

not expected *sua sponte* unless the trial court becomes aware of a significant change in the defendant's mental condition via an objective incident or action. Although the court has an obligation to protect the fairness of the trial for the criminal defendant, this case underscores the discretion afforded to trial courts on the subject of competency reevaluation. This opinion aligns with one of the stated tenants of the abuse of discretion standard; that is, to give deference to trial court decisions where there is a "strong interest in finality and avoiding appeals" (*McCarthy*, p 172, citing *Sisouvanh*, p 949).

Thus, the standard of review, abuse of discretion, adheres to its aim of finality. Whereas this standard results in a more workable precedent for the workings of our legal system, it is notably somewhat at odds with a psychiatric model of competency, wherein one's competence may be fluid and context-specific. There are instances when a retrospective review of trial competency is called for, which is exemplified by the landmark case of *Wilson v. United States*, 391 F.2d 460 (D.C. Cir. 1968). In *Wilson*, the court ruled that at the conclusion of a case where a defendant's competence is questioned due to amnesia, the court should consider several factors to assess whether the defendant had a fair trial. But it would be unworkable and overwhelm the court's resources were all such defendants to have a retrospective review of trial competency at the conclusion of their cases.

## Weight of Expert Witness Testimony in a Disability Claim

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**In Determining Disability Eligibility, the Arbiter May Assign Different Weights to Testimony from Expert Examiners and Treating Clinicians**

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In *Dols v. Saul*, 931 F.3d 741 (8th Cir. 2019), the Eighth Circuit Court of Appeals decided whether an Administrative Law Judge (ALJ) from the Social Security Administration (SSA) erred in concluding that the claimant, Mr. Dols, had only moderate functional restriction due to mental illness, thereby disqualifying him from receiving Supplemental Security Income (SSI). In addition, the court ruled on whether the ALJ erroneously granted "great weight" to a psychological expert's opinion and "no weight" to Mr. Dols' drug and alcohol counselor's opinion.

### Facts of the Case

In 2013, Robert Dols applied for SSI. His first and second claims were denied. An ALJ then held a hearing to review Mr. Dols' case. At the hearing, Mr. Dols testified, as did a psychological expert, Dr. Michael Lace, and Mr. Dols' licensed drug and alcohol counselor, Ms. Nancy Kaley. Dr. Lace provided his opinion based upon a review of the available records. Applying the five-step rubric established in 20 C.F.R. § 416.920(a) (2012) for determining SSI eligibility, the ALJ determined that, although Mr. Dols had several impairments (autism spectrum disorder, anxiety and depression, cerebral dysfunction, obsessive compulsive disorder, and a history of substance abuse and dependence), these impairments only met the level of moderate, rather than the requisite marked functional restrictions. The ALJ denied Mr. Dols' claim of SSI. The ALJ's determination then became the SSA Commissioner's final decision.

Mr. Dols subsequently filed suit with the United States District Court for the District of Minnesota. The district court granted summary judgment in support of the Commissioner's denial of Mr. Dols' claim. Mr. Dols appealed to the Eighth Circuit Court of Appeals on grounds that his mental impairments satisfied criteria outlined in the SSA Code of Federal Regulations and the ALJ erred by granting great weight to Dr. Lace's opinion and none to Ms. Kaley's.

### Ruling and Reasoning

The Eighth Circuit Court of Appeals determined that substantial evidence supported the ALJ's determination, thus affirming that Mr. Dols did not meet criteria to receive SSI.

The court of appeals conducted a limited and deferential review in considering whether substantial evidence was available to support the ALJ's determination, noting that it was immaterial as to whether it (the court) would have come to the same conclusion as the ALJ. The court explained that even when two opposing conclusions could be drawn from the evidence, if one of those was the ALJ's, then the appeals court would affirm the ALJ's ruling. In addition, the Eighth Circuit noted that Mr. Dols carried the burden of producing substantial evidence that contradicted the denial of his SSI claim.

The Eighth Circuit reviewed the evidence, both for and against Mr. Dols' claim, in a light most favorable to the ALJ's determination. The court noted that the ALJ had considered Mr. Dols' own testimony about his activities of daily living (ADLs) and acknowledged Ms. Kaley's testimony that Mr. Dols had serious difficulties in performing ADLs without significant supervision from the staff at the sober house where Mr. Dols resided. In addition, the appeals court noted Ms. Kaley's statements that, although Mr. Dols could drive and grocery shop, he received assistance in managing money, planning for groceries, and keeping his medication prescriptions filled.

The Eighth Circuit also underscored information that supported the ALJ's determination, including a 2013 function report completed by Mr. Dols, in which Mr. Dols stated he was working part-time and was able to dress and bathe himself, perform household chores and yardwork, shop for groceries and other personal items, and manage financial affairs. The court stated that Mr. Dols' assessment of his impairment contradicted his reported abilities. Furthermore, the court noted Dr. Lace's opinion that the deficits in Mr. Dols' functioning qualified for only moderate restrictions.

Given the above, the Eighth Circuit upheld the district court's summary judgment in favor of the SSA Commissioner, concluding that substantial evidence supported the ALJ's denial of Mr. Dols' claim.

On the problem of competing weight of testimonies, the Eighth Circuit agreed with the ALJ. Citing SSA regulations, the court emphasized that as Mr. Dols' counselor, Ms. Kaley is considered a non-medical, "other" source. In contrast, the appeals court noted that Dr. Lace, a psychologist, deemed a

medical source by the regulations, had reviewed all of the available evidence in the case and was familiar with the disability review process. The court noted that Ms. Kaley "presented little to no evidence other than her personal observations [of her client, Mr. Dols]. She based her opinion about Mr. Dols' ability to work on her observations as a licensed drug and alcohol counselor, instead of as an expert with experience in making disability determinations" (*Dols*, p 748).

Therefore, the court held that the ALJ's assessment of the competing testimonies was within the zone of choice, noting that weighing and assigning values to different sources of information is an inherent part of the disability review process. The Eighth Circuit concluded that, although the ALJ may have weighed testimony from Dr. Lace and Ms. Kaley differently, it did not err in its ultimate decision to grant great weight to the expert in comparison to no weight to the counselor.

#### Dissent

In the dissent, Judge Erickson drew attention to Mr. Dols' significant mental health and communication challenges. "Mr. Dols scowls, grunts, squeals, avoids eye contact . . . shouts out vulgarities . . . [and] is sometimes asked to leave a job after a single day" (*Dols*, p 749). Judge Erickson stated that Ms. Kaley's opinion (that Mr. Dols had communication deficits that would impede his employment) was neither inconsistent with the available record, nor incompatible with Dr. Lace's opinion that Mr. Dols' deficits limited him to superficial and infrequent contact with a hypothetical employer and zero contact with the public.

Judge Erickson also posited that the ALJ had failed to give adequate rationale for rejecting Ms. Kaley's opinion. She noted that Dr. Lace had not directly examined Mr. Dols and argued that the opinion of a non-examining medical consultant is not by itself substantial evidence. Furthermore, she reiterated SSA regulations that the ALJ should consider a variety of elements in determining the weight of testimony from treating clinicians and experts alike. These elements include the duration and type of relationship between the claimant and clinician or evaluator, the frequency of meetings, the supportability of the opinion by other objective sources, the consistency with the record, and the clinician's or expert's area of specialty. Judge Erickson noted that the ALJ

had only considered two of these factors (consistency and specialty) in weighing the opinions of Dr. Lace and Ms. Kaley. She disputed that Dr. Lace's area of specialty made his opinion more valuable than Ms. Kaley's, noting in particular that Ms. Kaley's relationship is of special relevance in the assessment of Mr. Dols' functional restrictions. In sum, Judge Erickson argued to reverse and remand to the district court with instructions to reconsider Mr. Dols' claim with proper weight given to Ms. Kaley's opinion.

#### Discussion

*Dols v. Saul* underscores the inherent complexities of disability assessment and the potential for conflicting opinions that must be weighed to make a final determination. The Eighth Circuit Court of Appeals ruled that substantial evidence supported the ALJ's decision to deny Mr. Dols' disability claim. In doing so, this opinion highlights that the mere presence of psychiatric symptoms is insufficient for a claim of disability-related benefits. Instead, the functional impairments that result from these symptoms must also meet statutory criteria required for eligibility.

In the present case, the ALJ considered Dr. Lace's expert testimony in opposition to that of the counselor Ms. Kaley's. Despite the fact that Ms. Kaley had known the claimant for several years, the ALJ granted greater weight to the expert's opinion. Although he did not directly examine Mr. Dols, Dr. Lace served the district court in providing his objective opinion that Mr. Dols did not meet eligibility criteria.

Even though the ALJ did not find any overt biases in Ms. Kaley's testimony, the court may have considered the conflicts of interest that often emerge when a treating clinician testifies in an expert role. In their seminal article, "On Wearing Two Hats," Dr. Strasburger and colleagues caution against dual role conflicts and the ethics, legal, and clinical pitfalls confronting a treating clinician who testifies on behalf of a patient (Strasburger L, Gutheil T, Brodsky A: On Wearing Two Hats: Role Conflict in Serving as Both Psychotherapist and Expert Witness. *Am J Psychiatry* 154:448-456, 1997). Treating psychiatrists and mental health practitioners alike may seek to limit their involvement in a patient's legal proceedings to provision of records only,

thereby avoiding the potential trappings of oral testimony.

## Judicial Determination of Workers' Compensation Eligibility

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### Minnesota Supreme Court Interprets Amendment to the Minnesota Workers' Compensation Act for Claims of PTSD

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In *Smith v. Carver County*, 931 N.W.2d 390 (Minn. 2019), the Minnesota Supreme Court considered whether a compensation judge's decision to deny benefits to a claimant was based on appropriate assessment under the state's amended workers' compensation law.

#### *Facts of the Case*

Chadd Smith worked as a deputy sheriff in Carver County, Minnesota, for almost ten years. Prior to his employment, he had never been diagnosed with posttraumatic stress disorder (PTSD), and was mentally and physically cleared for duty by a preemployment examination. In the course of his duties, he was exposed to several scenes of death and violence. These included responding to the suicide death of a high school classmate, helping recover a corpse that had been crushed by heavy construction machinery, and responding to a car fire where a passenger trapped inside was unable to be saved. Among the traumatic events that Mr. Smith witnessed, he identified two as particularly distressing: providing aid to a car accident victim who died on the scene, and responding to the choking death of an infant and later attending the infant's autopsy.

Mr. Smith began experiencing insomnia, night terrors, and digestive symptoms. He was evaluated