

OFFICE OF INSPECTOR GENERAL

**U.S. DEPARTMENT OF LABOR
OFFICE OF AUDIT**

**AUDIT OF PROPOSED CLOSURE OF
THE OFFICE OF ADMINISTRATIVE
LAW JUDGES' LONG BEACH
FIELD OFFICE**

**Report No. 09-00-201-01-060
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Exhibit A - OALJ Response

ACRONYMS

CTS	Case Tracking System
DLHWC	Division of Longshore and Harbor Workers' Compensation
FY	Fiscal Year
GSA	General Services Administration
LCMS	Longshore Case Management System
OALJ	Office of Administrative Law Judges
OASAM	Office of Assistant Secretary for Administration and Management
OIG	Office of Inspector General
OWCP	Office of Workers' Compensation Programs
USC	United States Code

EXECUTIVE SUMMARY

Congressmen Steven T. Kuykendall and Stephen Horn requested an audit of selected aspects of the U.S. Department of Labor, Office of Administrative Law Judges (OALJ). The request for audit was precipitated by the stated intention of the Chief Administrative Law Judge to close the OALJ Long Beach, California, Field Office. In a September 28, 1999, letter of request to then Inspector General Charles C. Masten, the Congressmen expressed concern that closure of the office would significantly impair the abilities of area employers and workers' to access the administrative adjudicative process. They also noted that there was a large disparity between caseload figures provided by the OALJ Chief Judge and statistics cited by the Longshore Claims Association.

The Congressmen posed 22 questions in their request to the Office of Inspector General.

Based upon our analysis of testimonial, statistical, and financial evidence supporting answers to the questions posed in the September 28, 1999, request, we found no verifiable evidence to support that closure of the office will diminish access to the adjudication process.

We found the workload figures presented by the Chief Judge accurately reflect case load data recorded in the OALJ Case Tracking System (CTS). Additionally, we found no legal or regulatory provisions which would limit the Chief Judge from exercising management prerogative to close the field office.

Answers to the 22 questions posed in the September 28, 1999, request are presented in the Audit Results section of this report (pages 5 to 17).

The OALJ response did not disagree with the conclusions presented in the report.

The full text of the OALJ response is included as Exhibit A to this report.

INTRODUCTION

Background

Longshore and Harbor Workers' Compensation

The U.S. Department of Labor, Office of Workers' Compensation Programs, Division of Longshore and Harbor Workers' Compensation (DLHWC), is responsible for administering the Longshore and Harbor Workers' Compensation Act (33 U.S.C.). This law primarily provides compensation for lost wages, medical benefits and rehabilitation services to longshore, harbor, and other maritime workers who are injured on the job or who contract an occupational disease related to employment. Survivor benefits are also provided if the work related injury or disease causes the employee's death. By extensions, this law also covers other classes of employees included in The Defense Base Act of 1941, The Non-Appropriated Fund Instrumentalities Act of 1952, The Outer Continental Shelf Lands Act of 1953, and pre-1982 injuries covered by The District of Columbia Workmen's Compensation Act. Benefits are usually paid directly by authorized self-insured employers or through an authorized insurance carrier. In some instances, benefits are paid by an industry financed "Special Fund."

A major function of DLHWC personnel is to act as mediators at informal hearings to help parties establish the facts of each case, define any disputed issues, identify the position of the parties in respect to the issues, and encourage the voluntary resolution of issues by means of agreement and/or compromise. DLHWC personnel make recommendations for resolving issues and disposing of the claim.

Role of the OALJ

If either the claimant or the employer (or insurance carrier) does not agree with the DLHWC recommendation for settlement, and requests a formal hearing, the case is referred to the OALJ. The OALJ is the "trial court" for many of the Department's programs. Over the last 5 years an average of 50 percent of the OALJ national case load has been related to the Longshore/ Harbor Workers' Statute. Last year (FY 1999) Longshore cases represented 59 percent of the national workload. These cases are heard by judges working from either OALJ headquarters in Washington, D.C., or one of the seven district offices (Boston, MA; Camden, NJ; Cincinnati, OH; Metairie, LA; Newport News,

VA; Pittsburgh, PA; and San Francisco, CA¹.) At the close of 1999 there were 50 judges in the OALJ. In addition to Longshore and Harbor Workers' cases, these judges also hear and decide cases arising from over 80 labor-related statutes and regulations, as well as presiding at Occupational Safety and Health Administration rulemaking proceedings; and staffing the Board of Contract Appeals and Board of Alien Certification Appeals.

Request for Audit

On September 28, 1999, Congressmen Steven T. Kuykendall and Stephen Horn requested an audit of selected aspects of the Office of Administrative Law Judges, with particular emphasis on the San Francisco District. In this written request to then Inspector General Charles C. Masten, the Congressmen advised that the Chief Judge had expressed his intention to close the OALJ Long Beach, California, Field Office and handle the caseload from the San Francisco District Office. The Congressmen were concerned this decision was based on past hiring patterns rather than the volume of Longshore Act claims. They were also concerned that the closure of the Long Beach Field Office would significantly impact the abilities of Los Angeles area employers and injured workers to readily access the administrative adjudication process. Additionally, the request noted that “. . . there is a tremendous disparity between figures provided by the Chief Judge and by the Longshore Claims Association.”

The request posed 22 questions relevant to gauging the tenability of the Chief Judge's intention to close the office.

¹ San Francisco District Office includes a field office in Long Beach, California. (This is the only field office in the OALJ organizational structure.)

OBJECTIVE, SCOPE AND METHODOLOGY

Our audit objective was to identify and verify selected OALJ workload statistics and financial impacts needed to address concerns and questions raised by Congressmen Steven T. Kuykendall and Stephen Horn. Specifically, we determined why there was a disparity in statistics provided by the OALJ and the Longshore Claims Association. We answered, where possible, the questions posed in the request.

Our audit was conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States. We applied procedures in accordance with performance audit field work standards to address the specific concerns and questions posed by the Congressmen. Our audit was limited to providing answers to those questions and concerns, and should not be interpreted as a performance audit of either the OALJ or the OWCP/DLHWC.

We conducted audit field work from November 1999 to February 2000. During the course of field work, we interviewed staff, reviewed documentation, and held discussions with: OALJ Judges and support staff in Washington, D.C., San Francisco District Office, and Long Beach Field Office; OWCP/DLHWC officials and staff in Washington, D.C., San Francisco Regional Office, and Long Beach District Office; officials and staff of OASAM San Francisco Regional Office; and members of the Longshore Claims Association in Long Beach, California.

We relied upon workload and case statistics captured and reported by two departmental systems: (1) the DLHWC Longshore Case Management System (CMS); and (2) the OALJ Case Tracking System (CTS). We did not perform audits of either system. Financial information was obtained directly from travel vouchers, bills, and purchase orders filed with the Department's Office of Administration and Management (OASAM). Longshore case referral information was evaluated for a 9-year period (FY 1991 - FY 1999). OALJ workload statistics were evaluated for a 6-year period (FY 1994 - FY 1999). OALJ financial information was obtained for fiscal years 1998 and 1999. Additionally, we obtained summaries of case assignment itineraries prepared by the San Francisco Chief District Judge for a 9-year period (FY 1991 - FY 1999). We reviewed specific case itineraries compiled during FY 1998 and FY 1999.

AUDIT RESULTS

Disparity in Workload Statistics Provided by OALJ and The Longshore Claims Association

Our evaluation of the “disparity” between the OALJ and Longshore Claims Association statistics found that both sets of data are generally accurate. However, data used by the Chief Judge are more relevant in determining the scope of OALJ workload on the West Coast.

The September 28, 1999, letter references a disparity between figures provided by the Chief Judge and by the Longshore Claims Association. In previous correspondence sent to the Congressmen, the Chief Judge indicated the volume of longshore work from the Long Beach area was not overwhelming in comparison to other West Coast port cities. He cited case statistics showing 120 cases in Long Beach, 116 cases in Portland, 114 cases in San Francisco, 95 cases in Seattle, and 74 cases in San Diego set during 1998.

However, figures supplied by the Longshore Claims Association showed that for the first three quarters of FY 1999, 1,879 lost time accidents had been reported in Long Beach alone. The Association explained that lost time accidents potentially lead to formal hearings before the OALJ. Therefore, there appeared to be a large disparity between figures used by each party to support their positions.

The Chief Judge used case information compiled in the OALJ Case Tracking System. This information reflected the cases scheduled to be heard by the OALJ. It represented those claims which could not be satisfactorily settled with the DLHWC.

The Longshore Claims Association cited statistics of claims for lost time accidents filed with OWCP/DLHWC. But, lost time accidents do not equate directly to OALJ workload.

Our evaluation of lost time accidents as reported by OWCP/DLHWC over the last three fiscal years shows that nationally, the number of lost time claims becoming an OALJ case referral is relatively small (14 percent).

Nationwide

Fiscal Year	Cases Referred to OALJ ¹	Lost Time Claims Filed With OWCP	Percent
1997	3,458	26,645	13%
1998	3,619	26,005	14%
1999	3,424	24,599	14%

Further, the percentages of cases referred to the OALJ resulting from lost time claims filed in the San Francisco, Seattle, and Long Beach OWCP Offices are below the national average.

San Francisco

Fiscal Year	San Francisco Cases Referred to OALJ ¹	Lost Time Claims Filed With San Francisco OWCP	Percent
1997	137	1,022	13%
1998	105	979	11%
1999	70	1,092	6%

Seattle

Fiscal Year	Seattle Cases Referred to OALJ ¹	Lost Time Claims Filed With Seattle OWCP	Percent
1997	239	2,988	8%
1998	242	2,488	10%
1999	242	2,373	10%

¹ Referrals per the OWCP Longshore Case Management System.

Long Beach

Fiscal Year	Long Beach Cases Referred to OALJ ¹	Lost Time Claims Filed With Long Beach OWCP	Percent
1997	189	2,652	7%
1998	201 ²	2,501	8%
1999	221	2,609	8%

Answers to Specific Questions Posed in the September 28, 1999 Request

Question 1 *“How many Longshore Act claims were referred from the OWCP to the OALJ for each year beginning in 1991, to the present, for each major city in the San Francisco District (San Diego, Long Beach/Los Angeles, San Francisco, Portland, and Seattle)?”*

The Longshore Case Management System (LCMS) maintained by the DLHWC tracks information by the OWCP District Office which processes the referred claim. In order to establish the city (or port facility) in which the injury occurred, each claim would have to be individually, manually reviewed. We determined that locating and reviewing each of the 5,746 referrals for the 9-year period was not reasonable. Therefore, we used case referral data from each OWCP office.

The four West Coast OWCP offices which refer Longshore cases to the OALJ are:

- San Francisco - jurisdiction: Arizona, Nevada, and Northern California (north of San Luis Obispo, Kern, and San Bernardino counties);
- Seattle - jurisdiction: Alaska, Colorado, Idaho, Montana, North Dakota,

¹ Referrals per the OWCP Longshore Case Management System.

² This figure does not equal 1998 Long Beach caseload statistics reported by the Chief Judge from the OALJ CTS because of timing differences and the inclusion of all Southern California and Honolulu cases in the OWCP Longshore Case Management System.

South Dakota, Oregon, Utah, Washington, and Wyoming;

- Honolulu - jurisdiction: State of Hawaii; and
- Long Beach - jurisdiction: Southern California.

Cases Referred From OWCP Office Located At:					
FY	San Francisco	Seattle	Honolulu	Long Beach	Total
1991	123	298	5	341	767
1992	135	360	8	258	761
1993	148	400	5	220	773
1994	136	289	6	150	581
1995	127	318	14	168	627
1996	139	295	3	154	591
1997	137	239	0 ¹	189	565
1998	105	242	0 ¹	201	548
1999	70	242	0 ¹	221	533

Question 2 *“Have the number of Longshore Act claims referred to the OALJ in each of these cities increased or decreased since 1991?”*

Since 1991 the number of cases has fluctuated but generally declined.

% Reduction of Cases Between 1991 and 1999		
San Francisco	Seattle	Long Beach
43%	19%	35%

¹ Honolulu cases included with Long Beach Office.

Question 3 *“How many judges have been assigned to the Long Beach and San Francisco offices, respectively, for each year beginning in 1991 to present?”*

Fiscal Year	Long Beach Based Judges	San Francisco Based Judges	Total San Francisco District
1991	2	9	11
1992	2	10	12
1993	2	10	12
1994	2	10	12
1995	2	9	11
1996	2	8	10
1997	2	7	9
1998	2	8	10
1999	2 ¹	8	10

Question 4 *“How many judges have been added to the San Francisco District Office since 1991?”*

Three judges have been hired since 1991. One judge was hired in 1992. One judge was hired in 1993. One judge was hired in 1998.

During the same period four judges left employment in the OALJ San Francisco District Office. One judge departed in each of the following years: 1993, 1995, 1996 and 1997.

There has been a net decrease of one judge in the San Francisco District Office since 1991.

Question 5 *“Is it true one of the judges recently hired by the OALJ was a resident of Los Angeles County before being assigned to the San Francisco Office?”*

¹ Includes one Judge who retired June 1999.

Yes. The judge hired in 1998 was originally a resident of Los Angeles County when she applied for the OALJ position.

Question 6 *“If so, why wasn’t she assigned to the Long Beach Field Office?”*

The judge advised us that she specifically requested assignment to the San Francisco Office.

Question 7 *“How many judges have been added to the Long Beach Field Office since 1991?”*

No additional judges have been assigned to the Long Beach Field Office since 1991.

Question 8 *“How does the staffing pattern compare to the volume of claims referred to the OALJ?”*

There is no direct correlation between Longshore case referrals and the staffing pattern of the San Francisco District Office.

Judges from the San Francisco District Office preside at hearings arising from over 80 labor related statutes. While Longshore cases comprised about 80 percent of their case volume, the composition of case types in the workload mix can vary from one year to the next. Also, the complexity and time involved in deciding “traditional” (non-Longshore related) cases can be greater than the complexity of Longshore cases.

Further, Judges from San Francisco travel to other parts of the country to preside over hearings. Conversely, Judges stationed at other OALJ District Offices may travel to court venues on the West Coast to preside over hearings, including Longshore cases. Therefore, there is no direct relationship between the number of Longshore claims referred from the West Coast OWCP Offices and the staffing of the OALJ San Francisco District Office.

To put this into a more relevant context, between 1991 and 1999 there has been a 30 percent reduction in the number of Longshore cases referred from the West Coast. However, the net change in staffing to the San Francisco District Office has been a one Judge reduction. If there was a direct relationship between Longshore cases and OALJ staff, it might be reasonably expected there would have been a three Judge reduction.

Question 9 ***“Are the residents of Southern California receiving their fair share of resources?”***

We found no statistical basis to support a response to this question.

Question 10 ***“Are visiting judges providing parties with adequate notice of trial dates and times?”***

Based on our review of the notification letters attached to case files, we confirmed parties are given 90 to 120 days advance notice. However, the specific date and time of each individual hearing are not set until a “calendar call” is convened at the beginning of the hearing week.

Question 11 ***“What is the average number of cases heard per trip by judges traveling to the Long Beach area?”***

Based upon trip itineraries filed by judges in 1998 and 1999, on average, a judge presides over about four hearings per visit.

Question 12 ***“What is the average length of a visiting judge’s hearing trip?”***

Review of travel vouchers showed that during 1998 and 1999 trips to Long Beach spanned from 1 to 8 days. Usually trips last from 3 to 5 days. The average number of days spent in Long Beach by a visiting judge during the last 2-year period is 4 days.

Question 13 ***“How many cases are generally continued?”***

Based on a review of trip itineraries filed for judges during 1998 and 1999, an average of three cases are continued per visit.

Question 14 ***“Does it take approximately six months to reschedule a hearing with a visiting judge?”***

Yes. Based on entries in the case tracking system during 1998, average time from continuance¹ to the next hearing was 6.9 months for visiting judges. During 1999, the average time from continuance to the next hearing was 5.6 months. (This calculation includes visiting judges assigned from anywhere in the U.S., not just visiting judges assigned from San Francisco.)

During the same period, average time for continuance to the next hearing for judges based in Long Beach was 6 months for 1998 and 1999.

Question 15 *“If so why?”*

If a continuance is granted by a visiting Judge, the case is returned to the inventory of unassigned cases at the District Office. It is assigned out of the inventory to another Judge using the District case assignment process (see answer to question 16). After assignment to a Judge, there is a 90 to 120-day notification period before the calender call. The entire process takes about 6 months.

If a continuance is granted by a Judge in the Long Beach Field Office, the Judge keeps that case in his workload. (It is not returned to the unassigned inventory at the District Office.) The Judge can reschedule the case for rehearing at the parties’ convenience. However, we found that these cases also averaged 6 months to the next hearing date.

Based upon our review of statistics generated from the OALJ Case Tracking System, there was no appreciable difference between rescheduling intervals by visiting Judges and Long Beach-based Judges.

¹ The calculation used to answer this question reflects continuances generated from cases originally scheduled to be heard in the City of Long Beach, California. In some instances, one case could be continued more than one time. The calculation would count each continuation as a separate event and calculate the duration from the first continuance to each succeeding hearing or next continuance.

Also, for comparative purposes, we evaluated the length of time it took to reschedule hearings in Seattle, Washington. (All hearings in Seattle are conducted by visiting Judges.) We found that length of time for continuances in 1998 was 6.1 months and in 1999 it was 5.4 months. This was comparable (actually for 1999 slightly shorter time frames) to the length of continuances handled by the Long Beach based Judges.

Question 16 *“How are case assignments made?”*

The Chief District Judge is responsible for case assignments. As Longshore cases come to the District OALJ (including continuances returned from visiting Judges) they are compiled in an inventory. When the inventory of cases reaches about 14 for a geographical area (i.e., Long Beach, Seattle, San Diego) the District Chief Judge assigns the cases and the hearing date to the next Judge in the rotation. For example, if the total number of Judges that hear Longshore cases in a District is 10, a Judge will expect to be assigned about every 10th case itinerary for each geographic area. The rotation process assures that the same Judges will not be consistently assigned to the same geographical areas.

It should be noted that there are exceptions to this assignment process. Some types of non-longshore cases require expedited hearings per Statute. Also, in cases where a party's health is deteriorating, there is an isolated hearing site, or in other unique circumstances, special hearing trips are scheduled.

Question 17 *“Are travel expenses generally considered when making case assignments?”*

Travel expenses are considered to the extent that if case itineraries are reduced to one or two cases before a hearing date, the trip may be canceled.

For example, a Judge sends out a notification letter identifying the date, time of the calendar call, and the case itinerary; a number of things happen before the calendar call date. Cases can settle before the calendar call, or attorneys or claimants may ask for a continuance. If out of the original 14 cases, only 1 or 2 remain, the Judge may cancel the calendar call until more cases can be added to the itinerary to make the trip more cost effective.

Question 18 *“What is the average travel cost associated with sending a San Francisco based judge to Long Beach to conduct formal hearings?”*

Average cost per trip by San Francisco-based Judges in 1998 was \$695. Average cost for 1999 was \$609.

Question 19 *“What are the annual travel costs associated with hearing cases in Long Beach?”*

Total travel cost in 1998 was \$6,258. Total travel cost in 1999 was \$5,924.

Question 20 *“What would be the net savings associated with closing the Long Beach Field Office?”*

	<u>Cost</u>	<u>Total</u>
FY 1999 Audited Costs:		
Office Rent - Long Beach Field Office	\$115,792 ¹	
Copier	3,636	
Parking	<u>1,440</u>	
Total Cost of Office		\$120,868
Estimated Costs After Closure:		
Office Rent - Court/Witness Room and Judge’s Chamber	28,216 ²	
Salary Cost Increases (San Francisco pay rates)	2,910	
Travel Cost Increases (3 trips @ \$717 per trip)	<u>2,151</u>	
Estimated Annual Cost After Closure	<u><u>33,277</u></u>	
		\$ 87,591¹

Question 21 *“Assuming that the Long Beach Field Office remains open to serve the residents of Southern California, and considering the total caseload of the OALJ, how many judges should be assigned to the Long Beach Field Office?”*

We did not answer this question.

Question 22 *“Are there any administrative policies that would preclude Judge Vittone from reassigning existing administrative law judges to the Long Beach Field Office?”*

No. We found no policies which would restrict the Chief Judge from reassigning judges to or from the Long Beach Field Office.

¹ On October 1, 1999, the General Services Administration (GSA) changed the method it uses for billing space to Federal agencies. The new method will result in a slightly lower rental charge for the existing space. Therefore, if the office remains open, estimated annual office rent will be \$106,225 not \$115,792. Consequently, a more accurate calculation of net savings would be \$78,024 (\$111,301 less \$33,277) rather than the \$87,591 which was based on audited costs.

² Rent calculation based on revised GSA billing rate and OALJ estimates of needed square footage limited to courtroom, witness room, and Judge’s chamber space.

CONCLUSION

Based upon the information developed to answer the 22 questions, we found no verifiable evidence to support that closure of the OALJ Long Beach Field Office will diminish access to the administrative adjudication process.

EXHIBIT A - OALJ RESPONSE

AUDITEE RESPONSE