

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 02-3623

ROBERT KIRK,

Appellant

v.

COMMISSIONER OF SOCIAL SECURITY

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civ. No. 00-03791)
Honorable Joseph A. Greenaway, Jr., District Judge

Argued April 8, 2003

BEFORE: ALITO, FUENTES, and GREENBERG, Circuit Judges

Filed: May 12, 2003

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OPINION OF THE COURT

GREENBERG, Circuit Judge.

This matter comes on before the court on appeal from an order entered on July 26, 2002, denying appellant Robert Kirk's appeal from a decision of the Commissioner of Social Security denying him social security disability benefits. The district court entered the order without an accompanying opinion.

The background of this case is as follows. In 1994 Kirk sought disability benefits. On September 11, 1995, the Social Security Administration advised Kirk that it had decided that he was disabled under its rules, indicating that it "found that drug addiction and/or alcoholism [was] a contributory factor material to [his] disability [and that] if [it] had not considered [his] drug addiction and/or alcoholism, [it] would not have

found [him] disabled.”¹ It is, however, clear that the residual effects of a stroke also contributed to his disability and the Commissioner acknowledges as much. In September 1996 pursuant to section 105 of the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, Kirk was notified that his benefits would cease as of December 31, 1996, as Congress had prohibited a claimant from receiving benefits where drug or alcohol addiction was a factor material to the determination of his disability. See 42 U.S.C. § 423(d)(2)(c).

The law, however, permitted him to seek a redetermination of his disability without regard for the substance dependency disorder and he did so. See Pub. L. No. 104-121, § 105. In effect, the request for a redetermination is treated as a new application with the five-part sequential evaluation process followed. The Commissioner denied Kirk’s claim following which he sought a hearing before an administrative law judge who, after considering his claim de novo, determined that he was not disabled. He then unsuccessfully sought review from the Appeals Council following which he instituted the proceedings which ultimately led to this appeal.

The district court had jurisdiction pursuant to 42 U.S.C. § 405(g) and we have jurisdiction pursuant to 28 U.S.C. § 1291. We exercise plenary review over the order of

¹Following the argument before this court the parties sent to the court certain submissions regarding the basis for the Social Security Administration’s original determination that Kirk was disabled as there was some question about this. After our consideration of these submissions we are satisfied that Kirk’s alcohol dependency was a factor material to the determination of his disability so that the Contract with the America Advancement Act of 1996 became implicated in this case.

the district court, see Knepp v. Apfel, 204 F.3d 78, 83 (3d Cir. 2000), but review the decision of the Commissioner to determine whether it is supported by substantial evidence. See Richardson v. Perales, 402 U.S. 389, 390, 91 S.Ct. 1420, 1422 (1971). Of course, we exercise plenary review over questions of law.

After a review of the matter we have concluded that exercising the appropriate standards of review that we have no basis on which to reverse the order of the district court. Consequently, the order of July 26, 2002, will be affirmed.

TO THE CLERK:

Please file the foregoing not precedential opinion.

/s/ Judge Morton I. Greenberg (Sr.)
Circuit Judge

DATED: May 12, 2003