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## Social Security

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## SOCIAL SECURITY

*Adamson v. Bowen*, 855 F.2d 668

Adamson brought individual and class claims against the Secretary of the U.S. Department of Health and Human Services (Secretary). The individual claim was an appeal of the Secretary's denial of social security disability benefits despite reports from Adamson's treating physician supporting the claim. Finding Adamson totally disabled, the district court reversed and imposed sanctions upon the Secretary pursuant to Fed. R. Civ. P. 11 of the cost for Adamson's attorney's fees in the previous action. Adamson also sought certification of a class action, alleging that the Secretary had an illegal policy of nonacquiescence to the law of the Tenth Circuit concerning the weight to be given reports of treating physicians. The district court declined to certify the proposed class action.

Whether imposing monetary sanctions against the Secretary under Rule 11 violated the federal government's sovereign immunity is an issue of first impression.

The Tenth Circuit found that the Equal Access to Justice Act, 28 U.S.C. § 2412, expressly waives immunity against attorney fee awards. An award of Rule 11 sanctions involves two steps: first the district court must find that a pleading violated Rule 11, then the court imposes an appropriate sanction. The Tenth Circuit applies an abuse-of-discretion standard on all Rule 11 issues. The court held that the district court did not abuse its discretion by concluding that the agency's ruling was so lacking in evidentiary support that the Secretary should have conceded the merits of Adamson's complaint. Because the record was filled with overwhelming evidence of Adamson's disability, the Secretary could not have believed its position was well-grounded in fact, as Rule 11 requires.

Adamson also argues that the district court erred in denying class certifications; and the Secretary's policy of disregarding Tenth Circuit rulings on the proper weight to be given treating physicians' reports violated the Social Security Act, the class members' due process rights, and the constitutional doctrine of separation of powers. The court held that the district court did apply an improper standard by placing upon the class a burden that the rule does not authorize, i.e., common question did not *predominate*.

The court affirmed the imposition of Rule 11 sanctions, vacated the denial of class certification, and remanded to the district court to consider a new class certification.

*Bernal v. Bowen*, 851 F.2d 297

Plaintiff brought this action after his application for Social Security disability benefits and supplemental security income was denied. The

district court affirmed the decision of the administrative agency and this appeal ensued. There is a five-step process used in evaluating disability claims. In this case, the administrative law judge (ALJ) determined that plaintiff's impairments did not meet or equal those set forth in the Social Security Act at the third stage of the evaluation procedure. The ALJ then proceeded to the fourth stage of the process and determined that plaintiff was not prevented from engaging in his prior work as a security guard and that plaintiff was not disabled within the meaning of the Social Security Act. Plaintiff argued that medical evidence showed he was in fact disabled. The Tenth Circuit felt that the treating physician's report was brief, conclusory, and without foundation and that the ALJ's decision to reject that report was supported by substantial evidence in the record. Furthermore, the fact that the case review and RFC were completed without the assistance of a mental health professional was not prejudicial to the plaintiff since the ALJ's decision was amply supported by the medical reports and records. Affirmed.

*Huston v. Bowen*, 838 F.2d 1125

Appellee Huston, who gave up farming as a result of a back injury, applied for Social Security disability insurance benefits. Despite non-medical evidence that Huston suffered pain, the administrative law judge (ALJ) found that Huston retained functional capacity for light work. The district court reversed, finding that the record established substantial evidence of disability.

The Tenth Circuit found that the ALJ's opinion ignored the fact that Huston established the existence of a medically determinable back impairment that can cause pain. Thus, the court held that a finding of no disability cannot be made without a full evaluation of all subjective and objective evidence of pain. The court stated that the district court usurped the ALJ's function by reweighing the evidence and making, in effect, its own determination. Reversed and remanded.

*Eggleston v. Bowen*, 851 F.2d 1244

Plaintiff suffered injuries to his back and was treated with surgery. Subsequently, he applied for disability benefits. His claim was denied at every step in the administrative process. On appeal to the district court, the case was remanded to the Secretary of Health and Human Services. Again, the claim was denied by an administrative law judge (ALJ). The district court affirmed the denial. Plaintiff appealed to the Tenth Circuit Court of Appeals, alleging that the ALJ erred in determining that plaintiff's injuries were not severe enough to merit an award and that plaintiff retains capacity to do light work.

The Tenth Circuit affirmed in part, reversed in part, and remanded the case to the district court. The court held the ALJ's findings of no severe impairment were supported by evidence of inconsistencies in plaintiff's treating physician's report and plaintiff's testimony. The ALJ's finding that plaintiff was capable of doing light work was sup-

ported by the evidence. However, the ALJ's finding of no disability based on a determination of functional literacy was not supported by the evidence. The ALJ erroneously presumed that plaintiff's mere holding of certain jobs in the past provided, contrary to his testimony, he must be literate.

*Doughty v. Bowen*, 839 F.2d 644

This was a case of first impression in the Tenth Circuit. The issue is whether a district court has sufficiently broad remedial powers to direct payments of interim benefits when the individual has never been certified as disabled. This court agreed with the Fourth Circuit in concluding that interim benefits are similar to mandatory deadlines, and held that a district court could not use its remedial powers to order interim benefits when Congress has not so provided. If a district court were allowed to order interim benefits payments in the initial denial of benefits cases, it would be doing something Congress has considered and not provided for.

*Gossett v. Bowen*, 862 F.2d 802

The Social Security Administration (SSA) and the Oklahoma Disability Determination Services denied plaintiff's application for disability benefits initially and upon reconsideration. Plaintiff obtained a *de novo* hearing before an administrative law judge (ALJ), who concluded plaintiff was not disabled within the meaning of the Social Security Act. The U.S. District Court for the Eastern District of Oklahoma affirmed. The Tenth Circuit also affirmed.

The Tenth Circuit held a claimant has the burden of proving a disability preventing him from engaging in his prior work under the SSA. Proof of such shifts the burden to the Secretary of Health and Human Services to show by substantial evidence that the claimant can perform other light or sedentary work activity and that these jobs exist in the national economy. Use of medical-vocational guidelines (grids), which take into consideration a claimant's ability to do light work, his age, education and work experience, may be used to determine if such other jobs exist. Where the claimant's injuries cause limitations to more than merely his ability to exert physical strength, the grids should be used only as a guideline. Since the ALJ determined claimant's credibility was doubtful and that his injuries did not extend beyond limiting his ability to exert physical strength, the ALJ properly used the grids to determine that claimant could perform other work. Therefore, claimant was not disabled within the meaning of the Social Security Act.

*Reyes v. Bowen*, 845 F.2d 242

Petitioner applied for disability benefits under the Social Security Act. Her application was denied. She appealed to the district court, which remanded the case to the Secretary of Health and Human Serv-

ices (Secretary). On remand, an Administrative law judge (ALJ) found that petitioner was disabled. The Appeals Council, acting for the Secretary, reversed. Petitioner appealed the district court, which affirmed the Appeals Council's denial of benefits. Petitioner appealed to the Tenth Circuit asserting that the Appeals Council lacked authority to review the ALJ's decision and that the Appeals Council's decision to reverse was not supported by substantial evidence.

The Tenth Circuit held that while the Secretary has the authority to review and alter any decision of an ALJ, the Secretary's ultimate decision must be supported by substantial evidence. To qualify as being supported by substantial evidence, the decision must include substantial consideration of the treating physician's opinion. This opinion is to be given greater weight than an examining physician's opinion. If, however, the Secretary rejects the treating physician's or the ALJ's opinion, the Secretary must fully articulate legitimate reasons for such. Because the Secretary has improperly given greater consideration to the examining physician's opinion over that of the treating physician, and because the Secretary has failed to give legitimate reasons for such, the decision to deny benefits is reversed.

*Descheenie v. Bowen*, 850 F.2d 624

Claimant unsuccessfully applied for Social Security benefits in 1971 and again in 1981. After a hearing before an ALJ, she was awarded benefits on both applications. The Social Security Administration's Appeals Council (Council) opened reconsideration of the award of benefits on the 1971 application, on grounds that the denial became final before the 1981 ALJ hearing. The record included memoranda asserting that claimant had received written notice of the denial of the first application, but the notice itself was not included in the file. The Council reversed the award of the 1971 benefits. The district court reversed that denial.

The Tenth Circuit affirmed, concluding the absence of actual evidence of written notice denying the Social Security claim negates the finality of the denial. The internal memoranda asserting that written notice of denial was given to Descheenie was presumptively unreliable hearsay. The court reiterated that a decision not supported by substantial evidence must be reversed.

*Everhart v. Bowen*, 853 F.2d 1532

Plaintiffs, on behalf of themselves and others similarly situated, filed this action challenging the netting methodology employed under the Social Security Act (SSA). The SSA offsets any overpayments against any underpayments to arrive at a single net amount of either a net overpayment or underpayment. The parties stipulated that the netting regulations had been applied to the named plaintiffs and filed cross motions for summary judgment. Upon hearing those motions, the district court held that the regulations contravene the waiver of recoupment provisions by denying recipients notice and a hearing on the issue of waiver

of recovery of overpayment. The district court remanded the plaintiffs' claims to the Secretary of Health and Human Services (Secretary) to recalculate their overpayments and underpayments without utilizing the netting methodology and to accord the plaintiffs their procedural rights. The Secretary was enjoined from applying the netting methodology to all other beneficiaries under Title II or Title XVI of the Social Security Act in Colorado. The statewide injunctive relief was stayed pending the appeal. Affirmed in part, reversed in part.

The Tenth Circuit held that the Secretary had exceeded his statutory authority in implementing the netting regulations. The netting methodology disregarded the differential treatment accorded underpayments and the overpayments. Mandatory statutory provisions dictate that administrative convenience cannot be countenanced when the netting regulations contravene the plain language of the statute.

The statewide injunction granted by the district court was tantamount to a grant of classwide relief. Absent a class certification, the lower court should not have treated the suit as a class action by granting statewide injunctive relief but rather should have tailored its injunction to affect only those persons over whom it had power.

