

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-41276
Summary Calendar

EARL W. WALTERS,

Plaintiff-Appellant,

VERSUS

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

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
(1:93-CV-318)

June 29, 1995

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:¹

Earl Walters contests the denial of his application for Social Security disability benefits. We **AFFIRM**.

I.

Walters applied for disability benefits in 1991, claiming disability since December 15, 1989, due to coronary artery disease and hepatitis. The application was denied originally and on reconsideration. Following an administrative hearing, at which

¹ Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

Walters appeared *pro se*, and at which he and a vocational expert testified, the administrative law judge (ALJ) determined that Walters was not disabled. The Appeals Counsel denied review, making the determination of the ALJ the final decision of the Secretary. Walters filed this action in the district court; and, in October 1994, the court upheld the decision of the Secretary.

II.

The ALJ found that, although Walters suffered from, *inter alia*, coronary artery disease and was unable to perform his past relevant work, he was not disabled because his residual functional capacity would permit him to perform a significant number of available jobs. As is more than well-established, we review this decision only for whether it was supported by substantial evidence, and whether the ALJ applied the correct legal standard. ***Paul v. Shalala***, 29 F.3d 208, 210 (5th Cir. 1994).

Walters presents three issues: (1) the ALJ failed to fully and fairly develop the record, in that he did not obtain current records from Walters' treating physician as he said he would; (2) the ALJ posed defective questions to the vocational expert; and (3) the district court erred in refusing to remand the case in light of new evidence.²

A.

Walters failed to raise the first two issues before the appeals council. We have jurisdiction to review the Secretary's

² As part of his first two issues, Walters contends that the ALJ did not permit him to cross-examine the vocational expert.

decision only when the claimant has exhausted his administrative remedies. *Id.*³

B.

Walters contends that the district court should have remanded his case for consideration of medical evidence developed during the pendency of his case before the Appeals Council. For such remand, Walters must show (1) new evidence, (2) that is material, and (3) that good cause exists for the failure to submit the evidence in a prior proceeding. *Pierre v. Sullivan*, 884 F.2d 799, 803 (5th Cir. 1989).

Walters' evidence consists of records of his medical treatment in January and February of 1993, and a letter from his treating physician from June 1993. The Appeals Council issued its opinion in May 1993. We agree with the district court that Walters has not stated good cause for failing to bring the new records to the attention of the Appeals Council prior to its May decision. Similarly, the June 1993 letter was based solely on Walters' medical history prior to March 1993, and could have and been requested in time to submit to the Appeals Council. Walters has not shown good cause for the delay.

³ As stated in *Paul*, we may review an issue not presented to the appeals council only in order to prevent a miscarriage of justice. 29 F.3d at 210-11. There is no such potential here. As to Walters' first issue, the appeals council considered all of the "new" medical evidence that could have been acquired by the ALJ prior to his decision. As to the second issue, Walters complains that the ALJ's questions to the vocational expert did not fully encompass his condition. Even assuming error, the appeals council had full disclosure of Walters' condition, and found substantial evidence supported the ALJ's decision.

III.

For the foregoing reasons the judgment is

AFFIRMED.