

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-8076
Summary Calendar

ROBERT R. RAMIREZ,

Plaintiff-Appellant,

VERSUS

DONNA SHALALA,
Secretary of Health & Human Services,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Texas
(DS-91-CV-631)

(December 8, 1993)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:¹

Robert B. Ramirez appeals the district court's grant of summary judgment to the Secretary affirming denial of Ramirez's application for disability insurance and supplemental social security income benefits. He alleges three errors. First, that there is no substantial evidence to support the Secretary's decision. Second, that the administrative law judge did not accord sufficient weight to Appellant's testimony concerning his pain.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

And finally, that the administrative law judge accorded undue weight to the opinion of the physicians who had not treated Appellant. We have carefully studied the record and find no merit in these contentions.

Appellant first argues that the uncontroverted medical evidence establishes his disability, and that there is no substantial medical evidence to support the administrative law judge's finding that Appellant can perform the full range of sedentary work. In so arguing, Appellant relies heavily on the opinion of Dr. Neimes. But the administrative law judge discounted this physician's opinion of Defendant's ability to work and convincingly explained why. This physician's opinions were framed in conclusory and vague terms in two different letters which, to some extent, contradicted each other, and which never explained the etiology of some of the Appellant's complaints. Nor did this physician explain any physiological reasons why the headaches, ischemia, obesity or diabetes, either alone, or in combination, would prevent Appellant from performing sedentary work. Additionally, Dr. Neimes' own observations noted that Appellant's obesity complicated treatment of his diabetes and some of his other illnesses, and that he would have no more difficulty controlling obesity than any other person. Additionally, the record establishes that Ramirez smoked heavily, maintained a poor diet and did very little to help improve his condition. Thus, the record establishes that a significant part of the Appellant's medical problems could be controlled by a more disciplined approach to his

illness. Additionally, Ramirez's own testimony suggests that he is capable of performing sedentary work. His description of his activities so indicates. Further, the ALJ, while making no credibility determinations, noted that Ramirez was not always entirely forthcoming suggesting, for example, that he did not work after 1984 and then admitting that he worked part-time through 1989.

Contrasted to Dr. Neimes's inconclusive findings, Dr. Holcomb's evidence supports fully the ALJ's findings that Ramirez is not disabled.

The record also provides ample support for the administrative law judge's determination that Appellant's objective complaints of pain did not prevent him from performing sedentary work. The record shows no evidence of medication prescribed for headaches; and that Appellant read and watched television during the day, without interference from pain, and that he drove his vehicle on occasion. Without disputing that Appellant suffered from occasional headaches, the administrative law judge noted that the evidence did not show that these headaches were of a frequency or severity to preclude him from engaging in sedentary work activity. The record fully supports that conclusion.

Finally, Appellant seems to argue that Drs. Holcomb and Condos did not examine the Appellant and, therefore, their combined opinions are not substantial evidence capable of supporting the administrative decision. The record shows, however, that Dr. Condos did examine the Appellant and that Dr. Holcomb was available

at the hearing to support his opinions based on Appellant's testimony and his evaluation of Appellant's records. This is quite different from the situation in Johnson v. Harris, 612 F.2d 993, 998 (5th Cir. 1980) on which Appellant relies. Upon the record as a whole, we are firmly convinced that the administrative decision was supported by substantial evidence.

AFFIRMED.