***Smith v. Kijakazi* (2021):** Claimant alleged disability since 2012. ALJ's decision, in 2019, relied substantially on dramatic improvement during the later years. **Held:** at least in the context of substantial and dramatic improvement over a multi-year case, it is error for the ALJ to formulate a single RFC for the entire period. *Note: there is very little guidance here on what the threshold is for when multiple RFCs will be required, either in terms of case duration or degree of change. This will be a battleground going forward.*

***Kilpatrick v. Kijakazi, 35 F. 4th 1187 (9th Cir. 2022)*:** the representative submitted job numbers rebuttal evidence, but used the "straight-line method" to divide all the jobs in the OES groups by the number of DOT codes; the representative did the math and did not rely on an "expert;" the Court affirmed.

***White v. Kijakazi* (2022):** Representative submitted (to AC) rebuttal significantly undercutting VE's testimony while apparently using the same source. **Held:** evidence was significant and probative because it was produced using a data source and methodology frequently relied on by SSA. *Note: the Court also noted that it was the same source used by the VE, so that still appears to be relevant, even if it isn't required.*

***Wischmann v. Kijakazi* (2023):** Representative submitted (to AC) rebuttal significantly undercutting VE's testimony while purportedly using the same source; however, the submission was somewhat unintelligible, and the numbers asserted in the memorandum attached to the submission did not appear to match the submission. **Held:** this evidence did not meet the significant and probative bar. The Court was unable to determine what methodology was used, or what filters may have been applied to generate the numbers submitted. *Note: Much of this is dicta, but of course OGC is running with it as though these are now requirements—and at minimum they amount to "best practices." Going forward, we need to be able to show how any given case is more like* White *than* Wischmann.

***Ferguson v. O'Malley* (3/14/2024):** Claimant alleged 2-3 headaches per week lasting 1-2 days, due to Chiari malformation status post surgery which provided only temporary relief. ALJ offered nearly no discussion of headaches, except to note that they improved with surgery and CL remained able to perform ADLs. **Held:** Neither of these offers any actual contradiction with the claimant's testimony. Where the first prong of the *Cotton* test is met (i.e. impairments could reasonably produce the claimant's symptoms), "to satisfy the substantial evidence standard, the ALJ must provide specific, clear, and convincing reasons which explain why the medical evidence is *inconsistent* with the claimant's subjective symptom testimony." (Court's emphasis; citing *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035-38 (9th Cir. 2007)). *Note: every time I look at this case it looms larger. I have been arguing that ALJs are applying the wrong standard by demanding that a claimant's testimony be "entirely consistent" with the medical evidence rather than "reasonably consistent" as the regulations state. This seems to vindicate that position.*

***Conway v. O'Malley* (3/26/2024):** DDS found limitation to medium exertion with stand/walk "about 6 hours." ALJ presented hypothetical to VE as "medium" without specification. Rep on cross added a limitation to 6 hours standing/walking, and VE testified that this additional restriction precluded the identified jobs and all other medium work. **Held:** the presumption that VE's testimony comports with the regulatory definitions of exertional levels is rebuttable, and is here rebutted by the VE's own testimony on cross. ALJ was compelled to accept the VE's testimony that the limitation would preclude medium work. Remanded for further proceedings because the ALJ did not develop the issue of transferable skills. *Note: this only works if you have jobs that require standing all day, AND a VE who is*

willing to admit that they do. Going forward, its greatest value may be in acknowledging that SSA presumptions are inherently rebuttable.