

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

MANUELA R. SOTO	:	CIVIL ACTION
	:	
v.	:	NO. 04-1588
	:	
JO ANNE B. BARNHART,	:	
Commissioner of Social Security	:	

MEMORANDUM AND ORDER

AND NOW, this 6th day of June, 2005, upon consideration of the cross-motions for summary judgment filed by the parties (Doc. Nos. 9 and 10), the court makes the following findings and conclusions:

1. On March 31, 2003, Manuela R. Soto (“Soto”) applied for Supplemental Security Income benefits (“SSI”) under Title XVI of the Social Security Act, 42 U.S.C. §§ 1381-1383f. (Tr. 64-67). Throughout the administrative process, including an administrative hearing held on November 6, 2003, before an administrative law judge (“ALJ”), Soto’s claims were denied. (Tr. 3-6, 16-24, 25-51, 52). Pursuant to 42 U.S.C. § 405(g), Soto filed her complaint in this court on May 6, 2004.

2. In her decision, the ALJ concluded that Soto had a severe impairment consisting of generalized arthritis and a depression impairment which she found non-severe due to a lack of supporting evidence. (Tr. 17 ¶¶ 5-6). The ALJ concluded that Soto was not disabled and retained the residual functional capacity (“RFC”) to perform medium level work which is limited to simple, repetitive tasks. (Tr. 21 ¶ 1, 22 ¶ 6, 23 Findings 6, 11, 13).

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. Soto raises three arguments in which she alleges that the determinations by the ALJ were either not supported by substantial evidence or were legally erroneous. These arguments are addressed below. However, upon due consideration of all of the arguments and evidence, I find that the ALJ’s decision is legally sufficient and supported by substantial evidence.

A. First, Soto contends that the ALJ should have given the opinions and conclusions of various doctors more weight. After reviewing the record, it is evident that the weight given to the opinions of the doctors was reasonable and supported by substantial evidence. For example, Dr. Munilla's one page form concluding that Soto was temporarily disabled due to osteoporosis and depression is not supported by objective evidence and is conclusory.¹ (Tr. 20 ¶ 7, 93). Moreover, Dr. Munilla's conclusions were inconsistent with the other record evidence. (Tr. 20 ¶ 7, 93, 94-96). A treating physician is not entitled to controlling weight when his or her opinion is conclusory and inconsistent with the other medical evidence. Jones v. Sullivan, 954 F.2d 125, 129 (3d Cir. 1991); S.S.R. 96-2p; 20 C.F.R. § 416.927(d)(2). Although Soto also claims that the ALJ gave improper weight to Dr. Sholevar's psychological opinion, as noted by the ALJ, no opinions or reports from Dr. Sholevar appear in the record. (Tr. 17 ¶ 6, 38). Soto further claims that the ALJ did not properly credit the state agency doctors Buschaizzo and Perch. Dr. Buschaizzo's disability examination report is supportive of the ALJ's findings and, in fact, the ALJ properly cites this report in her opinion to bolster her conclusions. (Tr. 20 ¶ 1, 94-97). Similarly, Dr. Perch, in his psychiatric review technique form, concludes that Soto's mental impairment is not severe, thus, supporting the ALJ's conclusion. (Tr. 98). Finally, although Soto does not argue that the ALJ failed to properly weigh Dr. Farber's report, I find that the ALJ gave the report proper weight for the reasons listed by the ALJ in her decision. (Tr. 19 ¶ 4, 20 ¶ 6, 120-122).

B. Second, Soto claims that the ALJ improperly discounted her credibility and failed to properly consider her subjective complaints of pain. "Credibility determinations are the province of the ALJ and only should be disturbed on review if not supported by substantial evidence." Pysher v. Apfel, No. 00-1309, 2001 WL 793305, at *3 (E.D. Pa. July 11, 2001)(citing Van Horn v. Schweiker, 717 F.2d 871, 973 (3d Cir. 1983)). Moreover, such determinations are entitled to deference. S.H. v. State-Operated Sch. Dist. of the City of Newark, 336 F.3d 260, 271 (3d Cir. 2003). Likewise, the ALJ is required 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, 181 F.3d at 362 (citing 20 C.F.R. § 404.1529(c)). In this case, the ALJ reasonably discounted Soto's credibility² and complaints of pain based upon the medical evidence and lack thereof, and her conservative treatment. (Tr. 19 ¶ 2 - 20 ¶ 2, 28-30, 36, 94-97). The ALJ's credibility determinations are supported by substantial evidence.³

C. Finally, Soto argues that her testimony and the evidence show that she is not capable of performing medium level work. On the contrary, the ALJ's determination that Soto can perform medium level work is supported by substantial evidence. (Tr. 19 ¶ 2 - 20 ¶ 1, 28-30, 36, 94-

¹ I note that even if Dr. Munilla's opinion was fully credited, it would not support the finding of a disability since he found Soto was only temporarily disabled for less than twelve months. 42 U.S.C. § 1382c(a)(3)(A).

² Regarding Soto's credibility argument, it is unimportant whether the ALJ believed Soto was unable to communicate in English as such a limitation would not affect the job examples listed by the VE. (Tr. 21 ¶ 6, 22 ¶ 5, 50).

³ Soto's contention that the ALJ must not have considered the proposed testimony of certain witnesses because it is not mentioned in the ALJ's decision, is unfounded. (Tr. 45). The ALJ is not required to discuss or make reference to every piece of relevant evidence included in the record. Fagnoli v. Halter, 247 F.3d 34, 42 (3d Cir. 2001).

97, 112-119). Moreover, as discussed above, the ALJ reasonably discounted Soto's testimony and the unsupported medical records based thereon.

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 Manuela R. Soto 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 MANUELA R. SOTO**; and

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

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