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

JANICE HASSON	:	CIVIL ACTION
	:	
v.	:	NO. 05-4233
	:	
JO ANNE B. BARNHART,	:	
Commissioner of Social Security	:	

MEMORANDUM AND ORDER

AND NOW, this 22nd day of August, 2006, upon consideration of the cross-motions for summary judgment filed by the parties and the letter reply thereto (Doc. Nos. 7, 8 and 10), the court makes the following findings and conclusions:

1. On January 7, 2004, Janice Hasson ("Hasson") filed for disability insurance benefits ("DIB") and supplemental security income ("SSI") under Titles II and XVI, respectively, of the Social Security Act, 42 U.S.C. §§ 401-433, 1381-1383f, alleging an onset date of April 15, 2003. (Tr. 86-88; 317-318). Throughout the administrative process, including an administrative hearing held on September 21, 2004 before an administrative law judge ("ALJ"), Hasson's claims were denied. (Tr. 6-10; 19-30; 39-61; 63-66; 320-323). Pursuant to 42 U.S.C. § 405(g), on August 9, 2005, Hasson filed her complaint in this court seeking review of that decision.

2. In his decision, the ALJ concluded that Hasson had severe impairments consisting of a back disorder, Lyme disease and obesity. (Tr. 24 ¶ 5; 29 Finding 3).[1] The ALJ further concluded that Hasson's impairments did not meet or equal a listing, that she was capable of performing her prior work as an office manager, that she also retained the residual functional capacity to perform a significant range of light work, and that she was not disabled. (Tr. 24 ¶ 6; 27 ¶¶ 2-7; 28 ¶¶ 3 & 6; 29 ¶¶ 1-2 & Findings 4, 6-8; 30 Findings 12-14).

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." 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 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. Hasson 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

[1] All numbered paragraph references to the ALJ's decision begin with the first full paragraph on each page.

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, Hasson claims that the ALJ improperly discredited the August 19, 2004 medical source statement of her treating physician, Kimberlee J. Park, D.O. ("Dr. Park") because Dr. Park stated that Hasson had a herniated disc instead of a protruding disc, which was established by a June 3, 2004 MRI. (Tr. 236-37; 293). Hasson claims this was an error because a herniated disc and a protruding disc are the same condition. In support of this argument, Hasson cites to several pages of the transcript in which the ALJ discussed with Hasson's counsel the basis of Dr. Park's diagnosis of disc herniation in light of the MRI showing only a disc protrusion. (Tr. 43-45). The ALJ stated that there was a difference between a protrusion and a herniation while counsel contended that the terms are often used interchangeably by radiologists. (Id.). Hasson contends that "[t]here is no doubt that had the ALJ determined that [Hasson] had sustained a 'herniated disc,' he would have . . . fully credited the evidence for both Dr. Park and Plaintiff." (Doc. No. 7, pg. 16). Hasson's argument is merely conjecture as there is absolutely no indication in the ALJ's decision that this conversation had any impact upon his reasons for discounting Dr. Park's medical source statement. In fact, the ALJ explicitly explained in his decision why he discounted Dr. Park's opinion. (Tr. 26 ¶ 5 - 27 ¶ 1). The ALJ stated that the high degree of limitation indicated by Dr. Park was not supported by the relatively mild clinical and objective findings, Hasson's conservative treatment, and Hasson's level of daily activities. (Id.). After citing specific medical evidence, the ALJ concluded that Dr. Park based her assessment on Hasson's subjective allegations rather than upon the medical evidence. (Id.). A treating physician is only provided controlling weight when his or her opinion is well supported by medically acceptable sources and not inconsistent with other substantial evidence in the record. 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2). Here, the ALJ followed this directive and determined that Dr. Park's opinion was inconsistent with the objective evidence. Moreover, there is no evidence that the ALJ ultimately distinguished between Dr. Park's diagnosis of a herniated disc and the MRI results showing a protruding disc. As a result, Hasson's argument must fail.

B. Second, Hasson argues that the ALJ erroneously found her less than fully credible. I note at the outset that "[c]redibility determinations are the province of the ALJ", should only "be disturbed on review if not supported by substantial evidence", and are entitled to deference. S.H. v. State-Operated Sch. Dist. of the City of Newark, 336 F.3d 260, 271 (3d Cir. 2003); 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)). Specifically, Hasson notes that the ALJ found that Dr. Park's opinion and her testimony were similar and could not be credited for similar reasons. (Tr. 26 ¶ 5). Therefore, Hasson contends that since the ALJ erroneously discredited Dr. Park's opinion, allegedly because the ALJ differentiated between herniated and protruding discs, he also erroneously discredited Hasson's testimony. As discussed above, the ALJ's decision to discount Dr. Park's opinion was based on substantial evidence and was legally permissible. For the same reasons as those stated above, the ALJ's decision to discount the credibility of Hasson's statements was also supported by substantial evidence as her complaints were not consistent with the medical findings, her treatment history or her ability to perform activities of daily living. (Tr. 26 ¶ 5 - 27 ¶ 1).

C. Third, Hasson contends that the hypothetical that the ALJ gave to the to vocational expert ("VE") was incomplete because it did not include limitations associated with major depressive disorder, a GAF score of 45 or Hasson's obesity. "A hypothetical question must reflect all of a claimant's impairments that are supported by the record; otherwise the question is deficient and the

expert's answer to it cannot be considered substantial evidence." Chrupcala v. Heckler, 829 F.2d 1269, 1276 (3d Cir. 1987). Although Hasson is obese, which the ALJ recognized and considered, there is no medical evidence in the record which indicates that her obesity led to vocational limitations, nor does Hasson argue that her obesity created such limitations. See (Tr. 24 ¶ 6; Doc. No. 7, pg. 19). Moreover, the ALJ discussed Rommel Rivera, M.D.'s ("Dr. Rivera") diagnosis of major depressive disorder with a GAF score of 45 and determined that they were inconsistent with his examination findings and further noted that Hasson had no treatment for depression other than medication from her primary care physician. (Tr. 24 ¶ 2; 25 ¶ 3). The ALJ also found that Hasson's depression had "vocationally insignificant symptoms with no evidence of any vocational limitations" (Id. (citing Tr. 122-155)). Therefore, it is evident why the ALJ did not include limitations in the hypothetical related to Dr. Rivera's diagnosis or Hasson's obesity and Hasson's argument to the contrary must fail.

D. Fourth, Hasson claims that the case should be remanded due to the new evidence submitted to the Appeals Council which was not previously submitted to the ALJ. 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: (1) the evidence is "new and not merely cumulative of what is already in the record" and (2) material; and (3) the claimant shows that there was good cause for not previously presenting the evidence to the ALJ. Szubak v. Sec. of Health and Human Servs., 745 F.2d 831, 833 (3d Cir. 1984); 42 U.S.C. § 405(g); Fisher v. Massanari, 28 Fed. Appx. 158, 159 (3d Cir. 2002) (citing Matthews v. Apfel, 239 F.3d 589, 593 (3d Cir. 2001)). Hasson provides no reason why a remand is appropriate other than merely stating that she submitted additional evidence but she presents no good cause for its previous absence. Moreover, upon review of the evidence, it is cumulative of what is already in the record and does not advance Hasson's claims. In fact, many of the new records are simply duplicates of notes already in the record. (compare Tr. 234-239 with Tr. 298-303). As a result, a remand due to new evidence is not warranted in this case.

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 Janice Hasson 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 JANICE HASSON**; and

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

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