in this Court, the Court will allow the claim to proceed. In that regard, the parties agreed at the Pretrial Conference that, as this action was brought as a “mixed case,”⁸ the Court’s review must be based upon the administrative record and the standards set forth in 5 U.S.C. § 7703(c).⁹ Accordingly, the Court **DIRECTS** the parties to meet and confer to discuss preparing the administrative record to be

⁸“A federal employee who asserts both discrimination in violation of Title VII and an ‘adverse employment action’ asserts a ‘mixed case’” *Pueschel v. Peters*, 577 F.3d 558, 563(4th Cir. 2009) (citations omitted). “Congress explicitly gave the district courts exclusive jurisdiction over mixed cases.” *Afifi v. U.S. Dept. of the Interior*, 924 F.2d 61, 63 (4th Cir. 1991).

⁹Section 7703(c) provides:

(c) In any case filed in the United States Court of Appeals for the Federal Circuit, the court shall review the record and hold unlawful and set aside any agency action, findings, or conclusions found to be--

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (2) obtained without procedures required by law, rule, or regulation having been followed; or
- (3) unsupported by substantial evidence;

except that in the case of discrimination brought under any section referred to in subsection (b)(2) of this section, the employee or applicant shall have the right to have the facts subject to trial de novo by the reviewing court.

5 U.S.C. § 7703(c).

submitted to the Court and a briefing schedule. The Court **ORDERS** the parties to submit their plan to the Court on or before **December 20, 2010**.

III. CONCLUSION

Accordingly, for the foregoing reasons, the Court **GRANTS** Defendant's Motion for Summary Judgment on Plaintiff's race and age discrimination claims [doc. no. 37], **DENIES** Defendant's Motion to Dismiss Whistleblower Claim for Lack of Subject Matter Jurisdiction [doc. no. 47], **DENIES as moot** Defendant's First Motion in Limine [doc. no. 50], **DENIES as moot** Defendant's Motion to Strike Jury Trial [doc. no. 51], and **DENIES** Plaintiff's Motion to Allow Briefing of Race Discrimination Issues [doc. no. 59]. The Court also **ORDERS** the parties to submit their plan regarding the filing of the administrative record and the briefing schedule on the Whistleblower claim to the Court on or before **December 20, 2010**. The Court further **CANCELS** the Final Settlement Conference currently set on December 13, 2010, and the trial set on December 14, 2010.¹⁰

¹⁰At the Pretrial Conference, the parties also discussed a contract claim. As that claim was not made in the Complaint, the Court will not allow Plaintiff to pursue it.

The Court **DIRECTS** the Clerk to send a copy of this written Opinion and Order to counsel of record and any unrepresented parties.

ENTER: December 7, 2010

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', written over a horizontal line.

ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE

Message0031

Subject: FW: Wall Street Journal questions for Chief Judge Charlie Andrus -
Huntington

From: Andrus, Charlie Paul

Date: 5/6/2011 10:11:00 AM

To: Bede, Jasper J.

Message Body

Judge Bede,

Here are the answers to the questions as requested. If anyone has any questions, please call me and I will be happy to provide more information.

Judge Andrus

From: Paletta, Damian [mailto:Damian.Paletta@wsj.com]

Sent: Thursday, May 05, 2011 11:47 AM

To: ^Press Office

Subject: Wall Street Journal questions for Chief Judge Charlie Andrus - Huntington

Hi Mark, Please forward this to Chief Judge Charlie Andrus, Huntington, WV. Thank you.

May 5, 2011

Dear Chief Judge Charlie P. Andrus,

My name is Damian Paletta and I'm a reporter with the Wall Street Journal in Washington DC. I am working on a story about Social Security disability programs and administrative law judges. One element of my reporting involves the work performed in the Huntington, W. Va., office where you are chief judge.

Homeland Security & Governmental Affairs
Committee

EXHIBIT #70

I have tried to set up an interview with you, without success, and wanted to offer you the fullest opportunity to have input into my reporting effort. Below, please find a list of questions.

In addition, we would of course welcome any other comments you would like to make.

Best regards,

Damian Paletta

The Wall Street Journal

[REDACTED] office

[REDACTED] cell

damian.paletta@wsj.com

1. You became chief judge of the Huntington office in 1997 after serving as an ALJ for 11 years. You have been Judge Daugherty's supervisor since 1997. Are these facts correct? If not, please set me straight.

Your information is correct.

2. Since 2006, staff and judges have complained to you about Judge Daugherty processing an unusually large number of cases brought forward by Attorney Eric C. Conn. They believe the situation showed favoritism, especially since some of the cases were taken out of rotation. Do you think these complaints had merit? Have you queried Judge Daugherty about the Conn cases he has decided?

· In order to decide cases fairly and as soon as possible I have offered all the judges in the office the opportunity to review unassigned cases to see if the evidence warranted an on-the-record decision. This was especially the case if new evidence was received in the office. Judge Daugherty did this.

· Mr. Conn has a large percentage of our cases in the Prestonsburg Kentucky service area.

· I directed Mr. Conn's cases to be assigned to the judges in strict rotation as soon as they arrived in the office; as he had so many cases that it was hard to schedule, and to insure that each judge had an equal amount of this workload.

· I was informed on one occasion that a staff member had not assigned these cases as soon as they came into the office and Judge Daugherty had decided them as they were not assigned. I had the

supervisor take corrective action to insure that the cases were assigned as soon as they arrived.

- I was informed some months later that Judge Daugherty had changed judicial assignments. I spoke with him and reminded him of the office policy that Eric Conn cases are not to be reassigned to another judge on a routine basis. He agreed.

- About one year later I was informed that this had happened again. I went to Judge Daugherty and he related that he did not know it was assigned to another judge as he did not know where to look in our computer system for the information. I asked him to go through a supervisor when any cases were to be reassigned to him.

- About a year later I was informed that this had happened once again. At that time, on April 29, 2011, I issued a written directive that no case was to be reassigned between judges by anyone unless I gave specific permission.

3. Staff and judges say you and Greg Hall, the director of the hearing office, retaliated against them when they raised concerns about Judge Daugherty. What is your version of events?

- I cannot answer the first part of the question as it is far too vague and does not give specific allegations.

- I have received complaints through the years concerning judges, staff and supervisors. I have investigated to determine if the allegations are supported, and if so I have taken corrective action in accordance with our collective bargaining agreements, and government regulations. In cases where I did not feel I had the authority to act, I forwarded the matter to those who did.

- Mr Hall and I have never retaliated against anyone for raising concerns, nor would we in the future.

4. Last year, Judge Daugherty approved 99.7% of cases he saw. He awarded benefits in 729 of the 729 cases he heard from Sept. 25, 2010 through March 25, 2011, according to data on ssa.gov. The other judges in your office have lower rates. Why do you think Mr. Daugherty's rate is relatively high? Have you ever asked him about these figures?

- I do not know why the rate is high, nor would I as a manager question a judge about how he or she may decide a case. Under the Administrative Procedure Act a judge has independence in how to decides a case.

5. The Huntington office has goals it strives to meet each month for the number of cases it processes. Our reporting shows that once the quote is met it is common practice to hold approved cases over until the next month, to count towards the following month's goal. As a result, approved applicants must wait to get their benefits and attorneys representing those clients can collect more in back pay. Several judges believe this is unfair. Have you authorized this approach in Huntington and, if so, why?

- This office usually exceeds the goals by a large margin. We do not stop because we have met a certain number.

- We also try our best to use a FIFO system, that is, First In, First Out. This allows us to get the older cases processed first which gets the claimant's their decision in a more timely manner.

· We cannot close a case until it is signed by the judge. If we have cases in mail status we will do our best to get it out that day, sometimes this cannot be done. Our labor agreements with all three unions do provide for flexible work schedules such as 4/10, 5/4/9, flexi-place, and the ability to start as early as 6:30 a.m., leaving by 3:00p.m. The result can be that we have limited staff the late afternoon of the last day of the week, and especially the last day of the reporting period. If a Judge signs a case late in the day, it may not be closed until the following Monday.

· We also try to manage our caseload. While we appreciate the efforts of Commissioner Astrue to get funding to give us a full staff, it is still a finite amount of staff resources. We try to close our cases evenly throughout the month as other components of the agency have to work on the cases after we are done, and if we closed a large number of cases at the end of the month it would make their work much more difficult and less efficient.

· As Judge Daugherty's cases, for example, are significantly younger, if we were to push his cases through the system we would not have the staff resources to close older cases decided by other judges causing those claimants to wait even longer. Any delay this may cause in Judge Daugherty's cases is a matter of days.

· Judges sometimes ask the management team, or check the computer tracking system, to see where we stand on meeting the goal throughout the month. If they see that we have enough cases to exceed the goal they may well work to get cases ready for hearings, or get them ready to close the next week. However, if a judge asks us to close a case by signing it, management will do our best to get the case closed the same day; if this is not possible we will close it the next business day.

6. Do the bonuses you receive each year depend on the ability of the office to hit these monthly targets?

· I am an Administrative Law Judge. I do not get bonuses.

7. Social Security Administration Commissioner Michael Astrue said in an interview there are some judges he called "outliers," which approve high numbers of cases. He said SSA had little control over those judges because they were protected by judicial independence. Do you view Mr. Daugherty's approval rate as high and what is your explanation for that?

· I agree with the Commissioner that judges are protected by judicial independence and as a supervisor I don't ask judges why they decide cases the way they do. I believe the numbers speak for themselves.

8. How and when did you meet attorney Eric C. Conn? What is the nature of your relationship with him?

· I met Mr. Conn several years ago, I am not sure when, as he began to represent claimants in my hearings.

9. Have you ever accepted gifts, dinners, money, or anything from Mr. Conn or his associates?

· NO

10. Several people have said that on numerous occasions Mr. Daugherty has taken Eric Conn cases assigned to other judges and reassigned them to Mr. Daugherty himself. Are you aware of this practice? If so, when were you notified? Have you asked Mr. Daugherty to desist? If so, how many times?

· I have covered this information in my answer to question 2.

11. The SSA inspector general's office has opened an investigation into Mr. Daugherty's high approval rate and is looking at any potential relationship between him and Mr. Conn. What is your view of this investigation and what is your understanding of their mutual dealings?

· I cannot confirm or deny the existence of any IG investigation, nor would I ever express an opinion about any investigation other than to direct the staff to answer any questions truthfully and to cooperate fully with any investigation.

· I have no knowledge of any dealings between Mr. Conn and Judge Daugherty

Outlook Header Information

Conversation Topic: Wall Street Journal questions for Chief Judge Charlie Andrus - Huntington
Subject: FW: Wall Street Journal questions for Chief Judge Charlie Andrus - Huntington
From: Andrus, Charlie Paul
Sender Name: Andrus, Charlie Paul
To: Bede, Jasper J.
Delivery Time: 5/6/2011 10:11:00 AM
Creation Time: 5/6/2011 10:11:20 AM
Modification Time: 5/6/2011 10:11:25 AM
Submit Time: 5/6/2011 10:11:20 AM
Importance: Normal
Priority: Normal
Sensitivity: Normal
Flags: 1 = Read
Size: 43364

Atty
Abbey Uovere

INCOMING CALL LOG

Dave | Jamies

DATE 2011	LINE	CALL NO.	CALL FROM	DISPOSITION	ACTION COMPLETED
5/6	5	121	[REDACTED]	[REDACTED]	[REDACTED]
	2	122	[REDACTED]	[REDACTED]	[REDACTED]
	2	123	[REDACTED]	[REDACTED]	[REDACTED]
	4	124	[REDACTED]	[REDACTED]	[REDACTED]
	5	125	[REDACTED]	[REDACTED]	[REDACTED]
	8	126	[REDACTED]	[REDACTED]	(USA)
	2	127	[REDACTED]	[REDACTED]	[REDACTED]
	4	128	[REDACTED]	[REDACTED]	[REDACTED]
	6	129	Judge Andrus	Eric Klave H.	[REDACTED]
	2	130	[REDACTED]	[REDACTED]	[REDACTED]
	2	131	[REDACTED]	[REDACTED]	[REDACTED]
	4	132	[REDACTED]	[REDACTED]	[REDACTED]
	5	133	[REDACTED]	[REDACTED]	[REDACTED]
	8	134	[REDACTED]	[REDACTED]	[REDACTED]
	2	135	[REDACTED]	[REDACTED]	[REDACTED]
	4	136	[REDACTED]	[REDACTED]	[REDACTED]
	5	137	[REDACTED]	[REDACTED]	[REDACTED]
	2	138	[REDACTED]	[REDACTED]	[REDACTED]
	2	139	[REDACTED]	[REDACTED]	[REDACTED]
	4	140	[REDACTED]	[REDACTED]	[REDACTED]
	4	141	[REDACTED]	[REDACTED]	[REDACTED]
	5	142	[REDACTED]	[REDACTED]	[REDACTED]
	8	143	[REDACTED]	[REDACTED]	[REDACTED]
	1	144	[REDACTED]	[REDACTED]	[REDACTED]
	4	145	[REDACTED]	[REDACTED]	[REDACTED]
	5	146	[REDACTED]	[REDACTED]	[REDACTED]
	2	147	[REDACTED]	[REDACTED]	[REDACTED]
	5	148	[REDACTED]	[REDACTED]	[REDACTED]
	4	149	[REDACTED]	[REDACTED]	[REDACTED]
	7	150	[REDACTED]	[REDACTED]	[REDACTED]

To: Mark Lassiter, National Press Office

The following are my answers to the questions posed by Mr. Damian Paletta of the Wall Street Journal:

1. Yes
2. Every decision I make is fully supported by relevant medical reports and physical and/or mental residual functional capacity assessments from treating or examining doctors or other medical professionals. And in all of my hearings, there is also competent testimony of a vocational expert.
3. The agency has, for years, ask the ALJs to review assigned and unassigned cases for possible on-the-record decisions in an effort to reduce the serious backlog of cases pending before us nationally. In all of those cases, I weigh the evidence in the same manner as in cases requiring a hearing. In addition, disposing of a case on-the-record saves the agency a great deal of money and work hours.
4. The saying that "some ALJs deny cases because they act like the money is coming out of their own pockets" is more or less a standing joke around ODAR offices. No more, no less.
5. At his first hearing before me, probably 15 years ago or so.
6. I have no idea. I do know that, over the years, I have denied a goodly number of Mr. Conn's cases.
7. Any lawyer who has practiced law at any level would know what that term means to them. It has been around for a long time. It simply means "favorite expert witness". All law firms who utilize expert testimony in court, such as medical, vocational, financial, real estate appraisers, etc., etc., have their favorites. In my cases, I weigh all of the evidence in accordance with the rules of evidence.
8. I have no recollection of prior cases. I try not to because of the confidentiality. Unfortunately, even if I did remember something about a case, I cannot and would not discuss it with anyone outside the office.
9. I have always been under the impression that an ALJ may review all assigned and unassigned cases for possible on-the-record decisions, so long as no other ALJ has seen or reviewed the file. I was recently reminded that that is no longer true and I promptly returned those said cases to the original assignees. All of my career, all of my efforts have been to help my office reach its "numbers" goals each month.
10. It has always been my opinion that if an ALJ spends 10 working days (about half of his/her time) in the courtroom each month, it is virtually impossible to adequately do the many, many other things we must do to move a case through the system. Some

do, others do not. I am dyslexic and I simply cannot spend that much time in the courtroom. The agency has also asked us to try to handle cases wherein the files have not been worked up by a clerk (raw form – nothing in order). I have been doing that for years. To my knowledge, no other ALJs in my office do it. This, of course requires more time for review and preparation for a hearing or an OTR. Thus, it is necessary to schedule all of my hearings (about 60-80 per month) on 4 or 5 days during the month. This allows me sufficient time to review and prepare for hearings, resulting in full and complete knowledge of the documents in the case prior to hearing.

11. Absolutely not.
12. I have no knowledge of an investigation. I would venture to say that of the 729 cases mentioned in question 2, approximately 200-250 of them were Mr. Conn's cases (because of his remarkable volume of cases) and the other 500 (give or take) were those of the other lawyers whose cases I hear. The manner in which I weigh the evidence and render a decision is in no way different in Mr. Conn's cases than in all other lawyer's cases.
13. Historically, I have always held my Prestonsburg hearings in the last week of the month, thus allowing no time to process the decisions by the end of the month. Therefore, all of my P-burg decisions are signed and closed during the first 2 weeks of the following month. My local cases are heard in the 2nd week of each month and they can usually be processed in the last 2 weeks of the month. Thus, my production in a given month consists of the P-burg cases from the previous month together with the local cases of that month. The P-burg cases that I work on during a given month must be held until the following month or I would have no cases for the coming month because I closed 2 months worth of cases in one month. I apologize for the confusion, but it is all about the "numbers game" that most, if not all, federal agencies are subject to.

D. B. Daugherty, ALJ

Huntington, WV ODAR Office

Message0396

Subject: RE: the story is running tomorrow
From: Astrue, Michael J.
Date: 5/19/2011 10:56:00 AM
To: Lassiter, Mark

Message Body

Thx. All told though it could have been much worse

From: Lassiter, Mark
Sent: Thursday, May 19, 2011 9:19 AM
To: Astrue, Michael J.
Subject: RE: the story is running tomorrow

I would have too. I actually went back at him on that issue yesterday.

From: Astrue, Michael J.
Sent: Thursday, May 19, 2011 9:04 AM
To: Lassiter, Mark
Subject: RE: the story is running tomorrow

I would have liked him to note that ALJ allowances are down on my watch, but he's been fair.

From: Lassiter, Mark
Sent: Wednesday, May 18, 2011 5:49 PM
To: Astrue, Michael J.; Tittel, Jo; Sklar, Glenn; Borland, Jim; Bice, Debra HQ ODAR
Cc: Courtney, Jim; Gambino, Phil; Hinkle, Mark; Fredricks, Kristen; Lasher, Jonathan
Subject: FW: the story is running tomorrow
Importance: High

FYI

From: Paletta, Damian [mailto:Damian.Paletta@wsj.com]
Sent: Wednesday, May 18, 2011 5:33 PM
To: ^Press Office
Subject: the story is running tomorrow

Hi Mark,

Thanks again for all your assistance over the last six weeks as I've come back again and again with questions for my ALJ story. I really appreciate it. Here's the thrust of the story, which is running on tomorrow's front page, in case there are any last-minute things you all would like to add.

The story looks at the ALJ situation in Huntington, WV with Judge David B. Daugherty, who approved benefits in 1,280 of the 1,284 cases he decided last year and has approved benefits in 729 of the 729 cases he decided this year.

The story includes several quotes from my interview with Commissioner Astrue.

They include a quote about how there were several "outliers" among the judges, but that his powers are tied to intervene. He also says most of the judiciary is "very productive." And that the Social Security administration has an obligation to pay people who deserve benefits and protect taxpayers in cases where people don't deserve benefits.

The story gets into complaints from numerous judges that they are under so much pressure to clear the backlog that they at times will err on the side of approvals, because they are faster and are rarely second guessed.

The story will also get into the situation in Huntington, where numerous judges and staff have complained about Mr. Daugherty over the years and said the situation should be addressed. They have also complained that there is one lawyer in particular who has had a large number of his cases decided by Daugherty, with some days as many as 20 hearings being scheduled 15 minutes apart.

The story says that the Huntington office has held cases that were approved to meet monthly goals. In April, 50 cases were held – these were Eric Conn cases approved by Daugherty – and they weren't processed until early May. That means one extra month the beneficiaries have to wait for benefits, but one month's additional fee for the lawyer.

The story also says that the inspector general's office is looking into the matter.

My best,

PSI-SSA-96D3-000953

Damian Paletta

The Wall Street Journal.

[REDACTED] (office)

[REDACTED] (cell)

twitter.com/damianpaletta

Outlook Header Information

Conversation Topic: the story is running tomorrow

Subject: RE: the story is running tomorrow

From: Astrue, Michael J.

Sender Name: Astrue, Michael J.

To: Lassiter, Mark

Delivery Time: 5/19/2011 10:56:00 AM

Creation Time: 5/19/2011 10:56:00 AM

Modification Time: 5/19/2011 10:56:00 AM

Submit Time: 5/19/2011 10:56:00 AM

Importance: Normal

Priority: Normal

Sensitivity: Normal

Flags: 1 = Read

Size: 18339

PSI-SSA-96D3-000954

Because I love my work,
Because I do numerous OTRs (the agency has, for years, ask us to do so),
Because most of my decisions are in cases wherein the files are not worked-up
(likewise, the agency has, for years, ask us to do so),
Because I write many of my own decisions,
Because I do much of my own scanning,
Because I issue more than 100 decisions per month, and
Because I tend to be a little energetic, if not aggressive, about my production,

I find myself defending my work ethic because of allegations made against me by two of our most unreliable and unproductive employees. One finds it difficult not to feel some degree of resentment under the circumstances.

Yes, there have been times that I have assigned other ALJ's cases to myself, or had someone else assign them to me. I was under the distinct impression that it was OK to do that if the other ALJ had not seen the file. When I was informed by Judge Andrus that I should not do it, I immediately stopped.

I was the first ALJ in our office to volunteer to handle electronic cases. Only four of our ALJs are now doing them, and these cases are accumulating rapidly, resulting in noticeable backlogs.

One particular lawyer in eastern Kentucky handles probably 2 of every 3 Kentucky cases. This means that each ALJ should be trying to schedule, or otherwise address, this lawyer's cases, accordingly. It is quite difficult to accomplish this, but I have always tried.

One of my accusers scheduled Prestonsburg cases for me last summer. A had about a half dozen cases penciled in on one particular day of my itinerary for another particular lawyer, but when I began my hearings that day, I discovered that she had added about 5-6 more of his cases, none of which I had reviewed, or even seen. I have since learned that both of my accusers are, and have been, particularly partial toward said lawyer. I didn't say anything because I was able to dispose of them without any problems. If it had been most any other ALJ, something likely would have been said or done.

The other one of my accusers has for months bugged me to schedule, or do OTRs in, cases for that same lawyer. I have done nothing but try to accommodate her.

It seems as though you just cannot be nice to some people, especially those who will use anything or anyone in order to have their way.

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EXHIBIT #75

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ITEMS 2
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Message2825	
Subject:	Administrative leave for Judge Daugherty
From:	Andrus, Charlie Paul
Date:	5/26/2011 2:19:58 PM
To:	Bice, Debra HQ ODAR
Message Body	
<p>Judge Bice,</p> <p>As instructed, I read the statement to Judge Daugherty and was with him until he left the office. I have his proximity cards for our building, and the remotes site in Prestonsburg, Kentucky. I informed him that he needs to be available at home from 8:00 a.m. to 4:30 p.m. His home number is [REDACTED] and his Cell is [REDACTED]. I directed him not to come into the office, nor is he to do any government work. I told him if he needed any personal effects to request them in writing to me and we would get them to him. I have directed the timekeeper to put him on administrative leave as of today. I have further directed the HOD to have his pin number removed from the alarm system in Huntington and in Prestonsburg. I will inform the guards here and in Kentucky that he is not to be in the building until further notice. I have made a memory jogger.</p> <p>He does have leave scheduled from Friday June 3, 2011 through Friday June 10, and had purchased plane tickets. He asked if he can go or if he needs to stay. Please advise me and I will let him know.</p> <p>Also, at your convenience, please advise me what I should tell the staff and the disposition of his cases.</p> <p>If there is anything else you need me to do, please let me know.</p> <p>Charlie Paul Andrus Hearing Office Chief Judge Huntington, WV</p>	

Outlook Header Information
Conversation Topic: Administrative leave for Judge Daugherty Sender Name: Andrus, Charlie Paul Received By: Bice, Debra HQ ODAR Delivery Time: 5/26/2011 2:19:58 PM Creation Time: 5/26/2011 2:19:58 PM Modification Time: 5/26/2011 5:44:37 PM Submit Time: 5/26/2011 2:19:55 PM Importance: Normal Priority: Normal Sensitivity: Normal Flags: 1 = Read Size: 17819
Standard Header Information
Received: from PH-CAS-HT-02.ph.ad.ssa.gov (10.26.86.118) by HQ-CAS-HT-02.ba.ad.ssa.gov (10.17.110.54) with Microsoft SMTP Server (TLS) id 8.2.255.0; Thu, 26 May 2011 14:19:58 -0400 Received: from PH-MB-01.ph.ad.ssa.gov ([10.26.86.121]) by

Homeland Security & Governmental Affairs
Committee

PSI-SSA-10-027678

EXHIBIT #76

Message2821

Subject: RE: Tornado
From: Bice, Debra HQ ODAR
Date: 5/23/2011 8:22:00 PM
To: Stroup, Marsha

Message Body

I agree with what all you say. It will be interesting talk in June. It sounded like people were in favor of capping cases – although I heard from one HOCALJ who was vexed. I like Andrus also but I think there is going to be some fallout from this – unfortunately. I'm not sure any office could withstand this scrutiny. On the positive side I am viewing it as an opportunity to get back to an emphasis on quality.

From: Stroup, Marsha
Sent: Monday, May 23, 2011 8:11 PM
To: Bice, Debra HQ ODAR
Subject: Re: Tornado

I think Huntington is embarrassing but not surprising, hopefully no kickbacks going on. The agency should have stopped this years ago but raw numbers have been valued too much and the claimants obviously love this kind of judge. We certainly don't want another Bellman fiasco but the number of cases scheduled for any judge should be controlled by the office. Judges shouldn't be allowed to troll for OTRs anymore and should only be scheduled, say no more than 60-80 cases a month. I'd be interested in seeing the quality of writing on his cases. I also wondered how he got so many cases with the same attorney. The OIG report will be interesting. Depending on what it says, I'd take a hard look on how Andrus has been running the office. I like Charlie but there are a lot of questions swirling around in the field about him now. I have some other thoughts. We can talk more at dinner in June. MS

Marsha Stroup

Sent from my BlackBerry Wireless Handheld

From: Bice, Debra HQ ODAR
Sent: Monday, May 23, 2011 06:54 PM
To: Stroup, Marsha
Subject: RE: Tornado

I was talking with [REDACTED] last night and he mentioned they were under tornado watch. I talked with region – PRS is still intact, no injuries to employees. [REDACTED] mentioned the debris from the hospital in Joplin (xrays) ended up in Springfield!

Also tornados in Minneapolis – some damage to FO employees but none in odar.

I agree – not a good year from mother nature!

Homeland Security & Governmental Affairs
Committee

EXHIBIT #77

PSI-SSA-100-030524

What do you think about the whole Huntington thing?

From: Stroup, Marsha
Sent: Monday, May 23, 2011 2:59 PM
To: Bice, Debra HQ ODAR
Subject: Tornado

Hi,

Just read about the Joplin tornado, good grief. Any damage in KC or around your area.

Had a long talk with [REDACTED] last week. He's a very unhappy camper. [REDACTED]

All is well here though it hasn't stopped raining in 2 weeks. We've had 7 inches of rain in May and more tonight. This breaks a record. My yard has never looked this good. The ski areas are still open, that's a record. The Spring runoff hasn't even started and that's going to be a record with widespread expected flooding. Mother Nature is certainly on a rampage this year.

RCALJ

Region VIII

Outlook Header Information

Conversation Topic: Tornado
Subject: RE: Tornado
From: Bice, Debra HQ ODAR
Sender Name: Bice, Debra HQ ODAR
To: Stroup, Marsha
Delivery Time: 5/23/2011 8:22:00 PM
Creation Time: 5/23/2011 8:22:34 PM
Modification Time: 5/23/2011 8:22:39 PM
Submit Time: 5/23/2011 8:22:34 PM
Importance: Normal
Priority: Normal
Sensitivity: Normal
Flags: 1 = Read
Size: 16203

PSI-SSA-100-030525

Message2543

Subject: Huntington
From: Bice, Debra HQ ODAR
Date: 6/8/2011 5:49:18 PM
To: Bede, Jasper J.; Allen, John

Message Body

I talked with Judge Andrus today. He has agreed to step down temporarily as HOCALJ. He is doing hearings at the PRS this week and has leave scheduled for next week. I told him that Judge Allen would be Acting HOCALJ and would be there Tuesday of next week. He asked if he has to move out of his office and I told him no.

I then went to Huntington office and spoke with Greg Hall and then the staff. I told them Judge Andrus had requested to step down temporarily and I had approved his request. I also told them Judge Allen would be Acting HOCALJ and would be there on Tuesday.

Judge Allen I told judge andrus and greg hall that you would probably call. I also told Greg to arrange for a place to sit. One of the first things you two will have to figure out is how to reassign daugherty's cases and whether judge allen is going to do columbus or huntington cases.

Debra Bice

Outlook Header Information

Conversation Topic: Huntington
Subject: Huntington
From: Bice, Debra HQ ODAR
Sender Name: Bice, Debra HQ ODAR
To: Bede, Jasper J.; Allen, John
Delivery Time: 6/8/2011 5:49:18 PM
Creation Time: 6/8/2011 5:49:18 PM
Modification Time: 6/8/2011 5:49:19 PM
Submit Time: 6/8/2011 5:49:18 PM
Importance: Normal
Sensitivity: Normal
Flags: 1 = Read
Size: 6938

Message2512

Subject: RE: Thank you
From: Bice, Debra HQ ODAR
Date: 6/9/2011 1:45:00 PM
To: Andrus, Charlie Paul

Message Body

:~)

From: Andrus, Charlie Paul
Sent: Thursday, June 09, 2011 1:44 PM
To: Bice, Debra HQ ODAR
Subject: RE: Thank you

Thanks. I appreciate your concern. And again I really appreciate how you handled a very difficult duty. You are really a class act.

Chuck

From: Bice, Debra HQ ODAR
Sent: Thursday, June 09, 2011 1:41 PM
To: Andrus, Charlie Paul
Subject: RE: Thank you

Yes, I don't think this will spark anything new but wanted you to think about it.

From: Andrus, Charlie Paul
Sent: Thursday, June 09, 2011 1:40 PM
To: Bice, Debra HQ ODAR
Subject: RE: Thank you

Thanks. I was careful to only discuss things that are quite well known by everyone.

From: Bice, Debra HQ ODAR
Sent: Thursday, June 09, 2011 1:25 PM
To: Andrus, Charlie Paul
Subject: RE: Thank you

Just might want to consider if the wsj will quote this.

From: Andrus, Charlie Paul
Sent: Thursday, June 09, 2011 12:24 PM
To: Bice, Debra HQ ODAR

Homeland Security & Governmental Affairs
Committee
EXHIBIT #79

PSI-SSA-100-030471

Cc: Bede, Jasper J.
Subject: Thank you

Judge Bice,

With your permission, I would like to send the below e-mail to the Huntington staff. My son tells me that it wasn't 20 minutes after your announcement that the reporter from the WSJ called my home gloating about my losing my job. Nice way for my family to find out.

Judge Andrus

As you know, as HOCALJ I carry a full load of cases as a judge as well as having administrative duties in the office. Recent events have added even more stressful duties. After my heart surgery I have been very cognizant of the stresses in my life. Some of you have expressed concern with things you saw indicating I am adversely reacting to the stress.

With this in mind, and given my doctor's warning about too high levels of stress, I requested that Judge Bice relieve me of the HOCALJ responsibilities on a temporary basis until the investigation is over. This will allow me to concentrate on my primary duty as an Administrative Law Judge. When the extra stressors are resolved, I plan to reassess the situation and in conjunction with my doctor, decide if I could safely request to resume the HOCALJ duties. Judge Bice agreed to my request.

I want to take this opportunity to thank all of you for your hard work for the claimants we serve. Now, more than ever, it is important to focus on what we are here to do—to get the claimants a fair decision as soon as we can. That is what I plan to devote my efforts toward, and I would ask that you join me in giving Judge Allen all possible support as the office continues to give the citizens who depend on us the world class service they deserve.

Judge Andrus

Outlook Header Information

Conversation Topic: Thank you
Subject: RE: Thank you
From: Bice, Debra HQ ODAR
Sender Name: Bice, Debra HQ ODAR
To: Andrus, Charlie Paul
Delivery Time: 6/9/2011 1:45:00 PM
Creation Time: 6/9/2011 1:45:17 PM
Modification Time: 6/9/2011 1:45:22 PM
Submit Time: 6/9/2011 1:45:17 PM
Importance: Normal
Priority: Normal
Sensitivity: Normal
Flags: 1 = Read
Size: 21109

PSI-SSA-100-030472

Message0223	
Subject:	FW: Thank you
From:	Andrus, Charlie Paul
Date:	6/9/2011 1:09:44 PM
To:	#PH WV ODAR Huntington All
CC:	Bede, Jasper J.; Allen, John
Message Body	
<p>As you know, as HOCALJ I carry a full load of cases as a judge as well as having administrative duties in the office. Recent events have added even more stressful duties. After my heart surgery I have been very cognizant of the stresses in my life. Some of you have expressed concern with things you have seen indicating I am adversely reacting to the stress.</p> <p>With this in mind, and given my doctor's warning about too high levels of stress, I requested that Judge Bice relieve me of the HOCALJ responsibilities on a temporary basis until the investigation is over. This will allow me to concentrate on my primary duty as an Administrative Law Judge. Judge Bice agreed to my request. When the extra stressors are resolved, I plan to reassess the situation and in conjunction with my doctor, decide if I could safely request to resume the HOCALJ duties.</p> <p>I want to take this opportunity to thank all of you for your hard work for the claimants we serve. Now, more than ever, it is important to focus on what we are here to do—to get the claimants a fair decision as soon as we can. That is what I plan to devote my efforts toward, and I would ask that you join me in giving Judge Allen all possible support as the office continues to give the citizens who depend on us the world class service they deserve.</p> <p>Judge Andrus</p>	

Outlook Header Information
Conversation Topic: Thank you Sender Name: Andrus, Charlie Paul Received By: Gitlow, William H. Delivery Time: 6/9/2011 1:09:44 PM Creation Time: 6/9/2011 1:09:44 PM Modification Time: 6/9/2011 1:09:44 PM Submit Time: 6/9/2011 1:09:42 PM Importance: Normal Priority: Normal Sensitivity: Normal Flags: 1 = Read Size: 18477
Standard Header Information
Received: from PH-MB-01.ph.ad.ssa.gov ([10.26.86.121]) by PH-CAS-HT-02.ph.ad.ssa.gov ([10.26.86.118]) with mapi; Thu, 9 Jun 2011 13:09:43 -0400 Content-Type: application/ms-tnef; name="winmail.dat" Content-Transfer-Encoding: binary From: "Andrus, Charlie Paul" <Charlie.Paul.Andrus@ssa.gov> To: #PH WV ODAR Hun... All... PH WV ODAR Huntington All@ssa.gov>

**Homeland Security & Governmental Affairs
Committee**

PSI-SSA-95-031007

EXHIBIT #80

Message0809

Subject: RE: I know you said not to work on the weekend but...
From: Bice, Debra HQ ODAR
Date: 8/28/2011 12:39:00 PM
To: Devlin, Michael

Message Body

While no promises have been made to Charlie Andrus, at the same time he has not been given any assurances that he will return. When a final decision is made, it could be unpleasant. That said, you do have the authority to make changes, after running it through our daily workgroup. If Andrus starts to act up let me know and I will take care of it.

-----Original Message-----

From: Devlin, Michael
Sent: Saturday, August 27, 2011 6:03 PM
To: Bice, Debra HQ ODAR
Subject: I know you said not to work on the weekend but...

At lunch Friday, Charlie Andrus mentioned that he can't wait for things to get back to normal so he can run the office again.

I would like to know whether he is delusional or whether you or Judge Bede have given him some assurance that he would return as HOCALJ.

Since I will soon be making changes in the office, he may see it as me stepping on his turf. Particularly if he views the Acting HOCALJ's as merely caretakers keeping the status quo until his return.

For all his hale fellow well met gregariousness, I think he is capable of being a mean SOB. He has been cordial and pleasant with me, but then again we have not had any disagreements yet.

It would help me to know where things stand if Andrus challenges my authority to make changes.

Thanks.

Mike

Michael Devlin

Sent from my BlackBerry Wireless Handheld.

Outlook Header Information

Conversation Topic: I know you said not to work on the weekend but...
Subject: RE: I know you said not to work on the weekend but...
From: Bice, Debra HQ ODAR
Sender Name: Bice, Debra HQ ODAR
To: Devlin, Michael
Delivery Time: 8/28/2011 12:39:00 PM
Creation Time: 8/28/2011 12:39:40 PM
Modification Time: 8/28

**Homeland Security & Governmental Affairs
Committee
EXHIBIT #81**

PSI-SSA-10-029427

Name: Charlie Paul Andrus
Position: Administrative Law Judge, Huntington Hearing Office
Interview Date: January 15, 2013
Place of Interview: Huntington Hearing Office, HOCALJ office
Individuals Present: Judge Andrus, Interviewee
Michelle M. Murray, attorney, Office of the General Counsel
Amanda Gilman, attorney, Office of the General Counsel
Erin Justice, attorney, Office of the Counsel to the Inspector General

STATEMENT OF CHARLIE P. ANDRUS

At the beginning of the interview, Judge Andrus was informed:

Previously, you were interviewed by agents from the Office of the Inspector General, about a "plan" to have Sarah Carver followed or videotaped while she was working on Flexiplace.

Since your interview, OIG referred this matter to the Office of Disability Adjudication and Review for any necessary administrative action. ODAR asked that the Office of the General Counsel conduct a supplemental investigation.

Today, we will ask you a series of questions about your involvement or knowledge in this matter. We will be taking contemporaneous notes during our discussion. Following the interview, we will format the notes into a Question and Answer statement for you to review, edit and sign.

Judge Andrus indicated that he remembered being interview by an OIG agent regarding a plan to have Sarah Carver followed or videotaped and acknowledged the interview format.

Representative

Q: Are you represented by anyone during this interview?

A: No.

Q: Do you decline representation voluntarily?

A: Yes.

Initials *CPA*

Page 1 of 24

Background

Q: What is your full name?

A: Charlie Paul Andrus.

Q: What is your current position?

A: Administrative Law Judge.

Q: How long have you held this position?

A: 27 years on March 3, 2013.

Q: What are your responsibilities in this position?

A: I hear and adjudicate disability cases and other appeals for SSA.

Q: Who is your first line supervisor?

A: The acting HOCALJ, Lisa Martin.

Q: Who is your second line supervisor?

A: Judge Bice is taking the place of the regional chief judge.

Q: Do you supervise anyone?

A: No.

Q: You once held the HOCALJ position in this office, correct?

A: Yes, from August 1997-October 2011.

Q: How were your responsibilities different?

A: I served as both a Judge and administratively, running of the office.

Q: Did you supervise anyone?

A: Yes. I was the first line supervisor for HOD and for the ALJs.

Q: For any other staff?

A: I was the ^{second} ~~third~~ line supervisor for the group supervisors; and ^{third line for} ~~staff~~ responsible to the group supervisor. ^{over}

Initials CPA

Statements to OIG

Q: Do you recall being interviewed by an OIG agent regarding a plan to have Sarah Carver followed or videotaped?

A: Yes

Q: Were you truthful and forth coming during that interview?

A: Yes

Q: Please describe in your own words generally what the plan entailed?

A: It started out as general discussions with Eric Conn and moved to be specifically about Sarah Carver. Eric Conn said he would hire a private investigator to see if Ms. Carver was working while on flexiplace.

Q: When did the discussions begin?

A: Almost a year ago – not precisely, but about March or April of 2012.

Q: Who is Eric Conn?

A: He is an attorney in Stanville, KY.

Q: How do you know him?

A: He's represented a large number of claimants before me since 1995.

Q: How did you come to know him?

A: Through his work at SSA.

Q: How would characterize your relationship with Mr. Conn?

A: Professional and as an acquaintance.

Q: Could you elaborate?

A: We would discuss things other than SSA – for instance, he has been married 11 or 12 times. He would talk about online dating; travels to meet people; he traveled to Siberia in February.

Initials CPA

Q: How often would talk with him?

A: When I was HOCALJ, I would have more interaction with Eric Conn discussing problems that would crop up about the operation of the office. For example, Eric Conn's staff was providing a lot of duplicate documents that we would have to sort and file. I discussed that with him and other scheduling problems because there were so many hearings. I remember I had a meeting with my HOD and Eric Conn and his manager about ways we could facilitate the scheduling.

Q: Do you remember when those discussions occurred?

A: We were still in the old office down the street.

Q: Who was at the meeting?

A: Harriet Cyrus, the HOD, Eric Conn and his mother, and another Conn staffer.

Q: You characterized your discussions as more frequent in the past than now – why?

A: Because I would be discussing matters regarding the running of the office. For instance, I told Mr. Conn about the initiative to have attorneys gain electronic access to the files and gave him information on how to apply - because Eric Conn had such a huge volume. I had the same discussion with Grover Arnett, another Salyersville, Kentucky attorney.

Q: Did you tell any other attorneys about that program?

A: Several – we were told to tell the local bar, but I can't remember the others.

Q: Did you have any similar meetings with other representatives like the one with Eric Conn, his mother, and Harriet Cyrus?

A: Before I became HOCALJ, Ms. Cyrus had a meeting with Bill Redd in Huntington – at that time he also had a large number of cases, but I was not at the meeting.

Q: Did you ever provide Eric Conn with changes in SSA policies and procedures?

A: I don't understand.

Q: With how the agency business was conducted?

A: I probably would have if it were public information. For instance, I told him about the electronic files and the initiative to have attorneys propose fully favorable decisions.

Initials CPA

Q: Why would it matter if it was public information?

A: I don't discuss confidential information with attorneys.

Q: Do you recall when you shared information regarding that initiative?

A: No.

Q: Do you recall sharing that fully favorable initiative with other representative attorneys?

A: I believe I shared it with Grover Arnett, but I wanted to see if it worked. At the time, Eric Conn was the most electronically savvy; he would propose some fully favorable decisions for me and for Judge William Gitlow, using the FIT template on the SSA internet website.

Q: How did you know he was doing them for Judge Gitlow?

A: Judge Gitlow is retired now. Judge Gitlow was having trouble meeting his goal, and this would help him move cases without a hearing.

Q: How would you communicate with Eric Conn?

A: I would talk with him in Prestonsburg or on the telephone.

Q: Since, you were removed from the HOCALJ position – have you spoken with Eric Conn?

A: Yes.

Q: What was the nature of those conversations?

A: We communicated about individual cases, much less frequently – and we discussed Ms. Carver.

Q: Are you aware if Mr. Conn is still in this area?

A: I believe he is.

Q: When was the last time you communicated with him?

A: Late April - beginning of May 2012 – before I went on vacation in May.

Q: Has Mr. Conn ever given you a gift?

A: He left some CDs for me – and on a few occasions, he brought sandwiches to the hearing site for everyone.

Initials 

Q: How many times did he do that?

A: Three or four – I'm not sure.

Q: Anything else? Ever dine with Mr. Conn outside of work?

A: I went to his office to check the connection for his video conferencing equipment– and when I was there he was having a staff dinner – I had some of that – this was several years ago. I was also at his office to take a look at his model hearing room that he wanted me to see – food was involved in that trip too. There was one time I was having dinner at a Mexican restaurant in Prestonsburg - I believe with one of the VEs - and Mr. Conn and his wife came in and sat with us.

Q: Has he ever invited you to go on trips?

A: Yes, he asked me if I wanted to go with him to Thailand, and I said he had to be kidding and to think about it and there was no way I could do that. Another time, my church was thinking about going to England, and Mr. Conn expressed an interest in taking his father, but the trip never materialized. *Mr. Conn did not offer to pay my way on that proposed trip. If he had I would have refused.*

Q: Have you ever shared food with any other representative?

A: Some bring food for the office at Christmas time that we make available to the staff – and Bill Roberts in 1995 was at the same restaurant with me and Judge Coggin, but I can't remember if he joined us. *Koggin*

Q: Who paid for that meal?

A: We each paid for our own.

Q: Has Eric Conn ever offered to buy you other items?

A: Not that I can recall – if he did, I wouldn't accept them.

Q: What about the CDs?

A: I shredded the CDs.

Q: Why?

A: Because he made a comment that they were legal under the laws of Thailand, and I thought they might be pirated so I didn't want get involved. *They were not commercial CD's, they were burned from some source onto a recordable CD.*

Initials *APL*

Q: Do you know if Mr. Conn offered any gifts to other ALJs?

A: I only remember CDs – can't remember anything else. He also left CDs for Judge Chwalibog.

Q: At the same time he left you the CDs?

A: Yes.

Q: Do you know what Judge Chwalibog did with the CDs?

A: No.

Q: Did Eric Conn tell you why he was giving you CDs?

A: I don't think he ever said – he just had these CDs.

Q: You are aware of May 2011 Wall Street Journal article?


A: Yes.

Q: Are you aware of a federal investigation?

A: Yes, I was interviewed by OIG. Right around that time, we had forwarded a fact sheet about Judge Daugherty to OIG – the fact sheet related an incident when he had come into the office with some benefits checks and was inquiring into whether or not they were proper and could be cashed. He talked to Stephen Hayes – the Group Supervisor at the time – and what had peaked my curiosity was when Judge Daugherty said that he talked to a claimant's mother at the VFW regarding the claim - which he granted as an OTR and then she brought him the checks and she asked whether she could cash the checks and if they were the right amount. I was troubled by the fact that he had them. Stephen Hayes wrote up a factsheet – and I sent it to Judge Bede who informed me that OIG would investigate.

Q: Do you recall when you were first interviewed by OIG?

A: In May, after Wall Street Journal article. Before the article had come out, I think the reporter had sent questions – and Judge Bede asked me to write up the agency's answers. The answers were forwarded to him, who forwarded it to Falls Church. I got a call from Glenn Sklar. He asked me if I had any problems with some revisions regarding the Commissioner's initiative to work down the backlog by reviewing cases for OTR decisions.

Initials 

Q: What was your understanding of the nature of the investigation?

A: I assumed it was about the factsheet – and whether there was any wrong doing between Judge Daugherty and Eric Conn and other attorneys.

Q: How long after that was the first conversation you had with Eric Conn about Ms. Carver? Tell us about that conversation and what happened next.

A: About a year later. It started off – we were having a general conversation – Eric Conn had mentioned that Sarah Carver and Grover Arnett and retired Judge Kemper had met with the Wall Street Journal reporter about Judge Daugherty. And he was not happy with Sarah Carver. I had mentioned that she was probably not performing time and attendance while on flexiplace; but that generally it was very difficult to do anything. She couldn't be disciplined unless there was video sent to her supervisor. Eric Conn said he'd be willing to hire a private investigator to check.

Then I got real stupid and said that sounds like an idea.

Then we discussed how to let him know when she was on flexiplace since it was not on a regular basis. He asked if there was anyone on staff who would be willing to call him – and I thought of Sandra Nease, a writer, because she had had personal problems with Sarah Carver and Sandra Nease agreed.

Eric Conn gave me a note for Sandra Nease indicating a cell number of a contact in his office and I gave it to Sandra Nease. She said she would call the person when she knew that Sarah Carver was on flexiplace.

Q: Did you read the note?

A: I don't believe I did – but I knew what it was.

Q: Do you remember when you gave the note to Sandra Nease?

A: Not with precision.

Q: How long after you had the first conversation with Eric Conn did you give the note?

A: Shortly.

Q: What did the note look like?

A: It was a yellow sticky note, lined.

Initials 

Q: How did you give it to note to Sandra Nease? Where?

A: By hand, in her office.

Q: Do you know what Sandra Nease did after you gave her the note?

A: She told me she called Eric Conn's office when the staff was on flexiplace; but I don't know what she did with the note.

Q: Was that the only note you gave her from Eric Conn?

A: Best as I can remember.

Q: Tell us about how Ms. Nease became involved?

A: I just did.

Q: Did you approach her?

A: Yes

Q: When?

A: Shortly after I had the conversation with Eric Conn.

Q: Do you recall how many conversations you had with Ms. Nease?

A: Not exactly, but several.

Q: Can you tell me about those conversations?

A: We discussed what might happen to Sarah Carver once management found out about her time and attendance abuse. We had a discussion about - because there was a video of some kind - it would be more difficult for Sarah Carver to claim retaliation as a basis for any action.

Q: Any other conversations?

A: Not that I can remember.

Q: How did Sandra Nease react when you approached her?

A: She thought it was a good idea.

Initials 

Q: Did she tell you why?

A: Because she was frustrated with Sarah Carver for getting away with everything while she was trying to make a big problem for the office in general about Judge Daugherty and generally trying to get the management team in trouble while she was abusing time and attendance and nothing was being done.

Q: Did you promise Sandra Nease any benefit for participating?

A: No.

Q: Did you tell her something negative would happen to her?

A: No, I was not in management.

Q: Did Conn promise a benefit or tell you something negative would happen?

A: No – this was all my own stupidity.

Q: Is the information regarding flexiplace days available to the public?

A: We do not publicize it, but it's not a secret as far as I know. A large part of the staff participates in flexiplace.

Q: Did you tell Mr. Conn where Ms. Carver lives?

A: I don't know where Ms. Carver lives.

Q: What information did you provide Eric Conn regarding Ms. Carver, like the car she drives?

A: I don't know that information.

Q: Did you tell Eric Conn about her prior problems with flexiplace?

A: I told him she had prior problems with flexiplace - I didn't go into details.

Q: Do you know if Ms. Nease made the calls?

A: I wasn't there when she made them, but she said that she did.

Q: How would she tell you she did?

A: I went into her office and she said I got a hold of Mr. Conn or the person in Mr. Conn's office – something to that effect.

Initials 

Q: Anything else?

A: That is all I can remember.

Q: Do you know how many calls she made?

A: No.

Q: Do you know when she starting making calls?

A: I cannot give you a date, shortly after I gave her the note with the phone number.

Q: Do you know if Eric Conn had Sarah Carver followed? Or someone from his office?

A: That's what he told me. He mentioned that one of his employees was a former police officer and he had given that employee a video camera to record her. The employee parked on a public street outside of Ms. Carver's residence and would tape her when she left the house during business hours.

Q: Did he share the video tape with you?

A: I've never seen it.

Q: Did Eric Conn say he caught Ms. Carver?

A: Yes.

Q: Did he tell you what he caught her doing?

A: He saw her leave her house, pick up her son, and go shopping. In another incident, she left in the afternoon and went to a law office. She stayed there for some time and came out with a sheaf of papers.

Q: Do you know what Eric Conn did with the tape?

A: Not directly – I told him it should go to her first line supervisor and then OIG. He asked for the address of the senate committee who was investigating at the time; I gave him the address.

Q: Do you know if he sent the materials to those individuals?

A: Not directly, but I assumed he did.

Q: Why did you assume so?

A: OIG later interviewed me about – indicating that they got it.

Initials CPJ

Q: After you had the conversation with Eric Conn about senate committee – did the two of you speak again?

A: I am sure I did. He asked me if I had heard of anything happening. I said would not know, since I wasn't in management – I wouldn't have been informed.

Q: Anything else?

A: That's all I can recall.

Q: After you heard that he had taped her, did you tell anyone?

A: I told Sandra Nease what he had said.

Q: Tell us about that conversation.

A: I related that he told me that they had video tape about her shopping and the incident where she went to the law office -- we speculated why she was there, Ms. Nease thought she was moonlighting. I said I had no clue.

Q: What happened next? Were there further conversations with Ms. Nease?

A: She told me that she was interviewed by staff for the investigating committee– and they had asked about her involvement in the plan.

Q: Who initiated that conversation?

A: I don't recall.

Q: Where were the conversations you would have with Ms. Nease?

A: Always in her office.

Q: Do you recall having any conversations with her after work hours?

A: I believe I called her once at home – she gave me her number to call.

Q: What was that conversation about?

A: Her interview with the senate staffers.

Q: Did you ever tell her how to answer questions?

A: No.

Initials *CAD*

Q: Did she tell you how to answer questions?

A: No.

Q: Did Ms. Nease ever express a hesitancy or uncertainty about being involved?

A: Not that I recall.

Q: Did you ever tell Ms. Nease you had a copy of the video?

A: No – I haven't seen it.

Q: Did Eric Conn send it to you and you did not watch it?

A: No. *He never sent a video*

Q: Why did you want to assist Eric Conn in this matter?

A: It seemed that Ms. Carver was trying to get several people in trouble. First with Judge Daugherty, another example – Mr. Hall – then the hearing office director – he had obtained some small shredding machines after I was no longer the HOCALJ. Ms. Carver emailed Falls Church and a blogger, and made a fuss and shredders were gone.

There were also three other incidents, one right after another. The first one, Kathy Goforth, Carver's supervisor, came to me and said that someone had pointed out that there was a roller bag left unattended by the sign-out sheet. She had taken it and looked inside and it contained files that Sarah Carver had been assigned to take home the day before, and Ms. Goforth kept them in her office. No one claimed them. At the close of business, they put the bag back. The next day Ms. Carver gave them the cases and said she had worked flexiplace. Ms. Goforth said you left the bag. She said another employee had brought them to her over lunch and she had some files at home from a prior flexiplace. Greg Hall checked the internal security system. The alarm had been turned off – someone had come in during the night and got the files. Ms. Carver eventually came forth and admitted what she had done. She confessed that she had lied.

During the same time, she was insubordinate to Ms. Goforth, and there was third thing, but I can't remember what it was.

After discussing with the HR people, Ms. Goforth proposed a suspension, and Greg Hall agreed, and issued it. There was no grievance filed. Or there may have been one but I don't remember.

Initials *CPG*

And then a few months later, we had another incident where she said she completed files on flexiplace. They can only work on paper files. That's why it's intermittent. On flexiplace, SCTs put exhibits in chronological order, remove clips and number the exhibits in the sections. The only two things they prepare ^{in the office} are the ^{CPA} exhibit list. When her supervisors looked at the files, there was quite a bit not done ^{fact sheet} which should have been done. Her group supervisor –Hayes or Patterson- proposed an additional suspension after speaking with someone in employee relations – a longer suspension. She filed a grievance which was scheduled to go to arbitration. Sometime later, I believe we found out that Judge Bede, based on a conversation with OGC, settled it from a suspension to a letter of reprimand. What was infuriating was that they did not discuss it with the Huntington management.

After that she seemed to have some sort of immunity. Then this thing started with Daugherty and Sarah Carver had sent emails to people calling me a criminal. I went to Judge Devlin, the acting HOCALJ at the time, and said this is creating a hostile work environment and nothing happened on that.

Right before Greg Hall retired, Sarah Carver filed a formal retaliation ^{allegation} against Greg Hall for not authorizing advance sick leave. He retired shortly after that.

I know when Judge Laba was the acting HOCALJ, she reminded the ALJs of the problems about time and attendance that had been brought to her attention. Carver was creating problems for others while I believe she was committing crimes while abusing flexiplace.

Q: Did you report your belief to the OIG about her abuse of flexiplace?

A: I discussed her problems – I did – but I asked them - if I had gone to you and told you - would you have done anything? The agent said no – because it wasn't as important as the other things they were investigating.

Q: Do you know how Ms. Nease knew Sarah Carver would be on flexiplace?

A: It is pretty obvious. Supervisors pass out paper files to SCTs. They have secure bags. They put files into the bags to take home. Files are given out the day before. If it is Monday, they give out on Friday.

Q: Did you ask anyone else in this plan to follow Sarah Carver?

A: No.

Q: Do you know Lauren Aldridge?

A: She used to work here.

Initials APA

Q: Did you ask her to take action related to this matter?

A: I don't believe I did.

Q: What position did she hold?

A: Senior Case Technician.

Q: When did she work here?

A: Sometime after Sandra Nease was promoted – she took a job with Veterans Affairs.

Q: Why?

A: She took a GS-12 position – it was a promotion.

Q: Was Brandee McCoy involved in the plan to have Sarah Carver followed?

A: No.

Q: Do you know if Ms. McCoy had knowledge about this plan?

A: No.

Q: Did you ever speak with her about plan?

A: No.

Q: Do you know if Ms. Nease told other people about the plan?

A: I don't know.

Q: Who is [REDACTED]

A: She worked here about three or four years ago – she went [REDACTED]

Q: Why?

A: I believe it was a promotion.

Q: Did she have problems with management?

A: Yes - she wanted to keep a refrigerator in her cubicle [REDACTED] We were told to remove all electric appliances. So we set up a refrigerator for prescriptions only 30 to 40 feet from her cubicle. She said she was afraid others would tamper with her medicine which was strange because she allowed others to use her frig when it was at

Initials 

the cubicle. When she had to stop using her refrigerator, we asked if she felt more comfortable putting it in one of our offices. There was a grievance – it was finished after she left.

Q: Was she subject to discipline?

A: Not that I was involved in.

Q: Did [REDACTED] ever not do something you asked her to do?

A: No - do you have something specific in mind?

Q: Did you ever alienate [REDACTED] have management alienate her?

A: No – [REDACTED]

Q: Ever discuss the plan to have Sarah Carver followed with anyone outside the office other than Eric Conn?

A: I don't believe I did – other than OIG.

Q: Did you learn that there came a time when Ms. Nease stopped making phone calls?

A: I know she stopped. I'm trying to think of when – before May 26, 2012. When I came back in June, Carver wasn't in the office.

Q: Do you know why Ms. Nease stopped?

A: No. There wasn't anything happening and then she had the discussion with the Senate committee staffers. That's when it dawned on me how incredibly stupid this had been.

Q: Why is the idea incredibly stupid?

A: One of the OIG investigators asked me how I could have been so stupid – I couldn't answer but to say it was incredibly stupid. Fortunately, it doesn't happen often, and I can guarantee it will not happen again. She was committing crimes and no one was doing anything about it and yet she was calling other people criminals who had not done anything wrong.

Q: Did you ever approach anyone in management about the plan? When?

A: I believe I mentioned to Stephen Hayes that I heard there was a video of Ms. Carver on flexiplace, and his response was he couldn't talk about anything like that – I can't remember when, in May before I went on leave.

Initials

EPD

Q: How did you know there was a video?

A: Mr. Conn had told me.

Q: Did you tell Mr. Hayes your information had come from Mr. Conn?

A: No.

Q: Did you mention anything about "White Vans" to Mr. Hayes?

A: I don't remember.

Q: Were there any "White Vans" involved in the plan?

A: No, but Eric Conn had said that his employee who had taken the video saw white vans.

Q: Did Conn ever tell you who he had videoing?

A: No.

Q: Do you recall when Mr. Conn told you about the white vans?

A: May 2012.

Q: Do you know Curtiss Wyatt?

A: Not that I recall.

Q: Did you ever tell Mr. Conn that you were being interviewed by OIG or the Senate Subcommittee?

A: I may have in May – since then I have not talked to him at all.

Q: Have you communicated in any other way?


A: No.

Q: Do you know why Ms. Carver is out of the office?

A: Not specifically.

Q: Do you know something generally?

A: Something about worker's compensation.

Initials 

Q: Did you tell Mr. Conn that Ms. Carver is not trust-worthy?

A: Yes, more than once.

Q: Why did you share this information with Eric Conn?

A: She seemed to be the basis for all the action that was being taken.

Q: Did you say that Ms. Carver was a thorn in your side?

A: I don't recall those exact words, but I could have very well have said that.

Q: Do you believe it to be true?

A: Yes, while I was HOAALJ ^{opm}

Q: Did you ever have a conversation with Ms. Nease about retaliation? Can you tell us about that? Who initiated the conversation?

A: I remember talking with her about it – I said that because it does not come from management, and it was independent evidence, it couldn't be construed as retaliation for Daugherty. I initiated the conversation.

Q: If you had been in management - would it have been retaliation?

A: There would have been a better allegation if I had been in management.

Q: When you told us Mr. Conn had given you DVDs, by not returning the DVDs, wouldn't it look like you had accepted his gift?

A: I was not thinking about that. *They really had little if any value as they were just copies burned onto a recordable disc.* ^{opm}

Q: Why did you not refuse the DVDs?

A: It was easier to shred them.

Q: When you first approached Ms. Nease about having Ms. Carver followed – what did you say?

A: I mentioned that Eric Conn would hire someone to videotape Sarah Carver, and she agreed right away.

Q: Why didn't you make the calls?

A: This was back when I was being stupid. I felt it would be better if it came from someone else. She was with the SCTs – if I was on a hearing trip – she was in a better position.

Initials *opm*

Q: Do you remember when you moved from the HOCALJ office?

A: October 2011. Judge Bice came and she told me that I was not going to be reinstated as chief judge. She wanted me out of this office.

Q: Do you blame Sarah Carver for being taken out of management?

A: I don't know enough. I asked Judge Bice more than once as to what I had done or not done that had prompted this decision. Judge Bice came to see me in Prestonsburg. She had emailed me, and told me she was going to be there noon the next day during the lunch hour – so no one else was there but the guard. The hearing reporter was at lunch. I figured that it cannot be good.

She said, "It's not as bad as you think," and that "I want you to step down as chief judge temporarily – once the investigation is over – you'll be reinstated – keep a low profile and don't cause disruption – or you'll be removed." I told her I would step down and wait until this is over. I told her, "I don't think this is your idea, sounds like the deputy commissioner." She looked at me and said "it's coming from higher up." The Commissioner wanted me to step down. So I stepped down – and did my cases.

Then I get an email – Judge Bice needs to talk. She told me that she will appoint a permanent HOCALJ here and it would not be me. I was rather upset. *What did I do or not do. She said, "I cannot tell you. It's an ongoing investigation." She said, "It was my idea, but of course, I cleared it with the Commissioner – and that you needed to be out of the HOCALJ office." And then she asked me to give Judge Laba any management files.*

I was rather upset. She gave me a card for the employee assistance program. Shortly after that, Tim Morton called and asked me how I was. I said – "Not worth a shit what can I do for you?" But eventually, when he came to speak with me the second time, he said, "I got the email that you had been permanently replaced. I figured that was what was bothering you." *I apologized to Agent Morton for the language I used.*

I don't know if it was Ms. Carver or something that came up or what.

Q: Do you recall when you had the first meeting with Judge Bice?

A: Shortly after the May article, June 2011. The second meeting was year ago - October 2011. She did not need to give me any reason.

Q: Do you know Judge Tinsely?

A: He was an ALJ, while I was HOCALJ.

Initials *CPA*

Q: Is he no longer here?

A: He retired. I don't know where he is.

Q: What did you think of his performance?

A: He never could get a handle on the work. He was bright, friendly, out-going, even after I had to do disciplinary things, like a suspension. I don't know if it was cognitive or just drive. I did not know what do. His production was the lowest in the office. I tried several things to help him get organized. I had him mentored by other judges. I gave him the assistance of the best senior attorney.

He would work off and on. If there was a problem, instead of working with the representative to resolve, he would stop and go on to another case. The hearings he had – when I listened – he was ^{receiving the files} turning pages. There ^{were} complaints that he was rude. When I listened, he didn't say anything bad. He was ^{BEUSK} ~~brush~~ and short.

I talked to Judge Bede. He said to take him off the roster. ^{BEUSK} It will just be for a couple of months so he could get out his decisions. ^{hearing} It didn't help. He had over 100 cases. Any other judge could have resolved that within few weeks. ^{a judge controlled}

Then Judge Bede had sent him a list of cases that had been in ^{status}. He directed him to move the cases by a certain date or explain why he could not. That's the first step when trying to remove a judge for poor production. There are no strict quotas, but when they are not producing without reason, that's grounds for removal. He moved some, but not all. He sent Judge Bede an email saying he could not get all done.

Judge Bede sent another memo, saying move the cases or explain why. He did not move all, but a lot. "I was confused – that's all I can do."

^{he told me when I asked for an explanation} Then there was another incident, the MSA noticed problems with his time and attendance while on travel to Prestonsburg. That led us, the agency, to suspend him for 30 days for falsifying time and attendance. When he came back, he started in with performance issues and then he had hearings set and he did not show up. I was in Prestonsburg, and was called by the HOD. I said call him at home, and see if another judge can hear the cases. We called him at home, and he said he had forgotten.

He missed another set of hearings. The SCT who worked with him to do scheduling, Harriet Beckett, told him he had hearings. He waited to ^{review} ~~remove~~ the files and then he did not show up.

Initials *CPH*

We sent it up to the Regional office. It was not good. I had supervisors work over ^{time} to care for people who were waiting to have hearings. You cannot hold hearings like that. ^{after the quinn left the} Not good at all. We thought removal, but then perfect, he went to work for Eric Conn.

Q: How did that happen?

A: Eric Conn had asked me if I knew anyone who wanted to retire. He ^{Mr Conn} was the only lawyer, and it was too much. I told him that the only one I had heard about was Judge Tinsley. He was old enough, but I did not know his plans. Judge Quinlivan told me shortly after that he was going to retire.

I said, "Whatever you do, if you have conversations with him, tell me so that I can take care of his cases." Then I got a call. They had entered into negotiations and had come to an agreement.

Q: When was that?

A: December 2010.

Q: After the suspension?

A: The suspension was in May. It was the following December.

Q: Did Judge Tinsely ask you for help?

A: No.

Q: Did either individual offer anything to you to help expedite the process?

A: No, but I was more than happy to have him retire.

Q: Did Conn ever discuss any staff issue other than that?

A: Over the years, he mentioned problems with some employees that would impact our operations. He would give me a block schedule and we would call.

He talked about opening an office in Ashland, and he asked if I knew an attorney who was capable of working with him. I gave him some names.

Q: Who?

A: One was Marie Goldcamp, who is now a Judge here. Also, Bill Redd.

Initials *CPM*

Q: Do you know anyone of Conn's current or former employees?

one or two in a class I taught on administrative law several years ago
A: I have met them, but I have no dealings with them outside of the office. *I may have had*

Q: Do you know if any of these people worked with SSA or other federal agencies?

A: I don't know. I know a vocational expert who does reports for workers compensation for one attorney who does ~~not~~ ^{do} SSA cases, [REDACTED]

Q: Do you consider yourself a mentor to Conn? Can you expand?

A: No. He ignores me. He wanted to expand nationally, advertise nationally. I said, "You know what helps your case. You know how the judges work. You know which doctors we look to as more important and not. You go elsewhere and you won't know that. You are effective at getting additional evidence. It's harder to do that on a national scale. Don't do it." He did it. He opened an office in California, and closed the office in Ashland.

Q: Is he still here?

A: As far as I know.

Q: What did he tell you about the California office?

A: Earlier this year, he had hired several attorneys. They are doing most of his work. He hasn't come to a hearing with me since before May. He has claimants here, but not Conn, other attorneys have appeared. *I cannot recall any specific details of conversations with Mr. Conn about his California office.*

Q: Earlier you mentioned knowing the judges preference about doctors. Please elaborate. Is there a cadre of doctors you don't find credible?

A: When we get the report and it always says, he can only lift 5 lbs, sit 2 hours in an 8 hour day, stand 2 hours in an 8 hour day, *and we* it is not consistent with other evidence, *we don't give it much weight.*

Q: Do you recognize names?

These reports
A: ~~They~~ ^{are} in every case. We look to see if its supported by other evidence in the file. There are some that are so consistently off the mark that you look at the doctor's name and read the report. It's not supported at all. A Third Circuit Case came out, saying a judge should not always afford greater weight to a carbon copy report.

Initials *UPA*

Q: If Conn knew there were doctors who you do not rely on, why use them?

A: Conn is an advocate. He is going to select a consultative evaluator who is going to be more disposed - to be likely to find the claimant disabled. Some doctors say they cannot do anything, and then you look in the file. They have a herniated disc or spinal stenosis which can be painful and limiting, but not necessarily disabling. He is an advocate. The doctor's opinions are supposed to be supported by evidence, and that is why you get into it. Some are way too conservative, others too liberal. Is it supported, with cites, why and so on? Treating doctors get more deference.

Q: He knew how you felt?

A: Yeah. Because I was clear - well, I didn't tell him, "Don't use that guy." But if in my decisions, I said there was no support or it was so far out of the norm. It became real clear quick.

[At this point, the investigators concluded the interview].

A: Let me say something - how profoundly sorry I am that you even have to do this. What I did involving Eric Conn was incredibly stupid and quite frankly I have no idea why it came up to do this. I have wasted or caused the waste of taxpayer money to have you come out here and to deal with this. I am incredibly sorry that I ever got involved with this. I have been with the agency for 27 years. 30 years of federal service. I have done a lot of extra things for this agency because people trusted me.

I have mentored four judges who were having problems in order to help them get on the right track. For years, I taught new judges and then there was extra training. I remember doing diversity training in the early 1990s; electronic business process. I have traveled extensively to that because they trusted my ability. Then I go and do something this incredibly stupid. I feel ashamed that I have caused all of this trouble for the agency. And most importantly, I have done something that jeopardized the trust that a lot of people had in me - and all I want to do now for whatever time I have left is to do the cases that are assigned to me - and to try to give every claimant the fairest decision in the quickest time allowable. I don't think I even can ask to do anything else. I think of my wife, all that I did at the expense of my family when I was younger. The agency valued my opinions - and I have just thrown all of that away. I have spent years building a good reputation and in one stupid decision threw it all out. I am 63 years old. You would think I have known better. As I said, fortunately it doesn't happen often, but when I decide to, it comes out big. I would like to work four more years and then go home and stay with my grandkids. I'm sorry.

the judges union's 1st contract

do all over

he had negotiate

etc

Initials *LDH*

I, Charlie Paul Andrus, hereby certify that I have read the foregoing statement, which consists of 24 pages, and it is true, complete, and accurate to the best of my knowledge and belief.

Signature: Charlie Paul Andrus

Date: March 8, 2013

Initials CPA

Message0332	
Subject:	RE: Huntington Paralegal Selection
From:	Andrus, Charlie Paul
Date:	11/19/2010 9:56:00 AM
To:	Taylor, Patricia D.; Hall, Gregory ODAR Huntington HO
Message Body	
<p>Let the games begin—those of us who about to die salute you!</p> <hr/> <p>From: Taylor, Patricia D. Sent: Friday, November 19, 2010 9:55 AM To: Andrus, Charlie Paul; Hall, Gregory ODAR Huntington HO Subject: FW: Huntington Paralegal Selection</p> <p>Good Morning,</p> <p>Kindly see the message below from CHR and initiate the action in FPPS and forward to my attention. Please call me if you have any questions or need assistance in FPPS.</p> <p>Thanks, Patti</p> <hr/> <p>From: Poulson, Kathleen Sent: Friday, November 19, 2010 9:49 AM To: Taylor, Patricia D. Subject: Huntington Paralegal Selection</p> <p>Sandra Nease has been cleared for the GS-11 Paralegal selection effective 11/21/10. Thanks.</p> <p>Kathy Poulson Social Security Administration Human Resource Specialist Staffing and Classification</p>	

Outlook Header Information
Conversation Topic: Huntington Paralegal Selection Subject: RE: Huntington Paralegal Selection From: Andrus, Charlie Paul Sender Name: Andrus, Charlie Paul To: Taylor, Patricia D.; Hall, Gregory ODAR Huntington HO Delivery Time: 11/19/2010 9:56:00 AM Creation Time: 11/19/2010 9:56:00 AM

Homeland Security & Governmental Affairs
Committee

EXHIBIT #83

From: Moreland, Vickie
Sent: Wednesday, July 06, 2011 3:05 PM
To: Campbell, Bridgette
Subject: RE: Shredders

OK THANKS

*Vickie Moreland
Administrative Assistant
Office of Disability Adjudication and Review/SSA
Huntington, West Virginia 25701
866-592-1607 ext. 19923
vickie.moreland@ssa.gov*

From: Campbell, Bridgette
Sent: Wednesday, July 06, 2011 2:47 PM
To: Moreland, Vickie
Subject: Shredders

Hi,

The shredders will have to be purchased using your supply funding.

From: ODOonline@OfficeDepot.com
Sent: Saturday, July 09, 2011 10:10 AM
To: Stanley, Shawna
Subject: Ship Confirm #570768078-001

Office DEPOT.

888-263-3423

Shipment Confirmation

Thank you again for shopping with Office Depot.

We thought you would like to know that your Office Depot order has shipped, and this completes your order. We value your business and look forward to serving you again soon.

For your reference, below is a summary of your order shipment:

Expected delivery date: **07.11.2011 8:30 AM - 5:00 PM.**

Order Number:	570768078-001	Status:	Shipped
Order Date:	07.08.2011	Tracking:	See below
Ordered By:	SHAWNA.STANLEY@SSA.GOV		
Last Modified By:	SHAWNA.STANLEY@SSA.GOV		
Customer Name:	SOCIAL SECURITY ADMIN	Shipping to:	SOCIAL SECURITY ADMINISTRATION
Customer number:	27690487		301 9TH ST FL 2
Payment info:	Credit Card		
PO Number:	1031-11-048		HUNTINGTON, WV 25701-1475
Contact:	SHAWNA STANLEY		
CC:			
BLDG/RM:	2ND FLOOR		
Release:			
LOC:	1170: Third Party		
Comments:			

Carton 1 - Shipped on 07.08.2011 - Carrier: - Tracking number: [See Order History](#)

ITEM DESCRIPTION	QTY
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0

Carton 2 - Shipped on 07.08.2011 - Carrier: UPSG - Tracking number: [1Z4708410368032504](#)

ITEM DESCRIPTION

QTY


()

Great Star 6-Piece Dual-End Precision Screw Driver (0707478)

Not on  Contract

1

Casio® SL-300SV Handheld Display Calculator (0736152)

Not on  Contract

30

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ROB PORTMAN, OHIO
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JERRY MORAN, KANSAS

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

MICHAEL L. ALEXANDER, STAFF DIRECTOR
NICHOLAS A. ROSSI, MINORITY STAFF DIRECTOR

July 28, 2011

VIA U.S. MAIL & EMAIL (suzanne.payne@ssa.gov)

The Honorable Michael J. Astrue
Commissioner
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235

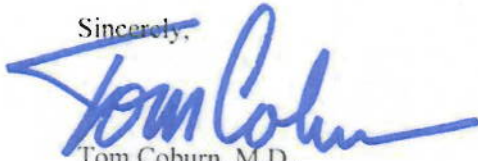
Dear Commissioner Astrue:

Pursuant to its authority under Senate Resolution 81, Section 12(e), 112th Congress, the United States Senate Permanent Subcommittee on Investigations (the "Subcommittee") is examining issues related to the Social Security Administration ("SSA") Social Security Disability Insurance ("SSDI") and Supplemental Security Income ("SSI") programs. As part of that investigation, the Subcommittee has also previously requested that the SSA Office of Inspector General provide the Subcommittee with information regarding allegations made against Administrative Law Judges from 2006 to 2011.

It has come to our attention that some SSA staff in the Huntington, West Virginia Office of Disability and Review Field Office may be engaged in the destruction of records related to this investigation, possibly in violation of several statutes, including the Federal Records Act and 18 U.S.C. § 1505 relating to obstruction of an investigation by a Congressional Committee. The Subcommittee takes very seriously the preservation of records by Federal agencies, and we respectfully request that you provide confirmation that you have taken appropriate steps to ensure the preservation of these documents at all SSA offices. In addition, we request that you ensure no documents are shredded at the Huntington Field Office outside the normal document retention policies and procedures. Please confirm by August 1, 2011 that SSA has taken or is taking steps to ensure the preservation of all documents related to this Subcommittee's investigation and to any pending law enforcement investigations that may be underway, including, but not limited to documents related to the processing and adjudication of SSDI and SSI cases and documents related to the management and review of SSA employees.

We greatly appreciate your assistance in this matter. Should you have additional concerns or questions, please have your staff contact Anthony Cotto (Senator Coburn) at 202/224-7496 or Laura Stuber (Senator Levin) at 202/224-9579.

Sincerely,



Tom Coburn, M.D.
Ranking Minority Member
Permanent Subcommittee on Investigations



Carl Levin
Chairman
Permanent Subcommittee on Investigations

cc: The Honorable Patrick P. O'Carroll
Inspector General
Social Security Administration

Homeland Security & Governmental Affairs
Committee
EXHIBIT #86



SOCIAL SECURITY

The Commissioner

August 1, 2011

The Honorable Carl Levin
Chairman, Permanent Subcommittee
on Investigations
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your letter of July 28, 2011, expressing your concerns about document retention and the recent acquisition of shredders in our Huntington, WV Hearing Office. As we discussed on Friday, July 29, I have directed that all documents, of any type and regardless of our other policies, be preserved in the Huntington Hearing Office and that any shredders immediately be moved out of the building to another Social Security facility until further notice. I also asked our Office of Inspector General (OIG) to immediately investigate the allegations that you raised.

I have learned that Huntington management obtained shredders to properly dispose of personnel records that we are required to timely purge, and OIG reports that the office was not inappropriately destroying records.

Safeguarding sensitive information has been an important issue ever since the creation of Social Security. In 1937, the first regulation adopted by the Social Security Board outlined the rules regarding privacy and disclosure of Social Security records. Through the years, other regulations and the Privacy Act have further defined our responsibilities to ensure the confidentiality of the information we collect and hold. Nearly all of our work is electronic. Even if an employee prints a document, including material from a claim, and later shreds it, its content likely exists in one of our systems.

We generally have two types of sensitive records in our hearing offices—documents containing personal information about beneficiaries and claimants, and employee personnel documents. Regulations issued by the Archivist of the United States require us to properly and definitively dispose of paper records containing privacy-related information by shredding, burning, or pulping. Any contracts for pulping or destruction of privacy-related information must meet standards appropriate for the material.

With respect to claimant information, offices place this information in locked shredder bins until the contractor picks the material up for shredding. Managers generally shred personnel records to prevent other employees, who may have access to contractor shredding bins, from retrieving information about their peers.

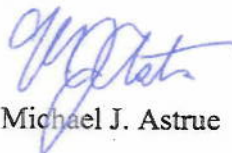
Homeland Security & Governmental Affairs
Committee
EXHIBIT #87

Following the temporary reassignment of Hearing Office Chief Administrative Law Judge Charlie P. Andrus on June 8, we have called upon a series of experienced managers from outside the Philadelphia Region to help the Huntington Hearing Office conform to national policy and best demonstrated practices. It was one of these managers who identified shortcomings in the office; thus, the office purchased a scanner, atomic clocks for timekeeping, and shredders to correctly dispose of personnel documents.

On July 29, an OIG criminal investigator entered the Huntington Hearing Office and secured all shredders, locked bins, and bagged shredded material. Inspector General Patrick P. O'Carroll, Jr. reported that the agent's review of the material has found that the records were appropriate for destruction.

I appreciate your interest in ensuring that our offices operate with the utmost integrity and I hope this information is helpful in addressing your concerns. We are sending a similar letter to Senator Coburn. I am happy to discuss this matter further, or your staff may contact Scott Frey, Deputy Commissioner, Office of Legislation and Congressional Affairs, at (202) 358-6030.

Sincerely,



Michael J. Astrue

cc:

Patrick P. O'Carroll, Jr.

From: [NAME REDACTED] [mailto:xxxxx.xxxx@ssa.gov]
Sent: Tuesday, August 02, 2011 10:14 AM
Subject: RE: Ltr from Perm. Sub. Invest. (SSA and SSA-OIG)

Chris,

With cross cut shredders, it is impossible to actually review the shredded material by piecing it together and determine what was shredded.

We do know based on the agent's observations and information gathered that the shredders were being used to destroy copies of personnel records for which electronic or other hard copies existed. The documents included personnel information which contained PII and medical information of employees within the office and 7b (personnel file) content, which is authorized for destruction every year. We understand that the management authorized the shredders because there was some concern with placing this type of information in the office shred bins that were accessible to administrative personnel.

We have no concerns that anything of evidentiary value was shredded as relates to our investigation.

I also left you a voicemail, but let me know if you have questions.

Thanks,
[NAME REDACTED]



Homeland Security & Governmental Affairs
Committee
EXHIBIT #89

THE
**Eric C.
Conn**
LAW COMPLEX

PRESENTS

We the People

Songs by Darrel Mullins and Dan Huff

THIS CD BEGAN WHEN OUR FOUNDING FATHERS SIGNED THE CONSTITUTION OF THE UNITED STATES OF AMERICA WITH THESE WORDS, "**We the People** of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

Thanks to Eric C. Conn for making this project possible, for his service as a veteran, and for believing in America and in us for telling our stories in songs. Thanks to the people of America, this CD is for you and about you. Special thanks to Snake Plisken... it's been a while.

Don't interfere with anything in the Constitution. That must be maintained, for it is the only safeguard of our liberties. ~ Abraham Lincoln

Those who expect to reap the blessings of freedom, must, like men, undergo the fatigue of supporting it. ~ Thomas Paine

They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety. ~ Benjamin Franklin

I would rather be exposed to the inconveniences attending too much liberty than to those attending too small a degree of it. ~ Thomas Jefferson

A hero is someone who understands the responsibility that comes with his freedom. ~ Bob Dylan

A more perfect union was the very first reason for the founding of The United States of America. America IS a union. You can't be anti-union and pro-America at the same time. Period. ~ Arlo Guthrie



AOC-491.1 Doc. Code: COPG
Rev. 9-03 09/3/2013 01:52 pm
Page 1 of 2 Ver. 1.01
Commonwealth of Kentucky
Court of Justice www.kycourts.net



COMMONWEALTH'S OFFER
ON A PLEA OF GUILTY

Case No. 13-CB-00231
Court Circuit
County Franklin

COMMONWEALTH OF KENTUCKY

VS.

Eric C. Conn

FILED
SEP 09 2013
FRANKLIN CIRCUIT COURT
SALLY JUMP, CLERK

PLAINTIFF
DEFENDANT

1. **Charges and Penalties:**

Charge Making a Gift of Money to Another Person to Contribute to a UOR Code 60410
Penalty Candidate on His Behalf Class D Felony
Charge _____ UOR Code _____
Penalty _____
Charge _____ UOR Code _____
Penalty _____
Charge _____ UOR Code _____
Penalty _____
Charge _____ UOR Code _____
Penalty _____
Charge _____ UOR Code _____
Penalty _____

2. **Amended Charges (if any):**

Amended Charge Criminal Attempt to Make a Gift to Another Person to UOR Code 60410
Penalty Contribute to a Candidate on His Behalf Class A Misdemeanor (KRS 506.010)
Amended Charge _____ UOR Code _____
Penalty _____
Amended Charge _____ UOR Code _____
Penalty _____
Amended Charge _____ UOR Code _____
Penalty _____
Amended Charge _____ UOR Code _____
Penalty _____
Amended Charge _____ UOR Code _____
Penalty _____

3. Reason(s) for amended charge(s) and UOR Code(s) (if applicable):

Agreement of the parties.

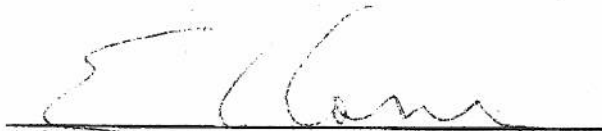
4. Facts of the Case:

On February 8-9, 2013, the defendant attempted to make a gift of money to another person to contribute to a candidate for the Kentucky Supreme Court on his behalf.

5. Recommendations on a Plea of Guilty (Plea Agreement):

Twelve (12) months, conditionally discharged for two (2) years. The defendant shall make restitution in the amount of \$5,600.00 to the Office of the Attorney General for investigative costs.

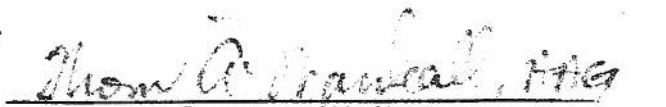
6. Offered this 5th day of September, 2013.



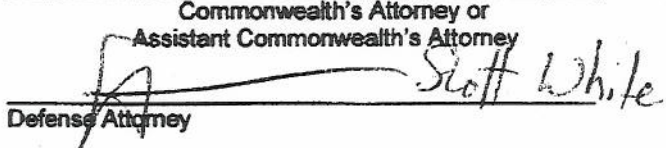
Defendant

Prosecuting Witness

Prosecuting Witness



Commonwealth's Attorney or
Assistant Commonwealth's Attorney



Defense Attorney

Police Officer

Police Officer

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION NO. II
CASE NO. 13-CR-00231

FILED
SEP 09 2013
FRANKLIN CIRCUIT COURT
SALLY JUMP, CLERK

COMMONWEALTH OF KENTUCKY

PLAINTIFF

VS.


WAIVER OF STATUTE OF LIMITATIONS

ERIC C. CONN

DEFENDANT

* * * * *

The undersigned, ERIC C. CONN, hereby states to the Court that he has reached a plea agreement with the Commonwealth that calls for the amendment of the charge in the Information to Criminal Attempt to Make a Gift of Money to Another Person to Contribute to a Candidate on His Behalf, a Class A Misdemeanor, and hereby acknowledges that his attorney, the Hon. Scott White, has explained to him and he understands that pursuant to KRS 500.050(2), the prosecution of a misdemeanor must be commenced within one (1) year after it is committed. With that understanding, and pursuant to the terms of the plea agreement, the undersigned hereby knowingly and voluntarily waives his right to be prosecuted within one (1) year after the amended charge was committed.



DEFENDANT
Sept 5, 2013
DATE

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION NO. II
CASE NO. 13-CF-00231

FILED
SEP 09 2013
FRANKLIN CIRCUIT COURT
SALLY JUMP, CLERK

COMMONWEALTH OF KENTUCKY

PLAINTIFF

VS.


WAIVER OF INDICTMENT

ERIC C. CONN

DEFENDANT

* * * * *

The undersigned, ERIC C. CONN, hereby states to the Court that he has been held to answer in this Court for the following offense: Making a Gift of Money to Another Person to Contribute to a Candidate on His Behalf (D Felony), and hereby acknowledges that his attorney, the Hon. Scott White, has explained to him and he understands that Section 12 of the Kentucky Constitution requires that the aforesaid offense be prosecuted by indictment unless the undersigned waives Indictment by notice in writing to the Court, in which event the offenses may be prosecuted by Information. With that understanding and pursuant to RCr. 6.02, the undersigned hereby knowingly and voluntarily waives his right to be prosecuted by indictment and allows the aforementioned offense to be prosecuted forthwith by information filed by the Attorney for the Commonwealth.


DEFENDANT

Sept 5, 2013
DATE

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION NO. II
CASE NO. 13-CR-00231

FILED
SEP 09 2013
FRANKLIN CIRCUIT COURT
SALLY JUMP, CLERK

COMMONWEALTH OF KENTUCKY

PLAINTIFF

VS.

INFORMATION

KRS 121.150(12)
KRS 121.990(3)
CLASS D FELONY
UOR 60410

ERIC C. CONN


DEFENDANT

* * * * *

Upon information and belief, the Attorneys for the Commonwealth, Shawna Virgin Kincer and Thom A. Marshall, Assistant Attorneys General, pursuant to RCr 6.04, charge that between February 8-9, 2013, in Franklin County, Kentucky, the above-named defendant made a gift of money to another person to contribute to a candidate on his behalf.

Against the peace and dignity of the Commonwealth of Kentucky.

Shawna Virgin Kincer
SHAWNA VIRGIN KINCER
ASSISTANT ATTORNEY GENERAL

Thom A. Marshall
THOM A. MARSHALL
ASSISTANT ATTORNEY GENERAL

**SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review**

DECISION

IN THE CASE OF

(Claimant)

(Wage Earner)

CLAIM FOR

Period of Disability and Disability Insurance
Benefits

(Social Security Number)

JURISDICTION AND PROCEDURAL HISTORY

This case is before the undersigned on a request for hearing dated March 24, 2010 (20 CFR 404.929 *et seq.*). The evidence of record supports a fully favorable decision; therefore no hearing has been held (20 CFR 404.948(a)). The claimant is represented by Eric C Conn, an attorney.

The claimant has amended the alleged onset date of disability to August 25, 2009.

ISSUES

The issue is whether the claimant is disabled under sections 216(i) and 223(d) of the Social Security Act. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

There is an additional issue whether the insured status requirements of sections 216(i) and 223 of the Social Security Act are met. The claimant's earnings record shows that the claimant has acquired sufficient quarters of coverage to remain insured through March 31, 2013. Thus, the claimant must establish disability on or before that date in order to be entitled to a period of disability and disability insurance benefits.

After careful review of the entire record, the undersigned finds that the claimant has been disabled from August 25, 2009, through the date of this decision. The undersigned also finds that the insured status requirements of the Social Security Act were met as of the date disability is established.

APPLICABLE LAW

Under the authority of the Social Security Act, the Social Security Administration has established a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 404.1520(a)). The steps are followed in order. If it is determined that the

See Next Page

**Homeland Security & Governmental Affairs
Committee**

EXHIBIT A - 1

claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the undersigned must determine whether the claimant is engaging in substantial gainful activity (20CFR 404.1520(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. If an individual engages in SGA, he is not disabled regardless of how severe his physical or mental impairments are and regardless of his age, education, or work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the undersigned must determine whether the claimant has a medically determinable impairment that is severe or a combination of impairments that is severe (20 CFR 404.1520(c)). An impairment or combination of impairments is severe within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. If the claimant does not have a severe medically determinable impairment or combination of impairments, he is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

At step three, the undersigned must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, and 404.1526). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the undersigned must first determine the claimant's residual functional capacity (20 CFR 404.1520(e)). An individual's residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, the undersigned must consider all of the claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e) and 404.1545; SSR 96-8p).

Next, the undersigned must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his past relevant work (20 CFR 404.1520(f)). If the claimant has the residual functional capacity to do his past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g)), the undersigned must determine whether the claimant is able to do any other work considering his residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he is not disabled. If the claimant is not able to do other work and meets the duration requirement, he is disabled. Although the claimant generally continues to have the burden of proving disability at this step, a limited burden of going forward with the evidence shifts to the Social Security Administration. In order to support a finding that an individual is not disabled at this step, the Social Security Administration is responsible for providing evidence that demonstrates that other

work exists in significant numbers in the national economy that the claimant can do, given the residual functional capacity, age, education, and work experience (20 CFR 404.1512(g) and 404.1560(c)).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After careful consideration of the entire record, the undersigned makes the following findings:

1. **The claimant s date last insured is March 31, 2013.**
2. **The claimant has not engaged in substantial gainful activity since August 25, 2009, the amended alleged onset date (20 CFR 404.1520(b) and 404.1571 *et seq.*).**
3. **The claimant has the following severe impairments: sciatica, disc herniation and diabetes (20 CFR 404.1520(c)).**
4. **The claimant does not have an impairment or combination of impairments that meets or medically equals one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525 and 404.1526).**
5. **The claimant has the residual functional capacity to lift 8-10 pounds occasionally and 5 pounds frequently, stand/walk 2 hours per work day, sit 4-5 hours per work day and only occasionally balance and never climb or crawl.**

In making this finding, the undersigned considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and SSRs 96-4p and 96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and SSRs 96-2p, 96-6p and 06-3p.

Having considered all of the evidence, I am satisfied that the information provided by Dr. Huffnagle most accurately reflects the claimant s impairments and limitations. Therefore, the claimant is limited to less than sedentary work at best.

After considering the evidence of record, the undersigned finds that the claimant s medically determinable impairments could reasonably be expected to produce the alleged symptoms, and that the claimant s statements concerning the intensity, persistence and limiting effects of these symptoms are generally credible.

The State agency medical consultants physical assessments are given little weight because another medical opinion is more consistent with the record as a whole and evidence received at

the hearing level shows that the claimant is more limited than determined by the State agency consultants.

6. The claimant is unable to perform any past relevant work (20 CFR 404.1565).

The demands of the claimant's past relevant work exceed the residual functional capacity.

7. The claimant was a younger individual age 18-44 on the established disability onset date (20 CFR 404.1563).

8. The claimant has at least a high school education and is able to communicate in English (20 CFR 404.1564).

9. Transferability of job skills is not an issue in this case because the claimant's past relevant work is unskilled (20 CFR 404.1568).

10. Considering the claimant's age, education, work experience, and residual functional capacity, there are no jobs that exist in significant numbers in the national economy that the claimant can perform (20 CFR 404.1560(c) and 404.1566).

In determining whether a successful adjustment to other work can be made, the undersigned must consider the claimant's residual functional capacity, age, education, and work experience in conjunction with the Medical-Vocational Guidelines, 20 CFR Part 404, Subpart P, Appendix 2. If the claimant can perform all or substantially all of the exertional demands at a given level of exertion, the medical-vocational rules direct a conclusion of either "disabled" or "not disabled" depending upon the claimant's specific vocational profile (SSR 83-11). When the claimant cannot perform substantially all of the exertional demands of work at a given level of exertion and/or has nonexertional limitations, the medical-vocational rules are used as a framework for decisionmaking unless there is a rule that directs a conclusion of disabled without considering the additional exertional and/or nonexertional limitations (SSRs 83-12 and 83-14). If the claimant has solely nonexertional limitations, section 204.00 in the Medical-Vocational Guidelines provides a framework for decisionmaking (SSR 85-15).

If the claimant had the residual functional capacity to perform the full range of sedentary work, considering the claimant's age, education, and work experience, a finding of "not disabled" would be directed by Medical-Vocational Rule 201.27. However, the additional limitations so narrow the range of work the claimant might otherwise perform that a finding of disabled is appropriate under the framework of this rule.

11. The claimant has been under a disability as defined in the Social Security Act since August 25, 2009, the amended alleged onset date of disability (20 CFR 404.1520(g)).

DECISION

Based on the application for a period of disability and disability insurance benefits filed on August 31, 2009, the claimant has been disabled under sections 216(i) and 223(d) of the Social Security Act since August 25, 2009.

/s/ David B. Daugherty

David B. Daugherty
Administrative Law Judge

June 1, 2010

Date

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

DECISION

IN THE CASE OF

██████████

(Claimant)

(Wage Earner)

CLAIM FOR

Period of Disability and Disability Insurance
Benefits

██████████

(Social Security Number)

JURISDICTION AND PROCEDURAL HISTORY

On September 28, 2007, the claimant filed a Title II application for a period of disability and disability insurance benefits, alleging disability beginning July 29, 2007. The claim was denied initially on December 17, 2007, and upon reconsideration on January 23, 2008. Thereafter, the claimant filed a written request for hearing on February 6, 2008 (20 CFR 404.929 *et seq.*). The claimant appeared and testified at a hearing held on June 9, 2009, in Prestonsburg, KY. ██████████ an impartial vocational expert, also appeared and testified at the hearing. The claimant is represented by ██████████ an attorney.

ISSUES

The issue is whether the claimant is disabled under sections 216(i) and 223(d) of the Social Security Act. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

There is an additional issue whether the insured status requirements of sections 216(i) and 223 of the Social Security Act are met. The claimant's earnings record shows that the claimant has acquired sufficient quarters of coverage to remain insured through December 31, 2011.

After careful consideration of all the evidence, the undersigned concludes the claimant has not been under a disability within the meaning of the Social Security Act from July 29, 2007 through the date of this decision.

APPLICABLE LAW

Under the authority of the Social Security Act, the Social Security Administration has established a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 404.1520(a)). The steps are followed in order. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

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Homeland Security & Governmental Affairs
Committee

EXHIBIT A - 2

At step one, the undersigned must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he has demonstrated the ability to engage in SGA (20 CFR 404.1574 and 404.1575). If an individual engages in SGA, he is not disabled regardless of how severe his physical or mental impairments are and regardless of his age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the undersigned must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If the claimant does not have a severe medically determinable impairment or combination of impairments, he is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

At step three, the undersigned must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, and 404.1526). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the undersigned must first determine the claimant's residual functional capacity (20 CFR 404.1520(e)). An individual's residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, the undersigned must consider all of the claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e) and 404.1545; SSR 96-8p).

Next, the undersigned must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his past relevant work (20 CFR 404.1520(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA (20 CFR 404.1560(b) and 404.1565). If the claimant has the residual functional capacity to do his past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

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At the last step of the sequential evaluation process (20 CFR 404.1520(g)), the undersigned must determine whether the claimant is able to do any other work considering his residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he is not disabled. If the claimant is not able to do other work and meets the duration requirement, he is disabled. Although the claimant generally continues to have the burden of proving disability at this step, a limited burden of going forward with the evidence shifts to the Social Security Administration. In order to support a finding that an individual is not disabled at this step, the Social Security Administration is responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that the claimant can do, given the residual functional capacity, age, education, and work experience (20 CFR 404.1512(g) and 404.1560(c)).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After careful consideration of the entire record, the undersigned makes the following findings:

1. **The claimant meets the insured status requirements of the Social Security Act through December 31, 2011.**
2. **The claimant has not engaged in substantial gainful activity since July 29, 2007, the alleged onset date (20 CFR 404.1571 *et seq.*).**
3. **The claimant has the following severe impairments: obesity and degenerative disc disease of lumbar spine (20 CFR 404.1520(c)).**

The claimant weighs is 5'7" and weighs 250 pounds (Exhibit 5F). The undersigned finds the claimant's obesity constitutes a severe impairment.

The claimant was diagnosed with degenerative disc disease of the lumbar spine (Exhibit 7F). The claimant takes prescription medications for his back impairment. Therefore, the undersigned finds the claimant's back impairment is severe.

The claimant alleged disability based upon diabetes (Exhibit 5E). The medical evidence shows the claimant was diagnosed with non-insulin dependent diabetes mellitus about 10 years ago (Exhibit 7F). The claimant checks his blood sugar once a day; takes Actos and Janumet for his diabetes; and eats a special diet. The evidence shows the claimant's diabetes is controlled with his medication (Exhibit 33F). Therefore, the undersigned finds the claimant's diabetes does not constitute severe impairment.

The claimant alleged disability based upon his hypertension (Exhibit 5E). The medical evidence shows the claimant was diagnosed with hypertension in about 2005 (Exhibit 7F). He takes Toprol and Altace for his high blood pressure. The evidence shows the claimant's hypertension is controlled with medication (Exhibits 5F, 7F). As such, the undersigned finds the claimant's hypertension does not constitute a severe impairment.

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The claimant testified he suffers from headaches about once a week. His headaches start in his neck and move up his head into his eyes. The claimant testified his headaches are relieved by taking pain medication. The undersigned finds the claimant's headaches do not constitute a severe impairment as they are controlled by medication and do not significantly limit a work related function.

The claimant alleged disability based upon tendonitis in his right foot (Exhibit 5E). The medical evidence shows the claimant received treatment for right foot pain in 2005 (Exhibit 23F). The claimant was diagnosed with achilles tendonitis (Exhibit 23F). The claimant's doctor prescribed pain medication and placed him on light duty; however, by March 2006, the claimant was released from work restrictions (Exhibit 23F). There is no evidence of the claimant receiving further treatment for his right foot. In addition, the claimant did not mention his right foot during the hearing. Therefore, the undersigned finds the claimant's tendonitis of the right foot does not constitute a severe impairment.

The alleged disability based upon depression and anxiety (Exhibit 5E). In 2008, the claimant reported feeling depressed because of his physical limitations (Exhibit 33F). The claimant's treating physician prescribed the claimant Cymbalta (Exhibit 33F). However, the record does not contain any evidence of the claimant continuing to receive medication for his mental impairments after 2008. In addition, the claimant has never received psychological treatment (Exhibit 24F). The claimant was examined by consultative psychologist [REDACTED] in February 2009 (Exhibit 24F). The claimant reported he was injured in a [REDACTED] accident in June 2007 (Exhibit 24F). Since the accident he has experienced symptoms of anxiety, such as worrying and feeling agitated when reminded of the accident (Exhibit 24F). In addition, the claimant reported symptoms of depression, such as gaining weight, being more emotional, and feeling useless (Exhibit 24F). The consultative psychologist's mental status exam showed a normal range of emotional expression and a low mood (Exhibit 24F). The consultative psychologist diagnosed the claimant with adjustment disorder, chronic with depressive and anxious features; pain disorder associated with medical condition and psychological factors (Exhibit 24F).

The claimant's medically determinable mental impairments of Depression; Adjustment Disorder; Pain Disorder Associated with Medical Condition and Psychological Factors, considered singly and in combination, do not cause more than minimal limitation in the claimant's ability to perform basic mental work activities and are therefore nonsevere.

In making this finding, the undersigned has considered the four broad functional areas set out in the disability regulations for evaluating mental disorders and in section 12.00C of the Listing of Impairments (20 CFR, Part 404, Subpart P, Appendix 1). These four broad functional areas are known as the "paragraph B" criteria.

The first functional area is activities of daily living. The claimant is able to attend to his personal care needs. He watches television and goes grocery shopping with his wife once a week (Exhibit 3E). The claimant does not have any restriction in this area.

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The next functional area is social functioning. In this area, the claimant has no limitation. The claimant testified he regularly visits his brother and sister. In addition, he attends church about once a month and has no problem socializing after the service. The undersigned finds the claimant has no limitation in this area.

The third functional area is concentration, persistence or pace. In this area, the claimant has mild limitation. The claimant reported trouble completing tasks and concentrating (Exhibit 3E). The undersigned finds the overall medical record demonstrates the claimant has mild limitation in this area.

The fourth functional area is episodes of decompensation. In this area, the claimant has experienced no episodes of decompensation which have been of extended duration.

Because the claimant's medically determinable mental impairments cause no more than "mild" limitation in any of the first three functional areas and "no" episodes of decompensation which have been of extended duration in the fourth area, they are nonsevere (20 CFR 404.1520a(d)(1)).

The limitations identified in the "paragraph B" criteria are not a residual functional capacity assessment but are used to rate the severity of mental impairments at steps 2 and 3 of the sequential evaluation process. The mental residual functional capacity assessment used at steps 4 and 5 of the sequential evaluation process requires a more detailed assessment by itemizing various functions contained in the broad categories found in paragraph B of the adult mental disorders listings in 12.00 of the Listing of Impairments (SSR 96-8p). Therefore, the following residual functional capacity assessment reflects the degree of limitation the undersigned has found in the "paragraph B" mental function analysis.

4. The claimant does not have an impairment or combination of impairments that meets or medically equals one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1525 and 404.1526).

Pursuant to Social Security Ruling 02-1p, I have considered the claimant's obesity and the combined effect of his impairments. Although the claimant's obesity may increase the severity of coexisting and related impairments, the evidence does not establish presumptive disability.

With regard to Section 1.00 dealing with the musculoskeletal system, the examining and treating physicians' reports show the neurological deficits required for Section 1.04A are not present (Exhibits 7F, 5F). Furthermore, after reviewing all of the evidence, including the medical records, and considering the interactive and cumulative effects of all medically determinable impairments, including any impairments that are "severe" and/or "non-severe," the undersigned finds that the claimant does not have a combination of impairments that meet or medically equal any listed impairment in Appendix 1 to Subpart P of Regulations No. 4.

5. After careful consideration of the entire record, the undersigned finds that the claimant has the residual functional capacity to perform light work as defined in 20 CFR 404.1567(b) except he only occasionally climb stoop, kneel, crouch, and crawl with no repetitive bending or squatting; and needs the option to sit and stand.

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In making this finding, the undersigned has considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and SSRs 96-4p and 96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and SSRs 96-2p, 96-5p, 96-6p and 06-3p.

In considering the claimant's symptoms, the undersigned must follow a two-step process in which it must first be determined whether there is an underlying medically determinable physical or mental impairment(s)--i.e., an impairment(s) that can be shown by medically acceptable clinical and laboratory diagnostic techniques--that could reasonably be expected to produce the claimant's pain or other symptoms.

Second, once an underlying physical or mental impairment(s) that could reasonably be expected to produce the claimant's pain or other symptoms has been shown, the undersigned must evaluate the intensity, persistence, and limiting effects of the claimant's symptoms to determine the extent to which they limit the claimant's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, the undersigned must make a finding on the credibility of the statements based on a consideration of the entire case record.

The claimant testified he is [REDACTED] years old and lives with his wife. He graduated from high school with a fair ability to read and perform math, but poor ability to write. The claimant testified he is 5'7" and weighs about 250 pounds. He has a lot of pain in his low back that prevents him from sitting or standing very long. His back pain is aggravated by bending, lifting, walking, and performing yard work. He can lift about 10 pounds; sit for 10 to 15 minutes before needing to rest; and stand and walk for 5 to 10 minutes before needing to rest. He received physical therapy and found it somewhat helpful. The claimant wears a back brace when he walks and takes Lorcet, Lyrica, Ultram, Flexeril, and Celebrex for his back impairment and finds them helpful. He relieves his pain by taking his pain medication and lying down with a heating pad.

The medical evidence shows the claimant is 5'7" and weighs about 250 pounds (Exhibits 3F, 5F, 7F, 16F, 29F). The medical evidence also demonstrates the claimant injured his back in a [REDACTED] accident on June 5, 2007 (Exhibit 1F). The claimant reported neck and low back pain; examination showed spasm in both the cervical and lumbar spine and decreased range of motion (Exhibit 3F). He was initially diagnosed with whiplash and lumbar strain (Exhibit 3F). The claimant was treated with Lortab, Flexeril, and Celebrex (Exhibit 3F).

The claimant continued to report pain in his low back that radiated down his left thigh (Exhibits 3F, 16F). X-rays of the cervical and lumbar spine were within normal limits (Exhibit 3F). An MRI of the lumbar spine from 2007 showed small central degenerative disc protrusion at the L4-L5 disc level with small posterior annular rent (Exhibit 3F). An MRI from 2008 showed degenerative change at L4-L5 with desiccation and annular cleft in midline (Exhibit 31F). Physical examination showed muscle spasm in the lumbar spine; decreased range of motion; and severe pain with palpation of the paraspinal muscles (Exhibit 3F). He was diagnosed with herniated nucleus pulposus; severe low back pain; and degenerative disc disease (Exhibit 3F).

The claimant received physical therapy for four months and reported it somewhat helpful (Exhibits 3F).

Neurologist, [REDACTED] examination revealed tenderness in the occipital area and left L5 area; motor strength of 5/5 throughout with pain limitations; and negative straight leg raising test (Exhibit 5F). The neurologist opined the claimant would not benefit from surgery and recommended lumbar epidural steroid injections (Exhibit 5F). The claimant received several lumbar epidural steroid injections and several selective nerve root injections (Exhibit 32F). He reported minimal results from the injections, but rated his pain at only a five (Exhibit 32F). The claimant's doctor gave him a back brace to wear; by February 2009, the claimant reported relief with the back brace along with the analgesics and coanalgesics (Exhibit 32F).

The claimant was examined by consultative examiner, [REDACTED] (Exhibit 7F). [REDACTED] found the claimant had diminished range of motion in the lumbar spine; difficulty squatting; no sensory deficits; and normal motor strength and gait (Exhibit 7F). The claimant was also examined by [REDACTED] (Exhibit 29F). [REDACTED] found thoracolumbar spine flexion of 40 degrees with low back; extension of 20 degrees with back pain; negative right straight leg raising tests in the sitting and supine positions; positive left straight leg raising test in the sitting and supine positions; no sensory deficits; and normal gait (Exhibit 29F). The claimant told [REDACTED] the neurologist recommended neurosurgery for his back (Exhibit 29F).

After careful consideration of the evidence, the undersigned finds that the claimant's medically determinable impairments could reasonably be expected to cause the alleged symptoms; however, the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are not credible to the extent they are inconsistent with the above residual functional capacity assessment.

The claimant testified his back impairment prevents him from working, however, he also said his medications relieve his back pain. The claimant told Dr. Herr the neurologist recommended neurosurgery for his back impairment; however, the evidence shows the neurologist recommended pain management instead (Exhibit 5F).

Pursuant to 96-6p, the undersigned has given consideration to the reports of the state agency medical consultants as well as to other treating, examining and non-examining medical sources. Consultative examiner [REDACTED] opined the claimant is able to sit, stand, and move about; would have difficulty with repetitive bending or squatting; able to ambulate without the use of an assistive device; and able to grossly and finely manipulate objects (Exhibit 7F). The undersigned gives significant weight to [REDACTED] assessment as it is consistent with the overall medical record.

The state agency medical consultants opined the claimant can lift and carry 20 pounds occasionally, 10 pounds frequently; stand and walk about 6 hours in an 8 hour workday; sit about 6 hours in an 8 hour workday; unlimited ability to push and pull; occasionally climb ramps, stairs, ladders, ropes, and scaffolds; stoop, kneel, crouch, and crawl; and should avoid concentrated exposure to vibration (Exhibits 8F, 15F). The undersigned gives great weight to the state agency assessments because they are consistent with the overall medical record.

Examiner, Dr. David Herr opined the claimant can lift and carry 15 pounds occasionally, 10 pounds frequently; stand and walk for a total of 4 hours in an 8 hour workday, for 45 minutes without interruption; sit for a total of 3 hours in an 8 hour workday, for 30 minutes without interruption; never climb, crouch, kneel, and crawl; occasionally balance and stoop; never push and pull; occasionally reach; frequently handle; never work at or around heights, moving machinery, or vibration; occasionally work around temperature extremes, chemicals, dust, fumes, and humidity (Exhibit 29F). The undersigned gives little weight to Dr. Herr's assessment because it is not supported by the overall evidence of record and he was not furnished the whole file.

Therefore, the undersigned finds the claimant retains the residual functional capacity to perform light work except he only occasionally climb stoop, kneel, crouch, and crawl with no repetitive bending or squatting; and needs the option to sit and stand.

6. The claimant is unable to perform any past relevant work (20 CFR 404.1565).

The claimant has past relevant work as a [REDACTED] and [REDACTED]. The vocational expert testified the claimant's work as a [REDACTED] is classified as heavy and semiskilled; his work as a [REDACTED] and [REDACTED] classified as medium and unskilled; and as a [REDACTED] is classified as heavy and unskilled. The claimant residual functional capacity to perform at the light level prevents him from performing his past relevant work.

7. The claimant was born on [REDACTED] and was [REDACTED] years old, which is defined as a younger individual age 18-49, on the alleged disability onset date. (20 CFR 404.1563).

8. The claimant has at least a high school education and is able to communicate in English (20 CFR 404.1564).

9. Transferability of job skills is not material to the determination of disability because using the Medical-Vocational Rules as a framework supports a finding that the claimant is "not disabled," whether or not the claimant has transferable job skills (See SSR 82-41 and 20 CFR Part 404, Subpart P, Appendix 2).

10. Considering the claimant's age, education, work experience, and residual functional capacity, there are jobs that exist in significant numbers in the national economy that the claimant can perform (20 CFR 404.1569 and 404.1569a).

In determining whether a successful adjustment to other work can be made, the undersigned must consider the claimant's residual functional capacity, age, education, and work experience in conjunction with the Medical-Vocational Guidelines, 20 CFR Part 404, Subpart P, Appendix 2. If the claimant can perform all or substantially all of the exertional demands at a given level of exertion, the medical-vocational rules direct a conclusion of either "disabled" or "not disabled" depending upon the claimant's specific vocational profile (SSR 83-11). When the claimant

cannot perform substantially all of the exertional demands of work at a given level of exertion and/or has nonexertional limitations, the medical-vocational rules are used as a framework for decisionmaking unless there is a rule that directs a conclusion of "disabled" without considering the additional exertional and/or nonexertional limitations (SSRs 83-12 and 83-14). If the claimant has solely nonexertional limitations, section 204.00 in the Medical-Vocational Guidelines provides a framework for decisionmaking (SSR 85-15).

If the claimant had the residual functional capacity to perform the full range of light work, a finding of "not disabled" would be directed by Medical-Vocational Rule 202.21. However, the claimant's ability to perform all or substantially all of the requirements of this level of work has been impeded by additional limitations. To determine the extent to which these limitations erode the unskilled light occupational base, the Administrative Law Judge asked the vocational expert whether jobs exist in the national economy for an individual with the claimant's age, education, work experience, and residual functional capacity. The vocational expert testified that given all of these factors the individual would be able to perform the requirements of representative occupations nationally/regionally at the light level: as Officer Messenger, 577,000/9,900; Unarmed Night Watchman, 700,000/7,500; and House Sitter, 550,000/2,500. The vocational expert testified that given all of these factors the individual would be able to perform the requirements of representative occupations nationally/regionally at the sedentary level: as Bench Worker, 745,000/4,200; Grader Sorter, 783,000/9,500; and Weighter Measurer, 830,000/1,500.

Pursuant to SSR 00-4p, the vocational expert's testimony is consistent with the information contained in the Dictionary of Occupational Titles.

Based on the testimony of the vocational expert, the undersigned concludes that, considering the claimant's age, education, work experience, and residual functional capacity, the claimant is capable of making a successful adjustment to other work that exists in significant numbers in the national economy. A finding of "not disabled" is therefore appropriate under the framework of the above-cited rule.

11. The claimant has not been under a disability, as defined in the Social Security Act, from July 29, 2007 through the date of this decision (20 CFR 404.1520(g)).

DECISION

Based on the application for a period of disability and disability insurance benefits filed on September 28, 2007, the claimant is not disabled under sections 216(i) and 223(d) of the Social Security Act.

/s/ Andrew J. Chwalibog

Andrew J. Chwalibog
Administrative Law Judge

August 27, 2009

Date

Social Security Administration
Please read the instructions before completing this form.

Form Approved
OMB No. 0960-0527

Name (Claimant) (Print or Type)	Social Security Number
Wage Earner (If Different)	Social Security Number

Part I
APPOINTMENT OF REPRESENTATIVE

I appoint this person, Eric C Conn, Eric C Conn Law Complex, PO Box 308, Starville, Kentucky 41659

to act as my representative in connection with my claim(s) or asserted right(s) under:

- Title II (RSDI)
 Title XVI (SSI)
 Title XVIII (Medicare Coverage)
 Title VIII (SVB)

This person may, entirely in my place, make any request or give any notice; give or draw out evidence or information; get information; and receive any notice in connection with my pending claim(s) or asserted right(s).

- I authorize the Social Security Administration to release information about my pending claim(s) or asserted right(s) to designated associates who perform administrative duties (e.g. clerks), partners, and/or parties under contractual arrangements (e.g. copying services) for or with my representative.
- I appoint, or I now have, more than one representative. My main representative is

(Name of Principal Representative)

Signature (Claimant)	Address	
Telephone Number (with Area Code)	Fax Number (with Area Code)	Date

Part II
ACCEPTANCE OF APPOINTMENT

I, Eric C Conn, hereby accept the above appointment. I certify that I have not been suspended or prohibited from practice before the Social Security Administration; that I am not disqualified from representing the claimant as a current or former officer or employee of the United States; and that I will not charge or collect any fee for the representation, even if a third party will pay the fee, unless it has been approved in accordance with the laws and rules referred to on the reverse side of the representative's copy of this form. If I decide not to charge or collect a fee for the representation, I will notify the Social Security Administration. (Completion of Part III satisfies this requirement.)

Check one: I am an attorney. I am a non-attorney who is participating in the direct fee payment demonstration project.

I am a non-attorney. I am not participating in the direct fee payment demonstration project.

I have been disbarred or suspended from a court or bar to which I was previously admitted to practice as an attorney. Yes No

I have been disqualified from participating in or appearing before a Federal program or agency. Yes No

I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.

Signature (Representative)	Address	
Telephone Number (with Area Code)	Fax Number (with Area Code)	Date

Part III (Optional)
WAIVER OF FEE

I waive my right to charge and collect a fee under sections 206 and 1631(d)(2) of the Social Security Act. I release my client (the claimant) from any obligations, contractual or otherwise, which may be owed to me for services I have provided in connection with my client's claim(s) or asserted right(s).

Signature (Representative)	Date
----------------------------	------

Part IV (Optional)
WAIVER OF DIRECT PAYMENT

by Attorney or Non-Attorney Eligible to Receive Direct Payment

I waive only my right to direct payment of a fee from the withheld past-due retirement, survivors, disability insurance or supplemental security income benefits of my client (the claimant). I do not waive my right to request fee approval and to collect a fee directly from my client or a third party.

Signature (Representative Waiving Direct Payment)	Date
---------------------------------------------------	------

FEE CONTRACT

I hereby hire Attorney Eric C. Conn to represent me in my claims for Social Security benefits.

If I do NOT get Social Security benefits, I will NOT have to pay any attorney fee, but I will have to reimburse my Attorney for any costs he has in representing me, such as costs for getting medical records or reports.

If the Social Security Administration favorably decides the claim, the attorney fee will be the lesser of 25 percent of my past-due benefits of [redacted] (or such higher amount as prescribed by the Commissioner of Social Security pursuant to section 406(a)(2)(A) of the Social Security Act.) I will also have to reimburse my Attorney for any costs he has in representing me, such as costs of getting medical records or reports.

The back benefits (past-due benefits) out of which the attorney fee will come include all back benefits going to me and my family under regular Social Security and Supplemental Security Income (SSI).

I promise that as soon as I receive any money from Social Security I will let my Attorney know as soon as possible and that I will pay my Attorney his fee out of my back benefits as soon as I receive any money.

This attorney fee contract covers only fees for representation before the Social Security Administration. If Social Security denies my claim and I want to appeal my case to Federal Court, my Attorneys and I will have to make a further agreement concerning attorney fees for that representation.

This the 31st day of August, 2009.

[redacted] _____
Client's Signature

[redacted] _____
Printed Name

[redacted] _____
Social Security Number

[redacted] _____
Address

[redacted] _____
(City, State, Zip)

Eric C. Conn

Attorney Representative's Signature
Eric C Conn
12407 South U.S. 23
P.O. Box 308
Starville, KY 41659
Phone: (606) 478-5100

DISABILITY REPORT - ADULT - Form SSA-3368

(3368) Section 1 - Information About the Disabled Person

A. Name: [REDACTED]

B. Social Security Number: [REDACTED]

C. Daytime Telephone Number (If you do not have a number where we can reach you, give us a daytime number where we can leave a message.):

[REDACTED] our number

D. Give the name of a friend or a relative that we can contact (other than your doctors) who knows about your illnesses, injuries, or conditions and can help you with your claim.

Name:	[REDACTED]
Relationship:	Spouse
Address:	[REDACTED]
Daytime Phone:	[REDACTED]

E. What is your height without shoes? [REDACTED]

F. What is your weight without shoes? 250 lbs.

G. Do you have a medical assistance card? No

If "YES", show the number here:

H. Can you speak and understand English? Yes

If "NO", what is your preferred language?

NOTE: If you cannot speak and understand English, we will provide an interpreter, free of charge.

If you cannot speak and understand English, is there someone we may contact who speaks and understands English and will give you messages?

(If "YES", is this the same person as in "D" above? If it is, show "SAME" below, if not complete below.)

I. Can you read and understand English? Yes

J. Can you write more than your name in English? Yes

(3368) Section 2 - Your Illnesses, Injuries, or Conditions and How They Affect You

A. What are the illnesses, injuries, or conditions that limit your ability to work?

type 2 diabetes, back pain, neck pain, herniated discs in back, muscle spasms, fatigue, depression, anxiety, nervousness, trouble sleeping, tendonitis in right foot and hypertension.

B. How do your illnesses, injuries, or conditions limit your ability to work?

Due to my pain I have difficulty sitting, standing and walking for any long period of time. I have difficulty reaching, lifting, bending, carrying things and most basic daily tasks are painful. I have hypertension which makes daily life difficult. I also have trouble sleeping and tendonitis in my right foot. I have trouble sleeping and have fatigue due to my pain. I also have depression, nervousness and anxiety due to my pain.

C. Do your illnesses, injuries, or conditions cause you pain or other symptoms? **Yes**

D. When did your illnesses, injuries, or conditions first interfere with your ability to work? **07/29/2007**

E. When did you become unable to work because of your illnesses, injuries, or conditions?
07/29/2007

F. Have you ever worked? **Yes**

G. Did you work at any time after the date your illnesses, injuries, or conditions first interfered with your ability to work? **No**

H. If "Yes," did your illnesses, injuries, or conditions cause you to:

work fewer hours?

change your job duties?

make any job-related changes such as your attendance, help needed, or employers?

Explain:

I. Are you working now? **No**

If "NO," when did you stop working? **07/29/2007**

J. Why did you stop working?

Because of my condition

(3368) Section 3 - Information About Your Work

A. List all the jobs that you had in the 15 years before you became unable to work because of your illnesses, injuries, or conditions.

* = Longest Job Held

Longest Job Held	Job Title	Type of Business	Dates Worked (From-To)	Hours Per Day	Days Per Week	Rate of Pay/Per
			1992 - 1995	8	5	
*			2000 - 7/29/2007	8	5	
			1997 - 2000	8	5	

B. Which job did you do the longest?

[REDACTED]

C. Describe this job. What did you do all day? (If you need more space, write in the "Remarks" section.):

I worked as [REDACTED]

D. In this job, did you:

Use machines, tools, or equipment? Yes

Use technical knowledge or skills? No

Do any writing, complete reports, or perform duties like this? No

E. In this job, how many total hours each day did you:

Walk? 8

Stand? 8

Sit? 1

Climb? 0

Stoop? (Bend down & forward at waist.): 0.5

Kneel? (Bend legs to rest on knees.): 0

Crouch? (Bend legs & back down & forward.): 0.5

Crawl? (Move on hands & knees.): 0

Handle, grab or grasp big objects? 8

Reach? 8

Write, type or handle small objects? 8

F. Lifting and Carrying (Explain what you lifted, how far you carried it, and how often you did this.):

I would lift and carry [REDACTED] and other safety equipment that was attached to my [REDACTED]

I had to carry keys to every department in the [REDACTED]

G. Heaviest weight lifted: 20 lbs.

H. Weight you frequently lifted (By frequently, we mean from 1/3 to 2/3 of the workday.):
10 lbs.

I. Did you supervise other people in this job? No

How many people did you supervise?

What part of your time was spent supervising people?

Did you hire and fire employees? No

J. Were you a lead worker? No

(3368) Section 4 - Information About Your Medical Records

A. Have you been seen by a doctor/hospital/clinic or anyone else for the illnesses, injuries, or conditions that limit your ability to work?

Yes

B. Have you been seen by a doctor/hospital/clinic or anyone else for emotional or mental problems that limit your ability to work?

No

C. List other names you have used on your medical records:

Tell us who may have medical records or other information about your illnesses, injuries, or conditions.

D. List each Doctor/HMO/Therapist. Include your next appointment:

Name:	[REDACTED]		
Address:	[REDACTED]	Date First Visit:	05/ [REDACTED] 2008
	Pikeville, KY 41501	Date Last Visit:	05/ [REDACTED] 2008
Phone:	[REDACTED]	Patient ID # :	
		Next Appointment:	none
Reasons for Visits: consultation while in hospital			
What treatment was received? consultation and testing			

Name:	[REDACTED]		
Address:	[REDACTED]	Date First Visit:	01/2008
	Pikeville, KY 41501	Date Last Visit:	07/2009
Phone:	[REDACTED]	Patient ID # :	
		Next Appointment:	None
Reasons for Visits: pain management			
What treatment was received? examination, medication and testing			

Name:	[REDACTED]		
Address:	[REDACTED]	Date First Visit:	fall 2007
	Lexington, KY 40536	Date Last Visit:	fall 2007
Phone:	[REDACTED]	Patient ID # :	
		Next Appointment:	none
Reasons for Visits: Neurologist			
What treatment was received? examination and consultation			

Name:	[REDACTED]		
Address:	[REDACTED]	Date First Visit:	2002
	Martin, KY 41649	Date Last Visit:	08/ [REDACTED] /2009
Phone:	[REDACTED]	Patient ID # :	
		Next Appointment:	11/2009
Reasons for Visits: family doctor			
What treatment was received? examinations, medication and testing			

E. List each Hospital/Clinic. Include your next appointment:

Name:	[REDACTED]	
Address:	[REDACTED]	
	Pikeville, KY 41501	
Phone:	606-218-3500	
Inpatient Date In 1:	05/ [REDACTED] 2008	Inpatient Date Out 1: 05/ [REDACTED] 2008
Inpatient Date In 2:		Inpatient Date Out 2:
Inpatient Date In 3:		Inpatient Date Out 3:
Outpatient Date First Visit:	2002	Outpatient Date Last Visit: 07/2009
Emergency Room Dates of Visits:		
Next Appointment:	none	
Your Hospital/Clinic Number:	[REDACTED]	
Reasons for Visits:	[REDACTED]	
I1 chest pain,, O1 pain management clinic		
What treatment did you receive?		
I1 examinations, O1 examinations, medication and testing		
What doctors do you see at this hospital/clinic on a regular basis?		

F. Does anyone else have medical records or information about your illnesses, injuries, or conditions (for example, Workers' Compensation, insurance companies, prisons, attorneys, or welfare agency), or are you scheduled to see anyone else?

Yes

Name:	Eric Conn, Eric C Conn Law Office	
Address:	PO Box 308	Date First Visit: 08/31/2009
	Stanville, KY 41635	Date Last Visit: 08/31/2009
Phone:	606-478-5100	Next Appointment: NONE
Claim Number:	[REDACTED]	
Reasons for Visits:		
Attorney		

(3368) Section 5 - Medications

Do you currently take any prescription or non-prescription medications for your condition(s)? **Yes**
If "YES," please tell us the following: (Look at your medication containers, if necessary.)

Name of Medication	Prescribed By (Name of Doctor)	Reason for Medication	Side Effects You Have
Actos	[REDACTED]	diabetes	none
Altace	[REDACTED]	blood pressure	none
Flexeril	[REDACTED]	muscle spasms	none
Janumet	[REDACTED]	diabetes	none
Lidoderm	[REDACTED]	pain patches	none
Lorcet 10	[REDACTED]	pain	none
Lyrica	[REDACTED]	pain	none
Ultram	[REDACTED]	pain	none

(3368) Section 6 - Tests

Have you had, or will you have, any medical tests for your illnesses, injuries, or conditions?

Yes

If "YES," please tell us the following: (Give approximate dates, if necessary.)

Kind of Test	When Was/Will Test Be Done? (Month, day, year)	Where Done	Who Sent You For This Test
CT Scan kidneys	03/2009	Pikeville Medical Center	[REDACTED]
EKG (Heart Test)	05/ [REDACTED] 2008	Pikeville Medical Center	[REDACTED]
MRI/CT Scan spine, head	11/ [REDACTED] 2008	Pikeville Medical Center	[REDACTED]
Treadmill (Exercise Test)	05/ [REDACTED] 2008	Pikeville Medical Center	[REDACTED]
X-Ray chest	11/ [REDACTED] 2008	Pikeville Medical Center	[REDACTED]

(3368) Section 7 - Education/Training Information

A. Highest grade of school completed: **12th grade**

Approximate date completed: [REDACTED]

B. Did you attend special education classes? No

If "YES",

C. Have you completed any type of special job training, trade or vocational school?

No

If "YES", what type?

Approximate date completed:

(3368) Section 8 - Vocational Rehabilitation, Employment Services, Other Support Services, and Individualized Education Programs

Have you participated, or are you participating in any program providing vocational rehabilitation, employment services, or other support services to help you go to work or in:

- An individual work plan with an employment network under the Ticket to Work Program;
- An individualized plan for employment with a vocational rehabilitation agency or any other organization;
- A Plan to Achieve Self-Support; or
- An individualized education program through an educational institution (if a student age 18-21)?

No

(3368) Section 9 - Remarks

Use this section for any additional information you did not show in earlier parts of this form. When you are done with this section (or if you don't have anything to add), be sure to go to the next page and complete the blocks there.

This report was completed on the Internet using i3368PRO by: Organization Name: Eric C Conn Law Office, Organization Type: Law Firm/Attorney, Contact Name: [REDACTED] Organization Address: PO Box 308 Stanville KY 41635, Contact Phone Number: (606)478-5100, Special Contact Instructions: Attorney*Internet medical form initiated on: [REDACTED]

Attorney has filed request for AC review.

Name of person completing this form:

Date Form Completed (Month, day, year):

Address (Number and street, City, State, Zip Code):

[REDACTED]

e-mail address (optional):

**REQUEST FOR MEDICAL
ADVICE**

Date Referred
10/05/2009

Social Security Number

To: Review by specialist(s) in

MENTAL DISORDERS - ADULT

21 DIB

From:

Examiner Name

Examiner Telephone Number

Reviewer Name

Reviewer Telephone Number

Claimant Name

Sex

Birth Date (mo, da, yr)

Application Date (mo, da, yr)

M F

08/31/2009

Type of Claim

DIB DAC DWB SSI ADULT SSI CHILD BLINDNESS

Case History

INITIAL RECON ALJ DHO TERI

Congressional or Controlled Inquiry

CDR Involved

Reopening of Prior Decision

CPD Date _____

Prior ALJ, AC, Court Decision

Cess. Date _____

Prior Disability Established _____ to _____

Age 18 Redetermination

Other

Date Last Insured or Prescribed Period

Alleged Onset

07/29/2007

Please Review the Medical Evidence and Respond to the following:

Please provide an assessment of the individual's current residual functional capacities. Physical Mental

SSI Childhood - Please prepare SSA-538

Please provide an assessment of whether there has been medical improvement (MI) in the individual's impairment(s) since CPD. If MI has occurred, a decision is needed as to whether MI is related to the individual's ability to work.

CPD was based on meeting/equaling listing _____

RFC Comparison Needed.

Specific problems or questions:

Allegations:

diabetes, back problems, neck problems, muscle spasms, fatigue, depression, anxiety, trouble sleeping, tendonitis, and hypertension
DandD applies, ALJ decision in the file.

MENTAL ALLEGATIONS WERE ADDRESSED IN THE ALJ DECISION THAT WAS MADE ON 08/27/09. THERE IS A PSYCH EVALUATION IN THE FILE FROM 02/2009. THERE ARE NO ADDITIONAL PSYCH RECORDS TO REVIEW. PLEASE REVIEW AND ADVISE. THANK YOU.

**Homeland Security & Governmental Affairs
Committee
EXHIBIT A - 5**

Continued on Attached Sheet

PHYSICAL RESIDUAL FUNCTIONAL CAPACITY ASSESSMENT

CLAIMANT: [REDACTED]		SOCIAL SECURITY NUMBER: [REDACTED]	
NUMBERHOLDER (IF CDB OR DWB CLAIM):		[REDACTED]	
PRIMARY DIAGNOSIS: DDD L SPINE	RFC ASSESSMENT IS FOR:		
SECONDARY DIAGNOSIS: DIABETES	<input checked="" type="checkbox"/> Current Evaluation	<input type="checkbox"/> Date 12 Months After Onset:	
OTHER ALLEGED IMPAIRMENTS: HYTERTENSION	<input type="checkbox"/> Date Last Insured: _____ (Date)	_____ (Date)	
	<input type="checkbox"/> Other (Specify): _____		

PRIVACY ACT NOTICE: The information requested on this form is authorized by Section 223 and Section 1633 of the Social Security Act. The information provided will be used in making a decision on this claim. Failure to complete this form may result in a delay in processing the claim. Information furnished on this form may be disclosed by the Social Security Administration to another person or governmental agency only with respect to Social Security programs and to comply with Federal laws requiring the exchange of information between Social Security and other agencies.

PAPERWORK REDUCTION ACT: This information collection meets the requirements of 44 U.S.C. § 3507, as amended by Section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take about 20 minutes to read the instructions, gather the facts, and answer the questions. *You may send comments on our time estimate above to: SSA, 6401 Security Blvd., Baltimore, MD 21235-6401. Send only comments relating to our time estimate to this address, not the completed form.*

I. LIMITATIONS:

For Each Section A - F

- ➡ Base your conclusions on **all evidence** in file (clinical and laboratory findings; symptoms; observations, lay evidence; reports of daily activities; etc.).
- ➡ Check the blocks which reflect your **reasoned judgment**.
- ➡ Describe how the **evidence substantiates your conclusions** (Cite specific clinical and laboratory findings, observations, lay evidence, etc.).
- ➡ Ensure that you have:
 - Requested appropriate medical source statements regarding the individual's capacities (DI 22505.000ff. and DI 22510.000ff.) and that you have given appropriate **weight to treating source conclusions** (See Section III.).
 - Considered and responded to **any alleged limitations imposed by symptoms** (pain, fatigue, etc.) attributable, in your judgment, to a medically determinable impairment. Discuss your assessment of symptom-related limitations in the explanation for your conclusions in A - F below (See also Section II.).
 - Responded to all allegations of physical limitations or factors which can cause physical limitations.
- ➡ **Frequently** means occurring one-third to two-thirds of an 8-hour workday (cumulative, not continuous). **Occasionally** means occurring from very little up to one-third of an 8-hour workday (cumulative, not continuous).

Homeland Security & Governmental Affairs
Committee

EXHIBIT A - 6

Continued on Page 2

A. EXERTIONAL LIMITATIONS

None established. (Proceed to section B.)

1. Occasionally lift and/or carry (including upward pulling)

(maximum) - when less than one-third of the time or less than 10 pounds, explain the amount (time/pounds) in item 6.

- less than 10 pounds
- 10 pounds
- 20 pounds
- 50 pounds
- 100 pounds or more

2. Frequently lift and/or carry (including upward pulling)

(maximum) - when less than two-thirds of the time or less than 10 pounds, explain the amount (time/pounds) in item 6.

- less than 10 pounds
- 10 pounds
- 25 pounds
- 50 pounds or more

3. Stand and/or walk (with normal breaks) for a total of -

- less than 2 hours in an 8-hour workday
- at least 2 hours in an 8-hour workday
- about 6 hours in an 8-hour workday
- medically required hand-held assistive device is necessary for ambulation

4. Sit (with normal breaks) for a total of -

- less than about 6 hours in an 8-hour workday
- about 6 hours in an 8-hour workday
- must periodically alternate sitting and standing to relieve pain or discomfort. (If checked, explain in 6.)

5. Push and/or pull (including operation of hand and/or foot controls) -

- unlimited, other than as shown for lift and/or carry
- limited in upper extremities (describe nature and degree)
- limited in lower extremities (describe nature and degree)

6. Explain how and why the evidence supports your conclusions in item 1 through 5.

Cite the specific facts upon which your conclusions are based.

LUMBAR SPONDYLOSIS W/O MYELOPATHY, MRI IN FILE SHOWS DDD, LEFT SACROILITIS AND LEFT LUMBAR RADICULOPATHY. LIMITED ROM IN BACK, TX BY PAIN MANAGEMENT

D & D CASE- ALJ DECISION OF 8/27/09 REVIEWED AND IS ADOPTED- NO MATERIAL MER SINCE DECISION.

Continued on Page 3

6. Continue (NOTE: MAKE ADDITIONAL COMMENTS IN SECTION IV)

B. POSTURAL LIMITATIONS

None established. (Proceed to section C.)

	Frequently	Occasionally	Never
1. Climbing - ramp/stairs _____ →	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- ladder/rope/scaffolds _____ →	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Balancing _____ →	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Stooping _____ →	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Kneeling _____ →	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Crouching _____ →	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Crawling _____ →	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

7. When less than two-thirds of the time for frequently or less than one-third for occasionally, fully describe and explain. Also explain how and why the evidence supports your conclusions in items 1 through 6. Cite the specific facts upon which your conclusions are based.

C/O BACK AND NECK PAIN, TENDONITIS IN RIGHT FOOT AND DDD
UNMARKED ITEMS NOT MARKED

Continued on Page 4

C. MANIPULATIVE LIMITATIONS

None established. (Proceed to section D.)

- | | LIMITED | UNLIMITED |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|
| 1. Reaching all directions (including overhead) _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Handling (gross manipulation) _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Fingering (fine manipulation) _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Feeling (skin receptors) _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Describe how the activities checked "limited" are impaired. Also, explain how and why the evidence supports your conclusions in item 1 through 4. Cite the specific facts upon which your conclusions are based. | | |

D. VISUAL LIMITATIONS

None established. (Proceed to section E.)

- | | LIMITED | UNLIMITED |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|
| 1. Near acuity _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Far acuity _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Depth perception _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Accommodation _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Color vision _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Field of vision _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Describe how the faculties checked "limited" are impaired. Also explain how and why the evidence supports your conclusions in items 1 through 6. Cite the specific facts upon which your conclusions are based. | | |

Continued on Page 5

E. COMMUNICATIVE LIMITATIONS

None established. (Proceed to section F.)

	LIMITED	UNLIMITED
1. Hearing _____ →	<input type="checkbox"/>	<input type="checkbox"/>
2. Speaking _____ →	<input type="checkbox"/>	<input type="checkbox"/>

3. Describe how the faculties checked "limited" are impaired. Also, explain how and why the evidence supports your conclusions in items 1 and 2. Cite the specific facts upon which your conclusions are based.

F. ENVIRONMENTAL LIMITATIONS

None established. (Proceed to section II.)

	UNLIMITED	AVOID CONCENTRATED EXPOSURE	AVOID EVEN MODERATE EXPOSURE	AVOID ALL EXPOSURE
1. Extreme cold _____ →	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Extreme heat _____ →	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Wetness _____ →	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Humidity _____ →	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Noise _____ →	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Vibration _____ →	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Fumes, odors, dusts, gases, poor ventilation, etc. _____ →	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Hazards (machinery, heights, etc.) _____ →	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

9. Describe how these environmental factors impair activities and identify hazards to be avoided. Also, explain how and why the evidence supports your conclusions in items 1 through 8. Cite the specific facts upon which your conclusions are based.

Continued on Page 6

II. SYMPTOMS

For symptoms alleged by the claimant to produce physical limitations, and for which the following have not previously been addressed in section I, discuss whether:

- A. The symptom(s) is attributable, in your judgment, to a medically determinable impairment.
- B. The severity or duration of the symptom(s), in your judgment, is disproportionate to the expected severity or expected duration on the basis of the claimant's medically determinable impairment(s).
- C. The severity of the symptom(s) and its alleged effect on function is consistent, in your judgment, with the total medical and nonmedical evidence, including statements by the claimant and others, observations regarding activities of daily living, and alterations of usual behavior or habits.
CLMT ALLEGES LIMITATIONS WITH SITTING, STANDING, BENDING, REACHING, LIFTING, CARRYING THINGS, SQUATTING AND KNEELING.

BASED ON THE MEDICAL EVIDENCE CLMT WOULD BE LIMITED TO OCCASIONAL BENDING, SQUATTING, KNEELING AND LIGHT LIFTING. THEREFORE THESE ALLEGATIONS ARE CONSIDERED CREDIBLE. HOWEVER THE ALLEGATIONS ADDRESSING LIMITATIONS IN SITTING, STANDING, CARRYING THINGS AND REACHING ARE NOT CREDIBLE BECAUSE THEY ARE NOT CONSISTENT WITH THE MEDICAL FINDINGS.

PAIN WAS CONSIDERED IN THE ASSESSMENT OF FUNCTIONAL CAPACITY.

Continued on Page 7

III. MEDICAL SOURCE STATEMENT(S)

A. Is a medical source statement(s) regarding the claimant's physical capacities in file?

Yes

No (Includes situations in which there was no source or when the source(s) did not provide a statement regarding the claimant's physical capacities.)

B. If yes, are there medical source conclusions about the claimant's limitations or restrictions which are significantly different from your findings?

Yes

No

C. If yes, explain why those conclusions are not supported by the evidence in file. Cite the source's name and the statement date.

Continued on Page 8

IV. ADDITIONAL COMMENTS:
NONE

V. SIGNATURE

A. Signatory's Role

Medical Consultant (MC)

OR

Single Decisionmaker (SDM)

B. MC's Statement

The MC does **not** check this block when the MC's assessment is preliminary, advisory or partial.

THESE FINDINGS COMPLETE THE MEDICAL PORTION OF THE DISABILITY DETERMINATION.

SIGNATURE:

MEDICAL CONSULTANT'S CODE: DATE:

37

03/05/2010

DuPlEx

SOCIAL SECURITY ADMINISTRATION
RETIREMENT, SURVIVORS, AND DISABILITY INSURANCE
Notice of Disapproved Claim

DATE: November 10, 2009

Claim Number: [REDACTED]

[REDACTED]

We are writing about your claim for Social Security disability benefits. Based on a review of your health problems you do not qualify for benefits on this claim. This is because you are not disabled under our rules.

THE DECISION ON YOUR CASE

The following reports were used to decide this claim:

[REDACTED] response received 10/01/2009
[REDACTED] MD response received 09/18/2009
[REDACTED] response received 09/11/2009

Additional information was considered from other people who know about your health. This information was obtained on 09/14/2009.

Additional reports were not obtainable, however, the ones shown had enough information to evaluate this claim.

You said that you became disabled on [REDACTED] 2007 because of diabetes, back problems, neck problems, muscle spasms, fatigue, depression, anxiety, trouble sleeping, tendonitis, and hypertension.

The medical evidence shows that you have received evaluation and treatment for your conditions. Although you may feel anxious and depressed at times, you are still able to think act and communicate in your own best interest. Your medical records do show that you have problems with your back. Your medical records also show that your blood pressure and blood sugar are higher than normal at times. Your overall condition does cause you to have limitations in your ability to perform some types of basic work related activities.

We realize that your condition prevents you from doing any of your past work, but it does not prevent you from doing work which is less demanding and requires less physical effort.

Based on your age [REDACTED] and your education (12), you can do some types of work.

We have determined that your condition is not severe enough to keep you from working. We considered the medical and other information, your age, education, training, and work experience in determining how your condition affects your ability to work.

[REDACTED]

If your condition gets worse and keeps you from working, write, call or visit any Social Security office about filing another application.

ABOUT THE DECISION

Doctors and other trained staff looked at this case and made this decision. They work for the state but used our rules.

Please remember that there are many types of disability programs, both government and private, which use different rules. A person may be receiving benefits under another program and still not be entitled under our rules. This may be true in this case.

RULES FOR SOCIAL SECURITY DISABILITY

You must meet certain rules to qualify for disabled worker's Social Security benefits. You must have the required work credits and your health problems must:

- keep you from doing any kind of substantial work (described below), and
- last, or be expected to last, for at least 12 months in a row, or result in death.

INFORMATION ABOUT SUBSTANTIAL WORK

Generally, substantial work is physical or mental work a person is paid to do. Work can be substantial even if it is part-time. To decide if a person's work is substantial, we consider the nature of the job duties, the skills and experience needed to do the job, and how much the person actually earns.

Usually, we find that work is substantial if gross earnings average over \$980 per month after we deduct allowable amounts. This monthly amount is higher for Social Security disability benefits due to blindness.

A person's work may be different than before his/her health problems began. It may not be as hard to do and the pay may be less. However, we may still find that the work is substantial under our rules.

If a person is self-employed, we consider the kind and value of his/her work, including his/her part in the management of the business, as well as income, to decide if the work is substantial.

IF YOU DISAGREE WITH THE DETERMINATION

If you disagree with this determination, you have the right to appeal. We will review your case and consider any new facts you have. A person who did not make the first decision will decide your case.

- You have 60 days to ask for an appeal.
- The 60 days start the day after you get this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5-day period.
- You must have a good reason for waiting more than 60 days to ask for an appeal.
- You have to ask for an appeal in writing. We will ask you to complete a form SSA-561-U2, called. "Request for Reconsideration". You may contact one of our

offices or call 1-800-772-1213 to request this form. Or you may complete this form online at <http://www.socialsecurity.gov/disability/appeal>. Contact one of our offices if you want help.

- In addition, you should complete a "Disability Report - Appeal" to tell us about your medical condition since you filed your claim. You may contact one of our offices or call 1-800-772-1213 to request this form. Or, you may complete this report online after you complete the online Request for Reconsideration.

Please read the enclosed pamphlet, "Your Right to Question the Decision Made on Your Social Security Claim." It contains more information about the appeal.

NEW APPLICATION

You have the right to file a new application at any time, but filing a new application is not the same as appealing this decision. If you disagree with this decision and you file a new application instead of appealing:

- you might lose some benefits, or not qualify for any benefits, and
- we could deny the new application using this decision, if the facts and issues are the same.

So, if you disagree with this decision, you should ask for an appeal within 60 days.

IF YOU WANT HELP WITH YOUR APPEAL

You can have a friend, lawyer, or someone else help you. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your appeal. Your local Social Security office has a list of groups that can help you with your appeal.

If you get someone to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect it. And if you hire a lawyer, we will withhold up to 25 percent of any past due Social Security benefits to pay toward the fee.

OTHER INFORMATION

In addition, you are not entitled to any other benefits based on this application. If you have applied for other benefits, you will receive a separate notice when a decision is made on that claim.

INFORMATION ABOUT VOCATIONAL REHABILITATION

You may be eligible for Vocational Rehabilitation Services. The Kentucky Department of Vocational Rehabilitation Program provides a variety of services to assist individuals with disabilities to become employed. If you are interested in becoming employed, you may contact the Kentucky Department of Vocational Rehabilitation at 1-800-372-7172 Voice/TTY for a referral to an office in your area.

IF YOU HAVE ANY QUESTIONS

If you have any questions, you may call us toll-free at 1-800-772-1213, or call your local Social Security office at (606) 886-8525. We can answer most questions over the phone. You can also write or visit any Social Security office. The office that serves your area is located at:

SOCIAL SECURITY ADMINISTRATION



1897 KY RT 321
PRESTONSBURG, KY 41653

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us serve you more quickly.

Paul Barnes
Regional Commissioner

Enclosure: SSA Pub. No. 05-10058

AFH/bhu/0001

CC: ERIC CONN

B24SiMpLeX



Simplified Vocational Rationale

CLAIMANT INFORMATION:

SSN: [REDACTED]

This claimant has a residual functional capacity for light work, is a younger individual, has a high school education, and work experience as a [REDACTED]. The current RFC does not permit the claimant to perform past work in the manner in which it was performed in the past or as typically performed within the national economy.

There are a significant number of occupations for which this claimant qualifies. Examples of these occupations include table worker, button reclaimer, and dowel inspector. According to the Kentucky Occupational Outlook, 483,020 persons are performing similar work in Kentucky in the Inspectors, Testers, Sorters, Samplers, and Weighers industry. Based on these figures, it can be reasonably inferred that the cited occupations exist as individual jobs in significant numbers not only in Kentucky, but also through the national economy. This vocational profile is similar to that described in vocational rule # 202.21 from the Vocational Regulations.

Since the claimant has the capacity to perform other work, disability is not established.

Homeland Security & Governmental Affairs
Committee

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DuPlEx
**SOCIAL SECURITY
NOTICE OF RECONSIDERATION**

From: Social Security Administration

DATE: [REDACTED]
Claim Number: [REDACTED]
Claim for: Disability Insurance Benefits

[REDACTED]

Upon receipt of your request for reconsideration we had your claim independently reviewed by a physician and disability examiner in the State agency which works with us in making disability determinations. The evidence in your case has been thoroughly evaluated; this includes the medical evidence and the additional information received since the original decision. We find that the previous determination denying your claim was proper under the law.

THE DECISION ON YOUR CASE

The following report was used to decide this claim in addition to those listed on our previous notice:

[REDACTED] response received 12/31/2009

Additional reports were not obtainable, however, the ones shown had enough information to evaluate this claim.

You said that you became disabled on [REDACTED] 2007 because of diabetes, neck pain, herniated discs in your back, muscle spasms, fatigue, tendonitis in your right foot, hypertension, depression and anxiety. The medical evidence shows that, although you may be depressed and anxious at times, you are able to think, communicate and act in your best interest. You are able to adjust to emotional stresses and to get along with others. You are able to do your usual activities and to remember and follow basic instructions. Although your blood pressure is higher than normal at times, the evidence shows that this condition has not caused any significant damage to your eyes, heart, liver or kidneys. Your diabetes has not caused any problems with your vision or any major organ in your body. Although you have discomfort, you are able to move about in a satisfactory manner. There are no significant restrictions in your ability to stand and walk. Your condition will limit your ability to do jobs that require heavy lifting and carrying; however, you can do lighter, less strenuous types of work. In our prior notice to you, we stated that you could not return to your past work. However, after another review of your claim, we find that you can return to your past work as [REDACTED]. Based on your description of your past work as [REDACTED] we have concluded that you have the ability to perform this job.

To be considered disabled, a person must be unable to do any substantial gainful work

[REDACTED]
Homeland Security & Governmental Affairs
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due to a medical condition which has lasted or is expected to last for at least 12 months in a row. The condition must be severe enough to keep a person from working not only in his or her usual job, but in any other substantial gainful work. We look at the person's age, education, training and work experience when we decide whether he or she can work.

The determination on your claim was made by an agency of the State. It was not made by your own doctor or by other people or agencies writing reports about you. However, any evidence they gave us was used in making this determination. Doctors and other people in the State agency who are trained in disability evaluation reviewed the evidence and made the determination based on Social Security law and regulations.

IF YOU DISAGREE WITH THE DETERMINATION

If you believe that the reconsideration determination is not correct, you may request a hearing before an administrative law judge of the Office of Disability Adjudication and Review. If you want a hearing you must request it not later than 60 days from the date you receive this notice. You may make your request through any Social Security office or on the Internet at <http://www.socialsecurity.gov/disability/appeal>. As part of the appeal process, you also need to tell us about your current medical condition. We provide a form for doing that, the Disability Report - Appeal. You may contact one of our offices or call 1-800-772-1213 to request this form. Or, you may complete the report online after you complete the online Request for Hearing by Administrative Law Judge. (Title II) Read the enclosed leaflet for a full explanation of your right to appeal. (Title XVI) Read the enclosed leaflet and the reverse of this notice for a full explanation of your right to appeal.

IF YOU WANT HELP WITH YOUR HEARING

You can have a friend, lawyer, or someone else help you. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your appeal. Your local Social Security office has a list of groups that can help you with your appeal.

If you get someone to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect it. And if you hire a lawyer, we will withhold up to 25 percent of any past-due benefits to pay toward the fee.

NEW APPLICATION

You have the right to file a new application at any time, but filing a new application is not the same as appealing this decision. If you disagree with this decision and you file a new application instead of appealing:

- you might lose some benefits, or not qualify for any benefits, and
- we could deny the new application using this decision, if the facts and issues are the same.

So, if you disagree with this decision, you should ask for an appeal within 60 days.

OTHER INFORMATION

This decision refers only to your claim for benefits under the Social Security Disability Insurance Program. If you applied for other benefits, you will receive a separate notice when a decision is made on that claim(s).



INFORMATION ABOUT VOCATIONAL REHABILITATION

You may be eligible for Vocational Rehabilitation Services. The Kentucky Department of Vocational Rehabilitation Program provides a variety of services to assist individuals with disabilities to become employed. If you are interested in becoming employed, you may contact the Kentucky Department of Vocational Rehabilitation at 1-800-372-7172 Voice/TTY for a referral to an office in your area.

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If you have any questions, you may call us toll-free at 1-800-772-1213, or call your local Social Security office at (606) 886-8525. We can answer most questions over the phone. You can also write or visit any Social Security office. The office that serves your area is located at:

SOCIAL SECURITY ADMINISTRATION
1897 KY RT 321
PRESTONSBURG, KY 41653

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us serve you more quickly.

Paul Barnes
Regional Commissioner

Enclosure: SSA Pub. No. 70-10281

SAD/sad/0088

SiMpLeX

CC: ERIC CHRISTOPHER CONN

B24



NH [REDACTED]

: UNIT: APLAPL :
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[REDACTED]

REQUEST FOR HEARING BY ADMINISTRATIVE LAW JUDGE

On March 24, 2010, we talked with you and completed your REQUEST FOR HEARING for SOCIAL SECURITY BENEFITS. We stored your REQUEST FOR HEARING information electronically in our records and attached a summary of your statements.

What You Need To Do

- o Review your REQUEST FOR HEARING to ensure we recorded your statements correctly.
- o If you agree with all your statements, you may retain the REQUEST FOR HEARING for your records.
- o If you disagree with any of your statements, you should contact us within 10 days after the date of this notice to let us know.

MY NAME IS [REDACTED]

MY SOCIAL SECURITY NUMBER IS [REDACTED]

I REQUEST A HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE. I DISAGREE WITH THE DETERMINATION MADE ON MY CLAIM FOR DISABILITY-WORKER OR CHILD BENEFITS BECAUSE I AM TOTALLY DISABLED FOR ANY SUBSTANTIAL GAINFUL A CTIVITY.

I HAVE NO ADDITIONAL EVIDENCE TO SUBMIT.

I WISH TO APPEAR AT A HEARING. I UNDERSTAND THAT AN ADMINISTRATIVE LAW JUDGE OF THE OFFICE OF DISABILITY ADJUDICATION AND REVIEW WILL BE APPOINTED TO CONDUCT THE HEARING OR OTHER PROCEEDINGS IN MY CASE. I ALSO UNDERSTAND THAT THE ADMINISTRATIVE LAW JUDGE WILL SEND ME NOTICE OF THE TIME AND PLACE OF A HEARING AT LEAST 20 DAYS BEFORE THE DATE SET FOR A HEARING.

IT COULD BE ESPECIALLY USEFUL IN MY CASE SINCE THE ADMINISTRATIVE LAW JUDGE WOULD HAVE AN OPPORTUNITY TO HEAR AN EXPLANATION AS TO HOW MY IMPAIRMENTS PREVENT ME FROM WORKING AND RESTRICT MY ACTIVITIES.

NH [REDACTED]

I AM REPRESENTED BY ERIC C CONN, WHO IS AN ATTORNEY.

MY PHONE NUMBER IS [REDACTED]

DATE March 24, 2010.

DB OTR LIST (MAY)

CLIENT'S	NAME	SS#	FILE #	CASE TYPE	EV/S/G	CALLED?	PHONE #
			23170	SSD/SSI	YES		
			25656	SSD/SSI	YES	YES	
			25869	SSD	NO		
			27579	SSD	NO		
			25538	SSD	NO		
			26958	SSD	NO		
			27344	SSD/SSI	YES	YES	
			25672	SSI	YES	YES	
			26794	SSD/SSI	YES	YES	
			27056	SSD/SSI	YES	YES	
			25632				
			25093	SSD/SSI	YES	YES	
			25940				
			26093	SSD	NO		
			25400	SSD/SSI	YES	DECEASED	
			25054	SSD/SSI	YES	YES	
			25216	SSD/SSI	YES	YES	
			26869	SSI	YES	YES	
			27520	SSI	YES		
			25355				
			27089	SSD	NO		
			26904	SSD	NO		
			26635	SSD	NO		
			26062	SSD	NO		
			25321	SSD	NO		
			26037	SSD	NO		
			26541	SSD	NO		
			25585	SSD/SSI	YES	YES	
			26575	SSD	NO		
			25295	SSD/SSI	YES	YES	
			27712	SSD/SSI	YES	YES	
			25172	SSD	NO		
			25200	SSD	NO		
			27723	SSI	YES	YES	
			26589	SSD	NO		
			27376	SSI	YES	YES	
			26811	SSD	NO		
			26953	SSD	NO		
			26809	SSD	NO		
			26138	SSD	NO		

FREDERIC T. HUFFNAGLE, M.D.
Board Certified Orthopedic Surgeon

**SOCIAL SECURITY DISABILITY
MEDICAL ASSESSMENT**

Frederic T. Huffnagle, M.D.
720 Chestnut Street
Suite 102
Bowling Green, KY 42101

PATIENT INFORMATION:

Date of Evaluation: 04/27/2010

Name: [REDACTED]

Date of Birth: [REDACTED]

Social Security Number: [REDACTED]

CURRENT MEDICAL SYMPTOMS OR PROBLEMS: This man has low back pain with left hip pain.

HISTORY OF PRESENT ILLNESS: This man's pain came on gradually over time. He had been involved in a [REDACTED] accident in 2007. His work history is significant in that he worked in [REDACTED] for 12 years [REDACTED], which contributed to his back pain.

PREVIOUS TREATMENT: He has had physical therapy and injections.

GENERAL MEDICAL HISTORY: This man has type 2 diabetes. He has gastric reflux. He also has high blood pressure and high cholesterol. He has a history of a previous fracture of the left elbow and a right ankle dislocation. He is suffering with anxiety and depression. He has a history of gout.

PAST SURGICAL HISTORY: He has had injections on six different occasions in the lumbar spine done at [REDACTED] in Pikeville, Kentucky by [REDACTED] in 2008. He has had his tonsils out and has had an anal fistula removed. He has had 14 kidney stones, which were treated with lithotripsy, and three of them have been treated surgically. These were done at [REDACTED] in Lexington, Kentucky. He had a right ankle dislocation done at the Pikeville Medical Center in 1983.

Homeland Security & Governmental Affairs
Committee

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FREDERIC T. HUFFNAGLE, M.D.
Board Certified Orthopedic Surgeon

April 27, 2010

RE: [REDACTED]

Page Two

MEDICATIONS:

1. Altace 5 mg one time a day.
2. Actos 45 mg one time a day.
3. Vytorin 10/20 one time a day.
4. Janumet 50/1000 mg twice a day.
5. Toprol XL 25 once a day.
6. Lyrica 150 mg three times a day.
7. Cyclobenzaprine 10 mg twice a day.
8. Hydrocodone 10 mg twice a day.
9. Nexium 40 mg once a day.
10. Mobic 15 mg once a day.
11. Lidoderm patch.

He is being treated by his family physician who is [REDACTED] in [REDACTED] Kentucky.

SOCIAL HISTORY: He is married. He does not smoke. He has last finished the twelfth grade.

WORK STATUS: He last worked on 07/29/07. He had previously worked in [REDACTED] a heavy equipment operator for 12 years and has also worked at the [REDACTED] as a [REDACTED] for 10 years.

REVIEW OF SYSTEMS:

General

Recent Weight Loss – Negative
Recent Weight Gain – Positive, +20 pounds
Fever – Negative
Chills – Negative
Night Sweats – Negative

Skin

Rash – Negative
Open Sores – Negative
New Moles – Negative
Poor Healing – Negative
Skin Infection – Negative