UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 93-4886

(Summary Calendar)

ARTHUR BARLOW,
463-46-6347,

Plaintiff-Appellant,

VERSUS

SECRETARY, HEALTH & HUMAN SERVICES,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
(90-CV-99)

(July 5, 1994)

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

PER CURIAM:*

Arthur Barlow seeks judicial review, under 42 U.S.C. § 405(g) (1988), of a final decision of the Secretary of Health & Human Services ("the Secretary") denying him disability benefits. Finding no reversible error, we affirm.

Barlow contends that the Secretary's decision is not supported by substantial evidence because the Administrative Law Judge

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

("ALJ") relied exclusively on the Medical-Vocational Guidelines ("the Guidelines"), 20 C.F.R. Pt. 404, Subpt. P, App. 2, in finding that Barlow was not disabled. Barlow argues that his chest pain and shortness of breath))resulting from a heart condition))are nonexertional impairments, and that a finding on the issue of disability may not be made exclusively on the basis of the Guidelines where the claimant suffers from nonexertional impairments.[1] Barlow correctly states the general rule))that the Guidelines may not be relied upon exclusively where the claimant suffers from non-exertional impairments. *See Fraga v. Bowen,* 810 F.2d 1296, 1304 (5th Cir. 1987). However, Barlow's argument fails because the record does not show that his alleged nonexertional impairments significantly compromised his residual functional capacity. *See id.* ("When . . . the claimant['s] . . . 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.).

In *Fraga v. Bowen,* the claimant argued that the ALJ erred by relying on the guidelines, because his back pain amounted to a nonexertional impairment. *See id.* at 1304. We rejected that contention because (1) the ALJ found that the claimant had the

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[1] *See* 20 C.F.R. Pt. 404, Subpt. P, App. 2, § 200.00(e) ("Since the [Guidelines] are predicated on an individual's having an impairment which manifests itself by limitations in meeting the strength requirements of jobs [i.e. an exertional impairment], they may not be fully applicable where the nature of an individual's impairment does not result in such limitations . . . .").

residual functional capacity to perform light work; (2) the ALJ determined that the claimant's capacity for light work "was not significantly compromised" by his nonexertional impairments; and (3) those determinations were supported by substantial evidence. *See id.* Similarly, in *Selders v. Sullivan,* 914 F.2d 614 (5th Cir. 1990), the claimant argued that the Secretary improperly relied on the Guidelines where the claimant suffered from nonexertional impairments of pain, anxiety, and low intelligence. *See id.* at 618. That argument failed because the ALJ found that the claimant had the residual functional capacity to perform light work, and the record did not support the conclusion that the claimant's residual functional capacity was further reduced by the alleged nonexertional impairments. *See id.* at 618-19 (citing *Fraga*). In *Dominick v. Bowen,* 861 F.2d 1330 (5th Cir. 1988), we held that "[t]he ALJ . . . was entitled to use the Medical-Vocational Guidelines since he made a determination supported by the record that Dominick's nonexertional impairments did not significantly affect her residual functional capacity." *Id.* at 1333 (citing *Fraga*).

Barlow's argument fails, based on the reasoning applied in *Fraga, Selders,* and *Dominick*. The ALJ determined that Barlow "has the residual functional capacity for the full range of medium work," and also determined that Barlow's "testimony of pain, other subjective complaints, and functional limitation is neither fully credible nor supported by the objective clinical findings." Furthermore, the record as a whole supports the ALJ's conclusion

that Barlow did not suffer chest pain or shortness of breath which would prevent him from performing medium work. Because Barlow's alleged nonexertional impairments do not significantly compromise his residual functional capacity, under *Fraga, Selders,* and *Dominick* the ALJ was entitled to rely upon the Guidelines exclusively in deciding that Barlow is not disabled.[2]

Barlow also contends that the ALJ denied him a full and fair hearing by failing (1) to inform him of his right to counsel and the availability of counsel for free or for a reduced rate; and (2) to develop the record more fully by conducting a longer hearing. We do not consider the merits of Barlow's argument, because he failed to raise it below, either before the Appeals Council or before the district court. *See Bowman v. Heckler,* 706 F.2d 564, 568 (5th Cir. 1983) (holding that issue "was not raised below, and we cannot now consider that issue"); *Dominick,* 861 F.2d at 1332 (holding that we had no jurisdiction to review issue raised for first time on appeal to this Court, because claimant had not exhausted her administrative remedies (citing 42 U.S.C. § 405(g))).

Barlow also contends that the ALJ "failed to properly consider his complaints of pain" in determining that his "testimony of pain . . . [was] neither fully credible nor supported by the objective clinical findings." Barlow relies on *Smith v. Schweiker,* 728 F.2d 1158 (8th Cir. 1984), and *Simonson v. Schweiker,* 699 F.2d 426 (8th

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[2] Because the ALJ was entitled to rely exclusively on the Guidelines, he was not required to ask the vocational expert whether Barlow could perform jobs which existed in the national economy. *See Fraga,* 810 F.2d at 1304-05.

Cir. 1983). Those cases stand for the propositions that (1) an "ALJ may not disregard a claimant's subjective complaints of pain solely because there exists no objective evidence in support of such complaints," *Simonson,* 699 F.2d at 429; *see also Smith,* 728 F.2d at 1163; (2) an ALJ may not disbelieve "subjective reports of pain because . . . [the claimant] cannot show the exact physiological source of his pain," *Simonson,* 699 F.2d at 429; and (3) an ALJ "may not circumvent these principles . . . `under the guise of a credibility finding.'" *Smith,* 728 F.2d at 1163 (quoting *Simonson*).

The ALJ's ruling did not run afoul of the Eighth Circuit's decisions in *Smith* and *Schweiker*. Although the ALJ questioned whether Barlow's chest pain was related to his heart condition, the record does not establish that the ALJ discredited Barlow's subjective reports of pain merely because of a lack of objective verification, or because of Barlow's failure to identify the exact physiological source of his chest pain. The ALJ noted that "[t]he medical evidence from Veterans Administration Hospital [did] not document any significant objective *or subjective* symptoms of chest pain." The ALJ further observed that Barlow saw his cardiologist only infrequently, and on one visit did not report any chest pain. The ALJ explicitly found that Barlow's testimony of pain was "*neither* fully credible *nor* supported by the objective clinical findings." Furthermore, at the hearing before the ALJ Barlow testified that he had last taken his pain medication))which he took whenever he experienced chest pain))a month before the hearing and

two months before that, even though he occasionally walked for exercise, went grocery shopping, drove a car, and cooked his own meals. That evidence is inconsistent with Barlow's assertion that he was unable to do any kind of work because his chest pain was too severe, and both *Smith* and *Simonson* recognize that an ALJ may discredit a claimant's subjective reports of pain because of "inherent inconsistencies or other circumstances." *Simonson,* 699 F.2d at 429; *see also Smith,* 728 F.2d at 1163. Barlow's argument premised on *Smith* and *Simonson* is therefore without merit.

Barlow also contends that the ALJ "did not sufficiently articulate any reasons to overcome the objective medical evidence supporting [his] complaints of pain in this case." Barlow relies on *Abshire v. Bowen,* 848 F.2d 638 (5th Cir. 1988), where we stated that "an ALJ's unfavorable credibility evaluation of a claimant's complaints of pain will not be upheld on judicial review where the uncontroverted medical evidence shows a basis for the claimant's complaints unless the ALJ weighs the objective medical evidence and assigns articulated reasons for discrediting the claimant's subjective complaints of pain." *Id.* at 642. Barlow's reliance on *Abshire* is misplaced, and his argument fails, for several reasons. First, the evidence does not show a basis for Barlow's complaint that his chest pain prevented him from performing medium work. Barlow was diagnosed with heart disease, and he has been prescribed medicine to relieve pain caused by his heart condition, but he does not cite, and we have not found, any objective medical evidence to support his contention that the chest pain was so severe that it

prevented him from performing medium level work. Furthermore, the ALJ considered the objective medical evidence and stated reasons for discrediting Barlow's testimony. In his written decision the ALJ reviewed the medical evidence in the record. He also noted that Barlow visited his cardiologist infrequently, and that neither the records of Barlow's follow-up treatment at the Veterans Administration Hospital, nor Barlow's cardiologist's notes regarding a recent visit, revealed complaints of chest pain. In light of the foregoing, the rule stated in *Abshire* does not support reversal of the ALJ's determination that Barlow's complaints of disabling pain were not credible.

Lastly, Barlow contends that reversal is required because the ALJ "did not give proper weight to the diagnoses of [his] treating physicians." Barlow cites to reports of his treating physicians which he alleges were entitled to greater weight. However, Barlow fails to cite to the ALJ's decision))merely alleging, in conclusory fashion, that the ALJ "substituted his own opinions as to [Barlow's] medical status and pain." Because Barlow fails to explain with any degree of particularity where or how the ALJ gave inadequate weight to any of the medical opinions of his physicians, he has not presented an argument which will permit us to review the merits of his claim. It is therefore waived. *See Friou v. Phillips Petr. Co.,* 948 F.2d 972, 975 (5th Cir. 1991) ("A party who inadequately briefs an issue is considered to have abandoned the claim.").

We therefore **AFFIRM**.