

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 93-4064  
Summary Calendar

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GRADY O'QUINN,

Plaintiff-Appellant,

VERSUS

U. S. SECRETARY OF HEALTH & HUMAN SERVICES,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Western District of Louisiana  
(91-0830)  
(December 10, 1993)

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Before GARWOOD, SMITH and DeMOSS, Circuit Judges.

PER CURIAM:\*

BACKGROUND

Grady Burl O'Quinn filed applications for disability benefits under Titles II and XVI of the Social Security Act in November 1988, alleging disability because of a back problem. An administrative law judge (ALJ) conducted a hearing on November 6, 1989. On May 29, 1990, the ALJ determined that O'Quinn met 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

disability status requirements of the Act and that he had not engaged in substantial gainful work activity since May 1985. The ALJ concluded that the medical testimony demonstrated that O'Quinn had severe disk bulges and neuroforamina stenosis, but that O'Quinn did not have any nonexertional limitations. Based on a finding that O'Quinn had the residual functional capacity to perform light work not requiring prolonged standing, the ALJ denied his applications for disability benefits. The Appeals Council denied O'Quinn's request for a review of the ALJ's decision, and that decision became the final decision of the Secretary.

O'Quinn filed a complaint in district court to set aside the Secretary's decision pursuant to 42 U.S.C. § 405(g). The district court adopted the magistrate judge's report and granted the Secretary's motion for summary judgment, affirming the denial of benefits.

#### OPINION

O'Quinn argues that summary judgment was erroneous because he is disabled due to his back impairment, vision difficulties, and hearing loss. He contends that he satisfies the disability listing at 20 C.F.R. § 404.1599<sup>1</sup> by having a disorder of the Musculoskeletal System or, alternatively, that he is disabled because of the combined effects of these severe impairments.

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<sup>1</sup>O'Quinn's brief refers to 20 C.F.R. § 404.1599, but that section addresses work-incentive experiments and rehabilitation-demonstration projects in the disability program. The applicable cite (which counsel did provide later) is 20 C.F.R. pt. 404, subpt. P, app. 1, sec. 1.05(C).

O'Quinn challenges the district court's holding affirming the Secretary's decision on four primary grounds: 1) he satisfies the disability listing at 20 C.F.R. pt. 404, subpt. P., app. 1, sec. 1.05(C) or that he is disabled based on the combination of impairments; 2) O'Quinn's allegations of pain are credible and supported by evidence; 3) the finding that he could not perform the full range of light work under 20 C.F.R. § 404.1567(b) and 20 C.F.R. § 416.967(b) was not based on the testimony of a vocational expert; and 4) the ALJ's severity determination was not based on the proper standards.

Summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); U.S. v. McCallum, 970 F.2d 66, 68 (5th Cir. 1992). This Court's review is de novo. McCallum, 970 F.2d at 68.

#### Substantial evidence

This Court reviews the record to determine whether there is substantial evidence to support the Secretary's decision and whether the Secretary applied the proper legal standards. Griego v. Sullivan, 940 F.2d 942, 943 (5th Cir. 1991). Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401, 91 S.Ct. 1420, 28 L.Ed.2d 842 (1971) (internal quotations and citation omitted). "[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). "This Court may not reweigh the evidence or try the issues *de novo*. Rather, conflicts in the evidence are for the Secretary to resolve." Anthony v. Sullivan, 954 F.2d 289, 295 (5th Cir. 1992) (citations omitted).

The ALJ must apply the five-step sequential process to determine whether an individual is disabled: (1) whether the claimant is not presently working; (2) whether the claimant has a severe impairment; (3) if the impairment is not listed in, or equivalent to, an impairment listed in Appendix 1 of the Regulations; (4) if the impairment prevents the claimant from doing past relevant work; and (5) if the impairment prevents the claimant from doing any other substantial gainful activity. Muse v. Sullivan, 925 F.2d 785, 789 (5th Cir. 1991); see 20 C.F.R. §§ 404.1520(b)-(f), 416.920(b)-(f). A finding that a claimant is not disabled at any point within the five-step analysis is conclusive and terminates the inquiry. Lovelace v. Bowen, 813 F.2d 55, 58 (5th Cir. 1987).

In 1988, in a prior application for disability benefits due to poor hearing and hip and back pain, an ALJ had found O'Quinn not disabled.

On November 6, 1989, ALJ Ronald Burton conducted a hearing based on O'Quinn's current applications for disability benefits. On May 29, 1990, the ALJ made the following findings: (1) O'Quinn

met the disability insured status requirements of the Act; (2) O'Quinn had not engaged in substantial gainful activity since May 1985; (3) O'Quinn has severe disk bulges and neuroforamina stenosis but not an impairment or combination of impairments equal to those listed in Appendix I, rendering him disabled; (4) the pain and physical limitations asserted by O'Quinn were not credible; (5) O'Quinn had the residual functional capacity to perform light work and that he experienced no nonexertional limitations; (6) O'Quinn could not perform his past work as a roustabout, sandblaster, cement laborer, and general laborer; (7) O'Quinn could perform the full range of sedentary work and a limited range of light work; (8) O'Quinn was a younger individual; (9) O'Quinn had a limited education; (10) the transferability of O'Quinn's work skills was not material in light of his age and residual functional capacity; and (11) O'Quinn was not disabled.

O'Quinn had the burden of proving that he is disabled within the meaning of the Social Security Act. Fraga v. Bowen, 810 F.2d 1296, 1301 (5th Cir. 1987). 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 twelve months." 42 U.S.C. § 423(d)(1)(A).

In Wren v. Sullivan, 925 F.2d 123, 126-28 (5th Cir. 1991), this Court set forth four elements of proof that must be weighed when determining if the first prong of the analysis has been met, whether substantial evidence of disability exists: (1) objective

medical facts; (2) diagnoses and opinions of treating and examining physicians; (3) the claimant's subjective evidence of pain and disability; and (4) the claimant's age, education, and work history.

The ALJ determined at step five that O'Quinn could not perform his past relevant work, but he could perform the full range of sedentary work and a limited range of light work. Light work is limited to lifting no more than 20 pounds at a time or frequently lifting or carrying no more than ten pounds at a time. The job may involve a good deal of walking, standing, and sitting, with pushing or pulling some arm or leg controls. 20 C.F.R. § 404.1567(b). A person who can do light work can also do sedentary work, which involves lifting no more than ten pounds at a time and occasionally lifting or carrying small items. The sedentary worker mostly sits but may occasionally stand and walk. 20 C.F.R. § 404.1567(a).

The ALJ's decision described O'Quinn as a 45-year-old individual with a seventh-grade education who had last worked in May 1985. Proceeding to the next step, the ALJ evaluated the medical evidence, finding that O'Quinn had failed to submit any additional information that indicated a worsening or improvement of his condition.

Determining whether there is substantial evidence of disability involves a consideration of both objective and subjective elements. Wren, 925 F.2d at 126-28. O'Quinn argues on appeal that he satisfied the requirements of 20 C.F.R. pt. 404, subpt. P, app. 1, sec. 1.05(C). That provision provides:

1.05 **Disorders of the spine:**

. . .

C. Other vertebrogenic disorders (e.g. herniated nucleus pulposus [sic; correct: "pulposus"], spinal stenosis) with the following persisting for at least 3 months despite prescribed therapy and expected to last 12 months. With both 1 and 2:

1. Pain, muscle spasm, and significant limitation of motion in the spine; and
2. Appropriate radicular distribution of significant motor loss with muscle weakness and sensory and reflex loss.

The medical evidence submitted by Dr. Fred C. Webre, an orthopaedic surgeon, listed O'Quinn as suffering from spondylolysis of the lumbar spine. Dr. Webre concluded that there were no muscle spasms, no sensory or circulatory deficit in the lower extremities; his hip, knees, and ankle motions were normal, his upper extremities exhibited good strength and function, with no restriction at the shoulders, elbows, wrists, and hands. Dr. Webre concluded that O'Quinn did not have any clinical findings that would prevent him from sitting, standing, walking, lifting, and carrying up to 50 pounds.

Dr. James LaFleur, an orthopaedic surgeon, diagnosed O'Quinn's condition as lumbar spondylosis. Upon subsequent treatment, he referred O'Quinn to another orthopedist after further tests revealed that he suffered from bulging discs in the lumbar spine. The University Medical Center subsequently treated O'Quinn for persistent back pain, recommending that he continue taking Advil for pain and that he resume normal activities. The University physician, Dr. Finney, ruled out that O'Quinn had spinal stenosis.

University Medical Center Radiologist Dr. Risa Reina concluded that O'Quinn had no spinal or foramina stenosis and no disc herniations. Dr. Reina concluded that O'Quinn had no definite fractures but determined that he did have a probable lumbar spinal stenosis.

O'Quinn argues that he should be classified disabled under 20 C.F.R. pt. 404, subpt. P, app. 1, sec. 1.05(C). The medical documentation does not indicate that O'Quinn had any significant limitation of motion in the spine nor any significant motor loss with muscle weakness and sensory and reflex loss. The objective evidence indicates that O'Quinn's condition was such that he could sit, stand, and walk, and lift and carry up to 50 pounds. O'Quinn argues that Dr. Webre's report is inadequate and that it is possible that on the date of his examination he could not have exhibited any objective findings. Because there is substantial relevant evidence in the record that supports the Secretary's conclusion and no contrary medical evidence was offered, the Court should not set aside the finding that he is not disabled. Richardson v. Perales, 402 U.S. at 401; Harrell, 862 F.2d at 475.

The allegations that the combination of impairments rendered him disabled is also without merit. Although O'Quinn mentioned during the hearing that his hearing impairment affected his ability to work, his current applications attribute his disability only to lumbar spondylosis and pain in his back, legs, and hips.

The ALJ's finding that O'Quinn's allegations of pain were not credible is supported by substantial evidence. A claimant's



subjective complaints must be corroborated, at least in part, by objective medical evidence of an underlying condition that could be expected to cause the alleged pain or limitation. Wren, 925 F.2d at 129. O'Quinn stated during the examinations and at the administrative hearing that his leg and back pain was being treated by Advil, supporting the finding that his medication levels were not such to classify him disabled. Anthony, 954 F.2d at 296. None of the treating physicians diagnosed acute distress or determined that O'Quinn was being treated on a regular and consistent basis until after April 1989, although he asserted that he had been disabled since 1984 because of pain. O'Quinn's statements regarding his lifestyle included that he lived a sedentary lifestyle but that he periodically washed clothes and dishes, watched television, fished, walked, and drove an automobile long distances.

Sedentary work means that the person lifts no more than ten pounds and requires only occasional standing and walking. 20 C.F.R. § 404.1567(a). The Secretary's finding is supported by O'Quinn's own testimony that he lives a "sedentary" lifestyle which allows for the determination that he could perform light and sedentary work. Additionally, Dr. Webre indicated that O'Quinn could stand, sit, walk, and lift and carry up to 50 pounds, conforming to the definition of sedentary work in the regulations. Therefore, the subjective complaints of pain were not corroborated by objective medical opinion nor supported by O'Quinn's own testimony during the hearing.

The Secretary's Failure to Use Vocational Expert Testimony

O'Quinn challenges the ALJ's finding that he could perform the full range of light work under 20 C.F.R. § 404.1567(b) and 20 C.F.R. § 416.967(b) because it was not based on the testimony of a vocational expert. After a determination that O'Quinn could not perform his previous work, the ALJ was required to consider O'Quinn's age, education, work experience, and residual functional capacity in order to determine whether O'Quinn could perform any other work available in the national economy. See 20 C.F.R. § 404.1520(f).

When the characteristics of the claimant correspond to criteria in the Medical-Vocational Guidelines of the regulations . . . and the claimant either suffers only from exertional impairments or his non-exertional impairments do not significantly affect his residual functional capacity, the ALJ may rely exclusively on the Guidelines in determining whether there is other work available that the claimant can perform.

Fraga, 810 F.2d at 1304. Otherwise, the ALJ must use vocational testimony or other like evidence to show that such jobs exist. Id.

The ALJ stated that the burden shifted to the Secretary to show that O'Quinn could perform jobs in the national economy that exist in significant numbers. Jobs in the national economy are classified as sedentary, light, medium, heavy, and very heavy in terms of the physical exertion requirements. 20 C.F.R. § 416.967. The ALJ's finding at step five that O'Quinn could perform sedentary work is supported by the congruent medical evidence in the record and by O'Quinn's testimony regarding his daily activities. "When the claimant suffers only from exertional impairments or his non-exertional impairments do not significantly affect his residual

functional capacity, the ALJ may rely exclusively on the Guidelines in determining whether there is other work available that the claimant can perform." Selders v. Sullivan, 914 F.2d 614, 618 (5th Cir. 1990). Furthermore, 20 C.F.R. § 416.966(e) provides:

Use of vocational experts and other specialists. If the issue in determining whether you are disabled is whether your work skills can be used in other work and the specific occupations in which they can be used, or there is a similarly complex issue, we [the SSA] may use the services of a vocational expert or other specialist. We will decide whether to use a vocational expert or other specialist.

O'Quinn challenges the ALJ's decision, arguing that the guidelines were inapplicable because of his non-exertional limitations. The ALJ did not err by his discretionary decision not to consult vocational expert testimony because O'Quinn's non-exertional impairments were not substantiated by medical evidence and did not affect his residual functional capacity to perform sedentary work. Selders, 914 F.2d at 618.

Contrary to O'Quinn's argument that the ALJ failed to use the proper standards in assessing a severity rating of his impairment, the ALJ's analysis of his disability and the denial of benefits comported with relevant legal standards. This Court will not disturb the district court's finding that O'Quinn was not eligible for disability benefits under the Social Security Act.

AFFIRMED.