

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

HARRY S. HAYES	:	CIVIL ACTION
	:	
v.	:	NO. 07-710
	:	
MICHAEL J. ASTRUE,	:	
Commissioner of Social Security	:	

MEMORANDUM

LOWELL A. REED, Jr., Sr. J

December 17, 2007

Upon consideration of the brief in support of request for review filed by plaintiff, defendant's response and plaintiff's reply thereto (Doc. Nos. 8, 9, & 10), the court makes the following findings and conclusions:

1. On September 10, 2004, Harry S. Hayes ("Hayes") filed for disability insurance benefits under Title II of the Social Security Act, 42 U.S.C. §§ 401-433 alleging an onset date of February 25, 2001. (Tr. 43-45; 363). Hayes' date last insured was September 30, 2001. Throughout the administrative process, including an administrative hearing held on February 28, 2006 before an ALJ, Hayes' claims were denied. (Tr. 5-8; 16-25; 29-33; 359-391). Pursuant to 42 U.S.C. § 405(g), Hayes filed his complaint in this court on February 20, 2007.

2. In his decision, the ALJ found that Hayes had severe impairments of hypertension, degenerative disc disease and tinnitus. (Tr. 21 Finding 3). The ALJ further concluded that Hayes' impairments did not meet or equal a listing, that he could perform light work including his past relevant work and, thus, he was not disabled. (Tr. 22 Findings 4 & 5; 24 Finding 6; 25 Finding 7).

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. Hayes raises four arguments in which he alleges that the determinations by the ALJ were legally insufficient or not supported by substantial evidence. 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.

A. First, Hayes contends that the ALJ erred in not finding his heart impairment to be a severe impairment. Hayes alleges that objective testing revealed, *inter alia*, aortic sclerosis with mild aortic insufficiency and left ventricular hypertrophy. (Tr. 289; 295; 299). However, Hayes has not shown that these conditions significantly limited his ability to perform basic work activities. 20 C.F.R. § 404.1521(a). Moreover, as documented by the ALJ, the record is replete with mild cardiac findings, normal test results, and unimpressive medical evidence including several unremarkable stress tests with good exercise tolerance during the relevant time period and even after. (Tr. 22 ¶ 7; 23 ¶¶ 4-6; 92-95; 207; 257; 272; 281; 284; 286; 287-88; 289; 290; 293; 294; 295-96; 299; 300; 301; 318).¹ The ALJ also noted that Hayes had limited treatment and was capable of shoveling snow, caring for a large dog, and performing essentially unrestricted activities of daily living. (Tr. 23 ¶¶ 4, 6; 24 ¶ 3). Although Hayes' evidentiary burden is not high at step two, I find that based on the record evidence, the ALJ's conclusion that Hayes' heart impairment was not severe during the relevant period was supported by substantial evidence. See Poulos v. Comm'r of Soc. Sec., 474 F.3d 88, 92-93 (3d Cir. 2007); McCrea v. Comm'r of Soc. Sec., 370 F.3d 357, 360 (3d Cir. 2004).

B. Second, Hayes contends that the ALJ erred in rejecting the opinion of his treating physician David R. Smith, M.D. On January 1, 2006, over four years after Hayes' date last insured, Dr. Smith signed a form espousing his opinion regarding Hayes' ability to do physical work related activities during the relevant time period, which essentially relegated Hayes to sedentary or less work. (Tr. 349-351). Dr. Smith also signed a form on February 27, 2006, the day before Hayes' hearing, which stated only that, during the relevant period, Hayes was capable of tolerating low stress jobs. (Tr. 352). The ALJ accorded these opinions very limited weight because, *inter alia*, they were inconsistent with Dr. Smith's own rather benign treatment notes from the relevant time period. (Tr. 24 ¶ 5). 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). Moreover, an ALJ may not reject a treating physician's medical opinion without explanation and a showing of contradictory evidence in the record. Wallace v. Sec. of Health and Human Servs., 722 F.2d 1150, 1155 (3d Cir. 1983); Frankenfield v. Bowen, 861 F.2d 405, 408 (3d Cir. 1988). Here, Dr. Smith's 2006 assessments were inconsistent with and contradicted by Hayes' nearly normal level of activities of daily living, Dr. Smith's own notes showing degenerative joint disease for which Tylenol PM was recommended and a stable cardiac condition, and the limited findings in the medical record as a whole. See e.g. (Tr. 23 ¶ 4 - 24 ¶ 6; 166-68; 173-75; 178-82; 206; 217-18; 258; 279; 281). The ALJ also provided the requisite explanation for why he gave Dr. Smith very limited weight. (Tr. 24 ¶ 5). As a result, the ALJ's assessment was legally adequate and supported by substantial evidence.

Hayes also argues that Dr. Smith's opinions should not have been rejected because he was the only doctor to opine on Hayes' functional limitations and that the ALJ erred in assigning him an RFC for light work because no doctor opined that Hayes was capable of such work. I note that, ultimately, the RFC determination is reserved to the ALJ. 20 C.F.R. § 404.1527(e)(2). The ALJ, after discussing all of the medical evidence, summarized the basis for his light work RFC and stated that it was supported by "the relatively benign objective findings, the limited degree of treatment the claimant received and his nearly normal level of activities of daily living prior to the date last insured." (Tr. 24 ¶ 6). The ALJ also gave "appropriate but not

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

conclusive weight” to the state agency report lay opinion that Hayes could perform medium work, noting that the opinion was made without the benefit of later evidence. (Tr. 24 ¶ 4). In support of his argument, Hayes cites Doak v. Heckler, 790 F.2d 26 (3d Cir 1986). However, in Doak, the Court found that where none of the evidence in the record (consisting of the plaintiff’s testimony, three medical reports, and the VE’s testimony) suggested that the plaintiff could perform light work, the ALJ’s conclusion that he could perform light work was not supported by substantial evidence. 790 F.2d at 28-29. Here, however, although no doctor specifically stated that Hayes had an RFC for light work, as evidenced partially above, there was ample record evidence from which the ALJ could legitimately reach that conclusion. Thus, Hayes’ argument must fail.

C. Third, Hayes alleges that the ALJ failed to consider the actual demands of his past relevant work when finding that he could return to such work. Specifically, Hayes claims that the ALJ failed to recognize that his past job was stressful as he performed it and as it is generally performed. I first note that Hayes has failed to establish that he required low stress jobs. Therefore, there was no reason for the ALJ to discuss the stress associated with his past work. Hayes points to his testimony that his prior work was stressful, and the one page form signed by Dr. Smith on February 27, 2006 on which he checked a box stating that Hayes was capable of tolerating low stress jobs. (Tr. 352; 365-66; 373). There is absolutely no explanation for this conclusion, and as detailed above, the ALJ’s decision to give Dr. Smith’s 2006 assessments little weight was supported by substantial evidence. Second, I find that the ALJ adequately addressed whether Hayes could perform his past relevant work. A plaintiff will be found to be “not disabled” when it is determined that he or she retains the RFC to perform either: (1) “The actual functional demands and job duties of a particular past relevant job”; or (2) “The functional demands and job duties of the occupation as generally required by employers throughout the national economy.” S.S.R. 82-61 (emphasis original). In considering whether a plaintiff may return to his prior work, the ALJ must make specific findings of fact: (1) as to the individual’s RFC; (2) as to the physical and mental demands of the past job/occupation; and (3) that the individual’s RFC would permit a return to his or her past job or occupation. S.S.R. 82-62. Here, the ALJ: (1) found that Hayes had an RFC for light work and explained his conclusion (Tr. 22 Finding 5; 24 ¶ 6); (2) discussed Hayes’ past relevant work, stated that he had compared Hayes’ RFC to the physical and mental demands of that work, and concluded that Hayes was capable of performing the work as it was generally and actually performed (Tr. 25 ¶¶ 1-2; 4); and (3) found that Hayes’ RFC did not preclude his return to his past relevant work (Tr. 24 Finding 6). The ALJ also acknowledged that the VE testified that Hayes’ past relevant work was listed in the DOT at the light exertional level but that Hayes testified he actually performed it at the sedentary level. (Tr. 25 ¶ 3). As a result, the ALJ’s past relevant work analysis is legally sufficient.

D. Last, Hayes argues that if the ALJ had added a limitation of low stress jobs to his light work RFC, Hayes would have been disabled under the Grids. This argument is irrelevant since the ALJ’s step four decision that Hayes could return to his previous work was supported by substantial evidence. (Tr. 24 Finding 6). Moreover, as discussed above, the ALJ’s decisions to discount Dr. Smith’s 2006 opinion that Hayes should be limited to low stress jobs (an opinion which lacked any explanation) and to find his heart impairment non-severe (presumably a reason why Hayes allegedly required low stress jobs) were supported by substantial evidence. (Tr. 24 ¶ 5; 352). As a result, this argument must fail.

5. Because the decision of the ALJ was both supported by substantial evidence and legally sufficient, Hayes’ request for relief must be denied and the decision must be affirmed.

An appropriate Order follows.

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Commissioner of Social Security	:	

ORDER

AND NOW, this 17th day of December, 2007, upon consideration of the brief in support of request for review filed by plaintiff, defendant's response and plaintiff's reply thereto (Doc. Nos. 8, 9, & 10) and having found after careful and independent consideration that 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, for the reasons set forth in the memorandum above, it is hereby **ORDERED** that:

1. **JUDGMENT IS ENTERED IN FAVOR OF THE DEFENDANT, AFFIRMING THE DECISION OF THE COMMISSIONER OF SOCIAL SECURITY** and the relief sought by Plaintiff is **DENIED**; and
2. The Clerk of Court is hereby directed to mark this case closed.

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