IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-5114
Summary Calendar

AUDREY DUPONT,

Plaintiff-Appellant,

VERSUS

DONNA SHALALA,
Secretary of Health and Human Services,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
91 2008

May 5, 1993

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:[*]

Audrey Dupont appeals the adverse summary judgment entered on judicial review of the denial of her social security disability benefits. Finding no error, we affirm.

---

[*] Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

A.

Dupont filed an application for social security disability benefits on July 17, 1989, based upon problems with high blood pressure, headaches, breathing, and pain in her back, shoulders, and legs resulting from a back injury. The Social Security Administration ("SSA") denied Dupont's request for benefits initially and upon reconsideration; consequently, she filed a timely request for an administrative hearing, after which the administrative law judge ("ALJ") again denied Dupont's request for benefits, finding that, although she suffered from severe cervical spondylosis and chest pain, she was not disabled in light of her residual functional capacity to perform a full range of sedentary work.

Asserting that the ALJ did not properly evaluate her complaints of pain and did not seek vocational expert testimony, Dupont requested but was denied review of the administrative hearing decision by the Appeals Council, which determined that the ALJ did evaluate Dupont's complaints of pain in compliance with the Social Security Act and that the ALJ's decision was supported by substantial evidence.

B.

Dupont then filed a complaint in federal district court for review of the final decision of her claim, arguing that the ALJ (1) failed to evaluate her complaints of pain and (2) failed to

obtain vocational expert testimony required because of her significant non-exertional impairments. The Secretary submitted a counter-motion and memorandum for summary judgment, arguing that (1) the objective evidence does not reveal that Dupont suffered from a mental or physical impairment that prevented her from performing sedentary work; (2) in evaluating her functional capacity and credibility, the ALJ properly considered Dupont's testimony that she performs most of her personal needs; (3) the medical evidence that the ALJ found credible did not support Dupont's testimony; and (4) Fifth Circuit case law permits the Secretary to rely upon the Medical-Vocational Guidelines ("GRIDS") in lieu of consulting a vocational expert.

The magistrate judge, to whom the case had been referred, concluded that there was sufficient evidence in support of the Secretary's decision to deny benefits and recommended that the Secretary's decision be upheld. Over objections to the report, the district court adopted the report and recommendation and granted the Secretary's motion for summary judgment.

II.

Dupont contends that the Secretary's decision is erroneous in that the GRIDS were erroneously applied to determine whether she is disabled when the Secretary actually should have elicited vocational expert testimony. Dupont asserts that because all of the physicians opined that she could not do any pushing or pulling and that she could not perform any activity requiring her to look up or

raise her arms above her head, the Secretary should have considered her manipulative limitations. On appeal, Dupont argues that use of the GRIDS is precluded when there is a combination of exertional and non-exertional impairments.

A.

To obtain disability benefits, Dupont must prove that she was disabled as defined by the Social Security Act. Cook v. Heckler, 750 F.2d 391, 393 (5th Cir. 1985). Disability under the Act is defined as the "inability to engage in any substantial gainful activity by reason of any medically determinable, physical or mental impairment which . . . has lasted or can be expected to last for a continuous period of not less than twelve months." 42 U.S.C. §§ 416(i)(1), 423(d)(1)(A).

Judicial review of the Secretary's denial of disability benefits is limited to a determination of whether (1) the decision is supported by substantial evidence in the record and (2) the denial comported with relevant legal standards. Villa v. Sullivan, 895 F.2d 1019, 1021 (5th Cir. 1990). If the Secretary's findings are supported by substantial evidence, the findings are conclusive, and the Secretary's decision must be affirmed. 42 U.S.C. § 405(g); Richardson v. Perales, 402 U.S. 389, 390 (1971). "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." Villa, 895 F.2d at 1021-22 (internal quotations and citations omitted). Dupont's contention

that the ALJ erroneously applied the GRIDS in assessing her claim of disability challenges the denial of benefits only on the second prong of the analysis, i.e., whether the denial comported with relevant legal standards.

The Secretary must evaluate a disability claim by determining sequentially whether (1) claimant is not presently working; (2) claimant's ability to work is significantly limited by a physical or mental impairment; (3) claimant's impairment meets or equals an impairment listed in the appendix to the regulations; (4) the impairment prevents claimant from doing past relevant work; and (5) claimant cannot presently perform relevant work. See Muse v. Sullivan, 925 F.2d 785, 789 (5th Cir. 1991); 20 C.F.R. § 404.1520. The claimant has the initial burden to establish that she cannot perform her past relevant work. If the claimant has established that she cannot perform her past relevant work, the burden then shifts to the Secretary to show that the claimant is capable of other work. To make this determination, the Secretary then considers the claimant's residual functional capacity, age, education, and work experience, according to the guidelines set forth by the Secretary. See 20 C.F.R. § 404.1561; Selders v. Sullivan, 914 F.2d 614, 618 (5th Cir. 1990). If the Secretary meets that burden, the claimant must prove that she cannot perform the other work. Muse, 925 F.2d at 789.

If disability is determined at any of the steps, the inquiry need not go further, as such a finding is conclusive. See Harrell v. Bowen, 862 F.2d 471, 475 (5th Cir. 1988). A determination that

the claimant is not disabled will similarly terminate further inquiry. Crouchet v. Sullivan, 885 F.2d 202, 206 (5th Cir. 1989). The ALJ examined Dupont's complaints through the five stages of the evaluation process and concluded that she is not disabled to the extent preventing her from engaging in sedentary work. The fifth stage is the stage at which Dupont claims the ALJ erred.

In Wren v. Sullivan, 925 F.2d 123, 126 (5th Cir. 1991), we set forth four elements of proof that must be weighed when determining whether substantial evidence of disability exists: (1) objective medical facts; (2) diagnoses and opinions of treating and examining physicians; (3) the claimant's subjective evidence of pain and disability; and (4) her age, education, and work history. We may not reweigh the evidence or try the issues de novo. Cook, 750 F.2d at 392. The Secretary, rather than the courts, must resolve conflicts in the evidence. See Patton v. Schweiker, 697 F.2d 590, 592 (5th Cir. 1983). A brief discussion of whether substantial evidence supports the ALJ's determination is necessary to understand whether the appropriate analysis was made by the ALJ at step five of the evaluation of Dupont's claim of disability.

B.

As set forth in Wren, determining whether there is substantial evidence of disability involves a consideration of both objective and subjective elements. Wren, 925 F.2d at 126. Dupont was treated for neck and right shoulder pain resulting from an automobile accident that occurred on December 3, 1981. On

March 25, 1982, Dr. Linwood Bryant, a chiropractor, indicated that Dupont was first treated by him on December 30, 1981, and that she suffered from a "traumatic cervical sprain," but he concluded that her range of motion for tendon reflexes had improved by fifty percent. He also indicated that after six additional months of treatment, Dupont would approach maximum medical improvement.

An orthopaedic surgeon, Dr. J. Thomas Kilroy, reported that he treated DuPont on January 21, 1982, and found her condition to be "cervical radicular syndrome with possible herniated nucleus pulposa" and that her range of motion was limited to half that of the normal range. He indicated that her right hand exhibited a marked weakness but that she was in no acute distress at the time of his examination.

On August 28, 1989, Dupont was treated by an internal medicine physician, Dr. D.F. Gremillion, who, after examining Dupont, determined that she suffered from "arteriosclerotic heart disease with angina pectoris," "cervical spondylosis," and "degenerative arthritis." Specifically, Dr. Gremillion concluded that

> . . . findings limit this patient's activities as follows: She is able to lift and carry up to ten pounds. In an eight hour day she is able to stand three hours, walk three hours and sit indefinitely. She is unable to climb or crawl. She is able to stoop, kneel and crouch. She is unable to do any pushing or pulling. She should refrain from heights, moving machinery, temperature extremes, chemicals, dust, fumes and humidity.

Upon referral by the SSA examiner, Dupont was evaluated by Dr. Fred C. Webre, an orthopaedic surgeon, who concluded that she had minimal restriction of motion in her neck and good grip in both hands but some "spondylosis" in her neck. He indicated that "[s]he

might have difficulty doing any type activity where she is looking up or working with her arms above her head, however, she would have no restrictions sitting, standing and walking. It appears that this lady would be able to lift and carry up to 40 to 45 pounds occasionally."

Another internal medicine physician, Dr. Thomas J. Callender, examined Dupont and concluded that she has frozen shoulder syndrome, chest pain and shortness of breath indicative of arteriosclerotic cardiovascular disease, a history of mental illness, and chronic dizziness but a normal neurological examination. He recommended that she receive a psychological examination. On December 29, 1989, a psychiatric evaluation was submitted by Dr. William Sharp, who concluded that Dupont did not suffer from a "significant degree of functional limitation due to a mental condition . . . ." Based upon the physicians' evaluations, the ALJ concluded that Dupont did have

> some minor restriction and tenderness in the neck and shoulder area which might prevent her from doing the full range of light work. However, there is nothing in the report which would prevent her from performing the full range of sedentary work. With a residual functional capacity for sedentary work, she should not be able to do any of her past relevant work, since all of these jobs required a good deal of activity by a way of walking and standing.
>
> . . .
>
> Proceeding to the fifth and final step in the evaluation process . . .
>
> the question of transferability of work skills is irrelevant, since with the residual functional capacity to do a full range of sedentary work, her medical-vocational profile corresponds to rule 201.18 of Table No. 1, which compels a finding that she is not disabled.

> The undersigned takes judicial recognition of a significant number of sedentary jobs existing in the national economy which the claimant can, and is expected, to make a vocational adjustment. Therefore, she is not disabled as that term is defined in the Social Security Act and her application for benefits is denied.

Although the ALJ recognized that Dupont suffered from some pain, he concluded that such complaints of pain "were somewhat exaggerated." He further based his evaluation of her complaints of pain upon the fact that she still was "able to do washing, hang the clothes out to dry (which would require using overhead movement) prepare dinner, do the dishes, sweep and take in the laundry." In summary, the ALJ stated, "Being able to do these chores does not equate with the limitations on her activities due to pain she alleges." Thus, the ALJ could reasonably conclude that without a medical diagnosis of a medical impairment that would produce the pain alleged by Dupont, and without evidence that she suffered from chronic pain that would limit entirely her work activities, she was not disabled.

The ALJ found that DuPont did meet her initial burden to establish that she could not perform her past relevant work. For that reason, the burden shifted to the Secretary to require a consideration of DuPont's residual functional capacity, age, education, and work experience. See Stone v. Heckler, 752 F.2d 1099, 1101 (5th Cir. 1985). The ALJ found that DuPont, at age forty-six, is to considered "a younger individual under the Regulations" with a seventh-grade education. The ALJ reasoned, however, that although she had skills of her past employment, to which she could not return, her residual functional capacity

allowed her "to do a full range of sedentary work." After reviewing all the factors, the ALJ found that DuPont's claim for disability was unsubstantiated, since it was based upon allegations of pain that were exaggerated and not supported by objective findings in light of her daily activities and the physicians' medical determinations. The finding by the ALJ is amply supported by DuPont's own testimony regarding her daily activities, the medical records, and reports. Such activities, e.g., cooking, cleaning, and doing the laundry, reflect DuPont's ability to perform sedentary work.

Although the ALJ's decision is supported by substantial evidence in the record, Dupont asserts that because the ALJ concluded that she could perform the full range of sedentary work, without considering that some of these activities require stooping and the use of hands and fingers, he improperly did not consider her manipulative limitations of reaching, grasping, pushing and pulling, and numbness of the right arm. Dupont asserts that when non-exertional impairments are demonstrated, the ALJ is prevented from relying solely upon the GRIDS but must consult expert vocational testimony for a determination of alternative occupations.

Jobs in the national economy are classified as sedentary, light, medium, heavy, and very heavy in terms of the physical exertion requirements. 20 C.F.R. § 416.967. Sedentary work means that the person lifts no more than ten pounds and requires only occasional standing and walking. 20 C.F.R. § 404.1567. The ALJ's

finding at step five, i.e., that Dupont could perform sedentary work, is supported by the congruent medical evidence in the record and by Dupont's testimony regarding her daily activities. "When the claimant suffers only from exertional impairments or his non-exertional impairments do not significantly affect his residual functional capacity, the ALJ may rely exclusively on the Guidelines in determining whether there is other work available that the claimant can perform." Selders, 914 F.2d at 618. Furthermore, 20 C.F.R. § 416.966(e) provides,

> Use of vocational experts and other specialists. If the issue in determining whether you are disabled is whether your work skills can be used in other work and the specific occupations in which they can be used, or there is a similarly complex issue, we [the SSA] may use the services of a vocational expert or other specialist. We will decide whether to use a vocational expert or other specialist.

In Hernandez v. Heckler, 704 F.2d 857 (5th Cir. 1983), the claimant applied for disability benefits as a result of an accidental back injury. Id. at 859. The ALJ determined that Hernandez's exertional impairments prevented his return to his former employment but that he could perform sedentary work because his vocational characteristics coincided with the Medical Vocational Guidelines. Hernandez challenged the ALJ's decision, arguing that the guidelines were inapplicable or of limited use because of his non-exertional limitations. Id. at 861. Similarly to Dupont, Hernandez asserted that the ALJ had not considered what work existed for a person having a combination of impairments.

Quoting 20 C.F.R. subpart P, app. 2, § 200.00(e)(2), the district court noted that "in these combinations of non-exertional

and exertional limitations which cannot be wholly determined under the rules in this Appendix 2, full consideration must be given to all of the relevant facts in the case in accordance with the definitions of each factor in the appropriate sections of the regulations." The court concluded that the ALJ had found that Hernandez's exertional limitations did not amount to a disability under the guidelines, nor did his non-exertional limitations affect the maximum sustained work capability for sedentary work. We affirmed, noting that the ALJ considered his impairments as a whole and determined that the latter did not incapacitate Hernandez from sedentary work. 704 F.2d at 862.

In this case, the ALJ evaluated both Dupont's exertional and non-exertional impairments. The medical documentation did not substantiate her exertional impairments, as she was found by Dr. Kilroy not to be in acute distress. Dr. Gremillion indicated that Dupont is able to lift and carry up to ten pounds and is able to stand and walk three hours and sit indefinitely within an eight-hour period but that she cannot climb, crawl, push, or pull. The other limitations he noted were heights, moving machinery, temperature extremes, chemicals, dust, fumes, and humidity. Dr. Webre noted that Dupont "should have no restrictions sitting, standing and walking. It appears that this lady should be able to lift and carry up to 40 to 45 pounds occasionally."

Therefore, the ALJ did not err in his discretionary decision not to consult vocational expert testimony, as Dupont's non-exertional impairments are not substantiated by medical evidence

and do not affect her residual functional capacity to perform sedentary work. See Selders, 914 F.2d at 618. The ALJ's analysis of Dupont's disability and the denial of benefits comport with relevant legal standards. Accordingly, we do not disturb the district court's finding that DuPont is not eligible for disability benefits under the Social Security Act. The judgment is AFFIRMED.