

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

DONNA M. JIMERSON : CIVIL ACTION
: :
v. : NO. 04-3211
: :
JO ANNE B. BARNHART, :
Commissioner of Social Security :

MEMORANDUM AND ORDER

AND NOW, this 6th day of June, 2005, upon consideration of the cross-motions for summary judgment filed by the parties (Doc. Nos. 6 and 7), the court makes the following findings and conclusions:

1. On February 26, 2003, Donna M. Jimerson (“Jimerson”) filed for disability insurance benefits (“DIB”), under Title II of the Social Security Act, 42 U.S.C. §§ 401-433, alleging an onset date of December 10, 1999. (Tr. 82-84). Throughout the administrative process, including an administrative hearing held on November 3, 2003, before an administrative law judge (“ALJ”), Jimerson’s claims were denied. (Tr. 5-7, 9-21, 29-72, 73-77). Pursuant to 42 U.S.C. § 405(g), Jimerson filed her complaint in this court on July 7, 2004.

2. In her decision, the ALJ concluded that Jimerson had severe impairments consisting of cervical and lumbar disc herniations and right shoulder rotator cuff repair and non-severe impairments resulting from knee pain and prior carpal tunnel release surgery. (Tr. 14 ¶¶ 2-3). The ALJ further found that Jimerson’s impairments did not meet or medically equal any listed impairments, that she could not perform her past work, but that she retained the residual functional capacity (“RFC”) to engage in a limited range of sedentary work. (Tr. 15 ¶ 3, 17 ¶ 6, 18 ¶ 2, 20 Findings 3, 4, 7, 8, 12).

3. The Court has plenary review of legal issues, but reviews the ALJ’s factual findings to determine whether they are supported by substantial evidence. Schaudeck v. Comm’r of Soc. Sec., 181 F.3d 429, 431 (3d Cir. 1999) (citing 42 U.S.C. § 405(g)). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Id. at 401 (quoting Consol. Edison Co. v. NLRB, 305 U.S. 197, 229 (1938)); see also Dobrowolsky v. Califano, 606 F.2d 403, 406 (3d Cir. 1979). It is more than a mere scintilla but may be less than a preponderance. See Brown v. Bowen, 854 F.2d 1211, 1213 (3d Cir. 1988). If the conclusion of the ALJ is supported by substantial evidence, this court may not set aside the Commissioner’s decision even if it would have decided the factual inquiry differently. Hartranft v. Apfel, 181 F.3d 358, 360 (3d Cir. 1999); see 42 U.S.C. § 405(g).

4. Jimerson raises four arguments in which she alleges that the determinations by the ALJ were either not supported by substantial evidence or were legally erroneous. These arguments are addressed below. However, upon due consideration of all of the arguments and evidence, I find

that the ALJ's decision is legally sufficient and supported by substantial evidence.

A. First Jimerson contends that the ALJ's determination that she be able to sit or stand at will precludes her from performing sedentary jobs under S.S.R. 83-12. This contention is incorrect. The ALJ acknowledged that Jimerson could not perform the full range of sedentary jobs and properly consulted a vocational expert ("VE") to determine the amount of erosion to the occupational base, which the VE and the ALJ specifically discussed. (Tr. 63). Likewise, the ALJ took into account Jimerson's right arm limitations. (Tr. 62). Therefore, the ALJ's decision is in accord with S.S.R. 83-12 and the controlling case law and, as a result, is distinguishable from Boone v. Barnhart, 353 F.3d 203 (3d Cir. 2004) on which Jimerson relies. See Staggers v. Barnhart, 106 Fed. Appx. 104, 105 (3d Cir. Jul. 19, 2004)(citing Jones v. Barnhart, 364 F.3d 501, 506 n. 6 (3d Cir. 2004)); Henderson v. Soc. Sec. Admin., 87 Fed. Appx. 248, 253 (3d Cir. Jan. 14, 2004).

B. Second, Jimerson alleges that the ALJ failed to incorporate into the RFC determination and the hypothetical the full extent of her reaching and lifting limitations. After reviewing the entire medical record, I conclude that there is substantial evidence in the record to support the limitations in the ALJ's RFC determination and hypothetical of, *inter alia*, no lifting in excess of ten pounds and no overhead reaching with her right arm. (Tr. 17 ¶ 6, 20 Finding 7, 62; see e.g. 140-142, 164-165, 166-167, 171, 174, 178, 179, 188, 199-201, 214, 217, 223-225, 227, 229-230, 231-248, 251-252, 253-261, 301-302, 313-314, 318-319, 341-342, 388-390, 402-403, 422-423). Contrary to Jimerson's assertion, the ALJ's determination is also not in conflict with the fact that the state agency consultant checked the "limited" box for "reaching all directions (including overhead)" with her right arm in the manipulative limitations section of the Residual Functional Capacity Assessment. (Tr. 256). Similarly, it is not significant that the ALJ did not discuss Dr. Rosenfeld's short note that Jimerson could not lift or carry objects using her right hand for any distances. (Tr. 304). There is no requirement that the ALJ discuss or make reference to every piece of relevant evidence included in the record. Fargnoli v. Halter, 247 F.3d 34, 42 (3d Cir. 2001); Hur v. Barnhart, 94 Fed. Appx. 130, 133 (3d Cir. April 16, 2004). Regardless, Jimerson is incorrect that Dr. Rosenfeld's note contradicts the ALJ's findings as the note deals with carrying objects over distances whereas the ALJ simply found that Jimerson could not be required to lift objects in excess of ten pounds. (Tr. 304, 20 Finding 7). In this case, the ALJ's decision, read as a whole, illustrates that the ALJ considered the appropriate factors in determining Jimerson's limitations.

C. Third, Jimerson argues that the VE's testimony conflicted with the Dictionary of Occupational Titles ("DOT") and that the ALJ did not ask the VE about the conflicts pursuant to S.S.R. 00-4p. Even if the ALJ did err in failing to inquire into any conflicts and some of the VE's testimony was in conflict with the DOT, remand is not warranted. The VE stated that a person falling within the ALJ's hypothetical could perform certain jobs, including as examples, cashier, assembler, and surveillance monitor. (Tr. 63). The Commissioner concedes that there appears to be a conflict with the VE's assessment that cashier is an unskilled sedentary job. Jimerson also claims that all sedentary and unskilled assembler jobs require either frequent or constant reaching. This does not appear to be a correct statement and, regardless, the ALJ's hypothetical only restricted overhead reaching with the right arm. Therefore, no conflict exists for this position. Next, Jimerson argues that surveillance system monitor requires occasional lifting of up to ten pounds. This requirement is not in conflict with the ALJ's RFC determination and hypothetical, and as discussed

above, the ALJ's determination was supported by substantial evidence. Finally, because the VE stated that these three positions were merely examples of the work Jimerson could perform and because there is no conflict between the VE's testimony and the DOT in at least two of the three jobs listed as examples, this action need not be remanded on this ground. Rutherford v. Barnhart, 399 F.3d 546, 557-558 (3d Cir. 2005)(citing Jones, 364 F.3d at 506); (Tr. 19 ¶ 1, 63).

D. Fourth, Jimerson asserts that the ALJ improperly found that she was not fully credible regarding the severity of her pain. "Credibility determinations are the province of the ALJ and only should be disturbed on review if not supported by substantial evidence." Pysher v. Apfel, No. 00-1309, 2001 WL 793305, at *3 (E.D. Pa. July 11, 2001)(citing Van Horn v. Schweiker, 717 F.2d 871, 973 (3d Cir. 1983)). Moreover, such determinations are entitled to deference. S.H. v. State-Operated Sch. Dist. of the City of Newark, 336 F.3d 260, 271 (3d Cir. 2003). Likewise, the ALJ is required to determine the extent to which a claimant is accurately stating the degree of pain or the extent to which he or she is disabled by it. Hartranft, 181 F.3d at 362 (citing 20 C.F.R. § 404.1529(c)). The ALJ did not disregard Jimerson's complaints of pain, but properly determined, based on substantial evidence (which was referenced in detail by the ALJ), that the record did not establish that Jimerson was as disabled as she claimed. Id.; (see Tr. 16 ¶¶ 1-4, 174, 223-225, 261). I conclude that the ALJ's findings at Tr. 16 and Tr. 20 Finding 5 are supported by substantial evidence.

Upon careful and independent consideration, the record reveals that the Commissioner applied the correct legal standards and that the record as a whole contains substantial evidence to support the ALJ's findings of fact and conclusions of law. Therefore, it is hereby **ORDERED** that:

5. The motion for summary judgment filed by Donna M. Jimerson is **DENIED**;

6. The motion for summary judgment filed by the Commissioner is **GRANTED**

and **JUDGMENT IS ENTERED IN FAVOR OF THE COMMISSIONER AND AGAINST DONNA M. JIMERSON**; and

7. The Clerk of Court is hereby directed to mark this case as **CLOSED**.

LOWELL A. REED, JR., S.J.