UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-9040
Summary Calendar

MARIA T. SHQAIR,
SSN 463-82-9394,

Plaintiff-Appellant,

versus

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

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
(3:93-CV-115-D)

(December 21, 1994)

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:*

Appellant Shqair, a woman with an eighth grade education and past work experience as an electronics inspector, seamstress, and wire stripper, filed an application for supplemental disability insurance benefits because of injuries suffered when she slipped and fell on ice on February 3, 1989. Having exhausted her

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

administrative remedies and suffered an adverse summary judgment in the district court, Shqair contends that substantial evidence did not support the Secretary's decision to deny benefits. Finding no error, we affirm.

This court's inquiry on appeal is limited to determining whether there is substantial evidence in the record to support the Secretary's decision. Villa v. Sullivan, 895 F.2d 1019, 1021 (5th Cir. 1990). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Villa, 895 F.2d at 1021-22. In applying the standard, this court may not reweigh the evidence or try the issues de novo. Id.

The ALJ found that Shqair could not perform her past relevant work because of her continuing back, neck and head problems. Therefore, the issue on appeal is whether the Secretary offered adequate evidence to demonstrate that there is other substantial work in the economy that Shqair can perform. Wren v. Sullivan, 925 F.2d 123, 125 (5th Cir. 1991).

In determining whether a claimant can perform any other work, the ALJ considers the claimant's age, education, work experience, and residual functional capacity. Selders v. Sullivan, 914 F.2d 614, 618 (5th Cir. 1990); 20 C.F.R. § 404.1561. Based on these factors -- limited by Shqair's exertional and nonexertional limitations -- the ALJ concluded that Shqair was capable of performing other work. In particular, the ALJ found that Shqair could perform the full range of sedentary work, limited only by the requirement that she be able to alternate sitting and standing, and

the nonexertional limitation of no skilled activities. Based upon the testimony of a vocational expert, the ALJ then concluded that there are a substantial number of jobs in the local and national economies which Shqair could perform. As such, the ALJ found that Shqair was not disabled within the meaning of the Social Security Act.

Shqair argues that this conclusion is not supported by substantial evidence in the record. She contends that the medical evidence in the record does not support the ALJ's conclusion that she could perform sedentary work, as limited by her need to alternate sitting and standing.

As defined by the Regulations, sedentary work

> involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

20 C.F.R. § 404.1567(a). Contrary to Shqair's assertions, there is substantial evidence in the record to support the Secretary's finding that Shqair could perform sedentary work as limited by her need to alternate sitting and standing.

Shqair's alleged disability is the result of a fall she suffered while working as a quality inspector for Rockwell International in February of 1989. She first began seeing Dr. Cable in February of 1989, following her fall. Dr. Cable has treated Shqair consistently since then. Dr. Cable has made the following observations: on March 6, 1990, Dr. Cable stated that "I

have confronted her directly with the fact that all of her studies were negative, facet injections did not help. . . . Her problem is primarily anxiety-related. I can find no justification for any further physical treatment on her." On April 3, 1990, Dr. Cable noted that "I have nothing else left to offer her. I have no objective findings really as to why she hurts."

On August 23, 1991, Dr. Cable found that Shqair had no tenderness on palpation of the back, essentially normal gait with some intoeing, negative sitting root test, normal Achilles tendon reflexes, normal EHL and tibialis anterior strength bilaterally. Dr. Cable felt that Shqair's primary medical problem was her weight, concluding that an aggressive weight loss program would be the most effective means of treating her symptoms.

Another of Shqair's treating physicians, Dr. Wharton, noted after a September 5, 1989, examination, that there was a "general lack of objective physical findings on a repeated and prolonged basis." He concluded by stating that "I strongly recommend that this patient be placed back in the work situation as quickly as possible or alteratively dismissed from her position if she is unwilling to take the very appropriate job, which she has been offered, which in my opinion is accompanied by appropriately low physical stress."

A March 14, 1990, examination by Dr. Wharton revealed the following: Shqair's toe walking, heel walking, hop, squat, and arising from a squat were all normal, as was her standing posture and walking gait; she had normal flexation of the spine, zero

extension, and half-normal rotation and tilt; her muscle strength and sensory exams for her lower extremities were also normal. Wharton also noted that Shqair "demonstrated grossly inappropriate hypersensitive responses to all movements of trunk, legs, hips, etc." Dr. Wharton submitted this conclusion:

> In my opinion, this patient has no valid reason to continue in an off work, off duty status. She has been treated by every reasonable medical modality known for effective treatment of the patient's back, has virtually no objective physical findings that correlate with her subjective complaints, and in general, in my opinion, is a classic example of someone who is not motivated to return to a productive life style and appropriate work activities.
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> In my opinion, her Workers Comp case is going to drag on as long as she can make it drag on and every effort should be made to settle this case. I see no objective basis upon which to give this patient any sort of a disability or impairment rating and in my opinion her physical findings at the present time would not indicate that she has any justifiable basis upon which to expect to need medical treatment in the future related to the alleged incident of falling on ice.

Id. at 250-51.

After an office visit on October 26, 1990, Dr. Pedro Nosnik found that Shqair had a full range of motion in her neck, but that she had pain on flexation and extension and lateral rotation. Dr. Nosnik also found that Shqair's disc's were flat, her sensory was intact, she had normal motor and sensory functions in her upper and lower extremities, and her gait was normal. On March 28, 1991, Dr. Nosnik noted that Shqair still suffered from "nagging" neck discomfort, but that she was helped "significantly" by medication he gave her, and that her back pain was "much improved."

Finally, Shqair testified at the hearing before the ALJ on October 3, 1991, that she can walk for about a half mile before her left leg "gives out," and that she can stand for about twenty minutes before she needs to sit or lie down. She also testified that she does light housework, goes shopping for groceries on occasion, can attend a full church service, and drives her car to school and around town. This testimony, in addition to the findings, opinions, and conclusions of the physicians noted above, establishes more than a scintilla of evidence in support of the Secretary's finding that Shqair is not disabled.

Shqair also argues that she cannot perform sedentary work, as determined by the Secretary, because sedentary work does not allow alternate sitting and standing. The regulation defining sedentary work, however, specifically contemplates that sedentary work requires "a certain amount of walking and standing." See 20 C.F.R. § 404.1567(a). Moreover, in his hypothetical to the vocational expert, the ALJ specifically incorporated the "sit/stand" option. Even with this limitation, the vocational expert concluded that there were a significant number of jobs in the local economy which Shqair could perform. see also Morris v. Bowen, 864 F.2d 333, 335-36 (5th Cir. 1988) (such evidence and testimony satisfies the standard required to uphold the Secretary's determination).

Shqair also argues that the ALJ's hypothetical questions to the vocational expert were defective, because he did not precisely describe all of Shqair's impairments, including her

subjective complaints of pain. In his report, however, the ALJ specifically addressed Shqair's complaints of pain and mental impairments. The ALJ made a specific finding that her complaints were not credible and were refuted by the medical and testimonial evidence. As such, he was not required to utilize them in his hypothetical to the vocational expert. See Morris, 864 F.2d at 336 (hypothetical need only incorporate disabilities recognized by ALJ).

For these reasons, there is substantial evidence in the record to support the Secretary's finding. The judgment of the district court is AFFIRMED.