



record as a whole, not just the evidence that is consistent with the agency's finding." Monsour, 806 F.2d at 1190, *quoting Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951).

Plaintiff has asserted three objections to Judge Smith's Report and Recommendation. Plaintiff's first and second objections are both based upon Plaintiff's belief that the ALJ and Judge Smith erred in failing to rely upon Social Security Ruling 83-12 in making their determinations. Plaintiff alleges that his capability to perform work falls between the classifications of sedentary work<sup>1</sup> and light work.<sup>2</sup> As such, Plaintiff believes his determination of benefits should be reviewed under Social Security Ruling 83-12. 1983 WL 31253 (S.S.A.). This ruling provides that, where a claimant cannot perform the full range of work within a given category, the ALJ is to consult a vocational expert to determine the extent of the claimant's occupational base. Id. at \*3. "In cases of unusual limitation of ability to sit or stand, a [vocational specialist] should be consulted to clarify the implications for the occupational base." Id. at \*4.

Whenever vocational resources are used, and an individual is found to be not disabled, the determination or decision will include (1) citations of examples of occupations/jobs the person can do functionally and vocationally and (2) a statement of the incidence of such work in the region in which the individual resides or in several regions of the country.

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1. "Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met." 20 C.F.R. § 404.1567(a).

2. "Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities." 20 C.F.R. § 404.1567(b).

Id. at \*5.

Under the Social Security Act, disability benefits are only available to individuals who are unable “to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment.” 42 U.S.C. § 423(d)(1)(A). To qualify for disability benefits, the individual must not only be unable to engage in his previous line of work, but must also be unable to engage in any other kind of “substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work.” 42 U.S.C. § 423(d)(2)(A) (2001).

Plaintiff alleges that, pursuant to Social Security Ruling 83-12, the vocational expert did not provide examples of jobs which Plaintiff could perform. Pl.’s Objections at 10. This allegation is untrue, as the expert clearly stated five examples of jobs which Plaintiff could perform, including gate attendant, inspector/tester, cashier, ticket seller and parking lot attendant. Def.’s Br. in Supp. of Mot. for Summ. J. at 11. The expert explained that, between these five types of jobs, 586,000 such positions are available nationally. Def.’s Br. in Supp. of Mot. for Summ. J. at 11. Plaintiff also alleges that the ALJ did not provide the basis for a conclusion about Plaintiff’s occupational base. Pl.’s Objections at 10. This allegation is also untrue, as the ALJ gave clear and substantial evidence to support his findings regarding Plaintiff’s capabilities.

There need only be “substantial evidence in the record to support the ALJ’s” findings in order for this Court to uphold the ALJ’s decision. Monsour, 806 F.2d at 1190. The vocational expert examined the evidence and determined particular jobs which Plaintiff is capable of performing, even though Plaintiff is not capable of performing the job he held prior to

his injury. The ALJ considered the expert's analysis and determined that Plaintiff is not disabled. The ALJ carefully weighed the evidence presented before him and determined that, given the definitions for sedentary work and light work, Plaintiff is able to perform limited light work. The ALJ clearly stated the medical reasons for his decision. Given that Plaintiff can perform substantial gainful work which exists in the national economy, there is substantial evidence in the record to support the ALJ's conclusion and Judge Smith's Recommendation to deny Plaintiff's Motion for Summary Judgment.

Plaintiff's third objection to Judge Smith's Report and Recommendation is that Judge Smith erred in concluding that the Commissioner sustained her burden of proof regarding Plaintiff's ability to perform alternate work. Plaintiff rightly noted that he had the burden of establishing that he was disabled on or before September 30, 1997, the date his eligibility for benefits expired. See 20 C.F.R. § 404.131 (2001). Plaintiff also noted that the burden of proof passed to the Commissioner once the ALJ found that Plaintiff was unable to perform his previous work. See Bowen v. Yuckert, 482 U.S. 137, n.5 (1987). Plaintiff is incorrect, however, in asserting that the Commissioner was unable to carry this burden.

The ALJ relied upon the evaluation of a vocational expert who aided the Commissioner in proving that Plaintiff is not disabled. According to Social Security Ruling 83-12, if a vocational expert is consulted, and an individual is found to be not disabled, the decision should include examples of jobs the individual can perform and a description of the location in which such jobs are available either in the region in which the individual lives or nationally. 1983 WL 31253 (S.S.A.) at \*5. The ALJ's findings and Judge Smith's Report and Recommendation note that the vocational expert listed jobs which the Plaintiff is capable of

performing, and the numbers of such jobs that exist regionally and nationally. 586,000 of the types of jobs identified for Plaintiff are available throughout the country, and several are presumably available in Plaintiff's region, given the common nature of these positions. Def.'s Br. in Supp. of Mot. for Summ. J. at 11. Furthermore, the ALJ's findings support the medical evidence upon which the ALJ relied in making his determination regarding Plaintiff's occupational base for light work. Plaintiff is able to stand and sit for particular periods intermingled throughout the day, and he is capable of performing common household chores. Tr. 144-45, 245-56. Accordingly, there is substantial evidence to indicate that the Commissioner sustained her burden of proof regarding Plaintiff's ability to perform alternative work from that which he used to do. Plaintiff's objections to Judge Smith's Report and Recommendation are overruled.

An appropriate Order follows.

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

WILLIAM E. HENDERSON,	:	
Plaintiff	:	
	:	CIVIL ACTION NO. 01-562
v.	:	
	:	
JO ANNE BARNHART,	:	
COMMISSIONER OF SOCIAL	:	
SECURITY ADMINISTRATION,	:	
Defendant	:	

**ORDER**

AND NOW, this 4th day of November, 2002, upon consideration of parties' cross-motions for summary judgment, and after review of the Report and Recommendation of Charles B. Smith, United States Magistrate Judge, and the objections filed thereto, it is hereby **ORDERED** that:

1. The Report and Recommendation is **APPROVED AND ADOPTED**;
2. The Defendant Commissioner's Motion for Summary Judgment is **GRANTED**;
3. The Plaintiff's Motion for Summary Judgment is **DENIED**.

Judgment is entered in favor of Defendant Commissioner and against Plaintiff William E. Henderson.

This case is **CLOSED**.

BY THE COURT:

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RONALD L. BUCKWALTER, J.