

# Standard of review in federal district courts

Law



A substantial evidence standard of review was defined in *Richardson v Perales*, 402 US 389, 401 (1971) as “ such relevant evidence as a reasonable mind might accept as adequate to support a decision.” A reviewing court must set aside the decision of the trial court if it finds that the evidence used in supporting the decision lacks substance taking into account the evidence in the case’s record that opposed such findings (*Universal Camera Corp v NLRB* 340 US 474, 488 [1951]). In deciding whether evidence is substantial or not, the US Supreme Court in the *Richardson* case reminds appellate courts that is “ more than a mere scintilla.” Five decided cases that made use of this standard are the following:

*Kober v. Apfel*, 133 F. Supp. 2d 868 (2001)

*Bowers v Astrue*, 555 F. Supp. 2d 1241 (2008)

*O’Connor v Barnhart*, 2004 U. S. Dist. LEXIS 19537

*Dunn v. Astrue*, 660 F. Supp. 2d. 1290 (2009)

*Hensley v Barnhart*, 352 F. 3d 353 (2003)

A *de novo* standard of review is one where a “ reviewing court makes an original appraisal of all the evidence to decide whether or not it believes [the conclusions of the trial court]” (*Bose Corporation v Consumers Union of the US, Inc.* 466 US 485, 514 [1984]). A *de novo* standard of review applies when there is an error of law (*Kober v Apfel*, 133 F. Supp. 2d 868 [2001]) or a mixed error of law and facts (*Johnson v Employment Security*, 112 Wn. 2d 172 [1989]). This standard of review was used in the following cases:

*Kober v. Apfel*, 133 F. Supp. 2d 868 (2001)

*Amanda J. v Clark County School District*, 267 F. 3d 877, 887-88 (2001)

*Deal v Hamilton County Dept. of Education*, 259 F Supp. 2d 687 (2003)

*Closson v Astrue* (2008) U. S. Dist. LEXIS 13129

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Johnson v Employment Security 112 Wn. 2d 172 (1989)

Any decision to elevate Mickey McDivet's case must take into account the two standards of review, which the federal district courts commonly use in reviewing a case. The issues that an appealing party cites as the basis for the appeal usually determine the standard that the court will use. An assignment of error of law, for example, will subject it to a de novo standard review and an assignment of error of fact on the part of the ALJ will subject it to a substantial evidence standard of review. An assignment of both types will create subject it to both standards.