UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DONNA M. LONG, Plaintiff,	)	
v.	)	CIVIL ACTION NO. 06-11027-DPW
MICHAEL J. ASTRUE, Commissioner of the Social Security Administration, Defendant.	)	

MEMORANDUM AND ORDER
August 6, 2007

Donna M. Long ("Long") brings this action pursuant to 42 U.S.C. § 405(g) and 1383(c)(3), which provide for judicial review of a final decision by Defendant Commissioner of Social Security (the "Commissioner") regarding Long's entitlement to disability benefits. Long contests a Social Security Administration ("SSA") decision denying her application for disability benefits and Supplemental Security Income (SSI).

I. BACKGROUND

A. Procedural History

Long applied for SSI benefits on February 2, 1998. She claimed disability since July 30, 1993, primarily due to fibromyalgia but also depression. Her SSI application was initially denied by the SSA on June 5, 1998, on the basis that her conditions did not prevent her from working. Long filed a Request for Reconsideration on June 8, 1998, but this was also denied on October 7, 1998. She then filed a Request for a Hearing

before Administrative Law Judge Hugh S. Atkins (the "ALJ") on November 5, 1998. The hearing was held on September 7, 1999; Long appeared and testified, as did her daughter and a vocational expert. The ALJ issued his decision on November 5, 1999, finding that Long was not disabled because she remained able to perform her past job as a collections clerk and other jobs that existed in significant numbers in the national economy despite her functional limitations. The SSA Appeals Council denied Long's request for review of the ALJ's decision on December 12, 2002. This civil action was subsequently commenced pursuant to 42 U.S.C. § 405(g) on June 13, 2006, pursuant to the recognition by the Appeals Council of an extended time frame within which Long could seek judicial review.

B. Plaintiff's Background and Medical History

Long was born on October 5, 1958; she completed high school and two years of college level courses, with an associate's degree in accounting. Her employment history consists of work as a construction worker, collection clerk, fast food worker, and machine operator. At the time of the hearing, she lived in New Bedford with her three children, ages 10, 19, and 21.

Long has claimed disability since July of 1993, when she last worked as a laborer for Shon Lee Construction. This work involved a wide variety of construction-related activity, such as pouring foundations, carpentry work, using equipment, and even a

forklift. Long primarily alleges disability because of fibromyalgia, which was unrelated to any work-related incidents but was later diagnosed in November 1997 by a rheumatologist, Dr. Gail Davidson, to whom Long was referred by her primary treating physician, Dr. Michael A. Taylor. Long claims that her fibromyalgia and depression prevent her from sitting or bending her head for short or long periods of time without pain and limits her ability to perform everyday activities. She has not gone back to work since July of 1993.

1. Long's Physical Condition

Long underwent an MRI of her lumbar spine on July 15, 1993, before she stopped working that same month; she had been complaining of lower back pain and a burning feeling in the plantar aspect of her left foot. Results of the MRI were normal, with no evidence of bulge or herniation in the lumbosacral intervertebral discs or abnormalities with respect to the diameters of the lumbosacral spinal canal. Long also underwent a cervical MRI on April 21, 1995, which found mild spondylosis giving rise to slight stenosis.

Long began seeing Dr. Taylor in July of 1993; these visits lasted until March 4, 1997. It was during these visits that Long first reported suffering from lumbar sacral pain, elbow pain, anxiety, asthma, and migraine headaches. Taylor's reports do not explicitly reveal the presence of fibromyalgia, which was

diagnosed later in 1997.

On February 3, 1997, Long--reporting of shoulder and back pain in both the cervical and lumbar area--was examined by Dr. Marvin Z. Schreiber at St. Luke's Hospital in New Bedford. Long's visit allegedly stemmed from an altercation with police officers at her home; she was in custody during the time of her examination. Schreiber noted that Long seemed to be hypersensitive to any palpation of any parts of her upper torso, but concluded that there was no exquisite tenderness over her neck or over her spine. Long also had full range of motion of her upper extremities. X-rays of both her shoulders and back were normal. Long was diagnosed with cervical, lumbosacral, and bilateral shoulder strains.

On March 4, 1997, Long reported wrist, forearm, and elbow pain to Dr. Taylor. X-rays were taken of the left elbow but showed no fracture or dislocation. On March 27, Long complained to Dr. Robert Conroy of left arm pain and paresthesias in the forearm and fingers, as a result of the previous altercation with the police. Conroy noted that Long had been treated with Motrin and Flexiril for the pain. He noted that Long appeared to be extremely sensitive to any manipulation of her left arm and palpation of the lateral epicondyle, although he noted that x-rays had been unremarkable and that his tests did not reveal any serious findings. Long also had an EMG nerve conduction study at this time, which resulted in normal findings with no evidence of

compression neuropathy, cervical radiculopathy, or plexopathy.

Long underwent a bone scan of her back on May 3, 1997, which showed no significant abnormalities in either the lumbar or thoracic spine.

Long then began seeing Dr. Davidson on June 16, 1997. Davidson noted that Long was "exquisitely tender to the touch, in fact almost inconsistently [so]." Davidson also noted that Long appeared to be able to get up and move well until she began to examine Long's back, "and then [Long] couldn't and burst into tears." Davidson advised Long to walk more and provided a prescription for Elavil. Long failed to show up for a outpatient appointment on October 6, 1997.

Long also continued to see Dr. Taylor during this time; on November 4, 1997 when Taylor noted that Long had been diagnosed by Davidson with fibromyalgia.[1] That same month, Taylor assessed Long's functional capabilities and determined that she was able to lift and/or carry 20 pounds occasionally and could stand for two hours and sit for four hours, alternating between the two positions every 45 to 60 minutes to relieve discomfort. However, on April 30, 1998, Taylor noted that Long's fibromylagia was

[1] The record does not appear to include Dr. Davidson's actual diagnosis of Long's fibromyalgia; however, the record does include statements supporting Dr. Taylor's November 4, 1997 report that Dr. Davidson provided Long with a fibrositis booklet and notes apparently from Dr. Davidson regarding fibromyalgia medication and a self-reporting health history form acknowledging fibromyalgia as a diagnosed health problem.

preventing her from being able to work.

In accordance with its review of Long's disability claims, the SSA began collecting Physical Residual Functional Capacity Assessment forms ("RFCs") from DDS physicians in April of 1998. The first was filled out on April 2, 1998 by a Dr. Weintraub, who opined that the Plaintiff could lift and carry 50 pounds occasionally and 25 pounds frequently.[2] Weintraub also concluded that Long could stand and/or walk about 6 hours in an 8-hour workday and could sit for about the same length of time. Weintraub observed that Long suffered from fibromyalgia with multiple trigger points but maintained a normal range of motion.

Long underwent a comprehensive evaluation by Dr. Anis Rahman in September of 1998 regarding her physical limitations. In his report dated September 18, 1998, Rahman noted that the examination was difficult because Long cried with pain upon the slightest contact and literally jumped with pain on the slightest touch of her spine. However, he also noted that her range of motion was normal, and that she exhibited no pain on motion. Rahman's examination of Long's lumbosacral spine resulted in normal findings. Long underwent an X-ray of her pelvic area, which presented a normal appearance.

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[2] There does not appear to be anything in the record to indicate Dr. Weintraub's identity other than an illegible signature on a report and reference to his last name in Defendant's Memorandum seeking reversal of the Defendant's decision that she was not disabled.

Long began seeing Dr. Roland Chan in January of 1999. Chan noted Long's fibromyalgia and reported back pain and prescribed Buspirone and Doxepin in order to help Long sleep through the night. Long exhibited positive results from the medication and reported feeling much better on June 9, 1999.

On August 2, 1999, Long was examined by Dr. Peter Horan for numerous alleged ailments including fibromyalgia and asthma, which had caused tightness in her throat and constant inability to breathe. Horan noted that Long's pain response was exaggerated with wincing and tears on moving. He did see some decreased range of motion of both hip joints, but the rest of Long's joints appeared to be normal as were her gait and posture. Long's lungs were clear to auscultation and percussion, with no wheezes heard and normal breathing sounds.

2. Long's Mental Condition

Dr. Taylor completed a mental RFC on July 11, 1997, which indicated that Long was either not limited or only slightly limited in her ability to sustain various activities over a normal workday. More specifically, Taylor found that Long had no limitations in her ability to understand and remember work procedures, simple and detailed instructions, work without distraction, and maintain attention and concentration to sustain employment. Taylor later maintained his opinions in a March 11, 1998 report in which he stated that he had not noticed any

memory, concentration or attention deficits or any significant deterioration in her habits, interests, or daily activities.

On May 6, 1998, Dr. Guillermo Gonzalez conducted a psychiatric evaluation report of Long. Long reported getting upset easily, crying, feeling tired and worthless, and getting angry at herself and her limitations. Long also stated that her depression had been going on for the past few years, preventing her from being able to do what she used to do in the past. She said that she was not undergoing any psychiatric treatment but that she was taking Zoloft for her depression. Gonzalez noted that while Long seemed depressed and cried during the interview, she was able to convey information to him in a logical, relevant, and coherent way. He also reported that she was in good contact with reality with no evidence of delusions or hallucination, and that her insight and judgment were good. Gonzalez also noted Long's ability for abstract thinking operations and her intelligence and reliability levels. Gonzalez assessed Long with a Global Assessment of Functioning score of 55.[3]

On May 22, 1998, Dr. Nancy Keuthen completed a mental RFC of Long, concluding that Long was not markedly limited in her ability to utilize understanding and memory, sustain concentration and persistence, interact socially, make

[3] A GAF of 51-60 indicates "moderate symptoms" or moderate difficulty in social or occupational functioning. *See Diagnostic and Statistical Manual of Mental Disorders*, *Text Revision*, 34 (4th ed.) ("DSMIV-TR").

adaptations at work, or to set realistic goals or make plans independently of others. Keuthen concluded that Long likely had some moderate limitations in attention, pacing and stress tolerance, but that she would still be able to do simple, low stress work. Keuthen also conducted a psychiatric review on the same day, finding that Long's depression caused only a slight restriction of activities of daily living but often resulted in deficiencies of concentration, persistence or pace resulting in failure to complete tasks in a timely manner.

On September 15, 1998, Long was seen at the psychiatric services unit of St. Luke's Hospital because of her fibromyalgia and depression. Long particularly complained of anxiety problems, which were providing her with the need to flee in public places, dizziness, and blurred vision. The intake counselor diagnosed depression and assessed a GAF score of 50. On September 29, Long reported feeling a little better and her GAF was assessed at 60. Long subsequently failed to appear for an appointment on October 23, but had an October 30 appointment in which she said that she felt better, with a better mood and self-esteem and that her medication was helping. In another appointment on December 9, Long reported feeling better and had a brighter affect.

On October 1, 1998, Dr. Maxwell Potter completed a psychiatric review and a mental RFC with very similar findings to that of Dr. Keuthen. Long exhibited either no significant or only moderate limitations with respect to her functional capacity and

no or slight impairment severity, with the exception of deficiencies of concentration, persistence or pace.

On August 9, 1999, Long was seen by Dr. Paul Solomon for a psychodiagnostic interview. Solomon noted that Long complained of an inability to concentrate, but also noted that her memory functioning was good and that she was able to do serial subtraction of 7's slowly but correctly. He also noted that Long was well oriented and did not demonstrate any psychotic though processes. He concluded that Long had all the symptoms of a major depression and also had "major medical problems," but did not go into detail in mentioning what these other problems were. Solomon also assessed Long's GAF at 50 and noted that it had not been higher than 50 in the past year.

Solomon also completed a supplemental RFC questionnaire after Long's hearing; he diagnosed mostly mild or moderate impairments of Long's functional capacity and ability to perform work-related tasks. Solomon did conclude that Long's pain allegations were consistent with clinical findings, but did not elaborate on how Long's pain affected her ability to function.

II. DISCUSSION

A. Standard of Review

The courts may not disturb the Commissioner's decision if it is grounded in substantial evidence. *See* 42 U.S.C. §§ 405(g) and

1383(c)(3). Substantial evidence means more than just a mere scintilla. *See Richardson v. Perales*, 402 U.S. 389, 401 (1971). Even if the record could support multiple conclusions, a court must uphold the Commissioner's findings "if a reasonable mind, reviewing the evidence in the record as a whole, could accept it as adequate to support [his] conclusion." *Rodriguez v. Sec'y of Health & Human Servs.*, 647 F.2d 218, 222 (1st Cir. 1981). The "resolution of conflicts in evidence and the determination of credibility are for the Commissioner, not for doctors or the courts." *Reeves v. Barnhart*, 263 F.Supp.2d 154, 156 (D. Mass. 2003)(citing *Rodriguez*, 647 F.2d at 222.).

B. Disability Standard

In order to qualify for disability benefits under the Social Security Act, an individual must suffer from a disability within the meaning of the Act. *See* 42 U.S.C. §§ 423 and 1382(c). An individual is considered disabled under the Act only if her physical or mental impairment or impairments are of such severity that she is not only unable to do her previous work but cannot, considering her age, education, and work experience, engage in any other kind of substantial gainful employment which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for her, or whether she would be hired if she applied for work. 42 U.S.C. §§ 423(d)(2)(A) and 1382c(a)(3)(A).

The burden is on the plaintiff to prove disability. *Martinez v. Shalala*, 911 F. Supp. 37, 41 (D. Mass. 1996).

Pursuant to SSA regulations, the Commissioner must weigh the evidence in a five-step process to determine whether a plaintiff is disabled. *See* 20 C.F.R. § 404.1520 and 416.920. The first step is to determine whether the plaintiff is currently working; if so, then she is automatically considered not disabled. Second, if any medically determinable physical or mental impairment or impairments are not considered severe enough for at least one year, then the claimant is automatically considered not disabled. Third, the claimant must have an impairment equivalent to a specific list of impairments contained in the regulations' Appendix 1. Fourth, the claimant must not be able to perform past relevant work because of her impairment(s). If she can, she is automatically considered not disabled. For the Fifth Step, the burden is on the Commissioner to determine whether the claimant can make an adjustment to other work found in the economy. *See Goodermote v. Sec'y of Health & Human Servs.*, 690 F.2d 5, 6-7 (1st Cir. 1982).

Here, the ALJ addressed the five step process and concluded that Long's impairments were not severe enough for her to be considered disabled and did not equal any impairment found in the Appendix 1 list of impairments. The ALJ also discussed Long's RFC by looking at the record and determined that Long had the RFC for

light and sedentary work with specific limitations. The ALJ used the testimony of the vocational expert at Long's hearing in order to conclude that Long would be able to perform her past relevant work as a collection clerk, or alternate substantial gainful activity at a similar exertion level.

C. Long's Contentions

Long challenges the ALJ's decision contending primarily that the ALJ improperly determined Long's RFC by not supporting his findings with substantial evidence. In addition, Long argues that the ALJ's decision be reversed or remanded because she submitted new evidence to the Appeals Council after the ALJ had decided against her claim.

1. The ALJ's RFC Finding

Long challenges the ALJ's RFC finding by highlighting certain pieces of the record that she argues the ALJ did not properly consider in his disability determination. These pieces include Dr. Solomon's reports, which the ALJ determined to contain exaggerations and inconsistencies, other medical evidence on the record highlighting Long's impairments and complaints of pain, and Long's own testimony regarding her symptoms and limitations. The ALJ concluded that the objective and subjective evidence on the record demonstrated that Long's medical condition was stable, relatively benign, and did not preclude the performance of a wide range of substantial gainful activity.

a. Dr. Solomon's Findings

Long contends that the ALJ mischaracterized Solomon's report in two ways. First, she claims that his report was not actually inconsistent with other evidence on the medical record. Second, she argues that the ALJ failed to explain his reasons for finding that Solomon's conclusions were inconsistent, vague, and exaggerated. Therefore, she concludes that the ALJ's rejection of the report was improper and that he had a duty to obtain clarification or additional evidence if he felt that Solomon's conclusions were inadequate or incomplete.

I find that the ALJ properly weighed Dr. Solomon's conclusions with the other medical evidence of record in his disability and RFC determinations. He cited the records of numerous other treating physicians such as Dr. Taylor, Dr. Horan, and Dr. Gonzalez in concluding that Long did suffer from fibromyalgia, but that Long was not under any severe physical or mental impairments which would have prevented her from a full range of light/medium work. The ALJ also cited the non-treating DDS physician reports from Dr. Keuthen and Dr. Potter, who concluded that Long's depression resulted in only a slight restriction of her daily activities and that she only had a few moderate mental limitations. The ALJ also considered other objective evidence such as the MRIs and X-rays taken in July 1993, February, March, and November of 1997, and September of

1998, all of which resulted in normal findings. The ALJ concluded that the overwhelming majority of the medical record contradicted Solomon's statements of Long's "major depression" and "major medical problems."

I observe no failure on the ALJ's part to discuss the reasons for finding that Solomon's conclusions were inconsistent, vague, or exaggerated. While the ALJ is required to address and explain explicitly any conflicts of evidence, *see Nguyen v. Callahan*, 997 F. Supp. 179, 182 (D. Mass. 1998), here the ALJ provided detailed reasons why he rejected Solomon's conclusions. The ALJ pointed out that Solomon indicated Long had complained of an inability to concentrate, yet tests of her memory and concentration were normal. Solomon subsequently concluded after the hearing that Long only had mild to moderate limitations regarding her functional capacity. Despite these findings, Solomon concluded that Long suffered from major depression and medical problems. The ALJ noted that Solomon had failed to explain or elaborate on what these "major medical problems" were or how they affected Long's RFC. The ALJ also pointed out that Solomon conceded Long had only been seen for an interview, and that no testing was done.

There was no need for the SSA to recontact Solomon to obtain clarification of his opinion or additional evidence to support his opinion. While 20 C.F.R. § 404.1519(p) directs that the SSA

contact medical sources if their reports are inadequate or incomplete, there is nothing to indicate that the ALJ considered Solomon's conclusions to be inadequate or incomplete; he merely determined that they were both internally and externally inconsistent with the medical record. Accordingly, I find that the ALJ did not improperly reject Dr. Solomon's conclusions in his decision.

b. Treatment of Other Medical Evidence and Long's Testimony

Long contends that the medical record is filled with reports of treating and examining physicians who have diagnosed Long's claimed impairments and that the ALJ unfairly and improperly discounted these parts of the record. She alleges that her consistent and constant pain due to fibromyalgia is evidenced and supported in the record from physicians familiar with the disease. She also argues that the ALJ failed to request additional information or testing from Long's treating sources in order to evaluate Long's allegations further, instead of simply discounting them.

The ALJ never rejected Long's claims that she suffered from fibromyalgia, asthma, or headaches, but only concluded that these impairments were not severe enough to fall under Appendix 1 in order to reach a disability determination. A claimant is not guaranteed disability benefits from the presence of an impairment; she must demonstrate an inability "to participate in

any substantial gainful activity by reason of any medically determinable physical or mental impairment ...." *Rohrberg v. Apfel*, 26 F. Supp. 2d 303, 309 (D. Mass. 1998) (citing 42 U.S.C. § 423(d)(1)(A) and 1382c(a)(3)(A)). The impairment also must be of such severity that the claimant is not only unable to perform her previous work but also, considering her age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy. *Id.*

Here, the ALJ recognized Long's impairments but reasonably determined that Long did not qualify for disability. Because Long did not prove that her impairments prevented her from being able to perform her past relevant work as a collection clerk and other jobs at the same functional capacity, the ALJ concluded that Long had no limitations for substantial gainful employment. *See Freeman v. Barnhart*, 274 F.3d 606, 608 (1st Cir. 2001) (holding that claimant has the burden of production with regards to the first four steps of the disability analysis, including the ability to perform past relevant work). In doing so, the ALJ did not improperly discount Long's supported impairments; in fact, he incorporated them directly into his RFC assessment. The ALJ concluded that keeping Long's established impairments in mind, she would still be capable of "light and sedentary work with the specific limitations of no lifting over 15 to 20 pounds, no bending, no reaching, limited fingering with the non-dominant

left hand, the need to be able to sit and/or stand at her option, no exposure to concentrations of pulmonary irritants, and a moderate restriction in ability to maintain attention and concentration."

Long also claims that the ALJ erred by improperly discrediting her testimony regarding her symptoms and limitations; but I find the ALJ's credibility decision was based on substantial evidence. When conflicts of evidence exist, the ALJ may determine that the Plaintiff's subjective complaints "are not consistent with the objective medical findings of record," if the ALJ's determination is supported by relevant evidence. *Makuch v. Halter*, 170 F. Supp. 2d 117, 126 (D. Mass. 2001)(quoting *Evangelista v. Sec'y of Health & Human Servs.*, 826 F.2d 136, 141 (1st Cir. 1987)). Of course, credibility determinations "must be supported by substantial evidence and the ALJ must make specific findings as to the relevant evidence he considered in determining to disbelieve the [claimant]." *Rohrberg,* 26 F. Supp. 2d at 309 (quoting *DaRosa v. Sec'y of Health & Human Servs.*, 803 F.2d 24, 26 (1st Cir. 1986)). But courts must show deference to the ALJ's findings as long as this support exists. *Frustaglia v. Sec'y of Health & Human Servs.*, 829 F.2d 192, 195 (1st Cir. 1987).

Here, the ALJ used various parts of the medical record to discredit Long's testimony. The ALJ cited treating professionals' reports describing Long's exaggerated pain responses which were

contrasted with normal objective findings taken during those examinations. With respect to Long's purported mental condition, the ALJ discussed that Long had never sought or required any consistent psychological or psychiatric care of counseling, and that her own treating physician, Dr. Taylor, had determined that Long had only slight limitations and would be able to work even with a diagnosis of depression.

In assessing Long's capability, the ALJ plainly relied on the objective medical evidence as well as medical opinions, and not simply on Long's own testimony regarding her daily activities. The ALJ did not reject Long's testimony out of hand but instead based his ruling on a survey and identification of substantial evidence. Consequently, I find that a reasonable mind could reach the same conclusion that the ALJ reached here.

2. Admissibility of New Evidence

Long also challenges the ALJ's decision on the grounds that her counsel had subsequently submitted new and material evidence, which warrants a reversal of the decision or a remand for further administrative proceedings. The new evidence includes a May 4, 2000 SSA decision which approved Long's application for SSI benefits; a Disc Disease Questionnaire dated April 19, 2000 and a Medical Source Statement of Ability to do Work-related (physical) Activities Questionnaire dated May 10, 2001 by treating rheumatologist Dr. Roland Chan; and an RFC assessment completed

post-hearing by Dr. Solomon, who then became Long's treating psychologist. Long alleges that the new evidence support her allegations of disabling medical impairments and call into question the ALJ's unfavorable decision.

The Appeals Council has the authority to utilize new and material evidence to review an ALJ's decision "if it finds that the ALJ's action, findings, or conclusion is contrary to the weight of the evidence currently of record." 20 C.F.R. § 416.1470. The Council is free to consider new evidence regardless of whether there was good cause for not producing it earlier, *Mills v. Apfel*, 244 F.3d 1, 5-6 (1st Cir. 2001), but the courts cannot order a remand absent such good cause. The First Circuit has further clarified that the Council has significant latitude in deciding which cases should be reviewed; the Council's refusal to review an ALJ decision may be reviewable itself, however, where it gives an egregiously mistaken ground for this action, such as rejecting evidence on the basis that it was not material when in reality it was. *Mills*, 244 F.3d at 5.

While the Council was concise in reporting its review of the new evidence and in its decision to uphold the ALJ's decision, I cannot find that the Council based its decision on egregiously mistaken grounds. In its decision, the Council stated that it had considered the additional evidence, but concluded that the additional evidence did not provide a basis for changing the

ALJ's decision. I take this to mean that the additional evidence did not provide enough support for Long's allegations to outweigh the overwhelming medical evidence of record that supported the ALJ's disability and RFC findings. While the new reports from Drs. Chan and Solomon shed more light on Long's back and mental problems, neither contend that Long would be unable to work at her previous job as a collections clerk or similar alternatives discussed by the ALJ. Dr. Solomon's report of Long's depression does point toward serious mental issues and it was not supported by objective medical evidence; it contains only the opinions of Dr. Solomon and Long's statements regarding her own condition. Consequently, I conclude that the Council did not err in deciding that Long's new evidence was not sufficient enough to alter the ALJ's decision.[4]

III. CONCLUSION

For the reasons discussed above, Plaintiff's motion to reverse the Commissioner's decision is denied, and Defendant's

[4] Long also seeks to remand the case citing material that the Council relied upon in its decision but is apparently not included in the record. The materials identified for the most part consist of correspondence packages regarding the Council's handling of Long's request for reopening of the case and extensions of time for filing. While the packages do not seem to be included on the record and may be relevant to the issue of reopening and extensions for appeal, I do not find that they are material and relevant to the primary issue of the ALJ's decision on the merits and the Council's decision not to disturb that decision. Accordingly, I decline to remand this case for further evaluation of those pieces of evidence, observing that Long does not argue why the evidence is material to the primary issue on the merits which I have resolved adversely to Long.

motion for order affirming decision of the Commissioner is granted.

/s/ Douglas P. Woodlock

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DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE