UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-7005
Summary Calendar

GLADYS BROCK,

Plaintiff-Appellant,

VERSUS

DONNA L. SHALALA,
Secretary of Health & Human Services,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Mississippi
(CA-WC91-51-B-0)

(November 12, 1993)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:[1]

Appellant sought social security disability benefits alleging that she had been disabled since 1982 as a result of diabetes, kidney problems and related feelings of weakness and swollen extremities. Her application was denied initially and on reconsideration the administrative law judge determined that Mrs. Brock did not have a "severe impairment" on or before December 31, 1987, the eligibility date. The ALJ relied primarily on the fact

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

that there was no record that Appellant had been treated by her treating physician from 1982 until 1989 and that in 1989 the physician reported no "recent" complaint of kidney problems. The ALJ concluded that there was no objective clinical evidence of a condition that existed prior to December 31, 1987 which reasonably could have been expected to produce the problems of which Plaintiff complained or other symptoms to preclude her from working. While the matter was under review by the appeals council, Appellant submitted affidavits of lay persons. Following denial of her appeal, she brought her complaint in the district court which found that substantial evidence supported the Secretary's determination. We agree and affirm.

It is at the second step of the well-known five step analysis that the factfinder concluded that the impairment was not severe. An impairment is not severe only if it is a slight abnormality with such a minimal effect on the individual that it would not be expected to interfere with that individual's ability to work, irrespective of age, education, or work experience. Stone v. Heckler, 752 F.2d 1099, 1101 (5th Cir. 1985).

Appellant basically contends that the Secretary's decision is not supported by substantial evidence in light of her own testimony, the other lay evidence which she has submitted, and the medical evidence. We have carefully reviewed the record, the findings of the district court, and the administrative law judge, and are firmly convinced that both applied the proper legal standards and analysis, and that their findings are supported by

substantial evidence. We will not here specifically address each argument advanced by Appellant, although each has been carefully considered. We do, however, address the primary ones.

Appellant first complains that the ALJ did not afford great weight to the evidence of the treating physician. We conclude there was cause for the ALJ's decision since the physician's findings were self-contradictory, he did not treat Appellant during 1987, and there is nothing in the record to indicate how he knew of her condition in 1987.

Appellant also complains that it was error to reject the lay testimony. However, in the case relied upon by Appellant, Ivy v. Sullivan, 898 F.2d 1045 (5th Cir. 1990), previously available medical records had been lost or destroyed so lay testimony was relied on. In this case, there were no previous medical records available since Appellant had not consulted a physician during that period.

Finally, we note that Appellant complains that her testimony concerning her pain, which was supported by testimony of lay witnesses, was rejected by the administrative law judge. Such testimony should be considered and indeed the administrative law judge did consider it. He stated that he had "carefully reviewed the claimant's subjective complaints." However, an individual's statement as to pain or other symptoms is not alone conclusive evidence of disability. 42 U.S.C. § 423(d)(5)(A). How much pain is disabling is a question for the administrative law judge and we may not reweigh that evidence.

AFFIRMED.