UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30159
Summary Calendar

FRANKLIN D. FRAZIER, SR.,

Plaintiff-Appellant,

versus

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE OF THE UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA 92-2022 "M" (1))

(December 7, 1994)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:[1]

Franklin D. Frazier, Sr., *pro se*, appeals the district court's judgment affirming the denial of his application for Social Security disability insurance benefits. We **AFFIRM**.

I.

On June 13, 1990, Frazier applied for disability insurance benefits, claiming disability from October 30, 1976, through December 31, 1981, the date on which his insured status expired,

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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 Pursuant to that rule, the court has determined that this opinion should not be published.

because of a back injury, diabetes, prostate cancer, and speech problems.[2] After his application was denied initially and on reconsideration, Frazier requested and received a hearing before an administrative law judge, who held that Frazier was not disabled. The Appeals Council denied Frazier's request for review.

When Frazier sought reversal in district court of the Secretary's decision, the parties filed cross motions for summary judgment. Over Frazier's objections, the district court adopted the magistrate judge's recommendation that summary judgment be granted for the Secretary.

II.

Frazier contends that the summary judgment should be reversed and the case remanded to the district court for further proceedings.[3]

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[2] The speech problems developed four days prior to Frazier's June 1990 application for disability benefits.

[3] Frazier's three-page brief and two-page reply brief do not contain a single citation to the record, and he cites no authority to support his contentions. Although we construe *pro se* briefs liberally, *pro se* litigants must comply nevertheless with the Federal Rules of Appellate Procedure. *E.g.*, ***United States v. Wilkes***, 20 F.3d 651, 653 (5th Cir. 1994). Fed. R. App. P. 28(a)(5) "requires that the appellant's argument contain the reasons he deserves the requested relief with citation to the authorities, statutes and parts of the record relied on." ***Yohey v. Collins***, 985 F.2d 222, 225 (5th Cir. 1993) (internal quotation marks and citation omitted). And, our local rules require that "[e]very assertion in briefs regarding matter in the record shall be supported by a reference to the page number of the original record where the matter relied upon is to be found." 5th Cir. R. 28.2.3. Frazier's failure to comply with the rules regarding the contents of briefs justifies dismissal of this appeal. 5th Cir. R. 42.3.2; *see* ***Moore v. FDIC***, 993 F.2d 106, 107 (5th Cir. 1993). But, despite Frazier's failure to comply with the rules, we have exercised our discretion to consider the merits of his appeal. Frazier is warned, however, that failure in the future to comply with the

"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). In applying this standard, "we may not reweigh the evidence in the record, nor try the issues *de novo*, nor substitute our judgment for the Secretary's, even if the evidence preponderates against the Secretary's decision." ***Harrell v. Bowen***, 862 F.2d 471, 475 (5th Cir. 1988).

The Social Security Act defines disability in relevant part 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 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.
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> 2. An individual who does not have a "severe impairment" will not be found to be disabled.
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> 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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rules will not be considered in such a lenient manner.

> 4. If an individual is capable of performing the work he has done in the past, a finding of "not disabled" must be made.
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> 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 finding that a claimant is disabled or not disabled 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 the burden shifts to the Secretary for step five, 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 this burden, the claimant must then prove that he is not capable of performing other work. ***Selders v. Sullivan***, 914 F.2d 614, 618 (5th Cir. 1990).

At the fifth step of the process, the ALJ determined, taking into account Frazier's age, education, and work experience, that Frazier could perform other work in the national economy.[4] He also determined that, from October 30, 1976 (the alleged onset date of disability), through December 31, 1981 (the date Frazier was last insured for disability benefits), Frazier could perform medium work.[5]

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[4] Frazier, who was 45 years of age on December 31, 1981, had a seventh grade education and work experience as a welder.

[5] "Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, ... he or she can also do sedentary and light work." 20 C.F.R. § 404.1567(c).

The record contains no evidence that any physician reported that Frazier was disabled for any period of 12 consecutive months during the relevant time period. At the hearing before the ALJ, Frazier testified that he had difficulty walking and experienced occasional numbness in his leg because of his back problem; and that he had chest pains and problems related to his diabetes. Medical records introduced at the hearing show that Frazier injured his back in April 1975, and reinjured it in March 1976. In October 1976, he sought treatment from Dr. Veca, complaining of back pain aggravated by forward bending, heavy lifting, and carrying of heavy objects. Dr. Veca opined that Frazier suffered from degenerative arthritis and probable degenerative disc disease, but concluded that Frazier could continue to work. Although Frazier underwent back surgery in October 1977, that surgery did not disable him for 12 consecutive months.

As of May 1978, Frazier was not taking medication for back pain, and had improved to the point that he was comfortable and could walk further distances at a time. Frazier's physical therapy was discontinued in July 1978, nine months after the surgery. Dr. Veca reported on December 26, 1978, that Frazier had reached maximum medical improvement and could be discharged.[6]

Frazier was hospitalized for severe right flank pain in September 1980. Testing revealed a stone in the right ureter. He

[6] Except for some groin pain and occasional flare-ups of back and leg pain, Frazier's course of treatment was unremarkable until July 1981, when Dr. Veca reported that Frazier had a permanent disability of approximately 25% of the whole body. Dr. Veca continued to treat Frazier through July 1982.

was discharged after five days, and the medical records contain no indication of a recurrence. Although Frazier's wife testified that his prostate problems began prior to December 1981, there is no supporting medical evidence in the record. Frazier testified at the hearing that he had been receiving supplemental security income benefits since 1987 or 1989 because of prostate cancer.

In sum, there is substantial evidence in the record to support the ALJ's finding that Frazier failed to meet his burden of rebutting the ALJ's conclusion that he was capable of performing medium work during the relevant period prior to December 31, 1981.[7]

III.

For the foregoing reasons, the judgment is

AFFIRMED.

[7] Frazier asserts in his brief that there is additional evidence pertaining to his medical condition. We may remand to the Secretary for consideration of additional evidence "only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding". 42 U.S.C.A. § 405(g) (Supp. 1994). Frazier has not made the requisite showing to warrant a remand.