

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

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| BRENDA SMITH | : | CIVIL ACTION |
| | : | |
| v. | : | NO. 07-1139 |
| | : | |
| MICHAEL J. ASTRUE, | : | |
| Commissioner of Social Security | : | |

MEMORANDUM

LOWELL A. REED, Jr., Sr. J

DECEMBER 17, 2007

Before the court for consideration is plaintiff's brief and statement of issues in support of request for review¹ (Doc. No. 7) and the response and reply thereto (Doc. Nos. 10, 11). The court makes the following findings and conclusions:

1. On May 12, 2004, Brenda Smith ("Smith") protectively filed for disability insurance benefits ("DIB") and social 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 October 1, 2003. (Tr. 48-50; 69-71). Throughout the administrative process, including an administrative hearing held on December 5, 2005 before an ALJ, Smith's claims were denied. (Tr. 4-6; 12-22; 33; 34-37). Pursuant to 42 U.S.C. § 405(g), on March 23, 2007, Smith filed her complaint in this court seeking review of that decision.

2. In his decision, the ALJ concluded that Smith's cervical and lumbar spine conditions, depression, and alcohol abuse were severe impairments. (Tr. 17 ¶ 1; 21 Finding 3).² The ALJ further concluded that Smith's impairments did not meet or equal a listing, that she retained the residual functional capacity ("RFC") to perform simple, routine, and repetitive sedentary work (involving objects, as opposed to people or data) with limited contact with the public, supervisors, and co-workers, and that she was not disabled. (Tr. 17 ¶ 1; 19 ¶ 2, 21 ¶ 1; 21 Findings 4, 6; 22 Finding 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, 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

¹Plaintiff filed a motion for summary judgment with her brief and statement of issues in support of request for review, which the court will construe only as a brief pursuant to the procedural order. (Doc. No. 5).

² All numbered paragraph references to the ALJ's decision begin with the first full paragraph on each page.

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. Smith raises five arguments in which she alleges that the determinations by the ALJ were either not supported by substantial evidence or were legally erroneous. Because the Commissioner did not apply the proper legal standards and because his determination is not supported by substantial evidence, I must remand to allow the Commissioner to conduct the proper analysis.

A. Smith asserts that the ALJ erred, when formulating her RFC, in discounting the medical evidence of tingling, ulnar neuropathy, and muscle wasting in her hands. An ALJ may not substitute his own opinion for a doctor's opinion based on competent medical evidence or make speculative inferences from medical reports. Plummer v. Apfel, 186 F.3d 422, 429 (3d Cir. 1999). In 2004 and the beginning of 2005, Smith reported she was capable of carrying 10 pounds, cleaning and preparing food, and had a normal physical exam with normal motor strength. (Tr. 60; 126; 159). However, on October 5, 2005, Tara Morrison, M.D. ("Dr. Morrison") found Smith had mild muscle wasting in her upper and lower extremities, "some distal motor weakness in the intrinsic muscles of the hands bilaterally," and reduced finger-to-nose touching in both hands. (Tr. 176-77). On December 12, 2005, Darlene Forth, M.D. ("Dr. Forth"), noted Smith had been complaining of numbness in her hands for the past six months and found that although Smith had intact motor strength, that the nerve conduction study was abnormal and demonstrated bilateral ulnar neuropathy at the elbows.³ (Tr. 173-75). On December 19, 2005, Dr. Morrison stated that Smith's condition was worsening in that she had intrinsic hand muscle wasting, continued to complain of numbness and tingling in her fingers at night, and her deep tendon reflexes were reduced at the brachioradialis and the finger flexors. (Tr. 172). At her hearing on December 5, 2005, Smith testified that she has difficulty cleaning, did not cook unless she had to, her hands tingled all the time, and that she had to use both hands to pick up a frying pan, or else she would drop it. (Tr. 235; 239). The ALJ noted the opinions of the neurologists were given subsequent to the finding by the lay reviewer for the State agency, who found no physiological limitations. (Tr. 19 ¶ 2; 150-54). However, the ALJ relied on Smith's statement from August of 2004 that she could lift 10 pounds and stated that her testimony regarding her difficulty with her hands was not supported by objective medical evidence. (Tr. 19 ¶ 2; 60). Substantial evidence does not support this finding, since the evidence in the record corroborates Smith's testimony regarding her limitations and there was no subsequent medical evidence in the record that contradicted the findings of Drs. Morrison and Forth. Thus, these manipulative limitations should have been included in the RFC. I note that the VE testified that the jobs she stated Smith was capable of performing required bilateral manual dexterity and that significant manipulative limitations would be a "definite problem." (Tr. 248). Thus, additional medical evidence should be obtained so that the severity of the limitation can be properly addressed in the RFC.

B. The above analysis demonstrates that the ALJ failed to fully consider the record before him, and thus, the court will not make a ruling on Smith's remaining arguments regarding

³As a result of these findings, Dr. Forth recommended that Smith stop leaning on her elbows and have a cervical and lumbar MRI performed. (Tr. 175). An MRI of Smith's cervical spine on January 4, 2006, demonstrated degenerative disc disease, but did not reflect stenosis, which could have been the reason for her difficulties with her hands. (Tr. 172; 177; 188). However, Dr. Morrison stated the etiology of at least some of her hand problems could be ulnar hand compression. (Tr. 177). The fact that stenosis was not found, does not appear from the evidence to invalidate the findings of Drs. Morrison and Forth.

the Commissioner failing to meet his burden at step five and the ALJ improperly discounting her depression, improperly rejecting the psychologists' finding with speculation, and failing to include all of her impairments in the hypothetical. The ALJ is directed to reevaluate those issues once he has fully examined the record in accordance with the proper procedures and legal standards.

5. Therefore, this case must be remanded in order for the ALJ to supplement his decision in a manner consistent with this opinion.

An appropriate Order follows.

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ORDER

AND NOW, this 17th day of December, 2007, upon consideration of the brief in support of review filed by plaintiff and response and reply thereto (Doc. Nos. 7; 10; 11) and having found after careful and independent consideration of the record that the Commissioner did not apply the correct legal standards and that the record does not contain substantial evidence to support the ALJ's findings of fact and conclusions of law, it is concluded that the action must be remanded to the Commissioner under sentence four of 42 U.S.C. § 405(g). Therefore, for the reasons set forth in the memorandum above, it is hereby **ORDERED** that:

1. **JUDGMENT IS ENTERED IN FAVOR OF THE PLAINTIFF, REVERSING THE DECISION OF THE COMMISSIONER OF SOCIAL SECURITY** for the purposes of this remand only and the relief sought by Plaintiff through her brief and motion for summary judgment is **GRANTED** to the extent that the matter is **REMANDED** for further proceedings consistent with this adjudication; and
2. The Clerk of Court is hereby directed to mark this case closed.

LOWELL A. REED, JR., Sr. J.