UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5291
Summary Calendar

CORRINE G. COTTEN,

Plaintiff-Appellant,

versus

DONNA E. SHALALA, Secretary,
Department of Health and Human
Services,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(92-CV-1721)

(May 13, 1994)

Before POLITZ, Chief Judge, KING and WIENER, Circuit Judges.

PER CURIAM:*

Corrine G. Cotten appeals an adverse summary judgment denying disability insurance benefits under Title II of the Social Security Act, 42 U.S.C. § 401 et seq. Finding no error, we affirm.

Background

Cotten applied for disability insurance benefits on

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

December 27, 1990, alleging that a neuroma on her left foot had disabled her since May 1986. The neuroma, which was surgically removed, was the result of nerve damage sustained in a work-related injury at Vidalia Lower Elementary School cafeteria. The application for disability benefits was denied; an Administrative Law Judge determined that Cotten was not disabled within the meaning of the Social Security Act. This determination became the final decision of the Secretary of Health and Human Services when the Appeals Council denied her request for review. Cotten sought judicial review. On cross motions for summary judgment the district court denied Cotten's motion and entered summary judgment in favor of the Secretary. Cotten timely appealed.

Analysis

Our review may consider only whether: (1) the Secretary applied the proper legal standards, and (2) the administrative decision is supported by substantial evidence on the record as a whole.[1] "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 scintilla, but it need not be a preponderance."[2] The regulations implementing the Social Security Act prescribe a sequential five-step process for determining whether a claimant is disabled.[3] At the fifth step, the ALJ used the Medical-Vocational Guidelines and determined that,

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[1]**Anthony v. Sullivan**, 954 F.2d 289 (5th Cir. 1992).

[2]**Id.** at 295.

[3]20 C.F.R. § 404.1520 (1991).

although she could not return to cafeteria work, Cotten was not entitled to benefits considering her age, education, and her residual functional capacity to perform a full range of light work.

Cotten first challenges this finding as unsupported by substantial evidence and points to the opinion of Dr. John Clifford that in 1986 Cotten was unable to perform any job requiring prolonged walking or standing. Dr. Clifford treated Cotten from 1985 to 1986. In April 1987, however, Dr. David Ball reported that Cotten was walking normally without a significant limp and that "on an objective basis, her degree of disability [was] very minimal." Subsequent notes from Dr. Ball indicated no change in Cotten's condition through 1990. Dr. Ball treated Cotten from 1985 to 1990. In 1991, Dr. Eugene Taylor found Cotten disabled from her past work as a cafeteria cook, and advised her not to sweep, mop, or lift heavy things. Neither the Ball nor Taylor opinion precluded a finding that Cotten could perform light work. No treating physician found Cotten incapable of sitting for prolonged periods and none advised her to alternate between sitting and standing. Despite Cotten's complaints about sitting and standing, her regular activities since retirement have included driving, light housework, cooking, shopping, and attending church twice a week.

Dr. Clifford's testimony conflicts with that of Dr. Ball. When the evidence conflicts, the Secretary, not the courts, has the duty to weigh the evidence, resolve the conflicts, and decide the case.[4] Upon review of the record evidence we must conclude that

[4]**Chaparro v. Bowen**, 815 F.2d 1008 (5th Cir. 1987).

the ALJ's determination that Cotten is able to perform light work is supported by substantial evidence.

Cotten next contends that the Secretary's decision is not supported by substantial evidence because the ALJ did not give proper consideration to the testimony of Dr. Hearn, a vocational expert, who indicated that Cotten would have difficulty finding a job for which she was qualified and that she would be unable to perform "any jobs in the national economy." Dr. Hearn based his evaluation on a posed hypothetical condition, requiring that he assume that Cotten's complaints of injury were true and that she was forced to alternate between standing and sitting. The ALJ found, however, that Cotten's claims of functional limitations lacked credibility, undercutting the factual basis of Dr. Hearn's evaluation. We are not disposed to reject the ALJ's credibility assessment.[5] Further, we have held that an ALJ may disregard a vocational expert's testimony where the objective medical evidence does not support the hypothet posed to that expert.[6] We conclude that the ALJ did not err in determining that Dr. Hearn's evaluation of Cotten's employability lacked relevance because no objective evidence supported Cotten's claimed inability to sit for more than short periods of time.

AFFIRMED.

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[5]**Villa v. Sullivan**, 895 F.2d 1019 (5th Cir. 1990).

[6]**Owens v. Heckler**, 770 F.2d 1276 (5th Cir. 1985).