

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

EVELYN MAZZARO

vs.

OTIS R. BOWEN, Secretary of
Health and Human Services

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C.A. NO. 85-0579

MEMORANDUM AND ORDER

RONALD R. LAGUEUX, United States District Judge.

Plaintiff Evelyn Mazzaro brings this action under section 205(g) of the Social Security Act, 42 U.S.C. § 405(g) (1983), to review the final decision of the Secretary of Health and Human Services denying her Social Security disability benefits. The matter before this Court is whether the Secretary's decision is supported by substantial evidence on the record as a whole.

Plaintiff is a 63 year old woman who worked as a floorlady at a jewelry factory. On October 24, 1984 plaintiff filed for disability benefits. In her application, plaintiff claimed that she had been unable to work since October 13, 1983 because she injured her back while lifting a heavy tray of jewelry at work.

The Department of Health and Human Services determined that plaintiff was not disabled. The agency reconsidered plaintiff's application at her request and again determined that she was not disabled. At the next stage of the administrative review process, the Administrative Law Judge (ALJ) conducted a de novo hearing. After examining the record and hearing testimony from plaintiff and a medical advisor, the ALJ concluded that plaintiff failed to provide any objective medical evidence of an impairment that prevented her from performing basic work activities. Because of the absence of such objective evidence, the ALJ found plaintiff not disabled pursuant to section 404.1520(c) without considering plaintiff's age, education and work experience. (Tr. 12).

The Appeals Council approved the ALJ's decision on August 13, 1985 rendering it the final decision of the Secretary of Health and Human Services. (Tr. 3). Plaintiff then brought this action for review of the Secretary's decision. The matter was thereafter referred to the Magistrate for a recommendation. By his July 8, 1987, Report the Magistrate recommended that this Court affirm the

decision of the Secretary. After plaintiff objected to the Magistrate's recommendation, this Court held a hearing on September 11, 1987. This matter is now ready for decision.

The question for this Court is whether the Secretary's determination is supported by substantial evidence on the record as a whole. 42 U.S.C. 405(g) (1983); Richardson v. Perales, 402 U.S. 389, 401, 91 S.Ct. 1420, 1427, 28 L.Ed.2d 842 (1971); Falu v. Secretary of Health and Human Services, 703 F.2d 24, 28 (1st Cir. 1983). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Universal Camera v. NLRB, 340 U.S. 474, 477, 71 S.Ct. 456, 459, 95 L.Ed. 456 (1951).

In deciding whether the Secretary's decision is supported by substantial evidence, this Court is bound by the Social Security Administration's regulations determining disability. The Secretary has established a sequential evaluation process for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920 (1987). Step one determines whether the claimant is engaged in "substantial gainful activity." If he is, disability benefits are

denied. §§ 404.1520(b), 416.920(b). If he is not, the decisionmaker proceeds to step two, and determines whether the claimant has a medically severe impairment or combination of impairments. That determination is governed by the "severity regulation" at section 404.1520(c):

If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience.

The ability to do basic work activities is defined as "the abilities and aptitudes necessary to do most jobs." §§ 404.1521(b), 416.921(b). Such abilities and aptitudes include "[p]hysical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling"; "[c]apacities for seeing, hearing, and speaking"; "[u]nderstanding, carrying out, and remembering simple instructions"; "[u]se of judgment"; "[r]esponding appropriately to supervision, co-workers, and usual work situations"; and "[d]ealing with changes in a routine work setting." Id. If the claimant does not have a

severe impairment or combination of impairments, the disability claim is denied.

Both the Social Security Act and the regulations require that the Secretary consider objective medical evidence to determine whether a claimant suffers from an impairment that prevents her from performing basic work activities. In the absence of medical findings, the Secretary may not find a claimant disabled. Claimant's subjective complaints alone will not support a finding of disability. See 42 U.S.C. § 423(d)(5); 20 C.F.R. § 404.1529.

Following this regulatory scheme, the ALJ considered plaintiff's complaints of severe lower back and radiating leg pain, weakness, and functional incapacity. (Tr. 12). The ALJ also considered the medical findings of four doctors that had evaluated plaintiff. The ALJ found plaintiff's complaints to be "entirely unsupported by objective medical findings." (Tr. 12). The ALJ concluded that "based on the substantial evidence of record, it is clear that the claimant does not suffer from an impairment which significantly affected her ability to engage in basic

work-related activities." (Tr. 12). Consequently pursuant to the "severity regulation" at 28 C.F.R. § 404.1520(c), the ALJ found plaintiff not to be disabled without considering her age, education and work experience.

In seeking review of the Secretary's final decision, plaintiff claims that the ALJ's determination was (1) based on an invalid "severity regulation" and (2) not supported by substantial evidence.

In Bowen v. Yuckert, ___U.S.___, 107 S.Ct. 2287 (1983) the Supreme Court recently upheld the facial validity of the Secretary's severity regulation at 20 C.F.R. § 1520(c). In its decision, the Supreme Court reasoned that "both the language of the [Social Security] Act and its legislative history support the Secretary's decision to require disability claimants to make a threshold showing that their 'medically determinable' impairments are severe enough to satisfy the regulatory standards." Yuckert, at ___U.S. ___, 107 S.Ct. at 2293. In light of Bowen v. Yuckert, this Court must reject plaintiff's challenge to the severity regulation.

In his Report and Recommendation, the Magistrate recommended that this Court affirm the decision of the

Secretary in light of Yuckert. The Magistrate, however, did not explicitly discuss whether the Secretary's determination that plaintiff was not disabled was supported by substantial evidence.

After reviewing the record carefully, this Court finds that the Secretary's conclusions are supported by substantial evidence on the record as a whole. In reaching this decision, the Court has reviewed both the medical evidence and plaintiff's subjective complaints of pain and restriction.

Substantial evidence on the record supports the Secretary's conclusion that the medical evidence presented fails to establish a medically determinable impairment or combination of impairments that would significantly limit plaintiff's ability to perform basic work activities. Plaintiff's treating physician, Dr. Izzi, diagnosed low back sprain, but reported that there was no evidence of atrophy and no evidence of neurological or vascular deficit. (Tr. 85). Moreover, Dr. Golini reported that there was no definite motor or sensory abnormalities and that objective EMG studies failed to demonstrate a significant neurological

abnormality or etiology of plaintiff's pain. (Tr. 86). He also noted that plaintiff reported no complaints of radiating pain to the lower extremities. (Tr. 86).

Dr. Genovese also reported that there were no documentable findings that would suggest a significant neurological abnormality or etiology of plaintiff's pain. (Tr. 93). He did note that plaintiff complained of constant discomfort in the low back and buttocks. However, Dr. Genovese reported that plaintiff's "gait was normal without any limp" and that plaintiff "was able to walk satisfactorily on her heels and on her tip toes." He further reported that there was no definite evidence of muscular spasm or atrophy and no evidence of active radiculopathy or of neurological deficits. (Tr. 93).

Finally, Dr. Fuchs, the medical advisor testified at a hearing before the ALJ that none of these physicians were able objectively to find neurological deficits. (Tr. 30-31). The medical evidence prepared by the four doctors constitutes substantial evidence supporting the Secretary's determination that plaintiff has failed to establish a medically determinable impairment that would significantly limit her ability to perform basic work activities.

Plaintiff claims that Dr. Izzi's findings of muscle spasm constitutes an objective medical finding of an impairment. Dr. Izzi's findings, however, do not persuade this Court that the Secretary's decision was not supported by substantial evidence on the record as a whole. While Dr. Izzi reported muscle spasm in October and December of 1983, Dr. Genovese reported "no definite evidence of muscle spasm" in January of 1985. (Tr. 93). Notably, Dr. Izzi reported no evidence of neurological or vascular deficit, and Dr. Golini and Dr. Genovese reported no neurological abnormality or etiology of plaintiff's pain. Thus, the significance of Dr. Izzi's early findings of muscle spasm is highly questionable and does not disturb this Court's conclusion that the Secretary's finding was supported by substantial evidence.

The record does contain the plaintiff's subjective complaints of severe and disabling pain, weakness and marked functional incapacity. (Tr. 23-25). However, both the Social Security Act and the rules clearly provide that the Secretary will not find disability on the basis of plaintiff's subjective complaints alone. 42 U.S.C. § 423(d)(5) (1983); 20 C.F.R. § 404.1529. Section 404.1529 provides:

We will never find that you are disabled based on your symptoms, including pain, unless medical signs or findings show that there is a medical condition that could be reasonably expected to produce those symptoms.

Here, the ALJ found the plaintiff's complaints to be far out of proportion to the clinical findings. (Tr. 12). Indeed, the ALJ clearly did not believe plaintiff's allegations. The ALJ stated that the lack of objective medical findings to support her complaints and plaintiff's refusal to have a Ct Scan or undergo evaluation at a pain clinic raised "serious doubt about this claimant's credibility as to the severity of her alleged pain, discomfort and restrictions." (Tr. 12).

Even if the ALJ had believed plaintiff's subjective complaints, he still could have found plaintiff not to be disabled. The First Circuit has held that the Secretary need not consider subjective complaints of plaintiff, even if believed, to find a claimant disabled where there was no medical diagnosis of impairment that could have caused the pain. See Winn v. Heckler, 762 F.2d 180 (1st Cir. 1985).

In summary, the medical evidence of record fails to establish a medically determinable impairment or combination of impairments that would significantly limit plaintiff's ability to perform basic work activities. Thus, there is substantial evidence on the record as a whole to support the Secretary's finding that plaintiff is not disabled within the meaning of the Social Security Act. The decision of the Secretary is affirmed.

It is so Ordered.



Ronald R. Lagueux
United States District Judge

10/9/87
Date