IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

93-3242

ROBERT L. WILLIAMS,

Plaintiff-Appellant,

versus

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

Defendant-Appellee

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA-91-3063-D)

(June 21, 1994)

Before SMITH and BARKSDALE, Circuit Judges, and WALTER,[*] District Judge.

DONALD E. WALTER, District Judge:[**]

Robert Williams appeals the action of the District Court in granting defendant HHS's motion for summary judgment. Finding no error, we affirm.

I.

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* District Judge of the Western District of Louisiana, sitting by designation.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Williams applied for disability insurance benefits on November 30, 1988. He claimed disability on three separate grounds: back and knee injuries resulting from a fall from a truck in May, 1986; alcohol dependency; and mental problems. After being denied benefits initially, Williams requested and was granted a hearing before an Administrative Law Judge. The ALJ found that Williams was disabled within the meaning of the Social Security Act only from May 13, 1986 through October 28, 1988. The ALJ also found that although Williams could not perform his past work (Williams is a plumber by trade) he could perform sedentary work. Williams' appeal of the ALJ's findings to the Appeals Council was denied.

Williams then brought suit challenging the Secretary's decision. The matter was referred to a magistrate judge who after reviewing the case recommended that the agency decision be affirmed. The magistrate judge specifically found that Williams could control his drinking when he chose to do so; that Williams had not sought treatment for alcohol dependency; and that the testimony of a vocational expert who testified before the ALJ constituted substantial evidence supporting the Secretary's decision.

Williams objected to the findings of the magistrate judge. After considering Williams' objections, the district court remanded the matter back to the magistrate judge for further findings that specifically addressed Williams' contention that the ALJ did not follow the applicable regulations concerning his alleged mental impairment. The magistrate judge issued amended findings approximately 6 months later which the district court adopted. Judgement was rendered dismissing Williams' claim.

Williams then filed this appeal raising two issues. He first claims the ALJ erred in evaluating the severity of his alcoholism. He also claims that the ALJ's finding that he is able to work is not supported by substantial evidence. We disagree.

II.

A.

Williams first claims that the ALJ erred in evaluating the severity of his alleged alcohol-related impairments by finding that he was not disabled by whatever alcohol-related problems he may have. This Court's review of a finding that a claimant is *not* disabled is limited to two specific inquiries: whether substantial evidence supports the finding and whether the decision comports with relevant legal standards. *Villa v. Sullivan*, 895 F.2d 1019, 1021 (5th Cir. 1990). If the findings are supported by substantial evidence they are conclusive and must be affirmed.

Substantial evidence is evidence which is both relevant and sufficient for a reasonable mind to accept as adequate to support the finding or conclusion. *Selders v. Sullivan*, 919 F.2d 901, 904 (5th Cir. 1990). It is more than a mere scintilla but less than a preponderance. *Moore v. Sullivan*, 919 F.2d 901, 904 (5th Cir. 1990). In determining whether substantial evidence of a disability exists, this Court is to consider 4 separate elements: the objective medical facts; the diagnosis and the opinion of the treating and examining physicians; the claimant's subjective evidence of pain and disability; and the claimant's age, education, and work history. *Wren v. Sullivan*, 925 F.2d 123, 126 (5th Cir. 1991).

In evaluating whether a particular disability claim should be allowed the Secretary follows a sequential, five-step process. *Orphey v. Secretary of Health & Human Services*, 962 F.2d 384, 386 (5th Cir. 1992). In the final step of the evaluation, the Secretary looks to whether the claimant can or cannot perform other work. *Muse v. Sullivan*, 925 F.2d 785, 789 (5th Cir. 1991).

The burden at this stage is initially on the claimant to establish that he or she cannot perform any past, relevant work. If this burden is carried, the Secretary must then show that the claimant is capable of other work. If the Secretary makes this showing, the burden shifts back to the claimant to show that he or she is not able to perform the alternative work. *Fields v. Bowen*, 850 F.2d 1168, 1169-70 (5th Cir. 1986). This Court has held that alcoholism can be disabling if it prevents a claimant from engaging in a substantial gainful activity, *Ferguson v. Heckler*, 750 F.2d 503, 505 (5th Cir. 1985), but only if it is shown that the claimant is addicted to alcohol and cannot control his or her drinking voluntarily. *Neal v. Bowen*, 829 F.2d 528, 531 (5th Cir. 1987).

Williams puts great weight in the reports of a physician who treated him in 1988 as evidence that his alcoholism was disabling. However, at the hearing Williams testified that he was not receiving treatment for his alcoholism. He also testified that he could control his drinking when he chose to do so and often did when he knew he would be driving. Williams also refrained from drinking on the mornings of important meetings or job interviews. In light of his testimony at the hearing, the ALJ found that Williams could voluntarily control his drinking and as such was not disabled. The

decision to accept Williams' own testimony that he can control his drinking when he wants to over the contradictory physician's reports does not warrant reversal.

Williams also argues that *Orphey, supra*, mandates reversal. The Court properly remanded in *Orphey* as the ALJ "made no finding as to whether Orphey had the ability to control his drinking and drug abuse." *Id.*, 962 F.2d at 386. In the case at hand, however, the ALJ in fact found that Williams could voluntarily control his drinking. With this finding no reversal is required under *Orphey*.

B.

Williams also claims that the finding of the ALJ that he could perform sedentary labor was not supported by substantial evidence. The basis for this finding was the testimony of a Vocational Expert. Williams argues that the testimony of the Vocational Expert was given in response to an improperly phrased hypothetical question which did not include any consideration of his nonexertional impairments of pain and alcoholism. As such, Williams argues, the answer cannot be substantial evidence.

An impairment can be considered as "not severe" only if it has "such minimal effect on the individual that it would not be expected to interfere with the individual's ability to work." *Stone v. Heckler*, 752 F.2d 1099, 1101 (5th Cir. 1985). As discussed above, the ALJ found that Williams could control whatever alcohol-related problems he may have, and as such, Williams' situation does not rise to the level of a disability. This indicates that Williams' problems with alcohol are not sufficiently severe so as to render an hypothetical question about his work ability invalid for not addressing them.

The failure of the hypothetical to include a reference to any nonexertional pain Williams may have been experiencing fits within the same analysis. The ALJ found that Williams was not physically disabled only after considering all of the evidence, including evidence presented by Williams himself that directly addressed any physical impairments he claimed. The failure to include a reference to these impairments in the hypothetical question asked of the Vocational Expert is of no moment.

AFFIRMED.