

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

WILLIE FREEMAN	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
	:	
v.	:	
	:	
JO ANNE B. BARNHART,	:	
Commissioner of Social	:	
Security Administration	:	
	:	NO. 02-6895
Defendant	:	

OPINION AND ORDER

Clarence C. Newcomer, S.J.

August , 2003

I. Introduction

Willie Freeman ("Plaintiff") seeks judicial review, pursuant to 42 U.S.C. §§ 405(g) and 1383(c), of the final decision of the Commissioner of the Social Security Administration denying his claim for disability insurance benefits ("DIB") under Title II of the Social Security Act. Currently before the Court are the Parties' Cross Motions for Summary Judgment. For the following reasons, the Defendant's Motion shall be granted and the Plaintiff's Motion shall be denied.

II. Procedural History

On September 23, 1996, the Plaintiff applied for Social

Security Disability Insurance ("SSDI") and Supplemental Security Income ("SSI"). He claimed disability beginning August 1, 1992. These claims were denied initially on February 13, 1997 and again after reconsideration on April 21, 1997. The Plaintiff then filed a request for a hearing on May 8, 1997. A hearing was held on April 21, 2000, before an administrative law judge ("ALJ"). At this hearing, the ALJ determined that the Plaintiff was not disabled because he could hold and maintain jobs in the national workforce under 20 C.F.R. § 404.1520(f). The Plaintiff then appealed the ALJ's decision to the Appeals Council, which found no basis to reverse. The ALJ's decision then became the final agency decision subject to judicial review. Sims v. Apfel, 530 U.S. 103, 106 (2000).

III. Facts

A. Personal and Work History

The Plaintiff was born on June 25, 1943 and completed seventh grade. (R. 95, 66) He has worked as a machine operator and as a forklift driver. (R. 130) The Plaintiff testified that he watches television, takes short walks outdoors, and periodically does his own shopping. (R. 236-240)

B. Medical History

In 1973, the Plaintiff suffered a workplace injury

which required invasive surgery around his sternum. (R. 157-168) On May 5, 1995, the Plaintiff began seeking treatment for gastroesophogael reflux disease ("GERD")¹, costochondritis², and bronchiectasis³ (R. 253). On September 15, 1995, the Plaintiff reported he was vomiting intermittently each week and was referred to a pulmonary specialist. (R. 251) He visited the pulmonary specialist on September 27, 1995, at which time it was concluded his symptoms were gastrointestinal and not pulmonary. (R. 250) The Plaintiff was then referred for a CT scan. (R. 250)

On October 11, 1995, the CT scan results for bronchiectasis were negative. (R. 249) The CT scan did show, however, that the Plaintiff had a mildly dilated esophagus. (R. 249) His next medical treatment occurred in September, 1996, when he visited Leon Kauffman, M.D., who stated that the Plaintiff was permanently disabled due to bronchiectasis, GERD, gastritis⁴, and chronic sinusitis.⁵ (R. 274-275) During a February 5, 1997 examination by Dr. Barry Marks, a consultative examiner, the Plaintiff denied any headaches, chest pain, cough, or shortness

¹GERD is a condition wherein there is a backflow of stomach contents into the esophagus.

²Costochondritis is a condition wherein there is irreversible dilation and destruction of the bronchial walls. Sufferers exhibit constant cough, hemoptysis (vomiting of blood), and chronic sinusitis.

³Bronchiectasis is inflammation of the cartilage of the ribs, characterized by chest pain and tenderness on both sides of the sternum.

⁴Inflammation of the stomach lining.

⁵Inflammation of the lining of the sinus cavities.

of breath. (R. 254) On February 8, 1997, a state-agency physician reviewed the record and determined that the Plaintiff could perform a variety of medium work. (R. 257-264)

On February 19, 1997, contrary to his prior diagnosis, Dr. Kauffman examined the Plaintiff and reported that GERD was "moderately well controlled" on Prilosec.⁶ (R. 256) On April 1, 1997, Dr. Kauffman noted that the Plaintiff's vomiting and GERD were "much better control[led]." (R. 331) The Plaintiff continued to improve, and, on May 20, 1997, Dr. Kauffman found that the Plaintiff no longer had hemoptysis and that his bronchiectasis was "fairly stable." (R. 329) Examination on January 20, 1998, revealed improved condition of his bronchiectasis. (R. 327) On March 10, 1998, Dr. Kauffman determined that the Plaintiff's costochondritis was "stable" and that he no longer had hemoptysis. (R. 324)

IV. Discussion

A. Standard of Review

This Court must determine whether the ALJ's decision is supported by substantial evidence. Hartranft v. Apfel, 181 F.3d 358, 360 (3d Cir. 1990); Stunkard v. Sec'y of Health and Human Serv., 841 F.2d 57, 59 (3d Cir. 1988). Substantial evidence is "such relevant evidence as a reasonable mind might accept as

⁶A medication that controls stomach acid.

adequate to support a conclusion," Richardson v. Perales, 402 U.S. 389, 402 (1971), and is more than a mere scintilla, though it may be less than a preponderance. Stunkard, 841 F.2d at 59. The ALJ must reconcile factual differences in evidence, determine witness credibility, and weigh the evidence presented. Richardson, 402 U.S. at 401.

B. Burden of Proof

To be found "disabled" under the Social Security Act, the Plaintiff must demonstrate he is unable to engage in "any substantial gainful activity by reason of any medically determinable physical or mental impairment . . . which has lasted or can be expected to last for a continuous period of not less than twelve months." 20 C.F.R. §404.1505(a). The Plaintiff may prove this with evidence that the impairment claimed is enough that he cannot engage in any "substantial gainful work which exists in the national economy." Heckler v. Campbell, 461 U.S. 458, 460 (1983); Brown v. Bowen, 845 F.2d 1211, 1214 (3d Cir. 1988). If the Plaintiff meets this burden, the burden then shifts to the Government to show that work exists in the national economy for which the Plaintiff is suited. Mason v. Shalala, 994 F.2d 1058, 1064 (3d Cir. 1993); 20 C.F.R. § 404.1520(f).

C. Review of the Administrative Law Judge's Decision

1. It Was Unnecessary For The ALJ to Consider Dr. Kauffman's March 1, 2000 Report When Determining Whether The Plaintiff Was Disabled Between September 8, 1995 And June 23, 1998

Only evidence that is relevant, probative, and available must be considered by an ALJ when determining whether a claimant is disabled. Adorno v. Shalala, 40 F.3d 43, 48 (3d Cir. 1994). If relevant evidence is rejected in this determination, the ALJ must explain the reason it was not considered. Brewster v. Heckler, 786 F.2d 581, 585 (3d Cir. 1986). This evidence may not be rejected for no reason or the wrong reason. Mason, 994 F.2d at 1066.

The Plaintiff contends the March 1, 2000 report prepared by The Plaintiff's treating physician, Dr. Kauffman, was wrongfully neglected by the ALJ. This contention presumes Dr. Kauffman's report was relevant to a determination of the Plaintiff's condition three to five years prior to its preparation. Instead, other objective and relevant evidence from the time period in question which contradicts Dr. Kauffman's March 1, 2000 report was presented to the ALJ for consideration. Because of the delay between the relevant time period and the formulation of Dr. Kauffman's report, as well as presence of more temporally relevant materials, the ALJ did not need to explain

his decision to not rely on the report. The 2000 report was irrelevant to the determination of whether the Plaintiff was disabled during the relevant period.

2. The Plaintiff is Not Illiterate Under Social Security Regulations

The Plaintiff contends the ALJ's residual functioning capacity determination was in error because the ALJ failed to consider his illiteracy when finding the Plaintiff was able to perform other work.⁷

The Social Security Act defines illiteracy as the inability to "read or write a simple message." 20 C.F.R. § 404.1564(b)(1). The evidence on record shows the Plaintiff does not satisfy this definition. The Plaintiff argues that he is illiterate because he was unable to fill out his Social Security disability application forms himself (Pl. Br. 11). The Plaintiff points to initials after his signature, which he claims are his daughter's, as evidence of his inability to fill out the application himself (Pl. Br. 11). An inspection of the record, however, supports the Defendant's argument that they are "Jr." and not the initials of his daughter, "L.F." (R. 229, 235, 240, 244; Def. Br. 13).

⁷The Plaintiff does not overtly contest the physical determinations by the ALJ. Therefore, the Court will not question them here.

Additionally, the Plaintiff testified that he filled out the forms when questioned by his own attorney at the hearing before the ALJ (R. 66). This evidence, coupled with the evidence concerning his signature, undermines the Plaintiff's argument concerning his literacy level.⁸ Thus, the ALJ was not in error by failing to consider his "illiteracy."

3. The ALJ's Credibility Determination is Supported by Substantial Evidence

The Plaintiff contests the ALJ's determination that his complaints of pain were not totally credible (Pl. Br. 17-18). To be credible, the Plaintiff's complaints must be supported by objective medical evidence and other evidence on record. 20 C.F.R. § 404.1529(a). The Commissioner must have medical evidence to disprove The Plaintiff's claims of pain, Chrupcala v. Heckler, 829 F.2d 1269, 1276 n. 10 (3d Cir. 1987), and cannot use non-medical evidence to discredit these claims. Mac v. Sullivan, 811 F.Supp. 194, 202 (E.D.Pa. 1993). This Court defers to credibility determinations made by the ALJ. Monsour Medical Ctr., 806 F.2d at 190-191.

The objective evidence suggests that the Plaintiff pain does

⁸The Plaintiff also argued that his inability to communicate during medical examinations evidences his illiteracy. (Pl. Br. 14) Because illiteracy is measured by the ability to read or write and the Plaintiff is referring to failures to communicate orally, this information has no bearing on whether he is illiterate.

not prevent him from being able to perform light exertional work. (R. 28) The Plaintiff's GERD was controlled with medication, his x-rays and CT scans were within normal limits, and he testified he can lift ten to fifteen pounds, stand for twenty minutes, sit for anywhere between forty-five minutes and one hour, and that he can walk two blocks. (R. 24) The Plaintiff occasionally performs many daily activities such as riding public transportation, going shopping with his wife, and cooking and cleaning (R. 24). This evidence supports the ALJ's determination that the Plaintiff's impairments do not limit his ability to perform light work.

V. Conclusion

For the foregoing reasons, the Court finds that the ALJ's decision is substantially supported and that the ALJ did not fail to consider any relevant evidence. Accordingly, the Court will grant summary judgment in favor of the Defendant. An appropriate order will follow.