

December 9, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 05-30391
Summary Calendar

DAVID J. VIATOR,

Plaintiff-Appellant,

versus

JO ANNE B. BARNHART, COMMISSIONER
OF SOCIAL SECURITY,

Defendant-Appellee.

Appeal from the United States District Court for
the Western District of Louisiana, Lafayette
(USDC No. 6:04-CV-813)

Before REAVLEY, HIGGINBOTHAM, and CLEMENT, Circuit Judges.

PER CURIAM:*

The judgment of the district court is affirmed for these reasons:

1. The Administrative Law Judge considered Mr. Viator's continuing employment as some evidence of his ability to return to his past work, not

*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

as present substantial gainful activity of itself to meet the first step in the evaluation process.

2. There is evidence to support the findings. No medical professional has said that Viator is disabled or cannot return to his prior work. His time walking is not critical for that employment, but the doctor's opinion that he could stand for 30 minutes is not inconsistent with a finding that he could stand for up to six hours in an eight-hour day, allowing for rest between the periods of standing. There is evidence that Viator's physical and mental problems are adequately controlled by medication.
3. The contention about improper use of the vocational expert is unavailing, because the record supported the findings and the expert only corroborated that.

AFFIRMED.