

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

KIM C. LOCKLEY,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	
JO ANNE BARNHART, Commissioner	:	NO. 05-5197
of the Social Security Administration,	:	
	:	
Respondent.	:	

MEMORANDUM

Baylson, J.

May 16, 2006

Plaintiff Kim C. Lockley (“Lockley”) seeks judicial review of the decision of the Commissioner of the Social Security Administration denying his claim for disability insurance benefits (DIB) under Title II of the Social Security Act, 42 U.S.C. §§ 401-433 (“the Act”). Presently before this Court are the parties’ Cross-Motions for Summary Judgment (Doc. Nos. 6 & 7). For the reasons that follow, the Court will grant Lockley’s motion in part and remand for further proceedings in accordance with this opinion.

I. Background

A. Procedural History

Lockley was born on September 8, 1964, and is now 40 years old.¹ R. at 22. He has a high school education plus four years of vocational training thereafter (apparently in aircraft

¹ Lockley thus qualified as a “younger person” under the regulations. 20 C.F.R. § 404.1563. The Court must “cautiously scrutinize the employment prospects of so young an individual before placing him on the disability rolls.” McLamore v. Weinberger, 530 F.2d, 572, 574 (4th Cir. 1976).

structural repair). R. at 96. Lockley has a background of past relevant work experience in light, skilled work as a human resources advisor. R. at 22-23, 45.

Lockley filed for Social Security disability insurance benefits on or about October 24, 2003, alleging he became disabled due to back pain and sciatica stemming from a pelvic fracture that occurred on July 14, 1989.² R. at 90. After Lockley's claim was initially denied by the state agency on January 5, 2004, Lockley timely requested a hearing before an Administrative Law Judge ("ALJ"). R. at 50, 54. The ALJ, Suanne Strauss, conducted a hearing on July 15, 2004, at which Lockley, who was represented by counsel, and a vocational expert testified. See R. at 26-48. On September 10, 2004, the ALJ issued a decision denying Lockley's claim, concluding that although Lockley could not perform his past relevant work as a human resources advisor, he was not "disabled" under the meaning of the Act because he could perform certain other work in the national economy (namely, the full range of light, skilled work). R. at 23-24.

The Appeals Council denied Lockley's request for review without comment (R. at 4-6), making the ALJ's decision the final decision of the Commissioner. See 20 C.F.R. §§ 404.955, 404.981 (2005); Matthews v. Apfel, 239 F.3d 589, 592 (3d Cir. 2001). Lockley thereafter sought judicial review of the Commissioner's decision in this Court. He filed a Motion for Summary Judgment on January 11, 2006 (Doc. No. 6) and Respondent, the Commissioner of the Social Security Administration ("Commissioner"), filed a Cross-Motion for Summary Judgment on December 16, 2005 (Doc. No. 7).

² In his brief, Lockley cites additional causes of disability, including substance abuse disorder and high blood pressure. However, in his Disability Adult Report, filed with the Social Security Administration, Lockley asserted only "severe pelvic fracture, chronic back problems, and sciatica in both legs" as the illnesses or injuries that limit his ability to work. R. at 89-90.

B. History of Injury and Treatment

Lockley asserts that he has been unable to work since July 14, 1989, when, while serving in the U.S. Army, he was involved in a motor vehicle accident in which the car he was in was hit head on by a drunk driver traveling approximately 60 miles an hour. R at 36, 123, 125, 134, 148. He sustained a severed pelvis and a shattered right acetabulum. He was hospitalized and had to undergo corrective surgery that included the placement of plates and hardware to repair the pelvis and stabilize the bone grafting required for the hip injury. R. at 97.

Lockley testified that over the years since the accident, the pain that he experiences from the injuries he suffered has progressively worsened. R. at 37. Lockley initially received a 100% disability rating and a disability pension from the Veterans Administration (“VA”). R. at 44. Lockley subsequently attempted to perform several jobs and the VA temporarily reduced his disability rating to 60%. R. At 44. He last worked for a company named Primavera in a human resources capacity. During that employment, Lockley claims that he experienced increasing pain in his back, hip, and down his legs. R. at 29-31. He was laid off by Primavera in November 2002 for excessive absences. R. at 41-42. In December 2004, Lockley was once again granted a 100% disability rating by the VA. R. at 173-77.

Lockley received treatment at the VA from Kenneth Frank, M.D. from 1996 through at least May 2004. R. at 120-150, 159, 163-68. He has seen Dr. Frank approximately every three to four months for approximately nine years. R. at 38, 159. Medical records reflect that:

1. Lockley has consistently complained of back and right hip pain with radiation down into both legs. R. at 120-150, 162-67. Indeed, He initially experienced pain in his right hip and down his right leg, however the tingling and sciatica spread to

both of his legs (R. at 122, 126, 132, 135, 138, 139, 146, 150, 164), his left great toe (R. at 138), and his right heel (R. at 164).

2. Lockley walks with a cane (R. at 118, 122, 164, 167), has trouble sleeping due to pain (R. at 138, 159), that medication helps him sleep (R. at 123, 131, 134-35, 137, 140, 144, 148, 165, 166), and that moisture, humidity, and inclement weather increases his pain (R. at 147, 162).³
3. Lockley has decreased range of motion of his back and right hip. R. at 117-118, 146. Positive straight raises⁴ on both the right and the left increased his back pain. R. at 126. Lockley has decreased sensation in his right foot and into the right groin and back. R. at 146, 159. Lockley can stand but not walk on his toes, can get on and off an examination table without difficulty, and occasionally has a limp. R. at 122, 126, 141, 164, 167.
4. Lockley, at various times during the previous five years, engaged in exercise, including weight lifting and walking his dog. R. at 123, 126, 132, 135, 138, 141, 145, 165.
5. Lockley was twice convicted of driving under the influence.⁵ R. at 125.
6. At various times, Lockley has engaged in the illegal use of marijuana (normally

³ Lockley also testified to several of these problems, namely that pain interferes with his ability to sleep (R. at 30), that inclement weather increases his pain (R. at 33, 35), and that he has used a cane ever since the accident in 1989 (R. at 29).

⁴ This is a diagnostic tool that detects nerve root pressure produced by lumbar disc herniation.

⁵ Neither DUI was related to Lockley's injuries, which were sustained when he was hit by a drunk driver.

smoking \$10-\$20 weekly) and felt he “ha[d] a substance abuse disorder.” R. at 127, 130.

Dr. Frank completed a Residual Functional Assessment (“RFA”) on May 13, 2004. As the Commissioner acknowledges, Dr. Frank “identif[ied] profound physical functional limitations.” Commissioner’s Br. at 4; R. at 159-62, 166. The RFA indicated:

1. Lockley experiences pain in his legs, feet, and back and decreased sensation in his right foot.
2. Lockley’s pain is aggravated by stress.
3. Lockley has extreme limitations in the ability to sit, stand, stoop, and crouch.
4. Lockley could only lift and carry less than ten pounds occasionally.
5. Lockley, if working, would need a job that would enable him to shift positions at will, take unscheduled breaks throughout the day, and miss more than four days of work per month.

See R. at 159-162.

II. Contentions of the Parties

In his Motion for Summary Judgment, Lockley asserts that the ALJ erred by failing to properly evaluate his residual functional capacity (“RFC”) and non-exertional impairments. More specifically, Lockley contends that (1) the ALJ did not properly consider his complaints of pain and limitations; (2) the ALJ afforded no weight to the opinion of Lockley’s treating physician, Dr. Frank; (3) the ALJ failed to adequately consider Lockley’s impairments in determining that he had the RFC for light work; and (4) the ALJ failed to properly address Lockley’s non-exertional impairments. Lockley contends that, due to these deficiencies, the

ALJ's decision is not supported by substantial evidence and does not comply with prevailing law.

The Commissioner counters that the ALJ evaluated all the evidence in the record, and had substantial evidence to conclude that the Lockley was not disabled. The Commissioner argues that (1) Lockley failed to meet his burden of proof in this case; (2) the ALJ properly made credibility determinations against Lockley based on the entire record; (3) The ALJ was reasonable in according less weight to Dr. Frank's assessment because it was so thoroughly based on Lockley's subjective complaints; and (4) the ALJ properly discounted non-exertional limitations because they were based primarily on Lockley's subjective complaints.

III. Legal Standard

The standard of review of an ALJ's decision is plenary for all legal issues. Schaudeck v. Comm'r of Soc. Sec. Admin., 181 F.3d 429, 421 (3d Cir. 1999). The scope of the review of determinations of fact, however, is limited to determining whether or not substantial evidence exists in the record to support the Commissioner's decision. Id. As such, "[t]his Court is bound by the ALJ's finding of fact if they are supported by substantial evidence on the record." Plummer v. Apfel, 186 F.3d 422, 427 (3d Cir. 1999). Where "an agency's fact finding is supported by substantial evidence, reviewing courts lack power to reverse . . . those findings." Monsour Med. Ctr. v. Heckler, 806 F.2d 1185, 1191 (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).

IV. Discussion

In order to establish a disability under the Social Security Act, a claimant must demonstrate that there is some “medically determinable basis for an impairment that prevents him from engaging in any “substantial gainful activity” for a statutory twelve month period. 42 U.S.C. § 423(d)(2)(A); Stunkard v. Sec’y of HHS, 841 F.2d 57, 59 (3d Cir. 1988).

To determine whether an individual is disabled, the regulations proscribe a five-step analysis. 20 C.F.R. § 404.1520(a); Ramirez v. Barnhart, 372 F.3d 546, 550-51 (3d Cir. 2004). The fact-finder must determine: (1) if the claimant currently is engaged in substantial gainful employment; (2) if not, whether the claimant suffers from a “severe impairment;” (3) if the claimant has a “severe impairment,” whether that impairment meets or equals those listed in 20 C.F.R. Part 404, Subpart P, Appendix 1, and thus are presumed to be severe enough to preclude gainful work; (4) whether the claimant can still perform work he or she has done in the past (“past relevant work”) despite the severe impairment; and (5) if not, whether the claimant is capable of performing other jobs existing in significant numbers in the national economy in view of the claimant’s age, education, work experience and residual functional capacity (“RFC”). Id. If there is an affirmative finding at any of steps one, two, four or five, the claimant will be found “not disabled.” 20 C.F.R. § 404.1520(b)-(f). See also Brown v. Yuckert, 482, U.S. 137, 140-42 (1987). The Plaintiff carries the initial burden of demonstrating by medical evidence that he or she is unable to return to his or her former occupation. Dobrowolsky v. Califano, 606 F.2d 403, 406 (3d Cir. 1979). Once the Plaintiff has done so, the burden shifts to the Commissioner to show the existence of substantial gainful employment the claimant could perform. Id.

A. The ALJ's Conclusions

The ALJ concluded that, although Lockley's physical impairment is "severe," Lockley does not meet or equal the criteria of the Act. R. at 23. The ALJ did not accept "Lockley's statements concerning his impairments and their impact on his inability to work . . . To the extent that those statement allege a level of disabling symptoms which exceed the objective medical evidence and clinical findings could reasonably be expected to produce." R. at 23. Although the ALJ found that Lockley's condition was serious enough to prevent him from performing his past relevant work as a human resources advisor, she found that Lockley still had the RFC to perform gainful employment at the exertional level of light work. R. at 23-24. In so finding, the ALJ concluded that Lockley "is able to lift up to 20 pounds occasionally and 10 pounds on a regular basis; he can walk, stand and sit up to six hours each day in an eight-hour workday with normal breaks." R. at 23. Therefore, the ALJ concluded that Lockley was not "disabled" within the meaning of the Act. R. at 24.

B. The ALJ's Finding that Lockley was Not Disabled

1. The ALJ's Consideration of the Treating Physician's Opinion

Lockley argues the ALJ erred in failing to accord significant enough weight to the opinions of his treating physician, Dr. Frank. The Commissioner counters that the ALJ properly attributed limited weight to the opinion of Dr. Frank because it was primarily based on the subjective complaints of Lockley.

The Third Circuit has repeatedly noted that "a cardinal principle guiding disability eligibility determinations is that the ALJ accord treating physicians' reports great weight, especially when their opinions reflect expert judgment based on a continuing observation of the

patient's condition over a prolonged period of time." Morales v. Apfel, 225 F.3d 310, 317 (3d Cir. 2000). See also Plummer v. Apfel, 186 F.3d 422, 429 (3d Cir. 1999) (citing Rocco v. Heckler, 826 F.2d 1348, 1350 (3d Cir. 1987)); 20 C.F.R. § 404.1527(d)(2) (providing for controlling weight where treating physician opinion is well-supported by medical evidence and not inconsistent with other substantial evidence in the record). In fact, treating physician's opinions are afforded controlling weight if well-supported by diagnostic evidence and not inconsistent with other medical evidence in the record, and it is an error of law to reject the treating physician's opinion without adequate explanation. 20 C.F.R. §404.1527; Fagnoli v. Massanari, 247 F.3d 34, 43 (3d Cir. 2001). As such, an ALJ may not make speculative inferences from medical reports, see, e.g., Smith v. Califano, 637 F.2d 968, 972 (3d Cir. 1981), and is not free to employ her own expertise against that of a physician who presents competent medical evidence. Ferguson, 765 F.2d at 37 (1985). Stated most succinctly, an ALJ may reject a treating physician's opinion outright only on the basis of contradictory medical evidence. Newhouse v. Heckler, 753 F.2d 283, 286 (3d Cir. 1984).

Here, the ALJ discounted the conclusions of Dr. Frank because they had "no objective basis" and were "based on the claimant's subjective complaints which [we]re not credible." R. at 20. Moreover, the ALJ did not cite any medical evidence or opinions to contradict the opinion of Dr. Frank regarding Lockley's physical functional limitations. The ALJ did note some objective evidence that Lockley engaged in activities that were at odds with his claims of disability, including physical exercise and marijuana use; however, reference to such evidence, alone, does not satisfy the strictures of the treating physician rule. The only attempt the ALJ made to directly address Dr. Frank's opinion was to cite an apparent inconsistency between a May 19, 2004 report

in which Dr. Frank “made no mention of the screws which the claimant said were in [vertebrae] L4-5” and Dr. Frank’s subsequent opinion (described above) as to Lockley’s serious impairment. R. at 20. However, in a letter, dated October 21, 2004, which Lockley maintains was submitted to the ALJ but for some reason was not made part of the record, Dr. Frank acknowledged that his May 19, 2004 report may have been confusing to the ALJ and provides a reasonable explanation:

I have now before me the actual images and indeed he does have two surgical screws plainly visible crossing the right sacral iliac joint. The radiology report mentioned that the fracture site had been surgically stabilized, without mentioning these screws. When I commented that no screws were mentioned in the report, I think it conveyed the misimpression of a normal back. Obviously, the sacral iliac joint is being held together by hardware and cannot be considered to be normal in any sense. Sacral iliac pain can cause severe back pain in the absence of limitation of range of motion or signs of motor weakness.

See Letter from Dr. Frank to the ALJ, dated October 21, 2004, attached to Lockley Reply Brief.

With the principles clearly articulated by the Third Circuit in mind, the Court concludes the ALJ did not develop a sufficient record basis to discount the deference that should be accorded to the opinion of Dr. Frank pursuant to the treating physician rule. An ALJ may only discount a treating physician’s conclusions if they are contradicted by other medical evidence or opinions in the record. Dr. Frank’s assessment that Lockley has severe physical limitations which preclude substantial gainful employment is supported by medical evidence (although, notably, much more so as to 2002-2004 than as to previous years), and it is not contradicted by any other medical opinion. Because Dr. Frank treated Lockley for approximately nine years and provided detailed records for some of those years, Dr. Frank’s opinion was informed not just by Lockley’s subjective complaints, but by medical tests and his objective assessment of Lockley’s

physical functioning.⁶ In short, the Court finds that the ALJ did not develop or cite to sufficient record medical evidence to justify affording no weight to the conclusions of Dr. Frank. Morales, 225 F.3d at 317; Plummer, 186 F.3d at 429.⁷

The Court will therefore remand this case to the ALJ for further development and explanation of record medical evidence which the ALJ finds contradicts Dr. Frank's opinion as to Lockley's disability. To comport with the treating physician rule, upon remand the ALJ must cite to specific and substantial medical evidence that is contrary to the opinion of Dr. Frank. The ALJ may seek to provide this necessary level of detail through more extensive reference and citation to the existing record or via the taking of additional testimony from Dr. Frank or another, independent medical professional. Furthermore, the ALJ should re-examine any conclusions based on Dr. Frank's alleged "inconsistency" in light of the October 21, 2004 letter of clarification from Dr. Frank.

The Court notes that if the ALJ can not cite to substantial record medical evidence to the

⁶ Record medical evidence indicates back and right hip pain with radiation down into both legs (R. at 120-150, 162-67); tingling and sciatica in both legs (R. at 122, 126, 132, 135, 138, 139, 146, 150, 164), the left great toe (R. at 138), and the right heel (R. at 164); use of a cane to walk (R. at 118, 122, 164, 167); trouble sleeping due to pain (R. at 138, 159) and need of pain medication to sleep (R. at 123, 131, 134-35, 137, 140, 144, 148, 165, 166); increase of pain by moisture, humidity, and inclement weather (R. at 147, 162); decreased range of motion of the back and right hip (R. at 117-118, 146); increase in pain caused by positive straight raises on both the right and left sides (R. at 126); decreased sensation in the right foot and into the right groin and back (R. at 146, 159); and inability to walk on toes and a limp (R. at 122, 126, 141, 164, 167).

⁷ The Commissioner's argument on this issue curiously contains no reference to the clearly enunciated principles of the Third Circuit concerning the treating physician rule; at best, it misstates that rule by merely suggesting (without further explanation) that here the ALJ "could have" accepted Dr. Frank's opinion but could also have "reasonabl[y]" chosen not to do so. See Commissioner's Mem. at 11.

contrary, the treating physician rule would dictate deference to the opinion of Dr. Frank; the ALJ may not simply employ her own expertise or simply extend a negative credibility determination about Lockley himself to refute the opinion of Dr. Frank, a medical professional.

2. The ALJ's Consideration of Lockley's Subjective Complaints

Lockley also argues the ALJ erred by discrediting his subjective complaints of pain and physical limitation, because they were supported by the un rebutted opinion of Dr. Frank and the medical record. The Commissioner argues that Lockley's subjective complaints were not amply supported by objective medical evidence, and the ALJ had good reason to doubt the veracity of Lockley's alleged disabling physical subjective pain.

An ALJ must consider a claimant's subjective symptoms, including pain, which may not be discounted if reasonably consistent with a showing of objective medical evidence of a condition that could reasonably produce the symptoms reported. Chrupcala v. Heckler, 829 F.2d 1269, 1275-76 (3d Cir. 1987); 20 C.F.R. § 404.1529. Indeed, where medical evidence exists to support a claimant's subjective complaints, these complaints should be given "great weight." Mason v. Shalala, 99 F.2d 1058, 1067-68 (3d Cir. 1993); Ferguson v. Schweiker, 765 F.2d 31, 37 (3d Cir. 1985). Therefore, once the claimant has submitted evidence to support subjective claims of disability, an ALJ may not dismiss the evidence simply as "not credible." Rather, the ALJ must point to contrary medical evidence. Mason, 99 F.2d at 1067-68; Williams v. Sullivan, 970 F.2d 1178, 1184-85 (3d Cir. 1992).

In this case, as mentioned supra, there is some evidence (e.g., physical exercise, drug use) that Lockley's complaints were not credible. However, as discussed above, the ALJ failed to indicate substantial contrary medical evidence to refute Dr. Frank's un rebutted medical opinion

or the objective medical evidence in the record. Dr. Frank concluded that Lockley had very significant exertional limitations. In addition, objective medical evidence of record demonstrated that Lockley had severe disc disease and attendant surgical repair (including screws in his lumbar spine), a major pelvic fracture and attendant surgical repair (including bone grafts), chronic pain, and limited range of motion. See n. 5, supra. Taken together, Dr. Frank’s opinion and the medical record constitute medical evidence of conditions that could reasonably produce the symptoms reported in Lockley’s subjective complaints. Because such medical evidence exists, the ALJ should have afforded Lockley’s subjective complaints “great weight,” and should not have dismissed (as simply “not credible”) these complaints without more extensively citing to objective medical evidence to explain why Lockley’s conditions could not have reasonably produced the asserted complaints. Upon remand, the ALJ must cite to specific contrary medical evidence that provides substantial evidence for the conclusion that Lockley’s complaints “exceed what the objective medical evidence . . . could reasonably be expected to produce.” R. at 23. Stated differently, the ALJ must offer an explanation of sufficient detail to remove her dismissal of Lockley’s subjective complaints from the realm of “personal speculation.” Morales, 225 F.3d at 317.⁸

⁸ The Commissioner focuses her argument on the contention that the ALJ’s credibility determination is entitled to deference. Such is true. However, evaluation of a claimant’s subjective complaints is a two-part inquiry, and only the second part involves a credibility determination. Before the ALJ decides whether the claimant’s subjective claims are credible, the ALJ must first determine whether there is an underlying medical condition that can reasonably be expected to produce the symptoms alleged. 20 C.F.R. § 404.1529(c)(1). Here, the ALJ has fallen short in this threshold analysis. Lockley sustained severe physical injuries, requiring extensive surgical repair, that (as Dr. Frank opined) could absolutely have caused the symptoms alleged. By discounting this fact with reference to specific substantial evidence to the contrary, the ALJ has conflated the threshold analysis with the secondary credibility determination.

3. Determination of Lockley's RFC

“Light work” requires an individual to walk and carry ten pounds for six hours out of an eight hour work day. Jesurum v. Secretary of Health and Human Servs., 48 F.3d 114 (1995); Social Security Ruling (SSR) 83-10. Furthermore, the individual must be able to work on a “regular and continuing basis,” which is defined by the Commissioner as 8 hours a day, five days a week. See 20 C.F.R. § 404.1545(b); Social Security Ruling (SSR) 96-8p; 96-9p.

Dr. Frank specifically opined that Lockley could sit, stand and walk only about two hours in an eight hour work day, and that he would miss work more than four times a month (i.e., he could only work four days a week or less). This uncontradicted medical opinion establishes that Lockley did not meet the requirements for a finding of a RFC for light work. Indeed, when asked by the ALJ, the vocational expert agreed that the physical limitations found by Dr. Frank would preclude all work. R. at 46-47. In addition, there is evidence that, due to Lockley's deteriorating condition, the VA increased his disability rating to 100% in 2003.⁹

As discussed, supra, the ALJ did not make reference to specific, substantial medical evidence to contradict either Dr. Frank's opinion or the medical evidence of record. That conclusion extends to the ALJ's findings regarding Lockley's RFC. See Burnet v. Apfel, 220 F.3d 112 (3d Cir. 2000) (where the ALJ fails to assess all of the medical evidence, the ALJ's finding regarding the claimant's RFC is unsupported by substantial evidence). See also, e.g., Stunkard v. Secretary of Health and Human Servs., 841 F.2d 57, 61 (3d Cir. 1988) (evidence that

⁹ Because the VA's revised disability rating is new and material evidence that was not possible for Lockley to have submitted prior to the ALJ hearing or decision, it was properly submitted to the Appeals Council and the Court can properly consider this evidence. 42 U.S.C. § 405(g). See also McCartney v. Massanari, 298 F.3d 1072 (9th Cir. 2002).

claimant could only sit for three hours, could not push or pull, and could only stand for three hours could not justify a finding that the claimant was capable of doing light work); White v. Secretary of Health and Human Servs., 910 F.2d 64, 66 (2d Cir. 1990) (government lacked substantial evidence that claimant could do light work when, though claimant could lift twenty pounds occasionally, he could sit for only four hours in an eight hour day -- two to three hours without interruption -- and could not push or pull); Jennings v. Bowen, 703 F. Supp. 833, 836, 840 (D. Ariz. 1988) (government lacked substantial evidence to show that the claimant could do light work when claimant could only occasionally lift 10-20 pounds, could sit for only fifteen minutes without interruption for up to four hours, and had a limited ability to walk for extended periods).

Accordingly, the ALJ's unsupported, different conclusion – i.e., that Lockley “is able to lift up to 20 pounds occasionally and 10 pounds on a regular basis; he can walk, stand and sit up to six hours each day in an eight-hour workday with normal breaks,” R. at 23 – is therefore not currently supported by substantial evidence. Upon remand, the ALJ must (by any of the methods discussed supra) reference specific, substantial evidence to contradict Dr. Frank's opinion that Lockley cannot meet the requirements for the performance of “light work.” If the ALJ can not do so, the ALJ must re-evaluate her conclusions as to Lockley's RFC in the context of the required deference to Dr. Frank's opinion.

4. Consideration of Lockley's Non-Exertional Impairments

Finally, Lockley argues that the ALJ erred by (1) neglecting to address certain of his non-

exertional impairments and (2) using the Medical-Vocational Guidelines¹⁰ without rebutting evidence of those non-exertional impairments. The Commissioner responds in passing by merely reiterating the belief that the ALJ properly discounted the opinion of Dr. Frank.

“Non-exertional” limitations “can affect the abilities to reach; to seize, hold, grasp, or turn an object; to bend the legs alone (kneel); to bend the spine alone (stoop) or bend both the spine and legs (crouch). See Social Security Ruling (SSR) 85-15. Furthermore, “some stooping . . . is required to do almost any work.” Id. If a claimant adduces evidence of non-exertional impairments, the Commissioner must rebut the claimant’s evidence by using a vocational expert or other evidence. Gilliland v. Heckler, 786 F.2d 178 (3d Cir. 1986). If the Commissioner does not rebut evidence of non-exertional impairments in this manner, the ALJ may not use the Medical-Vocational Guidelines to determine that the claimant is not disabled. Green v. Schweiker, 749 F.2d 1066, 1072 (3d Cir. 1984) (noting that the Medical-Vocational Guidelines are to be used only for purely exertional impairments).

As discussed supra, Dr. Frank opined that Lockley could stoop and crouch only about 5% of each work day. R. at 161. Dr. Frank’s opinion is therefore substantial evidence that establishes Lockley had non-exertional impairments. Again, however, the ALJ did not reference any contrary medical opinion in rejecting the conclusion of Dr. Frank. Moreover, no vocational expert testimony was taken in regard to this issue.¹¹ Without such, it was error for the ALJ to exclusively use the Medical-Vocational Guidelines to determine Lockley’s disability.

¹⁰ The ALJ used the Medical-Vocational Guidelines to arrive at the conclusion that Lockley was not disabled. R. at 9.

¹¹ Indeed, it appears that the Commissioner made no specific attempt to rebut the claim of non-exertional limitations at all.

Upon remand, the ALJ must (by any of the methods discussed supra) reference specific, substantial evidence to contradict Dr. Frank's opinion that Lockley had non-exertional impairments. If the ALJ can not do so, under prevailing law it is inappropriate for the ALJ to exclusively use the Medical-Vocational Guidelines to determine Lockley's disability. If such is the case, the ALJ should re-open the record and follow the procedures normally employed when a claimant asserts both exertional and non-exertional impairments.

V. Conclusion

For the foregoing reasons, this Court concludes that the ALJ's decision is not supported by substantial evidence. Accordingly, the Commissioner's Motion for Summary Judgment will be denied and Lockley's Motion for Summary Judgment will be granted in part. The decision of the ALJ will be reversed and the Court will remand this case for further administrative proceedings in accordance with this opinion.

An appropriate Order follows.

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

KIM C. LOCKLEY	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	
JO ANNE B. BARNHART, Commissioner	:	NO. 05-5197
of the Social Security Administration,	:	
	:	
Respondent.	:	

ORDER

AND NOW, this 16th day of May, 2006, after careful and independent consideration of the parties' Cross-Motions for Summary Judgment, and review of the record, it is hereby

ORDERED that:

1. Plaintiff's Motion for Summary Judgment (Doc. No. 6) is GRANTED IN PART;
2. The Commissioner's Motion for Summary Judgment (Doc. No. 7) is DENIED;
3. The case is remanded for further administrative proceedings not inconsistent with this opinion pursuant to the fourth sentence of 42 U.S.C. § 405(g).
4. The Clerk shall mark this case CLOSED for statistical purposes.

BY THE COURT:

/s/ MICHAEL M. BAYLSON
MICHAEL M. BAYLSON, U.S.D.J.