

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5108
(Summary Calendar)

THELMA WATSON,

Plaintiff-Appellant,

versus

DONNA SHALALA,
Secretary of the United States
Department of Health and
Human Services,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana

(CA-91-1291 "L")

(September 22, 1993)

Before JOLLY, WIENER and E. M. GARZA, Circuit Judges.

PER CURIAM:*

Plaintiff-Appellant Thelma Watson appeals the dismissal of her petition to set aside the decision of the Secretary of the United

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

States Department of Health and Human Services (the Secretary) that Watson was not disabled within the meaning of the Social Security Act, 42 U.S.C. § 423(d)(1)(A). Watson claims that she was denied a full and fair hearing and that there was not substantial evidence to support the Secretary's decision that she was not thus disabled. For the reasons set forth below, we affirm the district court's dismissal of Watson's petition.

I

FACTS AND PROCEEDINGS

Watson filed an application for disability insurance benefits and supplemental security income (SSI), alleging that she had been disabled since April 1989 as a result of hypertension and a nervous disorder. The application was denied initially and again upon reconsideration. Following a de novo hearing, the Administrative Law Judge (ALJ) determined that Watson was not disabled. The Appeals Council denied her request for review of the ALJ's decision, and that decision became the final decision of the Secretary.

Watson filed a petition in district court to set aside the Secretary's decision. The magistrate judge recommended that the Secretary's motion for summary judgment be granted and the district court did so, dismissing Watson's complaint with prejudice.

II

ANALYSIS

A. Counsel and Full and Fair Hearing

Watson argues that she was denied a full and fair

administrative hearing because she was not adequately informed of her statutory right to counsel and the options for obtaining counsel free-of-charge, and because the ALJ did not adequately develop the facts of her case during the administrative hearing. To be entitled to relief on these bases, Watson must show that she was prejudiced by the lack of counsel or the inadequate hearing. Kane v. Heckler, 731 F.2d 1216, 1220 (5th Cir. 1984); Ware v. Schweiker, 651 F.2d 408, 413 (5th Cir. 1981), cert. denied, 455 U.S. 912 (1982). To show prejudice she must demonstrate that had she had counsel or, had the ALJ adequately done his job, she could and would have adduced evidence that might have altered the result. Kane, 731 F.2d at 1220.

Watson argues that the hearing was inadequate because it lasted only seventeen minutes and consisted of only nine transcript pages. We have stated, however, that there is no specific time rule for determining whether the hearing is adequate. See James v. Bowen, 793 F.2d 702, 705 (5th Cir. 1986). In James, we determined that a ten-minute hearing during which the ALJ questioned the claimant about his physical symptoms and current medication, his ability to perform various tasks, his daily activities and the frequency with which he saw a doctor, and gave him an opportunity to provide any other information, was adequate. Id.

During the subject hearing, the ALJ asked questions regarding Watson's family and educational background, her previous work and duties, her current medical problems and treatment plan, and her treatment for prescription drug addiction and alcoholism. The ALJ

also asked Watson if she wished to provide any other information. We find that the ALJ's inquiry was sufficient to satisfy the Kane requirements. See James, 793 F.2d at 705. Additionally, Watson has not indicated what evidence she would have introduced at the hearing to change the result of the proceedings, and therefore cannot establish prejudice. See Kane, 731 F.2d at 1220. B.

Substantial Evidence

Watson argues that there is not substantial evidence in the record to support the Secretary's determination that she is not disabled within the meaning of the Social Security Act. We review the Secretary's decision to determine whether there is substantial evidence in the record to support that decision, and whether the Secretary applied the proper legal standards. Griego v. Sullivan, 940 F.2d 942, 943 (5th Cir. 1991). Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401, 91 S.Ct. 1420, 28 L.Ed.2d 842 (1971) (internal quotations and citation omitted). "[N]o substantial evidence will be found only where there is a conspicuous absence of credible choices or no contrary medical evidence." Harrell v. Bowen, 862 F.2d 471, 475 (5th Cir. 1988) (internal quotations and citation omitted).

The ALJ must apply the five-step sequential process outlined in Social Security Regulation No. 16 to determine whether an individual is disabled. See 20 C.F.R. §§ 404.1520(b)-(f), 416.920(b)-(f). A finding that a claimant is not disabled at any point during the five-step analysis is conclusive and terminates

the inquiry. Lovelace v. Bowen, 813 F.2d 55, 58 (5th Cir. 1987). Here, the ALJ determined at step four that Watson could perform her past relevant work as a cook and dietary aide and therefore was not disabled.

There is substantial evidence in the record to support the Secretary's decision that Watson is not disabled. Her treating physician, Dr. Mong, stated that Watson suffered from hypertension and chronic anxiety, but these conditions were not disabling and all she really needed was employment. Dr. Benbow, the Social Security Administration's psychiatric consultant, determined that Watson suffered from a chronic, moderate to moderately severe, panic disorder and substance abuse that was in possible remission. He noted that Watson did not appear to be under significant treatment for her disorder as she only takes one tranquilizer a day, and that her condition does not appear to interfere with her interpersonal relationships. Dr. Benbow also determined that Watson has a good ability to follow work rules, interact with supervisors, function independently, and maintain attention and concentration; a fair ability to relate to co-workers and deal with work stresses; and poor to no ability to deal with the public or use judgment with the public. She has a good ability to follow simple job instructions, a fair ability to follow detailed, but not complex job instructions, and poor to no ability to follow complex job instructions. The discharge summary for her substance abuse treatment indicates that she made good progress in the program and had a successful and uneventful detoxification.

Watson indicated in her vocational report that her duties as a cook and dietary aid required her to cook breakfast and lunch for the hospital staff and patients with the assistance of one helper; clean up the kitchen following the preparation of meals; and use equipment such as a stove, grill, deep fryer, oven, blender, and chopper. She also indicated that she is able to do her own grocery shopping and cook and clean at home. Finally, even though Watson missed some work because of her condition, the number of missed days was not extraordinary.

Watson contends that the ALJ should not have relied on Dr. Mong's evaluation because he is not a psychiatrist. The ALJ decides what weight to give to a medical report and can reject the conclusions of one physician over another. Moore v. Sullivan, 919 F.2d 901, 905 (5th Cir. 1990); Bradley v. Bowen, 809 F.2d 1054, 1057 (5th Cir. 1987). Significantly, Dr. Benbow's opinion was not in conflict with Dr. Mong's, and Dr. Benbow did not state that Watson was disabled.

For the foregoing reasons, the district court's dismissal of Watson's complaint is

AFFIRMED.