

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 02-3252

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Toby Duran,

Appellant,

v.

Jo Anne B. Barnhart, Commissioner,  
Social Security Administration,

Appellee.

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\* Appeal from the United States  
\* District Court for the Eastern  
\* District of Arkansas.  
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\* [UNPUBLISHED]  
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Submitted: March 4, 2003  
Filed: March 7, 2003

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Before BYE, FAGG, and RILEY, Circuit Judges.

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PER CURIAM.

Toby Duran applied for supplemental security income benefits alleging disability based on chronic obstructive pulmonary disease, asthma, and back pain. After an administrative law judge (ALJ) conducted a hearing and issued an

unfavorable decision, and after the Appeals Council denied review, the district court<sup>1</sup> upheld the Commissioner's final decision, giving rise to this appeal.

Having carefully reviewed the record, we conclude that the Commissioner's final decision is supported by substantial evidence on the record as a whole. See Pyland v. Apfel, 149 F.3d 873, 876 (8th Cir. 1998) (standard of review). In particular, we agree with the district court that, even assuming Duran's prior work as a waitress did not constitute relevant work experience, see 20 C.F.R. § 416.965(a) (2002) (after 15 years, it is no longer realistic to expect that skills and abilities acquired on job continue to apply), substantial evidence supports the ALJ's alternative finding, based on testimony by a vocational expert (VE), that Duran could perform other jobs existing in significant numbers. See Johnson v. Apfel, 240 F.3d 1145, 1149 (8th Cir. 2001) (arguable deficiency in ALJ's opinion-writing technique does not require setting aside finding supported by substantial evidence); Miller v. Shalala, 8 F.3d 611, 613 (8th Cir. 1993) (per curiam) (VE's testimony constitutes substantial evidence if question ALJ asked included impairments ALJ accepted as true). We reject as unsupported Duran's arguments that the ALJ needed to develop the record further. Cf. Shannon v. Chater, 54 F.3d 484, 488 (8th Cir. 1995) (reversal for failure to develop record is justified only where such failure is unfair or prejudicial). Because Duran's remaining arguments are either redundant or contradicted by the record, we affirm. See 8th Cir. R. 47B.

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<sup>1</sup>The Honorable William R. Wilson, Jr., United States District Judge for the Eastern District of Arkansas, adopting the report and recommendations of the Honorable John F. Forster, Jr., United States Magistrate Judge for the Eastern District of Arkansas.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.