Ninth Circuit Decisions 2024–2025

These are important:

Hudnall v. Dudek **(130 F.4th 668; March 7, 2025):**
Withdrawn by order of April 7, 2025. Watch this case!
Evidence in Appellant's case included a third-party function report prepared by his wife. The ALJ considered this evidence, but did not expressly articulate how this evidence was considered. The Ninth Circuit held that the prior "germane reasons" standard applied to nonmedical sources was not applicable under the new medical review rules, which indicates that ALJs are "not required to articulate how [they] considered evidence from nonmedical sources[.]" Citing 20 CFR 404.1520c(d).
Notes: This decision is being appealed because the quoted portion of the regulation is critically incomplete. The full quote is that ALJs "are not required to articulate how [they] considered evidence from nonmedical sources *using the requirements in paragraph (a)–(c) in this section*." 20 CFR 404.1520c(d). It remains to be seen whether the Ninth Circuit agrees as to the significance of this language.
Other issues raised by Appellant in this case were discussed in an unpublished memorandum.

Stiffler v. O'Malley **(102 F.4th 1102, May 28, 2024):**
ALJ rejected a medical opinion based on lack of supportive findings, and found that the claimant could perform two occupations requiring Level 2 Reasoning despite RFC limiting her to "simple routine task in a routine low stress work environment with few workplace changes[.]"
The panel affirmed. As to the medical source, the "extreme" limitations—defined in the opinions as indicating inability to function in the relevant area—was inconsistent with normal MSE findings and activities of daily living articulated by the ALJ. As to the step five findings, the panel rejected the claimant's assertion that there was a conflict between the limitation (specifically "few workplace changes") and the DOT definition of Level 2 Reasoning.
Relevance: It's unfortunate, but not surprising, to see the court rely on MSE findings and ADLs to uphold an ALJ's rejection of a medical opinion. It would be interesting to see whether this would hold up for a less extreme opinion.

Conway v. O'Malley **(96 F.4th1275, March 26, 2024) (KRC case!)**
ALJ found claimant capable of medium exertion work. However, on cross-examination, the vocational expert testified that a limitation to six hours standing and walking would preclude the identified jobs, and that it would be "difficult to provide substitute occupations." The panel held, first, that the presumption that a VE is aware of the programmatic definitions of terms such as "medium work" is rebuttable; and second, that the VE's clarifying testimony in this case was enough to rebut the presumption.
Relevance: We all know that some jobs—especially at higher exertional levels—require being on one's feet more than six out of eight hours. In this case, the VE was honest about it, and it made all the difference.

Ferguson v. O'Malley **(95 F.4th 1194, March 14, 2024) (KRC case!)**
ALJ found migraines/headaches "severe," and rejected claimant's testimony as "not entirely consistent" with the medical and other evidence, but never expressly or specifically stated that his

headache testimony was inconsistent with any particular evidence—in fact, the ALJ mentioned headaches only once, noting that the claimant had no neurological deficits and normal mood and affect at a single visit in 2017. The panel reversed based on the ALJ's failure to identify or explain any inconsistency in this finding.
Relevance: Claimant's testimony is one of the most important pieces of evidence. In order to reject a claimant's testimony as inconsistent with the record, the ALJ must identify an actual inconsistency. *Note:* At least some other bases for rejecting a claimant's symptom testimony remain unaddressed by this decision. For example, a failure to seek treatment may be a sufficient reason to reject certain physical limitations, even if the ALJ doesn't identify any specific contradiction—*but see Glanden*, *infra*.

Cross v. O'Malley **(89 F.4th 1211, January 5, 2024)**
Claimant argued that the new medical regulations (20 CFR 404.1520c / 416.920c) were partially invalid and therefore rendered the ALJ's application of those regulations reversible error. This case specifically questioned whether the new regulations properly displaced the prior caselaw applying to examining physicians. Relying on *Chevron v. Nat. Res. Def. Council Inc.*, 467 U.S. 837 (1984), the Court found that the regulations "fill[ed]" a "gap" "explicitly left" by Congress, and were not "manifestly contrary to the statute," and therefore were subject to deference.
Relevance: This is disappointing but not surprising; however, *Chevron* has been overturned in part. In *Loper-Bright Enterprises v. Raimondo*, 1444 S. Ct. 2244, the Supreme Court held that statutory ambiguities do not amount to implicit delegations to agencies. A subsequent challenge to the new regulations under *Loper-Bright* could potentially succeed where *Cross* failed, because—as SCOTUS held—it "makes no sense to speak of a 'permissible' interpretation that is not the one the court, after applying all relevant interpretive tools, concludes is best."

Glanden v. Kijakazi (86 F.4th 838, November 16, 2023)
Claimant alleged disability beginning December 2017, with a date last insured of June 2018. Claimant had no insurance during this period, due in part to incarceration and lack of income. As a result of lacking insurance, claimant had no treatment for his conditions during this period. Nevertheless, he had treatment both before and after this period for the conditions he alleged as disabling. ALJ denied the claim at step two based on lack of treatment.
The panel held that evidence of chronic conditions existing both before and after the gap in treatment was sufficient to clear the *de minimis* threshold applicable at step two.
Relevance: At least where a condition is chronic and the gap in treatment is explained, ALJ may not reject a condition at step two based merely on lack of treatment. However, this still leaves a fair amount of wiggle room; it doesn't clearly apply to non-chronic conditions or unexplained gaps in treatment.

These are less important:

Cooper v. SSA **(March 20, 2025):**
SSA overpaid Appellant through its own error prior to his Chapter 7 bankruptcy ("no-asset discharge"). Two years after the bankruptcy, the SSA reduced Appellant's benefits to recoup the debt. Held: recoupment is impermissible where SSA seeks to recoup overpayments from a bankrupt beneficiary who engaged in no malfeasance.

Relevance: Very little, but something to bear in mind if you have a client who has an overpayment due to Social Security's error.

Nevin v. Colvin **(January 22, 2025):**
Claimant filed a second application for benefits while the first application was pending in federal court. In April 2019, claimant was found disabled on the second application effective the day after the prior ALJ decision. After this decision, the District Court ordered remand on the first application. The Appeals Council neither affirmed nor reopened the decision on the second application, and instead left reopening to the discretion of the ALJ. In June 2021, the ALJ issued a new decision, reopening the second application and finding a later onset date. The Ninth Circuit held that ALJ's decision was a new decision on the merits, and timely appealed; that the decision to reopen the case was reviewable; and that reopening required "fraud or similar fault" based on 20 CFR 416.1488. As such, reopening was improper.
Relevance: Where the Appeals Council leaves reopening up to the ALJ, the ALJ must do so within the reopening framework of 20 C.F.R. 404.988 / 416.1488.

Nerio Mejia v. O'Malley **(120 F.4th 1360, November 4, 2024):**
The District Court held that the claimant was categorically ineligible to receive any fees attributable to work performed in connection with alternative arguments that were raised by the claimant but not reached by the court. Because the District Court had found the fees otherwise reasonable, the panel directed immediate payment.
Relevance: Claimants/Representatives can be paid for time spent on issues *not reached* by the District Court. This decision does not address whether claimants/representatives can be paid for time spent on issues reached by the District Court but where no error is found.