

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50766
Summary Calendar

Laurie Valek,

Plaintiff/Appellant,

versus

Donna E. Shalala, Secretary of
Health and Human Services

Defendant/Appellee.

Appeal from the United States District Court
For the Western District of Texas
(SA-93-CV-417)

(May 19, 1995)

Before JOHNSON, JOLLY, and DAVIS, Circuit Judges.*

JOHNSON, Circuit Judge:

After a hearing, an administrative law judge (ALJ) concluded that claimant Laurie Valek could do alternate work and thus her application for disability insurance benefits should be denied. The Appeals Council, though, vacated the ALJ's decision and remanded the case. On remand, the ALJ again denied benefits. The Appeals Council affirmed that decision. Valek sought review in the district court contending that the ALJ's decision was not

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

supported by substantial evidence and that the ALJ had erred by finding that some of the limitations he identified in his initial decision no longer existed. The district court upheld the administrative determination. Valek now appeals to this Court. Finding no error, we AFFIRM.

I. FACTS AND PROCEDURAL HISTORY

Laurie Valek applied for disability benefits in October of 1990 alleging disability due to a panic disorder with agoraphobia, and pain in the back and neck. Her application was denied by the Secretary of Health and Human Services ("the Secretary") both initially and on reconsideration.

Valek then requested a hearing before an ALJ. At the conclusion of that hearing, the ALJ determined that the medical evidence established that Valek suffered a soft tissue injury with pain in the back and neck when she was involved in an automobile accident. The ALJ further determined that she had a severe panic disorder with agoraphobia. Despite this, the ALJ found that Valek was not disabled within the meaning of the Social Security Act because Valek could do alternate work.¹

The Appeals Council vacated the ALJ's decision, though, and remanded the case to the ALJ for further proceedings, including a new decision. The remand order noted that there was "no vocational evidence in the record as to the extent to which

¹ The ALJ did note that Valek's ability to do light or sedentary work was reduced by her need to avoid stressful interpersonal interactions and working in a crowd with a large number of people.

[Valek's] limitations reduce [her] ability to perform light and sedentary work[.]" R. Vol. 2 at 300.

Thus, the ALJ conducted a supplemental evidentiary hearing for the purpose of taking vocational testimony.² At the conclusion of that hearing, the ALJ again determined, consistent with his first opinion, that Valek's physical and psychological limitations had not eroded her ability to perform at least certain jobs identified by the vocational expert. The ALJ did note that Valek's attorney had questioned the vocational expert hypothetically as to whether Valek could perform the jobs described by the expert if Valek experienced panic attacks four times a day or even once a week and if the attacks resulted in dizziness, heart palpitations, shakiness, hot flashes, and fear of dying. The ALJ concluded, however, that the record did not support the finding that Valek had attacks with the frequency and severity stated in the attorney's hypothetical. Thus, the ALJ reiterated his conclusion from the initial hearing that Valek could still perform alternate work and thus that she was not disabled within the meaning of the Social Security Act. The Appeals Council upheld this decision.

Valek then filed suit in the district court arguing that the ALJ's decision that Valek could do alternate work was not supported by substantial evidence. Additionally, Valek contended that the ALJ had, without notice and without any medical

² During this hearing, the ALJ stated that he thought that the hearing was limited primarily to vocational issues.

evidence, abandoned his finding from the initial hearing that Valek suffered from severe panic attacks and agoraphobia. This was, according to Valek, reversible error.

The district court found that the ALJ's decision was supported by substantial evidence. Further, the district court treated Valek's second argument as a due process challenge. Then, the district court held that Valek's due process rights had not been violated because the remand order vacated the ALJ's prior decision and the ALJ was authorized to enter a new decision. Valek now appeals to this Court.

II. DISCUSSION

In this Court, Valek raises only the due process argument.³ According to Valek, the ALJ, in his initial decision, made certain medical findings. In particular, the ALJ found that Valek suffered from a severe panic disorder and agoraphobia. Further, according to Valek's argument, when the Appeals Council vacated that decision and remanded, the remand was limited solely to vocational issues. Then, Valek asserts that, contrary to the limits of the remand order, the ALJ disavowed his earlier medical finding concerning the panic disorder and agoraphobia. This action breached her due process rights, Valek concludes, because

³ In the district court, Valek contended that the ALJ's finding was not supported by substantial evidence. There are oblique references to this contention in her brief to this Court, but no argument along these lines is made. This Court does not consider issues that are not briefed. *United States v. Valdiosera-Godinez*, 932 F.2d 1093, 1099 (5th Cir. 1991), *cert. denied*, 113 S.Ct. 2369 (1993).

it denied her a full and fair hearing.⁴

We find Valek's argument unavailing for two reasons. First, we agree with the district court that the ALJ was not, on remand from the Appeals Council, limited solely to consideration of vocational issues. Our precedent shows that, on remand from the Appeals Council, an ALJ shall take any action that is ordered by the Appeals Council and may make any determination that is not inconsistent with the remand order. *Houston v. Sullivan*, 895 F.2d 1012, 1015 (5th Cir. 1989); 20 C.F.R. § 404.977(b). In this case, the remand order, while it noted the lack of vocational testimony, was unlimited in scope. It sent the case back to the ALJ "for further proceedings, including a new decision." R. Vol. 2 at 300. Moreover, in making this "new decision," the ALJ would not be bound by his previous findings because, under the social security regulations, there is no rule of issue preclusion. *Muse v. Sullivan*, 925 F.2d 785, 790 (5th Cir. 1991); 20 C.F.R. § 404.977(b). Thus, we find that the ALJ was authorized to enter a new decision that included new medical findings so long as his decision was not inconsistent with the Appeals Council's remand order.

The second reason that we find Valek's argument unavailing is that, even though the ALJ could have made new medical findings, we conclude that he did not. A review of the ALJ's initial and supplemental decision reveals that the ALJ did not

⁴ Although Valek labels this as a due process argument, it is developed as an issue-preclusion argument.

disavow his earlier finding that Valek suffered from a severe panic disorder and agoraphobia. In fact, the ALJ's supplemental determination regarding the severity of Valek's panic disorder, and its effects on her ability to do alternate work, was substantially the same as his initial determination.

In making her argument that the ALJ disavowed his earlier determination, Valek relies on the ALJ's statement in his supplemental decision that he did not "find any claim that she actually has agoraphobia or severe or frequent panic attacks as *described in the hypothetical* to be credible[.]" R. Vol. 1 at 13 (emphasis added). However, this statement was not a disavowal of the ALJ's earlier finding that Valek suffered from severe panic attacks and agoraphobia. Rather, it was merely a rejection of the hypothetical question posed by Valek's attorney which described the panic disorder as more severe than that supported in the record and than that which the ALJ found in his prior determination. Accordingly, no due process violation could possibly have occurred from the ALJ's making new medical findings different from his initial findings because, in reality, no new medical findings were made.

III. CONCLUSION

For the reasons stated above, the judgment of the district court is AFFIRMED.