UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4448
Summary Calendar

JAMES MIGUES,

Plaintiff-Appellant,

versus

LOUIS SULLIVAN, Secretary
of Health and Human Services,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(90-CV-129)

(February 5, 1993)

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

EDITH H. JONES, Circuit Judge:*

Appellant Migues challenges the district court decision that upheld the denial of Social Security Act disability benefits to him. Finding no error, we affirm.

In April 1988 James Migues applied for disability benefits pursuant to the Social Security Act (SSA). This initial claim was denied on May 25, 1988. Migues then requested a

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

reconsideration of his claim, but it also proved unsuccessful. Subsequently, Migues requested a hearing before an administrative law judge (ALJ). The ALJ found Migues not to be disabled within the meaning of the SSA and denied Migues's claim for benefits. An appeals council upheld the ALJ's decision.

Migues then filed this suit against the Secretary of Health and Human Services (Secretary). The magistrate judge to whom the case was referred recommended upholding the ALJ's findings. Pursuant to 28 U.S.C. § 636(b)(1)(C), the magistrate judge notified the parties that they had ten days from receipt of his report to file any written objections. Migues, however, did not file any objections. The district court subsequently adopted the magistrate judge's conclusions, granted the Secretary's motion for summary judgment, and dismissed Migues's suit. Appellant's failure to file objections to the magistrate judge's recommendation limits the scope of review, see Parfait v. Bowen, 803 F.2d 810, 813 (5th Cir. 1986), but even if we were not so constrained we would find no reversible error.

In reviewing decisions denying disability benefits, this Court must determine whether substantial evidence supports the findings. Harper v. Sullivan, 887 F.2d 92, 95 (5th Cir. 1989). "Substantial evidence" amounts to more than a scintilla of evidence and constitutes such relevant evidence as a reasonable mind might accept as adequate to support the conclusion. Id. Although Migues's brief attempts to characterize its contentions as legal ones, for the most part, the brief simply quarrels with the ALJ's

findings of fact. Hence, the substantial evidence standard applies.

The ALJ found that although Migues suffers back pain and is unable to perform his past relevant work, Migues's impairment does not amount to a "disability" under the SSA. See 42 U.S.C. § 423(d) (definition of "disability"). The ALJ further found that Migues has the residual functional capacity to perform "light work." To be considered capable of doing "light work," a person must be able to do substantially all of the following activities: lift up to twenty pounds frequently; carry up to ten pounds; stand or walk for a considerable amount of time; and sit with some pushing and pulling of arm or leg controls. 20 C.F.R. § 404.1567(b).

In making its findings, the ALJ considered evidence from Dr. Fred C. Webre, an orthopedic surgeon, who examined Migues on two occasions. According to Dr. Webre's first report, dated May 17, 1988, Migues had full neck mobility. In addition, Migues could walk without a limp and could walk on his heels and toes with no difficulty. Migues also had full range of motion in the shoulders, elbows, wrists, hands, hips, knees, and ankles. Dr. Webre further found no reflex, sensory, or circulatory deficits; no sciatic irritation; and no muscle weakness. He concluded that Migues's symptoms were compatible with spondylolisthesis, which caused back pain with excessive activity.

On December 19, 1988, Dr. Webre examined Migues again. Dr. Webre assessed that Migues could lift fifty pounds "occasionally"

and twenty-five pounds "frequently." He further found that Migues's standing, walking, and sitting abilities were not impaired. Dr. Webre's report further reflects that Migues could climb, stoop, crouch, and crawl "occasionally" but that he could kneel and balance "frequently." Migues, moreover, could push or pull -- but not more than fifty pounds.

Migues's testimony reflects that the pain in his back hardly stops. Although he testified that he cannot do much walking, he admitted that he "can walk around the yard a lot." He can also work in his garden for short periods of time. His garden work, moreover, requires him to stoop "a little bit." He further admitted that he can lift thirty to forty pounds.

John William Grimes, a rehabilitation counselor, testified as the vocational expert. When asked whether Migues could find work in the national economy if he were found capable of performing light work, Grimes responded that considering Migues's age, education, and past work, there would be "numerous" occupations for Migues. "Light work" includes custodial work or work in a dry-cleaning establishment. It also includes working as a messenger, meter reader, light-machine operator, crossing guard, or service-station attendant.

Migues contends that his subjective complaints of pain, alone, provide a basis for a finding of disability. Blue brief, 11-15. The mere existence of pain, however, does not automatically create grounds for disability, and subjective evidence of pain will not take precedence over conflicting medical evidence. Harper v.

Sullivan, 887 F.2d at 96. In addition, Migues does not direct this Court's attention to any objective medical evidence supporting his position.

Substantial evidence supports the finding that Migues's impairment, although perhaps painful, is not "disabling" as that term is defined by the SSA. Further, we cannot consider the contention that appellant's back impairment satisfied the Appendix 1 listings, because it is newly raised on appeal. Chaparro v. Bowen, 815 F.2d 1008, 1011 (5th Cir. 1987).

The judgment of the district court is AFFIRMED.