

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

ANN MARIE MCDONALD	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	NO. 98-3001
v.	:	
	:	
KENNETH S. APFEL,	:	
Commissioner of Social Security,	:	
	:	
Defendant.	:	

**MEMORANDUM**

BUCKWALTER, J.

June 3, 1999

Presently before the Court are Plaintiff Ann Marie McDonald's objections to United States Magistrate Judge Peter B. Scuderi'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 a range of light and sedentary work (albeit with certain restrictions), and was capable of performing a significant number of jobs in the national economy. 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 Scuderi's report is APPROVED and ADOPTED.

Plaintiff objects to Magistrate Judge Scuderi's report on three grounds. First, she contends that improper weight was given to the opinion of Plaintiff's treating physician, Dr.

Marvin Levy. Specifically, she argues that it was improper for the ALJ to disregard Dr. Levy's opinion in evaluating her ability to engage in substantial gainful activity. Second, Plaintiff contends that there was substantial evidence in the record to support the ALJ's determination as to her pain. She maintains that her subjective amount of pain was discounted based on credibility grounds without contrary medical evidence. And finally, Plaintiff asserts that the ALJ erred in finding that Plaintiff could perform work "on a regular and continuing basis," in light of the ALJ's finding that she could "stand, walk or sit up to six hours." R. at 22.

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)).

The record affords substantial evidence to refute Plaintiff's objections. First, the ALJ carefully considered the opinion of Plaintiff's treating physician, Dr. Levy, and properly discounted it to the extent that it precluded Plaintiff from engaging in any substantial gainful activity. Second, while Plaintiff testified about her subjective complaints of pain, the ALJ properly appreciated the weight of her testimony, in light of Plaintiff's other testimony concerning her daily activities and life style. The ALJ also declined to recognize the pain as

precluding Plaintiff from any substantial gainful activity when viewed in conjunction with the medical evidence in the record from Plaintiff's treating physicians. Finally, contrary to Plaintiff's assertion that the ALJ erred in finding she could perform work on a regular and continuing basis when she could work only thirty-hour weeks, the ALJ properly found that Plaintiff could "stand, walk or sit up to six hours [a day]." The fact that the ALJ has delineated the activities of standing, walking, and sitting disjunctively in reference to a six-hour day is only consistent with a finding that Plaintiff is able to work a full eight-hour day, which is reflected in the remainder of the ALJ's opinion. In that vein, the Court rejects both parties' reading of the ALJ's admittedly poorly-drafted statement.

Additionally, based upon an independent review of the entire record, this Court concludes that the evidence adequately supports the ALJ's ultimate 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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 KENNETH S. APFEL, :  
 Commissioner of Social Security, :  
 :  
 Defendant. :

**ORDER**

AND NOW this 3rd day of June, 1999, upon consideration of the Report and Recommendation of the United States Magistrate Judge Peter B. Scuderi (Docket No. 12), Plaintiff's objections thereto (Docket No. 13), and Defendant's reply (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 No. 7 and 10) is **DENIED**, and Defendant's underlying motion for summary judgment (Docket No. 8) is **GRANTED**. Judgment is entered in favor of Defendant, Kenneth S. Apfel, and against Plaintiff, Ann Marie McDonald.

The Clerk shall mark this case **CLOSED**.

BY THE COURT:

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RONALD L. BUCKWALTER, J.

