The Burger Court Opinion Writing Database

Heckler v. Campbell

461 U.S. 458 (1983)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

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

CHAMBERS OF
THE CHIEF JUSTICE

May 11, 1983

MEMORANDUM TO THE CONFERENCE:

RE: 81-1983 - Heckler v. Campbell

Dear Lewis:

I join.

Regards,

WEB

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 19, 1983

No. 81-1983 Heckler v. Campbell

Dear Lewis:

Please join me.

Sincerely,

WJB, Jr.

Justice Powell

Copies to the Conference

April 19, 1983

No. 81-1983 Heckler v. Campbell

Dear Lewis:

I join your opinion in this case. I continue, however, to find the record of respondent's hearing somewhat disturbing, because the ALJ quite clearly failed to inquire into respondent's capacity to lift more than ten pounds (a dispositive factor under the disability table) in the face of considerable evidence in the record that she could not. Would you consider adding a footnote noting this problem after your citation of 20 C.F.R. §404.944 on page 10? I have in mind something like the following:

> The hearing respondent received was at least questionable on this ground. First, in order to find that respondent was not disabled, the Secretary had to determine that she had the physical capacity to do "light work," compare 20 C.F.R. pt. 404, subpt. P, app. 2, §201.10 (1982), with id., §202.10, a determination that required a finding that she was capable of frequent lifting or carrying of objects weighing up to 10 pounds and sometimes lifting up to 20 pounds, 20 C.F.R. §404.1567(b) (1982). The hearing record included one disinterested doctor's report of a medical examination of respondent that concluded with the unexplained statement "Patient may return to light-duty work," App. 11, and a subsequent report by a second disinterested doctor stating that respondent could lift and carry only "up to 10 pounds," id., at 32. In finding that respondent could perform "light work," the Administrative Law Judge rejected the second doctor's report as "without basis," Pet. for Cert. App. 23a-25a, after failing entirely to adduce evidence relevant to this issue at respondent's hearing. At several points during the hearing, respondent stated that she could not lift things, see App. 50, but the Administrative Law Judge did not question her on the subject at all. Second, the Administrative Law Judge did not explore whether factors not related to strength, age,

or education, combined with her other impairments, rendered respondent disabled. See 20 C.F.R. pt. 404, supra, at §200.00(e)(2); n. 5, supra. The Secretary's subsequent determination that respondent is now disabled, see n. 7, supra, rested on consideration of severe emotional complications not explored at all by the Administrative Law Judge in this case.

Of course, I shall be perfectly well satisfied if you can same something similar with fewer (or better) words.

Sincerely,

WJB, Jr.

Justice Powell

Copies to the Conference

Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: APR 27 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81–1983

MARGARET H. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES, PETITIONER *v.* CARMEN CAMPBELL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[April ——, 1983]

JUSTICE BRENNAN, concurring.

I join the Court's opinion. It merits comment, however, that the hearing respondent received, see *ante*, at 4–5, if it is in any way indicative of standard practice, reflects poorly on the Administrative Law Judge's adherence to what Chief Judge Godbold has called his "duty of inquiry":

> "[T]here is a 'basic obligation' on the ALJ in these nonadversarial proceedings to develop a full and fair record, which obligation rises to a "'special duty . . . to scrupulously and conscientiously explore for all relevant facts'" where an unrepresented claimant has not waived counsel. This duty of inquiry on the ALJ would include, in a case decided under the grids, a duty to inquire into possible nonexertional impairments and into exertional limitations that prevent a full range of work." *Broz* v. *Schweiker*, 677 F. 2d 1351, 1364 (CA11 1982).[1]

[1] Accord, *Thompson* v. *Schweiker*, 665 F. 2d 936, 941 (CA9 1982); *Ware* v. *Schweiker*, 651 F. 2d 408, 414 (CA5 1981); *Diablo* v. *Secretary*, 627 F. 2d 278, 282 (CADC 1980); *Cox* v. *Califano*, 587 F. 2d 988, 991 (CA4 1978); *Smith* v. *Secretary*, 587 F. 2d 857, 860 (CA7 1978); *Gold* v. *Secretary*, 463 F. 2d 38, 43 (CA2 1972). The "duty of inquiry" derives from claimants' basic statutory and constitutional right to due process in the adjudication of their claims, including a *de novo* hearing, see *Mathews* v. *Eldridge*, 424 U. S. 319, 332–335, 339 (1976); *Richardson* v. *Perales*, 402 U. S. 389, 402–404 (1971). See also *Goldberg* v. *Kelly*, 397 U. S. 254, 262–263 (1970). Inherent in the concept of a due process hearing is the decisionmaker's ob-

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 18, 1983

Re: 81-1983 - Heckler v. Campbell

Dear Lewis,

I agree.

Sincerely,

Justice Powell

Copies to the Conference

cpm

Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Marshall**

Circulated: APR 29 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81–1983

MARGARET H. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES, PETITIONER, *v.* CARMEN CAMPBELL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[May ——, 1983]

JUSTICE MARSHALL, concurring in part and dissenting in part.

While I agree that the Secretary's medical-vocational guidelines are valid, I believe that this case presents the additional question whether the administrative law judge fulfilled his obligation to "loo[k] fully into the issues." 20 CFR § 404.944 (1982). See *Richardson* v. *Perales*, 402 U. S. 389, 410 (1971) (at the hearing the administrative law judge is required to "ac[t] as an examiner charged with developing the facts"). I would therefore remand this case for further proceedings.

I do not agree with the Court, *ante*, at 10–11, that the decision below does not question the adequacy of the administrative law judge's inquiry at the hearing. Although the Court of Appeals' opinion is not entirely clear, the court appears to have concluded that Campbell was not given an adequate opportunity to demonstrate that she was unable to perform "light work." The court explained as follows:

> "'The key consideration in the administrative proceeding must be that the claimant be given adequate opportunity to challenge the suitability . . . of the jobs noticed. . . .' [O]ur major concern is that the claimant be given ade-

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 29, 1983

Re: No. 81-1983 - Heckler, Secretary v. Campbell

Dear Lewis:

Please join me.

I would feel somewhat more comfortable if, at the end of your footnote 8 on page 6, you would make the citation to Broz read as follows:

> "See Broz v. Schweiker, 677 F.2d 1351, 1359-1361 (CA11 1982), cert. pending sub nom. Heckler v. Broz, No. 82-816. This issue is not before us, and we do not reach it."

This, however, is not a condition of my joinder.

Sincerely,

Harry

Justice Powell

cc: The Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

Circulated: APR 16 1983

Recirculated: _____

APR 16 1983

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81–1983

MARGARET H. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES, PETITIONER, *v.* CARMEN CAMPBELL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[April ——, 1983]

JUSTICE POWELL delivered the opinion of the Court.

The issue is whether the Secretary of Health and Human Services may rely on published medical-vocational guidelines to determine a claimant's right to Social Security disability benefits.

I

The Social Security Act defines "disability" in terms of the effect a physical or mental impairment has on a person's ability to function in the work place. It provides disability benefits only to persons who are unable "to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment." 42 U. S. C. § 423(d)(1)(A). And it specifies that a person must "not only [be] unable to do his previous work but [must be unable], considering his age, education, and work experience, [to] engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work." 42 U. S. C. § 423(d)(2)(A).

In 1978, the Secretary of Health and Human Services promulgated regulations implementing this definition. See 43

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 26, 1983

81-1983 Heckler v. Campbell

Dear Bill:

Thank you for your join, and also for bringing to my attention your concern as to whether the ALJ performed his duty with the requisite care.

I have added a footnote (n. 12, p. 10) in the second draft now being circulated. It refers to the apparent failure of the ALJ to consider some of respondent's claims. I have not gone as far as you would like, however, because these claims were not considered by the Court of Appeals and it is not clear that they were raised there.

As you may recall, respondent filed a subsequent request for disability and my understanding is that this was granted. Our opinion, therefore, will have only limited consequences.

Sincerely,

L. Lewis

Justice Brennan

lfp/ss

CH STYLISTIC CHANGES THROUGHOUT

APR 26 1983

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

Circulated: _____

Recirculated: APR 26 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1983

MARGARET H. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES, PETITIONER, *v.* CARMEN CAMPBELL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[April ——, 1983]

JUSTICE POWELL delivered the opinion of the Court.

The issue is whether the Secretary of Health and Human Services may rely on published medical-vocational guidelines to determine a claimant's right to Social Security disability benefits.

I

The Social Security Act defines "disability" in terms of the effect a physical or mental impairment has on a person's ability to function in the work place. It provides disability benefits only to persons who are unable "to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment." 42 U. S. C. § 423(d)(1)(A). And it specifies that a person must "not only [be] unable to do his previous work but [must be unable], considering his age, education, and work experience, [to] engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work." 42 U. S. C. § 423(d)(2)(A).

In 1978, the Secretary of Health and Human Services promulgated regulations implementing this definition. See 43

P. 6

Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

Circulated: _____

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APR 3 0 1983

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81–1983

MARGARET H. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES, PETITIONER, *v.* CARMEN CAMPBELL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[May —, 1983]

JUSTICE POWELL delivered the opinion of the Court.

The issue is whether the Secretary of Health and Human Services may rely on published medical-vocational guidelines to determine a claimant's right to Social Security disability benefits.

I

The Social Security Act defines "disability" in terms of the effect a physical or mental impairment has on a person's ability to function in the work place. It provides disability benefits only to persons who are unable "to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment." 42 U. S. C. § 423(d)(1)(A). And it specifies that a person must "not only [be] unable to do his previous work but [must be unable], considering his age, education, and work experience, [to] engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work." 42 U. S. C. § 423(d)(2)(A).

In 1978, the Secretary of Health and Human Services promulgated regulations implementing this definition. See 43

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

May 24, 1983

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

MEMORANDUM TO THE CONFERENCE

Re: Cases Held for No. 81-1983, Heckler v. Campbell

No. 82-816, Heckler v. Broz

The CA11 determined that while the Secretary generally may rely on the medical-vocational guidelines, the guidelines' age categories are invalid. The CA noted that the guidelines operate on the premise that, at a certain point, age significantly restricts a worker's ability to adapt to a new job and a new working environment. It found, however, that the problem with the age categories is that they seek to measure a person's ability to adapt in terms of chronological age. Using chronological age to determine a condition that varies with each claimant results in arbitrary determinations.

The CA reasoned: "This adaptability or adjustment factor is not open to individual determination under the grids. Instead the grids conclusively determine that a person 49 years of age is able to adjust to a new unskilled sedentary occupation but that a person 50 years old is not." 677 F.2d 1351, 1360 (1982). In the CA's view, this determination must be made on an individualized basis. The CA11's holding on this point conflicts squarely with that of the CA7. See Cummins v. Schweiker, 670 F.2d 81, 83 (CA7 1982).

In Campbell, we recognized that "[t]he instant case does not present the issue addressed in Broz," slip. op., at 6, n. 8, and the Conference may want to give this question plenary consideration. I believe, however, that the discussion of the regulations in Campbell goes a long way toward resolving the issue. In footnote 5, we noted that "the regulations declare that the Administrative Law Judge will not apply the age categories 'mechanically in a borderline situation.'" We concluded in the next sentence, "Thus, the regulations provide that the rules will be applied only when they describe a claimant's abilities and limitations accurately." This footnote appears to meet the CA11's concerns that the rules are applied mechanically even in borderline situations. Because the CA11 thought that the rules did not require this type of inquiry, see 677 F.2d, at 1360, n. 10, I will vote to GVR Broz in light of Campbell.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 19, 1983

Re: No. 81-1983 Heckler v. Campbell

Dear Lewis:

Please join me.

Sincerely,

WHR

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 19, 1983

Re: 81-1983 - Heckler v. Campbell

Dear Lewis:

The last sentence of footnote 5 on page 4 may give the Secretary more of an endorsement than we can be sure is warranted. I have the impression that administrative law judges are so busy that they do not always apply these rules as carefully and accurately as your sentence suggests. I wonder if you should not change the sentence to read something like this:

> "Thus, the regulations provide that the rules will be applied only when they describe a claimant's abilities and limitations accurately."

With this minor problem, I will join your opinion.

Respectfully,

Justice Powell

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 19, 1983

Re: 81-1983 - Heckler v. Campbell

Dear Lewis:

Please join me.

Respectfully,

John

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 26, 1983

No. 81-1983 Heckler v. Campbell

Dear Lewis,

Please join me.

Sincerely,

Sandra

Justice Powell

Copies to the Conference