

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

CHARLES R. LEVERE, SR.,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 01-CV-1611
JO ANNE BARNHART, ¹	:	
Commissioner of Social Security,	:	
Defendant.	:	

MEMORANDUM/ORDER

GREEN, S.J.

MARCH _____, 2002

Presently before the Court are the parties' cross-motions for summary judgment. On December 28, 2001, United States Magistrate Judge Peter B. Scuderi filed a Report recommending that this Court grant, in part, the Plaintiff's motion for summary judgment, deny Defendant's motion for summary judgment, and remand the matter to the Commissioner of Social Security ("Commissioner") for further proceedings. After careful and independent consideration of the matter, and for the reasons set forth below, the Magistrate Judge's Report and Recommendation will be approved and adopted, and the matter will be remanded to the Commissioner for further evaluation of Plaintiff's subjective complaints.

I. Factual and Procedural Background

On June 17, 1997, Charles R. Levere, Sr. ("Plaintiff") applied for Disability Insurance Benefits under Title II, 42 U.S.C. §§ 401- 433 and Part A of Title XVIII, 42 U.S.C. §§ 1395c – 1395i of the Social Security Act, stating that his disability resulted from post-traumatic stress disorder, combined with pain in his neck and shoulder. Plaintiff's application was denied on

¹ Jo Anne Barnhart was sworn in as Commissioner of Social Security on November 14, 2001. Therefore, pursuant to Fed. R. Civ. P. 25(d)(1), Jo Anne Barnhart is automatically substituted as the Defendant in this action.

October 16, 1997. Subsequently, Plaintiff filed a request for a hearing by an Administrative Law Judge (“ALJ”), which was held on May 27, 1998. On August 17, 1998, the ALJ denied Plaintiff’s claim and issued a written decision. Plaintiff’s request for review by the Appeals Council was denied on February 16, 2001, thereby making the decision of the ALJ the final decision of the Commissioner.

Plaintiff then filed the instant matter seeking review of the Commissioner’s decision, pursuant to 42 U.S.C. § 405(g), which grants federal courts the power to review a final decision of the Commissioner regarding a claimant’s eligibility for disability benefits. Both parties then filed cross-motions for summary judgment. Pursuant to 28 U.S.C. § 636(b)(1)(B), this Court then referred the matter to United States Magistrate Judge Peter B. Scuderi. After careful consideration and review of the record, Magistrate Judge Scuderi filed a report recommending that this Court dispose of the cross-motions for summary judgment by granting, in part, the Plaintiff’s motion for summary judgment, denying Defendant’s motion for summary judgment, and remanding the matter to the Commissioner for further proceedings. Both parties were served copies of the Magistrate Judge’s report and recommendation. Pursuant to Local Rule of Civil Procedure 72.1 IV (b) and 28 U.S.C. § 636(b)(1)(C), the Commissioner timely filed written objections to the Magistrate Judge’s Report and Recommendation. Upon consideration of the Report and Recommendation and the Commissioner’s objections thereto, I will approve and adopt the Report and Recommendation.

II. Scope of Review

A district court judge may refer an appeal of a decision of the Commissioner to a magistrate judge. See 28 U.S.C. § 636(b)(1). Within ten days after being served a copy of the

magistrate judge's report and recommendation, a party may file timely and specific objections thereto. See 28 U.S.C. § 636(b)(1)(C). The district court judge will then make a *de novo* determination of those portions of the report and recommendation to which objection is made. See id. The judge may accept, reject, modify, in whole or in part, the findings or recommendations made by the magistrate, receive further evidence or recommit the matter to the magistrate with instructions. See id.

In reviewing the Commissioner's decision, the Court is bound by the ALJ's findings of fact if they are supported by substantial evidence in the record. See 42 U.S.C. § 405(g). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate." Plummer v. Apfel, 186 F.3d 422, 427 (3d Cir. 1999). Pursuant to 28 U.S.C. § 636(b)(1)(C), the Commissioner timely filed one objection to the Magistrate Judge's Report and Recommendation.

III. Discussion

While there was only one objection to the Magistrate Judge Scuderi's Report and Recommendation, a district judge may accept, reject, modify, in whole or in part, the findings or recommendations made by the magistrate. Accordingly, I will first review the Commissioner's objection, then the remainder of Magistrate Judge Scuderi's report.

A. The Commissioner's objection to Magistrate Judge Scuderi's Report.

In determining whether a plaintiff suffers from an impairment which prevents him from engaging in any substantial gainful activity, the ALJ is required to use a sequential five-step analysis. See Santise v. Schweiker, 676 F.2d 925, 927 (3d Cir. 1982). The ALJ must consider (1) whether the claimant is working; (2) whether the impairment is "severe"; (3) whether the impairment is so severe that benefits should automatically be awarded; (4) whether the claimant

can perform his past work; and (5) whether the claimant can perform other substantial gainful work in the economy. See id. (citing regulations). In the instant matter, the ALJ found that: (1) Plaintiff is not presently working; (2) Plaintiff has an impairment which significantly limits his ability to work; (3) this impairment is not a "listed" one that automatically requires a finding of disability; and (4) Plaintiff is not able to perform his past work as a building maintenance supervisor. Ultimately, the ALJ reached step five of the five-step sequential evaluation and found that Plaintiff was not disabled. Consequently, this matter turns on whether Plaintiff is capable of performing any work that exists within the national economy.

In his motion for summary judgment, Plaintiff argued that the ALJ's finding at step five was not supported by substantial evidence. Magistrate Judge Scuderi examined Plaintiff's arguments that the ALJ improperly weighed the medical evidence of record, and improperly rejected the Plaintiff's complaints. After rejecting Plaintiff's argument regarding the medical evidence of record, Magistrate Judge Scuderi moved on to Plaintiff's contention that the ALJ improperly rejected the Plaintiff's subjective complaints.

When evaluating a plaintiff's subjective complaints, the regulations require a two-step process: 1) a determination as to whether there is objective evidence of a medically determinable impairment that could reasonably be expected to produce the symptoms alleged; and, 2) an evaluation of the intensity and persistence of the pain or symptom, and the extent to which it affects the individual's ability to work. See Hartranft v. Apfel, 181 F.3d 358, 362 (3d Cir. 1999); 20 C.F.R. § 404.1529(b). An ALJ may reject a plaintiff's claim of inability to work if she does not find it credible, but

the determination or decision rationale must contain a thorough discussion and analysis of

the objective medical and the other evidence, including the individual's complaints of pain and other symptoms and the adjudicator's personal observations. The rationale must include a resolution of any inconsistencies in the evidence as a whole and set forth a logical explanation of the individual's ability to work.

See Schaudek v. Commissioner, 181 F.3d 429, 433 (3d Cir. 1999) (quoting Social Security Ruling ("S.S.R.") 95-5P, 1995 WL 670415 at *2); see, also, S.S.R. 96-7P, 1996 WL 374186 ("The reasons for the credibility finding must be grounded in the evidence and articulated in the determination or decision.").

In Magistrate Judge Scuderi's Report and Recommendation, he found that the ALJ failed to conduct an appropriate evaluation of Plaintiff's subjective complaints. Specifically, he concluded that "the ALJ did not proceed to the second step of the required evaluation, which requires a determination of the intensity and persistence of the pain or symptoms, and the extent to which it affects Plaintiff's ability to work." (Report at 23.) Finally, Magistrate Judge Scuderi "recommended that this matter be remanded for a reevaluation of Plaintiff's subjective complaints and, if it is deemed necessary, of his residual functional capacity." (Report at 23.)

Magistrate Judge Scuderi based his conclusion that the ALJ conducted a cursory analysis on a paragraph in the ALJ's decision which discussed Plaintiff's subjective complaints:

After consideration of the evidence of record, I conclude that [Plaintiff's] subjective complaints of disabling pain are not fully credible, as they are inconsistent with the objective medical evidence of record. I note the minimal and mild objective findings indicated in January 1998.

(Report at 21-22, citing Tr. at 23.) Disagreeing with the ALJ's comment that Plaintiff's subjective complaints were "inconsistent with the objective medical evidence of record," Magistrate Judge Scuderi cited to several places in the record where objective medical evidence *was consistent* with Plaintiff's subjective complaints. (Report at 22-23.) Magistrate Judge

Scuderi found the ALJ's analysis "an inaccurate interpretation of the medical evidence," and concluded that the ALJ "did not proceed to the second step of the required evaluation, which requires a determination of the intensity and persistence of the pain or symptoms, and the extent to which it affects Plaintiff's ability to work." (Report at 23.) Since an analysis of "Plaintiff's credibility necessarily impacts findings regarding Plaintiff's residual functional capacity," Magistrate Judge Scuderi concluded that the matter should be remanded for a full evaluation and consideration of Plaintiff's subjective complaints. (Report at 23.)

The Commissioner objects to Magistrate Judge Scuderi's conclusion that the ALJ did not proceed to the second step of the analysis. Addressing the same paragraph in the ALJ's decision which Magistrate Judge Scuderi relied on, the Commissioner argues that it stands for the ALJ's conclusion at the second step of the required analysis. (Objections at 2.) To support this interpretation, the Commissioner points out that, at step one, the ALJ did find that Plaintiff had medically determinable impairments that could reasonably be expected to produce the symptoms alleged. (Objections at 3; Tr. at 25, Finding No. 3.) Then, the Commissioner continues, the ALJ "thoroughly discussed the objective medical evidence and properly found that Plaintiff's subjective complaints were not fully credible as they were inconsistent with that evidence." (Objections at 3; Tr. at 21-23.) The Commissioner concludes that, "[i]n essence, the ALJ found that Plaintiff had medically determinable impairments that could reasonably produce the symptoms alleged but that the intensity and persistence of those symptoms would not prevent him from working." (Objections at 3.)

Notably, the Commissioner does not cite to the ALJ's decision to support her final conclusion. The reason for this omission is not carelessness, but prudence, for the ALJ did not

issue such a clear and emphatic statement. And, even if the ALJ *had* issued such a clear statement, it would still be insufficient unless the ALJ's rationale included "a resolution of any inconsistencies in the evidence as a whole and set forth a logical explanation of the individual's ability to work." See Schaudek v. Commissioner, 181 F.3d at 433. The ALJ should have set out, with specificity, which objective medical evidence negated Plaintiff's subjective complaints. A general conclusion that Plaintiff's subjective complaints are not fully credible, without a full and logical explanation of the overriding objective evidence, does indeed evince a cursory analysis, as Magistrate Judge Scuderi stated. Because the ALJ did not provide support for her conclusion that Plaintiff's subjective complaints were not fully credible, her decision is not supported by "substantial evidence."

I conclude that Magistrate Judge Scuderi was correct in finding that the ALJ failed to properly apply the necessary two-step evaluation to Plaintiff's subjective complaints, and remand is required. The Commissioner's objection will be overruled, and Magistrate Judge Scuderi's report and recommendation on this issue will be approved and adopted.

B. The remainder of Magistrate Judge Scuderi's Report.

After careful and independent review of the remainder of Magistrate Judge Scuderi's Report and recommendation, I will approve and adopt his Recommendation that the parts of the ALJ's decision which do not deal with Plaintiff's subjective complaints remain undisturbed, as they are supported by substantial evidence.

IV. Conclusion

For the foregoing reasons, I will approve and adopt the Report and Recommendation of Magistrate Judge Peter B. Scuderi. Plaintiff's motion for summary judgment will be granted in

part, and denied in part, and the Commissioner's motion for summary judgment will be denied.

The decision of the Commissioner will be reversed, and the case will be remanded to the

Commissioner for further evaluation of Plaintiff's subjective complaints. An appropriate order

follows:

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v.	:	
	:	NO. 01-CV-1611
JO ANNE BARNHART,	:	
Commissioner of Social Security,	:	
Defendant.	:	

ORDER

AND NOW, this _____ day of March, 2002, upon careful and independent consideration of the parties' Cross-Motions for Summary Judgment, the Report and Recommendation filed by United States Magistrate Judge Peter B. Scuderi, and Defendant's Objections thereto, **IT IS HEREBY ORDERED** that:

- 1) Defendant's Objections are **OVERRULED**;
- 2) The Report and Recommendation is **APPROVED and ADOPTED**;
- 3) Plaintiff's Motion for Summary Judgment is **GRANTED, in part**;
- 4) Defendant's Motion for Summary Judgment is **DENIED**;
- 5) The decision of the Commissioner which denied disability insurance benefits to Plaintiff is **REVERSED** and the case is **REMANDED** to the Commissioner in accordance with the attached memorandum.

BY THE COURT,

CLIFFORD SCOTT GREEN, S.J.