

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 96-60624

PATRICK A. BOYLE,

Petitioner,

VERSUS

CONTINENTAL GRAIN COMPANY, ET AL.,

Respondents.

Petition for Review of Final Order
of Benefits Review Board
(94-2641)

May 7, 1997

Before DAVIS, EMILIO GARZA and STEWART, Circuit Judges.

PER CURIAM:*

In this appeal from an order of the Benefits Review Board, the employee challenges the ALJ's finding (which was affirmed without decision by the Benefits Review Board) that suitable alternate employment was available to the employee. The ALJ found that the employer had demonstrated that several jobs were available to Mr. Boyle which he was capable of performing that would allow him to earn more than he was earning at his 29-hour per week job with

*Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

Hobby Hut. One of these jobs was in newspaper sales in the New Orleans area. It paid \$7.10 an hour for a 29-hour week and would yield Mr. Boyle \$205.90 per week.

Mr. Boyle argues that the ALJ erred in concluding that he would receive \$205.90 per week from the newspaper job because this job required him to use his personal automobile and the ALJ's computation did not consider automobile expenses. However, the employee did not present evidence that automobile expenses are not reimbursed. The only evidence on this point was from the rehabilitation counselor who testified that she assumed these expenses were reimbursed but had made no specific investigation of this point. We are persuaded that the ALJ was entitled to infer from this expert's testimony that ordinarily, in employment of this type, the employer reimburses the employee's automobile expenses. So regardless of which party had the burden of proof on this issue, substantial evidence supported the ALJ's finding.

AFFIRMED.