UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 92-7568

(Summary Calendar)

BOBBY L. KNIGHT,

Plaintiff-Appellant,

VERSUS

DONNA E. SHALALA, M.D.[*]
Secretary of Health & Human Services,

Defendant-Appellant.

Appeal from the United States District Court
For the Southern District of Mississippi
(CA J87 0359 (L))

(July 8, 1993)

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

PER CURIAM:[**]

Bobby L. Knight appeals the district court's dismissal with prejudice of his action for judicial review of the Secretary's decision denying him disability insurance benefits and supplemental security income benefits. Knight argues that the Secretary erred by finding him not disabled. We affirm.

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[*] Donna E. Shalala, M.D. is substituted for her predecessor Louis W. Sullivan, M.D., Secretary of Health and Human Services, pursuant to Fed. R. App. P. 43(c)(1).

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

In particular Knight argues that certain findings of fact by the administrative law judge ("ALJ"), which were adopted as the final decision of the Secretary, were not supported by substantial evidence. Knight challenges the ALJ's findings that (a) Knight did not demonstrate sufficient functional limitations to establish a listed mental impairment, as described in 20 C.F.R., pt. 404, subpt. P, app. 1, § 12.04 and § 12.08[1]; (b) Knight was not illiterate; and (c) Knight did not suffer from pain which constituted a disability (i.e. pain which was constant, unremitting, and wholly unresponsive to therapeutic treatment). After thoroughly reviewing the record, we conclude that those findings are supported by substantial evidence.[2] They must

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[1] § 12.04 contains criteria for determining whether a claimant is disabled as the result of an affective disorder. § 12.08 contains similar criteria for personality disorders. In order to show disability under either § 12.04 or § 12.08, the claimant must demonstrate certain functional limitations listed in sub-section "B" under both sections. The functional limitations are: (1) marked restriction of activities of daily living; (2) marked difficulties in maintaining social functioning; (3) deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner; and (4) repeated episodes of deterioration or decompensation (i.e. failure to adapt to stressful situations) in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms. *See* 20 C.F.R., pt. 404, subpt. P, app. 1, §§ 12.04(B), 12.08(B). The ALJ found that Knight did not satisfy these criteria. *See* Record on Appeal, vol. 3, at 339.

[2] "To be substantial, evidence must be relevant and sufficient for a reasonable mind to accept as adequate to support a conclusion; it must be more than a scintilla but it need not be a preponderance. We may not reweigh the evidence or substitute our judgment for that of the Secretary, but we must scrutinize the record in its entirety to ascertain whether substantial evidence does indeed support the secretary's findings." *Fraga v. Bowen,* 810 F.2d 1296, 1302 (5th Cir. 1987) (citations and footnotes omitted).

therefore be upheld. *See* 42 U.S.C. § 405(g) (1988) ("The findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive . . . ."); *Fraga v. Bowen,* 810 F.2d 1296, 1302 (5th Cir. 1987).

Knight also challenges the Secretary's reliance on the testimony of a vocational expert, who testified that jobs exist in the national economy which Knight can perform. Knight argues that the hypothetical questions posed to the vocational expert on direct examination did not properly reflect the full range of Knight's impairments. Because Knight did not raise before the district court his objection to the hypothetical questions or to the testimony of the vocational expert, those issues are waived. *See Chaparro v. Bowen,* 815 F.2d 1008, 1011 (5th Cir. 1987).

For the foregoing reasons, we AFFIRM.