

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4142
Conference Calendar

BENJAMIN SEMIEN, JR.,

Plaintiff-Appellant,

versus

U.S. SECRETARY OF H H S,

Defendant-Appellee.

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Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 91-CV-945
- - - - -

August 20, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Benjamin Semien, Jr. filed an application for disability insurance benefits based on a back injury. Semien was granted a hearing before an Administrative Law Judge (ALJ). Following the hearing, the ALJ sent Semien for a consultative examination by Sam Benbow, M.D., a psychiatrist. The ALJ found that Semien's

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

"exertional impairment(s) is slight, having such a minimal effect on him that it should not interfere with the ability to work, irrespective of age, education or work experience. His mental impairment precludes performance of sustained work activity." The ALJ concluded that Semien was disabled within the meaning of the Social Security Act. Semien contends that there is no substantial evidence to support the ALJ's finding that he was physically able to work, but disabled because of mental impairment.

The standard of review in cases under 42 U.S.C. § 405(g) is whether there is substantial evidence in the record to support the decision of the Secretary. Cook v. Heckler, 750 F.2d 391, 392 (5th Cir. 1985). Substantial evidence is more than "a suspicion of the existence of the fact to be established, but 'no substantial evidence' will be found only where there is a 'conspicuous absence of credible choices' or 'no contrary medical evidence.'" Hames v. Heckler, 707 F.2d 162, 164 (5th Cir. 1983) (citations omitted). This does not allow the Court to engage in a de novo assessment of the record. Deters v. Secretary of Health, Education & Welfare, 789 F.2d 1181, 1185 (5th Cir. 1986). The evidence to support a finding of a mental disorder is contained in Dr. Benbow's report. Dr. Benbow evaluated Semien's judgment and insight as moderately severely impaired and his ability to manage his affairs as "quite marginal." Benbow rated Semien's ability to carry out even simple job instructions as poor or none. Of eight different

factors rating Semien's ability to adjust to a job, Benbow rated four as fair, with the remainder as poor or none. This is sufficient to support the ALJ's finding of mental impairment and conclusion of disability.

AFFIRMED.