

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

VALARIE JACKSON : CIVIL ACTION
 :
 v. :
 :
 JOHN J. CALLAHAN, :
 Acting Commissioner of :
 Social Security : NO. 96-4263

MEMORANDUM AND ORDER

BECHTLE, J.

JULY , 1997

Presently before the court in this action for social security benefits are cross-motions for summary judgment filed by Plaintiff Valarie Jackson's ("Jackson") and Defendant John J. Callahan, Acting Commissioner of Social Security (the "Commissioner"), and Jackson's objections to the magistrate judge's Report and Recommendation. For the following reasons, the court will approve and adopt the Report and Recommendation granting summary judgment in favor of the Commissioner.

I. BACKGROUND

Jackson is presently 45 years old. She did not complete high school, but received a GED. Her education includes attending restaurant school and completing a course to qualify her as a certified nurse's aide. Her past relevant employment includes working as a cashier in a parking garage, a meat wrapper in a supermarket, and, most recently, a hotel chambermaid.

On May 3, 1993, Jackson applied for Social Security Income benefits ("SSI") under Title XVI of the Social Security Act, 42

U.S.C. §§ 1381 et seq., claiming that she has been unable to work since July 1991 because of severe and constant pain in her lower back resulting from a herniated disk. The application was denied at the initial level and again upon reconsideration. On May 23, 1995, after a hearing, the administrative law judge also denied the claim, finding that Jackson's impairment was not a disability under the Social Security Act because it did not prevent her from performing her past relevant work as a cashier. On April 12, 1996, the Appeals Council denied Jackson's request for review of that decision. The administrative law judge's decision is therefore the Commissioner's final decision.

On June 10, 1996, Jackson filed this civil action seeking judicial review of the Commissioner's decision. On February 5, 1997, Jackson moved for summary judgment, and on March 10, 1997, the Commissioner filed a cross-motion for summary judgment. The court referred the case to Chief Magistrate Judge Richard A. Powers, III, who issued a Report and Recommendation on April 23, 1997, recommending the court grant the Commissioner's motion and deny Jackson's motion. On May 7, 1997, Jackson filed objections to the Report and Recommendation.

II. LEGAL STANDARD

Judicial review of administrative decisions is limited. The court may not re-weigh the evidence. Monsour Med. Ctr. v. Heckler, 806 F.2d 1185, 1190 (3d Cir. 1986), cert denied, 482 U.S. 905 (1987). It determines only whether the Commissioner's

decision is supported by substantial evidence. 42 U.S.C. § 405(g); Richardson v. Perales, 402 U.S. 389, 401 (1971).

Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Pierce v. Underwood, 487 U.S. 552, 564-65 (1988). If the decision is supported by substantial evidence, the court must affirm the decision regardless of whether it would have come to a different conclusion. Id. The court reviews de novo the portions of the Report and Recommendation to which objections are filed. 28 U.S.C. § 636(b)(1)(C).

III. DISCUSSION

Jackson has exhausted all administrative remedies and complied with the applicable filing deadlines. The court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331.

The Commissioner has established a five-step test for determining whether a person is disabled under the Social Security Act. 20 C.F.R. §§ 404.1520, 416.920. Under this test, the claimant must first prove the threshold requirements: that he or she is not engaged in substantial gainful activity and that he or she suffers from a severe medical impairment. If these are proven, the third step requires a comparison of medical evidence of the impairment with a list of impairments presumed severe enough to preclude gainful employment. 20 C.F.R., part 404, subpart P, Appx. 1 (Part A). If the impairment matches or is

equal to one of the listed impairments, he or she automatically qualifies for benefits. 20 C.F.R. §§ 404.1520(d); 416.920(d). If the claimant does not qualify, the analysis proceeds to the fourth and fifth steps at which the inquiry is whether the claimant can perform his or her past work or other work that exists in the national economy in light of his or her age, education, and work experience. If the claimant cannot, he or she qualifies for benefits. 20 C.F.R. §§ 404.1520(e)-(f) and 20 C.F.R. § 416.920.(e)-(f). A finding of disability can not be based solely on subjective symptomology. There must be medical evidence and laboratory tests showing that the claimant has a medical impairment that could reasonably produce the symptoms. 20 C.F.R. § 416.929(a).

In this case, the Commissioner denied benefits to Jackson because she did not satisfy the fourth step. The administrative law judge found that Jackson had the residual functional capacity to perform work-related activities, except for tasks requiring the lifting and carrying more than ten pounds. (Tr. at 20.) Therefore, the administrative law judge found that Jackson could perform her previous position as a cashier and she was not entitled to benefits.

Upon review of the decision, the magistrate judge found that the administrative law judge addressed and analyzed all relevant medical evidence including Jackson's subjective complaints, and that the findings were supported by substantial evidence. He

therefore recommended that the court grant the Commissioner's motion for summary judgment. (Mag. Rept. & Recommendation at 6.)

Jackson objects to the Report and Recommendation for the following reasons: the magistrate judge erroneously relied on the absence of a declaration of disability by Jackson's treating physician to discredit her complaints of pain; erroneously relied upon lack of treatment to discredit her complaints of pain; and erroneously dismissed the significance of her gastrointestinal problems (Pl.'s Obj. Mag. Rept. & Recommendation at 1-4.) The court will address each of these in turn.

A. Declaration of Disability

The Report and Recommendation states that no medical doctor has found that Jackson is disabled. (Mag. Rept. & Recommendation at 6.) Jackson argues that this erroneously implies that there must be an affirmative declaration that her impairments preclude work. The court disagrees. The Report and Recommendation mentions this as one of many factors that support the administrative law judge's decision. Because Jackson must produce medical observations and laboratory tests to support her claim, her treating physician's diagnosis and opinion are relevant. 20 C.F.R. §§ 416.912, 416.929. His failure to give an opinion that she can not work, while not conclusive, is relevant. Therefore, the court finds that consideration of this evidence was not in error and the objection is overruled.

B. Lack of Treatment

Jackson also argues that the magistrate judge and the administrative law judge erroneously discredited her complaints of pain based upon an unsupported finding of lack of treatment. (Pl.'s Obj. Mag. Rept. & Recommendation at 2.) Both judges considered Jackson's testimony regarding her back pain, neck pain, and gastrointestinal problems. (Id. at 5; Tr. at 19.) The Commissioner may find that complaints of pain are not credible when there is little or no objective medical evidence to support the allegations. Rosario v. Sullivan, 819 F. Supp. 473, 477 (W.D. Pa. 1992). The administrative law judge considered Jackson's claim of pain, but found more credible evidence submitted as to her ability to function and the lack of medical evidence supporting the claim. A finding of disability cannot be based solely on subjective symptomology. 20 C.F.R. § 416.929(a).

The administrative law judge found that Jackson's back and gastrointestinal problems were not disabling. She noted that two physicians characterized the back problem as lumbar strain, (Tr. at 212, 202); that the MRI on May 1993 showed only a small focal left side herniation, (Tr. at 119); and that Jackson received only sporadic treatment by her physician. The court finds that the judges did not improperly discredit Jackson's testimony. Accordingly, the objection is overruled.

C. Dismissal of Significance of Gastrointestinal Problems

Jackson also argues that the magistrate judge erroneously dismissed the significance of her gastrointestinal problems. The

Report and Recommendation addresses Jackson's gastrointestinal problems, and notes that she testified that she does not consider them disabling, and also cites Jackson's treating physicians who found these problems "minimal," and with "no significant pathology." (Mag. Rept. & Recommendation at 5; see also Tr. at 19.) In the Report and Recommendation, the magistrate judge considered all testimony and evidence on this issue, including testimony as to how it affected her ability to treat her back condition. The court finds that the magistrate judge did not improperly discredit this evidence and the objection is overruled.

D. Judgment as a Matter of Law

Because there are no material issues of fact and the Commissioner has shown that he is entitled to judgment as a matter of law, the court will grant his motion and deny Jackson's motion.

IV. CONCLUSION

For the above reasons, the court will approve and adopt the magistrate judge's Report and Recommendation, grant the Commissioner's motion for summary judgment, and deny Jackson's motion for summary judgment.

An appropriate Order follows.

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v.	:	
	:	
JOHN J. CALLAHAN,	:	
Acting Commissioner of	:	
Social Security	:	NO. 96-4263

ORDER

AND NOW, TO WIT, this day of July, 1997, upon consideration of Plaintiff's and Defendant's cross-motions for summary judgment, and the responses thereto, IT IS ORDERED that Defendant's motion is GRANTED and Plaintiff's motion is DENIED.

Judgment is entered in favor of Defendant John J. Callahan and against Plaintiff Valarie Jackson.

LOUIS C. BECHTLE, J.