

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-20512  
Summary Calendar

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DWIGHT W. STRAHAN,

Plaintiff-Appellant,

versus

SHIRLEY S. CHATER, Secretary of Health and Human Services,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
(CA-H-93-2057)

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August 16, 1995

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Dwight W. Strahan appeals the denial of his application for disability insurance benefits. Finding substantial evidence to support the decision of the administrative law judge (ALJ), we affirm.

**BACKGROUND**

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Strahan filed an application for disability insurance benefits on March 25, 1991, asserting that he became disabled on May 8, 1984. His claim and subsequent motion for reconsideration were denied. Strahan then requested and received a hearing before an ALJ.

The ALJ found that Strahan was not disabled as defined by the Social Security Act because Strahan had engaged in substantial gainful activity from his alleged onset date, May 8, 1984, through the date his insured status expired, December 31, 1989. The ALJ found that Strahan's activities in running his small television transmitting station were valued at more than \$300 per month, the threshold amount at the time. The appeals council considered Strahan's request for review, but concluded that there was no basis for granting the request. A magistrate judge, sitting in place of a district judge by consent of the parties, affirmed.

#### **DISCUSSION**

Our standard of review in cases under 42 U.S.C. § 405(g) is whether there is substantial evidence in the record to support the decision of the Commissioner. Cook v. Heckler, 750 F.2d 391, 392 (5th Cir. 1985). Substantial evidence is defined as follows:

[S]uch relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It must do more than create a suspicion of the existence of the fact to be established . . . .

Abshire v. Brown, 848 F.2d 638, 640 (5th Cir. 1988) (per curiam). If supported by substantial evidence, the Commissioner's findings

are conclusive and must be affirmed. Richardson v. Perales, 402 U.S. 389, 390 (1971).

Under the Social Security Act, "disability" is defined as the inability to engage in any substantial gainful activity because of any medically determinable physical or mental impairment which could be expected to last for a period of not less than 12 months. 42 U.S.C. § 423(d)(1)(A); Shipley v. Secretary of Health & Human Servs., 812 F.2d 934, 935 (5th Cir. 1987). The regulations promulgated pursuant to the Social Security Act provide a five-step sequential evaluation process to determine disability. Villa v. Sullivan, 895 F.2d 1019, 1022 (5th Cir. 1990). The first step provides that an individual "who is working and engaging in substantial gainful activity will not be found disabled regardless of the medical findings." Wren v. Sullivan, 925 F.2d 123, 125 (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." Id. at 125-26.

The ALJ terminated the evaluation process at the first step, finding that Strahan had been engaging in substantial gainful activity throughout the period of the alleged disability. "Substantial" work activity is "work activity that involves doing significant physical or mental activities." 20 C.F.R. §§ 404.1572(a), 416.972(a). "[W]ork may be substantial even if it is done on a part-time basis." Id. "Work activity is gainful if

it is the kind of work usually done for pay or profit, whether or not a profit is realized." Id. at §§ 404.1572(b), 416.972(b).

Strahan maintains that the television station was small and amounted to no more than an expensive hobby. Strahan argues that any work he did was worthless because of his mental condition, and contends that had he provided work of any value, the station would have been more successful.

However, our review of the record reveals that the ALJ's finding that Strahan performed substantial gainful activity is supported by substantial evidence. The disability report filled out by Strahan showed that he was self employed from 1985 to March 1, 1991, keeping his television transmitter on the air. Strahan showed that he worked seven days per week and that the job involved the use of tools, technical knowledge, the ability to write reports, and supervisory responsibilities. In response to questions from the Social Security Administration, Strahan stated that he had owned two stations "and sold them for over \$100,000 profit each" before getting involved with the station in Victoria, Texas. Strahan also stated that for the last six years he has been attempting to sell the television station by making phone calls to brokers and by placing ads in national trade publications. Further, Strahan's tax returns showed that his TV station produced gross receipts of \$5,496 in 1987, \$3,195 in 1988, and \$7,971 in 1989. Finally, the ALJ's conclusion that Strahan worked at least 25 hours a week was supported by Strahan's attorney's statement at the hearing.

## CONCLUSION

In summary, we find that the record contains substantial evidence to support the ALJ's conclusion that Strahan performed substantial gainful activity during the relevant time period. **AFFIRMED.**