

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 11-2655

Bobby Dale Ayers,

Appellant,

v.

Michael J. Astrue, Commissioner,
Social Security Administration,

Appellee.

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* Appeal from the United States
* District Court for the
* Western District of Arkansas.
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* [UNPUBLISHED]
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Submitted: December 22, 2011

Filed: December 28, 2011

Before WOLLMAN, SMITH, and GRUENDER, Circuit Judges.

PER CURIAM.

Bobby Dale Ayers appeals the district court's¹ order affirming the denial of disability insurance benefits. Upon de novo review, we agree with the district court that the decision of the administrative law judge (ALJ) is supported by substantial evidence on the record as a whole, including the new evidence that the Appeals Council considered. See Van Vickle v. Astrue, 539 F.3d 825, 828 & n.2 (8th Cir.

¹The Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas, to whom the case was referred for final disposition by consent of the parties pursuant to 28 U.S.C. § 636(c).

2008). In particular, we disagree with Ayers (1) that he was presumptively disabled under certain listings, see McCoy v. Astrue, 648 F.3d 605, 611-12 (8th Cir. 2011) (to qualify for disability under listing, claimant has burden to establish his condition meets or equals all specified medical criteria); (2) that the ALJ erred in determining Ayer's residual functional capacity (RFC), see Jones v. Astrue, 619 F.3d 963, 971 (8th Cir. 2010) (ALJ is responsible for determining RFC based on all relevant evidence, including medical records, observations of treating physicians and others, and claimant's own description of his limitations; RFC finding must be supported by some medical evidence); and that the ALJ was not entitled to rely on the Medical-Vocational Guidelines (Guidelines), see Baker v. Barnhart, 457 F.3d 882, 894-95 (8th Cir. 2006) (Guidelines are properly used where ALJ explicitly discredits claimant's subjective complaints of pain for legally sufficient reasons). Finally, to the extent Ayers is challenging the district court's denial of his motion to remand for consideration of new evidence, we find no abuse of discretion. See Mouser v. Astrue, 545 F.3d 634, 636 (8th Cir. 2008). The judgment is affirmed.²

²We decline to consider issues that Ayers raises for the first time on appeal. See Gragg v. Astrue, 615 F.3d 932, 938 (8th Cir. 2010).