UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-1546
Summary Calendar

LEON WORMUTH,

Plaintiff-Appellant,

versus

DONNA SHALALA, Secretary
of Health and Human Services,

Defendant-Appellee.

Appeal from the United States District Court
for the Nothern District of Texas
(5:91-CV-156-C)

(January 5, 1994)

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

PER CURIAM:[*]

Leon Wormuth appeals the district court's order upholding a decision of the Secretary of Health and Human Services which denied him disability benefits. We affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Background

Wormuth was hospitalized for chest pain in August 1985. Chest x-rays showed a "borderline normal" heart with a possibility of enlargement. After a series of intermediate diagnoses and treatments, Wormuth ultimately underwent coronary bypass surgery. After an uneventful recuperation he was discharged in October 1985. Wormuth's chest pain and soreness continued, however, and his previously vigorous activities became very limited.

Based on his heart condition, Wormuth applied for disability insurance benefits on May 29, 1986. On August 31, 1987 he applied for supplemental security income. Benefits were denied initially, a result upheld after a hearing before an administrative law judge and two remands by an administrative appeals council. During the course of these proceedings Wormuth was referred to several physicians. These physicians, along with other doctors who had treated Wormuth, furnished the medical expert testimony of record. Ultimately the ALJ ruled against Wormuth and the appeals council declined his request for further review, making the denial of benefits final.

Thereafter, Wormuth filed the instant complaint. Both parties moved for summary judgment on the basis of the administrative record. The magistrate judge found that the Secretary's decision was supported by substantial evidence and recommended granting the Secretary's motion. The district court adopted the magistrate judge's report and recommendation over Womuth's objections. Wormuth timely appealed.

Analysis

In reviewing the ALJ's denial of benefits, we will reject the decision if it is not supported by substantial evidence.[1] "Substantial evidence is more than a scintilla, less than a preponderance, and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[2] More specifically, we will reject the ALJ's decision only if supporting credible facts and medical evidence are absent.

The record contains conflicting evidence about the severity of Wormuth's condition and his capacity for sedentary work. That the record contains substantial evidence supporting the ALJ's decision cannot be the subject of serious dispute. There is evidence both ways. At least two doctors attested that Wormuth was completely disabled. Other physicians found him fit for employment in a variety of sedentary jobs. Although we very well might assess the evidence differently were we reviewing it *de novo*, we cannot say that the decision by the ALJ lacks the support of substantial evidence.

The real legal controversy in this case, and the thrust of Wormuth's brief, is whether the record on which the ALJ's decision was based was sufficient. In addition to finding that the ALJ's decision is supported by substantial record evidence, we must determine whether the record has been fully and fairly developed

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[1]42 U.S.C. § 405(g); **Villa v. Sullivan**, 895 F.2d 1019 (5th Cir. 1990).

[2]**Hames v. Heckler**, 707 F.2d 162, 164 (5th Cir. 1983).

and is adequate to support an informed decision.[3]

Two of Wormuth's treating physicians, a cardiologist and a family practitioner, considered Wormuth completely disabled. Four other physicians found Wormuth's capabilities to be limited but consistent with sedentary work activity. Another of the state's medical experts, Dr. Anne Epstein, testified that Wormuth appeared able to perform sedentary work on the basis of evidence collected thus far, but recommended that he be examined by an internist for further study regarding other possible coronary conditions. Wormuth's complaint is that the ALJ did not refer him for an additional examination on the basis of this advice. Given that the ALJ had already referred Wormuth for examination by three internists and that these physicians unanimously found him capable of activity consistent with sedentary employment, the ALJ committed no error requiring rejection of his findings by declining to accept Dr. Epstein's suggestion that he seek yet another opinion.[4]

AFFIRMED.

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[3]**Kane v. Heckler**, 731 F.2d 1216 (5th Cir. 1984) ("It is the duty of the administrative law judge to develop the facts relative to a claim for benefits fully and fairly. When he fails in that duty, he does not have before him sufficient facts on which to make an informed decision. Consequently, his decision is not supported by substantial evidence.").

[4]"The ALJ has a duty to conduct a full and fair inquiry. Here he was confronted with the opinion of an internist and physician that Ms. Bowman was not disabled and the opinion of a psychiatrist that she was. It was fulfillment, rather than a violation, of the regulations and of his statutory duty of fairness to seek another opinion." **Bowman v. Heckler**, 706 F.2d 564, 567-68 (5th Cir. 1983). We thus spoke approvingly of an ALJ who, confronted with doctors who disagreed, sought <u>one</u> additional opinion. The ALJ in the instant case secured three.