**UNITED STATES COURT OF APPEALS**
**FOR THE FIFTH CIRCUIT**

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**No. 94-10329**
**Summary Calendar**

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**ROBERT W. STOUT,**

**Plaintiff-Appellant,**

**versus**

**DONNA SHALALA, Secretary of Health and Human Services,**

**Defendant-Appellee.**

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**Appeal from the United States District Court for the Northern District of Texas (4:93-CV-250-A)**

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**(February 21, 1995)**

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:[1]

Robert Stout challenges the denial of his application for Social Security disability benefits. We **AFFIRM**.

I.

Stout applied for disability insurance benefits, alleging that he had been disabled since mid-December 1987, because of a left shoulder injury. The application was denied originally and on reconsideration. Following a *de novo* hearing, the administrative law judge (ALJ) determined that Stout was not disabled. The

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[1] Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

Appeals Council denied Stout's request for review of the ALJ's decision, which therefore became the Secretary's final decision. The district court affirmed the Secretary's decision.

II.

Stout does not contest any of the findings of fact made by the ALJ, contending only that the Secretary incorrectly applied the governing legal standard in determining that, considering his age, education, and work experience, he was capable of performing substantial gainful activity that exists in significant numbers in the national economy.

"Appellate review of the Secretary's denial of disability benefits is limited to determining whether the decision is supported by substantial evidence in the record and whether the proper legal standards were used in evaluating the evidence." ***Villa v. Sullivan***, 895 F.2d 1019, 1021 (5th Cir. 1990). The Social Security Act defines disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months". 42 U.S.C. § 423(d)(1)(A). In determining whether a claimant is able to engage in substantial gainful activity, the Secretary applies the well-known five-step sequential evaluation process:

> 1. An individual who is working and engaging in substantial gainful activity will not be found disabled regardless of the medical findings.
>
> 2. An individual who does not have a "severe impairment" will not be found to be disabled.

> 3. An individual who meets or equals a listed impairment in Appendix 1 of the regulations will be considered disabled without consideration of vocational factors.
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> 4. If an individual is capable of performing the work he has done in the past, a finding of "not disabled" must be made.
>
> 5. If an individual's impairment precludes him from performing his past work, other factors including age, education, past work experience, and residual functional capacity must be considered to determine if other work can be performed.

***Villa v. Sullivan***, 895 F.2d at 1022. A disability determination "at any point in the five-step process is conclusive and terminates the Secretary's analysis." ***Harrell v. Bowen***, 862 F.2d at 475.

The claimant has the burden of proof for the first four steps; but, for step five, the burden shifts to the Secretary to show that the claimant is capable of performing other work in the national economy. ***Wren v. Sullivan***, 925 F.2d 123, 125 (5th Cir. 1991). If the Secretary meets that burden, the claimant must then prove that he is not capable of performing alternative work. ***Selders v. Sullivan***, 914 F.2d 614, 618 (5th Cir. 1990).

At step one, the ALJ found that Stout had not engaged in substantial gainful activity since December 1987, due to a severe derangement of the left shoulder, including a partially torn rotator cuff; at steps two and three, that, although Stout suffered from a severe impairment, he did not have an impairment or combination of impairments listed in or medically equal to one listed in Appendix 1 of the regulations; and, at step four, that Stout was unable to perform his past relevant work as an airline

baggage handler. But, at step five, the ALJ determined, after reviewing all of the evidence, that Stout

> retains the residual functional capacity to perform all work activities except for the inability to: lift more than 5 pounds with his left hand and arm, or more than 15 pounds with his right hand and arm; the inability to perform overhead work with his left upper extremity; or to push or pull with the left upper extremity, or to reach with the left upper extremity.

Accordingly, the ALJ concluded that Stout retained the residual functional capacity to perform certain sedentary occupations, as well as those light occupations that did not have lifting and carrying requirements.[2]

Because the ALJ determined that Stout's ability to perform the full range of unskilled sedentary work was reduced by the loss of the use of his left shoulder and arm, the ALJ received evidence from a vocational expert on the number of jobs that remained available to Stout. *See* ***Scott v. Shalala***, 30 F.3d 33, 34 (5th Cir. 1994) (internal quotation marks and citation omitted) (ALJ may rely solely on medical-vocational guidelines to determine if a claimant is disabled only if the guidelines' "evidentiary underpinnings coincide exactly with the evidence of disability appearing on the record"). The expert gave two examples of jobs Stout was capable of performing: telephone quotation clerk and ticket cashier, each representing numerous jobs in the national economy.

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[2] The ALJ determined that the medical evidence did not establish that Stout's injured shoulder limited his ability to stand or walk; and that Stout could perform the light unskilled job of ticket cashier, because the only reason the job had been upgraded to the light range of occupations was due to the amount of standing and walking required.

The ALJ noted that, "[i]f the range of sedentary work were significantly diminished, § 201.00(h) of Appendix 2 indicates that a finding of disabled would be appropriate." The ALJ concluded, however, that, although Stout's injury prevented him from performing "the full range of sedentary work ... there are a significant number of jobs in the national economy which he could perform." As examples, the ALJ pointed to the two cited by the vocational expert; one sedentary unskilled job and one light unskilled job. Because of the widespread availability of each, both nationally and in Texas, and because of the absence of evidence rebutting the conclusion that Stout could perform them, the ALJ determined that Stout's occupational base had not been so significantly compromised as to compel a finding of disability. *See* 42 U.S.C. § 423(d)(1)(A).

Stout maintains that the ALJ incorrectly focused "solely on the number of unskilled sedentary occupations [he] could perform, rather than the extent to which [his] ability to perform the full range of unskilled sedentary occupations has been compromised". He asserts that, because his lack of bilateral manual dexterity prevents him from performing the majority of unskilled sedentary jobs, the occupational base for the full range of sedentary work was compromised, and a finding of disability was required.[3]

Stout cites Social Security Rulings 83-10, 83-12, 83-14, and 91-3p for the proposition that a significant erosion of the

[3] Social Security Ruling 83-10 defines occupational base as "[t]he number of occupations, as represented by RFC [residual functional capacity], that an individual is capable of performing."

occupational base for sedentary work precludes finding that the claimant can perform significant numbers of jobs in the national economy. The Secretary counters that those rulings do not direct a finding of disability, but instead require only that, as was done in this case, vocational testimony be taken whenever the sedentary job base is significantly compromised. We defer to the Secretary's interpretation of her own rulings and regulations. *See* ***Cieutat v. Bowen***, 824 F.2d 348, 352 (5th Cir. 1987).

Stout relies also on 20 C.F.R. pt. 404, subpt. P, app. 2, § 201.00(h). That regulation does not mandate, however, a finding of disability for a claimant who is unable to perform the full range of sedentary work; it provides instead that "a finding of disabled *is not precluded* for those individuals under age 45 who do not meet all of the criteria of a specific rule and who do not have the ability to perform a full range of sedentary work". 20 C.F.R. pt. 404, subpt. P, app. 2, § 201.00(h) (emphasis added).

In any event, Stout contends that Example 1 of 20 C.F.R. pt. 404, subpt. P, app. 2, § 201.00(h), provides controlling guidance as to what constitutes a significant enough compromise of the claimant's range of unskilled sedentary occupations (or occupational base) to require a finding of disability. He asserts that the example requires finding him disabled, because his physical limitations, age, and education mirror those in the example. The example states, in pertinent part:

> [A] finding of disabled is not precluded for those individuals under age 45 who do not meet all of the criteria of a specific rule and who do not have the ability to perform a full range of sedentary work.

> *The following examples are illustrative*: Example 1: An individual under age 45 with a high school education can no longer do past work and is restricted to unskilled sedentary jobs because of a severe medically determinable cardiovascular impairment (which does not meet or equal the listings in appendix 1). A permanent injury of the right hand limits the individual to sedentary jobs which do not require bilateral manual dexterity. None of the rules in appendix 2 are applicable to this particular set of facts, because this individual cannot perform the full range of work defined as sedentary. Since the inability to perform jobs requiring bilateral manual dexterity significantly compromises the only range of work for which the individual is otherwise qualified (i.e., sedentary), a finding of disabled would be appropriate.

20 C.F.R. pt. 404, subpt. P, app. 2, § 201.00(h) (emphasis added).

Our court has previously rejected a similar contention, stating that example 1's language "makes it plain that [it] is merely illustrative", and that it does not automatically outweigh the testimony of a vocational expert. ***Asebedo v. Shalala***, No. 93-8826, at 7 (5th Cir. Aug. 3, 1994) (unpublished). In short, the example is not mandatory and does not require a finding of disability. The ALJ was not bound by it, and did not err in concluding that the vocational expert's testimony established that Stout's occupational base had not been so significantly reduced that a finding of "disabled" was required.

III.

For the foregoing reasons, the judgment is

**AFFIRMED.**