

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

JOAN D. BECKER, :  
 :  
 Plaintiff, :  
 : CIVIL ACTION  
 v. : No. 03-06374  
 :  
 JO ANNE B. BARNHART, :  
 COMMISSIONER OF SOCIAL :  
 SECURITY :  
 :  
 Defendant. :

Giles, C.J.

April 1, 2005

**MEMORANDUM**

Joan Becker brings this action under 42 U.S.C. § 405(g) and § 1383(c), seeking reversal of the final decision of the Commissioner of Social Security (“Commissioner”) denying plaintiff’s claim for disability insurance benefits (“DIB”) under Title II of the Social Security Act (“Act”). Plaintiff and defendant have each filed a Motion for Summary Judgment. For the reasons that follow, plaintiff’s motion is denied, defendant’s motion is granted and summary judgment is entered in favor of the Commissioner of Social Security.

**Factual and Procedural Background**

On July 1, 2001, plaintiff Joan D. Becker, a 51-year-old woman with a high school education applied for Disability Insurance Benefits (“DIB”), alleging disability as of November 1, 1999. Plaintiff’s date of last insured is December 31, 2001. (R. 15.) Plaintiff sought benefits based on coronary heart disease and the effects of treatment, claiming that she was suffering from shortness of breath on exertion, chest pain, sleeplessness, fatigue, and a lack of energy to sustain

tasks. (R. 123.) Plaintiff also claimed that she was suffering from carpal tunnel syndrome, and has been diagnosed with diabetes mellitus. (R. 63, 123.) Together, these medical problems limit plaintiffs' ability to stand for long periods of time, carry objects more than ten pounds and require her to take frequent breaks and would cause her to be absent from work more than three times a month according to her physicians.

Plaintiff's most serious ailment is her coronary heart disease. On November 7, 1999 plaintiff was diagnosed at Northeastern Hospital with chest pain. She was also given a stress test which showed signs consistent with ischemic abnormalities. (R. 17, 148-149.) After this initial diagnosis she was transferred to Temple Hospital where doctors performed a cardiac catheterization and inserted a stent into an artery. (R. 17, 231.) Plaintiff claims that as a result of her heart disease she is prescribed certain medication that causes serious fatigue and has forced her to change her habits of daily living. Plaintiff claims her fatigue limits her ability to walk without sitting for frequent rest, limits her social engagements, inhibits her ability to do housework and requires her to take naps. (R. 54-61.) In addition to her heart condition plaintiff also suffers from hand pain, likely due to the onset of carpal tunnel syndrome. Plaintiff claims that this hand pain makes her sometimes unable to grasp objects, causes her to drop objects, limits her ability to carry certain things, and occasionally causes her hands to feel numb. (R. 21-22.)

On December 21, 2001, plaintiffs' claim was denied. The Social Security Administration ("SSA") determined that plaintiff's condition is not severe enough to keep her from working. The SSA found that the evidence reviewed showed a history of successful medical treatment for plaintiff's coronary heart disease. The SSA also found that while plaintiffs' carpal tunnel

syndrome may cause her discomfort, she maintained full use of her hands. Further, the SSA found that although plaintiff is tired at times, she is not significantly limited by her fatigue. (R. 100.)

Plaintiff requested a review of the SSA's decision, which resulted in a hearing on October 30, 2002 before an Administrative Law Judge ("ALJ") in Philadelphia, Pennsylvania. Plaintiff was represented by counsel and testified before the ALJ. Medical expert Dr. Bradley Rothkopf, and vocational expert ("VE") Sherry Kristal-Turetsky also testified.

On December 24, 2002, the ALJ issued a decision concluding that although plaintiff has a severe impairment or combination of impairments she still maintains the residual capacity to return to work she had performed in the past. (R. 15.) Specifically, based on the testimony of the VE, the ALJ found that "given claimant's particular residual functioning capacity, she can return to her past work as a delicatessen worker." (R. 24.) Alternatively, the ALJ found that plaintiff would be able to make an adjustment to jobs existing in significant numbers in the national economy if she cannot return to her previous work. (R. 24-25.) These included, usher, surveillance system monitor, cashier, information clerk and bus monitor. (R. 26.)

Thereafter, plaintiff requested review of the ALJ's decision. (R. 9.) On September 17, 2003, the Appeals Council notified plaintiff that her request for review was denied, thereby making the decision of the ALJ the final decision of the Commissioner. On November 21, 2003, plaintiff filed a complaint.

### **Standard of Review**

"The Court is bound by the ALJ's findings of fact if they are supported by substantial evidence in the record." Plummer v. Apfel, 186 F.3d 422, 427 (3d. Cir. 1999) (citing 42 U.S.C. §

405(g) and Doak v. Heckler, 790 F.2d 26, 28 (3d Cir. 1986)). “Substantial evidence does not mean a large or considerable amount of evidence, but rather such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Hartranft v. Apfel, 181 F.3d 358, 360 (3d Cir. 1999)(quoting Pierce v. Underwood, 487 U.S. 552, 565 (1988)). “The court cannot conduct *de novo* review of the Commissioner’s decision or re-weigh the evidence of record.” Palmer v. Apfel, 995 F. Supp. 594, 552 (E.D. Pa. 1998).

### **Standards for Determining Disability**

In order for a claimant to receive benefits, the claimant must demonstrate that she suffers from a disability. The Social Security Administration evaluates claimant’s alleged disability pursuant to a five-step sequential process, and makes a determination whether the claimant is disabled<sup>1</sup> as defined by the Social Security Act and accompanying regulations. See 20 C.F.R. § 416.920.

To prevail under the five-step analysis a claimant must establish that 1) she is not currently engaging in “substantial gainful activity,” as defined in the regulations; 2) that she suffers from a “severe impairment,” 3) that her disability meets or equals an impairment listed in 20 CFR Pt. 404, Subpt. P. App. 1 (Listing of Impairments);<sup>2</sup> 4) that she does not have sufficient

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<sup>1</sup> For purposes of the Social Security Act “disability” is defined as: “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months . . . .” 42 U.S.C. § 423(d)(1)(A). “[The impairment must be so severe that the claimant] is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy . . . .” 42 U.S.C. § 423(d)(2)(A).

<sup>2</sup>*See* 20 C.F.R. § 416.920(d). If the impairment meets or equals a listed impairment, the claimant is considered disabled *per se* and the evaluation process ends. Plummer, 186 F.3d at

residual functional capacity to perform her past relevant work;<sup>3</sup> and at the final step – 5) the burden shifts to the Commissioner to show that the claimant can perform ‘other work.’<sup>4</sup> See Burns v. Barnhart, 312 F.3d 113, 119 (3d Cir. 2002).

Plaintiff claims that the ALJ’s conclusions, adverse to her, are based on mistakes of fact, erroneous as a matter of law, and not based on substantial evidence. Specifically, plaintiff claims that the ALJ’s rejection of the opinion of her physicians relied on mistakes of fact and law. Plaintiff also claims that the ALJ failed to take into account her documented problems with the use of her hands when assessing residual functional capacity. Finally, plaintiff asserts that the ALJ discounted her credibility using improper analysis.

#### **Medical Evidence from Plaintiff’s Physicians**

Plaintiff argues that the ALJ’s rejection of her treating physicians opinion constitutes an error of fact and law. She asserts that the ALJ erroneously accorded more deference to the opinion of Dr. Bradley Rothkopf, the non-treating, non-examining medical advisor, a specialist in cardiovascular disease, who testified at the hearing, than to the opinions of plaintiff’s treating physicians, Dr. Marc Hurowitz, her general physician, and Dr. Daniel Moscow, who once treated plaintiff for kidney stones and prepared an assessment of plaintiff using a form provided

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428. If, however, the claimant’s impairments do not satisfy step three, the claimant must continue on to step four.

<sup>3</sup>20 C.F.R. § 416.920(e). Residual functioning capacity is defined as “what a [claimant] can still do despite his limitations.” 20 C.F.R. § 416.945(a). If the claimant does not demonstrate his inability to do past relevant work, he will not be considered disabled. If he does, the inquiry moves to step five.

<sup>4</sup>20 C.F.R. § 416.920(f). “Other work” must consist of jobs that exist in significant numbers in the national economy that the claimant can perform given his age, education, past work experience, and residual functional capacity. Plummer, 186 F.3d at 428.

by plaintiff's attorney.<sup>5</sup> (Pl.'s Mem. Supp. Summ. J. at 8-9.); (R. 125, 248 - 52.)

The Social Security Regulations outline the weight that the ALJ will give the opinion of a claimant's physician. 20 C.F.R. § 404.1523 states, "If we find that a treating source's opinion on the issue(s) of the nature and severity of your impairment(s) is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with other substantial evidence in your case record, we will give it controlling weight." Reading these regulations, the third circuit has found that, "[a]n ALJ may reject a treating physician's opinion outright only on the basis of contrary medical evidence, but may afford a treating physician's opinion more or less weight depending on the extent to which supporting explanations are provided." Plummer, 186 F.3d at 429 (3d. Cir. 1999).

The ALJ noted four factors that led to her decision to reject the opinions of Dr. Hurowitz and Dr. Moscow. First, the ALJ found a lack of objective clinical or laboratory findings to support the degree of limitation alleged by the doctors. Second, the ALJ found that the record revealed no significant evidence of neurologic compromise which would effect that claimant's ability to stand, sit, walk, lift or grasp to the degree indicated by the treating physicians. Third, the ALJ found that neither treating physician related his opinion to a specific finding. Finally, the ALJ found that the doctors' evaluations were not consistent with the self-reported activities

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<sup>5</sup>At the hearing before the ALJ, plaintiff's counsel represented that Dr. Moscow and Dr. Hurowitz work in the same office and that plaintiff sees them interchangeably. However, throughout the record Dr. Hurowitz is consistently listed as plaintiff's primary care physician, and the only treatment notes from Dr. Moscow are related to removal of a kidney stone in December 2001. (R. 248 - 52). Further, the "Disability Report Adult" prepared by plaintiff as part of her application for benefits asks the applicant to "[l]ist each DOCTOR/HMO/THERAPIST. (R. 125.) Plaintiff's response does not list Dr. Moscow. (R. 125.)

of daily living for plaintiff. (R. 22.)

Much of plaintiff's claim is consumed by her disability stemming from coronary artery disease. However, as the ALJ found plaintiff's claims and her physicians' claims are not supported by objective medical evidence. (R. 22.) Further, the ALJ found that claimant's credibility was "significantly diminished" because of statements about the severity of her condition that are not supported by the medical evidence. (R. 23.) A review of the record shows that her reports to her physicians varied depending on, which physician was giving treatment. For example, after her stent insertion operation, plaintiff repeatedly met with Dr. James McDonald, her cardiologist. On March 8, 2000 Dr. McDonald evaluated plaintiff and found that she no longer complained of bilateral arm discomfort, and reported to him that she was extremely active. (R. 231.) In this same consultation, she denied any shortness of breath or heart palpitation. (R. 231.) On July 13, 2000 Dr. McDonald again saw plaintiff and again the treatment notes state that plaintiff did not complain of shortness of breath or heart palpitation, and states that since her dosage of beta blockers was decreased "she has no further complaints of any fatigue." (R. 230).

Plaintiff's next consultation with Dr. McDonald occurred on October 4, 2000. Again, plaintiff reported no chest discomfort or shortness of breath and Dr. McDonald reported that, "she seems to be doing well from a cardiac standpoint." (R. 229.) Plaintiff also reported to Dr. McDonald that she had increased her dosage of the beta blocker Lopressor back to the level it had been prior to a reduction by Dr. McDonald that was intended to lessen her fatigue. (R. 229-31.) In his treatment notes, Dr. McDonald explained that plaintiff told him that this increase in her dosage of Lopressor caused her to "actually feel[] better." (R. 229.) On June 7, 2001

plaintiff again was examined by Doctor McDonald. At this time she reported “fatigue and some dyspnea on exertion when using the steps only,” but “denie[d] any shortness of breath at any other time.” (R. 215).

These reports to plaintiff’s cardiologist, who did not prepare a disability determination evaluation, vary greatly from plaintiff’s report to Dr. Hurowitz who did prepare one. On November 5, 2001 plaintiff reported to Doctor Hurowitz that she was suffering from shortness of breath occurring when using stairs or long periods of walking, she also told Doctor Hurowitz that she was suffering from “significant fatigue and malaise.” (R. 232). Yet, in an appointment 3 months later with Doctor McDonald plaintiff “denied any recurrent chest discomfort and had no problems with shortness of breath, palpitations, or peripheral edema.” (R. 260).

In addition to these inconsistencies between plaintiff’s reports to different physicians, the conclusions of plaintiff’s treating physicians as to her limitations were found by the ALJ not to be supported by objective findings. (R. 22.) When the treating physicians’ conclusions are inconsistent with the objective medical evidence in the record, or the limitations on a claimants’ ability reported by the treating physicians are not supported by objective medical evidence, the ALJ is permitted to give these conclusions little or no weight. In this case, Dr. Hurowitz’s assessment limits plaintiff’s ability to lift to two - three pounds frequently and ten pounds occasionally. He also found that plaintiff’s ability to carry was limited to two - three pounds occasionally, and asserted that plaintiff’s ability to stand and walk was limited to one hour or less each day. (R. 235.) For each of these conclusions, Dr. Hurowitz directed the reader to “see narrative” when asked to describe the “[s]upportive medical findings” for each of these conclusions. The narrative accompanying his conclusions as to plaintiff’s ability to perform

work related activities failed to provide a basis for his conclusions. (R. 231 - 38.)

Similarly, Dr. Moscow's evaluation was found to contain the same type of bare assertions about plaintiff's limitations without pointing to any objectively determined medical information. (R. 248 - 52.)

In addition to the inconsistencies and lack of support for the treating physicians' assessments, the limitations on the plaintiff's ability assessed by her doctors was found not to correspond to plaintiff's report of daily living. (R. 22). Although the doctors found that plaintiff's ability to lift and carry was severely limited, plaintiff reported that she would be able to lift a gallon of milk. (R. 51, 235, 251.) In addition, both treating physicians reported that plaintiff would be limited in the amount of time that she could sit, stand and walk during an eight hour workday. Yet, plaintiff reported in her testimony that almost every day she walks between a half hour to an hour after lunch. (R. 50.) Further, the evaluation filled out by Dr. Moscow claims that plaintiff would require a job where she could get up and walk around at will and that she would need hourly breaks of fifteen - twenty minutes. (R. 251). This conclusion however is not supported by plaintiff's testimony, where she claimed that she was suffered from leg cramps after prolonged sitting, but that if she was able to get up and walk for "a minute or two" her pain would be relieved. (R. 51). Notably, plaintiff also claimed in her testimony that she never told her doctors of these leg cramps, which detracts not only from her credibility, but also from the weight which should be given to Doctor Moscow's report because it is another assertion which is made without pointing to any medical evidence and inconsistent with plaintiff's reports of daily living. (R. 50).

As the administrative law judge correctly noted in the opinion, "a case cannot be decided

in reliance on a medical opinion without some reasonable support for the opinion.” (R. 21.) In this case, the ALJ found, and her findings are supported by a review of the record, that the opinions of Dr. Hurowitz and Dr. Moscow were not supported by the record and not consistent with other evidence contained in the record. (R. 21.) The ALJ also found that the opinion of Dr. Rothkopf, the medical advisor who testified in the case was well supported by objective medical evidence and not inconsistent with other medical evidence in the record. (R. 21.)

Review of the ALJ’s opinion shows that the entire record was considered and that the ALJ had valid reasons for giving less weight to the treating physicians’ opinions than to those of the testifying medical expert. Because this court is bound to review the ALJ’s decision only to determine if the decision is supported by substantial evidence, Plummer, 186 F.3d at 427 (citing 42 U.S.C. § 405(g) and Doak, 790 F.2d at 28, if the reasons given by the ALJ satisfy the burden of assessing the opinion of the treating physician, the decision must remain undisturbed.

Plaintiff contends that “at minimum if the ALJ believed that the treatment records of Ms. Becker were inconsistent with the opinion of her doctors, she had an affirmative obligation to recontact the treating physicians for clarification.” (Pl.’s Mem. Supp. Summ. J. at 13). Plaintiff relies on 20 C.F.R. § 404.1512(e) for this argument<sup>6</sup>. However, the regulation makes clear that the ALJ only need re-contact the medical source when the evidence received from the medical

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<sup>6</sup> 20 C.F.R. § 404.1512(e) provides that:  
when the evidence we receive from your treating physician or psychologist or other medical source is inadequate for us to determine whether you are disabled, we will need additional information to reach a determination or a decision. To obtain the information, we will take the following actions. (1) We will recontact your treating physician or psychologist or other medical source to determine whether the information we need is readily available . . . .

source is inadequate to determine whether or not the claimant is disabled. Id. Here, the ALJ had adequate evidence to determine whether plaintiff is disabled under the regulations, so it was not necessary to re-contact her physicians. See Id. (requiring recontacting treating physicians if there is inadequate information to make a disability determination, but not requiring recontacting a treating physician because the ALJ finds the doctors opinion inconsistent with plaintiff's medical records).

### **Plaintiff's Subjective Complaints of Pain and Fatigue**

Plaintiff claims that the ALJ erred in rejecting her testimony concerning her level of fatigue on account of coronary heart disease treatment.

When determining whether a claimant is disabled, the SSA regulations require that the ALJ consider "all symptoms including pain, and the extent to which [the] symptoms can reasonably be accepted as consistent with the objective medical evidence, and other evidence. 20 C.F.R. § 416.929(a). When considering the credibility of plaintiff's subjective complaints, the ALJ may consider the conflicts between Plaintiff's testimony, and other sources, including medical history, medical signs and laboratory findings, and the statements by the medical sources, including treating and non-treating physicians. 20 C.F.R. § 416.929(b).

Plaintiff claims that the ALJ based her rejection of plaintiff's testimony on "alleged internal inconsistencies which, upon further scrutiny are illusory." (Pl.'s Mem. Supp. Summ. J. at 22.) The third circuit has found that the "ALJ is empowered to evaluate the credibility of witnesses, and [her] findings on the credibility of claimants "are to be accorded great weight and deference, particularly since an ALJ is charged with the duty of observing a witness' demeanor and credibility." Irelan v. Barnhart, 243 F. Supp.2d 268, 284 (E.D. Pa.) (citing Van Horn v.

Schweiker, 717 F.2d 871, 873 (3d. Cir. 1983) and Walters v. Comm’r of Soc. Sec., 127 F.3d 525, 531 (6th Cir. 1997)). Furthermore, “the ALJ may reject the claimant’s claim of disabling pain if he affirmatively addresses the claim in his decision, specifies the reason for rejecting it, and has support for his conclusion in the record.” Id. (citing Hirschfeld v. Apfel, 159 F. Supp.2d 802, 811 (E.D.Pa. 2001)).

The ALJ found that plaintiff does suffer from medically determinable impairments that could reasonably be believed to result in the symptoms alleged. However, after a thorough review of the evidence, the ALJ rejected the claimed severity of plaintiff’s fatigue and pain. The ALJ found:

The claimant has a lot of complaints, but many are not substantiated. The level of deterioration she alleges is excessive, at odds with her current activities of daily living as stated, prior medical observations, and the medical evidence of record. The [ALJ] is of the opinion that the claimant has a tendency to exaggerate the extent of her symptoms. The totality of the evidence of record, particularly the findings of treating physicians as cited, rebuts the claimant’s contention that she is disabled to the degree alleged.

(R. 23.) After reviewing the available evidence, the ALJ gave a reasonable explanation, using record evidence and proper rules of evidence evaluation, for the finding of non-disabling pain and fatigue. Because the ALJ’s decision is supported by substantial evidence, that finding must remain undisturbed.

### **Plaintiff’s Hand Pain**

Plaintiff claims that the ALJ erred in step four of the required analysis by rejecting her claimed limitation in the use of her hands. It was determined that plaintiff could return to her past

relevant work as a delicatessen worker.<sup>7</sup>

During the testimony of the VE, the ALJ posed a hypothetical question. This question asked the VE to consider,

an individual between 46-49 years of age, who has a high school education, and past work experience as claimant has had. And for the purposes of this hypothetical, let us assume that this individual could do light exertional work and should also avoid high stress jobs, should do a low to medium stress job.

(R. 85-86.) The ALJ went on to ask the VE to consider someone with the above limitations who could, “frequently use her hands for simple grasping and fine manipulations.” (R. 87). Plaintiff claims that because this hypothetical did not ask the VE to consider plaintiff’s claimed limitations on the use of her hands the ALJ erred and the court should award benefits or remand for further consideration. (Pl.’s Mem. Supp. Summ. J. at 17-18).

In Chrupcala v. Heckler, 829 F.2d 1269, 1276 (3d Cir. 1987), the court stated that, “[a] hypothetical question must reflect all of a claimant’s impairments that are *supported by the record*; otherwise the question is deficient and the expert’s answer to it cannot be considered substantial evidence.” Id. (emphasis added). However, in this case, the ALJ found that plaintiff’s hand pain should not be considered, because at the date of last insured, which is crucial for the award of DIB benefits, the hand pain had just started and was not at a disabling level. (R. 21.) Chrupcala, 829 F.2d at 1276, only requires the ALJ to present limitations to the VE that are supported by the record.. In this case the ALJ’s conclusion, which is supported by substantial

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<sup>7</sup> Denial of plaintiff’s claim for benefits was made at step four of the sequential evaluation process, although, the ALJ continued in the sequential evaluation process and made alternative findings under step five.

evidence was that the plaintiff's hand pain was not significant enough to merit consideration in determining whether plaintiff was able to return to her past employment. Because the hand limitations were not supported by the record, the ALJ did not need to include them in her hypothetical questions to the VE when determining whether plaintiff could return to her previous employment.

After allowing the record to remain open following the hearing to enable further medical testing of plaintiff's hands, the ALJ found that the medical evidence did not support a finding that plaintiff's hand pain had reached a disabling level as of the date of last insured status. (R. 21.)

Specifically, the ALJ found "at the critical time period for this case, the date of last insured status, the claimant's hand pain had just started and was not at a disabling level." Id. The ALJ considered the evidence in the record at the time of the hearing, the evidence from the testimony at the hearing and an EMG/nerve conduction study done after the hearing in reaching this conclusion. Based on her review of the evidence the ALJ concluded that although plaintiff did exhibit hand pain, plaintiff's testimony, medical records and physician's opinion did not show that plaintiff's hand pain was at the disabling level. (R. 17.)

Plaintiff testified at her hearing and the ALJ noted that her hand pain began approximately one year prior to her hearing. (R. 21, 51.) This would mean that her hand pain started just before her date of last insured status. (R. 21). The ALJ did not completely discredit plaintiff's complaint of hand pain. Rather based on a range of motion chart prepared by Dr. Hurowitz just before plaintiff's date of last insured the ALJ found that plaintiff had (R. 21.) "full dorsiflexion, full palmar flexion, and full radial deviation, though there is slight ulnar deviation

in both wrists.” (R. 21). Based on this evidence, prepared by plaintiff’s treating physician, the ALJ rightly found that plaintiff’s hand pain was not at a disabling level as of her date of last insured.

Thus, the ALJ’s decision to reject plaintiff’s hand limitations in her step four evaluation was supported by substantial evidence. Because of this, the ALJ’s decision not to include the hand limitations in the hypothetical questions posed to the VE was appropriate. See Chrupcala, 829 F.2d at 1276.

### **The ALJ’s Alternative Step Five Finding**

Plaintiff contends that the ALJ’s alternative finding that plaintiff could perform other work was legally inadequate, making it insufficient to carry the Commissioner’ burden and giving cause for remand to the ALJ. (Pl.’s Mem. Supp. Summ. J. at 20-21).

Even though the ALJ concluded that plaintiff could return to her past work in step four of the evaluation process, the ALJ continued to step 5, and examined plaintiff’s ability to perform other work. Evaluating a plaintiff’s ability to perform other work is the fifth step in the required evaluation. 20 C.F.R. 416.920(4)(v). This fifth step assumes that plaintiff could not return to past work and determines whether plaintiff could make an adjustment to other work based on her residual functioning capacity, age, education and previous employment experience. Id. At this step in the evaluation process, the burden shifted to the ALJ to “provid[e] evidence that demonstrates that other work exists in significant numbers in the national economy that [claimant] can do. . . .” 20 C.F.R. § 416.960(c)(2).

Plaintiff contends that the ALJ erred because in making an alternative step five finding she did not adequately consider plaintiff’s limitation on the use of her hands. However, the ALJ

posed four different hypothetical questions to the VE at the hearing. These hypothetical questions asked the VE to consider available jobs based on differing impairments. Among the hypothetical questions posed to the VE was one which asked the VE to consider an individual who had the residual functional capacity to “only occasionally use her hands for simple grasping or fine manipulation,” in addition to plaintiff’s other limitations (R. 88.) The VE found that such an individual could perform the work of either a cashier or surveillance system monitor at the sedentary exertional level, or an usher or bus monitor at the light exertional level. (R. 88-89.)

Plaintiff also claims that the ALJ erred in finding that if plaintiff could not return to her past relevant work, could then chose from a list of alternative options for employment, such as, usher, bus monitor, cashier, interviewer, information clerk, or surveillance system monitor. (R. 22.) As is evident from the hearing transcript, each of these jobs were given by the VE in response to the different hypothetical questions asked by the ALJ. (R. 86-93.) Plaintiff claims that because Finding 8 is a listing of job possibilities that were responsive to multiple hypothetical questions it is “impossible to discern any step five RFC finding.” (Pl.’s Mem. Supp. Summ. J. at 8-9). Plaintiff goes on to argue that this shows that the ALJ has not met her burden under step five of the required analysis which requires the ALJ to show that a sufficient number of jobs exist in the national economy. 20 C.F.R. §416.960(c)(2) (requiring SSA to demonstrate that other work exists in significant numbers in the national economy that plaintiff is capable of doing this work based on her RFC). Although Finding 8 by the ALJ does list certain jobs which the VE rejected when she considered the hand limitation suffered by plaintiff, the ALJ also listed jobs which were available in sufficient number in the national and regional economy, even

considering the claimed limitations on the usefulness of plaintiff's hands. Thus, the court finds that the ALJ met her burden under step five of the sequential analysis.

### **Conclusion**

Upon review of the record, the ALJ's findings and decision were supported by substantial evidence. Accordingly, defendant's motion for summary judgment is granted and plaintiff's motion for summary judgment is denied.

An appropriate order follows.

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

JOAN D. BECKER, : CIVIL ACTION  
: :  
Plaintiff, : NO. 03-06374  
: :  
v. : :  
: :  
JO ANNE B. BARNHART, :  
COMMISSIONER OF SOCIAL :  
SECURITY :  
Defendant. :

**JUDGMENT ORDER**

AND NOW, this \_\_\_\_ day of March 2005, upon consideration of the parties' cross-motions for summary judgment, it is hereby ORDERED as follows:

1. Defendant's Motion for Summary Judgment is GRANTED;
2. Plaintiff's Motion for Summary Judgment is DENIED;

3. Judgment is entered in favor of defendant, and against plaintiff;

BY THE COURT:

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JAMES T. GILES                      C.J.

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to