

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 97-4(9)]

Chavez v. Bowen; Effect of a Prior Final Decision That a Claimant is Not Disabled, And of Findings Contained Therein, On Adjudication of a Subsequent Disability Claim Arising Under the Same Title of the Social Security Act—Titles II and XVI of the Social Security Act

AGENCY: Social Security Administration.
ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Acting Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 97-4(9).

EFFECTIVE DATE: December 3, 1997.

FOR FURTHER INFORMATION CONTACT:

Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1695.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the Ninth Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after December 3, 1997. If we made a determination or decision on your application for benefits between April 19, 1988, the date of the Court of Appeals decision, and December 3, 1997, the effective date of this Social Security Acquiescence Ruling, you may request application of the Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b) or 416.1485(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in

20 CFR 404.985(e) or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c) or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security - Disability Insurance; 96.002 Social Security - Retirement Insurance; 96.004 Social Security - Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income.)

Dated: September 17, 1997.

John J. Callahan,

Acting Commissioner of Social Security.

Acquiescence Ruling 97-4(9)

Chavez v. Bowen, 844 F.2d 691 (9th Cir. 1988)—Effect of a Prior Final Decision That a Claimant is Not Disabled, And of Findings Contained Therein, On Adjudication of a Subsequent Disability Claim Arising Under the Same Title of the Social Security Act—Titles II and XVI of the Social Security Act.

Issue: Whether, in making a disability determination or decision on a subsequent disability claim with respect to an unadjudicated period, where the claim arises under the same title of the Social Security Act (the Act) as a prior claim on which there has been a final decision by an Administrative Law Judge (ALJ) or the Appeals Council that the claimant is not disabled, the Social Security Administration (SSA)¹ must: (1) apply a presumption of continuing nondisability and, if the presumption is not rebutted by the claimant, determine that the claimant is not disabled; and (2) if the presumption is rebutted, adopt certain findings required under the applicable sequential evaluation process for determining disability, made in the final decision by the ALJ or the Appeals Council on the prior disability claim.²

Statute/Regulation/Ruling Citation: Sections 205(a) and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a)

¹ Under the Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103-296, effective March 31, 1995, SSA became an independent Agency in the Executive Branch of the United States Government and was provided ultimate responsibility for administering the Social Security and Supplemental Security Income programs under titles II and XVI of the Act. Prior to March 31, 1995, the Secretary of Health and Human Services had such responsibility.

² Although *Chavez* was a title II case, similar principles also apply to title XVI. Therefore, this Ruling extends to both title II and title XVI disability claims.

and 902(a)(5)), 20 CFR 404.900, 404.957(c)(1), 416.1400, 416.1457(c)(1).

Circuit: Ninth (Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Washington)

Chavez v. Bowen, 844 F.2d 691 (9th Cir. 1988)

Applicability of Ruling: This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, ALJ hearing and Appeals Council).

Description of Case: Mr. Chavez first applied for disability insurance benefits on June 1, 1982. On March 30, 1983, an ALJ awarded Mr. Chavez a closed period of disability from March 3, 1981, through May 1982. In determining that disability had ended, the ALJ found that, although Mr. Chavez could not perform his past relevant work, he was able to engage in a wide range of at least light substantial gainful activity. Mr. Chavez did not appeal this decision. Therefore, it became final and binding.

On July 18, 1983, Mr. Chavez filed another application for disability insurance benefits. In a decision dated May 10, 1984, an ALJ found that Mr. Chavez could perform work-related activities except for work involving constant standing, walking, and lifting, and carrying more than 20 pounds. The ALJ then found that Mr. Chavez's past work as a backhoe operator did not require excessive standing and lifting and that his impairments therefore did not prevent him from resuming his past work. The decision made no reference to the findings of the first ALJ. This decision became the final decision of the Secretary.

Upon appeal, the district court granted the Secretary's motion for summary judgment. The district court found that substantial evidence supported the finding that the claimant could perform light work and, therefore, was not disabled. Mr. Chavez appealed this decision to the United States Court of Appeals for the Ninth Circuit.

Holding: The Ninth Circuit stated that:

The principles of res judicata apply to administrative decisions, although the doctrine is applied less rigidly to administrative proceedings than to judicial proceedings. The claimant, in order to overcome the presumption of continuing nondisability arising from the first administrative law judge's findings of nondisability, must prove "changed circumstances" indicating a greater disability. (Citations omitted.)

The court then found that Mr. Chavez's "attainment of 'advanced age' constitutes a changed circumstance precluding the application of res

judicata to the first administrative law judge's ultimate finding against disability." In addition, the court concluded that "[t]he first administrative law judge's findings concerning the claimant's residual functional capacity, education, and work experience are entitled to some res judicata consideration in subsequent proceedings."

Statement As To How Chavez Differs From Social Security Policy

Under SSA policy, if a determination or decision on a disability claim has become final, the Agency may apply administrative res judicata with respect to a subsequent disability claim under the same title of the Act if the same parties, facts and issues are involved in both the prior and subsequent claims. However, if the subsequent claim involves deciding whether the claimant is disabled during a period that was not adjudicated in the final determination or decision on the prior claim, SSA considers the issue of disability with respect to the unadjudicated period to be a new issue that prevents the application of administrative res judicata. Thus, when adjudicating a subsequent disability claim involving an unadjudicated period, SSA considers the facts and issues *de novo* in determining disability with respect to the unadjudicated period. SSA does not adopt findings from the final determination or decision on the prior disability claim in determining whether the claimant is disabled with respect to the unadjudicated period. Further, under SSA policy, a prior final determination or decision that a claimant is not disabled does not give rise to any presumption of a continuing condition of nondisability. When a subsequent claim involves an unadjudicated period, the determination or decision as to whether a claimant is disabled with respect to that period is made on a neutral basis, without any inference or presumption that a claimant remains "not disabled."

The United States Court of Appeals for the Ninth Circuit held that a final decision by an ALJ that a claimant is not disabled gives rise to a presumption that the claimant continues to be not disabled after the period adjudicated, and that this presumption of continuing nondisability applies when adjudicating a subsequent disability claim with an unadjudicated period arising under the same title of the Act as the prior claim. In order to rebut the presumption of continuing nondisability, a claimant must prove "'changed circumstances' indicating a greater disability." In addition, the court indicated that where

the claimant rebuts the presumption by proving a "changed circumstance," principles of res judicata require that certain findings contained in the final decision by the ALJ on the prior claim be given some res judicata consideration in determining whether the claimant is disabled with respect to the unadjudicated period involved in the subsequent claim. The court concluded that where the final decision by the ALJ on the prior claim, which found the claimant not disabled, contained findings of the claimant's residual functional capacity, education, and work experience, SSA may not make different findings in adjudicating the subsequent disability claim unless there is new and material evidence relating to the claimant's residual functional capacity, education or work experience.

Explanation of How SSA Will Apply The Chavez Decision Within The Circuit

This Ruling applies only to disability cases involving claimants who reside in Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon or Washington at the time of the determination or decision on the subsequent claim at the initial, reconsideration, ALJ hearing or Appeals Council level. It applies only to cases involving a subsequent disability claim with an unadjudicated period arising under the same title of the Act as a prior claim on which there has been a final decision by an ALJ or the Appeals Council that the claimant is not disabled.

When adjudicating the subsequent claim involving an unadjudicated period, adjudicators will apply a presumption of continuing nondisability and determine that the claimant is not disabled with respect to that period, unless the claimant rebuts the presumption. A claimant may rebut the presumption by showing a "changed circumstance" affecting the issue of disability with respect to the unadjudicated period, e.g., a change in the claimant's age category under 20 CFR 404.1563 or 416.963, an increase in the severity of the claimant's impairment(s), the alleged existence of an impairment(s) not previously considered, or a change in the criteria for determining disability.

If the claimant rebuts the presumption, adjudicators then must give effect to certain findings, as explained below, contained in the final decision by an ALJ or the Appeals Council on the prior claim, when adjudicating the subsequent claim. For this purpose, this Ruling applies only to a finding of a claimant's residual

functional capacity, education, or work experience, or other finding required at a step in the sequential evaluation process for determining disability provided under 20 CFR 404.1520, 416.920 or 416.924, or a finding required under the evaluation process for determining disability provided under 20 CFR 404.1578, as appropriate, which was made in the final decision on the prior disability claim. Adjudicators must adopt such a finding from the final decision on the prior claim in determining whether the claimant is disabled with respect to the unadjudicated period unless there is new and material evidence relating to such a finding or there has been a change in the law, regulations or rulings affecting the finding or the method for arriving at the finding.

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**OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE**

[Docket No. 301-116]

**Cancellation of Public Hearing in
Section 302 Investigation: Honduran
Protection of Intellectual Property
Rights**

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: On October 31, 1997, the United States Trade Representative (USTR) initiated an investigation under section 302(b) of the Trade Act of 1974 with regard to acts, policies, and practices of the Government of Honduras with respect to the protection of intellectual property rights, and proposed to determine that these acts, policies and practices are actionable under section 301(b) and that the appropriate response is a partial suspension of tariff preference benefits accorded to Honduras under the Generalized System of Preferences (GSP) and Caribbean Basin Initiative (CBI) programs (62 FR 60299 of November 7, 1997). The annex to that notice set forth a list of articles of Honduras which could be subject to the suspension of tariff preference benefits. The USTR also invited interested persons to submit written comments and to participate in a public hearing on December 4, 1997, concerning the proposed determinations and action. Due to a lack of response, the December 4, 1997 hearing is hereby canceled. Written comments are still due by December 10, 1997.