

VI. CONCLUSION

Accordingly, the FSM Department of Justice is granted summary judgment on its motion that the court cannot grant Hartmann a declaratory judgment that he is an FSM citizen. The FSM Department of Justice is not granted summary judgment that Fritz Edward Hartmann cannot have his passport renewed. The parties will therefore have until October 31, 2016, to complete discovery and until November 22, 2016, to file and serve dispositive motions.

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FSM SUPREME COURT TRIAL DIVISION

ATHANASIOS THALMAN,	)	CIVIL ACTION NO. 2015-3002
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
FEDERATED STATES OF MICRONESIA	)	
SOCIAL SECURITY ADMINISTRATION,	)	
	)	
Defendant.	)	

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ORDER GRANTING SUMMARY JUDGMENT

Dennis K. Yamase  
Chief Justice

Hearing: September 19, 2016  
Decided: September 28, 2016

APPEARANCES:

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HEADNOTES

Civil Procedure – Motions – Unopposed; Civil Procedure – Summary Judgment – Procedure

When an opposing party has not filed a response to a summary judgment motion, that party is deemed to have consented to the motion's grant, and the court may decline to hear oral argument from

that party. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 627 (Yap 2016).

#### Civil Procedure – Motions – Unopposed

Even when there is no opposition filed and consent deemed given, the court still needs good grounds before it can grant the motion, especially when the non-movant was permitted, without objection, to orally oppose the motion. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 627 (Yap 2016).

#### Administrative Law – Judicial Review; Social Security

Since, by statute, the findings of the Social Security Board as to the facts, if supported by competent, material, and substantial evidence, are conclusive, the statute thus requires that the court use the "substantial evidence" or "reasonableness" standard of review. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 628 (Yap 2016).

#### Administrative Law – Judicial Review

Generally there are three standards of review for administrative decisions: 1) arbitrary and capricious, or abuse of discretion; 2) reasonableness, or substantial evidence; and 3) de novo, or agreement review. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 628 n.2 (Yap 2016).

#### Evidence – Burden of Proof

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion. It consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Substantial evidence is also evidence of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment might reach different conclusions. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 628 (Yap 2016).

#### Social Security – Claims and Benefits

For Social Security benefit purposes, a disability is the inability to engage in any substantial gainful employment by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. Substantial gainful employment is not only an inability to engage in the applicant's previous occupation or work, but also means that based on the applicant's education, experience, and limitations, there are no other occupations that the applicant could perform. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 628 (Yap 2016).

#### Social Security – Claims and Benefits

Persons are entitled to Social Security disability benefits if they are currently and fully insured, are disabled and have been so for at least three full calendar months, and have filed a complete application with the Social Security Administrator for disability insurance. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 628 (Yap 2016).

#### Social Security – Claims and Benefits

A Social Security claimant becomes entitled to benefits once he or she has applied and has provided convincing evidence of entitlement. A Social Security benefit applicant is responsible for providing the evidence needed to prove his or her entitlement to Social Security benefits. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 628 (Yap 2016).

#### Social Security – Claims and Benefits

When a Social Security decision was supported by competent, material, and substantial evidence that the applicant was not disabled because he was capable of engaging in his former occupation or a similar occupation, that finding is conclusive as to the fact that, when Social Security and later the

Thalman v. FSM Social Sec. Admin.  
20 FSM R. 625 (Yap 2016)

Social Security Board made their determinations, the applicant was not sufficiently impaired to qualify as disabled for Social Security disability benefits. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 628 (Yap 2016).

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COURT'S OPINION

DENNIS K. YAMASE, Chief Justice:

On September 19, 2016, this came before the court to hear the defendant's pending summary judgment motion, filed, with supporting exhibits, on November 30, 2015. The plaintiff, Athanasius Thalman, did not file an opposition.

When an opposing party has not filed a response to a summary judgment motion, that party is deemed to have consented to the motion's grant, FSM Civ. R. 6(d), and the court may decline to hear oral argument from that party. Actouka v. Kolonia Town, 5 FSM R. 121, 123 (Pon. 1991). However, the defendant, FSM Social Security Administration, did not object to Thalman's counsel presenting oral argument. It only objected to Thalman presenting a witness to testify about his current medical condition. Thalman was thus permitted to present his opposition orally. But even when there is no opposition filed and consent deemed given, the court still needs good grounds before it can grant the motion, especially when the non-movant was permitted, without objection, to orally oppose the motion. Helgenberger v. Mai Xiong Pacific Int'l. Inc., 17 FSM R. 326, 330 (Pon. 2011).

I. BACKGROUND AND PROCEDURAL HISTORY

Thalman has diabetes. He complains that this causes diminished hearing and eyesight. He formerly worked in the FSM Public Defenders' Office on Yap where he was a manager and a legal practitioner. He last worked there in March 2013. Sometime thereafter, he applied for Social Security disability benefits, asserting that he had become unable to work after March 12, 2013. On December 1, 2014, a Social Security Claim Officer, along with the Social Security Yap Branch Manager, visited the then 53-year-old Thalman at his home and interviewed him there.

On December 14, 2014, Guam-based Social Security Disability Consultant John Vanderburgh issued his evaluation based on medical records from 2008 through August 1, 2013, and the December 1, 2014 home interview. Vanderburgh noted the lack of a confirmation from Thalman's employer of his medical retirement date, of his earnings record, of hearing test results, and of a visual acuity report. Vanderburgh concluded that Thalman was "able to stand/walk for at least 2 hours out of an 8-hour day with normal breaks, and to lift/carry 20 lbs. occasionally." and that Thalman "therefore should be capable of performing his past work." Vanderburgh thus concluded that Thalman did not meet or equal listings as impaired.

On January 23, 2015, the Social Security Administrator denied Thalman's application on the ground that Thalman's condition was not disabling. Thalman appealed to the Social Security Board. On June 19, 2015, the Board held a hearing at which Thalman and Dr. Gimots testified. On July 13, 2015, the Board issued its order denying Thalman's appeal. On September 9, 2015, Thalman appealed that denial to the FSM Supreme Court trial division.

II. JUDICIAL REVIEW

Social Security asks that the court adopt an abuse of discretion standard to review the Board's

decision. That the court cannot do. Congress has legislated the standard of review. By statute, "[t]he findings of the Board as to the facts, if supported by competent, material, and substantial evidence, shall be conclusive." 53 F.S.M.C. 708.<sup>1</sup> The statute thus requires that the court use the "substantial evidence" or "reasonableness" standard of review.<sup>2</sup>

"Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion. It consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance." George v. Albert, 17 FSM R. 25, 33 n.3 (App. 2010). Substantial evidence is also "evidence of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment might reach different conclusions." Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 656 (App. 2011).

### III. DISABILITY

For Social Security benefit purposes, a disability is the "inability to engage in any substantial gainful employment by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 53 F.S.M.C. 603(6). "Substantial gainful employment" is "not only an inability to engage in your previous occupation or work, but also means that based on your education, experience and limitations there are no other occupations that you could perform." Social Security Reg. § 100.2. Persons are entitled to Social Security disability benefits if they are currently and fully insured, are disabled and have been so for at least three full calendar months, and have filed a complete application with the Social Security Administrator for disability insurance. 53 F.S.M.C. 803A.

"A [Social Security] claimant becomes 'entitled' to benefits once he [or] she has applied and has provided convincing evidence of entitlement." Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 367 (Pon. 2016) (relying on Social Sec. Reg. § 100.2). A Social Security benefit applicant is responsible for providing the evidence needed to prove his or her entitlement to Social Security benefits. *Id.* at 369-70 (citing Social Sec. Reg. § 100.5). The evidence Thalman provided was insufficient to be convincing.

Social Security based its decision to deny Thalman's application on the home interview, Vanderburgh's evaluation of Thalman's file including the medical records it contained and the interview report, and the lack of certain information and records that, if present, might have further supported Thalman's claim.

The court therefore concludes that the Social Security decision was supported by competent, material, and substantial evidence that Thalman was not disabled because he was capable of engaging in his former occupation or a similar occupation. That finding is therefore conclusive as to the fact that, when Social Security and later the Social Security Board made their determinations, Thalman was not sufficiently impaired to qualify as disabled for Social Security disability benefits.

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<sup>1</sup> See also Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 366, 372 (Pon. 2016); Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 272 (Pon. 2015); Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 200 (Pon. 2015).

<sup>2</sup> "Generally there are three standards of review for administrative decisions: 1) arbitrary and capricious, or abuse of discretion; 2) reasonableness, or substantial evidence; and 3) de novo, or agreement review." GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 554 n.2 (Pon. 2014) (citing 33 CHARLES A. WRIGHT & CHARLES H. KOCH, JR., FEDERAL PRACTICE AND PROCEDURE § 8331, at 155 (2006)).

IV. CONCLUSION

Accordingly, Social Security's denial of disability benefits for Athanasius Thalman is affirmed.

Thalman asserts that his condition has worsened and that he now requires dialysis treatment to survive. If this is so, the court urges Thalman to provide Social Security the necessary supporting evidence and to either reapply for or, if it is possible, amend his application for Social Security benefits and proceed based on his current condition.

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FSM SUPREME COURT APPELLATE DIVISION

TADASY ANDREW and HEIRS OF )  
EDMOND TULENKUN, )  
 )  
 Appellants, )  
 )  
 vs. )  
 )  
 HEIRS OF TULENSRU SEYMOUR, )  
 )  
 Appellees. )  
\_\_\_\_\_ )

APPEAL CASE NO. K5-2016

ORDER OF DISMISSAL

Decided: September 28, 2016

BEFORE:

Hon. Dennis K. Yamase, Chief Justice, FSM Supreme Court  
Hon. Ready E. Johnny, Associate Justice, FSM Supreme Court  
Hon. Camillo Noket, Specially Assigned Justice, FSM Supreme Court\*

\* Chief Justice, Chuuk State Supreme Court, Weno, Chuuk

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