

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 94-41370
Summary Calendar

DAVID BROUSSARD,

Plaintiff-Appellant,

VERSUS

SHIRLEY CHATER,*
Commissioner, Social Security Administration,

Defendant-Appellee.

Appeal from the United States District Court
For the Western District of Louisiana

(93 CV 2155)

June 19, 1995

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:**

Appellant David Broussard appeals the judgment of the District Court which granted summary judgment in his favor in his action appealing the decision of the Secretary of Health and Human Services.

FACTS AND PROCEDURAL HISTORY

* Substituted as appellee pursuant to provisions of Public Law No. 103-296, § 106(d).

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Pursuant to that Rule, the Court has determined that this opinion should not be published.

Broussard filed an application for a period of disability, disability insurance benefits, and supplemental security income under the Social Security Act. He contended that he was disabled as of October 1990 primarily because of problems with his liver. Broussard's application was denied initially and then on reconsideration.

Broussard requested and received a hearing before an Administrative Law Judge (ALJ), who determined that Broussard was not disabled. However, the Appeals Council vacated the ALJ's decision and remanded to the ALJ to obtain additional evidence concerning Broussard's mental impairment and poly-substance abuse. Upon remand, the ALJ decided that Broussard was not entitled to a period of disability or to disability insurance benefits. The Appeals Council denied Broussard's request for review, and the decision of the ALJ became the final decision of the Secretary.

Broussard sought review of the Secretary's decision in the district court. Broussard filed a motion for summary judgment, asserting that it was an error to classify his past relevant work as "light" rather than "sedentary," and that the ALJ improperly applied the grid. The Secretary filed a motion for a "fourth sentence" remand for further administrative proceedings. Specifically, the Secretary stated that the ALJ would "be directed to obtain the testimony of a medical expert to assist him in determining whether the plaintiff is addicted to alcohol and/or narcotics, and if so, whether he has lost the ability to control their use."

The magistrate judge determined that the ALJ had not properly considered the effect of Broussard's non-exertional restrictions on his residual functional capacity to perform light work. It was recommended that the district court grant Broussard's motion for summary judgment and remand the case to the Secretary pursuant to sentence four of 28 U.S.C. § 405(g).¹ The district court reviewed the record de novo, considered Broussard's objections to the magistrate judge's report and recommendation, and granted the motion for summary judgment "reversing the decision of the Secretary and remanding this matter back to the Secretary for further consideration pursuant to sentence 4 of 28 U.S.C. § 405(g)." In addition, the district court specifically ordered the Secretary to develop the record and make findings concerning Broussard's substance abuse. Broussard filed a timely notice of appeal.

ANALYSIS

Although Broussard's motion for summary judgment requesting a reversal was granted in the district court and the case remanded, he contends that the remand, which specifically orders that the ALJ examine his alleged substance abuse, does not go far enough. Broussard argues that this court should modify the district court's judgment to include the question whether he is capable of performing a reduced range of light work activity. We need not

¹ The fourth sentence of § 405(g) of Title 28 of the United States Code provides: "The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing."

address the issue in this appeal.

A "fourth sentence" remand under 28 U.S.C. § 405(g) involves "entry of a judgment affirming, modifying, or reversing the decision of the Secretary." Bertrand v. Sullivan, 976 F.2d 977, 979 (5th Cir. 1992) (internal quotation and citation omitted). A sentence four remand order is a final judgment. Melkonyan v. Sullivan, 501 U.S. 89, 101-02 (1991). The judgment of the district court granted appellant's summary judgment motion and reversed, and thus vacated, the decision of the Secretary and remanded for further consideration; the vacatur was not partial. The district court's additional comments signalling that the Secretary develop the record and make findings concerning the substance abuse should not be read to limit the Secretary to those findings.

CONCLUSION

Accordingly, the judgment of the district court is AFFIRMED.²

² Broussard's arguments complaining of the conclusions of the ALJ and various alleged legal errors by the ALJ are not addressed since the judgment of the trial court vacated the Secretary's decision.