Rivera v. Secretary of Health and Human Services

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The claimant, Hector L. Rivera Perez, sought Social Security disability benefits because of a back condition and nervousness. The Secretary concluded that the claimant could not return to his past unskilled factory work, but could still perform light work or sedentary work. We have reviewed the entire record, which includes reports by numerous medical professionals, and the briefs on appeal and conclude, as did the district court, that substantial evidence supports the Secretary's decision that the claimant was not disabled at any time prior to the expiration of his insured status on December 31, 1987. We affirm essentially for the reasons stated by the district court, adding the following comments.

I

The claimant was 39 years old at the time of the last hearing in October 1988, and had a seventh grade education. The Administrative Law Judge (ALJ) considered all the record evidence and concluded that the claimant had a musculoskeletal condition (either a lumbosacral sprain, discogenic disease at L5-S1, or lumbar myositis), and a dysthymic disorder, which, along with associated pain, precluded the performance of his prior work, but permitted light exertion. The full range of light work was found to be reduced, however, by an inability to understand and carry out very complex job instructions, but, as this limitation did not significantly compromise claimant's capacity for the full range of such work, the claimant was found not disabled. In reaching the ultimate conclusion, the ALJ was guided by and applied grid rule 202.18 (light work capability, younger individual, education limited or less, and previous work experience skilled or semi-skilled, skills not transferable).[1] 20 C.F.R. pt.404, subpt. P, app. 2.

II

As an initial matter, there is some question on a fundamental issue: whether substantial evidence supported the Secretary's finding that the claimant is functionally capable of performing light work. The only residual functional capacity (RFC) assessment of record was provided by an agency non-examining physician after a review of all the medical evidence. That physician concluded that the claimant's back condition was "significant", but that, based upon clinical and laboratory findings, the claimant retained the strength to do light work. Pushing and pulling were limited to light weights, but, reaching, handling, and fingering, among other activities, were unlimited. The ALJ apparently relied upon this single assessment in deciding that the claimant could perform light work. However, the findings of two consulting neurologists who did examine the claimant (but provided no functional assessment) could reliably be used by the Secretary, along with the non-examiner's RFC

assessment, to make a "common sense judgment" that the claimant could do sedentary work. Gordils v. Secretary of Health & Human Services, 921 F.2d 327, 329 (1st Cir. 1990). These reports along with the non-examiner's RPC assessment provide substantial evidence to support the Secretary's finding that the claimant could perform sedentary work. Id.

The Secretary here, however, ultimately concluded that the claimant could perform light work, but expressly noted, as a subsidiary finding, that the "light work level of exertion . . . includes the ability to do sedentary work also." See 20 C.F.R. § 404.1567(b) ("If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or the inability to sit for long periods of time."). No limiting factors on the physical ability to do sedentary work are presented in this record. While it may well be true that the claimant can perform light work, the record does not provide substantial support for that conclusion, but does allow, in the circumstances presented here, the Secretary's express subsidiary finding that the claimant retained the ability to perform sedentary work, a sub-set of the light work universe. See Gordils v. Secretary of Health & Human Services, 921 F.2d at 329. Thus, while not invoked by the ALJ, grid rule 201.24 more accurately describes the claimant's vocational profile (sedentary work, younger individual, education limited, and prior work unskilled), except for his non-strength limitations of function, which are addressed below.

III

The appellant contends that a vocational expert was required because the combined severity of the claimant's mental condition and pain precluded sole reference to the grid. First, with respect to pain, the Secretary clearly has the discretionary power to make a credibility determination regarding the claimant's pain, Gray v. Heckler, 760 F.2d 369, 374 (1st Cir. 1985), provided adequate reasons for rejecting such a claim in whole or in part are placed upon the record and the result is otherwise rationally supported. Da Rosa v. Secretary of Health & Human Services, 803 F.2d 24, 26 (1st Cir. 1986). Here, the ALJ concluded that the complaints of severe pain were only credible to the extent that claimant could not perform more than light exertion. The ALJ's subsidiary findings reasoned that the objective medical evidence did not support the claimant's pain to the extent alleged, that no treatment was had after April 1987, and that the claimant had not been prescribed "strong" medication for his pain. Some of claimant's statements regarding pain made to consulting examiners were inconsistent with concomitant medical findings. "The credibility determination by the ALJ, who observed the claimant, evaluated his demeanor, and considered how that testimony fit in with the rest of the evidence, is entitled to deference, especially when supported by specific findings." Frustaglia v. Secretary of Health & Human Services, 829 F.2d 192, 195 (1st Cir. 1987). There was no error in this regard.

IV

Second, unskilled jobs at the sedentary level "can constitute [a] potential occupational base for

persons who can meet the mental demands of such work," i.e., the basic intellectual and emotional demands of the job on a sustained basis. Social Security Ruling (SSR) 85-15, at 95 (CE 1985); Ortiz v. Secretary of Health & Human Services, 890 F.2d 520, 526 (1st Cir. 1989). Only "a substantial loss of ability to respond appropriately to supervision, coworkers, and usual work situations" would severely limit the performance of unskilled work at any exertional level. SSR 85-15, at 95. Unskilled jobs primarily involve working with objects and machines, rather than people or data. It is work which requires little or no judgment in performing simple, routine, easily learned duties. 20 C.F.R. § 404.1568(a).

Mental RFC assessments completed by two non-examining doctors found the claimant to be not significantly restricted in the ability to understand, remember, and carry out simple instructions, or the ability to respond appropriately to usual work situations. Other activities such as the ability to make simple work-related decisions, to ask simple questions or request assistance, to maintain socially appropriate behavior, and to take normal precautions, were also found by both evaluators to be not significantly limited.

The ALJ decided that the claimant's dysthymic disorder was moderate[2], but that he seldom experienced deficiencies of concentration, pace or persistence resulting in uncompleted tasks. Detailed findings in the mental RFC assessments found no significant limitation in this regard with respect to short instructions and ordinary routines involving simple work-related decisions. Given a mental impairment that was "moderate in nature", as found by the ALJ, the functional assessments rendered indicated no more than a mild to moderate loss of function. See Sitar v. Schweiker, 671 F.2d 19, 21 (1st Cir. 1982) ("moderate depression does not necessarily mean moderate impairment"). While we consider this a close case, the record adequately supports the Secretary's conclusion that the overall basic mental demands of nonskilled work were not significantly compromised. Thus, the claimant's dysthemic condition did not preclude substantial compliance with the mental demands of unskilled sedentary work, Ortiz v. Secretary of Health & Human Services, 890 F.2d at 527, and reliance on the grid was proper. Perez-Torres v. Secretary of Health & Human Services, 890 at 1254-55.

V

In Ortiz we emphasized that reliance on the grid in the face of a significant nonexertional limitation (there a moderate mental impairment) was unusual, and that typically vocational testimony should be taken in such a situation. Ortiz v. Secretary of Health & Human Serices, 890 F.2d at 527-28. Short of such record evidence, the Secretary must, in a nonobvious case such as this, explain with particularity how the claimant is capable of meeting all of the basic mental demands of unskilled work, SSR 85-15; see also Lancellotta v. Secretary of Health & Human Services, 806 F.2d 284, 287 (1st Cir. 1986) (Campbell, J., concurring), and articulate, at least minimally, the reasons why the claimant's mental limitations as to those basic demands do not preclude application of the grid. We reiterate that while more specific findings regarding the claimant's remaining functional capacity are

ordinarily required in a case such as this, the findings actually made are sufficient as the basis for the denial of disability is clear on the record.

In sum, the Secretary adequately considered claimant's nonexertional limitations before deciding to apply the rules of the grid. The finding that claimant suffered from no nonexertional impairment serious enough to substantially limit the range of unskilled sedentary jobs available to him was supported by substantial evidence. Consequently, in the particular circumstances here, the ALJ properly relied on the medical-vocational guidelines to demonstrate the existence of substantial gainful work which the claimant could perform prior to the expiration of his insured status.

Affirmed.

1. The application of this rule does not, however, comport with the ALJ's supportable finding that the claimant's past relevant work was unskilled.

2. The records adequately support the conclusion that the claimant suffered from a dysthymic disorder that was moderate in nature. The ALJ also made these subsidiary findings: This [dysthymic disorder] is of moderate nature and although it might prevent the claimant from understanding and carrying out very complex job instructions, he still has the functional capacity to understand remember and carry out simple job instructions. He can also interact with supervisors and coworkers and can maintain concentration and attention.