

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-30322

Summary Calendar

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BRENDA J. FRANKS,

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 Louisiana  
USDC No. 98-CV-682

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September 15, 2000

Before HIGGINBOTHAM, WIENER, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

Brenda J. Franks appeals the decision of the district court affirming the denial of social security disability benefits. Franks argues that the administrative law judge (ALJ) erred by disagreeing with - and ultimately disregarding - the testimony of the vocational expert (VE). The ALJ's decision to reject the VE's response to the second hypothetical was permissible because the response was

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5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

confined to evidentiary assumptions found to be unsupported by the evidence.<sup>1</sup> For the reasons articulated in the district court's opinion and magistrate judge's report, there was substantial evidence supporting the ALJ's evidentiary findings and conclusion that Mrs. Franks was not disabled. The decision of the district court is thus AFFIRMED.

AFFIRMED.

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<sup>1</sup> See Owens v. Heckler, 770 F.2d 1276, 1282 (5th Cir. 1985).