

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION**

LINDA BOOKER,)	
Plaintiff,)	
)	Civil Action No. 6:06cv0036
v.)	
)	
JO ANNE B. BARNHART,)	By: Hon. Michael F. Urbanski
COMMISSIONER OF SOCIAL SECURITY)	United States Magistrate Judge
Defendant.)	

REPORT AND RECOMMENDATION

Plaintiff Linda Booker (“Booker”) brought this action for review of the Commissioner of Social Security’s decision denying her claim for Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”) under Title II and Title XVI of the Social Security Act, 42 U.S.C. §§ 401-433, 1381-1383. This case was referred to the undersigned Magistrate Judge on January 25, 2007, for report and recommendation. Following the filing of the administrative record and briefing, oral argument was held on June 6, 2007. As such, the case is now ripe for decision.

The undersigned finds that substantial evidence supports the Commissioner’s decision that Booker retains the residual functional capacity to do her past work as a machine operator/tender and as a production inspector. Accordingly, it is recommended that the ALJ’s decision be affirmed.

I.

Booker was born on May 17, 1955, and she completed the twelfth grade. (Administrative Record [hereinafter R.] at 30, 167, 133, 394) Booker’s previous work consists

of work as a machine line operator, production line inspector, janitor, machine winder, and assembly worker. (R. 31-33, 175-78)

Booker filed an application for DIB on December 4, 2001, and subsequently filed for SSI on or about February 14, 2003, alleging that she became disabled on November 1, 2001, due to high blood pressure and cholesterol, asthma, back problems, headaches, “bowels,” and “urine.”¹ (R. 133, 394) Booker’s claim for DIB was denied initially and at the reconsideration levels; however, when she filed her subsequent application for SSI, the SSI application was consolidated with the DIB claim for purposes of a hearing. (R. 13, 79) The combined hearing was held before an ALJ on February 18, 2003, and by written opinion issued March 25, 2003, Booker’s claims were denied. (R. 79-88) The Appeals Council denied Booker’s claim for review, and Booker then filed an appeal in the District Court, which ultimately remanded the matter, on the Commissioner’s motion, under sentence 6 of 42 U.S.C. § 405(g) because a transcript of the administrative hearing was not available. (R. 89)

A rehearing was held on August 31, 2004, (R. 24-69), and by written opinion dated February 9, 2005, the ALJ once again denied Booker’s claim for benefits. (R. 13-23) Specifically, the ALJ determined that Booker’s allegations as to the extent of her limitations were not fully credible and that she retains the residual functional capacity to do a variety of light work.² However, the ALJ found that Booker needs the opportunity to vary her position

¹During Booker’s second hearing on her claim for disability, she amended the alleged date of onset to July 1, 2002, after the claimant’s attorney noted that Booker took a retirement package from her employer in November 2001 and collected unemployment benefits until July 2002. (R. 13, 28, 35)

²Light work requires exerting up to 20 pounds of force occasionally, and/or up to 10 pounds of force frequently, and/or a negligible amount of force constantly to move objects. Physical

from sitting to standing at her discretion and can only manage gross manipulation of objects. The ALJ determined that based on Booker's testimony and the assessed functional limitations, Booker can do her past work as a machine operator/tender and as a production inspector and, thus, that she is not disabled. (R. 20-22) This decision became final for the purposes of judicial review under 42 U.S.C. § 405(g) on August 5, 2006, when the Appeals Council denied Booker's request for review. (R. 6-7) Booker then filed this action challenging the Commissioner's decision.

II.

Judicial review of a final decision regarding disability benefits under the Act is limited to determining whether the ALJ's findings "are supported by substantial evidence and whether the correct law was applied." Hays v. Sullivan, 907 F.2d 1453, 1456 (4th Cir. 1990) (citing 42 U.S.C. § 405(g)). Accordingly, the reviewing court may not substitute its judgment for that of the ALJ, but instead must defer to the ALJ's determinations if they are supported by substantial evidence. Id. Substantial evidence is such relevant evidence which, when considering the record as a whole, might be deemed adequate to support a conclusion by a reasonable mind. Richardson v. Perales, 402 U.S. 389, 401 (1971). If such substantial evidence exists, the final decision of the Commissioner must be affirmed. Hays, 907 F.2d at 1456; Laws v. Celebrezze, 368 F.2d 640, 642 (4th Cir. 1966).

demand requirements are in excess of those for Sedentary Work. Even though the weight lifted may be only a negligible amount, a job should be rated Light Work: (1) when it requires walking or standing to a significant degree; or (2) when it requires sitting most of the time but entails pushing and/or pulling of arm or leg controls; and/or (3) when the job requires working at a production rate pace entailing the constant pushing and/or pulling of materials even though the weight of those materials is negligible.
<http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM>.

III.

Booker argues that the ALJ failed to afford appropriate weight to the opinion of her treating physician, and she asks that the ALJ's decision be reversed. Booker claims that the positive nerve conduction study corroborates a letter opinion dated August 18, 2004, authored by her treating physician, Dr. Kalafian, stating that she is wholly disabled by diabetic neuropathy³ in her hands and feet with associated numbness and tingling and some diffuse itching of the skin and that he is referring her for a nerve conduction study to provide some "hard data" to support his findings. (R. 389) As such, she contends that Dr. Kalafian's letter should have been given controlling weight. The nerve conduction study, completed in September 2004 by Dr. Wallace, notes only that Booker has polyneuropathy⁴ which is likely related to her diabetes. Dr. Wallace does not opine as to the extent of her symptoms nor does he indicate that Booker has any functional or work-related limitations due to her condition. (R. 392)

Absent persuasive contradictory evidence, the "treating physician rule" generally "requires that the fact-finder give greater deference to the expert judgment of a physician who has observed the patient's medical condition over a prolonged period of time." Elliott v. Sara Lee Corp., 190 F.3d 601, 607 (4th Cir. 1999); Craig v. Chater, 76 F.3d 585, 590 (4th Cir. 1996) (stating a treating physician's opinion may be assigned little or no weight if it is conclusory and/or is not supported by objective testing or the record as a whole). However, the social

³Neuropathy is a functional disturbance or pathological change in the peripheral nervous system, and it may arise as a complication of various diseases, including diabetes. Dorland's Illustrated Medical Dictionary 1257 (30th ed. 2003).

⁴Polyneuropathy is the simultaneous neuropathy of several peripheral nerves. Dorland's Illustrated Medical Dictionary 1482 (30th ed. 2003).

security regulations afford substantially different weight to a treating physician's medical opinions as opposed to a treating physician's legal conclusions. Although the ALJ must usually give a treating physician's medical opinions special weight, the ALJ need not give the treating physician's legal conclusions any heightened evidentiary value. See 20 C.F.R. § 404.1527(e)(3) (“We will not give any special significance to . . . [a treating physician's legal conclusions]. . . .”). “Medical opinions are statements from physicians . . . that reflect judgments about the nature and severity of [the claimant's] impairment(s), including . . . symptoms, diagnosis and prognosis, what [the claimant] can still do despite impairment(s), . . . and [the claimant's] physical or mental restrictions,” whereas legal conclusions are opinions on issues reserved to the ALJ such as “statements[s] by a medical source that [the claimant is] ‘disabled’ or ‘unable to work.’ ” 20 C.F.R. § 404.1527.

Although the ALJ briefly noted Dr. Kalafian's opinion that Booker is disabled, he afforded it little weight as it was not supported by either Dr. Kalafian's treatment notes or the nerve conduction testing done at Dr. Kalafian's request. The ALJ further noted that on receiving the nerve conduction test results and although afforded the opportunity to do so, neither Dr. Kalafian nor Booker asked the neurologist to opine as to any work-related limitations based on the results of the nerve conduction test.

Dr. Kalafian began serving as Booker's primary care physician in July 2001. (R. 245) During his initial exam he noted that Booker suffered from poorly controlled diabetes, and she admitted that she had not been following an appropriate diet and had gained a significant amount of weight over the last several years. Booker complained only of “intermittent numbness” in her left foot and she did not voice any complaints of pain, burning, and/or numbness in her hands.

(R. 245) Dr. Kalafian recommended that Booker work on losing weight to control both her diabetes and asthma, and he increased her diabetes medication. (R. 246) Likewise, in October, November, and December 2001 and January, March, and April 2002, Dr. Kalafian again recommended that Booker continue with exercise and weight loss to manage her diabetes, and Booker did not voice any complaints of pain, numbness, and/or burning sensations in her hands or feet. (R. 240-43, 331-35)

Booker first mentioned to Dr. Kalafian that she was have a lot of itching in her feet at night, but none during the day, on June 11, 2002. Dr. Kalafian advised her to take some Benadryl before bed and to call him if the itching persisted. (R. 330) Later that day, she went to the Lynchburg General Hospital Emergency Room with identical complaints, and on exam the physician found that Booker was in no apparent distress, her discomfort was likely attributable to diabetic neuropathy, and she was released. (R. 323-325) Dr. Kalafian mentioned this emergency room visit in his July 31, 2002 notes, but in recounting the incident Dr. Kalafian stated that Booker had gone to the emergency room because of persistent aching in her feet. (R. 330) The undersigned notes this is clearly inconsistent with the actual symptoms Booker professed to Dr. Kalafian and the emergency room physicians on the day in question.

When Booker returned a month later, she reported to Dr. Kalafian that she has “only a little bit of burning” in her feet at times and diffuse itching. On exam, Dr. Kalafian found no syncope, numbness, or weakness. Further, although he noted her itchiness could be related to her diabetes, he attributed it to dry skin and he advised her to apply baby oil to keep her skin moist. Again, Dr. Kalafian also recommended weight loss. (R. 328-29)

On November 18, 2002, Booker reported chronic numbness in her feet. On exam Dr. Kalafian found no edema in her extremities and +2 distal pulses in her extremities, but did note decreased monofilament sensation. (R. 327) This was her last visit to Dr. Kalafian at his private office due to her lack of financial resources, and although she began to receive immediate medical care at the Lynchburg Health Department and she saw other physicians, she did not see Dr. Kalafian again until October 2003. (R. 327) Nonetheless, in February 2003, Dr. Kalafian sent a letter to counsel indicating that Booker has diabetic neuropathy involving her hands and feet, and he opined that this limited her ability to function and perform any meaningful occupations. (R. 347)

During Booker's intake exam at the Lynchburg Health Department on December 16, 2002, Booker did not complain of any pain, numbness, burning, and/or itching in her hands or feet. (R. 352-53) Thereafter, Booker had regular lab screens done to monitor her blood sugar, and she was next seen by a physician on October 9, 2003. That day she was examined by Dr. Kalafian, who noted no swelling or edema in any extremities and no new complaints. (R. 357) Booker did not complain of pain, burning, numbness, and/or itching in her feet or hands, but did allege some intermittent joint pain. (R. 357) During her next exam, on January 28, 2004, Booker complained of itchiness in her feet and hands. Nonetheless, she reported to Dr. Johnson that she was doing well and she did not voice any complaints of persistent pain, burning, and/or numbness in her feet or hands. (R. 355-56) On exam, Dr. Johnson noted that Booker's foot

exam was unremarkable and that there was no claudication⁵, cyanosis, or edema in any of her extremities. (R. 355-56)

Booker did not voice any further complaints until June 14, 2004, when she presented at the Lynchburg General Hospital with a complaint of intermittent, moderate itching in her feet and hands. Again, she was diagnosed with diabetic peripheral neuropathy. (R. 383-87) She returned the following month, on July 4, 2004, with similar complaints; however, on this instance she voiced her first complaint of burning in hands, but only in her left hand. (R. 377-83) On both instances, Booker was released immediately after seeing the physician, and the treatment notes reveal that Booker was ambulatory and in no acute distress. (R. 380-81, 386-87)

Booker was examined by Dr. Wallace, a neurologist, on September 7, 2004, following Dr. Kalafian's referral. Although Booker complained that she has "burning in the feet and to a lesser degree [in her] hands," she did not complain of persistent pain and/or numbness. On exam Dr. Wallace found that Booker had decreased vibratory and pinprick sensation in her hands and feet. The nerve conduction study showed diminished amplitude of conduction in Booker's left hand over the extensor digitor and brevis, but normal readings in her palm. It also revealed various problems in her left leg, including an absence of tibial and calf response. No studies were done on Booker's right hand or leg despite the fact that she is a right side dominant individual. (R. 31) Dr. Wallace found the test results were consistent with diabetic polyneuropathy, but he did not opine as to how this may impact Booker's functional abilities. (R. 392)

⁵Claudication is limping or lameness. Dorland's Illustrated Medical Dictionary 373 (30th ed. 2003).

Although the record establishes that Booker has been diagnosed with diabetic neuropathy, it does not indicate any impact on her functional abilities. A diagnosis of a condition is insufficient to prove disability. See Gross v. Heckler, 785 F.2d 1163 (4th Cir.1986); see also Hutton v. Apfel, 175 F.3d 651, 655 (8th Cir.1999) (holding that a lack of physical restrictions from a treating source tends against a finding of total disability); Hilton Williams v. Barnhart, 2006 WL 3099648, Civ. A. No. 7:05cv00674, *3 (W.D. Va. Oct. 24, 2006) (finding that a mere diagnosis of diabetes and viral peripheral neuropathy absent any evidence of actual functional limitations was insufficient to establish disability). There is simply nothing in the record to suggest that Booker's neuropathy is so severe she is unable to work. Booker has complained of, at best, occasional itchiness in her hands and feet and intermittent numbness in her feet. Booker has not complained to any of her physicians that she suffers from persistent aching, throbbing, or numbness in her feet or hands. Booker has never complained to any of her physicians that she has difficulty walking or grasping objects nor that her alleged symptoms have impacted her daily activities to any degree. Similarly, Booker did not complain in either her disability application or updated application that she had any problems with pain and/or numbness in her hands; at most, she complained of itchiness in her feet and some numbness in her toes. (R. 161, 182, 190, 192) Finally, none of Booker's physicians have placed any limitations on her physical activities and all have encouraged her to do more exercise.

To the extent Dr. Kalafian opines in August 2004 that Booker is disabled from all forms of work, there is substantial evidence to support the ALJ's conclusion that it is unpersuasive. As noted above, this is a legal conclusion which is not entitled to any controlling weight. See Morgan, 142 Fed.Appx. at 722 (holding that a treating physician's opinion that claimant was

“disabled,” “unable to work,” could not work an eight hour job, and/or could not do her previous work was not entitled to controlling weight). Not only is this finding inconsistent with Booker’s medical records, it is not supported by any functional assessment. As such, it is not entitled to great weight. See Craig, 76 F.3d at 590. Indeed, none of Dr. Kalafian’s extensive and voluminous treatment notes indicate that Booker has ever complained of pain, numbness, or tingling in her hands and she has only complained of occasional numbness in her feet. Also noteworthy, Dr. Kalafian has repeatedly advised Booker to do more physical activity and has not placed any restrictions on those activities due to her conditions. There are no notations in his records that Booker has any difficulty walking or exercising, and he has repeatedly encouraged Booker to do more exercise. Finally, this opinion is clearly inconsistent with Dr. Kalafian’s November 2001 clinical notes in which he specifically noted that he did not believe Booker was disabled from all forms of employment and she “certainly” could do at least sedentary work. (R. 241) Dr. Kalafian did not account for this opinion in his later assessments nor do his clinical notes indicate that her symptoms have significantly worsened such that he modified his earlier assessment of her functional abilities. Accordingly, the undersigned finds that the ALJ did not misapply the treating physician rule in giving little weight to Dr. Kalfian’s August 2004 letter.

IV.

Booker also makes a brief argument that the ALJ erred in failing to credit the testimony regarding the extent of her limitations. Booker testified that she suffers from pain and burning sensations in her hands and feet which are so severe she is unable to walk without a cane and she has difficulty grasping objects. (R. 35-40) She also testified that she has decreased feeling in her hands and feet. (R. 35-40) As a result of these pains she stated she is unable to do any

housework or cooking. (R. 44-45) Similarly, Booker's twenty-three year old daughter testified that her mother is basically an invalid, she needs assistance in all aspects of her personal care and home management, and she is unable to care for her nine year old daughter. (R. 53, 55-56) The ALJ determined Booker's testimony and Booker's daughter's testimony were not wholly credible because their claims of total incapacitation were not supported by the record as whole. (R. 16, 22) Additionally, the ALJ found Booker to be less than credible due to a pattern of inconsistent and self-serving statements evident in the record. (R. 16)

In light of conflicting evidence contained in the record, it is the duty of the ALJ to fact-find and to resolve any inconsistencies between a claimant's alleged symptoms and her ability to work. See Smith v. Chater, 99 F.3d 635, 638 (4th Cir. 1996). Accordingly, the ALJ is not required to accept Booker's or her daughter's testimony that she is disabled by pain, burning, itchiness, and numbness in her hands and feet, but rather must determine, through an examination of the objective medical record, whether she has proven an underlying impairment that could reasonably be expected to produce the symptoms alleged. Craig v. Chater, 76 F.3d 585, 592-93 (4th Cir. 1996) (stating the objective medical evidence must corroborate "not just pain, or some pain, or pain of some kind or severity, but the pain the claimant alleges she suffers."). Then, the ALJ must determine whether the testimony about Booker's symptoms are credible in light of the entire record. Credibility determinations are in the province of the ALJ, and courts normally ought not interfere with those determinations. See Hatcher v. Sec'y of Health & Human Servs., 898 F.2d 21, 23 (4th Cir. 1989).

Although Booker has been diagnosed with diabetic neuropathy, the record simply does not indicate that her neuropathy has significantly limited her functional abilities. Booker's

complaints of itchiness in her hands and itchiness and numbness in her feet are sporadic. The record lacks any indication that Booker has difficulty grasping objects or walking, that her condition has caused her to limit her daily living activities, and/or that her condition prevents her from caring for her personal needs. Furthermore, Booker's treating physicians have not instructed her to limit her physical activities due to her illness nor have they told her she could not work. In fact, all of her physicians, including Dr. Kalafian, have repeatedly instructed Booker to do more physical activity.

Moreover, Booker's pattern of self-serving behavior evident throughout the record lends weight to the ALJ's credibility determination. The most prominent example of such behavior relates to Booker's pursuit of disability benefits - Booker reported to the state unemployment offices that she was laid off and she collected unemployment benefits from November 2001 until July 2002, but during the same period she was actively pursuing federal disability benefits and she advised the state consultive examiner that she stopped working because she was too sick to work. (R. 161, 255)

The ALJ's decision not to credit Booker's testimony and her daughter's testimony that the pain in Booker's feet and hands is so severe she is unable to stand and grasp objects is supported by the record. Booker's voluminous medical records do not support her assertion that she suffers from significant pain or numbness in her feet, and there are no indications that Booker has ever complained of any pain or numbness in her hands or that she has difficulty grasping objects. Likewise, the record is devoid of any evidence suggesting Booker's daily living activities have been in any way impacted by her alleged discomfort. Further, the fact that Booker's treating physicians have repeatedly advised her to increase her physical activity and

have not imposed any restrictions on her physical activities leads the undersigned to conclude that her symptoms are not as severe as she alleges. Accordingly, the undersigned finds that the ALJ's conclusions regarding the extent of Booker's symptoms are supported by substantial evidence and should not be disturbed.⁶

V.

Booker also asserts that the ALJ erred in failing to seek additional information from Dr. Kalafian as to the basis of his disability opinion offered in the August 2004 letter and/or in failing to seek a neurological consultative examiner to explain the results of the nerve conduction study. Social Security Ruling ("SSR") 96-5p states that although the ALJ should not ignore a treating source's opinion, the ALJ should not afford that opinion special significance or controlling weight unless it is supported by and is consistent with all other relevant evidence in the record. However, "[b]ecause treating source evidence (including opinion evidence) is important, if the evidence does not support a treating source's opinion on any issue reserved to the Commissioner and the adjudicator cannot ascertain the basis of the opinion from the case record, the adjudicator must make 'every reasonable effort' to recontact the source for clarification of the reasons for the opinion." SSR 96-5p. The ALJ is only charged with a duty to recontact the treating source for additional information when (1) the record fails to support a treating source's opinion and (2) the basis for the treating source's opinion is not ascertainable from the record as a whole. Id.

⁶As the undersigned concludes that the ALJ's credibility determination is supported by the record, the undersigned need not address Booker's argument that had the ALJ credited Booker's testimony as to the extent of her limitations that there would not be any jobs available for a person with Booker's limitations in the national economy.

In this instance there was no need to recontact Dr. Kalafian regarding the basis of his opinion as he clearly states in the August 2004 letter that he does not believe Booker is able to work because of her combined medical problems, and he specifically notes the problems she has from diabetic neuropathy including pain, numbness, and tingling. (R. 389) The ALJ's determination not to credit Dr. Kalafian's opinion was not based on his inability to ascertain how Dr. Kalafian reached his conclusion; rather, the ALJ discounted the opinion because it was a legal conclusion not supported by the record as a whole. Accordingly, the undersigned finds the ALJ had no duty to recontact Dr. Kalafian. Newby ex rel. M.A.J. v. Comm'r of Soc. Sec., 2006 WL 163138, Civ. A. No. 7:05cv253, *3 (W.D. Va. Jan. 23, 2006) (holding no duty to recontact when basis of opinion can be ascertained from record); Alejandro v. Barnhart, 291 F.Supp.2d 497, 512 (S.D. Tex.2003) (finding no duty to recontact the treating physician when the ALJ disregarded that physician's opinion on the ultimate issue of disability on the basis the conclusion was not supported by the record as a whole and not on the basis that there was confusion as to the basis of that opinion).

Likewise, the ALJ did not have any duty to seek further explanation of the nerve conduction study by a neurological consultative examiner. Booker purports that such a consultation would be consistent with the ALJ's statements during the administrative hearing that, "if it [neurological study] comes back evasive and [im]material and uncertain" he would consider a neurological consultative examiner. (R. 69) However, the ALJ did not find the nerve conduction study unclear and, in fact, found that the study confirmed Dr. Kalafian's diagnosis of diabetic neuropathy. There is no question as to the results of the nerve conduction study as Dr. Wallace stated, "[i]n summary, Ms. Booker's nerve conduction studies are consistent with

polyneuropathy, which is likely related to her diabetes.” (R. 392) The ALJ considered this diagnosis and found it consistent with the record; however, the ALJ found that the mere diagnosis of such a condition did not render Booker disabled. (R. 17)

The ALJ had no duty to seek further information on this issue because the record was sufficient to make a disability determination without further medical evidence. 20 C.F.R. § 416.919a (stating a consultive medical exam may be purchased when the evidence as a whole is insufficient to render a decision on disability). In this instance there was no ambiguity as to Booker’s health condition, there were no inconsistencies in the medical record as to Booker’s symptoms or her treating physicians’ findings, and there was not any indication that Booker’s condition had changed. Accordingly, the undersigned concludes the ALJ was not compelled to seek further diagnostic evaluation or interpretation before rendering a decision on Booker’s claim. See id.

VI.

Based on a complete review of Booker’s medical history, the undersigned finds there is substantial evidence to support the ALJ’s determination that Booker retains the physical capacity for a range of light exertional work, including her past work as a machine operator/tender and as a production inspector. The ALJ considered the severity of Booker’s illnesses, her extensive medical record, and her testimony, and he concluded that although Booker has some functional limitations, she retains the capacity to do a range of light work as long as she is afforded the opportunity to change position as needed and she is not required to do fine manipulation of objects. This functional capacity assessment is consistent with the record as a whole.

As noted above, there are minimal indications in the record that Booker's illnesses have impeded her functional abilities or daily living activities. Booker has not complained to her treating physicians that she is unable to walk, to grasp objects, and/or care for personal needs, her nine year old daughter's needs, or her household management needs. Nonetheless, the ALJ afforded Booker the benefit of the doubt and limited her to those jobs which would allow her to sit or stand at her leisure and which would require only gross manipulation of objects. Booker testified that her past work as a machine operator/tender and a production inspector allowed her to sit as needed and required minimal manipulation of goods. (R. 31-34) As such, the undersigned finds that the ALJ's conclusion that Booker could return to her past relevant work and his ultimate disability conclusion is supported by the record and, therefore, should not be disturbed. See Morris v. Barnhart, 2007 WL 1339841, No. 06-408, * 2-3 (6th Cir. 2007) (upholding finding of no disability even though plaintiff suffered from, among other illnesses, diabetes, diabetic neuropathy, and asthma and treating physician stated claimant was disabled where treating physicians had not limited the claimant's physical activities and there was conflicting evidence of claimant's daily activities); see also Westfall v. Chater, 68 F.3d 484 (10th Cir. 1995) (finding that there was substantial evidence to support finding that claimant who suffered from diabetes, diabetic neuropathy, hypertension, and pain could return to her past relevant work as a hospital hostess when claimant's testimony as to her previous job duties did not conflict with the ALJ's residual functional capacity assessment). Accordingly, it is the recommendation of the undersigned that plaintiff's motion for summary judgment be denied and defendant's motion for summary judgment be granted.

In making this recommendation, the undersigned does not suggest that plaintiff is totally free of all pain and subjective discomfort. The objective medical record simply fails to document the existence of any condition which would reasonably be expected to result in total disability for all forms of substantial gainful employment. It appears that the ALJ properly considered all of the objective and subjective evidence in adjudicating plaintiff's claim for benefits. It follows that all facets of the Commissioner's decision in this case are supported by substantial evidence. It is recommended, therefore, that defendant's motion for summary judgment be granted.

The Clerk is directed immediately to transmit the record in this case to the Hon. Norman K. Moon, United States District Judge. Both sides are reminded that pursuant to Rule 72(b) they are entitled to note any objections to this Report and Recommendation within ten (10) days hereof. Any adjudication of fact or conclusion of law rendered herein by the undersigned not specifically objected to within the period prescribed by law may become conclusive upon the parties. Failure to file specific objections pursuant to 28 U.S.C. § 636(b)(1)(C) as to factual recitations or findings as well as to the conclusions reached by the undersigned may be construed by any reviewing court as a waiver of such objection.

The Clerk of the Court hereby is directed to send a certified copy of this Report and Recommendation to all counsel of record.

Entered this 14th day of June, 2007.

/s/ Michael F. Urbanski
United States Magistrate Judge