

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60808
Summary Calendar

PAUL D. SAVELL,

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
(3:93 CV 415)

(June 6, 1995)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:¹

Paul Savell appeals from the denial of his application for Social Security disability benefits. We **AFFIRM**.

I.

Savell applied for disability insurance benefits in 1992, claiming disability since May 15, 1984, due primarily to problems with his back. The application was denied originally and on reconsideration. Following an administrative hearing, the

¹ 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 Pursuant to that rule, the court has determined that this opinion should not be published.

administrative law judge (ALJ) determined that Savell was not disabled. The Appeals Counsel denied Savell's request for review, and the ALJ's determination became the final decision of the Secretary. Savell sought review in the district court, and in October 1994, the court affirmed the Secretary's decision.

II.

Savell's primary complaints are that the ALJ improperly evaluated the subjective evidence of disability, and improperly relied on the Medical-Vocational Guidelines. We review only for whether the Secretary's decision is "supported by substantial evidence in the record and whether the proper legal standards were used in evaluating the evidence". *Villa v. Sullivan*, 895 F.2d 1019, 1021 (5th Cir. 1990).

To determine disability, the Secretary applies a well-established five-step evaluation process:

1. An individual who is working and engaging in substantial gainful activity will not be found disabled regardless of the medical findings.
2. An individual who does not have a "severe impairment" will not be found to be disabled.
3. An individual who meets or equals a listed impairment in Appendix 1 of the regulations will be considered disabled without consideration of vocational factors.
4. If an individual is capable of performing the work he has done in the past, a finding of "not disabled" must be made.
5. If an individual's impairment precludes him from performing his past work, other factors including age, education, past work experience, and residual functional capacity must be considered to determine if other work can be performed.

Id. at 1022. The claimant has the burden of proof for the first four steps, but the burden shifts to the Secretary for step five, to show that the claimant is capable of performing other work in the national economy. **Anderson v. Sullivan**, 887 F.2d 630, 632-33 (5th Cir. 1989). Savell met his initial burden by establishing that, as a result of his impairments, he was unable to return to his former work as a pulpwood hauler and chicken farmer. The ALJ found, however, that, despite Savell's mild degenerative disc disease and gastritis, he had the residual capacity to perform "the full range of light work", and, based on the Medical-Vocational Guidelines, concluded that Savell could perform other work in the national economy.

A.

Savell offered subjective evidence of his inability to work, including pain, and he challenges the ALJ's determination that this evidence was not credible. We find no error.

Subjective complaints must be "corroborated, at least in part, by objective medical findings". **Harrell v. Bowen**, 862 F.2d 471, 481 (5th Cir. 1988). The ALJ found that Savell's subjective complaints were uncorroborated, observing, *inter alia*: (1) Savell documented only two visits to a doctor regarding his back, the most recent being in 1977 (seven years prior to his claimed onset of disability); (2) no physician has expressed a finding of disability; (3) Savell's medical problems relating to his stomach did not arise until after the expiration of his insured status (in

July of 1986);² and (4) Savell testified that he is able to care for his own grooming and hygiene needs, and that "he drives occasionally, watches t.v., rides around the pasture, etc.". Based on the foregoing, the ALJ did not err in determining that Savell's complaints were not credible.

B.

Savell next contends that the ALJ improperly relied on the Medical-Vocational Guidelines. The ALJ concluded:

Section 404.1569 of Regulations No. 4 and Rules 202.17 and 202.18, Table No. 2 of Appendix 2, Subpart P, Regulations No. 4 [the Medical-Vocational Guidelines], direct a conclusion that, considering the claimant's residual functional capacity, age, education, and work experience, he is not disabled.

In determining whether the claimant can perform other available work, the ALJ may rely exclusively on the Medical-Vocational Guidelines if the claimant suffers only from exertional impairments. **Fraga v. Bowen**, 810 F.2d 1296, 1304 (5th Cir. 1987). Although Savell asserts that he has both exertional and nonexertional impairments, he has stated no basis for this conclusion. And, to the extent that Savell relies on his subjective evidence to support his assertion of nonexertional impairment, we find that evidence unavailing. See *supra*, Part A; **Fraga**, 810 F.2d at 1304 (ALJ has discretion to determine existence

² Claiming disability insurance benefits, Savell was required to establish that his condition became disabling before the expiration of his insured status. 42 U.S.C. § 423(a) & (c); **Ivy v. Sullivan**, 898 F.2d 1045, 1048 (5th Cir. 1990). Savell's insured status expired in July 1986.

of nonexertional impairment). Accordingly, the ALJ properly relied on the Medical-Vocational Guidelines.³

III.

For the foregoing reasons, the judgment is

AFFIRMED.

³ Savell also contends that the ALJ erred in asking the vocational expert a hypothetical question that assumed Savell could do light work. Savell states no basis for this error and we find none. Savell was represented at the hearing and his attorney made no effort to cross examine the expert.