Administrative Law - Health and Human Services Department's Administrative Law Judges Must Explain Not Only Why They Credit Evidence in Determining Disability Claims for Social Security Benefits, but Also Why They Reject Evidence in Determining Such Claims

Laurie A. Kramer

Follow this and additional works at: https://digitalcommons.law.villanova.edu/vlr

Part of the Administrative Law Commons, and the Social Welfare Law Commons

Recommended Citation
Laurie A. Kramer, Administrative Law - Health and Human Services Department's Administrative Law Judges Must Explain Not Only Why They Credit Evidence in Determining Disability Claims for Social Security Benefits, but Also Why They Reject Evidence in Determining Such Claims, 27 Vill. L. Rev. 1265 (1982).
Available at: https://digitalcommons.law.villanova.edu/vlr/vol27/iss6/6

This Note is brought to you for free and open access by the Journals at Villanova University Charles Widger School of Law Digital Repository. It has been accepted for inclusion in Villanova Law Review by an authorized editor of Villanova University Charles Widger School of Law Digital Repository.
Daniel P. Cotter, a fifty-seven year-old welder, filed a claim for disability benefits pursuant to Title II of the Social Security Act (Act), and for supplemental security income benefits pursuant to Title XVI of the Act. The primary basis for Cotter's claim of disability was a heart condition.

Following the Secretary of Health and Human Services' (Secretary) denial of disability benefits, Cotter was provided with a hearing before an Administrative Law Judge (ALJ). After hearing conflicting evidence in determining the disability, the ALJ determined that Cotter was not entitled to disability benefits.

1. Cotter v. Harris, 642 F.2d 700, 702, reh. denied, 650 F.2d 481 (3d Cir. 1981). Cotter was 57 years old on June 21, 1978, the alleged date of the disability. Id. He had worked for at least the past 15 years as a welder of heavy equipment. Id.

2. Id. at 701. See 42 U.S.C. §§ 416(i)(1)(A), 423(d)(1)(A) (1976). These sections provide, in pertinent part, that for the purposes of claiming disability under this Title the term “disability” means an “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months.” Id.

3. 642 F.2d at 701. See 42 U.S.C. § 1381a (1976). Section 1381a provides that “[e]very aged, blind, or disabled individual who is determined under part A of this Title to be eligible on the basis of his income and resources shall, in accordance with and subject to the provisions of this subchapter, be paid benefits by the Secretary of Health, Education, and Welfare.” Id.

4. 642 F.2d at 702. Cotter had a history of frequent premature ventricular contractions (PVC), and was taking medication for this condition. Id. His application for benefits also alleged disability as a result of diplopia (double vision), which was caused by a work accident. Id. at 702 n.2. Cotter's application for benefits also alleged disability because of a mental impairment. Id.

5. Id. at 701. Benefits were denied initially, and again upon reconsideration. Id. For a discussion of how disability benefit claim eligibility is determined within the Social Security Administration, see note 24 and accompanying text infra.

6. Id. at 701-02. Cotter was represented by counsel at the hearing. Id. In connection with his disability claim, Cotter had previously filed a work activity report which stated that he last worked as a welder of heavy equipment in the coal stripping industry, and that such work required “frequent exposure to fumes and dust,” “occasional lifting of from 21 to 50 pounds, [and] carrying a 50 pound box 50 feet to a truck.” Id. at 702. At the hearing before the ALJ, Cotter also testified that this job sometimes required dragging 100 pound tanks. Id. The work activity report also stated that from 1970 to 1976 Cotter had welded road construction equipment, which required lifting from 50 to 100 pounds, and carrying these weights 10 feet. Id.
evidence from three doctors, the ALJ denied Cotter's application, finding that he was not disabled within the meaning of the Act because he still had the physical capacity to work as a welder. This decision was subsequently approved by the Appeals Council of the Social Security Administration.

Cotter then filed suit in the District Court for the Western District of Pennsylvania, seeking review of the decision denying him benefits. The district court granted summary judgment in favor of the Secretary. The United States Court of Appeals for the Third Circuit vacated the judgment and remanded the case to the Secretary, holding that the ALJ must state on the record the reasons for his findings and, in particular, must explain his implicit rejection of evidence that supported the disability claim. Cotter v. Harris, 642 F.2d 700 (3d Cir. 1981).

7. Id. at 702-03. Dr. Baltazar Corcino, an internist and Cotter's physician since July of 1975, found that Cotter's electrocardiogram (ECG) showed frequent PVCs with a bigeminal pattern. Id. at 702. In two medical reports, dated June 30, 1978 and September 28, 1978, Dr. Corcino diagnosed Cotter as having arteriosclerotic heart disease. Id. at 703. On March 8, 1978 and March 28, 1978, Dr. Corcino reported his conclusion that Cotter was unable to work. Id. Dr. William Kimber, a specialist with the Department of Cardiovascular Medicine at Geisinger Medical Center performed initial tests on Cotter, and his report, dated October 9, 1978, stated his "impression" of "Ventricular premature beats—rule[s] out associated cardiac disease." Id. A further examination of Cotter, including a treadmill exercise ECG, led Dr. Kimber to report on October 25, 1978 that Cotter had ventricular tachycardia, a significant rhythm disturbance of the heart, during the test. Id. In two medical reports, dated October 25, 1978 and March 6, 1979, Dr. Kimber recommended that Cotter not engage in work that entailed physical labor. Id.

In contrast to Dr. Corcino’s and Dr. Kimber’s diagnosis and recommendations were the conclusions of Dr. Tito Trinidad, an internist who performed a consultative examination in the Fall of 1978. Id. Dr. Trinidad administered a series of ECGs, including a two-step exercise ECG on October 18, 1978, and performed a physical capacity evaluation on October 16, 1978. Id. Trinidad also estimated that Cotter had the ability to frequently lift from 21 to 50 pounds, occasionally lift from 51 to 100 pounds, and to frequently bend, squat, crawl, and climb. Id. This report did not indicate the clinical tests or observations, if any, on which this evaluation was based. Id.

8. Id. at 703. The ALJ found that, although Cotter had an "occasional premature ventricular heart beat," he still had "the physical capacity to perform his past customary work as a welder." Id. The ALJ also found that Cotter's double vision had subsided soon after the accident and, therefore, could not be considered as a basis for a disability claim. Id. at 702 n.2. Cotter did not contest this ruling. Id. Furthermore, the ALJ found that although Cotter suffered from depressive neurosis, he was not sufficiently disabled by the condition. Id.

9. Id. at 702.

10. Id. Cotter filed in the district court pursuant to §§ 205(g) and 1631(c)(3) of the Social Security Act. Id. See 42 U.S.C. §§ 405(g), 1383(c)(3) (1976).

11. Id. at 702.

12. The case was heard by Judges Adams, Garth, and Sloviter. Judge Sloviter wrote the majority opinion. Judge Garth wrote a separate opinion, concurring in part and dissenting in part.
The Social Security Act (Act) is divided into various subchapters which cover a wide range of programs including an old-age, survivors, and disability insurance program and a supplemental security income program. 13

The Social Security Administration (SSA) administers the Disability Insurance Benefits Program under Title II of the Act and the Supplemental Security Income Benefits Program under Title XVI of the Act. 14 Eligibility for benefits under Title II and Title XVI requires that a claimant be disabled within the meaning of the Act. 15


For a discussion of the congressional intent in establishing the Disability Insurance Benefits Program, see Crawford, Judicial Review of Social Security Disability Provisions, 11 Tex. Tech. L. Rev. 215 (1980). This commentator argues that Congress intended the Title II disability insurance program to serve two competing interests: 1) to alleviate poverty by providing cash benefits to qualified disabled workers and dependents; and, 2) at the same time, to provide economic security for potential claimants by maintaining a financially viable insurance fund. Id. at 244. He suggests that the language of the disability provisions, as well as the congressional history, shows that Congress has favored a conservative application of such payments. Id. at 244-45. See also W. Gellhorn, C. Byse, P. Strauss, Administrative Law Cases and Comments 448 (7th ed. 1979) [hereinafter cited as C. Byse] (arguing that Congress understood the adverse consequences of using an adversary system for public benefit programs and intended SSA determinations to be made by "paternalistic refugees" who are assigned to protect both the public's interest in the disability trust fund and the claimant's rightful claim to benefits).


In addition, under Title II, a claimant must be under age 65, and must satisfy a two-part work requirement under the Act in order to obtain the status of a fully insured worker.

Congress authorized the Secretary to promulgate regulations and to establish a procedural framework for carrying out the purposes of the disability program. Specifically, the Secretary was given respon- nearly the same. See 42 U.S.C. §§ 416(i), 423(d)(1)(A), 1382c(a)(3)(A) (1976). For a definition of disability under §§ 416(i) and 423(d)(1)(A) of Title II, see note 2 supra. The key to the disability provision under Title II is the meaning of "substantial gainful activity." Regulations promulgated under the Act define "substantial gainful activity" as work that involves the performance of significant physical or mental activities, even if it is done on a part-time basis, or work that involves less activity, less pay, or less responsibility than when the individual worked before. 20 C.F.R. § 404.1572(a) (1981). Gainful work activity is defined as the kind of work usually done for pay or profit, whether or not a profit is realized. Id. § 404.1572(b). SSA considers various factors in determining whether work activity meets the definition of substantial gainful activity: the nature of work; how well it is performed; if the work is done under special conditions; if the individual is self-employed; and the time spent in work. Id. § 404.1573. However, if an individual's earnings exceed a certain amount per month (e.g., if an individual's earnings averaged more than $300 a month in calendar years after 1979), then this factor alone may be enough to show that the work constitutes substantial gainful activity. Id. § 404.1574(2)(vi).

The definition of disability also focuses on "physical or mental impairment." 42 U.S.C. § 423(d)(3) (1976). The Act defines this phrase to be "an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques." Id. The Act further narrows the current definition of disability for workers, providing that a worker must show that the physical or mental impairment(s) are of such severity that he is not only unable to do his previous work but cannot, considering his age, education and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. . . . . "Work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

Id. § 423(d)(2).

16. See generally 20 C.F.R. § 404.715 (1981). The claimant must submit proof of age, when required. Id.

17. 42 U.S.C. § 423(c) (1976). The claimant must have worked for a certain duration (i.e., be fully insured). Id. § 423(c)(1)(A). Also, a portion of claimant's work must have occurred during a certain period immediately preceding the disability (i.e., claimant must have at least 20 quarters of coverage during the 40-quarter period which ends with the quarter in which the disability began). Id. § 423(c)(1)(B)(i).

18. 42 U.S.C. § 405(a) (1976). Congress provided that the Secretary [s]hall have full power and authority to make rules and regulations and to establish procedures . . . necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

Id.
sibility for determining the nature and extent of the evidence necessary to establish a claim of disability, and the method by which such proof would be furnished. The Secretary acting pursuant to this broad delegation of regulatory authority placed the burden upon the claimant to prove disability within the meaning of the Act. In essence, where the claimant is not per se disabled, the claimant has the burden of submitting evidence that "convincingly" shows that a disability exists, and that such impairment prevents a return to work or precludes any substantial gainful employment available in the national economy.

Upon the filing of a disability claim with the SSA, the administrative decision-making and review process is initiated. This process consists of four stages: 1) "Initial Determination"; 2) "Reconsideration"; 3) "Hearing" before an ALJ; and 4) "Appeals Council Review." The claimant may appeal the final administrative determina-

19. 42 U.S.C. § 405(a) (1976). Congress mandated that "[a]n individual shall not be considered to be under a disability unless he furnishes such medical and other evidence of the existence thereof as the Secretary may require." 42 U.S.C. at § 423(d)(5). See also note 18 supra.


21. See 20 C.F.R. § 404.1520(d) (1981). A per se disability exists when an individual's impairment(s) meets the duration requirement, and is either listed in Appendix 1 or is determined to be the medical equivalent of a listed impairment. Id. If these requirements are met, a finding of disability shall be made without consideration of the individual's age, education, and work experience. Id.


24. Id. These steps usually must be requested within certain time periods and in the prescribed order. Id. "Initial Determination" is defined as the determinations made by the SSA, which state the important facts and the reasons for the action taken. Id. § 404.902. "Reconsideration" is defined as the first step in the administrative review process, which is provided by the SSA if the claimant is dissatisfied with the decision in the initial determination. Id. § 404.907. During reconsideration, the SSA reviews the evidence used in making the initial determination and considers any other evidence presented by the claimant. Id. § 404.918. A hearing before an ALJ may be requested by a claimant who is dissatisfied with the reconsideration determination. Id. § 404.900. At the hearing, the claimant may appear in person, submit new evidence, examine the evidence used in making the decision under review, and present and question witnesses. Id. § 404.929. The ALJ must make a complete record of the hearing proceeding and issue a decision based on the hearing record. Id. § 404.953. Furthermore, the ALJ must issue a written decision which states the findings of fact and the reasons for the decision. Id. If any party is dissatisfied with the hearing decision, a request can be made to the Appeals Council to review that action. Id. §§ 404.900(4), .967. The Appeals Council will consider the evidence in the hearing record, and any additional evidence which it believes is material to the issues being considered. Id. § 404.976(b). The Appeals Council may deny or dismiss the request for review, or it may grant the request and either render a decision or remand the case to the ALJ to receive additional evidence. Id. § 404.967.
tion to a federal court. However, the Act narrowly limits the permissible scope of subsequent judicial review. When a court engages in judicial review of an administrative decision, any findings of fact by the Secretary must be accepted as conclusive if supported by "substantial evidence." This "substantial evidence" test has traditionally delineated the scope of judicial review in federal administrative agency proceedings.

The four steps of the administrative review process are completed, the SSA will have made its final decision. Id. § 404.900(5).

25. 42 U.S.C. § 405(g) (1976). A claimant may appeal the final administrative determination to the federal district court in the district in which he resides. Id. The Act provides that the federal district court has jurisdiction, irrespective of the amount in controversy, with power to affirm, modify, or reverse the decision of the Secretary, but requires the district court to act as a court of review. Id. The judgment of the district court is final and binding upon the parties unless the decision is appealed to a federal court of appeals in the same manner as any other civil action. Id. § 405(h).


27. 42 U.S.C. § 405(g) (1976). Section 405(g) provides:

The findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive, and where a claim has been denied by the Secretary . . . because of failure of the claimant or such individual to submit proof in conformity with any regulation prescribed under subsection (a) of this section, the court shall review only the question of conformity with such regulation and the validity of such regulations.

Id.

28. See ICC v. Union Pacific R.R., 222 U.S. 541 (1912). In Union Pacific R.R., the substantial evidence rule was first discussed by the Supreme Court in connection with federal court review of an administrative agency decision. Id. at 548. According to one commentator, "[f]rom that time to the present, the substantial evidence rule has been the touchstone for review of agency fact-findings." B. SCHWARTZ, ADMINISTRATIVE LAW § 210, at 592 (1976). For the Court's analysis of what the substantial evidence test means, see, e.g., Illinois C.R.R. v. Norfolk & W. Ry., 385 U.S. 57, 69 (1966) (substantial evidence rule means that reviewing court must not reweigh evidence nor become concerned with the agency's reasoning or with the wisdom of its decisions); Consolo v. Federal Maritime Comm'n, 383 U.S. 607, 619-20 (1966) (substantial evidence is that amount of evidence which would justify, if the trial were to a jury, a refusal to direct a verdict); Universal Camera Corp. v. NLRB, 340 U.S. 474, 488 (1951) (substantial evidence rule requires a reviewing court to look to the record as a whole). See also B. SCHWARTZ, supra at 596 (substantial evidence test is a test of reasonableness, not of the rightness of agency findings of fact).

The Supreme Court also has indicated that the substantial evidence test imposes some requirements upon the administrative agency. SEC v. Chenery Corp., 318 U.S. 80, 94 (1943). Specifically, the Court stated: "The orderly functioning of the review process requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained." Id. But see Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519 (1978) (rejection of a reviewing court's imposition of procedural requirements).
In *Richardson v. Perales*, the Supreme Court specifically dealt with the question of substantial evidence in the context of social security disability proceedings. The Court interpreted substantial evidence to mean "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." The *Perales* Court held that written reports by non-testifying physicians who examined the claimant may constitute substantial evidence supporting a denial of benefits.

In utilizing the substantial evidence test to define the scope of judicial review in a social security disability proceeding, the courts of appeals have traditionally accorded much deference to the Secretary's decisions. However, a recent willingness by some circuits to assume


30. 402 U.S. at 402. In *Perales*, the claimant, aged 35, asserted that he became disabled as a result of an injury to his back sustained in lifting an object at work. *Id.* at 390. At the disability hearing, medical evidence in the form of reports of five doctors who had once examined the claimant were admitted into evidence, even though the doctors were not present to testify or be subject to cross-examination. *Id.* at 395. In denying benefits, the ALJ relied on this hearsay evidence to find that the claimant was not disabled. *Id.* at 396. On appeal, the claimant contended that this hearsay evidence could not by itself constitute substantial evidence in light of the claimant's testimony and the in-person testimony of medical witnesses which contradicted the reports. *Id.* at 399.

31. 402 U.S. at 401, citing Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229 (1938). For cases dealing with the meaning of the substantial evidence test, see note 28 supra.

32. 402 U.S. at 390. The Court held that such hearsay evidence may constitute substantial evidence when the claimant has not exercised his right to subpoena the reporting physicians and thereby provide himself with a chance for cross-examination. *Id.* at 409-10. For other cases in which the claimant was denied disability benefits and in which the Supreme Court discussed SSA procedures for determining denial, decrease, or termination of disability benefits, see Califano v. Yamasaki, 442 U.S. 682 (1979) (lack of prerecoupment oral hearing in overpayment cases); Mathews v. Eldridge, 424 U.S. 319 (1976) (evidentiary hearing is necessary before termination of disability insurance benefits); Richardson v. Wright, 405 U.S. 208 (1972) (challenge to procedures employed in suspension or termination of disability benefits).

33. See, e.g., Johnson v. Harris, 625 F.2d 311 (9th Cir. 1980) (reviewing court is limited to determining whether findings of relevant fact are supported by substantial evidence); Warncke v. Harris, 624 F.2d 1098 (5th Cir. 1980) (reviewing court may not reweigh evidence or substitute its judgment for that of Secretary even if it finds that evidence preponderates against Secretary's decision). *Accord*, Ginter v. Secretary of Health, Educ. and Welfare, 621 F.2d 313 (8th Cir. 1980); Bradley v. Califano, 573 F.2d 28 (10th Cir. 1978); Allen v. Weinberger, 552 F.2d 781 (7th Cir. 1977); Ingram v. Richardson, 471 F.2d 1268 (6th Cir. 1972). For a discussion of the courts of appeals' use of the substantial evidence test in social security disability proceedings, see generally B. Schwartz, *supra* note 28, §210; R. Dixon, *supra* note 14, at 93-102.

Professor Schwartz observes that the value of administrative agencies is their expertise and knowledge in complicated fields, and that judicial deference to agency decisions arises out of concern that this benefit would be undermined by judicial interference.
a more active role in reviewing administrative agency decisions,\footnote{See, e.g., Greater Boston Television Corp. v. FCC, 444 F.2d 841 (D.C. Cir. 1970), \textit{cert. denied}, 409 U.S. 923 (1971). The Greater Boston court stated that the reviewing court must intervene "if the court becomes aware . . . that the agency has not really taken a 'hard look' at the salient problems, and has not genuinely engaged in reasoned decision-making." \textit{Id.} at 851 (footnote omitted). Further, the court found that a "collaborative spirit [between the court and agency] does not undercut, it rather underlines the court's rigorous insistence on the need for conjunction of articulated standards and reflective findings, in furtherance of even-handed application of law." \textit{Id.} at 852. \textit{See also} Environmental Defense Fund v. Ruckelshaus, 439 F.2d 584 (D.C. Cir. 1971), where the court pronounced that judicial review is now at a watershed: We stand on the threshold of a new era in the history of the long and fruitful collaboration of administrative agencies and reviewing courts. For many years, courts have treated administrative policy decision with great deference, confining judicial attention primarily to matters of procedure. On matters of substance, the courts regularly upheld agency action, with a nod in the direction of the "substantial evidence" test, and a bow to the mysteries of administrative expertise. . . . [C]ourts are increasingly asked to review administrative action that touches on fundamental personal interests in life, health, and liberty. These interests have always had a special claim to judicial protection. . . . To protect these interests from administrative arbitrariness, it is necessary . . . to insist on strict judicial scrutiny of administrative action. . . . Courts should require administrative officers to articulate the standards and principles that govern their discretionary decisions in as much detail as possible. \textit{Id.} at 597-98 (footnotes omitted). Other circuits have cited this language with approval. \textit{See} Silva v. Secretary of Labor, 518 F.2d 501, 511 (1st Cir. 1975); United States v. Barbera, 514 F.2d 294, 502-04 (2d Cir. 1975), Morales v. Schmidt, 489 F.2d 1385, 1348-49 (7th Cir. 1973) (Stevens, J., dissenting). For a discussion of the benefits of increased judicial scrutiny of administrative agency decisions, see Leventhal, \textit{Principled Fairness and Regulatory Urgency}, 25 Case W. Res. L. Rev. 66, 70 (1974); K. \textsc{Davis}, \textit{Discretionary Justice} 57-59, 103-06 (1969).} Three circuits have, in fact, refused to uphold the Secretary's findings of no disability where the Secretary had failed to state on the record what evidence was considered, what weight it received, and why it was rejected.\footnote{Id. at 597-98 (footnotes omitted). Other circuits have cited this language with approval. \textit{See} Silva v. Secretary of Labor, 518 F.2d 501, 511 (1st Cir. 1975); United States v. Barbera, 514 F.2d 294, 502-04 (2d Cir. 1975), Morales v. Schmidt, 489 F.2d 1385, 1348-49 (7th Cir. 1973) (Stevens, J., dissenting). For a discussion of the benefits of increased judicial scrutiny of administrative agency decisions, see Leventhal, \textit{Principled Fairness and Regulatory Urgency}, 25 Case W. Res. L. Rev. 66, 70 (1974); K. \textsc{Davis}, \textit{Discretionary Justice} 57-59, 103-06 (1969).} The Fourth Circuit has been especially stringent in its demand for specific findings by the Secretary.\footnote{For a discussion of new requirements imposed by courts of appeals on the Secretary's fact-finding in a disability proceeding, see notes \textit{infra} and accompanying text \textit{infra}.} In \textit{King v. Califano},\footnote{615 F.2d 1018 (4th Cir. 1980).} the claimant's application for black lung benefits under the Federal Coal
Mine Health and Safety Act of 1969 was denied by the Secretary. The claimant's medical evidence consisted of x-ray studies which four physicians interpreted as supporting the claim of respiratory disease. However, the ALJ relied on another physician's assessment that the x-rays were unreadable or negative. The Fourth Circuit reversed and remanded the denial of benefits, holding that the ALJ must explain on the record the reasons for rejecting relevant evidence which supported the claim.

Similarly, in Myers v. Califano, a case involving disability insurance benefits under Title II, the Fourth Circuit held that the Appeals Council's failure to make specific findings in regard to a psychiatric report submitted by plaintiff was reversible error. The


40. 615 F.2d at 1019. These four physicians interpreted the x-ray data as showing the existence of pneumoconiosis. Id. In addition, two physicians gave claimant physical examinations and concluded that he suffered from occupational pneumoconiosis. Id. There was also testimony that claimant had symptoms of lung impairment (e.g., shortness of breath, coughing, and fatigue). Id.

41. Id. at 1020. In evaluating the evidence, the Secretary stated that no medical expert who was officially certified in radiology had read claimant's x-ray films as showing a lung impairment. Id. at 1019. However, the court noted that the record revealed that three out of the four physicians who found such a showing were officially certified readers. Id. at 1019-20.

42. Id. at 1020. The court noted that the Secretary's decision did not give proper treatment to the findings of two of the physicians who examined claimant and diagnosed pneumoconiosis. Id. After stating that the court places great reliance on the conclusions of a claimant's examining physician, the court concluded that the Secretary had "apparently, impermissibly limited his findings to those based on objective medical tests." Id. Furthermore, the court found that the Secretary had ignored a Circuit rule that contradictory x-ray readings benefit neither party. Id. In concluding that the Secretary had committed reversible error, the court held that the Secretary must consider all the evidence and state on the record how he treated the evidence of these two examining physicians. Id.

43. 611 F.2d 980 (4th Cir. 1980).

44. Id. at 983. The claimant had worked as a welder and on an assembly line prior to her application for disability insurance benefits because of back injuries. Id. at 982. One physician and one chiropractor diagnosed her condition as acute with disabling pain, while another physician found her orthopedic condition to be essentially normal, but noted her persistent complaints of pain. Id. The ALJ refused to give any weight to the evidence of pain, holding that under the regulations an impairment must be demonstrable by objective medical evidence. Id. at 983. The court reversed and remanded, stating that the ALJ must consider whether pain had a disabling effect. Id. Further, the
The court concluded that the Secretary must indicate explicitly on the record the weight given to all relevant evidence. Most recently, in *Walker v. Harris*, the Fourth Circuit reversed and remanded a denial of supplemental security income benefits because the ALJ's opinion lacked specific detail. The court stated that the ALJ's record should have contained a discussion of the claimant's former job duties and should have addressed the potential side effects of the claimant's many medications.

The Ninth Circuit has also indicated its support for requiring the Secretary to make more specific findings before it will consider the substantial evidence test to be fulfilled. In *Walker v. Mathews*, the court noted that the Appeals Council must make specific findings concerning a psychiatric report that claimant submitted after the ALJ decision. Id. The court emphasized that "unless the Secretary explicitly indicates the weight given to all the relevant evidence, we cannot determine on review whether the findings are supported by substantial evidence." Id. (citation omitted).

45. Id. The court emphasized that "unless the Secretary explicitly indicates the weight given to all the relevant evidence, we cannot determine on review whether the findings are supported by substantial evidence." Id. (citation omitted).

46. 642 F.2d 712 (4th Cir. 1981).

47. Id. at 714-15. Claimant filed an application for supplemental security benefits because of a variety of medical problems, including hypertension, diabetes, arthritis, and urinary tract infections. Id. at 713. Claimant, who had only four years of formal education, was not represented by counsel before the ALJ, and gave an uninterrupted, rambling monologue. Id. at 714. The ALJ denied the benefits on the ground that there was no medical evidence to support the finding that claimant had an impairment which prevented her from engaging in her former jobs. Id. The court reversed and remanded, holding that the ALJ's opinion was incomplete since "the (ALJ) failed in her duty 'scrupulously and conscientiously [to] probe into, inquire of, and explore for all the relevant facts' in this case involving an unrepresented, poorly-educated pro se claimant." Id. at 714-15 (citation omitted).

48. Id. at 714-15.

49. See notes 50-52 and accompanying text infra.

50. 546 F.2d 814 (9th Cir. 1976).

51. Id. at 819. The claimant had filed an application for disability insurance benefits because of a severe back injury that precluded the lifting of heavy objects as required in his work as a stevedore. Id. The ALJ denied disability benefits on the basis that there were a "host of jobs" available to claimant, including stenciling and machine packaging. Id. at 820.

52. Id. at 820, citing *Day v. Weinberger*, 522 F.2d 1154, 1156 (9th Cir. 1975). The court criticized the ALJ's conclusion that claimant could work since this finding was based on the theoretical existence of a few isolated jobs, and noted that Congress sought to preclude from the disability determination any consideration of jobs that exist in limited number or in only a few geographic locations. Id. at 819, citing 42 U.S.C. §423(d)(2)(A); 1967 U.S. Code Cong. & Ad. News 9197-98. The court further noted that the ALJ was
In a recent series of cases, the Third Circuit has carefully scrutinized the Secretary's decisions in disability benefits cases and has insisted upon an articulation of reasons underlying the agency's ultimate conclusions.\(^5\) In *Baerga v. Richardson*,\(^6\) the court, in dicta, criticized the ALJ for submitting a four-page summary of the evidence, followed by cursory findings of fact, without including in the record explicit statements as to what part of the evidence was accepted or rejected.\(^5\) Subsequently, in *Hargenrader v. Califano*,\(^6\) the court extended this reasoning in reversing and remanding a denial of benefits where the ALJ had given only a brief discussion of the evidence.\(^7\) The court

"equally cavalier in considering the evidence as to the nature of Walker's injury." *Id.* at 820. After acknowledging that it was not within the reviewing court's province to judge the credibility of witnesses before the ALJ, and further that uncontradicted expert opinions on ultimate issues are not binding on the ALJ, the court emphasized that if the ALJ rejects these he must state clear and convincing reasons for so doing. *Id.* The court then reversed and remanded because the medical testimony in the case was uncontradicted as to the bona fide nature of the claimant's pain and physical impairment. *Id.* at 820. It noted that, "[n]onetheless, the [ALJ] offered no explanation for his rejection of this testimony and his contrary conclusion as to Walker's disability. Such a conclusion cannot withstand the scrutiny of the substantial evidence test." *Id.* (footnote omitted).

53. For a discussion of the development of standards in the Third Circuit for assessing when the Secretary's findings of fact in disability proceedings constitute substantial evidence, see notes 54-64 and accompanying text infra.

54. 500 F.2d 309 (3d Cir. 1974), cert. denied, 420 U.S. 931 (1975). To support a claim for disability insurance benefits, the claimant submitted medical evidence in the form of x-ray studies and doctor's reports which showed extensive hip and leg deformities. *Id.* at 312. The claimant also gave testimony, which was corroborated by his family, that he had severe pain, was unable to bathe or dress himself, and had trouble sitting, standing, and walking. *Id.* In evaluating the claim, the ALJ did not mention this testimony and did not explain why he chose to accept certain medical evidence and reject contradictory evidence. *Id.*

55. *Id.* at 312. Although the court affirmed the Secretary's decision denying the claim, it stated that the findings in this case needed improvement and, further, that an administrative decision that a claimant is not eligible for benefits should "be supported by explicit findings of all facts that are essential to the conclusion of ineligibility." *Id.* at 313 (citation omitted). The court stated:

>[A]n examiner's findings should be as comprehensive and analytical as feasible and, where appropriate, should include a statement of subordinate factual foundations on which ultimate factual conclusions are based, so that a reviewing court may know the basis of the decision. This is necessary so that the court may properly exercise its responsibility under 42 U.S.C. §405(g) to determine if the Secretary's decision is supported by substantial evidence. It is incumbent upon the examiner to make specific findings—the court may not speculate as to his findings.

*Id.* (citation omitted).

56. 575 F.2d 434 (3d Cir. 1978).

57. *Id.* at 436. The claimant presented medical evidence that established that he had a skin ailment of unknown origin, which required a regular dosage of tranquilizers to control. *Id.* In addition, the claimant's doctor had
concluded that without specific subordinate findings of fact which would indicate why certain evidence was rejected by the ALJ, the court could not exercise its statutory function of review in a meaningful way. This holding elevated the court's suggestion in *Baerga* to a requirement that must be met in order to satisfy the substantial evidence test.

The Third Circuit followed this new standard in *Dobrowolsky v. Califano*, where the court further justified this rule by emphasizing that the special nature of proceedings for disability benefits dictates extra care on the part of the agency in developing an administrative record. The court concluded that a reviewing court could remand a case to the Secretary for good cause "where relevant, probative and available evidence was not explicitly weighed in arriving at a decision on the plaintiff's claim for disability benefits." Further, in *Kennedy v. Richardson*, the Third Circuit recognized that where there is conflicting probative evidence in the record, there is a particularly acute

advised him not to work because of an ulcer, nervousness, and other problems attributable to the skin condition. *Id.* Without mentioning in the decision such significant items of evidence, the ALJ made a finding that the claimant was not disabled and could perform many types of jobs. *Id.* at 437.

58. *Id.* at 436. The court found that its power to require the agency to make subordinate findings of fact was inherent in its statutory function of review mandated by § 405(g), and that "[s]uch findings are necessary to make meaningful a plaintiff's right to the limited review under that section." 575 F.2d at 436 n.3. For a discussion of § 405(g), see notes 25 & 27 and accompanying text *supra*.

59. 575 F.2d at 438 (Aldisert, J., dissenting). Judge Aldisert characterized this requirement in *Baerga* as obiter dictum which had been elevated to a standard in *Hargenrader*. *Id.* He was critical of this new standard because it "now is a controlling legal precept of sufficient dignity as to command a reversal if not followed by a hearing examiner." *Id.*

60. 606 F.2d 403 (3d Cir. 1979). The claimant filed an application for disability insurance benefits because of a heart condition. *Id.* at 404. He presented medical evidence from two physicians that characterized him as unable to work and also testified that he experienced pain in standing, sitting, and bending. *Id.* The ALJ's denial of disability benefits was based on a vocational expert's testimony that claimant could perform sedentary jobs. *Id.* at 408.

61. *Id.* at 406-07. The court declared that "[a]lthough the burden is upon the claimant to prove his disability, due regard for the beneficent purposes of the legislation requires that a more tolerant standard be used in this administrative proceeding than is applicable in a typical suit in a court of record where the adversary system prevails." *Id.* at 407, quoting *Hess v. Secretary of HEW*, 497 F.2d 837, 840 (3d Cir. 1974). The court found it consistent with legislative intent that the courts should be lenient with claimants, and that the Secretary's responsibility to rebut claimant's evidence be strictly construed. 606 F.2d at 407.

62. 606 F.2d 407 (citation omitted). The court reversed and remanded because the ALJ relied on the vocational expert's conclusory statements of claimant's physical abilities, and failed to furnish "any explanation regarding the relative weight and credibility of the evidence before him." *Id.* at 409.

63. 454 F.2d 376 (3d Cir. 1972).
need for the Secretary to explain why certain evidence was rejected.\textsuperscript{64} Against this background, the Cotter court discussed the standards to be applied in reviewing an administrative decision.\textsuperscript{65} The court first noted that the ALJ has a duty to hear and evaluate all probative evidence \textsuperscript{66} and to produce a written decision containing findings of fact and a statement of reasons for such findings.\textsuperscript{67} The court stated that "cogent reasons" existed for mandating that an administrative decision be accompanied by "a clear and satisfactory explication of the basis on which it rests."\textsuperscript{68} Chief among these reasons was the need for an appellate court to properly perform its statutory function of judicial review.\textsuperscript{69} In this context, the court turned to prior decisions in which the Third Circuit had reviewed administrative decisions on disability claims.\textsuperscript{70}

The court found that under its past decisions, an ALJ's findings "should be as comprehensive and analytical as feasible and, where appropriate, should include a statement of subordinate factual founda-
tions on which ultimate factual conclusions are based, so that a re-
viewing court may know the basis for the decision.” 71 The Cotter
court interpreted this standard as requiring the ALJ not only to express
the evidence supporting the decision, but also to give some indication
of the evidence which was rejected and an explanation of why it was
rejected.72 In the absence of such an indication and explanation in
disability decisions, the court stated, “the reviewing court cannot tell
if significant probative evidence was not credited or simply ignored.” 73

The Cotter majority felt it necessary to have the ALJ explain
on the record why relevant evidence supporting a claim was rejected.74
To hold otherwise, they argued, would be to trifurcate the uniform
obligation of an ALJ, which is to provide an adequate record so that a
reviewing court can determine whether the administrative decision is
based on substantial evidence.75 According to the majority, "substan-
tial evidence" can only be considered as supporting a decision when
it is viewed in relationship to all the other evidence in the record.76

71. 642 F.2d at 705, quoting Baerga v. Richardson, 500 F.2d 309, 312
(3d Cir. 1974), cert. denied, 420 U.S. 981 (1975). For a discussion of Baerga,
see notes 54-55 and accompanying text supra.

72. 642 F.2d at 705. The court emphasized that this requirement was not
designed to be a derogation of the ALJ's statutory responsibility (under 42
U.S.C. § 405(b) (1976)) to make findings of fact and decisions as to the rights
of individuals applying for benefits. Id. The court further conceded that an
ALJ is required to make credibility choices between conflicting medical evi-
dence, and that, in furtherance of that duty, an ALJ could not be expected
to include medical or scientific analysis beyond the capacity of a non-scientist.
Id.

73. Id. The court sought to make this point clear by giving the following
hypothetical:
[If the record contained the evidence of six medical experts, one of
whom supported the claimant and five of whom did not, it would be
of little assistance to our review function were the ALJ merely to
state that s/he credited the one supporting expert because that
evidence adequately demonstrated disability, but failed to either
mention or explain why the evidence of the other five experts was
rejected. In that instance, we would not know whether the evidence
of the five experts was rejected because the ALJ found it lacking in
credibility, irrelevant, or marred by some other defect.
Id. at 706.

74. Id. at 706. The court expressed puzzlement over Judge Garth's ob-
jection to having an ALJ explain on the record why relevant evidence sup-
porting a claim was rejected. Id. In particular the court noted that Judge
Garth "agrees that the ALJ must make findings on the basis of 'all the evidence
in the record' and [explain] 'both the evidence supporting his findings and the
reasons for his decision.' " Id.

75. Id. In arguing that Judge Garth's approach would trifurcate the uni-
form obligation of an ALJ the majority stated that it would be difficult "to
separate the obligation to explain why certain evidence has been accepted
from the obligation to explain why other significant probative evidence has
been rejected." Id. For an application of this reasoning, see note 73 supra.

76. 642 F.2d at 706.
In applying these standards to the facts in the case, the Cotter court examined Cotter's employment background, including evidence that his work required heavy lifting and repeated exposure to fumes and dust.\(^7\) The court paid considerable attention to medical evidence concerning Cotter's heart condition,\(^7\) and noted the sharp contrast between the medical finding that Cotter could not return to work involving physical labor,\(^7\) and the medical opinion that he could return to his previous job.\(^8\) In reviewing the ALJ's discussion of the medical evidence pertaining to the claimant's heart condition,\(^8\) the court found that the record was incomplete,\(^8\) and revealed confusion.\(^8\)

77. 642 F.2d at 702. For a discussion of Cotter's employment background, see note 6 and accompanying text supra.

78. 642 F.2d at 702-03. For a detailed discussion of the medical evidence pertaining to the claimant's heart condition, see note 7 and accompanying text supra.

79. 642 F.2d at 704. Cotter's personal physician, Dr. Corcino, and a specialist in cardiovascular medicine, Dr. Kimber, each had concluded that Cotter was unable to perform his prior job. Id. at 703. For a specific discussion of their reports, see note 7 supra.

80. 642 F.2d at 704. One physician, Dr. Trinidad, performed a consultative examination and concluded that Cotter should be able to go back to work. Id. at 703. For further discussion of this doctor's report, see note 7 supra.

81. 642 F.2d at 703.

82. Id. at 704. In discussing the evidence submitted by Mr. Cotter, the court noted that the ALJ failed to mention in his discussion of the evidence any medical findings or opinions supporting Cotter's claim. Id. The court stated that Dr. Corcino's opinion that Cotter could not return to work was entitled to substantial weight because he was Cotter's treating physician. Id. The court found even more significant the ALJ's failure to mention the findings of Dr. Kimber, a specialist in cardiovascular medicine. Id. Moreover, the ALJ did not mention the report relating to Cotter's next to last job in which he indicated he occasionally carried from 51 to 100 pounds. Id. The court found this evidence relevant because evidence regarding physical labor in previous welding jobs went to the issue of whether Cotter had an impairment which prevents him from engaging in past relevant work. Id., citing 20 C.F.R. § 404.1503(e) (1980). Furthermore, the court found that Cotter's response on the work activity report regarding the demands of prior work corroborated his testimony that welding involved heavy lifting, and, therefore, that this response was relevant. 642 F.2d at 707.

83. 642 F.2d at 707. The court found that the ALJ's decision was based on an erroneous construction of Cotter's work activity report. Id. According to the court, the ALJ had apparently concluded that Cotter's statement that he occasionally carried from 21 to 50 pounds referred solely to Cotter's carrying a 50-pound box of welding rods from a truck to the working station. Id. This interpretation had no support in the record and also meant that the ALJ apparently rejected as incredible Cotter's uncontradicted testimony that welding entailed heavy lifting including the dragging of 100 pound tanks. Id. Furthermore, the court found that the ALJ's discussion of the evidence revealed some confusion over the medical evidence, since the ALJ stated that the treadmill test administered by Dr. Kimber showed normal results. Id. The court stated that Dr. Kimber's evaluation could not, in fact, be fairly characterized as showing normal results. Id. The court was also troubled by the ALJ's conclusion that Dr. Kimber had ruled out heart disease, since Dr.
The court concluded that the ALJ's failure to explain his implicit rejection of the evidence supporting Cotter's claim or even to acknowledge the presence of such evidence was error, and thus, the case should be remanded to the ALJ for reconsideration.

In a separate opinion, Judge Garth agreed with the majority's decision that the substantial evidence test was not met. Judge Garth disagreed, however, with the requirement that the ALJ provide reasons for rejecting probative evidence. While acknowledging that the ALJ has a duty to consider all the evidence, Judge Garth would not require that an ALJ give reasons for rejecting or discrediting conflicting testimony. Judge Garth viewed this as an unprecedented

Kimber's statement to that effect was made before the treadmill ECG test, upon which the doctor based his ultimate medical findings concerning Cotter's condition. Id.

84. Id. at 707. The court stated:

Apparently, the ALJ based his ultimate conclusion that Mr. Cotter could perform his prior job on Dr. Trinidad's report and evaluation. Significantly, the ALJ gave no reason for implicitly rejecting the obviously probative and significant but conflicting findings and conclusions of Drs. Kimber and Corcino, which the ALJ failed to discuss. Id. at 704.

85. Id. at 707. The court concluded that the ALJ had not considered all the relevant evidence of record, and more significantly, had misconstrued the evidence considered, so that the conclusion that Cotter's impairment did not prevent the performance of his past relevant work must be reconsidered. Id. Upon reconsideration, the court stated that the ALJ might take additional evidence, if he deemed it necessary in his discretion. Id. The court noted, in conclusion, that the ALJ should reconsider whether Cotter's evidence was sufficient to support a determination that Cotter's heart condition, either alone or in conjunction with his mental impairment, would preclude Cotter from performing his past relevant work. Id. at 708.

86. 642 F.2d at 708 (Garth, J., concurring in part and dissenting in part). Judge Garth agreed with the majority finding that there was not substantial evidence in the record to support the Secretary's finding that Cotter could perform his former job as a welder. Id.

87. Id. For the majority's view as to why an ALJ must provide reasons for rejecting probative evidence, see notes 73-75 and accompanying text supra.

88. Id. Judge Garth interpreted this duty to mean that an ALJ must indicate the evidence that was rejected or acknowledge that there was conflicting evidence. Id. For the majority's interpretation of this duty, see note 66 and accompanying text supra.

89. Id. Judge Garth characterized the majority opinion as really imposing three additional requirements: "that an ALJ: (1) not only furnish an expression of the evidence supporting his result, but also indicate that evidence which he has rejected . . .; (2) explain 'the reason why probative evidence has been rejected' . . .; and (3) explain his implicit rejection of [conflicting] evidence'. . ." Id. Judge Garth specifically rejected the second and third additional requirements and depicted these as mandating that an ALJ make reciprocal negative findings and give explanations for rejecting evidence. Id. at 709 (Garth, J., concurring in part and dissenting in part). To clarify this point he stated:

[The majority would now require that an ALJ who has identified the evidence in the record which he credits and which support his
extension of prior circuit law, and contended that such a requirement was improper because it was not mandated by the Act.

It is submitted that the Cotter court’s holding manifests a broader interpretation of the scope of judicial review in a disability proceeding than that mandated under the Social Security Act. The express language of the Act gives the Secretary the full authority to establish rules and procedures for a determination of disability benefits, and the Secretary has not included in these comprehensive rules a requirement that an ALJ indicate in the record why certain evidence was rejected. In fact, neither the Code of Federal Regulations, nor the Administrative Procedure Act, which were relied upon by the Cotter court, can be utilized to support the majority’s imposition of this duty on the ALJ, since these regulations state only that an ALJ must

findings, and who has explained the reasons for his findings, must now also explain why he has discredited or rejected conflicting testimony.

[A]s I understand the Congressional directive under which we operate, once we are satisfied that substantial evidence exists to support a particular finding, e.g., that an accident occurred on Tuesday, January 6, 1981, the ALJ need not furnish us with findings or reasons why the accident did not occur on Monday, January 5, or Wednesday, January 7.

Id. (emphasis supplied).

90. Id. at 710. Judge Garth disagreed with the majority view that the standard set forth in Hargenrader required reciprocal negative findings or explanations for rejecting evidence. Id. Judge Garth instead recognized the additional requirement in Hargenrader as requiring an ALJ to furnish subordinate factual foundations for affirmative findings made by the ALJ, and, therefore, distinguished this as a much different requirement from those set forth by the majority. Id. For a further discussion of Hargenrader, see notes 56-58 and accompanying text supra.

91. 642 F.2d at 708 (Garth, J., concurring in part and dissenting in part). Judge Garth stated:

[M]y sole objection to the majority opinion is that it attempts to depart from the standard which Congress has specified in 42 U.S.C. § 405(g) governing our scope of review. As a court of appeals, we are authorized only to adjudicate a specific case or controversy; . . . we are not entrusted with the rule-making authority.” . . . I do not find any authority in our circuit which requires that an ALJ explain his reasons for rejecting probative evidence, and certainly the statute itself does not so require. . . . I believe that it is Congress that must establish the standard for review of agency action; such is not the function of the courts.

Id. at 711-12 (Garth, J., concurring in part and dissenting in part).

92. For a discussion of the scope of judicial review, see notes 25-27 and accompanying text supra.

93. For a discussion of the Secretary’s authority, see notes 18-20 and accompanying text supra.

94. See 20 C.F.R. § 404.953 (1981). This provision sets forth the items an ALJ must include on the record in a decision. For a discussion of this provision, see note 24 supra.

95. For the court’s discussion of these regulations, see note 67 and accompanying text supra.
make relevant findings and supply reasons for a decision. It is suggested that this lack of specific authority forced the Cotter majority to infer the imposition of such an obligation on the ALJ from the court's statutory function of review of administrative decisions.

It is submitted that the Cotter court's use of the substantial evidence test to infer the right to impose this additional requirement on the ALJ is clearly not supported by the Supreme Court, and is in fact inconsistent with that Court's interpretation of the scope of judicial review in an administrative proceeding. However, this use of the

---

96. For a discussion of the findings which must be made, see note 24 supra. See also 5 U.S.C. § 557(c) (1976). This section of the Administrative Procedure Act states that "[a]ll decisions . . . are a part of the record and shall include a statement of—(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record . . . ." Id. § 557(c)(3)(A).

97. See 642 F.2d at 705. The court acknowledged that the Social Security Act does not expressly place the obligation on the ALJ to give reasons for rejecting evidence. Id. at 706. However, the court found the authority to impose such obligation on the ALJ as "one fairly inferable from [its] statutory obligation of review." Id. The court justified this inference by reasoning that "[i]t is difficult to separate the obligation to explain why certain evidence has been accepted from the obligation to explain why other significant probative evidence has been rejected." Id. This inference arises from what the court saw as essentially a uniform obligation of the ALJ, which is to give an adequate basis for its decision so that a reviewing court can determine whether the administrative decision is based on substantial evidence. Id. For the court's discussion of its statutory obligation in disability determinations, see notes 70-76 and accompanying text supra.

98. For a discussion of Perales, the Supreme Court's most recent interpretation of the substantial evidence test in a disability proceeding, see notes 29-32 and accompanying text supra. See also R. Dixon, supra note 14, at 99-102. This commentator suggests that the Supreme Court decision in Perales did little to clarify the substantial evidence rule since that issue was not directly presented. Id. at 99. Dixon contends, however, that Perales is important because it indicates the Court's disposition to support SSA's limited type of hearing as consistent with due process. Id. at 102. Dixon also notes that the decision "leaves open the future development of the substantial evidence rule," and suggests that the degree to which that rule is actually followed by the courts depends on "(a) judicial acceptance of the goals of the political branches as embodied in the program, (b) the clarity of the statutory-administrative standards, and (c) the precision in administrative procedures and operational criteria for applying the standards." Id.

99. The Cotter court's reliance on SEC v. Chenery Corp., 318 U.S. 80 (1943) seems misplaced since although the Supreme Court reversed and remanded the Commission's order because the grounds upon which the Commission acted could not be sustained, the Court was careful to emphasize that it was "not enforcing formal requirements" on the administrative agency. Id. at 94. For a further discussion of Chenery Corp., see notes 28 & 68 supra. See also Cotter, 642 F.2d at 708 (Garth, J., concurring in part, dissenting in part). As noted by Judge Garth, this attitude by the Supreme Court that a reviewing court may not graft its own notion of proper procedures upon an administrative agency has recently been reiterated in Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519 (1978). In Vermont Yankee, the Court emphasized that formulation of procedures governing administrative decisions is within the discretion of administrative agencies,
substantial evidence test demonstrates that the test has not provided a precise standard by which a reviewing court may comprehend its scope of review in specific factual settings.\textsuperscript{100} Nevertheless, it is contended that although the \textit{Cotter} holding lacks specific statutory or Supreme Court authorization, it is quite appropriate in light of the special nature of a disability benefits claim and is consistent with the Secretary's intent to design procedures which further uniformity in the determination of disability benefits.\textsuperscript{101} The \textit{Cotter} court's insistence on having the ALJ set forth reasons for a rejection of probative evidence seems, in essence, to be a response to arbitrary decision making in the award of disability benefits.\textsuperscript{102} It is submitted that it is incumbent upon reviewing courts to insist on strict judicial scrutiny of administrative action in disability proceedings in order to protect the fundamental personal interests of individual claimants.\textsuperscript{103} In furtherance of this goal, it is apposite for reviewing courts to require administrative officers who are faced with conflicting medical evidence to articulate the reasons for rejecting relevant evi-

and reviewing courts are not free to impose additional procedural requirements. \textit{Id.} at 525. For a further discussion of Judge Garth's opinion, see notes 86-91 and accompanying text supra.

100. Commentators have long noted the difficulty in applying the substantial evidence test. \textit{See} K. \textit{Davis}, \textit{Administrative Law} §29.11 (1959) (the substantial evidence test is vague so that variations in intensity of review from court to court and from case to case are considerable); R. \textit{Dixon}, supra note 14, at 99 (the substantial evidence test is inherently imprecise as to the required evidentiary support for an administrative finding); B. \textit{Schwartz}, supra note 28 §210 (there is often greater difficulty in applying the substantial evidence test than in formulating it).

101. \textit{See} \textit{Richardson v. Perales}, 402 U.S. at 399. The \textit{Perales} Court stated the need for disability proceedings to contain procedures that are both fair and workable. For a discussion of \textit{Perales}, see notes 29-32 and accompanying text supra. For an acknowledgment by the Third Circuit that it has repeatedly recognized the special nature of disability claims and, therefore, the need for proportionately extra care in developing an administrative record, see note 61 and accompanying text supra.

For the views of other Circuits which have recognized the special need for judicial protection in disability benefits cases, see notes 34, 38-48, 50-52 supra.

102. \textit{See} R. \textit{Dixon}, supra note 14, at 52. This writer noted that "[t]he administrative regulations under the basic Congressional phrase—'inability to engage in any gainful activity'—were designed . . . to introduce some standardization, objectivity, and uniformity in proceedings on borderline disability claims on a national basis." \textit{Id.}

103. \textit{See} 642 F.2d at 706. The court expressed its frustration with the ALJ's lack of reasoned findings and stated that "the ALJ's bare recital of the boilerplate language that he 'carefully considered all the testimony . . . and the exhibits' [is not] sufficient." \textit{Id.} at 707 n.10.

104. \textit{See}, e.g., \textit{Environmental Defense Fund, Inc. v. Ruckelshaus}, 439 F.2d 584 (D.C. Cir. 1971), where the court recognized that when administrative action touches on fundamental personal interests, there is a special claim to judicial protection. \textit{Id.} For a more detailed discussion of this view, see note 34 supra.
Moreover, it is contended that strict judicial scrutiny and judicially imposed procedural requirements regulating agency fact findings will remain a necessity as long as the administrative process itself fails to confine and control the exercise of administrative discretion.\textsuperscript{106}

The Cotter court's decision serves to expand the scope of judicial review in a social security disability proceeding beyond prior Third Circuit decisions,\textsuperscript{107} and in application will compel lower courts in the Third Circuit to remand decisions made by the Secretary which do not conform to the new requirement that ALJ's explain their reasons for rejecting evidence.\textsuperscript{108} It is suggested that the impact of such remands will be to add to the significant backlog of cases that must be adjudicated in the Third Circuit by the Secretary,\textsuperscript{109} and, thus, will further delay the quick resolution of disability claims.\textsuperscript{110} However, it is submitted that, with time, the need for remands may diminish since by articulating the information it needs to conduct meaningful judicial review, the court may actually have enhanced understanding between the Secretary and the court.\textsuperscript{111} Moreover, this elucidation of what is required on the record will expedite the final resolution of applications for disability benefits by reducing the time needed by the court to review the record and by reducing the need for remands to develop

\begin{flushright}
\textsuperscript{105} For a discussion of the recent willingness by some circuits to impose such additional requirements on the Secretary, see notes 34-64 and accompanying text \textit{supra}.
\textsuperscript{106} It is submitted that some courts will continue to advocate a stricter judicial scrutiny than the substantial evidence test would allow as long as these courts perceive a void in administrative standards that govern their discretionary decisions. For a discussion of the recent trend of some courts to demand stricter judicial scrutiny of administrative action, see note 35 and accompanying text \textit{supra}.
\textsuperscript{107} For the prior scope of judicial review of disability proceedings in the Third Circuit, see notes 53-64 and accompanying text \textit{supra}.
\textsuperscript{108} See 650 F.2d at 481 (1981) (Garth, J., dissenting from order denying panel rehearing). Judge Garth expressed concern over the fact that the majority opinion had already been relied upon by the District Court as a basis for remanding several cases to the ALJ because the decisions did not state reasons for rejecting evidence. \textit{Id.} at 483 n.1, \textit{citing} Burnett v. Harris, No. 80-1790 (E.D. Pa. March 24, 1981); Summers v. Harris, No. 80-0512 (E.D. Pa. March 24, 1981).
\textsuperscript{109} See 650 F.2d at 484. Judge Garth set forth the Secretary's caseload statistics as follows: "Approximately 15,400 requests for a hearing before an [ALJ] are currently pending in this Circuit, an average backlog of 234 cases for each available [ALJ]." \textit{Id.} at n.2.
\textsuperscript{110} \textit{Id.} at 485. Judge Garth stated that the majority's decision in Cotter would have a devastating impact on the workload at the SSA. \textit{Id.}
\textsuperscript{111} See 650 F.2d at 482. The Cotter majority asserted that the ALJ would now know what explanations should be made on the record to establish an adequate basis for the reviewing court to perform its duty, and that this would expedite, rather than obstruct the ultimate disposition of social security cases. \textit{Id.}
Finally, it is arguable that the holding of this case will ultimately lead to more equitable determinations as to who is entitled to disability benefits, since it simultaneously requires the Secretary to be more comprehensive in developing a reasoned record and furnishes the court with an improved basis upon which to exercise its review function.  

Laurie A. Kramer

112. Id.
113. See note 111 and accompanying text supra.