

UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT

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No. 93-4030

(Summary Calendar)

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CHARLES PATRICK,

Plaintiff-Appellant,

versus

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Texas  
(1:86-CV-656)

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(February 21, 1994)

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

PER CURIAM:\*

Charles Patrick appeals the district court's dismissal of his action for judicial review of the decision by the Secretary of Health and Human Services ("the Secretary") denying his application seeking supplemental security income and disability insurance benefits. Finding no error, we affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.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

Patrick, a forty-five year old man with a high school education, filed applications in May 1985 for both disability insurance benefits and Supplemental Security Income ("SSI") benefits under Title II of the Social Security Act, 42 U.S.C. § 401 et seq. (1988).<sup>1</sup> Patrick alleged that he was disabled due to back problems, arthritis, and emphysema. After the Secretary initially denied his applications, Patrick requested a hearing. At the subsequent hearing, an administrative law judge ("ALJ") found that Patrick suffered from lumbar and cervical degenerative disc disease, chronic obstructive pulmonary disease, and obesity, and that these constituted severe physical impairments. Based on the record as a whole, however, the ALJ found that Patrick could perform both his past relevant work and light work. The Appeals Council declined to review Patrick's claim, and Patrick sought judicial review of the ALJ's decision in federal district court. In November 1986, the district court granted the Secretary's motion to remand the case for further consideration. The Appeals Council then vacated its prior decision denying review and the ALJ's decision and remanded the case to another ALJ for a new hearing.

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<sup>1</sup> Patrick's current application for disability benefits alleges that certain of his ailments began in June 1980. However, a previous administrative decision adjudicated Patrick's benefits entitlement through June 1984. Because Patrick did not appeal that determination, Patrick's claim for benefits for the period prior to June 1984 "is subject to the doctrine of administrative *res judicata*." *Muse v. Sullivan*, 925 F.2d 785, 787 n.1 (5th Cir. 1991).

In January 1988, the second ALJ heard Patrick's case. The ALJ found that Patrick could not perform his past relevant work but could perform a full range of sedentary work and a limited range of light work, thus rendering Patrick ineligible for disability benefits. The Appeals Council adopted the ALJ's decision. The district court then reopened the case, and both parties moved for summary judgment. The district court then vacated the Secretary's decision and remanded the case so that the Secretary could consider additional evidence regarding Patrick's allegations of pain and additional testimony from vocational experts. The Appeals Council once again vacated its previous decision and remanded the case to the ALJ for additional proceedings.

After an October 1990 hearing, the ALJ found that Patrick suffered from "severe impairments of lumbar and cervical degenerative disc disease, chronic obstructive pulmonary disease, obesity, and an affective mental disorder. The ALJ concluded, however, that because Patrick could perform a significant number of sedentary unskilled jobs, Patrick was ineligible for benefits. The Appeals Council declined to review the ALJ's decision, thus making it the final decision of the Secretary. Patrick then filed a motion in the district court to reopen the case, which the district court granted, and a second motion for summary judgment. The Secretary in turn moved for summary judgment on the ground that substantial evidence supported the ALJ's

decision. The district court granted the Secretary's motion and dismissed Patrick's suit. Patrick now appeals.

## II

Patrick challenges three aspects of the Secretary's decision to deny him disability benefits. On review, this Court determines whether substantial evidence exists in the record as a whole to support the ALJ's factual findings and whether the ALJ applied the proper legal standards. *Selders v. Sullivan*, 914 F.2d 614, 617 (5th Cir. 1990); *Villa v. Sullivan*, 895 F.2d 1019, 1021 (5th Cir. 1990). Substantial evidence is that which is relevant and sufficient for a reasonable mind to accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401, 91 S. Ct. 1420, 1427, 28 L. Ed. 2d 842 (1971). It is more than a mere scintilla and less than a preponderance. *Id.* "This Court may not reweigh the evidence or try the issues de novo. Conflicts in the evidence are for the Secretary and not the courts to resolve." *Selders*, 914 F.2d at 617. Disability is defined as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." 42 U.S.C. § 423(d)(1)(A).

## A

Patrick first argues that the evidence does not support the ALJ's determination that he is not disabled. Patrick, as claimant,

bears the burden of proving that he is disabled. *Selders*, 914 F.2d at 618. In evaluating a disability claim, the Secretary conducts a five-step sequential analysis, the first four steps of which place the burden on the claimant. First, the claimant must not be presently working. Second, the claimant must have an impairment or combination of impairments that severely limits his physical or mental ability to do basic work activities. Third, to secure a finding of disability without consideration of age, education, or work experience, the claimant must demonstrate that his impairment is listed in, or equivalent to, an impairment listed in Appendix 1 of the Regulations. Fourth, the impairment must prevent the claimant from doing past relevant work. Finally, the Secretary must establish that the claimant can perform other substantially gainful activity.<sup>2</sup> Once the Secretary meets this burden, the claimant must then prove that he cannot perform the work suggested. *Muse*, 925 F.2d at 789.

The ALJ disposed of Patrick's claim at step five. The ALJ found that Patrick retained the residual functional capacity to perform substantially gainful activity and, therefore, was not disabled. After closely examining the record, we conclude that substantial evidence supports the Secretary's determination that Patrick was not disabled. While Patrick points to evidence in the record suggesting that he is disabled, the record also contains

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<sup>2</sup> In determining whether the claimant can do any other work, the Secretary considers the claimant's residual functional capacity, together with age, education, and work experience, according to the Medical-Vocational Guidelines set forth by the Secretary. *Selders*, 914 F.2d at 618; 20 C.F.R. § 404.1520.

substantial evidence indicating that Patrick is not disabled. See *Harrell v. Bowen*, 862 F.2d 471, 481 (5th Cir. 1988) (recognizing that not all severe impairments are disabling). For example, various physical examinations and tests suggest that Patrick suffers from little objective abnormalities. In September 1987, Dr. Randolph Evans observed that although Patrick could not perform certain types of work activities, Patrick could perform work requiring him to lift between five and ten pounds, stand or walk for a total of four hours per day, and sit for a total of six hours per day. Also in September 1987, Dr. Jamie Ganc reported that Patrick's ability to function in a work-related setting was "fair" in light of Patrick's psychological condition. In January 1990, Dr. Joel Ragland opined that Patrick could undertake "sedentary type work." Anthony P. Moreno, a vocational expert, testified at the second hearing that Patrick could perform several types of sedentary or light work jobs available in the national economy in significant numbers. Mansel Wilkinson, a vocational witness who testified at the third hearing, confirmed that Patrick could perform many sedentary unskilled jobs available in the national and regional economy. The opinions of these physicians and vocational experts certainly constitute "more than a mere scintilla" of evidence and are the kind of evidence that "a reasonable mind might accept as adequate to support a conclusion." *Richardson*, 402 U.S. at 390, 91 S. Ct. at 1427. While Patrick correctly points out that the Secretary's findings are contradicted by evidence in the record, "[c]onflicts in the evidence are for the Secretary and not

the courts to resolve." *Selders*, 914 F.2d at 617. Because substantial evidence supports the Secretary's determination that Patrick was capable of performing substantial gainful employment, we will not disturb that finding on appeal.

**B**

Patrick next contends that the Secretary was required to give controlling weight to his treating physicians' opinions that he was physically incapable of engaging in substantially gainful activity. The ALJ found that while Patrick suffered from severe physical impairments, he could still perform substantial gainful employment. As demonstrated above, however, other physicians and medical evidence indicated that Patrick was not disabled because he could perform substantial gainful activity.

"If . . . a treating source's opinion on the issue(s) of the nature and severity of [the claimant's] impairment(s) is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in [the claimant's] case record, . . . it [will be given] controlling weight." 20 C.F.R. § 404.1527(d)(2). It is the Secretary, however, who ultimately determines whether a claimant is disabled:

[The Secretary is] responsible for making the determination or decision about whether [a claimant] meet[s] the statutory definition of disability. In so doing, [the Secretary] review[s] all of the medical findings and other evidence that support a medical source's statement that [a claimant] is disabled. A statement by a medical source that [a claimant is] "disabled" or "unable to work" does not mean that [the Secretary] will determine that [a claimant] is disabled.

20 C.F.R. § 404.1527(e)(1); see also *Spellman v. Shalala*, 1 F.3d 357, 364 (5th Cir. 1993). Because the opinions cited by Patrick were somewhat conclusory and inconsistent with substantial evidence in the record, the ALJ acted within its discretion in disregarding them. *Spellman*, 1 F.3d at 364-65.

### C

Patrick's final contention is that the ALJ did not adequately consider his complaints of pain. Although the ALJ must consider a claimant's subjective complaints of pain, *Carrier v. Sullivan*, 944 F.2d 243, 247 (5th Cir. 1991), pain constitutes a disabling condition under the Act only when it is "constant, unremitting, and wholly unresponsive to therapeutic treatment." *Harrell v. Bowen*, 862 F.2d 471, 480 (5th Cir. 1988). "`How much pain is disabling is a question for the ALJ [because] the ALJ has the primary responsibility for resolving conflicts in the evidence.'" *Carrier*, 944 F.2d at 247 (citation omitted). Here, the ALJ's finding is supported by substantial medical evidence, which demonstrates that there were no objective conditions causing the level of pain allegedly suffered by Patrick. See *Anthony v. Sullivan*, 954 F.2d 289, 296 (5th Cir. 1992) (noting that the "objective medical evidence must demonstrate the existence of a condition that could reasonably be expected to produce the level of pain or other symptoms alleged"). Moreover, Patrick testified before the ALJ that, during an average day, he exercised, did some yard work, and could walk up to seven or eight blocks at a time. Furthermore, both ALJs, after observing Patrick's demeanor and actions during



the three hearings, discredited Patrick's complaints of constant and unrelenting pain. See *Villa*, 895 F.2d at 1024 (noting that "a factfinder's evaluation of the credibility of subjective complaints is entitled to judicial deference if supported by substantial record evidence"). Because more than a mere scintilla of record evidence support's the ALJ's credibility determination, we will defer to it.

### **III**

For the foregoing reasons, we AFFIRM the judgment of the district court.