

MONDAY, OCTOBER 7, 2013

HSGAC SENATORS RELEASE SOCIAL SECURITY DISABILITY FRAUD REPORT

(WASHINGTON, D.C.) – On Monday, October 7, Homeland Security and Governmental Affairs Committee Ranking Member Tom Coburn, M.D. (R-OK), Chairman Tom Carper (D-DE), Permanent Subcommittee on Investigations Chairman Carl Levin (D-MI) and Permanent Subcommittee on Investigations Ranking Member John McCain (R-AZ), released the findings of a two year investigation into a case study of abuses surrounding the approval process of Social Security Disability benefits. The report, entitled, “How Some Legal, Medical, and Judicial Professionals Abused Social Security Disability Programs for the Country’s Most Vulnerable: A Case Study of the Conn Law Firm (http://www.coburn.senate.gov/public/index.cfm?a=Files.Serve&File_id=0d1ad28a-fd8a-4aca-93bd-c7bf9543af36),” details inappropriate conduct and collusion between a law firm, Social Security Law Judges and doctors in approving benefits, while outlining the inept agency oversight which allowed the misconduct to take place for years.

The investigation was led by Senator Coburn. The first year of the investigation was conducted by the Permanent Subcommittee on Investigations when Senator Coburn was the Ranking Member there, prior to his becoming the Ranking Member of the full Committee. The Committee held a hearing on

October 7, 2013, featuring the report entitled: “Social Security Disability Benefits: Did A Group of Judges, Doctors and Lawyers Abuse Programs for the Country’s Most Vulnerable?”

“This report highlights the very problems Congress needs to focus on but too often ignores. In just two years, the Social Security Disability Trust Fund could be depleted. That means millions of disabled Americans will face benefit cuts while every American could see an increase in their payroll taxes. That is unacceptable. What is also outrageous, as this report details, is how well-healed and well-connected lawyers, doctors, and judges have gamed the system for their own benefit. Every bogus claim made on behalf of someone who is not truly disabled robs taxpayers and denies or delays benefits for someone who is truly disabled. This is an enormous and urgent problem that should demand our immediate attention,” Ranking Member Coburn said, noting that a previous report on the disability program showed at least more than 25 percent of 300 disability cases reviewed contained errors or poor quality analysis.

“This investigative report details some very troubling occurrences within the Social Security disability review office in West Virginia,” Chairman Carper said. While we don’t have any evidence that this is more than an isolated case, one example of inappropriate actions of this nature is one too many. I welcome the opportunity to hold a hearing today examining a number of issues surrounding Social Security’s disability programs, gather facts and attempt to ascertain the truth. In the midst of this very partisan time, one thing that Republicans and Democrats agree on is that we need to make every effort to ensure our federal programs are well run and are as free as possible from abuse or wasteful practices. Whether it’s Delaware, West Virginia, or anywhere else in our nation, we need to ensure strong oversight in all of our government operations, to ensure both fairness and effectiveness. I am encouraged that the Social Security Administration has already acknowledged many of the issues raised by the investigation, and I understand that it has begun to implement stronger reviews and other solutions. My colleagues and I in Congress will continue to work with the Administration to provide oversight, guidance and resources to ensure that a few bad actors don’t take scarce tax payer resources from those who truly deserve them.”

“Federal disability programs provide critical assistance to the most vulnerable among us,” said Senator Levin, “and we can’t afford for those programs to be undermined by a law firm engaged in improper and collusive conduct that is abusive, longstanding, and intolerable. The report doesn’t decide whether the benefits awarded to individuals represented by Eric Conn were right or wrong,

since there are too many claimants to generalize. Nor does it apply to the dedicated and honest professionals that keep our disability programs going despite limited resources and back-breaking caseloads. After all, the investigation was launched after Social Security whistleblowers exposed the wrongdoing. Our goal is to spotlight the abusive conduct, put an end to it, and recommend measures to prevent similar abuses in the future.”

“The findings in the report regarding potential fraud in the Social Security Disability Programs are alarming and demand immediate attention by Congress, the Social Security Administration, and – where evidence obtained by the Committee suggests that crimes were committed – the Department of Justice,” said Senator McCain. “These programs are designed to help those who are most in need because of their inability to work. Yet, their susceptibility to being abused, at a cost of billions of taxpayer dollars, threatens both their viability and their continued ability to help those actually in need of the government’s help.”

Key findings of the report include:

- Daugherty Awarded More Than \$2.5 Billion in Benefits in the Last Years of His Career. Judge Daugherty moved an unusually large number of disability cases through the agency and awarded an unusually high percentage of disability benefits. Over a nearly seven year period, from 2005 to his retirement in mid-2011, Judge Daugherty awarded disability benefits to 8,413 individuals, which translates into about 1,200 cases per year and an estimated total award of federal lifetime benefits exceeding \$2.5 billion.
- Judge Provided “DB Lists” to Conn Law Firm. From at least June 2006 to July 2010, Judge Daugherty telephoned the Conn law firm each month and identified a list of Mr. Conn’s disability claimants to whom the judge planned to award benefits. Judge Daugherty also indicated, for each listed claimant, whether he needed a “physical” or “mental” opinion from a medical professional indicating the claimant was disabled. Over the four year period reviewed, from 2006 to 2010, the monthly list identified between 14 and 52 disability claimants each time for at least 1,823 claimants. Conn Law Firm personnel referred to the monthly list as the “DB List” for David B. Daugherty.
- Daugherty Relied on Conn’s Doctors to Generate Medical Evidence. After receiving the DB List, Mr. Conn’s office scheduled appointments for the identified claimants with certain doctors favored by the law firm. The Conn law firm provided several of those doctors with physical or mental residual functional capacity (“RFC”) forms in which the medical information was already filled out,

and the doctors signed the forms without making any changes. Frequently, these pre-filled forms contained information that conflicted with other information in the claimant's case file.

- Identical Medical Evidence Used for Multiple Claimants. A review of the RFC forms found that the Conn law firm supplied certain doctors with 15 pre-filled versions of the physical RFC form and five pre-filled versions of the mental RFC form for hundreds of claimants. In almost all cases, only the names and Social Security numbers on the forms differed. Of the forms reviewed, 97 described the claimants as having the exact same limitations and contained no unique medical or employment information specific to the claimant. Because each individual has different abilities and ailments, and the forms require a complex set of data, finding two RFCs exactly alike should have statistically been an extremely rare occurrence.
- Key Doctors Had Suspect Credentials. Of the doctors used by the Conn law firm to produce medical opinions for disability claimants, two had their medical license suspended or revoked in another state. Under SSA rules, a doctor with a suspended or revoked license could not be used by the Social Security Administration to review a disability case, but could still examine claimants at the request of a claimant or outside attorney.
- Judge Daugherty Wrote Questionable Decisions Relying on Mr. Conn's Doctors. A review of 110 case files for disability claimants listed on the DB Lists found the vast majority to contain highly questionable decisions. In all 110 cases, Judge Daugherty's decisions justified reversing the agency's prior denial of disability benefits by relying solely on the medical forms provided by the doctors procured by the Conn law firm. All but two of the 110 cases used the agency's Medical-Vocational grid guidelines to award benefits.
- Mr. Conn Obtained Millions in Attorney Fees Paid by SSA. From cases on the DB Lists alone, over the four year period from 2006 to 2010, the Social Security Administration paid Mr. Conn over \$4.5 million in attorney fees.¹⁰ Social Security records show that, altogether in 2010, Mr. Conn was the third highest paid disability law firm in the country due to its receipt of over \$3.9 million in attorney fees from the Social Security Administration. In 2009, Mr. Conn received a total of \$3.5 million in attorney fees from the agency.
- Mr. Conn Paid Doctors Substantial Fees for Evaluations. The doctors used by Mr. Conn to evaluate his claimants were also paid substantial fees. A review of records found that, over the past six years, Mr. Conn paid five doctors almost \$2

million to provide disability opinions for his claimants. Mr. Conn contracted with his claimants to repay the fees given to the doctors to perform their medical evaluations.

- Daugherty Bank Records Show \$96,000 in Unexplained Cash Deposits. From 2003 to 2011, Judge Daugherty's bank records contain regularly occurring cash deposits totaling \$69,800, the source of which is unexplained in the judge's financial disclosure forms. From 2007 to 2011, his daughter's bank records list similar cash deposits totaling another \$26,200. When asked about the \$96,000 in cash deposits, Judge Daugherty refused to explain their origin or the source of the funds.
- SSA Whistleblower Targeted by Huntington Chief Judge Andrus and Eric Conn. Following the public disclosure of Mr. Conn's relationship with Judge Daugherty, Huntington Chief ALJ Andrus worked with Mr. Conn to discredit and retaliate against an SSA employee suspected of leaking the information.
- Mr. Conn Destroyed Documents during an Investigation. After talking with SSA OIG investigators, Mr. Conn contracted with a local shredding company to destroy over 26,000 pounds of documents, the equivalent of 2.6 million sheets of paper. Former Conn law firm personnel asserted that he destroyed all hard copies of the DB Lists as well as computer hard drives in his office.

###