

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

DAVID T. HANCOCK,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	NO. 03-6906
vs.	:	
	:	
JO ANNE B. BARNHART,	:	
COMMISSIONER OF THE SOCIAL	:	
SECURITY ADMINISTRATION,	:	
Defendants.	:	

DUBOIS, J.

NOVEMBER 30, 2004

MEMORANDUM

I. BACKGROUND

Plaintiff, David T. Hancock, filed this action pursuant to 42 U.S.C. § 405(g), seeking judicial review of the final decision of the Commissioner of the Social Security Administration ("Commissioner"), denying his claim for Disability Insurance Benefits ("DIB") under Title II and XVI of the Social Security Act ("Act"). Both parties filed motions for summary judgment. Pursuant to Local Civil Rule 72.1(1)(d)(1)(c), the Court referred the case to United States Magistrate Judge Charles B. Smith for a Report and Recommendation.

Magistrate Judge Smith submitted a Report and Recommendation on August 24, 2004, in which he recommended that Plaintiff's Motion for Summary Judgment be denied and the Commissioner's Motion for Summary Judgment be granted. Plaintiff filed timely objections. For the reasons that follow, the Court overrules plaintiff's Objections to the Report and Recommendation, approves and adopts the Report and Recommendation, denies Plaintiff's

Motion for Summary Judgment, grants Defendant's Motion for Summary Judgment, and enters judgment in favor of defendant and against plaintiff.

II. STANDARD OF REVIEW

Under the Social Security Act, a claimant is disabled if he is unable to engage in "any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to ... last for a continuous period of not less than twelve (12) months." 42 U.S.C. § 423(d)(1)(A); 20 C.F.R. § 404.1505. Under the medical-vocational regulations, as promulgated by the Commissioner, the Commissioner uses a five-step sequential analysis in evaluating disability claims. This requires the Commissioner to consider, in sequence, whether a claimant: (1) is currently employed; (2) has a severe impairment; (3) has an impairment which meets or equals the requirements of a listed impairment; (4) can perform past relevant work; and (5) if not, whether the claimant is able to perform other work in view of her age, education and work experience. 20 C.F.R § 404.1520; Williams v. Sullivan, 970 F.2d 1178, 1180 (3d Cir. 1992).

The claimant bears the initial burden of proving the existence of a disability. 42 U.S.C. § 423(d)(5) (2004). To satisfy this burden, a claimant must establish an inability to return to his former work. Once the claimant makes this showing, the burden of proof shifts to the Commissioner to show that the claimant, given his age, education and work experience, has the ability to perform specific jobs that exist in the economy. Rossi v. Califano, 602 F.2d 55, 57 (3d Cir. 1979).

Judicial review of the Commissioner's final decision is limited. 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. Brown, 881 F.2d 37, 39 (3d Cir. 1989).

"Substantial evidence" is deemed to be such relevant evidence as a reasonable mind might accept as adequate to support a decision. Richardson v. Perales, 402 U.S. 389, 401 (1971); Jesurum v. Sec. of the United States Dep't of Health & Human Servs., 48 F.3d 114, 117 (3d Cir. 1995).

Substantial evidence is more than a mere scintilla, but may be less than a preponderance. Brown v. Bowen, 845 F.2d 1211, 1213 (3d Cir. 1988).

A district court judge makes a *de novo* determination of those portions of a magistrate judge's report and recommendation to which objection is made. 28 U.S.C. § 636(b)(1)(c). The Court may "accept, reject or modify, in whole or in part, the magistrate's findings or recommendations." Brophy v. Halter, 153 F. Supp. 2d 667, 669 (E.D. Pa. 2001).

III. DISCUSSION

Plaintiff argues that the Magistrate Judge's adoption of the Commissioner's finding that plaintiff is not disabled is not supported by substantial evidence. Specifically, Plaintiff objects to the Report and Recommendation of the Magistrate Judge on four grounds. He argues that the Administrative Law Judge ("ALJ") erred in: (1) failing to include in his hypothetical question to the vocational expert (VE) the need for plaintiff to have a sit-stand option; (2) finding that plaintiff has the physical and mental residual functional capacity to perform sedentary work; (3) failing to include in his hypothetical question to the VE any limitations with regard to work stress; and (4) finding that plaintiff's statement concerning his impairments are not totally credible.

A. Hypothetical Question to Vocational Expert Regarding Sit-Stand Option

Plaintiff contends that the ALJ improperly failed to include in his hypothetical question to

the VE the need for plaintiff to have a sit-stand option. A hypothetical question posed to a VE “must reflect all of a claimant’s impairments that are supported by the record.” Chrupcala v. Heckler, 829 F. 2d 1269, 1276 (3d Cir. 1987). Where the record contains medically undisputed evidence of an impairment not included in the hypothetical, the expert’s response is not considered substantial evidence. Podedworny v. Harris, 745 F. 2d 210 (3d Cir. 1987).

As explained in the Report and Recommendation, the only evidence in the record indicating a need for a sit-stand option is plaintiff’s own testimony. The ALJ concluded that plaintiff’s allegations of totally disabling pain were not credible in light of the his most recent physical examinations, the current lack of treatment for relief of pain, and the fact that plaintiff was not currently taking any medication; nonetheless, the ALJ limited plaintiff to two hours of standing and six hours of sitting.

Although Dr. Berger and Dr. Ghahramani found that plaintiff could not perform prolonged sitting or standing, such findings are not necessarily consistent with a sit-stand option. The ALJ recognized that plaintiff suffered from several impairments, including spina bifida occulta and degenerative disc disease, which could reasonably result in some limitations of plaintiff’s physical ability. The ALJ appropriately accounted for these physical limitations by including in his residual functional capacity assessment plaintiff’s inability to sit or stand for extended periods.

Nothing in the remaining medical evidence suggests that the ALJ was required to include a sit-stand option in the hypothetical question. See Plummer v. Apfel, 186 F.3d 422, 431 (3d Cir. 1999) (stating that the ALJ needs to include only those limitations that he finds are supported by the medical record). The VE’s testimony was in response to a hypothetical that fairly set forth

the nature and extent of every credible limitation established by the evidence of record.

Accordingly, the testimony of the VE on this issue can be relied upon as substantial evidence supporting the ALJ's determination that plaintiff is not totally disabled.

B. Physical and Mental Residual Functional Capacity to Perform Sedentary Work

“Residual functional capacity’ is defined as that which an individual is still able to do despite the limitations caused by his or her impairment(s).” Hartranft v. Apfel, 181 F.3d 358, 359 n. 1 (3d Cir. 1999) (citing 20 C.F.R. § 404.1545(a)). In making a residual functional capacity determination, the ALJ must consider all evidence – both medical and non-medical – before him. Burnett v. Commissioner of Social Security Admin., 220 F.3d 112, 121 (3d Cir. 2000). “Although the ALJ may weigh the credibility of the evidence, he must give some indication of the evidence which he rejects and his reasons for discounting such evidence.” Id.

Plaintiff argues that the ALJ’s residual functional capacity assessment failed to properly incorporate limitations due to his difficulties being around other people, attention and concentration problems, and his IQ in the borderline range. To support this argument, plaintiff cites Dr. Ghahramani’s findings that he is not able to carry out instructions or perform activities in a schedule or at a consistent pace, that he has poor immediate retention and recall, and that he was unable to perform “serial sevens,” had difficulty performing “serial fours,” and was slow and made mistakes when counting even numbers backward from twenty.¹

¹ Plaintiff contends that the ALJ’s determination that he receive as little direct supervision as possible is not consistent with his IQ in the borderline range. That argument is based on Social Security Ruling 85-16, which states that individuals with IQs in the borderline range require closer supervision than individuals with higher IQs. The Report and Recommendation addressed this argument; the Court concurs with the conclusion reached by Magistrate Judge Smith (R&R at 24 n.10).

As set forth in the Report and Recommendation, the ALJ carefully considered the evidence regarding plaintiff's mental impairment. In light of this evidence, the ALJ recognized plaintiff's non-exertional limitations and, when posing a hypothetical to the VE, emphasized that plaintiff should have a job which does not require concentration or attention to detail or sustained interaction with supervisors, co-workers, and the public. (R. 21). "[A]lthough the findings of Dr. Ghahramani serve to support plaintiff's contention that he was substantially unable to perform the basic work activities for unskilled work, the ALJ properly rejected them to the point that they were inconsistent with other medical evidence of record . . . Where there is conflicting evidence, the responsibility for weighing the evidence ultimately falls upon the ALJ." (R&R at 23) (citing Schwartz v. Halter, 134 F. Supp.2d 640, 647-48 (E.D. Pa. 2001)).

The ALJ appropriately discredited those portions of Dr. Ghahramani's opinion that were inconsistent with other medical evidence. Contrary to plaintiff's argument, a review of the record reveals that the ALJ's conclusions with respect to plaintiff's ability to perform basic work activities is supported by substantial evidence.

C. Hypothetical Question to Vocational Expert Regarding Work Stress

Plaintiff next argues that the ALJ erred in failing to include any limitations regarding work stresses in his hypothetical question to the VE. He argues that the ALJ did not conduct an individualized inquiry on the impact that stress may have on plaintiff's ability to perform even low stress jobs as required by Social Security Ruling 85-15. That ruling "requires the Commissioner to conduct a particularized assessment of the individual's ability in evaluating claims of stress and mental illness." Walls. v. Barnhart, 2002 WL 485647, *19 (E.D. Pa. Mar. 28, 2001).

The Court finds that the ALJ gave careful consideration to the medical evidence of plaintiff's limited ability to deal with stress. Because of plaintiff's difficulties with interpersonal skills, the ALJ's residual functional capacity determination limited plaintiff to work requiring minimal interaction with people and restricted plaintiff to work with simple, one-step instructions or routine/repetitive work (R. 23).

The ALJ conducted a specific and individualized inquiry on the impact that stress may have on plaintiff and that his residual functional capacity determination included those findings. The Court concludes the ALJ properly included in his hypothetical question only those limitations that were supported by medical evidence.

D. Plaintiff's Credibility

The Report and Recommendation, at pages 27-30, is devoted to plaintiff's objection to the ALJ's consideration of his subjective complaints. A claimant's testimony regarding subjective complaints is generally entitled to great weight, but only if it is supported by credible evidence. See Burns v. Barnhart, 312 F.3d 113, 129 (3d Cir. 2002). It is within the ALJ's discretion to evaluate the credibility of the claimant. See Alexander v. Shalala, 927 F. Supp. 785, 795 (D.N.J. 1995), aff'd, 85 F. 3d 611 (3d Cir. 1996).

The ALJ did not fully believe plaintiff's testimony regarding his impairments and their impact on his ability to work to the extent that plaintiff's testimony alleged a level of disabling symptoms which exceeded that which the objective evidence and clinical findings could reasonably be expected to produce. (R&R at 29, R. 119). The record confirms that the ALJ did not disregard plaintiff's subjective complaints, but he took into account substantial evidence of contradictory testimony by plaintiff. (R. 118-19). Having evaluated the evidence on this issue, the ALJ determined that plaintiff's ailments were not as debilitating as plaintiff described. In

rejecting some of plaintiff's testimony regarding the extent and severity of his symptoms, the ALJ relied on both medical and other evidence in the record. That decision of the ALJ was based upon the enumerated factors in the Social Security regulations and provided a thorough explanation of his decision that plaintiff's testimony was not credible.

The ALJ's findings with respect to plaintiff's testimony on this issue were well within the ALJ's authority. Because an ALJ may discount subjective complaints in the face of contradictory evidence, the Court finds that the ALJ properly assessed plaintiff's credibility in light of the inconsistent medical and other evidence. Green v. Schweiker, 749 F.2d 1066, 1068 (3d Cir. 1984).

IV. CONCLUSION

This Court concludes that there is substantial evidence in the record to support the ALJ's determinations and that he decided the issues according to the correct legal standards. The plaintiff is capable of procuring employment in the economy consistent with his residual functional capacity. Accordingly, the Report and Recommendation of United States Magistrate Judge Charles B. Smith dated August 24, 2004, is approved and adopted, plaintiff's Objections are overruled, plaintiff's Motion for Summary Judgment is denied, defendant's Motion for Summary Judgment is granted, and judgment is entered in favor of defendant and against plaintiff.

An appropriated Order follows.

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

DAVID T. HANCOCK,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
vs.	:	NO. 03-6906
	:	
	:	
JO ANNE B. BARNHART,	:	
	:	
COMMISSIONER OF THE SOCIAL	:	
	:	
SECURITY ADMINISTRATION,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 30th day of November, 2004, upon consideration of Plaintiff's Motion for Summary Judgment, and Defendant Motion for Summary Judgment, and after review of the Report and Recommendation of United States Magistrate Judge Charles B. Smith dated August 24, 2004, and the Objections to Report and Recommendation of the Magistrate Judge, it is

ORDERED:

1. The Report and Recommendation of United States Magistrate Judge Charles B. Smith dated August 24, 2004 is **APPROVED** and **ADOPTED**;

2. The Objections to Report and Recommendation of the Magistrate Judge are **OVERRULED**;

3. The Motion of Plaintiff, David T. Hancock, for Summary Judgment is **DENIED**;
4. The Motion of Defendant, Joanne B. Barnhart, Commissioner of Social Security Administration, is **GRANTED**; and,
5. Judgment is **ENTERED** in **FAVOR** of Defendant, Joanne B. Barnhart, Commissioner of Social Security Administration, and **AGAINST** Plaintiff, David T. Hancock.

BY THE COURT:

/s/ Honorable Jan E. DuBois

JAN E. DUBOIS, J.