IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60864

RACHEL B. WATKINS,

Plaintiff-Appellant,

versus

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
Donna E. Shalala, M.D., Secretary,

Defendant-Appellee.

Appeal from the United States District Court
For the Southern District of Mississippi
(4:94-CV-23-LN)

(September 29, 1995)

Before REAVLEY, JOLLY, AND WIENER, Circuit Judges:

PER CURIAM*:

Plaintiff-Appellant Rachel B. Watkins appeals the district court's judgment affirming the decision of the Secretary of Health and Human Resources (Secretary) that she is not "disabled" as a

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

matter of law. The question before us is whether the medical-vocational guidelines of 20 C.F.R. pt. 404, subpt. P, app. 2, §§ 200.00-204.00 (Guidelines) were a proper foundation for the Secretary's decision. Concluding that different factual findings in the case dictate independent and inconsistent responses to that question, we reverse and remand.

I

FACTS AND PROCEEDINGS

Watkins, who has a sixth grade education, drove a Nashoba County school bus for eleven years before quitting in the spring of 1991, when she allegedly began experiencing psychological disorders. In November 1991, she filed applications for Social Security disability insurance benefits and supplemental security income (SSI) benefits. Her applications were denied both initially and on reconsideration.

Watkins then requested and received a hearing before an Administrative Law Judge (ALJ). The ALJ found that she was not entitled to benefits, even though she suffered from "severe impairments," including possible minimal mechanical lower back problems, dysthymia (a form of chronic depression), dependent personality and generalized anxiety, and even though she could no longer drive a school bus. The ALJ concluded that Watkins could perform a limited range of "medium work," as defined by Social Security Administration (SSA) regulations.[1] Significant to our

[1]See 20 C.F.R. § 404.1567(c) (1995) (defining "medium work" as "lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds").

analysis here, the ALJ relied on the Guidelines in making the determination that Watkins was not disabled.

The Appeals Council denied review of the ALJ's ruling, making it the final decision of the Secretary. Watkins then requested judicial review. A United States magistrate judge recommended affirming the Secretary's decision; and the district court adopted the magistrate's report and recommendation, dismissing Watkins's case with prejudice. Watkins timely appealed.

II

ANALYSIS

Our role in reviewing disability determinations is limited to ensuring that proper legal standards were followed and that substantial evidence exists in the record to support the Secretary's factual findings.[2] Substantial evidence "'must be more than a scintilla but it need not be a preponderance . . . .'"[3] We may not reweigh the evidence; the Secretary must resolve any evidentiary conflicts.[4]

The legal framework for examining applications for disability benefits is well established:

> In evaluating a disability claim, the Secretary must determine sequentially whether: (1) claimant is not presently working; (2) claimant's ability to work is

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[2]See Scott v. Shalala, 30 F.3d 33, 34 (5th Cir. 1994); Johnson v. Bowen, 864 F.2d 340, 343 (5th Cir. 1988); Fraga v. Bowen, 810 F.2d 1296, 1302 (5th Cir. 1987).

[3]Anderson v. Sullivan, 887 F.2d 630, 633 (5th Cir. 1989) (quoting Fraga, 810 F.2d at 1302).

[4]See Selders v. Sullivan, 914 F.2d 614 (5th Cir. 1990); Anderson, 887 F.2d at 633.

> significantly limited by a physical or mental impairment; (3) claimant's impairment meets or equals an impairment listed in the appendix of the regulations; (4) [the] impairment prevents claimant from doing past relevant work; and (5) claimant cannot presently perform relevant work.[5]

The burden of proof on each of these issues rests with the claimant until the fifth step of the evaluation. Once the claimant establishes that she cannot function in her previous line of employment, the burden shifts to the Secretary to show that work exists which the claimant can perform.[6]

The Guidelines allow the Secretary to take administrative notice of employment available to claimant.[7] We have repeatedly held, however, that the Secretary may rely on the Guidelines only if the evidentiary underpinnings of the Guidelines match the record findings exactly.[8]

Thus, when the claimant is found capable of performing less than the full range of activity encompassed in the various categories of work set forth in the Guidelines,[9] application of the

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[5]Scott, 30 F.3d at 34 n.1 (citing 20 C.F.R. § 404.1520(b)-(f)); see also Anderson, 887 F.2d at 632.

[6]See Anderson, 887 F.2d at 632; see also Fields v. Bowen, 805 F.2d 1168, 1169-70 (5th Cir. 1986).

[7]Fields, 805 F.2d at 1170.

[8]See, e.g., Scott, 33 F.3d at 34; Lawler v. Heckler, 761 F.2d 195, 197 (5th Cir. 1985); Dellolio v. Heckler, 705 F.2d 123, 127 (5th Cir. 1983); Thomas v. Schweiker, 666 F.2d 999, 1004 (5th Cir. 1982); see also Anderson, 887 F.2d at 634.

[9]See 20 C.F.R. § 404.1567(c) (1995) (defining "sedentary work," "light work," "medium work," "heavy work," and "very heavy work").

Guidelines is inappropriate.[10] More specifically, when a claimant's capabilities are limited by a nonexertional impairment such as a mental disability or an incompatibility with particular environments, exclusive reliance on the Guidelines is improper.[11] The ALJ must instead clearly base a finding of no disability on expert vocational testimony or other similar evidence.[12] By contrast, when nonexertional impairments do not significantly affect a claimant's residual functioning capacity, exclusive reliance on the Guidelines is proper.[13]

In the present case, the ALJ made separate findings that lead to independent and inconsistent conclusions regarding the validity of his reliance on the Guidelines. On the one hand, the ALJ found that Watkins suffers from mental disorders and that her capacity for the full range of medium work is reduced by a low tolerance for noise and crowds. Substantial evidence supports this finding: The record indicates that at least one psychiatrist who examined

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[10]See Scott, 33 F.3d at 34-35 (holding that the ALJ erred in using the guidelines after finding that the claimant could perform only a limited range of "sedentary work" as defined by SSA regulations); Lawler, 761 F.2d at 197-98 (reversing for use of guidelines after determination that claimant was incapable of full range of "light work" or "sedentary work"); Thomas, 666 F.2d at 1003-04 (concluding that guidelines should not have been used when claimant could perform "sedentary work" only in environment free of dust, heat and fumes).

[11]See Scott, 30 F.3d at 35; Fields, 805 F.2d at 1170; Dellolio, 705 F.2d at 127; Thomas, 666 F.2d at 1004.

[12]See Scott, 30 F.3d at 35; Fraga, 810 F.2d at 1304; Fields, 805 F.2d at 1170.

[13]See Selders, 914 F.2d at 618; Dominick v. Bowen, 861 F.2d 1330, 1333 (5th Cir. 1988); Fraga, 810 F.2d at 1304.

Watkins concluded that she suffered from the disorders listed by the ALJ and that these disorders resulted in severe functional limitations.

These findings taken alone would lead us to the conclusion that the ALJ erred in relying on the Guidelines rather than expert vocational testimony, as psychological disabilities and environmental limitations are precisely the kind of impairments not considered by the Guidelines.[14] Although a vocational expert was called to testify, the ALJ's decision made only passing reference to the expert's testimony. We have recently held that such minimal attention is insufficient to allow us to conclude that the ALJ properly considered expert vocational testimony.[15]

On the other hand, the ALJ found that Watkins's nonexertional impairments did not significantly compromise her capacity for the full range of medium work. Substantial evidence also supports this finding, as one of the three psychiatrists on record suspected Watkins of exaggerating her symptoms for secondary gain. As we have upheld exclusive reliance on the Guidelines when non-exertional impairments do not significantly affect residual

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[14]See Dellolio, 705 F.2d at 127-28 (holding that if claimant's access to the full range of "light work" is limited a low tolerance for dust or fumes, then reliance on the guidelines is improper); 20 C.F.R. pt. 404, subpt. P, app.2, § 200.00(e) (1995).

[15]Scott, 30 F.3d at 35, 35 n.3 (concluding that a passing reference to vocational expert testimony did not constitute proper consideration of that testimony).

functional capacity,[16] this finding taken alone would lead us to affirm the Secretary's decision.

Quite simply, when an ALJ has relied on the Guidelines to determine the availability of employment for a claimant, environmental limitations and psychological disorders found to restrict a claimant's capacity for the full range of work are significant. In the past, we have affirmed findings of no significant effect on residual functioning capacity after determining that the ALJ had properly found claimants capable of the full range of relevant work.[17] Here, though, the Secretary asks us to affirm findings both (1) that Watkins is incapable of the full range of medium work -- a finding which quintessentially precludes reliance on the Guidelines -- and (2) that Watkins's capacity for work has not been significantly affected -- a finding that typically allows reliance on the Guidelines. Given such fundamentally inconsistent results, we cannot let the Secretary's decision stand. Accordingly, we reverse the judgment of the district court affirming the ALJ's decision and remand for proceedings consistent with this opinion.

REVERSED and REMANDED.

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[16]See Selders, 914 F.2d at 618; Dominick, 861 F.2d at 1333; Fraga, 810 F.2d at 1304.

[17]See Selders, 914 F.2d at 618-19 (affirming finding that claimant was capable of the full range of light work); Dominick, 861 F.2d at 1332-33 (upholding ALJ conclusion that no nonexertional impairments limited claimant's capacity for the full range of light work); Fraga, 810 F.2d at 1304 (noting that the only medical limitations established by claimant were activities that fell outside the full range of light work).