UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-40972
Summary Calendar

MELVIN SONNIER, 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 1052)

March 29, 1995

Before DUHÉ, WIENER, and STEWART, Circuit Judges.

PER CURIAM:[1]

Appellant Sonnier applied for Supplemental Security Income benefits at age 19 based upon low IQ scores and claims of a personality disorder. An Administrative Law Judge denied his application but the Appeals Council vacated and remanded for more evidence. This occurred several times resulting in four hearings before Administrative Law Judges and three reviews by the Appeals Council. The end result was a finding of no disability. Following the fourth hearing before an Administrative Law Judge, the Appeals

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Council denied review and Appellant sought judicial review raising three issues:

1. Whether the Secretary's decision that Appellant is not disabled is supported by substantial evidence.

2. Whether Appellant was deprived of his due process right to cross examine a medical expert consulted by the Administrative Law Judge.

3. Whether the Administrative Law Judge erred in relying on vocational expert testimony taken prior to one of the remands of the proceeding.

The district court adopted the Magistrate Judge's report and recommendation and granted the Secretary's motion for summary judgment. We affirm.

Appellant claims first that the Secretary's decision that he is not disabled is not supported by substantial evidence. Although the evidence is, to some extent, conflicting, it is more than adequate to support the decision. Although Appellant makes basically the same argument from several different prospectives, he basically contends that the combination of his low IQ scores and certain personality disorders, render him disabled. The traditional five step sequential process was employed and an absence of disability was found at the fifth step. We have carefully reviewed the extensive evidence and find it sufficient to support the decision that there was no disability according to § 12.05(C) of the Secretary's Listings of Impairments. The Magistrate Judge concluded that Appellant's IQ did not satisfy the

first prong of § 12.05(C). But that was not the end of the inquiry. Both the Administrative Law Judge and the Magistrate Judge evaluated the Appellant's mental condition to determine whether his personality disorder satisfied the second prong of § 12.05(C). It did not and that decision is fully supported by the record. Contrary to Appellant's argument, the Administrative Law Judge found his intellectual deficit severe, he did not find a severe mental or personality disorder. Appellant's passive personality traits do not have more than a minimal effect on him and are not expected to interfere with his ability to work.

Before the final hearing, the Administrative Law Judge obtained a report from a psychiatric expert. Appellant contends that the Administrative Law Judge had no authority to solicit the report and that the introduction of the report into evidence violated Appellant's right to cross examination because he did not have notice of the Administrative Law Judge's intent to solicit the opinion, or of the right to submit his own interrogatories, or of the right to cross examine. These contentions are contradicted by the record. Both Appeals Council remand orders requested additional medical testimony, and at the second hearing the Administrative Law Judge declared that if review of the record by a medical expert was essential that it would be managed by post-hearing interrogatory. Before the third hearing was terminated, the Administrative Law Judge stated that he had obtained the opinion and Appellant's representative at the hearing asserted the right of cross-examination. This constitutes more than adequate

notice. Additionally, the expert's opinion was sought pursuant to the Appeals Council's directive which, in itself, was more than adequate notice. The record further shows that the Administrative Law Judge informed Appellant's representative by letter that the expert was available to be examined at a separate hearing at the Government's expense and that this opportunity was rejected.

Finally Appellant claims that evidence obtained from several physicians subsequent to the vocational expert's testimony at his two prior hearings required that the ALJ provide new vocational expert testimony at the final hearing. But the record indicates that these medical reports are not significantly different than the information which was available to the vocational expert. Additionally, the Administrative Law Judge is free to reject the opinion of any expert when the evidence supports a contrary conclusion. He found that the other physician's conclusions were more persuasive than that of Dr. Robertson upon which Appellant relies. We find no error in this conclusion.

In short, we find no merit to any of the three issues raised on appeal.

AFFIRMED.