

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-9044
Summary Calendar

CHARLES STEVENS,

Plaintiff-Appellant,

VERSUS

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

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
(3:90-CV-913-D c/w 93-CV-2255)

(September 13, 1994)

Before DUHÉ, WIENER, and STEWART, Circuit Judges.

PER CURIAM:¹

Charles Stevens appeals the district court's judgment upholding the Secretary's denial of disability benefits under 42 U.S.C. §§ 423 and 1381. We affirm.

BACKGROUND

Stevens applied for disability benefits under Title II and Title XVI of the Social Security Act, 42 U.S.C. §§ 423 and 1381, alleging that an injury to his right knee prevented him from

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

working. In September 1991, an administrative law judge ("ALJ") determined that Stevens was not disabled because he could perform sedentary jobs. The Social Security Appeals Council upheld the ALJ's decision, making it the final decision of the Secretary. Stevens then filed a complaint in the district court. The district court issued a memorandum opinion and judgment affirming the ALJ's decision and dismissing Stevens complaint. Stevens appeals.

DISCUSSION

I. Standard of Review and Burden of Proof.

On review, we determine whether the record as a whole contains substantial evidence supporting the ALJ's findings and whether the ALJ applied the proper legal standards. Selders v. Sullivan, 914 F.2d 614, 617 (5th Cir. 1990). "Substantial evidence is more than a scintilla, less than a preponderance, and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Hames v. Heckler, 707 F.2d 162, 164 (5th Cir. 1983). "'[N]o substantial evidence' will be found only where there is a 'conspicuous absence of credible choices' or 'no contrary medical evidence.'" Id. (quoting Hemphill v. Weinberger, 483 F.2d 1137 (5th Cir. 1973)).

In evaluating a disability claim, the Secretary must determine sequentially whether: (1) claimant is not presently working; (2) claimant's ability to work is significantly limited by a physical or mental impairment; (3) claimant's impairment meets or equals an impairment listed in the appendix of the regulations; (4) the impairment prevents claimant from doing past relevant work; and (5)

claimant cannot presently perform relevant work. 20 C.F.R. § 404.1520(b)-(f); Selders, 914 F.2d at 618.

The claimant has the burden through the first four steps. Once the claimant shows that he can no longer perform his previous work, the burden shifts to the Secretary to show that there is other work in the national economy that the claimant can perform. Wren v. Sullivan, 925 F.2d 123, 125 (5th Cir. 1991). The Secretary may meet this burden by reference to the Medical-Vocational Guidelines of Appendix 2 of the regulations and/or by obtaining vocational expert testimony. If the Secretary meets this burden, the claimant must then prove that he is not able to perform other work. Anderson v. Sullivan, 887 F.2d 630, 632-33 (5th Cir. 1989).

In this case, the ALJ at step five found that Stevens was not disabled. Specifically, the ALJ found that Stevens had the residual functional capacity to perform the full range of sedentary work and relied upon the Medical-Vocational Guidelines and vocational expert testimony to find that Stevens could perform other work in the national economy. After a thorough review of the record, we conclude that the ALJ's findings are supported by substantial evidence and that he applied the correct legal standards.

II. Substantial Evidence

Stevens contends that the ALJ's finding that he has the residual functional capacity for the full range of sedentary work was not supported by substantial evidence. Referring to objective medical evidence, his subjective complaints of pain, and a treating

physician's opinion, he argues that he does not have the capacity to do sedentary work because his abilities to sit, stand, and walk are significantly limited. Contrary to his assertions, the objective medical record does not reveal a right knee impairment that would have prevented him from performing sedentary work. Furthermore, the ALJ's rejection of his complaints of pain is consistent with the objective medical evidence and the assessments of several treating physicians. Stevens regular activities (such as taking occasional drives, walking four blocks daily, and fishing once or twice a week) also refute his subjective complaints of pain. Finally, the ALJ did not err by rejecting Dr. Wright's opinion that Steven's knee impairment rendered him disabled. The opinion was not supported by any laboratory or clinical findings and it was inconsistent with the findings of other treating physicians.

III. Application of Law

The ALJ is entitled to rely exclusively on the Medical-Vocational Guidelines of Appendix 2 of the regulations to determine whether there is other work available that the claimant can perform if (1) the claimant's characteristics match the Guideline's profile regarding age, education, previous work experience, and residual functional capacity and (2) the claimant either suffers from exertional impairments only or his non-exertional impairments do not significantly affect his residual functional capacity. 20 CFR § 404, Subpart P, Appendix 2, §200.00(a), (d), & (e); Fraga v. Bowen, 810 F.2d 1296, 1304 (5th Cir. 1987). Stevens claims that

the ALJ should not have relied on the Guidelines because he does not have the residual functional capacity for the full range of sedentary work and his complaints of pain are non-exertional impairments. As stated above, the ALJ's finding that he had the capacity to perform sedentary work and rejection of his complaints of pain are supported by substantial evidence. Therefore, the ALJ was entitled to rely on the Guidelines.

Stevens further claims that the ALJ erred in relying on vocational expert testimony. He argues that this testimony was unreliable because it was based on inappropriate hypothetical questions posed by the ALJ. Steven's argument is of no consequence. Because the ALJ could have relied exclusively upon the Medical-Vocational Guidelines in determining that Stevens could perform other work, the vocational expert's testimony was unnecessary.

CONCLUSION

For the foregoing reasons, judgment in favor of the Secretary is

AFFIRMED.