UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60123
Summary Calendar

LUVENIA JOHNSON,

Plaintiff-Appellant,

VERSUS

DONNA E. SHALALA, M.D.,
SECRETARY OF DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Defendant-Appellee.

Appeal from the United States District Court
For the Northern District of Mississippi
(CA-1:92-98-B-0)

(September 30, 1994)

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:[*]

This is an appeal from the decision of the district court which affirmed the determination of the Secretary of the Department of Health and Human Services that the Appellant, Luvenia Johnson, had the ability to return to work and which denied her claims for disability insurance benefits and supplemental social security income. Finding substantial evidence to support the Secretary's decision, and because the record does not establish that the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Secretary applied improper standards, we AFFIRM.

A social security claimant has the burden to prove a disability by establishing a physical or mental impairment. Pierre v. Sullivan, 884 F.2d 799, 802 (5th Cir. 1989). The Social Security 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 12 months[.]" 42 U.S.C. § 423(d)(1)(A).

The Secretary has promulgated a five-step sequential process to be used in determining whether a claimant is disabled:

1. An individual who is working and engaging in substantial gainful activity will not be found disabled regardless of the medical findings. 20 C.F.R. § 416.920(b) (1993).

2. An individual who does not have a "severe impairment" will not be found to be disabled. 20 C.F.R. § 416.920(c) (1993).

3. An individual who meets or equals a listed impairment in appendix 1 of the regulations will be considered disabled without consideration of age, education, and work experience. 20 C.F.R. § 416.920(d) (1993).

4. If an individual is capable of performing the relevant work he has done in the past, a finding of "not disabled" must be made. 20 C.F.R. § 416.920(e) (1993).

5. If an individual's impairment precludes him from performing his past relevant work, other factors including age, education, past work experience, and residual functional capacity must be considered to determine if work can be performed. 20 C.F.R. § 416.920(f) (1991).

The claimant has the initial burden of demonstrating that she cannot perform her previous work. Fields v. Bowen, 805 F.2d 1168, 1169-70 (5th Cir. 1986). The burden shifts to the Secretary, "who

must show that the claimant can perform alternative employment." Id. at 1170. The burden then shifts back to the claimant, who must show that she cannot perform such alternative work. Id. In accordance with this burden shifting, "[a] finding that a claimant is disabled or is not disabled at any point in the five-step review is conclusive and terminates the analysis." Lovelace v. Bowen, 813 F.2d 55, 58 (5th Cir. 1987). In this case, the Secretary's evaluation proceeded to the fourth step: Johnson can perform past relevant work.

This Court's review of the Secretary's decision is limited to two issues: "(1) whether the Secretary applied the proper legal standards, and (2) whether the Secretary's decision is supported by substantial evidence on the record as a whole." Anthony v. Sullivan, 954 F.2d 289, 292 (5th Cir. 1992). "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 scintilla, but it need not be a preponderance." Id. at 295. "If the Secretary's findings are supported by substantial evidence, they are conclusive and must be affirmed." Id. This Court, moreover, may not reweigh the evidence, try the issues de novo, or substitute its judgment for that of the Secretary. Pierre, 884 F.2d at 802. "[C]onflicts in the evidence are for the Secretary to resolve." Anthony, 954 F.2d at 295.

Johnson argues that the Secretary erred by not ordering an independent consultative examination to assess her alleged mental impairment. An ALJ has the discretion to order a consultative

examination. Anderson v. Sullivan, 887 F.2d 630, 634 (5th Cir. 1989). An examination at government expense is not required unless the record establishes that such an examination is necessary to enable the Secretary to make a decision on disability. Id. In addition, a "mere sensitivity" about one's inability to work does not amount to a mental impairment. Jones v. Bowen, 829 F.2d 524, 526 (5th Cir. 1987).

The record reflects that Johnson received sporadic treatment in July 1990 at a county mental health center based on complaints of depression, nervousness, and dysthymia. Johnson was described in the medical notes as able to focus on the positive aspects of her life. Her attention span and behavior were considered appropriate, and she was described as functioning at a high level despite her periods of depression and nervousness. Furthermore, Johnson's treating physician indicated in July and August 1990 that Johnson's psychiatric and psychological systems were normal. In addition, at the administrative hearing, Johnson testified that the sessions she had at the mental health center were helpful. The record adequately reflects that Johnson did not suffer from a "mental impairment."

In any event, Johnson, who was represented by counsel at the administrative hearing, did not request a consultive examination before the ALJ. Counsel, moreover, had no objections to any of the evidence in the record, and he did not assert that the record was deficient. Johnson's argument, therefore, lacks merit.

We next examine Johnson's complaint that the Secretary erred

in characterizing her former work as "light" because she testified at the administrative hearing that her job as an assembler required that she lift at least fifty pounds. Johnson incorrectly contends that her testimony is uncontradicted. In a vocational report dated June 30, 1990, Johnson described the exertional requirements of the two jobs she had performed in the past. In one job she assembled seat belts, and in the other she assembled clocks. Johnson indicated in the report that both jobs required lifting a maximum of ten pounds at a time, seven hours of standing and walking, and one hour of sitting. These exertional requirements correspond to the Secretary's definition of light work. See 20 C.F.R. § 404.1567(b). In any event, the ALJ made a finding that Johnson had no significant exertional limitations. At most, therefore, the ALJ's finding amounts to harmless error. See Mays v. Bowen, 837 F.2d 1362, 1364 (5th Cir. 1988) (analyzing harmless-error rule in social security cases).

Johnson also asserts that it was error for the ALJ to use the medical-vocational guidelines and that the ALJ erred in finding that her former job was as a maid. The ALJ's decision, however, does not reflect that the ALJ used the medical-vocational guidelines or that he made a finding that Johnson's prior job was as a maid. Johnson, therefore, has failed to show any error.

Johnson further complains that the Secretary did not properly evaluate her complaints of pain. Pain, in and of itself, can be a disabling condition only if it is "constant, unremitting, and wholly unresponsive to therapeutic treatment." Harrell v. Bowen,

862 F.2d 471, 480 (5th Cir. 1988) (citations omitted). It is improper for an ALJ not to consider a claimant's subjective complaints of pain. Carrier v. Sullivan, 944 F.2d 243, 247 (5th Cir. 1991). Johnson, however, did not complain of pain. At the hearing, for example, Johnson testified that she would get weak and nervous at work, that she was tired in the morning because of her diabetes, that she has been depressed, and that once or twice a week her high blood pressure would cause dizziness. A review of the record, moreover, reveals no evidence that Johnson suffered from pain that was "constant, unremitting, and wholly unresponsive to therapeutic treatment." See Harrell, 862 F.2d at 480.

Johnson argues that the district court's judgment is contrary to the overwhelming weight of the law and evidence and not supported by any law or evidence. In reviewing this claim, this Court need only consider whether there is substantial evidence, that is, more than a scintilla, supporting the Secretary's decision. See Anthony, 954 F.2d at 295.

Johnson worked as a clock assembler, a job which allowed her to sit for the most part and involved no heavy lifting. According to Johnson, she left that job because she "couldn't stand the pressure." She further testified that she was weak and tired and that her mind would go blank. She alleged in her social security applications that she was disabled because of diabetes and high blood pressure.

With regard to Johnson's hypertension and diabetes, the ALJ found that those conditions were controlled with medication. A

medical report reflects that with medication, Johnson's diabetes was able to be controlled and that her blood pressure could be normalized. When a medical condition can be controlled with medication, it is not disabling. See Fraga v. Bowen, 810 F.2d 1296, 1305 n.11 (5th Cir. 1987) (hypertension).

With regard to Johnson's dysthymia, the ALJ found that it did not result in any significant functional loss. The reports from the county mental health center support this finding. In addition, as set out above, Johnson's treating physician indicated in medical reports in July and August 1990 that Johnson's psychiatric and psychological systems were normal.

Based on the record in this case, there is substantial evidence, that is, more than scintilla, that Johnson can perform her former work. See Anthony, 954 F.2d at 295.

CONCLUSION

For these reasons, the judgment of the district court is AFFIRMED.