

**UNITED STATES COURT OF APPEALS**  
**FOR THE FIFTH CIRCUIT**

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No. 96-11485  
Summary Calendar

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WILLIAM CUPPS,

Plaintiff-Appellant,

versus

JOHN J. CALLAHAN, Acting Commissioner  
of Social Security,

Defendant-Appellee.

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Appeal from the United States District Court  
For the Northern District of Texas  
(3:93-CV-1074-R)

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June 19, 1997

Before POLITZ, Chief Judge, JOLLY and BARKSDALE, Circuit Judges.

PER CURIAM:\*

William Cupps appeals an adverse summary judgment in favor of the Secretary of Health and Human Services denying his application for social security disability and supplemental income benefits. The clerk of court granted Cupps'

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\* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

unopposed motion to supplement the record with medical evidence that was not before the administrative law judge. We do not consider such evidence on appeal, except to determine whether the appeal should be remanded for consideration of that evidence. We conclude that the supplemental evidence is not material and would not have changed the outcome of the Commissioner's decision. We therefore do not consider the evidence in our review.<sup>1</sup>

After reviewing the record, the briefs, and the applicable law, we conclude that substantial evidence supports the Commissioner's decision.<sup>2</sup> Assuming without deciding error from the Commissioner's failure to complete a required evaluation form for mental impairments in conformity with regulations, we find that any such error resulted from petitioner's actions and was harmless.<sup>3</sup>

The judgment appealed is AFFIRMED.

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<sup>1</sup> 42 U.S.C. § 405(g).

<sup>2</sup> **Leggett v. Chater**, 67 F.3d 558 (5th Cir. 1995).

<sup>3</sup> **Mays v. Bowen**, 837 F.2d 1362 (5th Cir. 1988).