

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-40662  
Summary Calendar

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RICKY P. MILLER,

Plaintiff-Appellant,

versus

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

Defendant-Appellee.

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Appeal from the United States District Court  
For the Western District of Louisiana  
(93-CV-0877)

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(February 8, 1995)

Before POLITZ, Chief Judge, SMITH and WIENER, Circuit Judges.

PER CURIAM:\*

Ricky P. Miller appeals the rejection of his claim for disability benefits under the Social Security Act. Finding substantial evidence in support of the decision of the Secretary of Health and Human Services, 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 Pursuant to that Rule, the court has determined that this opinion should not be published.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

Miller was injured in a work-related incident on July 18, 1990 when struck by a falling beam. He filed for disability benefits under Title II of the Act, claiming severe headaches, neck pain, ringing in the ears, numbness in his arms and hands, jaw aches, and temporomandibular joint syndrome.

Following an evidentiary hearing, the ALJ ruled that despite some physical impairment, Miller retained the residual functional capacity to perform the full range of light work and was thus not disabled under the Act. The Appeals Council denied review; Miller sought judicial review and the district court granted the Secretary's motion for summary judgment. Miller timely appealed.

### Analysis

Miller claims error in the ALJ's conclusions that his complaints of disabling pain were not credible and that he was not disabled.<sup>1</sup> We review the Secretary's factual findings to determine whether the decision is supported by substantial evidence in the record as a whole.<sup>2</sup> Applicable regulations establish a five-step sequential analysis in assessing disability. The claimant bears the burden of proof in answering the inquiries whether: (1) he is currently working in gainful activity; (2) he has a severe impairment which limits ability to work; (3) if so, the impairment

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<sup>1</sup>The Act defines a disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected . . . to last for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A).

<sup>2</sup>**Anthony v. Sullivan**, 954 F.2d 289 (5th Cir. 1992).

meets or equals an impairment enumerated in the appendix to the regulations; and (4) he is prohibited from performing past relevant work.<sup>3</sup>

The ALJ found that Miller was not currently involved in substantial gainful activity, finding that he had a severe impairment -- status post cervical fusion at C5/6 and TMJ capsulitis -- that was not enumerated in the regulation. Although persuaded that Miller's condition would cause some pain and restriction of activities, the ALJ found that Miller's pain was not severe. Concluding that Miller's subjective allegations and complaints of disabling pain were not medically or non-medically substantiated and, thus, not credible, the ALJ concluded that Miller had the residual functional capacity to perform light work and to perform past relevant work as a night watchman.<sup>4</sup>

Miller contends that the ALJ erroneously discounted his claim of disabling pain, insisting that the claim was supported by objective medical evidence. Whether pain is disabling falls within the ALJ's discretion.<sup>5</sup> "[R]esolution of conflicts between the subjective evidence and the medical evidence should depend upon the ALJ's evaluation of the credibility of the claimant's complaints of pain."<sup>6</sup> When the medical evidence shows a basis for the claimant's complaints of pain, the ALJ must weigh the objective medical

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<sup>3</sup>20 C.F.R. § 404.1520; **Anthony**.

<sup>4</sup>Miller's claim foundered at the fourth inquiry.

<sup>5</sup>**Hollis v. Bowen**, 837 F.2d 1378 (5th Cir. 1988).

<sup>6</sup>**Id.** at 1385.

evidence and articulate reasons for discrediting the claimant's subjective complaints of pain.<sup>7</sup>

The ALJ cited ample support for the adverse credibility finding, explaining, for example, that Miller's testimony regarding his routine activities -- which included making breakfast, visiting his grandfather in a nursing home, driving, housework, and shopping -- undermined his claim of disabling pain. The ALJ found that Miller did not display any of the indices of chronic pain, such as atrophy, impairment of general nutrition, signs of premature aging, or poor overall health. The ALJ also referred to the fact that there was no objective medical evidence to support Miller's claim that he could only stand or sit for 10 to 20 minutes at a time or that he possessed any medical restrictions inconsistent with the performance of light work.<sup>8</sup> In reports contained in the record both a neurological surgeon and an orthopaedic surgeon opined that, from the standpoint of their medical specialties, there was no reason that Miller could not return to work. A dentist examined Miller and diagnosed post-traumatic myofascial pain and temporomandibular joint capsulitis. He recommended six to nine months of diagnostic splint therapy, stating that he found "no reason why [Miller] is not able to return to work once conservative splint therapy has begun to help reduce his headaches." It is

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<sup>7</sup>**Abshire v. Bowen**, 848 F.2d 638 (5th Cir. 1988).

<sup>8</sup>The orthopaedic surgeon reported that Miller could walk on his heels and tiptoes without problem; that he walked without a limp; that there was no indication of restriction of motion in the knees, hips, or ankles; and that Miller had excellent strength in his flexors, extensors, rotators, abductors, and adductors.

therefore abundantly clear that substantial evidence in the record supports the ALJ's determination that Miller's pain was not disabling. We perceive no abuse of discretion.<sup>9</sup>

Miller also challenges the ALJ's finding that he was not disabled. The ALJ found that Miller had the residual functional capacity to perform light work and to perform his past work as a night watchman. This finding is supported by substantial evidence in the record as a whole. A vocational expert testified that Miller's past work as a night watchman was unskilled light labor. The expert also testified that there were numerous jobs as hand packers and packagers in the regional and national economies existing at the light exertional level. As we have held above, the ALJ did not abuse his discretion in finding that Miller did not suffer disabling pain preventing work at the light exertional level.

The judgment appealed is AFFIRMED.

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<sup>9</sup>See **Falco v. Shalala**, 27 F.3d 160 (5th Cir. 1994).