

# UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

## Cosnyka v. Colvin

576 F. App'x 43 (2d Cir. 2014) · Decided August 21, 2014

### SUMMARY

The Second Circuit reviewed the denial of Steven Cosnyka's application for Social Security disability benefits. The court upheld the ALJ's decision not to give controlling weight to the treating physician's opinion but held that the RFC's six-minutes-per-hour off-task formulation was unsupported by substantial evidence and crucial to the vocational expert's testimony. The court vacated the district court's judgment and remanded for further factfinding concerning Cosnyka's RFC and the availability of suitable work.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                            |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States Court of Appeals for the Second Circuit                                                                                                                                                                                                                      |
| WRITING FOR THE COURT | Chin; Leval; Winter                                                                                                                                                                                                                                                        |
| JURISDICTION          | Federal                                                                                                                                                                                                                                                                    |
| DECIDED               | August 21, 2014                                                                                                                                                                                                                                                            |
| DISPOSITION           | vacated                                                                                                                                                                                                                                                                    |
| PROCEDURAL POSTURE    | Appeal from a judgment affirming the denial of an application for Social Security disability benefits.                                                                                                                                                                     |
| STANDARD OF REVIEW    | The court conducted plenary review of the administrative record, focusing on the administrative ruling rather than the district court's decision, and reviewed whether the ALJ's conclusions were supported by substantial evidence and based on a correct legal standard. |
| PRECEDENTIAL VALUE    | Published in the Federal Appendix; precedential status is not specified in the opinion text.                                                                                                                                                                               |
| PARTIES               | Steven Cosnyka v. Social Security Commissioner                                                                                                                                                                                                                             |

### TOPICS

judicial review of agency action

disability definition

standard of review

administrative law

appellate procedure

### PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the ALJ properly declined to give controlling weight to the treating physician's opinion.
2. Whether the ALJ's residual-functional-capacity finding, particularly the formulation that Cosnyka would be off task six minutes per hour, was supported by substantial evidence.
3. Whether the ALJ improperly assessed Cosnyka's credibility.

## HOLDINGS

1. The ALJ did not err in declining to give controlling weight to Dr. Calabrese's opinion because the opinion lacked identified clinical support and was inconsistent with other substantial medical evidence.
2. The ALJ erred by incorporating a six-minutes-per-hour off-task limitation into the RFC without evidentiary support.
3. The court did not decide the credibility challenge because further factfinding was required on remand.

## KEY QUOTATIONS

*“Accordingly, we find that there was no basis for the ALJ to incorporate this “six minutes per hour” formulation into the RFC finding.” (at 46)*

*“Because there is no substantial evidence for the ALJ’s six-minutes per hour formulation, and this formulation was crucial to the vocational expert’s conclusion that there were jobs Cosnyka could perform, we cannot uphold the ALJ’s decision to reject Cosnyka’s claim for benefits.” (at 46)*

*“For the reasons stated above, we VACATE the judgment of the district court and REMAND with instructions to remand the matter to the Commissioner so that she can further develop the evidence to make an RFC finding and determine whether there are jobs in the economy Cosnyka can perform.” (at 47)*

## FACTUAL BACKGROUND

Cosnyka applied for Social Security disability benefits based primarily on back pain and related limitations. The ALJ found that he retained the residual functional capacity for sedentary work but would be off task approximately ten percent of the workday, defined as six minutes per hour, and relied on vocational-expert testimony to find that jobs remained available. The medical record showed decreased lumbar range of motion but also full muscle strength and normal sensation, while the treating physician's report did not identify clinical findings supporting the asserted limitations.

## PROCEDURAL HISTORY

The district court granted the Commissioner's motion for judgment on the pleadings and denied Cosnyka's motion. It entered judgment on July 8, 2013, affirming the Commissioner's denial of benefits. Cosnyka appealed to the Second Circuit.

## DISPOSITION

vacated

## REMAND INSTRUCTIONS

Vacate the district court's judgment and remand with instructions to remand the matter to the Commissioner to further develop the evidence, make an RFC finding, and determine whether jobs exist in the economy that Cosnyka can perform.

## CASES CITED

- Selian v. Astrue, 708 F.3d 409, 417 (2d Cir. 2013)
- Talavera v. Astrue, 697 F.3d 145, 151 (2d Cir. 2012)
- Brault v. Social Sec. Admin., Comm'r, 683 F.3d 443, 448 (2d Cir. 2012)
- Shaw v. Chater, 221 F.3d 126, 131-32 (2d Cir. 2000)
- Burgess v. Astrue, 537 F.3d 117, 120 (2d Cir. 2008)
- Draegert v. Barnhart, 311 F.3d 468, 472 (2d Cir. 2002)
- Genier v. Astrue, 606 F.3d 46, 49 (2d Cir. 2010)
- Cichocki v. Astrue, 729 F.3d 172, 176 (2d Cir. 2013)
- Poupore v. Astrue, 566 F.3d 303, 306-07 (2d Cir. 2009)
- Rosa v. Callahan, 168 F.3d 72, 83 (2d Cir. 1999)