

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 94-50096

(Summary Calendar)

JOAN G. SCOTT,

Plaintiff-Appellant,

versus

DONNA SHALALA,

Defendant-Appellee.

Appeal from the United States District Court
For the Western District of Texas
(A-93-CV-194)

(December 19, 1994)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:*

Joan Scott applied for disability insurance benefits and supplemental security income under Titles II and XVI, respectively, of the Social Security Act.¹ The Secretary of the Social Security Administration (the "Secretary") denied Scott's application, the administrative law judge ("ALJ") affirmed the Secretary's ruling, and the district court affirmed the ALJ's determination. Scott

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

¹ 42 U.S.C. §§ 401, 1381 (1988).

appeals the district court's decision, alleging that (1) the ALJ failed to apply the proper legal standards in its consideration of the evidence, and (2) the ALJ's decision is not supported by substantial evidence on the record as a whole. We vacate the district court's decision and remand to the district court with instructions to remand to the Secretary for reconsideration.

I

Scott injured her wrist while working as a therapy technician at a school for the mentally and physically handicapped. For several months afterwards, she performed only light work at the school and received treatment from an orthopedic surgeon, Dr. Scott Orth. Soon after her treatment ended, Scott injured her back in another work-related accident and stopped working completely.

Dr. Orth examined Scott after the second accident and found that her range of motion in the lumbar region was limited and that her reflexes at the ankles were decreased. All other test results were normal, however, and x-rays revealed only a pre-existing spinal abnormality. Dr. Orth believed that Scott was suffering from a lumbosacral (lower-back) sprain resulting from the combination of the pre-existing condition and the fall. After two weeks of physical therapy, Scott's lumbar pain had lessened and Dr. Orth found no evidence of radiculopathy (disease of the nerve roots).

Dr. Orth referred Scott to Dr. George Tipton for evaluation of her lower-back pain. Dr. Tipton noted tenderness and moderately limited range of movement in Scott's lumbosacral region. However,

a detailed neurological examination revealed no physical condition to which her discomfort could reasonably be attributed. Dr. Tipton concluded that Scott's back pain was of unknown etiology.

Dr. Tipton referred Scott to Dr. Joe Powell, a rehabilitation specialist. Dr. Powell noted that Scott's employer was disputing her account of the accident, that she was not receiving workers compensation as a result, but that she was receiving payments from a private disability insurance policy. Dr. Powell suggested that these factors were possible incentives for "not getting well." He also noted that Scott did not complain of "true radicular symptoms" (typical symptoms of nerve damage); walked normally down the hall, but "became very halting, walking very slowly," while being examined; and that she had "a worrisome amount of functional overlay" (disturbance greater than that which has a detectable organic cause).

Dr. Powell referred Scott to Dr. William Stern, a psychologist, and his associate, Dr. Michael Haney. They found that Scott was greatly distressed by her physical complaints, but that she was not experiencing severe depression or anxiety. Drs. Stern and Haney believed that Scott's psychological response to her physical problems and financial worries exacerbated the pain she associated with her physical problems. The doctors diagnosed Scott as suffering from "Psychiatric Factors Affecting a Physical Condition." Scott suggested that she might be able to work toward part-time employment, and Drs. Stern and Haney were encouraged to learn that her application for SSDI was required by her insurer,

and thus not entirely motivated by a belief that she would never be able to work again.

When Dr. Powell did a follow-up examination, he concluded that "at this point in time [Scott] can do most activities, including the level of work that she was doing for the State before her [back injury]. We feel this patient can do her regular occupational activities." Soon thereafter, Scott's physical therapist discharged her with the recommendation that she "return to work activities as soon as possible." Within a week, Dr. Orth discharged Scott. Dr. Orth stated that while Scott "has very little motivation to return to work," he felt that she was not totally disabled and that she could be gainfully employed doing "less stressful" work than she did for the State before her wrist and back injuries.

Scott had applied to the Social Security Administration for disability insurance benefits and supplemental security income soon after she injured her back. The Secretary denied her application both initially and on reconsideration, and Scott requested a hearing before an administrative law judge. The hearing was held after Scott was discharged from physical therapy. The ALJ found that Scott was not entitled to either insurance benefits or supplemental security income, and the Social Security Administration denied Scott's request for an administrative review of the ALJ's decision.

Scott appealed to the district court, which adopted a magistrate judge's recommendation that the Secretary's decision be

affirmed. Scott now appeals the district court's judgment, alleging that (1) the Secretary failed to apply the proper legal standards in its consideration of the evidence, and (2) the Secretary's decision is not supported by substantial evidence on the record as a whole.

II

Our review of the Secretary's denial of Scott's application "is limited to determining whether the decision is supported by substantial evidence in the record and whether the proper legal standards were used in evaluating the evidence." *Villa v. Sullivan*, 895 F.2d 1019, 1021 (5th Cir. 1990).

In evaluating evidence of disability, the Secretary properly uses a five-step sequential evaluation process. See *Anthony v. Sullivan*, 954 F.2d 289, 293 (5th Cir. 1992) (noting that Secretary's promulgation of five-step test is "pursuant to the express authorization of Congress"). Under that test:

(1) A claimant who is working, engaging in a substantial gainful activity, will not be found to be disabled no matter what the medical findings are; (2) a claimant will not be found to be disabled unless he has a "severe impairment"; (3) a claimant whose impairment meets or is equivalent to an impairment listed in Appendix 1 of the regulations will be considered disabled without the need to consider vocational factors; (4) a claimant who is capable of performing work that he has done in the past must be found "not disabled"; and (5) if the claimant is unable to perform his previous work as a result of his impairment, then factors such as his age, education, past work experience, and residual functional capacity must be considered to determine whether he can do other work.

Bowling v. Shalala, 36 F.3d 431, 435 (5th Cir. 1994). If at any stage of the evaluation, the Secretary finds the claimant to be either disabled or not disabled, the inquiry is complete. *Anthony*,

954 F.2d at 293.

The ALJ found that Scott "does not have an impairment or combination of impairments listed in, or medically equal to one listed in Appendix 1"; and that "considering the claimant's residual functional capacity, age, education, and work experience, she is not disabled."² Scott contends that the ALJ did not apply the proper legal standards in considering the third and fifth factors, and that the ALJ's findings as to those factors were not supported by sufficient evidence.

A

Scott claims that a proper consideration of the third factor would support her claim of disability because she suffers from a somatoform disorder as described in Appendix 1 of the regulations. See 20 C.F.R. § 404, app. 1 § 12.07 (defining somatoform disorders as "[p]hysical symptoms for which there are no demonstrable organic findings or known physiological mechanisms," and listing severity requirements). "When medical findings do not substantiate the existence of physical impairments capable of producing alleged pain and other symptoms, the ALJ must investigate the possibility that a mental impairment is the basis of the symptoms." *Latham v. Shalala*, 36 F.3d 482, 484 (5th Cir. 1994) (citing 20 C.F.R.

² The ALJ's findings as to the other three criteria supported Scott's claim of disability. The ALJ found that Scott "has not engaged in substantial gainful activity since February 21, 1991"; has "severe lumbar spine sprains superimposed on a congenital degenerative condition"; and "is unable to perform her past relevant work as a therapist technician."

§ 404.1529(b)).³ Thus, the regulations required the ALJ to consider whether a mental impairment causes Scott to experience greater pain than could reasonably be caused by her back injury.

The ALJ completed the required Psychiatric Review Technique Form ("PRTF"),⁴ in which he found that documentation of factors evidencing a somatoform disorder was "absent" from Scott's medical record. In his accompanying report, the ALJ asserted that Drs. Stern and Haney's diagnosis that Scott suffered from Psychological Factors Affecting a Physical Condition "by definition rules out Conversion Disorder and other Somatoform Disorders." The ALJ did, however, find Scott's medical record to contain evidence of an anxiety related disorder. See 20 C.F.R. § 404, app. 1 § 12.06. Accordingly, the ALJ proceeded to evaluate whether that evidence would support a finding that Scott suffers from a severe anxiety related disorder.

Under the regulations, the documentation of "at least one" of a set of five symptoms is necessary, although not sufficient, to support a finding of a severe anxiety related disorder. *Id.*

³ Section 404.1529(b) states that the Social Security Administration will "develop evidence regarding the possibility of a medically determinable mental impairment when we have information to suggest that such an impairment exists, and [the claimant] allege[s] pain or other symptoms but the medical signs and laboratory findings do not substantiate any physical impairment(s) capable of producing the pain or other symptoms."

⁴ When an administrative law judge evaluates a mental impairment, "[a] standard document outlining the steps of this procedure must be completed." 20 C.F.R. § 404.1520a(d). The PRTF contains (1) a list of the types of mental disorders contained in Appendix 1, (2) the evaluator's opinion as to whether each should be considered as a possible impairment based on the presence or absence of "documentation of factors that evidence the disorder," and (3) for each impairment that is supported by evidence in the documentation, a detailed evaluation of the severity of the impairment's effect on the claimant's life.

(requiring documentation of persistent anxiety, fear, panic attacks, obsessions, or flashbacks). The ALJ found no evidence of any of these symptoms, but did find evidence of "psychological factors affecting a physical condition," a symptom which the ALJ listed along with the five statutory symptoms even though it is not listed with them in the regulations.

The ALJ's findings that Drs. Stern and Haney's diagnosis of Psychological Factors Affecting a Physical Condition both precluded the existence of a somatoform disorder and was properly considered as documented evidence of an anxiety related disorder were the result of his misapplication of the relevant legal standards.

First, the doctors' diagnosis of Psychological Factors Affecting a Physical Condition is not mutually exclusive with the statutory definition of a somatoform disorder.⁵ The Social Security Administration defines somatoform disorders as "physical symptoms for which there are no demonstrable organic findings or known physiological mechanisms." 20 C.F.R. § 404, app. 1 § 12.07. Drs. Stern and Haney stated that Scott "appears to be experiencing some significant psychological consequences of persistent pain. Those consequences are in turn exercising a significant impact on her physical condition. For example, she acknowledged that worry and anxiety are fairly clearly associated with exacerbation of pain." It is the linking of a physical impairment, or the degree

⁵ See *Easter v. Bowen*, 867 F.2d 1128, 1129-30 (8th Cir. 1989) (treating diagnoses of Psychological Factors Affecting Physical Condition and somatoform disorder as consistent in reviewing administrative law judge's denial of disability benefits).

of a physical impairment, to a psychological cause that is important to a finding of a somatoform disorder.⁶

Second, the ALJ should have engaged in a detailed examination of whether Scott's medical records would support a finding of a somatoform disorder of statutory severity. The ALJ avoided such an exercise by making a preliminary finding that documentation of factors evidencing a somatoform disorder was "absent" from Scott's medical record.⁷ That finding is not supported by substantial evidence from the record, and is certainly not supported by Scott's psychiatric evaluation or history.⁸ Drs. Stern and Haney's diagnosis that the pain from Scott's back injury caused her such worry and anxiety that she experienced even greater pain is evidence that she may suffer from a somatoform disorder. See 20 C.F.R. § 404, app. 1 § 12.07 (accepting as evidence of a somatoform disorder the "unrealistic interpretation of physical signs or sensations associated with the preoccupation or belief that one has a serious disease or injury"). Scott's other doctors' consistent references⁹ to the functional overlay evidenced by her difficulty

⁶ See, e.g., *Montgomery v. Shalala*, 30 F.3d 98, 100 (8th Cir. 1994) (undifferentiated somatoform disorder defined as when "patient has one or more physical complaints . . . [that stem from] some organic impairment, but have resulted in social and occupational impairment far in excess of what would be expected from the physical findings").

⁷ See 20 C.F.R. § 404.1520a(b)(2) (requiring severity analysis only after evidentiary finding that impairment exists).

⁸ See *id.* (b)(1) ("The mental status examination and psychiatric history will ordinarily provide the needed information [for determining whether a mental impairment is evidenced by a claimant's medical record].").

⁹ After one of Scott's last medical examinations before her hearing, Dr. Powell noted that she still suffered from "considerable functional overlay" and that her psychological evaluation had revealed "fairly significant

in walking and moving also constitutes evidence that Scott may suffer from a somatoform disorder. See *id.* (accepting as evidence "persistent nonorganic disturbance" of vision, speech, hearing, use of a limb, or movement). While it is possible that the whole of the record might not support a finding that Scott's suffers from a severe somatoform disorder, that determination should be made only after the detailed examination of the record that the ALJ erroneously avoided.¹⁰

In a recent and factually similar case, we held that an administrative law judge was required to investigate the possibility that a claimant's "complaints of pain and severe discomfort" were the result of a somatoform disorder, rather than his physical impairments, where there was evidence of a somatoform disorder in the claimant's medical records. See *Latham v. Shalala*, 36 F.3d 482 (5th Cir. 1994). Because there is evidence in Scott's medical record that she may suffer from a somatoform disorder, we remand to the district court with instructions to remand to the Secretary for a reconsideration of the third factor in the five-step disability evaluation.

B

Scott also contends that the ALJ did not apply the proper legal standards in considering the fifth factor of the five-step

psychological involvement in her pain syndrome."

¹⁰ See *Sullivan v. Zebley*, 493 U.S. 521, 525, 110 S. Ct. 885, 889, 107 L. Ed. 2d 967 (1990) ("In the third step [of the five-step disability evaluation], the medical evidence of the claimant's impairment is compared to a list of impairments presumed severe enough to preclude any gainful work.").

sequential evaluation process used to determine whether a claimant is disabled, and that the ALJ's findings were not supported by sufficient evidence.¹¹ The ALJ, purportedly taking into consideration Scott's age, education, past work experience, and residual functional capacity, found that she was able to perform sedentary work. Scott contends that the ALJ did not take into consideration her age, her "chronic wrist problem," or her psychiatric impairment.

At the relevant time, Scott was fifty-two years old, and thus classified by the regulations as a "person approaching advanced age." See 20 C.F.R. § 404.1563(c). The regulations state that: "If you are closely approaching advanced age (50-54), we will consider that your age, along with a severe impairment and limited work experience, may seriously affect your ability to adjust to a significant number of jobs in the national economy." *Id.* Scott contends that the ALJ's finding that she would be able to make such an adjustment is not supported by substantial evidence. The regulations provide, however, that a high-school educated individual in Scott's age group should not be found to be disabled by a severe medical impairment if her past work skills are transferable. 20 C.F.R. § 404, app. 2 § 201.15; see *Hollis v. Bowen*, 832 F.2d 865, 867 (5th Cir. 1987) (applying § 201). The ALJ's finding that the skills Scott acquired in her work for the

¹¹ Our holding as to the third factor is not conclusive as to the fifth because it does not necessitate a finding that Scott suffers from a severe somatoform disorder. See *Abbott v. Sullivan*, 905 F.2d 918 (6th Cir. 1990) (considering fifth element after holding consideration of third inadequate).

State "can be applied to meet the requirements of semiskilled work activities of other work" is supported by the vocational expert's testimony at the hearing that those skills "would transfer to other sedentary work." *See id.* (holding vocational expert's testimony to be substantial evidence of transferability).

Scott also argues that the ALJ ignored the impairment of her left wrist. It is clear from the record, however, that the ALJ did in fact consider Scott's wrist impairment in making his determination. The ALJ noted in his decision the date on which she suffered the injury, the treatment she received for it, and that she returned to work after she was discharged. He further noted that: "The claimant did not complain of any difficulty using the left upper extremity upon any of the subsequent clinical examinations or during any of the subsequent physical therapy. The claimant did not testify about pain or any other limitation associated with the nondominant left upper extremity during the hearing." Thus, the ALJ concluded that the injury to Scott's left wrist did not meet the regulations' requirement that an impairment "must have lasted or must be expected to last for a continuous period of at least 12 months." 20 C.F.R. § 416.909. This finding is supported by substantial evidence from the medical and administrative record, particularly Scott's failure to mention a wrist injury in her applications for disability benefits. *See id.* § 416.912 (listing statements made on applications as evidence).

Lastly, Scott alleges that the ALJ did not consider her psychiatric impairment. As discussed above, the ALJ's erroneous

finding that Drs. Stern and Haney's diagnosis of Psychological Factors Affecting a Physical Condition precluded the existence of a somatoform disorder indicates that he did not consider the possibility that Scott suffers from such a disorder. A finding that Scott suffers from a somatoform disorder, even if it is not statutorily severe, would certainly have been relevant to the ALJ's decision as to what kind of work, if any, Scott would be able to perform. See 20 C.F.R. § 404.1520 (The regulations state that "if you have more than one impairment, we will also consider the combined effect of your impairments."). On remand, therefore, the Secretary should consider whether the combined effect of Scott's back injury and somatoform disorder, if any, would prevent Scott from performing sedentary work.

III

For the foregoing reasons, we VACATE the judgment of the district court and REMAND to the district court with instructions to remand the Secretary for further proceedings consistent with this opinion.