

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-5153
Summary Calendar

DAVID J. STEIN,

Plaintiff-Appellant,

VERSUS

DONNA SHALALA, Secretary of
Health and Human Services,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(92 CV 2226)

(May 3, 1994)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:¹

David J. Stein challenges the Secretary's denial of his application for disability insurance benefits. We affirm.

I.

Stein applied for disability benefits on April, 26, 1991, alleging that he had been disabled since February of 1986 due to heart disease. Stein's earnings record shows that his insured status ended December 31, 1988.

¹ 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Stein's medical records and testimony in a hearing before an administrative law judge (ALJ) indicate the following. Stein was 50 years old at the time of the hearing, January 9, 1992. He has an eighth-grade education and has completed training in air conditioning and heating, which he has used in his vocation. He owned his own business but closed it in 1987 because of health problems.

In January 1986, Stein suffered an anterior myocardial infraction (heart attack), which required that he be resuscitated. Stein's treating physician, Dr. FASTERBEND, commented that Stein had "suffered a total occlusion of the left anterior descending coronary artery and then spontaneous reperfusion . . . [as well as] an extensive anterior myocardial infarction. . . [with] an apical mural thrombus." FASTERBEND prescribed Coumadin, an anti-coagulation medication. Stein was discharged from the hospital on March 4, 1986.

Stein was again hospitalized for chest pain on January 22, 1987. A cardiac catheterization indicated no significant changes from the angiogram conducted in February 1986. Stein was instructed to restrict his activity until a thallium exercise treadmill test could be performed. If the test showed ischemia, Stein would undergo angioplasty or by-pass surgery. At this juncture, Stein had not returned to work since his heart attack, but had been doing light carpentry work on his camp without difficulty but with occasional exertional chest pain.

Stein was readmitted to the hospital on February 5, 1987, with severe chest pain. Lab results after cardiac catheterization showed "very high grade new stenosis in the proximal left anterior descending coronary artery" which was not present one week before. Stein passed a stress test and was discharged.

On September 2, 1987, Stein was hospitalized for thrombophlebitis of the right leg but was treated successfully. **Id.** at 149. The condition reappeared in December 1987 and was again treated successfully.

The medical records show no evidence of medical treatment through December 31, 1988. Stein testified at the ALJ hearing that he received no treatment in 1988. He testified, however, that he suffered chest pains in January 1988, for which he took "nitrates." Stein's wife testified that he had few activities in 1988 and just sat around the house doing only light housework.

On January 25, 1989, Stein was admitted to the hospital complaining of weakness on the right side of his face. His tongue protruded to the right and his right arm was weak. He was diagnosed with advanced coronary artery disease with cardiomyopathy, cerebral embolus, and left ventricular aneurysm with thrombus. He was discharged with instructions to continue with his anticoagulation medicine.

On January 30, 1989, Stein was diagnosed with acute diverticulitis. He underwent a left colon resection and recovered. Shortly thereafter, on February 17, 1989, Stein returned to the hospital complaining of chest pain. Stein's treating physician

ruled out myocardial infraction (*id.* at 126), but questioned whether Stein's pains were myocardial in origin or gastrointestinal.

In April 1991, Stein had a small inferior wall myocardial infarction. A cardiac catheterization showed persistent patency of the left anterior descending artery which had been dilated several years, as well as a new occlusion. Stein also had severe left ventricular dysfunction.

The ALJ requested the professional opinion of Dr. Melvin Johnson to evaluate Stein's disability claim. Dr. Johnson summarized Stein's medical condition as having a massive heart attack in 1987 resulting in ventricular aneurysm. He noted that the vessel was reopened by angioplasty and that Stein passed a stress test shortly thereafter. He noted that Stein had another heart attack in another vessel in 1989 and with medication was able to pass a stress test. Dr. Johnson attributed Stein's stroke in April 1989 to an embolus from the mural thrombus in the ventricular aneurysm. Dr. Johnson stated that "[w]hile no individual element of this will meet disability definition [sic], . . . the combination of 2 heart attacks, a stroke and the presence of the mural thrombus requiring a lifetime of anticoagulation . . . equalled disability when he had the embolism in 1989."

The ALJ determined that although Stein was unable to perform his past work as a pipe fitter and air conditioner installer because of his heart condition, as of December 31, 1988, when his insured status ended, Stein could perform sedentary work.

The district court affirmed the ALJ's findings.

II.

Our review of the Secretary's decision is limited to determining "whether the Secretary applied the correct legal standard[s] and whether the Secretary's decision is supported by substantial evidence on the record as a whole." **Orphey v. Secretary of Health & Human Servs.**, 962 F.2d 384, 386 (5th Cir. 1992). If substantial evidence supports the findings, they are conclusive. 42 U.S.C. § 405(g); **Richardson v. Perales**, 402 U.S. 389, 390, (1971). Substantial evidence is that which is relevant and sufficient for a reasonable mind to accept as adequate to support a conclusion. It must be more than a mere scintilla, but it need not be a preponderance. **Id.** at 401.

The claimant has the burden of proving that he is disabled within the meaning of the Act. **Fraga v. Bowen**, 810 F.2d 1296, 1301 (5th Cir. 1987). Disability is 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 the present case, the disability requirements had to be met as of December 31, 1988, the date that Stein last met the insured-status requirement. **See id.**

A five-step analysis is used to evaluate whether a claimant is disabled: (1) a claimant must not be working or engaging in substantial gainful activity; (2) a claimant is not disabled if he

does not have a "severe impairment"; (3) a claimant is considered disabled if his severe impairment meets or equals an impairment listed in Appendix One of the regulations; (4) a claimant will be considered not disabled if he can perform past relevant work. (5) if the claimant cannot perform past relevant work, other factors are considered to determine if other work, found in the national economy, can be performed by the claimant, in which case the claimant is considered not disabled. 20 C.F.R. § 404.1520. **See Wren v. Sullivan**, 925 F.2d 123, 125 (5th Cir. 1991). A finding that the claimant is not disabled at any point terminates the sequential evaluation. **Crouchet v. Sullivan**, 885 F.2d 202, 206 (5th Cir. 1989).

Stein argues first that the Secretary's analysis should have ended at Step 3 because his condition equalled a listed impairment. Appendix 1 includes the following listed impairment:

4.04 Ischemic heart disease with chest pain of cardiac origin as described in 4.00E with: . . .

7. Angiographic evidence (see 4.00H) (obtained independent of Social Security disability evaluation) showing one of the following:

a. 50 percent or more narrowing of the left main coronary artery. . . .

20 C.F.R. pt. 404, subpt. P, app. 1, sec. 4.04B.7a.

Stein asserts that the medical evidence shows that he had chest pain relieved by nitroglycerin and that he had 99% blockage of his left main artery, thereby equaling a listed impairment. Stein points to the results of a January 29, 1987, angiogram which revealed a "high grade proximal left anterior stenosis" (or

narrowing) which was unchanged in appearance from a year prior. A test from 1986 showed "99% proximal stenosis." Additionally, Stein testified that he suffered chest pain in 1988 for which he took nitroglycerin.

Stein's medical records, however, indicate that after a cardiac catheterization on February 5, 1987, the stenosis in his left anterior descending coronary artery was resolved. A week later, Stein passed a stress test. No medical records indicate a recurrence of the stenosis through December 31, 1988, when Stein's insured status ended. A medical condition which is remedied by treatment or medication is not disabling. **Lovelace v. Bowen**, 813 F.2d 55, 59 (5th Cir. 1989). Moreover, to be entitled to benefits, disability must be proved to exist during the time that the claimant is insured within the meaning of the special-insured status requirements of the Social Security Act. 42 U.S.C. §§ 416(i)(3) and 423(c)(91) (1990); **Milam v. Bowen**, 782 F.2d 1284, 1286 (5th Cir. 1986). Therefore, we find that substantial evidence exists to support the Secretary's finding that Stein did not suffer from a listed impairment.

Stein raises next whether the Secretary's finding that he was able to perform other work or sedentary work was supported by substantial evidence. When the Secretary decides a case at Step 5, the Secretary has the burden of showing that the claimant, who is unable to perform his past work, can still perform other work in the national economy. 20 C.F.R. § 404.1520(f); **Herron v. Bowen**, 788 F.2d 1127, 1131 (5th Cir. 1986). The Secretary may discharge

this burden by referring to the Medical-Vocational Guidelines of which take administrative notice of categories of jobs available to claimants with certain medical and vocational characteristics. 20 C.F.R. § 404.1569 & subpt. P., app. 2, § 200.00 (1991).

The ALJ noted that 20 C.F.R. § 404.1567 defines sedentary work as lifting up to 10 pounds and occasionally lifting and carrying such articles as docket, ledgers, and small tools. He further noted that Stein was 47 years old, had an eighth grade education, and training in air conditioning and heating. The ALJ then cited to Rule 201.19 to Table No. 1 of Appendix 2 to Subpart P, Regulation No. 4 to determine that Stein could perform sedentary work. This rule provides that a person, who is 45-49 years old with limited or less education and has no transferable skills but is able to do sedentary work, is not disabled.

Once the Secretary finds that jobs in the national economy are available, the burden of proof shifts to the claimant to rebut this finding. **Selders v. Sullivan**, 914 F.2d 614, 618 (5th Cir. 1990). Stein has not presented evidence to rebut this finding. Accordingly, the Secretary applied the correct legal standards, and substantial evidence supports her decision.

III.

For the foregoing reasons, we find that the Secretary's denial of Stein's application for disability benefits was supported by substantial evidence.

AFFIRMED.