



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

**STATEMENT OF
THE HONORABLE
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U.S. OFFICE OF PERSONNEL MANAGEMENT**

before the

**SUBCOMMITTEE ON SOCIAL SECURITY, HOUSE COMMITTEE ON WAYS AND
MEANS AND SUBCOMMITTEE ON COURTS, COMMERCIAL AND
ADMINISTRATIVE LAW, HOUSE COMMITTEE ON THE JUDICIARY**

on

‘THE ROLE OF SOCIAL SECURITY ADMINISTRATIVE LAW JUDGES’

July 11, 2011

Chairman Johnson, Chairman Coble, Ranking Member Becerra, Ranking Member Cohen and members of the Subcommittees:

I am pleased to have the opportunity to appear before you this afternoon to discuss the role of the Office of Personnel Management (OPM) with respect to the hiring process used for Administrative Law Judges (ALJs), including qualification standards and administration of the examination.

The Role of ALJs

The Administrative Law Judge (ALJ) function was created by the Administrative Procedure Act (APA) in 1946 to ensure fairness in administrative proceedings before Federal Government agencies. ALJs have two primary duties which include 1) presiding over agency hearings, taking evidence, and acting as a fact finder in proceedings and 2) acting as a decisionmaker by making an initial determination about the resolution of a dispute. The Federal Government employs ALJs in a number of agencies throughout the United States.

Cases may involve Federal laws and regulations in areas such as antitrust, banking, communications, energy, environmental protection, health and safety, housing, international trade, labor management relations, securities and commodities markets, social security disability and other benefits claims, and transportation. As of December 2010, there are 1,704 ALJs

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assigned to Federal agencies across the Federal government. According to statistics compiled by OPM and maintained in the Central Personnel Data File, the Social Security Administration employs 85% of all ALJs.

The Role of OPM in the Hiring Process

Consistent with the Administrative Procedure Act and Civil Service law, OPM is responsible for the following: establishing ALJ qualifications and classification standards for determining ALJs' pay according to their duties; developing and administering the ALJ examination; and maintaining a listing, referred to as the "ALJ register," of qualified candidates for ALJ employment by Federal agencies. OPM also is responsible for approving non-competitive personnel actions affecting incumbent ALJs, such as promotions, transfers, reassignments, reinstatements, and interagency details. By law, OPM cannot delegate the ALJ examination to any other agency.

The qualification standard developed by OPM prescribes minimum requirements for ALJ positions. In order to be considered, an applicant must meet both the licensure and experience requirements and place among the more highly qualified applicants at the conclusion of the first segment of the examination. Applicants who are among the more highly qualified group must then complete additional components of the OPM ALJ competitive examination in order to complete the rating and ranking process. The current qualification requirements, which were updated in 2007, are defined in the *Qualification Standard for Administrative Law Judge Positions*. This includes the requirement that applicants must be licensed and authorized to practice law under the laws of a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the United States Constitution throughout the selection process, including any period on the standing register of eligibles. Applicants must also have a full seven years of experience as a licensed attorney preparing for, participating in, and/or reviewing formal hearings or trials involving litigation and/or administrative law at the Federal, State or local level. Qualifying litigation experience involves cases in which a complaint was filed with a court, or a charging document (e.g., indictment or information) was issued by a court, a grand jury, or appropriate military authority and qualifying administrative law experience involves cases in which a formal procedure was initiated by a governmental administrative body.

Candidates must also undertake the OPM administrative law judge competitive examination to be considered for an ALJ position. Periodically, open periods for the ALJ examinations are posted by a job opportunity announcement on OPM's website at: www.USAJOB.S.gov. In early 2007 OPM issued new ALJ regulations and opened a newly developed ALJ examination. The examination has been administered three times since 2007. The last general administration (consisting of the testing of all applicants, scoring, and the adjudication of appeals) of the ALJ examination occurred in 2009-2010. OPM continues to periodically administer the examination to 10 point preference eligible applicants, upon request, as required by applicable law.

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The purpose of the examination is to evaluate the degree to which a candidate possesses the competencies determined to be necessary to performing the work of an ALJ. The examination is professionally developed by psychologists. The ALJ examination developed and in use since 2007 includes an accomplishment record, a written demonstration, and a structured interview. OPM conducts occupational analyses to ensure the continuing validity of the examination and to keep current with the state of the art in testing methodology.

As noted earlier, ALJ candidates are placed on the ALJ register after completing a multi-part examination developed and administered by OPM. OPM is responsible for maintaining the ALJ register, the list of individuals who are eligible, who successfully completed the ALJ assessment. When an agency seeks to hire entry-level ALJs, it submits a request to OPM with the number of positions to be filled and the locations. OPM uses the ALJ register to create a Certificate of Eligibles, which lists names of eligible candidates, in descending numerical score order (including any applicable veterans' preference points) and based on the geographical preferences of eligibles.

It is the responsibility of the agencies to hire ALJs. That is, to make selections from the certificate (including whether to make any selections), consistent with the applicable merit principles and veteran preference rules regarding the order of selection. It is OPM's responsibility to ensure that the ALJ register maintains a sufficient number of qualified ALJ eligibles to meet the projected hiring needs of agencies, including enabling agencies to have an adequate number of choices for each position to be filled.

Once an ALJ is appointed by an agency, the ALJ receives a "career appointment," and is not subject to a probationary period. The hiring agency is further prohibited by statute and regulation from rating the job performance of the ALJ and from awarding the ALJ monetary awards, honorary awards, or any other kind of incentive. The restrictions on agency performance ratings are in place in order to ensure that the ALJ can be free of agency interference with the ALJ's judicial functions. Nonetheless, ALJs are not unaccountable to the agency. Misconduct by an ALJ is subject to sanction. An agency may remove, suspend, reduce in level, reduce in pay, or furlough for 30 days or less an administrative law judge for good cause established and determined by the Merit Systems Protection Board on the record and after opportunity for a hearing before the Board.

Conclusion

Members of the Subcommittee, thank you for having me here today to explain the role of OPM in the selection of ALJs. I would be happy to address any questions you may have.