

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

GREGORY GUITERAS,	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	NO. 01-242
	:	
JO ANNE B. BARNHART,	:	
Commissioner of Social Security,	:	
Defendant.	:	

**MEMORANDUM AND ORDER**

YOHN, J. FEBRUARY , 2002

Pursuant to 42 U.S.C. § 405(g), Gregory Guiteras appeals the final decision of the 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. Guiteras and the Commissioner both move for summary judgment. These cross motions for summary judgment were referred to Magistrate Judge M. Faith Angell. Magistrate Judge Angell has submitted a Report and Recommendation that I grant the Commissioner’s motion for summary judgment, and deny Guiteras’s motion. Mag. Judge’s Rep. and Rec. at 1 [hereinafter Rep. and Rec.].

Guiteras filed objections to the Magistrate Judge’s Report and Recommendation. Pl’s Objections to the Magistrate Judge’s Report and Recommendation [hereinafter Objections]. His five objections to the Report and Recommendation are that:

- (1) the Magistrate Judge’s Report and Recommendation failed to provide a well reasoned analysis of the ALJ’s decision, Objections at 2;
- (2) the Magistrate Judge erred in failing to find that the ALJ “provided no explanation for

- rejecting the opinion of treating psychiatrist Dr. Jha concerning [Guiteras's] limitations in concentration, persistence, or pace," *id.*;
- (3) the Magistrate Judge erred in "failing to find that the ALJ's rejection of the remainder of Dr. Jha's report was error of law," *id.* at 6;
  - (4) the "[Commissioner's] recitation of the evidence in his Motion for Summary Judgment, though seemingly thorough and exhaustive, present[ed] a distortion of the record through its crucial omissions," *id.* at 7; and
  - (5) "for the reasons set forth in [Guiteras's] Motion, the ALJ erred in failing to fully credit [Guiteras's] testimony concerning his limitations," *id.* at 10.

The government did not file a separate objection to Magistrate Judge Angell's Report and Recommendation and so presumably agrees with her findings. For the following reasons, I accept Magistrate Judge Angell's Report and Recommendation and grant the Commissioner's motion for summary judgment.

### **Facts**

Mr. Guiteras is a 50-year-old Vietnam veteran with a high school education. R.19; R.190. He admits to 37 years of drinking, R.21, and suffers from superficial phlebitis, an inflammation of the veins in his lower leg. R.20 - 22. His past relevant work experience was as a production supervisor, labor supervisor, and forklift operator. R.19. He reported that his medical condition finally made him stop working in February 1995. *Id.* There is no indication that Guiteras has engaged in any substantial gainful activity since that date. *Id.*; Exhibit 1E.

Guiteras had a cerebral concussion after an automobile accident on March 14, 1985. R.20. His skull x-rays after the accident were normal, as was a waking electroencephalogram

(EEG) on July 23, 1985. Exhibit 1F; Exhibit 3F. A computerized tomography scan of Guiteras's head on August 27, 1985 was also normal.<sup>1</sup> Exhibit 3F.

On November 4, 1994, Guiteras complained of left lower extremity pain and swelling, and was seen by Herbert J. Luscombe, M.D., for these symptoms. R.20. Left lower extremity Doppler and ultrasound testing established that Guiteras did not have deep vein phlebitis. *Id.* Dr. Luscombe diagnosed him as having superficial phlebitis. *Id.* He recommended shots of Heparin to reduce swelling, but warned Guiteras that he could not take Heparin and drink alcohol at the same time. *Id.* at 19 - 20. On February 3, 1995, Dr. Luscombe reported that Guiteras's breath smelled of alcohol. R.20. Guiteras admitted that he had not taken Heparin for three weeks because of the doctor's warning not to take Heparin and consume alcohol at the same time. *Id.* Guiteras was not working and complained of swelling and pain in his left leg, but refused hospitalization for treatment of his alcoholism. *Id.* Guiteras did not return to see Dr. Luscombe after February 3rd. *Id.*; Exhibit 18F.

On April 2, 1996, Guiteras presented at the V.A. Hospital complaining of a history of phlebitis and swelling of his left leg. R.20. His blood pressure was 147/87. *Id.* Doctors suspected venous insufficiency and varicose veins, and he was scheduled for further testing. *Id.* On April 11, 1996, Guiteras's blood pressure was 144/106, but he reported that he had stopped taking his blood pressure medicine due to a lack of insurance coverage. *Id.* Doctors found nonpitting edema and varicose veins on his lower left leg. *Id.* On August 7, 1997, Guiteras complained of increasingly painful phlebitis of his lower left leg. *Id.* He reported considerable

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<sup>1</sup>On September 1, 1991, Fairless Hills Psychological Associates also reported that Guiteras was being seen in individual psychotherapy for post-traumatic stress disorder stemming from his experiences in Vietnam. R.399; Exhibit 4F.

pain after taking a one hour walk each morning, and increasing pain if he stood for two hours straight. *Id.* His blood pressure was 151/89. *Id.* He reported being on Paxil for his moods and on Risperdal to silence the music he hears. *Id.* at 20, 22, 411. A duplex ultrasound of Guiteras's lower extremities venous system failed to show deep vein thrombosis in either leg. R.20; Exhibits 16F, 23F.

On April 16, 1996, Guiteras was seen for a psychological evaluation by Ronald Langberg, Ph.D. R.20. Guiteras told Dr. Langberg that he had a history of drinking 24 cans or more of beer a day. *Id.* Dr. Langberg noted in his report that Guiteras was intent on accentuating those aspects of his history and behavior that might support a finding that he was disabled. *Id.* Although his mood was dysphoric, Guiteras's affect was broad and largely appropriate to his thought content and situation. *Id.* Dr. Langberg thought that Guiteras's reports of hearing music were somewhat exaggerated. *Id.* Guiteras evidenced no frank delusional thinking and his abstract thinking appeared to be relatively intact. *Id.* at 20 - 21. Guiteras's ability to perform Serial 7s was quite limited, but he was oriented as to time, place and person, and his memory was intact. *Id.* at 21,192. Dr. Langberg did not note any marked impairment of Guiteras's activities of daily life; he could carry out instructions, meet a schedule, and work consistently. *Id.* at 21. His Global Assessment of Functioning (GAF) score was 53. *Id.* Dr. Langberg opined that Guiteras suffered from alcohol dependence, mood disorder (not otherwise specified), post-traumatic stress disorder, and personality disorder (not otherwise specified). *Id.* According to Dr. Langberg, Guiteras's prognosis was poor, given the chronicity of his substance abuse history and his steadfast resistance to seeking treatment for it. *Id.* He also suspected that Guiteras had bipolar disorder, although Guiteras's volatility and emotional fragility could be due to personality

factors, post-traumatic stress disorder, and alcoholism. *Id.*; Exhibit 9F.

On May 18, 1996, Guiteras saw Jiwesh Jha, M.D., Psychiatrist, at the Penndel Mental Health center for depressed mood and helplessness. R.21. Guiteras reported that he had been laid off from his job as a forklift operator in February 1995, and had not been able to find a job since. *Id.* Although his speech was normal, his thought process was logical, and his affect appropriate, he reported hearing music. *Id.* Dr. Jha diagnosed his condition as recurrent major depression, severe, with psychotic features, and a history of polysubstance abuse. *Id.* Dr. Jha gave Guiteras a GAF score of 40 for this year and 80 for the preceding year. *Id.*

In outpatient progress reports dated January 7, 1997, Guiteras smelled of alcohol and misinterpreted things. *Id.* He was told to go to the hospital. *Id.* On January 19, 1997, Guiteras's wife called Dr. Jha to report that he was "drinking more," had the shakes, and was detoxing at home. *Id.* She was told to take him to the Veteran's Hospital. *Id.* On January 17, 1997, Guiteras claimed to have been sober for ten days, following 37 years of drinking. *Id.* On April 21, 1997, Guiteras reported that he had missed his Alcoholics Anonymous meetings because he had been busy getting his car fixed, helping a neighbor do some landscaping, and helping his daughter with her baby. *Id.* On April 29, 1997, Guiteras reported that he had not been hired by either of the two jobs he applied for. *Id.* He was walking at night with his wife. *Id.* On May 13, 1997, he reported that he was still getting anxious and tired, and felt as though people were judging him. *Id.* On May 27, 1997, he reported putting many holes in a wall after fighting with his wife. *Id.* On June 2, 1997, he reported walking three miles a day with his wife at night. *Id.* On June 13, 1997, Guiteras reported that, due to his sobriety, he was getting to know his daughter and wife for the first time. *Id.* On June 17, 1997, he reported that he was taking his medications

and feeling better; he was going to church daily. *Id.* On July 7, 1997, Dr. Jha's notes indicated that, after 177 days of sobriety, Guiteras drank 18 beers over the July 4th weekend. *Id.* at 22.

In a July 11, 1997, Dr. Jha administered a Mental Impairment Questionnaire, rating Guiteras's mental abilities and aptitude for doing unskilled work as being good to fair (with fair equating to being seriously limited, but not precluded), but opined that Guiteras's impairments or treatments would cause him to miss work more than three times monthly. *Id.* On August 19, 1997, Dr. Jha submitted an outpatient treatment plan, indicating that Guiteras should receive individual counseling for his depression over the next three to six months.<sup>2</sup> *Id.*

In August 1997, the Veterans Administration Hospital found 2+ pitting edema to the mid tibia on the left and minimal tenderness. R.317. An additional duplex ultrasound was negative for deep vein thrombosis. *Id.* at 319. The medical notes state that Guiteras's left leg thrombophlebitis was stable and had remained relatively unchanged since 1995. R. 241, 318. His doctor recommended "conservative management" with compression stockings, elevation, and rest. R.318.

### **Procedural History**

Guiteras filed for disability insurance benefits on March 6, 1996, claiming that he had been unable to work since February 17, 1995 because of his problems with substance abuse and phlebitis. R.18. His claim was denied initially and upon reconsideration. *Id.* At his July 29, 1997, hearing before Administrative Law Judge Mark Newberger in Jenkintown, Pennsylvania, Guiteras was represented by counsel and testified on his own behalf. *Id.* Testimony was also

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<sup>2</sup> From January 3, 1997 through March 11, 1997, Guiteras also saw Aldo A. Ciccotelli, M.D., who noted that the Echo results of Guiteras's heart were normal although blood work showed that he was mildly anemic. R.23; Exhibit 13F.

given by Julius S. Romanoff, Ed.D., an impartial vocational expert. *Id.*

In Guiteras's testimony on July 29, 1997, he reported being sober for the 201 days preceding the hearing. *Id.* at 23. When specifically asked whether he had experienced any relapses during his 201 days of not drinking, Guiteras testified that he had not. *Id.* Guiteras also testified that he was applying for work as a grocery clerk, stock clerk, trash truck driver, and as a dispatcher. *Id.* He confirmed that he felt he could perform those jobs, but contended that he was being discriminated against in the hiring process because of his age. *Id.* Guiteras then claimed that he was unable to work because of his frame of mind, because his thoughts wandered after his head injury, and because of his knee pain. *Id.* At the time of the hearing, however, Guiteras admitted that he did not hear music when he took his medication, he has started reading more within the past two years, and his daily walks were for up to 45 minutes. *Id.* at 23 - 24. When asked specifically about the effect of his medications, Guiteras told the ALJ that "I notice with the Paxil a few months back considerable improvement [in the depression]. I was feeling much better, more lively, more energetic you know. And recently which [sic] I've discussed with my therapist, I feel a little bit back in the tunnel like it might be time for an increase in dosage or a change in medication. But I'm not to determine that. That's up to Dr. Jaj [sic]." R.411.

In his opinion of December 6, 1997, the ALJ found "the testimony of the claimant to be not fully credible." R.23. He refused to accept Guiteras's statements concerning his impairments and their impact "to the extent those statements allege a level of disabling symptoms which exceed what the objective evidence and clinical findings could reasonably be expected to produce." *Id.* The ALJ then listed specific examples of how he found Guiteras's statements not to be credible. *Id.* He cited evidence that, despite Guiteras's explicit denial that

he had consumed alcohol over the previous 201 days, Guiteras had drunk 18 beers over the July 4th weekend, and that Guiteras's testimony that he "could have done" the jobs that he applied for was inconsistent with his counsel's assertion that he was restricted to sedentary work. *Id.*

Although Guiteras's testimony at the hearing was that the upper limit of his daily walks was 45 minutes, contemporaneous medical notes indicated that he was walking one hour and three miles at a time. R.23; Exhibit 16F. The ALJ further noted that Guiteras's activities of daily living were "indicative of a full and active life" in which he was up by 5 AM, attended church daily, went shopping with his daughter and granddaughter, took his car for repairs, helped his neighbors with their landscaping, read, and went on daily walks with his wife. R.23; Exhibits 14F and 15F.

The ALJ also found not credible Guiteras's assertion in the hearing that he was often confused as a result of his head injury in 1985. R.23. The injury was diagnosed as a cerebral concussion after which skull X-rays, an EEG, and CAT scan at the time all confirmed that Guiteras did not have brain damage. *Id.* at 24. Medical notes record that disorder in Guiteras's thinking process stem from his history of abusing alcohol, rather than any other evidence. *Id.*

Moreover the ALJ found parts of Dr. Jha's evaluation of Guiteras not to be fully credible. *Id.* Dr. Jha's GAF score of 40 included consideration of underlying impairments not separate from Guiteras's substance abuse as required under the C.F.R. *Id.*; 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.09. According to the ALJ, "there [was] nothing in the evidence or the claimant's work history on which to base" Dr. Jha's opinion that Guiteras might miss up to three days of work monthly. R.24; 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.09. Dr. Langberg's concurrent GAF assessment of 53 was more convincing to the ALJ because it took into account "the claimant's alcoholism when he opined that [Guiteras's] prognosis must be considered poor . . .

due to the chronicity of his substance abuse history . . . .” R.24.

Even crediting Guiteras’s limitations, the ALJ noted that there were a significant number of jobs that Guiteras could perform in the economy. R.26. The ALJ credited the testimony of the impartial vocational expert in finding that, taking into consideration Guiteras’s age, educational background, and employment history, as well as his exertional and non-exertional limitations, Guiteras could perform such jobs as a watchman without firearms, an order-picker, an office cleaner, or a stock clerk. R.26. When the vocational expert was asked what the impact on the positions named would be if Guiteras could only perform light and sedentary work, only the stock clerk positions at the light exertional level were eliminated. *Id.* Although Guiteras’s “capacity for medium work is diminished by significant non-exertional limitations,” the ALJ found that it would be “possible for him to do simple, routine work, but not complex, detailed work; possible for him to work where he has infrequent contact with co-workers and supervisors, but not where he has frequent contact with co-workers and supervisors; impossible for him to do work requiring use of left leg foot-controls; possible for him to do work requiring that he read simple instructions and materials, but not complex, detailed instructions or materials.” R.27 - 28. The ALJ found, therefore, that Guiteras was not disabled. R.26.

But, even if Guiteras could have been considered disabled at this level of review, the ALJ found that “[t]he facts are, as testified to by [Guiteras] that it was his drug addition and alcohol problems [that] caused most of his problems and cost him jobs in the past.” R.24. Guiteras himself asserted that “substance abuse has cost me three jobs.” R.84. In Guiteras’s words, “alcoholic [sic] plays into” the fact that he has been in fights, evicted, or fired. R.82. At the hearing he admitted being fired by GM for using cocaine on company property. R.401 - 402.

Stresscom fired him for drinking during working hours. R.402. Sam's Club fired him from his job as a forklift operator because he had alcohol in his car on company property during lunchtime. R.404. At the hearing, Guiteras also admitted drinking on company property in the past and not being caught. R.405.

Congress passed Public Law 104-121 on March 29, 1996, which mandates that "an individual shall not be considered disabled . . . if alcoholism or drug addiction would[,] but for this subparagraph[,] be a contributing factor material to the Commissioner's determination that the individual is disabled." Pub. L. No. 104-121, § 105, 110 Stat. 847 (1996) (codified as amended at 42 U.S.C.A. § 423(d)(2)(C) (2001)). Examining Dr. Langberg's GAF assessment of 53, it was Guiteras's "chronicity of [] substance abuse history" that caused the doctor to find that "[Guiteras's] prognosis must be considered poor ." R.24. In treatment with Dr. Luscombe, the doctor reported that Guiteras had chosen not to take medication that reduced the swelling in his leg because he could not take Heparin and consume alcohol at the same time. R.20. Hence the medical evidence as well as Guiteras's own testimony "support[ed] a finding that[,] if the claimant stopped using alcohol, he would not be disabled." R.26. The ALJ then found that, even if he could make a finding that Guiteras was otherwise disabled, alcoholism would be a contributing factor material to the determination and therefore Guiteras could not be considered "disabled" under the Social Security Act.<sup>3</sup> *Id.*

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<sup>3</sup> The full list of the ALJ's findings was:

1. "The claimant met the disability insured status requirements of the Act on February 17, 1995, the date the claimant stated he became unable to work, and has acquired sufficient quarters of coverage to remain insured through at least December 31, 2000.
2. "The claimant has not engaged in substantial gainful activity since February, 1995.
3. "The medical evidence establishes that the claimant has bilateral superficial phlebitis, hypertension, depression, personality disorder and substance addiction disorder,

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- impairments which are severe but which do not meet or equal singly or in combination with each other the criteria of any of the impairments listed in Appendix 1, Subpart P, Regulations No. 4.
4. “The undersigned finds the testimony of the claimant to be not fully credible. Additionally, the claimant’s statements concerning his impairments and their impact upon his ability to work are not accepted by the undersigned Administrative Law Judge to the extent those statements allege a level of disabling symptoms which exceed what the objective evidence and clinical findings could reasonably be expected to produce.
  5. “The undersigned finds that the claimant retains the residual functional capacity to perform the exertional demands of medium work, or work which requires maximum lifting of 50 pounds and frequent lifting of up to 25 pounds (20 C.F.R. § 404.1567). The evidence supports a finding that he is able to lift and carry up to 50 pounds occasionally and up to 25 pounds frequently.
  6. “The claimant is unable to perform his past relevant work as production supervisor, labor supervisor, and forklift operator.
  7. “Mr. Guiteras’s capacity for medium work is diminished by significant non-exertional limitations under which it is: possible for him to do simple, routine work, but not complex, detailed work; possible for him to work where he has infrequent contact with co-workers and supervisors, but not where he has frequent contact with co-workers and supervisors; impossible for him to do work requiring use of left leg foot-controls; possible for him to do work requiring that he read simple instructions and materials, but not complex, detailed instructions or materials.
  8. “The claimant is 50 years old, an individual ‘closely approaching advanced age.’
  9. “The claimant has a high school education.
  10. “The claimant has semi-skilled work experience but has acquired no transferable work skills.
  11. “Based on an exertional capacity for medium work, and the claimant’s age, educational background, and work experience, Section 404.1569 and Rule 203.22, Table 3, Appendix 2, Subpart P, Regulations No. 4, would direct a conclusion of ‘not disabled.’
  12. “Although the claimant is unable to perform the full range of medium work, he is capable of making an adjustment to work which exists in significant numbers in the national economy. Such work includes employment as a watchman without firearms (medium exertional level – 3,000 such positions exist regionally and 248,000 nationally, light exertional level – 2,000 jobs exist regionally and 528,000 nationally); order-picker (light exertional level – 500 jobs exist regionally and 275,000 nationally); office cleaner (medium exertional level – 2,000 jobs exist regionally and 750,000 nationally, light exertional level – 2,000 jobs exist regionally and 1 million nationally); stock clerk (medium exertional level – 1,000+ regionally and 1.25 million nationally, light exertional level – 3,000 regionally and 800,000 nationally).
  13. “The claimant has not been under a disability, as defined in the Social Security Act, at any time through the date of this decision.
  14. “The claimant is not disabled when he stops using drugs and alcohol. Therefore, in

Guiteras filed a request for review of the ALJ's decision with the Social Security Administration's Appeals Council on December 29, 1997. The Appeals Council denied Guiteras's request and accepted the ALJ's decision as final on November 21, 2000.

Guiteras appealed the Social Security Administration's decision to this court on January 17, 2001. The Commissioner requested an uncontested extension of time to respond to Guiteras's complaint on March 26, 2001, which I granted on March 27, 2001. Guiteras then requested an uncontested extension of time to file a motion for summary judgment on June 14, 2001, which I granted on June 15, 2001. On July 16, 2001, Guiteras filed his motion for summary judgment. The Commissioner requested an enlargement of time to respond to Guiteras's motion on August 13, 2001, and filed its cross-motion for summary judgement on September 12, 2001. On September 21, 2001, I referred the cross-motions for summary judgment to Magistrate Judge M. Faith Angell. She filed her report and recommendation with this court on January 4, 2002.

In Magistrate Judge M. Faith Angell's Report and Recommendation, she concluded that the Commissioner's motion for summary judgment should be granted and Guiteras's motion for summary judgment should be denied. Rep. and Rec. at 1. She found that the ALJ thoroughly reviewed the medical documentation in Guiteras's case, *id.* at 7, and properly evaluated Guiteras's subjective complaints. *Id.* at 9. After quoting the ALJ's opinion at length, Magistrate Judge M. Faith Angell found that "[t]he ALJ in this case . . . set out a factual basis for each

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accordance with § 105 of Pub.L. 104-121, enacted on March 29, 1996, the claimant is ineligible for disability benefits under Title II of the Act." R.27 - 28.

finding. He analyzed and provided explanations for disregarding evidence in the Record.” *Id.* at 11 (citations omitted). She concluded that “[t]here [was] substantial evidence in the Record to support the ALJ’s determination.” *Id.* (citation omitted).

### **Standards of Review**

I review *de novo* the parts of the magistrate judge’s report and recommendation to which Guiteras 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 ALJ’s underlying determinations of disability is one of whether there is substantial evidence to support his decision.<sup>4</sup> *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 ALJ’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 ALJ’s decision must present “such relevant evidence as a reasonable mind might accept as adequate” to reach his conclusion.<sup>5</sup> *Richardson*,

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<sup>4</sup> This is not a *de novo* review of the ALJ’s decision, but rather consideration of whether the evidence from the record as a whole supports his decision, not just the evidence that is consistent with his findings. *Monsour Medical Center v. Heckler*, 806 F.2d 1185, 1190 - 91 (3d Cir. 1986).

<sup>5</sup> 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

402 U.S. at 401; *Plummer*, 186 F.3d at 427 (citing *Ventura v. Shalala*, 55 F.3d 900, 901 (3d Cir. 1995)); *Morales v. Apfel*, 225 F.3d 310, 316 (3d Cir. 2000).

### Discussion

I review each of Guiteras's five objections to the Magistrate Judge's Report and Recommendation individually.

1. *Guiteras's first objection is that the Magistrate Judge's Report and Recommendation is not well reasoned because it does not show that the Administrative Law Judge's decision provided a factual basis for his opinion and an explanation for disregarding evidence in the record. Objections at 2.*

This objection to the Magistrate Judge's Report and Recommendation is vague and unfocused. The Magistrate Judge's Report and Recommendation properly reviewed the ALJ's underlying opinion for whether he presented substantial evidence to support his decision. Rep. and Rec. at 2 - 3, 11; *Fargnoli v. Massanari*, 247 F.3d 34, 38 (3d Cir. 2001); *Knepp v. Apfel*, 204 F.3d 78, 84 (3d Cir. 2001); *see also Morales*, 225 F.3d at 316 (defining substantial evidence as such relevant evidence a reasonable mind might accept as adequate to support a conclusion).

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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).

Without more substance to this objection, I turn to evaluating the merits of Guiteras's four other, more focused, objections. As will be shown in response to those objections, the Administrative Law Judge's thorough decision did provide a factual basis for his opinion and an explanation for disregarding what evidence in the record he considered not to be fully credible.

2. *Guiteras's second objection is that the Magistrate Judge erred in failing to find that the ALJ "provided no explanation for rejecting the opinion of treating psychiatrist Dr. Jha concerning [Guiteras's] limitations in concentration, persistence, or pace." Objections at 2.*

Although the Magistrate Judge's Report and Recommendation does not treat this point, the ALJ's underlying opinion explains why he did not find it fully credible that Guiteras's limitations in concentration, persistence, or pace would render him unable to work. When an ALJ rejects the opinion of a treating physician, he must explicitly weigh it against other evidence and explain the basis of his decision on the record. *Allen v. Bowen*, 881 F.2d 31, 41 (3d Cir. 1989) (explaining the basis for rejecting the opinion of a treating physician); *Podedworny v. Harris*, 745 F.2d 210, 217 - 18 (3d Cir. 1984) (same). Here the ALJ explicitly weighed evidence for why he believed Guiteras could work despite his "frame of mind" and the chance that "his thoughts might wander," and detailed the basis of his decision on the record. R.23. According to the ALJ, Guiteras himself contradicted Dr. Jha when he asserted that he "could have done" the jobs for which he applied. *Id.* Moreover, Guiteras stated that he kept up with his work and was able to concentrate on his work for extended periods of time. R.84. Furthermore, even crediting Dr. Jha's conclusion about Guiteras's limitations of concentration, persistence or pace, the impartial vocational expert could list jobs in significant numbers in the economy that Guiteras could perform. R.26. The ALJ accepted Dr. Jha's opinion insofar as he found that Guiteras's

“capacity for medium work [was] diminished by significant non-exertional limitations,” but found that it would still be “possible for [Guiteras] to do work requiring that he read simple instructions and materials, but not complex, detailed instructions or materials.” R.27 - 28.

As I find that the ALJ satisfied the substantial evidence standard, explicitly weighing the substance of Dr. Jha’s opinion against other evidence and explaining the basis of his decision on the record, I will overrule Guiteras’s second objection. Moreover, to the extent Guiteras objects to the failure of the ALJ to find that Dr. Jha’s opinion that Guiteras would miss three days or more of work each month was credible, the ALJ pointed out that there was no evidence to support such a conclusion, other than the possibility of substance abuse. R.24. Furthermore, the record does support a contrary finding in Guiteras’s own statement. R.84. Guiteras himself asserted that he could report to work on time, have good attendance, keep up with his work, and concentrate on his work for extended periods of time. *Id.*

3. *Guiteras’s third objection is that the Magistrate Judge erred in “failing to find that the ALJ’s rejection of the remainder of Dr. Jha’s report was error of law.” Objections at 6.*

In reviewing the ALJ’s underlying opinion, it does not appear that he did reject the remainder of Dr. Jha’s report. The ALJ relied in great detail on Dr. Jha’s notes about Guiteras’s progress from activities such as getting his car fixed and helping a neighbor do some landscaping on April 21, 1997, to his consumption of 18 beers over the July 4th weekend. R.21-22. This remainder of Dr. Jha’s record was quite thorough and, in many specifics, did not help Guiteras’s claim for disability benefits. *See, e.g.*, R.23 (“When specifically asked, at the hearing, whether he had experienced any relapses during his 201 days of non-drinking, [Guiteras] testified that[,] although he had felt the urge to drink[,] he had not done so. However, the evidence shows that

he consumed 18 beers over the July 4th weekend in 1997.”). Moreover, Dr. Jha’s ultimate diagnosis that Guiteras was depressed was accepted by the ALJ and factored into his decision accordingly. *Compare* R.22 (“Dr. Jha submitted an outpatient treatment plan, dated August 19, 1997, which indicated that individual’s counseling for 3-6 months was planned for [Guiteras’s] depression.”), *with* R.27 (“The medical evidence establishes that [Guiteras] has . . . depression . . .”).

Without a factual basis, I cannot find in Guiteras’s favor on this point and will overrule Guiteras in his objection.

4. *Guiteras’s fourth objection is that the “defendant’s recitation of the evidence in his Motion for Summary Judgment, though seemingly thorough and exhaustive, presents a distortion of the record through its crucial omissions.” Objections at 7.*

I review the Magistrate Judge’s Report and Recommendation *de novo* and review the ALJ’s underlying opinion for whether there is substantial evidence to support his decision. 28 U.S.C. § 636(b)(1)(C); *Plummer*, 186 F.3d at 427; *Adorno*, 40 F.3d at 46. As the ALJ’s opinion rests on the full record before him, and the Magistrate Judge’s Report and Recommendation reviews his opinion, it is irrelevant to my review of either decision that Guiteras objects to the selection of facts the Commissioner chose to include in the brief. *See, e.g.*, R.26, 27 (noting review of the entire record available to the ALJ); Rep. and Rec. at 7 (same).

Guiteras’s objection here lacks a proper basis for review and must be overruled.

5. *Guiteras’s fifth objection is that, “for the reasons set forth in [Guiteras’s] Motion, the ALJ erred in failing to fully credit [Guiteras’s] testimony concerning his limitations.” Objections at 10.*

The Magistrate Judge's Report and Recommendation reviewed the ALJ's opinion in light of Guiteras's arguments in his motion and found that the ALJ had provided substantial evidence to support his conclusion that Guiteras's testimony was not fully credible. Rep. and Rec. 9 - 10; *Plummer*, 186 F.3d at 427; *Adorno*, 40 F.3d at 46. The ALJ carefully set forth a factual basis for each finding, analyzing and providing explanations in his opinion for why he chose to disregard evidence in the record. R. 22 -27; Rep. and Rec. at 11; *Burnett v. Comm'r of Social Security Admin.*, 220 F.3d 112, 119 (3d Cir. 2000). As the cases Guiteras cite in his brief require, when he chose to discount Guiteras's testimony, the ALJ detailed the medical evidence he relied on in finding Guiteras's claims not to be fully credible. Pl's Motion for Summary Judgment at 21; *Mac v. Sullivan*, 811 F. Supp. 194, 202 (E.D.Pa. 1993).

Specific examples of the ALJ citing such medical evidence abound. He found Guiteras's testimony not fully credible after citing Dr. Jha's notes to prove that, for example, despite Guiteras's explicit denial that he had consumed alcohol over the previous 201 days, Guiteras had drunk 18 beers over the July 4th weekend. R.23. Those same notes belied Guiteras's testimony at the hearing that the upper limit of his daily walks was 45 minutes; medical records indicated that he was walking one hour and three miles at a time. R.23; Exhibit 16F. Finally, the ALJ cited medical evidence in discounting Guiteras's assertion that he was often confused as a result of his head injury. R.23. The skull X-rays, the EEG, and the CAT scan taken at the time all confirmed that Guiteras did not have brain damage. *Id.* at 24.

After examining the ALJ's underlying opinion, I find Guiteras's fifth objection to have no basis and will overrule it as well.

## **Conclusion**

For the reasons stated above, I overrule each of Guiteras's objections to the Magistrate Judge's Report and Recommendation. The ALJ provided substantial evidence for his decision, and I will grant the Commissioner's motion for summary judgement. An appropriate order follows.

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

GREGORY GUITERAS,	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	NO. 01-242
	:	
JO ANNE B. BARNHART,	:	
Commissioner of Social Security,	:	
Defendant.	:	

**ORDER**

YOHN, J. FEBRUARY , 2002

AND NOW, this            day of February 2002, 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 M. Faith Angell and the plaintiff's objections thereto, IT IS HEREBY ORDERED that:

1. The Report and Recommendation is APPROVED and ADOPTED.
2. The motion of plaintiff Gregory P. Guiteras for summary judgment is DENIED.
3. The motion of defendant Jo Anne B. Barnhart, Commissioner of Social Security, for summary judgment is GRANTED.
4. Judgment is entered affirming the decision of the Commissioner.

BY THE COURT:

\_\_\_\_\_  
William H. Yohn, Jr.