

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

ANNE M. DOUGHERTY	:	CIVIL ACTION
	:	
v.	:	
	:	
JO ANNE BARNHART	:	NO. 05-5383

MEMORANDUM

Baylson, J.

August 21, 2006

Plaintiff Anne M. Dougherty (“Plaintiff” or “Dougherty”) seeks judicial review of the decision of the Commissioner of the Social Security Administration (“Defendant” or “Commissioner”) denying her claim for Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”) under Titles II and XVI of the Social Security Act (“the Act”), 42 U.S.C. §§ 401–433, 1381–1383c. Jurisdiction is established under § 205(g) of the Act. *Id.* § 405(g). Presently before the Court are the parties’ cross-motions for summary judgment (Doc. Nos. 9 and 10).

I. Background

A. General Background and Procedural History

Plaintiff initially filed applications for DIB and SSI on February 5, 2004. (R. at 95, 292). She appealed initial denials to an Administrative Law Judge (“ALJ”), who held a hearing on April 18, 2005 which consisted of testimony from both the Plaintiff and vocational expert (“VE”) Richard Baine. (R. at 24–57). On June 1, 2005, the ALJ issued a decision denying Plaintiff’s DIB and SSI claims. (R. at 14–22). The ALJ determined that while Plaintiff’s degenerative joint disease of the right ankle, obesity, bipolar affective disorder, and anxiety are considered severe

under the requirements set forth in the regulations, see 20 C.F.R. §§ 404.1520(c), 416.920(c), the “medically determinable impairments do not meet or medically equal one of the listed impairments in Appendix 1, Subpart P, regulation No. 4.” (R. at 21). In addition, the ALJ did not find Plaintiff’s allegations regarding her limitations to be “totally credible.” Id. In fact, the ALJ found that Plaintiff retained the residual functional capacity (“RFC”) to “perform low stress, 1–2 step tasks jobs involving lifting a maximum of 20 pounds, no prolonged standing/walking, and limited contact with the public or co-workers.” Id. The ALJ applied the Medical-Vocational Guidelines (the “M-V Guidelines”) and determined that though Plaintiff’s exertional limitations do not allow her to perform the full range of sedentary work, she could perform a significant number of jobs in the national economy. (R. at 22). The ALJ thus concluded that Plaintiff was not under a “disability” within the meaning of the Act at any time through the date of the decision. Id.

Plaintiff requested review by the Appeals Council, and on September 16, 2005 that body issued an order affirming the ALJ’s decision. (R. at 6–9). The ALJ’s decision therefore constitutes the “final decision of the Commissioner of Social Security,” and Plaintiff has commenced this action pursuant to 42 U.S.C. §§ 405(g), 1383(c), moving for summary judgment under F.R. Civ. P. 56. Plaintiff seeks a determination from this Court that he has been “disabled,” as defined under the Act, since August 8, 2002.

B. History of Treatment for Physical and Mental Impairments

Plaintiff is currently forty years old and has a high school education. She has prior work experience as an inventory clerk, a graffiti removal worker, a general clerk, and an attendant. (R. at 31–32). Plaintiff testified before the ALJ on April 18, 2005 and stated that she has been

unable to work due to both her mental and physical limitations, both of which limited her effectiveness in day-to-day activities. (R. at 42–45).

The ALJ's report contains an extensive review of Plaintiff's treatment records for both physical and mental impairments. Turning first to the alleged physical limitations, Plaintiff fractured her right ankle in 1990 and had open reduction surgery. (R. at 154, 180). In 1996, Plaintiff had the hardware removed and underwent an ankle arthroscopy. (R. at 180). The medical records indicate that Plaintiff's right ankle was deteriorating, as Plaintiff complained of pain and swelling. On September 16, 2003, Plaintiff had an MRI of her right ankle and the reading radiologist, Dr. Linda M. Russin Do found that the ankle had "extensive degenerative changes . . . involving the hindfoot predominantly at the tibiotalar joint." (R. at 154–55). The radiologist also noted that Plaintiff was suffering from extensive arthritis and plantar fasciitis and that the swelling in the ankle was caused by tendinitis. (R. at 155). The medical records indicate findings of "advanced degenerative change in the tibial talar joint and cystic changes" as well as hypersensitivity along the medial incision and decreased range of motion. (R. at 180). After the MRI, Plaintiff followed up with Dr. Randall N. Smith of the Delaware Valley Orthopedic & Spine Center on October 8, 2003. (R. at 156–57). Dr. Smith concurred with the radiologist's assessment of Plaintiff's right ankle and advised her to consider gastric bypass surgery, since her weight was putting extreme pressure on her ankle. (R. at 156).

The medical records indicate that Plaintiff is 5'6" and has weighed as much as 314 pounds, having gained between 70 and 100 pounds after she last worked. (R. at 223–24, 276, 278–79). Plaintiff visited with Dr. Richard H. Greenberg on July 9, 2004 in order to inquire about gastric bypass surgery, and though the doctor made it clear that she should lose weight, she

left the office with the understanding that she should seek more information about the operation before seriously considering the procedure. (R. at 223–24). The records also show that standing or walking for long periods of time increased the pain in Plaintiff’s right ankle. (R. at 156, 159, 164, 180, 242).

As for the Plaintiff’s mental health, there are extensive medical records both from treating physicians and psychologists as well as medical experts engaged for purposes of this social security claim. Plaintiff was treated by Doctor Ira N. Herman of SRI Psychological Services in Jenkintown, Pennsylvania from approximately August 2001 to May 2003. (R. at 145–53). The medical records from Dr. Herman indicate approximately seven visits, at least three of which were for medication refills. (R. at 145, 148–53). A hand-written note from Dr. Herman dated November 11, 2002 indicates that Plaintiff was under his care for treatment of bipolar disorder and that Plaintiff had been prescribed three medications: Depakote, Effexor, and Xanax. (R. at 147). The last report from Dr. Herman is dated May 19, 2003 and indicates that Plaintiff stated that she was “feeling better,” suffered from “less anger/mania,” and felt that she was “much less depressed.” (R. at 145).

Plaintiff sought a medication refill at the Medical College of Pennsylvania’s Eastern Pennsylvania Psychiatric Institute (“EPPI”) in December 2003. (R. at 167–79). The mental status evaluation performed by Dr. Beena Ramen at EPPI indicated that Plaintiff had a cooperative attitude, a neutral mood, appropriate affect, as well as goal-directed associations and normal stream of thought. (R. at 172). An assessment of Plaintiff’s thought content and perception noted that Plaintiff’s calculations, intellectual capacity, abstraction and reasoning, judgment, and insight were all “average,” however, it was noted that Plaintiff had worries and/or

concerns about her weight. Id. Plaintiff’s cognitive functioning (specifically, her attention, orientation, and memory) was assessed as “average.” (R. at 173).

Dr. Ramen concluded that Plaintiff was depressed and had impulse control issues and recommended individual therapy twice a month as well as monthly medication checks. (R. at 173, 176). Dr. Ramen’s report also noted Plaintiff’s performance on the Global Assessment of Functioning test (“GAF”), which measures an individual’s psychological, social, and occupational functioning on a hypothetical continuum of mental health/illness using a scale of one to one hundred.¹ On December 19, 2003, Plaintiff was given a score of 55.²

From March 2004 through February 2005, Plaintiff went to Northwestern Human Services (“Northwestern”) in order to receive her medication. On March 3, 2004, Plaintiff underwent an initial assessment at Northwestern, in which she reported that if she becomes upset she gets loud and angry and wants to hurt others. (R. at 193–97). She stated that she could restrain herself from injuring others due to her “fear of going to jail.” (R. at 193). Plaintiff also noted that her weight gain had made her upset and that she was in the process of being evaluated

¹ See American Psychiatric Association, Diagnostic and Statistical Manual 27–36 (4th ed. 2000) (hereinafter “DSM-IV”).

² A GAF score of 31–40 signifies “some impairment in reality testing or communication . . . or major impairment in several areas, such as work or school, family relations, judgment, thinking or mood.” DSM-IV at 34. A score of 40 is on the borderline between “some impairment” and serious symptoms. A GAF score of 41–50 indicates “serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) [or] any serious impairment in social, occupational, or school functioning (e.g., no friends, unable to keep a job).” Id. A score of 50 is on the borderline between serious and moderate symptoms. GAF scores between 51 and 60 indicate moderate symptoms (e.g., circumstantial speech and occasional panic attacks or moderate difficulty in social or occupational functioning as evidenced by few friends and conflicts with peers or coworkers). Id. A score of 60 is on the borderline between moderate and mild symptoms. A score of 61–70 is indicative of “some mild symptoms (e.g. depressed mood and mild insomnia) or some difficulty in social, occupational, or school functioning (e.g., occasional truancy, or theft within the household), but generally functioning pretty well, has some meaningful interpersonal relationships.” Id.

for gastric bypass surgery. Id. At the conclusion of the initial psychiatric assessment, the Northwestern clinician gave Plaintiff a GAF score of 40. (R. at 197).

On April 23, 2004, Plaintiff underwent a comprehensive psychiatric evaluation at Northwestern. (R. at 189–92). Plaintiff’s chief complaint, as stated in the report produced from the evaluation, was that she needed her medication. (R. at 189). In describing Plaintiff’s “history of present illness,” the report notes that she had severe mood swings for the prior two to three years and that she became easily agitated. Id. Plaintiff also stated that she “usually hits herself when . . . upset” and had pressured speech, limited insight, and reported poor frustration tolerance. Id. After the completion of the comprehensive psychiatric evaluation, Dr. Syed Rizui, Northwestern’s attending psychiatrist, gave Plaintiff a GAF score of 60, representing the borderline between moderate and mild symptoms. (R. at 192).

On May 2, 2004, Plaintiff underwent a consultative examination by Roslyn Wolberg, Psy.D. Ms Wolberg concluded that Plaintiff suffered from “bipolar disorder by report” and that anti-social personality disorder should be ruled out. (R. at 201). The examination also revealed that Plaintiff was in remission for “multiple substance abuse” and had been treated in an inpatient drug rehabilitation program in 1996 and an adult rehabilitation program for three months, both for addiction to methamphetamine and cocaine. (R. at 198, 201). Plaintiff reported that she has not used methamphetamines since 1996 and had not used cocaine for six to seven years. (R. at 198). Ms. Wolberg completed a medical source statement which assessed Plaintiff’s ability to do work-related activities and reported that Dougherty’s ability to “understand remember, and carry out instructions” was not affected by her impairment. (R. at 203). While the psychologist did determine that Plaintiff’s “ability to respond to supervision, co-workers, and work pressures in a

work setting” was affected by the impairment, four of the five specific categories provided were noted as “slight” restrictions, while one was listed as “moderate.”³ Id.

On June 23, 2004, Plaintiff was seen by Dr. J.J. Kowalski, a state agency physician consultant, who performed a mental RFC assessment. (R. at 205–07). Dr. Kowalski wrote that Plaintiff has “problems with a mood disorder, a mixed personality disorder and a history of substance abuse.” (R. at 207). Dr. Kowalski also concluded that Plaintiff is able to perform adequate activities of daily living and self-care. Id. His report continued, noting,

[Plaintiff] can have problems getting along with people and has been quick to anger. She communicates clearly. Her concentration can be compromised. She can follow instructions and is capable of performing a variety of routine, non-complex tasks, which don’t involve interaction with the general public.

Id. In evaluating Plaintiff’s ability to function, Dr. Kowalski found that Dougherty was at most “moderately limited” in such categories as “understanding and memory,” “sustained concentration and persistence,” “social interaction,” and “adaptation.” (R. at 205–06).

II. Parties’ Contentions

A. Plaintiff’s Motion for Summary Judgment

Plaintiff first argues that the ALJ failed to properly evaluate her RFC and non-exertional impairments. Plaintiff testified that she suffered great pain and argues that the conditions diagnosed for her ankle could reasonably have caused such pain. She maintains that the ALJ should have given “great weight” to her complaints, as she had shown objective medical

³ Specifically, psychologist Wolberg found the following restrictions (on a scale of none, slight, moderate, marked, and severe) for the listed work-related mental activities: (1) Interact appropriately with the public - Slight; (2) Interact appropriately with supervisor(s) - Slight; (3) Interact appropriately with co-workers - Slight; (4) Respond appropriately to work pressures in a usual work setting - Moderate; and (5) Respond appropriately to changes in a routine work setting - Slight. (R. at 203).

evidence of a condition producing the reported symptoms.

As for Plaintiff's mental condition, she argues that her testimony concerning frequent absences from work, problems with mood swings and impulse control, and manic and depressive episodes could all have been reasonably produced by her diagnosed Bipolar Disorder I. Plaintiff also notes that her documented GAF scores also support consideration of her testimony as to her mental limitations. Plaintiff claims that the ALJ in this case failed to even mention the GAF scores, which are found throughout Plaintiff's file. In addition, Plaintiff argues that the ALJ did not address the multiple limitations imposed by the state agency physician. Plaintiff asserts that the ALJ's incomplete discussion of the medical history and failure to provide an adequate explanation for disregarding evidence are clear grounds for reversal by this Court.

Second, plaintiff argues that the ALJ, in formulating the RFC, failed to properly evaluate her mental limitations. Specifically, Plaintiff contends that she suffers from numerous disabling symptoms, including mood swings, impulsivity, inability to control anger, anxiety, mania, depression, and problems focusing. She contends that it is reversible error for the ALJ in this case not to have included these specific limitations in the RFC.

Third, Plaintiff asserts that the ALJ failed to make a determination that Plaintiff had non-exertional impairments, despite the fact that Plaintiff suffers from pain and problems maintaining focus and concentration. Pl's Br. at 13. Plaintiff argues that a determination must be made whether non-exertional impairments "significantly erode the occupational base" by taking vocational evidence or providing or taking official notice of the fact that the occupational base was not eroded. *Id.* at 13-14. Plaintiff argues that because she suffers from non-exertional limitations, the ALJ should have addressed the issue with the VE and did not. Moreover,

Plaintiff claims that the ALJ failed to consider observations by a Social Security employee from February 2004, which noted that Plaintiff had difficulty answering questions and maintaining concentration. Plaintiff contends that ALJs are required to consider such observations, and the failure to do so in this case constitutes a plain abuse of discretion.

Fourth, Plaintiff maintains that the ALJ posed a flawed hypothetical to the VE, arguing that the hypothetical did not take into consideration many limitations in the record, including Plaintiff's psychological and orthopedic limitations. Because the law requires that a hypothetical take into account all of a claimant's impairments, the ALJ's determination concerning jobs in the economy which Plaintiff could perform was inherently flawed, and his disability determination should therefore be reversed.

Fifth and finally, Plaintiff contends that the VE's testimony clearly conflicted with the Dictionary of Occupational Titles (the "DOT"). According to Plaintiff, when a VE contradicts information in the DOT, the ALJ must require the VE to explain the basis for the disagreement. The VE testified that the jobs listed could be done with a sit/stand option, but Plaintiff asserts that the DOT does not provide for such an option. Also, Plaintiff argues that the VE failed to indicate whether the jobs were sedentary or light exertional level positions. Plaintiff claims that because the VE did not explain his disagreement with the DOT, the record lacks substantial evidence to support the ALJ's finding that there are jobs in the national economy which Plaintiff can perform.

B. Defendant's Motion for Summary Judgment

In her brief, the Commissioner argues that Plaintiff has failed to meet her affirmative burden of production and persuasion in this case. The Commissioner notes that Plaintiff did not

see a therapist for much of the period under review and did not submit treatment notes from a therapist. Additionally, the Commissioner contends that the medication checks and medical records simply do not support the severity of mental impairment testified to by Plaintiff during the April 18, 2005 hearing. The Commissioner states that it is the responsibility of the ALJ, in light of conflicting evidence of record, to resolve inconsistencies between a claimant's alleged symptoms and a claimant's true ability to work, which includes an assessment of credibility. Def's Br. at 12.

As for Plaintiff's contentions concerning the GAF scores, the Commissioner argues that the treatment notes from Northwestern do not support such a severe degree of limitations. Moreover, the Commissioner states that no physician of record has confirmed that Plaintiff suffers from such significant limitations. A GAF score, without explanation, is limited in its significance, and without supporting evidence, a medical source opinion is not entitled to controlling weight or any special significance, irrespective of its source.

Turning to Plaintiff's complaints concerning the ALJ's RFC assessment, the Commissioner argues that the ALJ "clearly acknowledged the evidence of record in his decision," and properly evaluated Plaintiff's mental and physical diagnoses under the listings. As for the ALJ's consideration of Plaintiff's limitations, the Commissioner asserts that the ALJ appropriately reduced Plaintiff's RFC to accommodate her ankle impairment and obesity in limiting her to sedentary work with no prolonged standing and walking and also accounted for her mental impairments by reducing Plaintiff to simple, low-stress work with limited contact with the public and co-workers.

Similarly, the Commissioner, in responding to Plaintiff's contention that certain medical

evidence was ignored by the ALJ, notes that a claimant's impairment must result in fundamental limitations that would prevent *all* work. Def's Br. at 16 (emphasis added). Here, the Commissioner alleges, the ALJ was aware of Plaintiff's impulsive nature but concluded that it did not preclude her from working. As for the state agency physician testimony cited by Plaintiff, the Commissioner argues that the doctor actually opined that Plaintiff was not disabled.

III. Legal Standard

The Act provides for judicial review of any "final decision of the Commissioner of Social Security" in a disability proceeding. 42 U.S.C. § 405(g). The district court may enter a judgment "affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing." *Id.* 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, 431 (3d Cir. 1999). The Court must review the record to determine whether substantial evidence supports the ALJ's decision. Rutherford v. Barnhart, 399 F.3d 546, 552 (3d Cir. 2005). The factual findings of the ALJ are accepted as conclusive, provided they are supported by substantial evidence. Reefer v. Barnhart, 326 F.3d 376, 379 (3d Cir. 2003). The Court must not "weigh the evidence or substitute [its own] conclusion for those of the fact-finder." Rutherford, 399 F.3d at 552 (quoting Williams v. Sullivan, 970 F.2d 1178, 1182 (3d Cir. 1992)); see also Monsour Med. Ctr. v. Heckler, 806 F.2d 1185, 1191 (3d Cir. 1986) (holding that where "an agency's fact finding is supported by substantial evidence, reviewing courts lack power to reverse . . . those findings"). "Substantial evidence has been defined as more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* (quotations and citations omitted); see also Hartranft v. Apfel, 181 F.3d 358, 360 (3d Cir. 1999).

IV. Discussion

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 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. Plaintiff’s Physical Impairments

1. The ALJ Sufficiently Explained Her Rejection of Plaintiff’s Subjective Complaints of Pain and Properly Evaluated Plaintiff’s Residual Functional Capacity

The first issue raised by the Plaintiff is that the ALJ failed to properly evaluate her RFC and non-exertional impairments. She alleges that the ALJ did not properly consider her

limitations and complaints of pain, as both the condition of her ankle and her obesity were significant enough to preclude gainful employment. In his report, the ALJ wrote that “the claimant’s allegations regarding her limitations are not totally credible . . .” (R. at 21). Plaintiff, however, argues that her physical impairments are well documented by doctors in the record and were not properly taken into account by the ALJ.

The Third Circuit has held that courts should “ordinarily defer to an ALJ’s credibility determination because he or she has the opportunity at a hearing to assess a witness’s demeanor,” but that is not necessarily the case when “the ALJ posed no questions to [the claimant] that would enable him to make such a credibility determination.” Reefer, 326 F.3d at 380 (noting that the ALJ did not ask the claimant “to describe her pain, her daily activities and limitations, how much she can lift, how far she can walk, how long she can sit or stand without discomfort, or whether she has difficulty concentrating”). The Reefer court held that when medical records indicate that a Plaintiff did complain about pain to treating physicians but are unable to explain the cause of such pain, “an ALJ has a duty to consider a Plaintiff’s subjective complaints of pain and to probe further.” Id. at 380–81.

An ALJ must consider a claimant’s subjective symptoms, including pain, which may not be discounted if reasonably consistent with the objective medical evidence and other evidence in the record. Chrupcala v. Heckler, 829 F.2d 1269, 1275–76 (3d Cir. 1987); 20 C.F.R. § 404.1529. However, it is the ALJ’s responsibility to resolve conflicts in the evidence and to determine credibility and the relative weights to be given to the evidence. Plummer v. Apfel, 186 F.3d 422, 427, 429 (3d Cir. 1999); Mason v. Shalala, 994 F.2d 1058, 1066 (3d Cir. 1993). Hence, an ALJ’s credibility determinations are entitled to great deference and should not be discarded

lightly, given his or her opportunity to observe an individual's demeanor. See Reefer, 326 F.3d at 380.

Here, Plaintiff complained of significant pain in her right ankle which prevented her from standing for long periods. Although the ALJ did refuse to accept Plaintiff's testimony regarding her physical condition, such a conclusion does not necessarily constitute reversible error. On the contrary, the ALJ in this case carefully examined the medical evidence and concluded that the Plaintiff's complaints concerning her physical condition simply did not square with the treatment records in her file.

Plaintiff argues in her brief that “[s]everal physicians who saw her documented her complaints of pain as a result of osteoarthritis in her right ankle . . . [the doctors] have prescribed strong pain and anti-inflammatory medications, as well as braces, orthotics and ankle supports, and have even discussed possible surgery.” Pl's Br. at 10. The Court generally agrees with Plaintiff's assessment of the medical evidence but concludes that the record in no way demonstrates that Plaintiff is unable to perform a job with “no prolonged standing/walking” and restricting her to “jobs invoking lifting of a maximum of 20 pounds.” (R. at 154–66, 180–88, 223–24). In fact, the ALJ's decision indicates that he did consider the very medical information cited by Plaintiff in her brief, as the RFC reflects an accommodation of both her ankle injury and her obesity.

“Residual Functional Capacity” is defined in the Social Security Rulings (“SSR”) as follows:

A medical assessment of what an individual can do in a work setting in spite of the functional limitations and environmental restrictions imposed by all of his or her medically determinable impairment(s). RFC is the maximum degree to which

the individual retains the capacity for sustained performance of the physical mental requirements of jobs.

SSR 83-10. Plaintiff argues that the ALJ failed to properly consider the “severe pain she suffers in her right ankle.” Pl’s Br. at 10.

Although it will discuss ALJ’s analysis of the medical evidence regarding Plaintiff’s mental condition *infra*, the Court concludes that the ALJ did properly take account of Plaintiff’s physical impairments in crafting the RFC in this case. In fact, the ALJ noted that the RFC contained in his report was “[b]ased on consideration of the evidence as a whole,” and the specific work limitations included in the RFC were designed to account for the physical limitations claimed by Plaintiff. (R. at 20). The Court finds that the ALJ was successful in accommodating Plaintiff’s obesity and ankle problems by restricting her to “no prolonged standing/walking” and “jobs involving lifting a maximum of 20 pounds.” *Id.*

In assessing Plaintiff’s complaints of pain and her RFC for work, the Court holds that the ALJ adequately developed the record and sufficiently explained why he credited certain medical reports in his analysis. The medical records indicate that Plaintiff is subject to certain limitations on account of her physical impairments, and the RFC devised by the ALJ has properly accounted for these conditions and “the maximum degree to which the individual retains the capacity for sustained performance” of the physical demands of jobs. *See* SSR 83-10.

2. The ALJ Did Not Err in Posing the Hypothetical Regarding Plaintiff’s Physical Limitations

When it comes to the hypothetical questions posed to VEs, the Third Circuit has held that “while the ALJ may proffer a variety of assumptions to the expert, the vocational expert’s testimony concerning a claimant’s ability to perform alternative employment may only be

considered for purposes of determining disability if the question accurately portrays the claimant's individual physical and mental impairments.” Burns v. Barnhart, 312 F.3d 113, 123 (3d Cir. 2002) (quoting Podedworny v. Harris, 745 F.2d 210, 218 (3d Cir. 1984)). Testimony of a VE constitutes substantial evidence for purposes of judicial review only where the hypothetical question posed by the ALJ fairly encompasses *all* of an individual's significant limitations that are supported by the record. Ramirez, 372 F.3d at 552; Chrupcala, 829 F.2d at 1276. When an ALJ incorporates a claimant's limitations into a hypothetical, “great specificity” is required. Ramirez, 372 F.3d at 554–55 (citing Burns, 312 F.3d at 122).

Here, the ALJ asked the VE whether jobs exist in the national economy for an individual of Plaintiff's age, education, past relevant work experience, and RFC. (R. at 21). The ALJ concluded that Plaintiff retained the RFC “to perform low-stress, 1–2 step task jobs involving lifting a maximum of 20 pounds, with no prolonged standing/walking, and with limited contact with the public and co-workers.” (R. at 20). As the Court concluded supra, the RFC devised by the ALJ adequately accounted for her obesity/ankle problems, and the Court thus holds that as to Plaintiff's physical impairments the ALJ's determination that Plaintiff can engage in a limited range of sedentary work is based upon substantial evidence. Since the sedentary work determination was made part of the hypothetical presented to the VE, the Court also holds that the hypothetical question posed by the ALJ fairly encompasses all of the Plaintiff's significant physical limitations. Plaintiff's objections to the ALJ's determinations concerning the physical impairments will therefore be denied.

B. Plaintiff's Mental Impairments

1. The ALJ Improperly Weighed and Discounted the Record Evidence in Reaching the Conclusion that Plaintiff Is Not Disabled

Plaintiff argues that the ALJ's failure to discuss the GAF scores was improper and requires reversal or remand. Defendant, however, argues that Plaintiff's GAF scores actually support a finding that she is not disabled and is, in fact, employable. In her summary judgment brief, Defendant argues that the GAF scores of 40 which Plaintiff was given during examinations in March and December 2004 and March 2005 are not accompanied by mental status examinations and are unsupported by Plaintiff's extensive medical records. Def's Br. at 13–14. Defendant contends that Plaintiff is attempting to rely upon isolated GAF results and that these scores are contradicted by the records from both EPPI and Northwestern.

Pursuant to the final rules of the Social Security Administration, a claimant's GAF score is not considered to have a "direct correlation to the severity requirements." 66 Fed. Reg. 50746, 50764–65 (2000). However, the rules still note that the GAF remains the scale used by mental health professionals to "assess current treatment needs and provide a prognosis." *Id.* As such, it constitutes medical evidence accepted and relied upon by a medical source and must be addressed by an ALJ in making a determination regarding a claimant's disability. Although the ALJ "may properly accept some parts of the medical evidence and reject other parts . . . he must consider all the evidence and give some reason for discounting the evidence he rejects." Adorno v. Shalala, 40 F.3d 43, 48 (3d Cir. 1994).

In Span ex rel. R.C. v. Barnhart, 2004 WL 1535768 (E.D. Pa. May 21, 2004), this Court held that an ALJ's determination of a claimant's level of function was not supported by

substantial evidence because of the ALJ's failure to explain how he weighed and discounted the significance of the claimant's GAF scores. Id. at *9. In Span, the ALJ relied upon the findings of a particular doctor in concluding that claimant's condition did not meet the requirements to be considered disabled under the law. Id. at *7. Ultimately, the Span court held that the "ALJ's written opinion does not evidence that he seriously considered and weighed the importance of these scores," and the case was remanded in order that the ALJ could clarify the basis for his holding. Id.

In Escardille v. Barnhart, 2003 WL 21499999 (E.D. Pa. June 24, 2003), this Court also addressed the significance of an ALJ's consideration of GAF scores in reaching a decision on a claimant's disability status. In Escardille, the ALJ failed to mention the claimant's GAF score of 50, and the district court concluded that the test score "constituted a specific medical finding" that the claimant was unable to perform competitive work. Id. at *7. The court thus remanded the case for further consideration, since there was no indication that significant probative evidence was either simply ignored or not credited. Id. at **6-7 (citing Cotter v. Harris, 642 F.2d 700, 705 (3d Cir. 1981)).

Additionally, in Colon v. Barnhart, 424 F. Supp. 2d 805, 813 (E.D. Pa. 2006), a recent case involving the consideration of GAF scores, this Court concluded that "in light of Plaintiff's total GAF score history, the ALJ was required to discuss his reasons for not even considering the two GAF scores of 50, leading up to the disability determination in this case."⁴

⁴ The present case, of course, is distinguishable from Colon v. Barnhart, 424 F. Supp. 2d 805 (E.D. Pa. 2006), as the court in that case concluded that the ALJ had "cherry picked" the higher GAF scores and used them as part of the foundation for his determination that the claimant was not disabled. See id. at 814 (noting that after consideration of "the wide range of scores which Plaintiff received over the six-year period, it is particularly troubling that the ALJ cited only two scores within the 'mild' range

Unlike in Escardille and Colon, where the ALJ's written opinion did not explicitly indicate that he seriously considered and weighed the importance of certain scores, this case is more akin to Span, where the ALJ simply listed the claimant's GAF scores and then adopted a doctor's determination that claimant was not impaired. Turning to the record in this case, it is clear that Plaintiff received at least five separate GAF evaluations over a period of approximately a year and a half.⁵ Plaintiff mentions in her brief, and the Court is aware, that the ALJ's report in this case fails to discuss any of the five GAF scores in the record. Plaintiff notes that she received three scores of 40 in 2004 and 2005 and argues that the ALJ's report ignores district court and Third Circuit case law requiring discussion of the discounting of probative record evidence, specifically GAF scores.

Because a GAF constitutes medical evidence accepted and relied upon by a medical source, it must be addressed by an ALJ in making a determination regarding a claimant's disability. After examining the record and the GAF scores contained therein, the Court is unwilling to conclude that the ALJ's decision is based upon substantial evidence.⁶ In this case,

in his report"). The logic of Colon still applies, however, as the fundamental holding of the case, like Escardille and Span before it, is that an ALJ must state reasons for discounting relevant medical evidence, including GAF scores.

⁵ A review of the record reveals the following GAF results for Plaintiff: December 2003, 55 (R. at 178–79); March 2004, 40 (R. at 197); April 2004, 60 (R. at 192); December 2004, 40 (R. at 266); March 2005, 40 (R. at 289). The description of the score range and the symptoms associated therewith, see supra note 2, is clearly relevant to the matter at hand, as GAF scores are one part of the record evidence used in assessing whether an individual can perform a job in the national economy.

⁶ This is not to say that the Court finds that the three GAF scores in question necessarily indicate that Plaintiff is disabled under the Act. In fact, the circumstances surrounding the three scores of 40 are quite informative and any complete discussion of Plaintiff's mental impairments (whether discounting or accepting the scores) should examine them in the context of the contemporaneous treatment notes and other assessments contained in the record.

First, the GAF score of 40 of March 3, 2004 was included as part of an "Initial Assessment" at

the Court finds that while the ALJ provided an explanation regarding the evidence he relied upon, she simply failed to disclose any reasons for discounting other evidence. See Span, 2004 WL 1535768, at *8 (citing Adorno, 40 F.3d at 48).

2. The ALJ's Hypothetical to the Vocational Expert Did Not Properly Account for All of Plaintiff's Mental Limitations

As noted above in the discussion of Plaintiff's physical impairments, testimony of a VE constitutes substantial evidence only where the hypothetical question posed by the ALJ fairly encompasses all of an individual's significant limitations that are supported by the record. See Ramirez, 372 F.3d at 552; Chrupcala, 829 F.2d at 1276. Although the ALJ in this case carefully considered the treatment records and evaluations from many medical sources, and ultimately concluded that Plaintiff was not disabled and could perform work, subject to the RFC, in the

Northwestern. As noted above, a score of 40 indicates significant mental-related problems, but in this case a subsequent "Comprehensive Psychiatric Evaluation" performed by the Attending Psychiatrist at Northwestern only six weeks later, resulted in Plaintiff receiving a GAF score of 60 (on the borderline between moderate and mild symptoms).

Because both the treatment records from Northwestern (which are specifically cited in the ALJ's opinion) and the comprehensive evaluation itself indicate that Plaintiff is generally able to function in a work environment, the Court notes that it is entirely possible that the GAF score of 40 from March 3, 2004 simply is not as significant as Plaintiff may believe.

As for the two GAF scores of 40 given on December 8, 2004 and March 31, 2005 at Northwestern, the Court finds that the treatment notes from Northwestern do not necessarily support the severe level of limitations alleged by Plaintiff. In fact, these two GAF scores are listed on one to two page "Behavioral Health Treatment Plan" reports, which are considered as "updates" on Plaintiff's condition rather than a comprehensive evaluation of her mental condition. (R. at 192, 266, 289). In addition, it bears mentioning that the two GAF tests, administered some four months apart, give both identical overall scores (for Axis V) and identical comments (for Axes I-IV) on the chart. (R. at 266, 289). Though the reports were apparently completed by two different individuals on two different dates, the Court mentions the identical nature of these two results because it at least causes one to question whether the March 31, 2005 GAF score was independently ascertained or simply based on, or copied from, the December 8, 2004 results.

Of course, the sequence of events described in this footnote does not excuse the ALJ from the responsibility of addressing the scores in the decision, and the Court has therefore remanded the determination of Plaintiff's mental impairments because the ALJ failed to "consider all the evidence and give some reason for discounting the evidence he rejects." Adorno, 40 F.3d at 48.

national economy, the fact Plaintiff's GAF scores were not mentioned at all in the written decision requires the Court to conclude that the ALJ's decision is unsupported by substantial evidence.

Because the ALJ failed to properly consider Plaintiff's GAF scores, including several that could indicate "some impairment in reality testing or communication . . . or major impairment in several areas, such as work or school, family relations, judgment, thinking or mood," see DSM-IV at 34, the Court concludes that the hypothetical posed in this case did not fairly encompass "*all* of an individual's significant limitations that are supported by the record." See Ramirez, 372 F.3d at 552. Thus, the Court holds that the VE's opinion is deficient because the ALJ's hypothetical question did not reflect all of Plaintiff's mental limitations which were supported by the record. The case must be remanded to the Commissioner of the Social Security Administration so that the ALJ can clarify the basis of her holding.

V. Conclusion

For the foregoing reasons, this Court concludes that though substantial evidence supports the ALJ's determination that Plaintiff's physical impairments do not constitute a disability under the Act, the same is not true for the ALJ's determination as to Plaintiff's mental impairments. Upon an independent and thorough consideration of the administrative record and all of the parties' filings, the Court concludes that Plaintiff's Motion for Summary Judgment will be granted in part, and the case will be remanded to the Commissioner on the basis that the ALJ's written opinion failed to properly indicate how the ALJ weighed and discounted certain record evidence, which is relevant to the issue of whether or not the ALJ's ultimate conclusion is supported by substantial evidence. Though Plaintiff has requested a summary judgment order

awarding benefits forthwith, the Court does not believe that the failure of the ALJ to address the entire range of GAF scores necessarily indicates that there is substantial evidence on the record that the Plaintiff is disabled and entitled to benefits. The Court must therefore remand the case for a new hearing in which the Plaintiff's GAF scores are considered in weighing the evidence presented. Accordingly, the Defendant's Motion for Summary Judgment will be granted in part and denied in part. Similarly, Plaintiff's Motion for Summary Judgment will be granted in part and denied in part. The case will be remanded for further proceedings in accordance with this opinion.⁷

⁷ The Court is aware of Plaintiff's contention that the VE's testimony clearly conflicted with the DOT and that the ALJ should have required the VE to explain the basis for the disagreement. Specifically, Plaintiff claims that the VE testified that the jobs listed could be done with a sit/stand option but that the DOT does not provide for such an option. Additionally, Plaintiff maintains that the VE failed to indicate whether the jobs were sedentary or light exertional level positions. For both of these reasons, Plaintiff contends that the record lacks substantial evidence to support the ALJ's finding that there are jobs in the national economy which Plaintiff can perform.

As to Plaintiff's objection that the VE failed to indicate whether the jobs in question were sedentary or light exertional positions, the Court notes that the VE did not explicitly state whether the jobs which could be performed by Plaintiff were sedentary or light exertional occupations. Social Security Ruling 00-4p requires that any conflict between the VE testimony and the DOT must be explained by the VE. The Ruling, in pertinent part, states:

Occupational evidence provided by a VE . . . generally should be consistent with the occupational information supplied by the DOT. When there is an apparent unresolved conflict between VE . . . evidence and the DOT, the adjudicator must elicit a reasonable explanation for the conflict before relying on the VE . . . evidence to support a determination or decision about whether the claimant is disabled. At the hearings level, as part of the adjudicator's duty to fully develop the record, the adjudicator will inquire, on the record, as to whether or not there is such consistency.

SSR 00-4p. Here, the questioning of the VE involved only three questions, and the exchange between the ALJ and the VE consumed scarcely more than one page of the hearing transcript. (R. at 48-50).

In Diehl v. Barnhart, 357 F. Supp. 2d 804 (E.D. Pa. 2005), Judge Robreno of this Court performed an extensive analysis under SSR 00-4p, ultimately determining that remand on those grounds was unnecessary. Diehl states:

Here, while the ALJ did not ask the VE specifically whether there were any conflicts between his testimony and the DOT descriptions of each job, such an inquiry was

An appropriate Order follows.

unnecessary in light of the detailed questioning of the VE by both the ALJ and Plaintiff's attorney. A review of the VE's testimony demonstrates that the VE was quite familiar with the DOT, as he referred to it specifically and repeatedly.

Id. at 823. Considering the very limited testimony in this case as well as the general uncertainty as to whether the VE was referring to light or sedentary positions when providing occupational possibilities in response to the hypothetical, the Court finds the instant case distinguishable from Diehl.

The lack of response from the Commissioner on this issue has left the Court with no alternative position to consider, requiring it to delve into the dense DOT in an effort to ascertain potential conflicts between the VE testimony and the descriptions of each occupation. Because the Court has already concluded that the ALJ improperly ignored Plaintiff's GAF scores and thus put forth a deficient hypothetical concerning Plaintiff's metal impairments, new VE testimony would, of course, be required on remand. While the Court makes no definitive decision on the matter, it includes this discussion of SSR 00-4p in order to note the potential for error in the ALJ's rather limited questioning of the VE and to encourage a more thorough examination upon remand. The Court will therefore require that on remand the ALJ secure more definite testimony from the VE as to the exertional level required of an individual in any occupations which are determined to be appropriate for an individual suffering from the same limitations as Plaintiff.

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

ANNE M. DOUGHERTY	:	CIVIL ACTION
	:	
	:	
	:	
v.	:	
	:	
	:	
JO ANNE BARNHART	:	NO. 05-5383

ORDER

AND NOW, this 21st day of August, 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. 9) is GRANTED IN PART and DENIED IN PART;
2. Defendant's Motion for Summary Judgment (Doc. No. 10) is GRANTED IN PART and DENIED IN PART; and
3. The case is remanded to the Commissioner for an evidentiary hearing in accordance with the foregoing Memorandum. This remand is ORDERED pursuant to the fourth sentence of 42 U.S.C. § 405(g).
4. The Clerk shall mark this case as CLOSED.

BY THE COURT:

s/ Michael M. Baylson
Michael M. Baylson, U.S.D.J.