

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

MARC HARRIS	:	CIVIL ACTION
	:	
v.	:	NO. 04-5280
	:	
JO ANNE B. BARNHART,	:	
Commissioner of Social Security	:	

MEMORANDUM AND ORDER

AND NOW, this 28th day of December, 2005, upon consideration of the cross-motions for summary judgment filed by the parties and the reply thereto (Doc. Nos. 10, 11, and 12), the court makes the following findings and conclusions:

1. On March 6, 2002, Marc Harris (“Harris”) filed for disability insurance benefits (“DIB”) under Title II of the Social Security Act, 42 U.S.C. §§ 401-433, alleging an onset date of January 1, 2000. (Tr. 84-86). Throughout the administrative process, including an administrative hearing held on November 17, 2003, before an administrative law judge (“ALJ”), Harris’ claims were denied. (Tr. 4-7, 18-30, 76-79, 239-276). Pursuant to 42 U.S.C. § 405(g), Harris filed his complaint in this Court on January 19, 2005.

2. In his decision, the ALJ concluded that Harris had a severe impairment consisting of status post gunshot wounds. (Tr. 29 Finding 3). The ALJ concluded that Harris’ impairments did not meet or equal a listing, that he could perform light work with no twisting of the left wrist, and that he was able to return to his previous work as a respiratory therapist as he had performed it. (Tr. 23 ¶¶ 1-2, 24 ¶ 2, 26 ¶ 2, 27 ¶ 3, 29 Findings 6-7).¹

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, 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).

¹ All numbered paragraph references to the ALJ’s decision begin with the first full paragraph on each page.

4. Harris raises four arguments in which he alleges that the determinations by the ALJ were either not supported by substantial evidence or were legally erroneous. Although I disagree with Harris regarding three of these arguments, I believe the fourth has some merit, and, thus, a remand for further consideration by the ALJ is required.

A. Harris contends that the ALJ's residual functional capacity ("RFC") assessment that he could perform light work with no twisting of the left wrist was not supported by substantial evidence. Specifically, Harris contends that: (1) the ALJ should have given greater weight to the RFC assessment made by Donald B. Parks, M.D. ("Dr. Parks"); (2) no medical evidence in the record supported the ALJ's RFC assessment; and (3) the ALJ failed to discuss all of the relevant evidence. While the ALJ did properly discount Dr. Parks' assessment, I agree that it is unclear which evidence the ALJ relied upon in making his RFC determination. The ALJ must provide a clear and satisfactory explication of the basis on which his determination rests. Mays v. Barnhart, 78 Fed. Appx. 808, 812 (3d Cir. 2003) (citing Cotter v. Harris, 642 F.2d 700, 704 (3d Cir. 1981)). There are three RFC assessments given by various sources in the record. The ALJ gave no weight to the state agency RFC assessment. (Tr. 28 ¶ 1, 131-136). The ALJ properly discounted Dr. Parks' RFC assessment because it is unsupported by his own notes and the medical record. (Tr. 25 ¶ 3-26 ¶ 1, 232-234). Finally, the ALJ discussed Leon Cander, M.D.'s ("Dr. Cander") assessment at length, but failed to discuss the weight given to it. (Tr. 24 ¶-25 ¶ 1). This is problematic because Dr. Cander's RFC assessment is more restrictive than that developed by the ALJ and the ALJ had discounted or dismissed all other medical opinions. (Tr. 122-129). Further compounding the situation is the meager amount of additional medical evidence in the record from which one could draw a sufficient RFC conclusion. Although the ALJ stated that his RFC determination was based upon the totality of the record including medical opinions and Harris' testimony, it is unclear exactly upon what evidence he relied. (Tr. 26 ¶ 2). It is possible that the ALJ discounted Dr. Cander's report based on other evidence not before Dr. Cander, but this analysis is not made clear by the ALJ. Therefore, it is necessary to remand this action for the ALJ to supplement his reasoning for his RFC assessment so that it can be determined specifically upon what evidence and opinions he relied.

B. As stated, I disagree with Harris' remaining arguments. First, contrary to Harris' contention, the ALJ's decision that Harris did not meet his burden of establishing that his seizure disorder was severe was supported by substantial evidence. The evidence shows that Harris' seizure disorder is controlled by medications and, thus, the ALJ's conclusion that it does not significantly limit Harris' physical or mental ability to do basic work activities is supported by substantial evidence. (Tr. 111, 115, 120, 121, 124, 259-260); Newell v. Comm'r of Soc. Sec., 347 F.3d 541, 546-47 (3d Cir. 2003) (stating that while the question of impairment severity is subject to a low threshold, a plaintiff must still provide evidence sufficient to show that her impairment has at least a minimal effect on her ability to work). Second, the ALJ's decision to discount Harris' credibility was supported by substantial evidence as his complaints were contradicted by the objective medical evidence, his daily activities, his routine treatment, and his many inconsistent statements. (Tr. 26 ¶ 4-27 ¶ 3, e.g. 111, 123-124, 130, 170,

198, 258-259); Pysher v. Apfel, No. 00-1309, 2001 WL 793305, at *3 (E.D. Pa. July 11, 2001) (stating that “credibility determinations are the province of the ALJ and only should be disturbed on review if not supported by substantial evidence.”).² Third, Harris claims that his prior work as a respiratory therapist was not past relevant work and that, regardless, the DOT lists such work as medium which he is unable to perform under the ALJ’s RFC analysis. This argument is meritless because: (1) Harris’ work as respiratory therapist meets the criteria of past relevant work regardless of whether it was performed part-time or as light work; and (2) it is proper to inquire into his prior work as it was performed by him, and not necessarily by how it is categorized in the DOT. 20 C.F.R. §§ 404.1560(b)(1) & (2); 404.1565(a); 404.1572(a). For the reasons stated, the remainder of Harris’ arguments fail.

Upon careful and independent consideration, I find that it is unclear whether the ALJ’s conclusions regarding Harris’ RFC are supported by substantial evidence. As a result, the action must be remanded to the Commissioner under sentence four of 42 U.S.C. § 405(g).

Therefore, it is hereby **ORDERED** that:

5. The motion for summary judgment filed by Marc Harris is **GRANTED** to the extent that the matter is **REMANDED** for further proceedings consistent with this order;

6. The motion for summary judgment filed by the Commissioner of Social Security is **DENIED**; and

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

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

² I further note that the ALJ was not the only individual to conclude that Harris’ credibility was not perfect. (Tr. 172-73, 175).