

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

EDWARD S. GOLAS :
 :
 v. : NO. 01-CV-3561
 :
 JO ANNE B. BARNHART, :
 Commissioner of Social :
 Security Administration :

ORDER

AND NOW, this ¹¹~~11~~ day of November, 2002, upon
consideration of Plaintiff's Motion for Summary Judgment (Docket
#7), the Defendant's Motion for Summary Judgment (Docket #8) and
the Plaintiff's reply brief, as well as the Magistrate Judge's
Report and Recommendation and the Plaintiff's objections thereto,
and having reviewed the record, it is hereby Ordered and Decreed
that the Report and Recommendation is Disapproved, the
Defendant's Motion for Summary Judgment is Denied, and the
Plaintiff's Motion for Summary Judgment is Granted in part and
Denied in part. The Court remands the case for a hearing with a
medical adviser to determine the onset date of disability.

After the parties filed their motions for summary
judgement, the Court referred the case to Magistrate Judge Carol

Sandra Moore Wells for a Report and Recommendation (R & R). On October 3, 2002, the Magistrate Judge issued an R & R that the Administrative Law Judge's findings were supported by substantial evidence and recommended that summary judgment be entered in favor of the Commissioner. The plaintiff has objected to the Magistrate Judge's R & R.

The Court adopts the procedural and factual history from the R & R and reviews the Social Security Commissioner's findings to determine if they are supported by substantial evidence. Schaudeck v. Comm'r of Soc. Sec. Admin., 181 F.3d 429, 431 (3d Cir. 1999).

In his objections to the Magistrate Judge's R & R, the plaintiff argues that the ALJ erred in finding that he had the residual functional capacity for a wide range of light exertional work. He contends that the ALJ did not give proper weight to the opinions of his treating doctor, Dr. Louis van de Beek, and refused to consider new and material evidence. The Court agrees that the ALJ did not give proper weight to the opinions of the treating doctor.

It appears that the plaintiff's back pain required consistent decreases in the plaintiff's exertion and increases in his medications over several years. Although the plaintiff complained of pain and numbness in his left leg and back at least

as early as 1997, the plaintiff began having significant back pain in 2000. The plaintiff's over-the-counter pain medication was no longer effective; in March 2000, the plaintiff began taking Roxicet, 5 milligrams twice daily for his back pain. In May 2000, he was diagnosed with "very severe degenerative arthritis of the lumbar spine with spinal stenosis," and prescribed Neurotin. R. 123-26, 184-86.

He was referred to a neurologist and diagnosed with "sensorimotor polyneuropathy of predominantly axonal loss type," nerve damage, and other problems. By June 2000, he was also taking Soma and an increased amount of Neurotin. Given the level of pain medication, the plaintiff reported napping in the afternoons. In October 2000, Dr. Van de Beek found that he had extreme pain when lifting and bending, could ambulate only with an assistive device and even then it was limited, and that all attempts to treat him had unsuccessfully controlled his symptoms. R. 53-55, 191, 198-99, 224.

The Court is also concerned with the ALJ's treatment of the plaintiff's hearing testimony. The ALJ found that if he "were to accept all of the claimant's hearing testimony as fully credible with respect to the nature, severity, intensity, persistence, and functionally limiting effects of his impairments, I would have to conclude that he has been reduced to

a very sedentary, vegetative lifestyle, and is incapable of any significant work-related functioning. . . ." R. 18. The basis for his rejection of the testimony was that it was not supported by clinical tests and was not consistent with responses to certain questions on a questionnaire that the plaintiff had filled out months earlier.

I agree with the plaintiff's objections that the ALJ appears to be relying on his personal evaluation of the clinical evidence as opposed to the evaluation of the treating doctor. The ALJ also does not explain why the more logical conclusion from the fact that the plaintiff did not mention napping months earlier is that the plaintiff's medication had drastically changed over those months and his condition had worsened.

Having carefully reviewed the record in this case (including the medical evidence, the transcript of the hearing, and the decision of the ALJ), the Magistrate Judge's R & R, and the plaintiff's objections to the R & R, the Court concludes that there is not substantial evidence to support the ALJ's decision that the plaintiff was not disabled through the date of that decision. The Court also concludes, however, that there is substantial evidence for a finding of no disability through a portion of the time period considered by the ALJ. For example, the plaintiff himself conceded at the hearing before the ALJ that

he could have done his job for "maybe another year," at the longest until June 1999. R. 45. For that reason, the Court is remanding the case for a hearing so that a medical adviser can determine the date of onset of disability.

BY THE COURT:


MARY A. MCLAUGHLIN, J.

faxed 11/15/02:

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