

Written Testimony of Erwin Hathaway
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Before the Senate Committee on Finance
Administrative Challenges Facing the Social Security Administration

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Introductory Remarks

Good morning Chairman Grassley, Ranking Member Baucus, and members of the Committee. Thank you for inviting me to discuss the delays in the Social Security Administration's processing of Disability claims. Thank you for assisting me in making this difficult trip to Washington D.C., so that I may address to the Committee my problems, as well as my concerns about the system as a whole. I felt it worthwhile to come here to see if I can add my experience and it will help make the system better for others. I would like to see the system improved and made more efficient. I appreciate the opportunity to address the Committee.

I live outside Trego, Montana. Trego is a very small town in northwest Montana. This trip out to Washington D.C. was a very difficult trip for me to make, and I could not have done so without the assistance of my wife.

My Case

During the four year period between when I applied and I started receiving benefits, we suffered significant financial hardship. I had to draw early retirement from Boeing at a discounted monthly amount. I will never get back the difference. We depleted our life savings, and we sold that stocks that I had accumulated through my work over many, many years. I had to take early withdrawals from my 401k. We had to take a mortgage on our home and sell possessions. This was all because of the long delay before receiving the benefits which were ultimately determined went back to when I stated I was disabled on my original application. During the time my first, and then second applications were pending, I could not work. If I could have worked, I would have. Although this was hard for me and my family, I know many people have worse circumstances and end up homeless waiting to get benefits. I was fortunate we had better circumstances, but I suffered a lot of anger and disappointed about how my case went and how long it took to get resolved.

It was not my idea to apply for disability in the first place, nor was it anything other than a last resort. I was originally injured in September of 1978. I had major surgeries in 1978 and 1979. I returned to work in 1980. I was not able to go back to my past work, and I was retrained at a community college to do quality assurance work. Because of the size of Boeing, and its many government contracts, the company had opportunities for people with disabilities. I went to work for Boeing in June of 1988. They hired me with the knowledge of my restrictions with walking, standing, stairs and not being able to climb ladders. I even had an 'inside' parking pass so I would not have to walk far. However, over time, my condition deteriorated. During my last 3-4 years of employment I missed a lot of work because of my pain and depression that resulted. My doctor had even suggested that I should apply for disability sooner because I was not able to sustain the work. They put up with me longer than they probably should have. I was finally laid off by

Boeing in December of 2001, and I applied for disability in February 2002. I was denied and appealed. I requested Reconsideration, and I was denied again.

I contacted my attorney when I was denied the second time and needed to request a Hearing. I requested my hearing on August 21, 2002. My hearing was held over a year later, in October 2003.

I did not feel that the Judge listened to me and had an open mind about the evidence. At times I wanted to write and complain about the judges and the hearing office. I contacted both my U.S. Senators in Montana about the delay and the way my case was handled.

I have had problems with my foot and ankle going back many years. Over the years I have been injured, especially the last five to six years, my activities have been severely limited. I cannot play catch with my grandkids nor do the kinds of activities with them I want to do. We have a very limited social life. I am in constant pain and do not interact well with others because of not only the pain, but my depression and mood swings. While my disability claim was pending, was also diagnosed with carpal tunnel syndrome and a chronic pain syndrome. My foot hurt so badly at one point I asked my doctor to just cut it off. I got so depressed I felt like I should be put down, like they do for horses. I can no longer walk on uneven ground or walk any significant distance. I use a cane. I have problems sitting and standing. For the past several years I cannot walk the woods, or hunt on foot. I have had a disabled parking permit since at least 2002. I have a Montana disabled hunting and fishing license, and I have a permit to hunt from my vehicle because of my disabilities.

I wonder if this long appeal process would have been necessary if there were better controls about accepting the treating doctors' recommendations and opinions about my limitations and disability. The claimant's doctors know the claimant's condition far better than some paper pusher or doctor looking at a file in an office hundreds of miles away. In my case I was very angry by not case not being granted because someone who read my file questioned my "credibility" about my pain and mental limitations. My doctors repeatedly advised I could not work and stated what my limitations were. This was confirmed when they responded to the second set of questions sent to them by last Administrative Law Judge (ALJ) - which he sent after my attorney objected to the first set of questions he sent. My attorney proposed questions which were fair, which the ALJ submitted to my doctors. Prior to that time, SSA never asked my doctors what they thought and the first Judge ignored what they had said. Even after the case came back from Federal Court, I felt like I was struggling against the system.

My wife has been very helpful during these very trying years, not only as a caregiver, but also during my times of severe depression, as well as my anger at the system that seems to be broken. Mr. Bliven and his office staff have also been very supportive when I would call and vent anger and frustration. Without this support I do not feel I could have overcome the system and made it to the day when I actually got my disability benefits.

My first hearing before an Administrative Law Judge was held on October 7, 2003, about sixteen months after the denial of my initial claim. My appeal was denied by the Administrative Law Judge at the Billings Office of Hearings and Appeals (OHA). My attorney appealed to the next

level, the Social Security Appeals Council. A ruling was issued nine months later. This ruling denied my claim, so my attorney appealed again to the United States District Court on July 28th 2004. I filed a second application, which was denied, I appealed, and was denied again. I requested a hearing. Before that hearing was set, and nine months later after my Complaint was filed in the U.S. District Court, the District Court determined that SSA had improperly evaluated his case and remanded the case back to the Appeals Council. At this point, I had waited 3 years and 6 months for resolution of my disability claim. Given the evidence in his case file and other facts, I was finally approved for benefits on December 28, 2005 – almost 4 years after my initial application.

A summary of time lines in my case (my original application) is in the table below:

			Onset of disability date was 12-14-01
02-15-02			Filed first DI application
05-31-02		3.5 months	Denial of initial application
10-07-03	1 year	8 months	First ALJ hearing (OHA)
11-19-03			Filed Appeal with Appeals Council
04-12-04			Case materials arrive from Appeals Council
05-21-04			Attorney Filed brief with Appeals Council
06-26-04	2 years	4 months	Appeals Council issues denial
07-28-04			Filed Complaint in District Court
03-25-05	3 years	1 month	Commissioner's Motion to Remand – District Court found denial of due process. Improper rejection of treating doctors' opinions. Failure to consider mental limitations.
04-01-05			Magistrate Judge Issues Remand Order to Appeals Council
08-16-05	3 years	6 months	Appeals Council issues case back to ALJ
08-23-05/8-25-05			Second ALJ Hearing (OHA)
12-28-05	3 years	10 months	Approval of Claim

I received my first check in January of 2006. I have not been paid all my back pay, nor has my attorney been paid from my benefits that have been withheld to pay him. While my case was pending I was diagnosed and treated for Prostate Cancer. After the Appeals Council denied my first application and while my case was on appeal the Federal Court, I filed a second application. That application was quickly denied without any significant development by the SSA because of the first denial. I was able to get a hearing date on the second application before the case came back from Federal Court, but the ALJ postponed that hearing because of the first denial and the file had not come back from Federal Court, despite my attorney's repeated efforts to get the files put together. It was quite an odyssey. My second hearing was postponed twice before it was heard. Even though SSA's doctor testified I was disabled at the second hearing, the ALJ would

not find me disabled until the second set of responses from my doctors, months later. I really felt like someone was against me.

Funding and Proposed Changes

I again thank the Committee for supporting funding for the Social Security Administration and its oversight. I support the goals of the Commissioner to speed up the system. I have reviewed much of her proposals, and the response of the National Organization of Social Security Claimant's Representatives (NOSSCR). I support efforts to use technology to help speed up the processing. I support funding for upgrading the system. However, I am concerned that others may suffer from similar problems that I had, and that those errors will increase if disabled applicants do not get a full and fair hearing. I think that access to the Federal Courts is critical, that someone outside the SSA reviews the actions of the adjudicators and even the ALJ's, to make sure that Disability applicants get a full and fair review. I believe that treating physicians should continue to be given the greatest weight and consideration - they know the claimant the best. I believe very strongly that claimants should have the continued ability to submit evidence until a final decision is made. It is important that Due Process is not sacrificed, and that the claimant have a full and fair opportunity to prove their disability. The claimant also needs to have the opportunity to appeal the incorrect decisions of the SSA including the Federal Courts.

Conclusion

My case took too long for the Social Security Administration to make the right determination. I would like to see the Congress to provide the funding necessary to the SSA so that it can process Disability claims like mine quickly and correctly. I appreciate the efforts and consideration of this Committee and ask that claimants like me continue to have your support and oversight.