

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

LOUIS DESANCTIS,
Plaintiff,

v.

JO ANNE BARNHART,
Commissioner of Social Security,
Defendant.

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CIVIL ACTION

NO. 04-1092

MEMORANDUM & ORDER

YOHN, J.

January ____, 2005

Plaintiff Louis DeSanctis appeals the final decision of the Commissioner of Social Security (“the Commissioner”) denying his claim for disability benefits under Title II of the Social Security Act, 42 U.S.C. §§ 401–44. DeSanctis and the Commissioner filed cross motions for summary judgment. I referred these motions to Magistrate Judge Linda K. Caracappa. The magistrate judge has submitted a report and recommendation that I grant the Commissioner’s motion for summary judgment, and deny DeSanctis’s motion. (Mag. Judge’s Report and Recommendation (“Mag. Judge’s Rec.”) at 1.) DeSanctis has filed objections to the report. For the reason set forth below, I will adopt the magistrate judge’s report and recommendation and grant the Commissioner’s motion for summary judgment.

I. BACKGROUND

DeSanctis is a sixty-six year-old former high school teacher. (Ct. Tr. Index at 92, 100.) He has a college degree and he attended graduate school. (*Id.* at 111.) DeSanctis stopped

working on September 27, 1994 due to a hearing disorder. (*Id.* at 105.)

In November 1996, DeSanctis filed an application for disability benefits. (*Id.* at 91–95.) The Commissioner denied the application, and DeSanctis failed to pursue it any further. (*Id.* at 76–78.) DeSanctis filed a second application for disability benefits on September 2, 1999. (*Id.* at 104–13.) After the Commissioner denied the application, DeSanctis requested a hearing before an Administrative Law Judge (“ALJ”). A hearing was held on September 26, 2000.

At the hearing, the parties submitted medical reports from various doctors who examined DeSanctis. I will describe these reports below.

In 1993, Dr. Robert Sataloff diagnosed DeSanctis with Meniere’s Disease,¹ a condition of the inner ear that causes hearing loss, tinnitus,² or ringing in the ear, and vertigo, a form of dizziness. (Ct. Tr. Index at 195.) On March 21, 1996, Dr. Douglas Bigelow examined DeSanctis and observed that “[h]is symptoms have seemed to settle down some, in that he is not having as a much fluctuation of his hearing and has not had much problems with balance recently.” (*Id.* at 240.) Later that year, Dr. Bigelow reported that DeSanctis “has been quite stable with only occasional fullness in the left ear” and “had no further episodes of dizziness.” (*Id.* at 238.)

On November 1, 1999, Dr. Marc Surkin examined DeSanctis at the request of the Pennsylvania Bureau of Disability Determination. Dr. Surkin concluded that DeSanctis had “no usable hearing in his left ear and only [a] fair level of hearing in his right ear, although he is a

¹*Stedman’s Concise Medical Dictionary* defines Meniere’s Disease as “an affection characterized clinically by vertigo, nausea, vomiting, tinnitus, and progressive hearing loss due to hydrops of the endolymphatic duct.” 606 (4th ed., 2001).

²*Steadman’s* defines tinnitus as “a sensation of noises (ringing, whistling, booming) in the ears.” 992.

candidate for amplification in the right ear.” (*Id.* at 272.) The next year, on April 5, 2000, DeSanctis’s family physician, Dr. Thomas DeBerardinis, reported that DeSanctis “is simply unable to adequately discern words, especially in a busy work setting.” (*Id.* at 254.)

Dr. Thomas Wilcox Jr., DeSanctis’s treating otolaryngologist,³ also submitted various reports. On August 26, 1999, Dr. Wilcox reported that DeSanctis denied experiencing vertigo, but had “some fluctuations in his hearing levels.” (*Id.* at 258.) He concluded that DeSanctis suffered from allergic rhinitis, an inflammation of the nasal membrane,⁴ and chronic sinusitis, an inflammation of the sinuses.⁵ (*Id.*) Nearly a year later, on July 18, 2000, Dr. Wilcox offered the following prognosis:

Mr. DeSanctis[’s] . . . Meniere’s disease . . . will certainly limit his ability to work, particularly as a teacher. The auditory disturbances including hearing loss and tinnitus will make it extremely difficult to maintain active communication with students. It is extremely difficult for one with Mr. DeSanctis’ hearing levels to discriminate in situations with some background noise including open classrooms. Additionally, Mr. DeSanctis’ imbalance will make it difficult to ambulate in a class room setting. . . . With regard to other occupations, Mr. DeSanctis’ hearing loss would limit his ability to function in any environment with background noise. Additionally, he would need sedentary work as his balance would not allow him to function in any role requiring ambulation or driving.
(Ct. Tr. Index at 278.)

DeSanctis submitted one medical report in connection with a lower back condition.⁶ On

³Otolaryngology is the “branch of medicine that deals with the ear, nose, and throat and their disorders.” *Webster’s Third New International Dictionary* 1599 (1981).

⁴*Steadman’s* defines rhinitis as an “inflammation of the nasal mucous membrane.” 861.

⁵*Steadman’s* defines sinusitis as an “inflammation of the lining membrane of any sinus, especially of one of the paranasal sinuses.” 908.

⁶DeSanctis also submitted evidence of a wrist condition. (Ct. Tr. Index at 276–77.)

July 28, 1988, Dr. Todd Siegal reported that a CT scan revealed that DeSanctis had a herniated disc in his lower back. (*Id.* at 275.) DeSanctis failed to submit any further evidence in connection with this condition.

DeSanctis also testified at the hearing. DeSanctis stated that he has minimal hearing in his left ear and suffers from constant tinnitus, pressure in his forehead and eyes, and problems with balance and vertigo. (*Id.* at 37, 46–49.) He explained that this causes nausea and makes it difficult to walk or use the telephone. (*Id.* at 40, 48.) Nonetheless, he acknowledged that he continues to perform daily activities such as driving, shopping, and caring for his wife, who is in a wheelchair.⁷ Additionally, he testified that he occasionally vacations at “the shore.” (*Id.* at 34–36.) When prompted by the ALJ, DeSanctis indicated that he could work at a job that did not require him to communicate with others. (Ct. Tr. Index at 41–42.) However, DeSanctis questioned whether such a job would be “commensurate . . . with [his] level of education,” and he asserted that it would be unfair for him “to go back to do . . . menial work again.” (*Id.* at 42.)

DeSanctis also testified about his back condition. He explained that he had suffered from lower back problems for twenty years due to his involvement in several traffic accidents. (*Id.* at 43.) He asserted that these problems affected his “ability to stand for a long period of time” and lift heavy objects.⁸ (*Id.* at 43, 45.) He also claimed that this condition “on occasion, took [him] to the hospital.” (*Id.* at 43.) Finally, DeSanctis explained that he used to see a chiropractor on a

⁷In a “Personal Pain Questionnaire” dated September 18, 1999, DeSanctis stated that he continues to “do the shopping, the vacuuming,” and “cut the grass and exercise.” (Tr. Ct. Index. at 120.)

⁸DeSanctis testified that he could lift twenty pounds, but not fifty pounds. (Ct. Tr. Index at 48.)

regular basis, but no longer receives treatment because his insurance no longer pays for these visits. (*Id.* at 44–45.)

A vocational expert also testified at the hearing. The ALJ asked the expert whether a hypothetical individual of DeSanctis’s age, education, and work experience, who could only communicate through “direct close-contact verbal communication or written instruction,” could perform any unskilled “heavy, very heavy, or medium exertional level occupations.” (Ct. Tr. Index at 60–61.) The expert replied that such an individual could work as a “machine operator” or a “packer,”^{9, 10} and he asserted that a significant number of these jobs exist in the regional and national economies. (*Id.* at 62.)

On December 16, 2000, the ALJ issued his decision denying DeSanctis’s application. The ALJ determined that DeSanctis has “an underlying medically determinable auditory impairment,” but he concluded that DeSanctis “retains the residual functional capacity to perform the functional demands of all levels of exertional work.” (*Id.* at 23, 25.) In reaching his decision, the ALJ discounted Dr. Wilcox’s opinion that DeSanctis could only perform sedentary work due to his problems with balance. The ALJ explained that he gave Dr. Wilcox’s opinion “only limited weight” because (1) “Dr. Wilcox provided no objective clinical, diagnostic, or laboratory findings;” (2) the opinion was inconsistent with Dr. Wilcox’s previous observation that

⁹The expert acknowledged that these positions could pose a limited hazard to an individual such as DeSanctis because they involve moving machinery. Nonetheless, the expert asserted that an individual with hearing problems could work at these jobs safely because they could be isolated from the machinery. (Ct. Tr. Index at 62.)

¹⁰The expert also testified that such an individual could possibly work as a tutor. (*Id.* at 63.) DeSanctis responded that he could not perform such work because he has difficulty engaging in “two-way communication.” (*Id.* at 64.)

DeSanctis “denies episodes of vertigo;” (3) the opinion was inconsistent with Dr. DeBerardinis’s opinion that DeSanctis’s “limitations are primarily related to word discrimination;” (4) the opinion was inconsistent with reports that indicate that DeSanctis only requires routine outpatient care; (5) the opinion was inconsistent with DeSanctis’s “self-reported activities of daily living;” and (6) because Dr. Wilcox is not “a vocational expert qualified to opine on occupational issues.” (*Id.* at 25.)

The ALJ also addressed DeSanctis’s back condition. He observed that DeSanctis “failed to indicate . . . specific instances, problems, difficulties, or functional limitations related to . . . a lumbar disorder.” (Ct. Tr. Index at 21.) Additionally, he recognized that DeSanctis has not received treatment for his back since 1994 and the only documentation of this condition was the CT scan from 1988. (*Id.*) The judge concluded there was “insufficient credible evidence . . . to corroborate . . . any finding of significant functional limitations related to” DeSanctis’s lower back.¹¹ (*Id.*)

On January 18, 2002, the Social Security Appeals Council denied DeSanctis’s request to review the ALJ’s decision and the Commissioner adopted this decision as her final decision. (*Id.* at 4.)

II. STANDARDS OF REVIEW

I review *de novo* the parts of the magistrate judge’s report to which DeSanctis objects. 28 U.S.C. § 636(b)(1)(C). I may accept, reject, or modify, in whole or in part, the magistrate’s

¹¹The ALJ also rejected DeSanctis’s claim for his wrist. (Ct. Tr. Index at 21–22.) The magistrate recommended that the court uphold this determination, and DeSanctis failed to object. (Mag. Judge’s Rec. at 15–16.) Consequently, I will not consider this part of the ALJ’s decision.

findings or recommendations. *Id.*

In contrast, a district court may not review the Commissioner's decision *de novo*. The court may only review the Commissioner's final decision to determine "whether the decision is supported by substantial evidence." *Hartranft v. Apfel*, 181 F.3d 358, 360 (3d Cir. 1999) (citing 42 U.S.C. § 405(g)). "[S]ubstantial evidence is more than a mere scintilla." *Universal Camera Corp. v. NLRB*, 240 U.S. 474, 477 (1951). It "does not mean a large or considerable amount of evidence, but rather 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Pierce v. Underwood*, 487 U.S. 522, 565 (1988) (citation omitted.) In making this determination, the court must "'consider[] the evidentiary record as a whole, not just the evidence that is consistent with the agency's finding.'" *Monsour Medical Ctr. v. Heckler*, 806 F.2d 1185, 1190 (3d Cir. 1986) (citations omitted). The substantial evidence test is "deferential." *Id.* at 1191. Consequently, the court "will not set the Commissioner's decision aside if it is supported by substantial evidence, even if [it] would have decided the factual inquiry differently." *Hartranft*, 181 F.3d at 360.

III. DISCUSSION

To qualify for social security disability benefits, a claimant, "must demonstrate that there is some 'medically determinable basis for an impairment that prevents him from engaging in any 'substantial gainful activity' for a statutory twelve-month period.'" *Stunkard v. Sec'y of Health and Human Services*, 841 F.2d 57, 59 (3d Cir. 1988) (citations omitted). When evaluating a claim for disability benefits, the Commissioner applies the following five-step sequential analysis. 20 C.F.R. § 404.1520; *Sykes v. Apfel*, 228 F.3d 259, 262–63 (3d Cir. 2000). The

Commissioner considers: (1) whether the claimant worked during the alleged period of disability; (2) whether the claimant has a “severe medically determinable . . . impairment;” (3) whether the “impairment” meets the requirements of a listed impairment; (4) whether the claimant can continue to perform “past relevant work”; and (5) whether the claimant can perform “other work” in the national economy. 20 C.F.R. § 404.1520. The claimant bears the burden of proving steps one through four.¹² If the claimant satisfies these steps, the burden shifts to the Commissioner to show that the claimant is capable of performing “other work.” *Sykes*, 228 F.3d at 265.

Here, DeSanctis has filed two objections to the magistrate judge’s recommendation. First, he contends that the magistrate judge mistakenly upheld the ALJ’s decision to accord Dr. Wilcox’s opinion “limited weight.” (Pl.’s Objections to the Mag. Judge’s Report and Recommendation (“Objections”) at 1.) He argues that the ALJ’s reasoning is not supported by substantial evidence. (*Id.*) Additionally, DeSanctis asserts that the magistrate judge mistakenly concluded that his lower back condition was not “severe” within the meaning of 20 C.F.R. § 404.1520 because the magistrate judge never addressed DeSanctis’s reasons for failing to obtain treatment for this condition. (*Id.* at 5.) I will consider these objections separately.

A. Whether the ALJ’s reasons for giving Dr. Wilcox’s opinion “limited weight” are supported by substantial evidence?

Courts must give a treating physician’s opinion controlling weight when the opinion is “well-supported” by accepted medical techniques and consistent with “other substantial evidence

¹²Technically, neither party bears the burden of proving step three “[b]ecause step three involves a conclusive presumption based on listings” *Sykes v. Apfel*, 228 F.3d 259, 263 n.2.

on the record.”¹³ 28 C.F.R. § 416.927(d)(2). An ALJ may only “reject ‘a treating physician’s opinion outright on the basis of contradictory medical evidence’ and not due to his or her own credibility judgments, speculation, or lay opinion.” *Morales v. Apfel*, 225 F.3d 310, 317 (3d Cir. 2000). Nonetheless, an ALJ need not defer to a treating physician’s opinion about the ultimate issue of disability because such determinations are reserved for the Commissioner. 20 C.F.R. § 416.927(e); S.S.R. 96-5p, 61; *see also Beltran v. Barnhart*, 2002 U.S. Dist. LEXIS 23605, at *13–*14 (E.D. Pa. 2002) (“A treating physician’s opinion that a patient is disabled, or unable to work . . . is entitled to little or no weight because such determinations are reserved for the Commissioner and not the health care provider.”)

DeSanctis claims that the ALJ mistakenly discounted Dr. Wilcox’s July 2000 opinion. He contends that the ALJ “rejected” Dr. Wilcox’s opinion without any contrary medical evidence.¹⁴ (Objections at 1.) In his opinion, Dr. Wilcox asserted that DeSanctis could only perform sedentary work due to his problems with balance. (Ct. Tr. Index at 278.) “Sedentary work” is a job classification used by the Commissioner to make disability determinations. *See* 20 C.F.R. § 404.1567(a) (“To determine the physical exertion requirements of work in the national economy, we classify jobs as *sedentary*, light, medium, heavy, and very heavy.”) (emphasis added). Hence, this determination is reserved for the Commissioner and the ALJ was not

¹³The social security regulations explain that “[g]enerally, we give more weight to opinions from . . . treating sources, since these sources are likely to be medical professional most able to provide a detailed, longitudinal picture of . . . medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports of individuals examinations, such as consultative examinations or brief hospitalizations.” 20 C.F.R. § 404.1527(d)(2).

¹⁴The ALJ did not “outright” “reject” Wilcox’s opinion. Instead, the judge accorded the opinion “only limited weight” due to a host of concerns. (Ct. Tr. Index at 25.)

required to defer to Wilcox's opinion. *See* 20 C.F.R. § 416.927(e).

Nonetheless, there is substantial medical evidence that conflicts with Dr. Wilcox's prognosis. In March 1996, Dr. Bigelow reported that DeSanctis "has not had much problems with balance recently." (Ct. Tr. Index at 240.) Later that year, Dr. Bigelow observed that DeSanctis "had no further episodes of dizziness." (*Id.* at 238.) In August 1999, Dr. Wilcox himself reported that DeSanctis denied experiencing vertigo. (*Id.* at 258.) In fact, none of the other physicians who examined DeSanctis indicated that he suffered from balance problems that would require him to remain sedentary. Moreover, while it is possible that DeSanctis's condition had substantially worsened by the time he saw Dr. Wilcox in July 2000, DeSanctis seeks retroactive benefits from September 1994,¹⁵ and the weight of the evidence suggests that DeSanctis was not "disabled" during this period.

DeSanctis also asserts that substantial evidence does not support the ALJ's reasons for giving Dr. Wilcox's opinion "limited weight." (Objections at 1.) The ALJ found that DeSanctis's testimony was inconsistent with Dr. Wilcox's opinion. (Ct. Tr. Index at 25.) DeSanctis disagrees and observes that he testified that he has trouble walking because his condition causes him to lose his balance. (*Id.* at 48.) The ALJ concluded that DeSanctis's testimony was not "fully creditable" because of "inconsistencies in the record."¹⁶ (*Id.* at 25.) I

¹⁵DeSanctis's disability report asserts that he became unable to work because of his condition on September 27, 1994, the same day that he left his teaching job. (Ct. Tr. Index at 105.)

¹⁶"[T]he ALJ is empowered to evaluate the credibility of witnesses," so long as the ALJ provides some reason for discrediting testimony. *Van Horn v. Schweiker*, 717 F.2d 871, 873 (3d Cir. 1983).

agree. DeSanctis testified that he continues to drive, shop, and care for his wife. (*Id.* at 34–36.) Additionally, in 1999, DeSanctis stated that he regularly vacuums, cuts the grass, and exercises. (*Id.* at 120.) It was reasonable to question DeSanctis’s testimony that he has trouble walking when he regularly shops, exercises, and performs housework.

DeSanctis also argues that the ALJ confused the terms “vertigo” and “vestibular deficit.” (Objections at 3.) The ALJ found that Dr. Wilcox’s opinion was inconsistent with his earlier observation that DeSanctis denied episodes of vertigo. (Ct. Tr. Index at 5.) DeSanctis observes that Dr. Wilcox concluded that a “vestibular deficit,” and not vertigo, caused DeSanctis’s problems with balance. (*Id.* at 278.) A “vestibular deficit” is a deficit of the vestibule,¹⁷ which is a central cavity in the ear. Dr. Wilcox uses this term to describe the condition caused by DeSanctis’s Meniere’s Disease. (*Id.*) Vertigo merely refers to a general feeling of dizziness. Hence, these are not two separate conditions, as DeSanctis suggests. Instead, vertigo, which may cause imbalance, is a symptom of a “vestibular deficit.”¹⁸ Thus, the ALJ correctly found that Dr. Wilcox’s opinion that DeSanctis suffers from imbalance conflicts with his earlier report that DeSanctis denied episodes of vertigo.

Additionally, DeSanctis criticizes the ALJ’s finding that Dr. DeBerardinis’s opinion is inconsistent with Dr. Wilcox’s opinion. (Objections at 3–4.) Dr. DeBerardinis’s opinion says

¹⁷*Stedman’s* defines vestibular as “relating to a vestibule, especially a vestibule of the ear.” 1053 (4th ed., 2001). The vestibule of the ear is the “central, somewhat ovoid, cavity of the osseous labyrinth communicating with the semicircular canals posteriorly and the cochlea anteriorly.” *Id.* at 1054.

¹⁸According to *Stedman’s*, Meniere’s Disease is “characterized clinically by vertigo.” 606.

nothing about DeSanctis's difficulties with balance. Instead, he focused on DeSanctis's "progressive hearing loss." (Ct. Tr. Index at 254.) Thus, while nothing in Dr. DeBerardinis's opinion actually contradicts Dr. Wilcox's diagnosis, nothing in the opinion supports Dr. Wilcox's opinion either. In sum, there was sufficient evidence for the ALJ to discount Dr. Wilcox's opinion that DeSanctis may only perform sedentary work.

B. Whether substantial evidence supports the ALJ's determination that DeSanctis's lower back condition is not a "severe impairment"?

DeSanctis argues that the ALJ mistakenly rejected his disability application for his back condition because the ALJ never addressed DeSanctis's reasons for failing to obtain treatment. (Objections at 5.) The ALJ concluded that DeSanctis's lower back was not a "severe impairment"¹⁹ because the only documentation of the condition was from 1988 and because DeSanctis last sought treatment for his back in 1994. (Ct. Tr. Index at 21.) DeSanctis testified that he stopped seeing a chiropractor because his insurance coverage lapsed when he left his job. (*Id.* at 44–45.) Although this may explain why DeSanctis no longer receives treatment, there remains no medical evidence that suggests that DeSanctis's condition is "severe." Moreover, if DeSanctis's back condition has forced him to seek treatment at a hospital as he claims, there would be records of his stay, and DeSanctis has failed to introduce any evidence of these alleged hospital visits. Additionally, DeSanctis's own testimony that he cares for his wife, shops, cuts grass, and exercises suggests that his back is not a "severe impairment."

¹⁹An impairment is "severe" if it "significantly limits" an individual's "ability to do basic work activities," such as "walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling." 20 C.F.R. § 404.1521.

DeSanctis also contends that the date of the report diagnosing his back condition is irrelevant. While this may be true, DeSanctis continued to work as a teacher²⁰ for six years after Dr. Siegal filed the report indicating that DeSanctis suffers from a herniated disc. (*Id.* at 275.) DeSanctis has failed to adduce any additional evidence that shows that this condition has worsened, or would prevent him from working. Hence, DeSanctis has failed to come forward with any valid reason why the ALJ's determination should be overturned.

IV. CONCLUSION

For the above reasons, I will overrule both of DeSanctis's objections to the magistrate judge's report and recommendation. The ALJ's decision is supported by substantial evidence, and consequently, I will grant the Commissioner's motion for summary judgment. An appropriate order follows.

²⁰In 1996, DeSanctis indicated that his teaching job required him to stand four hours per day and walk two hours per day. (Ct. Tr. Index at 101.)

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LOUIS DESANCTIS,
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JO ANNE BARNHART,
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Defendant.

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CIVIL ACTION

NO. 04-1092

ORDER

And now this ___ day of January 2005, upon consideration of the parties' cross-motions for summary judgment, and after careful review of the Report and Recommendation of the United States Magistrate Judge and the plaintiff's objections thereto, it is hereby ORDERED that:

1. Plaintiff's objections are OVERRULED.
2. The Report and Recommendation is APPROVED and ADOPTED.
3. The motion of plaintiff Louis DeSanctis for summary judgment is DENIED
4. The motion of defendant Jo Anne B. Barnhart, Commissioner of Social Security, for summary judgment is GRANTED.
5. Judgment is entered affirming the decision of the Commissioner.

William H. Yohn, Jr., J.

