

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

DAWN STRAWN	:	CIVIL ACTION
	:	
v.	:	NO. 05-4862
	:	
JO ANNE B. BARNHART,	:	
Commissioner of Social Security	:	

MEMORANDUM AND ORDER

AND NOW, this 12th day of September, 2006, upon consideration of the cross-motions for summary judgment filed by the parties (Doc. Nos. 6 and 8), the court makes the following findings and conclusions:

1. On December 8, 2003, Dawn Strawn (“Strawn”) protectively 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 March 16, 2002. (Tr. 55-62; 72-88). Throughout the administrative process, including an administrative hearing held on February 9, 2005 before an administrative law judge (“ALJ”), Strawn’s claims were denied. (Tr. 5-8; 11-29; 190-215). Pursuant to 42 U.S.C. § 405(g), on September 12, 2005, Strawn filed her complaint in this court seeking review of that decision.

2. In his decision, the ALJ concluded that Strawn had a severe impairment consisting of anxiety. (Tr. 15 ¶ 5; 18 Finding 3).¹ The ALJ further concluded that Strawn’s impairment did not meet or equal a listing, that she had the residual functional capacity (“RFC”) to perform a full range of exertional work, as long as there were no detailed instructions and limited contact with the public, and that she was not disabled. (Tr. 15 ¶ 6; 18 ¶ 1; 18-19 Findings 4; 6; 12).

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, 845 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. Strawn raises three arguments in which she 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 ALJ’s decision is legally sufficient and supported by substantial evidence.

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

A. Strawn first claims that the ALJ erred by failing to give controlling weight to the opinion of her treating physician, Mark Bernstein, M.D. (“Dr. Bernstein”), that Strawn’s anxiety met the listing. I first note that the ultimate disability determination is reserved for the ALJ and a treating physician’s opinion on that topic is not entitled to any special significance. 20 C.F.R. §§ 404.1527(e)(1), 416.927(e)(1); S.S.R. 96-5p. Furthermore, a treating physician is only provided controlling weight when his or her opinion is well supported by medically acceptable sources and not inconsistent with other substantial evidence in the record. 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2). Here, the ALJ discussed the psychiatrist’s opinion that Strawn was disabled and noted that Dr. Bernstein’s March 2004 report to the state agency from less than a year earlier and examination findings were not consistent with his later conclusion that Strawn was disabled. (Tr. 16 ¶ 1; 149-54; 156-57; 176-78; 180-86). The ALJ also noted that Dr. Bernstein’s treatment notes only indicated that Strawn was anxious and had negative thoughts, which the ALJ stated did not reflect sufficient symptomology to demonstrate Strawn’s anxiety met the severity required by the listing. (Tr. 16 ¶ 1; 176).

In January of 2002, Dr. Bernstein found that Strawn had a GAF of 60, denoting moderate limitations in functioning, which was consistent with his March 2004 report to the state agency that Strawn’s anxiety had no effect on her ability to handle detailed instructions and a slight effect on her ability to work with supervisors. (Tr. 17 ¶ 2; 156; 178). Although Dr. Bernstein found that Strawn’s anxiety had a marked effect on her ability to interact with co-workers and respond appropriately to work pressures, his reasoning for this was merely that Strawn was fearful of backstabbing co-workers, because of her prior work experience. (Tr. 15 ¶ 4; 156). Dr. Bernstein also found Strawn completely unable to get to and stay at work, however, the ALJ found there was no objective medical evidence to support this assertion. (Tr. 15 ¶¶ 4 and 6; 16 ¶ 1; 157). Less than a year later, Dr. Bernstein found Strawn met the listing for anxiety disorder, finding marked/extreme restrictions in daily living, moderate/marked difficulties in maintaining social functioning, frequent deficiencies in concentration, persistence, or pace making her unable to complete tasks, and three or more episodes of deterioration or decompensation. (Tr. 15 ¶ 2; 186). Additionally, Dr. Bernstein stated Strawn’s panic attacks and agoraphobia repeatedly limit her to a single room in her house. (*Id.*) However, the ALJ noted that despite Dr. Bernstein’s indication that Strawn’s symptoms increased, that was not reflected in the interim treatment notes and Strawn continued to see Dr. Bernstein only once a month or less frequently. (Tr. 17 ¶ 2; 176).

I also note that the ALJ was in a unique position to be able to observe Strawn to determine whether she truly was incapable of functioning independently outside the home. The ALJ clearly did not find that her behavior, objective medical evidence, and other physicians’ opinions demonstrated that her panic attacks were disabling. (Tr. 16 ¶ 4; 17 ¶ 2). Additionally, Dr. Chiampi, the consulting psychiatrist, found, despite Strawn’s testimony, that her anxiety had no more than a moderate effect on her ability to function at work and that she was capable of functioning independently outside of her home. (Tr. 172-73). As a result, because the disability opinion of Dr. Bernstein was contrary to his own records and other objective medical and testimonial evidence in the record, the ALJ’s decision to afford little weight to his disability opinion was supported by substantial evidence.

B. Second, Strawn contends that the hypothetical that the ALJ gave to the vocational expert (“VE”) was incomplete because it did not include most of the limitations associated with her anxiety resulting in panic attacks or any of the limitations related to her irritable bowel syndrome. “A hypothetical question must reflect all of a claimant’s impairments that are supported by the record; otherwise the question is deficient and the expert’s answer to it cannot be considered substantial evidence.” Chrupcala v. Heckler, 829 F.2d 1269, 1276 (3d Cir. 1987). Although the ALJ

found Strawn's anxiety disorder was a severe impairment, the ALJ stated that he did not find Dr. Bernstein's conclusions or Strawn's testimony to be fully credible based on the objective medical evidence, Dr. Bernstein's previous conclusions and treatment notes, and the other physicians' opinions (Tr. 15 ¶ 5; 16 ¶ 1; 17 ¶ 2). As discussed above, the ALJ's conclusion regarding Dr. Bernstein's opinion was supported by substantial evidence. As for the ALJ's decision to discount Strawn's allegations, "[c]redibility determinations are the province of the ALJ", should only "be disturbed on review if not supported by substantial evidence", and are entitled to deference. S.H. v. State-Operated Sch. Dist. of the City of Newark, 336 F.3d 260, 271 (3d Cir. 2003); 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)). Because of Strawn's testimony regarding the activities she could do and the treatment reports that reflected few abnormalities, the ALJ determined that Strawn's subjective allegations were not fully credible. (Tr. 17 ¶2). Thus, the ALJ only included in the hypothetical the limitations associated with her anxiety that were supported by the record.

As for Strawn's irritable bowel syndrome, the ALJ noted that Strawn has been diagnosed with irritable bowel syndrome and that Strawn's panic disorder exacerbated her irritable bowel, which, in turn, exacerbated her anxiety. (Tr. 15 ¶4). Neither Strawn's treating psychiatrist nor her attorney at the hearing noted that Strawn had any limitations specifically related to irritable bowel. Since there is no evidence in the record to support including a limitation specifically for her irritable bowel syndrome, the ALJ was not required to include in the hypothetical any such limitation.

C. Third, Strawn contends that the ALJ failed to properly analyze the evidence in the record and improperly concluded that she was capable of performing gainful employment. Since the ALJ's credibility determinations were supported by substantial evidence, as noted above, and the ALJ properly included all of Strawn's limitations that were supported by the record in the hypothetical, the VE's opinion that Strawn could perform gainful employment was supported by substantial evidence. Thus, Strawn's argument is unavailing.

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 Dawn Strawn 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 DAWN STRAWN; and

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

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