

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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NO. 94-30454  
Summary Calendar

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CLAUDE WILLIAMS, SR., Plaintiff-Appellant,

versus

DONNA E. SHALALA,  
Secretary, Department of  
Health and Human Services, Defendant-Appellee.

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Appeal from the United States District Court for the  
Middle District of Louisiana  
(CA-92-925-A-M2)

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(June 5, 1995)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM\*:

Claude Williams, Sr. ("Williams") applied for disability benefits on July 19, 1990, claiming that he had been disabled since June 15, 1898 due to problems with his right knee. His application was denied initially and on reconsideration. After a hearing before an administrative law judge ("ALJ"), at which a vocational expert testified, the ALJ issued a decision on January 29, 1992 finding Williams was not disabled within the meaning of the Social

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Pursuant to that Rule, the Court has determined that this opinion should not be published.

Security Act. The decision became final when the Appeals Council denied Williams's request for review.

Williams filed a complaint in the district court seeking review of the decision of the Secretary of the Department of Health and Human Services ("the Secretary"). Williams and the Secretary moved for summary judgment. The magistrate judge recommended that the court deny Williams's motion and grant summary judgment in favor of the Secretary. Williams objected to the recommendation, arguing that it countenanced the ALJ's reliance on the Medical Vocational Guidelines ("the Guidelines") rather than the vocational expert's testimony. The magistrate judge filed a supplemental report concluding that the ALJ had not committed reversible error and renewing the recommendation of summary judgment in favor of the Secretary. Williams objected to the supplemental report and recommendation of the magistrate judge. Noting that Williams's objections merely restated his legal argument, the district court adopted both reports and recommendations, entered summary judgment in favor of the Secretary, and dismissed the suit.

#### I.

Our review is limited to the determination of two issues: "(1) whether the Secretary applied the proper legal standards, and (2) whether the Secretary's decision is supported by substantial evidence on the record as a whole." *Anthony v. Sullivan*, 954 F.2d 289, 292 (5th Cir. 1992). The claimant bears the burden of showing that he is disabled within the meaning of the Social Security Act. *Cook v. Heckler*, 750 F.2d 391, 393 (5th Cir. 1985). "If the

Secretary's findings are supported by substantial evidence, they are conclusive and must be affirmed." *Anthony*, 954 F.2d at 295. Williams does not specifically argue that the finding of no disability is not supported by substantial evidence, but he challenges the methodology used to evaluate his claim.

## II.

Williams argues that the ALJ failed to fully and fairly develop the record because he did not grant his request for a consultative examination by an orthopedic specialist. Dr. Stephen Wilson ("Dr. Wilson") examined Williams on October 11, 1988 and submitted an orthopedic consultative evaluation in connection with Williams's prior claim for benefits based on injuries to his right hand and knee. Dr. Wilson concluded that Williams's right hand had healed and that, with rehabilitation, Williams could regain full use of his right knee. Williams objected to the inclusion of Dr. Wilson's evaluation in his medical record relative to his current application on the ground that, in 1989, the Louisiana Department of Social Services had identified Dr. Wilson as providing inadequate medical assessments. Williams also requested a new consultative examination.

The ALJ did not remove Dr. Wilson's report from the record or order a new consultative examination. To support his evaluation of Williams's orthopedic problems, the ALJ cited Williams's medical records from Earl K. Long Hospital and the records of his treating physicians, orthopedic surgeons Drs. Brian Griffith ("Dr. Griffith") and Charles Strange ("Dr. Strange"). Dr. Griffith

treated Williams from March to December 1988, and Dr. Strange treated Williams from December 1989 to September 1990. The ALJ noted that there was no indication that Williams had sought medical treatment for his alleged orthopedic problems after September 1990. The ALJ did not cite or rely on Dr. Wilson's evaluation.

The decision to require a consultative examination is within the discretion of the ALJ. *Wren v. Sullivan*, 925 F.2d 123, 128 (5th Cir. 1991). An examination is required only if the ALJ cannot otherwise make a disability determination. *Anderson v. Sullivan*, 887 F.2d 630, 634 (5th Cir. 1989). We find that the ALJ did not abuse his discretion in this case because the hospital records and the reports of Drs. Griffith and Strange support the finding that Williams is not disabled. *Wren*, 925 F.2d at 128; *Anderson*, 887 F.2d at 634.

### III.

Williams next argues that the ALJ used the wrong legal standard to evaluate his claim of disability by relying on the Guidelines, rather than the vocational expert's testimony to determine that he was not disabled. The Guidelines will support a finding that a claimant is capable of work if their "evidentiary underpinnings coincide exactly with the evidence of disability on the record." *Scott v. Shalala*, 30 F.3d 33, 34 (5th Cir. 1994) (internal quotation and citation omitted). The ALJ asked the vocational expert what jobs would be available to Williams if he could perform only sedentary work not requiring complex or detailed instructions, but he was able to deal with the general public. The

expert responded that Williams would be able to perform a variety of assembly jobs available in substantial numbers in Louisiana. When the ALJ asked what jobs would be available to an individual with Williams's background who suffered pain interfering with his ability to concentrate, the expert responded that no jobs would be available.

Williams has not suggested that the ALJ erred by rejecting his allegations of pain as not credible. See *Scott*, 30 F.3d at 35 n.2. The ALJ's reliance on the hypothetical question posed by the vocational expert was proper because the question incorporated all of the disabilities that the ALJ determined to be credible. *Bowling v. Shalala*, 36 F.3d 431, 436 (5th Cir. 1994). Williams has not suggested that the question posed by the expert was based on assumptions not supported by the record. *Id.* The ALJ noted that the Guidelines suggested a finding that Williams was not disabled and he cited the vocational expert's testimony that Williams was capable of performing a variety of available assembly jobs. We find that no error occurred because the ALJ's determination was properly based both on the Guidelines and on the testimony of the vocational expert.<sup>1</sup> AFFIRMED.

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<sup>1</sup> *Cf. Scott*, 30 F.3d at 34-35 (ALJ's reliance on vocational expert's testimony not clear from the record).