

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 02-2789

JOSEPH MCDONNELL,

Appellant

v.

*JOANNE B. BARNHART,
COMMISSIONER OF SOCIAL SECURITY
* (Pursuant to F.R.A.P. 43 (c))

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
District Judge: Honorable John P. Fullam
(D.C. Civ. No. 01-00035)

Argued February 27, 2003

BEFORE: SCIRICA, GREENBERG, and GIBSON*, Circuit Judges

(Filed: March 24, 2003)

*Honorable John R. Gibson, Senior Judge of the United States Court of Appeals for the Eighth Circuit, sitting by designation.

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OPINION OF THE COURT

GREENBERG, Circuit Judge.

Appellant Joseph McDonnell appeals from an order entered May 29, 2002, in the district court approving and adopting the report and recommendation of magistrate judge Linda K. Caracappa dated April 24, 2002, and granting summary judgment in favor of the Commissioner of Social Security in this disability insurance benefits and supplemental security income case. On this appeal we exercise plenary review over the decision of the

district court, Knepp v. Apfel, 204 F.3d 78, 83 (3d Cir. 2000), but we must uphold the Commissioner's decision if supported by substantial evidence. See Richardson v. Perales, 402 U.S. 389, 390, 91 S.Ct. 1420, 1422 (1971). There is, however, a special situation here in which McDonnell challenges the fairness of the administrative proceedings as he contends that the administrative law judge who considered the case following the remand did not decide the case on the entire record. We regard this contention as raising a legal issue which we consider de novo. See Knepp, 204 F.3d at 83.

Inasmuch as the magistrate judge comprehensively set forth the background of this case in her report and recommendation we do not repeat it. We have examined the record and are satisfied that applying the appropriate standards of review we have no basis to disturb the order for summary judgment. Consequently the order of May 29, 2002, will be affirmed.

/s/ Morton I. Greenberg
Circuit Judge