

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

WILLIAM L. SHIRK	:	CIVIL ACTION
	:	
v.	:	NO. 04-1133
	:	
JO ANNE B. BARNHART,	:	
Commissioner of Social Security	:	

MEMORANDUM AND ORDER

AND NOW, this 14th day of March, 2005, upon consideration of the cross-motions for summary judgment filed by the parties (Doc. Nos. 8 and 9), the court makes the following findings and conclusions:

1. On April 3, 2002, William L. Shirk (“Shirk”) applied for supplemental security income benefits (“SSI”) under Title XVI of the Social Security Act, 42 U.S.C. §§ 1381-1383f, alleging an onset date of January 17, 2002. (Tr. 65-66). Throughout the administrative process, including an administrative hearing held on April 9, 2004, before an administrative law judge (“ALJ”), Shirk’s claims were denied. (Tr. 4-6, 14-21, 24-27, 176-199). Pursuant to 42 U.S.C. § 405(g), Shirk filed his complaint on June 30, 2004.

2. In her decision, the ALJ concluded that Shirk had severe impairments consisting of degenerative disc disease of the lumbar spine, lumbar spondylosis, and right shoulder impingement. (Tr. 16 ¶ 2, 17 ¶ 1). The ALJ further found that Shirk’s impairments, singly or in combination, did not meet or medically equal any listed impairments, and that he retained the ability to engage in a limited range of sedentary work. (Tr. 17 ¶ 2, 18 ¶ 4).

3. The Court has plenary review of legal issues, but reviews the ALJ’s factual findings to determine whether they are supported by substantial evidence. Schaudeck v. Comm’r of Soc. Sec., 181 F.3d 429, 431 (3d Cir. 1999) (citing 42 U.S.C. § 405(g)). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Id. at 401 (quoting Consol. Edison Co. v. NLRB, 305 U.S. 197, 229 (1938)); see also Dobrowolsky v. Califano, 606 F.2d 403, 406 (3d Cir. 1979). It is more than a mere scintilla but may be less than a preponderance. See Brown v. Bowen, 854 F.2d 1211, 1213 (3d Cir. 1988). If the conclusion of the ALJ is supported by substantial evidence, this court may not set aside the Commissioner’s decision even if it would have decided the factual inquiry differently. Hartranft v. Apfel, 181 F.3d 358, 360 (3d Cir. 1999); see 42 U.S.C. § 405(g).

4. Shirk raises two arguments in which he alleges that the determinations by the ALJ were either not supported by substantial evidence or were legally erroneous. Both contentions are meritless and for the reasons stated below, I find that the ALJ’s decision is legally sufficient and supported by substantial evidence.

A. First, Shirk argues that the ALJ did not consider whether his impairments in combination met or equaled a listed impairment. Shirk’s assertion is incorrect. The

ALJ acknowledged her obligation to consider the combined effects of Shirk's impairments under 20 C.F.R. § 416.921 and specifically found that his impairments, considered singly or in combination, did not meet or medically equal a listing. (Tr. 15 ¶ 4, 17 ¶ 2). Directly after making this finding, the ALJ further found that "[t]here is no indication that the claimant's physical *impairments* are associated with sufficient findings to meet any relevant section of Listings 1.00 (Musculoskeletal System) or 11.00 (Neurological)." (Tr. 17 ¶ 2) (emphasis added). Moreover, Shirk does not attempt to show that his combined impairments do meet or equal any listed impairment. The ALJ's decision reveals that she properly considered Shirk's impairments in combination. As a result, Shirk's argument fails.

B. Second, Shirk argues that the ALJ should not have discounted his subjective complaints of pain solely because they were not substantiated by objective medical evidence and should not have discounted his credibility because of his ability to perform certain daily living activities. Both of these arguments are meritless as the ALJ based her credibility determination on several factors as directed by 20 C.F.R. § 416.929(c). The ALJ's decision clearly reveals that she considered the objective medical evidence, Shirk's level of treatment, and his ability to perform daily activities, before discounting his credibility regarding his subjective complaints of pain. (Tr. 15 ¶ 4-17 ¶ 2); see Hartranft, 181 F.3d at 362. Specifically, the ALJ reviewed and noted medical evidence consisting of X-rays, MRI's, doctors' reports, and the state agency physician's report which were not consistent with the degree of limitation and pain alleged by Shirk. (Tr. 16 ¶ 2-17 ¶ 2, 91-96, 125, 132-33, 135-36, 142, 146-147, 148-149, 152, 155-156, 159-161, 163-165, 168-169, 172, 173). The ALJ also noted that Shirk's condition was improving and controlled by small dosages of medication. (Tr. 16 ¶ 2-17 ¶ 1, 163-165, 167-169, 173). The ALJ further discussed that Shirk's ability to perform certain daily activities was consistent with the ability to perform sedentary work. (Tr. 16 ¶ 2-17 ¶ 2, 183-184, 193). As is readily apparent, the ALJ did not discount Shirk's credibility simply because his subjective complaints of pain were not substantiated by medical evidence nor did the ALJ rely only on Shirk's ability to perform daily living activities. Instead, the ALJ considered in conjunction all of the factors discussed above and properly used them to make her credibility determination. As a result, Shirk's arguments to the contrary fail.

Upon careful and independent consideration, the record reveals that the Commissioner applied the correct legal standards and that the record as a whole contains substantial evidence to support the ALJ's findings of fact and conclusions of law. Therefore, it is hereby **ORDERED** that:

5. The motion for summary judgment filed by William L. Shirk is **DENIED**;

6. The motion for summary judgment filed by the Commissioner is **GRANTED**

and **JUDGMENT IS ENTERED IN FAVOR OF THE COMMISSIONER AND AGAINST**

WILLIAM L. SHIRK; and

7. The Clerk of Court is hereby directed to mark this case as **CLOSED**.

LOWELL A. REED, JR., S.J.