

Audit Report

Electronic Bench Book

OIG

Office of the Inspector General
SOCIAL SECURITY ADMINISTRATION

MEMORANDUM

Date: June 21, 2016 Refer To:

To: The Commissioner

From: Acting Inspector General

Subject: Electronic Bench Book (A-01-12-11217)

The attached final report presents the results of the Office of Audit's review. The objective was to assess the Office of Disability Adjudication and Review's use of the electronic Bench Book to process hearing decisions.

If you wish to discuss the final report, please call me or have your staff contact Rona Lawson, Assistant Inspector General for Audit, 410-965-9700.



Gale Stallworth Stone

Attachment

June 2016

Office of Audit Report Summary

Objective

To assess the Office of Disability Adjudication and Review's (ODAR) use of the electronic Bench Book (eBB) to process hearing decisions.

Background

The Social Security Administration (SSA) provides Disability Insurance and Supplemental Security Income disability benefits to eligible individuals under Titles II and XVI of the *Social Security Act*.

In 2012, SSA piloted eBB in a limited number of sites and implemented it nationwide in 2014. The eBB is a voluntary Web-based application designed to assist users in documenting, analyzing, and making consistent and accurate decisions on hearing-level adult disability cases. It was also designed to reduce claim processing time, increase cost efficiency, and provide a more modern infrastructure.

The eBB pulls data from other Agency applications, such as case documents and bookmarks from SSA's electronic disability folder, and certain data from SSA's appeals system.

To achieve our objective, we interviewed administrative law judges and ODAR staff as well as staff responsible for developing and enhancing eBB. We also attended a demonstration of eBB.

Findings

Over the past 7 years, SSA has spent almost \$25 million to develop and implement eBB; and, at the time of our audit, SSA reported about 300 (20 percent) of the 1,500 administrative law judges (ALJ) in ODAR were using it. We were unable to determine whether eBB was meeting its goals. Additionally, during interviews, ALJs and ODAR staff reported positive and negative aspects of the tool.

The major issues that emerged from our interviews were eBB training needed to be improved, the design of eBB was not easy for users, and concerns about increased case processing time.

Recommendations

1. Assess the feedback from our audit and received directly from users.
2. Develop management information to determine whether eBB is achieving its stated goals and usage; and based on this information, re-evaluate eBB by the end of Calendar Year 2016 to determine its future uses.
3. Improve training on eBB as needed.

SSA agreed with the recommendations.

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ABBREVIATIONS

ALJ	Administrative Law Judge
C.F.R.	Code of Federal Regulations
eBB	Electronic Bench Book
FY	Fiscal Year
HALLEX	Hearings, Appeals and Litigation Law
ODAR	Office of Disability Adjudication and Review
OIG	Office of the Inspector General
POMS	Program Operations Manual System
Pub. L. No.	Public Law
SSA	Social Security Administration
SSI	Supplemental Security Income
Stat.	Statutes at Large
U.S.C.	United States Code

OBJECTIVE

Our objective was to assess the Office of Disability Adjudication and Review's (ODAR) use of the electronic Bench Book (eBB) to process hearing decisions.

BACKGROUND

The Social Security Administration (SSA) provides Disability Insurance and Supplemental Security Income (SSI) disability benefits to eligible individuals under Titles II and XVI of the *Social Security Act*.¹ To determine whether an adult is disabled, SSA uses a 5-step sequential evaluation process, which generally considers whether an applicant

1. is performing substantial gainful activity,²
2. has a severe condition for a certain period of time,
3. has a condition that meets or medically equals a listing on SSA's Listing of Impairments,³
4. can perform past relevant work, and
5. can perform any other work.⁴

If an individual disagrees with the Agency's initial determination of disability, he/she may request an appeal. In most cases, an individual may request up to four levels of review: reconsideration by the disability determination services, hearing by ODAR, Appeals Council review, and Federal Court review.⁵

¹ *Social Security Act* §§ 201 *et seq.* and 1601 *et seq.*, 42 U.S.C. §§ 401 *et seq.* and 1381 *et seq.*

² Substantial gainful activity means the performance of significant physical or mental activities in work for pay or profit or in work of a type generally performed for pay or profit, regardless of the legality of the work. SSA, POMS, DI 10501.001 (January 5, 2007). Substantial gainful activity in 2015 was \$1,090 per month for non-blind individuals and \$1,820 per month for blind individuals. SSA, POMS, DI 10501.015 (October 15, 2015).

³ SSA uses the Listing of Impairments to evaluate disability claims. The listing for each body system describes impairments that SSA considers severe enough to prevent an adult from doing any gainful activity or to cause marked and severe functional limitations in a child younger than 18-years-old. SSA, POMS, DI 34001.001 (September 21, 2000).

⁴ For more information on the sequential evaluation process, see Appendix A. 20 C.F.R. §§ 404.1520 and 416.920.

⁵ 20 C.F.R. §§ 404.909, 404.933, 404.968, 404.981, 416.1409, 416.1433, 416.1468 and 416.1481.

Administrative law judges (ALJ) and ODAR staff process hearing requests. ALJs conduct impartial de novo hearings and issue decisions to claimants who appeal the denial of their benefits.⁶ Staff includes senior case technicians and decision writers.

Senior case technicians may review files to ensure sufficiency of evidence, obtain any necessary evidence, mark pertinent evidence as exhibits, and highlight important information for the ALJs. ALJs analyze the evidence; prepare for, and conduct, hearings; make decisions; and write instructions for the decision writers. Decision writers primarily write the decisions for Social Security disability and non-disability cases. They analyze, research, and develop cases on requests for hearing. They also ensure that all decisions are consistent with adjudication policies in Social Security law, regulations, and rulings.

In 2012, SSA piloted eBB in a limited number of sites. The pilot helped refine the tool before the Agency implemented it nationwide in 2014. The eBB is a voluntary Web-based application designed to assist users with documenting, analyzing, and making consistent and accurate decisions on hearing-level adult disability cases. The eBB pulls data from other Agency applications, such as case documents and bookmarks from SSA's electronic disability folder, and certain data from SSA's appeals system.

The eBB provides

- case information, such as prior application information and the applicant's date of birth;
- the ability to take notes when reviewing a file;
- guides to help prepare for and document testimonies from the claimant, vocational expert, medical expert, and other witnesses at the hearing;
- the ability to document instructions for the decision writers that follow SSA's 5-step sequential evaluation process; and
- links to resources.

We conducted 36 interviews with ALJs and ODAR staff. In 30 of the interviews, we spoke with ALJs individually; and, in the remaining 6, we spoke with ALJs and staff in groups of up to 44 individuals. These individuals were from

⁶ Any decision by the Commissioner of Social Security which involves a determination of disability and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Commissioner's determination and the reason or reasons upon which it is based. *Social Security Act §§ 205(b)(1) and 1631(c)(1)(A), 42 U.S.C. §§ 405(b)(1) and 1383(c)(1)(A).* See also 20 C.F.R. §§ 404.953 and 416.1453 and SSA, HALLEX, I-2-8-1 (March 10, 2016) and I-2-8-25 (March 10, 2016).

- the seven eBB ALJ training cadre⁷ member offices in Stockton, California; Mount Pleasant, Michigan; Kansas City, Missouri; Raleigh, North Carolina; Albuquerque, New Mexico; Eugene, Oregon; and Johnstown, Pennsylvania;
- the three eBB decision writer cadre⁸ member offices in Baltimore, Maryland; New Orleans, Louisiana; and San Antonio, Texas; and
- other ODAR offices in Denver, Colorado; Boston, Massachusetts; Lansing, Michigan; Rochester, New York; Charlotte, North Carolina; and Houston, Texas.

We also interviewed the staff responsible for developing and enhancing eBB as well as an SSA executive in Baltimore, Maryland. Additionally, we received a demonstration of eBB.

We focused our audit on eBB Release 5.2, which was the version of eBB available when we began our audit. SSA continued updating eBB during our review, using eBB Release 7 as of April 2016. We did not audit the eBB system's development. For more information on our scope and methodology, see Appendix B.

RESULTS OF REVIEW

SSA spent almost \$25 million over the past 7 years to develop and implement eBB; and, as of April 2016, SSA had reported about 300 (20 percent) of the 1,500 ALJs in ODAR were using eBB.⁹ We were unable to determine whether eBB was meeting its goals. Additionally, during our interviews, ALJs and ODAR staff reported both positive and negative aspects of the tool.

Measuring eBB's Effectiveness

SSA designed eBB to be a voluntary, Web-based application to assist users with documenting, analyzing, and making consistent and accurate decisions on hearing-level adult disability cases. It was also designed to reduce claim processing time, increase cost efficiency, and provide a more modern infrastructure. We were unable to obtain data to analyze cases and determine whether eBB was meeting these goals. Additionally, when ODAR first developed eBB in 2009, the Agency had limited metrics for hearing decision quality. Since then, ODAR had implemented several quality initiatives, described in Appendix C.

⁷ The cadres assist the ALJs and staff in becoming proficient in their use of eBB. We began our interviews with the cadre members' offices (some of which were pilot sites) to ensure we would speak with at least some ALJs and staff who had used eBB.

⁸ Id.

⁹ ALJs have the option to use as much or as little of eBB as they want. Also, at the time of our audit, 3,500 staff members were using eBB for case intake, file review, and drafting hearing decision notices. We did not determine how much of the tool ALJs or staff used.

eBB's Goals

SSA originally designed eBB to assist ALJs with documenting, analyzing, and making consistent and accurate decisions on hearing-level adult disability cases. It was also designed to reduce claim processing time, increase cost efficiency, and provide a more modern infrastructure. In 2013, the Agency expected that as much as 25 percent and 50 percent of ALJs would be using eBB by the end of Fiscal Years (FY) 2013 and 2014, respectively.¹⁰

By 2015, SSA had dropped the goals for ALJs' use from published performance plans and expanded the other goals to include decision writers and other ODAR staff.¹¹ However, at the time of our audit, the Agency had not established how it would measure eBB's success in achieving these goals.

OIG Attempt to Review eBB's Performance Measures

When SSA implemented eBB in 2012, its systems had a manual indicator to identify eBB use, which showed the ALJ opened eBB during a case but did not necessarily complete the decision using eBB. It was not until December 2015 that SSA put an automated indicator on the claimants' records to show whether the ALJs in the cases used eBB. However, eBB did not place any documents in SSA's electronic disability folder about the decision process; therefore, we could not determine whether an ALJ used eBB throughout the entire hearing process.

Additionally, we obtained data on cases remanded from Federal Courts in FY 2014; however, the original hearing decisions pre-dated eBB implementation because it takes years for an individual to appeal an ALJ denial to the Appeals Council and the Federal Courts and receive a decision. In a prior review of disability claims processing times, we determined it took over 8 years from an ALJ denial until a Federal Court decision in FY 2009.¹² Therefore, we were unable to determine the effect eBB had on Federal Court remands because the first eBB cases might not receive court decisions for several more years.

Judicial Independence

SSA developed eBB as a voluntary Web-based application but has stopped enhancing other decision-making tools ALJs use, such as the Findings Integrated Templates. These other decision-making tools are client-server based applications, which, unlike Web-based applications, are labor intensive to maintain and update and make it difficult to manage cases, as they are not centrally stored. Before developing eBB, SSA considered moving the Findings Integrated Templates application to the Web but found the application did not meet its needs. In our interviews, several ALJs expressed concerns should the Agency require that they use eBB, and one ALJ stated he would retire rather than use eBB.

¹⁰ SSA, *Service Delivery Plan*, February 20, 2013.

¹¹ SSA, ODAR, *Information Technology Strategic Vision*, August 2015.

¹² SSA OIG, *Overall Disability Claim Times for 2009* (A-01-10-10168), May 31, 2011.

The *Administrative Procedure Act* established qualified judicial independence,¹³ ensuring the ALJ exercises independent judgment on the evidence before him/her, free from pressures by the parties or other Agency officials.¹⁴ Furthermore, the Act prohibits substantive review and supervision of the quasi-judicial functions of ALJs. However, decisional independence does not prohibit appropriate administrative supervision that is required during general office management. Although the decision of how to instruct ALJs and staff on which decision-making tools to use is an SSA management decision that does not affect ALJs' decisional independence, SSA had not mandated—as of May 2016—that ALJs and ODAR staff use eBB.

eBB Training, Design, and Processing Time

The major issues that emerged from our interviews were eBB training needed to be improved, the design of eBB was not easy for users, and concerns about increased case processing times.

Training

ODAR provided formal eBB training to new and more experienced ALJs. The eBB training was a required part of new ALJs' judicial training that was hands-on and in-person. However, for more experienced ALJs, the training was voluntary, lecture-style, and in-person or remote. Also, for both new and more experienced ALJs, ODAR established an eBB mentoring program and provided periodic refresher training. The eBB training for ODAR staff was left to the individual ODAR offices.

ODAR established ALJ and decision writer cadres to assist individuals in becoming proficient in their use of eBB. Cadre members were available to provide support and teach tips to incorporate eBB into the daily business process. In addition, the Agency rolled out IdeaBench, an on-line tool to foster collaboration while gathering feedback and suggestions from eBB users.

In seven interviews, ALJs and staff said the eBB training was good. However, in 16 interviews, ALJs and staff provided the following negative comments on eBB training.

- Experienced ALJs said training was complicated, was too short, did not extend beyond the classroom, did not cover everything they encountered, and was not hands-on.
- New ALJs said training was hard or cut short because eBB crashed.
- One ALJ said his trainers told him not to use certain parts of eBB until he became a more experienced ALJ.
- Staff members said their training was insufficient and would have been better had it been hands-on.

¹³ *Administrative Procedure Act*, Pub. L. No. 79-404, 60 Stat. 237 (1946).

¹⁴ For a more detailed discussion of judicial independence, see our report, *The Social Security Administration's Review of Administrative Law Judges' Decisions* (A-07-12-21234), March 19, 2012.

eBB Design

During our interviews, a number of ALJs and staff complained about eBB's "clunky" design and said it was not easy to use. Furthermore, some ALJs said they preferred processing cases using another application. For example, some ALJs, who had worked in their positions from 2 to 33 years, used Word documents or a program called Findings Integrated Templates to process cases. Findings Integrated Templates covers the majority of decisional outcomes.

- One ALJ used his own forms for vocational expert testimony, hearing notes, and decisions. He said he could normally finish these forms during the hearing and complete his instructions for the decision writers on the same day as the hearing.
- Another ALJ used the Findings Integrated Templates because he said he could easily move through the program when preparing for a hearing, conducting a hearing, and writing the instructions. He said that, during the hearing, he could scroll to any relevant section, complete it, and scroll back to where he was. After the hearing, he could finish the instructions within 15 minutes if he decides in favor of the claimant.

Processing Time

During interviews, we found the following.

- Many ALJs and staff said eBB increased their processing time. Some of these individuals said it took 15 minutes to 2 hours longer to process cases through eBB. In some interviews, ALJs stated they did not use eBB because it was cumbersome.
- Many other ALJs and staff said eBB decreased their processing time. Some, but not all, were eBB training cadre members who knew more about eBB than most ALJs.
- A few ALJs and staff said eBB did not affect their processing times.

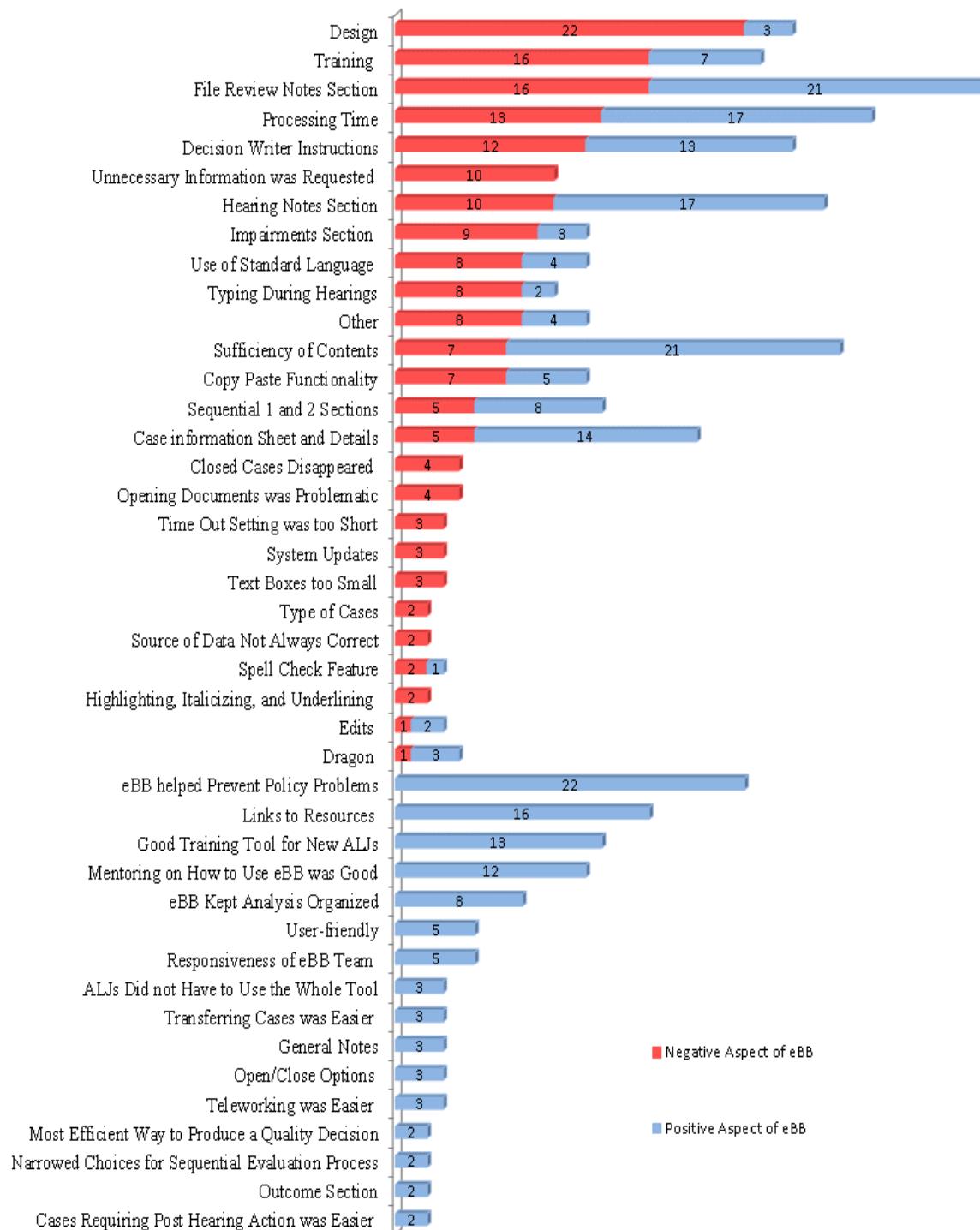
At the time of our review, we could not compare case processing times between those who used eBB and those who did not since SSA's case records did not have a reliable indicator of whether the ALJs used eBB.

If all ALJs used eBB and it saved or added just 15 minutes in each case, it could mean a difference of almost 50,000 hearing decisions per year. See Appendix D for details of our analysis.

Positive and Negative Aspects of eBB

Figure 1 shows the number of positive and negative aspects of eBB reported by ALJs and ODAR staff, based on number of interviews we conducted. See Table E-1 in Appendix E for more details on these positive and negative aspects of eBB. These were the issues identified during interviews from July through October 2015, when ODAR was using eBB Release 5.2. SSA reported it addressed some of these issues in Releases 6 and 7 and planned to address more in Release 8 in June 2016. We did not re-interview ALJs and ODAR staff to ask whether eBB updates addressed their concerns.

Figure 1: Positive and Negative Aspects of eBB by Number of Interviews



Other Feedback

During our interviews, the ALJs shared with us what other ALJs and staff told them they liked and disliked about eBB. These other individuals said many of the same things as our respondents. They also provided additional information, including the following.

- One ALJ said he would not use eBB because he was concerned eBB could be used as a surveillance or time keeping tool.
- One ALJ said he could not complete decision writer instructions at the hearing when using eBB.
- eBB contained too much technology.
- Non-eBB users pressured eBB users to stop using the system.

eBB Updates

During our audit, the Agency released two system updates designed to resolve issues raised by the users. These releases included the following.

- General hearing notes box that allowed the ALJ to add notes or an image of the notes to a case. An ALJ who found the testimony pages cumbersome could use this box in place of the testimony pages. Furthermore, ALJs could copy and paste their own forms in this box.
- Decision package. This package automatically generated decision documents, including the notice, on certain types of decisions. This package could alleviate some of the issues the decision writers had with the instructions.
- Other changes, such as having information from the Sequential 2 section no longer propagate to the Sequential 1 section.

The Agency planned to continue updating the system based on user feedback. Since December 2015, the team has been updating the system using a business process known as Agile.¹⁵ Agile involves a small group of staff—from ODAR and Systems—who work together daily to develop eBB updates every 2 weeks. This process allows the team to address any systems issues faster than it otherwise could.

Suggestions for Improvement

During our interviews, some ALJs and staff provided suggestions for improving eBB.

- Make it possible to collapse each section of a function-by-function hypothetical.
- List the diagnoses alphabetically, rather than in order by the number codes associated with the diagnoses. SSA informed us it addressed this issue.

¹⁵ We did not review the Agile business process.

- Move the ALJ's impression of the case to the top of the decision writer instructions. SSA informed us it addressed this issue.
- Allow the user to select the "note" and "opinion note" options after documenting a note, since he/she may not know which option is applicable until then.

CONCLUSIONS

We were unable to determine whether eBB was meeting its goals. During our interviews, ALJs and staff stated eBB had positive and negative aspects. The negative aspect mentioned most often was that eBB had design issues. In many of the interviews, the ALJs and staff also said SSA needed to improve the training it provided on eBB. Furthermore, some ALJs and staff stated eBB caused their processing times to increase, while some other ALJs and staff stated it caused their processing times to decrease. During our audit, the Agency released two systems updates, which appeared to address the cumbersome design of eBB to some extent. The Agency planned to continue updating the system in the future based on user-feedback. However, as of the time of our audit, it had spent almost \$25 million on eBB, and about 20 percent of ALJs was using it.

RECOMMENDATIONS

Based on the results of our review, we recommend SSA:

1. Assess the feedback from our audit and received directly from users.
2. Develop management information to determine whether eBB is achieving its stated goals and usage; and based on this information, re-evaluate eBB by the end of Calendar Year 2016 to determine its future uses.
3. Improve training on eBB as needed.

AGENCY COMMENTS

SSA agreed with the recommendations; see Appendix F.



Rona Lawson
Assistant Inspector General for Audit

APPENDICES

Appendix A – THE SOCIAL SECURITY ADMINISTRATION’S PROCESS FOR EVALUATING DISABILITY

The Social Security Administration (SSA) has a 5-step sequential process for evaluating disability for adults that generally follows the definition of disability in the *Social Security Act* and the regulations (Figure A–1). An individual is considered to be disabled under SSA’s regulations if he/she cannot engage in substantial gainful activity¹ by reason of a medically determinable physical or mental impairment that can be expected to result in death or has lasted, or can be expected to last, for a continuous period of not less than 12 months.²

At step 1, SSA considers whether the claimant is still working. If the claimant is not performing substantial gainful activity, the claim is sent for a medical determination of disability. When the claim is initially developed, the adjudicator concurrently requests all the evidence needed for consideration at steps 2 through 5 of the sequential evaluation process.³

At step 2, SSA determines whether the claimant’s condition is severe.⁴ If a claimant has a medically determinable severe impairment, the Agency applies step 3 and looks to the Listings of Impairments. If the severity of the impairment meets or medically equals a specific Listing, the individual is determined to be disabled.

If the individual’s impairment does not meet or medically equal a listing, the Agency looks to steps 4 and 5. At step 4, the Agency determines whether the claimant can perform past relevant work, considering his/her residual functional capacity⁵ and the physical and mental demands of the work he/she did. If the claimant can perform past relevant work, the claim is denied. If the claimant cannot perform past relevant work, at step 5, the Agency determines whether the claimant can perform any other work, considering his/her residual functional capacity, age,

¹ 20 C.F.R. §§ 404.1572 and 416.972. Substantial gainful activity means the performance of significant physical and/or mental activities in work for pay or profit, or in work of a type generally performed for pay or profit. As of 2016, “countable earnings” of employees indicate substantial gainful activity and “countable income” of the self-employed is “substantial” if the amount averages more than \$1,130 per month for non-blind individuals or \$1,820 for blind individuals. SSA, POMS, DI 10501.015 (October 15, 2015).

² *Social Security Act* § 223(d)(1)(A), 42 U.S.C. § 423(d)(1)(A), and § 1614(a)(3)(A), 42 U.S.C. § 1382c(a)(3)(A). See also 20 C.F.R. §§ 404.1520 and 416.920.

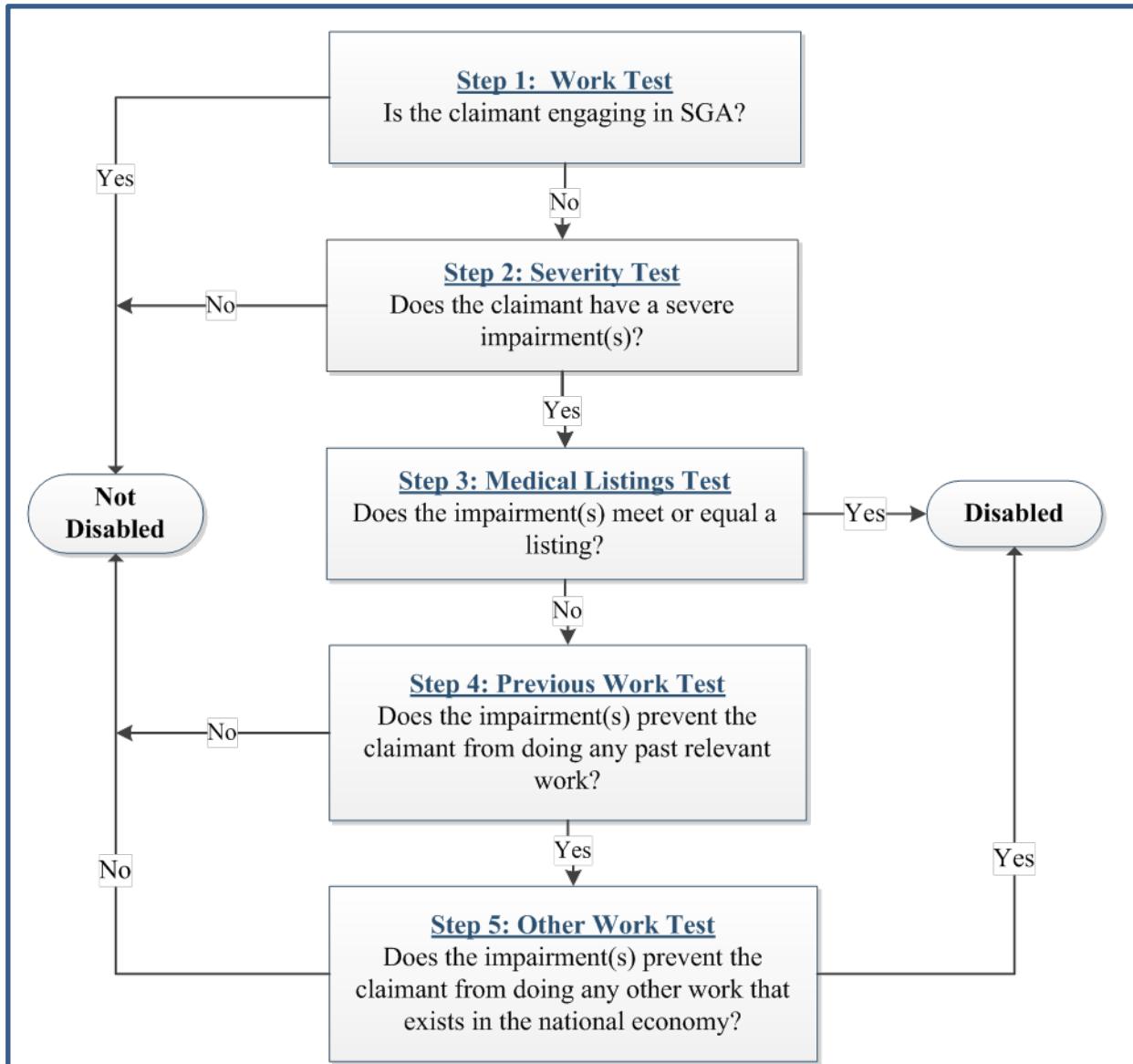
³ If the claimant disagrees with the Agency’s initial disability determination, he/she can file an appeal within 60 days of the date of notice of the determination. In most cases, there are four levels of review, including (1) reconsideration by the disability determination services, (2) hearing by an administrative law judge, (3) review by the Appeals Council, and (4) review by the Federal Courts.

⁴ 20 C.F.R. §§ 404.1521 and 416.921. An impairment or combination of impairments is not severe if it does not significantly limit an individual’s physical or mental ability to do basic work activities.

⁵ 20 C.F.R. §§ 404.1545 and 416.945. An individual’s impairment(s), and any related symptoms, such as pain, may cause physical and mental limitations that affect what he/she can do in a work setting. The residual functional capacity is the most the individual can still do despite these limitations. SSA assesses the residual functional capacity based on all relevant evidence in the case record.

education, and past work experience. If the claimant cannot perform any other work, SSA finds him/her disabled.⁶

Figure A–1: SSA’s 5-Step Sequential Evaluation for Determining Disability for Adults



⁶ SSA has another sequential process for evaluating whether a disabled beneficiary’s disability continues, which includes a step for considering the Listings. 20 C.F.R. §§ 404.1594(f) and 416.994(b)(5).

Appendix B – SCOPE AND METHODOLOGY

To accomplish our review, we:

- Reviewed applicable sections of the *Social Security Act* and the Social Security Administration's (SSA) regulations, rules, policies, and procedures.
- Reviewed the following Office of the Inspector General reports.
 - ✓ *Office of Disability Adjudication and Review Decision-Writing Process* (A-02-09-19068), November 2010.
 - ✓ *Training of New Administrative Law Judges at the Office of Disability Adjudication and Review* (A-12-11-11126), October 2011.
 - ✓ *Oversight of Administrative Law Judge Workload Trends* (A-12-11-01138), February 2012.
 - ✓ *The Social Security Administration's Review of Administrative Law Judges' Decisions* (A-07-12-21234), March 2012.
 - ✓ *Training and Development of Hearing Office Group Supervisors* (A-12-12-11240), December 2012.
 - ✓ *Subsequent Appellate Actions on Denials Issued by Low-Allowance Administrative Law Judges* (A-12-13-13084), July 2014.
 - ✓ *The Social Security Administration's Efforts to Eliminate the Hearings Backlog* (A-12-15-15005), September 2015.
- Viewed a demonstration of the electronic Bench Book (eBB) to understand its functionality.
- Attempted to determine the impact eBB had on processing time and administrative law judge (ALJ) agree rates (the number of cases in which the Appeals Council agree with the ALJ decisions).¹ However, when eBB was implemented in several pilot sites in 2012, SSA's systems had a manual indicator on the record, which showed whether an ALJ opened eBB during a case—but this did not indicate that eBB was actually used to process the case. It was not until December 2015 that SSA put an automated indicator on the claimants' records to show whether the ALJs in the cases used eBB. Furthermore, eBB did not place any documents in SSA's electronic disability folder about the decision process; therefore, we could not determine whether an ALJ used eBB throughout the entire hearing process.

¹ A claimant may appeal to the Appeals Council and then to the Federal Courts if he/she is dissatisfied with the ALJ decision.

- Obtained data on cases remanded from Federal Courts in FY 2014; however, the original hearing decisions pre-dated eBB implementation. Therefore, we were unable to determine eBB's effect on Federal Court remands.
- Focused our audit on eBB Release 5.2, which was the version available when we began our audit. We did not audit eBB's systems development lifecycle.
- Interviewed an Agency executive about eBB.
- Interviewed SSA's eBB team responsible for maintaining and enhancing eBB.
- Conducted 36 interviews in person or over the telephone with ALJs and staff from the Office of Disability Adjudication and Review (ODAR). (See Appendix E for the results of these interviews.) Some of these ALJs used eBB while others did not. In 30 of the interviews, we spoke with ALJs individually; in the remaining 6, we spoke with ALJs and staff in groups of up to 44 individuals. These individuals were from
 - ✓ the seven eBB ALJ Training Cadre² member offices in Stockton, California; Mount Pleasant, Michigan; Kansas City, Missouri; Raleigh, North Carolina; Albuquerque, New Mexico; Eugene, Oregon; and Johnstown, Pennsylvania;
 - ✓ the three eBB decision writer Cadre³ member offices in Baltimore, Maryland; New Orleans, Louisiana; and San Antonio, Texas;
 - ✓ other ODAR offices in Denver, Colorado; Boston, Massachusetts; Lansing, Michigan; Rochester, New York; Charlotte, North Carolina; and Houston, Texas.
- Obtained cost information from SSA as of October 2015 for developing and implementing eBB.
- Obtained from SSA the number of ALJs who were using eBB as of September 2015.
- Quantified the impact on the hearing backlog if eBB saved or added 15 minutes for each case processed using this tool.

We conducted our audit between June 2015 and March 2016 in Boston, Massachusetts; at various SSA hearing offices nationwide; and at SSA Headquarters in Baltimore, Maryland. The principal entity audited was the Division of Electronic Services and Strategic Information under the Office of the Deputy Commissioner for Disability Adjudication and Review. We conducted this performance audit in accordance with generally accepted government auditing standards.

² The Cadres assist the ALJs and staff in becoming proficient in their use of eBB. We began our interviews with the Cadre members' offices (some of which were pilot sites) to ensure that we would speak with at least some ALJs and staff who had used eBB.

³ Id.

Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix C – THE OFFICE OF DISABILITY ADJUDICATION AND REVIEW'S QUALITY INITIATIVES

The Social Security Administration's (SSA) Office of Disability Adjudication and Review (ODAR) initiative *Increase Usage of the Findings Integrated Templates*, part of the Agency's May 2007 *Hearings Backlog Plan*, was designed to improve the quality and legal sufficiency of the hearing decision by integrating the findings of fact into the body of the decision. In 2015, ODAR stated it processed about 98 percent of all decisions using Findings Integrated Templates.¹

In Fiscal Year (FY) 2010, ODAR's Office of Appellate Operations created Quality Review Branches to conduct pre-effectuation reviews of hearing-level decisions. Quality Review Branches review a sample of disability hearing-level allowances to determine whether the decisions are consistent with SSA regulations, policies, and procedures. If the Quality Review Branch questions a decision, the Appeals Council will choose whether to review the case. Based on its review, the Appeals Council will either issue its own decision on the case or return the case to the administrative law judge (ALJ) with instructions for additional actions.

Also in FY 2010, SSA's Office of Quality Review began performing post-effectuation reviews of randomly selected ALJ decisions. Since these reviews were conducted post-effectuation, these decisions were not changed, even if they were found to include errors (except for the rare instance when such a decision satisfied the criteria for reopening).² ODAR uses the results of the Office of Quality Review analyses to (a) ensure ALJs are following policies and procedures and (b) identify training that may be necessary for ALJs and hearing office staff.

In August 2011, ODAR implemented its *How MI Doing?* tool, which allows hearing office staff and ALJs to track their productivity over time and compare their performance at the local, regional, and national levels. This tool provides statistics and graphics that illustrate the productivity of each individual ALJ over time in five areas: (1) dispositions, (2) cases pending, (3) cases scheduled, (4) Appeals Council agree rates, and (5) average processing time.

¹ For more details, see our report, *The Social Security Administration's Efforts to Eliminate the Hearings Backlog* (A-12-15-15005), September 23, 2015.

² Generally, an ALJ's decision can only be changed if it has been reviewed within the 60-day appeal period. See 20 C.F.R. §§ 404.968(a)(1), 404.969(a), 416.1468(a), 416.1469(a). After the 60-day period ends, the Appeals Council may reopen and revise final agency decisions only under certain limited circumstances. See 20 C.F.R. §§ 404.987(b), 404.988, 404.989, 416.1487(b), 416.1488, 416.1489.

In a September 2013 newsletter to staff,³ ODAR's Chief Judge discussed new metrics for monitoring hearing office goals, which includes the Appeals Council's outcome on ALJ cases. A new metric called the "agree rate" represented the percentage of requests for review that the Appeals Council denies compared to the number of request for review dispositions after subtracting those remands that fall outside of an ALJ's control.⁴

³ SSA, *From the Bench*, Office of the Chief ALJ newsletter, September 2013.

⁴ The excluded remands include cases where new evidence was submitted to the Appeals Council, subsequent allowances, incomplete or inaccurate records because of a lost or inaudible recording, lost record or evidence, or evidence belonging to another claimant.

Appendix D – ESTIMATED EFFECT ON HEARING DECISIONS PROCESSED

If all administrative law judges (ALJ) used the electronic Bench Book (eBB) and it saved or added just 15 minutes in each case, it could mean a difference of almost 50,000 hearing decisions per year.

Table D–1: Estimated Effect on Hearing Decisions

Description	Cases/Hours
Average Cases per Day ¹	2.1 cases
Average Time per Case (based on 7.5 hour workday to account for two 15 minute breaks)	3.57 hours

Table D–2: Average ALJ Cases per Day if eBB Saved or Added 15 Minutes per Case

Description	If Saved 15 Minutes	If Added 15 Minutes
Average Time per Case from Table D-1 adjusted by .25 hours	3.32 hours	3.82 hours
Cases per 7.5 Hour Work Day	2.26 cases	1.96 cases
Change in Productivity	8 percent	7 percent

Table D–3: Estimated Total Cases per Year

Description	Cases
Total Cases Processed in Fiscal Year 2015	663,129
Seven Percent of Cases Processed	46,419
Eight Percent of Cases Processed	53,050

¹ SSA, Office of Disability Adjudication and Review, *Key Workload Indicators: Hearings – Appeals – Civil Actions, Fiscal Year 2015 – Fourth Quarter*.

Appendix E – POSITIVE AND NEGATIVE ASPECTS OF THE ELECTRONIC BENCH BOOK

Table E-1 provides the positive and negative aspects of the electronic Bench Book (eBB) based on our interviews with administrative law judges (ALJ) and Office of Disability Adjudication and Review (ODAR) staff. We identified issues during interviews from July through October 2015 when ODAR was using eBB Release 5.2. SSA reported it addressed some of these issues in Releases 6 and 7 and planned to address more issues in Release 8 in June 2016. We did not re-interview the ALJs and ODAR staff to ask whether eBB updates addressed their concerns.

Table E-1: Positive and Negative Aspects of eBB

Topic	Positive	Negative
Design	<ul style="list-style-type: none">Captured the way ALJs thought through a case, according to some ALJs.	<ul style="list-style-type: none">Was clunky and confusing.Was difficult to navigate during a hearing, especially since the claimants did not always testify the way the notes were organized in eBB.Caused an ALJ to forget to ask important questions at the hearing.Had the user complete numerous radio buttons and text boxes.Had the user enter too much information, which made it difficult to see contradictions and draw conclusions on cases.Did not capture the way ALJs thought through a case, according to one ALJ.
Training	<ul style="list-style-type: none">Was good.	<ul style="list-style-type: none">Needed improvement (see Results of Review section in this report).
Processing Time	<ul style="list-style-type: none">Decreased or remained the same for many ALJs.	<ul style="list-style-type: none">Increased for many ALJs.

Topic	Positive	Negative
File review note section ¹	<ul style="list-style-type: none"> • Organized the evidence. • Contained exhibits, which helped with the file review and creation of hypotheticals. • Made it easy to read notes and see the evidence to which they referred. • Made it easy to solidify an ALJ's impression before the hearing. • Allowed the ALJ to see whether anything was missing and what questions to ask at the hearing. • Allowed anyone who worked on a file to add notes, and those notes were in one place. • Made it easy and quick to add notes. • Maintained notes in ALJ pre-hearing review cases, which prevented users from having to review the file again when it was scheduled for a hearing. • Allowed the user to sort the notes. • Helped the user identify opinions and separate them from other types of notes. • Propagated notes to the Hearing Level Decision Summary and other appropriate sections. • Helped the user write instructions. • Made it easy to complete the function-by-function hypothetical and prevented users' own verbiage. • Propagated hypotheticals to the vocational expert testimony page. 	<ul style="list-style-type: none"> • Was cumbersome. • Only allowed the user to add a note for one piece of evidence at a time, so there could be several notes in one case. • Contained too many notes, which some said happened because it was so easy to take notes using the copy and paste functionality and there was so much to take notes on in eBB. • Only allowed the user to change the type of note by deleting it and adding a new one. • Did not allow the user to change or delete an opinion note someone else added to eBB but did allow him/her to add a new opinion note, so there could be multiple notes on the same opinion. • Froze or crashed while in use. According to one ALJ, this happened when eBB pulled the bookmarks from SSA's electronic disability folder. • Did not allow the user to add impairments to the file review section. • Did not show the treatment dates, so ALJs could not sort by date to show when impairments occurred and how they may have changed over time. • Was difficult for ALJs to understand other ALJs' notes. • Was difficult to scroll through a function-by-function hypothetical during a hearing because it had a lot of information.² • Made it difficult to update a function-by-function hypothetical during a hearing. • Had non-policy-compliant language for the function-by-function hypothetical.

¹ The eBB's file review notes section contains a claimant's documents from SSA's electronic disability folder and allows the user to add notes to those documents. This section also allows the user to create hypotheticals, which the ALJ can present as questions to the vocational expert at the hearing. The hypotheticals represent the claimant's residual functional capacity, which is the most an individual can do despite his/her limitations caused by his/her impairment. 20 C.F.R. §§ 404.1545 and 416.945.

² An ALJ can create hypotheticals in eBB in two ways: (1) function-by-function, which allows the ALJ to pick from an in-depth list and (2) a narrative, which allows the ALJ to document the limitations in his/her own words.

Topic	Positive	Negative
Instructions for decision writers ³	<ul style="list-style-type: none"> • Were in one place, the Hearing Level Decision Summary, which was easy to find and navigate. • Were easy to follow because they showed the ALJ's thought pattern and were typed. • Were standardized. • Covered everything needed for decision writers. 	<ul style="list-style-type: none"> • Were not separated from other information in the Hearing Level Decision Summary, and the Hearing Level Decision Summary was too long—which made it difficult to use. • Showed unanswered questions with a response of “none,” which confused the users because these responses looked like actual responses and sometimes conflicted with other information in file. • Were sometimes incomplete or inaccurate. • Did not express the ALJs’ impression of a case. • Had duplicate information. • Did not align with the decision notice template that the decision writers needed to complete in each case. • Had information on the hypotheticals that was difficult for the decision writers to understand because the language was awkward.
Information requested		<ul style="list-style-type: none"> • Was more than necessary. For example, eBB requested the user to select codes for all the impairments in a favorably decided case, even though a judge does not need to do this.
Impairment section ⁴	<ul style="list-style-type: none"> • Helped prevent ALJs from overlooking any impairment in a case. • Allowed ALJs to consistently address the impairments. 	<ul style="list-style-type: none"> • Had a broad list of impairments organized by number codes, which the users found difficult to remember. • Was used by ALJs who sometimes did not select an impairment or selected the wrong impairment, according to the decision writers. • Was used by ALJs who did not always supplement the selected impairment with additional information when needed, causing the decision writers to search for the additional information in the files and on the hearing recordings.

³ eBB stores instructions for decision writers along with other information in the Hearing Level Decision Summary.

⁴ The impairment section in eBB contains a drop down menu with a list of impairments.

Topic	Positive	Negative
Hearing notes section ⁵	<ul style="list-style-type: none"> Ensured ALJs did not miss anything and enabled a more free-flowing discussion at the hearing. 	<ul style="list-style-type: none"> Produced an opening statement that did not contain adequate language to ensure an unrepresented individual had the opportunity to obtain a representative. Was used by new ALJs who relied too heavily on the commonly asked questions; so, they may not ask questions that may come up based on information presented at the hearing. Had a claimant testimony page that was not always completed, so the decision writers had to listen to the hearing recordings for the missing information. Had a vocational expert testimony page that was too complicated and required too much information. Had a medical expert testimony page that was clunky, and it only gave the user the option of using the physical or mental guide, not both.
Sequential 1 and 2 sections ⁶	<ul style="list-style-type: none"> Helped the user keep track of and address the past relevant work in a case. Prompted the user to write complete instructions. Helped the user determine whether a person met a listing. Allowed the user to write the instructions quicker than he/she otherwise could. Allowed the user to write the instructions as he/she worked on a case. 	<ul style="list-style-type: none"> Erroneously propagated information from sequential 2 section to sequential 1 section, and sequential 2 was cumbersome. Confused some new ALJs into thinking the sequential 1 and 2 sections were the first two steps in the 5-step sequential evaluation process. Had a more complex substantial gainful activity subsection. Had cumbersome subsections on the severity of mental conditions (which the ALJs did not always fully document) and past relevant work.
Use of standard language ⁷	<ul style="list-style-type: none"> Served as reminders for the ALJs to address all issues. Included dropdown options the ALJs could choose to use or not, depending on whether they applied. 	<ul style="list-style-type: none"> Was not always applicable or easy to change, which some ALJs believed could result in unfair decisions or more appeals to Federal Court.

⁵ The hearing notes section in eBB automatically provides the opening statement based on the facts in a case. This section also helps the user develop scripts and questions for the claimant, vocational expert, medical expert, and other witness testimonies.

⁶ The sequential 1 and 2 sections are where the user documents the instructions for the decision writers. Sequential 1 is organized according to the 5-step sequential evaluation process, and therefore includes subsections on things such as substantial gainful activity, severity, listings, and past relevant work. Sequential 2 is where the user documents additional instructions on certain types of decisions.

⁷ Every part of eBB contained at least some standard language in the form of questions and drop down options.

Topic	Positive	Negative
Sufficiency of content	<ul style="list-style-type: none"> Had everything to work a case, according to several ALJs and staff. 	<ul style="list-style-type: none"> Did not have everything needed to work a case, according to some ALJs and staff, including prior disability determination information on impairments, medical opinions, and residual functional capacity; links to resources on names of medications, medical definitions, and acronyms; and staff notes from SSA's electronic disability folder and certain items staff corrected in SSA's appeals system.
Typing during a hearing ⁸	<ul style="list-style-type: none"> Was liked by a couple of ALJs. 	<ul style="list-style-type: none"> Was disliked by several ALJs because they could not type fast enough to complete the testimony pages or maintain eye contact with the claimant or others who were testifying. Hampered the ability to assess a person's statements or was too impersonal.
Copy and paste function ⁹	<ul style="list-style-type: none"> Allowed the ALJs to create a miniature folder of the relevant information in SSA's electronic disability folder. Made it easy to take notes. Made it easy for staff to write the decision notice. Reduced the amount of referencing done by staff. 	<ul style="list-style-type: none"> Did not always work correctly. Was slow. Pasted images in different sizes. Did not always paste a clear image—requiring the user to type what was on the image. Did not paste certain images in the proper format in the decision notice—requiring staff to reformat the image. Did not work in certain text boxes.
Closed cases disappeared from eBB		<ul style="list-style-type: none"> Could not access the closed cases.
Opening documents in eBB		<ul style="list-style-type: none"> Often took too long to open a document or could not open the document. Could not open multiple documents at once.
Time out function ¹⁰		<ul style="list-style-type: none"> Timed out too soon, so some work could be lost.

⁸ Since eBB is an electronic system, a user must type the information in a case. However, the user may type during or after a hearing.

⁹ In eBB, a user can copy text or images of selected areas of SSA's electronic disability folder documents and paste them in certain text boxes.

¹⁰ eBB is set to time out or automatically close within 1 hour from the time it is opened.

Topic	Positive	Negative
Case information sheet and details section ¹¹	<ul style="list-style-type: none"> Provided good case information, some of which automatically updated. Helped the user understand a case at a glance before reviewing the file. Allowed users to print the case information sheet. Was liked by staff because it was user-friendly and easier to prepare than the paper case fact sheet it replaced. 	<ul style="list-style-type: none"> Had too much information on the sheet, which prevented the ALJs from quickly glancing at the information during the hearing to enable them to react decisively, effectively, and without prior thought or planning. Was not liked by some ALJs who preferred the case fact sheet, which they were familiar with, and they said had a better format. Did not have some prior application information on the sheet. Did not allow the user to edit or add impairments to the case information sheet.
Source of data entries		<ul style="list-style-type: none"> Attributed all data entries (including notes) to the ALJ, even when someone else entered the data, which made it difficult for staff to understand what the ALJ wanted in a case.
Text boxes		<ul style="list-style-type: none"> Were too small where ALJs needed to <ol style="list-style-type: none"> summarize the data and draw conclusions, conduct the pre-hearing review, and document answers to questions asked at the hearing.
Spell check feature	<ul style="list-style-type: none"> Corrected misspellings as the user documented a case. 	<ul style="list-style-type: none"> Had to click on the feature to activate it. Did not always correct the misspellings. Was not always being used by the ALJs, according to the decision writers.
Highlight, italicize, and underline features		<ul style="list-style-type: none"> Was difficult to highlight, italicize, or underline information.
Edits ¹²	<ul style="list-style-type: none"> Warned the user to address certain things before he/she sent the instructions to the decision writer. 	<ul style="list-style-type: none"> Did not alert the ALJs of errors related to making a decision at step five of the sequential evaluation process—like the Findings Integrated Template did.
Dragon software ¹³	<ul style="list-style-type: none"> Could be used on notes. 	<ul style="list-style-type: none"> Did not work well with text boxes that had an image.
Case type		<ul style="list-style-type: none"> Could only handle adult disability claims.

¹¹ eBB contains a case information sheet, which includes information about the hearing, claimant, representative, prior applications, past occupations, and alleged impairments. Some of this information is also available at the top of each screen in eBB.

¹² When a case is completed, the system runs edit checks which will alert the user of any inconsistencies it finds between certain parts of eBB.

¹³ Dragon is a software package that allows the user to take notes using his or her voice. User can say the whole note or certain one-word commands that generate the whole notes associated with those commands.

Topic	Positive	Negative
eBB system updates		<ul style="list-style-type: none"> Caused system problems or were difficult for users to keep up with.
Other	<ul style="list-style-type: none"> Allowed users to see everything in that case. Enabled users to read documents faster. Resulted in less paper to secure and shred. Made it easier to work cases transferred from other ALJs. Could be accessed through SSA's electronic disability folder. Was Web-based rather than client server-based. Kept analysis organized. Helped prevent policy problems. Was an efficient way to produce a quality decision. Narrowed choices for sequential evaluation process. Did not require the user to complete every section. Was user-friendly. Made it easier to transfer cases to other offices. Had a straightforward outcome section, where the user recorded decisional information. Contained a general notes feature where ALJs could take notes that were not tied to exhibits. Had links to resources. Was a good tool for new ALJs. Made it easier to telework. Made it easier to work ALJ post hearing action cases. Was supported by good mentors who assisted ALJs in becoming proficient in their use of the tool. 	<ul style="list-style-type: none"> Had ALJs do things others usually did. Made users complete at least some sections to produce instructions for the decision writers. Did not allow the user to do a word search. Could not handle complex cases. Was used only by a few ALJs, making it difficult for staff to learn how to use it. Had a peek feature that did not always work.¹⁴ Had date fields that were difficult to use when the user did not enter the current date in those fields. Was difficult for decision writers to use since they needed it open along with two other applications. Only allowed users to add opinion notes in the file review section. Was not designed for decision writers. Allowed the user to use the cut command on portions of documents in the file review notes section, which inadvertently removed those portions from the permanent file. Did not allow user to edit images. Did not associate pasted images with documents.

¹⁴ When the user places the cursor over certain fields in eBB, it reveals a description of the field's purpose and policy citations.

Appendix F – AGENCY COMMENTS



SOCIAL SECURITY

MEMORANDUM

Date: June 13, 2016 Refer To: S1J-3

To: Gale S. Stone
Acting Inspector General

From: Frank Cristaudo /s/
Executive Counselor to the Commissioner

Subject: Office of the Inspector General Draft Report, “Electronic Bench Book” (A-01-12-11217)--
INFORMATION

Thank you for the opportunity to review the draft report. Please see our attached comments.

Please let me know if we can be of further assistance. You may direct staff inquiries to Gary S. Hatcher at (410) 965-0680.

Attachment

**COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL DRAFT REPORT,
“ELECTRONIC BENCH BOOK” (A-01-12-11217)**

General Comments

We continue to evaluate how to optimize use of the Electronic Bench Book (eBB) in the hearings process. We acknowledge the inclusion of both positive and negative feedback about eBB Version 5, as well as the recognition that the Office of Disability Adjudication and Review (ODAR) now uses a newer Version of eBB (Version 7), which addresses some of the concerns raised in this report.

We developed the eBB tool primarily for use by administrative law judges (ALJ). Based on survey results and feedback from ALJs during an extensive review of eBB in September 2015, we determined that eBB was under-utilized. After considering all options, we opted to refocus and streamline the instructions section of eBB by simplifying the ALJ instructions pages, emphasize the information ALJs need to provide to decision writers, and further develop the decisional notice section of eBB.

We continue to seek user feedback to evaluate how support staff in hearing offices can use eBB to support ALJs and how we should update the tool to support expanded use by support staff. Any proposed software changes to eBB would be subject to the availability of agency systems resources.

Recommendation 1

Assess the feedback from our audit and received directly from users.

Response

We agree. As noted above, we are considering changes to eBB based on input from both ALJs and support staff. The updated eBB business model will possibly need systems changes, which would require approval from of our Information Technology Investment Review Board.

Recommendation 2

Develop management information to determine whether eBB is achieving its stated goals and usage; and based on this information re-evaluate eBB by the end of Calendar Year 2016 to determine its future uses.

Response

We agree. On a weekly basis to track eBB usage, we review a report that shows the number of open cases in eBB, and how many instructions we complete using the tool. In addition, with the release of the decision writing functionality, we track how many decisions we write using eBB. We will continue to review eBB usage and determine its future usage by engaging in dialogue with eBB users, Senior Executives, and Regional Chief Administrative Law Judges.

Recommendation 3

Improve training on eBB as needed.

Response

We agree. We have created a group of seven ALJs from various regions to form the eBB ALJ Cadre. The eBB ALJ Cadre's mission is to provide eBB training for all ALJs, and suggest improvements to the tool. We have also created the eBB Decision Writing Cadre to address the decision writing functionality. As the tool is enhanced for other support staff, we will develop training for the new staff. We will consider improvement to our training as needed.

Appendix G – ACKNOWLEDGMENTS

Judith Oliveira, Director, Boston Audit Division

Phillip Hanvy, Audit Manager

Toni Paquette, Senior Program Analyst

Kimberly Beauchamp, Writer-Editor

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