

December 22, 2011

Via E-Mail (alan_cohen@finance.senate.gov)

The Honorable Max Baucus
Chairman, Senate Committee on Finance
511 Hart Senate Office Building
Washington, DC 20510

The Honorable Orrin Hatch
Ranking Member, Senate Committee on Finance
104 Hart Senate Office Building
Washington, DC 20510

Chairman Baucus and Ranking Member Hatch:

I write to alert you to an article in the *Wall Street Journal* regarding potentially fraudulent practices by the law firm of Binder & Binder in representing claimants for disability benefits before the Social Security Administration ("SSA"). That article, which I have attached, found that claimant representatives at the Binder & Binder firm withheld medical evidence from SSA that could prove their clients should not receive disability benefits.

Binder & Binder allegedly engaged in this practice, even though making false statements and misrepresentations or omissions to receive disability benefits are prohibited by the Social Security Act and subject to civil and criminal penalties. *See* Social Security Act, 42 U.S.C. §1320a-7a; 42 U.S.C. §408.

The ability of claimant representatives to take advantage of the disability appellate system is the result of a sizeable legal loophole in which no one represents the interests of the government or the taxpayer at ALJ hearings. While disability hearings are "nonadversarial," it is rare today that a disability claimant is not represented when appealing their application for benefits to an SSA Administrative Law Judge ("ALJ"). In fact, the percentage of disability claimants represented by an attorney at the ALJ hearing has nearly doubled since 1977. In 2004, 94 percent of Social Security Disability Insurance ("SSDI") claimants were represented at the ALJ hearing by an attorney or claimant representative and that number has likely increased.¹ As such, the Social Security Advisory Board has long advocated that:

¹ Social Security Advisory Board, Disability Decisions Making: Data and Materials, May 2006, <http://www.ssab.gov/documents/chartbook.pdf>.

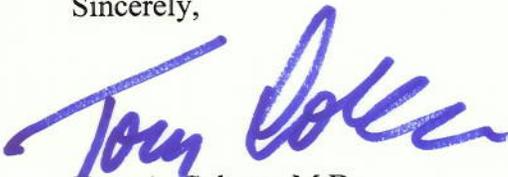
[h]aving an individual present at the hearing to defend the agency's position would help to clarify the issues and introduce greater consistency and accountability into the adjudicative system. It would also help to carry out an effective cross-examination of the claimant.²

While ALJs are tasked with developing an evidentiary record to support their decision, including evidence adverse to a claim for benefits, agency priorities are focused on decreasing the hearing backlog. This focus by the agency encourages judges to spend less time properly developing and reviewing each case. Instead, the ALJs should be focused on properly deciding disability cases based on a thorough review of the evidence to produce accurate decisions.

I strongly believe SSA should be represented during the ALJ hearing. Unlike current practice, the agency would be given the chance to defend its denial of the claimant as suitable for benefits. The attorney for the government (and ultimately, the American taxpayer) would be responsible for developing and submitting evidence that a claimant is not suitable for disability benefits.³ Therefore, an attorney for the government would ensure all medical evidence would be before an ALJ considering a disability claim, including the type of evidence the law firm of Binder & Binder routinely omitted.

This reform is only one of many others needed with regard to the Social Security disability programs. In fact, if Congress fails to reform Social Security Disability Insurance ("SSDI"), the trust fund that supports the program will be exhausted by 2018.⁴ I provided a number of commonsense proposals in a report I wrote, *Back in Black*. It is my hope that we can find areas of agreement. The American people depend on us to make sure that we have a robust safety-net for the disabled, but we must also ensure those programs meet strong standards on integrity. I look forward to working together.

Sincerely,



Tom A. Coburn, M.D.
United States Senator, Oklahoma

² Social Security Advisory Board, *Charting the Future of Social Security's Disability Program: The Need for Fundamental Change*, January 2001, <http://www.ssab.gov/publications/disability/disabilitywhitepap.pdf>.

³ Sen. Tom Coburn, *Back In Black*, Preserving Social Security for Future Generations, http://coburn.senate.gov/public//index.cfm?a=Files.Serve&File_id=90fe9124-5865-425c-b7c0-5d9dad48fbb9.

⁴ The 2011 Annual Report to the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, <http://www.ssa.gov/oact/tr/2011/tr2011.pdf>.