UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2914
Summary Calendar

C. LAURETTE RAYMON,

Plaintiff-Appellant,

VERSUS

DONNA E. SHALALA, Secretary
of Health and Human Services,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-91-1504)

(October 21, 1994)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:[1]

C. Laurette Raymon appeals an adverse summary judgment that she is not disabled within the meaning of the Social Security Act. We **AFFIRM**.

I.

In 1988, Raymon applied for disability insurance benefits, alleging disability since November 7, 1978, due to pulmonary sarcoidosis, chronic Epstein-Barr syndrome, chronic fatigue syndrome, irritable bowel syndrome, and other symptoms. Following

---

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

a hearing, an administrative law judge (ALJ) determined that Raymon's impairments did not preclude her from performing her past relevant work as a social worker and assistant personnel manager. Thus, the ALJ held that Raymon was not disabled within the meaning of the Social Security Act at any time from February 24, 1984 through September 30, 1988, the date Raymon was last insured for disability benefits.[2]

The Appeals Council denied Raymon's request for review. Therefore, the ALJ's decision became the final decision of the Secretary.

Raymon sought judicial review of the decision by the district court, which granted summary judgment in favor of the Secretary.

II.

In reviewing the Secretary's decision to deny disability benefits, this court is limited to determining whether there is substantial evidence in the record to support the decision and whether the proper legal standards were used in evaluating the evidence. ***Villa v. Sullivan***, 895 F.2d 1019, 1021 (5th Cir. 1990). "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." ***Id.*** at 1021-22 (citation omitted). A finding of no substantial evidence is appropriate "only where there is a conspicuous absence of credible

---

[2] A previous administrative decision of February 23, 1984, determined that Raymon was disabled and was entitled to a closed period of benefits through the end of September 1983. Because Raymon did not appeal that decision, her claim, as it pertains to the February 23, 1984 decision is subject to the doctrine of administrative *res judicata*. *See* 20 C.F.R. § 404.957(c)(1) (1994); ***Muse v. Sullivan***, 925 F.2d 785, 787 n.1 (5th Cir. 1991).

choices or no contrary medical evidence." ***Johnson v. Bowen***, 864 F.2d 340, 343-44 (5th Cir. 1988) (internal quotation and citation omitted).

To be entitled to disability insurance, the applicant must show that she is disabled. 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 has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A) (1988). In evaluating whether an applicant is capable of performing "any substantial gainful activity", the Secretary follows the well-known sequential five-step process. A finding that a claimant is not disabled at any point terminates the evaluation. ***Crouchet v. Sullivan***, 885 F.2d 202, 206 (5th Cir. 1989). The five-step process requires that: 1) the claimant is not presently working; 2) the claimant's physical or mental ability to do basic work activities is significantly limited by an impairment or combination of impairments; 3) if the claimant's impairment meets or medically equals an impairment listed in the appendix to the regulations, then disability is automatic; 4) the claimant's impairment prevents her from doing past relevant work; and 5) the claimant cannot perform any other work. *See* ***Muse v, Sullivan***, 925 F.2d 785, 789 (5th Cir. 1991); 20 C.F.R. § 404.1520(b)-(f) (1994).

On the first four steps of the analysis, the claimant bears the burden of proving her disability. If the fifth step is reached, the burden shifts to the Secretary to show that the

claimant can perform other work in the national economy. ***Wren v. Sullivan***, 925 F.2d 123, 125 (5th Cir. 1991). If the Secretary meets this burden, then the claimant must prove that she cannot in fact perform the work suggested by the Secretary. ***Muse***, 925 F.2d at 789.

The ALJ followed this five-step process. The ALJ found that Raymon had not worked since November 1978. The ALJ further found that Raymon has "sarcoidosis with residual pulmonary damage; chronic Epstein-Barr virus syndrome; candidiasis, by history; and a histrionic personality disorder with somatization", but that her impairment or combination of impairments did not meet or medically equal an impairment listed in the appendix to the regulations.[3] The ALJ then moved to step four, and determined that Raymon's impairment did not prevent her from performing sedentary to light work with some environmental limitations. Accordingly, the ALJ

---

[3] Sarcoidosis, a systemic disease of unknown cause, is characterized by nodular inflammatory lesions, especially involving the lungs with resulting fibrosis, but also involving lymph nodes, liver, spleen, eyes, skin, parotid glands, and phalangeal bones. STEDMAN'S MEDICAL DICTIONARY 1382 (25th ed. 1990). The acute form has an abrupt onset and a high spontaneous remission rate; the chronic form is progressive. THE SLOANE-DORLAND ANNOTATED MEDICAL-LEGAL DICTIONARY 625 (1987).

The Epstein-Barr virus causes infectious mononucleosis which typically consists of fatigue, fever, pharyngitis, or lymphadenopathy. THE MERCK MANUAL 2281-83 (16th ed. 1992).

Candidiasis is an infection with, or disease caused by Candida, a genus of yeast-like fungi. STEDMAN'S MEDICAL DICTIONARY 1382 (25th ed. 1990). Generally, it is a superficial infection of the moist cutaneous areas of the body. THE SLOANE-DORLAND ANNOTATED MEDICAL-LEGAL DICTIONARY 109 (1987).

Somatization is a psychiatric term to characterize the conversion of mental experiences or states into bodily symptoms. THE SLOANE-DORLAND ANNOTATED MEDICAL-LEGAL DICTIONARY 652 (1987).

ruled that Raymon was not disabled, as defined by the Social Security Act, during the period from February 1984 through September 30, 1988; further analysis of Raymon's claim ceased.

Raymon's sole contention is that, as a matter of law, the Secretary was required to give controlling weight to the opinions of Raymon's treating physicians over the opinion of the non-examining physician designated by the Secretary. She points out that her treating physicians believed she suffered from chronic fatigue syndrome, whereas the non-examining physician did not recognize the existence of that disease. But, Raymon does not challenge the detailed accounts of the medical evidence set out in the ALJ's decision and the magistrate judge's report.[4]

Ordinarily, in determining disability, the opinion and diagnosis of a treating physician familiar with the claimant's condition, treatment, and responses should be accorded considerable weight. ***Scott v. Heckler***, 770 F.2d 482, 485 (5th Cir. 1985). Thus, an ALJ may not rely on a non-examining physician's assessment, when contrary to, or unsupported by, findings made by an examining physician. ***Villa***, 895 F.2d at 1024. Similarly, the

---

[4] Indeed, because Raymon failed to object to the magistrate judge's report, she may not attack findings of fact adopted by the district court except on grounds of manifest injustice. ***Parfait v. Bowen***, 803 F.2d 810, 813 (5th Cir. 1986); ***Nettles v. Wainwright***, 677 F.2d 404, 410 (5th Cir. 1982)(en banc). Raymon obfuscates the issue in this appeal by positing that the opinion of the Secretary's consultant does not constitute substantial evidence when that opinion is contradicted by her treating physicians. She does argue correctly that the Secretary's decision must be supported by substantial evidence. In applying this standard, this court reviews the entire record, not just the contradictory testimony to which Raymon alludes. In doing so, we are mindful that we must neither reweigh the evidence nor substitute our judgment for the Secretary's. ***Villa***, 895 F.2d at 1022.

report of a non-examining physician, when it constitutes the sole medical evidence presented, does not provide substantial evidence on which to base an administrative decision. ***Id.***

However, "the ALJ is free to reject the opinion of any physician when the evidence supports a contrary conclusion." ***Bradley v. Bowen***, 809 F.2d 1054, 1057 (5th Cir. 1987) (internal quotation and citation omitted). Furthermore, as a matter of law, the opinion of a treating physician is not entitled to greater weight than that of a consulting physician. ***Adams v. Bowen***, 833 F.2d 509, 512 (5th Cir. 1987). When the evidence presents conflicting testimony and reports, the Secretary, not the courts, has the duty to resolve material conflicts in the evidence and to decide the case. ***Chaparro v. Bowen***, 815 F.2d 1008, 1011 (5th Cir. 1987).

The ALJ did not err, as a matter of law, in crediting the opinion of a non-examining medical advisor designated by the Secretary, Dr. Duren, over the opinions of Raymon's long-term treating physicians, Drs. Jenkins and Posey.[5] Dr. Duren, a specialist in internal medicine and cardiology, testified at the hearing that the medical evidence, during the period under consideration, demonstrated the existence of two physical or anatomical abnormalities -- sarcoidosis and chronic Epstein-Barr virus (CEBV) -- which were identifiable impairments under the Social Security Act. Dr. Duren also assumed that Raymon had been

[5] Raymon's characterization of a third doctor, Dr. Hamilos, as a "long-time treating" physician is inaccurate. Dr. Hamilos, a staff physician at the National Jewish Center for Immunology and Respiratory Medicine, simply conducted a variety of tests on Raymon, on December 14, 1988.

exposed to, or had, candidiasis at one time, although the laboratory tests, from which the diagnosis of candidiasis was made, were not part of the record. According to Dr. Duren, the mere diagnoses of sarcoidosis, CEBV, and candidiasis were not significant unless there were signs that these conditions were currently active or had resulted in some kind of end-organ damage. He concluded that Raymon's tests did not show residual effects from either CEBV or candidiasis.

With respect to Raymon's sarcoidosis, Dr. Duren stated that he concurred with the December 14, 1988, medical report from the National Jewish Center for Immunology and Respiratory Medicine Hospital that there was no objective evidence of active sarcoidosis. Dr. Duren concluded that Raymon's sarcoidosis had been very quiescent, with minimal involvement of the body and no evidence of involvement outside the lungs.

Dr. Duren also testified that the medical community had not entirely accepted chronic fatigue syndrome as a new disease entity, and that no objective test exists for fatigue. According to him, the record did not objectively document any disease process which would, with reasonable medical probability, cause the degree of fatigue symptoms claimed by Raymon. Dr. Duren concluded that, from February 1984 to September 1988, none of Raymon's documented impairments, individually or in combination, met or equalled the criteria of any listing for the purposes of step three of the sequential evaluation. He opined that Raymon was medically capable, during this period, of performing a light level of physical exertion, such as lifting ten pounds frequently and up to

20 pounds occasionally, in an environment which did not expose her to heavy dust and fumes.

Although Dr. Jenkins stated in a October 10, 1989, letter that Raymon had chronic fatigue syndrome, he acknowledged that she did not strictly meet the criteria for that condition, as set forth in the Annals of Internal Medicine, because sarcoidosis produced similar symptoms. Dr. Jenkins stated that Raymon was unable to perform physical work that would require her to lift or carry up to ten pounds, or lift and carry small objects for six hours in an eight-hour day requiring occasional walking or standing. This opinion was inconsistent with his July 1988 assessment, which stated that Raymon was capable of lifting and/or carrying up to 15 pounds and that the only activities she was to "avoid completely" were balancing, operating heavy equipment or certain vehicles, and exposure to dust, gases, fumes, chemicals, and allergenic agents.[6]

Dr. Posey's 1989 and 1990 letters indicating that Raymon was disabled due to chronic fatigue syndrome are weakened by his July 1988 statement that the diagnosis of CEBV was not made in his office, and that he did not have any data relating to this condition, aside from the patient history.

The ALJ noted that the medical evaluations, after February 1984 and prior to September 1988, showed that Raymon's sarcoidosis was relatively mild and generally in remission. He further noted that chest x-rays, electrocardiograms, electromyogram, and visual

---

[6] The ALJ noted that Dr. Jenkins' 1988 assessment alludes to at least a sedentary work capacity. The assessment did not imply that Raymon's capacity for even sedentary work was significantly compromised.

examination did not show any evidence of heart enlargement, arrhythmias, infiltrates, peripheral neuropathy, or significant visual loss during this period. Additionally, Raymon's treating physicians' opinions were inconsistent with their own assessments prior to the expiration of Raymon's insured status in September 1988. Thus, the ALJ acted within his discretion in rejecting the treating physicians' opinions that Raymon could not perform her past relevant work during the period under consideration, because these opinions were inconsistent not only with Dr. Duren's opinion, but also with other evidence in the record. *See* ***Spellman v. Shalala***, 1 F.3d 357, 364-65 (5th Cir. 1993).

III.

For the foregoing reasons, the judgment is

AFFIRMED.