

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-2948
Summary Calendar

LEROY CANNON, JR.,

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 Texas
(CA-H-92-3241)

(October 4, 1994)

Before GARWOOD, HIGGINBOTHAM and DAVIS, Circuit Judges.

PER CURIAM:¹

Leroy Cannon, a 60-year-old former truck driver, appeals the district court's summary judgment rejecting his claim for disability benefits under the Social Security Act. 42 U.S.C. §§ 301 et seq. We affirm.

I.

Cannon raises two issues on appeal: 1) the Secretary should have given controlling weight to the treating physician's opinion

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

under the correct legal standards; and 2) the Secretary's decision was not supported by substantial evidence.

A.

This court's review is limited to determining whether the record as a whole shows that the district court was correct in concluding that substantial evidence supports the findings of the Secretary and whether any errors of law were made. **Fraga v. Bowen**, 810 F.2d 1296, 1302 (5th Cir. 1987).

Cannon has the burden of proving that he is disabled within the meaning of the Social Security Act. **Fraga**, 810 F.2d at 1301. The statute 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). In evaluating a claim of disability, the Secretary follows the familiar five-step sequential analysis.²

The Administrative Law Judge (the "ALJ") found (under step 4) that Cannon had significant physical and mental problems that prevented him from returning to his previous job as a truck driver. At step five, however, the ALJ concluded that Cannon did not have

² 1) whether the claimant is presently engaging in substantial gainful activity, 2) whether the claimant has a severe impairment, 3) whether the impairment is listed, or equivalent to an impairment listed, in Appendix 1 of the Regulations, 4) whether the impairment prevents the claimant from doing past relevant work, and 5) whether the impairment prevents the claimant from doing any other substantial gainful activity. 20 C.F.R. § 404.1520; **Muse v. Sullivan**, 925 F.2d 785, 789 (5th Cir. 1991).

a mental impairment sufficiently severe to meet the criteria for disability under § 12.00 of the Social Security Administration's regulations. 20 C.F.R. Part 404, Subpart P, Appendix 1, §§ 12.00.³ In reaching this conclusion, however, the ALJ rejected the testimony of the treating psychiatrist, Dr. Amos Azumba, who testified that Cannon met the criteria for a mental disability under § 12.00.

An ALJ may reject the opinion of a treating physician provided the opinion is contradicted by "other substantial evidence" in the record. 20 C.F.R. 404.1527(d)(2). Accordingly, even though Dr. Azumba was Cannon's treating physician, the ALJ was entitled to reject that opinion if it was not adequately supported by the record as a whole. **Spellman v. Shalala**, 1 F.3d 357, 364-65.

Our review of the record persuades us that the ALJ's conclusion is supported by substantial evidence in the record. First, the decision is supported by the testimony of other medical witnesses. Dr. Pollock found that Cannon's symptoms were controlled when he took his medication. Dr. Altschuler, a medical advisor, also provided testimony that confirmed the ALJ's decision. From his review of the medical records, Dr. Altschuler found no evidence of a very severe psychotic process, severe depression,

³ In order to meet the level of severity required for classification as mentally impaired under the regulations, an applicant must meet the criteria of both Parts "A" and "B" of Appendix 1, § 12.00 et seq. The ALJ concluded that Cannon failed to meet the criteria of Part "B" which determine the severity of the applicant's condition. Specifically, Cannon was not affected by any severe "organic mental disorders" under § 12.02 or any "affective disorders" under § 12.04.

moderate dementia, or abnormal organic damage. Dr. Altschuler further found that there was no evidence of any serious impairment in social function.

Cannon admits that the record is unclear as to his mental condition but argues that this is even more reason to accept Dr. Azumba's conclusions in this respect. But Dr. Azumba's own reports indicated that Cannon no longer had a depressed mood and that he had responded well to medication.

In fact, Cannon's own testimony tends to confirm the ALJ's decision. Cannon testified at his hearing that he felt better while using his medication. Significantly, Cannon testified that he was able to work as a minister in his church every week. This testimony supports the ALJ's conclusion that Cannon did not meet one of the criteria for mental impairment under Part "B" of the regulation--serious impairment in social and communication skills. Appendix 1, § 12.00(C)(2).

B.

We are also persuaded that the ALJ was entitled to conclude that Cannon could perform other work in the economy. Substantial evidence supports this conclusion. Ms. Vasquez, a vocational expert, testified at the hearing that jobs were available in both the national and regional economy that Cannon could perform based on his mental and physical condition. This testimony supports the ALJ's conclusion that Cannon can perform other gainful employment. **Muse**, 925 F.2d at 789.

II.

In sum, the medical evidence demonstrates that Cannon has some minor physical problems and a minor mental condition that is controlled with medication. Cannon has quit smoking, which has decreased his chest pain, and he takes medication for his back pain. Cannon also plays with his grandchildren, reads the paper, helps with housework, drives, works as a minister at his church, and cuts his lawn. Therefore, the testimony of Cannon and his lay witnesses, together with Dr. Altschuler's and Ms. Vasquez's testimony, constitutes substantial evidence to support the ALJ's determination that, while Cannon could not perform his past work, he was not disabled within the meaning of the Social Security Act.

AFFIRMED.