UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-7767
Summary Calendar

INA F. TALBERT,

Plaintiff-Appellant,

versus

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

Defendant-Appellee.

Appeal from the United States District Court for the
Southern District of Mississippi
(CA-4:92-2-LN)

(December 27, 1994)

Before GARWOOD, HIGGINBOTHAM and DAVIS, Circuit Judges.[*]

GARWOOD, Circuit Judge:

Ina F. Talbert (Talbert) appeals the district court's dismissal of her request to set aside the decision of the Secretary of Health and Human Services (Secretary) finding that she was not disabled within the meaning of the Social Security Act. 42 U.S.C.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

§ 423(d)(1)(A). Because we determine that the administrative law judge (ALJ) ignored evidence that Talbert was unable to perform duties of her past relevant work, we vacate the district court's ruling and remand for proceedings in accordance with this opinion.

Facts and Proceedings Below

At the time of the hearing before the ALJ, Talbert was fifty-eight years old. She attended school through the eleventh grade and obtained a GED. After a one-year nursing course at Meridian Junior College in Meridian, Mississippi, she was certified as a licensed practical nurse (LPN). Her past relevant work has been as an LPN in hospitals and nursing homes.

Talbert's medical records contain treatment notes ranging in time from 1982 to 1990 for a variety of complaints, the most serious being asthma. Talbert's asthma has generally responded to the prescribed treatment, although she occasionally experienced respiratory distress and was hospitalized briefly in November 1987 for treatment for asthmatic bronchitis. Talbert has also been treated for obesity, hypertension, phlebitis, and arthritis. She has complained of pain in her knees; an examination in 1990 revealed no need for orthopaedic surgery.

On August 8, 1989, Talbert filed an application for disability insurance benefits, alleging that she had been disabled since June 15, 1987, because of asthma, hypertension, and steroid dependency. Talbert was required to establish that her disability commenced on or before September 30, 1988, the date her insured status expired.[1]

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[1] Talbert testified at the hearing before the ALJ that she had worked only two days since June 15, 1987. She explained that she

Her application was denied initially and upon reconsideration. Talbert timely requested a *de novo* hearing before an ALJ. Talbert, represented by counsel, testified at the hearing on May 25, 1990. In a decision issued on March 5, 1991, the ALJ determined that Talbert was not disabled because she was capable of performing her past relevant work as an LPN in the hospital. The Appeals Council declined to review the ALJ's denial of benefits, making that denial the final decision of the Secretary.

Talbert sought relief in the district court. Following the report and recommendation of a magistrate judge, the district court determined that there was substantial evidence to support the Secretary's ruling that Talbert was not disabled and accordingly denied her request to set aside the Secretary's decision.

Discussion

In reviewing the denial of disability benefits, we are limited to a consideration of two issues: (1) whether, upon the record as a whole, substantial evidence supports the decision of the Secretary, and (2) whether the Secretary applied the proper legal standards and procedure. 42 U.S.C. § 405(g); *Anthony v. Sullivan*, 954 F.2d 289, 292 (5th Cir. 1992). Evidence is substantial if it is both relevant and sufficient for a reasonable mind to find adequate to support a conclusion. *Muse v. Sullivan*, 925 F.2d 785, 789 (5th Cir. 1991). Talbert claims that the Secretary's ruling is not supported by substantial evidence.

A disability, for purposes of qualifying for disability

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had attempted full-time employment but was not able to work more than two days because of her alleged disability.

insurance benefits, is "the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 20 C.F.R. § 404.1505(a). A substantial gainful activity is one which "[i]nvolves doing significant and productive physical or mental duties . . . for pay or profit." *Id.*, § 404.1510(a), (b). A claimant must establish a physical or mental impairment by medical evidence. *Id.*, § 404.1508.

In evaluating a claimant's disability status, the Secretary utilizes a five-step analysis as set forth in 20 C.F.R. § 404.1520(b)-(f). If the claimant is found to be disabled or not disabled at any point in the process, the analysis ends, and no further review is necessary. *Bradley v. Bowen*, 809 F.2d 1054, 1056 (5th Cir. 1987). *See also Wren v. Sullivan*, 925 F.2d 123, 125-126 (5th Cir. 1991). Talbert bears the initial burden of proving that she is disabled within the meaning of the Act on all but the final step. *Bowen v. Yuckert*, 107 S.Ct. 2287, 2294 n.5 (1987); *Wren*, 925 F.2d at 125.

The analysis proceeds as follows: (1) if the claimant is engaged in a substantial gainful activity, she will be found not disabled regardless of her medical condition, age, education, or work experience; (2) a successful claimant must have a severe impairment or combination of impairments, *i.e.*, one which significantly limits her physical or mental ability to do basic work activities; (3) if the impairment meets or equals an impairment listed in Appendix 1 of the regulations, the claimant

will be considered disabled without further consideration of age, education, or work experience; (4) the claimant is not disabled if her residual functional capacity permits her to perform past relevant work; and (5) if the claimant cannot perform past relevant work, factors including residual functional capacity, age, education, and past work experience are considered to determine if other work can be performed, in which case the claimant is not disabled. 20 C.F.R. §§ 404.1520(b)-(f). *See Wren*, 925 F.2d at 125.

The ALJ determined at step four that Talbert was capable of performing her past relevant work as an LPN in a hospital setting and therefore was not disabled. Although it was the ALJ's duty to make a sufficient inquiry into the claim, Talbert had the burden to prove her inability to perform the former work. *Villa v. Sullivan*, 895 F.2d 1019, 1023 (5th Cir. 1990).

In his findings, the ALJ concluded that the medical evidence established that Talbert suffered from

> "`severe' asthma, hypertension controlled by medication, degenerative joint disease, degenerative disc disease at the C5-6 and C6-7 levels, and obesity, but that she did not have an impairment or combination of impairments listed in, or medically equal to[,] one listed in Appendix 1, Subpart P, Regulations No. 4."[2]

He found that her subjective allegations of impairment due to pain were not supported by the record and were therefore not credible to the extent she alleged; he did not find any restriction on her ability to stand or walk. Regarding her ability to perform work-related activities, the ALJ concluded that Talbert had the residual

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[2] The medical evidence in the record supports these findings.

functional capacity to perform the exertional requirements of light work, which requires lifting no more than twenty pounds at a time, with frequent lifting of no more than ten pounds. 20 C.F.R. § 404.1567(b). The ALJ further found that Talbert's asthma precluded her from performing activities in an outdoor setting or work involving exposure to pulmonary irritants. Applying these restrictions to the evidence of Talbert's past relevant work as an LPN in nursing homes and hospitals, the ALJ concluded that she was capable of performing her work as an LPN in a hospital setting and was therefore not disabled within the meaning of the Social Security Act.

To determine whether a claimant can perform past relevant work, the ALJ must assess the physical demands of the job by considering the description of the past work actually performed or as generally performed in the national economy. *Villa v. Sullivan*, 895 F.2d at 1022. In this case, the ALJ considered both. As evidence of the work of an LPN as generally performed in the national economy, the ALJ referred to the Dictionary of Occupational Titles (DOT), a publication of the United States Department of Labor.[3] The DOT classified Talbert's past relevant work as an LPN as medium work.

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[3] Talbert contends that the ALJ improperly relied on the DOT to determine that she could perform her past relevant work. This argument is factually inaccurate because, although the ALJ did refer to the DOT for a description of her past relevant work as an LPN, he then found that Talbert's own testimony of her work differed from that description. Moreover, Talbert ignores the fact that the ALJ's use of the DOT was beneficial to her: if the ALJ had relied solely on the DOT classification of LPN duties as medium work, the ALJ would have found Talbert disabled.

The DOT's classification differed from the ALJ's determination of Talbert's residual functional capacity. Based on a partial description of the work Talbert actually performed as an LPN, the ALJ concluded that her work in a hospital setting did not exceed light work, notwithstanding the DOT's general classification of her duties as medium work.

Upon our reading of the record, we determine that the ALJ overlooked other portions of Talbert's testimony at the hearing which suggest that her duties as an LPN in a hospital setting exceeded the exertional requirements of light work. The ALJ focused on the following exchange:

> "Q. [By the ALJ] Now, could you describe the work as an LPN, whether in nursing homes or in hospitals, as all generally performed the same way? Would that be accurate to say?
> "A. In a nursing home there is more lifting. There's longer standing.
> "Q. Tell me the difference then in the duties that you performed.
> "A. All right. In a nursing home I gave all the medications, did all the treatments. I helped to lift and turn the patients. I had toSQsometimes I had to help other people lift. Sometimes I had to lift them all myself. *In the hospital I did not have to lift patients*." (Emphasis added.)

Talbert continued on, however:

> "Sometimes in the hospital, when I worked in the obstetrical department, I had to help lift, help lift, fromSQlike from a stretcher to a table, delivery table. I did not ordinarily have to lift those patients."

The ALJ interpreted Talbert's responses to his questions as evidence that she did not have to lift patients in a hospital setting. Although her testimony is not completely clear, we consider this construction of Talbert's testimony to be plainly unreasonable. Talbert informed the ALJ that the nursing home

required *more* lifting, implying that her duties at the hospital entailed at least some lifting. She stated that she did not have to lift patients in the hospital, but in the very next sentence, as though clarifying that statement, she testified that she did have to help lift patients in the obstetrical department. Her final comment suggests that lifting was at least an occasional part of her duties in the hospital.

Talbert's testimony in response to questions by her attorney likewise reflects that she did have to lift patients in the hospital:

> "Q. [By counsel] When you were working in the hospital, what lifting did you have to do?
> "A. I hadsQif I worked in the wards, I had to help to lift the female patients.
> "Q. So it would be over, over a hundred pounds?
> "A. Oh, yes. And if I was in the obstetrics departments, which was something that I did, a special kind of training that I had received, I sometimes had to help lift [two and three hundred-]pound women, get them insQno, and these patients are paralyzed when you lift them because they have had injections for delivery.
> "Q. Uh-huh, okay.
> "A. I'd say . . . 200 to 250 anyway on a lot of those patients because a lot of them were very large."[4]

Later in her testimony, Talbert stated that her nursing job required lifting, not distinguishing between the nursing home or hospital settings:

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[4] Talbert again contrasted her duties at the hospital with those at the nursing home, reiterating that there was more lifting at the latter. She did not, however, assert that there was no lifting at the hospital.

> "Q. [By counsel] Why is it that you're not able to work at either the hospital or a nursing home now?
> "A. In the nursing home you have to be constantly lifting and turning patients which was why I could not work. I tried it and I cannot lift patients."

"Q. [By counsel] Could you return to any of the jobs that you've had in the last fifteen years? If you just picked out the easiest one you had?
"A. Not in nursing.
"Q. And why is that? All of it requires too much standing and lifting?
"A. All of it requires lifting or, orSQmostly it requires lifting."[5]

It is not clear how often Talbert was required to lift patients during the course of her duties in the hospital. It is evident, however, that lifting patients is a normal, if less than constant, part of her work in both the obstetrical department and the wards of the hospital. The ALJ did not mention this testimony and did not find Talbert's descriptions to be not credible.

Our conclusion is supported by the Residual Functional Capacity Assessment (RFC), completed in November 1989 in connection with Talbert's state application for disability benefits. The RFC indicated that Talbert could perform only light work and that she did not have the capacity to perform her work as an LPN.

Based upon the DOT classification of work as an LPN as medium work, the RFC determination that Talbert could not perform her past work as an LPN, and Talbert's own testimony that she had to lift patients in the hospital at least occasionally as a part of her normal duties, there is not substantial evidence to support the Secretary's decision that Talbert was capable of performing her past relevant work as an LPN in a hospital setting. Talbert should not have been found disabled at step four of the analysis, but the

[5] Talbert also claimed that she could not perform her past work as an LPN in either a nursing home or hospital setting because she could not stand for long periods of time due to pain in her knees. The ALJ did not find these claims to be credible.

burden should have passed to the Secretary to show that Talbert was capable of performing other relevant work in the national economy.

We vacate the judgment of the district court and remand the case for the district court to remand the case to the Secretary for further proceedings to determine Talbert's eligibility for the claimed disability benefits.[6]

Conclusion

For the reasons stated above, the judgment of the district court is VACATED and the cause REMANDED for proceedings not inconsistent with this opinion.

VACATED AND REMANDED

[6] Talbert also asserts that the ALJ erred by not obtaining the testimony of a vocational expert. This testimony was not necessary because the ALJ determined at step four that Talbert could perform her past relevant work and was not disabled. 20 C.F.R. § 404.1566(e); *Harper v. Sullivan*, 887 F.2d 92, 97 (5th Cir. 1989). On remand, however, the testimony of a vocational expert may be required.