

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4185
(Summary Calendar)

DONALD L. ROLLAND,
SSN XXX-XX-XXXX,

Plaintiff-Appellant,

versus

U.S. SECRETARY OF HEALTH
& HUMAN SERVICES,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(CA 91-1092)

(March 8, 1994)

Before JOLLY, WIENER and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Plaintiff-Appellant Donald L. Rolland appeals the decision of the district court affirming the decision of Defendant-Appellee U. S. Secretary of Health & Human Services (the Secretary), which denied Supplemental Security Income (SSI) and Disability Insurance

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Benefits (DIB), pursuant to 42 U.S.C. § 405(g). At issue is whether, in determining that Rolland could perform light work, the Administrative Law Judge (ALJ) properly used the Medical-Vocational Guidelines rather than relying on vocational expert testimony. Agreeing with the district court that the Secretary's decision is free of reversible legal error and is supported by substantial evidence, we affirm.

I

FACTS AND PROCEEDINGS

On September 26, 1989, Rolland applied for SSI and DIB, alleging that he had been disabled since April 15, 1986, due to dizzy spells. These applications were denied initially and on reconsideration. When filing for reconsideration, Rolland amended his complaint to include limitations arising from a stomach hernia.

Rolland next requested and received a hearing before an ALJ. The ALJ determined that Rolland was unable to perform his past work but had the residual functional capacity to perform a wide range of light work. The ALJ thus held that Rolland was not disabled within the meaning of the Social Security Act (SSA). The decision of the ALJ became the final decision of the Secretary when the Appeals Council denied Rolland's request for review.

Rolland then filed suit in the district court seeking review of the Secretary's decision. The parties later filed cross motions for summary judgment. The district court approved the report and recommendation of the magistrate judge over Rolland's objections and granted the Secretary's summary judgment motion.

The following salient facts were presented for the Secretary's determination. Rolland was born on August 8, 1933. He has an eighth grade education and has worked as a shrimper, deck hand, boat captain, and truck driver. In 1985, Rolland underwent coronary artery bypass surgery and then returned to work. On June 28, 1989, Rolland visited the Louisiana State University (LSU) Medical Center in Shreveport, complaining of occasional spells of lightheadedness that seemed to come in clusters and last about an hour. He reported that he had experienced dizzy spells for about a year, and that the last spell occurred three weeks before his visit to the LSU Medical Center. When it was noted that Rolland smoked four packs of cigarettes a day, he was urged to quit smoking. On July 12th, Rolland was given a stress test, the result of which was "[n]ondiagnostic due to failure to achieve target heart rate." An Echo/Doppler report in August stated that Doppler studies had "failed to demonstrate significant valvular regurgitation or stenosis."

On August 21, Rolland returned to the LSU Medical Center with complaints of lower back pain, for which ibuprofen was prescribed. In September, an EEG was interpreted as "probably" normal. Also in September, Rolland visited the LSU Medical Center emergency room complaining of dizziness. He was unsure how long the spells lasted but guessed that they lasted only a few seconds. Neither could Rolland say whether he suffered a loss of consciousness during the spells. Carotid ultrasound testing on September 26 revealed no definite abnormalities.

On October 5, Rolland returned for a follow-up visit. His medical report indicates that he was not taking his medications, and that he continued to smoke. A CAT scan was reported as normal. Rolland was instructed to stop smoking and to return if the dizziness continued.

At the hearing before the ALJ, Rolland testified that he was taking medications for dizziness, back and chest pain, as well as for his heart. According to Rolland, the drug prescribed to treat his dizziness was not effective initially, but that since he started taking a stronger dosage he had experienced fewer spells. Rolland also complained of having pain in his left leg, ankle, and side. He stated that he had been advised not to lift more than 20 pounds, that his back hurt after 15 to 20 minutes of standing, that he could only sit for about an hour at a time, and that he had difficulty bending. Rolland admitted that he still smoked about a pack of cigarettes a day. Rolland's wife essentially corroborated his testimony.

II

ANALYSIS

In reviewing the Secretary's decision to deny disability benefits, we seek to determine whether there is substantial evidence in the record to support the decision and whether the proper legal standards were used in evaluating the evidence. Villa v. Sullivan, 895 F.2d 1019, 1021 (5th Cir. 1990). Substantial evidence is more than a scintilla but less than a preponderance. It is such relevant evidence as a reasonable mind

might accept as adequate to support a conclusion. Villa, 895 F.2d at 1021-22. In applying this standard, we may not reweigh the evidence or try the issues de novo, but must review the entire record to determine whether substantial evidence exists to support the Secretary's findings. Id. at 1022.

The SSA defines disability as the "inability to engage in any substantial gainful activity 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." 42 U.S.C. § 423(d)(1)(A). The same law and regulations govern the determination whether a claimant is "disabled" for SSI or DIB purposes. Haywood v. Sullivan, 888 F.2d 1463, 1467 (5th Cir. 1989). The Secretary follows a five-step process in evaluating a disability claim. A finding that a claimant is not disabled at any step terminates the sequential evaluation. Crouchet v. Sullivan, 885 F.2d 202, 204, 206 (5th Cir. 1989). The five steps are:

- 1) Claimant is not presently working;
- 2) Claimant's ability to work is significantly limited by a physical or mental impairment;
- 3) Claimant's impairment meets or equals an impairment listed in the appendix to the regulations (if so, disability is automatic);
- 4) Impairment prevents claimant from doing past relevant work;
- 5) Claimant cannot perform relevant work.

See Muse v. Sullivan, 925 F.2d 785, 789 (5th Cir. 1991); 20 C.F.R. § 404.1520.

At the first four steps of the analysis, the initial burden is on the claimant to prove that he is disabled. At the fifth step, the burden shifts to the Secretary to show that there is other substantial work in the national economy which the claimant can perform. Wren v. Sullivan, 925 F.2d 123, 125 (5th Cir. 1991). In determining whether a claimant can perform any other work, the ALJ considers the claimant's age, education, work experience, and residual functional capacity. Selders v. Sullivan, 914 F.2d 614, 618 (5th Cir. 1990); 20 C.F.R. § 404.1561.

In evaluating Rolland's claim, the ALJ reached the fifth step of this process. The ALJ considered Rolland's age, education, work experience, and residual functional capacity, concluding that Rolland had the residual capacity to perform light work, reduced in range "by the inability to work at unprotected heights, operate or work near dangerous moving machinery or more than occasionally bend."

Rolland contends that the ALJ improperly used the Medical-Vocational Guidelines in Subpart P Appendix 2 because he has nonexertional impairments that significantly circumscribe his ability to perform light work. He argues that the testimony of a vocational expert was required to show that there were jobs available in the national economy that he could perform. As Rolland failed to object to the magistrate judge's report, however, he "may not attack findings of fact adopted by the district court on appeal except on grounds of 'plain error,' or 'manifest injustice.'" Parfait v. Bowen, 803 F.2d 810, 813 (5th Cir. 1986)

(citation omitted).

When the characteristics of the claimant correspond to criteria in the Medical-Vocational Guidelines of the regulations, . . . and the claimant either suffers only from exertional impairments or his non-exertional impairments do not significantly affect his residual functional capacity, the ALJ may rely exclusively on the Guidelines in determining whether there is other work available that the claimant can perform.

Fraga v. Bowen, 810 F.2d 1296, 1304 (5th Cir. 1987). Otherwise, the ALJ must use vocational testimony or other like evidence to show that such jobs exist. Id.

Rolland claims to have nonexertional limitations due to dizziness and a hernia. Nonexertional limitations describe non-strength related restrictions including limits on a claimant's mental processes or sensory abilities or tolerance of certain environmental conditions. 20 C.F.R. Pt. 404, Subpt. P., App. 2 § 200.00(e). The ALJ determined that Rolland was not disabled because his nonexertional limitations had not "significantly compromised" his capacity for the full range of light work. This finding is supported by substantial evidence. No physician has pronounced Rolland disabled or unable to perform light work activity. Furthermore, as the ALJ noted, Rolland's subjective complaints of pain and dizziness were not consistent with the objective medical evidence. The ALJ thus found Rolland's complaints "credible only to the extent that they would preclude the performance of work activity greater than a light exertional level." As Rolland's claimed non-exertional impairments did not affect his residual functional capacity to perform light work, the

ALJ was entitled to rely exclusively on the Medical-Vocational Guidelines. See Fraga, 810 F.2d at 1304-05. Thus, no plain error or manifest injustice results from our affirmance of the district court's dismissal of Rolland's claim.

AFFIRMED.