IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-7768
Summary Calendar

CHARLES BRADFORD,

Plaintiff-Appellant,

versus

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, DONNA SHALALA, Secretary of Health and Human Services,

Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Mississippi
(92-CV-115)

(July 25, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

I

Charles H. Bradford filed an application for disability insurance benefits on April 17, 1991. Bradford alleged that he suffered from rotator cuff tears in both shoulders and that this

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

condition prevented him from working. Bradford's application was initially denied and then denied again on reconsideration, so he requested a hearing before an Administrative Law Judge (ALJ).

Following a hearing, the ALJ determined that Bradford was not under a disability as defined in the Social Security Act; thus, he was not eligible for disability insurance benefits. Bradford sought review of the hearing decision before the Appeals Council. The Appeals Council denied his request for review, and the decision of the ALJ became the final decision of the Secretary. A magistrate judge reviewed the Secretary's decision and recommended affirming it. After considering Bradford's objections, the district court adopted the magistrate judge's report and recommendation.

II

This court's review of the Secretary's decision is limited to two issues: 1) did the Secretary apply the proper legal standards, and 2) is the Secretary's decision supported by substantial evidence on the record as a whole. Anthony v. Sullivan, 954 F.2d 289, 292 (5th Cir. 1992).

A

In evaluating a claim of disability, the Secretary should conduct a five-step sequential analysis: 1) whether the claimant is presently working; 2) whether the claimant has a severe impairment; 3) whether the impairment is listed, or equivalent to an impairment listed in Appendix 1 of the Regulations; 4) whether the impairment

prevents the claimant from doing past relevant work; and 5) whether the impairment prevents the claimant from doing any other substantial gainful activity. 20 C.F.R. § 404.1520; Muse v. Sullivan, 925 F.2d 785, 789 (5th Cir. 1991).[1]

The ALJ followed this five-step process. The ALJ found that Bradford had not worked since August 20, 1990. The ALJ further found that Bradford had "severe chronic bilateral shoulder pain secondary to rotator cuff tears," but that his impairment or combination of impairments did not meet or equal an impairment listed in the appendix to the regulations. The ALJ then determined that Bradford could not perform his past relevant work as a packer and windshield installer. The ALJ determined that Bradford was capable of performing the full range of sedentary work and, thus, was not disabled. The ALJ relied on a vocational expert's testimony that there were jobs in Mississippi and in the national economy that Bradford could perform.[2] Because the ALJ applied the proper legal standard in evaluating Bradford's claim, the court now

[1]In the first four steps, the burden of proof is on the claimant. At the fifth step, the burden shifts to the Secretary to show that the claimant can perform relevant work. If the Secretary meets this burden, it shifts back to the claimant to show that he cannot perform the work suggested. Muse, 925 F.2d at 789.

[2]As a part of his argument that the Secretary did not apply the appropriate legal standards, Bradford argues that the ALJ erred in using the medical/vocational guidelines. Although Bradford cites the law in his brief, he does not apply the law to facts of his case or cite to the record showing when the ALJ used these guidelines. Inadequately briefed issues need not be addressed. Brinkmann v. Abner, 813 F.2d 744, 748 (5th Cir. 1987).

examines the question whether the factual findings are supported by substantial evidence.

B

(1)

On review, this court determines whether substantial evidence in the record as a whole supports the Secretary's factual findings to which the proper legal standards were applied. Anthony, 954 F.2d at 292. If the Secretary's findings are supported by substantial evidence, they are conclusive and must be affirmed. 42 U.S.C. § 405(g); Richardson v. Perales, 402 U.S. 389, 390, 91 S.Ct. 1420, 28 L.Ed.2d 842 (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 scintilla, but it need not be a preponderance. Perales, 402 U.S. at 401. "This Court may not reweigh the evidence or try the issues *de novo*. Rather, conflicts in the evidence are for the Secretary to resolve." Anthony, 954 F.2d at 295 (citations omitted).

As the claimant, Bradford has the burden of proving that he is disabled within the meaning of the Social Security Act. Muse, 925 F.2d at 789. The Act defines disability as 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. §§ 416(i)(1), 423(d)(1)(A), 1382c(a)(3)(A).

To determine whether substantial evidence of disability exists, four elements of proof must be weighed: 1) objective medical facts; 2) diagnoses and opinions of treating and examining physicians; 3) claimant's subjective evidence of pain and disability; 4) claimant's age, education, and work history. De Paepe v. Richardson, 464 F.2d 92, 94 (5th Cir. 1972). The entire record is reviewed to determine if such evidence is present. Villa v. Sullivan, 895 F.2d 1019, 1022 (5th Cir. 1990).

(2)

The evidence produced at trial showed that Bradford had suffered a full rotator-cuff tear in his right shoulder and a partial rotator-cuff tear in the left shoulder that regressed to a full tear. At the time of the hearing, Bradford weighed approximately 240 pounds and was five feet, seven inches tall.

Bradford saw Dr. John Paul Lee on June 21, 1990, through July 25, 1990, and complained of pain in his right shoulder. X-rays of the right shoulder were normal. Upon referral from Dr. Lee, Bradford saw Dr. James O. Manning, an orthopedist, on July 26, 1990. Dr. Manning ordered that Bradford limit his lifting of weight until a bone scan and arthrogram of his shoulders were completed. An MRI revealed that Bradford suffered a full thickness rotator-cuff tear in his right shoulder and a partial thickness tear in his left shoulder.

In August 1990, Dr. Manning referred Bradford to Dr. Felix Savoie, another orthopedic surgeon. Dr. Savoie recommended surgery

to repair both his left and right rotator cuffs. Dr. Savoie performed arthroscopy, debridement, and decompression surgery on his left shoulder in August 1990. In December 1990, Bradford had arthroscopic, debridement, decompression, and open rotator-cuff surgery on his right shoulder.

On May 22, 1991, Dr. Savoie reported that Bradford's right shoulder was "doing quite nicely" and that "we would be able to release him to work activities on this side." The left shoulder had "marked popping and crepitation, positive supraspinatus stress test, and this is quite a concern." On May 27, 1991, Dr. Savoie noted that Bradford's left shoulder now had a complete rotator-cuff tear requiring surgery.

In a report dated December 2, 1991, Dr. Savoie stated that Bradford could lift five pounds continuously, ten pounds frequently, and twenty-five pounds occasionally. With two hands he could carry ten pounds continuously, twenty pounds frequently, and forty pounds occasionally. Bradford's standing, walking, and sitting were not affected by the shoulder injury.

Bradford testified at the hearing that he has "trouble picking up stuff" with his arms. He stated that his arms hurt, that he couldn't lift them above his shoulders without pain, and that his arms swell. Two or three times a week he wakes at 2:00 in the morning with pain in his arm. When he walks a lot, his shoulders feel like they are "raw on top." Bradford takes Darvocet N-100, which relieves pain "for a while" and does not make him drowsy; it

makes him feel funny and relaxed. Bradford also testified that he has pain in his lower back that increases when he does a lot of sitting.

When he appeared before the ALJ, Bradford was 45 years old. He completed high school and had no vocational or trade-school training. His previous employment was as a packer and shipper, requiring him to lift approximately 100-pound molders for steel mills. Before that he worked as a windshield installer.

(3)

In the light of all of the evidence, Bradford argues that the ALJ erred in finding that his subjective complaints of pain and symptomatology were not credible. Because pain alone may support a finding of disability, the ALJ is required to consider the claimant's testimony as subjective evidence of pain. Scharlow v. Schweiker, 655 F.2d 645, 648 (5th Cir. 1981). "However, not all pain is disabling; moreover, subjective evidence need not be credited over conflicting medical evidence. At a minimum, objective medical evidence must demonstrate the existence of a condition that could reasonably be expected to produce the level of pain or other symptoms alleged." Anthony, 954 F.2d at 295-96 (citation omitted). In order to be disabling, the "pain must be constant, unremitting, and wholly unresponsive to therapeutic treatment." Wren v. Sullivan, 925 F.2d 123, 128 (5th Cir. 1991).

The ALJ weighed Bradford's subjective complaints and determined that they were not credible. Specifically, the ALJ

noted that Bradford testified that (1) Darvocet N-100 relieves his pain for a while, (2) he walks and drives, and (3) his appetite is fair. The ALJ also noted that Dr. Savoie reported that Bradford could do lighter work that did not require heavy lifting. The ALJ's conclusion that the pain Bradford suffered would not prevent him from engaging in sedentary work was amply supported by the evidence.

Next, Bradford argues that the appellee erred in finding that he could perform sedentary work. Bradford argues that once he established a prima facia case by showing that his impairments prevented his return to his prior employment, the burden shifted to the Secretary, who should have produced evidence to show the existence of alternative employment that the claimant could perform, considering not only his physical capability, but as well his age, education, work experience, and training. See Millet v. Schweiker, 662 F.2d 1199 (5th Cir. 1981).

The ALJ found that Bradford could not perform his former work; thus, the burden then shifted to the Secretary to show that Bradford could perform relevant work. Muse, 925 F.2d at 789. A vocational expert testified at the ALJ hearing that a person of Bradford's age, education, work history, physical impairments, and limitations could perform sedentary work that did not require heavy lifting. The Secretary met her burden; thus, the burden shifted back to Bradford to show that he could not perform the work suggested. Muse, 925 F.2d at 789. Bradford did not present any

evidence to rebut the vocational expert. The finding of the ALJ that Bradford could perform sedentary work is supported by substantial evidence based on the testimony of the vocational expert at the ALJ hearing.[3]

III

Having found that the Secretary applied the appropriate legal standards in this case, and having found the Secretary's factual findings to be amply supported by the evidence, the judgment of the district court is

A F F I R M E D.

[3]Finally, Bradford argues that the ALJ's finding that he had no nonexertional limitations is not supported by the evidence. He did not articulate any law or facts to support this argument, however. This inadequately briefed issue need not be addressed. Brinkmann, 813 F.2d at 748.