

IN THE UNITED STATES OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-7704  
Summary Calendar

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CAROLYN J. WORSHAM,

Plaintiff-Appellant,

versus

DONNA E. SHALALA, Secretary,  
Department of Health & Human Services,

Defendant-Appellee.

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Appeal from the United States District Court for the  
Northern District of Mississippi  
(EC 91 CV 142 )

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(August 20, 1993)

Before JOLLY, SMITH, and WIENER, Circuit Judges.

PER CURIAM:\*

Carolyn Worsham is a former factory worker, cook and cashier. In 1988, Worsham injured her right shoulder while at work. Worsham filed for Supplemental Security Income and Disability Insurance Benefits, but the Secretary of Health and Human Services denied her benefits. The Secretary determined that Worsham was not disabled

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

because she could still work as a cashier. The district court affirmed the Secretary's decision, and Worsham brought this appeal. Finding that the Secretary and the district court did not err, we affirm.

I

Worsham is a woman in her mid 40's. She quit school in the sixth grade and has worked as a sewing machine operator in the garment industry. Worsham has also worked as a cook and a cashier.

In 1988, Worsham worked at Corinth Uniforms, as a sewing machine operator. On March 2, Worsham hurt her neck and shoulder when she picked up a bundle of shirts. Worsham visited Dr. Parker who recommended physical therapy. A magnetic resonance imaging study of Worsham was normal, and Dr. Parker cleared Worsham to returned to work in April. Because she continued to have some pain, Dr. Parker referred Worsham to Dr. B. J. Bakhtian, an orthopedist. When Worsham continued to complain about her pain under his treatment, Dr. Bakhtian sent her to Dr. Jacob Rosensweig, a thoracic surgeon.

Dr. Rosensweig diagnosed Worsham with thoracic outlet disease and performed a transaxillary decompression of the right thoracic outlet in August of 1988. Worsham recovered well. After the surgery, Worsham had a full range of shoulder motion and a strong right-hand grip. Dr. Rosensweig noted that, if she limited herself to light duties, Worsham could return to work. Worsham returned to Dr. Rosensweig in the summer of 1989 for a follow-up examination.

He found her normal except for some diminished sensation along the medial aspect of her hand and fifth finger. Believing that Worsham had made an excellent recovery, Dr. Rosensweig release her from his care.

In his January 3, 1990 deposition, Dr. Rosensweig stated that Worsham had a ten percent permanent partial disability as a result of her injury. He also said that Worsham would have an additional five percent disability if she continued to have diminished sensation in her fourth and fifth fingers and the medial aspect of her hand. Dr. Rosensweig recommended that Worsham avoid lifting more than twenty pounds and avoid repetitive exertional activity with the right hand.

At the request of Worsham's attorney, Dr. Robert J. Barnett examined Worsham on February 21, 1990. Dr. Barnett, an orthopedist, found that Worsham had ninety degrees forward elevation and ninety degrees abduction of the right shoulder. Worsham demonstrated twenty pounds grip strength in the right hand and forty pounds in the left hand. The x-rays of Worsham's right shoulder were normal, but x-rays of her lumbar spine showed loss of the normal anterior lumbar curvature with arthritic changes at L4 and L5 and about the sacroiliac. Dr. Barnett believes that Worsham's injuries limited her ability to bend, stoop, and lift heavy objects.

Worsham's attorney also sent her to Dr. Stanley C. Russell, a psychiatrist. Dr. Russell's January 1990 examination revealed that

Worsham was frustrated and depressed. Worsham stated that she had some problems sleeping and concentrating. Dr. Russell diagnosed chronic, generalized anxiety disorder, major depression, mental retardation, and somatoform pain disorder. He noted that Worsham was suffering from a combination of physical and mental impairments that would prevent her from engaging in any type of gainful employment.

In February of 1990, Worsham visited Dr. Mona Carlyle, a clinical psychologist. Dr. Carlyle reported that Worsham's behavior, psychomotor activity, and speech were unremarkable; she was alert, responsive, and appropriately oriented to the examination process. Worsham was anxious, however, and pulled on her hands. Worsham's testing results indicated verbal intellectual ability in the low average to average range. Dr. Carlyle concluded that Worsham suffered from a generalized anxiety disorder, major depression, and somatoform pain disorder.

The Department of Health and Human Services sent Worsham to Dr. Jan T. Goff, a psychiatrist. Dr. Goff evaluated Worsham's intellectual functioning as being at an average level. Although she was depressed, Worsham's thoughts were logical and coherent. Worsham showed no signs of blocking or tangential thinking. Dr. Goff diagnosed dysthymia. He concluded that Worsham's psychiatric limitations were secondary to her restlessness, and anxiety. Dr. Goff completed a "Medical Assessment of Ability to do Work-Related

Activities (Mental)" form, indicating that Worsham's ability to adjust to a job would be fair in all categories.

## II

On July 10, 1989, Carolyn Worsham applied for Supplemental Security Income and Disability Insurance Benefits. Worsham claimed that she had been disabled since July 1, 1988, when she hurt her shoulder at work. The Secretary of Health and Human Services denied Worsham's applications and her request for reconsideration. Worsham then requested a hearing before an Administrative Law Judge ("ALJ").

At the hearing before the ALJ, Worsham testified that surgery had left her right arm numb and that she had no feeling in the small, ring, and middle fingers of her right hand. Worsham also said that she could not lift her right arm over her head and that she dropped things. Worsham further testified that her arthritis made it difficult for her to sit or stand, and that she was constantly worried about her condition. Worsham complained of constant, moderate pain in her right arm, which sometimes became severe. To relieve the pain, Worsham used only Tylenol.

The vocational expert, Thomas M. Elliot, testified that Worsham's past jobs were all unskilled and required only light exertion. The ALJ asked Elliot if Worsham could perform any of her former jobs, assuming that she 1) was exertionally capable of light work or less, 2) had an impaired right arm with one-third normal strength, and 3) was taking medication and had less than moderately

severe pain on a continuous basis. Elliot responded that Worsham could perform her past job as a cashier. The ALJ also asked Elliot to assume that Worsham had a mental residual functional capacity of fair in all capacities except for an inability to handle complex tasks or complex job instructions. Elliot responded that these additional facts would not change his testimony.

After reviewing all of the evidence, the ALJ determined that Worsham's impairments did not preclude her from performing her past relevant work as a cashier. The ALJ, thus, held that Worsham was not disabled within the meaning of the Social Security Act. The decision of the ALJ became the final decision of the Secretary when the appeals council denied Worsham's request for review.

In May of 1991, Worsham filed suit in the district court seeking review of the Secretary's decision. The magistrate judge recommended that the district court affirm the Secretary's decision. Over Worsham's objections, the district court adopted the magistrate judge's report and recommendation. Worsham then brought this appeal.

### III

Worsham contends that the ALJ erred in several respects when he denied her benefits. Pursuant to 42 U.S.C. § 405(g), we limit our review of the Secretary's decision to deny a claimant disability benefits "to two issues: 1) whether the Secretary applied the proper legal standards, and 2) whether the Secretary's decision is supported by substantial evidence on the record as a

whole." Anthony v. Sullivan, 954 F.2d 289, 292 (5th Cir. 1992) (citing Wingo v. Bowen, 852 F.2d 827, 829 (5th Cir. 1988)). We may not reweigh the evidence or substitute our judgment for that of the factfinder. Jones v. Heckler, 702 F.2d 616, 620 (5th Cir. 1983).

Although Worsham may suffer from some pain and discomfort, she is not entitled to benefits unless she is disabled within the meaning of the Social Security Act, 42 U.S.C. § 423(d)(1)(A); see also Cook v. Heckler, 750 F.2d 391, 393 (5th Cir. 1985). The Social Security Act defines "disability" as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." 42 U.S.C. § 423(d)(1)(A); see also 42 U.S.C. § 416(i)(1); Cook, 750 F.2d at 393. As the claimant, Worsham bears the burden of showing that she is disabled under this definition. Cook, 750 F.2d at 393.

The Secretary has promulgated a five-step sequential process to determine whether a claimant is disabled under the above definition. The Secretary first determines whether the claimant is employed at a substantially gainful activity. If the claimant is so employed, the Secretary will not consider the claimant to be disabled. 20 C.F.R. §§ 404.1520(b), 416.920(b). Second, the Secretary determines whether the individual has a "severe impairment." If the claimant is not severely impaired, the Secretary will not consider the claimant to be disabled. 20 C.F.R.

§§ 404.1520(c), 416.920(c). Third, the Secretary will consider whether the claimant's condition meets or equals an impairment listed in Appendix one. The Secretary will consider a claimant to be disabled if his condition meets or equals any of the impairments in the Appendix. 20 C.F.R. §§ 404.1520(d), 416.920(d).

The Secretary moves to the fourth step only if he cannot make a decision based on the claimant's work activity and medical condition alone. In the fourth step, the Secretary determines whether the claimant can perform the work he has done in the past. If the claimant can perform this work, the Secretary will not consider the claimant to be disabled. 20 C.F.R. §§ 404.1520(e), 416.920(e). Finally, if the claimant cannot perform his past work, the Secretary will evaluate the claimant's age, education, work experience, and other abilities to determine whether the claimant can do other work. If the claimant cannot do any other work, the Secretary will find the claimant to be disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f). The Secretary can find the claimant disabled or not disabled at any point in this inquiry and that finding is conclusive and terminates the analysis. Villa v. Sullivan, 895 F.2d 1019, 1022 (5th Cir. 1990); Lovelace v. Bowen, 813 F.2d 55, 58 (5th Cir. 1987).

The ALJ followed this five-step process. The ALJ found that Worsham had not worked since she injured her shoulder in March of 1988. The ALJ found that Worsham's injury impaired her, but that the impairment did not satisfy the conditions listed in Appendix



one, as required by step three. The ALJ then moved to step four where he determined that Worsham was not disabled because she could work as a cashier, as she had in the past. This determination ended the ALJ's analysis.

A

Worsham contends that the ALJ erred in step three when he found that Worsham does not have an impairment that meets or equal an impairment listed in Appendix one. Worsham argues that her mental condition qualified as either an effective disorder, or an anxiety disorder. See 20 C.F.R. Part 404, Subpart P, App. 1, 12.04, 12.06. The Secretary describes an effective disorder as:

Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

20 C.F.R. Part 404, Subpart P, App. 1, 12.04. With regard to anxiety related disorders, the Secretary notes that:

In these disorders anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive or compulsive behavior.

20 C.F.R. Part 404, Subpart P, App. 1, 12.06.

To meet the requirements for either of these impairments, the claimant must 1) medically document the persistence of the condition, and 2) show that she is impaired as a result of the condition. 20 C.F.R. Part 404, Subpart P, App. 1, 12.04, 12.06.

Worsham documented a persistent effective disorder, but she could not demonstrate that the condition impaired her. As for the anxiety disorder, the ALJ found the Worsham proved neither a persistent condition nor impairment. For both of the above conditions, the claimant is impaired if the condition results in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Deficiencies in concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work setting or elsewhere); or
4. Repeated episodes of deterioration or decompensation in work or work-like setting which cause the individual to withdraw from that situation or to experience exacerbations of signs and symptoms (which may include deterioration of adaptive behavior).

20 C.F.R. Part 404, Subpart P, App. 1, 12.04(B), 12.06(B).

Substantial evidence in the record supports the ALJ's finding that, under the above definition, Worsham is not impaired by an effective or anxiety disorder. Worsham did not allege any mental impairments on her application for benefits. At the hearing before the ALJ, Worsham testified that she had never been treated by a psychologist or psychiatrist. She reported to Dr. Goff that she dresses herself and attends to her other personal and physical needs. She reported to Dr. Carlyle that she is able to drive short distances, schedule her own appointments, and handle money. Her activities include reading romance novels and watching television. Worsham smokes, occasionally drinks beer, and has a good appetite.

There is no evidence of episodic deterioration or decompensation in work-like settings.

Dr. Goff also found that Worsham demonstrated average intellectual ability, fair ability to make occupational adjustments, and from fair to good ability to make personal-social adjustments. In the light of the other evidence in the record, the ALJ afforded greater weight to the opinion of Dr. Goff than to the opinions of Drs. Russell and Carlyle. This court will not reweigh that evidence. See Chaparro v. Bowen, 815 F.2d 1008, 1011 (5th Cir. 1987). Substantial evidence supports the ALJ's evaluation of Worsham's mental condition. Worsham, thus, has failed to meet her burden of proving that she has one of these disabling mental impairments.

B

Worsham also generally argues that the ALJ's decision is not supported by substantial evidence. Specifically, she challenges the ALJ's finding at step four that she is not disabled because she can work as a cashier, as she has in the past. In making that determination, the ALJ relied largely on the reports of Dr. Rosensweig, Worsham's treating physician. Dr. Rosensweig indicated that Worsham had successfully recovered from thoracic outlet compression syndrome with minimal residuals. He concluded that Worsham was capable of light work. Worsham argues that the ALJ failed correctly to interpret Dr. Rosensweig's opinion regarding her disability in the light of Dr. Barnett's later findings. She

also asserts that Dr. Rosensweig was only her surgical physician, and that Dr. Barnett should be credited as the expert on her disability.

Dr. Barnett's medical opinion was based on a single examination performed at the request of Worsham's attorney. Although the ALJ considered Dr. Barnett's opinion that Worsham was unable to engage in even sedentary work activities, he determined that the record as a whole did not support this conclusion. The ALJ is entitled to determine the credibility of medical experts and to weigh their opinions accordingly. Scott v. Heckler, 770 F.2d 482, 485 (5th Cir. 1985). Where the record contains conflicting evidence, the Secretary, not the courts, must make credibility determinations and resolve the conflicts in the evidence. Chaparro, 815 F.2d at 1011. The ALJ reasonably afforded greater weight to the reports and opinion of Worsham's treating physician, Dr. Rosensweig, than to those of Dr. Barnett.<sup>1</sup> Thus, we will not overturn the ALJ's decision.

#### IV

For all of the foregoing reasons, the decision of the district court to deny Worsham benefits is

A F F I R M E D.

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<sup>1</sup>Worsham also challenges the Medical Assessment of Ability to do Work-related Activities (mental) form used by the Secretary, and she also argues that the ALJ gave insufficient weight to her subjective complaints of pain. Because Worsham failed to raise these issues before the district court, she waived them. Chaparro, 815 F.2d at 1011.