

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

SHELZIA JEAN WOODS	:	CIVIL ACTION
	:	
v.	:	NO. 05-0042
	:	
JO ANNE B. BARNHART,	:	
Commissioner of Social Security	:	

MEMORANDUM AND ORDER

AND NOW, 8th day of August, 2005, upon consideration of the cross-motions for summary judgment filed by the parties (Doc. Nos. 10 and 11), and the plaintiff’s reply brief thereto (Doc. No. 12), the court makes the following findings and conclusions:

1. On October 3, 2002, Shelbia Jean Woods (“Woods”) applied for supplemental security income (“SSI”) benefits, under Title XVI of the Social Security Act, 42 U.S.C. §§ 1381-1383f, alleging an onset date of February 1, 2002. (Tr. 85). Throughout the administrative process, including an administrative hearing (Tr. 26-55) held on June 29, 2004, before an administrative law judge (“ALJ”), Woods’ claim was denied. (Tr. 5-7, 12-22, 58-61). Pursuant to 42 U.S.C. § 405(g), Woods filed her complaint in this court on January 7, 2005.

2. In his decision, the ALJ concluded that Woods had severe impairments consisting of fatigue related to coronary artery disease and shortness of breath. (Tr. 21, Finding 2). The ALJ further found that Woods’ impairments did not meet or medically equal any listed impairments, that she was unable to perform any of her past relevant work, but that she retained the residual functional capacity (“RFC”) to perform a significant range of light work. (Tr. 21, Findings 2, 6, 10).

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.” Richardson v. Perales, 402 U.S. 389, 401 (1971) (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, 13 (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. Woods raises four arguments in which she alleges that the determinations of the ALJ were either not supported by substantial evidence or were legally erroneous. These arguments are addressed below. However, upon due consideration of all arguments and evidence, I find that the ALJ's decision is legally sufficient and supported by substantial evidence.

A. First, Woods alleges that the ALJ erred by failing to consider the effects of her obesity throughout the disability assessment. She correctly points out that various recordings of her height and weight in the record show that she falls within the obese range during the relevant period at issue. (Tr. 98, 126, 134, 141, 151, 169, 255). As a result, Woods argues that Social Security Ruling ("SSR") 02-01p imposes a duty on the ALJ to explicitly discuss obesity at various steps of the disability analysis, and that his failure to do so requires a remand. I find this argument unpersuasive. While the law of this circuit has recognized that references to height and weight in medical records may be sufficient to alert the ALJ that obesity could be a factor, the ALJ's failure to explicitly discuss obesity, when not raised by the plaintiff, is not a sufficient reason for remand if it would not affect the outcome of the case. Rutherford v. Barnhart, 399 F.3d 546, 553 (3d Cir. 2005). Woods never raised obesity as an impairment or limitation before the ALJ, nor did Woods specify or discuss how her obesity further impairs her ability to work either in her application (Tr. 99), during her consultative examination (Tr. 207-208), or at her hearing (Tr. 34-45).¹ Further, the ALJ adopted the limitations and findings of examining physician Dr. Wolk, who was aware of Woods' height and weight, but did not diagnose obesity as an impairment or mention obesity as contributing to any impairment. (Tr. 209-211).² Thus, even though the ALJ did not explicitly consider Woods' obesity, I find that the ALJ's adoption of Dr. Wolk's conclusions constitutes a satisfactory consideration of the impairment. Rutherford, 399 F.3d at 553 (concluding that, where the administrative record clearly shows the ALJ relied on medical evidence as the basis for his findings, the adoption of reviewing physicians' conclusions constitutes a satisfactory if indirect consideration of obesity).

B. Second, Woods alleges that the ALJ erred when he failed to arrange for medical expert testimony regarding whether Woods' impairments, considered in combination, meet or equal a listing. I disagree. It is within the ALJ's discretion to determine whether to call a medical expert to testify at an administrative hearing. See 20 C.F.R. § 416.927(f)(2)(iii). Woods is incorrect when she contends that whenever a combination of impairments exist the ALJ *must* enlist the services of a medical expert capable of making an equivalency finding as to whether the combination of her impairments equals a listing at step three. To support this contention, Woods' erroneously relies on Watson v. Massanari, No. 00-3621, 2001 WL 1160036

¹ Woods contends that, unlike Rutherford, who "never mentioned obesity" (Doc. No. 10, p.12), she raised obesity as an impairment which contributed to her inability to work when she stated that she "only does a little housework sitting down" (Tr. 41), performs "no activities" (Tr. 117), and "has not lost weight" (Tr. 118). Woods does not develop any argument with distinguishing features from Rutherford, and this court finds none.

² It is noteworthy that no physicians' reports or notations included in the record mention or discuss how Woods' obesity further contributed to her limitations or impaired her ability to work. (E.g., Tr. 126, 134, 141, 151, 169, 182-185, 255, 262-266).

(E.D. Pa. Sept. 6, 2001) and Bowen v. Heckler, 748 F.2d 629 (11th Cir. 1985), neither of which apply to this case.

Both Watson and Bowen involve plaintiffs with diverse combinations of severe physical and mental impairments. See Watson, 2001 WL 1160036; Bowen, 748 F.2d 629. Specifically, in Watson, the ALJ solicited medical expert testimony from a variety of different fields to help determine whether each of the plaintiff's severe asthma and mental impairments individually met or equaled a listing, but failed to obtain an expert opinion about whether the *combination* of plaintiff's severe impairments could equal a listing, and instead made the equivalency determination herself with "little explanation." 2001 WL 1160036, at *12. The court found not only that the ALJ's equivalency finding was unsupported by substantial evidence, but that the ALJ also committed legal error in failing to provide any explanation as to why the plaintiff's severe impairments combined did not amount to a listing equivalent. Id. at *14.

Unlike Watson, here, the ALJ did not abuse his discretion by failing to arrange for medical testimony because there is substantial evidence in the record to support his decision. After a detailed analysis of the Plaintiff's medical records, the ALJ found Woods' fatigue related to coronary artery disease and shortness of breath to be severe within the meaning of the Regulations. (Tr. 17 ¶¶ 1-6, Tr. 18 ¶¶ 1-3).³ He then considered the cardiac impairments cross-referenced under 20 C.F.R. Pt. 404, Subpt. P, App. 1, and found that Woods' medical records did not suggest a listing level impairment or its equivalent. (Tr. 18 ¶ 3). Further, I have already held that the ALJ properly considered obesity in his analysis for the reasons stated above. The ALJ did not feel it necessary to call a medical expert, and I find it was reasonable not to do so.

C. Third, Woods asserts that the ALJ improperly found that her subjective complaints were not entirely credible regarding the extent of her limitations. "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)). This requires the ALJ 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 v. Apfel, 181 F.3d at 362 (citing 20 C.F.R. § 404.1529(c)). Although the ALJ is required to give great weight to the claimant's testimony of subjective complaints, he has the right, as the fact finder, to reject partially or even entirely, such subjective complaints if they are not fully credible. Baerga v. Richardson, 500 F.2d 309, 312 (3d Cir. 1974). Here, the ALJ did not inadequately consider Woods' subjective complaints, but rather gave specific reasons, grounded in evidence of record, for finding that Woods' allegations regarding her limitations were not entirely credible. (Tr. 18 ¶ 6). The ALJ considered Woods' subjective allegations to be only partially credible in light of the medical evidence as a whole, discussed Woods' ability to engage in a variety of daily activities as reported in her questionnaire (Tr. 114-121), articulated with specificity the inconsistencies between this information and her hearing testimony (Tr. 34-43), and further noted her poor work history. (Tr. 18 ¶ 6). Therefore, I conclude that the ALJ's findings at Tr. 18 ¶ 6 and Tr. 21, Finding 4, are supported by substantial evidence.

³ Paragraph numbers that cite to the ALJ's decision are counted from the first full paragraph of each page.

D. Last, Woods asserts that the ALJ should have concluded that she had an RFC for sedentary work, not light work, which would make her disabled under the grids. Because the ALJ found Woods to be unable to perform “all or substantially all” of the requirements of light work, Woods erroneously contends that SSR 83-10 directs the ALJ to apply the sedentary guidelines. The ALJ properly concluded, based on substantial evidence, that Woods had an RFC for light work. When the plaintiff’s circumstances do not match all the corresponding criteria in a rule, the grid does not direct a conclusion, see SSR 83-10, 1983 WL 31251, at *1, but instead is to be used as *guidance* for deciding whether a plaintiff is disabled. Santiago v. Barnhart, 367 F. Supp. 2d 728, 735 (E.D. Pa. 2005) (citing SSR 83-12, 1983 WL 31253). Furthermore, when the extent of the erosion of the occupational base is not clear, the adjudicator is encouraged to consult a vocational expert. SSR 83-12 at *2; see also Boone v. Barnhart, 353 F.3d 203, 210 (3d Cir. 2004) (explaining that a “VE can provide a more individualized analysis as to what jobs the claimant can and cannot perform than does [an ALJ’s] determination of the claimant’s remaining occupational base.” (citing SSR 83-12)). Here, because the ALJ found that Woods could not do all or substantially all light work, the ALJ properly consulted a vocational expert who determined that a significant number of jobs in the regional economy exist for persons with Woods’ specific functional limitations, such as laundry sorter and inspector/examiner. (Tr. 50-54). The ALJ credited the VE’s testimony (Tr. 20 ¶¶ 4-6), which served as substantial evidence for his decision that Woods can perform a significant range of light work in the national economy.

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 Shelbia Jean Woods 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 SHELBIA JEAN WOODS;** and

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

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