

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-2241

THOMAS WILLIAMS,
Appellant

v.
COMMISSIONER OF SOCIAL SECURITY

On Appeal from the United States District Court
for the District of New Jersey
D.C. Civil Action No. 99-cv-02253
(Honorable John C. Lifland)

Submitted Pursuant to Third Circuit LAR 34.1(a)
January 17, 2002

Before: SCIRICA and ROSENN, Circuit Judges, and KANE, District Judge*
(Filed May 23, 2002)

*The Honorable Yvette Kane, United States District Judge for the Middle
District of Pennsylvania, sitting by designation.

OPINION OF THE COURT

SCIRICA, Circuit Judge.

This is an appeal from a denial of disability benefits under the Social Security Act. Appellant claims the Commissioner of Social Security's determination was not supported by substantial evidence in the record. He also appeals the denial of his motion to compel discovery before the District Court.

We will affirm.

I.

Thomas Williams has been trying unsuccessfully to receive social security disability benefits for the past sixteen years. The facts of the case have been well documented during that time period. Williams has been tested and found to have a verbal I.Q. in the mid-60s. He has a first-grade education and is illiterate. But he can carry out simple three-step instructions. Williams managed to hold gainful employment for more than 20 years for a steel drum company. After the steel company closed, Williams worked for a short time as a security guard a position that is normally performed at a light, unskilled level. Williams also suffers from diabetes and arthritis. But he is able to walk or sit for six hours in an eight-hour workday.

In 1992, we affirmed the Social Security Appeals Council's denial of disability for the period before January 30, 1991. Williams v. Sullivan, 970 F.2d 1178 (3d Cir. 1992). While his first petition was under consideration, Williams again claimed disability as of October 30, 1986. In 1999, the Appeals Council rejected Williams' request to reconsider the period between October 30, 1986 and January 29, 1991 as res judicata. Considering only the period from January 30, 1991 through March 31, 1992, the Appeals Council again denied disability finding Williams' able to perform past relevant work as a security guard.

II.

We review decisions to deny disability on a substantial evidence basis. 42 U.S.C. 405(g) (1991). Williams claims the Appeals Council erred in its determination under 20 C.F.R. 404.1520(d) (1985). But the record contains substantial evidence to support the Appeals Council's determination that Williams' impairments did not equal those listed in Appendix 1.

Williams also claims error under 20 C.F.R. 404.1520(e) (1985). Substantial evidence in the record supports the Appeals Council's determination that Williams could engage in his relevant past work as a security guard. Therefore, the findings of the Appeals Council are conclusive.

Williams claims the Appeals Council erred by applying res judicata to the question of disability prior to January 30, 1991, after the ALJ reopened the period for reconsideration. The Appeals Council partially vacated the ALJ's determination because Williams' previous application had become final when the Supreme Court

denied certiorari. Williams v. Shalala, 507 U.S. 924 (1993). We lack jurisdiction to review the Appeals Council's discretionary decision to apply res judicata in such a situation. See Tobak v. Apfel, 195 F.3d 183, 187 (3d Cir. 1999).

Finally, Williams claims the District Court improperly denied his motion to compel the Commissioner to produce documents relating to: (1) the changes in 12.05 regarding mental retardation in the Commissioner's Listing of Impairments at 20 C.F.R. Part 404, Subpt. P, Appendix I; and (2) any data prepared in response to the 1992 General Accounting Office (GAO) report entitled "Social Security: Racial Difference in Disability Decisions Warrants Further Investigation." The District Court has power to order taking additional evidence upon petitioner's showing that new and material evidence exists and good cause why it was not incorporated into the record at a prior proceeding. 42 U.S.C. 405(g).

Williams initially filed for disability benefits on October 20, 1987, two years after the publication of amended 12.05 of the Commissioner's Listing of Impairments which changed the criteria for proving mental retardation. Therefore, Williams' seeks to discover evidence that existed at the time of his earliest administrative hearings and he does not show good cause for failing to incorporate it into the administrative record. Additionally, Williams' request for data related to the 1992 GAO study was properly denied as he failed to show new evidence existed that was material.

III.

For the foregoing reasons, we will affirm the judgment of the District Court.

TO THE CLERK:

Please file the foregoing opinion.

/s/ Anthony J. Scirica
Circuit Judge

DATED: May 23, 2002