

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10081
Summary Calendar

JIMMY L. WEBB, SSN XXX-XX-XXXX,

Plaintiff-Appellant,

versus

DONNA SHALALA
Secretary of Health and Human Services,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Texas
(6:93-CV-041-C)

(September 19, 1994)

Before GOLDBERG, GARWOOD and JONES, Circuit Judges.

PER CURIAM:*

Jimmy L. Webb appeals the district court's decision to grant summary judgment in favor of the Secretary of Health and Human Services (the "Secretary"). The Secretary denied Webb supplemental security income and disability benefits, finding he was not "disabled," as defined in the Social Security Act (the "Act"), 42 U.S.C. §§ 301, 423(d) (1988), as amended. After

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

reviewing the record, we find that the Secretary's decision denying benefits is supported by substantial evidence and that the proper legal standards were applied. Therefore, we affirm.

Webb applied for supplemental security income and disability benefits, and the Social Security Administration found that he was ineligible and rejected his claim.¹ Webb appealed and received a hearing before an Administrative Law Judge (ALJ). This hearing lasted about half an hour, and Webb was represented by counsel. The ALJ issued a decision, which the Secretary adopted, denying Webb's application. Webb appealed this decision to the district court without avail. A Magistrate Judge issued his own findings of fact and conclusions of law agreeing with the ALJ and recommending that Webb be denied benefits. The district court adopted these recommendations and granted the Secretary's Motion for Summary Judgment against Webb. Webb then appealed to this court. Webb claims that the ALJ's findings lack sufficient evidentiary support, that the district court failed to give sufficient de novo review of the ALJ's findings, and that he did not receive a full and fair hearing before the ALJ.

¹ Webb applied for both supplemental security income and disability income. Title XVI of the Act provides for supplemental security income to the disabled. 42 U.S.C. § 1381. Title II of the Act provides for disability benefits. The relevant legal and regulatory standards for determining whether an individual is disabled are identical to those for determining eligibility for supplemental security income. Johnson v. Bowen, 864 F.2d 340, 344 n. 3 (5th Cir. 1988) (citing Davis v. Heckler, 759 F.2d 432, 435 n. 1 (5th Cir. 1985); Rivers v. Schweiker, 684 F.2d 1144, 1146 n. 2 (5th Cir. 1982); Strickland v. Harris, 615 F.2d 1103, 1105-06 (5th Cir. 1980).

Appellate review of the Secretary's denial of benefits is limited to determining whether the decision is supported by substantial evidence in the record and whether the proper legal standards were correctly applied. Villa v. Sullivan, 895 F.2d 1019, 1021 (5th Cir. 1990) (citing Hollis v. Bowen, 837 F.2d 1378, 1382 (5th Cir. 1988)). "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." Villa, 895 F.2d at 1021-22 (quoting Hames v. Heckler, 707 F.2d 162, 164 (5th Cir. 1983)); Orphey v. Secretary of Health and Human Servs., 962 F.2d 384, 386 (5th. Cir. 1992). When applying this standard, we must review the entire record to determine whether substantial evidence is present, but we may not reweigh the evidence, try the issues de novo, or substitute our judgment for that of the Secretary. Villa, 895 F.2d at 1022; Johnson v. Bowen, 864 F.2d 340, 343 (5th Cir. 1988); Muse v. Sullivan, 925 F.2d 785, 789 (5th Cir. 1991).

Webb is a 47 year old former arc welder who stopped working in 1989. Several doctors examined Webb. The ALJ examined their medical reports, held the hearing, and issued factual findings. In this case, the magistrate affirmed the ALJ's decision in an opinion elaborating on the ALJ's findings of fact. Because we find substantial evidence in the record to support both opinions below, we will not disturb them.

A brief summary of Webb's medical history is helpful. Webb's health complaints fall into two categories.² The first involves his breathing. Webb complained of, and received medical attention for, shortness of breath and other respiratory problems. Webb underwent successful lung surgery. After considering medical reports, both the ALJ and magistrate determined that Webb's respiratory problems were cured.

The second category relates to Webb's upper body. Webb claimed that after he sits for about a half an hour his arms and hands begin "to go to sleep" and he experiences increased pain. Webb also complained of neck and shoulder pain. Webb's shoulder problems were further aggravated after he fell from a ladder. An EMG and an MRI were performed to discover the source of the problems. Physicians concluded the sources of pain included bursitis in Webb's shoulders, impingement syndrome with rotator cuff tears, tendinitis, and mild chronic radiculopathy on the left side. Webb received some treatment for these conditions, including steroid injections.

The ALJ sent interrogatory forms to Webb's examining physicians to obtain their opinions on Webb's physical abilities. The ALJ and the magistrate examined the results of these surveys and determined that Webb's limitations due to these physical impairments did not prevent him from performing "sedentary work," and therefore Webb was not disabled under the Act. The regulations

² Another category concerned Webb's vision. The ALJ found no evidence of a vision disability, and Webb did not contest this finding. Therefore, this Court will not address this issue.

promulgated by the Social Security Administration specifically define "sedentary work:"

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 and other sedentary criteria are met.

20 C.F.R. § 404.1567(a).

The Social Security Administration established a five step test to determine when an individual is eligible for benefits. 20 C.F.R. § 404.1520(b) - (f) (1988). The claimant bears the burden of proof for the first four steps, which determine whether he is presumptively disabled and unable to work. Johnson, 864 F.2d at 344. Both the ALJ and the district court found that Webb met his burden on the first four steps, and this is not disputed. At the fifth step, the burden shifts to the Secretary to establish "that the claimant is capable of performing substantial gainful activity and therefore, not disabled." Id. (citation omitted). The fifth step sets forth the principle that if the individual is precluded from performing his past work, other factors including age, education, past work experience, and residual functional capacity must be considered to determine if he can presently perform other work. Webb's contends that the ALJ incorrectly determined his residual functional capacity and improperly characterized his pain-related impairments.

In addition to the five step test, the Social Security Administration promulgated Medical-Vocational Guidelines (the "grids") to determine whether an individual is disabled. 20 C.F.R. Part 404, Subpt. P, App. 2. The grid may be used in two ways. First, it can be used to provide a definitive answer to the disability question. The Secretary gathers information about specific factors, including age, education, and previous work experience, puts it in the grid, and receives a conclusion of "disabled" or "not disabled." See, e.g., Anderson v. Sullivan, 887 F.2d 630 (5th Cir. 1989). The grid becomes a judge. Second, the regulations state that the grid may be used "to provide guidance" or as a "framework" for a decision. 20 C.F.R. Part 404, Subpt. P., App. 2, §200.00(d) & (e)(2). This is appropriate when "the necessary judgments have been made as to each factor and it is found that no specific rule applies," or where the individual's work capacity may be diminished "in terms of jobs that would be contraindicated by ... non-exertional limitations." Id. For example, in Dellolio v. Heckler, 705 F.2d 123 (5th Cir. 1983), the ALJ there mechanically applied the grid and determined that the applicant was able to engage in light work. The applicant in Dellolio claimed to suffer from a combination of environmental, exertional, and non-exertional limitations. Id. at 126-28. The Dellolio court found that the ALJ did not adequately explore these limitations or consider how the combination of these limitations would affect the claimant's ability to work. Id. In cases like

Dellolio, the use of a vocational specialist "is advisable," but not required. S.S.R. 83-12.

Dellolio does not control Webb's case because the ALJ expressly considered all of Webb's alleged limitations individually and collectively. These allegations included exertional, non-exertional, and environmental limitations. The ALJ determined that these limitations did not prevent Webb from performing the full range of sedentary work in a clean atmosphere. See 20 C.F.R. §§ 404.1567, 416.967. Webb claims he suffers from non-exertional pain that renders him disabled. Webb bears the burden of proving his pain is sufficient to entitle him to benefits. Anderson, 887 F.2d at 633. First, Webb must link his pain to some medical condition. See 42 U.S.C. § 423(d)(5)(A). While Webb need not prove his pain objectively, the ALJ may evaluate Webb's subjective claim in combination with other evidence, including his medical records and activities. This is exactly what the ALJ did, and the magistrate agreed with him. The ALJ's credibility findings are due considerable deference. Carrier v. Sullivan, 944 F.2d 243, 247 (5th Cir. 1991) ("How much pain is disabling is a question for the ALJ since the ALJ has primary responsibility for resolving conflicts in the evidence.") (quotation omitted).

Webb argues that he did not receive a full and fair hearing. His contention is based on two facts. First, one of reasons proffered by the ALJ for not believing Webb's claims of constant pain was the fact that Webb did not "persistently seek medical help." While Webb stated that he did not seek medical care for

financial reasons, the ALJ wrote that "...there are many public facilities that provide treatment per ability to pay." Id. Second, Webb claims the ALJ failed to "probe[] conscientiously for all of the relevant information." However, Webb fails to point out what relevant information the ALJ failed to glean from the record or the hearing. After reviewing the transcript of the hearing and the record, we find Webb's argument without merit.

The district court's grant of summary judgment to the Secretary is AFFIRMED.