

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Filed 7/29/96

EDDIE D. BUNTIN,

Plaintiff-Appellant,

v.

SHIRLEY S. CHATER, Commissioner
of Social Security Administration,*

Defendant-Appellee.

No. 95-6412
(D.C. No. CV-95-96)
(W.D. Okla.)

ORDER AND JUDGMENT**

Before ANDERSON, LOGAN, and MURPHY, Circuit Judges.

* Effective March 31, 1995, the functions of the Secretary of Health and Human Services in social security cases were transferred to the Commissioner of Social Security. P.L. No. 103-296. Pursuant to Fed. R. App. Proc. 43(c), Shirley S. Chater, Commissioner of Social Security, is substituted for Donna E. Shalala, Secretary of Health and Human Services, as the defendant in this action. Although we have substituted the Commissioner for the Secretary in the caption, in the text we continue to refer to the Secretary because she was the appropriate party at the time of the underlying decision.

** This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

After examining the briefs and appellate record, this panel has determined unanimously to grant the parties' request for a decision on the briefs without oral argument. See Fed. R. App. P. 34 (f) and 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Plaintiff appeals from the district court's order affirming the decision of the Secretary of Health and Human Services denying plaintiff's applications for disability insurance benefits and for supplemental security income. We exercise jurisdiction under 42 U.S.C. § 405(g) and 28 U.S.C. § 1291 and affirm.

Plaintiff alleges disability since April 29, 1992, due to back, head, neck, shoulder, and right hand problems, including pain. After conducting a hearing, the administrative law judge (ALJ) denied benefits at step two of the five-step sequential evaluation process, see 20 C.F.R. §§ 404.1520, 416.920, after determining plaintiff does not suffer from a severe impairment. When the Appeals Council denied plaintiff's request for review, the ALJ's decision became the final decision of the Secretary from which plaintiff sought judicial review. The district court affirmed the decision of the Secretary. This appeal followed.

“We review the Secretary's decision to determine whether it is supported by substantial evidence and whether the Secretary applied the correct legal standards.” Washington v. Shalala, 37 F.3d 1437, 1439 (10th Cir. 1994). Substantial evidence is “such relevant evidence as a reasonable mind might

accept as adequate to support a conclusion.’” Richardson v. Perales, 402 U.S. 389, 401 (1971)(quoting Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229 (1938)).

Plaintiff argues that substantial evidence does not support the ALJ’s finding that he does not have a severe impairment. Plaintiff maintains the ALJ did not appropriately evaluate plaintiff’s complaints of pain, did not properly assess plaintiff’s credibility, and substituted his own opinion for the medical findings. These issues were thoroughly addressed in the district court. For substantially the reasons stated by the district court in its order of September 19, 1995, and in the findings and recommendations of the magistrate judge of August 21, 1995, adopted in full by the district court, we affirm as to these issues.

Plaintiff also argues that the ALJ did not fully and fairly develop the record. Plaintiff, who was represented by counsel at the ALJ hearing and in the district court, did not raise this argument in the district court. See Plaintiff’s Opening Brief before the district court attached to his brief before this court. Because there are no compelling reasons to consider this newly raised argument, we decline to do so. See Crow v. Shalala, 40 F.3d 323, 324 (10th Cir. 1994).

The judgment of the United States District Court for the Western District of Oklahoma is AFFIRMED.

Entered for the Court

Stephen H. Anderson
Circuit Judge