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

CONNIE SHEARS	:	CIVIL ACTION
	:	
v.	:	NO. 05-3713
	:	
JO ANNE B. BARNHART,	:	
Commissioner of Social Security	:	

MEMORANDUM AND ORDER

AND NOW, this 8th day of June, 2006, upon consideration of the cross-motions for summary judgment filed by the parties (Doc. Nos. 8 and 9), the court makes the following findings and conclusions:

1. On February 20, 2003, Connie Shears ("Shears") filed for disability insurance benefits ("DIB") and supplemental security income ("SSI") under Titles II and XVI, respectively, of the Social Security Act, 42 U.S.C. §§ 401-433, 1381-1383f, alleging an onset date of June 28, 2002. (Tr. 37-39; 190). Throughout the administrative process, including an administrative hearing held on July 21, 2004 before an administrative law judge ("ALJ"), Shears' claims were denied. (Tr. 3-5; 8-18; 25-30; 188-214). Pursuant to 42 U.S.C. § 405(g), Shears filed her complaint in this court on July 20, 2005.

2. In his decision, the ALJ concluded that Shears had severe impairments consisting of a neck disorder, a low back disorder, and hypertension. (Tr. 12 ¶ 4; 17 Finding 3).[1] The ALJ further concluded that Shears' depression was not severe and that her alleged fibromyalgia was not medically determinable. (Tr. 12 ¶¶ 5-6; 17 Finding 4). Ultimately, the ALJ concluded that Shears' impairments did not meet or equal a listing, that she had the residual functional capacity ("RFC") to perform a limited range of light and sedentary work, and that she was not disabled. (Tr. 13 ¶¶ 1, 4; 16 ¶ 1; 17 ¶¶ 1-2; 17 Findings 3, 7; 18 Findings 12-14).

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, 854 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. Shears raises two arguments in which she alleges that the determinations by the

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

ALJ were either not supported by substantial evidence or were legally erroneous. 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, Shears contends that the testimony of the vocational expert ("VE") regarding what jobs she could perform based on the ALJ's hypothetical question conflicted with the requirements of those jobs as listed in the Dictionary of Occupational Titles ("DOT"). Shears further claims that the ALJ violated S.S.R. 00-4p by failing to receive an explanation for the conflicts from the VE. The ALJ, in his hypothetical question, stated, *inter alia*, that Shears could lift and carry less than ten pounds and could perform no more than occasional handling and fingering with the right upper extremity. (Tr. 209). In response to the hypothetical question, the VE stated that Shears could perform the light work positions of checkroom attendant (358.677-010), restroom attendant (358.677-018), and ticket taker (344.667-010) and the sedentary positions of hand bander (920.687-030), semiconductor die loader (726.687-030), dowel inspector (669.687-014), golf ball inspector (732.567-010), and button reclaimer (734.687-042). (Tr. 210-212). Shears contends that all of these positions require constant or frequent handling and fingering whereas she was limited by the ALJ to occasional handling and fingering with the upper right extremity. Shears also contends that the light work positions contemplate the lifting of more than ten pounds whereas she was limited to lifting under ten pounds.

Regarding the handling and fingering requirements of these jobs, the VE addressed the conflict between the hypothetical question, his testimony, and the DOT definitions on his own. Therefore, it was unnecessary for the ALJ to raise the issue as the conflict was no longer unresolved. See S.S.R. 00-4p (stating that "[w]hen there is an apparent *unresolved* conflict between VE . . . and the DOT, the adjudicator must elicit a reasonable explanation for the conflict") (emphasis added). Before listing the light work jobs, the VE recognized that the handling limitation would erode the range of sedentary and limited light jobs available to Shears. (Tr. 210). Moreover, the VE stated that Shears could engage in the relevant sedentary jobs "[u]sing the involved hand in an assisted fashion." (Tr. 211). This shows that the VE was well aware of the handling and fingering limitations placed on Shears and that he specifically chose jobs which she would be able to perform with her limitations.

Regarding Shears' lifting limitations, S.S.R. 00-4p clarifies that the DOT lists the approximate maximum requirements for a position as it is generally performed, not the full range of requirements as it might be performed in specific settings. S.S.R. 00-4p; see Haas v. Barnhart, 91 Fed. Appx. 942, 948 (5th Cir. 2004). Here, the VE stated that Shears was capable of a range of sedentary and *limited* light work and listed specific light work attendant jobs which he opined could be performed by lifting less than ten pounds. (Tr. 210). It is appropriate for a VE to provide more specific information about jobs than is listed in the DOT since, *inter alia*, the DOT is merely a starting place from which to assess job definitions and it specifically disclaims that DOT definitions may not coincide in every respect with the content of the jobs as they are performed in particular situations. S.S.R. 00-4p; DOT at v. (Prefatory Note) and xiii (Special Notice). Therefore, the VE's identification of a number of these positions available with a sedentary-type lifting requirement is not necessarily in conflict with the DOT. Moreover, Shears did not challenge the VE regarding this issue at the administrative hearing, leaving for my consideration only the VE's uncontradicted testimony that even considering Shears' limitations, a significant number of attendant positions were available which could be performed at sedentary lifting levels. See Haas, 91 Fed. Appx. at 948-949.

Because the conflicts raised by Shears were addressed directly by the VE during the hearing, any error by the ALJ in failing to specifically inquire about apparent conflicts, as

mandated by S.S.R. 00-4p, was harmless. S.S.R. 00-4p (stating that the "adjudicator has an affirmative responsibility to ask about any possible conflict between [the] VE or VS evidence and information provided in the DOT"); Rutherford v. Barnhart, 399 F.3d 546, 553 (3d Cir. 2005) (refusing to remand where stricter compliance with a social security ruling would not have changed the outcome of the case); Tisoit v. Barnhart, 127 Fed. Appx. 572, 575 n. 1 (3d Cir. 2005) (recognizing that the Third Circuit has "not held that mere failure to inquire about the possibility of an inconsistency under SSR 00-4p mandates reversal"). As a result, a remand is not warranted on this issue.

B. Second, Shears alleges that the ALJ failed to properly assess her credibility regarding her pain and ability to function in violation of S.S.R. 96-7p. "Credibility determinations are the province of the ALJ and only should be disturbed on review if not supported by substantial evidence." Pysher v. Apfel, No. 00-1309, 2001 WL 793305, at *3 (E.D. Pa. July 11, 2001) (citing Van Horn v. Schweiker, 717 F.2d 871, 973 (3d Cir. 1983)). Moreover, such determinations are entitled to deference. S.H. v. State-Operated Sch. Dist. of the City of Newark, 336 F.3d 260, 271 (3d Cir. 2003). Likewise, the ALJ is required to determine the extent to which a claimant is accurately stating the degree of pain or the extent to which he or she is disabled by it. Hartranft, 181 F.3d at 362 (citing 20 C.F.R. § 404.1529(c)). Here, the ALJ considered and discussed the objective medical evidence and Shears' own statements and how they conflicted with her assertions. (Tr. 13 ¶ 1; 14 ¶ 1 -15 ¶ 1; 15 ¶ 7; 198; 205). Furthermore, contrary to Shears' argument, the ALJ did properly discuss, pursuant to S.S.R. 96-7p, the relevant credibility factors such as her physician's observations, her daily activities, and her use of medication. (Tr. 13 ¶ 1; 14 ¶ 1 - 15 ¶ 1; 15 ¶¶ 4-7; 17 Finding 6; 198; 200-202). Finally, an independent review of the record also supports the ALJ's conclusion. See e.g. (Tr. 105; 132; 135-137; 143; 145; 149; 177-179; 186). In light of the above, I find that the ALJ sufficiently supported his credibility determination with substantial evidence.

Upon careful and independent consideration, 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. Therefore, it is hereby **ORDERED** that:

5. The motion for summary judgment filed by Connie Shears is **DENIED**;

6. The motion for summary judgment filed by the Commissioner is **GRANTED** and **JUDGMENT IS ENTERED IN FAVOR OF THE COMMISSIONER AND AGAINST CONNIE SHEARS**; and

7. The Clerk of Court is hereby directed to mark this case as **CLOSED**.

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LOWELL A. REED, JR., S.J.