

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

JOSE ILDEFONSO-LYNN,	:	CIVIL ACTION
Plaintiff,	:	NO. 97-2257
	:	
v.	:	
	:	
KENNETH S. APFEL,	:	
Commissioner of the Social	:	
Security Administration,	:	
Defendant.	:	

M E M O R A N D U M

BUCKWALTER, J.

March 30, 1998

Presently before the court are Plaintiff's objections to Chief Magistrate Judge Melinson's report recommending that this court affirm the final decision of the Commissioner of the Social Security Administration adopting the Administrative Law Judge's denial of Plaintiff's request for Social Security Disability benefits. In denying benefits the Administrative Law Judge ("ALJ") determined that Plaintiff could perform medium work and could return to his past relevant work and therefore was not disabled. Based on my review of the record, in light of Plaintiff's objections, Judge Melinson's report is approved and adopted.

Plaintiff objects to Judge Melinson's report on two grounds -- only one of which warrants further discussion. Plaintiff argues that Judge Melinson erred in concluding that the

ALJ properly weighed and credited the medical testimony.¹ In reaching his decision to deny benefits the ALJ discounted the conclusions of Dr. Neil Connelly, one of Plaintiff's treating physicians, that Plaintiff's functional capacity restricted him to light work. Generally, great weight must be given to testimony and reports from an applicant's treating physician, however, where an ALJ is faced with conflicting medical evidence he may reasonable look to the medical record rather than the treating physician, provided that the ALJ explains as much in his notice of determination. See 20 CFR §§ 404.1527(d)(2), 416.927(d)(2). In the instant case the ALJ expediently noted that Dr. Neil Connelly's opinion was inconsistent with the medical record as a whole and therefore accorded it little weight. Judge Melinson agreed -- expanding on the ALJ's determination he explained that all other medical opinions and reports provided did not coincide with Dr. Neil Connelly's opinion regarding Plaintiff's physical limitations.

Plaintiff points out that neither the ALJ nor Judge Melinson considered medical reports, submitted at Plaintiff's hearing, from Dr. Gracia, Plaintiff's treating physician from 1990 until 1993. Generally, Dr. Gracia's reports, dated May 4, 1993 and October 11, 1993, state that Plaintiff has been a

1. Plaintiff's second objection is that the ALJ improperly rejected his subjective complaints. This objection has been adequately reviewed and rejected by Judge Melinson in his report. See Report and Recommendation at 10-12.

patient since 1990, suffers from chronic sinusitis, chronic bronchial asthma and that worsening of his asthmatic condition forced him to quit work in 1993. (Tr. 130-133). Because, according to Plaintiff, Dr. Gracia's reports support Dr. Neil Connelly's finding that Plaintiff has a restricted functional capacity, the ALJ erred in discounting Dr. Neil Connelly's opinion as inconsistent.

Plaintiff is partially correct, in comparing various medical reports and opinions in the record, both Judge Melinson and the ALJ omit to mention Dr. Gracia's. However, this omission does not warrant reversal. The applicable standard of review for a denial of benefits is whether the determination of the Commissioner is supported by substantial evidence. 42 U.S.C. § 405(g)(1991 & Supp. 1998). Substantial evidence is defined as that which would be sufficient to allow the reasonable factfinder to reach the same conclusion; while it must exceed a scintilla, it need not reach a preponderance of the evidence. Richardson v. Perales, 402 U.S. 389, 401 (1972).

Although the ALJ did not consider Dr. Gracia's report and to some extent the report appears to advance Plaintiff's claim, the ALJ's denial is supported by substantial, though not overwhelming, evidence and therefore will not be overturned by this court. The ALJ's finding that Plaintiff was capable of performing his past relevant work was based on his review of two

consultive opinions and the opinions of two of Plaintiff's other treating physicians Drs. John Connelly and Carmelo Crespo. Based on my independent review, these opinions adequately support the ALJ's determination.

An appropriate order follows.

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O R D E R

AND NOW, this 30th day of March 1998, upon consideration of Plaintiff's "Objection to the Report and Recommendation of the Magistrate Judge" (Docket No. 12); Defendant's response (Docket No. 13) and the Report and Recommendation of the Chief United States Magistrate Judge James R. Melinson (Docket No. 11), it is hereby ordered that the Report and Recommendation is **APPROVED** and **ADOPTED**. Accordingly, Plaintiff's underlying motion for summary judgment (Docket No. 8) is **DENIED** and Defendant's underlying motion for summary judgment (Docket No. 9) is **GRANTED**. The Clerk shall mark this case as **CLOSED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.