

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

Richard Kehoe	:	CIVIL ACTION
	:	
v.	:	No. 96-5550
	:	
John J. Callahan,	:	
Acting Commissioner of	:	
Social Security Administration	:	

M E M O R A N D U M

Broderick, J.

December 9, 1997

Plaintiff Richard Kehoe brings the instant action pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3), appealing the decision of the Commissioner of the Social Security Administration which denied his claim for disability insurance benefits ("DIB") and supplemental security income ("SSI") under Titles II and XVI, respectively, of the Social Security Act ("the Act"), 42 U.S.C. §§ 401-433, 1381-1383. Presently before the Court are cross-motions for summary judgment. For the reasons which follow, the Court will deny Plaintiff's motion for summary judgment, grant Defendant's motion for summary judgment and order that summary judgment be entered in favor of Defendant Callahan and against Plaintiff Kehoe.

On May 18, 1993, Plaintiff filed concurrent applications for DIB and SSI. In his applications, Plaintiff alleged that he had become disabled due to peptic ulcers, as well as pain in his back, neck and legs which arose from a back injury sustained at

work. Plaintiff alleged that he had been unable to work since January 7, 1991. At the time he stopped working, Plaintiff had been employed as a reconditioning manager at an auto dealership, a job which entailed reconditioning and repairing used automobiles for resale, and supervising other auto mechanics.

The Social Security Administration denied Plaintiff's initial claims and the Plaintiff's request for reconsideration. On June 2, 1995, a hearing was held before an Administrative Law Judge ("ALJ"). At the hearing, Plaintiff was represented by counsel. On July 28, 1995, the ALJ issued a written decision which held that Plaintiff had not at any time been "disabled." Plaintiff filed a Request for Review with the Social Security Administration Appeals Council. On June 10, 1996, the Appeals Council denied Plaintiff's Request for Review, thus accepting the ALJ's decision as the final decision of the Social Security Commissioner. Plaintiff, through his counsel, subsequently commenced the instant action.

When reviewing a final decision by the Social Security Commissioner to deny benefits, a District Court is limited to determining whether the denial is supported by substantial evidence. 42 U.S.C. § 405(g); Brown v. Bowen, 845 F.2d 1211, 1213 (3d Cir. 1988). 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). In other words, substantial evidence is "less than a

preponderance of the evidence but more than a mere scintilla."

Jesurum v. Secretary of U.S. Dep't of Health & Human Services, 48 F.3d 114, 117 (3d Cir. 1995). In applying this standard, the District Court may not weigh the evidence or substitute its conclusions for those made by the Administrative Law Judge. Williams v. Sullivan, 970 F.2d 1178, 1182 (3d Cir. 1992).

To be eligible for benefits under the Act a claimant must demonstrate that he is under a "disability," which the Act defines in relevant part as an "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment." 42 U.S.C. § 423(d)(1)(A). The Social Security Administration's regulations ("the administrative regulations") provide a five step sequential evaluation process for determining whether a claimant suffers from a "disability." See 20 C.F.R. § 404.1520. The United States Supreme Court has aptly summarized the process as follows:

The first two steps involve threshold determinations that the claimant is not presently working and has an impairment which is of the required duration and which significantly limits his ability to work. In the third step, the medical evidence of the claimant's impairment is compared to a list of impairments presumed severe enough to preclude any gainful work. If the claimant's impairment matches or is "equal" to one of the listed impairments, he qualifies for benefits without further inquiry. If the claimant cannot qualify under the listings, the analysis proceeds to the fourth and fifth steps. At these steps, the inquiry is whether the claimant can do his past work or any other work that exists in the national economy, in view of his age, education, and work experience. If the claimant cannot do his past work or other work, he qualifies for benefits.

Sullivan v. Zebley, 493 U.S. 521, 525, 110 S.Ct. 885, 888-89 (1990).

In the instant case, the ALJ undertook the evaluation process summarized above and concluded that Plaintiff did not suffer from a "disability." First, the ALJ determined that Plaintiff had significant impairments in the nature of "a severe herniated lumbosacral disc and peptic ulcer disease," and that these impairments had lasted for more than twelve months. Next, the ALJ next determined that Plaintiff's impairments were not of the kind which automatically qualified him for benefits. The ALJ thus considered whether Plaintiff could perform his past work or any other work available to him in the national economy. Although the ALJ found that Plaintiff was unable to perform his past work in auto repair and reconditioning, the ALJ determined that Plaintiff had the residual functional capacity to perform "light work." The ALJ then determined that, in light of Plaintiff's age, education and work experience, the Medical-Vocational Guidelines contained in the administrative regulations directed a finding that Plaintiff was "not disabled."

Plaintiff contends that the ALJ's finding that Plaintiff had a residual functional capacity to perform "light work" is not supported by substantial evidence. The administrative regulations define "light work" in relevant part as work which entails "lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to ten pounds," and which includes "a good deal of walking or standing [and]... sitting most of the time with some pushing and pulling of arm or

leg controls." 20 C.F.R. § 404.1567.

When determining Plaintiff's residual functional capacity, the ALJ had before him the opinion of Dr. Christopher Lynch-- an orthopedist who treated Plaintiff on several occasions between 1990 and 1992, the opinion of Dr. Mark Mishkin-- an internist who examined Plaintiff on one occasion in June 1993 at the request of the Social Security Administration, and the opinion of Dr. Sheri Schantzenbach-- a licensed chiropractor who began treating Plaintiff sometime in early 1993. The ALJ also heard testimony from Plaintiff himself who testified at the administrative hearing.

The opinion of Dr. Lynch supports the ALJ's finding. The record contains several documents written by Dr. Lynch over the course of his treating relationship with Plaintiff. These documents note improvement in Plaintiff's condition. In December 1992, Dr. Lynch wrote a letter to the Department of Public Welfare in which he states that Plaintiff has a disc herniation, but "has been released to perform sedentary or light work." Dr. Lynch further states in this letter that Plaintiff "is not completely disabled from this problem and is not likely to be disabled in the future."

The other opinions contained in the record do not support the ALJ's finding with respect to Plaintiff's residual functional capacity. The report from Dr. Mishkin, written in June 1993, states that Plaintiff could not lift ten pound objects for more than two or three hours per day, could not stand for more than

two hours per day and could not sit for more than six hours per day without experiencing lower back pain. Dr. Schantzenbach, in a letter dated November 1994, states that Plaintiff "is able to do light or sedentary work but most likely not on a sustained basis," and that Plaintiff "would be limited to a maximum of 3-4 hours of work per day." Additionally, Plaintiff himself testified that his functional capacity was extremely limited. According to his own testimony, Plaintiff cannot hold a screwdriver or lift a gallon jug of milk without feeling pain, cannot drive long distances or sit for long periods of time without pain, and rarely leaves the house.

In his written decision, the ALJ recognized the "clear conflict in the opinions as to the claimant's functional limitations," but determined that "the most credible of these opinions is that of Dr. Lynch." The ALJ made this determination based on Dr. Lynch's "treating relationship [with Plaintiff] and his area of specialty." The ALJ noted that because Dr. Lynch had examined and treated Plaintiff several times between 1990 and 1992, and because he was a specialist in orthopedics, his opinion was entitled to more weight than that of Dr. Mishkin, a general internist who had examined Plaintiff on only one occasion. Considering the opinion of Plaintiff's chiropractor, the ALJ stated that "the reports of a chiropractor are not considered medical evidence but are rather information from other sources and are of the same value and quality as lay observations." The ALJ thus adopted Dr. Lynch's opinion and stated that "to the

extent that the claimant's testimony would tend to indicate that he cannot perform light work, it cannot be credited."

Plaintiff contends that the ALJ abused his discretion in according Dr. Lynch's opinion more weight than that of Plaintiff's chiropractor. Plaintiff contends that his chiropractor's opinion should be accorded more weight because she had examined Plaintiff more recently than Dr. Lynch and was the only practitioner treating Plaintiff at the time of the administrative hearing.

The administrative regulations provide that "acceptable medical sources" which can provide medical evidence are licensed physicians, licensed osteopaths, licensed or certified psychologists and licensed optometrists for the measurement of visual acuity and fields and persons authorized. 20 C.F.R. § 404.1513(a). According to the administrative regulations, evidence from a chiropractor shall be considered "information from other sources," along with "observations by non-medical sources" and information from "public and private social welfare agencies." 20 C.F.R. § 404.1513(e). The administrative regulations further provide that more weight should be given to treating sources "since these sources are likely to be the medical professionals most able to provide a detailed longitudinal picture" of the medical impairment. 20 C.F.R. § 404.1527(d)(2). Moreover, the regulations provide that more weight should be given to the opinion of a specialist about medical issues related to his area of specialty. 20 C.F.R. §

404.1527(d)(5)-(6).

As the above administrative regulations make clear, there is substantial evidence to support the ALJ's conclusion that Dr. Lynch's opinion was the most credible. Indeed, it is hard to imagine the ALJ concluding otherwise in light of the administrative regulations which do not recognize a chiropractor as an acceptable medical source and which accord more weight to the opinion of a specialist and a treating physician. The ALJ did not commit error in finding Dr. Lynch's opinion most credible, and Dr. Lynch's opinion provides substantial evidence to support the ALJ's determination that Plaintiff had a residual functional capacity to perform light work.

Plaintiff additionally contends that the ALJ abused his discretion in failing to solicit testimony from a vocational expert as to the kinds of jobs available for an individual with Plaintiff's vocational profile and residual work capacity. In his written decision, the ALJ determined that, in light of Plaintiff's vocational profile and work capacity, Rules 201.21 and 201.22 of the Medical-Vocational Guidelines, 20 C.F.R. pt. 404, subpt. P., App. 2, § 200.00(b)-(c), "require the conclusion that the claimant is not disabled," and that testimony from a vocational expert was therefore unnecessary.

The Medical Vocational Guidelines, 20 C.F.R. pt. 404, subpt. P, App. 2, ("the Guidelines") contain grids which reflect varying levels of residual work capacities combined with varying

vocational factors of age, education and work experience. In order to properly adjudicate a claim for benefits, an ALJ must determine a claimant's residual work capacity, as well as the claimant's age, education and work experience, and must consult the Guidelines. Where the ALJ's findings fit within a particular grid, the Medical-Vocational Guidelines direct a conclusion as to whether the claimant is "disabled" or "not disabled." Podedworny v. Harris, 745 F.2d 210, 216 (3d Cir. 1984).

In the instant case, the ALJ consulted the Guidelines and determined that the Guidelines directed a finding that Plaintiff was "not disabled." After determining that Plaintiff had a residual functional capacity to perform "light work," the ALJ considered the undisputed facts that Plaintiff, at the age of 42, was a "younger individual" (which is defined in the guidelines as an individual age 18 through 49) with a high school education whose previous work experience was skilled or semiskilled. The ALJ then examined the Medical Vocational Guidelines and determined that Rules 202.21 and 202.22 directed a finding of "not disabled" for a claimant with Plaintiff's vocational profile and residual functional capacity.

Plaintiff contends that his case is not appropriate for the Medical-Vocational Guidelines because it was not clear that Plaintiff had a residual capacity to perform light work. Plaintiff argues that the ALJ should have consulted a vocational expert to provide testimony as to whether Plaintiff could perform "light work" and as to which jobs were available to an individual

with Plaintiff's vocational profile and residual work capacity.

As explained above, however, the ALJ's finding as to Plaintiff's residual capacity to perform "light work" is supported by substantial evidence in the record. Plaintiff's case was thus appropriate for consideration under the Medical-Vocational Guidelines. In light of the ALJ's undisputed findings regarding Plaintiff's age, education and previous work experience, there seems no question that the ALJ properly applied the Medical-Vocational Guidelines to the instant case and properly determined that Rules 201.21 and 201.22 of the Guidelines, 20 C.F.R. pt. 404, subpt. P, app. 2 § 200.00 (b)-(c), directed a finding that Plaintiff was "not disabled."

Accordingly, for the reasons set forth above, the Court will affirm the Commission's final decision to deny Plaintiff benefits, and will grant summary judgment in favor of the Commission and against the Plaintiff.

An appropriate Order follows.

