

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

FRANK SOKOL, : CIVIL ACTION
 : No. 97-4498
Plaintiff, :
 :
v. :
 :
KENNETH S. APFEL, :
Commissioner, Social Security :
Administration, :
 :
Defendant. :

ORDER-MEMORANDUM

AND NOW, this **30th** day of **September, 1998**, upon consideration of plaintiff's motion for summary judgment (doc. no. 6), defendant's motion for summary judgment (doc. no. 7), the Report and Recommendation of the Magistrate Judge (doc. no. 10), and plaintiff's objections thereto (doc. no. 11), it is hereby **ORDERED** that the objections are **OVERRULED** and that the Report and Recommendation of the Magistrate Judge to deny plaintiff's motion for summary judgment (doc. no. 6) and grant defendant's motion for summary judgment (doc. no. 7) is **ADOPTED**. It is **FURTHER ORDERED** that **JUDGMENT** shall be entered in favor of defendant and against plaintiff.

I. FACTUAL AND PROCEDURAL BACKGROUND

1. Plaintiff Francis M. Sokol ("claimant") brings this action pursuant to 42 U.S.C. § 405(g) to review the decision of the Defendant Commissioner of Social Security ("the Commissioner") denying claimant's request for disability

insurance benefits under Title II of the Social Security Act ("the Act"), 42 U.S.C. §§ 401-433.

2. Claimant filed his application for disability benefits on November 23, 1993, asserting that he had become totally disabled beginning on February 22, 1988, when he was injured while working as a hostler with the City of Philadelphia Police Department when a horse pulled him for some distance. Claimant alleged "cervical spine" and "right rotator cuff (arm)" conditions. The Commissioner denied claimant's application for disability benefits at the initial and reconsideration stages. Claimant then requested and was granted a hearing in front of an Administrative Law Judge ("ALJ"). A hearing was initially held on September 13, 1995, but was continued until March 28, 1996 to permit claimant's counsel to produce relevant medical documentation. Present at the 1996 hearing were claimant, his counsel, and a vocational expert ("VE"). Claimant and the VE testified at that hearing.

2. Claimant asked the Appeals Council to review the ALJ's ruling. That request was denied on May 6, 1997, thus rendering the ALJ's ruling the final decision of the Commissioner. See Jesurum v. Secretary of the United States Dep't of Health & Human Servs., 48 F.3d 114, 116 (3d Cir. 1995).

¹ Plaintiff testified that his duties as a hostler included "tak[ing] care of the police horses, muck[ing] stalls, sweep[ing] up, . . . fill[ing] feed bins, [and] get[ting] horses ready for patrol." (Tr. at 51.)

3. Claimant next sought review of the Commissioner's final decision in this Court pursuant to 42 U.S.C. § 405(g). In accordance with the general practice followed in this district, the parties filed cross motions for summary judgment. The Court then referred the matter to a Magistrate Judge for a Report and Recommendation. See Local R. Civ. P. 72.1(I)(d)(1)(J); see also 28 U.S.C. § 636(b)(1)(B). After reviewing the complaint and motion for summary judgment, the Commissioner's answer and cross-motion for summary judgment, the administrative transcript, including Exhibits 1-29, and plaintiff's letter memoranda, the Magistrate Judge issued a 10 page Report and Recommendation dated April 30, 1998 which recommended (1) granting the Commissioner's motion for summary judgment and (2) denying claimant's motion for summary judgment.

4. Claimant has filed objections to the Report and Recommendation of the Magistrate Judge. It is these objections which are currently before the Court. For the reasons stated herein, the Court will overrule the claimant's objections and therefore will adopt the Report and Recommendation of the Magistrate Judge.

II. DISCUSSION

5. When reviewing a decision of the Commissioner to deny disability benefits, the district court's role is limited to determining whether (1) the ALJ applied the proper legal standards, see Podedworny v. Harris, 745 F.2d 210, 221 n.8 (3d Cir. 1984) ("Our scope of review on matters of law is plenary"),

and (2) whether the Commissioner's findings of fact are supported by "substantial evidence." Jesurum, 48 F.3d at 117 (citing Brown v. Bowen, 845 F.2d 1211, 1213 (3d Cir. 1988); see 42 U.S.C. §§ 405(g)). Substantial evidence is defined as "'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" Jesurum, 48 F.3d at 117 (quoting Richardson v. Perales, 402 U.S. 389 (1971)). "It is less than a preponderance of the evidence but more than a mere scintilla." Id. (citing Richardson, 402 U.S. at 401).

6. The Court's review of the Magistrate Judge's ruling is de novo. See 28 U.S.C. § 636(b). Therefore, the Court "may accept, reject or modify, in whole or in part," the Magistrate Judge's findings and recommendations. Id. In considering claimant's objections to the Magistrate Judge's ruling, the Court has independently reviewed the entire record, including the Report and Recommendation itself, the ALJ's written decision, the transcript of the hearing, the hearing exhibits and relevant correspondence.

² The search for substantial evidence "is not merely a quantitative exercise." Kent v. Schweiker, 710 F.2d 110, 114 (3d Cir. 1983) (emphasis in original). Rather, "[t]he administrative decision should be accompanied by a clear and satisfactory [explication] of the basis on which it rests.'" Phillips v. Chater, 1996 WL 457183 at *4 (D. N.J. June 27, 1996) (quoting Cotter v. Harris, 642 F.2d 700, 704 (3d Cir.), reh'g. denied, 650 F.2d 481 (3d Cir. 1981)). "A single piece of evidence will not satisfy the substantiality test if the [Commissioner] ignores, or fails to resolve, a conflict created by countervailing evidence." Kent, 710 F.2d at 114.

7. To receive disability benefits, claimant must show that he suffered from a "disability" as defined by the Act.

Under the Act, "disability" is defined as:

inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months . . . [The impairment must be so severe that the claimant] is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.

42 U.S.C. §§ 423(d)(1)(A) & (d)(2)(A).

The Commissioner has established a five-step inquiry for determining if a claimant is eligible for disability benefits under the Act. See Jesurum v. Secretary of the United States Dep't. of Health & Human Servs., 48 F.3d 114, 117 (3d Cir. 1995). To prevail, claimant must establish "(1) that [he] is not engaged in 'substantial gainful activity' and (2) that [he] suffers from a severe medical impairment." Id. (quoting Bowen v. Yuckert, 482 U.S. 137, 140-41 (1987)). If claimant establishes elements (1) and (2), the Commissioner must determine "(3) whether the impairment is equivalent to an impairment listed by the [Commissioner] as creating a presumption of disability." Id. If it is not, claimant bears the burden to show "(4) that the impairment prevents [him] from performing the work that [he] has performed in the past." Id. (citing Bowen, 482 U.S. at 141, 107 S.Ct. at 2291). If claimant satisfies the burden, unless the Commissioner can demonstrate "(5) that there are jobs in the national economy that the claimant can perform," the Commissioner

must grant the claimant benefits. Id. (citing Ferguson v. Schweiker, 765 F.2d 31, 37 (3d Cir. 1985)).

8. The Magistrate Judge found that the ALJ correctly applied the requisite five-step sequential evaluation to both the physical and mental impairments, and that there was substantial evidence in the record to support the ALJ's decision to deny benefits in this case.

9. Claimant, in essence, presents two objections to the Magistrate Judge's Report and Recommendation. The Court finds no merit to either of claimant's objections.

10. Claimant alleges that the Magistrate Judge erred in finding that the ALJ had properly reviewed the objective medical evidence in considering claimant's complaints of pain in his decision to deny benefits. An ALJ "must give serious consideration to a claimant's subjective complaints of pain, even where those complaints are not supported by objective evidence . . ." Mason v. Shalala, 994 F.2d 1058, 1067 (3d Cir. 1993). "In order for an ALJ to reject a claim of disabling pain, he must consider the subjective pain and specify his reasons for rejecting these claims and support his conclusion with medical evidence in the record." Matullo v. Bowen, 926 F.2d 240, 245 (3d

³ Claimant essentially contests the "correctness" of the ALJ's conclusion that the objective medical evidence revealed minimal or normal findings. Because the Court's review of the ALJ's decision is limited to determining whether the ALJ applied the proper legal standard and whether the ALJ's decision was supported by substantial evidence, this is not a proper objection. See supra para. 5.

Cir. 1990) (citing Baerga v. Richardson, 500 F.2d 309, 312 (3d Cir. 1974)).

11. Claimant also contends that the Magistrate Judge erred in concluding that the ALJ properly analyzed claimant's activities of daily living in his conclusion that the activities were not indicative of an individual who is totally disabled. Claimant argues that this mis-characterization stems from an improper finding by the ALJ that claimant received a disability "pension likely decreases his motivation to return to the work force," (Tr. at 17), and that the ALJ improperly took this into account in evaluating claimant's credibility.

12. In finding that claimant retained residual functional capacity to perform the exertional demands of light to sedentary work, the ALJ specifically considered claimant's subjective complaints of pain. (Tr. at 18) ("Claimant alleges inability to work due to shoulder and neck injuries from a work related accident, and resulting subjective symptoms including pain in his neck, right shoulder and arm, back and right side."). The ALJ found, however, claimant's allegations of disabling pain exaggerated since they were disproportionate to the objective medical findings of record. Id. In support of his conclusion, the ALJ pointed to specific parts of the record, and discussed the results of the medical tests which claimant underwent and the notes of claimant's treating and examining physicians. Id.

⁴ The ALJ specifically made reference to EMG/NCV studies performed in 1984 and 1987 that were normal, a 1986 x-ray that showed an otherwise normal shoulder and only hypertrophic changes

Since the ALJ considered claimant's complaints of pain, explained his reasons for rejecting them by pointing to evidence in the record, and because his conclusion is supported by substantial evidence in the record, the Court finds that the ALJ properly rejected the claim of disabling pain in this case. See Matullo, 926 F.2d at 245.

13. There is a lack of consensus among courts on the propriety of considering the effect of disability benefits on a claimant's credibility, and the Third Circuit has not yet addressed the issue. See Rinker v. Chater, No. 95-3923, 1997 WL 47791 (S.D. N.Y. Feb. 6, 1997) (collecting cases and concluding that ALJ should not have adopt a per se rule that claimant's pension made him less credible in testifying about pain). Assuming, arguendo, that the ALJ improperly considered the fact that plaintiff was receiving disability benefits, because the ALJ's decision was not solely based on ALJ's perceived lack of motivation to return to the work force, but rather was merely one factor, (Tr. at 17-19), the Court finds that the ALJ's decision was nevertheless supported by substantial evidence. See, e.g., Gonzalez v. Chater, No. 93-7200, 1996 WL 442798 (S.D. N.Y. Aug.

to the clavicle, and an MRI scan performed in June 1987 that was normal. (Tr. at 18.) Further, the ALJ pointed to notes made by claimant's physicians from examinations in January 1987 by Dr. Mattei, in July 1987 by Dr. Wisnewski, and in September 1987 by Dr. Yablon which describe clinical findings of only mild impairment. (Tr. at 18-19.)

⁵ Besides the objective medical findings, the ALJ also noted claimant's testimony as to his own physical limitations and description of his activities of daily living. (Tr. at 17-19.)

6, 1996) (discounting the ALJ's decision to take into account disability payments as a factor for claimant's motivation, but finding nevertheless that without consideration of that factor, the decision to reject the request for disability insurance benefits was supported by substantial evidence).

III. CONCLUSION

For the reasons explained above, the Court adopts the Report and Recommendation of the Magistrate Judge. Claimant's motion for summary judgment is denied. The Commissioner's motion for summary judgment is granted.

AND IT IS SO ORDERED.

EDUARDO C. ROBRENO, J.