

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

ANGEL VELEZ : CIVIL ACTION
 :
 v. :
 :
 :
 KENNETH S. APFEL, Commissioner of :
 Social Security¹ : NO. 97-2692

MEMORANDUM and ORDER

Norma L. Shapiro, J.

May 18, 1998

Plaintiff Angel Velez ("Velez") seeks review under 42 U.S.C. § 405(g) of the final decision of the Commissioner of Social Security (the "Commissioner") denying his claims for disability insurance benefits ("DIB") under Title II of the Social Security Act (the "Act"), 42 U.S.C. § 401, et seq., and Supplemental Security Income ("SSI") under Title XVI of the Act. See 42 U.S.C. § 1381, et seq. The parties' cross-motions for summary judgment were referred to United States Magistrate Judge Peter B. Scuderi ("Judge Scuderi") for a Report and Recommendation. Judge Scuderi recommended that Velez's motion for summary judgment be denied and the Commissioner's motion for summary judgment be granted. For the reasons stated below, the court will grant partial summary judgment in favor of the Commissioner and remand for further proceedings.

¹ Kenneth S. Apfel was sworn in as Commissioner of Social Security on September 29, 1997. Under Federal Rule of Civil Procedure 25(d)(1), he is automatically substituted as the defendant in this action.

BACKGROUND

Velez, born December 24, 1947, was forty-eight years old at the time of his hearing before the administrative law judge ("ALJ"). (Tr. 50). Velez was born and raised in Puerto Rico, where he left school after fourth grade; Velez is semi-literate in Spanish. (Tr. 56). Velez worked for twenty years in Puerto Rico as a crane operator in a sugar cane facility. Velez climbed a ninety-foot ladder each day to reach the cab of the crane, where he would sit and operate hand levers controlling the crane's bucket. Velez picked up and moved piles of sugar cane and metal objects during the harvesting season. During off-season, Velez performed manual tasks at the sugar plant, such as scraping, cleaning, painting and repairing the cranes and other mechanical equipment. (Tr. 57, 68-69). Velez continued working at the sugar facility until early 1993, when he left because his eyesight had deteriorated to the point where he could not discern objects ninety feet below his crane's cab; he was not allowed to wear corrective lenses on the job. (Tr. 57-58). At the Social Security hearing, the vocational expert determined this job was skilled work performed at a light level of exertion. (Tr. 75).²

² Light work involves lifting no more than twenty pounds at a time with frequent lifting of up to ten pounds and frequent walking or standing during an eight-hour work day. See 20 C.F.R. §§ 404.1567(b), 416.967(b). "Skilled work requires qualifications in which a person uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of material to be produced.

In May, 1993, Velez moved from Puerto Rico to Philadelphia where he worked as a janitor cleaning offices and emptying trash for approximately three months. (Tr. 58, 69). Velez then returned to Puerto Rico "on an emergency basis," although Velez's testimony does not reveal the nature of the emergency. (Id.). The vocational expert determined Velez's janitorial position was unskilled, light work.³

After spending three months in Puerto Rico, Velez returned to Philadelphia and began working for a landscaping company. Velez operated a gas-powered, walking lawn mower for approximately two months; he was on his feet "all day." (Tr. 59, 69). Velez left this position because he was going to be reassigned to "another group that had bad habits, using drugs and stuff like that." (Id.). The vocational expert classified this position as unskilled, medium work.⁴

Velez then worked as a housekeeper at a Holiday Inn for about three months. At the Holiday Inn, Velez cleaned bathrooms,

Skilled work may require laying out work, estimating quality, determining the suitability and needed quantities of materials, making precise measurements, ... or making necessary computations or mechanical adjustments to control or regulate the work. 20 C.F.R. §§ 404.1568(d), 416.968(d).

³ "Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time." 20 C.F.R. §§ 406.1568(a), 416.968(b).

⁴ "Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds." 20 C.F.R. §§ 404.1567(c), 416.967(c).

vacuumed rooms and changed linens; he was on his feet "at all times." (Tr. 60, 69). Velez was laid off in December, 1993.

Velez, alleging a disabling back injury and psychological illness, filed a claim for DIB and SSI on June 3, 1994; he alleged an onset date of December 23, 1993. (Tr. 81-85). Velez subsequently amended the onset date to April 17, 1994. (Tr. 50). Velez's applications for benefits were denied initially and upon reconsideration. (Tr. 86-88, 89-92, 97-99, 100-03).

Velez requested a hearing before an ALJ from the Office of Hearings and Appeals. On April 19, 1996, the ALJ conducted a hearing on Velez's claims. (Tr. 47-80). The ALJ denied Velez's claims by decision dated August 3, 1996. (Tr. 25-36). Velez requested review of the ALJ's decision; the Appeals Council denied Velez's request on March 14, 1997. (Tr. 4-6). Velez then sought review of the Commissioner's final decision in this court.

DISCUSSION

To establish a disability under the Act, an applicant must show that there is some "medically determinable basis for an impairment that prevents engaging in any substantial gainful activity for a statutory twelve-month period." Stunkard v. Secretary of Health & Human Servs., 841 F.2d 57, 59 (3d Cir. 1988); Kangas v. Bowen, 823 F.2d 775, 777 (3d Cir. 1987). An applicant can establish a disability by: 1) producing medical evidence showing he is disabled per se by meeting or equaling the

impairments listed in the regulations, see Stunkard, 841 F.2d at 59; or 2) demonstrating an impairment severe enough to prevent the applicant from engaging in "any kind of substantial gainful work which exists in the national economy." Heckler v. Campbell, 461 U.S. 458, 461 (1983); see Cerar v. Secretary of Health & Human Servs., No. 93-6973, 1995 WL 44551, at *2 (E.D. Pa. Feb. 1, 1995) (Shapiro, J.).

The ALJ decided this case under the five-step sequential evaluation of disability claims. See generally Heckler, 461 U.S. at 467-68; Santise v. Schweiker, 676 F.2d 925, 934-35 (3d Cir. 1982), cert. dismissed, 461 U.S. 911 (1983). The five-step process is similar for both DIB and SSI.⁵ The burden of

⁵ The five steps are:

1. "If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience." 20 C.F.R. § 404.1520(b); see also 20 C.F.R. § 416.920(b).

2. "If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. However, it is possible for you to have a period of disability for a time in the past even though you do not now have a severe impairment." 20 C.F.R. § 404.1520(c); see also 20 C.F.R. § 416.920(c).

3. "If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience." 20 C.F.R. § 404.1520(d); see also 20 C.F.R. § 416.920(d).

establishing the first four steps with sufficient medical evidence lies with the applicant. See 42 U.S.C. § 423(d)(5). Once the applicant has done that, the burden shifts to the Commissioner to show that the applicant has the ability to perform specific jobs existing in the national economy. See Rossi v. Califano, 602 F.2d 55, 57 (3d Cir. 1979).

The ALJ made the following findings. First, the ALJ determined Velez "has not engaged in substantial gainful activity since April 17, 1994." (Tr. 32). Second, the ALJ found the evidence established that Velez suffers from "severe degenerative disc disease, gastritis and past history of duodenal ulcer, non-insulin dependent diabetes and some depression/anxiety." (Id.). Third, the ALJ concluded this impairment did not meet or equal any impairments listed in the regulations. (Tr. 33). Fourth, the ALJ determined Velez has the capability of performing work that does not involve "heavy lifting/carrying, sustained walking

4. "If we cannot make a decision based on your current work activity or on medical facts alone, and you have a severe impairment(s), we then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled." 20 C.F.R. § 404.1520(e); see also 20 C.F.R. § 416.920(e).

5. "If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled." 20 C.F.R. § 404.1520(f)(1); see also 20 C.F.R. § 416.920(f)(1).

or standing, or easily adjusting to new situations.” (Id.). The ALJ found Velez’s impairments do not preclude him from performing his past work as a crane operator. (Id.).

Judge Scuderi issued a Report and Recommendation that the Commissioner’s decision be upheld and summary judgment be granted in his favor. Velez objected to Judge Scuderi’s Report and Recommendation on the grounds that Judge Scuderi erred in discrediting Velez’s subjective complaints of pain and determining Velez’s physical and psychological ailments do not preclude him from performing past relevant work.

I. Standard of Review

The court conducts de novo review of the portions of a magistrate judge’s Report and Recommendation on a dispositive motion to which specific objections have been filed. See 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b).

In reviewing the decision of the Commissioner, this court must uphold the denial of benefits as long as the Commissioner’s determination is supported by substantial evidence. See 42 U.S.C. § 405(g); Richardson v. Perales, 402 U.S. 389, 390 (1971); Doak v. Heckler, 790 F.2d 26, 28 (3d Cir. 1986). “Substantial evidence is defined as the relevant evidence which a reasonable mind might accept as adequate to support a conclusion.” Maduro v. Shalala, No. 94-6932, 1995 WL 542451, at *1 (E.D. Pa. Sept. 9, 1995) (Shapiro, J.); see Richardson, 402 U.S. at 401; Dobrowolsky

v. Califano, 606 F.2d 403, 406 (3d Cir. 1979). Substantial evidence is "more than a scintilla of evidence but may be somewhat less than a preponderance of the evidence." Maduro, 1995 WL 542451, at *1; see Ginsburg v. Richardson, 436 F.2d 1146, 1148 (3d Cir.), cert. denied, 402 U.S. 976 (1971). The court cannot conduct de novo review of the Commissioner's decision or re-weigh the evidence of record. See Monsour Med. Ctr. v. Heckler, 806 F.2d 1185, 1190 (3d Cir. 1986), cert. denied, 482 U.S. 905 (1987).

II. Physical Disorders

Velez complains of physical problems ranging from back pain, stomach problems and faulty vision. The ALJ determined these problems do not preclude Velez from performing light, skilled work, such as operating a crane. Velez counters that the ALJ's finding is not supported by substantial evidence.

On April 17, 1994, Velez, complaining of stomach pain, was admitted to the Hospital of Philadelphia College of Osteopathic Medicine-Parkview ("Parkview"). (Tr. 159-75). Velez reported he was diagnosed with an ulcer approximately one year earlier while still in Puerto Rico; he had not sought treatment prior to this hospitalization. (Tr. 160). An abdominal examination revealed no inflammation or obstruction, although an endoscopy showed an intestinal ulcer and gastritis. (Tr. 164, 167-68). Velez was discharged two days later on April 19, 1994. (Tr. 165).

Several years prior to moving from Puerto Rico, Velez injured his back while jumping from the second floor of a building. He did not feel any pain while living in Puerto Rico; the onset of pain was after Velez moved to Philadelphia. (Tr. 61, 186).

On June 1, 1994, Velez was treated by D. Felix, M.D. ("Dr. Felix"), for pain in his back and right hip. Dr. Felix prescribed Flexeril, a muscle relaxant, and referred Velez to, William Matura, D.C. ("Dr. Matura"), a chiropractor. (Tr. 176). Dr. Matura applied heat therapy to Velez's back and referred Velez to doctors at Temple University; magnetic resonance imaging ("MRI") showed no abnormality. (Tr. 72).

Velez, returning to Parkview on July 27, 1994, reported six months of lower back pain, but did not "recall hurting his back at all." (Tr. 183). The physician prescribed Flexeril and recommended physical therapy. A public assistance medical assessment form completed that date stated that Velez's back condition did not prohibit his employment. (Tr. 178).

On October 27, 1994, Velez was examined by George Rodriguez, M.D. ("Dr. Rodriguez"). (Tr. 186-89). Dr. Rodriguez observed Velez had limited mobility in his low back and pain or tenderness in his right side and abdomen. (Tr. 187). Although Velez had pain in his lower, right back when raising his right leg 80 degrees, Dr. Rodriguez noticed no abnormal sensations, pain or

tenderness in the middle or left side and complete range of motion in his neck. Dr. Rodriguez recommended strengthening exercises for Velez's lower back and abdomen. The doctor reported that Velez could lift up to ten pounds, stand and walk for up to two hours at a time, sit for up to six hours and occasionally climb, kneel or crawl. (Tr. 188-89).

Velez sought treatment for back pain at Episcopal Hospital on November 30, 1994 and January 24, 1995. A CT scan showed only mild degenerative changes in Velez's lower back. (Tr. 236, 238, 243). The examining physicians reported back tenderness but normal reflexes, (Tr. 236), with a diagnosis of degenerative lumbar spine disease with no signs of radiculopathy.⁶ Daypro was prescribed for pain. (Tr. 236, 243).

Between March 24, 1995 and April 11, 1996, Velez was treated by Rosa Cuello-Suarez, M.D. ("Dr. Cuello-Suarez") for diabetes and hypertension. (Tr. 210-11). Dr. Cuello-Suarez reported Velez's diabetes and hypertension were often uncontrolled because Velez failed to comply with the prescribed treatment, but on several occasions Dr. Cuello-Suarez reported his condition was stable. (Tr. 210-15, 221-23, 225).

⁶ Radiculopathy is a nerve root disease causing limping or lameness or other neural disorders in the lower extremities. See Dorland's Illustrated Medical Dictionary 1404 (28th ed. 1994). Daypro is prescribed to control the signs and symptoms of osteoarthritis and rheumatoid arthritis. See Physician's Desk Reference 2579 (51st ed. 1997) ["PDR"].

Velez was referred to Steven Berney, M.D. ("Dr. Berney"), a Temple University rheumatologist, in March, 1995. Dr. Berney's examination showed tenderness in Velez's lower back and restricted mobility, but an MRI was negative. (Tr. 247-49). Dr. Berney injected Xylocaine and prescribed back-strengthening exercises. (Tr. 248). Velez, reporting that the Xylocaine had not alleviated his back pain, saw Dr. Berney again on April 27, 1995. Dr. Berney noticed a limited range of motion and recommended more exercise, Zostrix cream and epidural injections. (Tr. 249). An x-ray Dr. Berney ordered showed a "possible" disc bulge in the spine and a mild osteophyte, but "normal" sacroiliac joints. (Tr. 250).

Velez was evaluated by Deeb M. Kayed, M.D. ("Dr. Kayed") at Temple University's neurology clinic on September 28, 1995. Velez stated his pain preceded his fall in Puerto Rico several years before; his pain was "now better than before." (Tr. 264). Dr. Kayed reported Velez complained of tenderness in his back and observed reduced flexibility. Dr. Kayed found "no evidence of neurologic deficit" but referred Velez to the Temple University pain clinic. (Tr. 265).

Velez was examined there on October 5, 1995 and October 12, 1995 by Lily Yuan, M.D. ("Dr. Yuan") and Timothy O'Grady, M.D. ("Dr. O'Grady"). Velez stated he had pain while walking or sitting. The doctors reported Velez had a normal gait and

thought his possible disc bulge was causing the pain; they administered epidural injections which Velez claimed were ineffective. (Tr. 197-98, 252-61). They . (Tr. 253).

Michael Faben ("Faben"), a physical therapist, examined Velez on December 13, 1995 at Episcopal Hospital. Faben observed a reduced range of motion in Velez's legs and trunk. Faben reported Velez's posture was level and he was "independent" in activities of daily living. (Tr. 208). Faben recommended home exercise, treatment with a hot pack and an ultrasound. (Id.).

Velez reported to various doctors that he had had surgery on his right eye in early 1995. (Tr. 263). During a March 1, 1996 examination of Velez's eyes, Rafael Collazo, O.D. ("Dr. Collazo") observed a faint corneal scar on Velez's eye but no diabetic retinopathy. (Tr. 206).⁷ Velez now wears eyeglasses which have corrected most of his vision problems. (Tr. 62-63).

The ALJ, considering all of the above evidence, concluded Velez was severely impaired by degenerative disc disease, gastritis and a past history of duodenal ulcer and non-insulin dependent diabetes. (Tr. 33). However, the ALJ determined those

⁷ It is unclear if the prior operation was on Velez's right or left eye. Velez initially testified he had surgery on his right eye. The ALJ asked him to clarify whether the surgery was on his left or right eye, to which Velez responded, "No, the right one." The ALJ then referred to Dr. Collazo's notes which refer to a "faint corneal scar o.s." O.S. stands for oculus sinister, or left eye. See Dorland's Illustrated Medical Dictionary 1100 (25 ed. 1974). (Tr. 63).

impairments did not affect Velez's residual functional capacity to perform his past relevant work as a crane operator. Velez, arguing he does not have the capacity to perform light, skilled work, objects to that finding.

"Residual functional capacity is an assessment based upon all of the relevant evidence." 20 C.F.R. § 404.1545(a). At the hearing, Velez testified he was not taking any pain medications, often walked for five or ten minutes twice a day to the neighborhood cigarette store and could ride in a car for about 25 minutes at a time. (Tr. 73). Even though Velez's back injury might have been caused by jumping from the second floor of a building in Puerto Rico, Velez did not feel any pain until he came to Philadelphia several years later (Tr. 61, 186); the ALJ may have found this timing incredible. MRIs of Velez's back came back negative. (Tr. 172, 247-49). Velez informed one doctor his pain was "now better than before." (Tr. 264). Other doctors observed that Velez, while suffering from tenderness and decreased flexibility on one side of his back, had good posture and overall mobility. (Tr. 186-89).

Velez admitted his vision problem was mostly corrected once he wore eyeglasses. (Tr. 62-63). The vocational expert testified that wearing eyeglasses would not preclude an individual from working as a crane operator, although apparently Velez's employer in Puerto Rico did not permit his workers to do

so. (Tr. 75-76).

Velez was diagnosed with an ulcer that developed in Puerto Rico, although it was not severe enough to require extended hospitalization or out-patient treatment. (Tr. 164-68). The ALJ also may have found Velez exaggerated his ulcer pain because he did not take any medication or seek treatment for his ulcer until he moved to Philadelphia about two years after it developed.

Dr. Rodriguez and another doctor examined Velez on separate occasions and concluded his physical impairments did not preclude him from performing work activities, as long as he did not have to do heavy lifting, bending or prolonged sitting. (Tr. 178, 188-89).

The ALJ, based on the vocational expert's testimony, determined Velez could perform his past relevant work as a crane operator. The ALJ's decision that Velez's physical infirmities did not preclude him from working was supported by substantial evidence of record. See 42 U.S.C. § 405(g); Richardson, 402 U.S. at 390. A "reasonable mind" might find sufficient evidence in the record to conclude that Velez was physically capable of performing light, skilled work. See Dobrowolsky, 606 F.2d at 406; Maduro, 1995 WL 542451, at *1.

Velez argues the ALJ improperly discredited Velez's subjective complaints of pain. The ALJ did accept Velez's testimony that his pain prohibited him from doing heavy lifting

or carrying, (Tr. 32), but rejected Velez's testimony that his back pain was so extensive it prevented him from performing any work activity.

The ALJ based her rejection of Velez's subjective complaints of pain on the following:

The claimant asserts he is a virtual invalid because of his alleged pain. Yet numerous examining physicians, including specialists, have found no objective evidence of significant orthopedic or neurological deficits. There is no clinical evidence of pathological reflexes, sensory or motor deficits, muscular atrophy, significant restriction in range of motion, or impaired gait; likewise, there is no diagnostic evidence of radiculopathy, neuropathy, myopathy, or entrapment syndrome. Surgical intervention has not been deemed to be necessary and treatment has consisted of sporadic epidural injections; the claimant has indicated that he does not like to attend physical therapy (Exhibit 44, p.5). Of significant note is the fact that the claimant is not taking any pain medication to alleviate his alleged incapacitating symptoms.

(Tr. 31). The medical evidence that Velez has a normal posture and mobility in his back and limbs contradicts the evidence that Velez's "possible" disc bulge is causing pain as described by Velez.

An applicant cannot base a claim entirely on subjective complaints of pain; "there must be medical signs and laboratory findings which show that you have a medical impairment(s) which could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all of the other evidence ..., would lead to a conclusion that you are disabled." 20 C.F.R. §§ 404.1529(b), 416.929(b); see Mason v. Shalala, 994

F.2d 1058, 1067 (3d Cir. 1993).

The ALJ properly considered Velez's subjective complaints and rejected them only after reviewing medical evidence discrediting those complaints. The court will uphold the ALJ's finding that Velez is physically capable of performing a limited range of light, skilled work, such as operating a crane. Therefore, the court will grant summary judgment in favor of the Commissioner on Velez's claim for SSI and DIB based on his physical ailments.

III. Psychological Disorders

Velez claims to suffer from mental impairments including depression and anxiety. The ALJ acknowledged the existence of these impairments but determined they were not severe enough to prohibit Velez from performing his past relevant work as a crane operator. Velez objected to the ALJ's finding.

From January through September, 1995, Velez attended weekly psychotherapy sessions at New Hopes of Philadelphia, an outpatient mental health facility. (Tr. 267-83). Velez reported periods of insomnia, nervousness, feelings of isolation, forgetfulness and hallucinations. (Tr. 267, 274). Velez claimed to undergo periods where he preferred isolation to human contact. Velez received several kinds of psychotropic medications, including Buspar, Prozac, Sinequan, Haldol and Elavil. (Tr.

283).⁸ On August 21, 1995, Velez's therapist reported that "in spite of consistent therapy and increase in medication, [Velez] continues to show little improvement." (Tr. 280).

Between August 9, 1995 and November 3, 1995, Velez was treated at Pamm Human Resources Center, Inc. ("Pamm"). Psychiatrists including Frank Read, M.D. ("Dr. Read") determined that Velez suffered from "major depressive disorder" and was "unable to work for [his] mental problem." (Tr. 190-93). Dr. Read prescribed Zoloft and Doral to treat Velez's mental disorder. (Tr. 194-96).⁹

Armond Lupo, D.O. ("Dr. Lupo"), affiliated with Pamm, evaluated Velez on December 19, 1995 and found he was unable to deal with the public, use judgment or interact with supervisors. (Tr. 199). Dr. Lupo also determined Velez could not function independently or maintain his attention or concentration. (Tr. 200). Dr. Lupo further stated that Velez was unable to follow instructions, feed himself or perform simple chores. (Tr. 200-01). Dr. Lupo concluded that Velez had a memory problem, disorganized thought, delusions and "gross impairment in thinking

⁸ Buspar is prescribed for short-term relief from anxiety disorders. See PDR 709. Prozac, Sinequan and Elavil are all prescribed to treat depression, anxiety and the related symptoms of sleep disturbances, loss of energy, apprehension, guilt and worry. See PDR 943-44, 1374, 2441. Haldol is prescribed for the management of psychotic symptoms.

⁹ Zoloft is used to treat depression and Doral is prescribed to treat insomnia. See PDR 2051, 2773.

and communication." (Tr. 200).

The ALJ found Velez has an affective disorder, "accompanied by a full or partial manic or depressive syndrome." (Tr. 34-35). The ALJ determined Velez's mental disorder "would impede his ability to adjust to new work and adapt to new situations," (Tr. 32), but considered this "irrelevant" because the ALJ did not think Velez's inability to adapt to "new situations" would affect his ability to obtain a new job as a crane operator.

The ALJ's decision must "incorporate the pertinent findings and conclusions based on this procedure in our decision rationale. Our rationale must show the significant history, including examination, laboratory findings, and functional limitations that we considered in reaching conclusions about the severity of the mental impairment(s)." 20 C.F.R. §§ 404.1520a(c)(4), 416.920a(c)(4).

The ALJ may have found evaluations based on Velez's self-reports lacking in credibility even if the evaluations were made by treating physicians. But the ALJ offered no substantive analysis of why Velez's mental disorder, precluding him from adapting to new situations, would not affect Velez in finding a new job as a crane operator. Absent any explanation for the ALJ's arguably inconsistent or illogical conclusion, the court cannot review the finding that Velez was able to perform a light, skilled job as a crane operator despite his diagnosed psychiatric

disorder. See id. at 1161-62 (ALJ's conclusory language prevented meaningful review of determination that mental disorder did not affect applicant's ability to work). To more fully develop the record regarding Velez's ability to perform light, skilled work duties in view of his alleged mental disorder, the court will remand the action and direct the Commissioner to obtain an independent psychiatric evaluation, including to the extent possible an objective evaluation of the subjective complaints reported by Velez. Velez's ability to perform his past relevant work as a crane operator or other work should be reconsidered in light of that evaluation, the opinions of the treating physicians and the record as a whole. The cross-motions for summary judgment on Velez's ability to perform past relevant work in light of his mental disorder will be denied.

An appropriate Order follows.

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

ANGEL VELEZ : CIVIL ACTION
: :
v. : :
: :
KENNETH S. APFEL, Commissioner of :
Social Security¹⁰ : NO. 97-2692

ORDER

AND NOW, this 18th day of May, 1998, upon consideration of the parties' cross-motions for summary judgment, de novo review of the Report and Recommendation of United States Magistrate Judge Peter B. Scuderi ("Judge Scuderi"), and in accordance with the attached Memorandum, it is hereby **ORDERED** that:

1. Judge Scuderi's Report and Recommendation is **APPROVED AND ADOPTED** as to plaintiff's claims for physical disabilities and **REJECTED** as to plaintiff's claim for mental disability.

2. Plaintiff's motion for summary judgment is **DENIED**.

3. Defendant's motion for summary judgment is **GRANTED IN PART AND DENIED IN PART**. The motion is **GRANTED** as to plaintiff's claims for physical disability and **DENIED** as to plaintiff's claim for mental disability.

4. This matter is **REMANDED** to the Commissioner of Social Security to reopen the record, obtain an independent psychiatric evaluation and reevaluate Velez's ability to perform past relevant work.

Norma L. Shapiro, J.

¹⁰ Kenneth S. Apfel was sworn in as Commissioner of Social Security on September 29, 1997. Under Federal Rule of Civil Procedure 25(d)(1), he is automatically substituted as the defendant in this action.