

Appendix

Rule 14.1(i)

Appendix A

U.S. Court of Appeals for the Fourth Circuit

FILED: July 12, 2017

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 17-1806
(4:16-cv-00134-MSD-RJK)

PAMELA DENISE IDLETT

Plaintiff – Appellant

v.

NANCY A. BERRYHILL

Defendant – Appellee

ORDER

The court defers consideration of the motion
for appointment of counsel pending review of the
appeal on the merits.

For the Court-By Direction

/s/Patricia S. Connor, Clerk

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 17-1806

PAMELA DENISE IDLETT,

Plaintiff – Appellant,

v.

NANCY A. BERRYHILL,

Defendant – Appellee.

Appeal from the United States District Court for the
Eastern District of Virginia, at Newport News.

Mark S. Davis, District Judge. (4:16-cv-00134-MSD-
RJK)

Submitted: January 16, 2018

Decided: March 9, 2018

Before KING and HARRIS, Circuit Judges, and
HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Pamela Denise Idlett, Appellant Pro Se. George
Maralan Kelley, III, Assistant United States
Attorney, OFFICE OF THE UNITED STATES
ATTORNEY, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in
this circuit.

PER CURIAM:

Pamela Denise Idlett appeals the district court's order accepting the recommendation of the magistrate judge, granting the Acting Commissioner of the Social Security Administration's motion to remand for further administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g) (2012), and denying Idlett's motion for summary judgment requesting an award of disability insurance benefits.* We review a district court's summary judgment decision de novo, *Lee v. Town of Seaboard*, 863 F.3d 323, 327 (4th Cir. 2017), and a district court's choice of remedy in a social security action for an abuse of discretion, *Radford v. Colvin*, 734 F.3d 288, 295 (4th Cir. 2013). We have reviewed the record and perceive no reversible error. Accordingly, we affirm the district court's order and deny Idlett's motion to appoint counsel. We

dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

*Although the district court remanded Idlett's case for further proceedings, the order is appealable because the district court denied Idlett's request for an award of benefits. *Forney v. Apfel*, 524 U.S. 266, 271 (1998).

2

FILED: March 9, 2018

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 17-1806

(4:16-cv-00134-MSD-RJK)

PAMELA DENISE IDETT

Plaintiff – Appellant

v.

NANCY A. BERRYHILL

45

Defendant – Appellee

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/PATRICIA S. CONNOR, CLERK

FILED: June 12, 2018

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 17-1806

(4:16-cv-00134-MSD-RJK)

PAMELA DENISE IDETT

Plaintiff – Appellant

v.

NANCY A. BERRYHILL

Defendant – Appellee

ORDER

The petition and supplemental petition for rehearing en banc were circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition and supplement petition for rehearing en banc.

The court denies the motion to appoint counsel.

For the Court

/s/Patricia S. Connor, Clerk

Appendix A

U.S. Court of Appeals for the

Fourth Circuit

Pamela Idlett v. Nancy Berryhill,

No. 17-1806 (4th Cir. 2018)

Electronic Case File (ECF) Docket Data

Subject	Date	Doc. No.	Docket Title	Ref. Pg.
Order	July 12, 2017	7	ORDER deferring motion to appoint/assign counsel pending appeals review on the merits.	1, A1-2
Opinion	Mar. 9, 2018	18	UNPUBLISHED PER CURIAM OPINION filed. Hamilton, Senior Circuit Judge Motion disposition denying Appoint/Motion disposition denying Appoint/ Case number: 4:16-cv-00134-MSD-RSJ	1, 11, 17, 18 A2-4
Judgment	Mar. 9, 2018	19	JUDGMENT filed; affirmed District Court final order Before King and Harris, Circuit Judges, and Hamilton, Senior Circuit Judge	2, 6, 10, 11, 14, 17, 18, 36 A5-6
Order	Jun 12, 2018	26	COURT ORDER denying motion/ petition for	2, 7, A6-7

			rehearing en banc and motion for appoint counsel	
--	--	--	---	--

U.S. Court of Appeals

Other Relevant Filed Electronic Case File

(ECF) docket data

Subject	Date	Doc. No.	Docket Title	Ref. Pg.
Petition	Jul. 12, 2017	5	Idlett's Informal Opening Petition Brief and Notice of Appeal	36-38
Motion	Jul. 12, 2017	6	Idlett's Motion for Appoint/ Assign Counsel under the ADA; Federal Disability Retired (NASA); July 31, 2012	
Motion	July. 18, 2017	11	MOTION by Idlett to stay mandate	
Notice	Jul. 18,	12	NOTICE issued re: motion to	

	2017		stay mandate deemed moot.	
Notice	Jul. 21, 2017	14	NOTICE by Appellee that no brief will be filed	13, 64
Response	Jul. 26 2017	15	RESPONSE/ ANSWER by Idlett to no brief Notice	
Suppl.	Jul. 21, 2017	16	Supplemental Record requesting AR from Clerk	
AR	Aug. 23, 2017	17	Admin. Record (3 volumes)	15, 67
Petition	Apr. 9, 2018	20	Idlett's petition for rehearing en banc	2, 7
Motion	Apr. 9, 2018	21	Idlett's motion for appoint/assign counsel	
Petition	Apr. 19, 2018	24	Supplemental petition for rehearing en banc (brief)	2, 7
Mandate	Jun 20, 2018	27	Mandate issued.	

Appendix B

Case 4:16-cv-00134-MSD-RJK Document 18 Filed

05/05/17 Page 1 of 10 PageID# 257

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

Newport News Division

PAMELA DENISE IDLETT,

Plaintiff,

ACTION NO. 4:16cv134

v.

NANCY A. BERRYHILL,¹

Acting Commissioner of Social Security,

Defendant.

**UNITED STATES MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**

Pamela Denise Idlett brought this action, pursuant to 42 U.S.C. § 405(g), seeking judicial review of a decision of the Acting Commissioner ("Commissioner") of the Social Security

All

Administration ("SSA") denying her claim for a period of disability and disability insurance benefits ("DIB") under Title II of the Social Security Act.

An order of reference assigned this matter to the undersigned. ECF No. 7. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), Rule 72(b) of the Federal Rules of Civil Procedure, and Local Civil Rule 72, it is hereby recommended that the Commissioner's motion to remand to the Social Security Administration (ECF No. 12) be GRANTED, the Commissioner's decision on Idlett's claim be VACATED and REMANDED for further review, and Idlett's motion for summary judgment (ECF No. 10) be DENIED as MOOT.

¹Nancy A. Berryhill became the Acting Commissioner of Social Security on January 23, 2017, and is substituted for Carolyn W. Colvin as the defendant in this suit. See Fed. R. Civ. Proc. 25(d).

I. Procedural Background

Plaintiff, Pamela Denise Idlett ("Idlett"), protectively filed an application for a period of disability and DIB on October 31, 2012, R. 170-71², alleging that she became disabled on October 1, 2011 due to an Arnold Chiari malformation (rare brain malformation). R. 170, 303. The Commissioner denied Idlett's application on January 9, 2013, and, upon reconsideration, on September 17, 2013. R. 90-99, 101-12. At Idlett's request, an Administrative Law Judge ("ALJ") held a hearing by video teleconference on October 7, 2014, and received testimony from Idlett (who was represented by counsel) and an impartial vocational expert ("VE"). R. 63-89. During the hearing, Idlett amended the onset date of disability from October 1, 2011 to April 1, 2012. R. 66. Idlett also related that she had

received permanent disability retirement from the federal government. R. 68. Without reference to this known disability determination by another federal agency, on January 12, 2015, the ALJ denied Idlett's claim, finding that she was not disabled from October 1, 2011³ through the date of the decision. R. 48-57. On June 9, 2016, the Appeals Council denied Idlett's request for review of the ALJ's decision. R. 1-6. Therefore, the ALJ's decision stands as the final decision of the Commissioner for purposes of judicial review. *See* 42 U.S.C. §§ 405(h), 1383(c)(3); 20 C.F.R. § 404.981.

Having exhausted all administrative remedies, Idlett filed a complaint with this Court on August 8, 2016. ECF No. 1. The Commissioner answered on October 7, 2016. ECF No. 5. In response to the Court's order, Idlett filed a motion for summary judgment, with supporting

memorandum, on November 8, 2016. ECF No. 10.

On December 13, 2016, the Commissioner

²Page citations are to the administrative record previously filed by the Commissioner.

³ While the ALJ references the amendment of the alleged onset date to April 1, 2012, R. 48, he concludes that Idlett has not been under a disability from October 1, 2011 through the date of the decision. R.57.

Case 4:16-cv-00134-MSD-RJK Document 18 Filed

05/05/17 Page 3 of 10 PageID# 259

filed a motion to remand the case under the fourth sentence of 42 U.S.C. § 405(g) due to "the fact that the decision of the Administrative Law Judge below does not demonstrate consideration of the Plaintiff's disability award by another governmental agency." ECF No. 12 at 1. Idlett filed a response, objecting to the motion for remand, and requesting, in part, that judgment be

entered awarding her DIB. ECF No. 14. The Commissioner filed a reply. ECF No. 15. Without requesting leave to file a surreply, Idlett filed (subject to defect) a surreply requesting an award of benefits and sanctions. ECF No. 16.⁴ As neither party has indicated special circumstances requiring oral argument, the case is deemed submitted for a decision.

II. The ALJ's Decision

On January 12, 2015, the ALJ determined Idlett was not disabled from October 1, 2011 through the date of the decision. R. 57. To evaluate Idlett's claim of disability⁵, the ALJ followed the sequential five-step analysis set forth in the SSA's regulations for determining whether an individual is disabled. *See* 20 C.F.R. § 404.1520(a). Specifically, the ALJ considered whether Idlett: (1) was engaged in substantial gainful activity; (2) had a severe

impairment; (3) had an impairment that meets or medically equals a condition within the SSA's listing of official impairments; (4) had an impairment that prevents her from performing any past

⁴ The Court GRANTS Idlett leave to file the surreply, and has considered her filing, ECF No. 16, in making this report and recommendation.

⁵ To qualify for DIB, an individual must meet the insured status requirements of the Social Security Act, be under age 65, file an application, and be under a "disability" as defined in the Act. "Disability" is defined, for the purpose of obtaining disability benefits, "as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 20 C.F.R. § 404.1505(a); *accord* 42 U.S.C. §§ 423(d)(1)(A), 416(i)(1)(A). To meet this definition, the claimant must have a "severe impairment" making it impossible to do previous work or any other substantial gainful activity that exists in the national economy. 20 C.F.R. § 404.1505(a).

relevant work in light of her residual functional capacity; and (5) had an impairment that prevents her from engaging in any substantial gainful employment. R. 50-57.

The ALJ found that Idlett met the insured requirements ⁶ of the Social Security Act through December 31, 2017, and she had not engaged in substantial gainful activity since April 1, 2012, her amended alleged onset date of disability. R. 50.

At steps two and three, the ALJ found that Idlett's Arnold Chiari malformation constituted a severe impairment. R. 50. The ALJ classified Idlett's other asserted impairments, as non-severe, because they either responded to medication, required no significant medical treatment, did not continuously exist for a 12-month period, or did not otherwise continuously impose functional

limitations upon Idlett. R. 50-51. The ALJ further determined that Idlett's severe impairment, along with her other conditions, failed to meet or medically equal the severity of one of the impairments listed in 20 C.F.R. Pt. 404, Subpt. P, App. 1, as required for a finding of disability at step three. R. 52 (citing 20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526).

The ALJ next determined Idlett's residual functional capacity ("RFC"). R. 52-56. The ALJ considered Idlett's reports of her condition and symptoms, and how these limited her daily activities. R. 53. The ALJ summarized Idlett's treatment notes, medications, and test results, including multiple MRIs, a cerebrospinal fluid flow study (CSF flow study), and an EEG. R. 53-54. The ALJ addressed and weighed the opinion evidence from Idlett's treating physicians, nurse practitioner,

and physical therapist, as well as the state agency consultant's assessments. R. 55-56. The ALJ found that Idlett possessed an RFC to perform light work, *see* 20 C.F.R. § 404.1567(b), with the following limitations: (a) she could "lift and carry ten pounds frequently

⁶ In order to qualify for DIB, an individual must also establish a disability that commenced on or before the last day in which that individual met the insured status requirements of the Social Security Act. *See* 42 U.S.C. § 423(a), (c); 20 C.F.R. § 404.131(b).

and twenty pounds occasionally;" (b) she could sit for six hours, and walk or stand for four hours, in an eight-hour workday alternating "between sitting and standing every thirty minutes for comfort;" (c) she could not climb ladders or "work

at unprotected heights or around dangerous machinery;" (d) she could "perform jobs that require no frequent grasping as would be required on an assembly line;" and (e) she was "limited to simple repetitive job tasks." R. 52. The ALJ further concluded that this RFC was supported by "the mild findings on radiographic and physical examinations, the conservative level of treatment, and [Idlett's] extensive activities of daily living."

R. 56. Based upon this assessment of Idlett's RFC, the ALJ determined at step four that Idlett could not return to her past relevant work as a program analyst and a support assistant. R.56.

Finally, at step five, and after considering her age, high school education, work experience, and RFC, the ALJ found that Idlett could perform other jobs, such as an office helper, information clerk, and clerical checker, which existed in

significant numbers in the national economy. R. 56-57. Accordingly, the ALJ concluded that Idlett was not disabled from October 1, 2011 through the date of the ALJ's decision and was ineligible for a period of disability or DIB. R. 57.

III. Standard of Review

In reviewing a social security disability decision, the Court is limited to determining whether the Commissioner applied the proper legal standard in evaluating the evidence and whether substantial evidence in the record supports the decision to deny benefits. 42 U.S.C. § 405(g); *Johnson v. Barnhart*, 434 F.3d 650, 653 (4th Cir. 2005) (citing *Craig v. Chater*, 76 F.3d 585, 589 (4th Cir. 1996)); *Hays v. Sullivan*, 907 F.2d 1453, 1456 (4th Cir., 1990). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to

Case 4:16-cv-00134-MSD-RJK Document 18 Filed

05/05/17 Page 6 of 10 PageID# 262

support a conclusion." *Richardson v Perales*, 402 U.S. 389, 401 (1971) (quoting *Consol. Edison Co. of N.Y. v. NLRB*, 305 U.S. 197, 229 (1938)). It consists of "more than a mere scintilla of evidence[,] but may be somewhat less than a preponderance." *Laws v. Celebrezze*, 368 F.2d 640, 642 (4th Cir. 1966).

When reviewing for substantial evidence, the Court does not re-weigh conflicting evidence, make credibility determinations, or substitute its judgment for that of the Commissioner. *Craig*, 76 F.3d at 589; *Hays*, 907 F.2d at 1456. "Where conflicting evidence allows reasonable minds to differ as to whether a claimant is disabled, the responsibility for that decision falls on the

Secretary (or the Secretary's designate, the ALJ)." *Craig*, 76 F.3d at 589 (citing *Walker v. Bowen*, 834 F.2d 635, 640 (7th Cir. 1987)). The Commissioner's findings as to any fact, if supported by substantial evidence, are conclusive and must be affirmed, unless the decision was reached by means of an improper standard or misapplication of the law. *Coffman v. Bowen*, 829 F.2d 514, 517 (4th Cir. 1987) (citing *Myers v. Califano*, 611 F.2d 980, 982 (4th Cir. 1980)). Thus, reversing the denial of benefits is appropriate only if either (A) the record is devoid of substantial evidence supporting the ALJ's determination, or (B) the ALJ made an error of law. *Coffman*, 829 F.2d at 517.

In reviewing a decision of the Commissioner denying benefits, the Court has the power, "to enter, upon the pleadings and transcript of the record, a

judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing." 42 U.S.C. § 405(g). Further, "[i]f the reviewing court has no way of evaluating the basis for the ALJ's decision, then the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation." *Radford v. Colvin*, 734 F.3d 288, 295 (4th Cir. 2013) (quoting *Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 744

6

Case 4:16-cv-00134-MSD-RJK Document 18 Filed

05/05/17 Page 7 of 10 PageID# 263

(1985)).

IV. Analysis

Remand of Idlett's case is necessary to allow the ALJ to appropriately address the disability

A25

determination of another governmental agency, the Office of Personnel Management ("OPM"). In evaluating a Social Security Disability claim, an ALJ must consider all of the required categories of evidence as set out by the Code of Federal Regulations. 20, C.F.R. § 404.1513(a)(1)-(5). One of the types of evidence that will be considered is decisions by other governmental agencies about whether a person is "disabled, blind, employable, or entitled to any benefits." 20 C.F.R. § 404.1504. These decisions are not binding upon the Social Security Administration, 20 C.F.R. § 404.1504, which reserves the ultimate authority for deciding whether a petitioner is disabled, SSR 06-03p. However, the ALJ is required to consider, evaluate, and weigh these governmental agency decisions as evidence in the petitioner's claim. 20 C.F.R. § 404.1504; *Bird v. Comm'r of Sac. Sec. Admin.*, 699

F.3d 337, 343 (4th Cir. 2012) ("SSA is required to consider all record evidence relevant to a disability determination, including decisions by other agencies."); SSR 06-03p ("we are required to evaluate all the evidence including decisions by other governmental and nongovernmental agencies"); *Hicks v. Gardner*, 393 F.2d 299, 302 (4th Cir. 1968) ("Weight should be given to the findings of the Virginia Compensation Commission even though [the findings are] not determinative of the issue." (citing *Hayes v. Celebrezze*, 311 F.2d 648, 654 (5th Cir. 1963))).⁷

⁷A recent revision to the Code of Federal Regulations states that "in claims filed [] on or after March 27, 2017, we will not provide any analysis in our determination or decision about a decision made by any other governmental agency or a nongovernmental entity about whether you are disabled, blind, employable, or entitled to any benefits." 20 C.F.R. § 404.1504. The SSA made clear that it is now "not requiring adjudicators to provide written analysis about how they consider the

decisions from other governmental agencies and nongovernmental entities

Case 4:16-cv-00134-MSD-RJK Document 18

Filed 05/05/17 Page 8 of 10 PageID# 264

When the ALJ has not weighed the disability determination of another governmental entity in accordance with the Fourth Circuit's *Bird* decision, remand is the appropriate remedy. See *Parker v. Colvin*, No. 3:14cv618, 2015 WL 5561213, at *16 (E.D. Va. Sept. 11, 2015); *Wyche v. Colvin*, No. 4:13cv43, 2014 WL 1903106, at *8 n.2 (E.D. Va. Apr. 30 2014) (collecting cases from "ten different district and magistrate judges who have opined that *Bird* requires remand to permit the ALJ to analyze a [disability determination from another governmental agency] under the correct evidentiary standard"). The Commissioner concedes that, in Idlett's case, the ALJ failed to address the OPM's

disability determination. ECF No. 15 at 1 (noting the ALJ's opinion is "devoid of reference to a known disability determination by another federal agency"). Because the ALJ failed to address the OPM disability determination concerning Idlett, this Court cannot determine whether the ALJ's decision is supported by substantial evidence.

Remand is the appropriate remedy despite Idlett's requests that the Court award her DIB based on the current record. Here, the record consists of lengthy treatment records, test results, and multiple opinions from treating and non-treating sources, in addition to Idlett's reports regarding her symptoms. The ALJ explicitly considered and weighed this information when he determined that Idlett was capable of a limited range of light work. The Court cannot speculate as to what weight, if any, the ALJ gave to OPM's

disability decision, or whether consideration of the OPM decision would change the ALJ's conclusions.

Therefore, the Court should remand the

[and that adjudicators will only] consider in [their] determination or decision the relevant supporting evidence underlying the other governmental agency or nongovernmental entity's decision that [the SSA] receive[s] as evidence in a claim." Revisions to Rules Regarding the Evaluation of Medical Evidence, 82 FR 5844-01, 2017 WL 168819 (Jan. 18, 2017). This new rule does not apply to Idlett's case as the rules only went into effect on March 27, 2017, and, from its language, it applies only to claims made on or after that date. See *id.* ("These final rules are effective on March 27, 2017.").

8

Case 4:16-cv-00134-MSD-RJK Document 18 Filed

05/05/17 Page 9 of 10 PageID# 265

case to allow the ALJ to weigh the evidence in accordance with the *Bird* decision.⁸

V. Recommendation

For the foregoing reasons, this Court recommends that the Commissioner's motion to

remand to the Social Security Administration (ECF No. 12) be GRANTED, and that the Commissioner's decision on Idlett's claim be VACATED and the case be REMANDED to the Acting Commissioner of Social Security pursuant to sentence four of Section 405(8) of the Social Security Act, 42 U.S.C. § 405(8). On remand, the Appeals Council should send the case back to an Administrative Law Judge for further administrative proceedings consistent with this report and recommendation. Plaintiff's motion for summary judgment (ECF No. 10) should be DENIED as MOOT.

VI. Review Procedure

By copy of this report and recommendation, the parties are notified that pursuant to 28 U.S.C. § 636(b)(1)(C):

1. Any party may serve upon the other party and file with the Clerk written objections to the foregoing findings and recommendations within fourteen (14) days from the date of mailing of this report to the objecting party, see 28 U.S.C. § 636(b)(1), computed pursuant to Rule 6(a) of the Federal Rules of Civil Procedure. Rule 6(d) of the Federal Rules of Civil Procedure permits an extra three (3) days, if service occurs by mail. A party may respond to any other party's objections within fourteen (14) days after being served with a copy thereof. See Fed. R. Civ. P.

⁸ In addition to the request for an award of benefits, Idlett requests that certain harassing behavior, "telecommunications intrusions, wiretapping, location tracking and stalking" be immediately stopped, and that the Commissioner be sanctioned by referring this action to the judicial conference for investigation based on the "federal violation committed by the ALJ." ECF No. 14 at 5-6. These requests are not properly before the Court in this action brought pursuant to 42 U.S.C. § 405(g)

seeking review of the SSA's decision denying Idlett
DIB. See Compl. 2, ECF No. 1.

Case 4:16-cv-00134-MSD-RJK Document 18 Filed

05/05/17 Page 10 of 10 PageID# 266

72(b)(2) (also computed pursuant to Rule 6(a) and
(d) of the Federal Rules of Civil Procedure).

2. A district judge shall make a *de novo*
determination of those portions of this report or
specified findings or recommendations to which
objection is made.

The parties are further notified that failure to
file timely objections to the findings and
recommendations set forth above will result in a
waiver of appeal from a judgment of this Court
based on such findings and recommendations.
Thomas v. Arn, 474 U.S. 140 (1985); *Carr v. Hutto*;

737 F.2d 433 (4th Cir. 1984); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).



Robert J. Krask

United States Magistrate Judge

Robert J. Krask

UNITED STATES MAGISTRATE JUDGE

Norfolk Virginia

May 5, 2017

10

Personal Identifier: Pamela Denise Idlett (XXX-XX-0740)

THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA - NEWPORT
NEWS DIVISION

PAMELA DENISE IDLETT,

Plaintiff, *pro se*;

v. **Civil Action No.: 4:16-cv-134-MSD-RJK**

(Under Seal)

NANCY A. BERRYHILL,

A34

Acting Commissioner of Social Security, Defendant

PLAINTIFF'S OBJECTION TO MAGISTRATE

JUDGE'S REPORT AND RECOMMENDATION

FOR REMAND

TO THE HONORABLE DISTRICT JUDGE MARK

S. DAVIS

Plaintiff, Pamela Denise Idlett, *pro se*, brought this civil action before the District Court seeking judicial review and summary judgment on erroneous law execution and abuse of judicial discretion claims against the Social Security Administration pursuant to provisions of under Federal Rule of Civil Procedure 56(B); and 28 U.S.C. §636(b)(1)(B-C); (ECF No. 1, 10, 14, 16).

Plaintiff herein respectfully OBJECT the Magistrate Judge's proposed report and recommendation (ECF No. 18) to grant the

Commissioner's (defendant's) motion to REMAND (ECF No. 12) while DENYING and dismissing my motion for summary judgment (ECF No. 10). This objection is based on the grounds of vacating and dismissing errors in law and abuse of judicial discretion as "moot" issues of concern violates the legal standard of review process (Judiciary Code of Conduct, Canon 1; and Administrative Procedure Act, 556).

Pamela Denise Idlett (XXX-XX-0740) Case 4:16-cv-134-MSD-RJK

Procedural Background Summary and
Arguments

1. Commissioner admits to an "error in law" committed by the ALJ. This error in law "is devoid of reference to a known disability determination by another federal agency." (ECF No. 15, Defendant's Rebuttal and Reply to Motion to Remand, paragraph

1, sentence 2; and ECF No. 12). This error in law violates the standard of review process; Section 223 [42 U.S.C. §423](d)(2)(A-C3); and 20 CFR 404.1512(b)(5-6).

The ALJ committed this "error in law" as he made reference and acknowledgment of my federal disability retirement during the hearing, but devoid from decision. The ALJ's question, "Now, are you currently retired from federal government, NASA?" Plaintiff's answer, "Yes, I retired under disability." ALJ reply, "Right. Is that a permanent disability ma'am?" Plaintiff's answer, "Yes, sir." (Court Transcript of Oral Hearing, p68) OPM's Disability Retirement packet, letter and references are enclosed as part of the Decision exhibits listing. (Court Transcript 4D, p174-175; 9D, p188-220; 13D, p248-263; 3E, p284-286; and 17F, p1087)

2. Effective July 2, 2003, the SSA's standard of review process for assessing the duration of a "severe" impairment on symptoms under body systems is no longer in effect (rescinded). Undated process; if you have a "severe" impairment that is listed in 20 CFR Part 404, Subpart P, Appendix 1 and functional limitations that exist for a continuous duration of at least 12 months you will be found disabled. [20 CFR Part 404, Subpart P, Appendix 1, and 404.1520(a)(4)(iii)].

3. Defendant failed to provide a defense for "error in law" supported by undisputed substantial evidence. This error in law is assessing the continuous duration of a "severe" impairment on body symptoms. (Court Transcript of ALJ Hearing Decision, p51, paragraph 1). This standard of review process is rescinded. Assessing the duration on a rescinded process violates the

Pamela Denise Idlett (XXX-XX-0740) Case 4:16-cv-134-MSD-RJK

standard of review process. In accordance with SSR laws, "hypertension, headaches, and anxiety" (body habitus symptoms) are not physical or mental impairments. [20 CFR Part 404, Subpart P, Appendix 1, 404.1520(a)(4)(iii); Section 223 [42 U.S.C. §423](d)(2)(A-C3); and SSR 96-8p]. I have been medically diagnosed with a severe impairment; Arnold Chiari Malformation (Disability Code 3310, Cerebral Degeneration). This continuous neurological impairment causes severe physical and mild mental functional limitations with incapacitating episodic flare-ups.

4. Defendant failed to provide a logical defense for "abuse of judicial discretion" supported by undisputed substantial evidence. This abuse is

significantly increasing exertion/nonexertion hours from medical directives without adequate causation. This act violates the standard of review process. (Federal Rule of Civil Procedure 56(B); 28 U.S.C. §636(b)(1)(B); Judiciary Code of Conduct, Canon 1; and the Administrative Procedure Act. 556).

Medically directed exertion/nonexertion: **Sitting 2 hrs in 8 hrs; walking/standing 1 hr in 8 hrs.** [work(setting/day)] (Court Transcript, Disability Impairment Questionnaire, p11-16; 12F, p1005-1013; and 19F, p1115-1122)

ALJ changed exertion/nonexertion to: **Sitting 6 hrs. in 8 hrs; walking/standing 4 hrs. in 8 hrs.** [work(setting/day)] (Court Transcript of ALJ's Hearing Decision, p52, paragraph 5)

Magistrate Judge's Analysis Argument

The Magistrate Judge mistakenly disregarded the proper standard of review process for errors in

law and abuse of judicial discretion. These errors in law are devoid “with” reference to a known disability determination by another federal agency; and assessing the duration of a “severe” impairment on a rescinded review process. The standard review process for such violations are stated in the Standard of Review section of his report (paragraph 2, last sentence).

3

Pamela Denise Idlett (XXX-XX-0740) Case 4:16-cv-134-MSD-RJK

In addition, undisputed substantial evidence further support violations in the standard of review process. These violations are identified in the Procedural Background Arguments section above. These identified violations were mistakenly disregarded (also filed in ECF No. 10, 14, and 16). The Defendant provides no defense.

Conclusion

Period of Disability Insurance Benefits (DIB) expires December 31, 2017. A prompt decision is required. Remanding my case back to an ALJ in the Social Security Administration after such misapplication of the law will prolong a decision. This act will cause me to lose my disability entitlement (surviving widow's insurance) benefits retroactive back to April 1, 2012.

Denying and remanding my case for rehearing by this federal agency where errors in law and abuse of judicial discretion (misapplication of the law) have occurred will further violating the standard of review processes. These violations deprive the hearing of fairness mandated by federal, civil, SSA and United States Constitution, Article III. The federal and civil standard of review

processes for reversing the denial of benefits without
remanding this case for rehearing have been met.

(Date) May 12, 2017

/s/ Pamela Denise Idlett

Pamela Denise Idlett

U.S. Army Veteran and

FERS Disabled

Civil Servant Retiree

(Langley NASA)

435 Woodbrook Run

Newport News, VA

23606

757-272-7222(C);

757-826-8524 (H)

4

Case 4:16-cv-00134-MSD-RJK Document 20 Filed

05/31/17 Page 1 of 3 PageID# 272

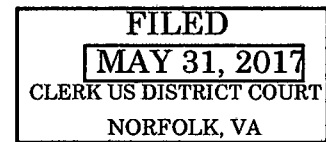
**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

A43

NEWPORT NEWS DIVISION

PAMELA DENISE IDLETT,

Plaintiff



ACTION NO. 4:16cv134

v.

NANCY A. BERRYHILL,

Acting Commissioner of Social Security,

Defendant.

FINAL ORDER

Plaintiff, Pamela Denise Idlett ("Idlett"), brought this action Pursuant to 42 U.S.C. §405(g), seeking judicial review of a decision of the Acting Commissioner of the Social Security Administration ("Commissioner") denying her claim for a period of disability and Disability insurance benefits under Title II of the Social Security Act.

This matter was referred to a United States Magistrate Judge, Pursuant to the provisions of 28 U.S.C. § 636 (b) (1) (B) and (C) and Rule 72 (b) of the

Federal Rules of Civil Procedure, as well as Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Report and Recommendation of the Magistrate Judge was filed on May 5, 2017, recommending that the district court grant the Commissioner's motion to remand to the Social Security Administration (ECF No. 12), that

Case 4:16-cv-00134-MSD-RJK Document 20 Filed 05/31/17 Page 2 of 3 PageID# 273

the Commissioner's decision on Idlett's claim be vacated, and that the case be remanded to the Acting Commissioner of the Social Security pursuant to sentence four of Section 405(g) of the Social Security Act, 42 U.S.C. §405(g). It was further recommended that Plaintiff's motion for summary Judgment (ECF No. 10) be denied as moot.

By copy of the Report and Recommendation, each party was advised of the right to file written objections to the findings and recommendation made by the Magistrate Judge. Plaintiff filed her Objection to Magistrate Judge's Report and Recommendation for Remand, ECF No. 19, on May 12, 2017. Defendant did not file a Response to Plaintiff's objections.

Following a de novo review of the Magistrate Judge's Report and Recommendation, and the objections filed thereto, and finding no error, the Court ADOPTS the findings and recommendations set forth in the Report and Recommendation of the United States Magistrate Judge filed on May 5, 2017. Therefore, the Commissioner's Motion to Remand (ECF No. 12) is **GRANTED**, and the Commissioner's decision on Idlett's claim is **VACATED** and the case is **REMANDED** to the

Acting Commissioner of Social Security pursuant to sentence four of Section 405(g) of the Social Security Act, 42 U.S.C. § 405(g). On remand, the Appeals Council should send the case back to an Administrative Law Judge for further administrative proceedings consistent with the Magistrate Judge's Report and Recommendation. Further, Plaintiffs

2

Case 4:16-cv-00134-MSD-RJK Document 20 Filed 05/31/17 Page 3 of 3 PageID# 274
Motion for Summary Judgment ((ECF No. 10) is DENIED AS MOOT.

The parties are ADVISED that they may appeal for this Final Order by forwarding a written notice of appeal to the Clerk of the United States District Court, United States Courthouse, 600

A47

Granby Street, Norfolk, Virginia 23510. Said written notice must be received by the Clerk within sixty (60) days from the date of this Final Order.

The Clerk shall forward a copy of this Final Order to Plaintiff and to counsel for the Defendant.

/s/ 
Mark S. Davis

United States District Judge

Norfolk, Virginia

May 30, 2017

3

Appendix B

U.S. District Court (D.C.)

Idlett v. Berryhill, No. 4:16-cv-00134. Doc. 20

(E.D. Va. 2017)

Electronic Case File (ECF) Docket Data

Subject	Date	Doc. No.	Docket Title	Ref. Pg.
Opinion	May 5,	18	"Magistrate Judge's	2-6, 37,

	2017		Report and Recommendation” Affirming SSA Commissioner’s Remand and Deny and Vacate Idlett’s Request for Summary Judgment of Disability Insurance Benefits (DIB) Before Mark S. Davis, District Judge and Robert J. Krask, Magistrate Judge	43, A4, A11-34, A45-47
Ob- jection	May 12, 2017	19	Idlett’s OBJECTION to Report and Recom- mendation	4-5, 37, 44, A34-43
Final order	May 31, 2017	20	FINAL ORDER Affirming Commissioner’s	5-6 10,11, 14, 17, 18, 65,

			Remand for Further Administrative Rehearing Proceedings Pursuant to Sentence Four of 42 U.S.C. §405(g)	A43-48
--	--	--	--	--------

U.S. District Court

Other Relevant Filed Electronic Case File

(ECF) docket data

Subject	Date	Doc No.	Docket Title	Ref. Pg.
Com- plaint	Aug. 8, 2016	1	COMPLAINT Erroneous Law Execution and Abuse of Judicial Discretion by the ALJ	16
Answer	Oct. 7, 2016	5	ANSWER to Complaint	
AR	Oct 7, 2016	6	SSA Admin. Record	15, 67

Order	Oct. 07, 2016	7	Order Referring Case to Magistrate Judge for Report and Recom- mendations	
Motion	Nov. 8, 2016	10	Plaintiff's (Idlett) Motion for Summary Judgment	1, 4, 6, 13, 64, 65
Motion	Dec. 13, 2016	12	Defendant's (Commis- sioner) Motion for Remand to Agency for further Admin. Rehearing Proceedings Under Sentence Four of 42 U.S.C.§405(g)	3-4, 45
Motion	Dec 16, 2016	14	Idlett's "Motion to Object Proposed Voluntary Remand	36, 37

			Based on “Bad Faith” Conduct”	
Rebuttal	Dec. 23, 2016	15	Defendant’s Rebuttal Brief ref. docket 12 Motion to Remand to SSA	4, 45
Response	Dec. 27, 2016	16	Idlett’s response brief in opposition of Defendant’s rebuttal and motion to remand and supporting memorandum	12, 37

Appendix C

Administrative Record (AR) Under Seal

Social Security Administration (SSA)

Disability Court Exhibits

<u>Description</u>	<u>Specific Pg. #</u>	<u>No. of Pg(s)</u>
Appeals Council Denial, 06/09/2016	1-7	7

Medical Evidence of Record (MER), dated 03/16/2016 from Frederick Patterson, M.D.	8-10	3
Disability Impairment Questionnaire, 07/03/2015, Frederick Patterson, M.D., Riverside Neurology	11-16	6
Attorney's Initial Request for Review of ALJ's Decision by Appeals Council, 06/29/2015	17	1
Emergency Room Mary Immaculate Hospital Neurological dysfunction: Loss of Consciousness (Syncope), Dizziness, Headaches, Neck Pain, 4/14/2015	18-37	20
Neurology Clinical Notes, Frederick Patterson, M.D., Riverside dated 05/04/2015; Mild Tenderness, Palpation Trapezius on left side	38-43	6
Initials Request for Review of Hearing Decision/Order; 01/28/2015	44	1
Administrative Law Judge (ALJ) Hearing Decision, dated 01/12/2015	45-62	18

Transcript of Oral Hearing, dated 10/07/2014	63-89	27
---	-------	----

Specific Administrative Record (AR) Exhibits

Exhibit No.	Specific Description	AR Pg. No.	No. of Pg(s)
1A	SSA Disability Determination Explanation, 1/9/2013	90-99	10
2A	Disability Determination and Transmittal	100	1
3A	SSA Disability Determination Explanation, Case Analysis, Impairment Diagnosis – 3310 Code Cerebral Degeneration, Severe; 9/17/2013	101- 112	12
4A	Recon Disability Determination by State Agency, Title II, 9/17/03	113	1
1B	T2 Notice of Disability Determination by State Agency	114- 118	5

	9/17/2013		
2B	Request for Recon.; 01/13/2013	119	1
3B	Representative Fee Agrmt. Mario A. Davila, Non-attorney, dated 01/21/2013	120	1
4B	Appt. of Rep., Mario A. Davila, dated 01/21/2013	121	1
5B	T2 Disability Recon. Notice, 09/17/2013	122- 125	4
6B	Request for Hearing by ALJ, 10/28/2013	126- 127	2
7B	Hearing Process Explanation letter dated 11/20/2013	128- 134	7
8-9B	NOTICE OF HEARING	135- 161	27
10B	Resume of Voc. Expert-Robert Edwards	162- 163	2
11B	Rep. Fee agrmt.- Colleen Ilacqua and Mario Davila, dated 08/18/2014	164	1

12B	Appt. of Rep.- Colleen Ilacqua, dated 10/01/2014	165	1
13B	Binder and Binder Reply to ALJ's statement of unremarkable MRI; 10/22/2014	166- 168	3
14B	Rep. Correspondence	169	1
1D	Appt. of DIB, 10/31/2012	170- 171	2
2D	Certificate of Release of Discharge from Active, Duty (DD- 214); 01/1988	172	1
3D	W2-2011, 11/05/2012	173	1
4D	Workers' Comp/Public DIB Questionnaire, 02/04/2013	174- 175	2
5D	Detailed Earnings Query, 07/07/2014	176- 180	5
6D	Summary Earnings Query, 07/07/2014	181	1
7D	Cert. Earnings Record, 07/07/2014	182- 186	5

8D	New Hire, Quarter Wage, Unemployment Query (NDNH), 07/07/14	187	1
10D	Atty./Rep.- Supplied Evidence	236- 237	2
11D	Appl. For Widows Ins. Ben.,	238- 245	8
12D	Death Certificate	246	1
13D	OPM FERS Disability Retirement Application with Supervisor's and Physician's Statements 02/02/12	247- 248	2
13D	OPM FERS Disability Retirement Application with Supervisor's and Physician's Statements 02/02/2012	249- 257	9
13D	Medical Opinion, Judy Huang, MD, Chief of Cerebrovascular	258- 259	2

	Neurosurgery, 12/13/2011; and Family Health Care Provider, U.S. Department of the Army Medical Center, 03/21/2012		
13D	Federal Agency 03/05/2012 Certification of Reassign. and Accommodation Efforts	260- 263	4
1E	Dis. Report- Adult-12 th grade edu.(1893), 11/05/12 from claimant	264- 272	9
2E	Work History Report – 11/14/12, from Idlett	273- 283	11
3E	Function Report – Adult, 11/16/12 from Idlett	284	1
3E	OPM Disability Retirement Approval Letter; 7/24/2012	285- 286	2
3E	Function Report –	287-296	13

	Adult, 11/16/12 from Idlett		
4E	Dis. Report, Field Office	297- 298	2
5E	Dis. Report, Field Office dated 01/17/2013	299- 300	2
6E	Function Report, Adult, dtd 07/18/2013 from claimant	301- 310	10
7E	Dis. Report, Field Off., dtd 10/29/2013	311- 312	2
8E	Dis. Report, Appeals, dtd 10/29/2013	313- 319	7
9E	Rep Correspondence, dtd 07/07/2014, from SSA/ODAR/SCT/ PMSmith	320- 330	11
10E	Claimant's Recent Med. Treatment, dtd 09/18/14	331- 332	2
11E	Claimant's Medications, dtd 09/18/2014 from Mario Davila	333-334	2
12E	Attorney's	335-	2

	Request for remand based on legal errors with detailed errors, July 22 2015 follow up from 06/29/2015 letter	336	
13E	Attorney's Second Reminder to Appeals Council in connection with request for remand; Also submitting additional medical information, Dec. 10, 2015	337	1
1F	Brain and Cervical Spine – Clinical Notes: 01/27/2011 MRI Interpretation on 02/9/2011 During follow up visit, Peninsula Neurology, Steven Bojarski, M.D.; Arnold Chiari	338-340	3

	Malformation; 01/26/2011 first visit exam – Facial deficit; Left Facial Asymmetry; decrease sensation in left Arm; deficits in muscle strength, greater on left		
1F	McDonald Army Health Center and ER Dept., Migraine Headaches and Cervical Spine radiology	341- 353 354- 355	13 2
2-3F	Brain MRI Interpretation of Outside MRI on 01/27/2011 by Johns Hopkins Bayview Medical Center; Arnold Chiari Malformation	356- 370	14
3F	Clinical Notes, Judy Huang, M.D., Chief	371- 377	7

	Cerebrovascular Neurosurgery, Johns Hopkins Bayview Medical Center, 11/29/2011 & 12/20/2011; Weakness, Positive Romberg (balance problem)		
4F	Medical Opinion, Family Health Care Provided, U.S. Department of the Army Family Health Center, 05/14/2012	378	1
4F	U.S. Department of Labor Certification of Health Care Provider, Employee's Serious Health Condition; 05/30/2012	384- 387	4
4F	John Hopkins Clinical Notes, 12/29/2011,	388- 398	11

	Duplicate		
4F	Brain MRI w/o contrast/CSF flow study interpretation, Sentara Norfolk General Hospital, ordered by Dr. Huang, 12/13/2011; Arnold Chiari Malformation	399-403	5
4F	Brain and Thoracic Spine MRI Interpretation, Mary Immaculate ordered by Dr. Huang 12/09/2011; Arnold Chiari Malformation; "Right tonsil slightly extends more inferiorly than the left." But "No evidence of thoracic cord syrinx.	404-407	4
4F	Brain & C-Spine	408-	2

	w/o contrast MRI Interpretation, Mary Immaculate ordered by Dr. Bojarski, 01/27/2011; Impression: Mild Chiari One malformation ("6.6mm inferior tonsillar displacement below the level of the foramen magnum"; But No Spinal Syrinx.)	409	
5F	Mary Immaculate Hospital MRI-TSpine, 12/09/2011, and Dr. Boulos-Mikhael followup	410-504	95
5F	Emergency Room Langley Air Force Hospital; Head, Neck, and Back Pain with stiffness; Confusion, Vomiting, Change	505-509	5

	in Vision, Weakness, and Spinal Morphine Injection		
6F	Out/Inpatient Rehabilitation Records. Routine Lab only and personal Women Health Clinic Records, etc.: <i>Not Rehab. Records</i>	510- 780	271
7F	Clinical Notes, Dr. Boulos- Mikhael, 10/5/2011- 8/29/2012	781- 802	22
8F	Various neurology and primary care exams (Sentara Neurology, Hampton; Sentara Medical Group, Sentara Norfolk General Hospital Brain MRI (w/o contrast) Interpretation of 12/13/2011;	803- 943	141

	McDonald Army Health Center; Sentara Hospital; 10/5/2011-03/11/2013, annotate past history of Headaches, Loss of Consciousness, Dizziness, Head Swelling, Blurred Unsteady Gait-falls, Numbness, Tremors, and Memory Loss		
9F	Dr. Kaz Vision Center	944	1
10F	Sentara Hospital; 10/05/2011-03/11/2013, tremors, memory loss and disorientated and MRI imaging results: Cerebellar tonsils extend 5 mm below the Foremen magnum: Chiari	945-950	6

	Malformation Type 1		
11F	Cervical Spine MRI Interpretation, Tidewater Diagnostic Imaging, 09/10/2012; Arnold Chiari Malformation; But No Spinal Syrinx	951- 953	3
11F	Hospital Records, dtd 11/01/2012- 07/16/2013, DOD Centralized Location – Med. Sharing Initiative	954- 1004	51
12F	Multiple Impairment Questionnaire, Joint Participation: Adel Boulos- Mikhael, M.D., Sentara Neurology, 02/14/2014; and Wayne MacMaster, M.S.,	1005- 1013	9

	P.T.; 02/10/2014		
13F	Duplications of medical records	1014- 1063	40
14F	Clinical Associates of Tidewater, Psychotherapy Fredrick Frieden, PhD., 03/27/2014	1064- 1072	8
15F	Tidewater Physical Therapy, Inc.	1073- 1075	2
16F	Dr. Kaz Vision Center; Annotation of Chiari Malformation	1076- 1078	3
17F	Sentara Neurology, Adel Boulos-Mikhael, M.D., Sentara Hospital; 11/13/2012 - 02/24/2014, Objective MRI imaging diagnosis: "The cerebellar tonsils extend 5 mm below the	1079- 1092	14

	foremen magnum, consistent with the tonsillar ectopia seen on the prior brain MRI.” “HEADACHE”, “numbness and tingling in her left side of the body”		
18F	Cardiology, Dr. Linz 05-05/2014 - 08/07/2014 - Result: <u>Chest pain</u> : “...heart symptom reacting to a <u>noncardiac issue</u> (a physiologic Response.)” No other medication therapy other than Beta blocker (atenorol). p1098	1093-1112	20
19-20F	Multiple Impairment Questionnaire, 10/03/2014; Frederick	1113-1130	18

	Patterson, M.D., Riverside Neurology		
21F	Cervical Spine MRI Imaging Report, Frederick Patterson, M.D., Riverside Neurology, 9/16/2014; No Spinal Syrinx	1131- 1133	3
22F	Mary Immaculate Hospital ER, 03/03/2014 Left side chest pain; and 09/17/2014; 10/27/2011	1134- 1167	33
23F	Clinical Notes, Frederick Patterson, M.D., Riverside Neurology, 09/09/2014 office visit; Positive Romberg with sway, tremors, decrease hand Feeling; 9/16/2014 MRI	1168- 1174	7

	interpretation transcribed on 10/16/2014		
24F	Table of Contents of Medical Records obtained Through DoD Centralized Location Medical Sharing Initiative Database, 9/12/2000 through 03/07/2016 – Appeals Council Requested Duplicate medical records, dated 03/07/2016	1175- 2286	1112

Appendix D

Constitutional Provisions

Statutory Text

(Rule 14.1(f))

Title(s)

Page(s)

18 U.S.C. §242, 6, 7, 10, 14, 18, 63, A72-73

Deprivation of rights under color of law:

“Whoever, under color of any law, statue, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosive, or fire, shall be fined under this title or

Title(s)

Page(s)

18 U.S.C. §242 (Continuation):

imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death."

18 U.S.C. §1001, 6, 7, 10, 14, 18, 19, 37, 61,

Statements or entries generally: 63, A73-74

"(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully -

- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
- (2) makes any materially false, fictitious, or fraudulent statement of representation; or
- (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;"

18 U.S.C. §1001 (Continuation):

“shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, the term of imprisonment imposed under this section shall be not more than 8 years.”

28 U.S.C. §453, Oaths of 8, 10, 18, A74

Justices and Judges:

“I, _____. do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ under the Constitution and laws of the United States. So help me God.”

42 U.S.C. §1983, Civil 6, 8, 10, 13, 14,

action for deprivation of rights: 18, 37, 63, A74-75

Title(s)

Page(s)

42 U.S.C. §1983 (Continuation):

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless declaratory decree was violated or declaratory relief was unavailable.”

42 U.S.C. §2000d, 8, 10, 18, 63, A75

Title VI of the Civil Rights Act of 1964, states:

“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

Title(s)

Page(s)

Code of Conduct . . . i, iii, 6, 8, 10, 18, 36, 37, 62,

for United States Judges:

A76

“Canon 1: A Judge Should Uphold the
Integrity and Independence of the
Judiciary”

“Canon 2: A Judge Should Avoid
Impropriety and the Appearance of
Impropriety in all Activities”

“Canon 3: A Judge Should Perform the
Duties of the Office Fairly, Impartially,
and Diligently”

United States Constitution:

Amendment V, 7, 8, 10, 18, 37,

Rights of Persons: 63, 40, 67, A76-77

“No person shall be held to answer for a
capital, or otherwise infamous crime,
unless on a presentment or indictment
of a grand jury, except in cases arising
in the land or naval forces, or in the

Amendment V (Continuation):

militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment XIV, Rights 7, 8, 10, 18

Guaranteed: Privileges 37, 63,

and Immunities of Citizenship, A77-78

Due Process, and Equal Protection:

"1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person

Amendment XIV (Continuation):

within its jurisdiction the equal protection of the laws.”

Article VI, Prior Debts, 6, 8, 9, 10, 12

National Supremacy, 13, 19, 36, 62,

Oaths of Office: A78

“3. The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.”

Index of Appendices

Rule 14.1(i)

<u>Title(s)</u>	<u>Page(s)</u>
Appendix A: U.S. Court of Appeals for	A1-11
the Fourth Circuit Opinions, Judgment, Orders and and relevant docket ECFs:	
Appendix B: U.S. District Court, E.D.	A11-52
Va., Newport News Division, Report of Recommen- dation, Plaintiff's Objection, Final Order and Docket ECFs:	
Appendix C: Administrative Record (AR) . .	A52-71
Under Seal; SSA Disability Court Exhibits	
Appendix D: Constitutional Provisions. . . .	A72-78
Statutory Text:	
Certificate of Compliance (Rule 33.1(h)): . . .	A79-80
Certificate of Service (Rule 29.5):	A81-84
Index of Appendices	A85