UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-7790
Summary Calendar

MAE KAREN PAGE,

Plaintiff-Appellant,

versus

DONNA E. SHALALA, Secretary
of Health and Human Services,

Defendant-Appellee.

Appeal from the United States District Court
For the Southern District of Mississippi
(CA-4:92-94(L)(N))

(November 29, 1994)

Before POLITZ, Chief Judge, GARWOOD and PARKER, Circuit Judges.

POLITZ, Chief Judge:[*]

Mae Karen Page appeals the denial of social security benefits. Finding the administrative denial of benefits supported by substantial evidence and finding no error of law, we affirm.

Background

Page was employed as a stenographer, file clerk, and

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

secretarial yard clerk for the railroad when on March 31, 1988 she fell down a flight of stairs and injured her back. After two years of treatment, including back surgery, she applied for disability and supplemental security income benefits. She claimed an inability to sit or stand for extended periods and to negotiate stairs. She also claimed a lung impairment.

Denied benefits, she sought a hearing before an ALJ who found a severe impairment due to the back injury, mild and reversible lung disease caused by smoking, and no credible evidence to support Page's complaints of pain. The ALJ concluded that Page was not disabled to perform her past relevant work as a secretary and was not disabled within the intendment of the statute and regulations. The Appeals Council agreed with the ALJ, as did the magistrate judge and district judge. Page timely appealed.

Analysis

To qualify for disability benefits a claimant must demonstrate an inability to "engage in any substantial gainful activity" due to a medically determinable physical or mental impairment that can be expected to last for at least one year.[1] The Secretary has promulgated a five-step sequential evaluation process for determining a claimant's disability:

> (1) If the claimant is presently working, a finding of "not disabled" must be made; (2) if the claimant does not have a "severe impairment" or combination of impairments, she will not be found disabled; (3) if the claimant has an impairment that meets or equals an impairment listed in Appendix 1 of the Regulations, disability is presumed

[1] **Jones v. Heckler**, 702 F.2d 616, 620 (5th Cir. 1983); 42 U.S.C. § 423(d)(1)(A).

> and benefits are awarded; (4) if the claimant is capable of performing past relevant work, a finding of "not disabled" must be made; and (5) if the claimant's impairment prevents her from doing any other substantial gainful activity, taking into consideration her age, education, past work experience and residual functional capacity, she will be found disabled.[2]

The ALJ found that as Page's impairments were not listed in or equivalent to the impairments in Appendix 1 of the Regulations, and that her other complaints were not supported by credible evidence, she was not disabled. The ALJ found Page capable of performing her past relevant work as a secretary and receptionist.

Page first complains that the district court erred in requiring her to prove her disability by a higher standard than required. She insists that her burden was only "to prove her case above a scintilla and not by a preponderance of the evidence." Page's counsel misstates the law. In **Harper v. Sullivan**, an earlier case handled by the same counsel, we made clear that "The quoted phrase refers to the quantity of evidence required to support administrative findings of the ALJ, not to a claimant's burden of proof."[3] This claim is meritless and we caution counsel.

Page maintains that the ALJ erred in disregarding her subjective complaints of pain and physical ailments. Such complaints are to be duly weighed but do not take precedence over conflicting objective medical evidence.[4] Further, pain must be

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[2]**Anthony v. Sullivan**, 954 F.2d 289, 293 (5th Cir. 1992); 20 C.F.R. §§ 404.1520, 416.920.

[3]887 F.2d 92,96 (5th Cir. 1989).

[4]**Harper v. Sullivan**.

found to be disabling before benefits may be awarded.[5]

Page's complaints of ringing in the ears due to being struck by lightning and of pain and numbness in her hands because of ganglion cysts are not supported by the record. The complaint of lung impairment is likewise not supported. Her respiratory maladies have been successfully treated and the remaining mild bronchitis is characterized as minor and smoking-related by the examining physicians.

Although Page has a back problem, the administrative finding that she is capable of performing secretarial duties is supported adequately by the record. All examining physicians concluded that she could sit, stand, or walk for six hours in an eight-hour workday, allowing for the performance of the exertional requirements of light or sedentary work.[6] The duties of her former job with the railroad required lifting of heavier loads and walking for longer periods than Page now may be comfortably able to do. But the job of a secretary, as typically performed in the national economy, does not require such exertion.[7] Comparing the record description of Page's abilities with the job data for general secretarial occupations as found in the Dictionary of Occupational Titles, the ALJ correctly found that Page was capable of performing this line of work. Page's challenge to the use of this book is

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[5]**Jones v. Heckler**.

[6]See 20 C.F.R. § 404.1567(a) and (b).

[7]See United States Department of Labor, Dictionary of Occupational Titles, Vol. I at 171 (4th ed. 1991).

without merit.[8]

The administrative determination that no compensable disability existed was legally correct and supported by substantial evidence,[9] and the district court's summary judgment in favor of the Secretary is AFFIRMED.

[8]**Villa v. Sullivan**, 895 F.2d 1019 (5th Cir. 1990).

[9]**Richardson v. Perales**, 402 U.S. 389 (1971).