



SOCIAL SECURITY

Inspector General

January 5, 2004

The Honorable Paul Ryan
House of Representatives
Washington, D.C. 20515

Dear Mr. Ryan:

In July 21, 2003 and August 5, 2003 letters, you and the other Representatives from the State of Wisconsin inquired about the management of claimant file assembly contracts in the Office of Hearings and Appeals' Chicago Regional Office. We have completed our work regarding your inquiry. The enclosed report contains the results of our review.

My office is committed to eliminating fraud, waste, and abuse in the Social Security Administration's operations and programs. We have provided copies of the enclosed report to Representatives Gerald Kleczka; Mark Green; F. James Sensenbrenner, Jr.; Ron Kind; Tammy Baldwin; Thomas Petri; and David Obey. If you have any questions concerning this matter, please call me or have your staff contact H. Douglas Cunningham, Executive Assistant, at (202) 358-6319.

Sincerely,



James G. Huse, Jr.

Enclosure

cc:

Jo Anne B. Barnhart, Commissioner
Martin H. Gerry, Deputy Commissioner for Disability and Income Security Programs
A. Jacy Thurmond, Jr., Associate Commissioner for Hearings and Appeals

CONGRESSIONAL RESPONSE REPORT

Chicago Regional Office of Hearings and Appeals Claimant Medical Files

A-13-04-24045



January 2004

Mission

We improve Social Security Administration's (SSA) programs and operations and protect them against fraud, waste, and abuse by conducting independent and objective audits, evaluations, and investigations. We provide timely, useful, and reliable information and advice to Administration officials, the Congress, and the public.

Authority

The Inspector General Act created independent audit and investigative units, called the Office of Inspector General (OIG). The mission of the OIG, as spelled out in the Act, is to:

- Conduct and supervise independent and objective audits and investigations relating to agency programs and operations.
- Promote economy, effectiveness, and efficiency within the agency.
- Prevent and detect fraud, waste, and abuse in agency programs and operations.
- Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.
- Keep the agency head and the Congress fully and currently informed of problems in agency programs and operations.

To ensure objectivity, the IG Act empowers the IG with:

- Independence to determine what reviews to perform.
- Access to all information necessary for the reviews.
- Authority to publish findings and recommendations based on the reviews.

Vision

By conducting independent and objective audits, investigations, and evaluations, we are agents of positive change striving for continuous improvement in the Social Security Administration's programs, operations, and management and in our own office.

Background

OBJECTIVE

Our objective was to review specific concerns identified in letters dated July 21, 2003 and August 5, 2003 to the Inspector General from Representatives from the State of Wisconsin. Generally, the concerns pertained to

- disposition of disability cases involving discarded medical records in the Office of Hearings and Appeals' (OHA) Chicago Regional Office;
- identification of the Social Security Administration's (SSA) policies concerning security checks of contractors, removal and use of claimants' files from SSA offices, and OHA Chicago Regional Office compliance with these policies; and
- determining SSA or private contractor responsibility for the decision to discard claimants' files.

BACKGROUND

In September 2002, SSA awarded two contracts for claimant file assembly services for its OHA Chicago Regional Office. The contracts required organizing the medical documents chronologically, arranging documents in appropriate sections, numbering documents, identifying and retaining duplicate documents, and ensuring all pertinent documents are appropriately marked. The two contracts were awarded to Training Solutions, in Country Club Hills, Illinois, for \$35,000 and Worldwide Industries in Atlanta, Georgia, for \$47,500.¹

In December 2002, contractor employees began working at the OHA Chicago site. SSA reports that OHA employees performed 100-percent reviews of claimant files assembled by staff employed by both contractors. In December 2003, the Agency advised us it had obtained large recycling bins by February 13, 2003, and the discarded material was moved to those bins. Further, SSA reported the bins had locks and did not allow access to the discarded documents. We did not independently verify this information. However, an OHA Chicago employee reported observing in February 2003 trash cans and boxes full of discarded documents in the contractor's employee work area. We were told SSA employees did not review the documents contained in these bins at that time. In May 2003, OHA Chicago Regional Office staff reviewed the work performed by the two contractors. The review indicated medical and evidentiary, both original and duplicate documents, had been discarded. On May 9, 2003, SSA

¹ Training Solutions, Contract Number 0600-02-55016 and Worldwide Industries, Contract Number 0600-02-55015.

management and the Office of the Inspector General took custody of claimant files and escorted contractor employees from the worksite. In July 2003, SSA initiated action to terminate both contracts.

In a July 21, 2003 letter, eight members of the House of Representatives requested that we gather information concerning discarded medical information from claims files. Further, in an August 5, 2003 letter, two members of the House of Representatives requested that we determine whether SSA or the contractors were responsible for the decision to throw away claimant files.

Results of Review

Responses to Questions in July 21, 2003 Correspondence

Concern 1: Of the 1,200 cases handled by contractors hired to help alleviate disability claim backlogs at the Chicago Regional Office of Hearings and Appeals, how many were sent out for hearing before SSA discovered documents had been thrown away? Did any of these claimants receive an unfavorable decision?

An OHA Chicago employee reported observing in February 2003 trash cans and boxes full of discarded documents in the contractor's employee work area. We were told SSA employees did not review the documents contained in these bins at that time. In May 2003, staff at the OHA Chicago Regional Office discovered medical and evidentiary documents were discarded from claimant files. During our August 2003 visit to the OHA Chicago Regional Office, Agency staff reported contractors' employees were involved in assembly activities concerning 1,244 case files. Agency staff reported 464 files were forwarded to administrative law judges for decision before May 9, 2003. Unfavorable decisions were given in seven of the cases reviewed.

As of October 2003, OHA Chicago Regional Office staff reported employees of the 2 contractors handled 1,367 claimant files (9 percent more files than initially indicated in August 2003). Of these claimant files, 495 were forwarded to administrative law judges for decisions. Administrative law judges conferred 45 unfavorable decisions in these cases. SSA advised us that claimants who received unfavorable decisions will be sent a letter informing them their cases "...will be remanded."

The Agency stated because of the importance of identifying all cases handled by these contractors, the OHA staff spent considerable time reviewing and reconciling the various documents that contained relevant information about the cases the contractors handled. These included various automated reports reflecting cases sent for processing by the Hearing Offices, handwritten logs of cases assigned to the contractors, and reports showing payment to the contractors for completed cases. Since no single automated report was available to identify all cases, the process was in large part a labor-intensive, manual process. As more information was reviewed, the information regarding the number of cases the contractors processed was updated. We did not independently verify this information.

Concern 2: Have any of these 1,200 claimants been told that portions of their medical or other documents may have been thrown away by these contractors? If not, why hasn't SSA notified claimants about this problem?

Beginning in August 2003, claimants were notified that documents may have been removed from their files and were provided the opportunity to review their case files.

SSA did not send letters to all claimants with dismissal, favorable and unfavorable decisions. We could not verify the exact number of claimants who received notices based on the information SSA provided.

In September 2003, SSA reported it was taking action to notify all claimants that could have been affected by the contractors' removal of documents from files. As of December 3, 2003, some claimants who had dismissal and unfavorable decisions had been notified. Further, the Agency advised us that notices were being prepared for claimants who received favorable decisions.

Concern 3: How were the private contractors hired by the Chicago OHA chosen? What kind of security checks were applied? What kind of security checks were done on the people working for the contractors who actually tossed the records in the recycling bin?

Contractor Selection Process

The contracts awarded were handled in accordance with the Agency's contracting policies and procedures.² In its *Abstract of Quotations*, the Chicago Regional Office indicated past performance, experience and price were the evaluation factors. However, price was considered the most important factor in selecting the contractors for file assembly contracts. Performance and experience were considered less significant.³

Contractor Suitability Determinations

SSA's policies require that a suitability clause be placed in each of its contracts.⁴ The clause provides procedures for obtaining suitability determinations for contractor personnel who will work either at an SSA facility or have access to Agency program or sensitive information. Suitability considerations include delinquency or misconduct in prior employment; criminal, dishonest, infamous, or notoriously disgraceful conduct; intentional false statement, deception, or fraud on application forms; and narcotics abuse.

Further, the suitability clause requires that each contractor employee submit to SSA (1) two completed Forms FD-258, *Fingerprint Charts*; (2) one completed Form GSA-176, *Statement of Personal History*; (3) one completed Optional Form 306, *Declaration of Federal Employment*; (4) one completed *Fair Credit Reporting Act* authorization form; and (5) one legible photocopy of a work authorization permit and Social Security number card for a non-U.S. citizen.⁵

² Social Security Acquisition Handbook, Part H2301.

³ *Abstract of Quotation Ordering Information*, Solicitation # SSA-RFQ-02-0016.

⁴ Social Security Acquisitions Handbook, *Security Requirements Clause*, Part H2304, Attachment 6.

⁵ Social Security Acquisitions Handbook, *Security Requirements Clause*, Part H2304, Attachment 6 pages 4-5.

The contracts required pre-screening and “final” suitability determinations of contract employees.⁶ When pre-screening suitability determinations are required, SSA notifies the contractor, Contracting Officer and Project Officer in writing whether a prospective contractor employee may or may not perform under the contract pending a final suitability determination. SSA policy indicates the final suitability determination should be completed approximately 45 days after the submission of the completed security forms. Agency policy requires the pre-screening suitability procedure be performed and the contractor notified of the results within 5 days of receipt of properly completed security forms.⁷ If SSA does not send a pre-screening approval letter, the contract employee should not be allowed to work on the contract.

Our review indicated that contractor employees performing work related to the claimant file assembly contracts submitted appropriate security forms for the suitability determination process. All contractor employees received pre-screening suitability approval letters from SSA. However, we determined two contractor employees performed work at the Government-provided space at the OHA Chicago Office before SSA granted pre-screening approval.

Concern 4: When was the regular trash picked up from this room, and when were the recycling bins emptied? How can Social Security be certain that none of these records were compromised if things were placed in the trash that were shredded or disposed of before this was discovered in May?



The building's management periodically collects material for recycling. OHA management provided documentation indicating recycling bins were emptied on February 12, 2003 and March 13, 2003. The Agency advised us discarded material was shredded on March 13, 2003. We could not verify this information. The OHA Chicago Regional Office staff provided us the picture on the left. Staff stated the picture was taken on May 8, 2003 to show some of the documents the contractors discarded.

SSA cannot be certain that 1,244 claimant files were not compromised because documents were discarded in the regular trash or recycling bins before May 2003. An OHA Chicago employee reported observing in February 2003 trash cans and boxes full of discarded documents in the contractor's employee work area. According to the SSA employee, these documents were eventually placed in recycling bins. We were told

⁶ Training Solutions, Contract Number 0600-02-55016, page 13 and Worldwide Industries, Contract Number 0600-02-55015, page 13.

⁷ Social Security Acquisitions Handbook, *Security Requirements Clause*, Part H2304, Attachment 6, page 5.

SSA employees did not review the documents contained in these recycling bins at that time. In addition, four contractor employees stated they discarded duplicate documents in the trash before May 2003.

Concern 5: Is it standard policy for SSA offices to allow private contractors or any SSA employees to take boxes of claimants files containing medical and other information home with them to be organized? If so, what is the justification for this policy? How many workers nationwide are allowed to do this, per their contract with SSA? How can SSA have oversight and supervise these people if they are working at home? How would SSA know if everything in the file was there when it was returned? Further, how does this prevent identity theft if these sensitive files are allowed to be worked on in individual homes? Are there any contracts in the Milwaukee Office of Hearings and Appeals or the regional Chicago Office of Hearings and Appeals that allow private contractors or any SSA workers to take these claimant files home?

The two contracts specified where work must be performed.⁸ Specifically, the contracts stated that contractors' employees were not allowed to take claimant files home.⁹ As of July 21, 2003, there were 25 of 28 contracts in the Chicago Region where contractors were allowed to work off-site. SSA staff told us the Commissioner of Social Security testified before Congress on July 24, 2003, that the "work at home" stipulation would be eliminated from all contracts. According to SSA staff, current contracts in the OHA Chicago Region, which includes the Milwaukee OHA, are being performed on-site at Government-provided space only.

SSA employees are eligible to take files home under certain labor union contract provisions.¹⁰ Specifically, administrative law judges, attorneys, legal technicians, and other union employees are allowed to work at home up to 3 days a week. The term used to describe this work at home effort is "flexiplace."¹¹ Participation in flexiplace is voluntary and is dependent on an individual's job. Of SSA's 64,400 employees, approximately 52,000 American Federation of Government Employees, 1,000 National Treasury Employees Union, and 900 International Federation of Professional and Technical Engineers employees are eligible to participate in flexiplace.

⁸ Training Solutions, Contract Number 0600-02-55016, page 2, and Worldwide Industries, Contract Number 0600-02-55015, page 2.

⁹ Id.

¹⁰ National Treasury Employees Union, Article 57, outlines the "Flexiplace Program" dated September 3, 1996; American Federation of Government Employees Union outlines its agreement with the National Council of Social Security Administration, Office of Hearings and Appeals Locals and the Social Security Administration, Office of Hearings and Appeals dated December 19, 2000 and the International Federation of Professional and Technical Engineers outlines the Flexiplace program in Article 15.

¹¹ Flexiplace is a program designed to permit certain designated employees to perform agency-assigned work at a management-approved Alternate Duty Station. Agency guidelines have designated qualifying SSA employees' Alternate Duty Station will be their homes. Office of Labor-Management and Employee Relations Website <http://eis.ba.ssa.gov/olmer/Links/Flexiplace/flexiplace.htm>.

When SSA or contractor employees are allowed to work “off-site,” SSA does not know whether documentation is missing when the file is returned to the office. We discussed SSA employees’ removal of claimant files from the office and their working with the files at home with SSA Office of Labor-Management and Employee Relations. SSA staff stated managers would keep a list of the files being taken out of the office; however, the list does not state the file’s contents.

SSA policy states its employees are responsible for safeguarding Agency documents and equipment used to work at home.¹² However, we believe despite employees’ efforts to safeguard documents, there is no guarantee sensitive information is protected when files are transported to and from, or maintained at, an employee’s home.

Concern 6: Please identify the 120 Wisconsin residents whose records were found in the recycling bin. Also, please identify all of the Wisconsin residents who were part of the 1200 cases worked on by these two contractors.

As of October 2003, SSA had identified that the 2 contractors had handled 1,367 claimant files. Of the 1,367 claimants, 203 were residents of the State of Wisconsin. The OHA Chicago Regional Office reported 95 of the Wisconsin residents had original documents discarded.

Response to the Question in the August 5, 2003 Letter

Concern 7: Determine whether responsibility for the decision to throw away claimants’ files rests with officials at the SSA or private contractors hired by SSA.

Contractor employees did not receive consistent guidance concerning claimant file assembly. OHA employees were assigned to train the contractor’s employees. Some OHA employees stated they were unaware of contract requirements for claimant file assembly. These employees used existing SSA policy to instruct some contractor employees to discard duplicate documents, which contradicted contract requirements. Based on instructions provided by SSA, in some instances, contractor employees discarded documentation.

According to SSA policy, “...it is vital that duplicate or unnecessary material not be filed in the folder.” If the record “...is already wholly or partially in file...the duplicated material should be discarded, keeping the most legible copy.”¹³ The contracts required “...placing any duplicate documents in the back of the section after marking ‘Duplicate’ at the top right-hand corner.”¹⁴ The instruction stated in the contracts contradicted existing SSA’s policy.

¹² OHA Policy Memorandum, December 2000, section 12, page 8.

¹³ Program Operations Manual Section DI 70005.005

¹⁴ Training Solutions, Contract Number 0600-02-55016, page 3-4 and Worldwide Industries, Contract Number 0600-02-55015, page 3-4.

Other Matters

Oversight of Contracts

We believe SSA needed better oversight for the two contracts. Employees at one contractor began performing work at the OHA office in December 2002. After receiving training for claimant file assembly, contractor employees reported to OHA-provided office space on December 3, 2002. The contractor's employees were to continue to report to the OHA office and perform file assembly work until the contract requirements were completed. However, employees of one of the contractors did not return to the OHA location until February 2003. The Project Officer assigned to assist in the oversight of the contracts did not take action to ascertain the reasons the contractor's employees failed to perform work during December 2002 and January 2003.

Further, another Project Officer assigned to oversee the contracts lacked formal training and experience. Oversight of the two contracts was the Project Officer's initial assignment. The Project Officer had not received any formal training. Rather, the Project Officer was instructed to use a Department of Health and Human Services handbook as a reference.

Costs Related to Claimant File Assembly Contracts



OHA Chicago Regional Office staff estimated that, as of October 15, 2003, the additional cost to "rework" claimant files assembled by the two contractors and contact individual claimants that may be impacted by contractor activities to be about \$123,000. Further, OHA Chicago Regional Office staff stated an additional cost of approximately \$13,000 had been incurred as a result of assisting us in our review of the two file assembly contracts. In total, these costs exceed the original contract costs of \$82,500 by \$53,500.

OHA Chicago Regional Office staff provided the picture above. Staff stated the picture was taken on May 8, 2003, to show some of the recovery process undertaken by staff in the OHA Chicago Regional Office.

Appendix

Appendix A – Scope and Methodology

Scope and Methodology

We collected and reviewed information specific to the concerns raised in July 21, 2003 and August 5, 2003 letters from Representatives from the State of Wisconsin. The letters identified several issues concerning the discarding of claimant medical files assigned to the Office of Hearings and Appeals' Chicago Regional Office from December 2002 through May 2003.

To achieve our objective, we:

- Examined Social Security Administration (SSA) contracts awarded to two contractors to procure case file assembly services in the Office of Hearings and Appeals' Chicago Regional Office.
- Reviewed case files assembled by contractor employees to determine the number of cases involved in the assembly process, all affected cases identified, and whether corrective actions had been taken.
- Reviewed SSA policy for allowing contractors and/or SSA employees to take claimant files and medical information home.
- Reviewed SSA policy concerning suitability determinations for contractors and their employees.
- Assessed SSA Office of Hearings and Appeals' compliance with SSA security-related policies for the contracts pertaining to case file assembly.
- Assessed the disposition of disability cases involving discarded medical records and other documents.

In addition, we interviewed Office of Hearings and Appeals staff and contractor employees to obtain additional information regarding the issues reviewed.

The SSA operating component reviewed was the Chicago Regional Office of Hearings and Appeals within the Office of the Deputy Commissioner for Disability and Income Security Programs. We performed our review in Baltimore, Maryland; Chicago, Illinois; and Falls Church, Virginia, from August through November 2003. We conducted our review in accordance with Quality Standards for Inspections issued by the President's Council on Integrity and Efficiency.

DISTRIBUTION SCHEDULE

Commissioner of Social Security
Office of Management and Budget, Income Maintenance Branch
Chairman and Ranking Member, Committee on Ways and Means
Chief of Staff, Committee on Ways and Means
Chairman and Ranking Minority Member, Subcommittee on Social Security
Majority and Minority Staff Director, Subcommittee on Social Security
Chairman and Ranking Minority Member, Subcommittee on Human Resources
Chairman and Ranking Minority Member, Committee on Budget, House of Representatives
Chairman and Ranking Minority Member, Committee on Government Reform and Oversight
Chairman and Ranking Minority Member, Committee on Governmental Affairs
Chairman and Ranking Minority Member, Committee on Appropriations, House of Representatives
Chairman and Ranking Minority, Subcommittee on Labor, Health and Human Services, Education and Related Agencies, Committee on Appropriations,
House of Representatives
Chairman and Ranking Minority Member, Committee on Appropriations, U.S. Senate
Chairman and Ranking Minority Member, Subcommittee on Labor, Health and Human Services, Education and Related Agencies, Committee on Appropriations, U.S. Senate
Chairman and Ranking Minority Member, Committee on Finance
Chairman and Ranking Minority Member, Subcommittee on Social Security and Family Policy
Chairman and Ranking Minority Member, Senate Special Committee on Aging
Social Security Advisory Board

Overview of the Office of the Inspector General

Office of Audit

The Office of Audit (OA) conducts comprehensive financial and performance audits of the Social Security Administration's (SSA) programs and makes recommendations to ensure that program objectives are achieved effectively and efficiently. Financial audits, required by the Chief Financial Officers' Act of 1990, assess whether SSA's financial statements fairly present the Agency's financial position, results of operations and cash flow. Performance audits review the economy, efficiency and effectiveness of SSA's programs. OA also conducts short-term management and program evaluations focused on issues of concern to SSA, Congress and the general public. Evaluations often focus on identifying and recommending ways to prevent and minimize program fraud and inefficiency, rather than detecting problems after they occur.

Office of Executive Operations

The Office of Executive Operations (OEO) supports the Office of the Inspector General (OIG) by providing information resource management; systems security; and the coordination of budget, procurement, telecommunications, facilities and equipment, and human resources. In addition, this office is the focal point for the OIG's strategic planning function and the development and implementation of performance measures required by the *Government Performance and Results Act*. OEO is also responsible for performing internal reviews to ensure that OIG offices nationwide hold themselves to the same rigorous standards that we expect from SSA, as well as conducting investigations of OIG employees, when necessary. Finally, OEO administers OIG's public affairs, media, and interagency activities, coordinates responses to Congressional requests for information, and also communicates OIG's planned and current activities and their results to the Commissioner and Congress.

Office of Investigations

The Office of Investigations (OI) conducts and coordinates investigative activity related to fraud, waste, abuse, and mismanagement of SSA programs and operations. This includes wrongdoing by applicants, beneficiaries, contractors, physicians, interpreters, representative payees, third parties, and by SSA employees in the performance of their duties. OI also conducts joint investigations with other Federal, State, and local law enforcement agencies.

Counsel to the Inspector General

The Counsel to the Inspector General provides legal advice and counsel to the Inspector General on various matters, including: 1) statutes, regulations, legislation, and policy directives governing the administration of SSA's programs; 2) investigative procedures and techniques; and 3) legal implications and conclusions to be drawn from audit and investigative material produced by the OIG. The Counsel's office also administers the civil monetary penalty program.