

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

Fedor v. Celebrezze

218 F. Supp. 667 (E.D. Pa. 1963) · Decided June 14, 1963

SUMMARY

The court reviewed the Secretary of Health, Education and Welfare's denial of the plaintiff's application for a disability freeze and disability benefits under the Social Security Act. It reversed the agency decision, holding that the record lacked a realistic showing that the plaintiff, who could no longer perform coal-mining work and had limited education and physical impairments, had a reasonable opportunity to obtain substantial gainful employment in another occupation.

CASE DETAILS

COURT	United States District Court for the Eastern District of Pennsylvania
WRITING FOR THE COURT	Joseph S. Lord, III
JURISDICTION	Pennsylvania
DECIDED	June 14, 1963
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiff sought judicial review of the Secretary of Health, Education and Welfare's final decision denying disability-freeze and monthly disability-benefit applications. Both parties moved for summary judgment.
STANDARD OF REVIEW	Judicial review of the administrative record to determine whether the Secretary's findings were supported by substantial evidence and had a sufficient evidentiary foundation.
PRECEDENTIAL VALUE	Published federal district court opinion; persuasive authority
PARTIES	Fedor v. Celebrezze

TOPICS

- judicial review of agency action
- agency adjudication
- administrative law
- disability definition

PRACTICE AREAS

- Social Security disability
- administrative law
- judicial review of agency action

QUESTIONS PRESENTED

1. Whether the Secretary's denial of a disability freeze and monthly disability benefits was supported by substantial evidence in the administrative record.
2. Whether merely suggesting unspecified light occupations, without evidence that plaintiff could perform them or that a reasonable opportunity existed for him to obtain such employment, satisfied the requirement of showing substantial gainful employment capacity.

HOLDINGS

1. The Secretary's findings were without foundation in the record because the record failed to establish that plaintiff could perform specific light jobs or that he had a realistic opportunity to engage in substantial gainful employment.
2. It is not enough to speculate that a claimant might perform one of numerous light jobs; the record must realistically show both that the claimant could perform the identified work and that a reasonable opportunity existed for the claimant to obtain substantial gainful employment.

KEY QUOTATIONS

"There must be a realistic showing not only that the plaintiff could do these jobs but also that there existed a reasonable opportunity for the plaintiff to engage in substantial gainful employment." (668)

"Such a showing is totally lacking from this record and hence the findings of the hearing examiner, affirmed by the Appeals Council, and embodied in the final decision of the Secretary are without foundation in the record." (668)

FACTUAL BACKGROUND

Plaintiff was nearly sixty-three years old, had only a fourth-grade education, and had worked exclusively in mining since 1924. He had advanced anthracosilicosis, with disputed additional impairment from arthritis and coronary insufficiency, and the government conceded that he could not return to coal mining and could perform at most light work. The record did not identify specific light jobs he could perform or establish that such jobs were realistically available to him given his education and physical limitations.

PROCEDURAL HISTORY

The hearing examiner denied plaintiff's applications, the Appeals Council affirmed, and the Secretary adopted that determination as the final agency decision. The district court reviewed the administrative record, rejected the Secretary's determination as unsupported, reversed the decision, and entered judgment for plaintiff.

DISPOSITION

reversed

REMAND INSTRUCTIONS

No remand was ordered; the court reversed the Secretary's decision and entered judgment for plaintiff.

CASES CITED

- Hodgson v. Celebrezze, 312 F.2d 260 (3d Cir. 1963)

OPINION

LORDIII, J.

JOSEPH S. LORD, III, District Judge. This plaintiff seeks review of the final decision of the Secretary of Health, Education and Welfare denying his application for the establishment of a disability freeze under § 216 (i) of the Social Security Act, 42 U.S.C.A. 416(i), and for monthly disability benefits under § 223 of the Act, 42 U.S.C.A. 423. Both plaintiff and defendant have moved for summary judgment. *668The plaintiff will be 63 years old in October, 1963.

He has a 4th grade education and at least since 1924 has done no work other than mining. He has, admittedly, an advanced stage of anthracosilicosis. There is some dispute as to the extent to which this constitutes a physical impairment, and there is also some dispute as to the presence and disabling effect of arthritis and coronary insufficiency. It is conceded by the government that plaintiff could at best do light work and is unable to work as a coal miner.

So far as we can discern, the evidence of record suggests no specific light job which the plaintiff could do although defendant's brief suggests possible jobs. There is no description whatsoever of what these jobs are or what they entail so far as physical labor and effort are concerned. Nor is there any showing that any of these jobs are open to the plaintiff with his limited education and physical impairment.

This case has even less in the record to-support the determination of the Secretary than in HODGSON v. CELEBREZZE, 312 F.2d 260 (C.A. 3, 1963), where at least there was a suggestion in the record that the plaintiff might obtain substantial gainful employment as an elevator operator.

The rule of this circuit is the rule of realism. It is not enough to suggest that a man might sell candy in a candy store or operate an elevator or become a watchman or perform any one of the almost infinite number of light jobs that can be conjured up. There must be a realistic showing not only that the plaintiff could do these jobs but also that there existed a reasonable opportunity for the plaintiff to engage in substantial gainful employment.

Such a showing is totally lacking from this record and hence the findings of the hearing examiner, affirmed by the Appeals Council, and embodied in the final decision of the Secretary are without foundation in the record.

The decision is reversed and judgment is entered for the plaintiff.

