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

ROGER DOERFLER	:	CIVIL ACTION
	:	
	:	
v.	:	NO: 04-3488
	:	
JO ANNE B. BARNHART, Commissioner of Social Security	:	

MEMORANDUM AND ORDER

AND NOW, this 7th day of June, 2005, upon consideration of the cross-motions for summary judgment (Doc. Nos. 6, 7, and 8) the Court makes the following findings and conclusions:

A. On June 18, 2002, Roger Doerfler, ("Doerfler") protectively filed his application for supplemental security income ("SSI") under Title XVI of the Act, 42 U.S.C. §§ 1381-1383f. (Tr. 70, 120-126). Throughout the administrative process, including a September 10, 2003, hearing before an administrative law judge ("ALJ"), Doerfler's claims were denied. (Tr. 13-30, 31-67, 70-71, 95-98). The Appeals Council denied Doerfler's request for review on May 25, 2004. (Tr. 5-8). Pursuant to 42 U.S.C. § 405(g), Doerfler sought review in this Court.

B. The ALJ found several of Doerfler's impairments to be severe, but found that none of Doerfler's impairments were severe enough to meet or medically equal any of the listed impairments. (Tr. 14-15 ¶ 7, 15 ¶ 8, 28-29 Finding Nos. 2, 3); 20 C.F.R. Part 404 Subpart P, Appendix 1. The ALJ further concluded that Doerfler was able perform his past relevant work and other work existing in the economy, was not disabled, and has the residual functional capacity ("RFC") to perform a significant range of sedentary and light work. (Tr. 13 ¶ 3, 26 ¶ 44, 27 ¶ 48, 27-28 ¶ 50, 28 ¶¶ 52-53, 29-30 Finding Nos. 8, 10, 11, 12).

C. 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 has been defined as "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 ALJ's conclusion 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).

D. Doerfler raises three arguments that the ALJ's determination was erroneous. However, this Court finds that there is no legal error in the ALJ's decision and that there is substantial evidence in the record to support the conclusions of the ALJ.

1. Doerfler asserts that ALJ failed to properly evaluate the medical evidence of record. Specifically, Doerfler argues that if his treating physician, Craig Wynne, M.D. were credited, the ALJ would have determined that Doerfler was disabled. Doerfler claims that the ALJ erred in rejecting Dr. Wynne's corroborated[1] assessment of Doerfler's exertional limitations. Doerfler further argues that Dr. Wynne's opinion regarding Doerfler's non-exertional impairment is well-supported and consistent with the record and that the ALJ erred in rejecting Dr. Wynne's opinion by unnecessarily requiring objective documentation and by substituting his lay opinion for the opinion of Dr. Wynne.

Generally, more weight is given to treating sources if their opinions are well-supported by medically acceptable sources and not inconsistent with other substantial evidence in the record. 20 C.F.R. § 404.1527(d)(2); see also SSR 96-8p, 1996 WL 374184, at * 7. Throughout his decision, the ALJ offered the following reasons for limiting the weight afforded to Dr. Wynne's medical assessment and for rejecting his findings regarding Doerfler's exertional and non-exertional limitations: (1) inconsistency with the clear weight of the record (Tr. 24 ¶ 37); (2) the objective evidence does not support the degree of exertional limitations assessed (Tr. 24 ¶ 37, 25 ¶ 39); (3) the objective evidence does not support the conclusion that claimant's symptoms would preclude him from work (Tr. 25 ¶ 39), and because (4) Dr. Wynne assessed psychological limitations despite that he is neither licensed as a psychiatrist or psychologist. (Tr. 26 ¶ 42). Upon reviewing the record as it appeared before the ALJ, it seems that the ALJ properly reduced the weight afforded to Dr. Wynne for the reasons he listed in his decision. Matthews v. Apfel, 239 F.3d 589, 592-593 (3d Cir. 2001). It is clear that the ALJ properly afforded Dr. Wynne's assessment little weight because it is conclusory and unsupported by the medical evidence. Jones v. Sullivan, 954 F.2d 125, 129 (3d Cir. 1991). Furthermore, it was proper for the ALJ to reject Dr. Wynne's assessment of Doerfler's exertional and non-exertional limitations for the reasons listed above.

2. Secondly, Doerfler argues that the ALJ's finding that Doerfler could perform his past relevant work is not supported by substantial evidence. (Tr. 3 ¶ 13, 26 ¶ 44, 27 ¶¶ 47-48, 29-30 Finding Nos. 7, 8, 9). The ALJ found that Doefler could perform two of his prior jobs as a salesperson in a photo studio and as a salesperson of shoes. (Tr. 27 ¶ 44, 29 Finding No. 7).

[1] Contrary to Doerfler's assertion, the ALJ properly discounted Dr. Richard Roseman's opinion. (Tr. 23 ¶ 33). The ALJ is entitled to dismiss medical opinions based entirely on the claimant's subjective complaints where the complaints are properly discounted. Morris v. Barnhart, 78 Fed Appx. 820, 825 (3d Cir. 2003); see infra, paragraph No. 3, page 3 (explaining why Doerfler's subjective complaints are properly discounted). Furthermore, the ALJ has no obligation to discuss or make reference to every piece of relevant evidence included in the record. Fargnoli v. Halter, 247 F.3d 34, 42 (3d Cir. 2001).

Doerfler argues that the mental[2] and physical[3] demands of his past work were not adequately considered by the ALJ. However, even if Doerfler could prove that he is incapable of performing any of his past relevant work, the ALJ properly completed a step five analysis and found Doerfler capable of transferring skills acquired during his past relevant work to other substantial gainful employment that exists in the national economy. (Tr. 3 ¶ 3, 27 ¶ 48, 28 ¶ 51, 29-30 Finding No. 9, 30 Finding No. 11).

Doerfler takes issue with the ALJ's step five analysis as well. He claims that although the ALJ properly found that Doerfler's skills were highly transferable, the ALJ failed to consider that for individuals who are of advanced age, there must be very little vocational adjustment required. 20 C.F.R. Part 404 Subpart P, Appendix 2 § 201.00(f). However, the ALJ's proper reliance on the VE's testimony, who he specifically found to be credible, suggests consideration of, even if not articulated in the ALJ's decision, the extent of vocational adjustment necessary. (Tr. 26-27 ¶ 44, 55-67); 20 C.F.R. § 416.966(e); Podedworny v. Harris, 745 F.2d 210, 218 (3d Cir. 1984)).

3. Finally, Doerfler, asserts that the ALJ failed to properly evaluate Doerfler's subjective complaints of pain.[4] However, the ALJ assessed Doerfler's subjective complaints of pain and sufficiently explained his rationale when he stated that "the severity of [Doerfler's] limitations are not credible to the extent those statements allege a level of disabling symptoms which exceed what the objective evidence and clinical findings could reasonably be expected to produce." (Tr. 18 ¶ 18). The ALJ has made no error. Not only do courts "ordinarily defer to an

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[2] Doerfler contends that the ALJ erred in formulating the hypothetical posed to the vocational expert ("VE") to the extent that it fails to incorporate the findings of Jennifer C. Hitt, Ph.D., whose findings were afforded substantial weight by the ALJ. (Tr. 20 ¶ 24-25). Dr. Hitt found that Doerfler had a fair ability to: (1) deal with the public, (2) deal with work stresses, (3) maintain attention and concentration, (4) understand, remember and carry out complex instructions, and (5) behave in an emotionally stable manner. (Tr. 323-324). Although the ALJ's discussion with the VE does not mention each of the above issues individually, it sufficiently covers the issues supported by the record because the ALJ's questions and the VE's answers implicitly include Doerfler's limited mental abilities. (Tr. 55-67). Because the ALJ's questions follow the spirit of the law and properly take into account Doerfler's mental limitations, the VE's response to the ALJ's hypothetical can be considered substantial evidence. Chrupcala v. Heckler, 829 F.2d 1269, 1276 (3d Cir. 1987) (hypotheticals posed by the ALJ to the VE must reflect all of the claimant's impairments that are supported by the record; otherwise the question is deficient and the VE's response cannot be considered substantial evidence).

[3] Although Doerfler argues that his past relevant work cannot be performed because both Drs. Wynne and Roseman opined that he could not bend (Tr. 329, 386), the ALJ properly rejected the opinions of both of those physicians. (Tr. 24-25 ¶ 37-39, 26 ¶ 42).

[4] Doerfler complains that the ALJ erred in failing to explain whether Doerfler's testimony about the side effects of his medication was credited or simply ignored in light of Third Circuit law. Stewart v. Secretary of HEW, 714 F.2d 287, 290 (3d Cir. 1983). Since it was expressly considered (Tr. 17 ¶ 16 (3)), it is clear that the ALJ chose not to credit the testimony.

ALJ's credibility determination because he or she has the opportunity at a hearing to assess the witness's demeanor," but here, the ALJ specifically lists the specific criteria under which he evaluated Doerfler's subjective complaints pursuant to 20 C.F.R. § 416.929 and the credibility finding must stand. (Tr. 17 ¶ 16 (1)-(7)); Reefer v. Barnhart, 326 F.3d 376, 380 (3d Cir. 2003).

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

ORDERED that:

1. The motion for summary judgment by the claimant is **DENIED**;

2. The motion for summary judgment by the defendant is **GRANTED** and **JUDGMENT IS ENTERED IN FAVOR OF THE COMMISSIONER AND AGAINST ROGER DOERFLER;** and

3. The Clerk of Court is hereby directed to mark this case closed.

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