IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-30377
Summary Calendar

FRANKLIN T. BORDELON,

Plaintiff-Appellant,

versus

DONNA E. SHALALA, Secretary of
Health and Human Services,

Defendant-Appellee.

Appeal from the United States District Court for
the Middle District of Louisiana

(CA-92-878)
(November 15 1994)

Before REAVLEY, DAVIS and DeMOSS, Circuit Judges.

PER CURIAM:*

Franklin T. Bordelon appeals the district court's grant of summary judgment in favor of the Secretary of Health and Human Services (the "Secretary"), affirming the denial of his application for social security disability benefits. We affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

BACKGROUND

On July 25, 1988, Bordelon was working as a painter and sandblaster at a construction site when he fell about 25 feet to the ground. He suffered multiple injuries. Other than a brief attempt to return to work in 1988, he has not worked since the accident.

Bordelon filed for disability benefits on May 22, 1990. A hearing was held before an administrative law judge ("ALJ"), and benefits were denied. Alvarado sought judicial review, and the district court granted the Secretary's motion for summary judgment and denied Bordelon's motion for summary judgment.

DISCUSSION

The ALJ decided that Bordelon's condition did not meet or equal the requirements of any impairment listed in 20 C.F.R. Part 404 Subpart P, Appendix 1, which would require an automatic finding of disabilty. See 20 C.F.R. § 404.1520(d). Bordelon argues that the ALJ failed to properly evaluate his claim by ignoring evidence which showed that Bordelon was mentally retarded and so met listing 12.05(C). 20 C.F.R. pt. 404, subpt. P, app. 1, 12.05(C).

The ALJ's decision did not reference school records offered by Bordelon which indicated that he had taken an IQ examination in 1971 and scored a figure of 69 for total IQ. Listing 12.05(C) requires, in part, that the applicant have an IQ of between 60 and 70. But, the ALJ need not discuss every piece of evidence in the record. The claim for disability benefits, throughout the

procedure before the Secretary, was based upon Bordelon's fall in 1988. There was no claim that Bordelon was disabled because of lifelong retardation, and Bordelon did not call the attention of the ALJ to the low IQ scores. The applicant bears the burden of proof of showing that he meets one of the listings in Part 404 Subpart P, Appendix 1. See, e.g., Muse v. Sullivan, 925 F.2d 785, 789 (5th Cir. 1991). The ALJ is not required to scour the record for evidence of some disability on the list. Thus, the ALJ did not commit error by failing to discuss the relevance of the high school IQ examination records or the weight given them.

In any case, the school records do not provide a "valid" IQ score as required by listing 12.05(C). The IQ examination dates to almost twenty years before Bordelon filed his claim for benefits. The examination shows that Bordelon manifested low intellectual functioning during the developmental period (before age 22) as required by listing 12.05(C). But, the IQ scores are too removed in time to be valid proof that Bordelon suffered from retardation at the time of his disability claim.

The scores indicating retardation are also belied by other facts in the record. Bordelon worked successfully in a variety of jobs, including a position as manager of a gas station in which he supervised two persons and prepared reports. More recently, he has had responsibility for the care of his two small children during the day. Such facts are relevant when evaluating the validity of an IQ test. Muse, 925 F.2d at 789-90.

The ALJ did not commit error by not ordering that Bordelon take a current IQ examination. The decision to order an examination is discretionary, and sufficient evidence as to Bordelon's present mental condition existed in the record so that another IQ examination was not necessary. See Jones v. Bowen, 829 F.2d 524, 526 (5th Cir. 1987).

After determining that Bordelon did not meet any of the automatic disability listings, the ALJ concluded that Bordelon was not disabled because he could perform employment available in the national economy. See 42 U.S.C. § 423 (d)(2)(A). The ALJ properly analyzed Bordelon's nonexertional and exertional impairments in determining that Bordelon could still perform available employment.

In his findings, the ALJ referenced Rule 202.18 of the medical-vocational rules in 20 C.F.R. Part 404, Subpart P, Appendix 2. The medical-vocational guidelines may not be used alone to conclude that an applicant can perform work existing in the economy where an applicant has significant nonexertional, as well as exertional, impairments. Fraga v. Bowen, 810 F.2d 1296, 1304 (5th Cir. 1987). But, the ALJ may still use the guidelines as a framework. 20 C.F.R. § 404.1569a(d). That is what the ALJ did in this case. In addition to relying on the guidelines, the ALJ heard the testimony of two vocational experts at the hearing. One of the experts testified that jobs existed in the economy which Bordelon could perform, even taking into consideration nonexertional impairments including a low intelligence level,

difficulty dealing with people, inability to follow complex instructions and vision difficulties. The ALJ indicated in his decision that he depended upon that expert testimony to conclude that Bordelon had the residual capability to work in packaging jobs or unskilled construction labor jobs.

AFFIRMED.