

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit
SEP 13 1990

ROBERT L. HOECKER
Clerk

EARL PENN,
Plaintiff-Appellant,
v.
LOUIS W. SULLIVAN, M.D.,
Secretary of Health and
Human Services,
Defendant-Appellee.

No. 90-5070
(D.C. No. 89-C-323-B)
(N.D. Okla.)

ORDER AND JUDGMENT*

Before LOGAN, SEYMOUR, and TACHA, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

This appeal is from an order of the district court affirming a determination of the Secretary of Health and Human Services (Secretary) that plaintiff is not disabled and can perform other work in the national economy. Plaintiff alleges on appeal that the Secretary was required to call a vocational expert because of the existence of pain, a nonexertional impairment. We disagree.

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

The Secretary is only obligated to call a vocational expert if the plaintiff has shown a nonexertional impairment that precludes application of the grids. In this case, the Secretary found that Penn's subjective allegations of pain were not corroborated by the record. In particular, the Secretary relied on the fact that Penn had not sought treatment for over a year after the onset of the pain, none of Penn's treating physicians had mentioned pain as a disabling factor, Penn's continued heavy work for a period, his failure to sustain treatment for pain once sought, and his determination that Penn's credibility was suspect. The Secretary properly considered a broad range of evidence. See Luna v. Bowen, 834 F.2d 161, 165 (10th Cir. 1987). We cannot say that the Secretary's determination is unsupported by the record. See Gossett v. Bowen, 862 F.2d 802, 806-07 (10th Cir. 1988). Because the Secretary determined that Penn's pain did not constitute a nonexertional impairment, the Secretary was not obligated to call a vocational expert and could rely on the grids. After examining the record and considering the plaintiff's legal arguments, we find that the Secretary's decision is supported by substantial evidence in the record and that the proper legal standards were applied. We therefore **AFFIRM** the order of the district court. The mandate shall issue forthwith.

ENTERED FOR THE COURT

Deanell Reece Tacha
Circuit Judge