

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 92-7711  
Summary Calendar

---

JAMES K. CRAPPS,

Plaintiff-Appellant,

VERSUS

DONNA SHALALA,  
Secretary of Health and Human Services

Defendant-Appellee.

---

Appeal from the United States District Court  
for the Southern District of Mississippi  
CA E 91 62 (L)

---

May 5, 1993

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:\*

James Crapps appeals the dismissal of his action seeking judicial review of the denial of his 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 Pursuant to that rule, the court has determined that this opinion should not be published.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.

Crapps filed an application for a Title II period of disability and disability insurance benefits, see 42 U.S.C. §§ 416(i), 423, on March 8, 1989. An administrative law judge ("ALJ") denied relief after an evidentiary hearing at which Crapps and his wife testified. The ALJ filed a decision stating his reasons for his ruling. The Appeals Council denied Crapps's request for review, whereupon the ALJ's decision became the Secretary's final decision for purposes of 42 U.S.C. § 405(g).

Crapps timely filed his civil action in the district court seeking judicial review of the Secretary's decision. After the Secretary filed an answer, a magistrate judge recommended dismissal of the action on the ground that substantial evidence supported the decision that Crapps was not disabled. Crapps filed timely objections. The district court then adopted the magistrate judge's report and dismissed the action with prejudice.

## II.

Crapps asserts that he has been disabled since he injured his back on December 31, 1988, lifting a hay ring. A CT scan and a lumbar myelogram indicated that Crapps had a herniated nucleus pulposus (the central portion of an intervertebral disk) at the L4-L5 level. Dr. Williams L. Hand performed a laminectomy (the surgical excision of the posterior arch of a vertebra) at L4-L5 on January 23, 1989. In February, Crapps complained of pain in his left thigh. After his readmission to the hospital on February 28,

1989, his symptoms improved a great deal. He was helped by using a TENS unit, which alleviates pain by the application of electric impulses; he was allowed to take the unit home with him.

During a visit to Hand on March 13, 1989, Crapps complained of left leg and back pain. Hand prescribed quadriceps-strengthening exercises, continued use of the TENS unit, and Darvocet-N 100. When Hand examined Crapps on April 10, 1989, Crapps reported that his leg was not hurting as much. Hand noted that Crapps had not used his TENS unit for three weeks and that he was not taking analgesics.

In June 1989, Crapps was having some back and left leg trouble but was not taking any medication. Hand opined that Crapps would not be able to return to his former work as a farm hand, which required heavy lifting. Based upon the Manual for Orthopedic Surgeons in Evaluating Permanent Physical Impairment, Hand believed that Crapps had twenty-percent whole-body permanent physical impairment. After seeing Crapps on September 25, 1989, Hand maintained his opinion concerning Crapps's impairment.

Hand completed a Medical Assessment of Ability to Do Work-Related Activities (Physical) on January 23, 1990, opinion that Crapps occasionally could lift twenty pounds and frequently could lift ten pounds during an eight-hour day. Hand found that Crapps could stand and/or walk, or sit, for a total of six hours during an eight-hour day and could do one hour of each without interruption. The doctor found that Crapps could balance and kneel frequently and that occasionally he could climb, stoop, or crawl. Although Crapps

had a reduced capacity for pushing and pulling, his abilities to reach, handle, feel, see, hear, and speak were unimpaired. Hand did not note any environmental restrictions relative to Crapps.

Dr. Randall L. Nance, an osteopath, treated Crapps on November 3, 1988, for a sore throat, headaches, and coughing. Crapps did not visit Nance again until February 1, 1990. Nance then found that Crapps had no patellar reflex in his left knee and that he was unable to heel/toe walk. On February 13, 1990, Nance found that Crapps's back was "the same" and that Crapps was having ulcer problems.

In a letter to Crapps's attorney dated February 14, 1990, Nance stated, "It is my belief that Mr. Crapps is ore than 20%, and closer to 100% disabled." In a letter dated February 15, 1990, Nance asserted that Crapps "can not sustain any type of employment requiring standing, lifting, or sitting, for a period of an hour without interruption," and that he could not left twenty pounds on an occasional basis or ten pounds on a regular basis. Nance opined that Crapps's "physical condition would [not] allow him to engage in any type of gainful employment."

Office records of Dr. David Moody show that he treated Crapps for right jaw pain on February 26, 1990. When Crapps next visited Moody, on February 9, 1990, he received treatment for stomach pain.

At the February 15, 1990, hearing before the ALJ, Crapps testified (1) that he main thing that prevented him from working was his back problem; (2) that he uses a cane to support his left leg because it gives way; (3) that he had had ulcers for about

three weeks, which caused pain, nausea, and vomiting; (4) that he has had stomach trouble all his life and frequently gets sick after eating; (5) that since December 1988, he had lost about twenty pounds (not 100 pounds, as stated in his brief), (6) that he had pain in both legs, but it was worse in his left leg (On a scale of one to ten, ten being the most severe, he rated his back pain as a six or seven.); (7) that he sits in a recliner equipped with a heating pad and a vibrator, as home treatment; (8) that he was using the TENS unit, which reduced but did not eliminate the pain; (9) that he drives "some"; and (10) that in his opinion, he would not be able to stand for one hour, stand or walk for six hours out of eight, lift twenty pounds occasionally, or lift ten pounds frequently.

Crapps's wife Linda testified that he could do most things on his own around the house but that she had to help him in and out of the bathtub. She testified that Crapps spends about half a day eight in his recliner or in bed. She did not say what he does the rest of the time.

### III.

#### A.

"Appellate review 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). In

applying the "substantial evidence" standard, we "may not reweigh the evidence in the record, nor try the issues de novo, nor substitute [the Court's] judgment for the Secretary's, even if the evidence preponderates against the Secretary's decision." Harrell v. Bowen, 862 F.2d 471, 475 (5th Cir. 1988). This is because "substantial evidence" means less than a preponderance, although more than a scintilla. Id.

A claimant is not entitled to disability benefits unless it is established that he is unable "to engage in any substantial gainful activity by reason of [a] medically determinable physical or mental impairment . . . which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. §§ 416(i), 423(d)(1)(a). In determining whether a claimant is capable of "engag[ing] in any substantial gainful activity," the Secretary applies a five-step sequential evaluation process.

The rules governing the steps of this evaluation process are as follows: (a) A claimant who is working, engaging in a substantial gainful activity, will not be found to be disabled, no matter what the medical findings are; (2) a claimant will not be found to be disabled unless he has a "severe impairment"; (3) a claimant whose impairment meets or is equivalent to an impairment listed in Appendix 1 of the regulations will be considered disabled without the need to consider vocational factors; (4) a claimant who is capable of performing work that he has done in the past must be found "not disabled"; (5) if the claimant is unable to perform his previous work as a result of his impairment, then factors such as

his age, education, past work experience, and residual functional capacity must be considered to determine whether he can do other work. Villa, 895 F.2d at 1022. "A finding that a claimant is disabled or not disabled at any point in the five-step process is conclusive and terminates the Secretary's analysis." Harrell, 862 F.2d at 475.

B.

The Secretary found, at step four of the evaluation process, that Crapps had met his burden of proving that he was unable to return to his former work as a county road worker or ranch hand, which requires at least medium exertion. Therefore, the burden shifted to the Secretary (at step five) to show that other work exists in the national economy that Crapps can perform. Chaparro v. Bowen, 815 F.2d 1008, 1010 (5th Cir. 1987). The Secretary met his burden by reference to the Medical-Vocational Guidelines (the "GRIDS"), 20 C.F.R. part 404, subpart P, app. 2. The burden then shifted to Crapps to show that he cannot perform alternate work. Taylor v. Bowen, 782 F.2d 1294, 1298 (5th Cir. 1987). The Secretary found that Crapps did not meet this burden, because he can perform the full range of light work.

The Secretary credited the evaluation of Hand, a board-certified orthopedic surgeon, who was Crapps's primary treating physician. Hand found that Crapps could engage in a wide range of work-related activities and was only twenty percent disabled. Based upon this evaluation, Crapps indeed is able to perform light

work. See 20 C.F.R. § 404.1567(b). "The opinions, diagnosis, and medical evidence of a treating physician whose familiarities [sic] with the patient's injuries, treatment, and responses over a length of time, should be accorded considerable weight." Barajas v. Heckler, 738 F.2d 641, 644 (5th Cir. 1984) (per curiam).

The ALJ did not credit Nance's opinion that Crapps was disabled. Nance is an osteopath, not an orthopedist, and he examined Crapps on only two occasions within a single two-week period, relative to his back and leg problems. Nance did not provide objective evidence to support his opinion that Crapps was "closer to 100% [than to 20%] disabled." Because this opinion is contradicted by the objective medical evidence and by Hand's evaluation, the Secretary did not err by giving greater weight to Hand's opinion. See Scott v. Heckler, 770 F.2d 482, 485 (5th Cir. 1985).

Citing several cases from other circuits, Crapps contends that the Secretary erred by basing the decision upon the ALJ's observations of Crapps during the hearing. Crapps is referring to the ALJ's finding that "the claimant did not appear severely ill or severely limited by his impairments." A review of the ALJ's discussion of Crapps's subjective complaints shows that the ALJ did not rely exclusively upon Crapps's appearance and demeanor at the hearing. The finding was not inappropriate, as "[t]he evaluation of a claimant's subjective symptoms is a task particularly within the province of the ALJ, who has had an opportunity to observe



whether the person seems to be disabled." Loya v. Heckler, 707 F.2d 211, 215 (5th Cir. 1983).

"Although a claimant's assertion of pain or other symptoms must be considered by the ALJ, [20 C.F.R. § 423(d)(5)(A)] requires that a claimant produce objective medical evidence of a condition that reasonably could be expected to produce the level of pain alleged." Harper v. Sullivan, 887 F.2d 92, 96 (5th Cir. 1989). In evaluating Crapps's subjective complaints of pain, the ALJ found that his testimony did not support a finding of disability because of the evidence of sporadic treatment, the fact that Crapps had not taken an inordinate amount of pain medication since April 1989, his description of his pain to Hand, and the doctor's functional-capacity assessment. "It is up to the finder of fact to determine a witness's credibility in light of conflicting evidence." Elzy v. Railroad Retirement Bd., 782 F.2d 1223, 1225 (5th Cir. 1986). There was substantial evidence to support the ALJ's conclusion that Crapps's subjective complaints were not credible to the extent that he proved disability.

Crapps also argues that the GRIDS should not have been applied but that vocational expert testimony was necessary because he has severe pain, a nonexertional impairment. He relies in part upon Martin v. Bowen, No. 87-4796 (5th Cir. Feb. 25, 1988) (unpublished), which is not on point. However, "[w]hen the characteristics of the claimant correspond to criteria in the [GRIDS], and the claimant either 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 [GRIDS] in determining whether there is other work available that the claimant can perform." Fraga v. Bowen, 810 F.2d 1296, 1304 (5th Cir. 1987). In such situations, whether to introduce testimony of a vocational expert as to particular jobs the claimant can perform is within the Secretary's discretion. 20 C.F.R. § 404.1566(e); see Jones v. Heckler, 702 F.2d 616, 622 (5th Cir. 1983).

The Secretary did not need a vocational expert in Crapps's case, as the credible evidence showed that his pain did not prevent him from performing the full range of light work. Furthermore, the appropriate grid, rule 202.17, requires a finding of not disabled for a "younger individual" (he was born in 1959) with limited education, and who, in effect, is unskilled because he cannot now perform his past work.

The Secretary carried the burden at the fifth step of the evaluation by relying upon the GRIDS to establish that there are jobs in the national economy that Crapps can perform. Consequently, the burden shifted back to Crapps to prove that he could not perform alternative work. Mays v. Bowen, 837 F.2d 1362, 1364 (5th Cir. 1988). Crapps's inability to carry this burden of proof required a finding that he was not disabled. 20 C.F.R. § 404.1520(f). Stated another way, our conclusion is that the district court's judgment is AFFIRMED because the Secretary's decision is supported by substantial evidence. See Villa v. Sullivan, 895 F.2d at 1021.