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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

United States District Court  
Southern District of Texas

Rodney Keith Vice,

Plaintiff,

versus

Commissioner of Social Security  
Administration,

Defendant.

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Civil Action G-16-271

**ENTERED**  
August 16, 2018

David J. Bradley, Clerk

## Opinion on Summary Judgment

### 1. *Introduction.*

The question is whether substantial evidence supports the commissioner's decision that Rodney Keith Vice is not disabled under the Social Security Act. It does.

Vice brought this action for judicial review of the commissioner's final decision denying his claims for disability insurance benefits. 42 U.S.C. §§ 405(g), 423. Vice moved for reversal and remand. The commissioner – Nancy A. Berryhill – moved for summary judgment.

### 2. *Standard of Review.*

Vice brought this action for judicial review of the commissioner's final decision to deny his disability insurance benefits. See 42 U.S.C. §§ 205(g), 405(g) (2005).

Judicial review is limited to determining whether substantial evidence in the record supports the commissioner's decision. This is a level of proof that a disinterested, reasonable mind would accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971). A decision unsupported by substantial evidence must be overturned. It would be arbitrary, failing the requirement that governmental process be regular. *U.S. Const. amend. V.*

First, Vice has not been gainfully employed. Second, Vice's post-traumatic stress disorder, anxiety, depression, obesity, and knee pain were severely impairing him. They imposed moderate limitations on his daily activities. Third, none of Vice's impairments met one listed. Fourth, the administrative law judge correctly determined that Vice would be unable to perform his past work. Fifth, the administrative law judge correctly considered the combined effects of his impairments and concluded that Vice could adjust to another type of work.

To determine whether Vice was disabled, the administrative law judge considered all of the evidence from 2013 to 2015. He accepted some of the opinions of Vice's doctors and credited Vice's testimony to a reasonable extent. He rejected Vice's doctors' conclusions when they were at odds with the medical data. Vice complains of nightmares, sadness, and irritability. He says that his right knee hurts. Yet the conclusion that he cannot work at all is disproportionate to these symptoms. Vice's mental status reports are nearly normal, and no primary evidence supports his physical impairments. He lives by himself on twenty acres of land and cares for livestock and a pet dog. He sometimes travels to Galveston. He attends church weekly, has a girlfriend, and enjoys barbequing with his friends.

Vice asked the appeals council to review the decision. He included additional medical records from Katherine Herring, M.D., from April and May of 2015 and a form from Stephen Incavo, M.D., from May 15, 2015. The appeals council considered these records but concluded that they had no bearing on whether he was disabled by February 25, 2015.

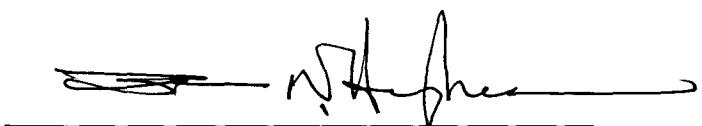
Vice says that Herring's records include past data, because he had been going to her practice group for ten years. Even if the records were about the relevant period, they would not support a conclusion that Vice is disabled. Herring treated Vice for hypertension, high lipids, and thyroid problems. She mentions other diagnoses for which she did not treat him and draws the conclusion that he is disabled. That is a determination for the commissioner.

The evidence from Incavo is a one-page instruction sheet for inpatient surgery that was scheduled for June 14, 2015. Nothing in the records from Incavo or Herring contradicts the administrative law judge's decision.

5. *Conclusion.*

The commissioner's decision denying Vice's claim for disability insurance is supported by substantial evidence and will be affirmed. Vice's motion to remand will be denied. Rodney Keith Vice will take nothing from Nancy A. Berryhill.

Signed on August 16, 2018, at Houston, Texas.



Lynn N. Hughes  
United States District Judge