

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 97-60631  
Summary Calendar

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HARRY NELSON,

Plaintiff-Appellant,

VERSUS

KENNETH S. APFEL, COMMISSIONER OF SOCIAL SECURITY,

Defendant-Appellee.

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

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May 13, 1998

Before DUHÉ, DeMOSS and DENNIS, Circuit Judges.

PER CURIAM:<sup>1</sup>

Harry Nelson appeals the district court's judgment affirming the Commissioner of Social Security's decision to terminate Nelson's disability benefits. Nelson contends that the Administrative Law Judge ("ALJ") violated the rule in Stone v. Heckler, 752 F.2d 1099 (5th Cir. 1985). The ALJ, however, implicitly found Nelson's impairment to be severe when he considered steps seven and eight in the sequential analysis.

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<sup>1</sup>Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Reyes v. Sullivan, 915 F.2d 151, 153-54 (5th Cir. 1991); see also, Griego v. Sullivan, 940 F.2d 942, 944 n.1 (5th Cir. 1991) (setting out the sequential analysis). Thus, the ALJ did not violate Stone's rule.

Nelson also argues that the ALJ did not properly consider either his own testimony or the vocational expert's. Had the ALJ done so, he would have found Nelson to be permanently and totally disabled. The record, however, contains substantial evidence supporting the ALJ's findings. See Richardson v. Perales, 402 U.S. 389, 390 (1971).

Nelson's final contention is that the ALJ failed to develop a full and fair record. This issue, however, has not been exhausted because Nelson did not present it to the Appeals Council. Thus, we have no jurisdiction over this issue. See Paul v. Shalala, 29 F.3d 208, 210 (5th Cir. 1994).

AFFIRMED.