

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-2477

GERALD SHEA,

Appellant

v.

*LARRY G. MASSANARI, ACTING
COMMISSIONER OF SOCIAL SECURITY

*(Pursuant to F.R.A. P. 43(c))

Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 00-cv-04485)
District Judge: Honorable Jan E. DuBois

Submitted Under Third Circuit LAR 34.1(a)
January 18, 2002

Before: ALITO and ROTH, Circuit Judges
SCHWARZER*, District Judge

(Opinion filed March 28, 2002)

* Honorable William W Schwarzer, Senior District Judge for the Northern District of California, sitting by designation.

OPINION

ROTH, Circuit Judge:

Appellant Gerald Shea brought an action in the United States District Court for the Eastern District of Pennsylvania, alleging that he was wrongfully denied Disability Insurance Benefits by the Commissioner of Social Security under 20 C.F.R. 404.1520. The District Court affirmed the decision of the Commissioner. Shea appeals, arguing that the Commissioner's decision to deny him Disability Insurance Benefits was not supported by substantial evidence. The parties are familiar with the underlying facts and history and we shall not repeat them here.

The District Court has jurisdiction pursuant to 42 U.S.C. 405(g). We have appellate jurisdiction pursuant to 28 U.S.C. 1291. Our review of the District Court Order is limited to determining whether the District Court properly found that there is substantial evidence to support the Commissioner's decision. See 42 U.S.C. 405(g) and

Plummer v. Apfel, 186 F. 3d 422, 427 (3d Cir. 1999). Substantial evidence has been defined as more than a mere scintilla but less than a preponderance. It means such relevant evidence as a reasonable mind might accept as adequate. Id. (citing Richardson v. Perales, 402 U.S. 389, 401 (1971)). We find that the Commissioner's decision was supported by substantial evidence.

In determining such a claim for Disability Insurance Benefits, the Commissioner follows a five-step analysis. See 20 C.F.R. 404.1520. In following the five-step analysis, the Commissioner considers: (1) whether the claimant is engaging in substantial gainful activity; (2) whether the claimant is suffering from a severe impairment; (3) whether the claimant's impairment meets or equals the requirements of a listed impairment; (4) whether the claimant has the inability to return to his past work; and (5) if not, whether the claimant can perform any other work available in the national economy. See 20 C.F.R. 404.1520 (a)-(f). At steps one through four, the burden of proof is on the claimant whereas at step five the burden of proof shifts to the Commissioner. See 20 C.F.R. 404.1520 (f). The inquiry at issue for purposes of this case is step five.

Shea argues that the Commissioner did not rely on substantial evidence at "step five" to determine that he was found not to be disabled within the meaning of the Social Security Act because he was capable of performing a significant number of jobs in the national economy. He contends that in making this decision, the ALJ's reliance on the medical-vocational rules was improper under Sykes v. Apfel, 228 F. 3d 259 (3d Cir. 2000) because the ALJ only relied on Dr. Mandel's exertional restrictions of his exam findings of Shea and not his nonexertional restrictions. In Sykes, we held that "grids cannot automatically establish that there are jobs in the national economy when a claimant has severe exertional and nonexertional impairments." Id. at 267. We agree with the District Court that the ALJ only determined that Shea had exertional impairments and not any nonexertional impairments. Thus, Sykes does not apply and the ALJ's reliance on the grids in the instant matter was wholly appropriate.

Shea also argues that the Commissioner's analysis is flawed at "step five" because he found Shea not to be illiterate. To be found illiterate under the Code, the claimant must have the inability to read or write. See 20 C.F.R. 404.1564(b)(1). By Shea's own admissions to Dr. Cooperstein and the ALJ, the District Court found that Shea is not illiterate. We also agree with this determination.

For the above reasons, we will deny Shea's petition to review the judgment of the Commissioner.

TO THE CLERK:

Please file the foregoing Opinion.

By the Court,

/s/ Jane R. Roth
Circuit Judge