UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 94-50135
Summary Calendar

TERESA HERNANDEZ,

Plaintiff-Appellant,

VERSUS

DONNA SHALALA, Secretary of Health and Human Services,

Defendant-Appellee.

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

(A 92 CA 512)

(November 25, 1994)

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:[*]

Appellant, Teresa Hernandez, appeals from the decision of the district court which affirmed the decision of the Secretary of Health and Human Services denying the appellant her request for disability insurance benefits and supplemental security income.

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Appellant's claim for disability stems from her claim of a continuing and disabling pain in her leg after a fracture, surgery and extensive treatment. Appellant also suffers from diabetes, obesity, high cholesterol and headaches.

Prior to filing suit in the district court the appellant had received an adverse ruling on her claim by the Administrative Law Judge (ALJ) and the Appeals Council denied review of the ALJ decision which had found appellant not disabled within the meaning of the Social Security Act. Appellant's appeal focuses on the finding of the ALJ that appellant has the residual functional capacity to perform the full range of sedentary work. We affirm.

Applicable Law and Standards of Review

Appellate review of the Secretary's denial of disability benefits is limited to determining whether: (1) the decision is supported by substantial evidence; and (2) proper legal standards were used to evaluate the evidence. Villa v. Sullivan, 895 F.2d 1019, 1021 (5th Cir. 1990). If the Secretary's findings are supported by substantial evidence, then the findings are conclusive and the Secretary's decision must be affirmed. 42 U.S.C. § 405(g); Richardson v. Perales, 402 U.S. 389, 390, 91 S. Ct. 1420, 28 L. Ed. 2d 842 (1971). "Substantial evidence is more than a scintilla, less than a preponderance, and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Villa, 895 F.2d at 1021-22 (internal quotations and citations omitted).

The Act defines disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which . . . has lasted or can be expected to last for a continuous period of not less than twelve months." 42 U.S.C. § 423(d)(1)(A) (disability insurance); see 42 U.S.C. § 1382c(a)(3)(A) (supplemental security income). In evaluating a disability claim, the Secretary must follow a five-step sequential process to determine whether: (1) the claimant is presently working; (2) the claimant's ability to work is significantly limited by a physical or mental impairment; (3) the claimant's impairment meets or equals an impairment listed in the appendix to the regulations; (4) the impairment prevents the claimant from doing past relevant work; and (5) the claimant can perform any relevant work. See Muse v. Sullivan, 925 F.2d 785, 789 (5th Cir. 1991); 20 C.F.R. § 404.1520.

The claimant has the burden of establishing that she cannot perform her past relevant work. Selders v. Sullivan, 914 F.2d 614, 618 (5th Cir. 1990). Once the claimant satisfies this requirement, the burden shifts to the Secretary to show that there is other employment available that the claimant is able to perform. Id. "In determining whether the claimant can do any other work, the Secretary considers the claimant's residual functional capacity [RFC], together with age, education, and work experience, according to the Medical-Vocational Guidelines set forth by the Secretary." Id.

The ALJ determined at step five of the evaluation process that Hernandez has the RFC to perform the full range of sedentary work. The regulations define sedentary work as work which "involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools." 20 C.F.R. § 404.1567(a). Although a "sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties." Id. A job is sedentary "if walking and standing are required occasionally and other sedentary criteria are met." Id. Rule 201.24 of 20 C.F.R. pt. 404, supt. P, app. 2, on which the ALJ relied, directs a finding of not disabled for a younger individual, age 18 to 44, with a limited education, whose prior work experience involved unskilled labor, and who has the RFC to perform sedentary work. The ALJ's findings place Hernandez squarely within this category.

Medical-Vocational Guidelines and Appellant's Claim of Nonexertional Impairment

Hernandez argues that the ALJ erred by using the Medical-Vocational Guidelines and the Grid because she suffers from nonexertional impairments which significantly limit her ability to perform basic work activities. She maintains that her back pain constitutes a nonexertional impairment that limits her ability to work. Hernandez therefore argues that the ALJ should have obtained testimony from a vocational expert.

The regulations define limitations as exertional "if they affect [the claimant's] ability to meet the strength demands of jobs." 20 C.F.R. § 404.1569a(a). Strength demands include:

"sitting, standing, walking, lifting, carrying, pushing, and pulling." Id. A nonexertional limitation is one that affects a claimant's ability to meet the demands of jobs other than strength demands. Id. Examples include a claimant's inability to function because of nervousness, anxiety, or depression; a claimant's difficulty maintaining attention or concentration; a claimant's difficulty understanding or remembering detailed instructions; a claimant's difficulty in seeing or hearing; a claimant's difficulty tolerating some physical features of certain work settings; and a claimant's difficulty performing the manipulative or postural functions of some work, such as reaching, handling, stooping, climbing, crawling, or crouching. Id., § 404.1569a(c)(i)-(vi).

The ALJ determined that Hernandez could not perform her past relevant work as a press operator because of her leg injury. The ALJ found that the job required Hernandez to work a pedal eight hours a day and that "constant use of foot controls would most likely aggravate her condition." Thus, the ALJ determined the exertional requirements of that job precluded Hernandez from returning to it.

"When the claimant suffers only from exertional impairments or [her] non-exertional impairments do not significantly affect [her] residual functional capacity, the ALJ may rely exclusively on the Guidelines in determining whether there is other work available that the claimant can perform." Selders, 914 F.2d at 618. "[P]ain may constitute a non-exertional impairment that limits the range of jobs a claimant otherwise would be able to perform." Fraga v.

Bowen, 810 F.2d 1296, 1304 (5th Cir. 1987). "There must be clinical or laboratory diagnostic techniques which show the existence of a medical impairment which could reasonably be expected to produce the pain alleged." Selders, 914 F.2d at 618.

The medical evidence concerning Hernandez's back pain does not support her contention that it amounts to a nonexertional impairment which limits her RFC. The x-rays of her lumbar spine were normal. The MRI of her lumbar spine showed a possible small disc herniation with no compression of adjacent neural structures. Moreover, as the ALJ indicated, Hernandez's testimony concerning her daily activities was inconsistent with the amount of pain she alleged. Moreover, Hernandez testified that she suffers from back pain primarily in the mornings when she awakens. She indicated that she gets relief from the pain by using heat. Thus, the evidence does not support Hernandez's claim that her back pain constitutes the type of nonexertional impairment that precluded application of the Medical-Vocational Guidelines. See Selders, 914 F.2d at 619. Therefore, contrary to Hernandez's assertion, the ALJ did not err by failing to obtain testimony from a vocational expert. See Fraga, 810 F.2d at 1304-05.

Hernandez also maintains that statements by her examining physicians "give a clear indication that the range of sedentary work she could perform could be significantly limited." The portion of the record she cites following this statement does not support it, however. In fact, one of the citations is to a Social Security disability determination which supports the ALJ's

determination that Hernandez retains the RFC to perform sedentary work. The other citation is to a standard form. Significantly, none of Hernandez's numerous treating physicians placed any exertional limitations on her. See, e.g., Harper v. Sullivan, 887 F.2d 92, 97 (5th Cir. 1989).

Hernandez also seems to argue that the ALJ erred by finding that she could perform the full range of sedentary work. The medical evidence reveals, however, that Hernandez's right leg fracture healed properly. She received relief from the pain in her leg following removal of the fat necrosis. Although she complained of continued pain, further treatment, such as trigger-point injections, pain medication, and lumbar-sympathetic blocks, provided relief. A physical examination by Dr. Leonard in September 1990, revealed no evidence of weakness in her right leg. Hernandez testified that she gets pain relief from elevating the leg and massaging it. Hernandez was never hospitalized, she walks without a crutch or a cane, and she does not take prescription medication for her leg pain. Notwithstanding her complaints of continued pain, Hernandez's testimony reveals that she engages in a wide range of activities consistent with sedentary work. Finally, Hernandez's other impairments, including diabetes, obesity, high cholesterol, and headaches, were controlled through treatment, diet, and medication, and thus did not affect her RFC. Accordingly, substantial evidence supports the ALJ's finding that Hernandez has the RFC for sedentary work.

Claim of Inconsistent ALJ Findings and Subjective Complaint of Pain

Hernandez next argues that the ALJ erred by finding that she suffered from severe impairments which prevented her from returning to her prior job, but then concluding that she could still perform the full range of sedentary work. Before her injury, Hernandez was involved in light to medium work activities, involving lifting of up to 50 pounds and frequent standing, walking, and pushing of leg controls. See 20 C.F.R. § 404.1567(b)-(c). Sedentary work, on the other hand, involves primarily sitting, occasional standing, and walking, and lifting no more than 10 pounds. 20 C.F.R. §404.1567(a). Thus, the ALJ's determination that Hernandez had severe impairments, which prevented her from returning to her past work, was not inconsistent with the finding that Hernandez retained the ability to perform sedentary work, which is much less physically demanding. See, e.g, Falco v. Shalala, 27 F.3d 160 (5th Cir. July 29, 1994, No. 93-7360), slip op. at 5449.

Finally, Hernandez argues that the ALJ failed to evaluate her subjective complaints of pain in accordance with Social Security Ruling 88-13. With regard to Hernandez's testimony concerning pain, the ALJ found:

> Within the guidelines set forth in Social Security Ruling 88-13, the undersigned has noted that the claimant testified at the hearing that she has never used any assistive device in walking. Although she recently alleges that her right leg gave way and she fell, it is not documented in the record and none of her treating physicians have placed any functional limitations on her ability to sit, stand, or walk. Indeed, the record shows that she has never required inpatient hospitalization. . . . Further, the claimant's list of medications in the

> record shows that she takes no medication for her alleged right leg pain. Although she lists Ibuprofen, 1 tablet 3 times daily for spinal arthritis pain, there are no objective clinical or laboratory findings in the record of arthritis. . . .
>
> . . .
>
> Despite the claimant's complaints that pain is present at all times in her right leg and that it is somewhat relieved by massaging it, she admitted that she is able to do the laundry, prepare meals, take care of her personal needs, and drive her car. Clearly such activities are consistent with sedentary to light work-related activities as defined in the Regulations and are inconsistent with the claimant's degree of pain claimed. Also, the record indicates that the claimant has not seen Dr. Henges since he referred her to the CAA Pain Clinic where the last lumbar sympathetic block was administered in May 1991. Since then, the records show no ongoing treatment for her right leg problems and the claimant stated at the hearing that she sees Dr. Garcia, her family physician on a regular basis, once a month but these are merely check-ups for her cholesterol, diabetes and blood pressure.
>
> . . . Based on the foregoing, the [ALJ] finds that although the claimant may have some discomfort, it is not of a degree of severity, intensity, frequency, or duration as to preclude a full range of sedentary work.

Because pain can constitute a disabling impairment when it is constant, unremitting, and unresponsive to therapeutic treatment, the ALJ must make affirmative findings concerning a claimant's subjective complaints of pain. Falco, slip op. at 5449. If uncontroverted medical evidence shows a basis for the claimant's complaints, the ALJ must weigh the objective medical evidence and assign articulated reasons for discrediting the claimant's subjective complaints of pain. Abshire v. Bowen, 848 F.2d 638, 642 (5th Cir. 1988). It is within the discretion of the ALJ to discount a claimant's complaints of pain "based on the medical reports combined with her daily activities and her decision to

forego certain medications." Griego v. Sullivan, 940 F.2d 942, 945 (5th Cir. 1991). An ALJ's determination as to the disabling nature of pain is "entitled to considerable deference." Wren v. Sullivan, 925 F.2d 123, 128 (5th Cir. 1991). This Court does not reweigh the evidence. Carrier v. Sullivan, 944 F.2d 243, 247 (5th Cir. 1991).

The ALJ adequately evaluated Hernandez's subjective complaints of pain. He acknowledged that there was medical evidence indicating the existence of a condition which could cause pain, but determined that Hernandez's pain was not as severe as she claimed. The ALJ observed that the medical records indicated Hernandez received relief from pain through treatment. The ALJ also noted that Hernandez's daily activities were inconsistent with the level of pain claimed. For example, Hernandez testified that she could not walk one block. But she also testified that she does grocery shopping, which requires a certain amount of walking. Likewise, Hernandez testified that she cooked the meals for her family, did the dishes, and did the laundry with help from her sons. Hernandez's application for benefits reveals that she no longer takes medication to alleviate the pain in her leg. As the Secretary points out, even when pain medication was prescribed for her, Hernandez did not take it as her physicians directed. Finally, the ALJ observed that none of Hernandez's treating physicians placed any functional limitations on her ability to sit, stand, or walk. Thus, the ALJ carefully weighed the medical evidence and articulated reasons for discrediting Hernandez's complaints of pain as required by Abshire.

Based on the foregoing, the decision of the district court is **AFFIRMED.**