

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

ROBERT E. RAYMER,	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	NO. 97-5762
	:	
LARRY G. MASSANARI,	:	
Acting Commissioner of Social Security,	:	
Defendant.	:	

MEMORANDUM AND ORDER

YOHN, J. NOVEMBER , 2001

Pursuant to 42 U.S.C. § 1383(c)(3) and 42 U.S.C. § 405(g), Robert E. Raymer appeals the final decision of the Acting Commissioner of Social Security (“the Commissioner”) denying his claim for social security disability benefits under Title II of the Social Security Act (“the Act”), 42 U.S.C. §§ 401 - 33. Raymer and the Commissioner both move for summary judgment. These cross motions for summary judgment were referred to Magistrate Judge Arnold C. Rapoport. Magistrate Judge Rapoport has submitted a Report and Recommendation to deny both motions and remand the proceedings for further consideration of the factors that led the Administrative Law Judge (ALJ) to conclude that Raymer was not entitled to benefits.

Raymer filed an objection to the Magistrate Judge’s Report and Recommendation. In his objection, Raymer agrees with the finding that the ALJ did not properly support his opinion that Raymer was not disabled, but requests that I grant summary judgment on his behalf because the government inexplicably delayed its response to his case for three years. The government did not file a separate objection to Magistrate Judge Rapoport’s Report and Recommendation and so presumably agrees with his findings. For the following reasons, I accept Magistrate Judge

Rapoport's Report and Recommendation and remand the case to the Commissioner for further review.

1. Facts

Raymer, a 37-year-old man at the time of his hearing before the Administrative Law Judge, finished the eleventh grade and later obtained his G.E.D. He has spent most of his career as a traffic device maintainer and track worker.

On October 25, 1993, Raymer was hit by a truck while painting lines on the street. He was taken to the emergency room where doctors attempted to treat his damaged back and arm. An MRI performed a month after the accident showed that his right shoulder had recovered, but the same exam on Raymer's back another week later showed that the curvature of his spine through his neck had changed, indicating muscle spasms and possibly a herniated disc. In his testimony since, Raymer has complained of sharp pain in his neck, back, and occasionally down his arms, as well as regular numbness in his hands.

In his job as a traffic device maintainer, Raymer routinely carried cans of paint weighing 50 lbs. a piece and pushed a painting machine weighing 300 lbs. As a traffic worker, Raymer maneuvered a jackhammer weighing fifty or sixty pounds and lifted rails of 1,300 lbs. with assistance. Raymer claims that he is now limited to lifting objects weighing 5 lbs. and cannot stay seated or comfortably standing in the same position for more than 10 or 15 minutes. At the time of his testimony before the ALJ, Raymer was 6'1" and weighed 150 lbs.

Raymer's claim for disability has been reviewed by three doctors. Magistrate Judge Rapoport's report accurately summarizes Raymer's interaction with the doctors and their diagnoses. I review the record and that summary now in brief to lay a foundation for addressing

Raymer's objection to the magistrate judge's recommendation.

The first doctor, Dr. Adrian W. Neumann, Raymer's treating neurologist, began seeing him on December 11, 1993 when Raymer complained of pain and numbness in his right hand. Dr. Neumann diagnosed Raymer as having bilateral median neuropathy, a right C6 radiculopathy, and cervical myofascitis. After nerve conduction studies, Dr. Neumann found a high suggestion of right C5 radiculopathy, and indications of a right median neuropathy at wrist level with carpal tunnel syndrome.

Raymer was able to improve somewhat with medications, but on May 16, 1994, Dr. Neuman reported that Raymer's herniated disc and the abnormal electrophysiological studies indicated that his injury was likely to be permanent. By July 27, 1994, Dr. Neumann noted that Raymer was no longer able to afford to take his medicine. His left thenar muscles had wasted, causing numbness in his left hand. In follow-up visits on August 22 and September 21, Dr. Neumann found a positive Phalen's Sign and decreased sensation in the left median distribution.

In subsequent visits to Dr. Neuman on January 15, February 15, April 11, May 5, June 6, July 7, and August 22, 1995, Raymer consistently complained of the same symptoms: pain in his back radiating down his left leg, numbness in his left arm, neck pain, muscle spasms, and pain and paresthesias in both legs. An MRI on April 14, 1995 revealed a bulging disc, central spinal stenosis and degenerative changes at the L1-L2 and L2-L3 levels. The same symptoms were present at the L3-L4 and L4-L5 levels, and the disc alone was herniated at the L5-S1 level. The EMG and nerve conduction study performed on August 25, 1995 was consistent with a right S1 and left L5 radiculopathy.

In his Medical Assessment of Ability to Do Work-Related Activities completed on

September 23, 1995, Dr. Neuman concluded that Raymer could lift or carry less than ten pounds due to pain associated with the herniated discs; could stand, walk, or sit for two hours in an eight-hour day with interruptions every ten to fifteen minutes, climb stairs holding a handrail, crawl occasionally, balance intermittently up to two or three times per day, and never crouch, stoop or kneel. Raymer's ability to reach, feel, handle and push or pull was also affected by his impairment. Although Raymer's hearing and speaking were not impaired and he did not require special environmental restrictions, Dr. Neumann concluded that he would be unsafe working around heights or moving machinery.

In the letter to the Administrative Law Judge accompanying his report, Dr. Neumann reported that Raymer had responded only moderately to conservative treatment and that surgery was not an option because of his multiple levels of injury. Raymer's prognosis was guarded: Dr. Neumann concluded that Raymer would not be able to perform any substantial physical activity for the rest of his life, although he could possibly engage in sedentary work if his pain could ever be adequately controlled.

The second doctor to report on Raymer was Dr. K. Seo, an orthopedist. In an examination on September 20, 1994, Dr. Seo noted that Raymer was able to walk into the examination room with a normal gait, could stand from a sitting position, was able to get on and off the examination table, and retained fine motor coordination in both hands. An x-ray of Raymer's spine though revealed mild dextroscoliosis and degenerative changes of the facet joints, most severe at L5-S1, and a small subluxation at L5-S1. Dr. Seo diagnosed internal derangement of Raymer's low back and neck and correspondingly limited function of the muscles in those areas. Raymer, he concluded, would have difficulty bending, lifting and

carrying heavy objects. Dr. Seo was not specific, however, about how much weight he believed Raymer could lift and what he believed to be the limits of Raymer's ability to work.

The third doctor to review Raymer's claim for disability was Dr. Alan Faye. He prepared a Residual Functional Capacity Assessment of Raymer's condition on October 10, 1994 by reviewing Raymer's medical files but never meeting with the patient. According to Dr. Faye, Raymer could occasionally lift fifty pounds and frequently lift twenty-five pounds; could stand, walk or sit for six hours in an eight-hour day; could push or pull twenty-five to fifty pounds with his arms and legs, had no limitation on climbing, balancing, stooping, kneeling, crouching, or crawling, and had no manipulative, visual, communicative or environmental limitations. Dr. Faye's report was largely limited to checking a series of boxes on a form and he gave no explanation for why he reached substantially different conclusions from the doctors who had met with Raymer.

2. Procedural History

The Administrative Law Judge's decision appears to have largely adopted Dr. Faye's conclusions in finding that Raymer could perform light work. In the ALJ's words, "the symptomatology suffered by the claimant is not of a duration, frequency or intensity as to be disabling nor would it preclude the performance of light work." (R.22) As defined in 20 C.F.R. § 404.1567, light work requires lifting a maximum of twenty pounds and frequently lifting objects up to 10 lbs. A job in this category requires a good deal of walking or standing, and may, if it requires sitting for extended periods of time, require the pushing or pulling of arm or leg controls. 20 C.F.R. § 404.1567 (2001).

In discussing the letter and report from Raymer's treating physician that detailed

Raymer's vocational limitations, the ALJ questioned whether Dr. Neumann had been deceived by the claimant. According to the ALJ, the "treating physician appears to have taken the claimant's subjective allegations at face value in making this assertion, one which does not necessarily take into account the other factors which must be considered by the Administrative Law Judge, such as the other medical reports and opinions as well as the vocational factors involved." *Id.* The ALJ thus concluded that "in view of the overall record," Dr. Neumann's diagnosis was not persuasive.¹ *Id.*

Raymer filed his original claim with the Social Security Administration for disability

¹ The full findings of the ALJ were that:

1. The claimant met the disability insured status requirements of the Act on October 25, 1993, the date the claimant stated he became unable to work, and continues to meet them through the date of this decision.
2. The claimant has not engaged in substantial gainful activity since the alleged onset date.
3. The medical evidence establishes that the claimant has an internal derangement of his neck and back, but that he does not have an impairment or combination of impairments listed in, or medically equal to one listed in Appendix 1, Subpart P Regulations No. 4.
4. The claimant's subjective allegations are not borne out by the overall record and are found not to be fully credible.
5. The claimant [does not have] the residual functional capacity to perform the physical exertion requirements of work except for . . . a light level of work[] (20 C.F.R. 404.1545).
6. The claimant is unable to perform his past relevant work as a traffic service maintainer and track worker.
7. The claimant has the residual functional capacity to perform light work[] (20 C.F.R. 404.1567).
8. The claimant is 37 years old, which is defined as a younger individual (20 C.F.R. 404.1563).
9. The claimant has an eleventh grade education (20 C.F.R. 404.1564).
10. In view of the claimant's age and residual functional capacity, the issue of transferability of work skills is not material.
11. Section 404.1569 of Regulations No. 4 and Rule 202.17, Table No. 2 of Appendix 2, Subpart P, Regulations No. 4, direct a conclusion that, considering the claimant's residual functional capacity, age, education, and work experience, he is not disabled.
12. The claimant was not under a "disability" as defined in the Social Security Act, at any time through the date of this decision (20 C.F.R. 404.1520(f)). (R.23 - 24).

insurance benefits on July 14, 1994. The ALJ issued his decision denying Raymer those benefits on December 11, 1995. The Appeals Council denied Raymer's request for review on July 11, 1997, and he filed his complaint with this court on October 2, 1997.

The government, reporting that it had lost Raymer's file, moved to remand the case on March 19, 1998. Raymer did not object. I subsequently remanded the case to the Commissioner on April 10, 1998. The government did not answer Raymer's complaint until January 9, 2001. There is no further explanation on the record between March 19, 1998 and January 9, 2001 to explain the government's delay.

3. Standards of Review

I review *de novo* the parts of the magistrate judge's report and recommendation to which Raymer objects. 28 U.S.C. § 636(b)(1)(C) (2001). I have the option to accept, reject or modify, in whole or in part, the magistrate judge's findings or recommendations. *Id.*

The standard by which I review the Commissioner's underlying determinations of disability is one of whether there is substantial evidence to support the Commissioner's decision. *Plummer v. Apfel*, 186 F.3d 422, 427 (3d Cir. 1999) (citing *Adorno v. Shalala*, 40 F.3d 43, 46 (3d Cir. 1994)). Substantial evidence to support the Commissioner's decision means "more than a mere scintilla" but somewhat less than a preponderance of the evidence. *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Brown v. Bowen*, 845 F.2d 1211, 1213 (3d Cir. 1988). The Commissioner's decision must present "such relevant evidence as a reasonable mind might accept as adequate" to reach his conclusion. *Richardson*, 402 U.S. at 401; *Plummer*, 186 F.3d at 427 (citing *Ventura v. Shalala*, 55 F.3d 900, 901 (3d Cir. 1995)). This is not a *de novo* review of the Commissioner's decision, but rather consideration of whether the evidence from the record

as a whole supports the agency's decision, not just the evidence that is consistent with the agency's findings. *Monsour Medical Center v. Heckler*, 806 F.2d 1185, 1190 - 91 (3d Cir. 1986).

To establish a disability under the Act, a claimant must prove that he is unable to "engage in substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A) (2001). To determine whether the claimant can satisfy this standard, the Commissioner applies a five-step process of evaluation under 20 C.F.R. § 404.1520. The first two steps of the analysis involve threshold determinations whether the claimant is working, 20 C.F.R. § 404.1520(a) (2001), and whether the claimant's impairment is of required duration and severity to significantly limit his ability to work, 20 C.F.R. § 404.1520(c) (2001). The third step is comparing the evidence of medical impairment against a list of impairments that would permit the claimant to qualify for disability without further inquiry. 20 C.F.R. § 404.1520(d) (2001). If the claimant does not qualify for benefits automatically according to this list, the Commissioner proceeds to the fourth and fifth steps of his analysis. In the fourth step he determines whether the claimant retains the residual functional capacity to perform work similar to that he has performed in the past. 20 C.F.R. § 404.1520(e) (2001). In the fifth and final step, if the Commissioner finds that the claimant is unable to perform any other work that exists in the national or regional economies, he must find the claimant to be disabled. 20 C.F.R. § 404.1520(f) (2001). *See also Sullivan v. Zebley*, 493 U.S. 521, 525 (1990) (expounding on the application of this five-step process).

4. Discussion

In Raymer's case, the Administrative Law Judge found him to be disabled at every step except for the last. Not accepting the testimony of doctors who examined Raymer, the ALJ held that Raymer could perform light work of a type found somewhere in the national economy. As the Magistrate Judge's report ably documents, however, an ALJ may not reject the opinion of a treating physician without explicitly weighing the opinion against other evidence. Mag. J. Rep. and Rec. at 13 - 15; *see Rocco v. Heckler*, 826 F.2d 1348, 1350 (3d Cir. 1987) (giving particular weight to a treating physician's testimony when it "reflects expert judgment based upon continuing observation of the patient's condition over a prolonged period of time") (quoting *Podedworny v. Harris*, 745 F.2d 210, 217 - 18 (3d Cir. 1984)). Furthermore, when an ALJ does decide to credit other evidence over the testimony of the treating physician, he must explain the basis of his decision on the record. Mag. J. Rep. and Rec. at 13 - 15; *Allen v. Bowen*, 881 F.2d 31, 41 (3d Cir. 1989) ("We have reaffirmed on a number of occasions the principle that where a report of a treating physician conflicts with that of a consulting physician, the ALJ must explain on the record the reasons for rejecting the opinion of the treating physician."). The ALJ did not do so in Raymer's case.

The ALJ also hints in his opinion that he doubts Raymer's credibility and believes that Raymer may have misled his treating physician. *See* R.22. But a claimant's testimony about subjective pain is normally entitled to great weight, particularly when supported by competent medical evidence. *Dobrowolsky v. Califano*, 606 F.2d 403, 409 (3d Cir. 1979); *Smith v. Califano*, 637 F.2d 968, 972 (3d Cir. 1981). If the ALJ believes that Raymer is malingering, he needs to specify objective evidence to support his conclusion on the record. *See, e.g., Morales v.*

Apfel, 225 F.3d 310, 318 (3d Cir. 2000) (reversing an ALJ’s refusal to award benefits to a claimant he believed to be malingering because the decision was “not based on objective medical evidence”). An ALJ is required to provide the objective evidence from which he deduces his findings in order for a reviewing court to determine whether the probative evidence in the case has been properly weighed; broad statements about the credibility of a claimant are impossible to evaluate in a vacuum. *Cotter v. Harris*, 642 F.2d 700, 705 (3d Cir. 1981). I am thus in complete agreement with the magistrate judge’s report detailing how and why the ALJ’s opinion is deficient in the area of supporting his credibility judgments.

Neither Raymer nor the government, however, disputes the magistrate judge’s finding that the ALJ failed to properly support his conclusion that Raymer was not disabled. Raymer’s objection to the report rather centers on Magistrate Judge Rapoport’s recommendation to remand the case to the Commissioner for further proceedings as opposed to awarding benefits directly.

The cases that Raymer cites for the proposition that I should overrule the Commissioner’s decision and award benefits directly however can be easily distinguished from the facts before me. For example, in *Allen v. Bowen*, 881 F. 2d 37 (3d Cir. 1989), the Third Circuit chose to direct benefits to the claimant rather than remand the case because there were no questions of evidence left to determine. According to the government’s own grid, the claimant was firmly entitled to benefits. *Id.* at 43. The government had argued that, on remand, its expert might have been able to locate acceptable jobs for the claimant, but, in the words of the *Allen* court, “[w]here as here the claimant established a *prima facie* case of entitlement, the record was fully developed, and there is no good cause for the Secretary’s failure to adduce all the relevant evidence in the prior proceeding, we see no reason to remand for further factfinding.” *Id.* at 44.

By contrast, in Raymer's case, the evidence on the record does not mandate a result on the determination of disability as it did in *Allen*.² Here, although Dr. Neumann opined that Raymer could not lift more than ten pounds, Dr. Faye found that Raymer could occasionally lift fifty pounds and frequently lift twenty-five pounds. Similarly, although Dr. Neumann wrote that Raymer could not stand, walk or sit more than two hours in an eight-hour day, Dr. Faye, in reviewing Raymer's medical history, believed that Raymer could stand, walk or sit for six hours in an eight-hour day. Dr. Seo's records do not specify how much he believed Raymer could lift or how long he believed Raymer could be in a fixed position, but the rest of his analysis of Raymer's condition appears to lie somewhere between the other two medical reports. Arguably the ALJ could have propounded legitimate reasons for crediting the evaluation of a doctor who had not met with the patient over ones who had. There are hints in the ALJ's opinion that he believed Raymer may have misled the doctors treating him. If the ALJ can highlight objective medical evidence in the record to support this contention, perhaps he can properly support his conclusion. *Cf., e.g., Morales*, 225 F.3d at 318 (reversing an ALJ's refusal to award benefits to a claimant he believed to be malingering because the decision was "not based on objective medical evidence"). If the ALJ cannot cite such evidence, Raymer should be awarded the benefits he seeks as promptly as possible.

Two other cases from the Third Circuit that Raymer cites in support of awarding benefits directly also are inapposite because the medical evidence of disability in his case is mixed. In

² *Cf. also Podedworny*, 745 F.2d at 222 ("The decision to direct the district court to award benefits should be made only when the administrative record of the case has been fully developed and when substantial evidence in the record as a whole indicates that the claimant is disabled and entitled to benefits.").

Morales v. Apfel, 225 F.3d 310 (3d. Cir. 2000), the facts merited reversal and the award of benefits because the Third Circuit held that the ALJ's finding could not be supported by substantial evidence in the record. In *Morales*, all of the doctors were in agreement that Morales would be unable to work. *Id.* at 318. The ALJ, convinced that Morales had malingered, overtly substituted his own judgment for the professional opinions of the doctors in the case. In *Caffee v. Schweiker*, 752 F.2d 63 (3d Cir. 1985), the facts likewise merited reversal and the award of benefits because the Third Circuit found that the government had entirely failed to produce evidence that the claimant would be able to work in a competitive environment. *Id.* at 68. As in *Morales*, the ALJ in *Caffee* could then have no basis for his opinion denying benefits to a claimant proven by all the evidence in the record to be unable to work.

Finally, the case of *Woody v. Secretary of Health and Human Services*, 859 F.2d 1156 (3d Cir. 1988), which Raymer cites to support the direct award of benefits, would even appear to militate against such a decision. The claimant in *Woody* suffered mysterious physical pain, but his resulting psychiatric depression and severe withdrawal were well-documented. As in *Morales* and *Caffee*, the Third Circuit held that “the *uncontradicted* medical and lay evidence” demonstrated that Woody suffered from an impairment that prevented him from working. *Id.* at 1162 (emphasis in original). The Third Circuit awarded Woody benefits because, under such circumstances, to have delayed the award of benefits any longer would have been to do an injustice to the claimant.

But the Third Circuit made a crucial observation in coming to this conclusion. According to the *Woody* court, “[i]f the only problem in this case had been the ALJ's failure to meaningfully address the issue concerning the vocational impact of Woody's mental state, we would, of

course, remand for further proceedings.” *Id.* at 1163. This exact situation now presents itself in Raymer’s case. The ALJ deciding Raymer’s case was presented with contradictory evidence and simply did not explain the basis for his decision. Reading these Third Circuit cases together, I find direction for when the award of benefits is appropriate and when it is not. When the ALJ fails to meaningfully address the issue of vocational impact but no substantial evidence exists for the ALJ’s decision to deny benefits, the courts may properly intervene to award benefits directly. *See Morales*, 225 F.3d at 318; *Caffee*, 752 F.2d at 68; *Woody*, 859 F.2d at 1163; *see also Podedworny*, 745 F.2d at 221 - 22 (establishing that courts may award benefits directly in social security disability appeals). When the ALJ fails to meaningfully address the issue of vocational impact and the evidence is debatable, the appropriate course of action is — as per the Third Circuit’s comment in *Woody* — to remand the case for further proceedings. *See Morales*, 225 F.3d at 318; *Caffee*, 752 F.2d at 68; *Woody*, 859 F.2d at 1163; *see also Podedworny*, 745 F.2d at 221 - 22 (establishing when courts may award benefits directly in social security disability appeals).

Raymer’s objections close with an emphasis on the long delay he has suffered due to the government’s ineptitude. There is simply no good explanation for why the government should misplace Raymer’s file for three years. The government has unconscionably delayed these proceedings, forcing Raymer to wait six years for a resolution of his claim. As Raymer notes and the Third Circuit held in *Podedworny*, district courts do have the power to award benefits to claimants directly when to remand the case for further proceedings would unjustly further delay

the claimant's receipt of benefits.³ *Podedworny*, 745 F.2d at 221 - 22, 223.

Nonetheless, although I am greatly concerned with the government's unwarranted delay of Raymer's case, carefully balancing the dictates of *Woody* and *Podedworny* forces me to conclude that remanding Raymer's case to the Commissioner for further proceedings is the only proper course of action. There do remain open questions for the ALJ to resolve and he must articulate his reasoning on the record. I therefore will remand Raymer's case to the Commissioner for further proceedings consistent with the concerns expressed in this opinion and at length in the magistrate judge's report and recommendation. The Commissioner is furthermore encouraged to give the case priority and expedite the remaining proceedings so this case may be resolved as promptly as practicable.

An appropriate order follows.

³ The facts of the *Podedworny* case in the Third Circuit are also apt for comparison with the facts in Raymer's case because the claimant in *Podedworny* had been waiting for five and a half years for benefits after "numerous errors of procedure and law by the Department of Health and Human Services." *Podedworny*, 745 F.2d at 223.

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	:	
LARRY G. MASSANARI,	:	
Acting Commissioner of Social Security,	:	
Defendant.	:	

ORDER

YOHN, J. NOVEMBER , 2001

AND NOW, this day of November, 2001, upon consideration of the parties' cross-motions for summary judgment, and after careful review of the Report and Recommendation of the United States Magistrate Judge Arnold C. Rapoport, IT IS HEREBY ORDERED that:

1. The Report and Recommendation is APPROVED and ADOPTED.
2. The plaintiff's motion for summary judgment is DENIED.
3. The defendant's motion for summary judgment is DENIED.
4. The matter is REMANDED to the Commissioner for further proceedings consistent with this opinion and the magistrate judge's Report and Recommendation.
5. The Commissioner is urged to give the case priority and expedite the remaining proceedings so this case may be resolved as promptly as practicable..

BY THE COURT:

William H. Yohn, Jr.