So you think you want to be an Administrative Law Judge?

By Jennifer Whang

The position of federal administrative law judge (ALJ) has been touted as being “one of the best jobs in government.” I couldn’t agree more! I have had the privilege of working for the federal government for over sixteen years and spent the last six years as an ALJ. While I have enjoyed all of my years of government service, the last few years have been the most rewarding of my career, and I hope to have many more.

So how did I get this position? I definitely would not be where I am today without the mentoring of my former supervisor, the Honorable Charles E. Bullock, who showed me what it takes to run a courtroom and encouraged me to pursue a career as an ALJ. I also would never have been selected to be an ALJ if I didn’t know how to navigate the ALJ hiring process. For anyone who is interested in becoming an ALJ, I hope this article will answer some of your general questions.

Introduction to the ALJ Hiring Process

Federal ALJs are appointed solely based on merit. The Office of Personnel Management (OPM) administers the federal ALJ recruitment process. The minimum qualifications include seven years of experience as a licensed attorney practicing in either litigation or administrative law. Whereas most federal attorney positions are excepted service, ALJ positions are considered competitive civil service, meaning they require applicants to take OPM’s competitive examination and require employers to take into account an applicant’s Veterans’ Preference.

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1 I began my service as an Administrative Law Judge (ALJ) with the Office of Disability Adjudication and Review at the Social Security Administration on July 18, 2009 and spent over three years in three different offices, including the hearing offices in Wilkes-Barre, Pennsylvania and Baltimore, Maryland, and at the National Hearing Center in Baltimore, Maryland. I joined the Office of Administrative Law Judges and Dispute Resolution at the Federal Energy Regulatory Commission on September 24, 2012. Prior to becoming an ALJ, I worked as an Attorney-Advisor in the Office of Administrative Law Judges at the United States International Trade Commission practicing intellectual property law for over seven years. Previously, I was trial attorney in the Civil Trial Section within the Tax Division of the Department of Justice. I also have background in tax and accounting as a former Tax Consultant and Tax Compliance Specialist in the Seattle, Washington offices of Ernst & Young and am licensed as a certified public accountant (inactive) in California where I was an auditor for a public accounting firm for two years. I hold a Bachelor of Science in Economics from the Wharton School of the University of Pennsylvania, and a Law Degree from the University of Arizona School of Law. The opinions expressed in this article are my own, and do not, in any way, reflect the views of the Federal Energy Regulatory Commission or any of my fellow judges. This article was originally published in the Fall 2013 Energy Bar Association Newsletter and has since been updated.


4 5 C.F.R. § 930.201(d) (2013).

5 5 C.F.R. § 930.201(b).
When an agency looks to fill an ALJ vacancy, it can either hire a candidate who is not yet an ALJ off the OPM “register” or hire a sitting ALJ from another agency. The register is “a list of candidates eligible for selection used to make referrals to agencies for employment consideration when they have entry level ALJ vacancies to fill.”

There are approximately 1,700 federal ALJs in the United States. Approximately 90% of those ALJs work for either the Social Security Administration (SSA) or the Office of Medicare Hearing and Appeals (OMHA) at the Department of Health and Human Services (HHS), whereas the remaining ALJs work for one of another two dozen federal agencies. The SSA has hired approximately 600 ALJs over the last five years to deal with the incredible backlog of disability cases. Although SSA has hired numerous ALJs recently, including over 200 new ALJs in fiscal year (FY) 2015, the number of ALJs from fiscal year 2013 to 2015 has actually decreased from 1,350 to 1,250, mostly due to retirements. Sources from SSA have stated that SSA is authorized to hire 250 ALJs in fiscal year 2016. SSA executives have stated that their ALJ hiring initiative is the most critical factor to meet its disability backlog goals, noting an ideal ALJ staffing level of 1,800-1,900 ALJs by fiscal year 2018.

The OMHA was created in 2005, which transferred Medicare appeals from the SSA to the OMHA; therefore, all OMHA ALJs were hired, or transferred from other agencies, within the last decade. OMHA, like SSA, has also recently had to deal with an incredible backlog of cases, mainly due to the Medicare Recovery Audit Program, implemented in 2010.
secured funding for 7 additional ALJs in fiscal year 2014, which increased its ALJs ranks by 10%. The SSA and the OMHA typically hire ALJs from the OPM register, whereas most of the other federal agencies hire sitting ALJs because those agencies typically hire experienced ALJs. The remainder of this article focuses on the process of getting onto OPM’s register. The ALJ hiring process is a long process—one I would describe as a marathon rather than a sprint. It took almost a full year from the day I submitted my initial application to the day I was appointed as an ALJ. During that year, I sat for a Written Demonstration (WD), had a Structured Interview (SI), received my Notice of Results (NOR), placing me on OPM’s register, was placed on the SSA’s ALJ hiring certificate, and had an interview with the SSA, all before receiving an offer as an ALJ. There have been multiple iterations of the examination administered by the OPM in the last twenty years and the examination process that I went through just seven years ago is different from the current examination process. I will attempt to point out differences as I go along.

Vacancy Announcement

The initial step in the ALJ hiring process is finding out when a vacancy announcement is posted. In the past, OPM has posted job announcements on USAJOBS, so if you are interested in finding out when an announcement is posted, set up an automatic search on USAJOBS to receive notification when the next vacancy is posted. OPM posts vacancy announcements infrequently, which is why it is important to monitor for the next vacancy announcement. OPM posted the most recent announcement in March 2013, whereas it posted the previous three announcements in November 2009, July 2008, and May 2007, so there is no consistent pattern for announcements. It is my understanding that OPM must post the next vacancy announcement by April 1, 2016, due to the requirements in the Bipartisan Budget Act of 2015, so now is the time to get prepared to submit an application.

13 Id. at 7.
15 Specifically, I filed my initial application on July 31, 2008 and was appointed as an ALJ on July 18, 2009. The USAJOBS announcement number I applied under was 2008ALJ-134575. A similar vacancy announcement was posted as Job Announcement Number 2009ALJ-134575 [hereinafter 2009 ALJ Vacancy Announcement].
16 Specifically, I took the WD in November 2008, had my SI in December 2008, received my NOR in February 2009, had an interview with the SSA in April 2009, and received an offer of employment in June 2009 for a July 2009 start date.
17 The ALJ register was frozen for four years between 1999 and 2003 because of an adverse ruling in litigation before the Merit Systems Protection Board (MSPB), referred to as the Azdell litigation. See Meeker v. MSPB, 319 F.3d 1368 (Fed. Cir. 2003), cert. denied sub nom. Azdell v. James, 540 U.S. 1218 (2004); SSA OIG Report, supra note 8, at app. H, n.1. After the Azdell litigation, significant changes were made in the format and scoring of the ALJ examination.
19 See 2013 ALJ Vacancy Announcement, supra note 6.
In the past, such as when I applied, the open period to apply was a very short window—only a few days—because the OPM put a cap on the number of applications it would consider. This disadvantaged many individuals who did not know when the announcement would be posted. Numerous interested applicants were left unable to file their materials before the deadline passed because of the mad dash of applicants submitting their applications once the job announcement was posted. After what I imagine were many complaints about this process, in OPM’s most recent job announcement, the OPM fixed a ten-day period during which applicants could apply. In addition to USAJOBS, another way to gather information on the ALJ examination is through an unofficial internet discussion board entitled “ALJ Discussion Forum,” where both sitting and hopeful ALJs anonymously discuss topics related to being an ALJ and to the hiring process.

Application and Examination

The next step after finding an OPM vacancy announcement posting is to go through the application and examination process. When I applied in 2008, this involved filling out an online application, which included an assessment questionnaire. The questionnaire asked me to describe how I met the seven-year experience requirement, state whether I was a licensed attorney, and provide examples of how I demonstrated skills in six accomplishment record categories: (1) decision making; (2) interpersonal skills; (3) oral communication; (4) writing; (5) judicial analysis; and (6) judicial management. Once the OPM reviewed this portion of the application, applicants who scored high enough were invited to proceed to the remaining portions of the ALJ examination. Once an applicant completed the WD and SI, the OPM sent the applicant an NOR with a numerical score and placed the applicant on the ALJ register.

One important part of the application process is your “geographic availability.” When applying, it is very important to check off as many locations where you would be willing to accept an appointment as an ALJ to maximize your chances of being selected. The SSA has hearing offices in over 168 locations across the entire country, while OMHA has 5 field offices. I know of very few ALJs that were selected to become ALJs in the same geographic area as their previous job. For many, it may not be practical to relocate due to their spouse’s job or their children’s school, but for those who are willing to relocate, it greatly increases their chances of becoming an ALJ.

As noted above, in the most recent job announcement, which was posted from March 5–15, 2013, the OPM no longer put a cap on the number of applications it would consider. The OPM introduced a few new elements into the testing process, including: the Situational Judgment Test (SJT) and writing sample, which is part of the “online” component; and the Logic Based

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21 For example, the 2009 ALJ Vacancy Announcement stated that “your complete application package must be submitted by the day on which the 900th completed application has been submitted or November 24, 2009, whichever comes first.” See 2009 ALJ Vacancy Announcement, supra note 15, at 1. For the November 2009 ALJ Vacancy Announcement, the application window closed within two days. GAO Report, supra note 14, at 9.
22 The 2013 ALJ Vacancy Announcement stated “that you must complete/submit your application in Application Manager before the ALJ Job Opportunity Announcement closes at 11:59 pm ET on Friday, March 15, 2013.” See 2013 ALJ Vacancy Announcement, supra note 6.
24 See 2013 ALJ Vacancy Announcement, supra note 6.
measurement test (lbmt), which is part of the “proctored” component. the experience
assessment (online component), written demonstration (proctored component), and structured
interview (in-person component) are similar to previous examinations. in the most recent
examination, applicants who successfully submitted an application during then ten-day time
frame were preliminarily screened to see if they met the seven-year experience and bar licensure
requirements. then the opm invited candidates who passed the preliminary screening to take
the online component. after the opm scored the online component, for those applicants whose
“assessment [was] within the range for the higher-scored sub-group of all the eligible
applicants,”25 the opm extended further invitations to take the proctored and in-person
components.

the latest vacancy announcement describes the sjt as presenting applicants “with a set of work-
related problems or critical situations and ask[ing them] to indicate which of the multiple-choice
response options they would most likely and least likely take to handle the situations. the sjt is
administered online, is timed, and involves text-based scenarios as well as video-based scenarios
with closed captioning.”26 in the last vacancy announcement, the opm provided applicants with
sample sjt questions before administering this portion of the online assessment.

the written demonstration is a four-hour written exam that takes place at opm headquarters in
washington, d.c. applicants are given a hypothetical fact-pattern and are expected to write a
“clear, concise, and well-reasoned legal decision”27 on an opm provided laptop. therefore, if
you’re not accustomed to typing your own documents, it would be wise to learn to type. after a
brief lunch break, applicants then take the lbmt on the same day as the written demonstration.
the opm describes the lbmt as presenting applicants “with a set of scenarios and multiple-
choice response options. only one response option in each scenario is logically accurate, while
the remaining options are logically inaccurate.”28 although the opm did not provide any
sample lbmt questions in its job announcement, i imagine that the questions are similar to the
questions administered by other federal agencies that require applicants to take logical reasoning
tests.29

on the day following the written demonstration and the lbmt, the structured interview takes
place in a designated location in washington, d.c. the structured interview is a one-hour
interview, typically with a panel of three individuals, including a sitting alj. candidates are
responsible for their own travel expenses to washington, d.c.

after taking the online component, proctored component, and in-person component, the opm
provides successful applicants with a numerical score referred to as nor, which places them on
the opm alj register. for the current alj examination, an applicant’s nor ranges from 1–
100, based on the scores from the “sjt/writing sample/experience assessment, wd/lmbt,

25 Id.
26 Id.
27 Id.
28 Id.
29 A sample logical reasoning test can be found on the federal bureau of investigation’s (fbi) job website,
www.fbijobs.gov, for becoming a special agent, under phase i testing of their application and hiring process,
available at https://www.fbijobs.gov/sites/default/files/specialagentphaseisampletest.pdf (last visited feb. 10,
2016).
and SI components, including 5 or 10 points veterans’ preference, if applicable.”30 OPM has not made public how each section of the examination is weighted when determining an applicant’s NOR. The OPM noted a change in scoring in the most recent vacancy announcement, stating that “[i]f you do not receive the required minimum score on the WD [or SI], you will not receive a final numerical rating and will not be placed on the ALJ register.”31 In the past, the OPM did not require a minimum score on the WD or SI to be placed on the ALJ register.

**Agency Certificate**

The next step in the ALJ hiring process is getting on an agency certificate. When an agency seeks to hire ALJs, it requests a certificate from the OPM. Typically, if an agency has an opening for one ALJ position in a particular location, the OPM will provide the agency with the names of the three highest scoring applicants that have included that particular city on their geographic availability list (GAL).32 For example, if the SSA informs the OPM that it intends to hire ninety ALJs, the OPM will provide the SSA with a certificate of 270 names.

As noted above, the two largest agencies that hire directly off the register include the SSA and the OMHA. The SSA typically hires ALJs in large numbers, such as thirty to ninety ALJs at a time for multiple cities. This is done, in part, to facilitate the SSA’s seven-week training of new ALJs, which consists of three-weeks of training in the office, where new ALJs observe hearings and are assigned a mentor, and four-weeks of classroom training at SSA Headquarters in Falls Church, Virginia, which is taught by experienced SSA ALJs.

**Agency Hiring Process**

After getting on an agency certificate, applicants must go through the agency hiring process. At the SSA, this included an in-person interview at the SSA headquarters in Falls Church, Virginia. Travel expenses for the interview have been paid for by the SSA. When you interview at the SSA, you are not told for which geographic location you’re being considered. During SSA’s ALJ hiring process, you are permitted to pare down your GAL to a more limited range of cities than your original list. You may not, however, widen your GAL to include more cities. When I filled out my OPM application, I listed that I was available to go to any city within the continental United States. Faced with the reality of a possible cross-country move, I pared this list down to a more realistic list of cities. According to the SSA, if an applicant eliminates a city from their GAL, the SSA will notify the OPM, and the OPM will take that applicant’s name off the list for that city for future positions.

**Offer of Employment**

The last step in the ALJ process is securing an offer of employment. When I got an offer, I was told that the offer was for the SSA hearing office in Wilkes-Barre, Pennsylvania, with a start date in one month. There was no choice of location. I could either accept going to Wilkes-Barre or

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31 *Id.*
32 This is often referred to as the “rule of three,” meaning agencies must select from the highest scoring three candidates available to serve in a given location. *GAO Report, supra* note 14, at 9.
Decline. Obviously, I chose the former and I don’t regret having made that choice, despite sacrifices made by my family, including selling our house in Maryland and renting apartments in two different cities before later settling back down in Maryland. I was fortunate to secure a transfer back to Maryland within a year of relocating to Pennsylvania. SSA has an official transfer policy as part of its ALJ union agreement that allows an ALJ to request a transfer to another office after they have been in service for a certain period of time. This time period used to be two years, then modified to 90 days, and is now fifteen months.

**Diversity**

I don’t know of any formal studies on diversity among the ALJ ranks and can only write about my personal observations. At FERC, where I am currently employed, there are currently twelve ALJs. Of those twelve ALJs, there are four women, one Hispanic-American, one Asian-American, and one African-American, who were all hired before President Barack Obama’s 2011 Executive Order to promote diversity in the workplace. Sadly, not all agencies have as much diversity in its ALJ ranks as FERC. Although information regarding diversity in the ALJ ranks is sparse, there is detailed diversity information on OPM’s website where one can search for diversity statistics for the government as a whole, by specific agency, and by sub-agency.

**Conclusion**

A 2010 Government Accountability Office (GAO) report found that, as of September 2008, 51% of ALJs were eligible to retire and that, by 2013, 79% of ALJs will be eligible to retire. The current average age of federal ALJs is in the late 50s; until the ALJ examination was reopened in 2007, the average age was 63. Retiring ALJs in the next decade will create many opportunities for aspiring ALJs. OPM does not post vacancy announcements to become an ALJ very frequently, as there have only been four vacancy announcements in the past ten years. OPM is, however, expected to advertise the next ALJ vacancy announcement by April 1, 2016, so get ready now for the application and good luck!

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33 The creation of a National Hearing Center in Baltimore, Maryland, in July 2009 was a major factor in permitting me to transfer back to Maryland so quickly. Prior to the creation of the NHC in Baltimore in 2009, and of the NHC in Falls Church, Virginia, in 2007, it would take years for an ALJ from the Washington, DC, area to secure a transfer back after relocating. See SSA Off. Inspector Gen. Audit Rep., The Role of National Hearing Centers in Reducing the Hearings Backlog, Apr. 2012, at 1, available at http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-12-11-11147.pdf.


38 GAO Report, supra note 14, at 12.