

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

MARGARITA E. RUDOLPH, : CIVIL ACTION  
Plaintiff, :  
 : NO. 97-2542  
v. :  
 :  
KENNETH S. APFEL, :  
Commissioner of Social Security, :  
Defendant. :

M E M O R A N D U M

BUCKWALTER, J.

January 14, 1998

Currently before the court are claimant Margarita Rudolph's objections to the magistrate judge's Report and Recommendation. Pursuant to 42 U.S.C. § 405(g), Rudolph sought review in this court of the Social Security Commissioner's decision to deny her disability insurance benefits, and both sides moved for summary judgment.<sup>1</sup> The magistrate judge recommended entry of summary judgment for the Commissioner on the grounds that his decision to deny benefits was based on substantial evidence. Id. For the reasons that follow, the court declines to accept the Recommendation and will instead deny the Commissioner's motion; grant Rudolph's motion in part; and, remand her claim to the ALJ for reconsideration of her Residual Functional Capacity.

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1. The parties are familiar with the procedural history, which is detailed in the Report.

## **I. Introduction**

After a hearing, the Administrative Law Judge (ALJ) denied benefits based on his determination that, while Rudolph suffered from a severe physical impairment, the Commissioner had met his burden of showing that Rudolph was capable of "substantial gainful activity which exists in the national economy." 20 C.F.R. §§ 404.1505(a). This finding of employment capability, or Residual Functional Capacity ("RFC"), see 20 C.F.R. § 404.1520a(c)(3), was based on the ALJ's finding that Rudolph could perform "light work," 20 C.F.R. § 404.1567, which was in turn predicated on the ALJ's determination that her complaints of back, neck and knee pain; restricted leg movement; and the need to elevate her legs for several hours a day to relieve swelling were not supported by objective medical evidence. (ALJ Decision at 6); see 20 C.F.R. §§ 404.1529(c)(2). Simply put, the ALJ did not credit Rudolph's testimony that her pain was severe enough to prevent her from working. The Commissioner reiterated the assertion that Rudolph's statements of disabling pain were not supported by objective evidence to the Magistrate Judge, who accepted it in her Report. (Report at 8). The court agrees with Rudolph, however, that the record does contain such evidence, and that a remand is necessary.

## II. Discussion

The parties do not dispute that Rudolph suffered from a severe physical impairment; the issue before the ALJ was the extent of that impairment in determining Rudolph's RFC. When making that determination, and in particular, when evaluating the claimant's testimony, the regulations require the ALJ to consider a non-exhaustive list of objective medical evidence, including "reduced joint motion" and "muscle spasms." 20 C.F.R. § 404.1529(c)(2). "When present, these findings tend to lend credibility to an individual's allegations about pain or other symptoms . . ." Social Security Ruling 96-7p. Dr. Stewart's treatment notes, upon which the ALJ expressly relied, do in fact support Rudolph's claims, as they record Stewart's observation of reduced joint motion and spasms. (T197-199). Consulting Examiner Dr. Barry Mark's report also supports Rudolph's claim of reduced joint motion. (T128).

Moreover, despite the ALJ's finding to the contrary, the record does contain evidence tending to support Rudolph's claim that she needed to raise her legs for a considerable period of time to reduce swelling. Stewart's notes from June 2, 1992 document his observation of "edema," i.e., swelling, as well as tenderness in the left knee, (T237; see also T198-199), and his December 12, 1992 notes characterize her knee as "grossly edematous." (T239). Finally, contrary to the Commissioner's

representation, the records contain ample evidence that Rudolph took prescribed medication for both pain and inflammation in her left knee. See SSR 88-13 (information about pain medication relevant to evaluation of claimant's subjective pain complaints).

Review of the ALJ's decision is statutorily limited, and courts should not simply reweigh the evidence of record. Here, however, it appears that the ALJ not only did not weigh relevant objective medical evidence, but also found that it did not exist and therefore discounted Rudolph's testimony. Because his weighing of Rudolph's credibility, and therefore his determination of her RFC, appear to have been faulty, see, e.g., 20 C.F.R. §§ 404.1545(a) (determination of RFC to be based on "all of the relevant evidence"); 404.1527(c) (same), the court cannot say that the denial of benefits was based on substantial evidence, and it will therefore deny the Commissioner's motion for summary judgment. While the court does not agree that the record necessarily establishes Rudolph's disability per se, it will grant Rudolph's motion to the extent that her claim is remanded to the ALJ for a redetermination of her Residual Functional Capacity to be based upon all relevant evidence, including her testimony and the objective medical evidence and other evidence which supports or tends to support it.

An order follows.

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O R D E R

AND NOW, this 14th day of January 1998, upon consideration of the Report and Recommendation (Dkt. # 11) and Plaintiff's Objections thereto (Dkt. # 12), it is hereby ORDERED that:

(1) The Court does not adopt the Report and Recommendation;

(2) Defendant's Motion for Summary Judgment (Dkt. # 8) is **DENIED**;

(3) Plaintiff's Motion for Summary Judgment is **GRANTED** in part, as follows:

(a) Plaintiff's claim is **REMANDED** to the Social Security Administration for reconsideration of Plaintiff's Residual Functional Capacity in light of all of the evidence contained in the record, and in accordance with the attached Memorandum.

BY THE COURT:

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RONALD L. BUCKWALTER, J.