

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FEB 19 1998

PATRICK FISHER
Clerk

TERESA Y. GURULE,

Plaintiff-Appellant,

v.

KENNETH S. APFEL, Commissioner,
Social Security Administration,*

Defendant-Appellee.

No. 97-5112
(D.C. No. 96-CV-157-W)
(N.D. Okla.)

ORDER AND JUDGMENT**

Before **BALDOCK**, **EBEL**, and **MURPHY**, Circuit Judges.

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

* Pursuant to Fed. R. App. P. 43(c), Kenneth S. Apfel is substituted for John J. Callahan, former Acting Commissioner of Social Security, as the defendant in this action.

** This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

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 the district court's decision upholding the Commissioner's denial of her application for disability benefits. Plaintiff asserted that she had been disabled, since August 3, 1992, because of headaches and pain in her left side, lower back and lower extremities. The administrative law judge (ALJ) determined, at step four of the applicable five-step analysis, see 20 C.F.R. § 404.1520, that plaintiff remained capable of performing her past relevant work in real estate sales and as a waitress. The Appeals Council denied review, making the ALJ's determination the Commissioner's final decision.

This court reviews the Commissioner's decision to determine only that he applied the law correctly and that the record contains substantial evidence to support the decision. See Bean v. Chater, 77 F.3d 1210, 1213 (10th Cir. 1995). At step four, the burden remains on plaintiff to establish that she cannot perform her past relevant work. See Thompson v. Sullivan, 987 F.2d 1482, 1487 (10th Cir. 1993).

On appeal, plaintiff challenges the ALJ's determination that plaintiff's complaints of disabling headaches were not credible. Credibility determinations are the province of the ALJ and we will afford those determinations considerable deference. See, e.g., James v. Chater, 96 F.3d 1341, 1342 (10th Cir. 1996).

Because the ALJ properly considered plaintiff's complaints of disabling headaches, see Luna v. Bowen, 834 F.2d 161, 163-66 (10th Cir. 1987), and because the record¹ contains substantial evidence supporting the ALJ's credibility determination, see Winfrey v. Chater, 92 F.3d 1017, 1020 (10th Cir. 1996), we affirm the denial of disability benefits.

The judgment of the United States District Court for the Northern District of Oklahoma is, therefore, AFFIRMED.

Entered for the Court

David M. Ebel
Circuit Judge

¹ Our review of the record includes evidence plaintiff presented for the first time to the Appeals Council. See O'Dell v. Shalala, 44 F.3d 855, 858, 859 (10th Cir. 1994).