

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

MICHAEL J. O'DONNELL	:	CIVIL ACTION
	:	
	:	
v.	:	NO: 05-2134
	:	
JO ANN B. BARNHART	:	
Commissioner, Social Security	:	
Administration	:	

MEMORANDUM AND ORDER

AND NOW, this 28th day of June 2006, upon consideration of the cross-motions for summary judgment (Doc. Nos. 5 and 8), the Court makes the following findings and conclusions:

A. On November 13, 2003, Michael J. O'Donnell ("O'Donnell") protectively applied for disability insurance benefits ("DIB") under Title II of the Social Security Act, ("Act") 42 U.S.C. §§ 401-433. (Tr. 44-46). Throughout the administrative process including a July 14, 2004, hearing before an administrative law judge ("ALJ"), O'Donnell's claim was denied. (Tr. 4-6; 9-26; 28-32; 355-392). Pursuant to 42 U.S.C. § 405(g), O'Donnell then sought judicial review in this Court.

B. The ALJ found O'Donnell's bilateral shoulder rotator cuff disease, degenerative disc disease, diabetes mellitus, Dupuytren's contracture plus status post right fasciectomy with release of ring and small fingers, hypertension, right knee tear of medial meniscus and liver disease/Hepatitis C impairments to be severe. (Tr. 13-14 ¶ 7; 25 Finding No. 3),¹ but found that they were not severe enough to meet or medically equal any of the listed impairments ("Listing's"). (Tr. 14-16 ¶¶ 12-18; 25 Finding No. 3); 20 C.F.R. Appendix 1 to Subpart P of Part 404. The ALJ further concluded that O'Donnell could not perform his past relevant work, but was not disabled, and had the residual functional capacity ("RFC") to perform a restricted range of light work.² (Tr. 13 ¶ 4; 16 ¶ 21; 17 ¶ 22; 22-23 ¶¶ 38-39; 23 ¶ 41; 25 ¶ 47; 25-26 Finding Nos. 6, 7, 11). Based on the testimony of a vocational expert ("VE") and Medical Vocational Rule 202.21, the ALJ further concluded that O'Donnell was able to perform other jobs that exist in the national economy. (Tr. 24-25 ¶ 45-46; 26 Finding No. 10).

C. The Court has plenary review of legal issues, but reviews the ALJ's factual findings to

¹ Paragraphs are numbered chronologically seriatim as they appear throughout the ALJ's decision.

² The ALJ states that because O'Donnell can perform light work he can also perform sedentary work. (Tr. 17 ¶ 22).

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 has been defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Richardson v. Perales, 402 U.S. 389, 401 (1971) (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 ALJ’s conclusion 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).

D. O’Donnell raises several arguments that the ALJ’s determination was legally and factually erroneous. However, this Court finds that there is no legal error in the ALJ’s decision and that there is substantial evidence in the record to support the conclusions of the ALJ.³

1. O’Donnell first argues that the ALJ failed to consider the combined effects of his impairments. Despite this, O’Donnell acknowledges that the ALJ stated that she had considered the combined effect of these limitations at step three, but complains also that the ALJ did not “cite any evidence supporting her review of the combined effects.” (Tr. 22 ¶ 37). However, the ALJ’s extraordinary comprehensive evaluation of the totality of the evidence, and in particular, the fact that the RFC finding encompassed several functional limitations attributable to various impairments, demonstrates her consideration of the combined effect of O’Donnell’s limitations. (Tr. 17 ¶ 22; 22-23 ¶ 38). Besides, an ALJ is not required to use any specific format or language in her decision, as long as she sufficiently develops the record to permit meaningful judicial review. Jones v. Barnhart, 364 F.3d 501, 505 (3d Cir. 2004). Therefore, there is no error and the ALJ’s decision is supported by substantial

³ I did not consider O’Donnell’s Exhibits 1-3 in my substantial evidence review. Evidence that was not before the ALJ cannot be used to argue that the ALJ’s decision was not supported by substantial evidence. Jones v. Sullivan, 954 F.2d 125, 128 (3d Cir. 1991).

The only purpose for which new evidence can be considered by a Court is to determine whether it provides a basis for remand under sentence six of 42 U.S.C § 405(g). When a claimant seeks to rely on evidence that was not before the ALJ, the District Court may remand to the Commissioner, but only if the evidence is new and material and if there was good cause for not having been presented previously to the ALJ. Fisher v. Massanari, 28 Fed. Appx. 158, 159 (3d Cir. 2002) (citing Matthews v. Apfel, 239 F.3d 589, 593 (3d Cir. 2001)). O’Donnell’s Exhibits 1-3 do not meet the test for remand namely because the evidence is not material nor has good cause been shown for the failure to submit it to the ALJ. The evidence fails to be material since each exhibit is dated after O’Donnell’s insured status expired on December 31, 2003, and therefore, does not relate to the time period at issue. Szubak v. Secretary of Health and Human Services, 745 F.2d 831, 833 (3d Cir. 1984) (implicit in the materiality requirement is that the new evidence relate to the time period for which benefits were denied, and that it is not evidence of a later-acquired disability or subsequent deterioration of the previously non-disabling condition). Finally O’Donnell offers no reason that this evidence was not presented earlier for good cause. Fisher, 28 Fed. Appx. at 160 (holding that a claimant’s failure to raise this issue at the District Court level, resulted in waiver by claimant of consideration of “good cause” before the court). O’Donnell’s September 8, 2005, cover letter to Commissioner explains that the omission of these exhibits from his motion for summary judgment was inadvertent. For the reasons stated above, a remand is not necessary because the additional evidence does not satisfy the criteria for a new evidence remand under sentence six of 42 U.S.C. § 405(g).

evidence.

2. Next, O'Donnell complains that the ALJ erred in not giving significant weight to his testimony. Specifically he asserts that the ALJ has no support for her statement that O'Donnell exaggerated his subjective complaints. In this case, the ALJ addressed O'Donnell's subjective complaints extensively and found them to be not fully credible. (Tr. 17 ¶ 23; 17-18 ¶ 25; 19 ¶ 29; 21-23 ¶¶ 35-38; 25 Finding No. 4). The ALJ based her determination on the lack of support in the objective medical records, inconsistencies between O'Donnell's testimony and the degree of limitations detailed in the record. (Tr. Id.; 355-392). Although O'Donnell complained of excruciating pain, there is considerable evidence in the record that O'Donnell's complaints are, in fact, exaggerated and that O'Donnell does not suffer from any work preclusive medical conditions. (Tr. 84; 102; 225; 266-270; 333-341; 345-346; 373; see also 85-91). The ALJ's findings of substantial inconsistencies between O'Donnell's subjective complaints and the medical and other relevant evidence is supported by substantial evidence and undermines his credibility. See Burns v. Barnhart, 312 F.3d 113, 130-31 (3d Cir. 2002) (holding that the ALJ may reject testimony of subjective complaints where it is not consistent with medical evidence). Therefore, the record gives legal support to the ALJ's determination on credibility.

3. O'Donnell further asserts that the ALJ erred in making her determination at step three in that she ignored or rejected medical evidence supportive of the notion that O'Donnell meets or equals various Listings. A claimant must provide enough medical evidence in step three to show that his impairment is equal in severity to a listed impairment. Rivera v. Commissioner, 164 Fed. Appx. 260, 262 (3d Cir. 2006) (citing Burnett v. Comm'r of SSA, 220 F.3d 112, 120 n.2 (3d Cir. 2000)). Here, the ALJ's decision makes clear that ALJ considered several Listings that were relevant to O'Donnell's case. (Tr. 14 ¶ 12-16 ¶ 18). For each Listing, the ALJ explains why the record evidence does not meet the specified medical criteria for that Listing. (Tr. Id.). Although the ALJ conceded that the record evidence shows some objective signs of some Listings, an impairment that manifests only some of the criteria, no matter how intensely, does not qualify. Sullivan v. Zebley, 493 U.S. 521, 530 (1990). Furthermore, her conclusion about each Listing is bolstered by the opinion of the state agency physician whose opinion that O'Donnell did not meet the Listings was afforded substantial weight. (Tr. 17 ¶ 23; 341). Because it is clear that each Listing and the evidence pertinent to each Listing was adequately considered, there is no error and the ALJ's decision is supported by substantial evidence.

4. Fourth, O'Donnell argues that the ALJ erred in not giving significant weight to the opinion of his treating physician and by giving significant weight to the determinations of the state agency examiner. Generally, more weight is given to treating sources if their opinions are well-supported by medically acceptable sources and not inconsistent with other substantial evidence in the record. 20 C.F.R. § 404.1527(d)(2); see also Social Security Ruling, ("SSR") 96-8p, 1996 WL 374184, at * 7. Contrary to O'Donnell's assertions, the ALJ provided ample explanation for declining to afford controlling weight to Drs. B.H. Grossinger and S.D. Grossinger and to his chiropractor, Dr. Schatzberg. (Tr. 17 ¶ 24; 20-21 ¶ 32-34). It is clear from the ALJ's decision that she declined to afford controlling weight to these physicians because the degree of limitation expressed in their opinions were not supported by objective evidence. (Tr. 20-21 ¶ 34). Furthermore, their opinions were conclusory, and

did not merit controlling weight. (Tr. 20-21 ¶¶ 33-34; 83; 84; 149; 150; 215; 225; 180; 292; 347); See Jones, 954 F.2d at 129 (holding that physician's opinions that are conclusory and unsupported by the medical evidence are not controlling). Also, a chiropractor's opinion is not a medical source that is entitled to controlling weight. Hartranft, 181 F.3d 361. Finally, in contrast to the treating physicians, the ALJ afforded the state agency physician significant weight because it *was* supported by and consistent with the medical evidence of record. (Tr. 17 ¶ 23; Cf. 102; 195; 266-273; 333-341). Because O'Donnell's treating physicians' opinions were not well-supported and were inconsistent with other evidence of record, the ALJ's decision to not to afford controlling weight was without error and is 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 Michael J. O'Donnell 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 MICHAEL J. O'DONNELL**; and

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

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