a small business investment company under Small Business Investment Company License No. 02/02–5307 issued to ODA Capital Corporation on January 25, 1977 and said license is hereby declared null and void as of July 22, 1993.

Dated: May 20, 1998.

Small Business Administration.

**Harry E. Haskins,**

*Acting Associate Administrator for Investment.*

[FR Doc. 98–14327 Filed 5–29–98; 8:45 am]

**BILLING CODE 8025–01–P**

## SOCIAL SECURITY ADMINISTRATION

**[Social Security Acquiescence Ruling 98-3(6)]**

## Dennard v. Secretary of Health and Human Services; Effect of A Prior Finding of the Demands of Past Work 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 Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 98-3(6).

**EFFECTIVE DATE:** June 1, 1998.

**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 Sixth Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after June 1, 1998. If we made a determination or decision on your application for benefits between April 10, 1990, the date of the Court of Appeals' decision, and June 1, 1998, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence 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: April 10, 1998.

**Kenneth S. Apfel,**

*Commissioner of Social Security.*

### Acquiescence Ruling 98-3(6)

*Dennard* v. *Secretary of Health and Human Services*, 907 F.2d 598 (6th Cir. 1990)—Effect of A Prior Finding of the Demands of Past Work 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, the Social Security Administration (SSA)[1] must adopt a finding of the demands of a claimant's past relevant work, 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 (h) and 702(a)(5) of the Social Security Act (42 U.S.C. 405 (a) and (h) and 902(a)(5)), 20 CFR 404.900, 404.957(c)(1), 416.1400, 416.1457(c)(1).

*Circuit:* Sixth (Kentucky, Michigan, Ohio, Tennessee)

*Dennard* v. *Secretary of Health and Human Services*, 907 F.2d 598 (6th Cir. 1990).

*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:* Donald Dennard filed an application for Social Security disability insurance benefits in 1981, claiming a disability which began on July 7, 1981. The application was denied initially and upon reconsideration. After a hearing held on September 28, 1982, an ALJ decided that Mr. Dennard was capable of performing sedentary work, that he had transferable skills, and that he was not disabled. This decision became the final decision of SSA and was affirmed by the district court.

Mr. Dennard filed a subsequent application on March 25, 1985, alleging an onset of disability of September 29, 1982. This application was also denied initially and upon reconsideration. At a hearing a vocational expert testified that Mr. Dennard's past relevant work as a resident care aide supervisor was light and semi-skilled, which provided him with skills transferable to other jobs in the supervisory field. The ALJ found that, despite his impairments, Mr. Dennard could ''perform the requirements of work except for prolonged standing or walking, manipulation of more than 10 pounds, heavy or extensive bending, or prolonged sitting that would not allow him an opportunity to stand occasionally to alleviate perceptions of discomfort ....'' While the ALJ determined that the claimant was unable to perform his past relevant work, he did determine that Mr. Dennard could perform sedentary work and, thereupon, found that he was not disabled. The Appeals Council denied review, and the claimant then appealed to district court. The case was remanded for a new hearing to obtain and develop the medical evidence and to obtain additional vocational testimony.

[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 *Dennard* 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.

In a subsequent decision issued on April 6, 1988, an ALJ found that Mr. Dennard was not prevented from performing his past relevant work and, therefore, was not disabled. A vocational expert had testified that, based on the claimant's testimony at the prior hearing, his past work as a resident care aide supervisor was semi-skilled and heavy to very heavy in terms of exertional level. However, the vocational expert further testified that, based on the job description provided by Mr. Dennard with his application for benefits, the job was semi-skilled and was sedentary to light in nature, because there was no direct patient contact. The Appeals Council denied the claimant's request for review. Upon appeal to the district court, a United States Magistrate recommended that Mr. Dennard be found disabled, because he believed that the claimant's testimony that his former job was heavy in exertion was controlling. The district court did not adopt the magistrate's recommendation. Instead it found that SSA's decision denying benefits was supported by substantial evidence. From that adverse decision, the claimant appealed to the United States Court of Appeals for the Sixth Circuit.

*Holding:* On appeal Mr. Dennard argued that because SSA had determined in its final decision on his first application for benefits that he could not perform his past relevant work, SSA was precluded by estoppel from reconsidering the issue and finding that Dennard could perform this work. The Sixth Circuit observed that it seemed clear that SSA had reconsidered the nature and extent of Mr. Dennard's exertional level in his former job as a resident care aide supervisor. The United States Court of Appeals for the Sixth Circuit stated: ''We are persuaded that under the circumstances, we must remand this case to [SSA] . . . to determine whether [Mr.] Dennard is disabled in light of the prior determination that he could not return to his previous employment.''

*Statement as to How Dennard Differs From SSA 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.

The Sixth Circuit held that, where the final decision of SSA after a hearing on a prior disability claim contains a finding of the demands of a claimant's past relevant work, SSA may not make a different finding in adjudicating a subsequent disability claim with an unadjudicated period arising under the same title of the Act as the prior claim unless new and additional evidence or changed circumstances provide a basis for a different finding.

*Explanation of How SSA Will Apply The Dennard Decision Within The Circuit*

This Ruling applies only to disability findings in cases involving claimants who reside in Kentucky, Michigan, Ohio, or Tennessee at the time of the determination or decision on the subsequent claim at the initial, reconsideration, ALJ hearing or Appeals Council level. It applies to a finding of the demands of a claimant's past relevant work, under 20 CFR 404.1520(e) or 416.920(e), which was made in a final decision by an ALJ or the Appeals Council on a prior disability claim. In addition, because a finding of a claimant's date of birth (for purposes of ascertaining a claimant's age), education or work experience, also involves a finding of fact, relating to a claimant's vocational background, which would not ordinarily be expected to change, this Ruling also shall apply to a finding of a claimant's date of birth, education or work experience required under 20 CFR 404.1520(f)(1) or 416.920(f)(1).

When adjudicating a subsequent disability claim with an unadjudicated period arising under the same title of the Act as the prior claim, adjudicators must adopt such a finding from the final decision by an ALJ or the Appeals Council 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.

[FR Doc. 98–14264 Filed 5–29–98; 8:45 am]

BILLING CODE 4190–29–F

## SOCIAL SECURITY ADMINISTRATION

**[Social Security Acquiescence Ruling 98-4(6)]**

## Drummond v. Commissioner of Social Security; Effect of Prior Findings 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 Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 98-4(6).

**EFFECTIVE DATE:** June 1, 1998.

**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 Sixth Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after June 1, 1998. If we made a determination or decision on your application for benefits between September 30, 1997, the date of the Court of Appeals' decision, and (*Insert the* **Federal Register** *publication date*), the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence 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