UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-4868
Summary Calendar

JOSEPH DRAYTON,

Plaintiff-Appellant,

VERSUS

DONNA E. SHALALA, Secretary
of Health and Human Services,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(CA-91-1058)

(November 12, 1993)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:[1]

Joseph Drayton appeals the district court's summary judgment affirming the Secretary's denial of social security benefits. We affirm.

I.

Drayton, a former truck driver, fisherman and roustabout, was born in 1945. He has a sixth grade education. Drayton claims disability primarily because of back complaints. He was examined

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

by a number of physicians, all of whom found complaints consistent with a bulging disc. The ALJ generally accepted the opinion of Dr. Razza which we describe below.

Dr. Razza examined Drayton on December 13, 1988. Drayton complained of intermittent pain down his right leg and pain in his left leg. Drayton's main complaint was chronic low back pain. Dr. Razza's exam revealed mild spasm but no neurologic deficits. Dr. Razza noted that Drayton's right index finger was amputated after an injury in 1964. His impression was that Drayton suffered from chronic low back pain, with mild intermittent radiculopathy in the lower extremities, and mild lumbar spondylosis. Dr. Razza confirmed a mild disc bulge at L-5/S-1. He further concluded that Drayton could perform work activity that did not require repetitive lifting of more than 15 pounds, infrequent lifting of more than 40 to 50 pounds, prolonged sitting, prolonged standing, repetitive bending, stooping, or climbing. Dr. Razza stated that he did not find any of the classic signs of a disc herniation and instead felt that Drayton may have an internal disc derangement, associated with the lumbar spondylosis, which was likely rendered symptomatic by the work accident.

Drayton testified at the hearing that he suffered from a "jabbing sharp pain" in his left leg. Bending over, sitting for more than thirty minutes, or staying in the same position exacerbated his back pain. On a scale of one to ten, with ten being the most severe, he rated the pain in his left leg as a ten and pain in his back as a seven. He also experienced severe

episodes of back pain lasting for a least one hour a day and severe episodes of left leg pain lasting for 35 to 45 minutes a day. Drayton's pain affected his sleep and restricted his daily activities.

II.

A.

Drayton argues that the court erred when it granted summary judgment because the ALJ'S decision to deny benefits is not supported by the evidence.

"[R]eview of the Secretary's denial of disability benefits is limited to determining whether the decision is supported by substantial evidence in the record 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, less than a preponderance, and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." **Id**. at 1021-22 (internal quotation omitted).

The Secretary has promulgated a five-step sequential process to determine whether a claimant is disabled:[2]

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[2] (1) An individual who is working and engaging in substantial gainful activity will not be found disabled regardless of the medical findings.

(2) An individual who does not have a "severe impairment" will not be found to be disabled.

(3) An individual who meets or equals a listed impairment in Appendix 1 of the regulations will be considered disabled

A disability determination at any point in the five-step analysis is conclusive and terminates any further analysis.

B.

Drayton first challenges the ALJ's finding as to the third step of the sequential process, arguing that his injuries meet or equal the injuries listed in Appendix 1. Regarding disorders of the spine, Appendix 1 includes:

> Other verebrogenic disorders (e.g. herniated nucleus puplosus, spinal stenosis) with the following persisting for at least 3 months despite prescribed therapy and expected to last 12 months. With both 1 and 2:
>
> > 1. Pain, muscle spasm, and significant limitation of motion in the spine; and
> >
> > 2. Appropriate radicular distribution of significant motor loss with muscle weakness and sensory and reflex loss.

20 C.F.R. part 404, Subpart P, App. 1, § 1.05 (1992).

Drayton argues that nerve conduction studies which are missing from the record revealed that he had significant sensory and reflex loss. He suggests that Dr. Razza ordered the studies in the first

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> without consideration of vocational factors.
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> (4) If an individual is capable of performing the work he has done in the past, a finding of "not disabled" must be made.
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> (5) If an individual's impairment precludes him from performing his past work, other factors including age, education, past work experience, and residual functional capacity must be considered to determine if other work can be performed.

Harrell v. Bowen, 862 F.2d 471, 475 (5th Cir. 1988).

place because Razza felt that Drayton's reflex loss and decreased range of motion was severe enough to warrant such studies. While Drayton's medical records reflect that he had radicular pain, some limitation of motion and muscle spasm, none demonstrate that he had significant motor loss with muscle weakness and sensory and reflex loss. Therefore, the district court correctly concluded that sufficient evidence supported the ALJ's finding that Drayton was not disabled by any of the impairments listed in Appendix 1.

C.

Drayton also challenges the ALJ's finding as to the fifth step, asserting that his impairment precludes him from performing the work suggested by the vocational expert. Specifically, Drayton argues that the evidence does not support the ALJ's findings that he has even a "marginal education," that his complaints of pain were not credible, and that he is capable of light work.

The ALJ considered vocational expert testimony and applied Rules 201.18 and 202.17 of Appendix 2 to find that Drayton could perform jobs involving sedentary and light work activity.[3] The vocational expert testified that a person with Drayton's residual functional capacity, age, education, and past work experience could

[3] "Sedentary work" involves lifting no more than 10 pounds at a time, with occasional lifting of objects such as docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. 20 C.F.R. § 404.1567(a) (1992). "Light work" involves lifting no more than 20 pounds at a time, and frequent lifting and carrying objects weighing up to 10 pounds. Light work also involves a considerable amount of standing or walking during the work day. 20 C.F.R. § 404.1567(b) (1992).

perform the sedentary and light jobs of delivery driver, laundry worker, packager and inspector, and parking lot attendant. Rule 201.18 directs a finding of "not disabled" for a claimant age 18-49, who has a limited or less education, but is literate and able to communicate in English, has unskilled work experience, and the capacity for sedentary and light work activity. 20 C.F.R. part 404, Subpart P., App. 2, Rule 201.18 (1992). A claimant bears the burden of proving that he is disabled under the Social Security Act. **Selders v. Sullivan**, 914 F.2d 614, 618 (5th Cir. 1990). Thus, Drayton must rebut this finding to overturn the ALJ's decision.

Drayton's educational level

Drayton contends that the ALJ improperly classified his educational level as "marginal," and asserts that he is functionally illiterate. A claimant's educational level is "marginal" if he has a sixth-grade education or less, and has reasoning, arithmetic, and language skills which are needed to do simple, unskilled types of jobs. 20 C.F.R. § 404.1564(b)(2) (1992). "Illiteracy" is defined as the inability to read or write a simple message and, generally, an illiterate person has had little or no formal schooling. 20 C.F.R. § 404.1564(b)(1) (1992).

Drayton testified that he had a least a sixth-grade education and that he was able to read and write small words. The vocational expert testified that Drayton's past work as a truck driver would have required him to understand and observe traffic regulations, and to use some degree of arithmetic to collect delivery receipts

or money, or to calculate and record mileage. Thus, the record contains substantial evidence that Drayton was able to read and write simple messages, and that he had the reasoning, arithmetic, and language skill necessary for simple, unskilled work. Therefore, sufficient evidence supports the ALJ's classification of Drayton's educational level as marginal.

ALJ's evaluation of Drayton's pain

Drayton complains that the evidence does not support the ALJ's finding that Drayton's complaints of pain were not credible. While the ALJ must consider a claimant's subjective complaints of pain, not all pain is disabling. **Hollis v. Bowen**, 837 F.2d 1378, 1384 (5th Cir 1988). Moreover, judgment as to the credibility of testimony is the province of the ALJ. This court does not reweigh the evidence. **Carrier v. Sullivan**, 944 F.2d 243, 247 (5th Cir. 1991). A claimant's subjective complaints must be corroborated, at least in part, by objective medical evidence of an impairment which could be expected to cause the alleged pain or limitation. **Wren v. Sullivan**, 925 F.2d 123, 128-29 (5th Cir. 1991).

Drayton's medical records show that he had no neurological difficulty. Drayton testified that his activities include fishing, attending church, visiting, driving five miles per week, walking one block, sitting on his neighbor's porch, and watching television. He also stated that he suffers from back pain for about an hour a day and leg pain for about thirty-five to forty minutes a day. Consequently, the evidence supports the ALJ's

finding that Drayton's complaint that pain precluded him from sedentary to light work activity was not credible.

ALJ's determination that Drayton is able to perform light work

Drayton argues that the ALJ erroneously found that he could perform the full range of light work activity. The ALJ did not find, however, that Drayton could perform the full range of light work, but listed examples of jobs he could perform. Drayton asserts that he is unable to perform the prolonged sitting and standing requirements of light work. He further contends that his missing fingers, leg pain, hypertension, and heart problems also prevent him from doing light work.

The ALJ included the work restrictions issued by Dr. Razza, which included a limitation on prolonged standing or sitting, in a hypothetical question to the vocational expert. Dr. Razza stated that Drayton could perform the lifting requirements of light work despite his missing fingers. The ALJ also included limitations due to missing fingers in his hypothetical question. The vocational expert identified jobs that did not require fine manual dexterity. Also, Drayton's medical records show that he was asymptomatic for his Wolff-Parkinson-White Syndrome. Thus, substantial evidence supports the ALJ's decision that Drayton could perform a wide range, not the full range, of light work activity.

ALJ's hypothetical question to the vocational expert

Drayton complains that the ALJ's hypothetical question to the vocational expert failed to include all of his impairments because it did not reference Dr. Razza's 15-pound lifting restriction; his

missing fingers, hypertension, or Wolff-White Syndrome; that he must lie down to get pain relief; or the side effects of his pain medication.

The ALJ's omission of the 15-pound lifting restriction does not require reversal because the ALJ requested the vocational expert to limit herself to light jobs, which require frequent lifting of only 10 pounds (**see** 20 C.F.R. § 404.1567(b) (1992)). **See Anderson v. Sullivan**, 887 F.2d 630, 634 (5th Cir. 1989) (error is not reversible unless substantial rights affected). Additionally, Drayton's medical records contain no mention of restrictions because of his hypertension and Wolff-Parkinson-White Syndrome or that he had to lie down to get pain relief. Likewise, Drayton's medical records do not reflect that he complained of side-effects from his medication. Drayton argues that the absence of complaints regarding side effects from the pain medication is not a basis for discrediting his subjective testimony regarding same. Drayton, however, did not attempt to have this included in the hypothetical at the hearing. **See Morris v. Bowen**, 864 F.2d 333, 336 (5th Cir. 1988). As to Drayton's missing fingers, the transcript shows that the ALJ included this limitation in his question.

ALJ's reliance on the vocational expert's testimony

Drayton argues that the vocational expert's testimony cannot constitute substantial evidence of his ability to perform work in the national economy. Specifically, Drayton asserts that he cannot perform the jobs identified by the vocational expert (light

delivery driver, light laundry, packager and inspector, and parking lot attendant) because the **Dictionary of Occupational Titles** (Revised 4th Ed. 1991) (**DOT**) describes "light delivery jobs" as "medium" type work. **Id**. at 27 (citing **DOT** §§ 292.353-010, 292.463-010). Drayton contends that "medium" type work is outside of his functional abilities. **Id**.

The **DOT**, however, lists light-level laundry worker and delivery driver jobs. **See DOT** §§ 292.687-010, 361.684-018, 361.687-030, 369.387-010. Although the **DOT** states that the job of hand packer is a medium-level work activity (**DOT** § 920.587-018), the **DOT** also identifies a number of light-level packaging/inspecting jobs. **See** DOT §§ 920.665-010, 920.685-026, 920.685-030, 920.685-054, 920.686-050, 920.687-166.

Drayton contends that he is unable to perform the arithmetic required of a light delivery driver or to meet its language requirements. The vocational expert testified that Drayton's past work as a truck driver would have required him to use some arithmetic to collect delivery receipts or money, to calculate and record mileage, and to understand and observe traffic regulations. Drayton asserts that the vocational expert never questioned Drayton about the skills required in his past work as a truck driver and that, therefore, the evidence is unreliable. The ALJ, however, is authorized to look to vocational expert testimony on issues involving transferability of skills. **See** 20 C.F.R. § 404.1566(e) (1992). Therefore, the evidence supports the ALJ's conclusion that Drayton could perform the work of a light delivery driver.

Drayton asserts that he cannot do the work of a "light laundry worker" because it requires either lifting over 50 pounds or that the employee have a higher educational level than Drayton. He adds that these positions require that workers use heavy and dangerous machinery and that the side effects from his pain medication prevent operation of machinery. The vocational expert testified, however, that there are light laundry jobs that require no skills at all and provide on-the-job training.

Drayton argues that his missing fingers prevent him from performing not only laundry jobs, but packager and inspector, and parking lot attendant as well. The vocational expert testified that the jobs she identified did not require manual dexterity, could be performed alternating sitting with standing, and did not exceed the lifting requirements of light work. Drayton's missing fingers apparently did not hinder him in his past work as a truck driver or roustabout. Thus, the evidence supports the ALJ's finding that, although he could not perform his past work, he could perform other work.

AFFIRMED.