

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 94-60118
Summary Calendar

ARLENE COLLINS,

Plaintiff-Appellant,

VERSUS

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,
DONNA E. SHALALA, SECRETARY,

Defendant-Appellee.

Appeal from the United States District Court
For the Southern District of Mississippi
(93-CV-328)

(December 8, 1994)

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:*

Arlene Collins (Collins) appeals from the decision of the Secretary of the Department of Health and Human Services which denied her claim for supplemental security income benefits. Collins first sought review in the district court, which adopted the magistrate judge's report and affirmed the Secretary's

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

decision, and, secondly, dismissed Collins' action. We AFFIRM the decision of the district court.

DISCUSSION

Collins argues, first, that substantial evidence does not support the ALJ's decision; second, that the ALJ improperly discounted her subjective complaints of pain; and, third, that the ALJ's questions to the vocational expert (VE) were confusing and omitted reference to Collins' restrictions. These issues are interrelated because Collins' success on either the second or the third issue would cast doubt on the substantiality of the evidence supporting the ALJ's decision. Accordingly, the second and third issues are addressed first and the more general first issue is addressed last.

Issue 1 - Subjective complaints

Collins argues that the ALJ improperly discounted her subjective complaints of pain. On review, this Court determines whether substantial evidence in the record as a whole supports the Secretary's factual findings to which the proper legal standards were applied. Anthony v. Sullivan, 954 F.2d 289, 292 (5th Cir. 1992). To qualify as a disabling condition, pain must be constant, unremitting, and wholly unresponsive to therapeutic treatment. Falco v. Shalala, 27 F.3d 160, 163 (5th Cir. 1994) (quotation not indicated). Additionally, "not all pain is disabling; moreover, subjective evidence need not be credited over conflicting medical evidence. . . . At a minimum, objective medical evidence must demonstrate the existence of a condition that could reasonably be

expected to produce the level of pain or other symptoms alleged." Anthony, 954 F.2d at 295-96.

Collins' testimony. Collins testified that she spends most of each day lying down. She does not do housework because of pain in her right knee. She does no yard work or grocery shopping, and she does not drive an automobile because of her right leg. She does go to church twice a month. The leg causes her problems dressing herself, and bending increases the pain. The pain in her leg interferes with sleep.

Collins also has problems with her eyes and her right ear. She was born with a weak pupil, but she has no difficulty seeing with the glasses that she wears.

She wore ear plugs in a former job, but, because she had problems with "stones," the doctor "said it was closing up" and advised her not to wear ear plugs anymore. She still has problems with the right ear. It feels like an "infection" or "knot." She uses ear drops.

Returning to the subject of knee pain, Collins said that she experiences it constantly as a sharp pain. On a scale of one to ten, with one being the lowest and ten being the highest, Collins classified her sharp pain as a "one." She has worn a brace and used a cane since surgery, which is discussed below. She can walk the length of a block. According to Collins, the exercise that her doctor recommended does not help.

Collins last worked in September 1991. After surgery, her doctor told her not to return to work and has not yet given his

clearance for her to do so. The work that she did was pulling guts from and hanging chickens. She did that for three years. The job required no special training but did require eight hours of standing on a concrete floor each day.

Before working at the poultry company, Collins worked at a sewing factory for about a year, carrying 25-pound bundles of blue jeans. She worked at a labeling machine at another factory and at a restaurant helping to make donuts. Her leg prevents her from doing any of her previous work.

Collins' neighbor who drives her to medical appointments also testified. She stated that Collins often appears to be in pain and gets around very little. She corroborated Collins' testimony.

Medical evidence. The medical evidence in the record shows that Collins had arthroscopic surgery of the right knee in October 1991. She regained quad control and range of motion with physical therapy, which was continuing as of October 1991. At that time, her surgeon thought that she could return to work in eight to 12 weeks. In December 1991, her surgeon estimated that she would be able to return to work in January 1992. The doctor wrote "1-28-91" as the estimated date of return to work but, as the note was dated in December 1991, he must have meant "1-28-92"). Another physician found her doing well in February 1992.

In January 1992, her surgeon stated that Collins would have to get used to some osteoarthritic pain. In February 1992, he noted that she was on a walking program and doing well. He also noted that, with her arthritis, she would never be normal, but an active

walking program should help. In April 1992, he noted that she was continuing to improve, gaining strength. An injury to her knee that she had sustained as a child continued to cause limping. In May 1992, the surgeon prescribed vocational rehabilitation for job retraining. "I think she can do more if she wanted to," noted the surgeon in April 1992.

In July 1992, another physician performed a consultative examination and made a report detailing Collins' knee problems, including her difficulty standing. He concluded, "She would be hard pressed to do any sort of meaningful work activity except while sitting."

Another orthopedic surgeon evaluated Collins in September 1992. He found, "Degenerative arthritis, right knee, moderately severe with patello-femoral changes." He also found weakness in Collins' quadriceps, which needed work in physical therapy. Additionally, he recommended a home exercise program.

ALJ's determinations. The ALJ determined that Collins' subjective complaints and the medical evidence were consistent to the extent that Collins' impairment makes it difficult for her to stand, walk more than one block, climb, stoop, kneel, crawl, push, and pull. Beyond that, he found, "There is no evidence that the claimant has problems with sitting or lifting at least 10 pounds." He further found that no medical evidence supported the claim of a disabling ear or eye condition.

Analysis. The medical evidence is consistent with the existence of pain and difficulty in doing numerous tasks, but no

physician opined that Collins was unable to perform work while sitting. The ALJ credited Collins' subjective complaints to the extent that they were supported by the medical evidence. The ALJ did not err in relying on the medical evidence when it was inconsistent with the subjective complaints.

Issue 2 - Vocational expert

We next address Collins' argument that the ALJ's hypothetical questions to the VE were confusing and omitted reference to Collins' restrictions. This Court reviews an ALJ's hypothetical questions to a VE to determine whether they incorporate the disabilities that the ALJ recognizes. Morris v. Bowen, 864 F.2d 333, 336 (5th Cir. 1988).

Questions and answers. The first extensive question that the ALJ posed to the VE was not hypothetical. The ALJ recited highlights from Collins' medical reports, noting a change in the x-rays of the right knee from July 1992 to September 1992, and asked whether such a change would make any difference in the VE's opinion. The VE said that it would not.

The ALJ referred to a medical report that had been rendered the month before the hearing and asked if any information contained therein would make any difference in the VE's opinion. The VE said that it would not.

The ALJ asked the VE if Collins could return to her past work. The VE said no. His opinion was based on the medical assessment that she could not stand or walk.

Then the ALJ asked whether, based on Collins' own testimony and that of Collins' neighbor, there were any jobs in the national economy that she could do. The VE said no. Following that answer, the ALJ asked whether, considering the vocational aspects of the case that the VE had stated earlier in his own testimony and the medical evidence that the ALJ had just recited, Collins was able to perform any jobs of a sedentary nature. The VE responded affirmatively.

The ALJ emphasized what he was inquiring about by asking, "You will notice that the medical assessment of ability to do work related activities would be physically limited to eight hours sitting and no walking or standing?" The VE said yes. The VE then gave many examples of sedentary jobs that exist in Mississippi and the national economy for which Collins would be qualified.

After all of those examples, the ALJ once again emphasized the nature of his inquiry by asking whether, considering Collins' own testimony and that of the neighbor, Collins could perform any of those jobs. The VE said no.

Analysis. Collins' argument that the questions did not incorporate the limitations that she reported is groundless. The ALJ asked about those limitations by asking the VE to specifically consider Collins' testimony that the VE had just heard. Each time that the ALJ asked the VE to consider the limitations that Collins reported, the VE said that she could perform no jobs that exist in the economy. In light of the medical reports, though, the VE thought that she could do sedentary work. Even though the ALJ

ultimately chose not to credit Collins' subjective complaints, he did ask the VE about them.

Collins also challenges the questions on the ground that they were difficult to understand. One question does go on for more than two pages in the transcript. It is understandable, and the VE gave no appearance of having trouble responding to it. There is no indication that the VE misunderstood any other question. Collins has identified no reversible error in the questioning.

Issue 3 - Substantial evidence

Finally, we address Collins' primary argument, which is that substantial evidence does not support the ALJ's finding that she can perform sedentary work. Such finding is conclusive if substantial evidence supports it. 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 that which is relevant and sufficient for a reasonable mind to accept as adequate to support a conclusion. It must be more than a mere scintilla, but it need not be a preponderance. Perales, 402 U.S. at 401. This Court does not reweigh the evidence; conflicts are for the Secretary to resolve. Selders v. Sullivan, 914 F.2d 614, 617 (5th Cir. 1990).

In evaluating a claim of disability, the Secretary conducts a five-step sequential analysis by determining whether (1) the claimant is not presently working, (2) the claimant's ability to work is significantly limited by a severe physical or mental impairment, (3) the 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 impairment prevents the claimant from performing any other substantial gainful activity. 20 C.F.R. § 404.1520; Muse v. Sullivan, 925 F.2d 785, 789 (5th Cir. 1991).

In the instant case, no one contests the determinations at the first four steps of the analysis. Collins argues that the ALJ erred at the fifth step by finding that she is capable of sedentary work. That finding, however, is consistent with all of the medical evidence and the VE's testimony, as indicated under Issue 1 above. The finding is inconsistent only with Collins' subjective testimony as corroborated by her neighbor.

The ALJ did not improperly credit the medical evidence over Collins' testimony. Given that the evidence that the ALJ did credit supports the finding, this Court's inquiry is at an end. Irrespective of what we might have found in the first instance, the Secretary's decision is conclusive because substantial evidence in the record supports the decision.

For the foregoing reasons, the judgment of the trial court is **AFFIRMED.**