UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-5105
Summary Calendar

GEORGE SLAUGHTER, XXX-XX-XXXX,

Plaintiff-Appellant,

versus

SECRETARY OF HEALTH & HUMAN RESOURCES,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
(92-CV-118)

(May 3, 1994)

Before POLITZ, Chief Judge, JONES and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

After injuring his back in a work-related accident, George H. Slaughter applied for disability benefits under Title II of the Social Security Act, 42 U.S.C. § 401 **et seq**. Benefits were denied initially and on reconsideration. Slaughter requested a hearing at

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*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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

which he achieved partial success; an Administrative Law Judge found him disabled from March 25, 1987, the date of his accident, until January 1990, but determined that he had improved enough to work thereafter. The Appeals Council denied review and the ALJ's decision became that of the Secretary of Health and Human Services. Slaughter sought judicial review and on cross-motions for summary judgment the district court denied relief. Slaughter timely appealed.

Slaughter contends that the Secretary's decision is not supported by substantial evidence in that the ALJ did not give appropriate weight to the opinion of his treating physician, Dr. Charles Clark. Dr. Clark, who operated on Slaughter three times, noted in contemporaneous progress reports that Slaughter was improving after the third surgery with abatement of his more severe pain but opined in answers to interrogatories in these proceedings that chronic back disorder with debilitating pain prevented Slaughter from working. Concluding that Dr. Clark was "leaning over backwards" to help his patient and that his opinion was not supported by objective clinical findings, the ALJ declined to assign his opinion controlling weight. The ALJ applied proper legal principles.[1] His determination is supported by substantial evidence. In addition to Dr. Clark's contemporaneous progress reports, the record contains the results of an examination and an EMG test administered by Dr. Leonard Hershkowitz in September 1990.

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[1]20 C.F.R. § 404.1527; **Spellman v. Shalala**, 1 F.3d 357 (5th Cir. 1993); **Scott v. Heckler**, 770 F.2d 482 (5th Cir. 1985).

Dr. Hershkowitz found chronic L5 root syndrome but no evidence of denervation. His assessment of the physical exertion of which he found Slaughter capable satisfied the Secretary's criteria for sedentary work.[2] We decline to disturb the ALJ's credibility assessment with respect to Slaughter's complaints of debilitating pain.[3]

Slaughter also maintains that the ALJ's findings of fact are internally inconsistent. The ALJ found that Slaughter was incapable of doing his prior work but he could do semi-skilled and unskilled sedentary jobs. His findings were supported by the testimony of a vocational expert with one exception: the vocational expert testified that Slaughter had the residual functional capacity to return to one of his previous jobs -- a dispatcher. The inconsistency in crediting the vocational expert's testimony while finding that Slaughter could not perform his prior work as a dispatcher operated to Slaughter's advantage; it shifted the burden to the Secretary to prove that there was other work that Slaughter could do.[4] The Secretary carried her burden. The inconsistency complained of did not affect Slaughter's substantial rights.[5] We find no basis for the requested reversal.

AFFIRMED.

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[2]20 C.F.R. § 404.1567(a).

[3]**Villa v. Sullivan**, 895 F.2d 1019 (5th Cir. 1990).

[4]**Muse v. Sullivan**, 925 F.2d 785 (5th Cir. 1991).

[5]See **Morris v. Bowen**, 864 F.2d 333 (5th Cir. 1988).