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

BLANCHE D. LEE, Plaintiff, v. JO ANNE B. BARNHART, Commissioner of Social Security, Defendant.	:	Civil Action No. 04-1767

J. William Ditter, Jr., S.J. May 18, 2006

MEMORANDUM AND ORDER

On April 6, 2006, this court denied plaintiff, Blanche D. Lee's, motion for summary judgment in which she sought judicial review of a decision by the Commissioner of Social Security that denied her disability insurance benefits. In that same order the Commissioner of Social Security's motion for summary judgment was granted, affirming its denial of benefits to Lee. On April 20, 2006, Lee filed a motion to alter or amend this court's April 6, 2006, decision. Because Lee misinterpreted the nature of this court's reasoning and the ALJ's reasoning and there is no error of law or fact, Lee's motion to alter or amend the judgment is denied.

Standard

The role of this court in deciding a Rule 59 motion is to alter or amend the judgment only if the party seeking to alter or amend has established one of the following: "'(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion for summary judgment; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice."' *Edwards v. Immigration & Naturalization Serv.,* No.

CIV.A.03-286, 2003 WL 22097780, at *2 (E.D.Pa. Aug. 20, 2003), quoting *Max's Seafood Café, by Lou-Ann, Inc. V. Quinteros,* 176 F.3d 669, 677 (3d Cir. 1999). Lee is relying on the third prong for her argument that her motion to alter or amend the judgment should be granted.

Discussion

Lee contends that the April 6, 2006, judgment should be altered or amended because the "Court has failed to recognize the fundamental error of the ALJ: inferring from Plaintiff's return to work in 2002 that she was not disabled on or before the critical date last insured of December 31, 1998." Lee's characterization of the ALJ's inference is mistaken. The ALJ did not rely on Lee's return to work as evidence that Lee was not disabled during her alleged closed period of disability from December 11, 1996, to July 1, 2002.[1] Instead, she relied on Lee's return to work as evidence that Dr. Bell's opinions should be discounted. In a letter written by Dr. Bell on September 24, 1998, Dr. Bell stated, "[t]he prognosis is poor. Due to [Lee's] impaired concentration, low energy level, and labile moods I believe that she is not employable." Tr. at 639. Lee's subsequent return to work in 2002, despite any additional treatment other than one

[1]Lee quotes the April 6, 2006, opinion for the proposition that the court endorsed the ALJ's view that the ALJ 'may consider work done by a claimant after the onset date as tending to show that the claimant was never disabled." It is important to note that although this proposition is supported by case law, it was not issue-determinative in this case because the ALJ used the fact that Lee returned to work as evidence that Dr. Bell's opinion should be discounted rather than as evidence that Lee was not disabled in the first place. The court found that this finding was supported by substantial evidence.

therapy visit, called Dr. Bell's prognosis into question and, along with other factors,[23] was substantial evidence that the ALJ rightly discounted Dr. Bell's opinions.

Conclusion

The ALJ did not rely on Lee's return to work as evidence that she was not disabled during her alleged closed period of disability and therefore, this court did not fail to recognize any fundamental error by the ALJ. Accordingly, Lee's motion to amend or alter the judgment is denied.

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[2]Lee also argues that the ALJ's finding that Lee's mental impairment was not severe was an error of law. As discussed in the footnote above, and at length in the April 6, 2006, decision, the ALJ's finding that Lee's mental impairment was not severe is supported by substantial evidence, including the fact that Dr. Bell's opinion was rightfully discounted. PULL LEE'S MSJ TO SEE IF DR. BELL EVER ALLEGED THAT MENTAL IMPAIRMENT WAS SEVERE.

[3]Lee argues that "the ALJ's failure to consider or discuss Dr. Tabby's prohibition against stooping was critical." However, because the foundation of this argument is not supported, it follows that the conclusion is not supported as well. As discussed in the April 6, 2006, opinion, Lee's inability to stoop is irrelevant. An inability to stoop only affects unskilled sedentary occupations. However, Lee was found capable of performing semi-skilled/light jobs. As a result, her inability to stoop, had it been credited by the ALJ (which it was not), would have no bearing on her ability to work because she was found capable of performing semi-skilled work, which is not affected by an inability to stoop.

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ORDER

AND NOW this 18th day of May, 2006, upon consideration of the Plaintiff's Motion to Alter or Amend Judgment filed on April 20, 2006, in the Eastern District of Pennsylvania, and all responses thereto, IT IS HEREBY ORDERED:

1. The Plaintiff's Motion to Alter or Amend Judgment is DENIED.

BY THE COURT:

/s/ J. William Ditter, Jr.
J. WILLIAM DITTER, JR., S.J.