

**The Annual Bench Bar CLE**  
**Social Security Appeals Practice in the Western District of Washington**  
**CASELAW UPDATE**  
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1. The Circuit clarified the scope of *Cody v. Kijakazi* and Appointments Clause challenges.

i. *Galvez v. Bisignano*, 154 F.4th 1091 (9th Cir. 2025).

Following several prior ALJ decisions, the current ALJ, who was properly ratified under the Appointments Clause, issued a new decision in 2022. The district court ruled that, pursuant to *Cody v. Kijakazi*, the ALJ's 2022 decision was "tainted" with an Appointments Clause violation because the decision contained some analysis that resembled a prior decision entered by an ALJ who had not been properly appointed.

The Ninth Circuit disagreed. The court held that a new ALJ's decision does not automatically violate the Appointments Clause merely by relying on a prior, tainted decision. Instead, the question is whether the ALJ gives a fresh look at the case. Some factors to consider are whether the ALJ gave the claimant another opportunity to appear at a hearing, what occurred at the hearing (e.g., was there new evidence, was the ALJ engaged), and if the ALJ provided new findings and discussions in the decision. And in the current case, the court determined that the new ALJ's decision showed he gave a fresh look; he gave new summaries of the evidence, weighed medical opinions differently despite some overlap with the old decision, and arrived at a different residual functional capacity.

2. The Circuit provided more guidance about procedural issues, including reopening, law of the case, and administrative forfeiture.

i. *Nevin v. Colvin*, 125 F.4th 1297 (9th Cir. 2025).

This case involved a reopening issue. The claimant filed an application in 2017, which an ALJ denied in 2018. The claimant challenged that decision in district court. As that case was pending, she also filed a second application for a later period. On that application, the agency found the claimant disabled beginning in late 2018, the day after the ALJ denied her first application. Meanwhile, the district court remanded the ALJ's first decision, and on remand, the ALJ re-opened the second application and denied the benefits that had been granted. The ALJ also ruled on the first application, finding that the claimant became disabled in 2020.

The claimant challenged the decision in district court, which concluded that it lacked jurisdiction to review the ALJ's reopening determination and denial of

benefits on the claimant's second application. On appeal, the Ninth Circuit held to the contrary: when an ALJ reopens a claim and decides it on the merits, the court has jurisdiction to review that decision. And here, the court ruled that the ALJ erred in reopening and reversing the claimant's award of benefits on her second application.

ii. *Fallon v. Dudek*, 135 F.4th 831 (9th Cir. 2025).

The issue was whether the district court abused its discretion when it refused to reconsider its rulings about two medical opinions in its initial order remanding to SSA for further proceedings. The Ninth Circuit reaffirmed its holding in *Stacy v. Colvin* that the law of the case doctrine applies in the Social Security context, and it ruled that the district court did not abuse its discretion by declining to revisit its earlier rulings about those medical opinions. The Circuit also noted that the claimant could have appealed the district court's prior order to the court of appeals to avoid a law-of-the-case situation, but she did not do so.

iii. *Obrien v. Bisignano*, 142 F.4th 687 (9th Cir. 2025).

The ALJ denied the claimant's application because he could do his past relevant work. The claimant challenged that finding, but the district court affirmed, concluding that the claimant forfeited his argument by not raising it during the hearing and, in any event, the ALJ's finding was supported by substantial evidence.

The Ninth Circuit remanded. As to forfeiture, the claimant was not required to raise the issue at the administrative level because the ALJ had to make findings about the claimant's past relevant work; it was not an extraneous or additional issue that, if not called to the ALJ's attention, the ALJ would have no occasion to decide; and it did not involve the presentation of new evidence. The Circuit also rejected the notion that the claimant committed an additional forfeiture in district court by not responding to the Commissioner's administrative forfeiture argument in the claimant's reply brief. Reaching the merits of the claimant's argument, the Circuit concluded that substantial evidence did not support the ALJ's finding about past relevant work and remanded for further administrative proceedings.

3. The Circuit issued a decision involving a challenge to the ALJ's findings about subjective complaints and work history.

i. *Nadon v. Bisignano*, 145 F.4th 1133 (9th Cir. 2025).

The claimant argued that the ALJ erred by considering the claimant's work as a personal care attendant when discounting her subjective complaints because the work did not constitute substantial gainful activity. The Ninth Circuit rejected that argument, explaining that an ALJ is permitted to consider any work done by the claimant, even part-time work, when evaluating the disability claim.

The court also noted that the ALJ gave additional reasons to discount the claimant's subjective complaints. For example, the claimant's allegations about fibromyalgia, back, and leg pain were inconsistent with evidence that she improved with conservative treatment, she had mostly normal examinations, and

she engaged in normal daily activities. The court upheld the ALJ's assessment of medical source opinions as well, and because the claimant failed to acknowledge all the ALJ's reasons, the claimant forfeited any arguments about them.

4. Finally, the Circuit issued a bankruptcy decision related to overpayments.
  - i. *Cooper v. Soc. Sec. Admin.*, 131 F.4th 995 (9th Cir. 2025).  
The Circuit ruled that SSA could not recoup disability benefits it overpaid the claimant through its own error.