

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Trego v. Astrue

350 F. App'x 158 (9th Cir. 2009) · Decided October 29, 2009

SUMMARY

The Ninth Circuit reversed the district court's grant of summary judgment upholding the denial of Disability Insurance Benefits and Supplemental Security Income to Wilfred Trego. The court held that the ALJ inadequately evaluated the treating and non-examining physicians' opinions and gave legally insufficient reasons for rejecting Trego's testimony about the severity of his back pain. Because the vocational expert testified that a person needing to lie down for two hours during a workday could not perform any work, the case was remanded for calculation of benefits.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Per curiam; Carney; Hug; Paez
JURISDICTION	Federal
DECIDED	October 29, 2009
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Wilfred Trego appealed the district court's grant of summary judgment for the Commissioner of Social Security, which upheld the Administrative Law Judge's denial of Disability Insurance Benefits and Supplemental Security Income.
STANDARD OF REVIEW	The court reviewed whether the ALJ's denial of benefits was supported by substantial evidence and whether the ALJ applied legally sufficient reasons for rejecting medical-opinion and claimant-testimony evidence.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Wilfred Trego v. Commissioner of Social Security

TOPICS

judicial review of agency action

administrative law

standard of review

appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the ALJ improperly relied on a non-examining physician's unexplained opinion over the contradicted opinion of Trego's treating physician.
2. Whether the ALJ gave legally sufficient clear and convincing reasons for rejecting Trego's testimony concerning the severity of his back pain and functional limitations.
3. Whether the record required remand for further administrative proceedings or calculation of benefits.

HOLDINGS

1. The ALJ did not satisfy the requirement to provide a detailed and thorough explanation of the facts and conflicting clinical evidence before relying on the non-examining physician's opinion over the treating physician's contradicted opinion.
2. The ALJ failed to provide clear and convincing reasons supported by the record for rejecting Trego's testimony about the severity of his back pain and resulting limitations.
3. Further proceedings concerning Trego's disability status were not warranted; the case was remanded for calculation of benefits.

KEY QUOTATIONS

“Opinions of a nonexamining, testifying medical advisor may serve as substantial evidence when they are supported by other evidence in the record and are consistent with it.” (at 159)

“The ALJ has not met her burden of “setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating [her] interpretation thereof, and making findings.”” (at 160)

“Merely pointing out that Trego was able to engage in some activity does not undermine Trego’s testimony that he lies down two hours each day for relief from back pain, and that he cannot sit or stand for more than fifteen minutes.” (at 161)

FACTUAL BACKGROUND

Trego claimed disability based principally on severe low-back pain and related functional limitations, including an inability to sit or stand for more than about fifteen minutes and a need to lie down for two hours each day. His treating physician, Dr. Rajan, reported that Trego could not sit still for more than a few minutes because of pain, while non-examining physician Dr. Burris opined without explanation that Trego could perform sedentary work. The ALJ rejected Dr. Rajan's opinion and Trego's testimony, relying in part on statements and daily activities concerning Trego's heart condition, pain at rest, relief from Vicodin, and bicycle use.

PROCEDURAL HISTORY

The ALJ denied Trego's claims for benefits under Titles II and XVI of the Social Security Act. The district court granted summary judgment for the Commissioner and affirmed the denial. The Ninth Circuit reversed and remanded with instructions that benefits be calculated because the ALJ improperly rejected the treating

physician's opinion and Trego's testimony, and the vocational evidence established that a person needing to lie down for two hours during a workday could not perform any work.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the Commissioner of Social Security for calculation of benefits; no further proceedings concerning Trego's disability status were warranted.

CASES CITED

- Morgan v. Commissioner of Social Security Administration, 169 F.3d 595, 600-01 (9th Cir. 1999)
- Stout v. Commissioner, Social Security Administration, 454 F.3d 1050, 1054 (9th Cir. 2006)
- Ryan v. Commissioner of Social Security, 528 F.3d 1194, 1201 (9th Cir. 2008)
- Gonzalez v. Sullivan, 914 F.2d 1197, 1201 (9th Cir. 1990)
- Orn v. Astrue, 495 F.3d 625, 640 (9th Cir. 2007)