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

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| ERIC NORMAN | : | CIVIL ACTION |
| | : | |
| v. | : | NO. 04-4969 |
| | : | |
| JO ANNE B. BARNHART, | : | |
| Commissioner of Social Security | : | |

**MEMORANDUM AND ORDER**

AND NOW, this 3rd day of April, 2006, upon consideration of the cross-motions for summary judgment filed by the parties (Doc. Nos. 8 and 9), the court makes the following findings and conclusions:

1. On April 18, 2002, Eric Norman ("Norman") filed for disability insurance benefits ("DIB") and supplemental security income ("SSI") under Titles II and XVI, respectively, of the Social Security Act, 42 U.S.C. §§ 401-433, 1381-1383f, alleging an onset date of December 23, 2001. (Tr. 68-70, 188-89). Throughout the administrative process, including an administrative hearing held on September 2, 2003, before an administrative law judge ("ALJ"), Norman's claims were denied. (Tr. 3-5, 9-19, 22-25, 184-187, 197-226). Pursuant to 42 U.S.C. § 405(g), Norman filed his complaint in this court on November 4, 2004.

2. In her decision, the ALJ concluded that Norman had severe impairments consisting of cervical spondylosis, rotator cuff impingement syndrome and a bulging disc in the lower back. (Tr. 14 ¶ 4, 18 Finding 3).[1] Ultimately, the ALJ concluded that Norman's impairments did not meet or equal a listing, he could perform light work with a sit/stand option every thirty minutes, and he could perform work which exists in significant numbers in the national economy, and, thus, was not disabled. (Tr. 14 ¶¶ 5-6, 16 ¶¶ 6-7, 17 ¶¶ 3-4, 18 Findings 4, 7, 12-13).

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).

4. Norman raises 3 arguments in which he alleges that the determinations by the ALJ were either not supported by substantial evidence or were legally erroneous. These arguments are addressed below. However, upon due consideration of all of the arguments and evidence, I find that the

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

ALJ's decision is legally sufficient and supported by substantial evidence.

A. First, Norman contends that the ALJ failed to comply with Social Security Ruling ("SSR") 96-6p and 20 C.F.R. §§ 404.1527(f)(1) and 416.927(f)(1) by failing to obtain an equivalency opinion from an expert *physician*. Instead, the record indicates that a *non-physician* state agency medical consultant signed two disability determination forms and a residual functional capacity ("RFC") assessment form as equivalency evidence. (Tr. 21, 132-139, 183). Defendant counters that since this case is a disability redesign prototype case under 20 C.F.R.§§ 404.906 and 416.1406(b)(2), it is not necessary for a physician to sign the disability determination forms and RFC assessment form. 20 C.F.R. §§ 404.906(b)(2); 416.1406(b)(2) (providing that "The decisionmaker will make the disability determination after any appropriate consultation with a medical or psychological consultant. The medical or psychological consultant will not be required to sign the disability determination forms we use to have the State agency certify the determination of disability to us"); see (Tr. 21, 183). Norman does not respond to this argument. I find that, for these prototype cases, 20 C.F.R. §§ 404.906(b)(2) and 416.1406(b)(2) have changed the longstanding practice of requiring the ALJ to seek a physician's opinion on the issue of equivalence. Oakes v. Barnhart, 400 F. Supp. 2d 766, 775-778 (E.D. Pa. 2005). As a result, the lack of an equivalency opinion from an expert physician is not improper and this argument fails.

B. Second, Norman contends that the ALJ erred by not incorporating into her RFC assessment the reaching and handling restrictions found in the consultative examination report prepared by his treating physician Corey Ruth, M.D. ("Dr. Ruth") and by not relying more heavily on Dr. Ruth's notes which post-date the examination report. See (Tr. 124-130, 140-154). I find that substantial evidence supports the decision of the ALJ to omit from her RFC assessment the reaching and handling restrictions found in Dr. Ruth's consultative examination report. Although Dr. Ruth found some reaching and handling limitations, he did not describe the nature and degree of the limitations or indicate that the limitations were incompatible with light work. (Tr. 130). Dr. Ruth also indicated in his notes that Norman's shoulder was merely tender and that he should avoid heavy lifting. (Tr. 121-122, 143). Moreover, the state agency's RFC assessment did not contain any reaching and handling or pushing and pulling limitations, provided that Norman's ability to push and pull was unlimited, and specifically mentioned that Norman stated he could perform fine and dexterous movements. (Tr. 14 ¶ 5, 133, 135, 137). Norman also stated that he was able to perform some household chores, drive one and one-half hours, dial a phone, use public transportation, use utensils and a remote control, and fasten his clothes and tie his shoes, and that he had no dexterity problems. (Tr. 93-95, 215-218).

Also, contrary to Norman's argument, it is evident that the ALJ did take into account Dr. Ruth's later notes and other medical evidence in establishing Norman's RFC. The ALJ noted that both the non-physician state agency medical consultant and Dr. Ruth in his consultative examination report assigned Norman limitations consistent with medium work. (Tr. 15 ¶ 4, 129-130, 133). Nonetheless, the ALJ, after reviewing the evidence and Norman's subjective complaints, found that Norman could only engage in light work with a sit/stand option. (Tr. 16 ¶ 5). The ALJ did discuss Dr. Ruth's more recent treatment notes and his findings therein, along with the findings of another of Norman's treating physicians, Menachem Meller, M.D. ("Dr. Meller"), and how they conflicted with Dr. Ruth's later determination that Norman was disabled.[2] (Tr. 15 ¶ 5 - 16 ¶ 1). Finally, the ALJ explained

[2] I note, as did the ALJ, that the ultimate disability determination is for the ALJ to make and a physician's opinion on that topic is not entitled to any special weight. (Tr. 15 ¶ 5); 20 C.F.R. §§ 404.1504, 416.904, 404.1527(e)(1), 416.927(e)(1).

that she was relying most heavily on Dr. Ruth's original consultative examination because it provided a detailed assessment and clinical findings. (Tr. 16 ¶ 2). As a result of the foregoing, the ALJ's RFC assessment was supported by substantial evidence.

In this argument section of his brief, Norman raises three other unavailing arguments. Norman contends that the ALJ should have received an updated opinion from Dr. Ruth pursuant to 20 C.F.R. §§ 404.1512(e)(1) and 416.912(e)(1) because Norman believes that Dr. Ruth's opinion changed after his initial consultative examination as he eventually opined that Norman was unable to work. (Tr. 140, 148, 151-153). There is no merit to this argument nor support for it found in the cited regulations. These regulations provide that when the evidence from a claimant's treating physician is inadequate for the ALJ to make a disability determination, the ALJ will re-contact the treating physician and request more records or a more detailed report. 20 C.F.R. §§ 404.1512(e)(1); 416.912(e)(1). The record was not inadequate for the ALJ to make his decision because the ALJ had access not only to Dr. Ruth's original consultative examination report but also to his medical records post-dating the report, which the ALJ's decision shows she considered. (Tr. 15 ¶¶ 4-6 ). Norman also argues that the ALJ failed to receive an RFC assessment from a state agency medical examiner pursuant to 20 C.F.R. §§ 404.1527(a)(2) and 416.927(a)(2). As discussed above, this requirement is not necessary in a prototype case such as this. Finally, Norman notes that the ALJ provided a sit/stand option in her RFC assessment and that SSR 83-12 provides that an individual who cannot sit or stand for extended periods is generally incapable of sedentary work. Boone v. Barnhart, 353 F.3d 203, 209-210 (3d Cir. 2003). Norman does not develop this argument further. This statement is not relevant since the ALJ found Norman was capable of light work and not simply sedentary work. Nonetheless, SSR 83-12 also states that if a person "must alternate periods of sitting and standing," he "is not functionally capable of doing . . . the prolonged standing or walking contemplated for most light work" and "In cases of unusual limitation of ability to sit or stand, a [vocational expert] should be consulted to clarify the implications for the occupational base." SSR 83-12; Boone, 353 F.3d at 210. In this case, the ALJ did consider the erosion of the occupational base by acknowledging that Norman could not perform the full range of light work and by employing a vocational expert to testify regarding what jobs Norman could perform within the category of light work. (Tr. 224-225). As a result, SSR 83-12 has been satisfied.

C. Third, Norman asserts that the ALJ's discussion of the credibility of his subjective complaints was inadequate and violative of SSR 96-7p. "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)). Moreover, such determinations are entitled to deference. S.H. v. State-Operated Sch. Dist. of the City of Newark, 336 F.3d 260, 271 (3d Cir. 2003). In this case, the ALJ reasonably discounted Norman's credibility and complaints of pain after considering the evidence, including: (1) the RFC assessment from the non-physician state agency medical consultant determining Norman could perform medium work[3]; (2) the consultative examination report from Dr. Ruth showing he could perform medium work with no sitting, standing, walking or lifting problems; (3) Dr. Ruth's later medical notes recommending Norman not perform heavy lifting and finding, *inter alia* 5/5 motor strength bilaterally, only diffused back pain with slight spasm and only mild radiculopathy; (4) the finding of Dr. Meller that Norman should avoid excessive lifting; (5) Norman's demeanor at the hearing; and (6) possible side effects from his medication. (Tr. 15 ¶ 3 - 16 ¶ 4, 129-130, 132-139, 148,

[3] Norman's contention that the state agency expert's opinion should be given no weight because the individual is not a physician is unfounded. Although the ALJ is not bound by the expert's findings, she cannot ignore them. See 20 C.F.R. §§ 1527(f)(2)(i); 416.927(f)(2)(i).

152, 167, 178). As footnoted above, the ALJ also noted that although in his later records Dr. Ruth found that Norman was disabled, the ultimate disability determination is reserved for the Commissioner pursuant to SSR 96-5p and that the welfare form upon which Dr. Ruth found Norman to be disabled does not give a specific function by function assessment of Norman's limitations and abilities.[4] SSR 96-5p; (Tr. 15 ¶ 5, 140, 148, 151-153). The above referenced items consist of substantial evidence which supports the ALJ's determination.

Moreover, contrary to Norman's contention, the ALJ did not violate SSR 96-7p because she did not disregard his complaints of pain. Instead, the ALJ's decision shows that she seriously considered Norman's complaints and credited them to the extent that she determined Norman could not perform work greater than light work with a sit/stand option. (Tr. 14 ¶ 1 - 16 ¶ 5, 18 Finding 5). Similarly, neither party argues that Norman does not have impairments which likely cause pain. However, the ALJ is required 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, which is exactly what the ALJ did in this case. Hartranft, 181 F.3d at 362 (citing 20 C.F.R. § 404.1529(c)). As a result of the forgoing, the ALJ's credibility determination was proper and Norman's argument to the contrary must fail.

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 Eric Norman 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 ERIC NORMAN**; and

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

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

[4]The August 5, 2003, welfare form marked as exhibit 8F was not available for inclusion in the record. (Tr. 2).