

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5587

Summary Calendar

SHELDON L. DULANEY,

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-2177)

(August 24, 1994)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Appellant Sheldon Dulaney filed an application for disability insurance benefits under 42 U.S.C. §§ 416(i), 423, claiming disability due to back and neck injuries and arthritis. An administrative law judge (ALJ) awarded Dulaney benefits for the closed period from February 28, 1986 to May 31, 1987. The Appeals Council of the Social Security Administration vacated and remanded

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

the case. The ALJ again awarded benefits, and the Appeals Council again vacated and remanded. After a new hearing, a different ALJ found that Dulaney was not entitled to benefits because he "has the residual functional capacity to perform the full range of medium work." The Appeals Council denied Dulaney's request for review, and thus the ALJ's decision became the final decision of the Secretary of Health and Human Services. Dulaney filed a complaint for review in the district court. That court granted defendant's motion for summary judgment and affirmed the denial of benefits.

Dulaney argues that the Secretary's decision was not supported by substantial evidence. Substantial evidence is evidence that "a reasonable mind might accept as adequate to support a conclusion." Hames v. Heckler, 707 F.2d 162, 164 (5th Cir. 1983). Here, a reasonable mind might conclude that Dulaney was able to work. Dr. Bermudez found that Dulaney's knee and ankle reflexes were normal, his gait was normal, he had no specific weakness, and his pain was relieved by Motrin. Dr. Smith found that Dulaney had a normal gait and normal arm and leg reflexes and motor and sensory abilities. He further noted Dulaney's good lumbar muscle tone with no evidence of spasm, list, or scoliosis. Dr. Smith concluded that Dulaney could engage in "a wide variety of work or leisure activities." Dr. Mead found no problem with Dulaney apart from his complaints of back pain when he bent more than forty-five degrees. Dr. Mead stated that there was insufficient objective evidence to confirm Dulaney's complaints of severe pain and noted that Dulaney did not suffer from spasms. Dr. Mead concluded that Dulaney could do any

work that did not require repetitive bending or lifting more than fifty pounds. Thus, substantial evidence supported the decision.

Dulaney argues that even if he is not entitled to ongoing benefits, he is entitled to benefits for a closed period of disability from February 28, 1986 to May 31, 1987. This argument runs up against the substantial evidence hurdle; Drs. Bermudez and Smith examined him during this period and found that he was in good health. In addition, Dulaney filed his application for benefits more than twenty-two months after the end of the alleged disability. Because he did not file for benefits within twelve months, Dulaney is not entitled to benefits. 20 C.F.R. § 404.320(b)(3) (1993). Therefore, the district court's grant of summary judgment is AFFIRMED.