IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-50543
(Summary Calendar)

MARIA F. HERRERA,

Plaintiff-Appellant,

versus

DONNA SHALALA, Secretary
of Health and Human Services,

Defendant-Appellee.

Appeal from United States District Court
for the Western District of Texas
(SA-93-CA-411)

(May 11, 1995)

Before DUHÉ, WIENER and STEWART, Circuit Judges.

PER CURIAM:[*]

Plaintiff, Maria F. Herrera, appeals the district court judgment which dismissed her claim for social security disability insurance benefits. Because there was substantial evidence to support the findings and conclusions made by the administrative law judge (ALJ), we affirm.

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 "Pursuant to that Rule, the Court has determined that this opinion should not be published.

FACTS

Maria F. Herrera, proceeding with counsel, applied for disability insurance benefits on September 17, 1991, alleging disability since December 15, 1989, due to neck injuries and burn injuries to her left hand. Her past relevant work experience is as a seamstress/presser for a clothing manufacturer.

The ALJ conducted a hearing on October 21, 1992, after which he determined that Herrera, although disabled from performing her past relevant work, could perform a full range of light work and thus was not disabled within the meaning of the Social Security Act. Herrera's request that the Appeals Council review the ALJ's decision was denied. Herrera filed suit in federal court. The matter was referred to a magistrate judge who recommended that the complaint be dismissed. Herrera filed objections which the district court overruled when it adopted the magistrate judge's report. Herrera appeals the district court judgment which dismissed her complaint.

LEGAL PRINCIPLES

This court reviews the denial of disability insurance benefits to determine whether the Secretary's decision is supported by substantial evidence in the record as a whole and whether the Secretary applied the proper legal standards. Anthony v. Sullivan, 954 F.2d 289, 292 (5th Cir. 1992); Johnson v. Bowen, 864 F.2d 340, 343 n.1 (5th Cir. 1988) (SSI and disability decisions undergo identical review). If substantial evidence supports such findings,

they are conclusive. 42 U.S.C. § 405(g); Richardson v. Perales, 402 U.S. 389, 390, 91 S.Ct. 1420, 28 L.Ed.2d 842 (1971).

The inquiry herein is whether there is substantial evidence to support the ALJ's determination of the following issue: whether the impairment prevents the claimant from doing any other substantial gainful activity. This issue is step five of the five-step sequential analysis conducted by the Secretary.[1]

Substantial evidence is "more than an scintilla, but less than preponderance"; it is "such relevant evidence as a reasonable mind might accept to support a conclusion." Johnson, 864 F.2d at 343. A finding of "no substantial evidence" is appropriate only when "there is a `conspicuous absence of credible choices' or `no contrary medical evidence.'" Id. at 343-44. This court need not reweigh the evidence or try the issues de novo, as conflicts in the evidence are for the Secretary and not for the courts to resolve. Selders v. Sullivan, 914 F.2d 614, 617 (5th Cir. 1990).

Herrera has the burden of proving that she is disabled within the meaning of the Act. Fraga v. Bowen, 810 F.2d 1296, 1301 (5th Cir. 1987). Disability is defined as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which . . . has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A). The suffering of some

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[1] For a discussion of the five-step sequential analysis which constitutes the proper legal standard to be applied by the Secretary, see Muse v. Sullivan, 925 F.2d 785, 789 (5th Cir. 1991) and Wren v. Sullivan, 925 F.2d 123, 125-26 (5th Cir. 1991).

impairment does not establish disability; a claimant is disabled only if she is incapable of engaging in any substantial activity. Anthony, 954 F.2d at 292-93.

DISCUSSION

Herrera argues that the proper legal standard was not applied because substantial evidence supports her claim for benefits. The crux of her argument is that the ALJ should not have found credible either the testimony of medical expert Dr. Jones or the report of Dr. Fornos, but should have relied instead on other medical evidence in the record. Her argument is unavailing. The proper inquiry is whether substantial evidence supports the ALJ's decision, not whether substantial evidence supports her contentions. See Perales, 402 U.S. at 390.

None of the physicians who examined Herrera opined that she was totally disabled or that she was unable to do light or sedentary work. Even Dr. Westfield, who found that she had a 64 percent disability in her left arm, stopped short of saying that she was unable to engage in any type of employment. There was testimony that Herrera could perform both light and sedentary work despite her particular impairments, and that there were jobs available for a person with her education and physical impairments. The record shows that the ALJ's decision is supported by substantial evidence.

Herrera also contends that the ALJ failed to actively consider her subjective complaints of pain. She is mistaken. The ALJ specifically found that Herrera suffered pain, and concluded that

her allegations of disabling pain were credible, but "only to the degree that she would be limited to light work thereby. Her allegations to the contrary cannot be found credible." The ALJ correctly noted that the pertinent issue was not the existence of pain, but the degree of incapacity caused by Herrera's pain.

Herrera contends that the medical reports support her contention that her pain was debilitating. The reports, however, do not indicate that her pain was constant, unremitting, and wholly unresponsive to therapeutic treatment. *See and compare*, Wren v. Sullivan, 925 F.2d 123, 128 (5th Cir. 1991) (Pain constitutes a disabling condition under the Act only when it is "constant, unremitting, and wholly unresponsive to therapeutic treatment"). *See also*, Griego v. Sullivan, 940 F.2d 942, 945 (5th Cir. 1991) (It is within the discretion of the ALJ to discount a claimant's complaints of pain); and Harrell v. Bowen, 862 F.2d 471, 480 (5th Cir. 1988) ("The evaluation of a claimant's subjective symptoms is a task particularly within the provence of the ALJ who has had an opportunity to observe whether the person seems to be disabled" (citation omitted)). Dr. Westfield's report of August 23, 1991, indicates that Herrera "may have pain the rest of her life, [and] that it might be best to send her to a pain clinic." However, the medical evidence does not indicate that the pain was debilitating. We find no error in the district court judgment.

Herrera also contends that the ALJ failed to consider the cumulative impact of her multiple physical and mental impairments; she complains that the ALJ simply addressed each impairment

separately. Like the argument regarding Herrera's subjective pain, this argument is unavailing because the record indicates that the ALJ did consider this cumulative impact.

The ALJ specifically noted Herrera's history of burns, herniated cervical disc, and mild right carpal tunnel syndrome, and specifically found that the combination of her impairments was not disabling. The ALJ also took into account Herrera's complaints of pain but found that her allegations were somewhat exaggerated. Additionally, both Dr. Fornos and medical expert Dr. Jones, who considered the combined effect of Herrera's impairments, found that she could perform light or sedentary work.

Herrera also contends that the hypothetical posed to the vocational expert was improper because it did not take into account her complaints of pain or carpal tunnel syndrome. This contention is also unavailing. Hypotheticals posed by an ALJ to a vocational expert need only incorporate the disabilities that the ALJ recognizes. Bowling v. Shalala, 36 F.3d 431, 435 (5th Cir. 1994); Morris v. Bowen, 864 F.2d 333, 336 (5th Cir. 1988). If the ALJ's hypothetical does omit a recognized limitation "and the claimant or his representative is afforded the opportunity to correct deficiencies in the ALJ's question by mentioning or suggesting to the vocational expert any purported defects in the hypothetical questions (including additional disabilities not recognized by the ALJ's findings and disabilities recognized but omitted from the question)" there is no reversible error. Bowling, 36 F.3d at 436. Herrera's counsel was afforded such an opportunity. Thus, even

assuming, arguendo, that the ALJ's hypothetical was deficient in some regard, Herrera's attorney was afforded an opportunity to correct any perceived deficiencies and thus, there is no reversible error.

CONCLUSION

For the foregoing reasons, the judgment of the district court is AFFIRMED.