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*United States Senate*

***COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS***

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**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**

**STAFF REPORT**

**COMMITTEE ON HOMELAND SECURITY AND  
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**UNITED STATES SENATE**



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COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL  
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# **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**

## **I. EXECUTIVE SUMMARY**

In 1993, Eric Christopher Conn opened a legal practice in a small trailer next door to his boyhood home in rural Eastern Kentucky. Located in Stanville, Kentucky, along Highway 23, his office was two hours from the closest major city and over an hour from the Social Security's main regional office in Huntington, West Virginia. Despite operating in a sparsely populated town of 500, Mr. Conn would go on to build one of the largest and most lucrative disability practices in the nation. A two-year investigation of his actions representing claimants applying for Social Security Disability Insurance ("SSDI") and Supplemental Security Income ("SSI") benefits uncovered a raft of improper practices by the Conn law firm to obtain disability benefits, inappropriate collusion between Mr. Conn and a Social Security Administrative Law Judge, and inept agency oversight which enabled the misconduct to continue for years.

From the beginning, Mr. Conn focused his efforts primarily – and later exclusively – on helping people onto the Social Security Administration's ("SSA") disability program rolls. His knack for navigating the program's arcane rules, along with an aggressive approach to marketing that included television, radio, and online advertisements, drew thousands of clients to his office looking to obtain benefits. At the height of his success in 2010, Mr. Conn employed nearly 40 people and obtained more than \$3.9 million in legal fees from SSA, making him the agency's third highest paid disability lawyer that year. Today, the Eric C. Conn Law Complex is significantly larger than the single trailer used twenty years earlier. Several interconnected trailers now surround a main office building. A prominent feature of the complex is a large replica of the Abraham Lincoln statute in the Lincoln Memorial in Washington, D.C., which has become a local tourist attraction used to recruit clients. Mr. Conn, referred to in some of his advertisements as "Mr. Social Security," used his law practice to exploit key vulnerabilities in a critical federal safety net program and became wealthy in the process.

Concern about Mr. Conn's methods first surfaced publicly in May 2011, when *The Wall Street Journal* published an article about his relationship with David B. Daugherty, an Administrative Law Judge ("ALJ") in the SSA's regional Huntington, West Virginia Office of Disability Adjudication and Review. In the years leading up to 2011, Judge Daugherty had become one of the agency's highest producing judges, issuing more decisions each year than nearly all 1,500 of SSA's other judges. In some years, 40 percent of his caseload consisted of cases represented by Mr. Conn – nearly all of which he approved for benefits. Public airing of the details surrounding the unusual arrangement between Judge Daugherty and Mr. Conn prompted top SSA officials to request an investigation by the SSA Inspector General. Judge Daugherty was also placed on administrative leave, after which he quickly resigned.

Unease with the relationship between Judge Daugherty and Mr. Conn had begun years earlier, however, among those who worked with both men on a day-to-day basis. Inside SSA's Huntington Office of Disability Adjudication and Review ("Huntington ODAR"), some noticed

how Judge Daugherty gave Mr. Conn's cases special treatment. Whereas most judges held 15 to 20 randomly assigned hearings in a week, each lasting an hour or more, Judge Daugherty scheduled as many as 20 hearings for Mr. Conn's clients in a single day, moving them through in 15 minute increments. To ensure most of Mr. Conn's cases ended up before him, Judge Daugherty ignored the office's rotational assignment policy for new cases and personally assigned Mr. Conn's cases to himself. Where Conn cases had already been assigned to other judges, the judge sometimes quietly reassigned them to his own docket without mentioning the reassessments to others. Eventually, Judge Daugherty stopped holding hearings for Mr. Conn's cases altogether, instead deciding them "on the record" in large numbers – and always favorably. These troubling practices were brought to the attention of Huntington's Chief Administrative Law Judge, Charles Paul Andrus, but he failed to stop them.

Inside Mr. Conn's office, some of his employees grew increasingly uncomfortable with his relationship to Judge Daugherty – also known to many as "DB" – who assumed a central role in the law firm's operations and revenues. By 2011, Mr. Conn and Judge Daugherty had collaborated on a scheme that enabled the judge to approve, in assembly-line fashion, hundreds of clients for disability benefits using manufactured medical evidence.

Since at least 2006, Judge Daugherty had a practice of coordinating with Mr. Conn to create what was referred to as a "DB List," which was a list of Mr. Conn's clients that the judge planned to approve for benefits that month. After deciding which claimants would be on the month's DB List, Judge Daugherty personally telephoned Mr. Conn's office, provided the claimant list to one of Mr. Conn's employees, and indicated whether the claimants needed to provide additional medical evidence of a "mental" or "physical" ailment. Within days, Mr. Conn scheduled the listed claimants to see one of the several doctors he paid to provide medical assessments. These doctors almost invariably concluded that the claimant was disabled. In most cases, the doctors simply signed and dated a medical form which had been filled out ahead of time by Mr. Conn's office.

After receiving the medical forms he had requested, Judge Daugherty overturned earlier agency denials and issued favorable decisions awarding Mr. Conn's clients disability benefits. The evidence indicates that the entire process, from the time a Conn claimant requested a hearing before an ALJ on a denied claim to the issuing of a favorable decision by Judge Daugherty, took as little as 30 days. During the same period, waiting times for claimants nationally, as well as others with cases before the Huntington ODAR, averaged well over one year. According to Mr. Conn's former employees, word about the special treatment of his cases spread far enough that prospective clients would come to his office asking how they could get their cases heard by Judge Daugherty.

After publication of the *Wall Street Journal* article in May 2011, SSA instituted a number of reforms to correct the situation in Huntington, including reinstating the assignment of cases to all ALJ's on a strict rotational basis.

Mr. Conn, Judge Daugherty and Chief Judge Andrus also took steps in reaction to the article. According to the testimony of former employees, and corroborated by documentary evidence, Mr. Conn's office purchased several disposable prepaid cellular phones for the purpose of

allowing Mr. Conn and Judge Daugherty to talk. Mr. Conn systematically destroyed several dozen of the Conn Law Office’s computers, and hired a local shredding company to clear out a large warehouse full of documents. Mr. Conn’s use of a shredding company was the first time he had shredded such a large amount of firm documents at one time, according to former employees and documents reviewed by the Committee.

Additional evidence indicates that Mr. Conn and Judge Andrus devised a plan to discredit an SSA employee suspected of blowing the whistle on the Huntington office problems, Sarah Carver. According to former Conn and SSA employees as well as a recorded SSA IG interview in which Judge Andrus admitted his part, he and Mr. Conn worked together to have video surveillance conducted of Ms. Carver on days when she worked from home in an attempt to catch her violating the office’s telework policies. After several unsuccessful attempts, according to the employees, Mr. Conn, together with Judge Andrus, fabricated evidence and sent it to her superiors.

In 2011, SSA placed Judge Daugherty on administrative leave, and he later retired. The same year, SSA removed Judge Andrus from his position as Chief ALJ, but allowed him to remain in the Huntington office. In September 2013, SSA placed him on administrative leave pending a removal action. Mr. Conn has continued to represent claimants seeking disability benefits and has even opened a new office in California.

While the events that unfolded at SSA’s Huntington ODAR paint an unappealing picture of corruption, fraud, and favoritism in that office, they also call attention to the need for specific steps to be taken by the Social Security disability programs to prevent this type of wrongdoing from recurring.

#### **a. Investigation Overview**

In May 2013, the Social Security Trustees estimated the Social Security Disability Trust Fund, which supports the SSDI program would be exhausted by 2016 and only able to pay 80 percent of scheduled SSDI benefits.<sup>1</sup> As such, the Trustees “recommend[ed] that lawmakers address the projected trust fund shortfalls in a timely way in order to phase in necessary changes and give workers and beneficiaries time to adjust to them.”<sup>2</sup>

This report is the second in a series examining problems within the Social Security SSDI and SSI disability programs and recommending workable solutions for fixing and saving them. In September 2012, the Minority Staff of the U.S. Senate Permanent Subcommittee on Investigations issued the first report finding more than a quarter, or 25 percent, of 300 Social Security Administration (“SSA”) disability decisions had “failed to properly address insufficient, contradictory, or incomplete evidence.”<sup>3</sup> Problems with the agency’s decision process were

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<sup>1</sup> The 2013 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, <http://www.ssa.gov/oact/tr/2013/tr2013.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> Minority Staff Report, U.S. Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, “Social Security Disability Programs: Improving the Quality of Benefit Award Decisions,” September 13, 2012, <http://www.hsgac.senate.gov/subcommittees/investigations/hearings/social-security-administrations-disability-programs>.

particularly acute at the Administrative Law Judge (“ALJ”) level of appeal. The Report’s findings corroborated a 2011 internal quality review conducted by SSA that found on average nationwide, disability decisions made by agency ALJs had errors or were insufficient 22 percent of the time.<sup>4</sup> The Report also made a number of recommendations to improve the agency’s decision-making process.<sup>5</sup>

In the course of reviewing a broad spectrum of disability decisions for the first report, information emerged that a few ALJs issued and approved cases at levels far higher than their peers. One ALJ stood out. Judge Daugherty in the Huntington office awarded disability benefits in all but four of the 1,375 claims he decided in 2010.<sup>6</sup> The year before he approved benefits in 1,410 cases, denying benefits in only five.<sup>7</sup> While other ALJs issued an average of 500-700 decisions and approved 60 percent of them for benefits on average,<sup>8</sup> Judge Daugherty issued nearly three times as many and approved almost all of them.

The Committee initiated an investigation to evaluate how Judge Daugherty was able to process so many cases and why, contrary to other ALJs, he awarded disability benefits in almost every case before him. During the course of its work, the Committee also investigated the allegations that Judge Daugherty had engaged in an improper partnership with Mr. Conn. In conducting its two-year investigation, the Committee obtained and reviewed thousands of pages of documents from the Social Security Administration, the Conn law firm, and other entities. It also interviewed current and former Social Security Administration employees and ALJs as well as former employees of the Conn Law Firm. Through his attorney, the Committee requested an interview of Mr. Conn, but he declined to cooperate.

## b. Findings

The Report makes the following findings of fact.

- **Agency Backlog Plan Created Pressure for ALJs to Complete Cases.** In 2007, due to long wait times at the ALJ level of appeal, the Social Security Administration instituted an ALJ hearing backlog reduction plan. The plan focused on moving high volumes of cases through the ALJ level quickly. Numerous ALJs and other SSA employees told the Committee that this plan created significant pressure to move cases as fast as possible.
- **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

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 5-6.

<sup>6</sup> Information provided by the Social Security Administration.

<sup>7</sup> *Id.*

<sup>8</sup> See generally, Social Security Administration, ALJ Disposition Data,

[http://www.socialsecurity.gov/appeals/DataSets/archive/03\\_FY2010/03\\_September\\_ALJ\\_Disposition\\_Data\\_FY2010.pdf](http://www.socialsecurity.gov/appeals/DataSets/archive/03_FY2010/03_September_ALJ_Disposition_Data_FY2010.pdf)

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.<sup>9</sup>

- **Judge Daugherty and Mr. Conn Engaged in Inappropriate Collusive Efforts to Approve Benefits.** Judge Daugherty worked with Mr. Conn in inappropriate ways to approve a high volume of cases submitted by the Conn Law Firm.
- **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 Assigned Himself Mr. Conn’s Cases.** Judge Daugherty assigned cases submitted by the Conn law firm to himself to decide, at times awarding benefits in cases that had been officially assigned to other ALJs in the Huntington ODAR.
- **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.
- **Doctors Processed a Large Number of Patients in a Short Period of Time.** Some of the doctors examined the claimants in a “medical suite” in the Conn law firm, spending as little as 15 minutes per claimant and seeing up to 35 claimants in a day.

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<sup>9</sup> This estimate based upon the Social Security Office of Inspector General’s determination that each award of disability benefits costs \$300,000 in federal lifetime benefits. See Social Security Administration, Office of Inspector General, “Disability Fraud Probe Leads to Arrests in Puerto Rico,” <http://oig.ssa.gov/audits-and-investigations/investigations/disability-fraud-probe-leads-arrests-puerto-rico>.

- **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.<sup>10</sup> 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.
- **Huntington ODAR Became One of the Top Producing Offices.** During Judge Daugherty’s tenure, Huntington ODAR became one of the fastest offices in the country in deciding disability cases. In 2010, it had the second shortest average processing time at just 263 days. The office ranked 12th out of 149 hearing offices in ALJ Dispositions per day per ALJ with each Huntington ODAR ALJ recorded as processing 2.93 cases per day.
- **Judge Daugherty Violated Agency Attendance Policy.** Judge Daugherty was on several occasions found by SSA officials to have violated the time and attendance policy in place for ALJs. On a regular basis, over a period of many years, he would arrive at work and sign in,

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<sup>10</sup> Under SSA rules, attorney and claimant representatives may be awarded fees by the agency using funds taken from back-pay benefits awarded to a claimant. An attorney or representative can currently obtain as much as 25 percent of the back-pay awarded to a claimant, with a maximum of \$6,000 per claimant.

leave for the entire workday and then return at the end of the day only to sign out. SSA never disciplined him for these absences.

- **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.
- **Judge Daugherty and Mr. Conn Communicated Using Disposable Phones.** Following the initiation of an investigation by the SSA Office of Inspector General (“OIG”) and a news article on Judge Daugherty approving a large number of Mr. Conn’s claimants, Mr. Conn purchased disposable prepaid cellular phones to communicate with Judge Daugherty.
- **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.
- **Huntington ODAR may have Destroyed Key Documents.** Also subsequent to initiation of the SSA OIG investigation, the Huntington ODAR purchased four personal paper shredders for management and Chief ALJ Andrus, even though it already had a contract in place with a local company to routinely shred documents containing protected information. The SSA Inspector General’s office interviewed the individuals in possession of the shredders and concluded “the office was not inappropriately destroying documents.” However, one of those same individuals was later determined to have misled the OIG on matters related to the broader investigation of the Huntington office, and the agency appears to have later been unable to recover numerous documents and emails requested by the Committee.

### c. Recommendations

The Report makes the following recommendations:

- **ALJ Consideration of Prior Agency Decision.** Judge Daugherty ignored information provided in prior decisions denying benefits and overturned those decisions by relying on information provided by Mr. Conn and his network of doctors that the claimant was disabled. The agency should ensure initial decisions made by the Department of Disability Services (“DDS”) to deny benefits are well documented, with specific evidence on why the claimant did not meet the agency’s definition of disability. The agency should consider allowing the ALJ to contact the DDS examiner who made the prior decision in the presence of the claimant’s representative to ask about the reasons for the prior denial. The ALJ would remain responsible for providing a *de novo* review of the claim.
- **Strengthen ALJ Quality Review Process.** Judge Daugherty’s approved decisions were not subject to further review or the scrutiny of the appellate process, since his awards of benefits were not appealed by the claimant. It is important the agency strengthen and expand the

review of ALJ award decisions by the Quality Division of the Office of Appellate Operations, and that Congress provide adequate funding for that effort. The agency should conduct more reviews during the year and improve ways of measuring the quality of disability decisions. Such information should be made available to Congress.

- **Reform the Medical-Vocational Guidelines.** Almost all of Judge Daugherty's cases reviewed by the Committee were decided based on the outdated medical-vocational guidelines, which have not been changed since 1980. Those guidelines should be reviewed to determine the reforms needed to update the guidelines to reflect current life expectancy and related ability. Additional studies should be conducted to evaluate whether the current guidelines utilize the proper factors and if they appropriately reflect a person's ability to work.
- **Prohibit Claimant Use of Doctors with Revoked or Suspended Licenses.** In some cases, the Conn law firm provided medical opinions from a doctor whose licenses had been suspended or revoked in another state. The agency should prohibit claimants from submitting opinions by doctors whose services, under its existing rules, the agency itself could not accept.
- **Strengthen ALJ Analysis of Medical Opinions.** Almost all of Judge Daugherty's decisions were based on a medical opinion provided by an attorney-procured medical professional. Many times those opinions were in direct conflict with other evidence in the claimants' files. SSA should provide specific training with regard to how ALJs should use these types of opinions.
- **Focused Training for ALJs.** The Office of Appellate Operations, Quality Division, should provide training to all ALJs regarding adequate articulation in opinions of legal determinations. This training should emphasize the proper way to analyze and address these issues as required by law, regulation and agency guidance, including how to address obesity and drug and alcohol abuse.
- **OIG Review of Top Attorney Fee Awards.** The SSA Inspector General should conduct an annual review of the practices of the law firms earning the most attorney fees from processing disability cases to detect any abusive conduct. The review could include examining a sample of RFC forms from the firm's claimants to detect repetitive language, reviewing the licensing history of the doctors used by the law firm to provide medical opinions, and seeing if a disproportionate number of the claimants represented by the firm had their cases decided by a particular judge.

## **IX. MR. CONN POTENTIALLY FABRICATED MEDICAL OPINIONS, RESULTING IN AWARDED DISABILITY BENEFITS**

According to witness testimony and evidence reviewed by the Committee, it appears that on several occasions Mr. Conn provided the agency with fabricated medical evaluations based in part on information Mr. Conn found on the internet. This information was incorporated into agency approved templates, which could be quickly approved by ALJs.

In the spring of 2010, Judge Andrus called Mr. Conn with a proposal to help him “get rid of his backlog.”<sup>245</sup> Pitching it as a “mutual benefit,” Judge Andrus asked Mr. Conn to submit template decisions for his approval.<sup>246</sup> Mr. Conn agreed and Judge Andrus gave him instructions about how the decisions should be written, even identifying certain key sentences that should be included.<sup>247</sup>

The templates referred to by Mr. Conn and Judge Andrus are known as Findings Integrated Templates, or “FIT decisions.” As part of the agency’s plan to reduce its hearing backlog, SSA introduced the use of “FIT” decisions in order to expedite the decision process by allowing claimant representatives to draft a judge’s decision, and submit it for approval if it accurately reflected the case file.<sup>248</sup>

A FIT decision is submitted if the claimant’s representative “believe[s] the evidence supports a fully favorable decision for [the] claimant.”<sup>249</sup> If the judge agrees to award the claimant disability benefits, the ALJ “may use the language proposed by [the] representative.”<sup>250</sup> In practice, the use of FIT decisions results in the claimant’s representative writing a fully favorable decision awarding disability benefits to her claimant and requests the ALJ sign it. Should the ALJ agree the claimant qualifies for benefits, the FIT decision submitted by the claimant’s representative should speed the processing of the claim.

After his agreement with Judge Andrus, Mr. Conn ordered three staff members to pull all cases pending before Judge Andrus and identify old cases that could generate the maximum fee.<sup>251</sup> He then directed them to prepare approximately 180-200 Findings Integrated Template (“FIT”) decisions. These FIT decisions were submitted by Mr. Conn for signature to Judge Andrus to make fully favorable awards of disability benefits to certain claimants of Mr. Conn.<sup>252</sup>

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<sup>245</sup> March 22, 2012 Committee interview with Jamie Slone.

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

<sup>248</sup> Social Security Administration, Plan to Reduce the Hearings Backlog and Improve Public Service at the Social Security Administration, <http://www.ssa.gov/hearingsbacklog.pdf>.

<sup>249</sup> Social Security Administration, Hearings and Appeals, Recommending a Favorable Decision for Your Client, <http://www.ssa.gov/appeals/fit/index.html#submission>.

<sup>250</sup> HALLEX, I-2-8-98: Exhibit – Information for Claimants and Representatives About Submitting Language That May Be Used in the Hearing Decisions or Bench Decisions Checklist, [http://www.ssa.gov/OP\\_Home/hallex/I-02/I-2-8-98.html](http://www.ssa.gov/OP_Home/hallex/I-02/I-2-8-98.html).

<sup>251</sup> March 22, 2012 Committee interview with Jamie Slone.

<sup>252</sup> June 12, 2012 Affidavit of Jamie Lynn Slone, ¶ 19.

For some of these FIT decisions, Mr. Conn relied on medical evidence members of his staff said he falsified. According to one employee, Mr. Conn would send claimants to receive x-rays from Dr. Ira Potter at the Potter Medical Clinic in Lackey, Kentucky. Mr. Conn provided x-ray request forms for the claimant to take to the clinic. The forms were marked by the Conn Law Firm “WE DO NOT WANT THE FILMS READ BY ANYONE!!!!”<sup>253</sup> The Potter Medical Clinic obliged this request and would give the unread medical images to the claimant when the x-rays were completed.

The claimant would return to the firm with the x-ray films. One of the firm’s employees then observed Mr. Conn personally writing the medical analysis of the x-ray. Mr. Conn appears to have attempted to compensate for his lack of medical training by basing his analysis off descriptions found on the Internet. Mr. Conn would cut and paste these descriptions into his clients’ medical opinions, asserting the claimant was disabled and unable to work. Dr. Frederic Huffnagle, one of the doctors frequently used by Mr. Conn to provide medical opinions of Conn’s claimants, would sign the opinions written by Mr. Conn without any additional edits.<sup>254</sup>

Mr. Conn then sent Judge Andrus FIT decisions generated by his office. In an August 6, 2010 email to Mr. Conn, Judge Andrus confirmed he had “written the other OTRs and signed most of them.”<sup>255</sup> When asked by the Committee about this correspondence, Judge Andrus stated although he awarded benefits to certain claimants of Mr. Conn, Judge Andrus said he evaluated and edited each of the FIT decisions before signing, and only approved 20 to 30 cases in this manner.<sup>256</sup> Judge Andrus confirmed this email referred to the FIT decisions Mr. Conn submitted,<sup>257</sup> which according to employees contained medical conditions Mr. Conn found on the internet.<sup>258</sup> Although this appears to have been an isolated occurrence, the allegations presented to the Committee raise the startling possibility that disability claims were granted based on fabricated medical evidence.

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<sup>253</sup> June 12, 2012 Affidavit of Jamie Lynn Slone, ¶ 20 (Exhibit 16); *see also, e.g.*, CLF031230; CLF031232; CLF031234; CLF031236; and CLF031250. Exhibit 41.

<sup>254</sup> June 12, 2012 Affidavit of Jamie Lynn Slone, ¶ 20 (Exhibit 16).

<sup>255</sup> August 6, 2010 email from Charlie P. Andrus to Eric Conn, PSI-Conn-09-0050-51. Exhibit 42.

<sup>256</sup> June 19, 2012 Committee interview of Judge Charlie Andrus.

<sup>257</sup> August 6, 2010 email from Charlie P. Andrus to Eric Conn, PSI-Conn-09-0050-51. Exhibit 42.

<sup>258</sup> June 12, 2012 Affidavit of Jamie Lynn Slone, ¶ 20.

## **X. LAWYERS RELIED ON DOCTORS THEY KNEW WOULD PROVIDE EVIDENCE OF CLAIMANT DISABILITY**

The role of medical doctors and professionals in the adjudication of disability cases before Huntington ODAR highlights a key structural vulnerability within the Social Security Disability Insurance program. Because of the subjectivity involved in evaluating disability applications and the independence afforded to ALJs, medical opinions supplied by poorly credentialed doctors may be assigned equal weight to the opinion of more qualified physicians. Within Huntington ODAR, a group of lawyers, doctors, and judges appear to have exploited this vulnerability by utilizing low-quality medical evidence for the purpose of quickly approving claimants.

In an effort to obtain medical evidence supporting an award of disability benefits, some attorneys sought doctors they knew would provide disabling opinions without question. Representatives would send their claimants only to certain doctors to examine the claimant and then opine on their abilities, whether physical or mental. With respect to Doctors obtained by Mr. Conn, the results of these medical evaluations almost always concluded the patient qualified for disability benefits. ALJs, Judge Daugherty in particular, could then quickly approve the claim, giving the purchased medical evidence more weight than the other evidence in the file.

### **a. Doctors Known to Provide Opinions Stating the Claimant is Disabled Were Known as “Whore Doctors”**

The Committee evaluated the medical opinion of a number of doctors who had a reputation for regularly providing questionable medical opinions at the request of disability attorneys. Within SSA, it became common to refer to this class of doctors internally by an unflattering nickname: “whore doctors.”<sup>259</sup> This expression, many explained, grew out of the widely held view that attorneys simply purchased disability opinions from the doctors.

Most commonly, the type of medical evidence to come from attorney-arranged exams was a “medical source statement.” These were often brief conclusory statements signed by doctors, providing little if any evidence in support. The price of medical source statements varied by doctor, but typically ranged in price from \$225 to \$650.<sup>260</sup>

Many at the agency considered attorney procured medical evidence to be problematic. Judge Cristaudo told the Committee he was familiar with the term “whore doctor,” but that it was a challenge for even the best ALJ at times to sort out good medical evidence from bad. For years, he said, “it’s the battle of the medical source statements.”<sup>261</sup> As a judge he would commonly see the same or similar medical evidence from certain doctors, regardless of the claimant. He told the Committee: “Good judges will look at all the evidence and give them less weight. Lazy

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<sup>259</sup> June 19, 2012 Committee interview of Judge Charlie Andrus; May 15, 2013 Committee interview of Judge Frank Cristaudo.

<sup>260</sup> According to financial documents produced by Mr. Conn, it appears Dr. Herr received \$650 per consultative exam. *See, e.g.*, CLF02216, CLF06038. Exhibit 43.

<sup>261</sup> May 15, 2013 Committee interview of Judge Frank Cristaudo.

judges will just follow the medical source statements.”<sup>262</sup> Judge Cristaudo also was aware of “claims attorneys [would] go to a doctor and say ‘fill this out.’” He told the Committee that he had even heard – in some instances – that when doctors knew an exam was related to the SSA disability program, they would have the “patients or secretaries fill them out.”<sup>263</sup> He added, “There’s so much abuse. It’s the easy way out.” When asked how much weight to give medical decisions that a judge suspects is problematic, he replied, “Who knows? It’s an educated guess.”<sup>264</sup>

### **b. Doctors Employed by Mr. Conn Provided Questionable Medical Evidence**

The doctors used by Mr. Conn to evaluate his claimants appeared to have routinely provided low-quality medical opinions. Documents reviewed by the Committee and testimony of Mr. Conn’s employees provided evidence that the doctors used by Mr. Conn held perfunctory exams and sometimes signed improper paperwork.

Some of the doctors who evaluated Mr. Conn’s claimants had histories of malpractice allegations, disciplinary problems, and even had a license revoked in another state. According to former Conn personnel, Mr. Conn specifically sought out doctors with licensure problems for his practice.<sup>265</sup> Ms. Slone, former office manager for the Conn Law Firm, for example, said Mr. Conn would look online for doctors who were sanctioned and intentionally recruited them.<sup>266</sup>

Some of the doctors used by Mr. Conn would not have been allowed to provide medial opinions on claimants at the request of the Social Security Administration. The agency’s regulations prevent it from purchasing consultative exams from medical providers whose license to provide health care has been lawfully revoked or suspended by any State licensing authority for reasons bearing on professional competence or conduct.<sup>267</sup> No such restrictions exist, however, for medical opinions provided by claimant representatives to ALJs.

The following doctors were among those relied upon most often by Mr. Conn.

#### **i. Dr. Frederic Huffnagle**

The primary doctor used by Mr. Conn to review the majority of his claimants during the period reviewed was Frederic Thomas Huffnagle.<sup>268</sup> Dr. Huffnagle had a history of malpractice and a long disciplinary record, including revocation of his license to practice medicine in New York.

*Medical Malpractice Claims.* Dr. Huffnagle received his medical degree in 1961 from Thomas Jefferson Medical College in Philadelphia, PA and became a board certified orthopedic surgeon

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<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

<sup>264</sup> *Id.*

<sup>265</sup> June 12, 2012 Affidavit of Jamie Lynn Slone; ¶17 (Exhibit 16); June 13, 2012 Affidavit of Melinda Lynn Martin, ¶15 (Exhibit 17).

<sup>266</sup> February 23, 2012 interview with Jamie Slone.

<sup>267</sup> See 20 C.F.R. §§404.1503a and 416.903a.

<sup>268</sup> June 12, 2012 Affidavit of Jamie Lynn Slone; ¶9 (Exhibit 16). In fact, of the physician opinions reviewed by the Committee, the majority were prepared by Dr. Huffnagle.

in 1970.<sup>269</sup> In his first ten years of practice, Dr. Huffnagle settled nine malpractice suits, had his staff privileges revoked by at least one hospital, and provided false statements on his application for staff privileges at another hospital.<sup>270</sup>

In 1968, Dr. Huffnagle gained staff privileges at Beverly Hospital and Hunt Memorial Hospital, both located in Massachusetts. Two years later, in 1970, Beverly Hospital placed Dr. Huffnagle on probation for scheduling an experimental surgery that neither he, nor anyone else at the hospital, had previously performed. The next year, in 1971, Beverly Hospital declined to renew his staff privileges citing the above incident among “other serious continuing difficulties.”<sup>271</sup> Despite losing privileges at Beverly Hospital, Dr. Huffnagle continued to practice at Hunt Memorial.<sup>272</sup> In total, his eight years of practice in Massachusetts resulted in five separate malpractice suits resulting in payments to patients.<sup>273</sup>

One of the malpractice lawsuits involved a patient of Dr. Huffnagle who suffered from osteoarthritis. Dr. Huffnagle implanted the wrong size of artificial knee in the patient and later fractured a bone and ruptured a tendon removing the knee, leaving the patient permanently bound to a wheel chair.<sup>274</sup>

In 1981, Dr. Huffnagle moved to California and gained staff privileges at Westminster Hospital where he practiced for one year and had four more malpractice suits filed against him.<sup>275</sup> He appears to have gained his privileges at Westminster by falsifying answers in his application, claiming no other hospital failed to renew his privileges and there were no settlements paid related to malpractice claims against him.<sup>276</sup> After that one year in California, Dr. Huffnagle moved back to Massachusetts and was hired by Massachusetts Osteopathic after being rejected at Hunt Memorial Hospital.<sup>277</sup>

*Falsifying Application.* Dr. Huffnagle garnered several monetary fines and had his license revoked in one state for providing false answers on applications for his medical licenses. On March 3, 1999, the Massachusetts Board of Registration entered an order imposing a reprimand and a \$7,500 fine for providing false answers on two Massachusetts license renewal applications and a Pennsylvania license renewal application.<sup>278</sup> On May 20, 1999, he had his license revoked in New York for providing false answers on three previous license renewals in other states.<sup>279</sup>

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<sup>269</sup> *Small Percentage of Doctors Responsible for Surge in Malpractice Suits, Rates*, BOSTON GLOBE, June 16, 1986, <http://www.saynotocaps.org/newsarticles/Small%20Percentage%20of%20Doctors.html>.

<sup>270</sup> *Id.*

<sup>271</sup> *Id.*

<sup>272</sup> *Id.*

<sup>273</sup> *Id.*

<sup>274</sup> *Id.*

<sup>275</sup> *Id.*

<sup>276</sup> *Id.*

<sup>277</sup> *Id.*

<sup>278</sup> In the matter of Frederic T. Huffnagle, M.D., State Board for Professional Medical Conduct, State of New York, Surrender Order BPMC No. 99-184,

[http://w3.health.state.ny.us/opmc/factions.nsf/0/a7fd6ec05fca9a3985256a4a0047d70f/\\$FILE/lc208366.pdf](http://w3.health.state.ny.us/opmc/factions.nsf/0/a7fd6ec05fca9a3985256a4a0047d70f/$FILE/lc208366.pdf).

<sup>279</sup> *Id.*

On March 23, 2000, Dr. Huffnagle was placed on one year probation in Pennsylvania and was reprimanded and assessed a \$400 fine for providing false answers on a previous application.<sup>280</sup>

*Dr. Huffnagle's Opinions in Support of Mr. Conn's Claimants.* Dr. Huffnagle routinely found that Mr. Conn's claimants were disabled and could not perform any work. Many of Dr. Huffnagle's examinations were performed on site in the Conn Law Firm's "medical suite."

For two days each month, Dr. Huffnagle would travel 250 miles to Stanville, Kentucky from Bowling Green, Kentucky to evaluate individuals referred to him by Mr. Conn.<sup>281</sup> The claimants would be scheduled for an examination by Dr. Huffnagle in 10 to 20 minute increments and he would meet with a large number of claimants each day.<sup>282</sup> For example, a schedule for Dr. Huffnagle's exams produced by the Conn Law Firm indicated on February 1, 2007 Dr. Huffnagle was scheduled to see 35 claimants and review the medical files for two other claimants and prepare opinions.<sup>283</sup> The first appointment was scheduled for 9 a.m. and the last at 6:20 p.m. Claimants were scheduled at 10 to 20 minute increments; at times, two claimants were scheduled for the same time slot.<sup>284</sup>

The claimants scheduled to see Dr. Huffnagle were typically also listed on the DB Lists created by Mr. Conn and Judge Daugherty.<sup>285</sup> For example, the list of 35 individuals scheduled for Dr. Huffnagle on February 1, 2007 included 25 claimants also listed on the February 2007 DB List, all of which noted "physical."<sup>286</sup>

Dr. Huffnagle's wife would assist him by dictating the medical opinions, which were later transcribed by an outside service.<sup>287</sup> Dr. Huffnagle would provide a short description of the claimant's condition, which consisted mainly of information the claimant reported to Dr. Huffnagle. This included information on the claimant's chief complaint; the history of the present illness; past surgical history; medications; social history; activities of daily living; physical examination; impressions; and discussion.

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<sup>280</sup> *Disciplinary Action*, Pennsylvania State Board of Med. Newsletter (Pennsylvania State Board of Med., Harrisburg, PA), Spring 2001, at 7, [www.state.pa.us/portal/server.pt/document/487090/mednews01\\_pdf](http://www.state.pa.us/portal/server.pt/document/487090/mednews01_pdf).

<sup>281</sup> See CLF033386, "Frederic Huffnagle, M.D.; Orthopedic Surgeon; 720 Chestnut Street, Suite 102; Bowling Green, Kentucky 42101." See, i.e., CLF033360 and CLF033356 scheduling evaluations for Dr. Huffnagle on July 26 and 27, 2007. Exhibit 44.

<sup>282</sup> See CLF033399, "Dr. Huffnagle Appts for 2/1/07; CLF033384, "Dr. Huffnagle's Appt's for 3/27/07;" CLF033392, "Dr. Huffnagle Appt 03/01/07;" CLF033378, "Dr. Huffnagle Appt's for 4/27/07;" CLF033371, "Dr. Huffnagle's Appt's for 05/24/07." Exhibit 44.

<sup>283</sup> See CLF033399, "Dr. Huffnagle appts for 2/1/07, listing 35 claimant appointments and two "file reviews." Exhibit 44.

<sup>284</sup> *Id.*

<sup>285</sup> Compare CLF030651-52, "February D.B. 2007 Due Date 02/15/07" (Exhibit 18) to CLF033399, "Dr. Huffnagle Appts for 2/1/07." (Exhibit 44). The February DB List included a total of 36 total claimants with four noting "Decision has been sent!" Also compare CLF030646-48, "D.B. March 2007 List Due March 7, 2007" (Exhibit 18) to CLF033392, "Dr. Huffnagle Appt 03/01/07." (Exhibit 44) The March DB List contains 44 names; 14 of those names are listed on Dr. Huffnagle's appointment schedule for March 1, 2007, all of which noted "physical" on the March DB List.

<sup>286</sup> Compare CLF030651-52, "February D.B. 2007 Due Date 02/15/07" (Exhibit 18) to CLF033399, "Dr. Huffnagle Appts for 2/1/07." (Exhibit 44).

<sup>287</sup> June 12, 2012 Affidavit of Jamie Lynn Slone, ¶10 (Exhibit 16).

In addition to the report of his examination, Dr. Huffnagle would also sign a Residual Functional Capacity (“RFC”) form for each claimant. This is a standard form provided by doctors on behalf of disability claimants and used by all ALJ’s. Its purpose “is to determine the [claimant’s] ability to do work related activities on a day-to-day basis in a regular work setting.”<sup>288</sup> Once a doctor measures an individual’s ability to do these activities, the results are tabulated using guidelines provided by SSA, and a claimant’s “capacity” for work is determined. Using the RFC in combination with a claimant’s age, education and work experience, an ALJ would decide whether someone qualified for disability benefits.

The RFC measures an individual capacity for work by requesting information on: (1) the weight an individual could lift or carry; (2) the time in an 8 hour work day the claimant could stand or walk; (3) the time an individual could sit in an 8 hour work day; (4) how often the individual could perform certain postural activities; (5) the claimant’s limitations with regard to certain physical and communicative functions; and (6) the claimant’s ability to tolerate environmental activities and conditions.

Under agency rules, each RFC is supposed to be tailored to describe each claimant’s individual exact abilities.<sup>289</sup> Because each individual has different abilities, and the forms require a complex set of data, it follows that finding two RFC’s that are exactly alike should be a rare occurrence. Claimants who visited Dr. Huffnagle, however, were given the exact same RFCs over and over again. While the form was intended to accurately reflect the claimant’s limitations as observed by Dr. Huffnagle, that was not the case.

Assigning multiple claimants the same RFCs was not an accident, but rather appears to have been an effort to tailor evidence to Judge Daugherty’s preferences. For claimants on the DB Lists which Judge Daugherty noted “physical,” this was understood by Mr. Conn’s staff to mean the claimant needed evidence of some sort of a physical disability.<sup>290</sup> Dr. Huffnagle was then asked provide evidence of physical disabilities and sign a RFC associated with the claimant’s physical limitations.<sup>291</sup>

Rather than providing detailed evaluations for each individual claimant, Dr. Huffnagle submitted the same evidence for dozens of claimants. A former employee of Mr. Conn testified the firm used several versions of the RFC form with all information completed before any exam took place. These same versions were used in rotation regardless of the claimant’s medical condition;

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<sup>288</sup> This language was present on all forms submitted in conjunction with the forms completed by Dr. Huffnagle for Mr. Conn’s claimants. See, e.g., CLF029445-48. Exhibit 44.

<sup>289</sup> See 20 C.F.R. Appendix 2 to Subpart P of Part 404 – Medical Vocational Guidelines (“In the application of the rules, the individual’s residual functional capacity (i.e., the maximum degree to which the individual retains the capacity for sustained performance of the physical-mental requirements of jobs), age, education and work experience must first be determined. When assessing the person’s residual functional capacity, we consider his or her symptoms (such as pain), signs, and laboratory findings together with other evidence we obtain. The correct disability decision (i.e., the issue of ability to engage in substantial activity) is found by then locating the individual’s specific vocational profile.”).

<sup>290</sup> See June 12, 2012 Affidavit of Jamie Lynn Slone; ¶6 (Exhibit 16).

<sup>291</sup> See June 12, 2012 Affidavit of Jamie Lynn Slone; ¶9 (Exhibit 16).

just the names and Social Security numbers at the top of the form were changed. While Dr. Huffnagle did not write or edit the RFCs, he routinely signed them.<sup>292</sup>

The Committee reviewed 837 RFCs signed by Dr. Huffnagle ranging in date from July 2005 to September 2010. A pattern emerged in which large groups of Mr. Conn's claimants had the same limitations and were submitting the same forms – all suggesting that only the names and Social Security numbers were changed on these forms. The Committee found 15 versions of the RFC that were used and approximately 15 groups of claimants, each having the exact same limitations. For example, 54 of Mr. Conn's claimants reviewed by Dr. Huffnagle submitted "RFC Form Version 1," indicating they all had the same limitations:<sup>293</sup>

#### RFC Form Version 1

<b>Physical Act</b>	<b>Limitations</b>
Lifting / Carrying	8 pounds / 5 pounds
Standing / Walking	3 hours / 30 minutes
Total Sitting / Without Interruption	4 hours / 30 minutes

The following chart identifies the features of each version of the RFC form used by Mr. Conn's claimants examined by Dr. Huffnagle. It also provides the number of claimants Dr. Huffnagle submitted each version of the RFC for Mr. Conn's claimants' case decided by Judge Daugherty:

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<sup>292</sup> June 12, 2012 Affidavit of Jamie Lynn Sloane; ¶13 (Exhibit 16).

<sup>293</sup> Dr. Huffnagle signed 15 version of RFCs. Each version can be found at Exhibit 45.

**RFC Forms Signed by Dr. Huffnagle and Submitted by Mr. Conn to Judge Daugherty**

<b>RFC Version</b>	<b>Lifting / Carrying</b>	<b>Standing/Walking</b>	<b>Sitting / Without Interruption</b>	<b>Number of Claimants with same RFC</b>
1	8 pounds / 5 pounds	3 hours / 30 minutes	4 hours / 30 minutes	54
2	10-15 pounds / 4-5 pounds	2-3 hours / 30 minutes	3-4 hours / 15-20 minutes	55
3	8-10 pounds / 5 pounds	2-3 hours / 15-30 minutes	3 hours / 30-45 minutes	43
4	8-10 pounds / 5 pounds	2 hours / 20 minutes	4-5 hours / 15-30 minutes	53
5	10 pounds / 5 pounds	1 hour / 20 minutes	5 hours / 30 minutes	47
6	10 pounds / 5 pounds	2 hours / 30 minutes	4 hours / 30 minutes	50
7	10 pounds / 5 pounds	3 hours / 30 minutes	3 hours / 1 hour	50
8	15-20 pounds / 10 pounds	2-3 hours / 30 minutes	3 hours / 30 minutes	38
9	20 pounds / 15 pounds	1 hour / 30 minutes	4 hours / 30 minutes	97
10	5-10 pounds / 5 pounds	1-2 hours / 30 minutes	4-5 hours / 15-20 minutes	52
11	15 pounds / 5 pounds	3 hours / 20-30 minutes	4 hours / 30 minutes	48
12	15 pounds / 10 pounds	1 hour / 30 minutes	4 hours / 30 minutes	54
13	10 pounds / 7-8 pounds	3 hours / 20 minutes	3 hours / 45 minutes	37
14	20 pounds / 10 pounds	2 hours / 30 minutes	4 hours / 30 minutes	61
15	25 pounds / 10 pounds	3 hours / 20 minutes	3 hours / 30 minutes	17
<b>Total</b>				<b>756<sup>294</sup></b>

The RFC then asked the signing doctor to rate the ability for each claimant to perform 22 activities by checking a box associated with of the following responses: never; occasionally; frequently; or constantly. The 22 activities listed were: climbing; balancing; stooping; crouching; kneeling; crawling; reaching; handling; feeling; pushing/pulling; seeing; hearing; speaking; heights; moving machinery; temperature extremes; chemicals; dust; noise; fumes; humidity; and vibration.

All of these marked categories matched, in the same manner as the above cited similarities. Setting aside the first three categories listed above and just considering the 22 categories to be marked in four ways, the possibility of two claimants having the exact same limitations is statistically remote. Yet, in just the RFCs submitted in support of Mr. Conn's clients to Judge Daugherty reviewed by the Committee, Dr. Huffnagle determined up to 97 of Mr. Conn's claimants had the exact same limitations.

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<sup>294</sup> The Committee determined that 81 of Dr. Huffnagle's decisions did not appear to fall into one of the cited groups of claimants.

The similar number of claimants in each group is consistent with allegations the RFC forms were rotated on a regular basis as Dr. Huffnagle saw each claimant.<sup>295</sup>

Dr. Huffnagle died on October 5, 2010.<sup>296</sup>

**ii. Dr. David P. Herr, D.O.**

As part of its review, the Committee also reviewed 102 assessments by Dr. Herr submitted to Judge Daugherty in support of Mr. Conn's claimants.

*Analysis of Dr. Herr's Opinions.* Dr. Herr is an orthopedist located in West Union, Ohio, but his opinions stated evaluations of Mr. Conn's clients were performed in the Law Offices of Eric C. Conn. The majority of claimants examined by Dr. Herr also submitted RFC's identical to the ones listed above for claimants reviewed by Dr. Huffnagle. While claimants examined by Dr. Herr submitted only 11 of the 15 RFC versions cited above, over 94 percent of the RFC's reviewed by the Committee were one of these 15.

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<sup>295</sup> See June 12, 2012 Affidavit of Jamie Lynn Sloane; ¶13 (Exhibit 16); June 13, 2012 Affidavit of Melinda Lynn Martin. ¶11 (Exhibit 17).

<sup>296</sup> Obituary, Dr. Frederic Huffnagle, October 5, 2010,

<http://www.legacy.com/obituaries/tennessean/obituary.aspx?page=lifestory&pid=145826864#fbLoggedOut>.

**RFC Forms Signed by Dr. Herr and Submitted by Mr. Conn to Judge Daugherty**

<b>RFC Version</b>	<b>Lifting / Carrying</b>	<b>Standing/Walking</b>	<b>Sitting / Without Interruption</b>	<b>Number of Claimants with same RFC</b>
1	8 pounds / 5 pounds	3 hours / 30 minutes	4 hours / 30 minutes	6
2	10-15 pounds / 4-5 pounds	2-3 hours / 30 minutes	3-4 hours / 15-20 minutes	18
3	8-10 pounds / 5 pounds	2-3 hours / 15-30 minutes	3 hours / 30-45 minutes	4
4	8-10 pounds / 5 pounds	2 hours / 20 minutes	4-5 hours / 15-30 minutes	17
5	10 pounds / 5 pounds	1 hour / 20 minutes	5 hours / 30 minutes	13
6	10 pounds / 5 pounds	2 hours / 30 minutes	4 hours / 30 minutes	8
7	10 pounds / 5 pounds	3 hours / 30 minutes	3 hours / 1 hour	n/a
8	15-20 pounds / 10 pounds	2-3 hours / 30 minutes	3 hours / 30 minutes	8
9	20 pounds / 15 pounds	1 hour / 30 minutes	4 hours / 30 minutes	n/a
10	5-10 pounds / 5 pounds	1-2 hours / 30 minutes	4-5 hours / 15-20 minutes	5
11	15 pounds / 5 pounds	3 hours / 20-30 minutes	4 hours / 30 minutes	6
12	15 pounds / 10 pounds	1 hour / 30 minutes	4 hours / 30 minutes	n/a
13	10 pounds / 7-8 pounds	3 hours / 20 minutes	3 hours / 45 minutes	10
14	20 pounds / 10 pounds	2 hours / 30 minutes	4 hours / 30 minutes	n/a
15	25 pounds / 10 pounds	3 hours / 20 minutes	3 hours / 30 minutes	1
<b>Total</b>				<b>96<sup>297</sup></b>

Just as cited above, the RFC then asked the signing doctor to rate the ability for each claimant to perform 22 activities by checking a box associated with the following responses: never; occasionally; frequently; or constantly. The 22 activities listed were: climbing; balancing; stooping; crouching; kneeling; crawling; reaching; handling; feeling; pushing/pulling; seeing; hearing; speaking; heights; moving machinery; temperature extremes; chemicals; dust; noise; fumes; humidity; and vibration. All of these marked categories matched, in the same manner as the above cited similarities.

Finally, in most opinions by Dr. Herr reviewed by the Committee, the doctor arrived at the exact same conclusion, using the exact same wording: "In my opinion, it can be stated within a reasonable degree of medical certainty that the claimant will not regain functional capacities with treatment that would support a return to work."

*Agency Analysis.* In late 2011, the Division of Quality within the Social Security Administration reviewed 10 of Dr. Herr's opinions that were adjudicated by Judge Daugherty. That review determined that "Dr. Herr uses the same language to describe the purpose of the evaluation and,

<sup>297</sup> The remaining six RFCs reviewed do not fall into one of the listed categories.

with some small variances, how the impairment(s) affect the claimant's life.”<sup>298</sup> The same review found that, in his opinions, Dr. Herr summarized the medical evidence in the record, but did not find additional impairments. Instead, Dr. Herr used the “claimant’s medical history, their subjective complaints and his physical examination to determine [the claimant] to have greater limitations than may have been expressed by either a treating source or a State Agency medical consultant just four to six months prior.”<sup>299</sup> The agency also noted that in all cases reviewed, Dr. Herr determined the claimant was unable to sustain an eight-hour work day.<sup>300</sup>

According to documents provided by Mr. Conn, Dr. Herr was paid up to \$650 for each claimant he reviewed and provided an opinion.<sup>301</sup>

The Committee requested to interview Dr. Herr through his attorney, but he declined to cooperate.

### **iii. Dr. Brad Adkins, Ph.D.**

During the period under review, Dr. Adkins worked as a Clinical Psychologist at the Pikeville Medical Center in Pikeville, Kentucky. He received his bachelor of science at Pikeville College; Master of Science in Clinical Psychology at Morehead State University; and his doctoral degree from The Union Institute and University of Cincinnati, Ohio.<sup>302</sup>

Dr. Adkins began performing evaluations of disability claimants for the Social Security Administration through the Commonwealth of Kentucky’s Disability Determination Services around 2005.<sup>303</sup> At the same time, Dr. Adkins contacted and met with Mr. Conn to perform evaluations for Mr. Conn’s disability claimants as well.<sup>304</sup> When they met, Mr. Conn and Dr. Adkins determined that Mr. Conn would pay Dr. Adkins \$300 per claimant Dr. Adkins reviewed; that fee later increased to \$350 per claimant.<sup>305</sup>

*Dr. Adkins Evaluated Mr. Conn’s Claimants.* When Judge Daugherty indicated “mental” in his monthly call to Mr. Conn’s law firm listing the claimants he would approve on-the-record, Mr. Conn would usually send those claimants to Dr. Brad Adkins.<sup>306</sup>

Dr. Adkins explained to the Committee an employee for Mr. Conn would contact him each month to set up the appointments with Mr. Conn’s claimants. On average, Mr. Conn would send Dr. Adkins around 20 claimants each month.<sup>307</sup> Dr. Adkins would meet with these claimants in

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<sup>298</sup> Social Security Administration, DRAFT: Report of the Division of Quality’s Review of Decisions Issued by the Huntington, WV Hearing Office, August 15, 2011, PSI-SSA-95D2-044759. Exhibit 46.

<sup>299</sup> *Id.*

<sup>300</sup> *Id.*

<sup>301</sup> See, i.e., CLF06038-39. Exhibit 43.

<sup>302</sup> April 4, 2013 Committee Interview of Dr. Brad Adkins. See also Pikeville Medical Weight Loss Surgery Center, Weight Loss Surgery Staff, [http://www.pikevillehospital.org/bariatric\\_staff.html](http://www.pikevillehospital.org/bariatric_staff.html).

<sup>303</sup> April 4, 2013 Committee interview of Dr. Brad Adkins.

<sup>304</sup> *Id.*

<sup>305</sup> *Id.*

<sup>306</sup> June 12, 2012 Committee Affidavit of Jamie Lynn Slone, ¶ 14 (Exhibit 16).

<sup>307</sup> April 4, 2013 Committee interview of Dr. Brad Adkins.

his office in Betsy Layne, Kentucky on Tuesday afternoons. Since Dr. Adkins reviewed claimants at the request of the agency and local disability attorneys, he tailored his exam based on the request from each entity. For example, the agency could request that Dr. Adkins perform only a clinical interview, without additional testing, for which he received \$80 per exam, with a \$25 bonus if the completed exam was turned in within 15 days. When Dr. Adkins performed this exam at the request of the agency, he would examine and evaluate the patients by: (1) performing a clinical interview;<sup>308</sup> (2) reviewing the objective medical history;<sup>309</sup> and (3) a mental status exam. A mental status exam administered by Dr. Adkins included a series of questions on five domains of neuropsychological function: (1) language, both receptive and expressive; (2) attention; (3) concentration; (4) immediate, recent, and remote memory; and executive functioning and sensorium.<sup>310</sup>

Dr. Adkins also explained when the agency requested he perform an IQ test, the agency paid Dr. Adkins \$150.00, with a \$25 bonus for a quick turnaround.<sup>311</sup>

Dr. Adkins charged the disability attorneys more depending on what exam elements they requested. He noted the mental status exam was replaced with the administration of an IQ test, which is a more involved exam, since the attorney paid \$350.00 per evaluation.<sup>312</sup>

*Dr. Adkin's RFC Forms.* Dr. Adkins also provided an RFC form to Mr. Conn describing the patient's limitations, though it focused on mental ability and limitations rather than physical limitations. The form stated that it sought "to determine this individual's ability to do work-related activities on a day-to-day basis in a regular work setting."<sup>313</sup> The examiner was asked to describe the claimant's ability in one of the following ways:

- Unlimited: ability to function in his area is not limited by a mental impairment;
- Good: ability to function in this area is more than satisfactory;
- Fair: ability to function in this area is limited but not satisfactory;
- Poor: ability to function in this area is seriously limited but not precluded;
- None: no useful ability to function in this area.<sup>314</sup>

When Dr. Adkins initially started performing evaluations for Mr. Conn, he said he filled out the RFC forms himself. Subsequently, Mr. Conn's office contacted him and asked if they could fill out the RFC form for him, and bring him a copy of his exam report as well as the RFC to review and sign.<sup>315</sup> According to Ms. Sloane, these forms, filled out in advance by Mr. Conn's office, were used in rotation and Dr. Adkins never requested they be edited based on each claimant's

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<sup>308</sup> Dr. Adkins explained the clinical interview included: assessing a patient's level of pain; how pain interfered with their life and in what domains; mental health history and any prior treatment; family mental health history; current mental state; substance abuse history; legal history; general family history; and any history of developmental delays.

<sup>309</sup> According to Dr. Adkins, an objective medical history review included: academic and vocation history; any behavioral observations; activities of daily living.

<sup>310</sup> April 4, 2013 Committee interview of Dr. Brad Adkins.

<sup>311</sup> *Id.*

<sup>312</sup> *Id.*

<sup>313</sup> See, i.e., CLF016923-25. Exhibit 47.

<sup>314</sup> *Id.*

<sup>315</sup> April 4, 2013 Committee interview of Dr. Brad Adkins.

individual condition.<sup>316</sup> Dr. Adkins admitted when he picked up payment at Mr. Conn's office for rendering the exams, he would sign the pre-filled forms.<sup>317</sup> He asserted, however, he reviewed each of the forms Mr. Conn prepared to ensure the form matched the claimant's limitations as described in Dr. Adkin's report.

*Mr. Conn Used Five Versions of the Mental RFC.* The majority of RFC forms signed by Dr. Adkins and reviewed by the Committee fell into one of five versions of the RFC.<sup>318</sup> While the names of the claimants were handwritten at the top of each RFC, the "X" in each box indicating the claimant's ability was computer generated.<sup>319</sup> Dr. Adkins explained the computer generated RFCs were filled out by Mr. Conn.<sup>320</sup> The Committee reviewed 182 RFC forms signed by Dr. Adkins in support of adult claims decided by Judge Daugherty. Of those, he signed one of five identical forms 132 times.

As noted below, the numerous variables (15 in all) of the claimants' abilities and related descriptors (i.e., unlimited to none, five in all) suggest these RFCs were not specific to each claimant, but instead prepared independent of the claimant the RFC purported to describe. In fact, the possibility of two claimants having the exact limitations is statistically remote.<sup>321</sup>

For Version 1 of the RFC, Dr. Adkins found that 26 of Mr. Conn's claimants had the same limitations:

Making Occupational Adjustments		Making Performance Adjustments		Making Personal/Social Adjustments	
Follow Work Rules	Good	Understand, remember and carry out complex job instructions	Poor	Maintain personal appearance	Good
Relate to Co-Works	Good	Understand, remember, and carry out detailed, but not complex job instructions	Poor	Behave in an emotionally stable manner	Fair
Deal with the Public	Poor	Understand, remember, and carry out simple job instructions	Fair	Related predictability in social situations	Fair
Use Judgment	Fair			Demonstrate Reliability	Poor
Interact with Supervisors	Good				
Deal with Work Stresses	Poor				
Function Independently	Fair				
Maintain Attention/Concentration	Poor				

<sup>316</sup> June 12, 2012 Affidavit of Jamie Lynn Slone, ¶ 14 (Exhibit 16).

<sup>317</sup> April 4, 2013 Committee Interview of Dr. Brad Adkins.

<sup>318</sup> June 12, 2012 Affidavit of Jamie Lynn Slone, ¶ 14 (Exhibit 16).

<sup>319</sup> See, i.e., CLF030282-84; CLF030289-91. Exhibit 47.

<sup>320</sup> April 4, 2013 Committee Interview of Dr. Brad Adkins.

<sup>321</sup> Dr. Adkins signed five versions of the RFCs, located at Exhibit 47.

Dr. Adkins indicated 26 of Mr. Conn's claimants had the following RFC limitations, or Version 2:

Making Occupational Adjustments		Making Performance Adjustments		Making Personal/Social Adjustments	
Follow Work Rules	Good	Understand, remember and carry out complex job instructions	Poor	Maintain personal appearance	Fair
Relate to Co-Works	Good	Understand, remember, and carry out detailed, but not complex job instructions	Poor	Behave in an emotionally stable manner	Fair
Deal with the Public	Poor	Understand, remember, and carry out simple job instructions	Fair	Related predictability in social situations	Fair
Use Judgment	Fair			Demonstrate Reliability	Poor
Interact with Supervisors	Good				
Deal with Work Stresses	Poor				
Function Independently	Poor				
Maintain Attention/Concentration	Poor				

Dr. Adkins submitted the following RFC for 29 of Mr. Conn's claimants (Version 3):

Making Occupational Adjustments		Making Performance Adjustments		Making Personal/Social Adjustments	
Follow Work Rules	Poor	Understand, remember and carry out complex job instructions	Poor	Maintain personal appearance	Good
Relate to Co-Works	Fair	Understand, remember, and carry out detailed, but not complex job instructions	Fair	Behave in an emotionally stable manner	Poor
Deal with the Public	Fair	Understand, remember, and carry out simple job instructions	Fair	Related predictability in social situations	Fair
Use Judgment	Fair			Demonstrate Reliability	Poor
Interact with Supervisors	Fair				
Deal with Work Stresses	Poor				
Function Independently	Fair				
Maintain Attention/Concentration	None				

Version 4 of Dr. Adkin's RFC form was submitted for 20 of Mr. Conn's claimants, which contained the following limitations:

Making Occupational Adjustments		Making Performance Adjustments		Making Personal/Social Adjustments	
Follow Work Rules	Fair	Understand, remember and carry out complex job instructions	None	Maintain personal appearance	Fair
Relate to Co-Works	Fair	Understand, remember, and carry out detailed, but not complex job instructions	Poor	Behave in an emotionally stable manner	Fair
Deal with the Public	Fair	Understand, remember, and carry out simple job instructions	Poor	Related predictability in social situations	Fair
Use Judgment	Poor			Demonstrate Reliability	Poor
Interact with Supervisors	Fair				
Deal with Work Stresses	None				
Function Independently	Poor				
Maintain Attention/Concentration	Poor				

The following limitations – Version 5 – in Dr. Adkin's RFC submissions were submitted for 31 of Mr. Conn's claimants:

Making Occupational Adjustments		Making Performance Adjustments		Making Personal/Social Adjustments	
Follow Work Rules	Fair	Understand, remember and carry out complex job instructions	Poor	Maintain personal appearance	Good
Relate to Co-Works	Fair	Understand, remember, and carry out detailed, but not complex job instructions	Fair	Behave in an emotionally stable manner	Fair
Deal with the Public	Poor	Understand, remember, and carry out simple job instructions	Fair	Related predictability in social situations	Fair
Use Judgment	Poor			Demonstrate Reliability	Poor
Interact with Supervisors	Fair				
Deal with Work Stresses	Good				
Function Independently	Fair				
Maintain Attention/Concentration	Poor				

Of note in each version of the RFC signed by Dr. Adkins is that he rated the claimant as “poor” when it came to their ability to “demonstrate reliability.” Therefore, according to the RFC, as determined by Dr. Adkins, the RFC itself was potentially unreliable.

The remaining 50 RFCs reviewed were similar with as many as six claimants having the same limitations marked, but did not fall into one of the above stated categories.

*Inconsistencies Between Dr. Adkins’ Reports and RFCs.* As noted above, an RFC accompanied each of Dr. Adkins’ opinions. Dr. Adkins stated that while he used to fill out the RFC’s himself, at a certain point in time Mr. Conn’s office stated filling out the forms and then providing them to Dr. Adkins simply to sign. Dr. Adkins claimed he reviewed each of the RFCs to ensure it was consistent with his assessment of the claimant. Dr. Adkins told the Committee he never noticed the RFCs were identical and that only five versions existed.<sup>322</sup>

In reviewing Dr. Adkins opinions and RFCs together there were certain internal inconsistencies, which raised questions about how thoroughly he reviewed the RFCs prior to signing them. For example, after examining a 22 year old woman, Dr. Adkins described the claimant in his medical opinion as having “an impaired ability to adapt to the workplace, regarding her ability to tolerate the stress and pressures associated with day to day work activity.” The RFC for the same individual, however, rated his ability to “deal with work stress” as “good.”<sup>323</sup> When questioned about the internal inconsistency with regard to his assessment, Dr. Adkins stated “mistakes happen.”<sup>324</sup>

*Dr. Adkins’ Evaluation of Children.* Several of the claimants reviewed by Dr. Adkins were under the age of 18, which SSA evaluates for disability under a different set of criteria than adults. Children are examined within a set of “domains” that are more applicable to their level of development.<sup>325</sup> These include: (1) acquiring and using information; (2) attending and completing tasks; (3) interacting and relating with others; (4) moving about and manipulating objects; (5) caring for yourself; and (6) health and physical well-being.<sup>326</sup> Instead of filling out an analysis of Mr. Conn’s child claimants based on these factors, Dr. Adkins signed the same RFC he signed for Mr. Conn’s adult claimants. This produced the odd result in which Dr. Adkins claimed that he carefully examined whether children could “deal with work stress” and “relate to co-workers.” For example, in one instance, Dr. Adkins rated a seven-year-old boy as “fair” with regard to “follow work rules” and “relate to co-workers.”<sup>327</sup>

*Other Report Issues.* While Dr. Adkins’s reports stated he spent 3.5 hours with each claimant, he later explained to the Committee that was a typo in all his reports due to the use of a common template.<sup>328</sup> In reality, he explained, his visits with the claimants were much shorter.

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<sup>322</sup> April 4, 2013 Committee interview of Dr. Brad Adkins.

<sup>323</sup> Psychological Evaluation by Dr. Brad Adkins, CLF015807-18. Exhibit 47.

<sup>324</sup> April 4, 2013 Committee interview of Dr. Brad Adkins.

<sup>325</sup> See Social Security Administration Childhood Disability Evaluation Form, <https://secure.ssa.gov/apps10/poms/images/SSA5/G-SSA-538-1.gif.pdf>.

<sup>326</sup> *Id.*

<sup>327</sup> Psychological Evaluation by Dr. Brad Adkins, CLF019495-501. Exhibit 47.

<sup>328</sup> This explained how, for example, on July 17, 2007; November 29, 2007; and December 6, 2007 Dr. Adkins evaluated four claimants each day spending a total of 14 hours with the claimants. The following exams were dated

When asked what he believed the RFC was used for, Dr. Adkins stated he did not know and believed it was only used by the lawyer. He claimed he was unaware the document was reviewed or relied on by an administrative law judge to award disability benefits.<sup>329</sup> In explaining he stated, “if I am guilty of anything, it is of being naïve.”<sup>330</sup>

SSA contacted Dr. Adkins in March 2013 and told him he would no longer be asked to review and evaluate disability claimants for the State of Kentucky. Dr. Adkins does, however, continue to review and evaluate claimants for attorneys, though no longer for Mr. Conn.<sup>331</sup>

#### **iv. Dr. Srinivas Ammisetty**

Dr. Srinivas Ammisetty, according to Mr. Conn’s website, is an “independent medical examiner who regularly performs evaluations, file reviews, and completes reports for Eric C. Conn Law Firm.”<sup>332</sup> The Committee reviewed 10 of the medical opinions by Dr. Ammisetty submitted in support of claims before Judge Daugherty.

Dr. Ammisetty received his medical degree from Guntur College in India. He specializes in internal medicine, pulmonary medicine, and sleep disorders, and practices in Stanville, Kentucky, and has privileges in all the hospitals in the surrounding area.<sup>333</sup> Dr. Ammisetty told the Committee that Mr. Conn requested he perform disability evaluations initially in 2003, but Dr. Ammisetty declined. Mr. Conn approached him again in 2010 when his primary doctor, Dr. Huffnagle, passed away. Dr. Ammisetty told the Committee that Mr. Conn said he had a backlog of cases because of Dr. Huffnagle’s death, and Dr. Ammisetty agreed to handle them.<sup>334</sup> While Mr. Conn asked Dr. Ammisetty to review the claimants in Mr. Conn’s office, Dr. Ammisetty said that he refused. Instead, Dr. Ammisetty insisted he review the claimants in his medical office and said that he never visited Mr. Conn’s Law Firm to examine claimants.<sup>335</sup>

The medical opinions submitted by Dr. Ammisetty for Mr. Conn’s clients included an RFC form. As with other doctors Mr. Conn worked with, the Conn office typically filled out the RFCs and Dr. Ammisetty signed them.<sup>336</sup> Dr. Ammisetty told the Committee that he did not complete the RFC forms himself because he was not trained to perform such assessments, and because he did not have the necessary equipment in his office, such as weights, to perform that type of evaluation.<sup>337</sup> Dr. Ammisetty told the Committee that, in response, Mr. Conn asserted he had “a team of occupational therapists at his law firm who reviewed the claimants’ medical files,

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July 17, 2007: CLF025065-76; CLF030115-27; CLF030146-57; and CLF030159-70. The following exams were dated November 29, 2007: CLF024291-302; CLF025901-12; CLF025989-99; and CLF028471-82. The following exams were dated December 6, 2007: CLF025888-99; CLF027717-23; CLF027758-68; and CLF028604-15.

Exhibit 47.

<sup>329</sup> April 4, 2013 Committee interview of Dr. Brad Adkins.

<sup>330</sup> *Id.*

<sup>331</sup> *Id.*

<sup>332</sup> The Eric C. Conn Law Firm, <http://hegetsthejobdone.com/?p=230> (last visited Nov. 21, 2012).

<sup>333</sup> April 4, 2013 Committee Interview of Dr. Srinivas Ammisetty.

<sup>334</sup> *Id.*

<sup>335</sup> *Id.*

<sup>336</sup> *Id.*

<sup>337</sup> *Id.*

interpreted Dr. Ammisetty's findings, and prepared the RFCs." Dr. Ammisetty indicated that he never met, nor knew the name, of any occupational therapist used by Mr. Conn to prepare the RFCs, but based on Mr. Conn's assertion, Dr. Ammisetty signed the RFCs.<sup>338</sup> Dr. Ammisetty told the Committee that he never requested that any of the RFCs be changed prior to his signing them.

The Committee reviewed 10 medical opinions signed by Dr. Ammisetty for cases before Judge Daugherty. Of those, nine contained pre-filled RFC forms identical to those submitted by other doctors used by Mr. Conn.

#### **RFCs Signed by Dr. Ammisetty for Cases before Judge Daugherty**

<b>RFC Version</b>	<b>Lifting / Carrying</b>	<b>Standing/Walking</b>	<b>Sitting / Without Interruption</b>	<b>Number of Claimants with same RFC</b>
1	8 pounds / 5 pounds	3 hours / 30 minutes	4 hours / 30 minutes	2
2	10-15 pounds / 4-5 pounds	2-3 hours / 30 minutes	3-4 hours / 15-20 minutes	1
3	8-10 pounds / 5 pounds	2-3 hours / 15-30 minutes	3 hours / 30-45 minutes	2
5	10 pounds / 5 pounds	1 hour / 20 minutes	5 hours / 30 minutes	2
6	10 pounds / 5 pounds	2 hours / 30 minutes	4 hours / 30 minutes	1
8	15-20 pounds / 10 pounds	2-3 hours / 30 minutes	3 hours / 30 minutes	1
<b>Total</b>				<b>9</b>

Just as cited above, the RFC asked the signing doctor to rate the ability for each claimant to perform 22 activities by checking a box associated with the following responses: never; occasionally; frequently; or constantly. The 22 activities listed were: climbing; balancing; stooping; crouching; kneeling; crawling; reaching; handling; feeling; pushing/pulling; seeing; hearing; speaking; heights; moving machinery; temperature extremes; chemicals; dust; noise; fumes; humidity; and vibration. All of these categories were marked in the exact same manner, as described above with other doctors.

The remaining RFC was handwritten by Dr. Ammisetty, while the above nine were computer generated.

To prepare his opinion of each claimant, Dr. Ammisetty told the Committee that he spent from 5 to 40 minutes with each individual. He said he typically reviewed the patient's past medical history, which was provided to him by Mr. Conn's office staff, and dictated a summary of the claimant's conditions based on the information in the file.<sup>339</sup> He said he used information from the claimants' files to determine what questions he would ask, and he sometimes performed a physical exam if it was needed. If the claimant had no medical records, Dr. Ammisetty recorded the claimant's medical history based on the information provided. Dr. Ammisetty stated he

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<sup>338</sup> *Id*; see also The Conn Law Firm's RFC form signed by Dr. Ammisetty. Exhibit 48.

<sup>339</sup> *Id*.

never performed any additional medical testing, but said he could look at the patients and tell what their conditions were.<sup>340</sup> He charged Mr. Conn \$400 to review each claimant.

Dr. Ammisetty stated that he stopped performing exams for Mr. Conn in October 2011, because he was too busy, and also because of the news coverage Mr. Conn was receiving.<sup>341</sup>

*SSA Reviewed Dr. Ammisetty's Opinions.* In the SSA Division of Quality report mentioned above, the agency audited 12 cases in which Dr. Ammisetty provided independent medical opinions on behalf of Mr. Conn.<sup>342</sup>

The agency's report made several findings regarding Dr. Ammisetty's medical evaluations, including that the doctor consistently copied and pasted material from the claimant's other medical records. It noted that Dr. Ammisetty typically copied background information on the claimant and findings from prior consultative examination reports from doctor opinions procured by the Disability Determination Services.<sup>343</sup> It also noted that Dr. Ammisetty never cited the prior exam as the source, but instead passed the findings off as his own.<sup>344</sup> In addition, the reports he copied always found the claimant was physically capable of more activity and less restricted than Dr. Ammisetty would ultimately conclude in his findings.<sup>345</sup> The use of copy and paste insertions also suggested to the Division of Quality that Dr. Ammisetty's examinations were incomplete or that he may have failed to examine the claimant at all.<sup>346</sup> Such a finding is consistent with Dr. Ammisetty telling the Committee that he dictated his medical opinions from prior medical evidence.<sup>347</sup>

The agency noted "on at least one occasion, Dr. Ammisetty copied from multiple independent consultative examination reports, which produced internally inconsistent notes, such as reporting in one sentence no previous surgery, then reporting another sentence a recent surgery."<sup>348</sup> Finally, the Division of Quality report noted that other medical evidence in the record did not support Dr. Ammisetty's findings of disability, and his ultimate conclusions were not supported by substantial evidence.<sup>349</sup>

Judge Daugherty adjudicated all 12 cases reviewed by the Division of Quality and awarded disability benefits to each claimant over the span of two days.<sup>350</sup> The Division report noted that Judge Daugherty relied exclusively on Dr. Ammisetty's reports, never cited any other evidence, and always included the same stock language, which appeared in a different font from the rest of the opinion: "having considered all of the evidence, I am satisfied that the information provided

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<sup>340</sup> *Id.*

<sup>341</sup> *Id.*

<sup>342</sup> Social Security Administration, DRAFT: Report of the Division of Quality's Review of Decisions Issued by the Huntington, WV Hearing Office, August 15, 2011, PSI-SSA-95D2-044759. Exhibit 46.

<sup>343</sup> *Id.*

<sup>344</sup> *Id.*

<sup>345</sup> *Id.*

<sup>346</sup> *Id.*

<sup>347</sup> April 4, 2013 Committee interview of Dr. Srinivas Ammisetty.

<sup>348</sup> *Id.*

<sup>349</sup> *Id.*

<sup>350</sup> *Id.*

by Dr. Ammisetty most accurately reflects the claimant's impairments and limitations. Therefore, claimant is limited to less than sedentary work at best.”<sup>351</sup>

A separate SSA memorandum documented another agency review of nineteen disability determinations where Dr. Ammisetty’s submitted medical reports mirrored the information contained in previous consultative examination reports. Again, the memorandum noted the use of copy and paste insertions from past consultative examination reports without crediting the source.<sup>352</sup> The memorandum also stated that the heavy use of copy and paste insertions made it difficult to determine which part of the evaluation included Dr. Ammisetty’s notes as opposed to copied content from other sources.<sup>353</sup> Moreover, when a consultative examination was absent from the file, it noted that Dr. Ammisetty’s reports were much more cursory and the findings less detailed. In all but one case reviewed, Dr. Ammisetty opined the claimant was completely disabled.<sup>354</sup>

### **c. Other Doctors Provided Reviews of Claimants at the Request of Mr. Conn**

#### **i. Phil Pack, M.S.**

Mr. Pack was affiliated with East Kentucky Psychological Services, Inc. during the period of Committee review. The practice had offices in three Kentucky locations: Paintsville, Pikeville, and Harlan. While not a medical doctor, he provided psychological assessments for clients of Mr. Conn, which he submitted as evidence of mental impairments for his clients. Mr. Pack stated he is licensed as a psychologist in the state of Kentucky.<sup>355</sup>

Mr. Pack began performing evaluations for Mr. Conn as long as 15 years ago. However, he said the claimants he reviewed at that time were “flat out malingerers”,<sup>356</sup> and he called Mr. Conn’s office and said they needed to do a better job screening clients because they were not going to like the reports he was sending them. He said Mr. Conn stopped calling him at that point to ask for assessments.<sup>357</sup>

Mr. Pack began performing assessment for Mr. Conn again in the last ten years, and also provided assessment on behalf of the agency. Mr. Conn paid him \$225 per exam, while the agency paid \$150.<sup>358</sup> He estimated that roughly 80 percent of his work was done for the agency, with 20 percent done on behalf of attorneys, including Mr. Conn.<sup>359</sup>

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<sup>351</sup> *Id.*

<sup>352</sup> According to the review, Dr. Ammisetty’s use of copy and paste was evident from the following: “verbatim word usage in full narrative paragraphs; matching chronology of the reports; identical medical findings, including blood pressure and weight despite several months or a year between exams; inclusion of identical test results for atypical examinations such as arm measurements; alternating use of “patient” and “claimant” between reports.” Social Security Administration, DRAFT: Report of the Division of Quality’s Review of Decisions Issued by the Huntington, WV Hearing Office, August 15, 2011, PSI-SSA-95D2-044759. Exhibit 46.

<sup>353</sup> *Id.*

<sup>354</sup> *Id.*

<sup>355</sup> April 2, 2013 Committee interview of Mr. Phil Pack, M.S.

<sup>356</sup> Malingering is a term used to describe the fabrication or exaggeration of symptoms.

<sup>357</sup> April 2, 2013 Committee interview of Mr. Phil Pack, M.S.

<sup>358</sup> *Id.*

<sup>359</sup> *Id.*

Mr. Pack stated Mr. Conn never provided him with a template form to sign, and that he was never pressured to change the results of any of his reports.<sup>360</sup>

*Agency Analysis of Mr. Pack.* The agency also reviewed 30 claimant reports submitted by Mr. Pack, most of which were submitted at the request of Mr. Conn. Mr. Pack, however, also submitted reports on behalf of the agency as well at the DDS level. While the reports appeared to be original, the findings were boilerplate. For example, the agency determined that “of 28 cases in which Mr. Pack provided assessments, he found the claimant had poor ability (markedly limited) in demonstrating reliability 28 times (100%).”<sup>361</sup>

The agency noted in three of the cases reviewed, Mr. Pack was the examining source for both the agency at the DDS level and Mr. Conn at the appeals level. This meant Mr. Pack would be in the unusual situation of reviewing his own work. In one of these cases, Mr. Pack found the claimant not credible when he evaluated the claimant for SSA at the DDS level, but completely credible when he evaluated the same claimant at the request of Mr. Conn on appeal to an ALJ. In another report, Mr. Pack made clear the claimant had a problem with substance abuse at the DDS level, while in his report on the same claimant for Mr. Conn made no mention of such an issue when the case was appealed to an ALJ.<sup>362</sup> Overall, the agency found Mr. Pack’s reports for Mr. Conn always found the claimant disabled and unable to work.<sup>363</sup>

## ii. Dr. Syed Ikramuddin

Dr. Ikramuddin received his medical degree in 1964 from Osmania Medical School in India, and came to America as a general surgeon. He first received his license to practice medicine in New York in 1976, and then received his license to practice in Kentucky two years later at which time he began practicing in Prestonsburg, Kentucky.<sup>364</sup>

*License Suspended in Kentucky.* On December 14, 1994, the Kentucky Board of Medical Licensure (“KBML”) suspended Dr. Ikramuddin’s license for gross negligence and failure to conform to the “standards of accepted and prevailing medical practice within the Commonwealth of Kentucky.”<sup>365</sup> The KBML’s decision was based on two separate grievances filed against Dr. Ikramuddin.

The first grievance involved a tonsillectomy performed by Dr. Ikramuddin on a forty-two year old male patient in 1986.<sup>366</sup> The patient died six days later from cardiac arrest due to left arterial tonsillar hemorrhage and secondary shock.<sup>367</sup> KBML determined that not only was

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<sup>360</sup> *Id.*

<sup>361</sup> Social Security Administration, DRAFT: Report of the Division of Quality’s Review of Decisions Issued by the Huntington, WV Hearing Office, August 15, 2011, PSI-SSA-95D2-044759. Exhibit 46.

<sup>362</sup> *Id.*

<sup>363</sup> *Id.*

<sup>364</sup> Ky. Rev. Stat. Ann. § 311.595(8)(1994); Ky. Bd. of Med. Licensure v. Ikramuddin (Commonwealth of Ky. State Bd. of Med. Licensure Dec. 14, 1994) (agreed order). Sealed Exhibit.

<sup>365</sup> *Id.*

<sup>366</sup> *Id.*

<sup>367</sup> *Id.*

tonsillectomy unnecessary, but also Dr. Ikramuddin's actions (or inactions) during and post-surgery were directly responsible for the patient's death.<sup>368</sup> Dr. Ikramuddin inflicted a wound during the surgery that resulted in postoperative bleeding. He then failed to properly manage the bleeding, which resulted in hypovolemic shock and the patient's death.<sup>369</sup>

The second grievance involved Dr. Ikramuddin removing part of a ten-year old female patient's left breast to perform a biopsy.<sup>370</sup> Like the previous case, the Board found the procedure was not medically necessary or even appropriate.<sup>371</sup> Moreover, the Board concluded the patient would never develop a normal breast as a result of the operation conducted by Dr. Ikramuddin.<sup>372</sup>

*New York Revokes Dr. Ikramuddin's License.* As a result of continuing misconduct in Kentucky, Dr. Ikramuddin's license to practice in New York was revoked on November 10, 1997.<sup>373</sup> The New York Board based its decision on a 1997 Order issued by the KBML.<sup>374</sup> The conduct in Kentucky by Dr. Ikramuddin, as indicated by the Order, included: failure to provide appropriate treatment; failure to order appropriate tests; ordering inappropriate tests or treatment; failure to perform adequate physical exams; failure to take adequate patient histories; a lack of basic surgical knowledge; and falsification of a medical record.<sup>375</sup> The Order also documented instances of gross negligence and deviations from the standard of care required in Kentucky.<sup>376</sup>

Dr. Ikramuddin died on December 29, 2011.

### iii. The Potter Clinic

According to a former employee of Mr. Conn, the Potter Clinic provided x-rays of Mr. Conn's claimants with no analysis of the actual x-ray. Mr. Conn requested certain clients receive x-rays from the clinic, with the form stating "WE DO NOT WANT THE FILMS READ BY

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<sup>368</sup> *Id.*

<sup>369</sup> *Id.*

<sup>370</sup> *Id.*

<sup>371</sup> *Id.*

<sup>372</sup>In addition to filing grievances with the KBML, both the female patient and the estate of the male patient filed malpractice suits against Dr. Ikramuddin. The ten-year old girl's claim was settled with Dr. Ikramuddin's insurance carrier for approximately \$485,000,<sup>372</sup> while the man's estate won a jury verdict of around \$1 million, which was later affirmed by the Kentucky Court of Appeals. See Ky. Bd. of Med. Licensure v. Ikramuddin 7 (Commonwealth of Ky. State Bd. of Med. Licensure Dec. 14, 1994) (hearing officer's proposed findings of fact and conclusions of law) at 32-33.

<sup>373</sup> New York Dep't of Health State Bd. for Prof'l Medical Conduct, Determination and Order for Syed Ikramuddin M.D., (Nov. 10, 1997)[hereinafter Revocation Order]. New York law allows the State Board for Professional Medical Conduct (NY Board) to revoke a doctor's license for misconduct committed in other states. Under New York Education Law § 6530(9)(d), if a medical professional licensed in the State of New York has had disciplinary action taken against them by an authorized professional disciplinary agency of another state, and those actions would constitute professional misconduct under New York law, then that professional is subject to disciplinary action by the New York State Board for Professional Medical Conduct. N.Y. Educ. Law § 6530(9)(d), available at [http://www.health.ny.gov/professionals/office-based\\_surgery/law/6530.htm](http://www.health.ny.gov/professionals/office-based_surgery/law/6530.htm)

<sup>374</sup> *Id.*

<sup>375</sup> *Id.*

<sup>376</sup> *Id.*

ANYONE!!!!”<sup>377</sup> Once the x-rays were provided to Mr. Conn, he would provide the analysis of the x-ray from disabling descriptions on the Internet of x-ray films. Dr. Huffnagle would then sign the opinion.<sup>378</sup> Some of these descriptions prepared by Mr. Conn, which did not match the x-ray, according to Ms. Slone, were submitted to Judge Andrus to support an on-the-record FIT decision.<sup>379</sup>

#### **d. Mr. Conn’s Attorney Explained the Use of Supplemental Medical Opinions**

Through his attorney, Mr. Conn explained his use of these supplemental medical opinions:

In certain cases, the Conn Law Firm procures a supplemental ***medical opinion*** in order to advocate for its client and explain why the SSA record supports a favorable decision. Such medical opinions are supplementary only. They are based on the same “medical records” already in the SSA file (sometimes twice) that any SSA medical opinion is based. They are not required and are not procured for every client. Each supplemental medical opinion procured by the Conn Law Firm is submitted to the SSA and stored in the SSA’s [database] system.

The decision to procure a supplemental medical opinion is based on factors specific to each case and could include the conclusion by the Conn Law Firm that the underlying medical records don’t fully reflect the client’s disability, the medical opinion obtained through the SSA assigned doctor is not fulsome, the preference of the SSA decisionmaker, and/or the type of SSA case involved. If during its representation the Conn Law Firm obtains medical records that for some reason were not obtained by the SSA, it is the firm’s practice to submit those records to the SSA as well.<sup>380</sup>

Mr. Conn, through his law office, would initially pay for the medical evaluation as required under SSA regulations prohibiting representatives from charging for additional exams. However, contrary to agency rules, each claimant was later required to reimburse the firm for the cost of the examination.<sup>381</sup> To ensure this was the case, Mr. Conn required all of his clients to sign an affidavit stating they would reimburse CLF for the cost of the examination, while another employee filmed the claimant signing the affidavit.<sup>382</sup> Indeed, a document produced by Mr.

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<sup>377</sup> June 12, 2012 Affidavit of Jamie Lynn Slone, ¶ 20 (Exhibit 16); *see also*, e.g., CLF031230; CLF031232; CLF031234; CLF031236; and CLF031250. Exhibit 41.

<sup>378</sup> June 12, 2012 Affidavit of Jamie Lynn Slone, ¶ 20 (Exhibit 16).

<sup>379</sup> June 12, 2012 Affidavit of Jamie Lynn Slone, ¶ 20 (Exhibit 16).

<sup>380</sup> May 17, 2012 Letter from Pamela J. Marple, Esq., attorney for Eric C. Conn, to the Permanent Subcommittee on Investigations. Exhibit 9.

<sup>381</sup> June 12, 2012 Affidavit of Jamie Lynn Slone, ¶ 8 (Exhibit 16). *See also* 20 C.F.R. §404.1720 Fee for representative’s service. That provisions mandates the amount of the representative’s fee is determined by the agency and “a representative must not charge or receive any fee unless we [the agency] has authorized it, and a representative must not charge or receive any fee that is more than the amount we authorize.”

<sup>382</sup> June 12, 2012 Affidavit of Jamie Lynn Slone, ¶ 8 (Exhibit 16).

Conn's law firm noted whether the claimant had signed an affidavit related to their appointment with Dr. Huffnagle.<sup>383</sup>

**e. Judge Daugherty Appeared to Rely Exclusively on the Opinions of Mr. Conn's Doctors to Award Disability Benefits**

The prior list of doctors is not an exhaustive list of every medical professional hired by Mr. Conn, though they provided a key piece of evidence in overwhelming majority of the cases reviewed by the Committee. Despite problems with the medical evidence they produced, however, Judge Daugherty appeared to rely exclusively on the opinions of these doctors to award benefits to Mr. Conn's clients.

Judge Daugherty's actions are in stark contrast to expectations created by top agency officials for ALJ decision-making. According to agency policy, as laid out in the *SSA Hearings, Appeals and Litigation Law Manual* (HALLEX), an ALJ is required to take careful steps each time a case is heard to carefully weigh the evidence and make an accurate decision. Accordingly, it requires every ALJ to include in every decision, “[a] discussion of the weight assigned to the various pieces of evidence in resolving conflicts in the overall body of evidence; e.g., conflicts between treating and nontreating sources, including a statement of which evidence is more persuasive and why.”<sup>384</sup> More than a cursory reference to the various pieces of evidence in the case file, this requires ALJs to provide a robust discussion of the weight they assign each piece.

Moreover, if an ALJ is unsatisfied with the amount of medical evidence in the file, he or she can request an additional consultative exam. Only, the additional exams should be requested through official agency channels and be directed to the SSA doctors in each state. HALLEX says “the ALJ may request a CE(s) and/or test(s) through the State agency.”<sup>385</sup>

Judge Daugherty did not appear to follow these requirements in cases represented by Mr. Conn. As detailed in the following section, many of these cases involved claimants with little or no medical evidence to support their disability claim. To overcome this problem, Judge Daugherty did not go through the agency, but directly alerted Mr. Conn to the evidence needed to rule in favor of the claimant, which Mr. Conn's doctors then provided.

The interaction between Mr. Conn and Judge Daugherty was the same each month. Once the DB List for the month was created, one of Mr. Conn's employees would call the claimants on the list and request they come to the office for a medical evaluation. Depending on whether Judge Daugherty indicated the claimant needed a “mental” or “physical” evaluation would dictate what doctor the claimant was scheduled to see to provide an opinion the claimant was disabled.<sup>386</sup>

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<sup>383</sup> See Frederic T. Huffnagle Schedule, CLF033403-04. Exhibit 49.

<sup>384</sup> HALLEX I-2-8-25. Writing the Decision. Can be found at [http://www.ssa.gov/OP\\_Home/hallex/I-02/I-2-8-25.html](http://www.ssa.gov/OP_Home/hallex/I-02/I-2-8-25.html).

<sup>385</sup> HALLEX I-2-5-20. Consultative Examinations and Tests. Can be found at [http://www.ssa.gov/OP\\_Home/hallex/I-02/I-2-5-20.html](http://www.ssa.gov/OP_Home/hallex/I-02/I-2-5-20.html).

<sup>386</sup> June 12, 2012 Affidavit of Jamie Lynn Slone, ¶ 7 (Exhibit 16).

When writing his decisions, Judge Daugherty appeared to rely solely on this attorney-bought medical opinion to award disability benefits. Not only did he do this nearly 100 percent of the time for Mr. Conn's clients, but in the decisions reviewed by the Committee he would routinely ignore all of the other evidence in the file, appearing to give it no weight at all. For example, in Huntington Case 74<sup>387</sup> where Mr. Conn provided an opinion by Dr. Huffnagle, Judge Daugherty opined:

Having considered all the evidence, I am satisfied that the information provided by Dr. Huffnagle most accurately reflects the claimant's impairments and limitations. Therefore, the claimant is limited to sedentary work at best.

This same language was present in most, if not all, of Judge Daugherty's cases. For some opinions, this language was in a different font than the rest of the decision, which could be due to material being copied and pasted into a document.<sup>388</sup> Judge Daugherty then discounted the remainder of the medical evidence by stating:

The State agency medical consultants physical assessments are given little weight because another medical opinion is more consistent with the record as a whole and evidence received at the hearing level shows that the claimant is more limited than determined by the State agency consultants.

Judge Daugherty then awarded the claimant disability benefits based solely on the one doctor's opinion who was paid by Mr. Conn, who only examined the patient once. This apparent disregard of the claimant's complete medical records was contrary to program rules and regulations.

#### **f. Analysis of Cases Decided by Judge Daugherty on the “DB Lists”**

##### **i. Review of Claimants' Case Files on DB Lists**

The Committee reviewed the analysis employed by Judge Daugherty in awarding benefits to the DB List claimants. To do so, the Committee reviewed a total of 110 case files, which included all claimants listed on the first and last full DB lists from January 2007 and July 2010, and additional DB Lists issued within that timeframe. In reviewing these cases, the Committee did not attempt to independently determine whether or not the claimants met the Social Security Administration's criteria for awarding benefits under the disability program. Rather, the Committee assessed the extent to which Judge Daugherty's decisions were supported by the full evidence included in each case file, including all of the medical records, results of consultative examinations, agency evaluations, and the claimants' subjective allegations as indicated on their application and other forms.

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<sup>387</sup> The Committee requested certain case files from the Social Security Administration. When the agency produced the case files to the Committee, each case file was assigned a number, which could be referenced but the claimant would remain anonymous.

<sup>388</sup> Social Security Administration, DRAFT: Report of the Division of Quality's Review of Decisions Issued by the Huntington, WV Hearing Office, August 15, 2011, PSI-SSA-95D2-044759. Exhibit 46.

## ii. Summary Analysis of Findings

Of the 110 cases reviewed, the Committee found reason to question the basis for the vast majority, or 100, of Judge Daugherty's decisions. In these 100 cases, the Committee reviewed all medical evidence available in the claimants' files and in each case, identified either a lack of objective evidence, or conflicting evidence that Judge Daugherty often appeared to ignore. Conversely, the Committee found a total of 10 cases in which Judge Daugherty's decisions to award benefits were supported by the medical evidence of record contained in the claimant's case file. These included two cases in which the claimant's met the medical listing criteria for mental disorders.

Every one of the cases reviewed was decided on-the-record without holding a hearing. Furthermore, geographic waivers which ensured the claim would be routed through the Prestonsburg Field Office, and then appealed to the Huntington ODAR, were present in 30 of these cases.

Furthermore, all but two of the 100 decisions questioned by the Committee were decided based on the agency's Medical-Vocational Guidelines, known as the vocational "grids." In such cases, the claimant's medical conditions alone were not severe enough to meet any of the agency's medical listings. Rather, the determination of disability was based on whether a claimant's medical symptoms caused a sufficient level of functional limitations that, in combination with the claimant's age; education level; transferability of job skills; and availability of jobs in the national economy; so limited the capacity to work that a determination of disability was warranted.<sup>389</sup>

For example, according to these Guidelines, an individual who cannot lift more than 10 pounds at a time, who cannot stand or walk for at least two hours in an eight hour workday, and who cannot sit for at least six hours in an 8 hour workday, is determined to be capable of "less than sedentary" work.<sup>390</sup> The determination of the level of work an individual is capable of performing is based on an assessment of his or her abilities, as indicated by the Residual Functional Capacity (RFC), which according to Administration guidance identifies what an individual can do, and is based "primarily upon medical evidence, but may also include observation or description of limitations."<sup>391</sup>

Once the individual's RFC is identified, the remaining factors noted above are taken into account to determine whether the individual is disabled. A finding that an individual is capable of performing only sedentary, or less than sedentary work is more likely - once other factors are taken into account - to lead to a finding of disability.

Of greatest concern in the 100 cases in which Judge Daugherty issued questionable decisions was the extent to which he relied exclusively on medical opinions provided by doctors hired by Eric Conn. In doing so, Judge Daugherty failed to account for other evidence in the claimant's

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<sup>389</sup> 20 C.F.R. Part 404, Subpart P, Appendix 2.

<sup>390</sup> SSR 83-10, Titles II and XVI: Determining Capability to Do Other Work—The Medical Vocational Rules of Appendix II.

<sup>391</sup> DI 24510.001 Residual Functional Capacity (RFC) Assessment - Introduction.

files that in many cases, suggested the claimants were capable of working. This included evidence that either directly contradicted those opinions, differed significantly in assessing the severity of the claimant's alleged symptoms and conditions, or that identified other factors, such as the claimant's noncompliance with prescribed medication or physician advice, or indications of drug or alcohol abuse.

Judge Daugherty's reliance on a single piece of evidence to support his decisions stands in direct conflict with agency regulations that guide the evaluation process. Woven throughout SSA regulations is a consistent requirement to consider *all* of the available evidence in the case file.

For example, in describing how the agency is to evaluate symptoms, including pain, regulations state: "In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you."<sup>392</sup>

Agency policy notes that "...under no circumstances may the existence of an impairment be established on the basis of symptoms alone. Thus, regardless of how many symptoms an individual alleges, or how genuine the individual's complaints may appear to be, the existence of a medically determinable physical or mental impairment cannot be established in the absence of objective medical abnormalities; i.e., medical signs and laboratory findings."<sup>393</sup>

With regard to a claimant's credibility, agency policy states: "It is not sufficient for the adjudicator to make a single, conclusory statement that 'the individual's allegations have been considered' or that 'the allegations are (or are not) credible.' It is also not enough for the adjudicator simply to recite the factors that are described in the regulations for evaluating symptoms. The determination or decision must contain specific reasons for the finding on credibility, supported by the evidence in the case record, and must be sufficiently specific to make clear to the individual and to any subsequent reviewers the weight the adjudicator gave to the individual's statements and the reasons for that weight."<sup>394</sup>

### **iii. Judge Daugherty Used Templatized Language in Written Decisions**

In 88 of the 110 decisions reviewed, Judge Daugherty relied on physical evaluations provided by Dr. Huffnagle. In 56 of these cases, Judge Daugherty wrote short decisions in which his description of the claimants' residual functional capacity and his basis for that determination were nearly identical.

The decisions all contained the same four paragraphs, which established the findings from Dr. Huffnagle's medical exams as the sole basis for determining the individual's residual functional capacity. The only part of this section that changed from one claimant to the next was the determination of whether the claimant was capable of *less than sedentary* or *sedentary* work in the second paragraph. For decisions that followed this format, this section of the decision never included analysis of other medical evidence in the claimants' files, as required by the agency.

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<sup>392</sup> 20 CFR 404.1529 § (a).

<sup>393</sup> SSR 96-4p.

<sup>394</sup> SSR 96-7p.

The general template Judge Daugherty used for this section was as follows:

In making this finding, the undersigned considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and 416.929 and SSRs 96-4p and 96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and 416.927 and SSRs 96-2p and 06-3p.

Having considered all the evidence, I am satisfied that the information provided by Dr. Huffnagle most accurately reflects the claimant's impairments and limitations. Therefore, the claimant is limited to *less than sedentary* work at best.

After considering the evidence of record, the undersigned finds that the claimant's medically determinable impairments could reasonably be expected to produce the alleged symptoms, and that the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are generally credible.

The State agency medical consultants' physical assessments are given little weight because another medical opinion is more consistent with the record as a whole and evidence received at the hearing level shows that the claimant is more limited than determined by the State agency consultants.

With the exception of the blanket statement that the medical opinions submitted by providers hired by Mr. Conn best reflected the claimants' conditions, Judge Daugherty provided no additional written explanation to demonstrate his consideration of all of the other evidence included in these cases. This fact is the primary reason why the Committee questioned the basis for Judge Daugherty's decisions in the majority of cases reviewed.

The Committee identified numerous cases in which Judge Daugherty appeared to either overlook or disregard without any explanation significant evidence included in the claimant's case files that called his finding of disability into question. For instance, in a number of cases, additional medical evidence from consultative exams or the claimants' treating physicians called into question the severity of the claimant's conditions. The Committee identified some cases in which Dr. Huffnagle diagnosed claimants with medical conditions that the claimants' themselves did not identify in their applications, but which then formed the basis for Judge Daugherty's decision. Some case files included evidence of claimant noncompliance with treatment, or evidence of drug and alcohol abuse. While these factors may not have precluded a finding of disability, Judge Daugherty's decisions reflect no indication that he gave such factors the appropriate level of consideration to determine whether the claimants' conditions would warrant a finding of disability regardless.

Section 4 below summarizes one of the cases reviewed by the Committee, illustrative in that it provided an opportunity to compare Judge Daugherty's approach with that of another

Administrative Law Judge who evaluated the same claimant. Detailed summaries of a sample of additional cases reviewed by the Committee are presented in Appendix I.

#### **iv. Judge Daugherty Overturned Prior ALJ Decisions**

In some cases, Judge Daugherty awarded benefits to claimants who were previously denied by another Administrative Law Judge, but then reapplied. In these cases, the only additional medical evidence provided was from the physicians hired by Mr. Conn. With the exception of those opinions, Judge Daugherty awarded benefits on largely an identical body of evidence that a previous Administrative Law Judge found insufficient to merit a favorable decision.

Generally in such cases, a claimant can file a new application or in some cases re-open an old case, but are not allowed to receive benefits for any time before the date of their previous denial. This prevents someone from receiving benefits for a time period that the agency has already decided a person was not disabled, but allows benefits in the future if circumstances change. As such, when someone reappeals it is typical for them to allege an onset date on the day immediately following the date of the previous ALJ decision.

After being denied benefits again at the initial and reconsideration decisions by the agency, these cases were presented to Judge Daugherty with largely the same body of medical evidence that was reviewed by the previous Judge, with the exception of an additional medical opinion from the physicians hired by Eric Conn.

**Case A:** On June 1, 2010, Judge Daugherty awarded benefits to a claimant he determined was only capable of performing less than sedentary work due to sciatica, disc herniation, and diabetes.<sup>395</sup> However, less than a year prior the claimant was denied benefits on a prior application by another judge in the Huntington, West Virginia ODAR.<sup>396</sup> Judge Daugherty's written decision made no mention of the claimant's past application, but instead relied only on the evaluation performed by Dr. Huffnagle, which he again concluded was most consistent with the evidence as a whole.<sup>397</sup> However, the decision did not cite or discuss any other evidence from the file that would support that finding.<sup>398</sup>

On August 27, 2009, less than a year before, Administrative Law Judge Andrew Chwalibog denied benefits to the claimant, concluding that while he could not return to his previous job, "the claimant is capable of making a successful adjustment to other work that exists in significant numbers in the national economy. A finding of 'not disabled' is therefore appropriate ..." <sup>399</sup> Judge Chwalibog's decision contained a detailed examination of the medical evidence and determined that despite having several severe limitations, including obesity, he did not meet the requirements of the program.<sup>400</sup>

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<sup>395</sup> See Exhibit A-1, June 1, 2010 Decision, Administrative Law Judge David B. Daugherty at 3 and 5.

<sup>396</sup> See Exhibit A-2, August 27, 2009 Decision, Administrative Law Judge Andrew J. Chwalibog at 9.

<sup>397</sup> See Exhibit A-1, June 1, 2010 Decision, Administrative Law Judge David B. Daugherty at 3-4.

<sup>398</sup> *Id.* at 3-4.

<sup>399</sup> See Exhibit A-2, August 27, 2009 Decision, Administrative Law Judge Andrew J. Chwalibog at 9.

<sup>400</sup> *Id.* at 3-9.

His detailed, nine-page decision made 57 references to the claimant's medical exhibits, and assigned weights to the opinion of various sources.<sup>401</sup> Of particular importance was the evidence Judge Chwalibog gained from the hearing he held on June 9, 2009.<sup>402</sup> For example, while the claimant said that his right foot was a major problem, the judge wrote, "the claimant did not mention his right foot during the hearing. Therefore, the undersigned finds the claimant's tendonitis of the right foot does not constitute a severe impairment."<sup>403</sup>

Judge Chwalibog also referred to the testimony of a vocational expert who testified, "that given all of these factors the individual would be able to perform the requirements of representative occupations nationally/regionally at the light level."<sup>404</sup>

Four days after the decision, on August 31, 2009, the claimant hired Eric Conn as his attorney and applied for benefits once more.<sup>405</sup> The claimant changed his alleged onset date from July 2007, as it was in his prior application, to August 25, 2009 – a date two days *prior* to the Chwalibog denial.<sup>406</sup> He listed the same conditions for which he had just been denied, including, "type 2 diabetes, back pain, neck pain, herniated discs in back, muscle spasms, fatigue, depression, anxiety, nervousness, trouble sleeping, tendonitis in right foot, and hypertension."<sup>407</sup>

When the agency considered the new application, documents note that no new medical evidence was submitted, and as a result, the initial decision was denied on November 9, 2009.<sup>408</sup> The examining official wrote: "This claimant has a residual functional capacity for light work, is a younger individual, has a high school education, and work experience ... There are a significant number of occupations for which this claimant qualifies ... Since the claimant has the capacity to perform other work, disability is not established."<sup>409</sup> This decision to deny benefits was upheld on March 8, 2010 upon reconsideration by the agency.<sup>410</sup>

*Claimant Added to DB List.* Following the reconsideration decision, the claimant requested an ALJ hearing on March 24, 2010.<sup>411</sup> Mr. Conn and Judge Daugherty also placed the claimant on the May 2010 "DB List."<sup>412</sup>

On April 27, 2010, the claimant was seen by Dr. Huffnagle.<sup>413</sup> The exam notes indicate that the claimant's current medical symptoms or problems included: "low back pain with left hip pain,"

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<sup>401</sup> *Id.* at 3-8.

<sup>402</sup> *Id.* at 1.

<sup>403</sup> *Id.* at 4.

<sup>404</sup> *Id.* at 9.

<sup>405</sup> See Exhibit A-3, August 31, 2009 Appointment of Representative and Fee Agreement at 1-2 and see Exhibit F-4, Disability Report – Adult Form SSA-3368 at 9.

<sup>406</sup> See Exhibit A-2, August 27, 2009 Decision, Administrative Law Judge Andrew J. Chwalibog at 1 and see Exhibit A-4, Disability Report – Adult Form SSA-3368 at 2.

<sup>407</sup> *Id.* at 2.

<sup>408</sup> See Exhibit A-5, October 5, 2009 Request for Medical Advice at 1; Exhibit A-6, March 5, 2010 Physical Residual Functional Capacity at 2 and see Exhibit A-7, November 10, 2009 Notice of Disapproved Claim.

<sup>409</sup> See Exhibit A-8, Simplified Vocational Rationale at 1.

<sup>410</sup> See Exhibit A-9, March 5, 2010 Notice of Reconsideration at 1.

<sup>411</sup> See Exhibit A-10, Request for Hearing by Administrative Law Judge at 1.

<sup>412</sup> Exhibit A-11, DB OTR List (May) CLF030713.

which he added, “came on gradually over time.”<sup>414</sup> Dr. Huffnagle diagnosed the claimant with “sciatica, possible L4-L5 disc herniation, and diabetes” with no mention of the claimant’s right foot in the diagnosis.<sup>415</sup> On the same day, he signed Conn Law Office RFC version #4.<sup>416</sup>

*Claimant Awarded Benefits.* Judge Daugherty’s fully favorable decision a month later on June 1, 2010 found that the claimant’s severe and disabling limitations were “sciatica, disc herniation and diabetes” – the same identified by Dr. Huffnagle; although Judge Daugherty dropped the adjective “possible” from Dr. Huffnagle’s description of the claimant’s disc herniation.<sup>417</sup>

His decision failed to mention how the claimant had previously applied and was denied, and instead gave exclusive weight to the exam performed by Dr. Huffnagle, writing: “Having considered all of the evidence, I am satisfied that the information provided by Dr. Huffnagle most accurately reflects the claimant’s impairments and limitations. Therefore, the claimant is limited to less than sedentary work at best” and therefore disabled according to the Medical Vocational Guidelines.<sup>418</sup>

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<sup>413</sup> See Exhibit A-12, April 27, 2010 Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D. at 1.

<sup>414</sup> *Id.* at 1.

<sup>415</sup> *Id.* at 4.

<sup>416</sup> *Id.* at 5-8.

<sup>417</sup> See Exhibit A-1, June 1, 2010 Decision, Administrative Law Judge David B. Daugherty at 2.

<sup>418</sup> *Id.* at 3-5.

**APPENDIX I:**  
**SUMMARY OF A SAMPLE OF ERIC CONN CLAIMANT CASE FILES**  
**DECIDED FAVORABLY BY JUDGE DAUGHERTY**

**1. Medical Opinions Procured by Mr. Conn Were Inconsistent with Other Medical Evidence**

Most of Judge Daugherty's written decisions stated that the opinions of the consulting doctors paid by Mr. Conn were "more consistent with the record as a whole." As such, Judge Daugherty adopted Dr. Huffnagle's findings, including his residual functional capacity assessments, as the basis for determining that the claimants could not work. However, the Committee found many instances in which Dr. Huffnagle's opinions differed significantly from other evidence contained in the claimants' case files, a fact that Judge Daugherty always failed to address.

**Case B:** Judge Daugherty awarded benefits in August 2010 to a claimant who had previously been denied because the agency determined he could work.<sup>656</sup> While several doctors contributed to the agency's determination, Judge Daugherty based his fully favorable decision solely on a single examination by Dr. Huffnagle, which described injuries suffered by the claimant in a traffic accident that occurred the year before.<sup>657</sup>

The seriousness of his injuries was thrown into some question, however, since he did not seek medical attention until the day after his accident.<sup>658</sup> Medical records from St. Mary's Medical Center dated the day after his accident stated:

This is a young man who apparently presents with a history [of a traffic accident]. He was able to get up, move around, he went home. As a matter of fact, he mowed his yard.<sup>659</sup>

Exam notes indicated that, because of his fractures, "He will require an MRI in the morning and a brace with a cervical collar with a chest extension and a TLSO brace on his dorsal spine for 6 weeks."<sup>660</sup> Records also indicated that the claimant was not wearing a helmet.<sup>661</sup> He saw his regular physician 6 days later, who noted the claimant was wearing a "hard brace and cervical collar" and made a notation "off work – disability- 4 weeks."<sup>662</sup>

Later that month, the claimant saw the same physician who treated him while in the hospital, and exam notes from that visit state that the claimant was still wearing his hard brace and cervical

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<sup>656</sup> See Exhibit B-1, August 3, 2010 Decision, Administrative Law Judge David B. Daugherty at 1 and 5.

<sup>657</sup> *Id.* at 3. and see Exhibit B-2, June 24, 2010 Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D.

<sup>658</sup> See Exhibit B-3, June 2009 Medical Records at 1.

<sup>659</sup> *Id.* at 1.

<sup>660</sup> *Id.* at 1.

<sup>661</sup> *Id.* at 3.

<sup>662</sup> See Exhibit B-4, June 2009 Medical Records at 1.

collar, and that “X rays show good alignment in the cervical and dorsal spine.”<sup>663</sup> The patient was advised to “take Tylenol #3 and I will see him back here with x-rays in [six weeks].”<sup>664</sup>

He hired Eric Conn as his attorney a few months after his accident and applied for disability benefits on the same day.<sup>665</sup>

Subsequent visits with the claimant’s treating physician indicate that the claimant was still experiencing back and neck pain during subsequent months in 2009 as a result of the accident, but also that he was receiving pain relief as a result of medications.<sup>666</sup>

In November 2009, the claimant was sent by DDS for a consultative exam in which the physician said that the claimant had few work-related limitations, concluding:

As far as the claimant’s work capabilities are concerned, he certainly hears and understands normal conversational tone. He moves about the exam room today using no assistive devices and without any obvious gait disturbance. He does not complain of chest pain. He has normal strength and dexterity in both upper extremities, although with his tender wrist, repetitive heavy use of his hands may be prohibitive. He should be able to lift 10-15 pounds, but heavier lifting may bother his back. Walking is not a problem and mobility should not be an issue with this patient. He should be able to ambulate a reasonable distance. However, bending and stooping may present problems as well because of the back difficulties.<sup>667</sup>

His application was denied in January 2010 following the consultative exam and then again on May 17, 2010 upon reconsideration.<sup>668</sup> An examiner at the DDS level explained, “This claimant has a residual functional capacity for light work, is a younger individual, has a high school education, and work experience as a contractor … There are a significant number of occupations for which this claimant qualifies.”<sup>669</sup>

*Claimant Added to DB List.* The claimant was placed by Mr. Conn and Judge Daugherty on the July 2010 “DB List,” marked as needing a “physical” examination and scheduled to see Dr. Huffnagle.<sup>670</sup> He was seen by Dr. Huffnagle on June 24, 2010, who concluded the claimant was not only experiencing a number of severe conditions, but faced significant functional limitations as well.<sup>671</sup>

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<sup>663</sup> See Exhibit B-5, June 2009 Medical Records at 1.

<sup>664</sup> *Id* at 1.

<sup>665</sup> See Exhibit B-6, August 26, 2009, Appointment of Representative and Fee Contract at 1 and 2.

<sup>666</sup> See Exhibit B-7, August 2009 and September 2009 Medical Records at 1 and 2.

<sup>667</sup> See Exhibit B-8, November 2009 Consultative Examination at 4-5.

<sup>668</sup> See Exhibit B-9, January 13, 2010 Notice of Disapproved Claims and Exhibit A-10, May 17, 2010 Notice of Reconsideration.

<sup>669</sup> See Exhibit B-11, Simplified Vocational Rationale at 1.

<sup>670</sup> See Exhibit B-12, DB July 2010, CLF030809.

<sup>671</sup> See Exhibit B-2, June 24, 2010 Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D. at 4, 5-9.

However, in diagnosing the claimant he got key pieces of information wrong. According to Dr. Huffnagle, the claimant was involved in a “severe” traffic accident in which he fractured C1 to T11, L5-S1. Upon leaving her hospital, “he was in a body cast and a halo.”<sup>672</sup> The claimant’s records, however, do not show that he was in a “body case and a halo,” but rather in a cervical collar and TLSO brace.<sup>673</sup> While the former restricts the neck and back from any movement at all – and often requires extreme bed-rest – the latter allows for mobility, including the ability to walk around.

On the same day, Dr. Huffnagle also signed the Conn Law Firm’s residual functional capacity (RFC) form Version #3 on behalf of the claimant.<sup>674</sup> As previously described, Mr. Conn’s clients were assigned one of 15 RFC’s used by the law firm, which were signed by doctors he hired. His findings on the RFC, however, were inconsistent with Dr. Huffnagle’s exam notes. For example, the exam notes suggested the claimant could not return to construction or coal mining, but in the section of the RFC evaluating him for “moving machinery” said he could do so “constantly.”<sup>675</sup> Again, the exam notes showed back pain with little flexibility, but the RFC showed the claimant could “constantly” perform “stooping,” “crouching” and “kneeling.”<sup>676</sup>

*Claimant Awarded Benefits.* Judge Daugherty issued a fully favorable decision on August 3, 2010, based solely on the exam conducted by Dr. Huffnagle.<sup>677</sup> In the decision he concluded, “Having considered all of the evidence, I am satisfied that the information provided by Dr. Huffnagle most accurately reflects the claimant’s impairments and limitations. Therefore, the claimant is limited to less than sedentary work at best.”<sup>678</sup>

**Case C:** The claimant in this case alleged a number of physical ailments, including blindness in one eye, as well as depression.<sup>679</sup> However, after several doctors determined that neither his physical or mental problems would not prevent him from working, he was sent by Mr. Conn to see Dr. Brad Adkins for a mental exam.<sup>680</sup> Based on this exam, Judge Daugherty awarded full disability benefits for depression and anxiety.<sup>681</sup>

Prior to applying for disability, the claimant worked as a mechanic for 25 years, but stopped in 2005.<sup>682</sup> He explained to one doctor, “he simply has been unable to continue due to orthopedic complaints.”<sup>683</sup> A year later, on July 19, 2006, the claimant hired Eric Conn to represent him and applied for disability the next day.<sup>684</sup>

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<sup>672</sup> *Id.* at 1.

<sup>673</sup> See Exhibit B-3, June 2009 Medical Records at 1.

<sup>674</sup> See Exhibit B-2, June 24, 2010 Social Security Disability Medical Assessment, Frderic T. Huffnagle, M.D. at 5-9.

<sup>675</sup> *Id.* at 9.

<sup>676</sup> *Id.* at 7.

<sup>677</sup> See Exhibit B-1, August 3, 2010 Decision, Administrative Law Judge David B. Daugherty at 1 and 5.

<sup>678</sup> *Id.* at 3.

<sup>679</sup> See Exhibit C-1, Disability Report-Adult-Form SSA-3368 at 2.

<sup>680</sup> See Exhibit C-2, January 9, 2007 Psychological Evaluation, Brad Adkins, Ph.D.

<sup>681</sup> See Exhibit C-3, January 23, 2007 Decision, Administrative Law Judge David B. Daugherty.

<sup>682</sup> See Exhibit C-1, Disability Report-Adult-Form SSA-3368 at 2 and 3.

<sup>683</sup> See Exhibit C-4, August 2006 Consultative Examination at 2.

<sup>684</sup> See Exhibit C-5, July 19, 2006 Appointment of Representative and Fee Contract.

The claimant applied on the basis of the following conditions: “vision problems, right eye is legally blind, pain in wrist, right knee, both legs, back, hands shake, hands sweat, depression, 7th grade education, can’t read, learning disability.”<sup>685</sup> He described his challenges with personal care, including that it took him longer to get dressed when his knee swelled up; that he had to step in to bathe with his left leg and put weight on the right leg because of pain; and that holding his arms up in the air to care for his hair caused pain.<sup>686</sup>

However, the claimant’s file contained conflicting evidence. His mother was also asked to fill out a questionnaire, which described the claimant’s abilities differently. She wrote that she saw her son every day, and that they ate together, went shopping, and did chores.<sup>687</sup> She added that the claimant did not have any limitations in personal care, could drive himself around in a car, cook complete meals of “whatever he wants to eat that day,” do laundry, dishes, and some yard work, and could shop for food and clothes on average two days per week for about three hours.<sup>688</sup>

During the initial consideration of the case, the agency sent the claimant out for a consultative mental exam in August 2006, performed by Phil Pack, M.S., who also performed evaluations for Eric Conn’s clients. Mr. Pack noted at the beginning of the exam write up “On the formal testing, he tends to give up very easily on items. His scores may be an underestimation of his actual potential, given his general test behavior.”<sup>689</sup> The exam notes also state “Regarding alcohol use, he tells me he drinks approximately 15 to 18 beers on Friday and Saturday nights, but does not see this as a particular problem.”<sup>690</sup> Under the “Behavioral Observations and Validity of Testing” section, the examiner said:

“His chief complaint is multiple physical difficulties. He describes himself as being nervous or depressed and seems to use these terms interchangeably. He does not present with a clear pattern of affective disturbance. He has some worry and stress over his financial situation and lack of medical coverage. He does not report of any suicidal, homicidal, or psychotic symptoms. On the formal testing, he tends to give up somewhat quickly on tasks. His scores place him in the upper end of the mild range of mental retardation. He seems to present with significant reading deficits and alleges illiteracy. However, the Rey [a test for malingering] suggests a less than optimal effort. Some caution would be urged in interpretation on the following data, particularly in the absence of collateral information.”<sup>691</sup>

The IQ test administered in this exam yielded a full scale IQ of 66, but the examining doctor reiterated his skepticism about the score because of a Rey test “score of 5, which indicates a less than valid effort on this task.”<sup>692</sup> He diagnosed the claimant with “life circumstance problems”

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<sup>685</sup> See Exhibit C-1, Disability Report-Adult-Form SSA-3368 at 2.

<sup>686</sup> See Exhibit C-6, Function Report-Adult at 2.

<sup>687</sup> See Exhibit C-7, Function Report Adult Third Party at 2.

<sup>688</sup> *Id.* at 3-5.

<sup>689</sup> See Exhibit C-4, August 2006 Consultative Examination at 1-2.

<sup>690</sup> *Id.* at 3.

<sup>691</sup> *Id.* at 3-4.

<sup>692</sup> *Id.* at 5.

and “mild mental retardation on today’s testing, more probable borderline intellectual functioning, reading disorder.”<sup>693</sup>

A consultative physical exam took place in September 2006, at which the physician concluded that other than blindness in his right eye, the claimant had no serious limitations.<sup>694</sup> His blindness resulted from an injury in 1998, when the claimant had emergency surgery to repair his right eye.<sup>695</sup>

On October 11, 2006, the agency denied his initial application, noting: “We realize that your condition prevents you from doing some types of work, but it does not prevent you from doing work which is not demanding and requires little or no training.”<sup>696</sup> No additional evidence was submitted for reconsideration, and as a result, the application was denied again on November 29, 2006,<sup>697</sup> with the DDS examiner making the following conclusion:

The claimant has a limited education, is a younger individual, and retains the capacity to perform unskilled work ... Since the claimant has the capacity to perform a broad range of work activity, disability is not established.<sup>698</sup>

A week later the claimant appealed to have a hearing before an ALJ.<sup>699</sup>

*Claimant Added to DB List.* Mr. Conn and Judge Daugherty placed the claimant on the January 2007 “DB List.”<sup>700</sup>

On January 9, 2007, Eric Conn referred the claimant to see Dr. Brad Adkins for a second mental evaluation.<sup>701</sup> Dr. Adkins completed an exam report, which found the claimant to have severe mental limitations. However, the report also noted that the claimant had a “history of alcohol abuse.” Dr. Adkins detailed the claimant’s use of alcohol: “He has been arrested [multiple] times for public intoxication. He has a history of two arrests for DUI (Driving Under the Influence) about ten years ago. He said that he still drinks alcohol about [e]very two to three weeks on the weekend.”<sup>702</sup>

Dr. Adkins also administered an IQ test, which yielded a score of 77, placing him in the borderline range for mental retardation.<sup>703</sup> Where the examining doctor several months earlier who found the claimant likely failed the IQ test on purpose, Dr. Adkins judged the results as valid.

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<sup>693</sup> *Id.* at 5.

<sup>694</sup> See Exhibit C-8, September 2006 Internal Medicine Evaluation at 4.

<sup>695</sup> *Id.* at 1.

<sup>696</sup> See Exhibit C-9, October 11, 2006 Notice of Disapproved Claim at 1.

<sup>697</sup> See Exhibit C-10, November 29, 2006, Notice of Reconsideration

<sup>698</sup> See Exhibit C-11, Simplified Vocational Rationale.

<sup>699</sup> See Exhibit C-12, December 5, 2006 Request for Hearing by Administrative Law Judge

<sup>700</sup> See Exhibit C-13, D.B. January, CLF030654 at 2.

<sup>701</sup> See Exhibit C-2, January 9, 2007 Psychological Evaluation, Brad Adkins, Ph.D.

<sup>702</sup> *Id.* at 2-3.

<sup>703</sup> *Id.* at 6.

In the section of Dr. Adkins' report titled "Summary and Conclusions" Dr. Adkins copied, word-for-word, the claimant's subjective information and allegations that were contained in the "Background" section and summarized the IQ test results.<sup>704</sup> Based on this information, Dr. Adkins concluded that the claimant had "Major Depressive Disorder, Single Episode, Moderate; Generalized Anxiety Disorder; Pain Disorder Associated with Both Psychological Factors and a General Medical Condition" as well as "History of Alcohol Abuse."<sup>705</sup> He did, however, add "R/O Panic Disorder," indicating that panic disorder should still be ruled out by further examination.<sup>706</sup>

*Claimant Awarded Benefits.* Two weeks after the claimant was examined by Dr. Adkins, Judge Daugherty issued a fully favorable decision on January 23, 2007, based solely on this exam.<sup>707</sup> He concluded that the claimant had a large number of severe impairments, which were copied word-for-word from Dr. Adkins' exam report, including: "blind right eye; major depressive disorder, single episode, moderate; generalized anxiety disorder; pain disorder" and "history of alcohol abuse."<sup>708</sup> In addition, he added that one of the claimant's severe limitations was "rule out panic disorder."<sup>709</sup>

Despite including a history of alcohol abuse in the claimant's list of conditions, Judge Daugherty provided no additional explanation as to whether that history was a factor in the other disabling conditions.

To support his conclusion he said the claimant had "moderate restriction of activities of daily living; mild difficulties in maintaining social functioning; mild difficulties in maintaining concentration, persistence, or pace; and no episodes of decompensation."<sup>710</sup> However, this information came from a mental exam conducted on November 20, 2006, by a doctor who concluded that a finding of disability would not be warranted.<sup>711</sup>

Judge Daugherty concluded, "The State agency medical opinions are given little weight," and that, "I find Dr. Adkins assessment to be reasonable and consistent with the medical evidence of record."<sup>712</sup> However, other than those related to the claimant's eye surgery in the late 1990's, the only other medical records in the file were provided by agency State agency doctors.

Moreover, the judge added: "The State agency did not have the opportunity to observe the claimant but Dr. Adkins did. Therefore, I find the assessment of Dr. Adkins to be more persuasive and I will therefore adopt."<sup>713</sup> He made this claim, despite earlier in the paragraph

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<sup>704</sup> *Id.* at 7-8.

<sup>705</sup> *Id.* at 8.

<sup>706</sup> *Id.* at 8.

<sup>707</sup> See Exhibit C-3, January 23, 2007 Decision, Administrative Law Judge David B. Dougherty at 1, 3-4, and 7.

<sup>708</sup> *Id.* at 3.

<sup>709</sup> *Id.* at 3.

<sup>710</sup> *Id.* at 3-4.

<sup>711</sup> *Id.* at 3 and see Exhibit C-14, Mental Residual Functional Capacity Assessment at 12.

<sup>712</sup> See Exhibit C-3, January 23, 2007 Decision, Administrative Law Judge David B. Dougherty at 5.

<sup>713</sup> *Id.* at 5.

referring to results of a state exam of the claimant. Indeed, the state agency sent the claimant to an in-person consultative mental exam in August 2006.<sup>714</sup>

## 2. Awards Based on Medical Conditions Discovered by Mr. Conn's Doctors

In some cases reviewed by the Committee, Judge Daugherty awarded benefits on the basis of a medical condition the claimants themselves did not identify in their applications and which were unsupported in the other medical evidence included in the files. However, the conditions that formed the basis of the award were in each instance discovered by Dr. Huffnagle in exams conducted at the request of Mr. Conn.

**Case D:** Judge Daugherty awarded benefits to a claimant on the basis of osteoarthritis and a quintuple heart bypass surgery, which he concluded limited the claimant to “less than sedentary” work.<sup>715</sup> However, while the claimant’s heart surgery was well-documented in the file, there was nothing related to osteoarthritis until he was examined by Dr. Huffnagle.<sup>716</sup> Judge Daugherty based his decision solely on Dr. Huffnagle’s exam, but did not explain why prior evidence, or in this case, the lack of evidence, was disregarded.<sup>717</sup>

In 2009, the claimant was hospitalized for chest pain and records from the visit indicate he had a history of hypothyroidism and hyperlipidemia, or high cholesterol.<sup>718</sup> The physician noted that the claimant had been “laid off and has been noncompliant with his cholesterol medications for economic reasons. The patient does follow up in my office on an erratic basis.” The claimant was diagnosed with an acute myocardial infarction, or heart attack, and was admitted to the Intensive Care Unit, where he was treated with a cardiac catheterization and angioplasty.<sup>719</sup>

Approximately one month later, in August 2009, the claimant applied for disability.<sup>720</sup> In his application, he cited “heart attack with upcoming open heart surgery” as the illness that limited his ability to work.<sup>721</sup>

The next day,, the claimant underwent coronary artery bypass surgery.<sup>722</sup> According to the surgical report, the claimant tolerated the procedure well and there were no complications.<sup>723</sup> The claimant’s discharge summary stated that the claimant was to:

“walk daily, increase distance gradually. Do not lift anything heavier than 10 pounds. Avoid pulling or pushing. Shower and wash incisions with mild soap. Daily weights and

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<sup>714</sup> See Exhibit C-4, August 2006 Consultative Exam.

<sup>715</sup> See Exhibit D-1, August 3, 2010 Decision, Administrative Law Judge David B. Daugherty at 3.

<sup>716</sup> See Exhibit D-2, June 23, 2010 Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D.

<sup>717</sup> See Exhibit D-1, August 3, 2010 Decision, Administrative Law Judge David B. Daugherty at 3.

<sup>718</sup> See Exhibit D-3, July 27, 2009 Medical Records at 1-2.

<sup>719</sup> *Id.* at 2 and see Exhibit D-4, August 2009 Discharge Summary at 1.

<sup>720</sup> See Exhibit D-5, Application Summary for Disability Insurance Benefits at 1.

<sup>721</sup> See Exhibit D-6, Disability Report-Adult-Form SSA-3368 at 2.

<sup>722</sup> See Exhibit D-7, August 2009 Operative Report at 1.

<sup>723</sup> *Id.* at 2.

daily temperatures. Continue breathing exercises. Wear TED hose during the day. Take medications exactly as ordered.”<sup>724</sup>

He was ordered to follow up with his cardiac and primary physicians over the course of the next few weeks, although there are no records of any such visits included in the claimant’s case file.<sup>725</sup>

In early 2010, the claimant underwent a DDS-level consultative exam that noted few limitations to his ability to move, and indicated upon physical exam that the claimant was able to walk and squat without difficulty.<sup>726</sup> Nonetheless, the examiner found the claimant to be limited in his “ability to perform work-related activities like bending, stooping, lifting, crawling, squatting,” and other functions were impaired as a result of his heart disease.<sup>727</sup> However, a DDS examiner looked at the exam record two weeks later and came to the opposite conclusion, writing, “As this is inconsistent with the medical evidence provided and obtained, this is given little weight.”<sup>728</sup>

As such, DDS denied his claim on February 2, 2010 and a few weeks later in February, he hired Eric Conn as his representative.<sup>729</sup> His request for reconsideration was then also denied on May 7, 2010, with which the agency included the following explanation:

“The medical evidence shows you have been treated for your conditions. Although you had a heart attack and then open heart surgery, the medical evidence shows you are recovering well and there are no signs of complications at this time. Even though you are not able to work now, your condition is expected to improve. It will not prevent you from working for 12 months.”<sup>730</sup>

*Claimant Added to DB List.* On May 24, 2010, the claimant requested a hearing before an administrative law judge.<sup>731</sup> He was likewise included by Mr. Conn and Judge Daugherty on the July 2010 “DB List” and marked for a “physical” examination.<sup>732</sup>

Dr. Huffnagle saw the claimant on June 23, 2010 and concluded the claimant had degenerative arthritis, which was not previously documented by any doctor.<sup>733</sup> He added that the claimant’s arthritis was not going to improve with time, also noting that the claimant was unable to afford medical care, and that his prognosis for the future was “guarded.”<sup>734</sup>

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<sup>724</sup> See Exhibit D-4, August 2009 Discharge Summary at 2.

<sup>725</sup> *Id.* at 2.

<sup>726</sup> See Exhibit D-8, January 2010 Internal Medicine Examination at 1 and 6.

<sup>727</sup> *Id.* at 7.

<sup>728</sup> See Exhibit D-9, Physical Residual Functional Capacity Assessment at 7 and 8.

<sup>729</sup> See Exhibit D-10, February 2, 2010 Notice of Disapproved Claims and Exhibit C-11, February 22, 2010 Appointment of Representative and Fee Agreement

<sup>730</sup> See Exhibit D-12, May 7, 2010 Notice of Reconsideration at 1.

<sup>731</sup> See Exhibit D-13, May 24, 2010 Request for Hearing by Administrative Law Judge at 1.

<sup>732</sup> See Exhibit D-14, DB July 2010 CLF030809 at 1.

<sup>733</sup> See Exhibit D-2, June 23, 2010 Social Security Disability Medical Assessment at 4.

<sup>734</sup> *Id.* at 4.

However, Dr. Huffnagle's exam notes were inconsistent with the rest of the claimant's medical record. He wrote the claimant "is having mid back pain. He is also having pain in the right and left shoulder ... This man's pain came on gradually after he had cardiac surgery in 2009."<sup>735</sup> The evidence reflected the opposite, that the claimant reported no pain at all in his shoulders. At the time the claimant was hospitalized for his heart condition, exam records from July 27, 2009 indicate that the claimant "denies any acute or chronic joint pain" and from July 28, 2009 visit indicate "Musculoskeletal: No claudication [limping], edema [swelling], joint pain, or gait disturbance."<sup>736</sup> Likewise, records from an emergency room visit for pneumonia on September 5, 2009 indicate no issues with any movement or pain in the claimant's extremities that might be expected with severe osteoarthritis.<sup>737</sup> Furthermore, the claimant provided no indication of back or joint pain at the consultative examination performed in early 2010.<sup>738</sup>

Also on June 23, 2010, Dr. Huffnagle signed RFC form Version #5, which found the claimant to have extreme physical limitations.<sup>739</sup>

Dr. Huffnagle's conclusions in the RFC were significantly different from a DDS-level doctor who reviewed the claimant on May 6, only a month-and-a-half prior.<sup>740</sup> While the DDS doctor concluded the claimant could lift 50 pounds occasionally and 25 pounds frequently, Dr. Huffnagle concluded the claimant could only lift 10 and five pounds respectively.<sup>741</sup> Also, while the DDS doctor found the claimant able to stand and walk for six hours a day, Dr. Huffnagle said it was not possible for the claimant to do so for more than an hour.<sup>742</sup>

*Claimant Awarded Benefits.* Judge Daugherty issued his fully favorable decision on August 3, 2010, writing: "Having considered all of the evidence, I am satisfied that the information provided by Dr. Huffnagle most accurately reflects the claimant's impairments and limitations. Therefore, the claimant is limited to less than sedentary work at best."<sup>743</sup>

**Case E:** Judge Daugherty awarded benefits to a claimant who he said was limited to performing "less than sedentary" work due to degenerative arthritis and a dislocated patella.<sup>744</sup> His decision solely cited the medical opinion of Dr. Huffnagle and disregarded the other medical evidence in the file.<sup>745</sup> Prior to being seen by Dr. Huffnagle, however, the claimant's medical record contained no evidence to indicate that the claimant was ever diagnosed with degenerative arthritis.

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<sup>735</sup> *Id.* at 1.

<sup>736</sup> See Exhibit D-3, July 2009 Medical Records at 4 and see Exhibit D-15, July 2009 Medical Records.

<sup>737</sup> See Exhibit D-16, September 2009 Medical Records at 1-3.

<sup>738</sup> See Exhibit D-8, January 2010 Internal Medicine Examination at 1-2.

<sup>739</sup> See Exhibit D-2, June 23, 2010, Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D. at 5 and 8.

<sup>740</sup> See Exhibit D-17, Physical Residual Functional Capacity Assessment at 8.

<sup>741</sup> *Id.* at 2 and see Exhibit D-2, June 23, 2010, Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D. at 5.

<sup>742</sup> See Exhibit D-17, Physical Residual Functional Capacity Assessment at 2 and see Exhibit D-2, June 23, 2010, Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D. at 5.

<sup>743</sup> See Exhibit D-1, August 3, 2010 Decision, Administrative Law Judge David B. Daugherty at 1 and 3.

<sup>744</sup> See Exhibit E-1, August 2, 2010 Decision, Administrative Law Judge David B. Daugherty at 3.

<sup>745</sup> *Id.* at 3.

In the fall of 2009 the claimant injured her knee while playing volleyball at a family reunion, and an MRI performed shortly after the injury indicated that her kneecap was dislocated.<sup>746</sup> The claimant underwent arthroscopic knee surgery, and was ordered to attend physical therapy.<sup>747</sup> She attended physical therapy sessions over the following months, and while she still had pain and some complications, was making progress.<sup>748</sup> Notes from a visit about three months later state “[Patient] states Doctor wants her to finish the two visits left on her script and then hold on therapy and try doing normal activities at home. Doctor stated after visit with next time he may try to send her back to work at 4 hours per day.”<sup>749</sup>

Several days later on December 17, 2009 she filed her initial application and cited a “left knee injury, trouble walking, bulging disc in back and upper neck, pain in low back, numbness in arms, depression, anxiety, and trouble sleeping” as the illnesses and injuries that prevented her from able to work.<sup>750</sup> The application made no specific mention of arthritis.<sup>751</sup> She hired Eric Conn as her attorney on December 23, 2009.<sup>752</sup>

Following a physical therapy session that month, the claimant remarked to her therapist, “she is having less pain … and thinks she is stronger but still has a slight limp [when] walking.” During the sessions, she was able to use the treadmill for 12 minutes and an exercise bike for 15 minutes.<sup>753</sup>

Records from a follow-up appointment in February 2010 indicate that the claimant made slow progress, was continuing to complain of symptoms related to her knee cap, but also stated she had returned “back to work” despite being in the process of applying for permanent disability.<sup>754</sup>

Regarding her claim of a bulging disc in her upper back and neck, an MRI performed on February 23 showed only “mild degenerative disc disease with a “right paracentral disc protrusion [bulging disc] at the C5-C6 level<sup>755</sup> She also claimed numbness in her arms, but a nerve conduction study performed in March 2010 returned normal results.<sup>756</sup>

The claimant’s file did not include any records related to depression, but a consultative mental exam from February 2010 identified other mental impairments, stating that:

[T]he claimant has no impairment to understand, retain, and follow simple instructions. The claimant has no impairment to sustain concentration and persistence to complete tasks in a normal time. The claimant has marked impairment to maintain social interactions with supervisors, friends, and the public. The claimant has marked

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<sup>746</sup> See Exhibit E-2, September 2009 Medical Records at 1; see Exhibit E-3, February 2010 Consultative Examination at 1-2; and see Exhibit E-4, September 2009 Medical Records

<sup>747</sup> See Exhibit E-5, September 2009 Operative Report at 1 and see Exhibit E-6, September 2009 Physical Therapy Evaluation at 2.

<sup>748</sup> See Exhibit E-7, November 2009 Medical Records at 1.

<sup>749</sup> See Exhibit E-8, Evaluation and Progress Notes at 1.

<sup>750</sup> See Exhibit E-9, Disability Report-Adult-Form SSA-3368 at 2 and 9.

<sup>751</sup> *Id.* at 2.

<sup>752</sup> See Exhibit E-10, December 23, 2009 Appointment of Representative and Fee Contract at 1-2.

<sup>753</sup> See Exhibit E-8, Evaluation and Progress Notes at 1.

<sup>754</sup> See Exhibit E-11, February 2010 Medical Records at 1.

<sup>755</sup> See Exhibit E-12, February 2010 Diagnostic Imaging Report at 1.

<sup>756</sup> See Exhibit E-13, March 2010 Nerve Conduction Study Report at 1.

impairment to adapt and respond to the pressures of normal day-to-day work activity. Based on the claimant's statements, it appears she may have additional impairments resulting from physical problems.<sup>757</sup>

When the agency denied the initial SSDI application on April 21, 2010, it noted that while she had some limitations, she was still able to work:

You are somewhat limited by your knee, back and neck problems. Your ability to lift and carry objects is decreased. Although you do have some problems with your arms, you are still able to grasp, hold and use most objects effectively with normal breaks. Although you do have some concentration problems, you are still able to remember and follow simple instructions. The evidence does not show any other conditions which significantly limit your ability to work. ... We have determined that your condition is not severe enough to keep you from working.<sup>758</sup>

She appealed the decision several days later and asked for reconsideration.<sup>759</sup> On May 17, 2010, a DDS examiner reviewed her file and found not only that she had minimal limitations, but had returned to work.<sup>760</sup> The same day, she was denied again with the following rationale, "This claimant has a residual functional capacity for Medium work, is a younger individual, has a college education, and work experience ... there are a significant number of occupations for which this claimant qualifies."<sup>761</sup>

*Claimant Added to DB List.* A week later she appealed to have her case heard before an administrative law judge.<sup>762</sup> Mr. Conn and Judge Daugherty put the claimant's name on the July 2010 "DB List" and indicated the need for a "physical" exam.<sup>763</sup>

During the application process the agency asked the claimant – in late April and again in late May – whether her condition had improved or was worsening, and each time she replied, "No."<sup>764</sup> During her visit with Dr. Huffnagle on June 23, 2010, he discovered and diagnosed degenerative arthritis affecting her lumbar spine, cervical spine, and her knees, which was not mentioned by any other doctor in her file, along with the claimant's dislocated kneecap, for which she received treatment sufficient enough for her to go back to work.<sup>765</sup>

In his exam report he described her current medical symptoms the following way: "This woman is experiencing low back pain with pain in her right leg. She also has severe pain in her left knee. She has neck pain with pain that radiates into her right shoulder and headaches."<sup>766</sup> He

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<sup>757</sup> See Exhibit E-3, February 2010 Consultative Examination at 7.

<sup>758</sup> See Exhibit E-14, April 21, 2010 Notice of Disapproved Claim at 1.

<sup>759</sup> See Exhibit E-15, April 26, 2010 Request for Reconsideration at 1.

<sup>760</sup> See Exhibit E-16, May 17, 2010 Physical Residual Functional Capacity Assessment at 2-3 and 8.

<sup>761</sup> See Exhibit E-17, Simplified Vocational Rationale at 1.

<sup>762</sup> See Exhibit E-18, May 26, 2010 Request for Hearing by Administrative Law Judge at 1.

<sup>763</sup> See Exhibit D-14, DB July 2010 CLF030809

<sup>764</sup> See Exhibit E-19 Disability Report – Appeal-Form SSA-3441 at 2, 6, 7, and 10.

<sup>765</sup> See Exhibit E-20, June 23, 2010 Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D. at 1 and 4.

<sup>766</sup> *Id.* at 1.

noted as well that, “This woman’s work history is significant in that her job required her to lift...repetitively.”<sup>767</sup>

After diagnosing the claimant with degenerative arthritis, he concluded that her condition would not improve with time, noting that she would need medical care for the rest of her life.<sup>768</sup> The same day, Dr. Huffnagle signed RFC Version #1.<sup>769</sup> However, the findings of this RFC were inconsistent both with his own exam report as well as with the claimant’s medical record. For example, his exam report found, “She cannot walk on her heels. She cannot walk on her toes.”<sup>770</sup> In the RFC signed by Dr. Huffnagle, though, it found she could stand and walk “without interruption” for 30 minutes and for three hours in an 8-hour work day.<sup>771</sup>

Moreover, Dr. Huffnagle concluded the woman’s back and knee problems were so severe as to prevent her from bending or walking, yet the RFC he signed said she could “Constantly” perform “Balancing,” “Stooping,” “Crouching” and “Kneeling.”<sup>772</sup>

Finally, in a RFC completed by the agency in May, only a month prior to Dr. Huffnagle’s exam, the agency found the claimant able to lift 50 pounds occasionally, and 25 pounds frequently.<sup>773</sup> Yet, Dr. Huffnagle’s RFC found her able to lift only 8 and 5 pounds respectively.<sup>774</sup>

*Claimant Awarded Benefits.* On August 2, 2010, Judge Daugherty issued a fully favorable decision, which gave Dr. Huffnagle’s exam exclusive weight relative to the other medical evidence.<sup>775</sup> He concluded the claimant had two severe impairments, “degenerative arthritis and dislocated [sic] patella” – the same conclusion reached by Dr. Huffnagle.<sup>776</sup>

He failed, however, to explain that the claimant’s other medical files contained no reference to degenerative arthritis, indicated that she was recovering from her knee injury, and that she had gone back to work. In his opinion, he concluded, as he did in many of the cases reviewed by the Committee:

Having considered all of the evidence, I am satisfied that the information provided by Dr. Huffnagle most accurately reflects the claimant’s impairments and limitations. Therefore, the claimant is limited to less than sedentary work at best.<sup>777</sup>

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<sup>767</sup> *Id.* at 1.

<sup>768</sup> *Id.* at 4.

<sup>769</sup> *Id.* at 6 and 9.

<sup>770</sup> *Id.* at 3.

<sup>771</sup> *Id.* at 6.

<sup>772</sup> *Id.* at 3 and 7.

<sup>773</sup> See Exhibit E-16, May 2010 Physical Residual Functional Capacity at 2.

<sup>774</sup> See Exhibit E-20, June 23, 2010 Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D. at 6.

<sup>775</sup> See Exhibit E-1, August 2, 2010 Decision, Administrative Law Judge David B. Daugherty at 1, 3, and 5.

<sup>776</sup> *Id.* at 3.

<sup>777</sup> *Id.* at 3.

**Case F:** Here, Judge Daugherty awarded benefits to a claimant for “osteoarthritis, sciatica, and diabetes,” which he determined limited her to performing sedentary work.<sup>778</sup> However, the claimant’s case file contained no evidence at all of diabetes until she was seen by Dr. Huffnagle, who made that diagnosis without any indication of laboratory results to confirm the diagnosis.<sup>779</sup> Of note, Dr. Huffnagle’s exam write-up bore similarities to his write-up for the claimant in case E above, whom he examined on the same day.

The claimant alleged on onset date of her symptoms of April 2, 2008, which she said was the day she stopped working due to back and hip pain, along with other symptoms.<sup>780</sup> Despite her complaints of severe pain, her medical records do not clearly indicate a precise problem.

A lumbar X-ray performed two weeks after she left her job in April 2008 indicated no abnormalities.<sup>781</sup> A subsequent MRI performed in May of that year identified some issues that could have been causing the claimant’s pain, however, including a left lateral disc protrusion producing moderate foraminal stenosis [narrowing] affecting the exiting L4 nerve root.<sup>782</sup> At a subsequent visit in August, the claimant’s physician found her to be improving and wrote:

This lady was evaluated in May of this year with back and left leg pain. An MRI revealed a left lateral disc protrusion at L4-L5. She continues to have these symptoms, but has improved since being off work since 4.2.2008. She is now 50-70% better. ... I discussed options with her, including surgical intervention. Her sciatica seems to be improving and she has a resolving left L4 radiculopathy [nerve pain]. She will continue with conservative therapy and remain off work for six weeks.<sup>783</sup>

In November, this same treating physician wrote a letter clearing her to return to work, writing: “[The claimant] has been on medical leave for some time. Our most recent correspondence notes [she] may return to work with restrictions.....it is our recommendation that she complete a functional capacity evaluation to address specifics.”<sup>784</sup> In December, 2008 she visited an orthopedist for testing, which found she could work: “The results indicate that [she] is able to work at the LIGHT Physical Demand Level” as well as that she could lift and carry 20 pounds.<sup>785</sup>

She applied for disability on September 1, 2009, claiming a large number of conditions: “complications from chronic varicosities, Raynaud’s phenomenon, posterior tibial tendon dysfunction, low back pain, hip pain, knee pain, osteoarthritis, hypertension, depression, anxiety, and sleep deprivation.”<sup>786</sup> However, she did not allege diabetes.<sup>787</sup>

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<sup>778</sup> See Exhibit F-1, August 3, 2010 Decision, Administrative Law Judge Davud B. Daugherty at 3.

<sup>779</sup> See Exhibit F-2, June 23, 2010 Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D. at 4.

<sup>780</sup> See Exhibit F-3, Disability Report – Adult-Form SSA-3368 at

<sup>781</sup> See Exhibit F-4, April 2008 Medical Records at 1.

<sup>782</sup> See Exhibit F-5, May 2008 Medical Records at 1.

<sup>783</sup> See Exhibit F-6, August 2008 Medical Records at 1-2.

<sup>784</sup> See Exhibit F-7, November 2008 Medical Records at 1.

<sup>785</sup> See Exhibit F-8, December 2008 Functional Capacity Evaluation at 1.

<sup>786</sup> See Exhibit F-3, Disability Report – Adult-Form SSA-3368 at 2,

<sup>787</sup> *Id.* at 2.

In November 2009, the agency sent her for a physical examination during which the claimant specifically denied having diabetes at all.<sup>788</sup> In the exam notes explaining her past medical history, it was written: “Endocrine Hx [History]: Claimant denies diabetes.”<sup>789</sup>

The claimant’s initial application was denied on January 20, 2010, and then again at reconsideration on April 13, 2010.<sup>790</sup> The agency determined she could work, but at a pace that was less physically demanding than her previous job as a medical assistant.<sup>791</sup> The reconsideration denial stated:

Although you are somewhat limited by your conditions, medical evidence shows you are still capable of doing some work related activities. … We realize that your condition prevents you from doing any of your past work, but it does not prevent you from doing work which is less demanding and requires less physical effort.<sup>792</sup>

She appealed the decision the next day and requested a hearing in front of an administrative law judge.<sup>793</sup> In a statement faxed to the agency at the same time she reiterated her conditions, but still made no mention of diabetes.<sup>794</sup>

*Claimant Added to DB List.* On May 14, 2010, she hired Mr. Conn as her representative.<sup>795</sup> Mr. Conn and Judge Daugherty placed her on the July 2010 “DB List” and marked her as needing a “physical” exam.<sup>796</sup>

Dr. Huffnagle examined the claimant on June 23, 2010, and his exam notes found: “This woman is experiencing low back pain with pain into both the right and left leg. She has more pain in the right leg than in the left leg. She also has her right ankle wrapped up and tells us that she has stretched tendons in the right ankle that she is currently being treated for.”<sup>797</sup>

However, his exam notes bore a striking similarity with another claimant’s diagnosis. For the claimant discussed above in case D, who Dr. Huffnagle examined on the same day, he determined the claimant’s back issues related to her career, stating:

This woman’s work history is significant in that… her job required her to lift…repetitively. Her pain came on gradually over time.<sup>798</sup>

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<sup>788</sup> See Exhibit F-9, November 2009 Internal Medicine Evaluation at 1.

<sup>789</sup> *Id.* at 1.

<sup>790</sup> See Exhibit F-10, January 20, 2010 Notice of Disapproved Claim at 1 and see Exhibit F-11, Notice of Reconsideration at 1.

<sup>791</sup> See Exhibit F-11, April 13, 2010 Notice of Reconsideration at 1.

<sup>792</sup> *Id.* at 1.

<sup>793</sup> See Exhibit F-12, April 14, 2010 Request for Hearing by Administrative Law Judge at 1.

<sup>794</sup> See Exhibit F-13, April 13, 2010 Statement of Appeal Filing at 2.

<sup>795</sup> See Exhibit F-14, May 14, 2010 Appointment of Representative and Fee Contract at 1 and 2.

<sup>796</sup> See Exhibit D-14, DB July 2010 CLF030809 at 1.

<sup>797</sup> See Exhibit F-2, June 23, 2010 Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D. at 1.

<sup>798</sup> See Exhibit E-20, June 23, 2010 Social Security Disability Medical Assessment, Frederic T. Huffnagle M.D. at 1.

For both claimants as well, he wrote a nearly identical description of their conditions, in this case writing:

This woman's work history is significant in that she...repetitively lifted...during the course of her work. Her problems with her back came on gradually over time. She has osteoarthritis and degenerative arthritis.<sup>799</sup>

In addition, Dr. Huffnagle also diagnosed the claimant with diabetes, without the benefit of any objective diagnostic testing, which is not mentioned in any of the claimant's other medical records, and which she denied having only six months prior.<sup>800</sup> He also diagnosed the claimant with "Osteoarthritis," "Degenerative arthritis," and "Sciatica."<sup>801</sup>

Dr. Huffnagle signed the Conn Law Office's RFC Version #6 on the same day.<sup>802</sup>

*Claimant Awarded Benefits.* On August 3, 2010, Judge Daugherty wrote a brief, four-page fully favorable decision awarding benefits to the claimant.<sup>803</sup> He based his decision solely on the findings of Dr. Huffnagle and found the claimant to have "the following severe impairments: osteoarthritis, sciatica and diabetes."<sup>804</sup>

He found the claimant disabled since April 2, 2008 when she last stopped working, though did not explain why this was the case in light of her being cleared to work several times after that date.<sup>805</sup> His opinion did not also explain why he believed the claimant had diabetes in light of the evidence otherwise.<sup>806</sup> He instead wrote that the agency doctors were "given little weight because another medical opinion is more consistent with the record as a whole" and concluded:

Having considered all of the evidence, I am satisfied that the information provided by Dr. Huffnagle most accurately reflects the claimant's impairments and limitations. Therefore, the claimant is limited to less than sedentary work at best....Considering the claimant's age, education, work experience, and residual functional capacity, there are no jobs that exist in significant numbers in the national economy that the claimant can perform.<sup>807</sup>

### **3. Judge Daugherty Failed to Address Claimant Noncompliance**

According to agency regulations, individuals are required to follow physician-prescribed treatments in order to qualify for disability benefits. This prevents someone with a treatable

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<sup>799</sup> See Exhibit F-2, June 23, 2010 Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D. at 1.

<sup>800</sup> *Id.* at 4 and see Exhibit F-13, April 13, 2010 Statement of Appeal Filing at 2.

<sup>801</sup> See Exhibit F-2, June 23, 2010 Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D. at 4.

<sup>802</sup> *Id.* at 5 and 8.

<sup>803</sup> See Exhibit F-1, August 3, 2010 Decision, Administrative Law Judge David B. Daugherty at 4.

<sup>804</sup> *Id.* at 3.

<sup>805</sup> *Id.* at 1 and see Exhibit F-7, November 2008 Medical Records at 1 and Exhibit F-8, December 2008 Functional Capacity Evaluation at 1.

<sup>806</sup> See Exhibit F-1, August 3, 2010 Decision, Administrative Law Judge David B. Daugherty at 3-4.

<sup>807</sup> *Id.* at 3-4

condition from receiving benefits when they might otherwise work. Judge Daugherty failed to address this issue in the cases reviewed, and instead awarded benefits to individuals who may have been ignoring their doctors.

According to SSA rules: “Individuals with a disabling impairment which is amenable to treatment that could be expected to restore their ability to work must follow the prescribed treatment to be found under a disability, unless there is a justifiable cause for the failure to follow such treatment.”<sup>808</sup> Failure to follow prescribed treatment is referred to as noncompliance. These rules prevent claimants from manipulating a manageable illness in order to qualify for benefits. At a minimum, in instances where the medical evidence of record reflects evidence of patient noncompliance, an ALJ is required to develop evidence around issues of noncompliance to determine whether or not it is justifiable in deciding whether to award benefits.<sup>809</sup>

The Committee found cases in which the medical evidence included indications of claimant noncompliance with prescribed treatment, yet Judge Daugherty’s written opinions provided neither discussion of that evidence, nor his evaluation of its relevance in choosing to award benefits.

**Case G:** In this case, Judge Daugherty awarded benefits to a claimant who injured his arm in a traffic accident, but based his decision on inaccurate information.<sup>810</sup> Whereas the claimant’s accident occurred in December 2009, Judge Daugherty awarded benefits as of April 2009 when the man stopped working – but confused the two dates.<sup>811</sup> Moreover, the claimant failed to follow his doctor’s instructions following his accident, delaying surgery and failing to participate in physical therapy, which greatly inhibited his recovery.<sup>812</sup>

When the accident occurred, the claimant was driving his truck through the woods, but injured his arm when it struck a tree outside of the window.<sup>813</sup>

Notes from the emergency room visit on that date indicate that the claimant was diagnosed with fractures in both the radius and ulna bones in his left forearm.<sup>814</sup> The emergency room physician reset the fractures and put the claimant in a splint.<sup>815</sup> Since surgery was a strong possibility he was given the name and address of an orthopedic surgeon and instructed: “Be at his office at 8am in the morning. DO NOT EAT OR DRINK ANYTHING AFTER MIDNIGHT TONIGHT.”<sup>816</sup>

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<sup>808</sup> SSR 82-59: Titles II and XVI: Failure to Follow Prescribed Treatment, [http://www.ssa.gov/OP\\_Home/rulings/di/02/SSR82-59-di-02.html](http://www.ssa.gov/OP_Home/rulings/di/02/SSR82-59-di-02.html)

<sup>809</sup> Ibid.

<sup>810</sup> See Exhibit G-1, August 2, 2010 Decision, Administrative Law Judge David B. Daugherty at 1.

<sup>811</sup> See Exhibit G-2, December 2009 Medical Records at 1 and see Exhibit G-1, August 2, 2010 Decision, Administrative Law Judge David B. Daugherty at 1.

<sup>812</sup> See Exhibit G-2, December 2009 Medical Records at 1.

<sup>813</sup> *Id.* at 2.

<sup>814</sup> See Exhibit G-3, December 2009 Medical Records at 1.

<sup>815</sup> *Id.* at 3.

<sup>816</sup> *Id.* at 5.

However, he failed to show up the next morning and did not see a surgeon for five more days.<sup>817</sup> Notes from the orthopedic physician state:

Patient, 5 days prior, was driving his truck in the woods. His truck started to slip down the hill...he was found in the Emergency Department to have a left both-bone forearm fracture. He was told to follow up 1<sup>st</sup> thing in the morning for a clinical evaluation and placed on the OR schedule given the severity of his injury. He did not show up in clinic. The clinical staff tried to contact him given the phone number as listed in the system and were unable to do so, since the numbers were unlisted. Patient showed up in clinic today 5 days out with severe pain in his left wrist, inability to flex and extend his fingers, and numbness in his fingers and hand. This is likely due to some degree of compartment syndrome, which was not treated secondary to the patient's refusal to follow up in a timely manner ... After the risks of surgery were discussed with the patient and the fact that since he did not follow up in a timely manner, he may not get recovery of his nerve or muscle function of his hand...<sup>818</sup>

As such, the claimant's failure to show up the following morning exacerbated the medical condition which formed the basis for his subsequent application for disability benefits.<sup>819</sup>

In a follow up visit in December 2009, the same orthopedic physician noted that the claimant was still experiencing stiffness in his arm, and said, "The necessity of PT [physical therapy] was also described although I doubt, given the financial status of the patient, that he will actually actively participate in PT..."<sup>820</sup> In that same visit, the physician said, "It is anticipated that the patient will most likely be off work approximately 6 months from date of injury."<sup>821</sup>

On December 30, 2009, the claimant hired Eric Conn as his representative.<sup>822</sup> The same day he requested his case be transferred to the Prestonsburg, Kentucky SSA office.<sup>823</sup> In doing so, he signed a "Request for Transfer and Waiver of Travel Expenses," which allowed his case to be heard nearby Mr. Conn's law offices, but waived his opportunity to have SSA pay for his travel costs.<sup>824</sup>

The claimant filed for disability the next day on December 31, 2009, citing, "pain in arm, had two surgeries on left arm, can't use left hand, pain in knees and legs, and trouble breathing."<sup>825</sup> However, in filing his application he said that his disability began on April 21, 2009, when he stopped working, rather than December, when medical records show he was injured.<sup>826</sup>

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<sup>817</sup> See Exhibit G-2, December 2009 Medical Records at 1.

<sup>818</sup> *Id.* at 1-2.

<sup>819</sup> See Exhibit G-4, Disability Report – Adult – Form-SSA-3368 at 2.

<sup>820</sup> See Exhibit G-5, December 2009 Medical Records at 1.

<sup>821</sup> *Id.* at 1.

<sup>822</sup> See Exhibit G-6, December 30, 2009 Appointment of Representative and Fee Agreement at 1-2.

<sup>823</sup> See Exhibit G-7, December 30, 2009 Request for Transfer and Waiver of Travel Expenses at 1-2.

<sup>824</sup> *Id.* at 1-2.

<sup>825</sup> See Exhibit G-4, Disability Report – Adult-Form-SSA-3368 at 2.

<sup>826</sup> *Id.* at 3.

Moreover, the only medical records he submitted were dated from December 2009 onward – there was nothing related to a disability beginning in April 2009.

As is typical when a claimant submits few medical records, the agency sent him to a consultative exam in March 2010.<sup>827</sup> The doctor determined the claimant “should be able to sit, walk, and/or stand for a full workday with adequate breaks. He would have moderate restrictions in his ability to lift/carry objects due to his left arm pain, weakness and decreased range of motion. He can hold a conversation, respond appropriately to questions, carry out and remember instructions.”<sup>828</sup>

Less than two weeks later in April, however, another doctor concluded that even these moderate limitations were not valid and said the prior doctor’s view “is given no weight as it is regarding condition now,” and would not last more than 12 months.<sup>829</sup> He added that a recent physical exam was “quite unremarkable except for left UE fidings [referring to the claimant’s left arm injuries] and that “all-in-all, physical expected to resolve and then have no impact on the ability to do basic work-related activities.”<sup>830</sup>

The claimant’s initial application was denied on April 8, 2010, and then again on May 7, 2010.<sup>831</sup> In its reconsideration denial, the agency wrote:

You said you became disabled on 04/21/2009 because of problems with your left arm and hand, pain in your knees, and trouble breathing. The medical evidence shows that you have been treated for your conditions. Although you report some discomfort following your surgery, your medical records show good healing. Although you report pain in your hands, you are still able to do basic grasping and handling of objects with your right hand. Although you report breathing difficulties, you are able to breathe in a satisfactory manner. We have reviewed your claim and determined that your conditions are not considered disabling. Even though you are not able to work now, your condition is expected to improve. It will not prevent you from working for 12 months.<sup>832</sup>

*Claimant Added to DB List.* A week later he appealed to request a hearing before an ALJ.<sup>833</sup> Mr. Conn and Judge Daugherty placed his name on the July 2010 “DB List” and marked him down for a “physical” exam.<sup>834</sup>

Dr. Huffnagle’s medical exam, conducted on June 23, 2010, described the claimant’s current medical symptoms the following way: “This man is experiencing low back pain. He also has

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<sup>827</sup> See Exhibit G-8, March 2010 Medical Records at 1.

<sup>828</sup> *Id.* at 3.

<sup>829</sup> See Exhibit G-9, April 2010 Case Analysis at 1.

<sup>830</sup> *Id.* at 1.

<sup>831</sup> See Exhibit G-10, April 9, 2010 Notice of Disapproved Claim at 1 and see Exhibit G-11, May 7, 2010 Notice of Reconsideration at 1.

<sup>832</sup> *Id.* at 1.

<sup>833</sup> See Exhibit G-11, May 18, 2010 Request for Hearing by Administrative Law Judge at 1.

<sup>834</sup> See Exhibit D-14, DB July 2010 CLF030809 at 1.

right and left knee pain. He has neck pain with pain that radiates into the left shoulder. He is experiencing headaches, which he attributes to his cervical pain. He also has left wrist pain.”<sup>835</sup>

In his exam report, however, he also inaccurately said the claimant’s truck accident and injury occurred in April 2009 rather than in December 2009: “On 4/21/09 this man had his left arm resting on the door of his truck with the window down...which resulted in displacement of the bone in his left arm, and jarring of his left shoulder.”<sup>836</sup> His description of the claimant’s surgical history was also inaccurate, which suggested the claimant had surgery the same day he was injured, rather than five days later, writing: “He was taken to [the hospital] and had surgery there and then a few days later had a second surgery.”<sup>837</sup>

Dr. Huffnagle diagnosed the claimant with “Traumatic arthritis,” “Fracture of the left arm,” and “Cervical sprain/strain.”<sup>838</sup> Moreover, while several agency doctors said the claimant was sure to heal, Dr. Huffnagle concluded “this man’s traumatic arthritis is not going to improve with time. It is affecting his lumbar spine and his shoulder. He will need lifelong treatment for this.”<sup>839</sup>

On the same day, Dr. Huffnagle signed the Conn Law Office RFC Version #2.<sup>840</sup>

*Claimant Awarded Benefits.* Judge Daugherty issued his fully favorable decision on August 2, 2010 after concluding the claimant had several severe limitations, specifically, the same conditions diagnosed by Dr. Huffnagle: “traumatic arthritis, fracture of left arm and cervical strain/sprain.”<sup>841</sup> His written decision failed to account for the claimant’s noncompliance in showing up for his surgical appointment.<sup>842</sup> By failing to hold a hearing he was unable to question the claimant about why this happened.<sup>843</sup>

He based his determination solely on the opinion of Dr. Huffnagle, who he said most accurately represented the facts of this case.<sup>844</sup> He did not, however, reconcile the numerous factual errors made by Dr. Huffnagle in his exam report.<sup>845</sup>

Judge Daugherty also determined the claimant’s disability began on April 21, 2009.<sup>846</sup> This was supported only by the claimant’s own statements, and the factual inaccuracy in Dr. Huffnagle’s report, which said the claimant’s accident occurred in April 2009.<sup>847</sup> However, he concluded:

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<sup>835</sup> See Exhibit G-13, June 23, 2010 Social Security Disability Medical Assessment, Frederic T. Huffnagle M.D. at 1.

<sup>836</sup> *Id.* at 1.

<sup>837</sup> *Id.*

<sup>838</sup> *Id.* at 4.

<sup>839</sup> *Id.*

<sup>840</sup> *Id.* at 5-8.

<sup>841</sup> See Exhibit G-1, August 2, 2010 Decision, Administrative Law Judge David B. Daugherty at 3 and 5.

<sup>842</sup> *Id.* at 3-4.

<sup>843</sup> *Id.* at 1.

<sup>844</sup> *Id.* at 3.

<sup>845</sup> *Id.* at 3-4

<sup>846</sup> *Id.* at 1.

<sup>847</sup> See Exhibit G-4, Disability Report-Adult-Form SSA-3368 at 3 and see Exhibit G-13, June 23, 2010 Social Security Disability Medical Assessment at 1.

Having considered all of the evidence, I am satisfied that the information provided by Dr. Huffnagle most accurately reflects the claimant's impairments and limitations. Therefore, the claimant is limited to less than sedentary work at best.<sup>848</sup>

#### 4. Judge Daugherty Failed to Assess Evidence of Drug and Alcohol Abuse

When evaluating cases in which evidence of drug or alcohol abuse is present, the ALJ is required to determine whether drug addiction or alcoholism is "a contributing factor material to the Commissioner's determination that the individual is disabled."<sup>849</sup> The agency follows a sequential process to determine whether drug and alcohol abuse is a material contributing factor. In instances where such abuse is the only factor present, the claim must be denied. In instances where other impairments are also present, the agency must determine whether the individual would still be disabled if the drug or alcohol abuse, and the associated conditions caused by that abuse, went away. The agency's guidance notes that adjudicators, including an ALJ, "must provide sufficient information so that a subsequent reviewer considering all of the evidence in the case record can understand the reasons.....whenever drug or alcohol abuse is an issue."<sup>850</sup>

Despite such guidance, a number of Judge Daugherty's decisions failed entirely to account for and reconcile evidence in the case file of drug or alcohol abuse, and as with other case examples discussed here, relied solely on the opinions provided by Dr. Huffnagle and others to justify the award of benefits.

**Case H:** Judge Daugherty awarded benefits to a claimant for liver problems, among other conditions, who also had lifelong alcoholism, but failed to address the claimant's alcohol use in his decision.<sup>851</sup> The claimant applied for benefits on the basis of stomach problems, diabetes, fatigue, pain in feet, back, legs, and knees, depression, nervousness, and anxiety.<sup>852</sup> Judge Daugherty awarded benefits on the basis that the claimant had cirrhosis, shortness of breath, and pain that limited him to performing less than sedentary work.<sup>853</sup> Judge Daugherty's decision relied exclusively on the medical opinion of Dr. Huffnagle, who never examined the claimant in person.<sup>854</sup>

Throughout the case file, the claimant's heavy alcohol use was well documented. According to the medical records,, it resulted in the claimant's temporary hospitalization.<sup>855</sup> Records from the visit in early 2006 showed the claimant was "...admitted with 1 week history of diffuse upper abdominal pain. The pain got worse yesterday. The patient has been drinking very heavily for the past few weeks. He has a history of heavy alcohol abuse. He has been drinking all of his

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<sup>848</sup> See Exhibit G-1, August 2, 2010 Decision, Administrative Law Judge David B. Daugherty at 3.

<sup>849</sup> Check cite: 42 U.S.C. 1382(c)

<sup>850</sup> [http://www.socialsecurity.gov/OP\\_Home/rulings/di/01/SSR2013-02-di-01.html](http://www.socialsecurity.gov/OP_Home/rulings/di/01/SSR2013-02-di-01.html) (will fix citations for this paragraph and clean up language)

<sup>851</sup> See Exhibit H-1, January 18, 2007 Decision, Administrative Law Judge David B. Daugherty at 1.

<sup>852</sup> See Exhibit H-2, Disability Report – Adult-Form SSA-3368 at 1.

<sup>853</sup> See Exhibit H-1, January 18, 2007 Decision, Administrative Law Judge David B. Daugherty at 1 and 2.

<sup>854</sup> *Id.* at 2 and see Exhibit H-3, January 12, 2007 File Review, Frederic T. Huffnagle at 1.

<sup>855</sup> See Exhibit H-4, March 2006 Consultation at 1.

life, as per the family.”<sup>856</sup> The physician noted that he drank a 12-pack per day for 30 years and smoked a pack and a half of cigarettes per day for 30 years as well.<sup>857</sup> On this particular occasion the claimant’s blood alcohol level reached .209 and he was hospitalized for 10 days.<sup>858</sup> Upon discharge, the claimant was diagnosed with multiple conditions, including alcoholism, and chronic pulmonary obstructive disease and was told to stop smoking, stop drinking, and to comply with a strict diet.<sup>859</sup> The discharge instructions did not indicate that the claimant should stop working.<sup>860</sup>

The claimant was hospitalized again on several occasions in which his alcohol abuse either played a role, or was discussed with treating physicians, both before and after the incident described above. In an earlier hospitalization in 2004, the claimant was involved in a motor vehicle accident as a passenger, and admitted to the emergency room with a blood alcohol content of .31 and minor injuries.<sup>861</sup>

On April 10, 2006 he hired Eric Conn as his attorney and applied for disability benefits, alleging: “stomach problems, diabetes, fatigue, pain in feet, back, legs and knees, depression, nervousness and anxiety.”<sup>862</sup> He said his problems began on January 15, 2004 when he stopped working.<sup>863</sup>

In late July 2006, the claimant was hospitalized for three days due to noncompliance with diabetes medication and acute gastroenteritis.<sup>864</sup> The exam notes stated:

Because of his chronic alcoholism, he was offered detox, but he refused. He also refused any involvement with AA meetings. He stated that he is going to stop drinking on his own....He was told at this point that he probably has cirrhosis of the liver. He had this diagnosis made in Hazard before with low platelets due to hypersplenism and his LFTs due to chronic alcohol cirrhosis. Again, he was told that he definitely needs to stop the ETOH [ethanol] abuse as mentioned above.<sup>865</sup>

Despite his doctor’s instructions to stop drinking, the claimant was again hospitalized in October 2006, admitted to the emergency room with abdominal pain and vomiting.<sup>866</sup> During the exam the doctors found:

The patient is a known insulin dependent diabetic. He went to [another state] for 2 weeks and did not take his Humalog insulin. The patient also has history of chronic alcoholism. He drinks about ½ a case to 1 case a day, and smokes about 2

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<sup>856</sup> *Id.* at 1.

<sup>857</sup> See Exhibit H-5, March 2006 History and Physical Examination at 2.

<sup>858</sup> *Id.* at 2 and see Exhibit H-6, March 2006 Discharge Summary at 1.

<sup>859</sup> *Id.*

<sup>860</sup> *Id.*

<sup>861</sup> See Exhibit H-7, July 2004 Medical Records at 1 and 2.

<sup>862</sup> See Exhibit H-8, April 10, 2006 Appointment of Representative at 1 and see Exhibit H-2, Disability Report – Adult-Form SSA-3368 at 2.

<sup>863</sup> *Id.* at 2.

<sup>864</sup> See Exhibit H-9, July 2006 Discharge Summary at 1.

<sup>865</sup> *Id.* at 2.

<sup>866</sup> See Exhibit H-10, October 2006 Discharge Summary at 1 and 2.

packs a day. ... His blood sugar dropped to around the 200 range but the patient signed himself out against medical advice. He was advised to use Humalog insulin at 30 units a.m. and 30 units p.m. If he needs alcohol rehab, he will call and ask for an appointment. He signed himself out.<sup>867</sup>

During the application process, however, the claimant failed to attend several consultative exams requested by the agency, despite being contacted several times.<sup>868</sup> According to a letter provided to the claimant on December 6, 2006, the agency denied his application for benefits over his failure to appear at these exams: “Due to a lack of medical information regarding your depression, nervousness, and anxiety, you were scheduled for a special medical examination...on Saturday, November 18, 2006. You were notified and reminded of this exam, but you did not keep the exam. Because there is insufficient evidence to make a complete determination, your claim is denied.”<sup>869</sup>

On December 14, 2006, he appealed and requested a hearing before an administrative law judge.<sup>870</sup>

*Claimant Added to DB List.* Mr. Conn and Judge Daugherty put the claimant on the January 2007 DB List and noted “MENTAL AOD [amend onset date] 04/11/06.”<sup>871</sup>

On January 12, 2007, Dr. Huffnagle signed a report titled, “Social Security Medical Disability Assessment,” which provided his conclusions about the claimant.<sup>872</sup> However, Dr. Huffnagle did not examine the claimant in person, but instead performed a “File Review,” which looks only at the paper records available.<sup>873</sup> His brief report, which was little more than half of a page in length, was faxed to SSA on January 16, the day before Judge Daugherty issued his decision.<sup>874</sup>

Dr. Huffnagle’s report noted the claimant had cirrhosis of the liver, but otherwise made no specific diagnoses, finding only complaints of “stomach problems, respiratory problems.”<sup>875</sup> Regarding his alcohol-related problems, he found, “The patient has a history of alcohol which likely accounts for some of his problems. However, his problems have now reached a level of severity that even if he were to stop drinking his problems would remain in the absence of alcohol.”<sup>876</sup>

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<sup>867</sup> *Id.* at 1-2.

<sup>868</sup> See Exhibit H-11, November 21, 2006 RE: Special Medical Examination at 1.

<sup>869</sup> See Exhibit H-12, December 6, 2006 Notice of Reconsideration at 1.

<sup>870</sup> See Exhibit H-13, December 14, 2006 Request for Hearing by Administrative Law Judge at 1.

<sup>871</sup> See Exhibit H-14, D.B. January CLF030654 at 2.

<sup>872</sup> See Exhibit H-3, January 12, 2007 Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D. at 1-2.

<sup>873</sup> *Id.* at 1 and *See* June 12, 2012 Affidavit of Jamie Lynn Slone ¶12.

<sup>874</sup> See Exhibit H-3, January 12, 2007 Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D. at 2.

<sup>875</sup> *Id.* at 1.

<sup>876</sup> *Id.*

He concluded his report by explaining the claimant would not be able to work, and even made precise judgments about the length of time he could work each day, despite never actually examining the claimant:

The patient due to severe uncontrolled abdominal pain would have a need for significant breaks that would cause him to be off tasks for long periods of time. It is my opinion within reasonable medical probability that this patient would only be able to stay on task for six hours in an eight hour workday and the six hours would not be continuous. His ability to stay on task at one time would be no more than one hour at a time.<sup>877</sup>

*Claimant Awarded Benefits.* Dr. Huffnagle's report was faxed to the agency on January 16, 2007.<sup>878</sup> Two days later – little more than a month after the claimant appealed his denial – Judge Daugherty issued a fully favorable decision, without holding a hearing.<sup>879</sup> Moreover, the decision was based exclusively on the brief file review conducted by Dr. Huffnagle.<sup>880</sup>

At no point in the written decision, however, did Judge Daugherty acknowledge the claimant's alcohol abuse, which even Dr. Huffnagle and other treating physicians documented to be the likely reason for his condition.<sup>881</sup> Rather, he found that the claimant had "the following 'severe' impairments: cirrhosis, SOB [shortness of breath], and pain."<sup>882</sup> Judge Daugherty did not specify anything more specific regarding the last impairment – "pain" – but simply found it limited him to less than sedentary work:

The evidence supports a finding that the claimant retains the following residual functional capacity: needs significant breaks, causing him to be off task for long periods of time and could stay on task no more than 6 hours in a work day. Having considered all of the evidence, I am satisfied that the information provided by Dr. Huffnagle most accurately reflects the claimant's impairments and limitations. Therefore, the claimant is limited to less than sedentary work, at best.<sup>883</sup>

Based on that finding, Judge Daugherty relied on the Medical Vocational Guidelines to award benefits to the claimant.

## 5. Factual Inaccuracies in Judge Daugherty's Decisions and Misuse of Medical Opinions

The Committee reviewed a number of cases where, in addition to the sole reliance on medical opinions procured by Eric Conn, Judge Daugherty misused information from the opinions themselves. Thus, his decisions contained numerous factual inaccuracies, which were important in the award of benefits.

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<sup>877</sup> *Id.* at 1-2.

<sup>878</sup> *Id.* at 2.

<sup>879</sup> See Exhibit H-1, January 18, 2007 Decision, Administrative Law Judge David B. Daugherty at 1 and 4.

<sup>880</sup> *Id.* at 2.

<sup>881</sup> *Id.* at 1-4.

<sup>882</sup> *Id.* at 1.

<sup>883</sup> *Id.* at 2.

**Case I:** Judge Daugherty awarded benefits to a man for a disc prolapse and chronic pain despite being cleared to work by several doctors.<sup>884</sup>

Records in the file indicate that the claimant hired Eric Conn on March 29, 2006 and applied for benefits the next day.<sup>885</sup> His application alleged he became disabled that same month.<sup>886</sup> This claimant applied for benefits due to “problems with both ankles swelling, calcium deposits on ligaments, arthritis in knees, bone spurs and arthritis in disc in back and all joints, left elbow has been broken and unable to straighten arm, pain in hands, limited use of hands, pain in back that goes to legs and knees, borderline cholesterol, and hearing loss in both ears.”<sup>887</sup>

Following his application, the agency sent the claimant for a consultative physical exam in May 2006.<sup>888</sup> In the medical history section of the exam report, the claimant traced his ankle pain to a diagnosis of calcium deposits on the tendons in both ankles from 2003, and said that he had pain in his ankles about 4-5 days per week.<sup>889</sup> His elbow fracture was from 2000, and occurred while playing basketball.<sup>890</sup> The claimant said that “he can no longer play sports because of his elbow. He complains of pain in his left elbow about 2 times per month and he is unable to use his left arm at those times.”<sup>891</sup>

Despite reporting that he stopped working due to his disability, his records also showed that his disability began on the same day he was laid off.<sup>892</sup> In the employment section of the exam notes it stated that, “Patient last worked on March 17, 2006...He worked there for 6 months before being laid off.”<sup>893</sup>

Based on the physical exam, the physician concluded that the claimant was fully able to work and had almost no significant limitations:

[I]t would appear that this claimant does have the ability to do such work related activities as sitting, sanding, moving about, lifting, carrying, handling objects, hearing and seeing and speaking and traveling. His routine physical examination today was within normal limits with the exception of some findings of some mild arthritis in the knees....while I do believe he does have findings compatible with some mild arthritis, I do not find that this arthritis is of such an extent that it would prevent him from performing his job functions...Based on his examination

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<sup>884</sup> See Exhibit I-1, January 16, 2007 Decision, Administrative Law Judge David B. Daugherty at

<sup>885</sup> See Exhibit I-2, March 29, 2006 Appointment of Representative at 1 and see Exhibit I-3, Application Summary for Disability Benefits at 1.

<sup>886</sup> *Id.* at 1.

<sup>887</sup> See Exhibit I-4, Disability Report-Adult-Form SSA-3368 at 2.

<sup>888</sup> See Exhibit I-5, May 2006 Consultative Examination at 1.

<sup>889</sup> *Id.* at 1.

<sup>890</sup> *Id.* at 2.

<sup>891</sup> *Id.*

<sup>892</sup> *Id.* and see Exhibit I-4, Disability Report-Adult Form SSA- 3368 at 2.

<sup>893</sup> See Exhibit I-5, May 2006 Consultative Examination at 2.

today, I found no factors which would limit his ability to do job related activities.<sup>894</sup>

Based on this evidence, the agency denied the claim initially on June 7, 2006.<sup>895</sup> The claimant requested reconsideration of his application, and in the meantime, sought additional medical treatment for his back pain.<sup>896</sup>

In June 2006, the claimant saw an orthopedic specialist who reviewed X-rays the claimant brought with him and concluded that “Disc space is well preserved except for L5,S-1 which has a near complete effacement [narrowing of space].”<sup>897</sup> The physician recommended getting an MRI and beginning exercises, as well as a course of physical therapy.<sup>898</sup> He also, however, noted that with those activities, the claimant was healthy enough to return to work in the future: “Based on MRI findings, an epidural would likely be helpful. I think between that and exercises, it is likely he would be able to return to gainful employment.”<sup>899</sup>

The next day, the claimant saw another physician in the same practice.<sup>900</sup> Under the “history” section of the exam notes, the claimant described his condition by saying:

...over the past six months, the pain has gotten much worse. He states that most of the pain seems to be located in the lower part of the back with very mild radiation into both buttocks. He denies any significant radiculopathy or symptoms going down into the leg. Most of the pain is the dull achy-type pain in the lower back that is made worse by physical activity. He states that he has been dealing with this for approximately 20 years and he gets some mild relief with ibuprofen. Recently the pain has gotten to the point where it affects his daily functioning. He states that he is to the point where ibuprofen is not handling the pain as well. Sitting to standing, lying to sitting, and transition positions increased the pain. He gets some relief when he rests...He denies any numbness, tingling or paresthesia into the leg. He denies weakness in the legs.<sup>901</sup>

The physician concluded that the claimant “on MRI does have a lot of degenerative joint disease in the lower spine. There was apparently no evidence of any nerve root impingement, a formal read is pending.”<sup>902</sup> The physician “discussed options, risks, and alternatives with him. He opted to proceed today with an epidural injection. I told him it probably would not give him long lasting relief because of the degenerative joint disease in the back, but we opted to proceed.” The physician also “talked to him about exercise program, water aerobics, some weight loss, and probably to avoid smoking.”<sup>903</sup>

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<sup>894</sup> *Id.* at 4.

<sup>895</sup> See Exhibit I-6, June 7, 2006 Notice of Disapproved Claim at 1.

<sup>896</sup> See Exhibit I-7, Request for Reconsideration at 1 and Exhibit I-8, June 2006 Medical Records at 1.

<sup>897</sup> See Exhibit I-8, June 2006 Medical Records at 2.

<sup>898</sup> *Id.* at 2.

<sup>899</sup> *Id.*

<sup>900</sup> See Exhibit I-9, June 2006 Medical Records at 1.

<sup>901</sup> *Id.* at 1.

<sup>902</sup> *Id.* at 2.

<sup>903</sup> *Id.*

The exam notes do not indicate the claimant was advised against working or given any other physical limitations.<sup>904</sup>

When the formal report of the MRI arrived later that day it showed the problem to be less severe than his doctor originally believed, and characterized the claimant's back issues as "minimal arthritic change, no evidence of significant lumbar disc pathology."<sup>905</sup> The claimant returned to the clinic for another epidural injection a month later in July 2006.<sup>906</sup> Exam notes from that visit stated, "[He] tells me that he has significantly improved. He states he still has some pain. He would describe, maybe 50-60% improvement..."<sup>907</sup> While sitting in the car for the six-hour trip to the clinic exacerbated his pain, he said overall there were signs of improvement.<sup>908</sup> The physician noted that the MRI from the previous visit had been reviewed and showed "just minimal arthritic changes, but no significant evidence of lumbar disc pathology."<sup>909</sup>

The agency reviewed this additional evidence, and on November 28, 2006, once more concluded the claimant was not disabled, and in fact wrote a detailed analysis showing the claimant to be in overall good health:

The medical evidence shows that you have been evaluated and treated for your conditions. Although you report pain and discomfort, the evidence shows that you have satisfactory movement in your ankles, knees, back, elbows, hands and joints. There is no severe muscle weakness or loss of control due to nerve damage. Your grip strength is satisfactory. There are no significant restrictions in your ability to stand, walk, move about, handle objects and do your normal activities. Although your cholesterol may become higher than normal at times, there is no evidence of end organ damage. Although you report problems with your hearing, your records show that you are able to hear satisfactorily.<sup>910</sup>

*Claimant Added to DB List.* He requested a hearing before an ALJ on December 6, 2006.<sup>911</sup> Judge Daugherty and Mr. Conn placed the claimant on the January 2007 "DB List."<sup>912</sup>

On January 5, 2007 he was sent by Mr. Conn to see Dr. Huffnagle.<sup>913</sup> However, according to Dr. Huffnagle's brief exam write-up, the claimant's conditions were not severe.<sup>914</sup> After performing his physical exam, Dr. Huffnagle concluded that the claimant had "chronic low back pain, status post disc prolapsed, which is healed."<sup>915</sup>

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<sup>904</sup> *Id.* at 1-2.

<sup>905</sup> See Exhibit I-10, June 2006 MRI at 1.

<sup>906</sup> See Exhibit I-11, July 2006 Medical Records at 1.

<sup>907</sup> *Id.* at 1.

<sup>908</sup> *Id.*

<sup>909</sup> *Id.*

<sup>910</sup> *Id.*

<sup>911</sup> See Exhibit I-13, Request for Hearing by Administrative Law Judge at 1.

<sup>912</sup> See Exhibit H-14, D.B. January CLF030653 at 2.

<sup>913</sup> See Exhibit I-14, January 5, 2007 Social Security Disability Medical Assessment, Frederic T. Huffnagle, M.D. at 1.

<sup>914</sup> *Id.* at 2.

<sup>915</sup> *Id.*

The same day he signed the Conn Law Office RFC Version #16.<sup>916</sup> The RFC, though, contradicted the claimant's own allegations of hearing loss in both ears, indicating he did not have any problems at all.<sup>917</sup>

*Claimant Awarded Benefits.* Judge Daugherty issued a fully favorable decision eleven days later on January 16, 2007.<sup>918</sup> He cited only the medical opinion of Dr. Huffnagle and found the claimant to have "the following 'severe' impairments: disc prolapse and chronic pain."<sup>919</sup> He noted that:

Having considered all of the evidence, I am satisfied that the information provided by Dr. Huffnagle most accurately reflects the claimant's impairments and limitations. Therefore, the claimant is limited to sedentary work, at best.<sup>920</sup>

Judge Daugherty failed to note, however, that rather than characterizing the claimant's disc prolapse as being severe, Dr. Huffnagle characterized it as being healed.<sup>921</sup> In other words, the very condition Judge Daugherty used as the basis for awarding benefits was healed.

## 6. Reassignment of Cases from Judge Gitlow to Judge Daugherty

**Case J:** In this instance, the claimant's case was before Administrative Law Judge Gitlow.<sup>922</sup> However, before Judge Gitlow could issue a decision, the claimant requested that his case be dismissed, and reapplied for benefits.<sup>923</sup> Under the new application, his case was ultimately decided favorably by Judge Daugherty, who based his decision solely on a mental exam conducted by Dr. Brad Adkins.<sup>924</sup>

*Claimant Denied Benefits in a Prior Application:* Medical records in the file document a long history of treatment for the claimant's leg injury, which stemmed from a traffic accident in 1993.<sup>925</sup> Following the accident, he underwent several surgeries in 1993 and 1995, including the placement of a rod in his fractured femur.<sup>926</sup> His file contained medical records from the claimant's main treating physician focusing mainly on this condition up through 2006.

At a visit in 1999, the physician ordered a functional capacity evaluation to see if he could work.<sup>927</sup> The evaluation was performed a few days later, but the therapist who performed the evaluation found the results to be invalid due to what the therapist classified as a "manipulation

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<sup>916</sup> *Id.* at 4 and 7.

<sup>917</sup> *Id.* at 6.

<sup>918</sup> See Exhibit I-1, January 16, 2007 Decision, Administrative Law Judge David B. Daugherty at 1 and 4.

<sup>919</sup> *Id.* at 2.

<sup>920</sup> *Id.*

<sup>921</sup> *Id.*

<sup>922</sup> See Exhibit J-1, November 20, 2006 Notice of Dismissal at 3.

<sup>923</sup> *Id.* at 3 and see Exhibit J-2, Disability Report – Adult-Form SSA-3368 at 1 and 7.

<sup>924</sup> See Exhibit J-3, August 3, 2007 Decision, Administrative Law Judge David B. Daugherty at 1.

<sup>925</sup> See Exhibit J-4, November 1999 Medical Records at 1.

<sup>926</sup> *Id.* at 1.

<sup>927</sup> *Id.* at 1 and 2.

effort” by the claimant.<sup>928</sup> Based on the results that were demonstrated, the therapist stated “This assessment, although invalid, would qualify [the claimant] to be able to do light work as a physical demand level.”<sup>929</sup>

Several years later in August 2002, the claimant was ordered off work by this same treating physician, but records also show he was able to return to work by December of that year.<sup>930</sup> The claimant continued to see his physician and receive treatment for his pain for the next few years.

In May 2004, the physician stated that the claimant was “...unemployed at present. The company with which he was employed has closed their offices.”<sup>931</sup> The claimant’s application for disability benefits indicated, however, that he became unable to work in April 2004 because of his medical conditions.<sup>932</sup> In 2005, the physician noted in a write-up, “[The claimant] is in today for follow-up. He still describes persistent right lower extremity pain and some radiculopathy. He has yet to find any type of work, and therefore, has signed up for disability.”<sup>933</sup>

Notes from a May 2006 exam with the claimant’s treating physician stated:

He is still having some knee pain and this pops at times. He hasn’t done anything to reinjure this. He is concerned about hardware becoming loose and creating a problem. He is much more inactive and is becoming much more depressed. He is staying in the house a lot and has a non-restorative sleep pattern. He is napping throughout the day. I have had a real heart-to-heart talk with him and basically told him to get his head on straight, that he is not disabled totally, and that there is no reason, with his computer background, that we cannot get him some type of retraining, out of the house, and productive.<sup>934</sup>

His physician recommended that the claimant contact the Department of Rehabilitative Services for re-evaluation and concluded: “He is not totally disabled and there is no reason that he cannot get back into some type of meaningful employment. I only hope that he will heed my constructive advice.”<sup>935</sup>

The same physician saw the claimant again, who presented with symptoms related to his leg pain in November 2006.<sup>936</sup> In describing the claimant’s symptoms, his doctor said “He says that is to the point that he can’t stand the pain anymore and that something has to be done. He has seen orthopedic surgeons in the past, none of whom have recommended removing his hardware. He describes being in significant pain, but he is very stoic and appears to be in no acute distress whatsoever in the exam room, so I question symptom magnification and secondary gain.”<sup>937</sup> The physician concluded this visit by making a referral to another orthopedic surgeon, and to the pain

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<sup>928</sup> See Exhibit

<sup>929</sup> *Id.* at 1.

<sup>930</sup> See Exhibit J-6, August 2002 Medical Records at 2 and see Exhibit J-7, December 2002 Medical Records at 1. .

<sup>931</sup> See Exhibit J-8, May 2004 Medical Records at 1.

<sup>932</sup> See Exhibit J-2, Disability Report – Adult-Form SSA-3368 at 2.

<sup>933</sup> See Exhibit J-9, May 2005 Medical Records at 1.

<sup>934</sup> See Exhibit J-10 May 2006 Medical Records at 1.

<sup>935</sup> *Id.* at 2.

<sup>936</sup> See Exhibit J-11, November 2006 Medical Records at 1.

<sup>937</sup> *Id.* at 1.

clinic for evaluation, and recommended the claimant return to the office in six months.<sup>938</sup> There was no indication that the claimant could not work.<sup>939</sup>

The claimant applied for benefits previously in 2001, but was denied at the Appeals Council level.<sup>940</sup> In a subsequent application, the claimant was denied at the reconsideration level in March 2005.<sup>941</sup> His case was assigned to Administrative Law Judge Gitlow, but before the Judge could render a decision, the claimant withdrew his request.<sup>942</sup> Judge Gitlow dismissed the case, meaning that the denial at reconsideration stood.<sup>943</sup>

*Claimant Reapplied for Benefits:* The claimant re-applied for benefits, and on November 22<sup>nd</sup>, 2006, the claimant submitted a new signed fee agreement and notice of representation by Eric Conn.<sup>944</sup> This new application cited the following conditions as the basis for his claim: left leg injury, numbness in right side, shortness of breath, nerve problems, depression, anxiety, and trouble sleeping.<sup>945</sup> The claimant listed his height as 5'6" and his weight as 300 pounds, and said that he became unable to work because of his injuries in April 2004.<sup>946</sup>

One month later, the agency notified the claimant that his application was denied, based on the fact that his leg injury had healed, and the fact that he could perform most of his usual activities.<sup>947</sup> The agency also noted that while the claimant may become depressed at times, he was still capable of thinking clearly and carrying out normal activities, and that the medical evidence did not give any indication of any other condition that would limit his ability to work.<sup>948</sup>

The claimant was again denied at reconsideration in April 2007 along similar lines.<sup>949</sup> The agency indicated that the claimant was still capable of performing his prior work, noting in its evaluation of his functional capacity that the claimant's treating physician recommended that the claimant perform some kind of job to stay active instead of lying in bed.<sup>950</sup> The claimant requested an Administrative Law Judge hearing on May 23, 2007.<sup>951</sup>

*Claimant Added to DB List:* The claimant was added to the Conn Law Firm DB list for August 2007, which noted the need for a mental exam with an amended onset date of March 3, 2005.<sup>952</sup>

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<sup>938</sup> *Id.* at 1.

<sup>939</sup> *Id.* at 1-2.

<sup>940</sup> See Exhibit J-12, Disability Report – Field Office –Form SSA-3367 at 2.

<sup>941</sup> *Id.* at 2.

<sup>942</sup> See Exhibit J-1, November 20, 2006 Notice of Dismissal at 3.

<sup>943</sup> *Id.* at 3.

<sup>944</sup> See Exhibit J-2, Disability Report – Adult-Form SSA-3368, and see Exhibit J-13, November 22, 2006 Appointment of Representative and Fee Agreement at 1-2.

<sup>945</sup> See Exhibit J-2, Disability Report – Adult-Form SSA-3368 at 2.

<sup>946</sup> *Id.* at 1 -2.

<sup>947</sup> See Exhibit J-14, Notice of Disapproved Claims at 1.

<sup>948</sup> *Id.* at 1.

<sup>949</sup> See Exhibit J-15, April 4, 2007 Notice of Reconsideration at 1.

<sup>950</sup> See Exhibit J-16, February 2007 Physical Residual Functional Capacity at 7.

<sup>951</sup> See Exhibit J-17, Request for Hearing by Administrative Law Judge at 1.

<sup>952</sup> See Exhibit J-18, D.B. August 2007, CLF030625 at 2.

On July 17, the claimant filed a motion to amend his onset date to March 3, 2005 – one day after the denial of benefits in prior application.<sup>953</sup>

The claimant also saw Dr. Adkins on July 17, after being referred there by Eric Conn, for a mental evaluation.<sup>954</sup> In describing background information on the claimant, Dr. Adkins noted that the claimant had been receiving treatment at a local clinic and was diagnosed with depression there, although the claimant's case file included no records from that clinic.<sup>955</sup> Dr. Adkins stated that the claimant reported pain and difficulty when performing toileting, hygiene maintenance, and grooming.<sup>956</sup> This, however, was inconsistent with the claimant's own description of his limitations. In a separate functional report provided to the agency, the claimant listed only that he had difficulty putting on socks because of his leg pain when asked to provide information about performing personal care tasks.<sup>957</sup>

Dr. Adkins administered an IQ test, and rated the claimant as having a full scale IQ of 91, in the Average range.<sup>958</sup> He also administered the Personality Assessment Inventory, and found that the claimant was experiencing symptoms associated with depression.<sup>959</sup> The Summary and Conclusions section of the exam restated, word for word, the claimant's reported history, as well as the test results.<sup>960</sup> Dr. Adkins diagnosed the claimant primarily with major depressive disorder, single episode, moderate, as well as social phobia, and pain disorder associated with both psychological factors and a general medical condition.<sup>961</sup> In the prognosis section, Dr. Adkins said that, “with treatment that should include psychotherapy and psychiatric intervention, it would not be unreasonable to expect to see a fair amount of remediation of his depression anxiety symptoms.”<sup>962</sup>

Dr. Adkins also signed the Conn Law Firm's additional Version 1 form assessing the claimant's ability to do work-related activities that was identical to the forms for 25 other individuals, based on the Committee's analysis.<sup>963</sup>

*Claimant Awarded Benefits:* On August 3, 2007, two weeks after the claimant's visit with Dr. Adkins, Judge Daugherty issued a fully favorable decision without holding a hearing.<sup>964</sup> His decision relied entirely on Dr. Adkins' exam, and disregarded the remainder of evidence in the file.<sup>965</sup>

However, Judge Daugherty also found the claimant to have more severe depression than even Dr. Adkins had. Where Dr. Adkins diagnosed with claimant with Major Depressive, *Single*

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<sup>953</sup> See Exhibit J-19, July 17, 2007 Motion to Amend Alleged Onset Date at 1.

<sup>954</sup> See Exhibit J-20, July 17, 2007 Psychological Evaluation at 1.

<sup>955</sup> *Id.* at 2.

<sup>956</sup> *Id.*

<sup>957</sup> See Exhibit J-21, Function Report Adult at 3.

<sup>958</sup> See Exhibit J-20, July 17, 2007 Psychological Evaluation at 6.

<sup>959</sup> *Id.* at 7.

<sup>960</sup> *Id.* at 7-8.

<sup>961</sup> *Id.* at 9.

<sup>962</sup> *Id.*

<sup>963</sup> *Id.* at 11 and 13.

<sup>964</sup> See Exhibit J-3, August 3, 2007 Decision, Administrative Law Judge David B. Daugherty at 1 and 5.

<sup>965</sup> *Id.* at 3-4.

*Episode, Moderate;* Judge Daugherty characterized the claimant's condition simply as "Major Depression" in the written opinion.<sup>966</sup> Judge Daugherty wrote that Dr. Adkins was more consistent with the record as a whole, even though that record contained no evidence to support the claimant's indication that he was seeking treatment for, or had been diagnosed with depression.<sup>967</sup>

Judge Daugherty also provided no further explanation or evaluation to support why he felt the claimant was more severely restricted than was indicated by the agency in its two prior reviews of the claimant's conditions.<sup>968</sup> He also did not address the evidence presented by the claimant's treating physician that the claimant was capable of working.<sup>969</sup>

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<sup>966</sup> See Exhibit J-20, July 17, 2007 Psychological Evaluation at 9 and see Exhibit J-3, August 3, 2007 Decision, Administrative Law Judge David B. Daugherty at 3.

<sup>967</sup> *Id.* at 4.

<sup>968</sup> *Id.* at 4-5.

<sup>969</sup> *Id.* at 1-5.