

Deputy Secretary Response to Draft Report

Appendix D

DEPUTY SECRETARY OF LABOR
WASHINGTON, D.C. 20210

MAR 31 2015

MEMORANDUM FOR SCOTT S. DAHL
Inspector General

FROM: CHRISTOPHER P. LU 

SUBJECT: Response to OIG Audit Report: "Procedural Changes Could Reduce the Time Required to Adjudicate Federal Black Lung Benefit Claims" (No. 05-15-001-50-598)

Thank you for the opportunity to respond to your office's audit report titled, "Procedural Changes Could Reduce the Time Required to Adjudicate Federal Black Lung Benefit Claims." I appreciate the many hours your staff has spent evaluating the Black Lung Program and developing concrete suggestions for ways in which the Department can improve the claims and adjudication process. I asked each of the three agencies whose individual processes you evaluated to prepare a memorandum addressing the recommendations directed to it. Accordingly, I have attached responses from the Director of the Office of Workers' Compensation Programs, the Acting Chief Administrative Law Judge of the Office of Administrative Law Judges, and the Acting Chair and Chief Administrative Appeals Judge of the Benefits Review Board. Together, these memoranda constitute the Department's substantive response to your report.

The Department agrees with many of your recommendations and has taken a significant number of actions consistent with them. For instance, earlier this year OALJ began to aggressively address the Black Lung case backlog by redistributing cases among its regional offices and changing the case-assignment methodology within certain offices. With additional funding, OALJ has also committed to hiring more judges and law clerks this fiscal year to replace those who have left the Department. These, along with other changes OALJ plans to introduce, will help reduce the average amount of time it takes for OALJ to adjudicate a Black Lung case. OWCP and the BRB have also fully implemented new processes in response to OIG's recommendations. OWCP has launched a program to periodically screen its medical providers, and the BRB has adopted guidelines to ensure that BRB staff detailed to OALJ to assist with Black Lung decision making will not encounter conflicts of interest upon their return.

Although more progress needs to be made, all three agencies are working together to continue to improve Black Lung claims handling within the confines of available resources.

Again, our thanks to the OIG team that conducted this audit. We look forward to using your recommendations as we continue our ongoing efforts to improve the Black Lung program.

Procedural Changes Could Reduce the Amount of Time Required to
Adjudicate Federal Black Lung Benefit Claims
Report No. 05-15-001-50-598

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OWCP Response to Draft Report

Appendix E

U.S. Department of Labor

Office of Workers' Compensation Programs
Washington, D.C. 20210




File Number:

March 30, 2015

MEMORANDUM FOR ELLIOT P. LEWIS

Assistant Inspector General for Audit

FROM:

LEONARD J. HOWIE III 
Director, Office of Workers' Compensation Programs

SUBJECT:

Response to the Office of Inspector General's Report, "Procedural Changes Could Reduce the Time Required to Adjudicate Federal Black Lung Benefit Claims"

The Office of Workers' Compensation Programs (OWCP) has received and reviewed the Inspector General's (OIG) report, "Procedural Changes Could Reduce the Time Required to Adjudicate Federal Black Lung Benefit Claims," and responds to those OIG findings and recommendations specifically addressed to it.¹ OWCP thanks the OIG audit team for its hard work and extensive study of the black lung benefits program and appreciates the OIG's recognition of the many improvements that OWCP has already made to the program. (See OIG Report at 5-11.) OWCP also thanks the team for its suggestions regarding possible changes to the program's administration to effectuate the common goal of increasing efficiency and accuracy in black-lung decision-making.

I. Responses to OWCP Recommendations

¹ The OIG's report discusses whether the Department has implemented recommendations made by the Government Accountability Office (GAO) in its October 2009 Report on the Black Lung Benefits Program. (See <http://www.gao.gov/assets/300/297807.pdf>) Several of the OIG's findings and recommendations overlap with those made by GAO. In Parts I and II, we reference the relevant GAO recommendations, and the response provided serves as a response to both the OIG and GAO recommendations.

Recommendation 1: Continue to enhance and periodically evaluate the effectiveness of incentives to medical providers for turning in completed medical reports within certain timelines.

The medical report referred to in this recommendation is the DOL-sponsored complete pulmonary evaluation mandated by statute, 30 U.S.C. § 923(b), which forms the basis for OWCP's initial adjudication of each miner's entitlement to benefits. As noted by the OIG, OWCP already closely monitors both the timeliness and quality of physicians' reports and is conducting a multi-pronged effort to address physicians' reporting delays when they do occur, including when OWCP needs to request clarification of certain physicians' opinions. As a result, at the time of the OIG's review in June 2014, 82% of medical reports were timely submitted as measured against OWCP's goal of submitting reports within 85 days of the date of the medical examination. OWCP's efforts continue to increase both the reports' timeliness and quality.

OWCP encourages the submission of timely, high-quality medical reports by paying its physicians promptly, but only after their evaluations are complete and need no further clarification. OWCP enhanced this incentive on December 30, 2013, increasing fees for completing the diagnostic physical examination by 29% and fees for completing a supplemental report by 200%.

OWCP has also initiated training to further improve the completeness of medical reports, thereby preventing clarification requests and increasing medical report timeliness. On March 16, 2015, OWCP launched a new training program for its medical providers entitled, "Black Lung Disability Evaluation and Claims Training for Medical Examiners." The training, developed in collaboration with the University of Illinois at Chicago, is free, offered online, and is specifically aimed at physicians conducting disability evaluations for the black lung program. The training covers topics such as coal-mine induced lung diseases, one of the issues commonly in dispute in black lung claims. Providers who complete it will earn continuing medical education credits. The training is substantive and will also teach providers how to correctly complete the black lung program medical evaluation form. A link to module 1 of the four part training is now available on OWCP's website at <http://www.dol.gov/owcp/dcmwc/>, and the remaining three modules will be available within the next several months. At the time the training was launched, OWCP sent letters to all approved physicians informing them of its availability. OWCP will do the same as subsequent training modules are issued.

In order to further improve the quality and timeliness of its medical opinions, on March 11, 2015, OWCP issued a bulletin to its district offices, outlining procedures for adding, reviewing, and removing physicians from its list of approved providers. The bulletin, which can be found on OWCP's website at <http://www.dol.gov/owcp/dcmwc/blba/indexes/BL15.05OCR.pdf>, emphasizes that a provider can be removed from the list for failure to submit timely or complete opinions.

Additionally, in order to improve report timeliness, OWCP has been actively recruiting additional doctors to perform DOL-sponsored complete pulmonary evaluations. The remote and rural surroundings of many coal mining communities create a dearth of available, qualified physicians. When there are additional doctors to complete required examinations and testing, timeliness of

reports improves. Thus, in January 2015, OWCP sent targeted recruitment mailings to doctors in medically underserved geographic areas.

In sum, the vast majority of OWCP's DOL-sponsored pulmonary evaluation reports are complete and delivered in a timely fashion. OWCP will continue, however, to evaluate—and if necessary, enhance—the effectiveness of incentives for medical providers to turn in complete medical reports in a timely manner. OWCP will also continue efforts to improve report quality by focusing on incentives that reward quality as well as timeliness.

Recommendation 2: Explore the feasibility of seeking legislative authority for online access to SSA earnings records, and in the interim, attempt to renegotiate with SSA to allow OWCP to submit requests for earning verification to SSA electronically.

As the OIG recognizes, OWCP does not currently possess the requisite legislative authority to access SSA earnings records electronically in black lung cases. OWCP will evaluate this suggestion further, consulting as appropriate with SSA, the Department of Treasury, and the Office of Management and Budget (OMB). In the interim, on February 27, 2015, OWCP asked SSA for permission to submit requests for earnings records electronically by fax in the black lung program and is awaiting that agency's response. In this manner, OWCP hopes to follow the example of the Energy Employees Occupational Illness Compensation Act program, which is currently submitting such requests electronically as part of a pilot program.

Recommendation 3: Develop a program to periodically screen whether providers are properly licensed and in good standing in their state of practice and remove providers from the list in appropriate situations.

OWCP has fully implemented this recommendation. On March 11, 2015, OWCP issued a bulletin to its district offices outlining procedures for adding, reviewing, and removing providers from the list of providers authorized to perform DOL-sponsored complete pulmonary evaluations. These procedures include annual screening to ensure providers are properly licensed and in good standing with their states of practice. If, during this review, OWCP obtains information suggesting that a physician should be removed from the approved provider list, it may temporarily suspend the provider pending investigation of the information. The physician will be notified of OWCP's concerns and given the opportunity to respond and to work with OWCP to remedy them. After completion of attempts to rehabilitate the physician, and OWCP's confirmation of all relevant facts, the black lung program director or his delegate will make a removal determination. The bulletin and all procedures for adding, reviewing, and removing providers from the list of providers authorized to perform DOL-sponsored complete pulmonary evaluations can be found on OWCP's website at <http://www.dol.gov/owcp/dcmwc/blba/indexes/BL15.05OCR.pdf>.

Recommendation 4: Present claim statistics that show the number of claims approved, the number denied, the number abandoned, and the number withdrawn.

OWCP has fully implemented this recommendation. In addition to the claim statistics already on its website, OWCP has now published FY 2014 claim statistics that show the number of claims approved, the number denied, the number abandoned, and the number withdrawn. These statistics can be found at <http://www.dol.gov/owcp/dcmwc/statistics/PartCClaimOutcomes.htm>. OWCP also intends to publish these claim statistics at the end of each fiscal year going forward.

Recommendation 5: Coordinate with the BRB and OALJ to evaluate the feasibility and costs of transmitting OWCP's fully electronic case files (i.e., those created in FY 2015 and later) electronically rather than in hard copy.

OWCP agrees that it would be ideal to have a unified system, or at least three systems that interface with one another, to effectively and efficiently transfer case files among OWCP, the OALJ, and the BRB. OWCP looks forward to coordinating with the BRB and the OALJ to evaluate the feasibility and cost of transmitting fully electronic case files electronically. OWCP anticipates that the BRB and the OALJ will be willing partners and has already begun preliminary discussions with them. Similarly, GAO recommendation 2 asks the Department to create an automated system to track cases through the entire adjudication process. (See GAO Report at 32.) As OIG acknowledges, OWCP's claim tracking system is robust and can track claims through the entire adjudication process on an ad hoc reporting basis (see OIG Report at 23), but OWCP agrees that having an automated method for tracking all claims through the entire adjudication process would be optimal.

Recommendation 6: Evaluate the results of its pilot program aimed at strengthening the pulmonary evaluation upon its conclusion and decide which actions should be permanently included as part of the claims process.

Since its launch in February 2014, OWCP has collected pilot program data on an ongoing basis. As of March 1, 2015, OWCP had included 252 claims in the pilot program. OWCP's medical providers had completed 183 supplemental medical reports, and district directors had issued proposed decisions and orders in 164 pilot cases. In 112 of those cases decided, the initial finding of eligibility was upheld, and in 52, it was not. It is too soon, however, to evaluate the overall impact of the program. Additional information is necessary before determining whether the program should be made a permanent part of the claims process. OWCP hopes to determine whether the pilot program has resulted in: (1) submission of higher quality DOL-sponsored medical reports; (2) issuance of higher quality proposed decisions and orders; (3) fewer requests for hearing before the OALJ; and (4) fewer reversals after hearing and decision by the OALJ. OWCP will be better positioned to evaluate the pilot program after more cases have resulted in

OALJ decisions. Additionally, the Department has contracted with the University of Illinois at Chicago to conduct a process study of the pilot program, which is scheduled to conclude on September 19, 2015 unless extended.

- Recommendation 7:** Conduct comprehensive analyses of the benefits and costs of pursuing statutory changes to the BLBA to introduce:
- a. referee medical examinations;
 - b. methods for increasing claimant legal representation;
 - c. compensation for partial disability; and
 - d. settlement of claims.

Each of the statutory changes the OIG lists and that GAO listed in its 2009 report, requires careful exploration and consideration, both by the Department and the Office of Management and Budget. (See OIG Report at 27-28; GAO Report at 32-33.)

Most of the statutory changes above were included in the GAO report as recommendation number 7. (See GAO Report at 32-33.) The GAO suggested compensation for partial disability and the settlement of claims as means of resolving the difficulties claimants face proving the existence of coal-mine-related lung disease and disability due to such disease. (See GAO Report at 21-23.) Since issuance of the GAO report, however, the BLBA was substantively amended to reintroduce (1) derivative survivors' benefits, which automatically entitle certain survivors to benefits, provided the miner was awarded benefits, 30 U.S.C. 932(l); and (2) the 15-year presumption, which provides a rebuttable presumption of total disability or death due to pneumoconiosis to former miners with at least 15 years of qualifying coal mine employment and a totally disabling pulmonary impairment, 30 U.S.C. § 921(c)(4). The 15-year amendment aids certain miners by presuming both the existence of coal-mine-related lung disease and disability causation. The amendment providing automatic entitlement for certain survivors totally eliminates the need to prove death due to pneumoconiosis. Thus, the 2010 amendments may sufficiently improve approval rates over time so as to obviate the need for some of the suggested amendments. The black lung benefits program is better served by allowing the Department additional time to evaluate the long-term impact of amendments already passed and the 2013 regulations implementing them, before devoting the extensive resources required to evaluate the benefits and costs of possible statutory changes.

II. Responses to Additional OIG Findings Regarding Quality of Medical Reports and Claim Determinations

OWCP has explained in detail many of its efforts to improve the quality and timeliness of its current medical reports in response to Recommendations 1, 2, and 6, above. . The OIG Report makes additional recommendations, such as using a multiple-choice, check-box or decision-tree medical reporting form, aimed at improving the documentation supporting DOL's physicians' opinions. (See OIG Report at 25.) OIG also recommends improving the accuracy of claims

determinations by using DOL-sponsored second medical opinions and/or chest x-ray readings. (See *OIG Report* at 6-8.) Based on its many years of experience as program administrator, OWCP does not believe that either change is justified currently. As recommended by GAO (recommendation number 4), OWCP modified the form used to report the DOL-provided physical examination results in 2011 based on physician input. (See *GAO Report* at 32.) The form was improved by asking specific questions about relevant entitlement issues and by adding additional space to encourage physicians to provide narrative opinions in response to those questions. Both changes were intended to encourage physicians to make necessary findings and to explain their conclusions. In addition, OWCP intends to query physicians taking its upcoming, online training for additional suggestions to improve the current medical reporting forms. Turning the form into a multiple-choice or decision-tree exercise, however, would support arguments that such decisions are not as well reasoned as possible because they are not explained in detail. Defeating such arguments is critical because entitlement determinations, when reviewed by the BRB and the courts of appeals, often turn on the credibility of conflicting doctors' opinions.

As for the *OIG's* suggestion that OWCP use second medical opinions and/or chest x-ray readings, such a change would require the program's use of many more physicians with a resulting increase in cost. It would also require significant regulatory amendments—all without any guarantee of improved decision-making. OWCP's more than 40 years of experience as program administrator has demonstrated that simply adding more medical evidence does not "bolster the accuracy of claims determinations." (See *OIG Report* at 6.) In fact, the Department limited the amount of medical evidence admissible in each black lung claim in its 2000 regulatory amendments, believing that a "fairer, more credible evaluation[] of black lung claims" would result from "resolv[ing] issues of eligibility based on the quality of the medical evidence developed by the parties rather than merely the quantity of [that] evidence." Regulations Implementing the Federal Coal Mine Health and Safety Act of 1969, as Amended; Final Rule, 65 Fed. Reg. 79920, 79992 (Dec. 20, 2000). Thus, OWCP prefers to continue to improve the quality of the medical evidence it currently develops rather than increase its quantity.

Finally, *OIG* recognizes that OWCP implemented *GAO* recommendation 6 (see *GAO Report* at 32), which recommended that the Department develop a feedback mechanism to track stakeholder complaints about arterial blood gas testing practices. (See *OIG Report* at 26-27.) The *OIG* suggests that OWCP could do more to improve the accuracy of blood gas testing by recruiting physicians capable of drawing blood throughout the exercise portion of a blood gas study. (See *OIG Report* at 27.) OWCP will continue to consider this factor in recruiting additional physicians for the program.

III. Conclusion

OWCP appreciates the *OIG's* extensive study of the black lung program and its suggestions for improvement. OWCP will continue to improve the quality and timeliness of its medical reports (Recommendation 1) and is exploring methods to improve the timeliness of its access to SSA earnings information (Recommendation 2). OWCP agrees with and has fully implemented

Recommendations 3 and 4. In addition, OWCP will evaluate the feasibility and costs of transmitting fully electronic case files with the BRB and the OALJ (Recommendation 5) and will evaluate the results of its pilot program when the necessary data becomes available (Recommendation 6). As for the OIG's list of possible statutory amendments (Recommendation 7), the concern motivating some of these changes may be obviated by the long-term results of the 2010 amendments to the Black Lung Benefits Act and their implementing regulations. The other statutory suggestions require careful policy and cost evaluation by both the Department and OMB.

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OALJ Response to Draft Report

Appendix F

U.S. Department of Labor

Office of Administrative Law Judges
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Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)



March 30, 2015

MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General for Audit

FROM: STEPHEN R. HENLEY *Stephen R. Henley*
Acting Chief Administrative Law Judge

SUBJECT: Response to the Office of Inspector General's Report,
"Procedural Changes Could Reduce the Time Required to
Adjudicate Federal Black Lung Benefit Claims"

The Office of Administrative Law Judges (OALJ) welcomes the opportunity to respond to the findings and recommendations of the Office of the Inspector General's (OIG) Draft Report No. 05-15-001-50-598. OALJ acknowledges the efforts expended by the OIG and appreciates the report's recommendations. Most of the recommendations pertaining to OALJ have already been adopted, incorporated or implemented.

I. Responses to the OIG Recommendations for OALJ

The OIG's report addresses whether OALJ has implemented recommendations made by the Government Accountability Office (GAO) in its 2009 Report on the Black Lung Benefits Program. Several of OIG's recommendations overlap with those made by GAO. In those instances, we have referenced the GAO recommendation, and the response provided serves as a response to both agencies' recommendations. For those GAO recommendations that address unrelated subjects, we have provided a response in section II. below.

OIG Recommendation 8: Seek resources to replace outgoing judges and law clerks.

OALJ is hiring 31 FTEs in FY 2015 (4 judges, 16 clerks, 2 attorneys and 9 legal assistants) due to increased Black Lung funding, in addition to replacing retiring judges, departing clerks and support personnel.

OIG Recommendation 9: Add optional extensions to the term of law clerks and stagger the hiring of law clerks.

OALJ has added an optional one year extension to the law clerks' current two-year term of employment and is staggering hiring.

OIG Recommendation 10: Reinstate the contract writer program.

OALJ is researching the viability of instituting a new contract writer program. To that end, OALJ issued a Request for Information in January 2015 to contractors and black lung practitioners requesting information on the availability of contract writers and the anticipated cost of reinstating the contract writer program. The information received in response to the Request for Information is currently under review. A decision whether to reinstate the program will be made in late summer of 2015, based on available writers, costs and funding.

OIG Recommendation 11: Implement additional formalized training programs for incoming law clerks and judges.

OALJ has prepared and scheduled formal black lung training classes for judges and law clerks to be held in April 2015 in Pittsburgh, PA and San Francisco, CA.

OIG Recommendation 12: Establish and promulgate centralized written policies, procedures, or templates to improve efficiency and communication among the districts.

OALJ has established a centralized repository on OALJ's Intranet allowing judges and law clerks access to some of the more common orders, office policies and procedures, and decisional guides to improve efficiency.

OIG Recommendation 13: Implement a distance hearing program, which could include video or telephone hearings, to reduce judges' travel costs and time.

OALJ has initiated a test project to determine the viability of utilizing video conferencing technology to minimize travel for ALJs. The black lung hearings held as part of this project will use existing Department of Labor resources and are scheduled for the summer of 2015. [This response also pertains to GAO Recommendation 3].

OIG Recommendation 14: Coordinate with OWCP and BRB to evaluate the feasibility and costs of an electronic case management, tracking, and storage system that could exchange case file information electronically with OWCP and BRB.

OALJ, OWCP and the BRB have established a working group. The discussions from this group will be used to assist OALJ in development of an electronic case management system that is able to easily interface with the BRB and OWCP case management systems in order to track and transmit cases between the agencies. OALJ, OWCP, and the

BRB met collectively on January 23, 2015. OALJ had an additional meeting with OWCP technical staff on February 3, 2015. Based on determinations made in the technical meeting, OALJ is updating our new system requirements to integrate with OWCP's system. [This response also pertains to GAO Recommendation 2].

OIG Recommendation 15: Establish timelines and performance goals for the disposition of cases for the Office as a whole and for the District Offices individually.

OALJ is formalizing timelines and performance goals for the disposition of cases for the National and District Offices and implemented measures to monitor judges' productivity. However, because the range of cases handled by OALJ is so broad, and the time required to adjudicate each case varies so much depending not only on the type of case but also on the individual facts of each case, imposing strict timelines and performance goals would not be an effective management tool. [This response also pertains to GAO Recommendation 2].

OIG Recommendation 16: Consider transitioning the Cincinnati OALJ office to the case assignment methodology currently used by the Pittsburgh OALJ office.

OALJ has changed the assignment policy for black lung cases in the Cincinnati District Office to three additional dockets of cases annually per judge, regardless of the number of pending black lung cases before each judge.

OIG Recommendation 17: Implement a time tracking system for judges and law clerks to record the amount of time spent on each case.

Given the complexity of issues each individual black lung case may engender, OALJ submits that implementing a time tracking system for judges and law clerks to record the amount of time spent on each case would not be an effective mechanism to improve productivity or result in any meaningful metric, because each case is different. The Chief ALJ, the Associate Chief ALJs, and the seven District Chief Judges track and discuss District Office and individual ALJ docketing and disposition numbers and overage cases on a monthly basis. The Associate Chief ALJs and the District Chief Judges are responsible to then manage productivity and performance of subordinate judges.

OIG Recommendation 18: Coordinate with BRB to prepare and implement a plan for detailing all staff not directly required for the BRB's own adjudicatory processes.

OALJ has coordinated with the BRB in response to this recommendation and has already arranged for the detail of at least one black lung staff attorney to OALJ to assist in decision writing and black lung program management.

OIG Recommendation 19: Implement recommendation #1 from GAO's 2009 report and develop a system of regular communication with BRB leadership to better coordinate activities in which both have common interests.

OALJ is now regularly communicating with the BRB leadership on issues of common interest. [This response also pertains to GAO Recommendation 1].

II. Additional Responses to GAO Recommendations

GAO Recommendation No. 1: Take steps to reduce the number of black lung cases remanded from BRB to OALJ by convening a group to determine the causes of these remands and develop solutions for reducing their incidence.

The report notes that OALJ and the BRB held one meeting to discuss the causes of remands and possible solutions for reducing their incidence. The report suggests that this group be reconvened. As noted in OIG Recommendation 19, OALJ and the BRB are already meeting regularly to discuss items of common interest. To the extent they remain focused on general trends or system-wide concerns in black lung cases and not on any individual case or judge, such discussions may assist in reducing the number of remands. Discussions of specific cases or judges, however, would be inappropriate and create an appearance that OALJ and the BRB lack institutional independence.

GAO Recommendation No. 2: Obtain summary information on how long it takes to resolve claims using its current automated system to routinely track cases through the entire adjudication process and develop associated performance measures.

See responses to OIG Recommendations 14 and 15.

GAO Recommendation No. 3: Consider shortening the time required to schedule hearings for black lung cases by examining the feasibility of using video teleconferencing technology to streamline the scheduling of hearings in remote areas.

See response to OIG Recommendation 13.

GAO Recommendation No. 5: Evaluate and report on claimant access to legal and lay representation by implementing changes to the data management systems of OWCP, OALJ, and BRB that will permit accurate data about claimant representation throughout the claims appeals process.

OALJ's existing case tracking system cannot capture this information; however, OALJ is implementing a Modernization Project of its system during FY 2015 which will allow the capturing and analysis of this type of information when implemented during FY 2016.

III. Conclusion

As previously acknowledged, OALJ appreciates the OIG's suggestions to improve the Federal Black Lung Benefits Program. OALJ has implemented or is implementing most of the recommendations (Recommendations 8-9, 11-12, 15-16, 18-19) and is exploring several others (Recommendations 10, 13, 14). The only OIG recommendation pertaining to OALJ not implemented or considered for further study is establishing a system to track the amount of time judges and clerks spend on an individual case (Recommendation 17). OALJ believes this recommendation would not improve productivity or result in any meaningful metric given the differences in each case. As noted, however, OALJ has implemented measures to monitor judges' productivity.

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BRB Response to Draft Report

Appendix G

U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601



March 30, 2015

MEMORANDUM FOR ELLIOTT P. LEWIS

Assistant Inspector General for Audit

FROM:

BETTY JEAN HALL *Betty Jean Hall*
Acting Chairman of the Board and
Chief Administrative Appeals Judge
Benefits Review Board

SUBJECT:

Response to the Office of Inspector General's Report,
"Procedural Changes Could Reduce the Time Required
to Adjudicate Federal Black Lung Benefit Claims"

The Benefits Review Board (BRB) has received and reviewed the Inspector General's report, "Procedural Changes Could Reduce the Time Required to Adjudicate Federal Black Lung Benefit Claims," and responds to those OIG findings and recommendations specifically addressed to it. BRB thanks the OIG audit team for its hard work and extensive study of the black lung benefits program. The BRB remains committed to the common goal of increasing efficiency and accuracy in black lung decision-making.

I. Responses to BRB Recommendations¹

Recommendation 20:

Recall detailees from other agencies and coordinate with

¹ OIG's report addresses whether the Department has implemented recommendations made by GAO in its 2009 Report on the Black Lung Benefits Program. Several of OIG's recommendations overlap with those made by GAO. In those instances, we have referenced the GAO recommendation, and the response provided serves as a response to both agencies' recommendations. For those GAO recommendations that address unrelated subjects, we have provided a response in a separate section below.

OALJ to prepare and implement a plan for detailing to OALJ all staff not directly required for BRB's own adjudicatory processes.

BRB and OALJ are finalizing plans to detail additional BRB black lung attorneys to OALJ, as needed by OALJ, in the months ahead. Several BRB black lung attorneys have been identified as excellent candidates for OALJ details, and will be interviewed for selection by OALJ. If more candidates are needed, detailees to other agencies will be recalled. If possible, however, the BRB would like to allow the short-term details in progress, including details under the Secretary's ROAD Program, to be completed.

One BRB staff attorney is currently on detail to the OALJ. A Memorandum of Understanding has been signed by the Acting Chair of BRB and the Acting Chief Judge for OALJ, spelling out the terms of this six month detail. In addition, it is worth noting that BRB recently recommended two of its former staff attorneys for positions in OALJ, and both have been hired.

Recommendation 21:

Develop a plan for preventing detailees returning from OALJ from working on cases they worked on at the OALJ.

This recommendation has been fully implemented. BRB and OALJ have cleared a set of guidelines with DOL's Counsel for Ethics, Rob M. Sadler, that will assist returning BRB staff in avoiding conflicts of interest. Most critically, the guidelines provide safeguards to ensure that detailees returning from OALJ will not work on cases they worked on at OALJ.

Recommendation 22:

Develop a system of regular communication with OALJ leadership to better coordinate activities in which both have common interests.

BRB and OALJ have met to discuss and coordinate activities in which they have common interests. These issues include the detailing of staff to OALJ and various IT issues, including how to better share information electronically. BRB and OALJ have agreed to meet on a semiannual basis to continue to discuss and coordinate these and other relevant matters.

Recommendation 23:

Coordinate with OWCP and OALJ to evaluate the feasibility and costs of an electronic case management, tracking, and storage system that could exchange case file information electronically with OWCP and OALJ.

On February 9, 2015, OWCP, OALJ and BRB met to discuss and evaluate the ability to electronically exchange information and records among the agencies. Because all of the records in cases on appeal to BRB are sent from OWCP, the IT staffs of BRB and OWCP have had ongoing discussions to assess the ability of the agencies to transfer electronic records in the Black Lung program between the agencies, using BRB's DOL Appeals case tracking system and OWCP's OIS system. BRB looks forward to continuing these discussions in an effort to improve the efficiency of the Black Lung appeals process. BRB and OWCP envision establishing a pilot program for the exchange of electronic records for the Black Lung program in the near future. Discussions have also been held among OWCP, OALJ and BRB regarding the development of the new OALJ case tracking system. BRB's actions on these issues are also responsive to Recommendation #2 of the 2009 GAO report.

II. Objective 2 – Has DOL implemented the recommendations made by GAO in its October 2009 report?

DOL could take more action on GAO's recommendations:

The OIG report recommends that DOL take more action to implement the recommendations made by GAO in its October 2009 report. Recommendation #'s 1, 2 and 5 of the 2009 GAO report pertained to the BRB. The OIG Report concludes that GAO Recommendation #5 had been implemented by the BRB. See BRB's response to OIG Recommendation 23 above, for action on GAO Recommendation #2.

In Recommendation #1, GAO recommended that the BRB take steps necessary to reduce the number of cases that are remanded from BRB to OALJ. OIG suggests that BRB and OALJ convene a group to determine the causes of remands and to develop solutions for reducing their incidence. As noted in BRB's response to OIG Recommendation 22, BRB and OALJ have agreed to meet on a regular basis to discuss issues relevant to both agencies. It is anticipated that these discussions will touch on broader, system-wide concerns, as well as issues and ideas presented in the OIG report and the responses thereto. Thus, although it would be inappropriate for the BRB to engage in discussions with OALJ regarding the

possible disposition of individual cases that are appealed to the BRB from OALJ, it is anticipated that ongoing discussions will shed additional light on the reasons for remands and reduce their numbers going forward.