

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-50199  
Summary Calendar

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JAMES O. BROOKS,

Plaintiff-Appellant,

versus

DONNA SHALALA,

Defendant-Appellee.

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Appeal from the United States District Court for  
the Western District of Texas  
(A-92-CV-704)

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(August 19, 1994)

Before REAVLEY, HIGGINBOTHAM and WIENER, Circuit Judges.

PER CURIAM:\*

**BACKGROUND**

James Brooks was denied disability benefits and supplemental security income benefits by the Secretary of Health and Human Services. Brooks sought a hearing before an administrative law judge ("ALJ") to review the denial. The ALJ found that although Brooks had a foot injury which prevented him from performing

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

certain physically demanding jobs, Brooks was capable of performing the full range of sedentary work activity. In addition to the physical impairment, the ALJ considered Brooks' psychological capacity in a lengthy analysis and concluded that Brooks' mental condition presented "a slight abnormality which has only a minimal effect upon the claimant's ability to work and as such does not constitute a severe impairment."

Brooks filed a complaint in district court and a magistrate judge recommended that the ALJ's decision be affirmed. The district court subsequently issued an opinion adopting the magistrate's recommendation, and entered judgment for the Secretary. Brooks appeals and argues that the decision of the ALJ is not supported by substantial evidence.

#### **DISCUSSION**

Our review of a denial of disability insurance benefits is limited to: 1) whether the Secretary applied the correct legal standards, and 2) whether the decision is supported by substantial evidence. Anthony v. Sullivan, 954 F.2d 289, 292 (5th Cir. 1992). The Social Security Act defines a "disability" as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A).

The Secretary has formulated a five-step plan in order to determine if a claimant is disabled: 1) if the claimant is

presently working, a finding of "not disabled" must be made; 2) if the claimant does not have a "severe impairment" or combination of impairments, the claimant is not disabled; 3) if the claimant has an impairment that meets or equals an impairment listed in Appendix 1 of the Regulations, disability is presumed and benefits are awarded; 4) if the claimant is capable of performing past relevant work, a finding of "not disabled" must be made; and 5) if the claimant's impairment prevents him from doing any other substantial gainful activity, taking into consideration age, education, work experience and functional capacity, the claimant will be found to be disabled. 20 C.F.R. §§ 404.1520, 416.920. In the present case, the ALJ found that Brooks was "not disabled" at step 5, because Brooks is capable of performing certain sedentary jobs in the economy, such as ticket taker or cashier, in spite of his physical and mental condition.

Brooks' main complaint is that the ALJ did not make a severity finding as to mental impairment. But the ALJ engaged in a lengthy analysis of Brooks' mental competence: the ALJ noted that the examining psychologist found that Brooks made good eye contact and responded to questions well; that his speech was clear and coherent and his concentration was good; that he was capable of doing household chores and preparing meals and that among other findings, he was in the average to borderline range of intellectual functioning. The ALJ further noted that "other than the claimant's statement that he gets upset easily, there are no allegations or indications of a mental disorder." The ALJ

concluded that "the impairment is a slight abnormality which has only a minimal effect upon the claimant's ability to work and as such does not constitute a severe impairment." Cf. Stone v. Heckler, 752 F.2d 1099, 1101 (5th Cir. 1985). Contrary to Brooks' allegations, the ALJ further considered Brooks' mental and physical conditions *together*. The ALJ determined that Brooks' foot injury was severe and he was not capable of performing past relevant work, but that "[t]he record does not show an impairment or *combination of impairments* which meets or equals the level of severity contemplated for any impairment found in Appendix 1 to Subpart P of Social Security Administration Regulations No. 4."

Brooks points out that once the claimant establishes disability, the burden shifts to the Secretary to show that there is other substantial gainful employment available for the claimant. Selders v. Sullivan, 914 F.2d 614, 618 (5th Cir. 1990). If the Secretary meets this burden by pointing out alternative employment opportunities, as was done in the present case, the burden shifts back to the claimant to prove that he is unable to perform alternate work. Id. The ALJ considered Brooks' capacity for other work in view of his age, education and past experience, and determined that Brooks was capable of doing sedentary work. Brooks did not demonstrate otherwise. The record demonstrates that Brooks can sit at length and stand or walk, and Brooks has engaged in daily activities in spite of his

impairments such as visiting with friends, preparing meals, light housecleaning and using public transportation.

Brooks complains, however, that the ALJ did not take into consideration the vocational expert's answers to hypothetical questions, where the expert indicated that Brooks' appearance and communication skills might possibly prevent him from succeeding in certain sedentary jobs. But the vocational expert did not state that Brooks was incapable of performing the suggested sedentary jobs available to him, nor does the evidence in the record support that conclusion.

Substantial evidence supports the conclusion to deny disability benefits. A "reasonable mind" could accept the relevant evidence as adequate to support the conclusion that Brooks is not disabled. See Marcello v. Bowen, 803 F.2d 851, 853 (5th Cir. 1986). Our inquiry ends here because we may not reweigh the evidence or substitute our judgment for that of the Secretary. Id.

AFFIRMED.