

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

FREDERICK FITCH,
Plaintiff

v.

JO ANNE BARNHART,
Commissioner of Social Security,
Defendant

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**CIVIL ACTION
NO. 03-1596**

MEMORANDUM OPINION

RUFE, J.

December 23, 2003

Plaintiff seeks judicial review of the decision of the Commissioner of the Social Security Administration denying his claim for disability insurance benefits (“DIB”) under Title II of the Social Security Act. 42 U.S.C. §§ 401-433. Presently before the Court are the parties’ cross-motions for summary judgment. United States Magistrate Judge Arnold C. Rapoport issued a report recommending that this Court deny Plaintiff’s Motion for Summary Judgment, grant Defendant’s Motion, and affirm the Commissioner’s decision. Upon careful and independent consideration of the administrative record, Judge Rapoport’s report, and Plaintiff’s objections thereto, the Court overrules Plaintiff’s objections and grants Defendant’s Motion for Summary Judgment.

I. BACKGROUND

Judge Rapoport sets forth in his Report and Recommendation (“R & R”) a detailed review of the procedural history, factual background and evidence submitted in this case. Essentially, Plaintiff does not object to Judge Rapoport’s recitation of the facts, and the Court therefore adopts and incorporates that recitation herein with one limited exception.¹ The following

¹ Plaintiff objects to the following summary of Plaintiff’s testimony at the April 9, 2002 hearing: “Plaintiff also testified that his daily activities include driving, doing the dishes, laundry, occasional shopping, driving to see his mother in New Jersey twice a week, and visiting with his grandchildren.” R & R at 9 n.10. This statement does

summary is presented for informational purposes only.

Plaintiff filed his application for DIB on June 26, 2001, alleging disability since December 15, 2000 due to carpal tunnel syndrome, a torn rotator cuff in his left shoulder, and back and foot pain. The Commissioner of Social Security denied Plaintiff's claims for DIB, and Plaintiff thereafter requested a hearing. After a hearing before Administrative Law Judge ("ALJ") William J. Ready on April 9, 2002, the ALJ found that Plaintiff retained the residual functional capacity ("RFC") to perform the exertional requirements of light level work and denied Plaintiff's claim on May 30, 2002. Plaintiff then appealed to this Court.

On cross-motions for summary judgment, Judge Rapoport filed his R & R, finding that "the ALJ's decision was supported by substantial evidence of record, including the ALJ's evaluation of Plaintiff's ability to perform light work [and] the ALJ's credibility determination." R & R at 20. Today the Court adopts the legal reasoning and conclusion set forth in the R & R. Consistent with its duty as articulated in 28 U.S.C. § 636(b)(1), the Court addresses below those portions of the R & R to which objection is made.

II. STANDARD OF REVIEW

The Social Security Act provides for judicial review of any "final decision of the Commissioner of Social Security" in a disability proceeding. 42 U.S.C. § 405(g). The district court may enter a judgment "affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing." *Id.* However, the Commissioner's

contain some inaccuracies, including that Plaintiff testified that he only does the dishes and laundry "sometimes" and that he only visits his mother "maybe once a week." (Tr. 104-05) There is no evidence in the record, however, that the ALJ similarly mischaracterized Plaintiff's testimony as to Plaintiff's daily activities. As such, any inaccuracies in the above summary are irrelevant to whether the ALJ's decision was supported by substantial evidence.

findings “as to any fact, if supported by substantial evidence, shall be conclusive.” *Id.* Accordingly, the Court’s scope of review is “limited to determining whether the Commissioner applied the correct legal standards and whether the record, as a whole, contains substantial evidence to support the Commissioner’s findings of fact.” Schwartz v. Halter, 134 F. Supp. 2d 640, 647 (E.D. Pa. 2001).²

Substantial evidence has been defined as “more than a mere scintilla” but somewhat less than a preponderance of the evidence, or “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Richardson v. Perales, 402 U.S. 389, 401 (1971); Jesurum v. Sec’y of the United States Dep’t of Health & Human Servs., 48 F.3d 114, 117 (3d Cir. 1995). The standard is “deferential and includes deference to inferences drawn from the facts if they, in turn, are supported by substantial evidence.” Schaudeck v. Comm’r of S.S.A., 181 F.3d 429, 431 (3d Cir. 1999).

In reviewing Judge Rapoport’s R & R, this Court must review *de novo* only “those portions” of the R & R “to which objection is made.” 28 U.S.C. § 636(b)(1).

III. OBJECTIONS TO THE R & R

The Court has discerned two specific objections to Judge Rapoport’s R & R and addresses each of these objections below.

A. Whether Judge Rapoport Erred When He Agreed With the ALJ’s Decision Not to Give Great Weight to Dr. Bonner’s Opinions and Findings

Plaintiff argues that the ALJ’s decision not to rely on Dr. James Bonner’s report was improper. In support of this argument, Plaintiff points to the following two reasons cited by the ALJ

² On July 30, 2003, pursuant to a subsequent DIB application, the Social Security Commissioner found Mr. Fitch disabled as of February 1, 2003, the month in which he turned 55. Objections at 17 n.6. The question remains, however, whether the ALJ’s May 30, 2002 decision was supported by substantial evidence.

that Plaintiff says are contrary to the evidence: 1) the ALJ's finding that Dr. Bonner "provided no test results, only reported on them"; and 2) the ALJ's finding that Dr. Bonner's report is unclear about the time period he was reporting on and about how recently the tests were conducted. Plaintiff's objection is unfounded. First, these two reasons are only part of why the ALJ did not give great weight to Dr. Bonner's report. As the ALJ explained:

Dr. Bonner was not the claimant's treating physician, but a consultant for the claimant and his representative. The doctor wrote the evaluation the same day he first evaluated the claimant. The doctor provided no test results, only reported on them. His report leaves a question about how recently the tests were conducted. The report is unclear and Dr. Bonner may have been reporting about the claimant's condition at the time he, the claimant, underwent back and carpal tunnel surgery, in the early 1990s. Dr. Bonner's report was written just three months after Dr. Webbers [sic] assessment. The undersigned gives more weight to the report of the treating physician, Dr. Webber.

(Tr. 16) This explanation demonstrates, as Judge Rapoport points out in his R & R, that the ALJ considered all of the evidence when deciding not to rely on Dr. Bonner's report. Most significantly, the ALJ properly gave greater weight to the report of Dr. Webber, Mr. Fitch's treating physician, who had examined him only three months before.³

Viewed individually, Plaintiff's specific objections are unfounded. Plaintiff claims that the ALJ's statements that Dr. Bonner "provided no test results, only reported on them," and that "his report leaves a questions about how recently the tests were conducted," are not supported by the evidence. Plaintiff argues that in his report, Dr. Bonner includes "the results of his clinical examination as well as the electrodiagnostic testing that he performed on Mr. Fitch."

³ A treating physician's opinion is entitled to "substantial and at times even controlling weight." Fagnoli v. Massanari, 247 F.3d 34, 43 (3d Cir. 2001) (citing 20 C.F.R. § 404.1527(d)).

Objections at 7. He further argues that Dr. Bonner's opinions are in the present tense. Id. Dr. Bonner's report, however, does not support Plaintiff's arguments. Nowhere in his report does Dr. Bonner state that he actually performed any tests. Most of his references to tests being performed are in the passive voice, and, although his opinions relating Mr. Fitch's condition are generally in the present tense, his discussion of the results of these tests is in the past tense. Accordingly, this Court concludes that the ALJ's finding that Dr. Bonner did not provide any test results, and that it is unclear when the tests he reports on were performed, was supported by substantial evidence.

Plaintiff also finds error in the ALJ's explicit rejection of Dr. Bonner's opinion that Plaintiff was disabled. In support of this argument, Plaintiff asserts only that the opinions of Dr. Finch, a state agency medical consultant, are not substantial evidence to reject Dr. Bonner's findings and conclusions. This objection is also unfounded. As discussed above, and as pointed out by Judge Rapoport, the ALJ considered all the evidence and did not reject Dr. Bonner's findings solely on the basis of Dr. Finch's assessment. In fact, the ALJ specifically stated that he gave more weight to Mr. Fitch's treating physician, Dr. Webber, when he explained his reasons for rejecting Dr. Bonner's opinion. Moreover, the ALJ acknowledged that he was not bound by Dr. Finch's findings, but he gave them substantial weight because they were consistent with other evidence. (Tr. 16) Accordingly, the ALJ properly considered the evidence when determining how much credence to give to Dr. Bonner's conclusions. Furthermore, after undertaking its own independent review of the evidence, the Court finds that the ALJ's decision was supported by substantial evidence.

2. Whether the ALJ Erred in His Credibility Determination of Plaintiff

Judge Rapoport addressed each of Plaintiff's objections to the ALJ's credibility determination of Plaintiff. Plaintiff claims the evidence does not support the ALJ's conclusion that

Plaintiff exaggerated his symptoms. However, as Judge Rapoport noted, the ALJ considered all of the evidence, including medical reports, medical history and Plaintiff's own testimony in light of the medical treatment actually sought by Plaintiff. After doing so, the ALJ concluded that some of Mr. Fitch's symptoms were not fully supported by the documentary evidence.⁴ Nevertheless, the ALJ properly credited those portions of Mr. Fitch's testimony relating to symptoms that were supported by the evidence. Moreover, this Court has independently reviewed the record and finds that the ALJ's credibility determination was supported by substantial evidence.

An appropriate Order follows.

⁴ "Allegations of pain and other subjective systems must be supported by objective medical evidence." Hartranft v. Apfel, 181 F.3d 358, 362 (3d Cir. 1999) (citing 20 C.F.R. § 404.1529).

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ORDER

AND NOW, this 23rd day of December, 2003, upon careful consideration of Plaintiff's Motion for Summary Judgment [Doc. #7], Defendant's Motion for Summary Judgment [Doc. #8], Plaintiff's Reply Brief [Doc. # 10], the Report and Recommendation of United States Magistrate Judge Arnold C. Rapoport [Doc. #11], and Plaintiff's Objections thereto [Doc. #12], and for the reasons set forth in the attached Memorandum Opinion, it is hereby **ORDERED**:

1. The Report and Recommendation is **APPROVED** and **ADOPTED**;
2. Plaintiff's Objections are **OVERRULED**;
3. Plaintiff's Motion for Summary Judgment is **DENIED**;
4. Defendant's Motion for Summary Judgment is **GRANTED**; and
5. The Clerk of Court shall mark this case closed for administrative purposes.

It is so **ORDERED**.

BY THE COURT:

CYNTHIA M. RUFÉ, J.