

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

BOBBY E. BATTS	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 01-507
JO ANNE B. BARNHART ¹ , Commissioner of the	:	
Social Security Administration,	:	
Defendant.	:	

MEMORANDUM AND ORDER

YOHN, J.

MAY____, 2002

Pursuant to 42 U.S.C. § 405(g), Bobby Batts (“Batts”) appeals from the final decision of the Commissioner of Social Security (“the Commissioner”) partially denying his claim for disability income and supplemental security benefits under Titles II and XVI of the Social Security Act, 42 U.S.C. §§ 401 - 34. Batts and the Commissioner both move for summary judgment and Batts has alternatively moved to remand. These motions were referred to Magistrate Judge Carol Sandra Moore Wells. Magistrate Wells has submitted a Report and Recommendation that I grant the Commissioner’s motion for summary judgment and deny Batts’ motions.

Batts filed objections to the Magistrate Judge’s Report and Recommendation, in which he argues that the Magistrate Judge erred in adopting the Commissioner’s findings, as such findings

¹ Jo Anne B. Barnhart became the Commissioner of Social Security, effective November 14, 2001. Under Fed.R.Civ. P. 25(d)(1) and 42 U.S.C. § 405(g), Jo Anne B. Barnhart is automatically substituted as the defendant in this action.

are not supported by substantial evidence. Specifically, Batts challenges the following findings: (1) that he is not illiterate, (2) that he retains the residual functional capacity to perform “light work,” (3) that his statements of pain are not fully credible, and (4) that he is capable of performing a number of jobs in the community.

For the following reasons, I approve Magistrate Judge Wells’ Report and Recommendation and grant the Commissioner’s motion for summary judgment.

Background

I. Procedural History

Batts applied for disability insurance benefits (“DIB”) on October 27, 1998, claiming that he was disabled and unable to work since April 1995 due to an irregular heart beat, dizziness, high cholesterol, high blood pressure, muscle spasms, shortness of breath, chest pain, arthritis, ear ringing, joint pain, swollen feet, hemorrhoids, gout and athlete’s feet. R. 122, 131. Batts’ claim for benefits was initially denied, as was his request for a rehearing. R. 78-81, 83-85. On June 17, 1999, Batts requested a hearing before an administrative law judge (“the ALJ”). R. 86. A hearing on his claim was held on February 29 and a supplemental hearing was held on May 2, 2000. On June 27, 2000, the ALJ rendered a decision “partially favorable” to Batts. R. 15. The decision provided that Batts was not under a disability prior to June 1, 2000, and that as a result, Batts was not entitled to a period of DIB. R. 31. However, because the ALJ found Batts disabled as of June 1, 2000, Batts was eligible for social security income payments (“SSI”) as of that date. *Id.* This decision became the final determination of Batts’ DIB claim on November 29, 2000, when the appeals counsel upheld the ALJ’s decision. R. 7-8. Batts filed the instant action on

January 31, 2001, alleging that the ALJ's decision was not supported by substantial evidence.

II. Personal and Work Background

At the time of the hearings before the ALJ, Batts was a 54-year old man with a fifth grade education.² His past work experience included employment as a roofer, floor stripper, janitor and house-keeping supervisor. R. 135, 141-143. As a supervisor, Batts was responsible for 21 other employees, for writing warnings and reports and for making presentations. R. 52, 135. Batts was fired from his last employment in 1996, at which time he stopped working and collected unemployment compensation. R. 39, 135.

Batts testified that his back pain, irregular heartbeat, and arthritis in his hands, shoulders, hips, knees and legs have kept him from working. R. 42-43. Batts claimed that his discomfort increases when he bends over or attempts to lift an object, and that in order to reduce the pain, he must sit down. R. 43. Batts told the ALJ that he is only able to sit or stand for 15 minutes at a time, walk short distances and lift, at most, a gallon of milk. R. 39-41. Because Batts experiences shortness of breath when climbing stairs, Batts remains on the lower level of his two-story home for the entire day. R. 42. Batts spends most of his day watching television, and he lies down after taking his medication, which occurs three times daily. R. 46. In addition, Batts smokes a pack and a half of cigarettes a day. R. 39.

III. Medical History

The medical evidence, treatment notes and Batts' testimony indicate that back pain, an

² Batts was born on September 12, 1945.

irregular heartbeat and high blood pressure are Batts' primary disabling conditions.

From May 1998 through January 2000, Batts complained of back pain to his family practitioner, Dr. Peter Arcuri. R. 278, 284, 289, 291, 293, 296. In June 1999, an x-ray of Batts' lumbosacral spine indicated that osteoarthritis had caused sclerosis around the joints at the L5-S1 area. R. 236. The x-ray also showed that Batts' vertebral bodies, disc space, back alignment, pelvis, hips and sacroiliac joints were normal. Id. In July 1999, Dr. Arcuri referred Batts to Dr. Pedro Margate for a lumbar MRI scan. The MRI scan revealed two slightly "bulging" discs at L4-L5 and L5-S1, which "minimally" indented Batts' thecal sac. R. 235. Batts testified that, following his first administrative hearing, he visited Dr. Black, an orthopaedic surgeon who told Batts that he had a slipped disc for which surgery was recommended. R. 59-60. Batts told the ALJ that he declined surgery because Dr. Black did not like to operate on people with high blood pressure and heart problems.³ R. 60.

In August 1995, Batts visited the Hahnemann University Hospital emergency room, complaining of chest pain and shortness of breath. R. 248-249. A September 1995 cardiological exercise test showed Batts' to have a "low exercise tolerance" and a "hypertensive response to exercise" and a possible transmural ischemia⁴ or dyskinesia⁵ myocardium.⁵ R. 157. In October 1995, Dr. Arcuri referred Batts to cardiologist, Dr. William G. Kussmaul, M.D. R. 226. Dr.

³ Other than Batts' testimony, there is no evidence in the record of Dr. Black's consultation or proposed treatment.

⁴ Transmural ischemia is deficiency of blood throughout an entire organ. *See Dorland's Illustrated Medical Dictionary* at 566 (29th Ed. 2000).

⁵ The myocardium is the middle and thickest layer of the heart wall. Dyskinesia is a distortion or impairment of voluntary movement, as in a spasm. *Dorland's* at 554, 1169.

Kussmaul examination of Batts included a Holter monitor test that revealed “multiple PVC’s” (irregular heartbeats) but no other abnormalities. R. 226. Thus, Dr. Kussmaul concluded that Batts had a “structurally normal heart” and is at “very low risk of any danger from his irregular heart beat.” R. 227. On January 30, 1996, Batts was examined by another cardiologist, Dr. Marc Cohen. Dr. Cohen performed a Holter monitor test that revealed “ frequent ventricular premature beats as well as PACs and sinus tachycardia.” R. 229. Because of the serious nature of heart-related conditions, Dr. Cohen recommended that Batts undergo a cardiac catheterization. R. 230. The results of this catheterization were normal. R. 232. Another cardiologist, Dr. Scott Hessen examined Batts on March 27, 1996, finding that although Batts suffered from symptomatic ventricular ectopy (an irregular heartbeat) and hypertension, he had normal coronary arteries. R. 233. As treatment, Dr. Hessen proposed an increase in Batts’ dosage of hypertension drugs. Id.

In addition to his back and heart condition, Batts occasionally complained of dizziness to Dr. Arcuri. R. 263, 264, 268, 280. However, once Batts was prescribed medication for his dizzy spells in April 1999, it appears that his complaints of dizziness to Dr. Arcuri stopped. Batts testified that his dizzy spells occurred a couple times a week and lasted for approximately 4-6 seconds. R. 51.

IV. Residual Functioning Capacity

On behalf of the state agency, Dr. William I. Schwartz examined Batts on December 28, 1998. Schwartz found that Batts had a normal heart and lungs, zero degree of atrophy on his extremities, and a normal range of motion in all his joints. R. 210-211. Schwartz diagnosed Batts with high blood pressure and arthritis. R. 211. Despite this rather mild diagnosis, Schwartz

found that Batts was severely limited in his residual functioning capacity. Schwartz indicated that Batts was only capable of standing or walking one hour in an 8-hour day, of sitting six hours in an 8-hour day, and of lifting 20 pounds. R. 212.

In January 1999, Dr. Fred Meyers, a non-examining state agency evaluator, found Batts' limitations to be far less significant. Dr. Meyers opined that Batts was capable of occasionally lifting 50 pounds, frequently lifting 25 pounds, standing or walking for six hours a day, sitting for six hours a days and pushing or pulling without restriction. R. 218.

Dr. Arcuri did not formally assess Batts' residual functioning capacity; however, on May 26, 1999, he completed an "Employability Re-Assessment Form" which indicated that Batts was "permanently disabled" and unable "to engage in any gainful employment." R. 289-290. This assessment confirmed his earlier statement to the Pennsylvania Bureau of Disability Determination that he did not "think" Batts could work. R. 208.

Dr. Daniel Lewis, a medical expert in the fields of internal medicine and cardiovascular disease, reviewed Batts' medical file and testified at the supplemental administrative hearing in May 2000. Dr. Lewis found that although Batts had symptoms of an irregular heartbeat, he had a structurally normal heart and normal coronary arteries. R. 64. Dr. Lewis noted that in a structurally normal heart, irregular heartbeats are "regarded as benign." R. 64. Dr. Lewis testified that the limitations Dr. Schwartz imposed on Batts' ability to work were "rather drastic" and unsupported by the medical records. R. 65-66. Dr. Lewis opined that Batts could work a full day, if given the option to sit and stand at will.⁶ R. 66-67. To accommodate Batts' lumbar spine

⁶ In rendering this opinion, Dr. Lewis first stated that he was unable to assess Batts' back limitations because he was not an orthopedic surgeon. R. 65. However, Dr. Lewis continued to testify that he had considered Batts' lumbar spine problems when assessing Batts' residual

condition, Dr. Lewis also limited Batts' bending, kneeling, and other postural activities, other than reaching or handling. R. 67. Moreover, Dr. Lewis cautioned that Batts should not work around large machinery because of his hypertension and the possibility of dizziness. R. 67-68.

V. Vocational Testimony

Roslyn Sampson ("Sampson"), a vocational expert who testified at the supplemental administrative hearing, characterized Batts' past house-keeping work as medium exertion and unskilled and Batts' prior supervisory role as medium exertion and semi-skilled. R. 72. She further testified that Batts did not have any skills that would be transferrable to light or sedentary work. *Id.* The ALJ adopted Dr. Lewis' testimony and asked Sampson to assume a hypothetical man of Batts' age, education and experience, able to lift 20 pounds occasionally and able to sit, stand or walk for up to six hours a day, if afforded the opportunity to alternate these positions at will.⁷ R. 73. Sampson stated that although such a person could not perform any of Batts' previous jobs, this hypothetical person would be capable of performing other jobs that existed in significant numbers in the national and local economies. *Id.* Sampson identified the positions of security guard, parking lot attendant and cashier as potential employment opportunities for a person with Batts' limitations. *Id.*

functioning capacity. R. 67.

⁷ At the first administrative hearing, another vocational expert, Steven H. Gumermann testified that a hypothetical person of Batts' age, education and work experience, who could lift 20 pounds occasionally and needed to alternate sitting and standing, could work as a ticket taker, a lot attendant or a laundry sorter. R. 53. The ALJ's decision and Batts' motion for summary judgment, however, focus on the jobs suggested by Roslyn Sampson at the supplemental hearing.

VI. The ALJ's Opinion

In a decision dated June 27, 2000, the ALJ found that Batts had been under a disability since June 1, 2000, but not prior thereto.⁸ Based on the medical evidence, the testimony of Dr.

⁸ The ALJ's full findings were that:

1. "Claimant last met the disability insured status requirements of the Act on June 30, 1998.
2. "Claimant has not engaged in substantial gainful activity since his alleged onset date.
3. "The medical evidence establishes that claimant has severe degenerative arthritic changes in the lumbar spine, symptomatic ventricular ectopy, and irregular left ventricular heartbeat, 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. "Claimant's statements concerning his subjective complaints are overstated and not fully credible, as they are not well supported by the medical evidence.
5. "Claimant retains the residual functional capacity to perform work activity in jobs that do not require sitting, standing, or walking more than 6 hours per 8 hour day, do not require lifting or carrying more than 20 pounds occasionally, do not require pushing or pulling with more than 20 pounds of force, and would allow him to sit or stand as he felt necessary during the course of the day (20 CFR 404.1545, 416.945)
6. "Claimant is unable to perform his past relevant work.
7. "As of April 1, 1995, his alleged onset date, claimant was 49 years of age, which is defined as a 'younger person.' On September 11, 1995, claimant attained age 50, defined as "closely approaching advanced age," for Social Security purposes. Claimant is deemed to have attained age 55, defined as 'advanced age,' on June 1, 2000 (20 CFR 404.1563, 416.963).
8. "Claimant has a marginal education through completion of the fifth grade, but is able to read at a minimal level and is not illiterate (20 CFR 404.1564, 416.964).
9. "Claimant does not have any acquired work skills which are transferable to the skilled or semiskilled work activities of other work (20 CFR 404.1568, 416.964).
10. "During the time period from April 1, 1995, through June 1, 2000, based on an exertional capacity for light work activity, and considering claimant's age, education, and past work experience, 20 CFR 404.1569, 416.969, and Rules 202.11, 202.18, Table No. 2, Appendix 2, Subpart P, Regulations No. 4, direct a conclusion of 'not disabled.'
11. "During the time period from April 1, 1995, through June 1, 2000, although claimant's additional nonexertional limitations would not have allowed him to perform the full range of light work activity, using the above-cited rules as a framework for decision making, there are a significant number of jobs in the local

Lewis and the testimony of the vocational expert, Roslyn Sampson, the ALJ found that although prior to June 1, 2000, Batts' irregular heartbeat and lumbar spine condition had caused some limitations in his ability to work, Batts retained the capacity to perform work existing in significant numbers in the national economy and so was not disabled as defined by the Social Security Act. R. 20. Accordingly, the ALJ found that Batts was not entitled to a period of disability benefits. However, because Batts was almost 55 years old at the time the decision was rendered, the ALJ found that he was almost at "advanced age,"⁹ and thereby disabled under the Social Security Act as of June 1, 2000. Thus, Batts was eligible to receive supplemental security income as of that date.

Standards of Review

I review *de novo* the parts of the magistrate judge's report and recommendation to which Batts 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

and national economies that he could have performed, examples of which were enumerated by the vocational expert.

12. "As of June 1, 2000, based on a residual functioning capacity for light work activity, and considering claimant's age, education, and past work experience, 20 CFR 404.1569, 416.969, and Rule 202.02, Table No. 2, Appendix 2, Subpart P, Regulations No. 4, direct a finding of 'disabled.'
13. "Claimant was not under a 'disability' as defined in the Social Security Act until June 1, 2000 (20 CFR 404.1520(f), 416.920(f))."

⁹ A "person of advanced age" is defined as a person age 55 or over. The Commissioner considers that at an advanced age a person is less able to adjust to other work. 20 C.F.R. § 404.1563(e).

of whether there is substantial evidence to support his 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 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.¹⁰ *Richardson*, 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 examine each of Batts' objections and find them to be without merit. The Magistrate Judge properly addressed Batts' points and correctly concluded that the ALJ supported his

¹⁰ 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).

decision that Batts was not disabled with substantial evidence. An independent review of the ALJ's decision has brought me to the same conclusion as the Magistrate Judge and I will grant the Commissioner's motion for summary judgment.

I. Batts' First Objection - Finding of his Literacy Not Supported by Substantial Evidence

Batts' first objection is that the Magistrate Judge's adoption of the ALJ's finding that Batts' is not illiterate is not supported by substantial evidence.¹¹ Doc. 12 at 1. The ALJ considered the evidence that Batts had worked as a supervisor and was responsible for preparing some reports and presentations to be illustrative of his literacy. R. 21. The Magistrate Judge agreed with the ALJ, finding that although Batts had a marginal education, the "totality of the evidence in the record, including those facts relating to [Batts'] education, work history, and supervisory duties, strongly supports the ALJ's finding" that he is not illiterate. Doc. 11 at 15.

The social security regulations define illiteracy as the "inability to read or write." 20 C.F.R. § 404.1564(b)(1). The bar of literacy under the social security regulations is quite low; proficiency is not required. *Glenn v. Secretary of Health and Human Services*, 814 F.2d 387, 391 (7th Cir. 1987). Under the regulations, someone is considered illiterate if "the person cannot read or write a simple message such as instructions or inventory lists even though the person can sign his or her name." 20 C.F.R. § 404.564(b)(1). The numerical grade level reached by an individual is not always indicative of an ability to read and write. *Grottoli v.*

¹¹ The issue of Batts' literacy is relevant because if Batts were found to be illiterate, the social security regulations would require a finding that given his age, vocational skills, and physical impairments, Batts was disabled prior to June 1, 2000. 20 C.F.R. Pt. 404, Subpt. P. App 2, § 202.00(d).

Chater, 1996 WL 617425 (E.D.Pa. Oct. 18, 1996). The key question in determining an individual's literacy is whether the individual is able to read or write well enough to obtain an unskilled job. *Glenn*, 814 F.2d at 391. If not, that individual is considered illiterate, regardless of their education level. *Id.* Thus, in determining Batts' literacy, the appropriate focus is not on Batts' completion of the fifth grade, but rather on Batts ability to work given his reading and writing abilities or lack thereof.

The Magistrate Judge noted that Batts' prior supervisory role was classified as "semi-skilled" and that Batts' ability to perform at this skill level was inconsistent with his present claim of illiteracy, which would preclude even unskilled work. Doc. 11 at 14. Batts takes issue with the Magistrate Judge's determination that the supervisory nature of his past employment is evidence that he is not illiterate. Batts maintains that as a supervisor he was mostly responsible for telling people what to do and for working out a schedule, tasks which did not require literacy.

While it may be true that most of Batts' time as a supervisor was spent "keeping an eye on other workers," the record evidence establishes that as a supervisor he also had written responsibilities. On his DIB application, Batts described his basic duties as a housekeeping supervisor to include writing warnings. R. 135. Additionally, at the administrative hearings, Batts testified that as a supervisor he was responsible for writing reports and for giving presentations. R. 52. Although Batts testified that when time allowed his wife "sometimes" assisted in the preparation of these reports, this does not in any way establish that Batts did not complete the reports independently when pressed for time. Rather, it only demonstrates that Batts found it easier to write with the help of his wife. The ability to write with ease, however, is not a prerequisite to finding that a claimant is not illiterate under the regulations. Given Batts

prior work experience, which included writing warnings and reports, it is certainly logical to conclude that Batts possessed at least a minimal ability to write. Thus, I agree with the Magistrate Judge that there is substantial evidence to support the ALJ's finding that Batts is "not illiterate."

Batts also objects to the Magistrate Judge's literacy analysis on the grounds that she focused solely on Batts' ability to write and did not consider whether Batts was able to read. Doc. 12 at 2 - 4. Batts argues that literacy requires the ability to read *and* write, and therefore even if he has a minimal ability to write, he cannot properly be deemed "not illiterate" because he is unable to read. As evidence that he was unable to read, Batts points to his testimony that his wife read his mail for him and that he was "not good" at reading the newspaper to determine what was on television.¹² R. 37.

Despite this testimony, I believe that there is substantial evidence to support a logical inference that Batts was capable of reading at a functionally literate level. *See Glenn*, 814 F.2d at 390-91 (Claimant was found literate despite evidence that he could read neither the newspaper nor the notice of hearing that the Social Security Administration sent him.). As stated above, in his supervisory role, Batts wrote reports and warnings. It is hard to imagine how Batts could write these reports and warnings, and yet be unable to read and understand the contents of what he was writing. See Doc. 12 at 4. The only conceivable way Batts could write these reports and warnings without the ability to read these reports and warnings would be if he memorized the words and sentences that he wrote. However, Batts does not claim to have prepared his reports and warnings by memorization, nor is it likely that all of the reports and warnings that Batts

¹² It is unclear from the testimony whether Batts is able to read a simple shopping list, because when he was asked this question, Batts gave the ambiguous answer that his wife "does all the shopping." R. 38.

wrote were identical enough to make memorization a possibility. Because there is evidence that Batts has enough mastery of language to be able to put words together in written sentences, it is logical to conclude that he also has a minimal ability to read the sentences that he writes.

Moreover, Batts did not testify that he could not read and write. He only stated that his ability to read and write was “not that good.” R. 37. However, an ability to read and write well is not what is required by the social security regulations for a finding of literacy. All that is required is the ability to read and write well enough to perform a job requiring few skills. Based on Batts’ prior work experience and his testimony at the administrative hearing, I find it reasonable to conclude that Batts can read and write well enough to be deemed “not illiterate” for purposes of obtaining disability benefits. Thus, I agree with the Magistrate Judge that there is enough evidence to support the ALJ’s determination of Batts’ literacy.¹³

II. Batts’ Second, Third, Fourth and Fifth Objections

Batts also objects to the Magistrate Judge’s adoption of the ALJ’s findings that: (1) he had the residual functioning capacity to perform light duty work, (2) his statements concerning his physical condition were not fully credible, (3) he can perform a number of jobs, such as a

¹³ Although Batts argues that the evidence of his illiteracy is clear, Batts maintains that if the court finds the evidence to be unclear, the proper course of action is to remand this case to the Commissioner for a supplemental hearing. Doc. 12 at 5-6. To support his case for a remand, Batts cites cases which stand for the well-settled proposition that the Commissioner has an obligation to fully and fairly develop the record. *Id.* at 6. This case, however, does not present a case where the ALJ has failed to develop the record. Here, the ALJ developed the record by actively questioning Batts regarding his illiteracy. R. 36-38, 52. Thus, it would be improper to remand this case based on any alleged fault of the ALJ in developing the record. Moreover, it would be improper to remand this case simply because it arguably presents a close call on the issue of literacy. The record evidence is clearly sufficient for a reasonable mind to accept the ALJ’s determination that Batts is not illiterate as defined by the Administration’s regulations.

cashier, security guard and parking lot attendant, and (4) that he is not disabled.¹⁴ In particular, Batts objects to these findings on the basis that such findings were not supported by substantial evidence.

Batts' second objection is that the evidence did not support a finding that he had the residual functioning capacity to perform light work. The basis of this objection was Batts' belief that the ALJ had acted improperly in applying less weight to the opinion of his treating physician, Dr. Arcuri, that Batts was permanently disabled and unable to work. Applying the law of this circuit, which allows an ALJ to disregard the opinion of a treating physician if there is a lack of clinical data to support it or contradictory medical evidence, I find that the medical evidence did not support Dr. Arcuri's conclusion that Batts was permanently disabled. *See Frankenfield v. Bowen*, 861 F.2d 405, 408 (3d Cir. 1988); *Newhouse v. Heckler*, 753 F.2d 283, 286 (3d Cir. 1985). Not one of the numerous doctors who examined Batts opined that his irregular heartbeat would limit his functional abilities. Rather, the uncontradicted opinion was that his heart was structurally normal and that any irregular heartbeat was benign. R. 210, 225, 227. Moreover, the x-ray and MRI of Batts' lumbar spine were rather unremarkable, indicating nothing more than a "slight bulging" at two of his discs and a minimal indenting of the thecal sac. R. 235, 236. Thus, although Batts' experienced hypertension, which caused him to have a "low exercise tolerance" (R. 157, 226, 229), the medical evidence simply does not support Dr. Arcuri's conclusion that Batts could not work at all. Rather, the medical evidence substantially supports the ALJ's finding that Batts could perform some types of light work, especially if given the opportunity to

¹⁴ It is not completely correct to state that the ALJ did not find Batts disabled. The ALJ's exact finding was that Batts was not disabled prior to June 1, 2000, but that after that date he was disabled.

alternate sitting and standing as Batts felt necessary during the course of the day.

Batts' third objection is that the ALJ improperly discredited his testimony about his physical limitations. I find that the ALJ conducted a proper and thorough review of the intensity and persistence of Batts' symptoms as required by the social security regulations, considering both the objective medical evidence and Batts' subjective testimony. *See* 20 C.F.R. § 404.1529. Moreover, contrary to Batts' assertion, the ALJ did not wholly discredit his complaints. The ALJ only discounted Batts' testimony to the extent that it was inconsistent with the objective medical evidence. *See Hartranft v. Apfel*, 181 F.3d 358, 362 (3d Cir. 1999) ("Allegations of pain and other subjective symptoms must be supported by objective medical evidence."). In fact, the ALJ explicitly credited Batts when he chose to rely on the more restrictive residual functioning assessment of Dr. Lewis rather than the lenient residual functioning assessment of Dr. Myers. Accordingly, I agree with the Magistrate Judge that there is substantial evidence to support the ALJ's finding that Batts' statements concerning his pain were "overstated and not fully credible." R. 29.

Batts' fourth objection is that there was not substantial evidence to support the ALJ's finding that Batts could perform a number of jobs in the local and national economies. Batts' specific argument is that the vocational expert testimony that the ALJ relied upon in making this finding conflicted with the job descriptions contained in the Dictionary of Occupational Titles (DOT) and that the ALJ did not elicit a reasonable explanation for the conflict as is required by Social Security Ruling 00-4p. Batts maintains that a conflict exists because although the vocational expert testified that Batts did not have any transferrable skills and was only suited for unskilled employment, the positions identified by the vocational expert as appropriate for Batts,

namely cashier, parking attendant and security guard, were classified by the DOT as semi-skilled. However, contrary to Batts' assertion, there is no such conflict here. Within the categories of jobs identified by the vocational expert as appropriate for an individual with Batts' limitations, the DOT includes many subclasses of unskilled positions. For example, the "Cashier II" position, which includes the positions of cafeteria cashier, parking lot cashier, dining-room cashier, store cashier, and payments-received cashier, has a specific vocational preparation ("SVP") of level 2, the SVP of unskilled employment. *See The Dictionary of Occupation Titles - Revised* at § 211.462-010 (4th Ed. 1991). As there is no conflict here that made the ALJ's reliance on the vocational expert's testimony erroneous, I agree with the Magistrate Judge that the relevant evidence substantially supports the ALJ's finding that Batts could perform certain light work and unskilled jobs which exist in significant numbers in the economy.

Batts' fifth objection is that the Commissioner's ultimate finding that Batts was not disabled is not supported by substantial evidence. Beyond the four objections discussed above, Batts has not raised any specific arguments to support this fifth objection. Given that Batts' specific objections to the ALJ's decision are without merit, I agree with the Magistrate Judge that the ALJ's decision that Batts was not disabled prior to June 1, 2000 is properly supported by substantial evidence.

Conclusion

Magistrate Judge Wells was correct in finding that the ALJ's decision that Batts was not disabled prior to June 1, 2000 was supported by substantial evidence. The relevant evidence is such that a reasonable mind might accept as adequate the ALJ's findings that Batts was not

illiterate, capable of performing light work, and that his testimony as to his physical conditions was not entirely credible. There is also sufficient evidence to support the ALJ's finding that even with his physical limitations, Batts was able to perform work in several occupational fields. Thus, I will adopt the Magistrate Judge's Report and Recommendation that Batts' motion for summary judgment be denied and that the Commissioner's motion for summary judgment be granted.

An appropriate order follows.

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

BOBBY E. BATTS	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 01-507
JO ANNE B. BARNHART, Commissioner of the	:	
Social Security Administration,	:	
Defendant.	:	

ORDER

And now this _____ day of May 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 Carol Sandra Moore Wells 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 Bobby E. Batts for summary judgment or, in the alternative, to remand is DENIED.
3. The motion of defendant Jo Anne B. Barnhart, Commissioner of Social Security, for summary judgment is GRANTED.
4. Judgement is entered affirming the decision of the Commissioner.

William H. Yohn, Jr., Judge

