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

ROBERT E. COMBS	:	CIVIL ACTION
	:	
v.	:	
	:	
JO ANNE B. BARNHART,	:	NO. 03-5526
Commissioner of Social Security	:	

MEMORANDUM AND ORDER

AND NOW, this 28th day of November, 2005 upon consideration of the unopposed Motion to Alter or Amend Judgment filed by Plaintiff (Document No. 15), the Court makes the following findings and conclusions:

A. Robert E. Combs ("Combs") sought judicial review of the decision of the Commissioner of Social Security Administration denying his claim for disability insurance benefits ("DIB") under Title II of the Social Security Act, ("Act") 42 U.S.C. §§ 401-433. (Tr. 24-26). Upon careful and independent consideration of cross-motions for summary judgment and Combs' reply brief thereto, the Court decided that the record as a whole contained substantial evidence to support the findings and conclusions of the Administrative Law Judge. See Combs v. Barnhart, No. 03-5526, 2005 U.S. Dist. LEXIS 17265, (E.D. Pa. Aug. 16, 2005). Presently before the Court is Comb's motion to alter or amend the judgment of the Court affirming the decision of the ALJ.

B. Federal Rule of Civil Procedure 59(e) and Local Civil Rule 7.1(g) of the United States District Court for the Eastern District of Pennsylvania allow parties to file motions for reconsideration or amendment of a judgment. Fed. R. Civ. P. 59(e); E.D. Pa. R. Civ. P. 7.1(g). These motions should be granted sparingly, reconsidering the issues when: (1) there has been an intervening change in controlling law; (2) new evidence has become available; or (3) there is a need to prevent manifest injustice or correct a clear error of law or fact. Wilson v. Halter, No. 00-468, 2001 U.S. Dist. LEXIS 4947, at * 5-6 (E.D. Pa. Apr. 18, 2001), aff'd Wilson v. Massanari, 27 Fed. Appx. 136 (3d Cir. 2002). Mere dissatisfaction with the Court's ruling is not a proper basis for reconsideration as it is improper "ask the Court to rethink what [it] had already thought through–rightly or wrongly." Id. (citing Burger King Corp. v. New England Hood and Duct Cleaning Co., No. 98-3610, 2000 U.S. Dist. LEXIS 1022, at * 5 (E.D. Pa. Feb. 4, 2000)).

C. Combs contends that the Court has committed a clear error of law. However, upon reviewing my previous analysis, I conclude that there is no manifest injustice or clear error of law or fact.

D. In his motion, Combs makes two arguments that the Court's step five analysis was flawed. At step five, the burden shifts to the Commissioner to show that other jobs exist in significant numbers in the national economy that the claimant could perform. Rutherford v. Barnhart, 399 F.3d 546, 551 (3d Cir. 2005) (citing 20 C.F.R. § 404.1520(f)).

1. First, Combs claims that the Court erroneously concluded the existence of transferability of skills. Generally, transferability is "most probable and meaningful among jobs in which - the same or lesser degree of skill is required" or "from skilled to semiskilled" as transferability generally increases with the skill level of the previous job. Podedworny v. Harris, 745 F.2d 210, 220 (3d Cir. 1984); 20 C.F.R. § 404.1568(d); Social Security Ruling ("SSR") 82-41, 1982 WL 31389, at * 4-5. Here, since Combs would be transferring from a skilled SVP 7 to a semiskilled SVP 3 job, I concluded that transferability was *likely*. Combs, 2005 U.S. Dist. LEXIS 17265, at * 15. I recognize that there are degrees of transferability and that in cases such as this one, the degree transferability is not particularly high as the similarities between a cook and a security guard are minimal. Id. Nevertheless, the rule does not require a high degree of transferability, but merely provides guidance as to when transferability is most probable. 20 C.F.R. § 404.1568(d). Furthermore, I do not believe that the skills in question are "so specialized or have been acquired in an isolated vocational setting that they are not readily usable in other industries, jobs, and work settings" that they are not transferable. Id. Lastly, according to SSR 82-41, consultation with a vocational expert ("VE") may be necessary to ascertain whether skills are transferable, and here, the ALJ noted and agreed with the VE that Combs was capable of performing other work in the national economy.[1] (Tr. 333 ¶¶ 48-49); SSR 82-41, 1982 WL 31389, at * 4.

2. Second, Combs claims it is reasonable to assume that the ALJ opined that Combs could not perform the other occupations discussed by the VE. (Tr. 378-397). He further claims that this conclusion is consistent with the ALJ's findings and the VE's testimony. However, the very fact that the ALJ called the security guard and telemarketer positions *examples* suggests that the ALJ reached the opposite conclusion. Cf. Rutherford, 399 F.3d at 557-558 (noting that where a VE stated he was providing examples he had no intent to provide a complete list of occupations available to claimant). Therefore, it is mere speculation that because the ALJ chose to elaborate on only two occupations discussed by the VE, that he concluded that Combs could not perform the others. (Tr. 335 Finding No. 13). Also, because the VE listed additional jobs during the hearing before the ALJ, the admonition in Securities & Exchange Commission v. Chenery, that "the grounds upon which an administrative order must be judged are those upon which the record discloses that its action was based" has been met. 318 U.S. 80, 88 (1943); (Tr. 380-382). Finally, Combs argues that the suggested occupations of usher and attendant do not constitute substantial gainful activity pursuant to 20 C.F.R. §404.1545(b) because they are sometimes part-time jobs. The VE agreed that they were sometimes performed part-time and that most jobs of the sort were generally performed 20-30 hours, but indicated that they could be performed full or part-time. (Tr. 392). However, even if usher and attendant did

[1] The VE's discussion of the transferability of skills was briefly, but not thoroughly, discussed at the hearing. (Tr. 379).

not constitute substantial gainful activity, the remaining light occupations mentioned, packer and cashier, still appear to be appropriate light occupations that Combs could perform. See packer DOT 920.687-010; 920.687-034; cashier 211.462-010.

Therefore, substantial evidence supports the conclusion that the ALJ's findings that Combs is not disabled and that work for which Combs is qualified exists in significant numbers in the economy.

Accordingly, it is hereby **ORDERED** that the motion to alter or amend by Robert E. Combs is **DENIED**.

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