

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 94-60459
Summary Calendar

TOMMIE L. GRANT,

Plaintiff-Appellant,

VERSUS

DONNA SHALALA, Secretary
of Health and Human Services,

Defendant-Appellee..

Appeal from the United States District Court
For the Southern District of Mississippi

(4:93-CV-37)

(May 18, 1995)

Before WISDOM, JOLLY, and JONES, Circuit Judges.

WISDOM, Circuit Judge:*

The plaintiff/appellant, Tommie Grant, appeals from a decision of the Secretary of Health and Human Services denying his claim under 42 U.S.C. § 416(i) and § 423 for disability insurance

* Local Rule 47.5.1 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Pursuant to that Rule, the Court has determined that this opinion should not be published.

benefits and supplemental security income. Substantial evidence supports the Secretary's conclusion that the plaintiff is not disabled nor entitled to receive disability benefits, and we affirm the decision of the district court.

I

On April 9, 1991, the plaintiff filed applications for disability insurance benefits and for supplemental security income under the Social Security Act (the "Act"). The applications were denied, and the plaintiff requested a hearing before an administrative law judge ("ALJ"). At the time of the administrative hearing, the plaintiff was 39 years old. He has a twelfth-grade education and worked in the past as a meat cutter and a market employee. The plaintiff alleges that since January 10, 1991, he has not been able to work due to heart trouble, pain, and shortness of breath.

After hearing testimony and considering the medical records, the ALJ found that although the plaintiff no longer could perform his past work, he retained the residual functional capacity to perform a full range of sedentary work. The ALJ also specifically concluded that the plaintiff's allegations of inability to perform sedentary work were not credible. The ALJ found that the plaintiff was not disabled under the Act and denied his application for benefits.

The plaintiff appealed from the ALJ's decision to the Appeals Council, and the Council affirmed the decision of the ALJ. Having exhausted his administrative remedies, the plaintiff filed

a complaint in the United States District Court for the Southern District of Mississippi. The plaintiff filed a motion for summary judgment, contending that substantial evidence did not support the decision of the ALJ. On May 19, 1994, a magistrate judge issued a report and recommendation affirming the decision of the ALJ. The plaintiff filed objections to the magistrate's report, and on June 3, 1994, the district court adopted in full the report and recommendation of the magistrate judge denying the plaintiff's application for disability benefits. From the final decision of the district court, the plaintiff appeals.

II

The plaintiff's only argument on appeal contends that the Secretary's decision to deny him disability benefits is not supported by substantial evidence. In reviewing the Secretary's denial of disability benefits, this Court neither reweighs the evidence nor substitutes its own judgment for that of the Secretary.¹ Appellate review is limited to two questions: (1) whether the Secretary applied the proper legal standards, and (2) whether the Secretary's decision is supported by substantial evidence.²

A

The Social Security Act permits the payment of benefits to applicants who have contributed to the program and suffer from

¹ Hollis v. Bowen, 837 F.2d 1378, 1383 (5th Cir. 1988).

² Anthony v. Sullivan, 954 F.2d 289, 292 (5th Cir. 1992).

a disability. 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 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".³ The claimant has the burden of proving that he or she is disabled within the meaning of the Act,⁴ and the Secretary uses a five-step, sequential evaluation process to determine whether a claimant is capable of engaging in any substantial gainful activity:

(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, he or she will not be found 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 or her from doing any other substantial gainful activity, taking into consideration her age, education, past work experience, and

³ 42 U.S.C. § 423(d)(1)(A) (1991).

⁴ Anthony v. Sullivan, 954 F.2d 289, 293 (5th Cir. 1992) (quoting Milam v. Bowen, 782 F.2d 1284, 1286 (5th Cir. 1986)).

residual functional capacity, he or she will be found disabled.⁵

At step four, the Secretary found that the plaintiff met his burden to prove that he was not capable of performing his past work. The burden of proof then shifted to the Secretary to demonstrate that other work exists in the national economy that Grant could perform. The district court concluded that substantial evidence supported the ALJ's finding that the Secretary met its burden to show that the plaintiff was capable of performing a full range of sedentary work, and that the plaintiff had not demonstrated his inability to perform such work.⁶

On appeal, the plaintiff contends that substantial evidence does not support the decision of the ALJ. The plaintiff argues that his own testimony and the medical evidence show that he cannot hold a job, and that the ALJ improperly discounted his credibility and his subjective complaints of shortness of breath, pain, and lack of stamina.

In evaluating the plaintiff's credibility, the ALJ followed the guidelines in Social Security Ruling 88-13, and articulated specific reasons for his rejection of the plaintiff's subjective allegations of pain. The ALJ concluded that Grant's

⁵ Anthony, 954 F.2d at 293 (citing 20 C.F.R. §§ 404.1520, 416.920 (1994)).

⁶ Sedentary work, as defined in the C.F.R., "involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 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. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met". 20 C.F.R. § 404.1567(a) (1994).

testimony of pain, lung congestion, and shortness of breath was not credible "because he has no medically determinable impairment which would be expected to cause such symptoms".⁷

The evaluation of a claimant's subjective symptoms is a task particularly within the province of the ALJ who had an opportunity to observe the claimant, and we afford considerable deference to the credibility determinations of the ALJ.⁸ The factfinder's evaluation of the credibility of subjective complaints is entitled to judicial deference if supported by substantial record evidence.⁹ We conclude that substantial evidence supports the determination of the ALJ.

The law in this Circuit requires "that subjective complaints be corroborated, at least in part, by objective medical findings".¹⁰ The plaintiff has not required any medical treatment for his impairments since March 1, 1991. The June 1992 medical report of Dr. Gaines Cooke indicates that the plaintiff does not require any medication for his impairments. Dr. Cooke also found that although the plaintiff was incapable of doing heavy work, he was capable of "moderate physical activity". Indeed, the plaintiff testified that he cares for a 10-month-old child every day, drives his wife's car, goes to church, does housework, cooks, and visits

⁷ 2 Record at 17-18.

⁸ Harrell v. Bowen, 862 F.2d 471, 481 (5th Cir. 1988).

⁹ Villa v. Sullivan, 895 F.2d 1019, 1024 (5th Cir. 1990) (citing Hollis v. Bowen, 837 F.2d 1378, 1385 (5th Cir. 1988)).

¹⁰ Harrell, 862 F.2d at 481.

his neighbors.

This Court has never taken the position that subjective evidence of pain must take precedence over conflicting medical evidence.¹¹ Substantial evidence supports the Secretary's conclusion that the plaintiff is not disabled within the meaning of the Social Security Act, and we affirm the decision of the district court.

¹¹ Jones v. Heckler, 702 F.2d 616, 621 n.4 (5th Cir. 1983) (citing Gaultney v. Weinberger, 505 F.2d 943, 945 (5th Cir. 1974)); see also Laffoon v. Califano, 558 F.2d 253, 255 (5th Cir. 1977).