

IN THE UNITED STATES OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3020
Summary Calendar

ROSEMARY WELLS,

Plaintiff-Appellant,

versus

DONNA E. SHALALA, Secretary,
Department of Health & Human Services,

Defendant-Appellee.

Appeal from the United States District Court for the
Middle District of Louisiana
(CA 92 206 B M2)

(August 18, 1993)

Before JOLLY, SMITH, and WIENER, Circuit Judges.

PER CURIAM:*

Rose M. Wells is a former nurse's aide and cashier. In 1988, she injured her back and later she injured her knee. Wells filed for disability benefits under the Social Security Act, but the Secretary of Health and Human Services denied her benefits. The Secretary determined that Wells was not disabled because she could still work as a cashier. The district court affirmed the

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

Secretary's decision, and Wells brought the appeal now before us. Finding that the Secretary and the district court did not err, we affirm.

I

Rose M. Wells is a woman in her mid 40's. She has a tenth grade education, and has worked as a nurse's aide. Before becoming a nurse's aide, Wells worked in a convenience store, first as a cashier and then as an assistant manager and a manager.

In August of 1988, Wells fell on her right hip while at work and injured her back. Four months later, Wells finally visited Dr. Proctor, a neurologist. Dr. Proctor thought that Wells was exaggerating her injuries, but he scheduled further tests. Later Wells injured her knee, and Dr. Proctor referred her to Dr. Loupe, an orthopedic surgeon. Dr. Loupe performed arthroscopic surgery on Wells's knee, and it recovered well. In fact, in March of 1989, the pain in Wells's knee had almost completely disappeared.

On Dr. Proctor's advice, Wells began a work hardening program. The staff where the program was administered noted that Wells exaggerated her pain and did not have an interest in returning to work. Moreover, Wells did not regularly attend the program as her doctor had advised. At her request, Dr. Loupe continued to treat Wells's back problems. In May of 1989, Dr. Loupe released Wells to return to work. Dr. Loupe briefly hospitalized Wells in June of 1989, but he returned her to work hardening a few months later. In

October, Dr. Loupe concluded that Wells was partially disabled, but he did not determine the length or the severity of the disability.

II

In November of 1989, Wells filed applications for disability benefits under titles II and XVI of the Social Security Act. Wells alleged that she had been disabled since August of 1988.

The state agency had Dr. John Humphries, an orthopedic surgeon, examine Wells in January of 1990. Dr. Humphries found tenderness and some limitation of motion in Wells's lumbar spine, but he found no signs of muscle spasms and determined that her neurological signs were normal. Wells's knee was stable and had a full range of motion. Dr. Humphries concluded that Wells could sit without restriction, but that Wells's leg and back injuries might limit her ability to lift heavy objects and to stand for prolonged periods of time. The state agency also had Wells visit Dr. Douglas Davidson, a general practitioner. Dr. Davidson found that Wells had good movement and no instability in her right knee. Dr. Davidson concluded that Wells could sit without restriction, stand three to five hours a day, and lift up to fifty pounds. He also found that Wells could climb, twist, bend, squat, and kneel several hours a day.

The Social Security Administration ("SSA") denied Wells's applications for disability benefits. On reconsideration, the SSA affirmed its decision, and Wells requested a hearing before an Administrative Law Judge ("ALJ"). The ALJ held a hearing on

October 9, 1990. At the hearing, Wells stated that she had severe, constant pain in her lower back, buttocks, and legs. She also stated that she could lift only about ten pounds. Wells indicated, however, that she cooked meals, did housework, drove, and attended church.

The ALJ, in an opinion dated November 28, 1990, found that Wells was not disabled and denied her benefits. The ALJ found that Wells's testimony was not credible because her medical condition should not produce such prolonged pain. The ALJ also noted that some of Wells's treating doctors believed that she exaggerated her condition. The ALJ concluded that Wells could perform light work. Importantly, the ALJ concluded that Wells could return to her past work as a cashier. Later, the Appeals Council of the Department of Health and Human Services denied Wells's request for review of the ALJ's decision. Thus, the ALJ's decision became the final decision of the Secretary of the Department of Health and Human Services (the "Secretary").

In March of 1992, Wells filed a complaint in district court for judicial review of the ALJ's decision. About six months later, the magistrate judge recommended that the district court affirm the ALJ's decision. Wells objected to the magistrate judge's report. Nevertheless, on December 31, 1992, the district court adopted the magistrate judge's recommendation and entered judgment in favor of the Secretary. Wells filed a timely notice of appeal, and brought this appeal.

III

Wells contends that the ALJ erred in several respects when he denied her benefits. Pursuant to 42 U.S.C. § 405(g), we limit our review of the Secretary's decision to deny a claimant disability benefits "to two issues: 1) whether the Secretary applied the proper legal standards, and 2) whether the Secretary's decision is supported by substantial evidence on the record as a whole." Anthony v. Sullivan, 954 F.2d 289, 292 (5th Cir. 1992) (citing Wingo v. Bowen, 852 F.2d 827, 829 (5th Cir. 1988)). We may not reweigh the evidence or substitute our judgment for that of the factfinder. Jones v. Heckler, 702 F.2d 616, 620 (5th Cir. 1983).

Although Wells may suffer from some pain and discomfort, she is not entitled to benefits unless she is disabled within the meaning of the Social Security Act, 42 U.S.C. § 423(d)(1)(A). Cook v. Heckler, 750 F.2d 391, 393 (5th Cir. 1985). The Social Security Act defines "disability" as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." 42 U.S.C. § 423(d)(1)(A); see also 42 U.S.C. § 416(i)(1); Cook, 750 F.2d at 393. As the claimant, Wells bears the burden of showing that she is disabled under this definition. Cook, 750 F.2d at 393.

The Secretary has promulgated a five-step sequential process to determine whether a claimant is disabled under the above

definition. The Secretary first determines whether the claimant is employed at a substantially gainful activity. If the claimant is so employed, the Secretary will not consider the claimant to be disabled. 20 C.F.R. §§ 404.1520(b), 416.920(b). Second, the Secretary determines whether the individual has a "severe impairment." If the claimant is not severely impaired, the Secretary will not consider the claimant to be disabled. 20 C.F.R. §§ 404.1520(c), 416.920(c). Third, the Secretary will consider whether the claimant's condition meets or equals an impairment listed in Appendix one. The Secretary will consider a claimant to be disabled if his condition meets or equals any of the impairments in the Appendix. 20 C.F.R. §§ 404.1520(d), 416.920(d).

The Secretary moves to the fourth step only if he cannot make a decision based on the claimant's work activity and medical condition alone. In the fourth step, the Secretary determines whether the claimant can perform the work he has done in the past. If the claimant can perform this work, the Secretary will not consider the claimant to be disabled. 20 C.F.R. §§ 404.1520(e), 416.920(e). Finally, if the claimant cannot perform his past work, the Secretary will evaluate the claimant's age, education, work experience, and other abilities to determine whether the claimant can do other work. If the claimant cannot do any other work, the Secretary will find the claimant to be disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f). The Secretary can find the claimant disabled or not disabled at any point in this inquiry and that

finding is conclusive and terminates the analysis. Villa v. Sullivan, 895 F.2d 1019, 1022 (5th Cir. 1990); Lovelace v. Bowen, 813 F.2d 55, 58 (5th Cir. 1987).

The ALJ followed this five-step process. The ALJ found that Wells had not worked since she injured her back in August of 1988. The ALJ found that Wells's injury severely impaired her, but that the impairment did not satisfy the conditions listed in Appendix one, as required by step three. The ALJ then moved to step four where he determined that Wells was not disabled because she could work as a cashier, as she had in the past. This determination ended the ALJ's analysis.

A

Wells first contends that the ALJ erred at step three when he determined that Wells does not have an impairment that meets or equals an impairment listed in Appendix one. Relying on some of Dr. Loupe's records, Wells argues that her condition is equivalent to the following impairment listed in section 1.05(c) of the appendix:

- 1.05 Disorders of the spine: . . .
- C. Other vertebrogenic disorders (e.g. herniated nucleus pupous, spinal stenosis) with the following persisting for at least three months despite proscribed therapy and expected to last twelve months. With both one and two:
 - 1. Pain, muscle spasm, and significant limitation of motion in the spine; and
 - 2. Appropriate radicular distribution of significant motor loss with muscle weakness and sensory and reflex loss.

20 C.F.R. § 404, subpart P, App. 1, 105(c).

Significant evidence in the record supports the ALJ's conclusion that Wells does not have the above impairment. After Dr. Loupe successfully performed arthroscopic surgery on Wells's knee, an x-ray of her lumbar spine showed no bone abnormalities, a normal alignment, and only mild spasms. Wells denied having any radicular pain in her lower extremities. On May 22, 1989, Dr. Loupe noted that Wells's condition had improved considerably and that her sensory and motor abilities appeared normal. Dr. Humphries found that Wells did not have a herniated disc and that she could sit without restriction. Similarly, Dr. Davidson found that Wells could stand and walk for three to five hours a day, and that she could carry up to fifty pounds. He also found that Wells could climb, twist, bend, squat, and kneel several hours a day. This evidence supports the ALJ's decision that Wells did not have an impairment equivalent to the impairment listed section 1.05(c) of the appendix.

B

Wells also contends that the ALJ erred when he found that she did not suffer from a closed period of disability that lasted at least twelve months. Wells argues, without citing any part of the record, that the combination of her back and knee injury rendered her disabled for over two years. The ALJ, however, found that Wells's back and knee problems did not render Wells continuously impaired for a twelve-month period. Once again, Wells's medical records amply support this determination. Wells did not seek

treatment until December 7, 1988, about four months after she injured herself in the fall. Several of her doctors and therapists believed Wells exaggerated her condition. Both Dr. Proctor and Dr. Loupe placed Wells in a work hardening program, indicating that she was not disabled. Finally, both Dr. Humphries and Dr. Davidson's records indicate that Wells was not disabled.

C

Wells next contends that the ALJ failed to evaluate properly the combined effect of her back and knee injuries. In the following regulation, the Secretary provides that the combined effect of concurrent injuries may render an individual impaired within the meaning of the Social Security Act:

(b) Concurrent impairments. If you have two or more concurrent impairments which, when considered in combination, are severe, we must also determine whether the combined effect of your impairments can be expected to continue to be severe for twelve months. If one or more of your impairments improves or is expected to improve within twelve months, so that the combined effect of your remaining impairments is no longer severe, we will find that you do not meet the twelve month duration test.

20 C.F.R. § 404.1522(b).

The ALJ correctly found that the combined effect of Wells's back and knee injuries did not render her disabled. All of the evidence in the record indicates that Wells's knee healed well and did not significantly impair her after she underwent arthroscopic surgery in February of 1989. Dr. Loupe found that the knee healed well. Moreover, both Dr. Humphries and Dr. Davidson found that

Wells's knee had a full range of motion and was stable. Thus, the ALJ did err when he evaluated the combined effects of Wells's knee and back injuries.

D

Finally, Wells contends that the ALJ improperly rejected her subjective complaints of pain. Wells is incorrect. The ALJ rejected Wells's subjective complaints because he did not find her testimony credible. Because the ALJ's evaluation of Wells's credibility is entitled to deference, we must accept the ALJ's determination if it is supported by substantial evidence. Villa, 895 F.2d at 1024. Substantial evidence clearly supports the ALJ's finding that Wells's testimony was not credible. Dr. Proctor, for instance, believed that Wells exaggerated her symptoms, and he could not explain her complaints even after he detected her injured disc. The staff at her work hardening program believed that Wells exaggerated her pain. In addition, the physical therapist that Dr. Loupe sent Wells to concluded that Wells engaged in self-limiting behavior. Furthermore, Wells's complaints were not consistent with Dr. Humphries's and Dr. Davidson's findings.

IV

For all of the foregoing reasons, we AFFIRM the decision of the district court to deny Wells disability benefits.

A F F I R M E D.