

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40400
Summary Calendar

WILL PERKINS, JR.,

Plaintiff-Appellant,

versus

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

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(93-0985)

March 21, 1995

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:*

Appellant Perkins, an unsuccessful applicant for social security disability benefits for the period June 1989 through December 1990 asserts that the Secretary made two errors in evaluating his case. Having reviewed the Secretary's decision in light of the record, the summary judgment of the magistrate judge,

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

and the district judge's approval thereof, we find no error and affirm.

Perkins first asserts that, contrary to the ALJ's evaluation, he had a listed disability for a spinal disorder, pursuant to 20 C.F.R. part 404, subpart P, app. 1, § 1.05(C). The requirements for such a disorder, such as herniated nucleus pulposus or spinal stenosis, include pain, muscle spasm, significant limitation of motion in the spine, and significant motor loss with motor weakness and sensory and reflex loss which persists for three months and is expected to last 12 months. As the district court and ALJ noted, no medical evidence supports a finding that Perkins met these stringent requirements. During the period of insured status, Perkins reflected various levels of symptoms relating to his previously-operated back, but at no time did he experience all of these symptoms together or for the duration required by the regulation. The ALJ's determination finds substantial evidence in the record.

Perkins's second contention, that he was unable to do light work, is similarly unavailing. Perkins successfully underwent a work hardening program during this period, which rendered him able to perform, by one doctor's estimation, medium duty work requirements. Even Dr. Bernauer, who opined in November 1990 that Perkins could require further surgery, also believed that he could lift up to 25 pounds and could stoop, crawl, climb or stand for no longer than three hours without a rest period. These limitations are consistent with the ALJ's finding that Perkins

could perform light work. Perkins also contests the ALJ's alleged failure to consider that he could perform physical labor only while medicated. This complaint is ill-founded. The ALJ treated the need for medication as a complaint of the disabling nature of Perkins's pain and found that his complaints were not consistent with the level of physical activity in which Perkins was engaging. There is substantial evidence to support this finding in the record, and it was based on the appropriate legal standard.

The judgment of the district court is therefore **AFFIRMED**.