

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-50211  
Summary Calendar

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FREDERICO FIERRO,

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 Western District of Texas  
USDC No. A-94-CV-822

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November 3, 1998

Before JOLLY, SMITH, and WIENER, Circuit Judges.

PER CURIAM:\*

Frederico Fierro appeals the affirmance of the Commissioner's decision denying him social security disability and supplemental income benefits.

Fierro argues that the administrative law judge ("ALJ") failed to consider nonexertional impairments, namely, hearing loss, depression, and a history of somatization, as well as the exertional limitation to Fierro's right elbow. Because Fierro failed to raise this argument before the Appeals Council, and thus

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\*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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

failed to exhaust his administrative remedies, we have no jurisdiction to consider the matter. See Paul v. Shalala, 29 F.3d 208, 210 (5th Cir. 1994).

Fierro challenges the ALJ's consideration of his complaints of chronic pain. Our review of the record reveals that the ALJ applied the correct legal standard by utilizing the correct analysis and that the determination concerning Fierro's subjective complaints of pain is supported by substantial evidence. See Falco v. Shalala, 27 F.3d 160, 163 (5th Cir. 1994); Wren v. Sullivan, 925 F.2d 123, 128 (5th Cir. 1991); Anderson v. Sullivan, 887 F.2d 630, 633-34 (5th Cir. 1989).

Fierro also argues that the report by Dr. Charles Parker should have been considered as new evidence. We find no error by the district court in refusing to remand the case to the Commissioner. See Haywood v. Sullivan, 888 F.2d 1463, 1471-72 (5th Cir. 1989).

A F F I R M E D.