UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-4985
Summary Calendar

LEOLA J. MALONE,
SSN 435-90-0683,

Plaintiff-Appellant,

versus

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

Defendant-Appellee.

Appeal from the United States District Court for the
Western District of Louisiana
(91-CV-1886)

(August 19, 1994)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.*

GARWOOD, Circuit Judge:

Plaintiff-appellant Leola Malone (Malone) seeks judicial review of a final decision of the Secretary of Health and Human Services (the Secretary) denying her application for disability benefits under the Social Security Act, 42 U.S.C. § 401 *et seq*.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

(the Act). The district court granted summary judgment in favor of the Secretary, and we affirm.

Facts and Proceedings Below

Malone was hospitalized on November 4, 1986, for neck and shoulder injuries resulting from an auto accident. She was diagnosed with a "Grade I AC separation and acute cervical strain with no evidence of fractures and dislocations." After receiving anti-inflammatory medication and physical therapy, she was discharged on November 13, 1986. By then her pain had subsided, but she continued to suffer some soreness.

In September 1987, and again in March 1988, Malone filed applications for disability insurance benefits and supplemental security income due to lower-back pain, but both applications were denied. On November 11, 1988, she requested a hearing before an administrative law judge (ALJ), which occurred February 15, 1989. The ALJ's initial order denying benefits was remanded by the Appeals Council for further proceedings. Subsequently, the ALJ issued a second order finding that Malone was not disabled within the meaning of the Act. The Appeals Council declined to review the order, and Malone filed the present complaint in federal district court. On March 25, 1992, the magistrate judge recommended the Secretary's decision be affirmed. Overruling Malone's objections, the district court adopted the magistrate judge's report and granted the Secretary's motion for summary judgment. Malone brings this appeal.

Discussion

A social security claimant bears the burden of proving disability by establishing a physical or mental impairment. *Pierre v. Sullivan*, 884 F.2d 799, 802 (5th Cir. 1989). The Act defines "disability" 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 Secretary evaluates disability claims through a five step process:

> "(1) Is the claimant currently working? (2) Can the impairment be classified as severe? (3) Does the impairment meet or equal a listed impairment in Appendix One of the Secretary's regulations? (in which case, disability is automatic) (4) Can the claimant perform her previous relevant work? and (5) Is there other work available in the national economy that the claimant can perform?" *Kershaw v. Shalala*, 9 F.3d 11, 12-13 n.1 (5th Cir. 1993); 20 C.F.R. §§ 404.1520, 416.920 (1992).

A finding of disability or no disability at any step is conclusive and terminates the analysis. In the present case, the Secretary's evaluation proceeded to the fifth step, finding Malone was unable to return to her past relevant work as a laborer in a chicken processing plant, but that she was able to do certain sedentary jobs. Accordingly, the Secretary concluded Malone was not disabled, nor was she entitled to disability benefits or supplemental income.

This Court reviews the Secretary's decision to determine whether the Secretary applied the proper legal standard and whether the decision was supported by substantial evidence in the record as a whole. *Anthony v. Sullivan*, 954 F.2d 289, 292 (5th

Cir. 1992). This Court may not reweigh the evidence or substitute its own judgment for that of the Secretary, *Pierre*, 884 F.2d at 802, and all conflicts in the evidence are to be resolved by the Secretary, *Anthony*, 954 F.2d at 295.

I. Literacy

First, Malone challenges the Secretary's finding that she is literate. Malone relies on the determinations by Thomas E. Staats, Ph.D., and Richard H. Galloway, M.S.W., Ph.D., that she is functionally illiterate based on her results on standardized tests. The record as a whole, however, clearly supports the Secretary's implied finding concerning Malone's literacy. Malone admitted in her disability application that she had completed the tenth grade. She also testified at her hearing that she could read and write, that she did not have problems completing her schooling, and that she reads the morning newspaper.

II. Subjective Complaints of Pain

Malone next argues that the Secretary erred in discrediting her subjective complaints of pain, claiming that medical evidence supports her complaints.[1] She contends the ALJ misrepresented the evidence concerning her capabilities and did not assert specific reasons for rejecting testimony of her pain. Malone further asserts the Secretary failed to give proper weight to medical evidence provided by her treating physician, Dr. Fred S. Willis.

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[1] In a related claim, Malone also argues that the Secretary erred in finding that she is a malingerer. This assertion lacks merit, however, because the ALJ made no such finding. The ALJ merely acknowledged the findings of Dr. Donald Wolfe, M.D., that Malone "may well be a malingerer" and that there was clear evidence that she *exaggerated* her symptoms.

The testimony of Dr. Willis indicates that Malone should not stoop, lift, climb, kneel, crouch, or bend; that standing would worsen her condition; and that she is unable to perform work that requires prolonged sitting. In addition, Malone offers letters from two consulting doctors indicating that she probably has a herniated disc which may require surgery, and that she is unable to hold any gainful employment that would require lifting over twenty pounds or sitting more than thirty minutes at a time.

The ALJ was obliged to consider Malone's subjective complaints of pain. *See Carrier v. Sullivan*, 944 F.2d 243, 247 (5th Cir. 1991). The record reveals the ALJ did consider her claims and simply found them unconvincing. In discrediting Malone's complaints, the ALJ considered that although Malone claimed to be in severe pain every day, she did not take pain medication on a daily basis; that she acknowledged being able to lift ten pounds repetitively; and that she was able to cook, clean, do laundry, drive, and go shopping. The ALJ also relied on the findings of two medical professionals that found "clear evidence" that Malone exaggerated the physical symptoms of her injuries. Evaluating "a claimant's subjective symptoms is a task particularly within the province of the ALJ who has had an opportunity to observe whether the person seems to be disabled." *Harrell v. Bowen*, 862 F.2d 471, 480 (5th Cir. 1988) (quotation omitted). In this instance, the ALJ did not abuse his discretion in discounting Malone's complaints "based on the medical reports combined with her daily activities and her decision to forego certain medications." *Griego v. Sullivan*, 940 F.2d 942, 945 (5th Cir. 1991).

The ALJ's opinion specified that the diagnoses of the treating physicians were inconsistent with their own findings and not supported by the objective medical evidence. The ALJ relied on a June 1988 medical exam provided by an orthopedic surgeon, Dr. Edward L. Anglin, M.D., diagnosing Malone's problem as "lumbar strain" and recommending medication and physical therapy. An August 1987 medical report by Dr. Marion E. Milstead, M.D., bolstered this finding. Dr. Milstead found that Malone had a "normal exam" with no evidence of back spasm and that she had full range of motion in the lumbar spine. Likewise, Dr. Wolfe's medical report in October 1987 found no muscle spasm, no swelling, and no limitation of extension or lateral bending; and a radiological exam of her lumbar spine revealed no fractures, destructive lesions, gross malalignments, spondylolysis, or spondylolisthesis. Thus, the ALJ sufficiently articulated his reasons for discrediting Malone's complaints, and substantial evidence in the record supported these findings. Any conflicts in the medical evidence were for the ALJ, not the court, to resolve.

III. Vocational Evaluation

Finally, Malone challenges the vocational evaluation, claiming that the hypothetical situations presented to the vocational expert were not based on the actual facts in her case and did not accurately reflect her limitations.[2] This allegation is not

[2] As one facet of this claim, Malone objected to the hypothetical questions posed to the vocational expert because they did not include her illiteracy as a limiting disability. As stated above, however, the record supported the Secretary's implied finding that Malone was literate, and thus inclusion of this factor was not necessary.

supported by the record. To show the existence of possible employment, the Secretary can meet her burden by identifying jobs suited to the claimant's capabilities which were available. *Morris v. Bowen*, 864 F.2d 333, 335-36 (5th Cir. 1988). To do this, the ALJ properly relied on the medical evidence and Malone's own testimony regarding her abilities, as well as the testimony of a vocational rehabilitation expert, to determine the availability of jobs for someone in Malone's condition. The vocational expert testified that a significant number of jobs existed in the national economy for a person of Malone's age (forty), education (tenth grade), and past relevant work (unskilled laborer), who was limited to sedentary work activities. For instance, Malone was found to be capable of performing work as a sedentary assembly worker (325,000 jobs in the national economy), a surveillance system monitor (45,000 jobs), a ticket taker/usher (52,000 jobs), or a house sitter (11,000 jobs). The Secretary clearly applied the proper legal standards in considering this claim, and the record supported her decision. Other concerns, such as the relative weight of the evidence or the credibility of the testimony, are not for this Court to review.

Conclusion

Accordingly, the decision of the Secretary denying disability benefits is

AFFIRMED.