

Hart v. Colvin: Filed February 9, 2015



#### About the Lead Plaintiff, Kevin Hart

Kevin Hart is a fifty year old man who was struck by a car on October 2, 2007, shattering his right leg. Mr. Hart underwent two surgeries to attempt to repair his leg, but still experiences tremendous pain and limited mobility. He needs a cane to walk and is significantly limited in his day-to-day activities. He cannot stand or sit for long periods of time.

While he would like to be able to work, Mr. Hart is incapable of sustained employment due to his medical conditions. He has worked over his career as a janitorial contractor, a loader, and a groundskeeper, but can no longer do any of that work.

The Social Security Administration determined that Mr. Hart was permanently disabled in 2010. Mr. Hart was assessed to have “less than sedentary residual functioning capacity.” To make matters worse, Mr. Hart was the victim of a violent crime in 2013. He sustained a non-displaced rib fracture, a serious kidney laceration with hematoma, ruptured cyst, and multiple abrasions. According to medical records, Mr. Hart’s health

declined in many respects after he was found to be disabled.

In 2013, SSA notified Mr. Hart that he was scheduled for a disability review to determine if he continued to meet the disability standard. This type of review is used to determine if there has been any medical improvement. For this review, Mr. Hart was referred to Frank Chen, a medical examiner for the Social Security Administration. Dr. Chen did not complete a full physical examination of Mr. Hart. He didn’t review Hart’s medical records, didn’t ask him about his condition, repeatedly interrupted Hart when he attempted to explain his diagnosis, and only spent approximately 10 minutes on a perfunctory examination. Dr. Chen’s report referenced tests he didn’t perform and failed to mention Mr. Hart’s primary leg and foot injuries— even though Mr. Hart needed a cane to stand during his exam.

Dr. Chen concluded that Mr. Hart was capable of walking for six hours in an eight hour day, and sitting for six hours in an eight hour day, and that he could carry “50 pounds occasionally and 25 pounds frequently.” Mr. Hart, however, cannot stand or walk for more than a few minutes without the assistance of a cane, and he cannot sit for long periods of time without experiencing painful swelling in his feet.

After Frank Chen’s evaluation, Mr. Hart received a notice from SSA dated September 2013 telling him that his benefits were being terminated because he was no longer disabled. He promptly filed a Request for Reconsideration and a hearing was scheduled for February 26, 2014 before a Disability Hearing Officer. He was not represented by counsel at the Reconsideration hearing. Although Frank Chen had been disqualified two months before the hearing, neither SSA nor DDS ever notified him of Frank Chen’s disqualification.

Mr. Hart currently lives with his seventy-eight-year-old mother in San Mateo. He tries to help his mother with chores around the house, but his disability makes simple tasks, like doing the dishes, extremely difficult. He worries about having enough money to meet basic needs like paying rent and buying food, let alone paying for the special shoes and inserts that his doctor has prescribed to take care of his feet. He struggles to get by with his modest monthly SSI and SSDI disability benefit, and cannot imagine how he will meet basic life necessities without it. That monthly benefit is his only income.

About Frank Chen's Disqualification:

On September 2, 2011, the Disability Determination Service Division (DDSD) sent Frank Chen an initial Corrective Action letter identifying four areas of concern: the quality of his CE reports, the lack of thoroughness of his examinations, religious comments made during examinations, and conducting unauthorized neurological examinations. On October 14, 2013, a second Corrective Action letter was sent to Frank Chen identifying continuing problems with the quality of his CE reports. On December 20, 2013, Frank Chen was removed from the Consultative Examiner panel. The people who had been denied benefits based on his reports were never notified of his disqualification, even after or in the midst of appeals. After his disqualification, Frank Chen's reports had been and are still being treated as competent evidence by the Social Security Administration and by the courts in making determinations of eligibility for benefits.