

Security Act, 42 U.S.C. §§ 401-433.

This Court's standard of review in evaluating the Commissioner's final decision is whether there is substantial evidence in the record to support the Commissioner's decision. Doak v. Heckler, 790 F.2d 26, 28 (3d Cir. 1986). Substantial evidence is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It is more than a mere scintilla of evidence but less than a preponderance. Stunkard v. Secretary of Health & Human Services, 841 F.2d 57 (3d Cir. 1988). Moreover, the Commissioner must be especially careful "about disregarding the opinions of attending physicians, particularly when the opinion reflects an expert judgment based on a continuing observation of the patient's condition over a prolonged period of time." Rocco v. Heckler, 826 F.2d 1348, 1350 (3d Cir. 1987).

In the instant case, after thoroughly reviewing the record and pleadings, the Magistrate Judge determined that 1) the Commissioner's interpretation of Dr. Bednar's functional capacity restriction evaluations is supported by substantial evidence, 2) the Commissioner's finding of relevancy of the plaintiff's past work as a trainer is supported by substantial evidence, and 3) the Commissioner's determination of how much credibility to give plaintiff's complaints of pain have a basis in the record and, thus, must be accepted. Accordingly, Judge Welsh recommended that summary judgment be granted in favor of the defendant Commissioner.

In her Objections to the Report and Recommendation, plaintiff argues that Magistrate Judge Welsh's determination is erroneous as a matter of law because the Judge 1) disregarded the residual functional capacity form executed by Dr. Bednar on or about May 30, 1996 which places the plaintiff's residual functional capacity as

restricted to less than the full range of sedentary work, and, thus, renders her “disabled” under the applicable social security rules, and 2) determined that the ALJ had correctly rejected the plaintiff’s subjective complaints of pain “to the extent that her testimony would tend to indicate that Plaintiff cannot perform the range of light work derived from the medical evidence.” (Pl.’s Obj., at 1-2.)

After independently reviewing the record and the Magistrate’s Report and Recommendation and Objections thereto, I agree with Magistrate Judge Welsh’s Report and Recommendation.

In the first instance, I agree with Judge Welsh’s finding that there is substantial medical evidence to support the ALJ’s conclusion that the plaintiff could perform “work related activities except for work involving requiring lifting more than 20 pounds or using her right arm for repetitive motions.” (R. 18) In reaching her conclusion, Judge Welsh cited to Dr. Bodnar’s reports of May 13, June 21, July 26, and December 9, 1993 which report the plaintiff as able to perform “light duty work with a 5-10 pound lifting limit and no repetitive motion of the right arm,” or a “10-20 pound lifting limit using a splint and avoiding repetitive motion.” (R. 156, 133, 135, 138) See also 20 C.F.R. § 404.1567 (defining both “sedentary” and “light” work for the purposes of disability determinations under Title II of the Social Security Act).

Nor does the Court agree with plaintiff’s assertion that Dr. Bodnar’s May 30, 1996 form “unequivocally place[s] the plaintiff’s residual functional capacity as restricted to less than the full range of sedentary work.” (Pl.’s Obj., at 1-2.) The relevant regulation defines sedentary work as:

lifting no more than 10 pounds at a time and occasionally lifting or carrying

articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

20 C.F.R. § 404.1567(a).

Dr. Bodnar's May 30, 1996 form, however, does not state a range restriction on the plaintiff's ability to perform sedentary work. Rather, the form limits plaintiff to the intermittent lifting of 0-10 pounds for no more than two hours of an eight-hour work day. (R. 9) The form indicates that the plaintiff may not lift objects above the shoulder, but that she may perform tasks involving intermittent sitting, walking and standing throughout the course of an eight-hour day. (Id.) Thus, the May 30, 1996 form appears to be ambiguous as to what range of sedentary work the plaintiff's residual functional capacity restricts her. Accordingly, notwithstanding Dr. Bodnar's May 30, 1996 form, the ALJ's decision was properly based on the substantial evidence of Dr. Bodnar's numerous other reports.

In her Objections, plaintiff also argues that Judge Welsh erred in determining that the ALJ had correctly discounted the plaintiff's objective complaints of pain. However as Judge Welsh correctly noted, the ALJ's decision to discount the plaintiff's complaints of pain is supported by a reasoned basis in the record. Specifically, the ALJ noted that, although the plaintiff complained of severe pain, the record reflects that she did not visit her treating physician at all between April 13, 1995 and February 8, 1996. (R. 17) Moreover, the ALJ noted that, during that same period, the plaintiff was receiving \$400 per week in workman's compensation, and was thus financially able to visit the doctor. (Id.) Finally, the ALJ drew the inference that the plaintiff was

exaggerating and overdramatizing her complaints at her hearing. (Id.) Accordingly, there is a basis in the record for the ALJ's finding that the plaintiff's subjective claims of disabling pain cannot be totally credited. (R. 17-18) See also Mason v. Shalala, 994 F.2d 1058, 1068 (3d Cir. 1993) (noting ALJ entitled to draw inference adverse to claimant from fact that claimant has not sought medical assistance to relieve professed pain).

Upon independent review of the record, and in consideration of the Report and Recommendation of Magistrate Judge Welsh and the plaintiff's Objections thereto, I approve and adopt the Report and Recommendation of Judge Welsh. An appropriate order follows.