

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

MOLLIE COHEN,	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. 98-3530
	:	
v.	:	
	:	
KENNETH S. APFEL,	:	
Commissioner of Social Security,	:	
	:	
Defendant.	:	

OPINION

BUCKWALTER, J.

April 19, 1999

I. INTRODUCTION

Presently before the Court are Plaintiff Mollie Cohen's objections to Magistrate Judge Jacob P. Hart's report recommending that this Court affirm the final decision of the Commissioner of Social Security, which adopted the Administrative Law Judge's denial of Plaintiff's request for social security disability benefits. In denying the benefits, the Administrative Law Judge ("ALJ") determined that Plaintiff could perform sedentary and light exertional work (albeit with certain restrictions), and was capable of returning to a past relevant position. She was therefore not under a "disability," as that term is defined under the Social Security Act and the regulations promulgated thereunder. Based on an independent review of the record, in light of Plaintiff's objections, Magistrate Judge Cohen's report is APPROVED and ADOPTED.

Although it is not entirely clear, Plaintiff appears to be objecting to Magistrate Judge Hart's report on four grounds. First, Plaintiff contends that Magistrate Judge Hart's conclusion -- that there was no evidence that Plaintiff's hearing loss or the symptoms associated with her ear infections would preclude her from taking any job -- is rebutted by her own testimony and the medical records relating to her chronic ear disease. Second, Plaintiff maintains that Magistrate Judge Hart erred in regarding the ALJ's explanation of Plaintiff's credibility as adequate. Third, Plaintiff argues that the ALJ erred in attaching any suspicion to her having not claimed a disability as a result of her depression until after she was told she would not be covered for the injuries sustained in the car accident. And finally, Plaintiff claims that the Magistrate Judge erred in using her work history as evidence against her disability.

II. DISCUSSION

A. Standard of Review

This Court's review is limited to determining whether the Commissioner's decision is supported by substantial evidence. See 42 U.S.C. § 405(g). The Court neither undertakes a de novo review of the decision, nor does it reweigh the evidence in the record. See Monsour Med. Ctr. v. Heckler, 806 F.2d 1185, 1190 (3d Cir. 1986). Substantial evidence is evidence that is less than a preponderance, but more than a mere scintilla. See Richardson v. Perales, 402 U.S. 389, 401 (1971). That is, it "does not mean a large or considerable amount of evidence, but rather 'such relevant evidence as a reasonable mind might accept as adequate to

support a conclusion.”” Pierce v. Underwood, 487 U.S. 552, 565 (1988) (quoting Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229 (1938)).

B. First Objection

Plaintiff contends that Magistrate Judge Hart’s conclusion concerning the effect of her ear infection and concomitant hearing loss are rebutted by her own testimony and the medical records relating to her chronic ear disease. However, Plaintiff misreads the import of Magistrate Judge Hart’s statement. The inquiry is whether her ear-related ailments would preclude her from taking any job. After a review of the entire record, including Plaintiff’s testimony and the medical records relating to her chronic ear disease, the Court concludes that Magistrate Hart’s assessment was correct. There is no evidence that Plaintiff’s hearing loss or the symptoms associated with her ear infections would preclude her from taking any job.

C. Second Objection

Plaintiff maintains that Magistrate Judge Hart erred in regarding the ALJ’s explanation of Plaintiff’s credibility as adequate. Specifically, she contends that she is not required to establish her disability through medical evidence alone as there is a presumption of credibility accorded her subjective complaints of pain and symptoms.

Although Plaintiff is surely not required to establish her disability through medical evidence alone, her “statements alone are not enough to establish that there is a physical or mental impairment.” 20 C.F.R. § 404.1528(a) (1999); accord 20 C.F.R. § 404.1529(a) (1999) (“statements about your pain or other symptoms will not alone establish that you are disabled”). Thus, it is far from established that Plaintiff’s testimony is bestowed any presumption of credibility.

In any event, the ALJ is empowered to evaluate the credibility of witnesses. See Van Horn v. Schweiker, 717 F.2d 871, 873 (3d Cir. 1983). Plaintiff testified about her pain and symptoms, whose weight the ALJ properly appreciated, in light of the medical evidence. On this record, the Court concludes that the ALJ adequately explained her decision to regard the severity of Plaintiff's symptoms as not entirely credible. See Cotter v. Harris, 642 F.2d 700, 705 (3d Cir. 1981).

D. Third Objection

Plaintiff argues that the ALJ erred in attaching any suspicion to her having not claimed a disability as a result of her depression until after she was told she would not be covered for the injuries sustained in the car accident. Specifically, Plaintiff claims that she was not able to recognize the extent of her mental impairment or the degree of her need for treatment because of her depression.

The fact that Plaintiff changed the date of the onset of her disability once she was informed that she would not be covered for the injuries sustained in the car accident may cast some doubt on Plaintiff's credibility. Indeed, it appears the ALJ characterized this as some kind of admission that Plaintiff only became disabled after the expiration of her insured status. See R. at 21. To the extent the ALJ considered these circumstances to reflect negatively on Plaintiff's credibility, the Court believes that would have been in error because of Plaintiff's lay person status and her mental impairment.

However, in any case, examining the entire record and the peculiar procedural posture of the case before the ALJ, the Court cannot conclude that the ALJ erred in ultimately determining that Plaintiff was not entirely credible. It is apparent that the ALJ took great pains to

ensure that Plaintiff received a full and fair opportunity to be heard and that all relevant evidence was submitted. See R. at 18.

E. Fourth Objection

Finally, Plaintiff contends that the Magistrate Judge erred in using her work history as evidence against her disability. Specifically, Plaintiff claims that the Magistrate Judge ignored the sporadic nature of that work history, and that the ALJ's decision totally ignored that report of Plaintiff's 1995 visit to the Bustleton Guidance Center.

However, Plaintiff's work history, sporadic or otherwise, is evidence relevant to whether she is able to engage in a substantial gainful activity and thus, may properly be considered by the ALJ even if it is prejudicial to Plaintiff. Moreover, while the ALJ may have omitted mention of Plaintiff's 1995 visit, this omission does not warrant a reversal as substantial evidence exists in the record to support the ALJ's decision.

III. CONCLUSION

Based on an independent review of the record, this Court concludes that the evidence adequately supports the ALJ's determination. Accordingly, the ALJ's denial of benefits is supported by substantial evidence and therefore, the decision will neither be overturned nor remanded for further explication. The report will be APPROVED and ADOPTED in its entirety.

An appropriate order follows.

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Commissioner of Social Security,	:	
	:	
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ORDER

AND NOW, this ____ day of April 1999, upon consideration of the Report and Recommendation of the United States Magistrate Judge Jacob P. Hart (Docket No. 13) and Plaintiff's objections thereto (Docket No. 14), it is hereby ORDERED that the Report and Recommendation is APPROVED and ADOPTED, in accordance with the accompanying memorandum.

Accordingly, Plaintiff's underlying motion for summary judgment (Docket Nos. 6 and 12) is DENIED and Defendant's underlying motion for summary judgment (Docket No. 10) is GRANTED.

The Clerk of Court shall mark this case CLOSED.

BY THE COURT:

RONALD L. BUCKWALTER, J.