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NEW THREATS TO INJURED WORKERS

Editor's Note: LCR interviewed Russell Youmans (of the Oakland law firm of Jewel, Leary and Russo), who has long specialized in representing injured workers seeking to establish their entitlement to disability benefits under Social Security. Youmans has warned working people and their unions about "dark clouds on the horizon" for injured workers who are dependent on Social Security for disability benefits.

LCR: Mr. Youmans, you assert that in recent years the Social Security Administration (SSA) has repeatedly tightened and retightened its eligibility requirements for injured workers seeking to qualify for Social Security Disability benefits. What has SSA been doing?

RY: First, SSA has increased the burden of "medical proof" required to qualify for benefits while at the same time, has ignored or given inadequate consideration to the opinion of a workers' treating physician. It is not uncommon to handle cases in which the Administration had either denied or discontinued benefits based upon the opinion of a brief "one-shot" medical exam compelled by the government (CDR program).

Second, when SSA denied benefits but an Administrative Law Judge reversed that denial in more than 60% of his or her cases, SSA targeted the decisions of such judges for special review (called the "Bellman Review"). Judges who did not "respond" were subject to disciplinary action.

Third, SSA publicly announced that it would not obey the decisions of Federal District Courts and Courts of Appeal with which it did not agree (Non-acquiescence). SSA now claims it will follow the District Court decisions but proposes that unsuccessful Social Security claimants be denied access to Federal courts (Social Security Court proposal).

LCR: You have also warned that new changes are now proposed, that would have an even more far-reaching negative impact on a vast number of disabled workers who are wholly dependent on Social Security Disability benefits. What are these proposals?

RY: The first is called the Government Representation Project. As you know, an injured worker is entitled to an appeal hearing, with legal counsel present, before an Administrative Law Judge. When President Reagan was elected, an "experiment" was instituted in which an attorney was permitted to appear at this hearing to make arguments against the injured worker. This was the first time in the history of Social Security that such a procedure has been allowed. This so-called "experiment" has now been expanded, despite the fact that no direct benefit resulted from the presence of the government attorney at the hearing. In fact, the Government Representation Project has resulted in greater hardship for the injured worker because of excessive delays in rendering a decision.

LCR: We understand that there is current legislation to abolish this "experimental" project?

RY: Yes. Both the House, in HR 3854, and the Senate in SB 1944, have proposed legislation to abolish the Government Representation Project. Let me give you a quote from Senator Sasser (D.Tenn.) about this:

"Not only has the project dragged on for two years beyond its scheduled end, its results have been greater confusion, less fairness and higher costs, the exact opposite of what was intended. Social Security Disability recipients should never have to face an adversary when they apply for or defend their benefits. This program should be discontinued before thousands of disability recipients are unfairly denied their benefits."

I would like to urge your readers to contact their representatives in Congress and voice strong support for passage of HR 3854 and SB 1944, which would dismantle the Reagan Administration's, unfair impediment to disability benefits. Remember that all workers have contributed heavily to Social Security over the years, to make these benefits possible for injured workers who are often in desperate need.

LCR: *What else is going on to put these "dark clouds" on the horizon for injured workers?*

RY: Presently, Social Security appeals are filed in federal district courts, and can then be appealed to the U.S. Courts of Appeal and finally to the Supreme Court. But now, at the urging of the Justice Department and the Health and Human Services Department, the White House is pushing to create a new federal court solely to handle Social Security appeals. Remember that nearly four million people in this country receive monthly cash benefits through the Social Security Disability program. Well, at the end of last year, there were 53,000 appeal cases pending in the 94 Federal district courts. Ninety-five percent of these appeals involved disability benefits.

LCR: *Has this enormous case load of appeals resulted directly from the Reagan Administration's programs which you just summarized?*

RY: Yes, because the number of appeals has more than doubled since the end of 1982. Also, the record shows that the SSA in federal court loses more than 50% of the appeals filed by dissatisfied Social Security claimants. Some attorneys in the Justice Department have threatened to quit rather than to continue defending weak SSA cases. A typical review ruling was rendered by a Federal District Judge in New Jersey, who declared in 1984 that "a heartless bureaucratic monster was destroying the lives of disabled citizens."

LCR: *Has legislation been introduced to create this special court system? Or should we call it a special "court packing" system?*

RY: Legislation has been introduced in the House--the bill is HR 4419, which I urge everyone to oppose. Also in the House, a resolution has been introduced which expresses disapproval of any proposal to establish a separate court. It's House Resolution 400, which I urge everyone to support.

The *Wall Street Journal* has reported that Attorney General Edwin Meese is pushing the new court system. If it is established, the Reagan Administration will undoubtedly hand pick the judges--and there are serious concerns over whether existing case law precedents will be followed. In fact, the Reagan Administration wants the new court to set its own rules of procedure. In this whole matter, SSA is clearly trying to avoid or short circuit the legal remedies now available to aggrieved claimants for Social Security Disability benefits. A new court packed with Reagan-appointed judges would severely undercut the reforms made through our present federal court system and remove what is now the last level of appeal.

LCR: *We've reached our space limit. You only get one more brief comment.*

RY: Then let me ask your readers: Why should disabled people be denied access to the general courts of this country, which have done a good job of protecting their rights? And why should they be denied when such access is guaranteed to everyone else?

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