

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

REGINA O'CONNELL,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 00-382-KAJ
)	
)	
COMMISSIONER OF SOCIAL)	
SECURITY)	
)	
Defendant.)	

MEMORANDUM OPINION

Angela P. Ross, Esquire; Doroshow, Pasquale, Krawitz, Siegel & Bhaya, 1202 Krikwood Highway, Wilmington, Delaware 19805, counsel for plaintiff.

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August 21, 2003
Wilmington, Delaware

JORDAN, District Judge

I. INTRODUCTION

Before the Court is plaintiff Regina O’Connell’s (“O’Connell”) motion for summary judgment (Docket Item “D.I.” 16) and defendant Commissioner of Social Security’s (“Commissioner”) cross motion for summary judgment (D.I. 20).¹ O’Connell brings this action under 42 U.S.C. § 405(g), seeking review of the Commissioner’s decision denying her disability benefits under Title II of the Social Security Act (“the Act”), 42 U.S.C. §§ 401-434. Jurisdiction is proper under 42 U.S.C. § 405(g) of the Act.

II. BACKGROUND

A. Procedural History

On July 29, 1996, O’Connell filed for disability benefits with the Social Security Administration (“SSA”). (D.I. 17 at 1.) The SSA denied her claim originally and upon reconsideration. (D.I. 13 at 48, 56.) O’Connell then filed a request for a hearing before an administrative law judge (“ALJ”). (*Id.* at 13, 60.) A hearing followed on June 17, 1998. (D.I. 17 at 1.) At the hearing, O’Connell was represented by counsel and testified on her own behalf. (D.I. 13 at 14.) The ALJ determined, however, that O’Connell was not disabled under the Act. (*Id.*)

O’Connell then appealed the ALJ’s decision to the Appeals Council of Social Security. (*Id.* at 7.) The Appeals Council found that there was “no basis under the regulations for granting” O’Connell’s “request for review.” (*Id.* at 3.) The August 18, 1998 decision of the ALJ, therefore, became the final decision of the Commissioner. See 20

¹ Plaintiff’s action survives any change of the person occupying the office of the Commissioner of Social Security. 42 U.S.C. § 405(g). Accordingly, Jo Anne B. Barnhart, the acting Commissioner of Social Security, is substituted as defendant in this action. (*Id.*)

C.F.R. §§ 404.955, 404.981, 422.210; *see also Sims v. Apfel*, 530 U.S. 103, 106-107 (2000); *Matthews v. Apfel*, 239 F.3d 589, 592 (3d Cir. 2001). O’Connell now seeks review by this Court under 42 U.S.C. § 405(g). (D.I. 17 at 1.)

B. Facts

O’Connell was thirty-four years old at the time of the ALJ’s August 18, 1998 decision. (D.I. 21 at 3.) She is a high school graduate, has an associates degree, and was working as a sales representative at the time of the alleged onset of her disability. (D.I. 13 at 88; D.I. 17 at 3.) She also has past employment experience as a merchandiser and pre-school teacher. (*Id.*)

O’Connell alleges an inability to work as of October 25, 1994 due to a work-related accident. (D.I. 13 at 15.) According to O’Connell, the accident occurred as she was reaching to remove a product off the top of a freezer and something fell, striking her on the head. (*Id.*) That caused her to lose her balance and fall backwards on her spine. (*Id.*) O’Connell’s alleged injuries resulting from the accident are two herniated disks; loss of use of her right arm; pain in her neck, middle back, lower back, left arm, legs, and ankles; numbness of her left arm; daily headaches; depression; and problems concentrating, remembering and sleeping. (*Id.* at 84.)

1. Medical Evidence - Physical

In January 1995, Dr. Lawrence Bellew (“Dr. Bellew”), a licensed osteopath, treated O’Connell for her alleged injuries. (*Id.* at 285.) Dr. Bellew’s initial diagnosis was: (1) sacroiliac, lumbar, thoracic, and thoracocervical strain and sprain; (2) spinal somatic dysfunction pelvic, sacrum, lumbar, abdomen, rib, thoracic, cervical, and cranium; and (3) contusion of the head. (*Id.* at 286.) O’Connell received osteopathic treatment, consisting

of cranial osteopathy and deep fascial release techniques. (*Id.*)

Dr. Bellew continued treating O'Connell from January 1995 to February 1998. (*Id.* at 170-289.) On nineteen visits to Dr. Bellew, O'Connell reported an improvement in her symptoms in response to treatment. (*Id.* at 177-282.) On several of those visits, O'Connell also described the pain associated with her injuries as less severe. (*Id.*)

On May 2, 1997, Dr. Bellew, at the request of the Delaware Disability Determination Service, performed a consultative evaluation of O'Connell. (*Id.* at 155-158.) Dr. Bellew opined that O'Connell could perform part-time sedentary work, but was incapable of performing any job which would require her to remain in the same position for a prolonged period of time. (*Id.* at 157.) On a physical capacities evaluation report², Dr. Bellew stated that O'Connell was unable to bend, squat, crawl, climb or reach. (*Id.* at 171.) Dr. Bellew also noted that O'Connell needed to lie down for two-hours in an eight-hour day to relieve pain. (*Id.*)

Dr. Steven J. Valentino ("Dr. Valentino"), a licensed osteopath, had previously examined O'Connell in May 1995. (*Id.* at 258-261.) Dr. Valentino's physical exam revealed that O'Connell "was able to perform a squat and return to an erect posture without difficulty." (*Id.* at 260.) Dr. Valentino's overall "impression" was that of a "normal orthopedic exam." (*Id.* at 261.) He further noted that O'Connell was "fully, totally and completely recovered from any injury she may have sustained on 10/13/94. She has no positive objective findings to substantiate her subjective symptoms[.] ... She is not in need of any ongoing supervised medical care and capable of gainful employment full time, full

² A Physical Capacities Evaluation Report indicates a claimant's ability to sit, stand, walk, lift, carry, bend, squat, crawl, climb, reach, grasp, and push and pull with the hands and feet. (D.I. 13 at 171.)

duty without restriction.” (*Id.* at 261.)

In February 1995, O’Connell underwent a magnetic resonance imaging (“MRI”) examination of her spine. (*Id.* at 135.) The MRI revealed “[c]entral small disc herniations ... at C4-C5 and C5-C6 and ... central bulging of C3-C4 and C6-C7.” (*Id.*) Dr. Philip Chao, who administered the MRI, noted that “[a]ll of these findings only indent the thecal sac and do not cause cord compression.” (*Id.*)

In August 1995, Dr. Bellew referred O’Connell to Dr. Bruce Grossinger (“Dr. Grossinger”), an osteopath, to undergo a neurological examination. (*Id.* at 129.) On the initial exam, Dr. Grossinger determined that O’Connell had two herniated discs and cervical disogenic syndrome. (*Id.* at 130.) Dr. Grossinger attributed these injuries to O’Connell’s alleged work injury in October 1994. (*Id.*) He further opined that O’Connell could not perform her “pre-injury job” and was only capable of part-time sedentary work. (*Id.*)

2. Medical Evidence - Psychological

On behalf of the Delaware Disability Determination Service, Dr. Frederick Kurz (“Dr. Kurz”), performed a psychological evaluation of O’Connell in March 1997. (*Id.* at 137-141.) Dr. Kurz conducted a clinical interview, a Wechsler Adult Intelligence Scale-Revised test, and a Wechsler Memory Scale test.³ (*Id.* at 137.) He concluded that O’Connell’s mood and affect were within normal limits and there seemed to be no signs of any thought disorders. (*Id.*) Dr. Kurz noted that O’Connell’s attention, pace and concentration were adequate. (*Id.* at 38.) He also stated that O’Connell’s work related deficiencies were mild

³ The Wechsler Adult Intelligence Scale-Revised test consists of testing in vocabulary, arithmetic, digit span, comprehension, similarities, picture completion, picture arrangement, block design, object assembly and digit symbol. (D.I. 13 at 138.) The Wechsler Memory Scale test consists of testing in mental control, memory passages, visual reproduction and associate learning. (*Id.*)

and that she suffered from “Mild”⁴ or “No[]” functional limitations . (*Id.*)

In April 1997, a reviewing psychiatrist⁵ completed a Psychiatric Review Technique Form (“PRT form”)⁶. (*Id.* at 149.) After reviewing the medical evidence in O’Connell’s file, the psychiatrist determined that O’Connell had slight restrictions in daily living, slight difficulty in maintaining social functioning, often had deficiencies in concentration, persistence or pace and never had episodes of deterioration or decompensation in work or work-like settings. (*Id.*)

In August 1998, the ALJ also completed a PRT form as required under 20 C.F.R. § 404.1520a. (*Id.* at 23-25.) After evaluating the findings of Dr. Kurz and the reviewing psychiatrist, the ALJ determined that O’Connell had no restrictions in daily living, no difficulty in maintaining social functioning, seldom had deficiencies in concentration, persistence or pace and never had episodes of deterioration or decompensation in work or work-like settings. (*Id.* at 24-25.)

3. The ALJ’s Decision

To determine whether a claimant is entitled to disability benefits, an ALJ applies a “sequential five-step inquiry pursuant to 20 C.F.R. § 404.1520[]” . *Morales v. Apfel*, 225 F.3d 310, 316 (3d Cir. 2000); see *Brewster v. Heckler*, 786 F.2d 581, 583 (3d Cir. 1986). Under that inquiry:

[T]he [ALJ] determines first whether an individual is currently

⁴ On the Psychological Functional Capacities Evaluation Form , “mild” is defined as “suspected impairment of slight importance which does not affect ability to function.” (D.I. 13 at 141.)

⁵ The psychiatrist’s name is not discernable from the record.

⁶ The Psychiatric Review Technique Form outlines the steps of the mental health evaluation. See *Plummer v. Apfel*, 186 F.3d 422, 429 (3d Cir. 1999).

engaged in substantial gainful activity. If that individual is engaged in substantial gainful activity, [she] will be found not disabled regardless of the medical findings. If an individual is found not to be engaged in substantial gainful activity, the [ALJ] will determine whether the medical evidence indicates that the claimant suffers from a severe impairment. If the [ALJ] determines that the claimant suffers from a severe impairment, the [ALJ] will next determine whether the impairment meets or equals the list of impairments in Appendix I of sub-part P of Regulations No. 4 of the Code of Regulations. If the individual meets or equals the list of impairments, the claimant will be found disabled. If [she] does not, the [ALJ] must determine if the individual is capable of performing [her] past relevant work considering [her] severe impairment. If the [ALJ] determines that the individual is not capable of performing [her] past relevant work, then [the ALJ] must determine whether, considering the claimant's age, education, past work experience and residual functional capacity, [she] is capable of performing other work which exists in the national economy.⁷

Brewster, 786 F.2d at 583-584 (internal citations omitted) (footnote added).

In this case, after applying the five-step evaluation, the ALJ determined that O'Connell was not disabled within the meaning of the Act and its regulations. (D.I. 13 at 14.) The ALJ first found that O'Connell was not engaged in substantial gainful activity. (*Id.*) Next, the ALJ concluded that O'Connell suffered from a severe back disorder, however, the disorder was not an impairment listed in Appendix I of sub-part P of Regulations No. 4 of the Code of Regulations. (*Id.* at 15,20.) The ALJ then determined, after finding that O'Connell had no nonexertional limitations, and only suffered from exertional limitations, that O'Connell had a residual functional capacity

⁷ Prior to 1978, the question of "whether a job existed in the national economy suitable to a claimant was generally determined through reference to testimony by vocational experts. However, in 1978 the Secretary promulgated the medical-vocational guidelines, commonly known as 'the Grids.'" *Mason v. Shalala*, 994 F.2d 1058, 1064 (3d Cir. 1993). The Grids, in certain cases, allow an ALJ to determine whether a job exists in the national economy for a claimant given their age, education, past work experience and residual functional capacity. *Id.*

to perform sedentary work. (*Id.* at 20.) However, O’Connell was not able to perform her past relevant work. (*Id.*) The ALJ, therefore, matched O’Connell’s vocational profile (age, education, work experience and residual functional capacity) to correspond with vocational rules 201.28 and 201.29 under the Medical-Vocational Guidelines (“grid rules”).⁸ (*Id.*) Under rules 201.28 and 201.29, a claimant aged 18 to 44, with a high school education or more, with skilled or semiskilled work experience and with the residual functional capacity to perform sedentary work, is not disabled. 20 C.F.R. Pt. 404, Subpt. P, App. 2, Tbl. 1, R. 201.28, 201.29; see *Mason*, 994 F.2d at 1064. The ALJ, therefore, found O’Connell not disabled. (D.I. 13 at 20.)

III. STANDARD OF REVIEW

A court applies plenary review to the Commissioner’s application of law. *Markle v. Barnhart*, 324 F.3d 182, 187 (3d Cir. 2003). The Commissioner’s findings of fact, however, are reviewed to determine “whether there is substantial evidence to support such findings.” *Id.* A Court is required to review the entire record when making those determinations. *Reefer v. Barnhart*, 326 F.3d 376, 379 (3d Cir. 2003.)

Substantial evidence is defined as “more than a mere scintilla. It means 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 *Consolidated Edison Co. V. NLRB*, 305 U.S. 197, 229 (1938.)) If the Commissioner’s decision is supported by substantial evidence, then a Court is bound by those factual findings.

⁸ Table 1, Appendix 2, Subpart P is entitled: “Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a result of Severe Medically Determinable Impairment(s)” 20 C.F.R. Pt. 404, Subpt. P, App. 2, Tbl. 1.

Plummer, 186 F.3d at 427.

IV. DISCUSSION

O'Connell submits that the findings of the Commissioner of Social Security are not supported by substantial evidence. (D.I. 17 at 8.) Specifically, O'Connell argues that the ALJ failed to give proper weight to the opinions of Dr. Bellew and erroneously determined that O'Connell had no mental limitations. (*Id.*) O'Connell further contends that her postural limitations and complaints of pain were not properly evaluated and, thus, the ALJ's finding of "no nonexertional limitations" was not supported by substantial evidence. (*Id.*) Additionally, O'Connell submits that the grid rules were erroneously applied and that the ALJ committed error by not obtaining testimony from a vocational expert. (D.I. 17 at 2.)

A. Whether the ALJ gave proper weight to Dr. Bellew's findings.

A treating physician's opinions and assessments are generally given more weight than a non-treating physician's. See 20 C.F.R. § 404.1527(d)(2). Particularly when the treating physician's "opinions reflect expert judgement based on a continuing observation of the patient's condition over a prolonged period of time." *Morales*, 225 F.3d at 317 (quoting *Plummer*, 186 F.3d at 429.) An ALJ may "reject 'a treating physician's opinion ... only on the basis of contradictory medical evidence' and not due to his or her own credibility judgements, speculation or lay opinion." *Id.*

In this case, the ALJ rejected Dr. Bellew's February 18, 1998 assessment of O'Connell because of contradictory medical evidence provided by Dr. Valentino and the MRI results. (D.I. 13 at 19.) Dr. Valentino's examination of O'Connell "revealed no evidence to substantiate an ... ongoing orthopedic injury" because there was "no

positive objective findings to substantiate her subjective symptoms.” (D.I. 13 at 261.) Dr. Valentino further noted that O’Connell was capable of full time, full duty employment without restriction. (*Id.* at 261.) Furthermore, the MRI performed on O’Connell did not substantiate Dr. Bellew’s findings. (D.I. 13 at 135.) Therefore, the Court is of the opinion that the ALJ properly considered and rejected Dr. Bellew’s February 18, 1998 assessment.

Moreover, contrary to O’Connell’s argument, it appears that the ALJ accorded great weight to Dr. Bellew’s opinions and assessments. (D.I. 13 at 15.) Dr. Bellew’s reports from 1995-1998 consist of over 100 pages in the record. (*Id.* at 170-289.) The February 18, 1998 assessment is but one of those pages. (*Id.* at 170.) The ALJ extensively relied on Dr. Bellew’s findings to determine that O’Connell had, in fact, suffered from a severe back disorder. (*Id.* at 15-19.) This is evidenced by the ALJ’s extensive documenting of Dr. Bellew’s findings in the opinion. (*Id.*) O’Connell’s contention that the ALJ did not give proper weight to Dr. Bellew’s opinions and assessments is, therefore, without merit.

B. Whether the ALJ erroneously determined that O’Connell had no mental limitations.

The Commissioner has supplemented the five-step sequential evaluation process, previously enumerated, with additional regulations addressing mental impairments. *Plummer*, 186 F.3d at 428; see 20 C.F.R. § 404.1520a (“Evaluation of mental impairments”). Those additional regulations require the ALJ “to record the pertinent signs, symptoms, findings, functional limitations and effects of treatment contained in the case record, in order to determine if a mental impairment exists.”

Plummer, 186 F.3d at 428. The ALJ records that information on a PRT form, which summarizes the steps involved “in determining the degree of functional loss suffered by the claimant.” *Id.*

A claimant’s functional limitations are broken into four categories: (1) activities of daily living; (2) social functioning; (3) concentration, persistence, or pace; and (4) episodes of decompensation. 20 C.F.R. § 404.1520a(c)(3). If the ALJ finds the claimant’s degree of limitation is “none,” “mild,” “slight”⁹ or “seldom”¹⁰ in the first three functional areas and “none” in the fourth area, the ALJ will conclude that the impairment is not severe. 20 C.F.R. § 404.1520a(d)(1). “However, there must be competent evidence in the record to support the conclusions recorded” by the ALJ. *Woody v. Sec’y of Health and Human Servs.*, 859 F.2d 1156, 1159 (3d Cir. 1988).

Here, the ALJ’s finding that O’Connell did not suffer from a mental limitation was supported by substantial and competent evidence in the record. Dr. Kurz’s psychological evaluation of O’Connell revealed that O’Connell suffered from “mild” or “no[]” functional limitations and he specifically stated in his report that “the claimant’s only work related deficiencies were considered to be mild.” (*Id.* at 137-141.) Dr. Kurz further noted that O’Connell’s attention, pace and concentration were adequate. (*Id.*)

⁹ Under 20 C.F.R. 404.1520a(c)(4), the first two functional areas (activities of daily living, and social functioning) are rated on a five-point scale: “None, mild, moderate, marked, and extreme.” In the instant action, the PRTF form uses the following five-point scale for the same functional areas: “None, slight, moderate, marked and extreme.” (D.I. 13 at 24.) The Court, therefore, assumes that “mild” has the same meaning as “slight.”

¹⁰ Under 20 C.F.R. 404.1520a(c)(4), the third functional area (concentration, persistence, or pace) is rated on a five-point scale: “None, mild, moderate, marked, and extreme.” In the instant action, the PRTF form uses the following five-point scale for the same functional area: “Never, seldom, often, frequent and constant.” (D.I. 13 at 25.) The Court, therefore, assumes that “mild” has the same meaning as “seldom.”

Moreover, the reviewing psychiatrist's¹¹ PRT form revealed similar findings, with the exception that it showed that O'Connell "often" suffered from deficiencies of concentration. (*Id.* at 149.) Therefore, the ALJ, in relying on the evidence provided by Dr. Kurz and the reviewing psychiatrist, recorded on the PRT form "none" for restrictions of activities of daily living, "none" for difficulties in maintaining social functioning, "seldom" for deficiencies of concentration, persistence or pace and "never" for episodes of deterioration or decompensation. (*Id.* at 24-25.)

The ALJ was justified in making those findings. The ALJ's findings are consistent with Dr. Kurz's and the reviewing psychiatrist's, with the exception that the ALJ relied more on Dr. Kurz's assessment in finding that O'Connell "seldom" had deficiencies in concentration, persistence or pace. However, Dr. Kurz's findings are more persuasive because of his in-person evaluation of O'Connell, whereas the reviewing psychiatrist's conclusions are solely based on a review of O'Connell's file. Therefore, the Court finds the ALJ's assessment of O'Connell's functional limitations was supported by substantial evidence, and, under 20 C.F.R. 404.1520a(d)(1), the ALJ properly concluded that O'Connell's mental impairment was not severe. (*Id.* at 18.)

C. Whether the ALJ's finding of "no nonexertional limitations" was supported by substantial evidence.

Nonexertional limitations affect a claimant's "ability to meet the demands of jobs other than the strength demands, that is, demands other than sitting, standing, walking, lifting, carrying, pushing or pulling[.]" 20 C.F.R. § 404.1569a(a). Pain or postural limitations are nonexertional and may affect a claimant's ability to perform certain jobs.

¹¹ The psychiatrist's name is not discernable from the record.

Id.

When a claimant asserts pain or postural limitations, and those assertions are reasonably supported by medical evidence, the Commissioner may not discount the claimant's allegations without contrary medical evidence. *Pegg v. Sullivan*, 788 F.Supp. 863, 867 (W.D.Pa. 1991) (citing *Fergusom v. Schweiker*, 765 F.2d 31, 37 (3d Cir. 1985) (citation omitted); see *Stunkard v. Sec'y of Health and Human Servs.*, 841 F.2d 57, 62 (3d Cir. 1988) ("The flaw in the ALJ's decision stems from the fact that he failed to give proper consideration to evidence of Stunkard's [postural] nonexertional limitations."))

Contrary to O'Connell's argument, the ALJ's evaluation of O'Connell's assertions of pain and postural nonexertional limitations was adequate. As previously mentioned, the ALJ properly rejected Dr. Bellew's February 18, 1998 report based on evidence provided by Dr. Valentino and the MRI results. In Dr. Bellew's report, he indicated that O'Connell had to lie down for two-hours in an eight-hour workday due to pain and was unable to bend, squat, crawl, or climb (postural limitations). (D.I. 13 at 171.) Dr. Valentino's examination, in contrast, revealed that O'Connell was embellishing the pain and that her complaints were not supported by "objective findings to substantiate her subjective symptoms." (*Id.* at 261.) Furthermore, Dr. Bellew's records indicate that O'Connell, on numerous occasions, reported less pain associated with her injuries and an overall improvement in her symptoms. (*Id.* at 177-282.) Therefore, the ALJ properly dismissed O'Connell's allegations with contrary medical evidence. As such, the ALJ's finding of "no nonexertional limitations" was supported by substantial evidence.

D. Whether the grid rules were properly applied and whether testimony from a vocational expert was required.

When a claimant suffers solely from exertional impairments, the ALJ may apply the grid rules to determine if the claimant is able to perform other work. *Monahan v. Shalala*, Civ. A. No. 91-CV-5565, 1993 WL 195258, at *7 (D.N.J. Aug. 9, 1993.) However, the grid rules are not exclusively “applied whe[n] the claimant [also] suffers from ... nonexertional impairments.” *Pegg*, 788 F.Supp. at 868 (quoting *Welch v. Heckler*, 808 F.2d 264, 270 (3d. Cir. 1986.)) If a nonexertional impairment exists, it “ordinarily trigger[s] the need for a vocational expert.” *Butterfield v. Sullivan*, Civ. A. No. 88-5455, 1990 WL 210605, *4 (E.D.Pa Dec. 18, 1990) (citing *Burnam v. Schweiker*, 682 F.2d 456 (3d Cir. 1982.))

Here, as previously established, the ALJ properly determined that O’Connell suffered from “no nonexertional limitations.” Therefore, the ALJ was not required to enlist the testimony of a vocational expert. Moreover, because O’Connell only suffered from exertional impairments, the ALJ could rely on the grid rules in determining that she was capable of sedentary work.

IV. CONCLUSION

For the reasons stated, the Court grants defendant’s motion (D.I. 20) and denies plaintiff’s motion (D.I. 16.) An appropriate order will issue.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

REGINA O'CONNELL,)
)
 Plaintiff,)
)
 v.) Civil Action No. 00-382-KAJ
)
 COMMISSIONER OF SOCIAL)
 SECURITY,)
)
 Defendant.)

ORDER

At Wilmington this 21st day of August, 2003,

For the reasons set forth in the Court's Memorandum Opinion of today's date
in this matter,

IT IS HEREBY ORDERED that defendant's Motion for Summary Judgment
(D.I. 20) is GRANTED, and plaintiff's Motion for Summary Judgment (D.I. 16) is
DENIED.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE