In a subsequent decision issued on April 6, 1988, an ALJ found that Mr. Dennard was not prevented from performing his past relevant work and, therefore, was not disabled. A vocational expert had testified that, based on the claimant's testimony at the prior hearing, his past work as a resident care aide supervisor was semi-skilled and heavy to very heavy in terms of exertional level. However, the vocational expert further testified that, based on the job description provided by Mr. Dennard with his application for benefits, the job was semi-skilled and was sedentary to light in nature, because there was no direct patient contact. The Appeals Council denied the claimant's request for review. Upon appeal to the district court, a United States Magistrate recommended that Mr. Dennard be found disabled, because he believed that the claimant's testimony that his former job was heavy in exertion was controlling. The district court did not adopt the magistrate's recommendation. Instead it found that SSA's decision denying benefits was supported by substantial evidence. From that adverse decision, the claimant appealed to the United States Court of Appeals for the Sixth Circuit.

Holding: On appeal Mr. Dennard argued that because SSA had determined in its final decision on his first application for benefits that he could not perform his past relevant work, SSA was precluded by estoppel from reconsidering the issue and finding that Dennard could perform this work. The Sixth Circuit observed that it seemed clear that SSA had reconsidered the nature and extent of Mr. Dennard's exertional level in his former job as a resident care aide supervisor. The United States Court of Appeals for the Sixth Circuit stated: ''We are persuaded that under the circumstances, we must remand this case to [SSA] . . . to determine whether [Mr.] Dennard is disabled in light of the prior determination that he could not return to his previous employment.''

Statement as to How Dennard Differs From SSA Policy

Under SSA policy, if a determination or decision on a disability claim has become final, the Agency may apply administrative res judicata with respect to a subsequent disability claim under the same title of the Act if the same parties, facts and issues are involved in both the prior and subsequent claims. However, if the subsequent claim involves deciding whether the claimant is disabled during a period that was not adjudicated in the final determination or decision on the prior claim, SSA considers the issue of disability with respect to the unadjudicated period to be a new issue that prevents the application of administrative res judicata. Thus, when adjudicating a subsequent disability claim involving an unadjudicated period, SSA considers the facts and issues *de novo* in determining disability with respect to the unadjudicated period.

The Sixth Circuit held that, where the final decision of SSA after a hearing on a prior disability claim contains a finding of the demands of a claimant's past relevant work, SSA may not make a different finding in adjudicating a subsequent disability claim with an unadjudicated period arising under the same title of the Act as the prior claim unless new and additional evidence or changed circumstances provide a basis for a different finding.

Explanation of How SSA Will Apply The Dennard Decision Within The Circuit

This Ruling applies only to disability findings in cases involving claimants who reside in Kentucky, Michigan, Ohio, or Tennessee at the time of the determination or decision on the subsequent claim at the initial, reconsideration, ALJ hearing or Appeals Council level. It applies to a finding of the demands of a claimant's past relevant work, under 20 CFR 404.1520(e) or 416.920(e), which was made in a final decision by an ALJ or the Appeals Council on a prior disability claim. In addition, because a finding of a claimant's date of birth (for purposes of ascertaining a claimant's age), education or work experience, also involves a finding of fact, relating to a claimant's vocational background, which would not ordinarily be expected to change, this Ruling also shall apply to a finding of a claimant's date of birth, education or work experience required under 20 CFR 404.1520(f)(1) or 416.920(f)(1).

When adjudicating a subsequent disability claim with an unadjudicated period arising under the same title of the Act as the prior claim, adjudicators must adopt such a finding from the final decision by an ALJ or the Appeals Council on the prior claim in determining whether the claimant is disabled with respect to the unadjudicated period unless there is new and material evidence relating to such a finding or there has been a change in the law, regulations or rulings affecting the finding or the method for arriving at the finding.

[FR Doc. 98–14264 Filed 5–29–98; 8:45 am]

BILLING CODE 4190–29–F

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 98-4(6)]

Drummond v. Commissioner of Social Security; Effect of Prior Findings on Adjudication of a Subsequent Disability Claim Arising Under the Same Title of the Social Security Act—Titles II and XVI of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 98-4(6).

EFFECTIVE DATE: June 1, 1998.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1695.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals' decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the Sixth Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after June 1, 1998. If we made a determination or decision on your application for benefits between September 30, 1997, the date of the Court of Appeals' decision, and (*Insert the* **Federal Register** *publication date*), the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b) or 416.1485(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in

20 CFR 404.985(e) or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c) or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security - Disability Insurance; 96.002 Social Security - Retirement Insurance; 96.004 Social Security -Survivors Insurance; 96.005 - Special Benefits for Disabled Coal Miners; 96.006 - Supplemental Security Income.)

Dated: April 10, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

Acquiescence Ruling 98-4(6)

Drummond v. *Commissioner of Social Security*, 126 F.3d 837 (6th Cir. 1997)—Effect of Prior Findings on Adjudication of a Subsequent Disability Claim Arising Under the Same Title of the Social Security Act—Titles II and XVI of the Social Security Act.

Issue: Whether, in making a disability determination or decision on a subsequent disability claim with respect to an unadjudicated period, where the claim arises under the same title of the Social Security Act (the Act) as a prior claim on which there has been a final decision by an Administrative Law Judge (ALJ) or the Appeals Council, the Social Security Administration (SSA) must adopt a finding of a claimant's residual functional capacity, or other finding required under the applicable sequential evaluation process for determining disability, made in the final decision by the ALJ or the Appeals Council on the prior disability claim.[1]

Statute/Regulation/Ruling Citation: Sections 205(a) and (h) and 702(a)(5) of the Social Security Act (42 U.S.C. 405 (a) and (h) and 902(a)(5)), 20 CFR 404.900, 404.957(c)(1), 416.1400, 416.1457(c)(1).

Circuit: Sixth (Kentucky, Michigan, Ohio, Tennessee)

Drummond v. *Commissioner of Social Security*, 126 F.3d 837 (6th Cir. 1997).

Applicability of Ruling: This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, ALJ hearing and Appeals Council).

Description of Case: Grace Drummond applied for disability insurance benefits on July 6, 1987, claiming a disability onset date of November 17, 1985. The claim was denied initially and upon reconsideration. A hearing was held before an ALJ who concluded that the claimant was not disabled and denied her claim. The ALJ found that Ms. Drummond was unable to perform her past relevant work but retained the residual functional capacity for sedentary work.

Ms. Drummond filed a subsequent application for disability insurance benefits on June 21, 1989. This claim was denied initially and again upon reconsideration. After a hearing was held, an ALJ found that the claimant suffered from combined musculoskeletal and multiple body system impairments but retained the residual functional capacity for medium level work and could perform her past relevant work as a textile machine operator. Accordingly, the ALJ found that Ms. Drummond was not disabled. After the Appeals Council denied the claimant's request for review, she sought judicial review. The United States District Court for the Eastern District of Kentucky granted summary judgment to SSA finding that substantial evidence supported SSA's denial of benefits.

On appeal to the Court of Appeals for the Sixth Circuit, Ms. Drummond argued that, based on principles of res judicata, the first ALJ's determination that she was limited to sedentary work must be followed by the second ALJ in the absence of evidence of an improvement in her condition since the first hearing. Declining to address this issue initially on appeal, the Sixth Circuit reversed the judgment of the district court and remanded the case with instructions to remand it to SSA for further proceedings to determine whether res judicata is applicable against SSA and, if so, whether there was substantial evidence to support a finding that the claimant's condition had improved since the time of her first application.[2]

On remand, after oral argument was held before the Appeals Council on September 27, 1993, the Appeals Council issued a decision denying Ms. Drummond's claim for disability insurance benefits. The Appeals Council found that 42 U.S.C. 405(h) could not be applied against SSA as a bar to prevent reconsideration of an issue because SSA was not a party to the benefits determination.

Ms. Drummond sought judicial review of the Appeals Council's decision and the United States District Court for the Eastern District of Kentucky affirmed SSA's decision denying disability benefits. The district court found that ''administrative res judicata does not apply to the Commissioner when a transitory condition such as health is involved ....'' The claimant appealed this decision to United States Court of Appeals for the Sixth Circuit.

Relying on the Fourth Circuit's decision in *Lively v. Secretary of Health and Human Services*, 820 F.2d 1391 (4th Cir. 1987), the claimant argued that res judicata applied and that, absent evidence of an improvement in her condition, the first ALJ's finding that she had a residual functional capacity limited to sedentary work was binding on SSA in deciding her subsequent claim.[3] Noting the similarity between the *Lively* case and the case at bar, the Sixth Circuit observed that the court in *Lively* had relied on ''[p]rinciples of finality and fundamental fairness drawn from § 405(h)'' to conclude that ''evidence, not considered in the earlier proceeding, would be needed as an independent basis to sustain a finding [of the claimant's residual functional capacity] contrary to the final earlier finding.''[4]

Holding: The Court of Appeals for the Sixth Circuit found the reasoning of the *Lively* court persuasive and stated that ''[a]bsent evidence of an improvement in a claimant's condition, a subsequent ALJ is bound by the findings of a previous ALJ.'' The court held that SSA could not reexamine issues previously determined in the absence of new and additional evidence or changed circumstances. The court indicated that to allow such a reevaluation ''would contravene the reasoning behind 42 U.S.C. § 405(h) which requires finality in the decisions of social security claimants.'' The Court of Appeals further stated that ''[j]ust as a social security claimant is barred from relitigating an issue that has been previously determined, so is the Commissioner.''

After finding that there was no substantial evidence that Ms. Drummond's condition had improved significantly during the time period between the two ALJ hearings, the court

[1] Although *Drummond* was a title II case, similar principles also apply to title XVI. Therefore, this Ruling extends to both title II and title XVI disability claims.

[2] *Drummond* v. *Secretary of Health and Human Services*, No. 92-5649 (6th Cir. April 26, 1993).

[3] In *Lively*, the Fourth Circuit held that where a final decision of SSA after a hearing on a prior disability claim contained a finding about a claimant's residual functional capacity, SSA may not make a different finding based on the same evidence when adjudicating a subsequent disability claim arising under the same title of the Act and covering a period not adjudicated in the decision on the prior claim. 820 F.2d at 1392. On July 7, 1994, SSA published Acquiescence Ruling 94-2(4) at 59 FR 34849 to reflect the holding in *Lively*.

[4] *Lively*, 820 F.2d at 1392.

concluded that SSA was bound by its previous finding that the claimant was limited to sedentary work. The Court of Appeals thereupon reversed the judgment of the district court and remanded with instructions for the district court to remand the case to SSA for an award of benefits.

Statement as to How Drummond Differs From SSA Policy

Under SSA policy, if a determination or decision on a disability claim has become final, the Agency may apply administrative res judicata with respect to a subsequent disability claim under the same title of the Act if the same parties, facts and issues are involved in both the prior and subsequent claims. However, if the subsequent claim involves deciding whether the claimant is disabled during a period that was not adjudicated in the final determination or decision on the prior claim, SSA considers the issue of disability with respect to the unadjudicated period to be a new issue that prevents the application of administrative res judicata. Thus, when adjudicating a subsequent disability claim involving an unadjudicated period, SSA considers the facts and issues *de novo* in determining disability with respect to the unadjudicated period.

The Sixth Circuit concluded that where a final decision of SSA after a hearing on a prior disability claim contains a finding of a claimant's residual functional capacity, SSA may not make a different finding in adjudicating a subsequent disability claim with an unadjudicated period arising under the same title of the Act as the prior claim unless new and additional evidence or changed circumstances provide a basis for a different finding of the claimant's residual functional capacity.

Explanation of How SSA Will Apply The Drummond Decision Within The Circuit

This Ruling applies only to disability findings in cases involving claimants who reside in Kentucky, Michigan, Ohio, or Tennessee at the time of the determination or decision on the subsequent claim at the initial, reconsideration, ALJ hearing or Appeals Council level. It applies only to a finding of a claimant's residual functional capacity or other finding required at a step in the sequential evaluation process for determining disability provided under 20 CFR 404.1520, 416.920 or 416.924, as appropriate, which was made in a final decision by an ALJ or the Appeals Council on a prior disability claim.[5]

When adjudicating a subsequent disability claim with an unadjudicated period arising under the same title of the Act as the prior claim, adjudicators must adopt such a finding from the final decision by an ALJ or the Appeals Council on the prior claim in determining whether the claimant is disabled with respect to the unadjudicated period unless there is new and material evidence relating to such a finding or there has been a change in the law, regulations or rulings affecting the finding or the method for arriving at the finding.

[FR Doc. 98–14265 Filed 5–29–98; 8:45 am]

BILLING CODE 4190–29–F

[5] In making a finding of a claimant's residual functional capacity or other finding required to be made at a step in the applicable sequential evaluation process for determining disability provided under the specific sections of the regulations described above, an ALJ or the Appeals Council may have made certain subsidiary findings, such as a finding concerning the credibility of a claimant's testimony or statements. A subsidiary finding does not constitute a finding that is *required* at a step in the sequential evaluation process for determining disability provided under 20 CFR 404.1520, 416.920 or 416.924.

DEPARTMENT OF STATE

[Public Notice 2827]

Statutory Debarment Under the International Traffic in Arms Regulations

AGENCY: Office of Defense Trade Controls, State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has imposed statutory debarment pursuant to Section 127.7(c) of the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120–130) on persons convicted of violating or conspiring to violate Section 38 of the Arms Export Control Act (AECA) (22 U.S.C. § 2778).

EFFECTIVE DATE: Date of conviction as specified for each person.

FOR FURTHER INFORMATION CONTACT: Philip S. Rhoads, Chief, Compliance and Enforcement Branch, Office of Defense Trade Controls, Department of State (703–875–6644).

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA prohibits licenses and other approvals for the export of defense articles and the furnishing of defense services to be issued to a person, or any party to the export, convicted of violating or conspiring to violate the AECA. Pursuant to Section 127.7(c) of the ITAR, statutory debarment is imposed upon persons convicted of violating or conspiring to violate the AECA. Statutory debarment is based solely upon a conviction in a criminal proceeding, conducted by a United States court, and as such the administrative proceedings outlined in Part 128 of the ITAR are not applicable.

This notice is provided in order to make the public aware that the persons listed below are prohibited from participating directly or indirectly in any brokering activities and in any export from or temporary import into the United States of defense articles, related technical data, or defense services in all situations covered by the ITAR:

1. Mohammad Iqbal Badat, 11025 Maidencane Court, Houston, TX 77086. Conviction date: March 13, 1996, 18 U.S.C. § 371 (conspiracy to violate the AECA), *U.S.* v. *Mohammad Iqbal Badat,* U.S. District Court for the Western District of Louisiana, 6:93CR60013–002
2. Sanford B. Groetzinger, 82 Dennison Street, Gloucester, MA 01930, 22 U.S.C. § 2778 (violation of the AECA). Conviction date: June 13, 1997, *U.S.* v. *Sanford B. Groetzinger,* U.S. District Court for the District of Massachusetts, 1:96CR10326–001
3. Alfred Peter Harms, Merkurstr. 32, 76461 Muggensturm, Germany. Conviction date: October 25, 1996, 18 U.S.C. § 371 (conspiracy to violate the AECA), *U.S.* v. *Alfred Peter Harms,* U.S. District Court for the Northern District of Texas, 3:96–CR–280–R(1)
4. James Lee, 410 Auburn Way, No. 34, San Jose, CA 95129. Conviction date: June 18, 1997, 22 U.S.C. § 2778 (violation of the AECA), *U.S.* v. *James Lee,* U.S. District Court for the Northern District of California, 5:95CR20142–002
5. Thomas McGuinn, Cloommull Drumcliffe, County Sligo, Republic of Ireland. Conviction date: April 19, 1996, 22 U.S.C. § 2778 (violation of AECA), *U.S.* v. *Thomas McGuinn,* U.S. District Court for the Southern District of Florida, 94–170–CR–UNGARO–BENAGES
6. Penny Ray, 7100 Rainbow Drive #30, San Jose, CA 95129. Conviction date: June 18, 1997, 22 U.S.C. § 2778 (violation of AECA), *U.S.* v. *Penny Ray,* U.S. District Court for the Northern District of California, 5:95CR20142–001
7. Salvador Romavi-Orue, 15400 S.W. 75 Circle Lane, Apt. 104, Miami, FL 33193. Conviction date: February 16, 1996, 22 U.S.C. § 2778 (violation of AECA) *U.S.* v. *Salvador Romavi-Orue,* U.S. District Court for the Southern