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

LAURIELEE M. LYONS	:	CIVIL ACTION
	:	
	:	
v.	:	NO: 04-5094
	:	
JO ANNE B. BARNHART,	:	
Commissioner of Social Security	:	

MEMORANDUM AND ORDER

AND NOW, this 16th day of February, 2006, upon consideration of the cross-motions for summary judgment (Doc. Nos. 5 and 8) the Court makes the following findings and conclusions:

A. On July 17, 2002, Laurielee M. Lyons ("Lyons") applied for disability insurance benefits ("DIB") under Title II of the Social Security Act, ("Act") 42 U.S.C. §§ 401-433 alleging disability since November 16, 2001. (Tr. 40-42). Throughout the administrative process, including an October 20, 2003, hearing before an administrative law judge ("ALJ"), Lyons' claims were denied. (Tr. 13-24; 30-31; 32-35; 286-311). Pursuant to 42 U.S.C. § 405(g), Lyons appealed to this Court.

B. The ALJ found Lyons' low back pain and neuropathies to be severe, but found that none of Lyons' impairments were severe enough to meet or medically equal any of the listed impairments. (Tr. 17-18 ¶¶ 7, 9; 23 Finding Nos. 3, 4);[1] 20 C.F.R. Appendix 1 to Subpart P of Part 404. The ALJ further concluded that during the relevant period Lyons could not perform her past relevant work, but was not disabled, and had the residual functional capacity ("RFC") to perform sedentary work which permits a sit/stand option with only occasional stooping, kneeling, and crouching. (Tr. 18 ¶ 11; 22 ¶ 31; 24 Finding Nos. 6, 7). With the testimony of a vocational expert ("VE"), the ALJ further concluded that Lyons was able to perform other jobs that exist in the national economy. (Tr. 22-23 ¶¶ 32-33; 24 Findings No. 8, 9).

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." 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 ALJ's conclusion is supported by

[1] Paragraphs are numbered chronologically seriatim as they appear throughout the ALJ's decision.

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. Lyons raises several arguments that the ALJ's determination was legally and factually 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. Lyons argues that the ALJ erred by not considering the cumulative effect of her disabilities. Generally, an ALJ must analyze the cumulative effect of all of a claimant's impairments in determining whether she is capable of performing work or is disabled. Plummer v. Apfel, 186 F.3d 422, 428 (3d Cir. 1999) (citing 20 C.F.R. § 404.1523). Despite Lyons' contention, it is clear from the ALJ's decision that he considered Lyons' back problems and neuropathies together since he discussed them in conjunction with each other, similar to how Drs. Sammi, Husain, and Nakkache discussed them. The ALJ also noted his duty to consider whether an impairment *or combination of impairments* met a listing. (Tr. 22 ¶ 24;17 ¶ 9; 18 ¶10; 19 ¶ 14; 20-21 ¶¶ 20, 21, 23; 21 ¶¶ 25-27; 126-127; 219-230; 274-276).

2. Next Lyons briefly argues that the ALJ failed to address the issue of whether her inability to use her hands would effect her in a sedentary work setting. Although an inability to use one's hands is likely to affect a claimant's occupational base, the inability to perform substantially all sedentary unskilled occupations, does not require a finding of disability. Social Security Ruling ("SSR") 96-9p, 1996 SSR LEXIS 6, at * 13; see also SSR 83-12, 1983 SSR LEXIS 32, at * 11 (noting that the level of remaining function in an individual's upper extremity will determine the occupational base). Here, as stated in paragraph 3 infra the ALJ properly found Lyons' testimony that she "can't use her hands much" to be overstated, therefore producing at best a minimal effect on Lyons' sedentary work capabilities. (Tr. 22 ¶¶ 29-30; see Tr. 300 (Lyons describes her ability to lift a ten pound bag); 302 (Lyons describes her ability to grocery shop); 304 (Lyons describes her ability to use her upright vacuum)).

3. Lyons also claims that the ALJ committed error by not properly evaluating her subjective complaints of pain. According to SSR 96-7p, a claimant's pain will be determined to diminish work capacity to the extent that the limitations alleged are consistent with the medical evidence. 1996 WL 374186, at * 2. Although the record in this case contains some objective medical evidence to support the existence of impairments which could reasonably be expected to produce the pain complained of, the ALJ found that Lyons' complaints and limitations were overstated. Credibility determinations are for the ALJ to make. Van Horn v. Schweiker, 717 F.2d 871, 873 (3d Cir. 1983). This determination is supported by substantial evidence for several reasons. First, although Lyon's subjective complaints of pain are corroborated by Monica Cozzone, D.O., her opinion was properly afforded little weight by the ALJ. (Tr. 21 ¶ 27); see paragraph 4 infra. Second, the record does not support a finding that Lyons' impairments are disabling. (Tr. 21 ¶ 27; Cf. 119-129; 133-135; 151-154; 157-164; 210-211; 229-230; 275-276). Third, the record reflects and Lyons testified that some prescription and over the counter medication somewhat lessen her pain. (Cf. Tr. 119; 121; 128; 168; 208; 211; 212; 219; 296). Finally, the ALJ's decision reflects adequate consideration of Lyons' subjective complaints by

incorporating her physical limitations into her RFC assessment and by the ALJ's rejection of the disability services consultant who opined that Lyons could perform light work. (Tr. 22 ¶¶ 28, 31; 24 Finding No. 6).

4. Lyons' final argument is that the ALJ erred in failing to give controlling or substantial weight to her treating physician's opinion that she was disabled. 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.[2] Here, it is evident that the ALJ properly weighed Dr. Cozzone's opinion as it was inconsistent internally and with other evidence of record. (Tr. 21 ¶ 27). As the Commissioner points out, Dr. Cozzone contradicts herself by instructing Lyons to return to work in April 2002 (Tr. 187), opining she can lift 25 pounds in May 2002 (Tr. 172), noting "tremendous improvement in activity tolerance" in August 2003 (Tr. 212), but then opining later in September 2003 that Lyons' November 2001 motor vehicle accident caused permanent disabling lumbar radiculopathy. (Tr. 231). Dr. Cozzone's opinion is also generally inconsistent with the remainder of the medical evidence (see paragraph 3 supra.) and in particular, with the opinion of John Querci, D.O.[3] who opined that Lyons is capable of sedentary work. (Tr. 151-154). Finally, the determination of a claimant's disability is for the Commissioner to make. 20 C.F.R. § 404.1527(e)(1).

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:

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[2] Relying upon Rocco v. Heckler, Lyons argues that a treating physician's report should be afforded great weight when their opinions reflect expert judgment based on continued observation over a prolonged period of time. 826 F.2d 1348, 1350 (3d Cir. 1997). However, the facts of that case are distinguishable from the facts in this case in that the ALJ dismissed the treating physician's opinion without a reasoned explanation and the doctor-patient relationship spanned twenty years. Id. Here, although the doctor-patient relationship was somewhat lengthy, the ALJ provided a reasoned explanation for affording little weight to Dr. Cozzone. Furthermore, factors such as the length, nature and extent of the treatment relationship are considerations in deciding how much weight to afford a treating physician once the ALJ has decided *not* to afford controlling weight. 20 C.F.R. § 404.1527(d)(2)(i)-(ii).

[3] Lyons argues that the ALJ failed to explain the weight afforded to Dr. Querci as required by 20 C.F.R. § 404.1527(f)(2)(ii). While it is true that the ALJ did not literally comply with this directive with respect to Dr. Querci or several other physicians, it is evident from the style of decision and the conclusion reached, that those opinions contained in the ALJ's decision that were not explicitly rejected or afforded reduced weight, were accepted and given substantial weight. Because one can infer the weight assigned to these physicians, the ALJ complied with the spirit of the law and therefore, did not err. Even assuming a stricter compliance with the regulation was required, the error was harmless and there is still substantial evidence to support the ALJ's decision. See Rutherford v. Barnhart, 399 F.3d 546, 553 (3d Cir. 2005) (refusing to remand where stricter compliance with a social security ruling would not have changed the outcome of the case).

1. The motion for summary judgment by **LAURIELEE M. LYONS** is **DENIED**;

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

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

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