

U.S. Department of Labor

Office of Inspector General—Office of Audit

REPORT TO THE OFFICE OF ADMINISTRATIVE LAW JUDGES



EFFECT OF OALJ STAFFING LEVELS ON THE BLACK LUNG CASE BACKLOG

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BRIEFLY...

September 27, 2017

EFFECT OF OALJ STAFFING LEVELS ON THE BLACK LUNG CASE BACKLOG

WHY OIG CONDUCTED THIS REVIEW

We conducted this review to inform stakeholders about the effect various staffing levels in the Office of Administrative Law Judges (OALJ) would have on the disposition rate of black lung benefits cases.

The Black Lung Benefits Act (BLBA) helps miners suffering from this incurable disease by providing monthly payments to them or their eligible survivors, and medical treatment for coal miners totally disabled by black lung. Black lung claims can take a long time to reach a final decision, as illustrated by the fact that the Office of Workers' Compensation Programs took, on average, almost a year to process a black lung claim. Claims appealed to OALJ then spent, on average, an additional 640 days—almost two years—at the agency before a judge issued a decision.

OALJ's black lung case backlog (number of cases not decided within a year of receipt) grew from 1,538 in Fiscal Year (FY) 2011 to 2,984 in FY 2015. We recommended in a 2015 audit report that OALJ address staffing and process improvements over its black lung case backlog. After implementing our recommendations and making other process improvements, OALJ's black lung case dispositions increased dramatically in FY 2016 and its backlog declined to 2,511 cases.

Many factors affect OALJ's ability to work through its current workload and the black lung case backlog. These include, among others, OALJ's staffing levels; judge productivity; the unpredictable number of incoming cases; shortage of lawyers representing miners or their survivors; and changes in OALJ's overall case load.

WHAT OIG DID

OIG conducted a review to determine the following:

How would adjustments to staffing levels affect OALJ's pending black lung case backlog?

For our review, we focused on staffing levels as the primary variable over which OALJ exercises some level of control. We created several scenarios to determine the impact of staffing levels on the black lung cases in its backlog.

OIG RESULTS

Adding 3 judges would reduce the time to eliminate the backlog by 21 percent, and adding 6 judges by 28 percent.

Based on our analysis, we project that assuming incoming cases, staffing levels, and disposition rates remain relatively constant, the number of cases in the backlog should be addressed in about 53 months, or sometime in FY 2021.

In our scenarios, we adjusted staffing levels without varying other factors mentioned above. We determined that by:

- Adding 3 judges, OALJ could reduce the time it would take to eliminate the backlog by 11 months – a 21 percent reduction.
- Adding 6 judges would reduce the time by 15 months, or about 28 percent.

OALJ provided no comments on our draft report other than to highlight our note regarding constraints on claimant representation.

READ THE FULL REPORT

To view the report, including the scope, methodologies, and full agency response, go to: <http://www.oig.dol.gov/public/reports/oa/2017/05-17-003-01-060.pdf>.

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U.S. Department of Labor

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September 27, 2017

INSPECTOR GENERAL'S REPORT

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The mission of the Department of Labor's (DOL) Office of Administrative Law Judges (OALJ) is to render fair, just, and equitable decisions under the governing law and the facts of each individual case. Hearings concerning claims under the Black Lung Benefits Act (BLBA) and the Longshore and Harbor Workers' Compensation Act constitute the largest part of the office's work.

In 2014, several Congressmen sent a letter to the President encouraging the White House to make elimination of the backlog of OALJ black lung cases a priority in the Fiscal Year (FY) 2015 budget. According to the letter, black lung claimants waited an average of 429 days for their cases to be assigned to an administrative law judge (ALJ), and an additional 90-120 days after assignment until their cases were heard. Congress previously voiced concerns that miners may die while waiting to have their black lung claims heard.

As a result of these concerns, we performed a review to determine the following:

How would adjustments to staffing levels affect OALJ's backlog of black lung cases?

RESULTS IN BRIEF

Adjusting staffing levels could have a positive impact on the black lung backlog (number of cases not decided within a year of receipt). Our projections indicate adding 3 judges would reduce the time to eliminate the current backlog by 21 percent, while adding 6 judges would reduce the time by 28 percent.

Many variables affect the disposition rate of the black lung backlog, including the unpredictability of the number of incoming cases, as well as changes in coal mine

employment caused by shifting demand for coal. OALJ has limited or no control over variables such as these. Hence, we focused our analysis on staffing levels.

We developed three scenarios to determine the impact of staffing levels on the black lung case backlog. Based on our analysis, we project that assuming incoming cases, staffing levels, and disposition rates remain relatively constant, the backlog of black lung cases should be eliminated in about 53 months, or sometime in FY 2021. In our scenarios, we adjusted staffing levels without varying other factors mentioned above. We determined that by adding 3 judges, OALJ could reduce the time it will take to eliminate the backlog by 11 months – a 21 percent reduction. Adding 6 judges would reduce the time by 15 months, or about 28 percent.

We also noted the following important factors in our review:

- As part of a concerted effort to reduce the black lung backlog, OALJ prepared several backlog reduction plans attempting to find a solution.
- OALJ has mostly addressed and implemented the recommendations from our 2015 report. Their efforts included reinstating the contract writer's program and extending the terms of law clerks. These corrective actions resulted in an increased rate of black lung case dispositions, and a reduction in the black lung case backlog.
- The shortage of attorneys to represent black lung claimants could affect OALJ's ability to further reduce the backlog.

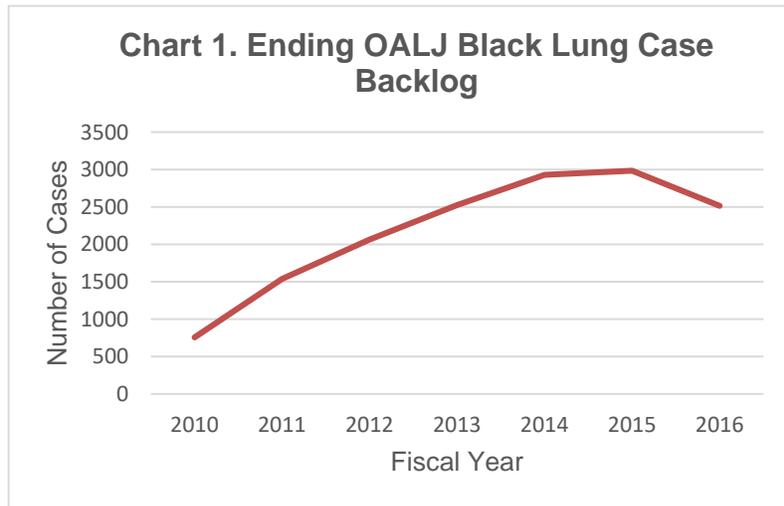
BACKGROUND

Black lung disease, or pneumoconiosis, is a chronic lung disease related to coal mine employment.¹ The BLBA, as amended, authorizes monthly payments and medical treatment for coal miners totally disabled from black lung disease. The BLBA also authorizes monthly benefits to certain eligible miners' dependent survivors.

Black lung can cripple and kill. The disease often leads to lung impairment, disability, and premature death. According to a National Institute for Occupational Safety and Health (NIOSH) estimate, 77,996 miners died from black lung from 1968 to 2014. However, both NIOSH and at least one other medical professional believe this estimate is understated for a variety of reasons. For instance, a NIOSH representative noted the count of black lung-related deaths does include deaths caused by other pulmonary diseases.

¹ 20 C.F.R. §718.201

Three DOL agencies share responsibility for processing and adjudicating black lung claims: the Office of Workers' Compensation Programs (OWCP), OALJ, and the Benefits Review Board (BRB). Claims are initially filed with OWCP, which makes a determination to approve or deny benefits. Parties dissatisfied with OWCP's determination may request a hearing before OALJ, and cases can further be appealed to BRB and subsequently to a federal court. OALJ has had a long-standing backlog of black lung cases (see Chart 1).



From our sample of 41 black lung cases, it took OALJ an average of 640 days to make a decision. One case in our sample was pending with OALJ for more than four and a half years.

RESULTS

We conclude that adjusting OALJ staffing levels would reduce the amount of time the black lung case backlog will be outstanding. Adding 3 judges would reduce the time to eliminate the backlog by 21 percent, while adding 6 judges would reduce the time by 28 percent.

In our current review, we used a combination of historical data and projections to determine how changes to staffing could affect OALJ's backlog of black lung cases. In addition, we found OALJ had fully or mostly addressed the 12 OALJ-specific recommendations made in our April 2015 report. Budgetary, hiring, and other actions that OALJ took increased the disposition rates of black lung cases and reduced the backlog. Please see the exhibit captioned "Prior OIG Recommendations," later in our report for a detailed review of these recommendations. In our report, we also identified a shortage of claimant representation as an ongoing, but difficult to quantify, challenge that may further affect OALJ's ability to reduce its black lung case backlog.

ADDITIONAL STAFF WILL HELP REDUCE THE BLACK LUNG CASE BACKLOG SOONER

At the end of FY 2016, OALJ's black lung case backlog consisted of 2,511 cases. A backlog is any case that is not decided within a year of receipt. Given current staffing levels and productivity rates, we projected OALJ will not eliminate its backlog of black lung cases until sometime in FY 2021.

Many variables affect the disposition rate of the black lung backlog. Most significant are the number of incoming cases, productivity rates (the number of cases each judge decides in a given time period), and staffing levels. OALJ has no control over the number of incoming cases, and the Administrative Procedure Act² (APA) limits the tools OALJ may use to influence the productivity of judges. As a result, we focused on staffing levels as the primary and most immediate variable within OALJ's control since the agency determines ALJ assignments and workloads of black lung cases.

An essential factor in projecting black lung case backlog is the number of incoming black lung cases. During the six years covered in our review, the volume of new cases OALJ received averaged about 1,166 per year. Projecting this number for future years, however, was a challenge. We attempted to determine what, if any, factors might be useful in projecting future black lung claims. One factor most commonly cited by OWCP was coal mine employment (CME), which has declined over the last several years. As coal production declines, so does CME. Anecdotal evidence indicated an inverse correlation between CME and new black lung claims — according to many knowledgeable sources within the black lung community, as CME declined, claims would increase. We analyzed CME and black lung claims over the last three decades to try to find any correlation between the two. However, our analysis did not find a relationship between CME and black lung claims, and we did not identify any other factors that might have an impact on black lung claims. As a result, we did not make any projections for incoming black lung cases. Our scenarios assumed incoming cases would remain the same over the time covered by our analysis.

We also faced a challenge in calculating the black lung productivity rates for judges. We defined “productivity rate” as the number of cases each judge decided each year. Judges at OALJ hear and decide cases arising from over 80 labor-related statutes and regulations. No judge is assigned specifically to black lung cases; instead, judges are assigned dockets consisting of a mix of cases. This created a challenge in calculating the productivity of judges for black lung cases in that some judges had dockets that leaned more heavily toward black lung cases and others had dockets that leaned more to other types of cases. Our scenarios included productivity for all judges who decided a black lung case. Because some judges decided few black lung cases, the average productivity for judges appeared low in our scenarios. This should not be taken to

² The APA effectively prohibits OALJ from establishing performance targets or incentives for administrative law judges. As a result, OALJ has no means to incentivize judges for high performance or counsel them for lower than average performance.

indicate productivity for black lung judges is low; only that on average, judges hear different mixes of cases.

Ultimately, we focused on staffing levels as the primary variable OALJ could control that would have an impact on the case backlog. However, using staffing levels as our only variable introduced a challenge. At OALJ, cases are heard by the ALJs who are assisted by law clerks and attorneys. As of 2015, OALJ reinstated the contract writer program, in which decisions are initially drafted by third-party contract writers, and then presented to OALJ for a final decision. For all intents and purposes, these four parties make up what we consider OALJ's staffing base. However, because judges are not all assigned the same number of law clerks and use contract writers at different rates, and attorneys are not assigned specifically to black lung cases, we could not define the term "staff" as a single number to use in our calculations. As a result, we used solely the number of judges in our staffing projections because it was the only clearly defined "staffing" number and also because judges are overwhelmingly the most significant contributors to the hearing and decision process. It is important to note when reading our projections, however, that adding law clerks and attorneys, as well as boosting the use of contract writers, could have a positive impact on case disposition rates.

The scenarios we developed were based on the following assumptions:

- OALJ maintains its current staffing levels by timely back-filling the positions of judges who retire.
- The judges' case mixes remain the same as in FY 2016.
- The future annual number of incoming black lung cases remains the same as in FY 2017.³
- OALJ completes, on average, the same number of black lung cases per judge as it did in FY 2016. In other words, productivity rates would remain stable.
- Attorneys representing black lung claimants are able to keep up with OALJ's increased productivity in scheduling hearings.

Any changes in these assumptions could have an effect on the projections.

SCENARIO 1: THE STATUS QUO

Table 1 is based on the "status quo" as of the time of our review. We used OALJ's current average black lung disposition rate per judge and current staffing levels to project the black lung case backlog. In this scenario, the black lung backlog would be

³ The average number of new black lung cases over the last six fiscal years has remained reasonably consistent at about 1,166 per year.

eliminated in about 53 months, or by February 2021. See Appendix A, Methodology, *Scenarios* section for calculation details.

Table 1. Current ALJ Productivity and Staffing Levels (Black Lung Only)

Fiscal Year	Number of Judges	Disposition Rate Per Judge	Beginning Backlog	New Cases	Disposed Cases	Ending Backlog
2015	39	25	2,928	1,063	1,007	2,984
2016	42	39	2,984	1,195	1,668	2,511
2017	42	39	2,511	1,100	1,638 ¹	1,973
2018	42	39	1,973	1,100	1,638	1,435
2019	42	39	1,435	1,100	1,638	897
2020	42	39	897	1,100	1,638	359
2021	42	39	359	1,100	1,638	-

Entries in red indicate projections.

Entries in black indicate actual/historical data or calculated values.

¹ Number of judges *multiplied by* the disposition rate per judge
(42 ALJs x 39 dispositions per judge = 1,638 dispositions)

SCENARIO 2: ADD THREE JUDGES

Table 2 adds three judges to OALJ's staffing levels at the end of 2016. We assumed that the added judges would hear a mix of cases and not exclusively black lung cases. As a result, we used OALJ's current average black lung disposition rate to project the black lung case backlog. In this scenario, it would take OALJ approximately 42 months to eliminate the backlog – a 21 percent reduction from the “status quo.” Therefore, the black lung backlog in this scenario would be eliminated sometime by March 2020. See Appendix A, Methodology, *Scenarios* section for calculation details.

Table 2 follows on the next page.

Table 2. Current ALJ Productivity with the Staffing Level Increased by 3 Judges (Black Lung Only)

Fiscal Year	Number of Judges	Disposition Rate Per Judge	Beginning Backlog	New Cases	Disposed Cases	Ending Backlog
2015	39	25	2,928	1,063	1,007	2,984
2016	42	39	2,984	1,195	1,668	2,511
2017	45	39	2,511	1,100	1,755 ¹	1,856
2018	45	39	1,856	1,100	1,755	1,201
2019	45	39	1,201	1,100	1,755	546
2020	45	39	546	1,100	1,755	-

Entries in red indicate projections.

Entries in black indicate actual/historical data or calculated values.

¹ Number of judges *multiplied by* the disposition rate per judge
(45 ALJs x 39 disposition rate per judge = 1,755 dispositions)

SCENARIO 3: ADD SIX JUDGES

Table 3 adds six judges to OALJ's staffing levels at the end of 2016. As in Scenario 2, we assumed that the added judges would hear a mix of cases and not exclusively black lung cases. As a result, we used OALJ's current average black lung disposition rate to project the black lung case backlog. In this scenario, it would take OALJ 38 months to eliminate the backlog – a 28 percent reduction from the "status quo." In this scenario, the black lung backlog would be eliminated in November 2019. See Appendix A, Methodology, *Scenarios* section for calculation details.

Table 3. Current ALJ Productivity with the Staffing Level Increased by 6 Judges (Black Lung Only)

Fiscal Year	Number of Judges	Disposition Rate Per Judge	Beginning Backlog	New Cases	Disposed Cases	Ending Backlog
2015	39	25	2,928	1,063	1,007	2,984
2016	42	39	2,984	1,195	1,668	2,511
2017	48	39	2,511	1,100	1,872 ¹	1,739
2018	48	39	1,739	1,100	1,872	967
2019	48	39	967	1,100	1,872	195
2020	48	39	195	1,100	1,872	-

Entries in red indicate projections.

Entries in black indicate actual/historical data or calculated values.

¹ Number of judges *multiplied by* the disposition rate per judge
(48 ALJs x 39 disposition rate per judge = 1,872 dispositions)

It is important to note that in our scenarios, new judges would not hear only black lung cases, but the same mix of cases as most judges currently do. If the new judges were dedicated exclusively to black lung cases, the backlog would be likely to decline more rapidly.

We concluded adjusting staffing levels could have a positive impact on the black lung backlog, as it would reduce the amount of time miners spend waiting for their cases to be adjudicated. As discussed in the Additional Considerations section of this report, a factor requiring mention are the limits of the legal and medical community supporting the parties involved in the black lung legal process. According to OALJ, anecdotal evidence suggests the 66 percent increase in black lung dispositions is testing the limits of the legal infrastructure supporting black lung litigation. Attorneys handling black lung cases may not have the structural capacity to ramp up their output to the degree demanded by OALJ.

ADDITIONAL CONSIDERATIONS

Many factors affect OALJ's ability to work through its current workload and the backlog of black lung cases, including OALJ's staffing levels, judge productivity, and changes in OALJ's overall case load. We list some additional items for consideration which may impact OALJ's ability to reduce its black lung case backlog below.

THE NUMBER OF INCOMING CASES IS UNPREDICTABLE

The number of incoming black lung cases is difficult to predict because many difficult-to-estimate factors may have an effect on incoming cases, such as:

- Changes in economic conditions affecting coal production. The U.S. Energy Information Administration (EIA) reported that in 2015, coal production in the U.S. fell 10.3 percent year-over-year to below 900 million short tons, the lowest since 1986. In 2015, CME fell to a record low of 65,971. Climate change and environmental policies have contributed to declines in coal consumption over the last several years. For example, in addition to the 2015 decline, the previous administration's Clean Power Plan may continue to have an impact on coal usage by domestic power plants. According to EIA, U.S. coal production fell by 17.6 percent in the third quarter of 2016, as compared to the same quarter in 2015. Exports are also declining: EIA reported a high in coal exports of 37.5 million short tons in the second quarter of 2012, versus 12.6 million short tons in the third quarter of 2016. In general, the trend in power generation seems to be moving away from coal and into renewable energy sources. A decrease in coal production may have an impact on incoming claims.
- NIOSH reported that miners are being diagnosed with black lung disease at a younger age than in the past.

- In May 2014, the Mine Safety and Health Administration (MSHA) finalized a rule to lower exposure limits to respirable coal mine dust. Inhaled coal dust is the leading cause of pneumoconiosis, and a reduction in the ambient levels of coal dust could contribute to a decreased risk in developing black lung disease.

OALJ'S BACKLOG REDUCTION PLANS

OALJ has made a concerted effort to reduce its black lung backlog. As part of this effort, OALJ has prepared several backlog reduction plans attempting to find a solution to the backlog. OALJ provided OIG with copies of its 2014 Backlog Reduction Plan, FY 2015 Black Lung Reduction Plan, and March 2016 Revised Black Lung Action Plan. The 2014 plan described steps to reduce OALJ's backlog of all case types, while the FYs 2015 and 2016 plans focused specifically on reducing black lung case backlogs.

OALJ's 2014 plan explained how the black lung backlog evolved. The agency cited funding reductions caused by sequestration that led to a drop in OALJ staffing levels from 170 full-time employees (FTE) in FY 2005, to 130 FTEs in FY 2014. While staffing levels dropped, OALJ's backlog of pending cases (all types) grew from 5,696 in FY 2005, to 11,325 in FY 2013. The Permanent Immigration and Defense Base Act backlogs contributed to much of that increase. During this period, Congress passed new whistleblower protection laws and new regulations took effect which contributed to OALJ's increased workload. The 2014 Backlog Reduction Plan outlined three options to reduce OALJ's case backlog. Each option listed varying scenarios where increasing levels of FTEs would allow for greater disposition of cases resulting in a backlog reduction in decreasing corresponding intervals.

OALJ's FY 2015 Black Lung Reduction Plan outlined steps to maximize the disposition of black lung cases. With this plan, OALJ hired additional legal assistants for district offices, offered longer law clerk appointments (up to three years), hired more law clerks to report directly to ALJs, and added two attorneys with BRB experience to work at the National Office. Finally, OALJ implemented a new case assignment strategy. In 2015, OALJ National Office started to assign four District Offices that mainly handled Longshore cases (San Francisco, Covington, Newport News, and Boston) a black lung docket corresponding to a geographic area in Kentucky or Virginia.

In its Revised Black Lung Action Plan (March 2016), OALJ proposed further steps to reduce the backlog. Pending judges' needs and available funding, OALJ planned to expand the Contract Writer Program to fund 10 full-time contract writers. OALJ projected that the contract writers could draft approximately 400 black lung decisions per year, over a five-year period. OALJ also stated plans to reevaluate the "efficacy" or effectiveness of its case assignment strategy and the size of black lung dockets assigned to different offices. Finally, OALJ noted it created an internal work group to identify how information technology, digitization, and videoconferencing might help support increased disposition of black lung cases.

OALJ HAS MOSTLY ADDRESSED RECOMMENDATIONS FROM OUR PREVIOUS REPORT

In our April 2015 report, we made 12 recommendations to the OALJ Acting Chief Administrative Law Judge. In our fieldwork for this review, we followed up on OALJ's response to our last report and substantiated that OALJ took corrective actions to mostly address these recommendations.

Our 2015 report's recommendations included OALJ seeking resources to replace outgoing judges and law clerks; adding optional extensions to the term of law clerks; reinstating the contract writers' program; implementing more formalized training for incoming judges and law clerks; establishing and promulgating centralized, written policies, procedures, or templates to improve efficiency and communication among the districts; and coordinating with OWCP and BRB to evaluate the feasibility and costs of an electronic case management, tracking, and storage system that could exchange case file information electronically with OWCP and BRB. In particular, reinstating the contract writers' program enabled OALJ to expand the adjudication of black lung cases from the traditional four offices, prior to 2015, to eight offices currently.

OALJ's efforts to implement these recommendations, along with other measures, has resulted in an increased rate of black lung case dispositions, and a reduction in the black lung case backlog. For further details describing OALJ's progress on implementing the recommendations from our prior report, please see the Exhibit.

OALJ FACES AN EXTERNAL CHALLENGE IN PROCESSING CASES

We identified an ongoing challenge that may affect OALJ's ability to reduce its black lung case backlog: a shortage of attorneys representing claimants.

The pool of black lung attorneys is limited. One ALJ stated that these attorneys may not have sufficient funds to hire additional staff as there are few incentives to take on these types of cases. Current law prohibits payment of attorney fees until a black lung case is closed, and then only if the claimant receives benefits. The Government Accountability Office (GAO) previously reported claimants generally lack financial resources to cover costs related to developing the evidence required to support and defend their claims.⁴ DOL officials told GAO that attorneys were not inclined to take claimants' cases due to a low probability of success.⁵ DOL officials and claimant attorneys told GAO that another disincentive was the lengthy adjudication process.

Dispositions of black lung cases increased by 66 percent from 2015 to 2016 as a result of OALJ's black lung backlog reduction plans. According to OALJ, since it began assigning black lung dockets to all offices in 2015, there has been a "surge" in scheduling hearings. Both black lung attorneys and ALJs we interviewed told us that, in

⁴ Government Accountability Office, *Black Lung Benefits Program: Administrative and Structural Changes Could Improve Miners' Ability to Pursue Claims*. GAO Report -10-7 (October 2009).

⁵ In FY 2016, OWCP reported that district directors approved 17.7 percent of claims.

the past, hearings took longer to occur. For example, one attorney stated lawyers were used to waiting a year to get cases before judges. Now, this time had dropped to about three months. As a result, attorneys must prepare and analyze all of the evidence they will need for their clients' claims, including medical reports, in a foreshortened period of time. Attorneys have told us that they are frequently unable to meet the truncated timelines required by OALJ. Moving the timelines forward has brought to the forefront the shortage of attorneys representing black lung claimants.

According to one ALJ, black lung attorneys came to hearings unprepared or asked the judge to leave the record open, sometimes for 90 days. OALJ staff also stated that attorneys may feel overwhelmed. One example an ALJ provided was that attorneys often had trouble obtaining medical evidence due to a shortage of experienced doctors in rural areas.

An attorney with the United Mine Workers of America (UMWA) suggested that MSHA's policy on discrimination claims filed by miners under Section 105(c) of the 1977 Federal Mine Safety and Health Act offers a "model" to address this barrier. Section 105(c) allows for temporary reinstatement of a miner before MSHA issues a final decision on the complaint. In the case of black lung, if a claimant offers some level of proof (e.g. medical report), and establishes they meet certain criteria (e.g. work experience), there could be an interim fee award from the Black Lung Trust Fund or operator. The UMWA attorney suggested that such a procedural change might increase representation for black lung claimants.

One ALJ we interviewed suggested OALJ might consider exploring opportunities to educate claimant representatives about black lung case law, with the goal of expanding the pool of attorneys. An example would be collaborating with Washington and Lee University's Black Lung Clinic to offer continuing legal education courses for lawyers on black lung.

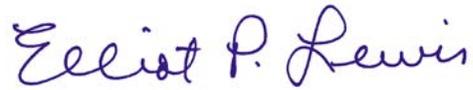
We make no recommendations in this report.

MANAGEMENT RESPONSE

OALJ stated that the black lung bar is near capacity on being able to prepare for and participate in the hearings presently scheduled. Given the current capacity of the private bar, increasing the number and frequency of ALJ hearings may not be realistic.

OALJ did not provide any additional comments.

We appreciate the cooperation and courtesies that OALJ personnel extended to the Office of Inspector General during this review. OIG personnel who made major contributions to this report are listed in Appendix C.



Elliot P. Lewis
Assistant Inspector General
for Audit

Exhibit

PRIOR OIG RECOMMENDATIONS

OIG Recommendation	What We Found In Our Last Report	OALJ Corrective Actions/ What We Found in This Review
<p><i>1. Seek resources to replace outgoing judges and law clerks.</i></p>	<p>We noted a total of 65 judges worked for OALJ in 1996. By 2013, there were 40 judges and 31 law clerks. By 2014, the number of judges and law clerks had further decreased, to 38 and 27, respectively. Also, from 2005 to 2013, OALJ's incoming case load increased from 5,220 to 8,446 new cases per year. OALJ still managed to dispose of 4,599 cases in FY 2013, an increase of 70 cases from FY 2009, even with fewer ALJs. Nonetheless, the increase in new cases (primarily immigration and whistleblower), combined with the reduction in FTEs, resulted in an increase in the overall OALJ case backlog of 134 percent – from 4,846 in FY 2009 to 11,325 in FY 2013.</p>	<p>OALJ initiated hiring actions in FYs 2015 and 2016. The Agency hired 31 FTEs (4 judges, 16 law clerks, 2 attorneys, and 9 legal assistants).</p> <p>Unlike two years ago, where often judges would share one law clerk, now OALJ has a one to one law clerk ratio. Additionally, several offices have added new attorney positions as well. Also, OALJ increased the number of district offices handling black lung cases from four to eight offices.</p> <p>The Associate Chief Judge for Black Lung noted that the \$4.2M budget boost has been essential for addressing and decreasing the backlog of black lung cases. He noted that not only had this allowed them to hire more judges and law clerks, the added funding helped to add training for judges and law clerks, and also enabled them to expand the number of district offices adjudicating black lung cases from four offices to eight offices.</p>
<p><i>2. Add optional extensions to the term of law clerks and stagger the hiring of law clerks.</i></p>	<p>Law clerk terms were restricted to two years, which was problematic for helping to ensure consistent productivity and support for judges in adjudicating black lung cases.</p>	<p>OALJ district offices now have the flexibility of extending law clerk terms beyond the former two year term and stagger hiring.</p>
<p><i>3. Reinstate the contract writer program</i></p>	<p>Up to 2008, OALJ utilized contract writers to write decisions on cases. We were told by consensus that this program provided an effective means for writing cases to submit to ALJs for their review, editing and approval. That included only paying a fee of about \$300 to \$400 per case for a contract writer to write up. However, though widely praised by OALJ staff, the program was abruptly canceled by the home office in 2008.</p>	<p>We confirmed that the contract writers program had been reinstated. This has resulted in more case decisions and contributed to the ability of OALJ to decrease the backlog of black lung cases. The contract writers, nearly all of whom came to the program with notable black lung law experience, have played an integral role in helping to reduce the backlog of black lung cases. OALJ management, in its efforts to reduce the backlog of black lung cases, doubled the number of district offices to hear and adjudicate black lung cases. It is via the reintroduction of the contract writers program that enabled these offices that previously had not handled black lung cases to more quickly transition and have black lung case dockets assigned to judges in those offices, including the San Francisco office. Judges told us via interview and surveys that they were pleased with the results from the reinstatement of this program.</p>

OIG Recommendation	What We Found In Our Last Report	OALJ Corrective Actions/ What We Found in This Review
<p><i>4. Implement additional formalized training programs for incoming law clerks and judges.</i></p>	<p>OALJ provided little formalized training for any of its positions, even though untrained law clerks cycled through OALJ every two years. Aside from a week of introductory training provided online and via telephone to incoming law clerks and judges, training was mostly ad-hoc, including no training manuals, performed at the local level, and dependent on departing law clerks to impart their knowledge and experience to incoming clerks. New ALJs were provided only a week of introductory training in black lung law and were subsequently required to train themselves on an ad-hoc basis.</p>	<p>OALJ has conducted several days introductory training program for new judges and law clerks, either in person or via WebEx. The training addresses the specialized programs adjudicated by OALJ, with an emphasis on the areas in which judges and staff are most likely to work (e.g., black lung, longshore, immigration and whistleblower). Specific to black lung law, OALJ prepared and delivered two formal training classes for judges and law clerks in April 2015. Training documents, desk books, procedural guides, and sample orders were developed.</p> <p>Additionally, the training was recorded so that it can be used in the future as new judges and law clerks are hired. These materials and other useful documents and training modules are available on OALJ’s internal shared network drive and OALJNet. The training materials are updated as needed. District offices also often provide more in-depth local training. New judges are mentored by the experienced ALJs and are sent on at least an initial hearing trip with an experienced judge to observe and learn about best practices for conducting hearings.</p> <p>Formalized training for law clerks was introduced last year in the Pittsburgh district office, with law clerks traveling there. The OALJ sponsored week-long black lung training for law clerks in 2015. Participants received a binder of training materials and District Offices received CD versions of the materials. The Pittsburgh District Chief Judge Morgan led sessions on the types of issues that law clerks/judges face in black lung cases. This training video is now also housed in the OALJ intranet. 67% of law clerks/attorneys rated quality and sufficiency of training to complete their required work as "Good" or "Excellent."</p>
<p><i>5. Establish and promulgate centralized, written policies, procedures, or templates to improve efficiency and communication among the districts.</i></p>	<p>In our prior review, we found OALJ had an almost complete lack of centralized policies and procedures. Where guidance existed, it had been infrequently updated. For the adjudication process, judges largely follow the Benchbook, but that was not being properly updated. We found a large degree of policy and procedural guidance had been generated independently by each district office. We had also found a lack of communication and interactions between OALJ headquarters management and its district</p>	<p>We found communication and interaction had improved, and we determined there is a more robust approach being taken. We found periodic communication from the National Office came in the form of more periodic updates, particularly from the Senior Attorney, on statutory and regulatory changes, and updates on case law for use by judges and law clerks. OALJ also stated it established a centralized repository on OALJ's intranet allowing judges and law clerks access to the more common orders, office policies and procedures, and decisional guides to improve efficiency.</p>

OIG Recommendation	What We Found In Our Last Report	OALJ Corrective Actions/ What We Found in This Review
	<p>offices, as well as among the district offices.</p> <p>In our previous review, we also found that each OALJ district office had seen itself as a self-contained entity responsible for developing its own processes and procedural guidance, and practices among offices have varied widely. Judges in each office had independently developed decision templates and practice aids, such as handbooks containing legal guidance and case law, for their own use, rarely sharing those with other offices.</p> <p>One source of black lung legal guidance (the ‘Bench Book’, an in-house manual on black lung law) was formerly maintained by a Senior Attorney at OALJ headquarters; however, this attorney had resigned and the guidance was at risk of falling out of date.</p>	<p>We also found improved processes where the Intranet in particular was both updated and updates to that conveyed to district offices. Also, there are more informal approaches now, such as “brown bag” sessions, which are held periodically with law clerks around OALJ. Mission critical policies and procedures are communicated through staff meetings or other face-to-face communications. Those matters are reinforced through communication via email and, where warranted, by posting on the OALJNet.</p> <p>The Senior Staff attorney position had been filled, and with that we also discovered the “Bench Book” had been updated.</p> <p>75% of judges rated quality and sufficiency of policies and procedures as "Good" or "Excellent," while 62% of law clerks/attorneys rated quality and sufficiency of policies and procedures as "Good" or "Excellent." At that time of our last review, more than half the judges who responded to our survey rated the quality and sufficiency of OALJ policies and procedures as “poor” or “fair.”</p> <p>While we verified that some prior conditions still exist, we recognize the inherent independent nature of ALJs creates an environment that does not lend itself to uniformity in office practices and approaches. ALJs, exercising their independence, utilize their own approaches (e.g. ‘decision templates’) to track their respective cases.</p>
<p><i>6. Implement a distance hearing program, which could include video or telephone hearings, to reduce judges’ travel costs and time.</i></p>	<p>OALJ lacked the ability to conduct hearings via VTC. Judges needed time to travel to remote locations, frequently losing two days of in travel time each week.</p> <p>OALJ stated it is exploring the viability of this recommendation.</p> <p>OALJ is implementing a test project to determine the viability of utilizing video conferencing technology to minimize travel for ALJs and other hearing participants.</p>	<p>OALJ stated, however, that the black lung hearings participating in the test project have been continued, extending the time period required for completion of the test.</p> <p>In addition, to continue to explore hearings via VTC, in early 2016, OALJ transitioned to a centralized Sharepoint calendar for the scheduling of black lung hearings. Use of Sharepoint as a scheduling tool allows each District Office to reserve hearing trips and streamlines the de-conflicting process. Also, there is a renewed focus on black lung cases with isolated hearing locations: OALJ monitors the unassigned black lung case list for cases with distant or atypical hearing locations. On a rolling basis, it is determined whether any such cases can be added to an existing docket or whether a special trip is needed.</p>

OIG Recommendation	What We Found In Our Last Report	OALJ Corrective Actions/ What We Found in This Review
<p><i>7. Coordinate with OWCP and BRB to evaluate the feasibility and costs of an electronic case management, tracking, and storage system that could exchange case file information electronically with OWCP and BRB.</i></p>	<p>Although each agency has implemented and enhanced its own tracking system, none communicate with one another and there is no system that can routinely track cases through the entire adjudication process. OWCP claims system was primarily manual and paper based. Claimants submitted applications on paper forms, and most subsequent documentation was received in paper form, including medical evidence.</p>	<p>OALJ told us they and OWCP have successfully transferred first filer and other black lung cases in a fully digital format. At the end of March 2016, OWCP began to transfer fully digital Director's Exhibits to OALJ in initial miner's claims. Beginning on November 30, 2016, this initiative was expanded to include survivor's claims that have been digitized. On December 30, 2016, OWCP started to transfer digitized subsequent miner's claims to OALJ.</p>
<p><i>8. Establish timelines and performance goals for the disposition of cases for OALJ as a whole and for its district offices individually.</i></p>	<p>OALJ lacked adequate performance measures or goals, and had not made use of the performance management tools it does have.</p> <p>Also, terminating judges for performance reasons was not a viable option. However, though OPM regulations expressly prohibit ALJs from receiving performance ratings, and judges can only be removed for "good cause" after a formal hearing before the U.S. Merit Systems Protection Board, despite OALJ never having dismissed an ALJ for poor work performance, there is precedent for underperforming judges to be removed.</p>	<p>OALJ told us it had established District Office and agency-wide performance goals and general timelines for the disposition of cases. From our survey of judges, we did find 72 percent who responded confirmed there are black lung case file disposition goals or timetables established for their office, but 28 percent stated there were not, or were not sure.</p> <p>On September 1, 2015, the U.S. Court of Appeals affirmed the dismissal of a Social Security ALJ for performance reasons. The U.S. Court of Appeals stated, "when an agency establishes that an individual ALJ's case disposition rate is so significantly lower than the rate of similarly situated ALJs in his own region, that evidence, absent some contradictory showing that the statistics do not present a valid comparison, can support a finding of good cause." The court also noted that Social Security in its oral argument had delayed removal proceedings for this judge due to its perception that they were not permitted to remove ALJs for productivity reasons.</p>
<p><i>9. Consider transitioning the Cincinnati OALJ office to the case assignment methodology currently used by the Pittsburgh OALJ office.</i></p>	<p>We determined that the methodology used by OALJ to assign cases may not encourage the greatest productivity.</p>	<p>OALJ also stated plans to reevaluate the "efficacy" or effectiveness of its case assignment strategy and the size of black lung dockets assigned to different offices. Mainly due to Cincinnati office backlog, Judge Henley assigned judges doing Longshore to Kentucky and southern Ohio to hear dockets for black lung cases.</p> <p>We found in our analysis that the productivity for the disposition of black lung cases in the Cincinnati office increased, from 23 cases per judge in 2014 to 63 cases disposed in 2016.</p>

OIG Recommendation	What We Found In Our Last Report	OALJ Corrective Actions/ What We Found in This Review
<p><i>10. Implement a time tracking system for judges and law clerks to record the amount of time spent on each case.</i></p>	<p>OALJ lacked a system to track the amount of time judges and law clerks spent on the cases assigned to them.</p>	<p>OALJ disagreed with this recommendation, citing the variance of issues each individual black lung case engenders. They cited the wide variation judges face from case to case, including being able to work with diverse sets of litigants and representatives, including self-represented litigants, and be prepared to assist persons needing accommodations due to disability or limited English proficiency.</p> <p>OALJ stated tracking the amount of time judges and law clerks spend on specific cases is not a meaningful metric and would require a considerable amount of effort better invested towards case adjudication. Moreover, the APA effectively prohibits OALJ from establishing performance targets or incentives for administrative law judges. Accordingly, OALJ does not collect this data.</p> <p>OALJ stated they established District Office and agency-wide performance goals and general timelines for the disposition of cases.</p>
<p><i>11. Coordinate with BRB to prepare and implement a plan for detailing all staff not directly required for the BRB's own adjudicatory processes.</i></p>	<p>As OALJ struggled to manage its caseload in the face of decreasing staff, BRB detailed some staff to outside agencies and used some staff to update research tools. Until November 2014, these two agencies had not collaborated or reached an agreement to share resources to achieve the common goal of expediting the disposition of black lung cases. During our fieldwork, however, the agencies announced they had held a meeting to discuss possibilities for sharing resources and improving the black lung claims process. In addition, BRB stated it detailed one of its black lung attorneys to OALJ for a six-month period. The two agencies also drafted a memorandum of understanding (MOU) to address the sharing of resources.</p>	<p>OALJ coordinated with the BRB and arranged for the detail of staff attorneys to OALJ to assist in decision writing and black lung program management. Three BRB black lung staff attorneys were detailed to OALJ. All three details have ceased and, effective February 2016, OALJ hired one of the three BRB staff attorneys who had been detailed to the agency.</p>
<p><i>12. Implement recommendation #1 from GAO's 2009 report and develop a system of regular communication with BRB leadership to better coordinate activities in which</i></p>	<p>OIG reiterated GAO's report recommendation to BRB to develop a system of regular communication to better coordinate activities where both have a common interest.</p>	<p>OALJ stated it is now regularly communicating with the BRB leadership on issues of common interest. During FY 2015, OALJ and the BRB instituted a practice of having regularly scheduled meetings between the agencies.</p>

OIG Recommendation	What We Found In Our Last Report	OALJ Corrective Actions/ What We Found in This Review
<i>both have common interests.</i>		

Source: *Procedural Changes Could Reduce the Time Required to Adjudicate Federal Black Lung Benefit Claims* (OIG Report No. 05-15-001-50-598)

Appendices

APPENDIX A

OBJECTIVE, SCOPE, METHODOLOGY, AND CRITERIA

OBJECTIVE

We performed a review to determine the following:

How would adjustments to staffing levels affect OALJ's backlog of black lung cases?

SCOPE

The review primarily consisted of black lung cases adjudicated by OALJ between October 1, 2009, to May 31, 2016, and also projected black lung caseloads for FYs 2017 – 2021. We reviewed laws, policies, procedures, documents, reports, referrals, and OALJ's case tracking system (CTS) data. We interviewed and surveyed national and regional OALJ officials and staff. Our review was performed using the CIGIE Standards for Inspections and Evaluations.

METHODOLOGY

To determine how adjustments to staffing levels might affect OALJ's ability to decrease its backlog of black lung cases, we examined OALJ's black lung case disposition rates and case mix to determine the most likely actual disposition rate. This included reviewing and calculating OALJ-provided data and metrics to analyze and determine case and productivity outcomes and trends.

We analyzed OALJ's updated backlog reduction plan, as modified from OALJ's original 2014 plan by subsequent actual results and changes in actual staffing levels since our 2015 report, as well as the most likely case disposition rates. Further, we reviewed the options implemented in the backlog reduction plan for the impact on the black lung case backlog. We also developed several staffing scenarios, as well as the reintroduction of contract writers, to determine their effect on the backlog. OALJ has no control over the number of incoming cases, and only limited control over productivity rates, so we focused on the single variable over which OALJ had some level of control: staffing levels.

We also reviewed other internal and external factors for their effect on the backlog, to ascertain any ongoing deficiencies in the adjudication process and project changes in the case backlog. To address OALJ's other responsibilities and time requirements, we examined statutory/regulatory deadlines for specific non-black lung related cases. We also examined critical factors, such as BRB's staff sharing as temporary judges with OALJ to assist in backlog disposition, and technological and process changes affecting OALJ's ability to process cases.

We also conducted surveys of law clerks and judges to gauge their perspectives on their work they and their offices do, and to assess important matters such as sufficiency of staff resources, quality and sufficiency of training received, and the level of communication and technological tools available to them.

DATA RELIABILITY AND SAMPLING

OALJ utilizes an Intranet Microsoft .NET web application stored on a SQL Server 2005 database to capture the agency's case data. CTS comprises two modules, the 'Case Master' and the 'DMS2.' The 'Case Master' module is used to set up case detail information, input a case, and assign events to a case ('case master' data). The 'DMS2' (Document Management System) module is where a user can issue and/or publish judge-signed documents related to a case ('events' data). CTS is not accessible to any individual outside of OALJ. Access to CTS is role-based for OALJ staff. Depending on what stage the case is at, CTS permission levels vary.

Cases move in and out of CTS as a "living database." OALJ officials informed us that it is possible for one case to be included in multiple fiscal years as a newly docketed case. For example, a case is originally docketed in FY 2010 and the ALJ issues a decision in the same fiscal year. Then, in FY 2011, the case is remanded back to OALJ. In CTS, the remand date becomes a new docket date. As a result, the case is counted in both FYs 2010 and 2011 as a newly docketed case. The case number initially assigned remains the same through the entire case lifecycle. Although the original docket date is overwritten in CTS's 'case master' and replaced with the most recent docket date, a user has the capability to view a case's history. This history log shows all events associated with the case.

Our review relied in large part on the 'case master' data. The data presented in this report was based on a "snapshot" of the data as it existed at the time of our request and was the best available information OALJ could provide.

OALJ provided two datasets — 'case master' and 'events' — for all cases docketed from October 1, 2009 – May 31, 2016. Using the 'case master' dataset (universe), we separated the data by district office and case type (see Table 4). We also identified the fiscal year each case was docketed (see Table 5).

**Table 4. Number of Cases Docketed by Case Type and District Office
October 1, 2009 – May 31, 2016**

	Black Lung	Defense Base	Longshore	Perm Immigration	Traditional	Traditional Immigration	Total # of Cases
Boston, MA	185	165	2,808	560	130	51	3,899
Cherry Hill, NJ	1,384	298	939	2	258	90	2,971
Cincinnati, OH	1,540	148	185	3	262	58	2,196
Covington, LA	290	1,127	3,610	624	378	194	6,223
Newport News, VA	349	763	2,118	694	244	156	4,324
Pittsburgh, PA	1,579	52	46	19	169	28	1,893
San Francisco, CA	342	1,124	3,544	-	364	101	5,475
Washington, DC	1,726	1,582	949	13,056	1,051	1,036	19,400
Unknown	4	-	-	-	-	-	4
TOTAL	7,399	5,259	14,199	14,958	2,856	1,714	46,385

Table 5. Number of Cases Docketed by Case Type and Fiscal Year

	2010	2011	2012	2013	2014	2015	2016⁶
Black Lung	874	1,283	1,215	1,190	1,051	1,063	1,195
Defense Base Act	545	701	766	756	914	962	981
Longshore	2,245	2,259	2,121	2,163	2,063	2,030	2,081
Perm Immigration	1,667	2,994	3,777	3,540	1,752	768	852
Traditional Immigration	280	560	221	180	181	168	212
Traditional	389	352	445	459	523	396	451
TOTAL	6,000	8,149	8,545	8,288	6,484	5,387	5,772

Data reliability testing was a major component of our work. We performed various data reliability tests to identify duplicate case numbers and blank date fields. We also checked to ensure: (a) character fields contained only valid characters; (b) numeric fields contained only numeric data; and (c) date fields contained only valid dates. Data reliability testing was only performed on the ‘case master’ data for October 1, 2009 – May 31, 2016.

After data reliability testing, we decided to remove remanded cases from the universe. Using the ‘events’ data, we identified all cases assigned with the remand event code. Utilizing the ‘Remove Duplicates’ data tool in Microsoft Excel, we removed all duplicate case numbers. In total, we removed 414 remanded cases from the universe. Our “new” universe is broken down in Table 6.

⁶ Subsequent to our fieldwork, OALJ provided additional datasets for FY 2016.

Table 6. OALJ Universe by District Office and Case Type

	Black Lung	Defense Base	Longshore	Perm Immigration	Traditional	Traditional Immigration	Total # of Cases
Boston, MA	185	164	2,789	560	128	51	3,877
Cherry Hill, NJ	1,350	295	933	2	254	88	2,922
Cincinnati, OH	1,527	146	185	3	260	58	2,179
Covington, LA	289	1,112	3,572	624	375	193	6,165
Newport News, VA	344	761	2,093	694	227	156	4,275
Pittsburgh, PA	1,511	52	46	19	164	28	1,820
San Francisco, CA	342	1,117	3,508	-	358	101	5,426
Washington, DC	1,656	1,569	940	13,056	1,048	1,036	19,305
Unknown	2	-	-	-	-	-	2
TOTAL	7,206	5,216	14,066	14,958	2,814	1,711	45,971

We judgmentally selected four OALJ district offices based on the following four factors: (1) total number of cases assigned; (2) number of black lung cases assigned; (3) geographic location of district offices; and (4) prior audit experience. Based on these factors and the location of the case files, we selected a random statistical sample of 180 cases — 45 from each selected district office (see Table 7).

Table 7. Case File Custodian⁷ by OALJ District Office

Case File Custodian	OALJ District Office				TOTAL
	Washington, DC	Pittsburgh, PA	San Francisco, CA	Boston, MA	
ARB	-	-	-	1	1
BRB	-	-	-	2	2
OALJ	17	13	10	3	43
OWCP	7	32	35	36	110
ETA	21	-	-	3	24
Total	45	45	45	45	180

ARB = Administrative Review Board
 ETA = Employment and Training Administration

At each of these locations, we examined case file documentation and made objective factual determinations regarding specified elements in the documents. We verified whether key data elements were consistent and sufficiently reliable between the data and source documentation. Key data elements tested were as follows:

- 'Docket' – The date OALJ Docket (located in Washington, DC) receives the case from the forwarding agency (e.g. OWCP)

⁷ OALJ is not the custodian of all case files. Once a case is closed (decision issued), the hardcopy file is returned to the originating agency (e.g. OWCP).

- 'Refer' – The date OALJ Docket “refers” the case to an OALJ District Office
- 'Assignment' – The date the District Chief Judge assigns the case to a judge within the district
- 'Hearing' – The date the hearing is scheduled
- 'Decision' – The date the judge serves/issues a decision

Source documentation included referral letters with date stamps, hearing schedules, decisions issued, and history logs.

We identified and documented any discrepancies between the data and source documentation (tracing).

Based on our data reliability testing, we did not identify any duplicate case numbers or significant data validity errors. Therefore, we determined that OALJ's data is sufficiently reliable for us to use in calculating disposition rates (“disposition rate”) and projecting OALJ's black lung backlog.

SCENARIOS

According to OALJ's FY 2017 Congressional Budget Justification, the Agency projects to receive 1,100 new black lung cases. This equates to 92 cases per month ($1,100 \div 12 \text{ months} = 92 \text{ cases per month}$). As noted earlier in this report, we carried this number forward in our projections.

Scenario 1 – Status Quo

- For FY 2017, we projected that OALJ will staff 42 judges. Each ALJ will dispose of 39 cases per year. In total, OALJ will dispose of 1,638 black lung cases ($42 \text{ ALJs} \times 39 \text{ dispositions per judge} = 1,638 \text{ cases}$).
- The judges would dispose of at least 137 cases each month ($1,638 \text{ cases} \div 12 \text{ months} = 137 \text{ cases per month}$).
- By FY 2020, the ending backlog is 359 cases.
- The backlog should be eliminated approximately three months into FY 2021.⁸ However, this does not include new black lung cases received during that fiscal year. If the backlog is to be eliminated three months into FY 2021, OALJ will receive 3 months' worth of new black lung cases. We project OALJ to receive 276 new cases ($92 \text{ new cases} \times 3 \text{ months} = 276 \text{ new cases}$).

⁸ $359 \text{ cases (FY 2020 ending backlog)} \div 137 \text{ monthly case disposition rate} = 2.63 \text{ months}$

- In total, for FY 2021, OALJ will dispose of 635 cases (359 cases [FY 2020 ending backlog] + 276 new cases = 635 cases).
- OALJ should eliminate the backlog within 53 months.⁹

Scenario 2 – Add 3 Judges

- For FY 2017, we projected that OALJ will staff 45 judges. Each ALJ will dispose of 39 cases per year. In total, OALJ will dispose of 1,755 black lung cases (45 ALJs x 39 dispositions per judge = 1,755 cases).
- The judges would dispose of at least 146 cases each month (1,755 cases ÷ 12 months = 146 cases per month).
- By FY 2019, the ending backlog is 546 cases.
- The backlog should be eliminated approximately four months into FY 2020.¹⁰ However, this does not include new black lung cases. If the backlog is to be eliminated four months into FY 2020, OALJ will receive 4 months' worth of new black lung cases. We project OALJ to receive 368 new cases (92 new cases x 4 months = 368 new cases).
- In total, for FY 2020, OALJ will dispose of 914 cases (546 cases (FY 2019 ending backlog) + 368 new cases = 914 cases).
- OALJ should eliminate the backlog within 42 months.¹¹
- OALJ could reduce the time it will take to eliminate the backlog by 11 months (53-month status quo – 42 months = 11-month difference). This is a 21 percent reduction (11-month difference ÷ 53-month status quo = 21 percent) from the “status quo.”

Scenario 3 – Add 6 Judges

- For FY 2017, we projected that OALJ will staff 48 judges. Each ALJ will dispose of 39 cases per year. In total, OALJ will dispose of 1,872 black lung cases (48 ALJs x 39 dispositions per judge = 1,872 cases).

⁹ FYs 2017 – 2020 is 48 months

635 cases ÷ 137 monthly case disposition rate = 4.64 months

48 months + 5 months = 53 months

¹⁰ 546 cases (FY 2019 ending backlog) ÷ 146 monthly case disposition rate = 3.74 months

¹¹ FYs 2017 – 2019 is 36 months

914 cases ÷ 146 monthly case disposition rate = 6.26 months

36 months + 6 months = 42 months

- The judges would dispose of at least 156 cases each month (1,872 ÷ 12 months = 156 cases per month).
- By FY 2019, the ending backlog is 195 cases.
- The backlog should be eliminated approximately one month into FY 2020.¹² However, this does not include new black lung cases. If the backlog is to be eliminated one month into FY 2019, OALJ will receive one month's worth of new black lung cases (92 cases).
- In total, for FY 2020, OALJ will dispose of 287 cases (195 cases (FY 2019 ending backlog) + 92 new cases = 287 cases).
- OALJ should eliminate the backlog within 38 months.¹³
- OALJ could reduce the time it will take to eliminate the backlog by 15 months (53-month status quo – 38 months = 15-month difference). This is a 28 percent reduction (15-month difference ÷ 53-month status quo = 28 percent) from the "status quo."

INTERNAL CONTROLS

Our internal control assessment was based on a review of OALJ's policies and procedures and interviews with OALJ officials. In planning and performing our review, we considered OALJ's internal controls that were relevant to our review objective by obtaining an understanding of those controls, and assessing control risk for the purposes of achieving our objective. The objective of our review was not to provide assurance on the internal controls. Therefore, we did not express an opinion on the internal controls as a whole. Our consideration of OALJ's internal controls relevant to our review objective would not necessarily disclose all matters that might be reportable conditions. Because of the inherent limitations on internal controls, noncompliance may nevertheless occur and not be detected.

To assess the effectiveness of OALJ's internal controls, we provided a formal Internal Control Questionnaire (ICQ) to OALJ management for their completion. The ICQ, citing Office of Management and Budget Circular A-123, directing management be responsible for establishing and maintaining internal control to achieve the objectives of effective and efficient operations, reliable financial reporting, and compliance with applicable laws and regulations, looks to verify where significant areas have been identified, and the corresponding control activities that have been implemented. We also looked where management has redesigned and improved controls since our last review.

¹² 195 cases (FY 2019 ending backlog) ÷ 156 monthly case disposition rate = 1.25 months

¹³ FYs 2017 – 2019 is 36 months

287 cases ÷ 156 monthly case disposition rate = 1.84 months

36 months + 2 months = 38 months

CRITERIA

- Title IV of the Federal Coal Mine Health & Safety Act
- Black Lung Benefits Act of 1972
- Black Lung Reform Act of 1977 (20 CFR, Part 727)
- Black Lung Benefits Revenue Act of 1977 (Title 26, United States Code, Part 9501)
- Black Lung Benefits Amendments of 1981
- Black Lung Benefits Revenue Act of 1981
- Black Lung Consolidation of Administrative Responsibility Act of 2002
- Patient Protection and Affordable Care Act of 2010
- Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR, Part 18)

APPENDIX B

OALJ's RESPONSE

U.S. Department of Labor

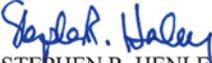
Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)



September 20, 2017

MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General for Audit

FROM: 
STEPHEN R. HENLEY
Chief Administrative Law Judge

SUBJECT: Response to the Office of Inspector General's
Report, Office of Administrative Law Judges
Black Lung Backlog

The Office of Administrative Law Judges (OALJ) appreciates the opportunity to review and comment on the Office of the Inspector General's (OIG) Report No. 05-17-003-01-060.

The report notes that one of the challenges that could impact how quickly the backlog is reduced is a shortage of attorneys representing claimants. It is a fair observation that a small number of law firms specialize in black lung claims. Feedback from the black lung bar indicates that it is near capacity on being able to prepare for and participate in the hearings presently being scheduled. Given the current capacity of the private bar, increasing the number and frequency of ALJ hearings may not be realistic.

OALJ does not have any additional comments for your consideration at this time. OALJ thanks OIG for its helpful recommendations, which have played a large part in OALJ's recent success in reducing the black lung backlog, and for the work done on this report. Should you have any questions related to this matter please contact Angel Perez, Deputy Director of Program Operations at (202) 693-7337 or at perez.angel.l@dol.gov.

APPENDIX C

ACKNOWLEDGEMENTS

Key contributors to this report were: Nicholas Christopher (Audit Director), Fernando Paredes (Audit Manager), Jason Jelen (Audit Manager), Susan Rosenblum, Richard Donna, Jerry Howe, and Kathleen Mitomi.

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