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

STEPHEN J. PERRY, Plaintiff, v. JO ANNE B. BARNHART, Commissioner of Social Security, Defendant.	: : : : : : : : :	CIVIL ACTION No. 02-2962

MEMORANDUM AND ORDER

J. M. KELLY, J. **MAY , 2003**

Presently before the Court is the Report and Recommendation of United States Magistrate Judge Arnold C. Rapoport, to which no objections have been filed, recommending that this Court deny the Motion for Summary Judgment filed by Plaintiff Stephen J. Perry ("Plaintiff"), and grant the Motion for Summary Judgment filed by Defendant Commissioner of Social Security ("Defendant"). This Court agrees with the analysis presented and the conclusions drawn by Magistrate Judge Rapoport and, for the following reasons, approves and adopts his Report and Recommendation.

Plaintiff's claim arises out of Defendant's denial of supplemental security income ("SSI") benefits under Title XVI of the Social Security Act (the "Act"), 42 U.S.C. §§ 1381-1383f. On October 17, 2000, Plaintiff filed an application for SSI (R. 46-49.), which was denied (R. 31.). Plaintiff requested a review hearing (R. 32-33, 36-40.), and, on September 20, 2001, a hearing took place before Administrative Law Judge Edward T. Morriss (the "ALJ") (R. 18-30.) On October 10, 2001, the ALJ issued Plaintiff

an unfavorable decision, finding that Plaintiff was impaired by conditions such as high blood pressure, hypercholesterolemia, anxiety and depression, but that they were not severe impairments such that they significantly limit Plaintiff's ability to perform work-related activities. (R. 9-15.) Thereafter, Plaintiff sought review of the ALJ's decision and, on March 28, 2002, the Appeals Council refused Plaintiff's request. (R. 5-6.) The ALJ's determination became a final decision of the Commissioner, which allowed Plaintiff to initiate the instant suit for judicial review pursuant to 42 U.S.C. § 405(g). This Court referred the matter to Magistrate Judge Rapoport for a Report and Recommendation.

Judicial review of the Commissioner's final decision is limited, and this Court is bound by the factual findings of the Commissioner if they are supported by substantial evidence and decided according to correct legal standards. Allen v. Bowen, 881 F.2d 37, 39 (3d Cir. 1989); Coria v. Heckler, 750 F.2d 245, 247 (3d Cir. 1984). Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971) (quoting Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229 (1938)). It is more than a mere scintilla of evidence but may be less than a preponderance. Brown v. Bowen, 845 F.2d 1211, 1213 (3d Cir. 1988).

The Social Security Administration has promulgated regulations that require a five-step sequential evaluation of a disability claim, which include, in order, whether a claimant: (1) worked during the alleged period of disability; (2) had a severe impairment; (3) had an impairment that meets or equals the requirements of a listed impairment; (4) could return to his past relevant work; and (5) if not, whether he could perform other work in the national economy. 20 C.F.R. § 404.1520. In this case, the ALJ determined, at step two, that Plaintiff did not have any severe impairment or combination of impairments that significantly limited his ability to perform basic work-related activities, and found that Plaintiff was not disabled. (R. 9-15.) Plaintiff challenges the ALJ's decision on the grounds that the ALJ did not give sufficient weight to his subjective complaints and did not develop a full and fair record.

This Court agrees with Magistrate Judge Rapoport's Report and Recommendation finding that substantial evidence in the record supports the ALJ's determination. Specifically, the ALJ determined that: (1) Plaintiff acknowledged that his blood pressure and high cholesterol was controlled by medication, if he remembered to take it; (2) objective medical record evidence showed that, although Plaintiff sought treatment for atypical chest pain, stress tests proved negative with a finding of no cardiac origin; (3) objective cardiac work-ups had been negative;

and (4) the state agency psychologist determined that Plaintiff's depression and anxiety were not severe. (R. at 14.) We agree with Magistrate Judge Rapoport that since the ALJ considered both objective medical evidence and Plaintiff's own subjective testimony, and determined that Plaintiff's subjective complaints were not entirely credible, the ALJ's decision is supported by substantial evidence.

In addition, the ALJ created a sufficient record when he explained what medical evidence he considered as a part of the record, and identified the source and date of that evidence. (R. 26.) When asked by the ALJ, Plaintiff responded that there were no other records to be considered. (Id.) Thus, we agree with Magistrate Judge Rapoport that the ALJ fully and fairly developed the record.

For the reasons set forth above, it is **ORDERED** that the Report and Recommendation issued by Magistrate Judge Rapoport (Doc. No. 11), to which no objections have been filed, is **APPROVED** and **ADOPTED**. It is **FURTHER ORDERED** that Plaintiff's Motion for Summary Judgment is **DENIED**, and that Defendant's Motion for Summary Judgment is **GRANTED**.

BY THE COURT:

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JAMES McGIRR KELLY, J.