

The Burger Court Opinion Writing Database

Richardson v. Perales

402 U.S. 389 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

April 22, 1971

CHAMBERS OF
THE CHIEF JUSTICE

No. 108 - Richardson v. Perale

Dear Harry:

Please join me.

Regards,

WB

Mr. Justice Blackmun

cc: Conference

April 21, 1971

Dear Hugo:

Here is a very rough draft
of my proposed dissent in No. 108 -
Richardson v. Perales. It is rather
sketchy. Any ideas you may have would
be greatly appreciated. I will not
circulate until I hear from you.

William O. Douglas

Mr. Justice Black

WD
adm

Revised 4/27/71
2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 108.—OCTOBER TERM, 1970

From: Douglas, J.

Circulated: 4/27/71

Elliot L. Richardson, Secretary of Health, Education, and Welfare, Petitioner,
v.
Pedro Perales.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[May —, 1971]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK concurs, dissenting.

This claimant for social security disability benefit had a serious back injury. The doctor who examined him testified that he was permanently disabled. His case is defeated, however, by hearsay evidence of doctors and their medical reports about this claimant. Only one doctor who examined him testified at the hearing. Five other doctors who had once examined the claimant did not testify and were not subject to cross-examination. But their reports were admitted in evidence. Still another doctor testified on the hearsay in the documents of the other doctors. All of this hearsay may be received, as the Administrative Procedure Act (5 U. S. C. § 556) provides that "any oral or documentary evidence may be received." But this hearsay evidence cannot by itself be the basis for an adverse ruling. The same section of the Act states that "a party is entitled . . . to conduct such cross-examination as may be required for a full and true disclosure of the facts."¹

¹ S. Rep. No. 752, 79th Cong., 1st Sess., pp. 22-23.

"The right of cross-examination extends, in a proper case, to written evidence submitted pursuant to the last sentence of the subsection as well as to cases in which oral or documentary evidence is

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

7/1

3rd DRAFT

From: Douglas, J.

Circulated: _____

Recirculated: 4-28

SUPREME COURT OF THE UNITED STATES

No. 108.—OCTOBER TERM, 1970

Elliot L. Richardson, Secretary of Health, Education, and Welfare, Petitioner,
v.
Pedro Perales. } On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[May —, 1971]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK and MR. JUSTICE BRENNAN concur, dissenting.

This claimant for social security disability benefit had a serious back injury. The doctor who examined him testified that he was permanently disabled. His case is defeated, however, by hearsay evidence of doctors and their medical reports about this claimant. Only one doctor who examined him testified at the hearing. Five other doctors who had once examined the claimant did not testify and were not subject to cross-examination. But their reports were admitted in evidence. Still another doctor testified on the hearsay in the documents of the other doctors. All of this hearsay may be received, as the Administrative Procedure Act (5 U. S. C. § 556) provides that "any oral or documentary evidence may be received." But this hearsay evidence cannot by itself be the basis for an adverse ruling. The same section of the Act states that "a party is entitled . . . to conduct such cross-examination as may be required for a full and true disclosure of the facts."¹

¹ S. Rep. No. 752, 79th Cong., 1st Sess., pp. 22-23.

"The right of cross-examination extends, in a proper case, to written evidence submitted pursuant to the last sentence of the subsection as well as to cases in which oral or documentary evidence is

April 21, 1971

Re: No. 106 - Richardson v. Parasol

Dear Harry:

I am consumed with admiration for your mastery of the medical lexicon, and, although I feel beyond my depth in this field, I am perfectly content to leave my legal conscience in your careful hands on this score. As to your legal conclusions, I am in full agreement with you. I am happy to join your opinion.

Sincerely,

J. M. H.

Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

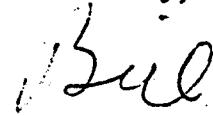
April 28, 1971

RE: No. 108 - Richardson v. Perales

Dear Bill:

Please join me in your dissent in the
above.

Sincerely,



W. J. B. Jr.

Mr. Justice Douglas

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

April 19, 1971

No. 108, Richardson v. Perales

Dear Harry,

I am glad to join your opinion for
the Court in this case.

Sincerely yours,

Q.S.

Mr. Justice Blackmun

Copies to the Conference

April 15, 1971

Re: No. 108 - Richardson v. Peralta

Dear Harry:

Please join me.

Sincerely,

B.H.W.

Mr. Justice Blackmun

cc: Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 27, 1971

Re: No. 108 - Richardson v. Perales

Dear Harry:

I agree with your memorandum.

Sincerely,



T.M.

Mr. Justice Blackmun

cc: The Conference

April 14, 1971

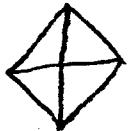
MEMORANDUM TO THE CONFERENCE

Re: No. 103 - Richardson v. Perales

I apologize for the length of this opinion. I had a number of these social security cases in the Court of Appeals, but I have never been able to keep them within proper length. I suspect that this is due in part to the medical nature of the material and to the inevitable conflict in the evidence.

This is a somewhat peculiar case. Whether it is at all important, I do not know.

H.A.B.



To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Blackmun, J.

Circulated: 4/14/71

No. 108.—OCTOBER TERM, 1970

Recirculated:

Elliot L. Richardson, Secretary of Health, Education, and Welfare, Petitioner,
v.
Pedro Perales. } On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[April —, 1971]

Memorandum from MR. JUSTICE BLACKMUN.

In 1966 Pedro Perales, a San Antonio truck driver, then age 34, height 5' 11", weight about 220 pounds, filed a claim for disability insurance benefits under the Social Security Act. Sections 216 (i)(1) and 223 (d)(1) of that Act, 42 U. S. C. §§ 416 (i)(1) and 423 (d)(1), both provide that the term "disability" means "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which . . .".¹ Section 205 (g), 42 U. S. C. § 405 (g), relating to judicial review, states, "The findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive . . .".

The issue here is whether physicians' written reports of medical examinations they have made of a disability claimant may constitute "substantial evidence" supportive of a finding of nondisability, within the § 205 (g) standard, when the claimant objects to the admissibility of those reports and when the only live testimony is presented by his side and is contrary to the reports.

¹ Not pertinent here are the durational aspects of disability specified in the statutes' definition.

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall

stylistic changes
2nd DRAFT

From: Blackmun, J.

SUPREME COURT OF THE UNITED STATES

No. 108.—OCTOBER TERM, 1970

Recirculated: 4/29/71

Elliot L. Richardson, Secretary of Health, Education, and Welfare, Petitioner,
v.
Pedro Perales. } On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[May —, 1971]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

In 1966 Pedro Perales, a San Antonio truck driver, then age 34, height 5' 11", weight about 220 pounds, filed a claim for disability insurance benefits under the Social Security Act. Sections 216 (i)(1) and 223 (d)(1) of that Act, 42 U. S. C. §§ 416 (i)(1) and 423 (d)(1), both provide that the term "disability" means "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which"¹ Section 205 (g), 42 U. S. C. § 405 (g), relating to judicial review, states, "The findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive"

The issue here is whether physicians' written reports of medical examinations they have made of a disability claimant may constitute "substantial evidence" supportive of a finding of nondisability, within the § 205 (g) standard, when the claimant objects to the admissibility of those reports and when the only live testimony is presented by his side and is contrary to the reports.

¹ Not pertinent here are the durational aspects of disability specified in the statutes' definition.