

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-1491  
(Summary Calendar)

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PAUL CLAYTON,

Plaintiff-Appellant,

versus

DONNA SHALALA, SECRETARY  
OF HEALTH AND HUMAN SERVICES,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
(3:92-CV-0803-J)

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(March 9, 1994)

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

PER CURIAM:\*

Plaintiff-Appellant Paul Clayton appeals the summary judgment dismissing his suit to set aside the decision of Defendant-Appellee Donna Shalala, Secretary of Health and Human Services (the Secretary) that Clayton was not disabled within the meaning of the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Social Security Act (SSA), 42 U.S.C. § 423(d)(1)(A). For the reasons expressed below, we affirm the district court's dismissal of Clayton's complaint.

## I

### FACTS AND PROCEEDINGS

Clayton filed an application for disability insurance benefits, alleging that he had been disabled since March 11, 1988, due to knee and back injuries. His application was denied originally and again on reconsideration. Following a de novo hearing, the Administrative Law Judge (ALJ) determined that Clayton was not disabled. The Appeals Council denied Clayton's request for review of the ALJ'S decision, so that decision became the final decision of the Secretary.

Clayton filed a complaint in the district court to set aside the Secretary's decision. The district court granted the Secretary's motion for summary judgment, finding substantial evidence in the record to support the Secretary's decision that Clayton is not disabled.

## II

### ANALYSIS

#### A. Substantial Evidence

Our review of the Secretary's decision is limited to a determination whether there is substantial evidence in the record to support the Secretary's decision, and whether the Secretary applied the proper legal standards. Spellman v. Shalala, 1 F.3d 357, 360 (5th Cir. 1993). Substantial evidence is that which is

relevant and sufficient for a reasonable mind to accept as adequate to support a conclusion. Id. "[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 stage of 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 five that Clayton had the residual functional capacity to perform the full range of sedentary work and that the Medical-Vocational Guidelines thus indicated that he was not disabled within the meaning of the SSA. See Anderson v. Sullivan, 887 F.2d 630, 632-34 (5th Cir. 1989).

Clayton argues that the pain in his lower back and knees is disabling. He contends that as a result of that pain he can sit for only 15-30 minutes, stand for only ten minutes, and walk only one half mile.

Pain constitutes a disabling condition under the SSA only if it is "constant, unremitting and wholly unresponsive to therapeutic treatment." Selder v. Sullivan, 914 F.2d 614, 618-19 (5th Cir. 1990). A claimant must produce objective medical evidence that his condition could reasonably be expected to produce the level of pain alleged, Harper v. Sullivan, 887 F.2d 92, 96 (5th Cir. 1989), and

the ALJ's determination of the severity of pain is entitled to considerable deference. Carrier v. Sullivan, 944 F.2d 243, 247 (5th Cir. 1991). Subjective evidence of pain will not trump conflicting medical evidence. Harper, 887 F.2d at 96.

The evidence in the instant record establishes that Clayton was injured on the job when his right leg fell through a crack between a loading dock and his truck; that he had previously had back and knee surgery; and that he currently takes Valium, Fiorinal 3 with codeine, and Ruffen for pain. Following the accident, Clayton had arthroscopic surgery on both knees and was released to work with respect to his knees on September 26, 1990. His right knee has fully recovered and he has a 15-20% permanent partial disability of his left knee. His treating physician, Dr. Wood, believes that he can work at a sit-down or stand-up job that does not require standing for more than 60 minutes at a time or six hours during an eight-hour shift; sitting for more than two hours at a time or six hours during an eight-hour shift; any squatting; or climbing one flight of stairs more than twice during an eight-hour shift. These restrictions are well within the exertional requirements of sedentary work. See 20 C.F.R. § 404.1567(a).

The evidence regarding Clayton's back injury admittedly presents a closer question. He has been diagnosed as having lumbar radicular syndrome. The physician who examined Clayton on November 20, 1989, for the Texas Rehabilitation Commission recommended that he be referred to an orthopedic surgeon for his back. Clayton's

treating physician, Dr. Henderson, determined that he was temporarily totally disabled as a result of his back injury on July 23, 1990. Although he was supposed to return to Dr. Henderson for a follow-up visit in November or December 1990, Clayton has not provided any later records from Dr. Henderson. Dr. Selby, an orthopedic surgeon who examined Clayton on November 29, 1989, believed that he was capable of performing a "light duty" job. Dr. Rowlan also found in July 1988 that Clayton could touch his toes, had no pain with extension, and did not need back surgery. Dr. Rowlan expressed the belief that the back injury did not prevent Clayton from working.

Although there is conflicting evidence regarding the extent of Clayton's back injury, Dr. Henderson's opinion does not necessarily control. See Moore v. Sullivan, 919 F.2d 901, 905 (5th Cir. 1990). Significantly, Dr. Henderson diagnosed Clayton's condition as lumbar radicular syndrome, but did not explain his conclusion that Clayton was temporarily totally disabled. The ALJ could give the other doctors' reports more weight. There is substantial evidence to support the ALJ's decision that Clayton is not disabled.

Clayton contends, however, that the ALJ did not consider adequately his subjective allegations of pain. Although Clayton testified that he had severe pain, rating 70 on a scale from one to 100, the ALJ specifically found that the objective medical evidence did not support Clayton's subjectively stated level of pain. The ALJ considered Clayton's daily activities and his medical records in making this finding. The ALJ's determination regarding the

disabling nature of Clayton's pain is supported by the record and therefore is entitled to deference. See Carrier, 944 F.2d at 247.

B. Medical-Vocational Guidelines

Clayton also argues that the ALJ improperly relied on the Medical-Vocational Guidelines to determine that Clayton was not disabled within the meaning of the SSA. The ALJ may rely exclusively on the guidelines to determine whether there is other work available that a claimant can perform if the claimant's characteristics correspond to the criteria in the guidelines and the claimant's nonexertional impairments do not significantly affect his residual functional capacity. Selder, 914 F.2d at 618. The ALJ specifically found that Clayton had no nonexertional limitations because his testimony regarding the extent of his pain was not credible. As discussed above, this determination is supported by substantial evidence. The ALJ properly relied on the Medical-Vocational Guidelines.

AFFIRMED.