UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-8488
Summary Calendar

LARRY TAYLOR,

Plaintiff-Appellant,

versus

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

Defendant-Appellee.

Appeal from the United States District Court
For the Western District of Texas
(A-92-CV-294-SS)

(April 22, 1994)

Before POLITZ, Chief Judge, HIGGINBOTHAM and DeMOSS, Circuit Judges.

PER CURIAM:[*]

Larry Taylor appeals the dismissal of his petition for review of a Department of Health and Human Services decision denying him Supplemental Security Income. We affirm.

In 1990, Taylor filed an application for SSI claiming his left hand had been crushed in a 1987 accident. The injury resulted in

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

the loss or amputation of several fingers and ultimately a 75% impairment in the function of his left hand. On the basis of this injury, Taylor was unable to continue working in carpentry and construction. On his application for SSI, however, an administrative law judge found Taylor was not disabled, heeding Taylor's medical records and expert testimony that alternative employment was available at his level of residual function. After unsuccessfully petitioning the HHS appeals council, Taylor filed the instant complaint seeking review of the Secretary's denial of benefits. The district court adopted the magistrate judge's recommendation, denying benefits and dismissing Taylor's petition for review. Taylor timely appealed.

Taylor presents two issues, questioning whether he made an informed waiver of counsel before the ALJ, and claiming the ALJ's determination was not supported by substantial evidence. As to waiver of counsel, the ALJ failed to give Taylor proper notice before the proceeding.[1] For a valid waiver, the ALJ had to notify Taylor at the time of the hearing not only of a right to representation by counsel but also of low-cost representation options including contingency fees.[2]

For this error to warrant a remand, however, Taylor must

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[1]The ALJ stated: "In the notice we sent you telling you that we were going to have this hearing it stated that you had the right to have a lawyer or a representative here with you. I assume since you're appearing without either that you want to go ahead with the hearing."

[2]**Clark v. Schweiker**, 652 F.2d 399 (5th Cir. 1981); 42 U.S.C. § 406(b) & (c).

demonstrate that incomplete notice resulted in prejudicial evidentiary gaps in the record.[3] Taylor has not presented any evidence concerning his colostomy, leg, or head injuries likely to alter the outcome in this matter. Taylor's injuries have not prevented him from working in a variety of jobs. That he continued to work despite those infirmities is compelling evidence he was not disabled by them.[4] The ALJ nonetheless inquired at length into each impairment mentioned by Taylor at the time and concluded that his allegations of disabling pain were not persuasive. Taylor's previously unmentioned and wholly undocumented head injury was not such a self-evident source of functional impairment that failure to develop it violated the ALJ's duty to fully probe Taylor's *pro se* claims. We perceive no evidentiary gaps in this record.

As to Taylor's evidentiary challenge, the Secretary need only adduce substantial relevant evidence in support of her conclusions. The quantum of required proof is more than a scintilla but less than a preponderance of the evidence.[5] While we may sympathize with Taylor, our limited legal inquiry is whether the evidence shows that jobs are available in the economy for someone in

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[3]**Cowan v. Sullivan**, No. 91-8598 (5th Cir. Aug. 3, 1992) (unpublished); **Edwards v. Sullivan**, 937 F.2d 580 (11th Cir. 1991); **Kane v. Heckler**, 731 F.2d 1216 (5th Cir. 1984).

[4]**Johnson v. Bowen**, 864 F.2d 340 (5th Cir. 1988). In addition to his continued work, Taylor's failure to complain of these ailments in his disability claim form casts doubt on any argument that these injuries were disabling. Taylor's testimony that his leg pain was resolved by taking Motrin belies any claim that this injury was disabling. **Lovelace v. Bowen**, 813 F.2d 55 (5th Cir. 1987).

[5]**Anthony v. Sullivan**, 954 F.2d 289 (5th Cir. 1992).

Taylor's physical and mental condition. Based on the testimony of a vocational expert and the reports of his doctors, Taylor correctly was found capable of performing several available sedentary jobs. The ALJ's decision that Taylor is not disabled within the meaning of the Social Security Act[6] is thus supported by substantial record evidence.

AFFIRMED.

[6]**Muse v. Sullivan**, 925 F.2d 785 (5th Cir. 1991); 42 U.S.C. § 423(d)(1)(A).