

Audit Report

Administrative Leave Used for
Extended Absences

A-06-16-50026 / March 2017



MEMORANDUM

Date: March 9, 2017 **Refer To:**

To: The Commissioner

From: Acting Inspector General

Subject: Administrative Leave Used for Extended Absences (A-06-16-50026)

The attached final report presents the results of the Office of Audit's review. The objectives were to determine whether the Social Security Administration took corrective action on recommendations in our July 2010 report on *Administrative Leave Use* (A-06-09-29133) and whether grants of extended periods of administrative leave from January 2009 through July 2015 were properly authorized and appropriate.

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
Gale Stallworth Stone

Attachment

Administrative Leave Used for Extended Absences

A-06-16-50026



March 2017

Office of Audit Report Summary

Objectives

To determine whether the Social Security Administration (SSA) took corrective action on recommendations in our July 2010 report, *Administrative Leave Use* (A-06-09-29133), and whether grants of extended periods of administrative leave from January 2009 through July 2015 were properly authorized and appropriate.

Background

Administrative leave is an authorized absence from duty without loss of pay or charge to leave. Each Federal agency has the authority and discretion to excuse employees from duty without loss of pay or charge to leave in appropriate circumstances.

When employee wrongdoing is being investigated and agency officials determine it is in the Government's best interest to have the employee off the job, the employee may be relieved from duty and continued in a pay status without charge to leave for the time necessary to process a suspension.

SSA's Office of Human Resources provided data that identified all SSA employees granted administrative leave from January 2009 through July 2015.

Findings

In October 2010, SSA responded to our July 2010 report by amending its leave delegations of authority to require senior executive approval of extended administrative leave. During the period reviewed, SSA granted 1,000 or more hours of administrative leave to 46 employees. This is a small number relative to the nearly 86,000 employees who received administrative leave during that period. Grants of extended leave in these cases were within management officials' discretion and authority; and Agency officials retained information regarding the circumstances surrounding the leave grants.

However, contrary to SSA policy, the Office of Operations did not document Regional Commissioner approval in eight instances where SSA granted employees 1,000 or more hours of administrative leave.

Several factors can extend the length of time an employee remains on administrative leave, such as the legal procedures the Agency must complete before it suspends or removes an employee, or when officials exercise discretion and allow employees to remain on administrative leave while SSA investigates their misconduct.

Senior executive review and approval of extended administrative leave helps ensure the absences are as brief as possible and are determined to be in the Government's best interest.

Recommendation

We recommend that SSA remind components that administrative leave grants in excess of 40 consecutive hours must be approved by Deputy Commissioners, the Chief Actuary, the Chief Information Officer, the Deputy Chief of Staff, the General Counsel, or Regional Commissioners; that this authority cannot be re-delegated; and that leave approval must be documented.

SSA agreed with our recommendation.

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ABBREVIATIONS

ALJ	Administrative Law Judge
GAO OGC	Government Accountability Office, Office of the General Counsel
H.R.	House of Representatives Bill
MSPB	Merit Systems Protection Board
OIG	Office of the Inspector General
OPM	Office of Personnel Management
PPM	Personnel Policy Manual
S.	Senate Bill
SSA	Social Security Administration
U.S.C.	United States Code

OBJECTIVES

Our objectives were to determine whether the Social Security Administration (SSA) took corrective action on recommendations in our July 2010 report, *Administrative Leave Use* (A-06-09-29133), and whether grants of extended periods of administrative leave from January 2009 through July 2015 were properly authorized and appropriate.

BACKGROUND

Administrative leave is an authorized absence from duty without loss of pay or charge to leave. Administrative leave is not an entitlement, and agencies are not required to grant it.

The Office of Personnel Management (OPM) develops and maintains Government-wide regulations and policies on leave administration. When we initiated this review, OPM did not regulate administrative leave use. Instead, the Government Accountability Office's Office of the General Counsel incorporated applicable guidance into the *Civilian Personnel Law Manual*. The guidance states that each agency has the authority and discretion to excuse employees from duty without loss of pay or charge to leave in appropriate circumstances. The guidance indicates that, generally, agencies may not place an employee on leave with pay for an extended period.¹ OPM advises the absence should be as brief as possible under the circumstances and determined to be in the agency's best interest.

On December 23, 2016, the President signed into law the *National Defense Authorization Act for Fiscal Year 2017*² (Act). The Act includes provisions that create new categories of administrative leave and significantly restrict the amount of administrative leave agencies can grant their employees. The Act further requires that OPM prescribe implementing regulations and provide those regulations to Federal agencies within 270 days of enactment.

Agency officials can grant employees administrative leave during severe weather or other emergencies. Agency officials can also grant administrative leave for other reasons like allowing employees to donate blood, participate in preventative health screenings, or serve as pallbearer in funeral services for members of the armed forces. During our 2010 audit, we determined that SSA's oversight of short periods of administrative leave was generally effective.

While investigating employee wrongdoing, if agency officials determine it is in the Government's best interest to have the employee off the job, the employee may be relieved from duty and continue in a pay status without charge to leave for the short time necessary to process a suspension. In these instances, the agency can issue an indefinite suspension—an adverse action that takes an employee off duty and out of pay status until the inquiry or investigation into allegations of misconduct is complete.

¹ GAO OGC, Civilian Personnel Law Manual, Title II, Leave, Chapter 5-3.b (1996).

² *National Defense Authorization Act for Fiscal Year 2017*, S. 2943, 114th Cong. § 2 (2016).

To issue an indefinite suspension, the agency must use adverse action procedures, which require a 30-day paid notice period. After the 30-day notice period, the employee will no longer be in a pay status until the completion of the investigation, criminal proceeding, or medical determination.³ The 30-day notice period is not required if the agency has reasonable cause to believe the employee has committed a crime for which sentence of imprisonment may be imposed.

To insulate administrative adjudicators from improper agency pressures, Congress incorporated a provision into the *Administrative Procedure Act*, which provides that an Administrative Law Judge (ALJ) cannot be suspended without pay or removed until they have had an opportunity to have their case heard before the Merit Systems Protection Board (MSPB).⁴

Our 2010 audit reviewed instances where SSA employees received 1,000 or more hours of administrative leave and found that timekeepers or certifiers did not retain justification for the extended periods of administrative leave and SSA did not develop a process to monitor extended leave use. We recommended that SSA improve the process for authorizing and monitoring extended administrative leave use. See Appendix A for more information on our prior audit.

SSA's Office of Human Resources provided data from the Federal Personnel and Payroll System Datamart, identifying administrative leave granted from the 1st pay period of Calendar Year 2009 (beginning December 21, 2008) through the 16th pay period of Calendar Year 2015 (ended July 25, 2015). See Appendix B for the scope and methodology of this review.

**Table 1: Administrative Leave Granted from December 21, 2008
Through July 25, 2015**

Hours	Number of Employees	Cumulative Hours	Average Hours Per Employee
Under 80	55,684	2,010,249	36
80 to 239	29,759	3,843,269	129
240 to 499	427	131,425	308
500 to 749	48	28,694	598
750 to 999	27	23,030	853
1,000 or More	46	96,167	2,091
Totals:	85,991	6,132,834	71

³ OPM, *Dealing with Workplace Violence: A Guide for Agency Planners*, Part III, Section 3, Administrative Actions to Keep an Employee Away from the Worksite.

⁴ *Administrative Procedure Act*, 5 U.S.C. § 7521. We did not determine whether the administrative leave provisions included in the *National Defense Authorization Act for Fiscal Year 2017* apply to ALJs.

RESULTS OF REVIEW

SSA took corrective action on recommendations in our July 2010 report. In October 2010, SSA amended its leave delegations of authority⁵ to require senior executive approval of extended administrative leave grants. During the period reviewed, SSA granted 46 employees 1,000 or more hours of administrative leave.⁶ This is a small number relative to the nearly 86,000 employees who received administrative leave during that period. Grants of extended leave in these cases were within management officials' discretion and authority; and Agency officials retained information regarding the circumstances surrounding the leave grants. However, contrary to SSA policy, the Office of Operations did not document Regional Commissioner approval in eight instances where SSA granted employees 1,000 or more hours of administrative leave.

Senior executive review and approval of extended administrative leave helps ensure the absences are as brief as possible under the circumstances and are determined to be in the Government's best interest.

Extended Administrative Leave

Several factors can extend the length of time an employee remains on administrative leave, such as the legal procedures the Agency must complete before suspending or removing an employee, or when officials exercise discretion and allow employees to remain on administrative leave while the Agency investigates their misconduct. As detailed in Appendix C, during the review period, SSA granted 1,000 or more hours of administrative leave to 46 employees.

In 12 cases, SSA granted administrative leave to ALJs it intended to remove for misconduct or poor performance. Federal law provides ALJs special privileges.⁷ To suspend an ALJ without pay or terminate an ALJ's employment, SSA must establish good cause on the record and offer an opportunity for a hearing before the MSPB. SSA's Office of General Counsel interprets these provisions to apply until the ALJ has exhausted all appeals before the MSPB, a lengthy process that can result in grants of thousands of hours of administrative leave.

For example, in July 2012, while on duty and under the influence of alcohol, an ALJ assaulted a female security guard in an SSA hearing office. The next day, SSA placed the ALJ on administrative leave. While investigating the incident, law enforcement identified a second woman the ALJ assaulted in the hearing office in June 2011.

⁵ SSA, Personnel Policy Manual (PPM) S630_1 § 4.

⁶ Included 23 Office of Disability Adjudication and Review employees, 22 Office of Operations employees, and 1 Office of the Inspector General employee.

⁷ *Administrative Procedure Act*, 5 U.S.C. § 7521.

- In November 2012, authorities arrested the ALJ and charged him with two counts of indecent assault.
- In January 2013, as part of a plea agreement, the ALJ pleaded guilty to one count of assault. The court sentenced the ALJ to 2 years' probation, including 3 months under house arrest.
- SSA filed a proposal with the MSPB to terminate the ALJ.
- After an October 2014 hearing, an MSPB ALJ found good cause for the ALJ's removal.
- The ALJ filed an appeal with MSPB requesting an opinion from the Board.
- In June 2015, the Government paid the security guard \$50,000 to settle a lawsuit. A similar lawsuit brought by the woman assaulted in 2011 was pending in Federal court.
- On March 22, 2016, the MSPB issued a final order denying the ALJ's appeal and upholding its initial decision to allow for the ALJ's removal. The same day, SSA cancelled the ALJ's administrative leave and terminated his employment.
- SSA paid this individual more than \$500,000 in salary during his 6,926 hours on administrative leave.

In cases that did not involve ALJs, instead of immediately using indefinite suspension provisions for alleged misconduct, Agency officials exercised their discretion and authority and allowed employees to remain on administrative leave pending completion of investigations into the alleged misconduct. For example, SSA placed a field office employee on administrative leave in March 2014 because of threatening, intimidating, offensive, and disruptive behavior. After an Office of the Inspector General (OIG) and Office of General Counsel investigation verified the misconduct, SSA terminated his employment in March 2015. The employee received 1,616 hours of administrative leave before SSA terminated his employment.

Leave Delegations of Authority

In October 2010, SSA amended its leave delegations of authority to require that Deputy Commissioners, the Chief Actuary, the Chief Information Officer, the Deputy Chief of Staff, the General Counsel, or Regional Commissioners approve all grants of administrative leave in excess of 40 consecutive hours. SSA prohibited further re-delegation of this authority. Leave approving officials must document leave approval.⁸

However, the Office of Operations did not document Regional Commissioner approval of extended administrative leave granted to eight employees after SSA amended the leave delegations of authority.⁹ Operations staff stated that Regional Office executives were alerted to

⁸ SSA, PPM S630_1 § 5.4.

⁹ In 14 of 22 cases where the Office of Operations granted 1,000 or more hours of administrative leave, the extended leave periods began after the October 2010 amendment to the leave delegations of authority. Operations could not provide documentation confirming Regional Commissioner approval of the extended leave granted in 8 of the 14 cases.

circumstances surrounding the cases and of personnel actions being taken against the employees but could not confirm that Regional Commissioners documented leave approval.

Senior executive review and approval of extended administrative leave helps ensure the absences are as brief as possible under the circumstances and are determined to be in the Government's best interest.

CONCLUSIONS

SSA took corrective action on recommendations in our July 2010 report. In October 2010, SSA amended its leave delegations of authority to require senior executive approval of extended administrative leave grants. During the period reviewed, SSA granted 1,000 or more hours of administrative leave to 46 employees. Grants of extended leave in these cases were within management officials' discretion and authority; and Agency officials retained information regarding the circumstances surrounding the leave grants.

However, contrary to Agency policy, the Office of Operations did not document Regional Commissioner approval of extended administrative leave granted to eight Office of Operations' employees.

RECOMMENDATION

We recommend that SSA remind components that administrative leave grants in excess of 40 consecutive hours must be approved by Deputy Commissioners, the Chief Actuary, the Chief Information Officer, the Deputy Chief of Staff, the General Counsel, or Regional Commissioners; that this authority cannot be re-delegated; and that leave approval must be documented.

AGENCY COMMENTS

SSA agreed with our recommendation. The Agency's comments are included in Appendix D.



Rona Lawson
Assistant Inspector General for Audit

APPENDICES

Appendix A – PRIOR AUDIT

In our July 2010 report, *Administrative Leave Use* (A-06-09-29133), we found that the Social Security Administration's (SSA) oversight of short periods of administrative leave was generally effective. Review of documentation in components with the highest administrative leave use or supporting specific days where SSA officials granted the highest amount of administrative leave indicated the leave was properly authorized and appropriate.

However, we also determined that SSA did not establish policies governing leave use in the small number of instances where it granted employees extended periods of administrative leave. In 11 of 16 cases reviewed where SSA granted employees 1,000 or more hours of administrative leave, timekeepers and certifiers maintained no documentation to explain or justify leave approval. Instead, timekeepers or certifiers stated someone in their chain of command verbally authorized the leave. Further, SSA did not require any legal or administrative review of extended periods of administrative leave, and, once the certifying official approved the leave, SSA did not develop a process to monitor extended leave use.

As a result, we recommended that SSA (1) develop and implement policies governing authorization, review, and approval of extended periods of administrative leave and (2) establish procedures to monitor extended administrative leave use.

SSA reported that, in October 2010, it amended its leave delegations of authority to state that only Deputy Commissioners, the Chief Actuary, the Chief Information Officer, the Deputy Chief of Staff, the General Counsel, and Regional Commissioners have the authority to excuse employee absences in excess of 40 consecutive hours. In response to our second recommendation, SSA reported that it implemented biweekly reports to identify any employees granted 40 or more continuous hours of administrative leave. SSA's Office of Human Resources runs the reports and sends them to the appropriate component for review and any necessary action.

Appendix B – SCOPE AND METHODOLOGY

To accomplish our objectives, the Social Security Administration's (SSA) Office of Human Resources provided data from the Federal Personnel Payroll System Datamart identifying all approved administrative leave granted to SSA employees from the 1st pay period of Calendar Year 2009 (beginning December 21, 2008) through the 16th pay period of Calendar Year 2015 (ended July 25, 2015). We did not analyze the system controls for recording and maintaining administrative leave data.

As part of this review, we:

- Reviewed pertinent sections of SSA's policies and procedures as well as other relevant Federal laws and regulations.
- Reviewed administrative leave data identifying approximately 6.1 million hours of approved leave¹ and summarized the data on Table 1.
- Identified all employees granted 1,000 or more hours of leave.
 - For employees who remained on administrative leave as of July 25, 2015, we obtained the additional administrative leave hours granted through May 14, 2016.
 - Estimated the salary paid to each employee while on administrative leave based on the employee's salary at the beginning of the extended leave period and summarized this information on Appendix C.

To determine whether SSA took corrective action on recommendations in our July 2010 report, we:

- Interviewed Agency officials in components that granted individual employees 1,000 or more hours of administrative leave since January 2009 and requested they describe procedures for granting and monitoring extended administrative leave.
- Requested that Agency officials provide documentation explaining/justifying approval in all cases where employees received 1,000 or more hours of administrative leave.

¹ This included all instances where SSA granted employees at least 1 hour of administrative leave during a bi-weekly pay period. SSA data also separately identified approximately (1) 2.4 million hours of weather-related, (2) 500,000 hours of court-related (for example, jury duty), and (3) 12,000 hours of blood donation-related administrative leave granted to SSA employees. Because we previously determined that SSA's oversight of these types of leave was generally effective, we excluded this leave from further review.

We conducted our audit between December 2015 and November 2016 in Dallas, Texas. We determined the data used for this audit were sufficiently reliable to meet our audit objectives. The primary entities audited were the Offices of the Deputy Commissioners for Operations and Disability Adjudication and Review. We conducted this performance audit in accordance with generally accepted government auditing standards. 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 –LEAVE GRANTS OF 1,000 OR MORE HOURS

Six employees who received 1,000 or more hours of administrative leave remained on leave at the end of our review period (July 25, 2015). SSA identified 4,797 additional hours of administrative leave granted to the six employees through May 14, 2016. The table below incorporates the additional hours and provides those employees' status as of May 14, 2016.

Table C–1: Employees Granted 1,000 or More Hours of Administrative Leave

	Hours (Rounded)	Estimated Salary While on Leave	Employee Status
1*	6,926	\$514,864	Terminated
2*	5,469	\$429,889	Case Pending
3*	5,832	\$397,641	Resigned
4*	5,016	\$397,290	Terminated
5*	4,676	\$355,125	Terminated
6*	4,344	\$332,779	Terminated
7*	3,668	\$251,944	Terminated
8	4,250	\$205,483	Terminated
9*	2,435	\$192,863	Retired
10*	2,548	\$178,123	Resigned
11*	2,296	\$174,373	Terminated
12	2,239	\$114,116	Terminated
13	2,244	\$109,978	Returned to Work
14	1,884	\$104,979	Returned to Work
15	1,894	\$97,160	Terminated
16*	1,264	\$95,996	Terminated
17	2,651	\$92,627	Resigned
18	1,490	\$92,027	Resigned
19*	1,224	\$91,337	Retired
20	2,770	\$72,860	Resigned
21	1,420	\$61,600	Retired
22	2,077	\$60,810	Returned to Work
23	1,321	\$58,696	Retired

	Hours (Rounded)	Estimated Salary While on Leave	Employee Status
24	1,571	\$54,369	Terminated
25	1,329	\$49,472	Retired
26	1,616	\$48,668	Terminated
27	1,905	\$45,586	Terminated
28	1,011	\$39,922	Retired
29	1,165	\$39,690	Resigned
30	1,330	\$39,641	Retired
31	1,401	\$39,286	Returned to Work
32	1,812	\$39,050	Terminated
33	1,240	\$38,952	Returned to Work
34	1,233	\$37,500	Retired
35	1,278	\$34,178	Terminated
36	1,770	\$32,898	Resigned
37	1,573	\$32,879	Terminated
38	1,726	\$32,071	Terminated
39	1,352	\$31,722	Terminated
40	1,084	\$31,403	Resigned
41	1,260	\$31,132	Terminated
42	1,163	\$29,282	Returned to Work
43	1,030	\$28,084	Returned to Work
44	1,047	\$27,817	Terminated
45	1,108	\$26,794	Terminated
46	1,022	\$24,417	Terminated
Totals	100,964	\$5,317,373	

*Denotes employee is/was an Administrative Law Judge.

Appendix D – AGENCY COMMENTS



SOCIAL SECURITY

MEMORANDUM

Date: February 27, 2017 Refer To: S1J-3

To: Gale S. Stone
Acting Inspector General

From: Stephanie Hall /s/
Acting Deputy Chief of Staff

Subject: Office of the Inspector General Draft Report, “Administrative Leave Used for Extended Absences” (A-06-16-50026)--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,
“ADMINISTRATIVE LEAVE USED FOR EXTENDED ABSENCES” (A-06-16-50026)**

GENERAL COMMENTS

We take our responsibility to ensure we maintain adequate controls for the approval of administrative leave in excess of 40 hours very seriously. We have policies and procedures in place to ensure our executives in Headquarters and the Regions are aware of employee investigations and administrative actions imposed that result in approval of administrative leave in excess of 40 hours.

The National Defense Authorization Act for Fiscal Year 2017 (Act), signed into law on December 23, 2016, established two new categories of administrative leave – investigative leave and notice leave. The Office of Personnel Management (OPM) has 270 days to issue regulations and guidance to Federal agencies. When OPM publishes its regulations, we will develop policies to implement the Act.

Recommendation 1

Remind components that administrative leave grants in excess of 40 consecutive hours must be approved by Deputy Commissioners, the Chief Actuary, the Chief Information Officer, the Deputy Chief of Staff, the General Counsel, or Regional Commissioners, and that this authority cannot be re-delegated; and that leave approval must be documented.

Response

We agree.

MISSION

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