

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

DARRYL WASHINGTON,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	
JO ANNE B. BARNHART, Commissioner	:	NO. 04-CV-1137
of the Social Security Administration,	:	
	:	
Defendant.	:	

MEMORANDUM

Baylson, J.

March 25, 2005

Plaintiff, Darryl Washington, seeks judicial review of the decision of the Commissioner of the Social Security Administration denying his claim for disability benefits under Title II of the Social Security Act, 42 U.S.C. §§ 401-433. Presently before this Court are the parties' cross-motions for summary judgment.

I. Background and Procedural History

Plaintiff was born on July 18, 1962 (R. at 53). He has previous employment experience as a truck driver, roofer and dishwasher (R. at 79, 280). Plaintiff has not worked since December 20, 2000 (R. at 78), on which date Plaintiff injured his right knee after slipping on ice and falling (R. at 140). Plaintiff underwent three operations on his right knee, on March 14, 2001 (R. at 123-24), February 27, 2002 (R. at 166-67) and June 27, 2003 (R. at 225-26). Plaintiff was also voluntarily hospitalized for ten days following a "suicide gesture" in January 2003 (R. at 177). Plaintiff also received outpatient psychiatric treatment, once in September 2002 (R. at 145) and

twice in November 2002 (R. at 249).

Plaintiff filed an application for Disability Insurance Benefits (“DIB”) on August 12, 2002, claiming disability as of December 20, 2000 (R. at 53). Following an initial denial by the Social Security Administration, Plaintiff timely requested a hearing before an Administrative Law Judge (“ALJ”) (R. at 47). A hearing was held before an ALJ on August 21, 2003 (R. at 255-85), and on August 27, 2003 the ALJ issued a decision denying Plaintiff’s application (R. at 11-21). On January 14, 2004, the Appeals Council denied Plaintiff’s request for review, making the Commissioner’s decision to deny benefits final (R. at 5). Plaintiff subsequently sought judicial review of the Commissioner’s decision in this Court, and filed a motion for summary judgment on July 28, 2004. Defendant filed a cross-motion for summary judgment on August 20, 2004.

II. Contentions of the Parties

A. Did the ALJ Disregard Medical Evidence in Determining that Plaintiff Did Not Meet §1.02 of the Listing of Impairments

In his Motion for Summary Judgment, Plaintiff contends that the ALJ improperly disregarded evidence in determining that Plaintiff’s knee impairment did not meet the requirements of Listing 1.02A.¹ Specifically, Plaintiff argues that the ALJ disregarded evidence in making the determination that Plaintiff can ambulate effectively under Listing 1.02A. Plaintiff

¹ Listing 1.02A reads as follows:

Major dysfunction of a joint(s) (due to any cause): Characterized by gross anatomical deformity of hip or knee(e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b.

asserts that the ALJ failed to properly account for the period of time following Plaintiff's first surgery, during which time Plaintiff claims that he was reliant on a walker, crutches and two canes for ambulation (Pl's Br. at 8). Defendant responds that the medical records do not support this claim, and that the records contain no evidence that such assistance was needed (Def's Br. at 16-17).

Plaintiff further contends that the ALJ focused too narrowly on the use of crutches in assessing the criteria for ambulation.² Plaintiff asserts that the ALJ's determination that he could ambulate effectively was based solely on the conclusion that the Plaintiff is not now dependent on crutches for ambulation. Plaintiff argues that the regulations do not define effective ambulation as merely ambulation without crutches, and therefore the ALJ improperly disregarded other factors that would support the conclusion that Plaintiff cannot effectively ambulate. In this regard, Plaintiff does not point to specific portions of the record that would support such a

² Effective ambulation is defined as follows in 20 C.F.R. 404, Subp. P, App. 1, § 1.00B2b:

(1) Definition. Inability to ambulate effectively means an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities. . .

(2) To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. They must have the ability to travel without companion assistance to and from a place of employment or school. Therefore, examples of ineffective ambulation include, but are not limited to, the inability to walk without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail. The ability to walk independently about one's home without the use of assistive devices does not, in and of itself, constitute effective ambulation.

conclusion, and Defendant likewise responds that there is no additional evidence in the record that would support a conclusion that Plaintiff cannot ambulate effectively (See Pl's Br. at 17-18).

Finally, Plaintiff asserts that the ALJ's determination that Plaintiff would not need crutches in the future, following his third knee operation in June 2003, was irrelevant to the adjudication period that was actually before the ALJ (Pl's Br. at 8). Defendant responds that the period following the third (and final) surgery was relevant to the extent that an impairment must have lasted, or be expected to last, for a period of twelve months in order to qualify for disability benefits (Def's Br. at 16; see also 20 C.F.R. § 404.1509 ("How long the impairment must last")). Defendant suggests that the twelve-month requirement extends the relevant period of time to be assessed by the ALJ.

B. Did the ALJ Improperly Discount the Opinions of Plaintiff's Treating Physicians?

1. Orthopedic Surgeon

Plaintiff asserts that the ALJ improperly rejected his treating physicians' opinions without adequate explanation. Specifically, Plaintiff argues that the ALJ should have done more than give "limited weight" to the following opinions of Plaintiff's orthopedic surgeon, Dr. Vincent DiStefano: 1) Plaintiff was impaired in lifting, carrying, standing and walking; 2) Plaintiff could only sit for six hours per day; and 3) Plaintiff could never climb, stoop, balance, kneel, crouch or crawl (R. at 218-20). This opinion was provided by Dr. DiStefano in the weeks following Plaintiff's third and last knee operation. The close proximity to the surgery date, coupled with the fact that the operation was "intended to further improve functioning in the claimant's right knee," provided the basis for the ALJ giving limited weight to Dr. DiStefano's opinion (R. at 19). Plaintiff argues that because the procedure was the third undergone by Plaintiff, the ALJ should

not have relied on the probability of its success (Pl's Br. at 12-13). Plaintiff further contends that the ALJ erred by not further contacting Dr. DiStefano for clarification of the nature of his opinion and his prognosis for recovery (Pl's Br. at 14).

Defendant asserts that a treating doctor's opinions do not bind the Commissioner on issues reserved to the Commissioner, such as the decision of whether a plaintiff can work (Def's Br. at 18). Defendant further argues that Dr. DiStefano's notes were limited to Plaintiff's immediate post-surgical condition, and thus it was appropriate for the ALJ to take a limited view of Dr. DiStefano's opinion. Defendant cites Dr. Distefano's notes from July 21, 2003 (written three days prior to the opinion quoted above), which remark that "it would take six weeks for [Plaintiff's] bone union to occur (Def's Br. at 19). Defendant also contends that it was unnecessary for the ALJ to recontact Dr. DiStefano because the ALJ did not find Dr. DiStefano's assessment to be unclear or ambiguous (Pl's Br. at 19-20). Should there have been additional relevant information that Dr. DiStefano might have provided, Defendant argues that the burden was on Plaintiff to bring that information to the ALJ's attention.

2. Psychiatrist

Plaintiff also claims that the ALJ improperly rejected the opinion of Plaintiff's treating psychiatrist, Dr. James D. Nelson. Specifically, Plaintiff argues that the ALJ erroneously discounted Dr. Nelson's August 2003 opinion that Plaintiff had poor or no ability to interact with supervisors, deal with work stresses, relate to co-workers, or maintain attention or concentration (R. at 251). Plaintiff asserts that the ALJ substituted his own lay opinion based upon Dr. Nelson's earlier records that noted Plaintiff "showing significant improvement as of March 2003" (ALJ Rep., R. at 18). Plaintiff also claims that the ALJ was incorrect in concluding that

Dr. Nelson's opinion was inconsistent with that of Dr. Miller, who in December 2002 opined that Plaintiff possessed "good" to "fair" abilities to adjust to, and carry out, job responsibilities (R. at 171-76).

Defendant asserts that the ALJ did not "reject" Dr. Nelson's assessment, but rather gave it limited weight. Defendant further argues that the ALJ had sufficient basis to give limited weight to Dr. Nelson's assessment, to the extent that the ALJ found Dr. Nelson's opinion to be inconsistent his own earlier treatment notes. Defendant also notes that after Plaintiff's hospitalization in January 2003, he was discharged with a Global Assessment of Functioning ("GAF") score of 55, indicative of only "moderate" functional limitations (R. 179; see ALJ Rep., R. at 18). Defendant contends that the hospitalization record, coupled with other psychiatric evaluations—including the earlier report of Dr. Nelson—provide ample evidence from which to discount Dr. Nelson's August 2003 assessment.

C. Was the ALJ's Hypothetical Question to the Vocational Expert Sufficient?

Plaintiff contends that the ALJ's first hypothetical question (R. at 281) to the vocational expert ("VE") was legally insufficient because it failed to incorporate all of the Plaintiff's physical and mental functional limitations (Pl's Br. at 19). Consequently, argues Plaintiff, the VE's response did not constitute substantial evidence upon which the ALJ could rely in making the determination that there were a significant number of other jobs that Plaintiff could perform despite his impairments. Plaintiff does not identify the physical and mental limitations that the ALJ failed to include in the hypothetical to the VE, nor does Plaintiff cite any portion of the record to support this contention.

Defendant argues that the hypothetical question posed to the VE was sufficient, in that it

encompassed all of Plaintiff's limitations (Def's Br. at 24-25). Specifically, Defendant argues that the phrase "simple routine tasks" (R. at 281), contained in the hypothetical question, encompassed all of Plaintiff's deficiencies in concentration, persistence or pace. Additionally, Defendant emphasizes that the "Functional Capacity Assessment" of Dr. Rightmyer, who determined on March 10, 2003 that Plaintiff retained mental residual functional capacities "for simple routine tasks" (R. at 183), buttressed the substantial evidence that formed the basis of the ALJ's first hypothetical question posed to the VE.

D. Did the ALJ Improperly Discount Plaintiff's Credibility?

Plaintiff asserts that the reasons provided by the ALJ for discounting his credibility (R. at 17-18) were inadequate. The ALJ found Plaintiff's subjective complaints "exaggerated and only partially credible" (R. at 17). For example, the ALJ did not find Plaintiff credible when he asserted that he has had to sit with his leg elevated every day since his first surgery (in March 2001). Plaintiff asserts that he never made such a claim, but rather that he had merely been instructed to elevate his leg ever since his first surgery. This assertion appears to be at odds with the transcript of the hearing before the ALJ (See R. at 261). Plaintiff also contends that the ALJ had no reason to doubt Plaintiff's claims of insomnia, and that these claims were supported in the record by Dr. Miller's note conveying Plaintiff's complaint that he was "sleeping poorly" (R. at 172). Finally, Plaintiff argues that the ALJ failed to consider the proper factors for assessing credibility, as articulated by the Third Circuit.

Defendant contends that the ALJ's credibility assessment was based upon substantial evidence. Chiefly, Defendant asserts that the ALJ identified inconsistencies between Plaintiff's representations and the facts in the record. Defendant argues that these inconsistencies constitute

substantial evidence on which the ALJ properly relied in discounting Plaintiff's credibility.

III. Legal Standard

The standard of review of an ALJ's decision is plenary for all legal issues. Schaudeck v. Comm'r of Soc. Sec. Admin., 181 F.3d 429, 421 (3d Cir. 1999). The scope of the review of determinations of fact, however, is limited to determining whether or not substantial evidence exists in the record to support the Commissioner's decision. Id. As such, "[t]his Court is bound by the ALJ's finding of fact if they are supported by substantial evidence on the record." Plummer v. Apfel, 186 F.3d 422, 427 (3d Cir. 1999). Where "an agency's fact finding is supported by substantial evidence, reviewing courts lack power to reverse ... those findings." Monsour Med. Ctr. v. Heckler, 806 F.2d 1185, 1191 (3d Cir. 1986). "Substantial evidence 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." Hartranft v. Apfel, 181 F.3d 358, 360 (3d Cir. 1999).

IV. Discussion

To determine whether an individual is disabled, the regulations proscribe a five-step analysis:

1. If the claimant currently is engaged in substantial gainful employment, he will be found "not disabled."
2. If the claimant does not suffer from a "severe impairment," he will be found "not disabled."
3. If the severe impairment meets or equals a listed impairment in 20 C.F.R. Part 404, Subpart P, Appendix 1 and has lasted or is expected to last for a continuous period of at least twelve months, the claimant will be found "disabled."
4. If the claimant can still perform work he has done in the past ("past relevant work") despite the severe impairment, he will be found "not disabled."

5. Finally, the Commissioner will consider the claimant's ability to perform work ("residual functional capacity"), age, education, and past work experience to determine whether or not he is capable of performing other work which exists in the national economy. If he is incapable, a finding of disability will be entered. On the other hand, if the claimant can perform other work, he will be found not to be disabled.

20 C.F.R. § 404.1520 (b) - (f) (2000).

In reviewing the evidence, the ALJ made the following findings in concluding that Plaintiff was not disabled (R. at 20-21):

1. Plaintiff had not been working for the statutory period of time.
2. Plaintiff suffers from severe knee impairment and severe depressive disorder, but Plaintiff's impairments do not meet or equal a listed impairment in Appendix 1.
3. Plaintiff's mental impairments cause "mild" limitations in activities of daily life and "moderate" limitations in concentration, but do not meet the criteria for "Affective Disorders" under the section "C" of Listing 12.04.
4. Plaintiff's testimony was not credible because it exaggerated the extent to which his impairments limit his physical and mental capabilities.
5. Plaintiff retains the residual functional capacity to perform certain sedentary work, but Plaintiff's functioning capacity prevents him from performing past relevant work.
6. Plaintiff's residual functioning capacity, though not allowing him to perform the full range of sedentary work activity, do not prevent him from performing a significant number of jobs in the regional and national economies, and therefore, Plaintiff is not disabled.

In reviewing the ALJ's decision de novo, the Court holds that the ALJ's findings were based on substantial evidence. As such, the Plaintiff's motion for summary judgment will be denied and the Defendant's motion for summary judgment will be granted.

A. The ALJ's Determination that Plaintiff Did Not Meet § 1.02 of the Listing of Impairments was Proper and Supported by Substantial Evidence

Plaintiff contends that he met the requirements of Listing 1.02 of the Social Security Regulations for major dysfunction of a joint, and is therefore disabled. Specifically, Plaintiff argues that the ALJ ignored medical evidence in making the determination that Plaintiff could “ambulate effectively” as defined in § 1.00B2b (see supra, note 2). However, Plaintiff fails to point to specific evidence, or portions of the record, that the ALJ did not consider. Instead, Plaintiff insists that the ALJ improperly relied upon the use of crutches as the sole criterion in making the determination as to whether Plaintiff could ambulate effectively for the purpose of Listing 1.02. The Court disagrees. Although the ALJ noted that Plaintiff is not expected to be dependent on crutches for ambulation, this observation was made in response to Plaintiff's contention that his reliance on crutches met the ineffective ambulation standard of § 1.02A. Moreover, the ALJ's conclusion that the evidence does not establish the inability to “ambulate effectively” came after a lengthy evaluation of the medical evidence and Plaintiff's medical history. See ALJ Decision, R. at 15-17. The Court concludes that there was substantial evidence—including but not limited to evidence that Plaintiff would not be dependent on crutches—on which to base the ALJ's finding that Plaintiff did not suffer from an impairment under Listing 1.02.

Plaintiff further argues that the ALJ should not have considered Plaintiff's ability to ambulate in the future, and that the ALJ improperly ignored the period of time following Plaintiff's initial fall, after which he was dependent upon crutches and/or a cane (Def's Br. at 8). Section 404.1509 of the regulations require that an “impairment must have lasted or be expected to last for a continuous period of at least 12 months.” The Court finds no evidence that the ALJ

ignored Plaintiff's condition at the time immediately following his fall on December 23, 2000. Moreover, Plaintiff can point to no evidence that, during this time, there was a continuous period of twelve (12) months during which Plaintiff was dependent upon crutches and/or a cane. Finally, the regulation is clearly forward looking, requiring that "the impairment must have lasted *or be expected to last . . .* at least 12 months" (emphasis added). Plaintiff's final surgical procedure took place in June 2003 and the hearing before the ALJ occurred on August 17, 2003. In determining the length of Plaintiff's impairment, it was entirely appropriate for the ALJ to consider the period of time following the hearing and conclude that Plaintiff would not be impaired for a continuous period of twelve months.

B. The ALJ Accorded Proper Weight to the Opinions of Plaintiff's Treating Physicians

Plaintiff argues that the ALJ discounted the opinions of Plaintiff's orthopedic surgeon, Dr. DiStefano, and Plaintiff's psychiatrist, Dr. Nelson, without providing a proper explanation for doing so (Pl's Br. at 18-24). The Court disagrees.

It is well established that an ALJ must explain his reasons for discounting evidence that is contrary to his conclusions. See, e.g., Fagnoli v. Massanari, 247 F.3d 34, 43 (3d Cir. 2001); Cotter v. Harris, 642 F.2d 700, 706 (3d Cir. 1981) (explaining "there is a particularly acute need for some explanation by the ALJ when s/he has rejected relevant evidence or when there is conflicting probative evidence in the record"). The Third Circuit has recognized that it is the ALJ's obligation "to provide an adequate basis so that the reviewing court can determine whether the administrative decision is based on substantial evidence." Cotter, 642 F.2d at 706. Without such an explanation, the court is "handicapped," as it is "impossible to determine whether the ALJ's [conclusion] is supported by substantial evidence." Fagnoli, 247 F.3d at 40.

An ALJ “may properly accept some parts of the medical evidence and reject other parts, but she must consider all the evidence and give some reason for discounting the evidence she rejects.” Adorno v. Shalala, 40 F.3d 43, 48 (3d Cir. 1994). In assessing medical evidence, an ALJ may reject any physician’s opinion that is either contrary to other medical evidence of record, see Frankenfield v. Bowen, 861 F.2d 405, 408 (3d Cir. 1988), or insufficiently supported by clinical data. See Newhouse v. Heckler, 753 F.2d 283, 286 (3d Cir. 1985). In general, an ALJ may accord limited weight to a medical opinion that is inconsistent with other medical evidence. See 20 C.F.R. § 404.1527(d)(4).

1. Dr. DiStefano

Plaintiff contends that the ALJ improperly gave “limited weight” to Dr. DiStefano’s evaluation of Plaintiff’s condition immediately following his third and final knee operation in June 2003 (see supra, p. 4). However, the Court finds that the ALJ did not dismiss Dr. DiStefano’s opinion, nor did the ALJ substitute his own opinion for that of Dr. DiStefano. Rather, the ALJ accorded limited weight to that opinion because it came in the weeks immediately following Plaintiff’s third knee operation. As the ALJ explained:

The surgery was clearly intended to further improve functioning in the claimant’s right knee, and no evidence has been submitted that would indicate that the operation has not or will not achieve that purpose. Therefore Dr. DiStefano’s assessment is not consistent with the evidence as a whole, and I assign it limited weight.

(R. at 19) Among the other evidence considered by the ALJ was Dr. DiStefano’s own statement in 2001 that Plaintiff was “fit for sedentary work.” (R. at 18; R. at 139). Because it was reasonable to assume that Plaintiff’s condition would improve following surgery, and because the Dr. DiStefano’s post-operative notes regarding Plaintiff’s condition were not consistent with other medical evidence in the record, the Court finds that the ALJ was correct to assign limited

weight to this opinion.

Plaintiff further contends that the ALJ should have recontacted Dr. DiStefano upon finding his opinions inconsistent with other evidence. The Court disagrees. Although the Third Circuit has not explicitly addressed the standard governing when an ALJ is obligated to recontact a treating physician, the applicable regulation is clear. Under § 404.1512(e)(1) (“Recontacting medical sources”), the ALJ is only required to further develop the record when “the evidence we receive from your treating physician is *inadequate* for us to determine whether you are disabled” (emphasis added). Here, the ALJ was not required to recontact Dr. DiStefano because the record was adequate to determine that the Plaintiff was not disabled, and the ALJ did not need further information or clarification from Dr. DiStefano. See Thomas v. Barnhart, 278 F.3d 947, 958 (“[T]he requirement for additional information is triggered only when the evidence from the treating medical source is inadequate to make a determination as to the claimant’s disability.”).

2. Dr. Nelson

Plaintiff also contends that the ALJ improperly “rejected” the August 18, 2003 opinion of Plaintiff’s treating psychiatrist, Dr. Nelson, that Plaintiff had minimal ability to cope with the rigors of the work environment (see supra, p. 5; R. at 251). The Court first notes that the ALJ did not reject Dr. Nelson’s opinion of August 18, 2003, but rather assigned it “limited weight” (R. at 18). Moreover, the Court finds that the ALJ was faced with conflicting evidence with respect to Plaintiff’s mental functions, and the ALJ adequately evaluated and weighed the evidence. As noted by the ALJ, the August 18, 2003 assessment of Dr. Nelson was inconsistent with his March 2003 opinion that Plaintiff had shown significant improvement. The state disability determination review psychologist, Dr. Rightmyer, concluded that Plaintiff’s mental health problems would only result in “mild” restrictions in activities of daily living and “moderate”

difficulties in maintaining concentration, persistence or pace (R. at 18, 181-83). The ALJ also noted that following hospitalization in January 2003, Plaintiff was discharged with a GAF score of 55, indicative of only “moderate” functional limitations (R. 179). The ALJ adequately explained his reasons for giving limited weight to Dr. Nelson’s August 18, 2003 assessment and substantial evidence supports the ALJ’s decision to accord limited weight to that opinion. Therefore, this Court will not re-weigh the evidence or disturb that decision. See Monsour Med. Ctr. v. Heckler, 806 F.2d at 1190-91.

C. The ALJ’s Hypothetical Question to the Vocational Expert Was Sufficient

Plaintiff contends that the ALJ’s first hypothetical to the vocational expert (“VE”) was insufficient because it did not encompass all of Plaintiff’s physical and mental functional limitations (Pl’s Br. at 19).³ Plaintiff asserts that characterizing him as being limited to sedentary work with “just simple routine tasks” fails to incorporate all of the functional limitations identified by Dr. DiStefano and Dr. Burns. However, Plaintiff fails to identify with specificity what functional limitations are not incorporated in the ALJ’s hypothetical, nor does Plaintiff point to any part of the record where such limitations are so identified. Moreover, because of conflicting evidence (discussed supra), the ALJ made the determination that the opinions of Dr. DiStefano and Dr. Burns were to be accorded limited weight. Although the ALJ is obligated to

³ The ALJ’s first hypothetical was as follows:

Ms. Scutt [the VE], if you had a hypothetical individual who was limited to sedentary exertional work, who would have Mr. Washington’s age of 41, high school education, and past work experience that you just described. In addition, the hypothetical individual could never climb ladders, ropes, or scaffolds, or balance or kneel. And could only occasionally climb stairs and crouch and crawl. In addition, the hypothetical individual would be limited to performing just simple routine tasks. Would there be unskilled, sedentary occupations that would be possible for the hypothetical individual, in your opinion?

(R. at 281).

accurately portray all of a claimant's credibly established limitations, limitations "that are medically supported but are also contradicted by other evidence in the record may or may not be found credible. . . ." Rutherford v. Barnhart, 399 F.3d 546, 554 (3d Cir. 2005). Here, the ALJ's hypothetical relating to the performance of simple routine tasks encompassed Plaintiff's functional limitations identified by Dr. Rightmyer (see R. at 181) with respect to "sustained concentration and persistence." Furthermore, Plaintiff mischaracterizes the ALJ's hypothetical by failing to note the numerous physical functional limitations incorporated into the question (see supra, note 3).

In posing the first hypothetical question to the VE, the ALJ used language that incorporated all of the Plaintiff's credibly established limitations. Because there was conflicting evidence regarding the scope of Plaintiff's limitations, the ALJ properly weighed the evidence and incorporated his findings into an appropriate hypothetical question. Because the ALJ properly evaluated each of Plaintiff's alleged impairments, the hypothetical posed to the VE was not deficient and the VE's answer to the question can be considered substantial evidence.

D. Substantial Evidence Supports the ALJ Determination of Plaintiff's Credibility

It is the ALJ's responsibility to resolve conflicts in the evidence and to determine credibility and the relative weights to be given to the evidence. Plummer v. Apfel, 186 F.3d 422, 429 (3d Cir. 1999); Mason v. Shalala, 99 F.2d 1058, 1066 (3d Cir. 1993). The ALJ's conclusions must be accepted unless they are without basis in the record. Torres v. Harris, 494 F. Supp. 297, 301 (E.D. Pa. 1980). Hence, where credibility is at stake, courts should be reluctant to overturn an ALJ's determination, especially given that only the ALJ had the opportunity to hear live testimony. See Wilson v. Apfel, No. 98-6511, 1999 U.S. Dist. LEXIS 16712, at *9 (E.D. Pa. Oct. 29, 1999) ("In Social Security cases in general, the credibility determinations of

the ALJ are to be given great deference.”). The ALJ's credibility determinations are entitled to great deference, where as here, the ALJ has adequately explained his reasons for his determination. Brunhammer v. Barnhart, 2004 U.S. Dist. LEXIS 7685, *27 (D. Del. 2004) (internal citations omitted). Ultimately, the ALJ’s “determination or decision must contain specific reasons for the finding on credibility, supported by the evidence in the case record, and must be sufficiently specific to make clear to the individual and to any subsequent reviewers the weight the adjudicator gave to the individual’s statements and the reasons for that weight.” Schwartz v. Halter, 134 F. Supp. 2d 640, 654 (E.D. Pa. 2001) (quoting Social Security Ruling 96-7p; Schaudeck v. Commissioner of Social Security Administration, 181 F. 3d 429, 433 (3d Cir. 1999)).

In this case, the ALJ determined that the Plaintiff’s subjective complaints were “exaggerated and only partially credible” (R. at 17). Specifically, the ALJ found no support in the medical record for Plaintiff’s assertion that he has had to sit with his right leg elevated ever since his first knee operation on March 14, 2001. Plaintiff denies this characterization of his testimony and insists that he was merely instructed to elevate his leg following the surgery. However, the transcript of the hearing supports the ALJ’s description of Plaintiff’s testimony:

- Q: Do you always have to sit with you leg elevated?
- A: Yes, sir.
- Q: You always do?
- A: If you noticed on the back of my cast, it’s very soft from the –
- Q: And how long have you had to sit that way?
- A: Well, since my first surgery, I’ve been sitting like that.

(Transcript of Hearing, R. at 261). The ALJ also noted that Plaintiff exhibited a “marked hypersensitivity to touch” when examined by Dr. Frederick for a second opinion following a work-related injury (R. at 148-151) in September 2002. However, no such hypersensitivity was

evident when Plaintiff was examined multiple times by his treating physicians. Lastly, the ALJ noted the inconsistency between Plaintiff's testimony and his mental health records. Whereas Plaintiff testified that he suffers from insomnia and has difficulties using his hands, "no such complaints or impairments are documented in the medical record" (R. at 17).

There is no evidence to contradict the ALJ's credibility finding with regard to Plaintiff's physical and mental limitations. Therefore, this Court finds no error in the ALJ's credibility determination, as it was based on substantial evidence and is supported by the record.

V. Conclusion

For the foregoing reasons, this Court concludes that the decision of the ALJ is properly supported by substantial evidence. Accordingly, the Commissioner's Motion for Summary Judgment will be granted and Plaintiff's Motion for Summary Judgment will be denied.

An appropriate Order follows.

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

DARRYL WASHINGTON,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	
JO ANNE B. BARNHART, Commissioner	:	NO. 04-CV-1137
of the Social Security Administration,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 25th day of March, 2005, after careful and independent consideration of the parties' cross-motions for summary judgment, and review of the record, it is hereby

ORDERED that:

1. The Commissioner's Motion for Summary Judgment (Doc. No. 10) is GRANTED;
2. The Plaintiff's Motion for Summary Judgment (Doc. No. 9) is DENIED; and
3. The decision of the Commissioner is AFFIRMED.
4. The Clerk is directed to enter judgment in favor of Defendant and against Plaintiff and mark this case as closed.

IT IS SO ORDERED.

BY THE COURT:

/s/ Michael M. Baylson
MICHAEL M. BAYLSON, U.S.D.J.