

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CYNTHIA WATSON, : CIVIL ACTION
Plaintiff, :
 :
v. :
 :
KENNETH S. APFEL, :
Defendant. : NO. 99-433

MEMORANDUM & ORDER

J.M. KELLY, J.

JANUARY , 2000

Presently before the Court are the Objections of Plaintiff, Cynthia Watson ("Watson"), to the Report and Recommendation in this matter of Magistrate Judge Arnold C. Rapaport. Cross-Motions for Summary Judgment were referred to Judge Rapaport for his Report and Recommendation. Judge Rapaport recommended that the Court affirm the decision of the Commissioner of the Social Security Administration, Kenneth Apfel ("Commissioner"), that Watson was not disabled.

STANDARD OF REVIEW

Objections to the report and recommendation of a Magistrate Judge are subject to de novo review. 28 U.S.C. § 636(b)(1) (1994). The standard of review of factual decisions supporting the Secretary's denial of benefits is whether the determination of the Secretary is supported by substantial evidence. 42 U.S.C. § 405(g). Substantial evidence is defined as that which would be sufficient to allow a reasonable factfinder to reach the same conclusion; while it must exceed a scintilla, it need not reach a preponderance of the evidence. Richardson v. Perales, 402 U.S.

389, 401 (1972). The determination of the Secretary is given great deference, and while the district court must not merely rubber stamp the Secretary's determination, matters of credibility are left in the hands of the Secretary. While the district court may not agree with the relative weight given by the Secretary, it is improper to reverse the Secretary's determination of credibility issues unless clearly erroneous. Palmer v. Celebrezze, 334 F.2d 306, 307 (3d Cir. 1964).

Questions of law are subject to plenary review. Finkelstein v. Sullivan, 924 F.2d 483, 486 (3d Cir. 1991). Watson objects to three components of the Report and Recommendation: 1) the ALJ applied the wrong standard in his evaluation of Watson's testimony; 2) the ALJ's determination regarding RFC was not supported by substantial evidence; and 3) the ALJ did not adequately evaluate Watson's occupational base.

DISCUSSION

I. Evaluation of Watson's Testimony

Watson grasps upon the ALJ's Finding No. 3, which states: "The claimant's subjective complaints are not credible because they are not supported by the objective medical records." This Finding, however, is not the sole factor in the ALJ's credibility determination. The ALJ reviewed Watson's history of Sarcoidosis and that she has had neither treatment nor medication for the condition. Medical evidence demonstrated that Watson was

asymptomatic and the condition had not progressed between diagnosis in 1989 and evaluation in 1996. In fact, Watson has never complained to a physician of the severe restrictions which she now claims. Ruling 96-7p requires the ALJ to consider all of the evidence in the case record to evaluate Watson's claim of pain. Review of the ALJ's decision indicates that such a review was undertaken. Therefore, there is no basis to reverse the ALJ's credibility determination.

II. Residual Functional Capacity

Watson asserts that the ALJ failed to order a consultive examination and did not have the benefit of a medical expert to explain how Watson's residual functional capacity ("RFC") would be affected by the medical reports and testimony. As a result, Watson asserts, there was not sufficient evidence to determine Watson's RFC. Review of the Final Decision demonstrates that the ALJ evaluated all of the medical evidence in the record, as well as Watson's testimony. In fact, the ALJ discounted an evaluation of RFC, performed by a state agency, that assigned Watson a higher level of RFC than ultimately determined by the ALJ. Accordingly, there is substantial evidence to support the Commissioner's decision.

III. Work that Exists in the National Economy

Given Watson's impairments, The ALJ was required to determine whether work exists in the national or regional economy

which Watson can perform, taking into account her RFC, age, education and past work experiences. 20 C.F.R. § 404.1520(f). The ALJ also relied upon the uncontradicted testimony of a vocational expert ("VE"). The VE testified that, based upon Watson's postural and environmental restrictions, there existed 7,900 jobs in the local economy and 130,000 jobs in the national economy that she could perform.¹ Given Watson's occupational restrictions, it was not an error for the VE to identify specific jobs that Watson could perform and to calculate the number of such jobs that existed in the local and national economy. See Social Security Ruling 83-12, Adjudicative Guidance No. 3. Substantial evidence therefore existed to allow the ALJ to determine that Watson could perform a substantial number of jobs in the local and national economy.

¹ Watson believes that the Locker Room Attendant group of jobs should be removed from the VE's list of available jobs because the VE testified that in some instances humidity from showers may make Watson unable to perform that job. The VE did not suggest such a blanket exclusion, so Watson may be able to perform some of the locker room jobs.

