



Published on *United States Bankruptcy Court* (<http://www.canb.uscourts.gov>)

[Home](#) > Memorandum of Decision Re: Disability Homestead Exemption

---

Thursday, June 8, 2000

**UNITED STATES BANKRUPT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

In re

DAVID CLOWES and KATHARINE STADTER,

No. 99-13888

[Debtor](#) <sup>i</sup>(s).

---

**Memorandum of Decision**

The normal California homestead exemption is \$75,000.00. However, California Code of Civil Procedure §704.730(a)(3)(B) provides that the exemption is \$125,000.00 for "[a] person physically or mentally disabled and as a result of that disability is unable to engage in substantial gainful employment." Debtor David Clowes has claimed the disability homestead exemption based on his atrophied left leg caused by polio. The objection of [creditor](#) <sup>i</sup>Six Rivers National Bank is now before the court. In order to be eligible for the increased exemption, a debtor must be both disabled and unable to engage in substantial gainful employment. The term "substantial gainful employment" is the same term used in federal social security law. Federal rules define the term as the ability to earn at least \$700 per month. 20 CFR § 404.1574. Pursuant to FRBP 4003(c), the objecting party has the burden of proving an exemption is not properly claimed. *In re Rostler*, 169 B.R. 408, 411 (Bkrcty.C.D.Cal. 1994). There is no doubt that Clowes is seriously disabled; his leg is atrophied and he needs a cane to walk. He cannot stand for any length of time, nor can he walk for extended distances. However, the Bank alleges that he earns more than \$700.00 per

month, and therefore does not meet the second part of the test. Clowes is self-employed as a saddle maker, and also has earned some money teaching a course at a local college. His income was, at the time of the bankruptcy filing, about \$1000.00 per month. His wife, who is partially disabled, earns about \$75.00 per month. If the court were free to make its own definition of "substantially gainful employment," it would not use the Social Security amount of \$700.00, which amounts to poverty level income. However, it seems clear that the California legislature, by use of the phrase, intended that definition. There is no other definition in any case law, nor has Clowes urged a different definition. Accordingly (albeit reluctantly), the court concludes that Clowes is capable of substantial gainful employment.

However, there is unrebutted evidence that debtor Katherine Stadter is disabled and earns less than \$1,000.00 per year. The statute does not call for combining income; if *either* the debtor or his spouse meets the requirements of § 704.730(a)(3)(B), then they may [claim](#) the higher homestead amount. The Bank having failed to meet its burden of proof, its objection must be overruled. However, since both sides focused their attention on Clowes alone, the Bank may seek reconsideration if it wishes to present any evidence that the higher homestead amount is not justified by Stadter's disability. Counsel for the debtors shall submit an appropriate form of order.

Dated: June 8, 2000

---

Alan Jaroslovsky

U.S. [Bankruptcy Judge](#)

---

**Source URL (modified on 11/04/2014 - 2:16pm):**

<http://www.canb.uscourts.gov/judge/jaroslovsky/decision/memorandum-decision-re-disability-homestead-exemption-1>