

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10807
Summary Calendar

SHARON FRIES,

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
(7:92-CV-55)

(May 29, 1995)

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:*

Plaintiff-Appellant Sharon K. Fries ("Fries") appeals the decision of the Defendant-Appellee, the Secretary of the Department of Health and Human Services ("Secretary"), to deny her disability

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

insurance benefits under Title II of the Social Security Act ("Act"). Finding no reversible error, we affirm.

FACTS AND PROCEDURAL HISTORY

Fries filed an application for disability insurance benefits on June 28, 1989. Fries asserted that she had been unable to work since February, 1981 because of a lower back injury followed by various complications that included a mental impairment. The claim for disability benefits was denied. Fries requested reconsideration, but the claim was again denied. Fries then requested a hearing before an Administrative Law Judge ("ALJ"), which was held in Wichita Falls, Texas on January 29, 1991.

The ALJ found that Fries was not disabled as defined by the Act because "she was able to engage in her past relevant work on or prior to June 30, 1984[,]" the last day of her insured status under Title II. Fries requested review of the ALJ's decision. The appeals council considered the request for review, but concluded that there was no basis for granting the request. This denial became the final decision of the Secretary.

Fries brought her claim to federal district court on April 27, 1992. At the direction of the magistrate judge, both parties submitted motions for summary judgment. The magistrate judge issued findings, conclusions, and a recommendation that the decision of the Secretary be affirmed because there was substantial evidence to support the ALJ's determination. The district court adopted the magistrate judge's findings, conclusions, and recommendation.

Fries argues that the Secretary erred in finding that she was capable of performing her past work on or before June 30, 1984. Fries contends that the ALJ had no basis for finding that her disability began later than February, 1981 when she sustained her back injury. The standard of review is whether there is substantial evidence in the record to support the decision of the Secretary. 42 U.S.C. § 405(g); Cook v. Heckler, 750 F.2d 391, 392 (5th Cir. 1985). Substantial evidence is more than "a suspicion of the existence of the fact to be established, but 'no substantial evidence' will be found only where there is a 'conspicuous absence of credible choices' or 'no contrary medical evidence.'" Hames v. Heckler, 707 F.2d 162, 164 (5th Cir. 1983) (citations omitted).

We find that there is substantial evidence in the record to support the Secretary's decision. Fries never challenges the ALJ's finding that, although she did have a severe impairment on or prior to June 30, 1984 in connection with her back injury, "it is clear from the record . . . that this would not have precluded her from engaging in work activities at the light and sedentary level." The ALJ then found her past work to be light and sedentary. Further, Fries never challenges the ALJ's finding that, prior to 1984, she was able to travel to London to visit a faith healer, attend classes several times a week, write poetry, and take care of housework. Finally, the medical evidence, although evincing the opinion of several doctors that Fries may have an emotional or psychological problem, does not contain any formal diagnosis of a mental impairment and does not state that any mental problems Fries

may have had were restrictive of her activities in any way prior to June 30, 1984. Although it was recommended to Fries on at least one occasion that she should seek treatment for her mental problems, "both she and her mother were seemingly opposed to this and would consider nothing that even hinted at anything psychologic." Fries's refusal to seek treatment also suggests that her mental problems were not significant to the extent that she would be disabled as defined under the Act.

CONCLUSION

Accordingly, the decision of the Secretary is AFFIRMED.