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

MICHELLE L. WOODSON,	:	CIVIL ACTION
Plaintiff	:	
v.	:	
JO ANNE BARNHART, Commissioner of Social Security,	:	
Defendant	:	NO. 03-49

MEMORANDUM

Padova, J. **May 11, 2004**

I. BACKGROUND

Plaintiff Michelle Woodson seeks judicial review of the final decision of Defendant, Social Security Commissioner Jo Anne Barnhart, who denied her claim for Social Security benefits. Both Plaintiff and Defendant have filed motions for summary judgment. Pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.1(d)(1)(C), the Court referred this matter to Chief Magistrate Judge James R. Melinson for a Report and Recommendation. Chief Magistrate Judge Melinson recommended that Plaintiff's motion for summary judgment be denied, and that Defendant's motion for summary judgment be granted. Plaintiff filed timely objections to the Report and Recommendation. For the reasons which follow, the Court overrules Plaintiff's objections and grants Defendant's motion for summary judgment in its entirety.

II. STANDARD OF REVIEW

A district court judge makes a *de novo* determination of those

portions of a magistrate judge's report and recommendation to which objection is made. 28 U.S.C. § 636(b)(1)(C). The judge may accept, reject or modify, in whole or in part, the magistrate judge's findings or recommendations. Id.

Under the Social Security Act, a claimant is disabled if he is unable to engage in "any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to . . . last for a continuous period of not less than twelve (12) months." 42 U.S.C. §423(d)(1)(A); 20 C.F.R. §404.1505. Under the medical-vocational regulations, as promulgated by the Commissioner, the Commissioner uses a five-step sequential evaluation to evaluate disability claims.[1] The burden to prove the

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[1] 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.
2. You must have a severe impairment. 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.
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.
4. Your impairment(s) must prevent you from doing past relevant work. 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

existence of a disability rests initially upon the claimant. 42 U.S.C. §423(d)(5). To satisfy this burden, the claimant must show an inability to return to his former work. Once the claimant makes this showing, the burden of proof then shifts to the Commissioner to show that the claimant, given his age, education and work experience, has the ability to perform specific jobs that exist in the economy. Rossi v. Califano, 602 F.2d 55, 57 (3d Cir. 1979).

Judicial review of the Commissioner's final decision is limited, and this Court is bound by the factual findings of the Commissioner if they are supported by substantial evidence and decided according to correct legal standards. Allen v. Brown, 881 F.2d 37, 39 (3d Cir. 1989); Coria v. Heckler, 750 F.2d 245, 247 (3d Cir. 1984). "Substantial evidence" is deemed to be such relevant evidence as a reasonable mind might accept as adequate to support a decision. Richardson v. Perales, 402 U.S. 389, 407 (1971); Cotter v. Harris, 642 F.2d 700, 704 (3d Cir. 1981). Substantial evidence is more than a mere scintilla, but may be somewhat less

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> 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.
> 5. Your impairment(s) must prevent you from doing any other work. (1) 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. (2) If you have only a marginal education, and long work experience (i.e., 35 years or more) where you only did arduous unskilled physical labor, and you can no longer do this kind of work, we use a different rule.

20 C.F.R. §§ 404.1520(b)-(f).

than a preponderance. Dobrowolsky v. Califano, 606 F.2d 403, 406 (3d Cir. 1979).

Despite the deference to administrative decisions implied by this standard, this Court retains the responsibility to scrutinize the entire record and to reverse or remand if the Commissioner's decision is not supported by substantial evidence. Smith v. Califano, 637 F.2d 968, 970 (3d Cir. 1981). Substantial evidence can only be considered as supporting evidence in relationship to all other evidence in the record. Kent v. Schweiker, 701 F.2d 110, 114 (3d Cir. 1983).

III. DISCUSSION

Plaintiff protectively applied for supplemental security income benefits ("SSI") on January 24, 2001. The application alleged a disability beginning on January 24, 2001, due to a heart murmur, hand problems, and emphysema. At a hearing held on May 29, 2002, an Administrative Law Judge ("ALJ") received testimony from Plaintiff, who was represented by counsel, and from a vocational expert.

Plaintiff was born on October 13, 1957, and was forty-four years old at the time of the administrative hearing. (Tr. 83.) She has a ninth grade education and past relevant work experience as a nurse's assistant. (Tr. 42, 44-45, 88, 90.) Her only source of income is from public assistance. (Tr. 88.) Plaintiff lives alone in a room on the third level of a building but must walk up

six flights of stairs to reach that room. (Tr. 42, 51.) She injured her left knee and left shoulder in a bus accident a couple of weeks before the administrative hearing. (Tr. 42.) According to counsel, there is a separate lawsuit pending in connection with the bus accident, and the injuries sustained in that accident are not part of Plaintiff's instant claim for SSI benefits. (Tr. 42.)

At the hearing, Plaintiff testified that she has problems with her hands. Her fingers "lock," her hands swell, and her wrists are very painful and tight. (Tr. 46.) These symptoms cause her to drop and break heavy items like glasses, dishes, and pots. (Tr. 62.) Plaintiff also testified that she has worn splints on both of her wrists every day, but not all day, for over a year. (Tr. 41.)

Plaintiff estimated that, before the bus accident, she could lift fifteen to twenty pounds; that she could walk a block or two at the most; that she could stand twenty to thirty minutes before needing to sit; that she could sit for an hour; that she was able to push things with her arms, such as a shopping cart; that she had difficulty reaching over her head with both arms; that she was able to use her hands to eat, write, work zippers, pick up a coin from the table, and turn pages of a book; that she was able to do some cooking; and that she had no difficulty dressing or bathing. (Tr. 49-52, 57.) Plaintiff's sister and her neighbor help her with household chores, including shopping and laundry. (Tr. 53.) Plaintiff described her typical day as watching six to eight hours of television, taking an hour long nap two to three times per week,

and doing some reading or crossword puzzles. (Tr. 55-56.) Plaintiff experiences extreme fatigue three or four days per week, which causes her to stay home and sleep. (Tr. 59.) Six to eight times per month, Plaintiff experiences chest pain which lasts for fifteen to twenty minutes. (Tr. 60.) She described this pain as resembling someone stepping on her chest or stabbing her. (Tr. 60-61.) The pain comes with or without exertion.

The medical evidence reveals that, in March 2001, Plaintiff went to the emergency room while experiencing chest pains. (Tr. 130-158, 167-170.) Upon admission, the attending physician reported that Plaintiff's physical examination was significant for a diastolic murmur. (Tr. 130.) An echocardiogram revealed mild aortic regurgitation. (Tr. 130, 182, 186.) A CT scan of the chest was performed and ruled out aortic dissection. (Tr. 130, 210.) A cardiac stress test revealed no evidence of myocardial infarction, cardiac arrhythmia, or ischemia. (Tr. 167-169, 181-186.) The physician opined that at some point in the near future Plaintiff would need valvular replacement. (Tr. 130.) After a week's stay, Plaintiff was discharged into the care of the cardiology clinic and her primary care physician. (Tr. 131.)

On June 6, 2001, Plaintiff was evaluated at the Temple Lung Center for complaints of shortness of breath upon exertion. (Tr. 159-160.) Dr. Wissam Chatila noted that a recent pulmonary function test was consistent with mild to moderate emphysema. (Tr. 159, 161-164.) Upon examination and review of the medical tests,

Dr. Chatila diagnosed Plaintiff with chronic pulmonary obstructive disease ("COPD") and mild to moderate aortic regurgitation, and recommended that Plaintiff quit smoking and return in one month for a follow-up appointment. (Tr. 160.) On July 11 2001, Dr. Kathleen Brennan conducted a follow-up examination and noted that Plaintiff's COPD was under good control. (Tr. 221.) On November 14, 2001, Dr. Brennan conducted another follow-up examination and indicated that Plaintiff's emphysema was under good control. (Tr. 215.) On March 13, 2002, a physician at the Center reevaluated Plaintiff and noted that she was still smoking cigarettes and that she did not want to take Zyban to help her quit smoking because of the potential side effects of the drug. (Tr. 213.) The physician also noted that Plaintiff had been hospitalized from March 5, 2002 through March 6, 2002 for chest pain, but diagnostic tests showed no abnormality. (Tr. 213.) On March 8, 2002, Plaintiff was seen at the cardiology clinic and told that she was "doing fine." (Tr. 213.)

Plaintiff has also been treated for knee pain. In August 2000, Plaintiff's primary care physician referred to the Department of Rhuematology at Temple University Hospital for an evaluation. (Tr. 122-123, 248-249, 252.) Plaintiff complained of constant bilateral knee pain, which was brought on by movement. (Tr. 122, 248.) Plaintiff had been suffering from the knee pain for eight months. (Tr. 122, 248.) A treatment note dated April 17, 2001 revealed that Plaintiff suffered from bilateral knee pain of

unknown etiology. (Tr. 115, 236.) During subsequent visits, Plaintiff received injections for her knee pain. (Tr. 124, 126-128, 230, 236, 240.) In February 2002, the attending physician noted that Plaintiff's knee pain had been "resolved for the most part," but that she continued to have muscle cramps in both legs. (Tr. 225.)

Plaintiff was also treated at Temple's Department of Rheumatology for carpal tunnel syndrome. (Tr. 123.) In September 2000, Dr. Anim-Appiah reported that Plaintiff complained of "numbness and tingling in the tips of her fingers" and occasional weakness in her hands. (Tr. 122, 248). Dr. Anim-Appiah noted that Plaintiff tested positive for Tinel's and Phalen's sign and also suffered from finger clubbing. (Tr. 249.) He concluded that Plaintiff "possibly" had carpal tunnel syndrome and recommended wrist splints for treatment. (Tr. 122, 248). An October 2000 treatment note indicated that Plaintiff had "numbness and tingling in fingers at times and sometimes drops things." (Tr. 121.) In November 2000, electromyography ("EMG") and nerve conduction studies showed right carpal tunnel syndrome. (Tr. 245.) The interpreting neurologist opined that "the lesion was demyelinative for the most part and may respond to conservative treatment with splinting alone." (Tr. 235.) A February 2001 treatment note indicated that Plaintiff had suffered from carpal tunnel syndrome for over a year and that an injection on January 29, 2001 had not provided significant relief. (Tr. 119, 241.) The

examining physician further noted that Plaintiff tested negative for Tinel's and Phalen's sign and instructed Plaintiff to continue wearing wrist splints. (Tr. 117). An April 2001 treatment note indicated that Plaintiff's symptoms of carpal tunnel syndrome were stable and noted that she had been wearing wrist splints. (Tr. 116.)

Following a steroid injection for her left carpal tunnel syndrome in August 2001, Plaintiff developed swelling, which lasted for 24-36 hours, and severe hand pain. (Tr. 211.) An examination of Plaintiff's left upper extremity revealed that she had minimal edema and that her sensation was intact. (Tr. 124.) An EMG study was interpreted to show borderline carpal tunnel syndrome and bone scans were negative. (Tr. 124.) Plaintiff's hand pain was treated with elevation and a splint. (Tr. 124, 211.) Plaintiff was also placed on Neurontin after the EMG testing showed bilateral median nerve damage. (Tr. 211). In December 2001, Plaintiff underwent EMG and nerve conduction studies for evaluation of left shoulder, arm, and neck pain. (Tr. 228-229.) These tests provided electrodiagnostic evidence of very mild left carpal tunnel syndrome, with no evidence of radiculopathy or plexopathy involving the left upper extremity. (Tr. 229.)

On or about February 5, 2002, Plaintiff was referred to the Department of Anesthesiology at the Temple University Hospital for an evaluation of her complaints of arm pain following the August 2001 injection. (Tr. 211.) Plaintiff advised Dr. Robert Friedman

that she was experiencing burning discomfort in her wrist that radiated up to her forearm, increasing clumsiness of her hands, and difficulty sleeping because of the pain. (Tr. 211.) Dr. Friedman noted that, at the time of the visit, Plaintiff was only taking Tylenol for her pain. (Tr. 211.) Dr. Friedman's physical examination of Plaintiff revealed "some" hypothenar wasting, but no dystrophic changes. (Tr. 211.) Dr. Friedman also observed "some" allodynia over the medial crease of Plaintiff's left wrist and noted that Plaintiff's grip strength in her left hand was slightly diminished compared to the right hand. (Tr. 211.) Dr. Friedman's impressions were "[c]omplex regional pain syndrome, left wrist secondary to median nerve injury." (Tr. 211.) Dr. Friedman prescribed Neurontin for Plaintiff's sleep disorder and requested the "follow-up EMG which was done sometime following the August episode in 2001"(presumably the December 2001 EMG test) to confirm his diagnosis. (Tr. 211.)

Plaintiff subsequently received treatment on February 28, 2002 at Temple's Department of Rheumatology. (Tr. 227.) The treatment notes indicated that Plaintiff's carpal tunnel symptoms were mild and that she had no hand weakness or muscle tenderness. (Tr. 226-227.) The notes further indicated that Plaintiff had been wearing wrist splints for her carpal tunnel syndrome, and the examining physician instructed Plaintiff to continue wearing wrist splints. (Tr. 226.)

On or about October 21, 2001, Dr. Jerry Ginsberg, D.O.,

evaluated Plaintiff at the request of the Commissioner. (Tr. 194-196.) Upon physical examination, Dr. Ginsberg's impressions were that Plaintiff suffered from aortic regurgitation by history, bilateral leg pain (undiagnosed), and emphysema. (Tr. 196.) Dr. Ginsberg opined that Plaintiff's prognosis was guarded. (Tr. 196.) Dr. Ginsberg determined that Plaintiff's bilateral hand grasp strength was normal and he found no evidence of any abnormality of fine or gross motion of either hand. (Tr. 195.) Dr. Ginsberg opined that Plaintiff could frequently lift and carry two to three pounds; that she could stand and walk one hour or less; that she had no limitation in her ability to sit; that she had no limitation in her ability to push, pull, handle or finger objects, and operate hand or foot controls; that she had no limitation in her ability to bend, kneel, stoop, crouch, balance, or climb; and that she could not perform work in poorly ventilated areas, or in areas with temperature extremes, chemicals, wetness, dust, fumes, odors, gases, or humidity. (Tr. 197-198.)

On December 26, 2001, a state agency physician completed a residual functional capacity assessment form for Plaintiff. (Tr. 199-206.) The physician diagnosed Plaintiff with leg pain and aortic regurgitation, and opined that Plaintiff could lift/carry twenty pounds occasionally and ten pounds frequently; that she could stand/walk about six hours in an eight hour day; that she could sit about six hours; that her ability to push/pull was unlimited; that her ability to reach overhead with her left upper

extremity was limited; that she would need to work within certain environmental limitations; and that her subjective complaints were not supported by the evidence. (Tr. 199-206.)

In his decision, the ALJ found that the medical evidence established that Plaintiff had severe impairments consisting of a left shoulder disorder, emphysema, and aortic regurgitation, but that she did not have an impairment or combination of impairments listed in, or medically equal to, a listing found in the Commissioner's regulations. (Tr. 20.) The ALJ also found that the medical evidence established that Plaintiff had non-severe impairments consisting of carpal tunnel syndrome and knee problems. (Tr. 20.) The ALJ further found that Plaintiff's allegations as to the severity of her symptoms and limitations in relation to her ability to perform basic work activities were exaggerated and not supported by the evidence in the record. (Tr. 20.) The ALJ next determined that Plaintiff had the residual functional capacity to perform a reduced range of sedentary level work. (Tr. 20.) According "great weight" to Dr. Ginsberg's assessment of Plaintiff's abilities and limitations, the ALJ found that Plaintiff had the residual functional capacity to lift and carry two to three pounds frequently; stand/walk for one hour; sit for eight hours; perform no more than occasional overhead reaching with her left upper extremity; and that she must avoid concentrated exposure to extremes in hot and cold temperatures, wetness, humidity, fumes, odors, dust, gases, and poor ventilation. (Tr. 20.) Based on her

residual functional capacity, the ALJ found that Plaintiff could not return to her past relevant work as a nurse's assistant. (Tr. 20.) However, the ALJ determined that Plaintiff could perform several jobs, such as information clerk, inspector/examiner, and cashier, all of which exist in significant numbers in the regional and national economy. (Tr. 20.) The ALJ concluded that Plaintiff was not disabled as defined by the Act and, therefore, denied Plaintiff's claim for SSI benefits in his decision dated June 28, 2002. (Tr. 20.)

After Plaintiff's appeal to the Appeals Council was denied, Plaintiff sought judicial review in this Court. The Court then referred the matter to Chief Magistrate Judge Melinson for a Report and Recommendation. See 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.1(d)(1)(C). The Chief Magistrate Judge recommended that the decision of the ALJ denying Plaintiff's claim for benefits be upheld. Plaintiff filed timely objections to the Chief Magistrate Judge's Report and Recommendation.

Plaintiff's objections to the Report and Recommendation challenge only the ALJ's findings with respect to her carpal tunnel syndrome. Specifically, Plaintiff argues that the ALJ erred in finding that her carpal tunnel syndrome was a non-severe impairment, and also improperly relied on a hypothetical question that incorporated neither her complaints of pain and other symptoms produced by her carpal tunnel syndrome nor the undisputed fact that she wears wrist splints on a daily basis to treat her carpal tunnel

syndrome.

A. Severity of Carpal Tunnel Syndrome

Plaintiff challenges the ALJ's finding that her carpal tunnel syndrome was a non-severe impairment. An impairment is considered severe if it "significantly limits [the individual's] ability to do basic work activities." 20 C.F.R. § 416.920(c). In turn, the Social Security regulations define "basic work activities" as "the abilities and aptitudes necessary to do most jobs." 20 C.F.R. § 416.921(b). Examples of basic work activities include, *inter alia*, "[p]hysical functions such as walking, standing, sitting, lifting, pulling, reaching, carrying, or handling." 20 C.F.R. § 416.921(b)(1). By contrast, a non-severe impairment has "no more than a minimal effect" on the individual's ability to perform basic work activities. Social Security Ruling 85-28.

The ALJ provided the following analysis in support of his finding that Plaintiff's carpal tunnel syndrome was not severe:

> An electromyography/nerve conduction study done in November 2000 showed a right carpal tunnel lesion which was demyelinative for the most part and which might respond to conservative treatment with splinting alone. The medical evidence shows that the claimant was treated for the disorder by a rheumatologist. She was advised to wear wrist splints and was receiving injections from another physician. As of February 2001, she had negative Phalen's and Tinel's signs and full range of motion in her wrists. At this time, the physician declared the carpal tunnel syndrome to be stable. In August 2001, the claimant appears to have had an exacerbation of her wrist problem, which she advised occurred after her last injection was complaining that her left wrist pain was radiating up to her neck. However, on examination her left upper extremity had minimal edema, her sensation was

> intact, the bone scan done was negative, and the electroyography was interpreted to show borderline carpal tunnel syndrome. When the claimant underwent a consultative examination in October 2001, she was found to have no swelling or joint deformities, no evidence of fine or gross abnormal motion of her hands, her grip strength was five out of the normal five, and the physician found no range of motion restrictions. Results of an electromyography/nerve conduction study done in December 2001, [sic] were indicative of only *very mild* left carpal tunnel syndrome with no evidence of radiculopathy or of plexopathy involving the left upper extremity. When she saw her rheumatologist in February 2002, the claimant was noted to have *mild* carpal tunnel syndrome symptoms and no hand weakness, so she was advised to continue to use wrist splints.
>
> When she saw her neurologist in February 2002, the claimant was not taking any pain medications except for Tylenol, was receiving some benefit through prescribed Neurontin, and although there was some hypothenar wasting evident on examination, there were no dystrophic changes noted and her left grip strength was only slightly diminished when compared to the right side. The Administrative Law Judge notes the recurrence of the claimant's carpal tunnel syndrome symptoms, but finds that this recent recurrence might not last the required twelve month duration with medication and treatment.

(Tr. 13-14)(emphasis in original).

The objective medical evidence, as recited accurately by the ALJ, supports the finding that Plaintiff's carpal tunnel syndrome was non-severe. Indeed, none of Plaintiff's treating or examining physicians opined that her carpal tunnel syndrome significantly limited her physical ability to perform basic work activities. While ALJ took note of the recurrence of Plaintiff's carpal tunnel symptoms in February 2002, he reasonably determined that these symptoms might not continue for the requisite twelve month period given that the prescribed treatment and medication had worked

effectively both before and after her reaction to the August 2001 injection. Moreover, as discussed more fully below, Plaintiff's own description of her daily activities support the ALJ's determination that her carpal tunnel syndrome was non-severe. The Court concludes that the ALJ's determination that Plaintiff's carpal tunnel syndrome was non-severe is supported by substantial evidence. See, e.g., Connor v. Barnhart, Civ. A. No. 02-009, 2003 WL 57901, at *6 (E.D. Pa. Jan. 6, 2003)(upholding ALJ's finding that carpal tunnel syndrome was non-severe where plaintiff's range of motion or strength was not reduced, even though she experienced coldness, numbness, and tingling of the fingertips and pain upon repeated use of her hand). Accordingly, Plaintiff's objection to the Report and Recommendation is overruled in this respect.

B. ALJ's Hypothetical Question

Plaintiff also argues that the ALJ's finding that there are a significant number of occupations in the regional and national economy which she could perform, such as information clerk, inspector/examiner, and cashier, is not supported by substantial evidence. The ALJ's finding was based on the response of Dr. Steven Gummerman, a vocational expert, to the following hypothetical question:

> Dr. Gummerman, if you had a hypothetical individual who could lift and carry 2 to 3 pounds frequently, stand and walk one hour, no limitation on sitting. In addition this hypothetical individual would have Ms. Woodson's age of 44, 9th grade education and past work experience in

> home healthcare. In addition a hypothetical individual couldn't reach overhead with the left upper extremity more than occasionally and would have to avoid concentrated exposure to extremes in hot and cold temperatures, wetness, humidity and fumes, odors, dusts, gases and poor ventilation. Would there be unskilled occupations that would be possible for the hypothetical individual?"

(Tr. 63.)

The testimony of a vocational expert constitutes substantial evidence where the hypothetical question "fairly set[s] forth every credible limitation established by the physical evidence." Plummer v. Apfel, 186 F.3d 422, 431 (3d Cir. 1999)(citing Chrupcala v. Heckler, 829 F.2d 1269, 1276 (3d Cir. 1987)). Plaintiff contends that the hypothetical question upon which the ALJ relied was deficient because it failed to properly consider her complaints of pain in her hands and fingers. At the hearing, Plaintiff testified that her "fingers lock," her "hands swell sometimes," her "wrists have very bad pain," and she has dropped glasses, dishes, and pots because of lack of strength in her hands. (Tr. 46, 62.) Notably, the ALJ posed an alternative hypothetical which assumed that Plaintiff's testimony was fully credible. (Tr. 66.) In response, Dr. Gummerman opined that Plaintiff would not be able to perform any occupations, in part because of her finger locking, hand pain, and dropping of items. (Tr. 66.)

"Allegations of pain and other subjective symptoms must be supported by objective evidence." Hartranft v. Apfel, 181 F.3d 358, 362 (3d Cir. 1999)(citing 20 C.F.R. § 404.1529). Where the

ALJ does not fully accept a plaintiff's testimony concerning pain, the ALJ is obligated to explain his or her reasoning. Mason v. Shalala, 994 F.2d 1058, 1068 (3d Cir. 1993). The reviewing court should "ordinarily refer to an ALJ's credibility determination because he or she has the opportunity at a hearing to assess a witness's demeanor." Reefer v. Barnhart, 326 F.3d 376, 380 (3d Cir. 2003). Where the ALJ concludes that the claimant has a condition which could reasonably produce the pain alleged, but the pain that the claimant complains of exceeds the level and intensity that is supported by objective medical evidence, he or she may consider the following factors: (1) the individual's daily activities; (2) the location, duration, frequency, and intensity of the individual's pain or other symptoms; (3) factors that precipitate and aggravate the symptoms; (4) the type, dosage, effectiveness and side effects of any medication taken by the individual; (5) treatment, other than medication that the individual receives or has received for relief of pain or other symptoms; (6) any measure other than treatment that the individual uses or has used to relieve pain or other symptoms; and (7) other factors concerning the individual's functional limitations and restrictions due to pain or other symptoms. Social Security Ruling 96-7p, 20 C.F.R. §§ 404.1529(c)(3)(i)-(vii). The purpose of this inquiry is "to determine the extent to which a claimant is accurately stating the degree of pain or the extent to which he or she is disabled by it." Hartranft v. Apfel, 181 F.3d 358, 362 (3d

Cir. 1999)(citing 20 C.F.R. § 404.1529(c)).

In this case, the ALJ recognized that Plaintiff suffered from several impairments, including carpal tunnel syndrome, which could reasonably produce the pain and other symptoms that she alleged. However, the ALJ concluded that Plaintiff's allegations as to the debilitating effects of her impairments were "exaggerated and not supported by the evidence of record." (Tr. 20.) In assessing the accuracy of Plaintiff's complaints of the pain and other symptoms produced by her carpal tunnel syndrome, the ALJ noted that Plaintiff's daily activities include cooking simple meals and using her dominant right hand to eat meals without difficulty. (Tr. 18.) The ALJ further noted that Plaintiff has the ability to turn the pages of a book, button and zipper items, and attend to her personal grooming and hygiene. (Tr. 18.) The ALJ observed that Plaintiff "has received very conservative treatment for her joint pain and receives relief through the use of medications and the use of wrist splints." (Tr. 19.) The ALJ also recognized that "[e]xpressed side effects of medications are not documented in the medical records." (Tr. 19.)

The record supports the ALJ's assessment of Plaintiff's subjective complaints of the pain and other symptoms produced by her carpal tunnel syndrome. First, as the ALJ discussed, Plaintiff's allegations of pain are inconsistent with the conservative treatment she has received for her carpal tunnel syndrome. Second, the ALJ properly noted that the use of wrist

splints and medication has provided significant relief from the pain and other symptoms about which Plaintiff complained. Indeed, Plaintiff's complaints to Dr. Friedman in early February 2002 of burning discomfort in her wrists and increasing pain and clumsiness in her hands are conspicuously absent from the treatment notes of February 28, 2002, which reported that Plaintiff - who had been wearing wrist splints and taking pain medication - was experiencing no hand weakness and that her carpal tunnel symptoms were mild. (Tr. 227.) Third, as the ALJ also recognized, Plaintiff testified that the pain produced by her carpal tunnel syndrome did not prevent her from performing a number of basic activities, such as light cooking and personal grooming. Plaintiff also indicated on a Social Security disability form that she can perform several other activities that involve the use of her hands and fingers, such as dialing a regular touch-tone telephone, using a standard size television remote control, and tying her shoes. (Tr. 108.) Fourth, none of Plaintiff's treating or examining physicians opined that she had any disabling functional limitations. Dr. Ginsberg, the consultative physician who evaluated Plaintiff at the request of the Commissioner, found that Plaintiff had no abnormality of fine or gross motion of either hand and that her hand grasp strength was normal. (Tr. 195.) He concluded that Plaintiff could frequently lift and carry three pounds and had no limitation in her ability to push, pull, handle or finger objects. (Tr. 197-198.) The ALJ properly accepted Dr. Ginsberg's uncontradicted opinion.

In sum, Plaintiff's complaints of pain in her hands and fingers are inconsistent with the conservative treatment Plaintiff received for her carpal tunnel syndrome, Plaintiff's own description of her daily activities, and the objective medical evidence of record. Because the ALJ addressed Plaintiff's subjective complaints of pain and stated his reasons for rejecting them, and because the ALJ's conclusion is supported by the record, the ALJ had the discretion to reject Plaintiff's complaints of pain and its impact on her ability to work. Hartranft, 181 F.3d at 263.

Plaintiff also argues that the hypothetical question on which the ALJ relied failed to incorporate the undisputed fact that she wears wrist splints on a daily basis. Plaintiff maintains that this omission was critical because the ALJ ultimately concluded that she could perform occupations that, according to the testimony of the vocational expert, would require "constant" use of her hands and fingers. (Tr. 70-71.) Notably, however, none of Plaintiff's treating or examining physicians imposed any restrictions on her ability to repetitively use her hands and fingers while wearing wrist splints or otherwise. See Plummer, 186 F.3d at 430-31 (holding that hypothetical addressing claimant's inability to perform work requiring bilateral dexterity or extensive handling of objects but not her inability to use her hands on demand was appropriate since "[n]one of the doctors who evaluated claimant found her unable to perform any work which required occasional use of her hands - rather, they reported the claimant cannot perform

jobs which require repetitive fine finger manipulation and handling”). To the contrary, Dr. Ginsberg found, as discussed above, no limitation on Plaintiff’s ability to handle and finger objects. (Tr. 198.)

In sum, the vocational expert’s testimony was in response to a hypothetical that fairly set forth the nature and extent of every credible limitation established by the evidence of record. As such, it can be relied upon as substantial evidence supporting the ALJ’s conclusion that Plaintiff is not totally disabled. Accordingly, Plaintiff’s objections to the Report and Recommendation are overruled in this respect.

IV. CONCLUSION

For the foregoing reasons, the Court overrules Plaintiff’s objections to the Report and Recommendation of Chief Magistrate Judge Melinson. Defendant’s Motion for Summary Judgment is granted in its entirety. Plaintiff’s Motion for Summary Judgment is denied in its entirety.

An appropriate Order follows.

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

MICHELLE L. WOODSON,	:	CIVIL ACTION
Plaintiff	:	
v.	:	
JO ANNE BARNHART, Commissioner of Social Security,	:	
Defendant	:	NO. 03-49

O R D E R

AND NOW, this 11th day of May, 2004, having considered the parties' motions for summary judgment, and having reviewed the entire record, including the ALJ's written Decision, the transcript of the hearing, and the hearing exhibits, for the reasons discussed in the accompanying Memorandum, **IT IS HEREBY ORDERED AS FOLLOWS**:

1) Plaintiff's objections to the Report and Recommendation of Chief Magistrate Judge Melinson are overruled;

2) Defendant's Motion for Summary Judgment is **GRANTED**;

3) Plaintiff's Motion for Summary Judgment is **DENIED**;

4) This case shall be closed for statistical purposes.

BY THE COURT:

_____
John R. Padova, J.

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

MICHELLE L. WOODSON,	:	CIVIL ACTION
Plaintiff	:	
v.	:	
JO ANNE BARNHART, Commissioner of Social Security,	:	
Defendant	:	NO. 03-49

JUDGMENT

AND NOW, this 11th day of May, 2004, in accordance with the Court's separate Order dated this same date, granting Defendant's Motion for Summary Judgment, pursuant to Kadelski v. Sullivan, 30 F.3d 399 (3d Cir. 1994) and Federal Rule of Civil Procedure 58, **IT IS HEREBY ORDERED** that **JUDGMENT IS ENTERED** in favor of Defendant, Jo Anne Barnhart, Commissioner of the Social Security Administration, and against Plaintiff, Michelle Woodson.

BY THE COURT:

John R. Padova, J.