

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

THOMAS SMITH

VS.

C.A. NO. 03-4503

JO ANNE B. BARNHART,
Commissioner of
Social Security

WEINER, J.

JULY 1, 2004

MEMORANDUM OPINION AND ORDER

Plaintiff Thomas Smith (“Smith”) seeks judicial review under 42 U.S.C. section 1383(c)(3) of the decision of the Commissioner of Social Security, who found that plaintiff was not entitled to Social Security Income (“SSI”) under title XVI of the Social Security Act (“Act”), 42 U.S.C. sections 1381-1383f. Presently before the court are the parties’ cross-motions for summary judgment. For the reasons which follow, the motion of the defendant will be denied, the motion of the plaintiff will be granted and the case will be remanded for further proceedings.

STANDARD OF REVIEW

When reviewing a denial of a claimant’s application for SSI, a

reviewing court applies the “substantial evidence” standard. See 42 U.S.C. § 405(g); Burns v. Barnhart, 312 F3d 113 (3d Cir. 2002). “Substantial evidence is ‘more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate’.” Ventura v. Shala, 55 F.3d 900, 901 (3d Cir. 1995) (quoting Richardson v. Perales, 402 U.S. 389, 401 (1971)). This court is not “empowered to weigh the evidence or substitute its conclusions for those of the fact-finder.” Williams v. Sullivan, 970 F.2d 1178, 1182 (3d Cir. 1992).

PROCEDURAL HISTORY

Smith protectively filed an application for SSI on October 17, 2000, alleging disability since December 10, 1992 due to a work-related injury which, he argues, resulted in a permanently disabling back injury. R-12. After his application was initially denied, Smith requested and was granted a hearing before an Administrative Law Judge (“ALJ”) on February 27, 2003. Id. After reviewing the evidence and hearing testimony from Smith and a vocational expert, the ALJ determined that Smith was not eligible for SSI. Specifically, the ALJ found that the plaintiff suffers from severe impairments of his lower back and left hip but that he did not have an impairment listed in, or medically equal to one listed in, Appendix P, Subpart P, regulations No. 4. R. 19. The ALJ also found that although

plaintiff could not perform his past work as a laborer, Smith retained the residual functional capacity to perform “light” work activity with the following additional restrictions: “he should not use his left foot for repetitive movements such as operation foot controls or pushing and pulling; he can perform no more than occasional climbing, balancing, bending, kneeling, crouching, or crawling; he can perform simple grasping with his dominant left hand no more than occasionally, but can use both hands for fine manipulation; he should avoid concentrated (frequent) exposure to temperature extremes, wetness, humidity, vibration, and hazards such as moving machinery and unprotected heights; and he is limited to simple, routine tasks.” R-20.

At his hearing before the ALJ, Smith testified that he “can stand for about 10 minutes” before it gets “really, really, really bad.” R-65. Smith also testified that he could sit for “[m]aybe 10 minute[s] at the most and three minute[s] sometime[s].” *Id.* The ALJ noted for the record that Smith alternated between sitting and standing during the course of the hearing. R-65.

Smith also testified that Dr. L. Wolf, a doctor with Jacobson Tabby Associates¹, was his treating physician. On February 23, 2000, Dr. Wolf

¹During the hearing, Smith testified that “[m]y primary doctor is Dr. Jacobson Tabby.” R-59. When the ALJ questioned Smith, Smith told him that Dr. Wolf was

completed a Department of Public Welfare (“DPW”) form on which he checked a box, indicating that Smith was permanently disabled. His primary diagnosis was that Smith suffered from left side arthritis, disc disease, left hip disease. His secondary diagnosis noted radiculopathy. R-193.

On October 4, 2000, Dr. Wolf completed a second DPW form, again indicating that Smith was permanently disabled. His primary diagnosis indicated that Smith suffered from left side degenerative joint disease and severe lower back pain. Secondary diagnosis presented radicular pain as well as an altered unstable gait. R-191.

On July 31, 2001, Smith underwent an x-ray which presented, among other things, marked degenerative disc disease at L4-5. R-270.

In his motion for summary judgment, Smith argues, inter alia, that the ALJ erred by not affording substantial weight to his treating physician’s opinion that Smith was permanently disabled. Smith also argues that the ALJ mistook or misinterpreted the x-ray from July 31, 2001 that showed marked degenerative disc disease at L4-5, R-270, which corroborated the treating physician’s opinion that

his primary doctor, and that Jacobson Tabby is the Association:

A: Dr. Wolfe [sic], that’s my doctor. Jacobson Tabby is the association.

Q: So Dr. Wolfe [sic] is with Jacobson Tabby?

A: Yes, yes

R-62.

Smith was permanently disabled.

DISCUSSION

A treating physician's opinion will be given controlling weight when it is "well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in [the] case record." 20 C.F.R. § 416.927(d)(2). An ALJ may reject a treating physician's opinion outright only on the basis of contradictory medical evidence, but may afford a treating physician's opinion more or less weight depending upon the extent to which supporting explanations are provided." Plummer v. Apfel, 186 F.3d 422, 429 (3d Cir. 1999). "Form reports in which a physicians's obligation is only to check a box or fill in a blank are weak evidence at best . . . where these so-called reports [residual functional capacity reports] are unaccompanied by thorough written reports, their reliability is suspect." Mason v. Shalala, 994 F.2d 1058, 1065 (3rd Cir. 1993) (quoting Brewster v. Heckler, 786 F.2d 581, 585 (3rd Cir. 1986)) (internal quotations omitted).

Dr. Wolf was plaintiff's treating physician. Accordingly, upon a showing that his opinions were "well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in [the] case record," Dr. Wolf's assessment that plaintiff was

permanently disabled due to his left degenerative disc disease should have been given controlling weight.

However, the ALJ assigned little weight to Dr. Wolf's conclusions because "they are not explained and are not supported by the medical evidence."

R. 18. The ALJ gave no further explanation as to why he was not recognizing Dr. Wolf's opinion as controlling.

It is well settled that an ALJ "cannot reject evidence for no reason or for the wrong reason . . . [and that] an explanation from the ALJ of the reason why probative evidence has been rejected is required so that a reviewing court can determine whether the reasons for rejection were improper." Cotter v. Harris, 642 F.2d 700, 706-07 (3rd Cir. 1981) (internal citations omitted). Failure to do so results in ALJ determinations being set aside. See, e.g., Burnett v. Comm'r of Soc. Sec. Admin., 220 F.3d 112, 121 (3rd Cir. 2000) ("The ALJ did err by reason of his failure to consider and *explain* his reasons for discounting all of the pertinent evidence before him in making his residual functional capacity determination. In making a residual functional capacity determination, the ALJ must consider *all* evidence before him." (citing Plummer v. Apfel, 186 F.3d 422 (3rd Cir. 1999) (emphasis added); Doak v. Heckler, 790 F.2d 26, 29 (3d Cir. 1986)).

In Cotter, our Court of Appeals reversed a district court's granting of summary judgment in favor of the Social Security Administration after the ALJ denied a claimant's application without properly addressing medical evidence supporting his claim. Reiterating the long-held rule that an ALJ's failure to adequately address evidence at hand precludes meaningful judicial review, the court explained:

To state the issue simplistically but clearly, if the record contained the evidence of six medical experts, one of whom supported the claimant and five of whom did not, it would be of little assistance to our review function were the ALJ merely to state that s/he credited the one supporting expert because that evidence adequately demonstrated disability, but failed to either mention or explain why the evidence of the other five experts was rejected. In that instance, we would not know whether the evidence of the five experts was rejected because the ALJ found it lacking in credibility, irrelevant, or marred by some other defect.

Kotter, 642 F.2d 700, 706 (3rd Cir. 1981). Accordingly, the court vacated and remanded to the agency since “[t]he ALJ’s failure to explain his implicit rejection of [the] evidence or even to acknowledge its presence was error.” Id. at 707. See also Fagnoli v. Halter, 247 F.3d 34, 42 (3rd Cir. 2001) (“Where there is conflicting probative evidence in the record, we recognize a particularly acute need for an explanation of the reasoning behind the ALJ's conclusions, and will vacate or remand a case where such an explanation is not provided.”) (quoting Kotter).

In denying Smith's application for SSI, the ALJ relied upon his interpretation of the evidence presented, and found that "[t]here is very little objective evidence supporting his allegations of disabling back and hip pain, and there are no objective tests showing a disc herniation, just mild degenerative changes" R-16. The "mild degenerative change" is of particular note since it was the ALJ's *only* reference to the July 31, 2001 x-ray which revealed, inter alia, the presence of "*marked* degenerative disc disease at L4-5." R-270 (emphasis added). An x-ray revealing marked degenerative disc disease may support the treating physician's opinion that plaintiff was permanently disabled. However, the ALJ did not explain his reasoning for rejecting this medical evidence in denying Smith's application.

Noting that the "severity of the pain [Smith] describes is not supported by the objective medical evidence," R 16-17, the ALJ found Smith's testimony to be "less than fully credible in that it exaggerates the extent to which his impairments limit his physical and mental capabilities." R-19. Since the ALJ's determination failed to incorporate the July 2001 x-ray, it cannot be said that the ALJ's credibility determination surrounding Smith's subjective complaints was based on substantial evidence. See Hartranft v. Apfel, 181 F.3d 358, 362 (3rd Cir. 1999) ("Once an ALJ concludes that a medical impairment that could

reasonably cause the alleged symptoms exists, he or she must evaluate the intensity and persistence of the pain or symptom, and the extent to which it affects the individual's ability to work.”); Carter v. R.R. Ret. Bd., 834 F.2d 62, 65 (3rd Cir. 1987) (“While such complaints are to be considered seriously even when not fully corroborated by objective medical evidence, they must be accorded great weight when reasonably supported by medical evidence. In the latter situation, subjective complaints should not be disregarded absent contrary medical evidence.”) (internal citations and quotations omitted). See also Mason v. Shalala, 994 F.2d 1058 (3rd Cir. 1993) (applying Carter).

Since the ALJ’s failure to properly explain his reasons for rejecting the July 31, 2001 x-ray showing “marked degenerative disc disease at L4-5” implicates the ALJ’s reasoning for not affording the opinion of Smith’s treating physician full weight as well as the ALJ’s determination that Smith’s subjective complaints were not adequately supported by objective medical evidence to corroborate its severity, the court will remand the case to allow the ALJ to properly address the x-ray.

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ORDER

The motion of the defendant for summary judgment is DENIED.

The motion of the plaintiff for summary judgment is GRANTED.

Judgment is ENTERED in favor of the plaintiff and against the
defendant.

The case is REMANDED to the Commissioner for further
proceedings consistent with this Opinion.

IT IS SO ORDERED.

CHARLES R. WEINER