

decisions of the Secretary involving benefits under Titles II, XI, XVI and XVIII of the Act and Part B of title IV of the Federal Mine Safety and Health Act of 1977, as amended, are proper and in accordance with the law, regulations, and binding agency policy established in Social Security Rulings and Acquiescence Rulings.

Currently, 22 Appeals Council members, hereinafter referred to as either "Administrative Appeals Judges (AAJs)" or "members," comprise the membership of the Appeals Council. The Associate Commissioner for OHA is the Chair of the Appeals Council and is the administrative officer directly responsible to the Commissioner of Social Security for carrying out OHA's mission of holding ALJ hearings and deciding appeals. Each AAJ, other than the Chair, is assisted by an Appeals Officer who presently serves as a legal clerk. Organizationally, Appeals Officers are a part of the Appeals Council.

The Appeals Council considers appeals under titles II, XI, XVI, and XVIII of the Act, and under Part B of title IV of the Federal Mine Safety and Health Act of 1977, as amended. The regulations setting forth the responsibilities of the Appeals Council appear in 20 CFR Part 404 (Subpart J, §§ 404.967 *et seq.*), Part 410 (Subpart F, §§ 410.657 *et seq.*), Part 416 (Subpart N, §§ 416.1467 *et seq.*), and 42 CFR Part 405 (Subpart G, §§ 405.701(c) and 405.724, and Subpart H, § 405.815), Part 417 (Subpart Q, § 417.634), and Part 473 (Subpart B, §§ 473.46 and 473.48(b)). These regulations provide that after an ALJ has issued a decision or dismissed a request for a hearing, the Appeals Council may review a case on its own motion or at the request of a party to the hearing decision or dismissal. The Council may deny or dismiss a party's request for review, or it may grant the request and either issue a decision or remand the case to an ALJ. If the Appeals Council denies a request for review of a decision by an ALJ, the ALJ's decision becomes a final decision of the Secretary subject to judicial review under the provisions of section 205(g) of the Act except when judicial review is precluded in certain Medicare cases. If the Appeals Council grants a request for review and issues a decision, that decision also becomes a final decision of the Secretary subject to judicial review under section 205(g) of the Act except in certain Medicare cases.

Sections 404.970 and 416.1470 of 20 CFR describe cases involving Social Security and supplemental security income benefits payable under title II

and title XVI of the Act that the Appeals Council will review. Those sections provide that the Appeals Council will review a case if the action, findings or conclusions of the ALJ are not supported by substantial evidence; there is an error of law; or there appears to be an abuse of discretion by the ALJ. Those sections also provide that the Appeals Council will review a case that presents a broad policy or procedural issue that may affect the general public interest. The same standards apply to determine if the Appeals Council will review a case under titles XI and XVIII of the Act and under Part B of title IV of the Federal Mine Safety and Health Act of 1977, as amended.

Over the years, there have been questions about the functions and operations of the Appeals Council. Some commenters have questioned the usefulness of review by the Appeals Council. Several studies have addressed the role of the Appeals Council, resulting in many recommendations for improving the Council's structure and operations.

In its Recommendation 87-7: A New Role for the Social Security Appeals Council (adopted December 18, 1987), the Administrative Conference of the United States (ACUS) concluded that the high volume of work of the Council (up to 500 cases per member per month) precluded it from detecting emerging problems, identifying new issues to be resolved, and identifying and developing needed policies. ACUS recommended that the Secretary and SSA restructure the Appeals Council in "a fashion that redirects the institution's goals and operations from an exclusive focus on processing the stream of individual cases and toward an emphasis on improved organizational effectiveness" (1 CFR 305.87-7). To this end, ACUS recommended that "the Appeals Council should be provided the authority to reduce significantly its caseload and also be given, as its principal mandate, the responsibility to recommend and, where appropriate, develop and implement adjudicatory principles and decisional standards for the disability determination process." ACUS also recommended that the agency enhance the status of the Appeals Council and provide law clerks to its members.

To address the workload problems ACUS discussed in its recommendation, SSA decided, in 1988, to add Appeals Officers to the Council to enable the members to focus their attention on the more complex and significant cases, including those cases presenting important policy or procedural issues.

Appeals Officers presently assist AAJs in considering recommendations made by the Council's support staff in OHA's Office of Appellate Operations. Appeals Officers, who are attorneys, also act as the AAJs' staff attorneys, researching and providing legal memoranda on issues arising from cases that come to the attention of the Appeals Council. However, because the Appeals Officers do not have authority under our existing regulations to carry out any of the decisionmaking responsibilities of the AAJs, one or more AAJs must make these decisions.

Research we have supported since we established the Appeals Officer position has persuaded us that if the Appeals Officers are authorized to assume some of the responsibilities of the AAJs, the AAJs will be able to focus more of their attention on cases that present broad policy or procedural issues. In a report commissioned by ACUS in 1989 (Report and Recommendations on the Social Security Administration's Administrative Appeals Process), Professor Frank S. Bloch discussed the Appeals Council's workload and stated that the Council could not be expected to assume a meaningful review function for all claims that might be presented to it. One of the recommendations in the report was that the Appeals Council be authorized "to use staff or lower level Council members to deny a request for review, and limit the review of cases by the Appeals Council to those raising significant policy issues." See Recommendation No. 12.

To complete the changes we contemplated when we established the Appeals Officer position, we are amending § 422.205 to authorize Appeals Officers, as well as AAJs, to deny a request for Appeals Council review of a hearing decision by an ALJ in any case in which the Act would provide an opportunity for judicial review of such hearing decision following a denial of a request for Appeals Council review. Because an ALJ's dismissal of a request for a hearing is not subject to judicial review, AAJs alone will continue to decide whether to grant or deny a request for review of a hearing dismissal. For the same reason, only AAJs will be empowered to exercise the Council's authority to dismiss a request for review or refuse a request to reopen a decision of an ALJ or the Appeals Council. The AAJs also retain exclusive authority to grant a request for review of a hearing decision or a dismissal, to decide to review a case on the Appeals Council's own motion, to remand a case to an ALJ, or to issue a final decision.