

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 95-30736
Summary Calendar

CLIFFORD LEO FOSTER,

Plaintiff-Appellant,

VERSUS

SHIRLEY S. CHATER, COMMISSIONER,
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Defendant-Appellee.

Appeal from the United States District Court
For the Western District of Louisiana
(94-CV-1609)

February 2, 1996

Before REAVLEY, JOLLY and BENAVIDES, Circuit Judges.

PER CURIAM:*

Clifford Leo Foster appeals the district court's judgment affirming the decision of the Commissioner and dismissing his suit with prejudice. Foster complains that the Commissioner erroneously offset his workmen's compensation payments, which arose from employment not covered by the social security tax, against his social security disability payments. The Commissioner reduced his

*Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

benefits to zero after concluding his workmen's compensation benefits were in excess of 80% of his average current earnings. See 42 U.S.C. § 424a(a)(5).¹

Our review of the record and the Report and Recommendation of the magistrate judge reveals no reversible error. We see nothing in § 424a which precludes the Commissioner from using workmen's compensation benefits arising from a non-covered source to offset social security disability payments. Therefore, the judgment of the district court is

AFFIRMED.

¹ The term "average current earnings" was given a technical definition for purposes of § 424a(a)(5) and is calculated based on pre-disability wages. The Commissioner determined Foster's highest years of earnings to be 1974 and 1970, with a total income of \$24,430. His average monthly wage was determined to be \$407, eighty percent of which is \$325.60. Foster does not complain that his average current earnings were improperly calculated.