

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

ANTHONY BELARDINO : CIVIL ACTION
 :
 Plaintiff, : NO. 04-1669
 v. :
 :
 JO ANNE B. BARNHART :
 :
 Defendant. :

Giles, C.J.

September 26, 2005

MEMORANDUM

Anthony Belardino brings this action under 42 U.S.C. § 405(g) seeking reversal of the final decision of the Commissioner of Social Security (“Commissioner”) denying plaintiff’s claim for disability insurance benefits (“DIB”) under Title II of the Social Security Act (“Act”). Plaintiff and defendant have each filed a Motion for Summary Judgment. For the reasons that follow, including the absence of objective medical evidence supporting plaintiff’s allegations of disabling impairments, it is hereby ordered that plaintiff’s motion is denied and defendant’s motion is granted. Summary judgment is entered in favor of the Commissioner of Social Security.

Procedural History

Plaintiff filed an application for DIB on May 19, 1992. (R. 71-74.) The application was denied on July 8, 1992. (R. 50-52.) Plaintiff subsequently filed applications on May 4, 1993 and April 22, 1994 (R. 75-78; 80-82.) Both of these subsequent applications were denied and plaintiff

did not further pursue the claims. (R. 53-58.)

Plaintiff filed the current application for DIB on September 3, 1996. (R. 85-93.) He alleged he became disabled on September 19, 1991, as a result of a work-related back injury, and further, that his disabling condition included a herniated disc at L4-5, degenerative changes at L3-4, leg pain, and anxiety. (R. 85.) The application was denied initially on November 13, 1996, and denied on reconsideration on May 1, 1997. (R. 59-61; 64-66.) Plaintiff timely requested a hearing before an administrative law judge (ALJ). (R. 67-68.)

On February 8, 1999, the ALJ issued an opinion concluding that plaintiff was not disabled at any time since September 19, 1991, the time of the alleged onset of disability. (R. 30-39) On September 7, 2000, the Appeals Council denied plaintiff's request for an appeal and affirmed the ALJ's decision. (R. 11-12.) Plaintiff then filed an appeal in this court. The court reversed the ALJ's decision of February 8, 1999, and it remanded the case to the Social Security Administration. (R. 652.) In turn, the Appeals Council vacated the ALJ's February 8, 1999 decision and remanded the case to the ALJ. (R. 653-655.) On September 16, 2002, the ALJ issued a decision concluding the plaintiff was not disabled during the relevant time period. (R. 608-617.)

Because plaintiff filed multiple applications, the first three denials of which he did not appeal, the relevant time period reviewed by the ALJ and for this appeal is August 30, 1994, the day following the ALJ's denial of claimant's third application on August 29, 1994, to December 31, 1996, the last date on which plaintiff met the disability insured status requirements of the Act.

On April 16, 2004, plaintiff filed this action pursuant to 42 U.S.C. § 405(g), and now moves for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. Defendant filed a cross motion for summary judgement on November 10, 2004.

Factual History

Plaintiff's date of birth is February 29, 1956. (R. 85.) Pursuant to 20 C.F.R. 404.1563, plaintiff has been regarded as a "younger person" at all relevant times. Plaintiff is a high school graduate, and his past relevant experience consists of employment as a material handler. (R. 622-626.)

Plaintiff testified that he worked as a material handler until September 19, 1991. His employment involved lifting heavy objects, including parts for construction and farm equipment (R. 627-628.) Plaintiff alleged that his disability occurred as a result of a work related injury on October 1, 1990. According to plaintiff, he was driving a dump truck without brakes and he fell off the truck and severely injured his back. (R. 622.) Plaintiff further testified that he experienced sharp pain down his legs and could only sit for 30 minutes at a time (R. 629-630.) He claimed that he could not lift more than five pounds without straining himself, and that he often needed to lie down on the floor to get relief from the strain of sitting or walking. (R. 630-631.) He received worker's compensation until 1998.

Clinical tests assessing plaintiff's condition include magnetic resonance imaging and nerve conduction studies and an EMG. A lumbar spine MRI completed on April 30, 1992 found no evidence of disc herniations or central canal stenosis. The MRI also revealed a mild left lateral

bulge of the L4-5 disc. (R. 222.) An EMG completed in June 1992 found mild acute and chronic changes associated with plaintiff's L4 radiculopathy (R. 241.)

A number of plaintiff's treating physicians noted plaintiff's lumbar strain and spasm and radiculopathy. In statements of plaintiff's functional capacity, treating physicians Drs. Allen, Abraham, and Silber, all found that plaintiff was totally disabled. Notably, none of these physicians cited objective medical evidence to substantiate this conclusion. (R. 328-330; 356-361; 682-695.)

Dr. Bong S. Lee, an orthopedic surgeon, evaluated plaintiff two months before the relevant period began, and twice during the relevant period. Dr. Lee completed an orthopedic evaluation of plaintiff on June 30, 1994, and he noted that there were no significant changes or differences from his previous examination of May 3, 1993. Dr. Lee reported that plaintiff complained of lower back pain, radiating down the left leg to the knee; however, he also found there was no evidence of swelling or atrophy. He found that plaintiff was still partially disabled and recommended a modified job. In a functional capacity statement, Dr. Lee opined that plaintiff could sit for four hours at a time, stand for two, and walk for one. Further, he suggested plaintiff could work full-time. (R. 352-355.)

In October 1995, Dr. Lee again noted that the examination did not reveal any significant changes from the previous examination of June 24, 1994. (R. 462-466.) In his last examination of plaintiff on December 18, 1996, Dr. Lee found the same degree of lumbar spine degeneration as in previous examinations, and he diagnosed plaintiff with chronic low back pain syndrome associated with degenerative discogenic disease (R. 468.) Dr. Lee also reported that plaintiff was no longer receiving active treatment and that he would be able to perform light exertional work.

Dr. Richard Bennett, a neurologist, examined plaintiff and reviewed his medical records on May 24, 1994. Dr. Bennett reported that upon motor examination there was no evidence of localized muscle wasting or muscle atrophy. Dr. Bennet also noted that, while plaintiff's medical records revealed a history of intermittent right leg at lower back discomfort, the examination did not identify any evidence of specific point tenderness or localized discomfort. Upon a complete review of plaintiff's medical records, Dr. Bennett concluded that plaintiff may have sustained an uncomplicated lumbar strain and sprain as a result of his work-related accident on October 1, 1990. Nevertheless, the doctor found that there was no evidence of any specific orthopedic or neurological impairment related to disc pathology or a condition that would warrant surgical considerations, and that plaintiff appeared to be fully and completely recovered. Dr. Bennett concluded that plaintiff could return to work as a warehouseman. (R. 348-351.)

Medical expert and orthopedist, Dr. Stanley R. Asken, testified at the most recent ALJ hearing on July 1, 2002. He found that plaintiff did have back pain, but that he considered it "run of the mill" pain and a "common middle age condition." (R. 640.) Dr. Asken testified that the plaintiff's medical records, including the MRI and neurological evaluation, did not support a diagnosis of lumbar radiculopathy because there was no evidence of nerve root compression. (R. 639.)

Standard of Review

When a district court reviews a decision of the Commissioner, review is limited to the Commissioner's final decision. 42 U.S.C. § 405(g); Podedworny v. Harris, 745 F.2d 210, 217 (3d Cir. 1984). If the Commissioner's decision is supported by substantial evidence the decision

must be upheld, even if this court would have reached a different conclusion. Richardson v. Perales, 402 U.S. 389, 401 (1971). Substantial evidence has been defined as “such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” Consolidated Edison Co. V. NLRB, 305 U.S. 197, 229 (1938). In this context, substantial evidence is more than mere scintilla, but may be somewhat less than a preponderance of the evidence. Ginsburg v. Richardson, 436 F.2d 1146, 1148 (3d Cir. 1971).

Discussion

Plaintiff appeals the decision of the ALJ alleging a number of errors, including the following: (1) the ALJ erred because he did not give the appropriate weight to the opinions of plaintiff’s treating physicians; (2) the ALJ failed to take into account plaintiff’s diagnosis of lumbar radiculopathy; and (3) because plaintiff is unable to sit for prolonged periods of time, there is no basis for the ALJ’s finding that plaintiff is able to engage in the full range of sedentary work that would include working for six hours in an eight hour work day.

Upon review of the record, the court concludes that the ALJ’s findings and decision were supported by substantial evidence and the applicable legal principles. While plaintiff’s medical records include assessments from his numerous treating physicians that conclude plaintiff is disabled and unable to perform work activity, the objective medical evidence does not support the disabling impairments alleged by plaintiff. Accordingly, the ALJ properly considered the opinions of plaintiff’s treating physicians, but only considered them to the degree that they did not contradict the objective medical evidence in the record.

Central to the decision is the determination that there is no objective medical evidence of lumbar disc herniation, atrophy, or nerve compression that substantiates a diagnosis of lumbar radiculopathy. Objective clinical testing, including an MRI, revealed only degenerative changes of the lumbar spine, mild stenosis at L4-5, and a disc bulge at L4-5. There was no objective evidence of nerve root compression. In the absence of such underlying physical conditions, it cannot be said that the ALJ erred in crediting the testimony of Dr. Asken to the effect that plaintiff's claims of lumbar radiculopathy are suspicious and discrediting plaintiff's allegations that radioculopathy creates for him a disabling condition; that is, inability to sit for more than one hour. Indeed, the plaintiff sought sedentary work during the relevant time period.

Conclusion

The ALJ's determination that plaintiff was not disabled during the relevant time period, and that plaintiff had the capacity to perform sedentary work is supported by substantial evidence. Accordingly, the defendant's motion for summary judgment is granted and the plaintiff's motion is denied.

An appropriate order follows.

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JUDGMENT ORDER

AND NOW, this 26th day of September, 2005, in consideration of Plaintiff's Motion for Summary Judgment, Defendant's Motion for Summary Judgment, Plaintiff's Reply, and the record, it is hereby ORDERED that:

1. Plaintiff's Motion for Summary Judgment is DENIED;
2. Defendant's Motion for Summary Judgment is GRANTED;
3. JUDGMENT is entered in favor of defendant and against plaintiff.

BY THE COURT:

JAMES T. GILES C.J.