

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

BARBARA PRATT, :
Plaintiff :

v.

NO. 02-CV-1021

JOANNE B. BARNHART, Commissioner of :
Social Security Administration, :
Defendant

ORDER

AND NOW, this 28th day of February, 2003, upon
consideration of Plaintiff's Motion for Summary Judgment (Docket
#8), the Defendant's Motion for Summary Judgment (Docket #9) and
the Plaintiff's Reply, as well as the Magistrate Judge's Report
and Recommendation and the Plaintiff's objections thereto, and
having reviewed the record, it is hereby Ordered and Decreed that
the Report and Recommendation is Approved, the Defendant's Motion
for Summary Judgment is Granted, and the Plaintiff's Motion for
Summary Judgment is Denied.

After the parties filed their motions for summary
judgement, the Court referred the case to Magistrate Judge Linda
K. Caracappa for a Report and Recommendation (R & R). On

December 30, 2002, the Magistrate Judge issued an R & R that the Administrative Law Judge's findings were supported by substantial evidence and recommended that summary judgment be entered in favor of the Commissioner. The plaintiff has objected to the Magistrate Judge's R & R.

The Court adopts the procedural and factual history from the R & R and reviews the Social Security Commissioner's findings to determine if they are supported by substantial evidence. Schaudeck v. Comm'r of Soc. Sec. Admin., 181 F.3d 429, 431 (3d Cir. 1999).

In her objections to the Magistrate Judge's R & R, the plaintiff first argues that the ALJ's finding that Ms. Pratt has no severe musculoskeletal impairment is not supported by substantial evidence, and that this finding was made in violation of applicable legal principles.

The Court disagrees on both counts. The ALJ used a legal test that is even more favorable to the plaintiff than required by Third Circuit law. The ALJ stated: "Step 2 of the process requires a determination of whether the claimant has at least one severe impairment. To be severe, an impairment must have at least a minimal effect on the claimant's physical or mental ability to perform basic work activities.'" See Santise v.

Schweiker, 676 F.2d 925, 927 (3d Cir. 1981) ("Second, the ALJ determines ... whether the claimed impairment is 'severe,' that is, of a magnitude sufficient to limit significantly the individual's 'physical or mental ability to do basic work activities'; if it is not, the claim is denied.").

There was substantial evidence to support the ALJ's conclusion that Ms. Pratt does not have a severe musculoskeletal impairment. This evidence is adequately set out in the ALJ's decision and in the R & R.

The plaintiff's second objection is that the ALJ failed to adequately consider Ms. Pratt's obesity. She argues that the ALJ failed to recognize that obesity, alone, can be the basis for a finding of disability, and to consider her obesity in connection with her arthritis.

The Magistrate Judge correctly stated that SSR 00-3p provides the framework for evaluating obesity. It provides: "as with any other medical condition, we will find that obesity is a 'severe' impairment when, alone or in combination with another medically determinable physical or mental impairment(s), if it significantly limits an individual's physical or mental ability to do basic work activities.'"

The plaintiff is correct that the ALJ never described

the part of the framework that considers obesity alone. He did, however, consider the limitations **of** obesity in analyzing the plaintiff's ability to do **jobs** requiring sedentary work. The Court concludes that the ALJ properly considered obesity both alone and in connection with another impairment. As to a consideration of obesity with arthritis, the ALJ had first found that the plaintiff's arthritis was not a current, ongoing problem. It was proper, therefore, not to consider obesity with arthritis.

The plaintiff's third objection is that the ALJ erred by rejecting treating physician opinion without stating adequate reasons. The ALJ adequately stated his reasons for rejecting certain opinions of the treating physician. He found that the conclusions of the physician were not well-supported by clinical evidence and, taken together with other evidence in the record, were not persuasive. R. 16-17.

The plaintiff's fourth objection is that the ALJ erred by relying on vocational testimony inconsistent with Social Security Administration policy. The Court agrees with the **analysis** of the Magistrate Judge on this issue. See R & R at 13.

The plaintiff's fifth objection is that the ALJ erred by rejecting claimant testimony without stating adequate reasons.

The ALJ stated several reasons why he rejected the claimant's testimony of disabling pain. See R. 12-13; R & R at 12-13. The ALJ's conclusion is supported by the record.

BY THE COURT:


MARY A. MCLAUGHLIN J.