

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10159
Summary Calendar

EFFIE L. MCGRAW,

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-433-H)

(December 5, 1994)

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

By EDITH H. JONES, Circuit Judge:*

Effie L. McGraw filed an application for disability insurance benefits alleging that she suffered from chronic cervical syndrome.

McGraw's application was denied initially and on reconsideration, and she requested a hearing before an Administrative Law Judge (ALJ). Following a hearing, the ALJ

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

determined that McGraw was not under a disability as defined in the Social Security Act; thus, she was not eligible for disability insurance benefits. McGraw sought review of the hearing decision before the Appeals Council. The Appeals Council denied her request for review, and the decision of the ALJ became the final decision of the Secretary. Upon review, the district court found that the ALJ's decision was supported by substantial evidence in the record and granted summary judgment in favor of the Secretary.

I.

McGraw argues that the ALJ's decision is not supported by substantial evidence. She contends that she does not have the residual functional capacity for the full-range of light work and that the Secretary failed to consider the demands of her past work as a pharmacy technician that she no longer was able to perform.

This Court's review of the denial of disability insurance benefits is limited to two issues: (1) whether the Secretary applied the proper legal standards, and (2) whether the Secretary's decision is supported by substantial evidence on the record as a whole. Anthony v. Sullivan, 954 F.2d 289, 292 (5th Cir. 1992).

Applying the legal standards to determine disability

The Secretary conducts a five-step sequential analysis to determine whether a claimant is disabled: 1) whether the claimant is presently working; 2) whether the claimant has a severe impairment; 3) whether the impairment is listed, or equivalent to an impairment listed in Appendix 1 of the Regulations; 4) whether the impairment prevents the claimant from performing past relevant

work; and 5) whether the impairment prevents the claimant from performing any other substantial gainful activity. 20 C.F.R. § 404.1520; Muse v. Sullivan, 925 F.2d 785, 789 (5th Cir. 1991). "A finding that a claimant is disabled or is not disabled at any point in the five-step review is conclusive and terminates the analysis." Lovelace v. Bowen, 813 F.2d 55, 58 (5th Cir. 1987).

At step one, the ALJ found that McGraw had not engaged in substantial gainful activity since June 24, 1987. At steps two and three, the ALJ found that McGraw suffers from severe chronic cervical syndrome and chronic myofascial syndrome, limiting her ability to "lift and carry, climb, reach, handle, feel and finger," but that she does not have an impairment or combination of impairments listed in, or medically equal to, one listed in Appendix 1 of the Regulations.

At step four, the ALJ found that McGraw retained the residual functional capacity for a full-range of light work, requiring the lifting of 20 pounds occasionally and 10 pounds frequently, with significant walking and standing. The ALJ found no evidence that McGraw was not able to lift the amounts at the light level or that she was unable to perform the requisite standing and walking. The ALJ found McGraw's credibility "questionable" and her complaints of symptomatology related to her impairment credible only to the extent that she would be limited to work activity of light exertion. The ALJ determined that, with a residual functional capacity for a full-range of light work, McGraw was able to return to her past relevant work as a pharmacy

technician, in which she answered phones, received over-the-telephone prescription orders and gave them to the pharmacist, and dealt directly with the public. The ALJ concluded that because McGraw's impairments did not prevent her from performing her past relevant work, she was not under a disability for purposes of entitlement to benefits. Thus, the determination of "not disabled" was made at step four of the analysis.

The ALJ applied the proper legal standard in evaluating McGraw's disability claim. We now examine the question whether the factual findings are supported by substantial evidence.

Substantial evidence

If the Secretary's findings are supported by substantial evidence, they are conclusive and must be affirmed. Anthony, 954 F.2d at 295. "Substantial evidence is that which is relevant and sufficient for a reasonable mind to accept as adequate to support a conclusion; it must be more than a scintilla, but it need not be a preponderance." Id. "This Court may not reweigh the evidence or try the issues de novo. . . . Rather, conflicts in the evidence are for the Secretary to resolve." Id.

As the claimant, McGraw bears the burden of showing that she is disabled within the meaning of the Social Security Act. Cook v. Heckler, 750 F.2d 391, 393 (5th Cir. 1985). The Act defines disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which . . . has lasted or can be expected to

last for a continuous period of not less than twelve months." 42 U.S.C. §§ 416(i)(1), 423(d)(1)(A), 1382c(a)(3)(A).

To determine whether substantial evidence of disability exists, four elements of proof must be weighed: 1) objective medical facts; 2) diagnoses and opinions of treating and examining physicians; 3) claimant's subjective evidence of pain and disability; and 4) claimant's age, education, and work history. DePaepe v. Richardson, 464 F.2d 92, 94 (5th Cir. 1972). The entire record is reviewed to determine if such evidence is present. Villa v. Sullivan, 895 F.2d 1019, 1022 (5th Cir. 1990).

Objective medical facts and diagnoses and opinions of treating and examining physicians

McGraw entered the hospital on June 24, 1987, for chest, neck, and arm pain; bone scan, chest x-ray, and cervical spine x-ray revealed no abnormalities. A neurological consultation indicated that McGraw had improved via anti-inflammatory therapy, and anticipated that her symptoms should disappear entirely. A discharge summary reported that McGraw's probable diagnosis was Parsonage-Turner syndrome and that she would be "followed as needed."

In a letter dated August 4, 1987, McGraw's examining doctor stated that she "was disabled from work from July 8, 1987 and remains so to this day." On August 24, 1987, the doctor reported that McGraw could return to work as of September 8, 1987, but "not at her previous task," and instructed that her job not require repetitive neck or left arm motion. On September 3, 1987, the doctor declared that she was able to return to work as of that

date. On September 15, 1987, he repeated that McGraw "should be afforded a task in which she does not have to use repetitive movements of her left shoulder."

On October 7, 1987, McGraw was examined by Dr. Burkhead, who stated that McGraw had a full cervical range of motion with mild pain on terminal rotation. X-rays revealed no significant pathology. On December 1, 1987, he stated that McGraw was slightly improved. On January 15, 1988, Dr. Burkhead reported that McGraw's bone scan was normal and stated that he saw "no reason why she cannot return to work in the next several weeks." On January 26, 1988, he stated that there was some improvement and that "some of this may be related to stress and tightness of her muscles." By March 9, 1988, Dr. Burkhead released McGraw to work four hours per day.

On May 24, 1988, Dr. Burkhead diagnosed carpal tunnel syndrome. Beginning in December, McGraw underwent carpal tunnel release; within a month, she reported better sensation in her hand and less wrist pain, but continued to complain of occasional shoulder discomfort. On February 7, 1989, Dr. Burkhead stated that McGraw had "good relief from pain" in her hands, but still had "some neck pain." He stated that she should be able to return to work in six weeks. On March 14, 1989, Dr. Burkhead's notes indicated that "they [did] not have anything for her at work yet."

On April 6, 1989, McGraw was examined by Dr. Daughety. She opined that McGraw initially suffered from left brachial plexitis from repetitive activity and left wrist median neuritis.

She stated that McGraw currently suffered from left shoulder-hand syndrome and that she may be getting causalgia pain. She concluded that McGraw may not recover sufficiently to return to her former job at Texas Instruments.

On June 13, 1989, McGraw was examined by Dr. West, who stated that she should be "off work until further notice." After four more visits throughout July and August 1989, Dr. West found that McGraw's pain level remained unchanged and referred her to a chronic pain management program.

From September 1989 to April 1990, McGraw was treated at the Swiss Avenue Behavioral Medicine Center in the pain management program. Treatment notes indicate that McGraw "changed her activities of daily living from almost complete bed rest to being active," and that she was participating in family activities on a daily basis. The report stated that McGraw had learned to manage her pain effectively and was moving toward employment as a realistic goal.

On March 19, 1991, McGraw was examined by Dr. Peter Louis. He found that she had full range of motion of the neck without any radicular pain elicited, and that although there was slight limitation in active range of motion of the left shoulder, there was full range of motion on forward flexion, extension, and internal rotation, and full passive range of motion of the left shoulder. He found a slight decrease in her left hand grip. Her neurological examination was within normal limits, and x-rays of her left shoulder and cervical spine were normal. Dr. Louis'

impression was of chronic cervical pain syndrome, chronic left shoulder-hand pain syndrome, and adult anxiety depressive situational reaction. He completed a work-assessment form in which he stated that McGraw could lift and carry 20 pounds occasionally, could stand and walk six to eight hours per day, and could sit eight hours per day.

Subjective evidence of pain and disability

McGraw testified that she has continuous pain in her neck, back, left shoulder, down her arm, and in her hand. She stated that she gets back spasms every day and wakes up with headaches almost every day. She further testified that she does very little housework, grocery shopping, or driving, and that she cannot do her hair because it hurts to lift her arm over her head. She stated that she watches television, reads, and sleeps during the day, and that some days she doesn't get out of bed at all. She testified that she was depressed because of her pain and because she was unable to do the things she used to do.

Age, education, and work history

At the time of the hearing on March 20, 1991, McGraw was 42 years of age with a high school diploma. From 1967 to 1975, McGraw worked as an electronic assembler at Texas Instruments. From 1977 to 1981, she worked in electronics at Mostek Corporation, and from 1982 until 1985, she worked as a production inspector at Xerox Corporation. From 1985 until 1986, she worked at K-Mart as a pharmacy technician, answering the phone, taking prescriptions, and providing prescriptions to the pharmacist. In 1986, she

returned to work at Texas Instruments, where she remained until her pain began in mid-1987.

McGraw argues that the finding that she was able to return to her past relevant work as a pharmacy technician was not supported by substantial evidence. In contrast, the ALJ determined that she had not alleged an impairment that would preclude her from performing this job.

Light work is defined as

lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.

20 C.F.R. § 404.1567(b). With the exception of Dr. Daughety, all of the physicians' reports indicate that McGraw can perform activities consistent with light work. In September 1987, Dr. Parker stated that McGraw could return to work as long as the job did not require repetitive movements of her left shoulder. Dr. Louis stated that McGraw could lift and carry 20 pounds occasionally, could stand and walk six to eight hours per day, and could sit eight hours per day. The conclusion of the ALJ that McGraw retained the residual functional capacity for the full range of light work is amply supported by substantial evidence in the record.

McGraw also contends that the Secretary did not consider the physical and mental demands of her past work as a pharmacy technician. "In evaluating a claimant's ability to perform past

relevant work, the ALJ is obliged by the regulations to review the claimant's residual functional capacity and the physical and mental demands of the work [the claimant has] done in the past." Abshire v. Bowen, 848 F.2d 638, 641 (5th Cir. 1988) (internal quotations and citations omitted). The ALJ adequately compared McGraw's residual functional capacity with the demands of her past employment as a pharmacy technician. The medical evidence supports his determination that McGraw would be physically capable of answering telephones, receiving prescriptions and giving them to the pharmacist, and dealing directly with the public. Further, the ALJ found no evidence that McGraw's depression was disabling, noting that she had not alleged that her depression would keep her from working and that she had not alleged an impairment that would preclude her from performing the duties of a pharmacy technician.

The ALJ further found that McGraw's credibility was "questionable" and that her complaints of symptomatology related to her impairment were considered credible only to the extent that she would be limited to work activity of light exertion. An ALJ's findings "regarding the debilitating effect of the subjective complaints are entitled to considerable judicial deference." Haywood v. Sullivan, 888 F.2d 1463, 1470 (5th Cir. 1989) (internal quotation and citation omitted).

The Secretary applied the proper legal analysis, and the decision at the fourth step that McGraw was able to perform her past relevant work is supported by substantial evidence on the record as a whole.

For the foregoing reasons, the judgment of the district court is **AFFIRMED**.