

peals in *Wilson v. U.S.* The court in *Andrews* utilized many of the same factors as were used in *Wilson* to help in determining whether a defendant's amnesia renders him incompetent to stand trial. The Seventh Circuit did not, however, require the post-trial review of the effect the defendant's amnesia had on his trial as *Wilson* does.

While forensic psychiatrists study *Wilson* as a landmark case, *U.S. v. Andrews* emphasizes that the remainder of the U.S. courts of appeal do not follow the approach taken by the D.C. Circuit Court of Appeals on this matter. The D.C. Circuit Court of Appeals is the only circuit to require a post-trial review for the competency of individuals with amnesia at the time of their alleged crimes. In contrast to *Wilson*, the Seventh Circuit took the approach that the ordinary attention paid by judges to a defendant's competence throughout the course of a trial is sufficient.

Parsing Mental Illness and Substance Abuse in Determining Social Security Disability Benefits

Sylvester Smarty, MD
Fellow in Forensic Psychiatry

Stephen Noffsinger, MD
Associate Professor of Psychiatry

Case Western Reserve University
Cleveland, OH

An Individual With Bipolar Disorder and History of Substance Abuse May Not Be Denied Social Security Disability Benefits When Evidence Indicates That the Individual's Bipolar Disorder Is Disabling

In *Kangail v. Barnhart*, 454 F.3d 627 (7th Cir. 2006), petitioner Tina Kangail sought review by the U.S. Seventh Circuit Court of Appeals of a decision by the U.S. District Court for the Northern District of Illinois, Eastern Division, upholding the denial of her application for social security disability benefits. Ms. Kangail applied for social security disability due to bipolar disorder. A social security administrative law judge (ALJ) denied her application, believing that Ms. Kangail's bipolar disorder was caused by chronic abuse of alcohol and cocaine. The key issue

before the Seventh Circuit was whether an individual with both bipolar disorder and a history of substance abuse qualifies for social security disability benefits, if medical evidence suggests that the individual's bipolar disorder is disabling. Ms. Kangail contended that her bipolar disorder prevented her from holding gainful employment, independent of the effects of substance abuse.

Facts of the Case

Ms. Kangail received a diagnosis of bipolar disorder when in her twenties. She had a comorbid history of alcohol and cocaine abuse. Her bipolar disorder was characterized by severe depression with moderate to severe manic episodes, coupled with employment instability. Despite achieving sobriety from alcohol and drugs in 2000, she was employed in 10 different jobs during the next 3 years, working as a cashier, telemarketer, and waitress. Her longest period of employment was 8 months working as a cashier, earning \$9,900.

Ms. Kangail applied for social security disability benefits in 1999 on the grounds that she could not sustain employment due to her bipolar disorder. Her final hearing before a social security ALJ was in February 2003. She testified that she had left most of her jobs because of her "blowing up" and having confrontations with customers and supervisors. She testified that her ability to function at work was affected by her "racing thoughts, insomnia, inability to concentrate, feeling overwhelmed" and depressive symptoms.

The ALJ denied Ms. Kangail social security disability benefits because her mood symptoms improved and she was able to work at different jobs after she stopped her substance abuse in 2000. The ALJ reasoned that because her symptoms improved after cessation of substance abuse, the symptoms of her bipolar disorder were most likely caused by the substance abuse. The ALJ refused to give weight to the testimony of medical experts who examined her because of "contradictions" in their testimony. The specific contradiction relied on by the ALJ was that, although the various medical experts reported that she suffered from a severe mental illness, they observed that she behaved normally while in their office.

Ms. Kangail appealed the denial of social security disability benefits to the U.S. District Court for the Northern District of Illinois, Eastern Division. The

U.S. District Court affirmed the finding of the ALJ, prompting her to seek a review by the U.S. Seventh Circuit Court of Appeals in 2006.

Ruling

The Seventh Circuit vacated the decision of the district court and remanded the case to the Social Security Administration for further proceedings.

Reasoning

The Seventh Circuit Court of Appeals found that the ALJ did not provide “a rational basis” for denying Ms. Kangail’s application for disability benefits. Citing various appellate decisions (*Brueggemann v. Barnhart*, 348 F.3d 689 (8th Cir. 2003); *Bustamante v. Massanari*, 262 F.3d 949 (9th Cir. 2001); and *Drapeau v. Massanari*, 255 F.3d 1211 (10th Cir. 2001)), the court held that, in reviewing the disability application of an individual who had a potentially disabling illness and was also a substance abuser, the most important consideration is “whether, were the applicant not a substance abuser, she would still be disabled.” The court concluded that if the answer to this question is in the affirmative, then, the individual should qualify for social security disability benefits “independent of drug addiction or alcoholism.”

The court criticized the ALJ for placing too much emphasis on Ms. Kangail’s history of alcohol and drug abuse while ignoring medical evidence that suggested that her bipolar disorder was disabling. The court also criticized the ALJ for playing “doctor” by concluding that her bipolar disorder was caused by substance abuse because her symptoms improved after she stopped using drugs.

Citing the DSM-IV and several reputable papers on bipolar disorder published in the *American Journal of Psychiatry*, the court noted that bipolar disorder is episodic and often coexists with a substance abuse disorder. Based on those reports, the court pointed out that, contrary to the ALJ’s conclusions, bipolar disorder often results in substance abuse because the “sufferer” utilizes illicit substances as a means “to alleviate” the symptoms of the bipolar disorder. The court noted that medical testimony suggested Ms. Kangail had a tendency to “indiscriminately use drugs and alcohol during her manic phases.” Furthermore, the court noted that although her bipolar disorder was aggravated by her substance abuse, it could still be disabling absent the effects of substance abuse.

The court found that the ALJ placed too much emphasis on Ms. Kangail’s job experience after she stopped abusing alcohol and drugs in 2000. The court reasoned that although she had held one job for more than 6 months, this job could not be considered “substantial gainful employment” for the purpose of determining disability benefits, since her total earnings during this period were nominal. Further, the court found that it was erroneous for the ALJ to conclude that her inability to hold a job was unimportant because she could hold a job when she took her medications. The court noted that one of the hallmarks of bipolar disorder is noncompliance with medication. The court found that the ALJ erred by not considering this possibility.

Discussion

Kangail v. Barnhart illustrates some important aspects of the interplay between psychiatry and the law. First is the complex interplay of comorbid psychiatric and substance use disorders, which can be especially confounding within the legal context. It is not unusual for the causation of a primary psychiatric illness to be erroneously attributed to substance abuse, as the Social Security ALJ initially found in this case. This raises the need for psychiatry to improve the criteria by which mental health disorders are classified in a way that makes it easier for others to understand.

The second important issue illustrated by *Kangail v. Barnhart* is the dichotomous view of psychiatry within the legal community. On the one end are some in the legal community who view psychiatry in general, and psychiatric expert witnesses in particular, with nascent suspicion and skepticism (as reflected by some landmark case decisions, e.g., *Washington v. U.S.*, 390 F.2d 444 (D.C. Cir. 1967)). This skepticism may explain the reluctance of the ALJ to consider the medical evidence, which in this case strongly suggested that Ms. Kangail was disabled as a result of her bipolar disorder. On the other hand, some legal minds recognize the irreplaceable aid that psychiatric testimony offers in the adjudication of certain legal disputes, especially those that involve questions of mental health, as evidenced in this case. The justices of the Seventh Circuit Court of Appeals clearly belong to this second group. This attitude is reflected in this case, in which they scold the ALJ for “playing doctor” and for wrongly attributing the cause of Ms. Kangail’s bipolar disorder to her sub-

stance abuse. That they also relied heavily on several articles published in the *American Journal of Psychiatry* indicates the value the court placed on the field of psychiatry.

The overall message from this case is that there remains a wide gap between the knowledge of mental health practitioners and the understanding of lay persons. Greater efforts should be made to educate other professionals, especially those in the legal system, so as to foster a better understanding and greater appreciation of the work of psychiatric expert witnesses.

Asylum Eligibility

Michael Greenspan, MD

Resident, Department of Psychiatry

Madelon Baranoski, PhD

Associate Professor of Psychiatry

Yale University School of Medicine

New Haven, CT

Need for Well-Founded Fear of Persecution to be Eligible for Asylum

In *Ouk v. Alberto Gonzalez*, 464 F.3d 108 (1st Cir. 2006), the U.S. Court of Appeals for the First Circuit reviewed the decisions of the immigration judge (IJ) and the Board of Immigration Appeals (BIA), both of whom denied the petitioner's request for asylum. The appeals court considered and described the conditions under which a person should be granted asylum based on a "well-founded fear."

Facts of the Case

Southy Ouk, a native of Cambodia, entered the United States as a nonimmigrant visitor on February 7, 2003. She was permitted to remain until August 6, 2003, after which time her presence was unauthorized. On February 6, 2004, she applied for political asylum and withholding of removal based on "her political opinion and membership in a particular social group" (*Ouk*, p 109). In Cambodia, she had been a member of the Sam Rainsy Party, an opposition party to the majority Cambodian People's Party.

At her initial hearing before the IJ on November 19, 2004, Ms. Ouk described how she and her husband were identified as members in the Sam Rainsy Party during a protest that took place in March 1997. She reported that police beat members of opposition parties at that protest. She suffered only minor

bruises "as a result of crowd movement." Ms. Ouk also testified that her husband was killed in July 1997 because of his political opposition to the Cambodian People's Party. In addition, she reported that other members of her family, including her father and brother, had been arrested and killed for their political opinions. Following her husband's death, Ms. Ouk hid herself in the city of Phnom Penh for fear of personal persecution at the hands of the Cambodian People's Party.

In addition to her testimony, Ms. Ouk also introduced documentary evidence, including two expert witnesses who assigned a diagnosis of posttraumatic stress disorder (PTSD).

The IJ denied Ms. Ouk's application for asylum, stating that although he found her testimony "generally to be credible," several factors mitigated her contention that she had reason to fear for her well-being based on her political affiliation: (1) although her husband had been persecuted based on political affiliation, Ms. Ouk herself had experienced no such persecution; (2) Ms. Ouk had requested and received a visa for travel to the U.S.; (3) Ms. Ouk's brother and sister, also members of the Sam Rainsy Party, continued to safely live in Cambodia; (4) the most recent Cambodian election saw the Sam Rainsy Party win 24 seats in the National Assembly, and the Cambodian Constitution provides for the peaceful change of government "through periodic elections on the basis of universal suffrage" (*Ouk*, p 110).

Ms. Ouk appealed the decision to the BIA, who affirmed the IJ's ruling in February 2006. The BIA cited the fact that Ms. Ouk herself had never been seriously harmed and the continued presence of her family members in Cambodia as undermining the reasonableness of her fear of future persecution.

In this appeal, Ms. Ouk argued that: (1) she did have a well-founded fear of persecution based on her political beliefs; (2) the IJ and BIA did not recognize her emotional harm in evaluating her claim; and (3) the IJ and BIA did not consider her mental illness in their rulings.

Ruling

The U.S. First Circuit Court of Appeals affirmed the decisions of the IJ and the BIA, finding that Ms. Ouk did not have a well-founded fear of persecution based on her political affiliation with the Sam Rainsy Party and thus was not eligible for political asylum.