

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

EVELYN J. WOLF : CIVIL ACTION
 :
 v. :
 :
 KENNETH S. APFEL, :
 Commissioner of Social Security : NO. 97-4018

O R D E R - M E M O R A N D U M

AND NOW, this 12th day of March, 1998, upon consideration of the cross-motions for summary judgment of plaintiff Evelyn J. Wolf and defendant Kenneth S. Apfel, Commissioner of Social Security, the Report and Recommendation of the United States Magistrate Judge Jacob P. Hart, and defendant's objections to the Report and Recommendation, the following is ordered:

1. The objections are overruled, and the Report and Recommendation is approved and adopted. In addition to the reasons given in the Report and Recommendation, the following has been considered:

Evidence of "postural" limitations – such as inability to bend, stoop, crouch, or kneel – that can accompany a painful condition are classifiable as nonexertional limitations. See 20 C.F.R. § 404.1569a(c)(1)(vi) (1998); Stunkard v. Secretary of Health and Human Services, 841 F.2d 57, 61 (3d Cir. 1988). Our Circuit has recognized back pain to be a nonexertional limitation. See Welch v. Heckler, 808 F.2d 264, 269 (3d Cir. 1986). When

presented with nonexertional limitations, an administrative law judge may not mechanically apply the "grids" – the Medical-Vocational Guidelines found in 20 C.F.R. Pt. 404, Subpt. P, App. 2. See Welch, 808 F.2d at 270; Williams v. Chater, No. 95-CV-1351, 1995 WL 604600, at *4 (E.D. Pa. Oct. 12, 1995). Instead, the ALJ must fully consider all relevant facts to determine if a plaintiff is capable of performing the full range of work in the category directed by the grids. See 20 C.F.R. Pt. 404, Subpt. P, App. 2, Sec. 200.00(e)(2) (1998); Welch, 808 F.2d at 270. A vocational expert can assist the ALJ in assessing the impact of plaintiff's nonexertional limitations, see Santise v. Schweiker, 676 F.2d 925, 935 (3d Cir. 1982), and in pointing to specific jobs performable within the applicable grid category, see Williams, 1995 WL 604600, at *4.

Here, there is evidence that plaintiff has nonexertional limitations given Dr. David Friedman's March 20, 1992 evaluation that plaintiff could kneel only occasionally and could not bend, squat, climb, or twist. Tr. at 16. Plaintiff's subjective symptoms of burning pain in her lower back and legs while sitting, tr. at 47, were substantiated by the uncontroverted medical evidence that she has a herniated disc, tr. at 15, 165. This further supports the conclusion that plaintiff is subject to nonexertional limitations. The ALJ did not assess the impact of these nonexertional limitations on plaintiff's ability to perform sedentary work, as opined in vocational expert testimony. Nor did the ALJ point to specific jobs that plaintiff could perform within

the applicable grid category. Instead, the ALJ simply concluded that plaintiff's ability to perform sedentary work was only "slightly reduced by her inability to sit for long periods or to climb or bend." Tr. at 20. This conclusion is not supported by substantial evidence, requiring a remand under 42 U.S.C.A. § 405(g) (Supp. 1997), for further consideration and testimony of a vocational expert.

2. Defendant's motion for summary judgment is denied.

3. Plaintiff's motion for summary judgment or, in the alternative, for remand is granted in part. The decision of the Commissioner denying benefits is reversed and remanded, 42 U.S.C.A. § 405(g) (Supp. 1997). Further consideration should be given to testimony of a vocational expert on the effect of plaintiff's nonexertional limitations on her ability to engage in substantial gainful employment.

Edmund V. Ludwig, J.