

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

EDWARD J. BELLINI, :  
 :  
 Plaintiff, :  
 :  
 v. : Civil Action No. 00-853-JJF  
 :  
 JO ANNE B. BARNHART,<sup>1</sup> :  
 Commissioner of Social :  
 Security, :  
 :  
 Defendant. :

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Edward J. Bellini, Pro Se Plaintiff.

Colm F. Connolly, Esquire, United States Attorney, and Douglas E. McCann, Esquire, Assistant United States Attorney, of the OFFICE OF THE UNITED STATES ATTORNEY, Wilmington, Delaware.  
Of Counsel: James A. Winn, Esquire, Regional Chief Counsel, and Shawn C. Carver, Esquire, Assistant Regional Counsel of the SOCIAL SECURITY ADMINISTRATION, Philadelphia, Pennsylvania.  
Attorneys for Defendant.

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**MEMORANDUM OPINION**

March 31, 2003

Wilmington, Delaware

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<sup>1</sup> Jo Anne Barnhart became the Commissioner of Social Security, effective November 14, 2001, to succeed Acting Commissioner Larry G. Massanari, who succeeded Commissioner Kenneth S. Apfel. Pursuant to Federal Rule of Civil Procedure 25(d)(1) and 42 U.S.C. § 405(g), Jo Anne Barnhart is automatically substituted as the defendant in this action.

**Farnan, District Judge.**

Presently before the Court is an appeal pursuant to 42 U.S.C. §§ 405(g) filed by Plaintiff, Edward J. Bellini, seeking review of the final decision of the Commissioner of the Social Security Administration denying Plaintiff's claims for disability insurance benefits ("DIB") under Title II of the Social Security Act, 42 U.S.C. §§ 401-433. Plaintiff filed a Motion For Summary Judgment (D.I. 13) requesting the Court to grant him benefits. In response to Plaintiff's Motion, Defendant filed a Cross-Motion For Summary Judgment (D.I. 14) requesting the Court to affirm the Commissioner's decision. For the reasons set forth below, Defendant's Cross-Motion For Summary Judgment will be granted, and Plaintiff's Motion For Summary Judgment will be denied. The decision of the Commissioner dated November 2, 1999 will be affirmed.

**BACKGROUND**

**I. Procedural Background**

Plaintiff filed his application for DIB on October 30, 1998, alleging disability as of December 15, 1979, due to a mental disorder. (Tr. 43-45). Plaintiff's date last insured was June 30, 1984. (Tr. 12, 173).

Plaintiff's claim was denied initially and on reconsideration. Plaintiff timely appealed the denial of his application and an administrative law judge (the "A.L.J.")

conducted a hearing on Plaintiff's claim on July 23, 1999. (Tr. 42, 170-179). Plaintiff was informed of his right to representation (Tr. 32, 34, 40-41), but chose to appear and provide testimony without the assistance of an attorney or other representative. (Tr. 172).

By decision dated November 2, 1999, the A.L.J. denied Plaintiff's claim for DIB finding that Plaintiff was not disabled, because he did not have a medically determinable impairment on or before his date last insured of June 30, 1984. Plaintiff timely requested review of the A.L.J.'s decision. (Tr. 60), but the Appeals Council denied review. (Tr. 6-7).

After completing the process of administrative review, Plaintiff filed the instant civil action pursuant to 42 U.S.C. § 405(g), seeking review of the A.L.J.'s decision denying his claim for DIB. In response to the Complaint, Defendant filed an Unopposed Motion And Order For Remand (D.I. 4) in order to locate or reconstruct Plaintiff's file. The Court granted the Motion, the file was located, and the Commissioner filed a Motion To Vacate Prior Order And Reinstate Case (D.I. 5). The Court granted the Motion To Vacate and the case was reinstated. Defendant filed an Answer (D.I. 6) and the Transcript (D.I. 7) of the proceedings at the administrative level.

Thereafter, Plaintiff filed a Motion For Summary Judgment (D.I. 13) and Defendant filed a Cross-Motion For Summary Judgment

(D.I. 14) and a combined Answering Brief and Opening Brief (D.I. 15) requesting the Court to affirm the A.L.J.'s decision. Plaintiff file a Reply Brief to Defendant's Cross-Motion (D.I. 16), and therefore, this matter is ripe for the Court's review.

## **II. Factual Background**

### **A. Plaintiff's Medical History**

Plaintiff joined the National Guard in 1965 and was sent to Fort Bliss, Texas for active military duty in February 1967. Two months later, in April 1967, Plaintiff was treated for anxiety reaction, chronic with acute exacerbation, severe, and was subsequently discharged. (Tr. 13, 51, 112, 129-149). After leaving the military, Plaintiff worked for several years, including a job with Xerox for five years. (Tr. 177).

At the hearing, Plaintiff testified that he wasn't the same person after his military discharge, and that he began to abuse alcohol. (Tr. 175-176). Plaintiff reported that he stopped abusing alcohol in December 1988, four years after his date last insured. However, Plaintiff also told a consultative examiner, who was examining him on behalf of the state agency, that he stopped drinking in 1979. (Tr. 151).

Plaintiff contends that he has not worked since December 1979 (Tr. 63-66, 150). However, Plaintiff's medical records indicate that he had an export business and used car lot, and was working in April and May 1989. (Tr. 100, 112-113, 120). In

April 1989, Plaintiff reported to an examining physician that he changed jobs every six to seven years due to boredom and lack of interest. (Tr. 113, 122).

Despite this evidence and in connection with his disability claim, Plaintiff testified that he stopped working in December 1979, because he became very angry and could not interact with people anymore. (Tr. 174). Plaintiff maintains that he still cannot interact with people and that he cannot work, because he doesn't like people. (Tr. 50, 74).

Plaintiff also contends that he was told that he could not work, but Plaintiff has failed to disclose who gave him that opinion. (Tr. 54, 56). Plaintiff testified that he did not see a doctor in the early 1980's about his alleged mental problem because he did not know what was wrong. (Tr. 176). Plaintiff has no medical history of treatment for any mental disorder since his 1967 military discharge until his date last insured. (Tr. 13, 51, 122, 175).

Four years after his date last insured, Plaintiff was treated at the New Castle Community Mental Health Center for depression. (Tr. 100-128). Although Plaintiff initially denied alcohol abuse, subsequent interviews with Plaintiff revealed that he had abused alcohol until December 1988, and that he continued to have occasional drinks once or twice a week. (Tr. 119, 122). Plaintiff was diagnosed initially with major depression single

episode and personality disorder of an undetermined nature. (Tr. 113). It was later noted that Plaintiff had decreased self-esteem related to his business and guilt related to extramarital affairs. (Tr. 108, 116-117, 128).

Plaintiff failed to comply with the medication regimen that was prescribed for him. (Tr. 100, 103-104, 108-109). Plaintiff was last seen by Dr. DeSoto in July 1989. (Tr. 100). He continued to complain of depression, but indicated that it was not as bad as before. (Tr. 100). Plaintiff also reported that he went to work and was more productive with a sixty percent improvement. (Tr. 100). In June 1991, he was discharged by Dr. DeSoto due to the length of his broken contacts with him. (Tr. 100).

In September 1998, a month before Plaintiff filed his application for DIB, he sought treatment at the Veterans' Administration. (Tr. 51). Plaintiff was prescribed Zoloft and Trazodone. (Tr. 150).

In November 1998, Plaintiff underwent a consultative examination with Patricia Lifrak, M.D., M.B.A., on behalf of the state agency for a disability determination. (Tr. 150). Plaintiff stated that he planned to commit suicide two months prior to the interview. (Tr. 151). He also stated that he was placed on medication a month prior to his interview, but that it did not help him. (Tr. 151). Plaintiff also claimed that he

stopped abusing alcohol in 1979, and that he had not used any alcohol since that time. (Tr. 151). Following the consultative examination, Dr. Lifrak issued a report with the following impressions concerning Plaintiff's condition: major depression, recurrent, moderate; impulse control disorder, not otherwise specified; alcohol dependence in sustained full remission, according to patient's report; and antisocial personality traits. (Tr. 153). Dr. Lifrak further opined that Plaintiff had a severe mental impairment with work-related limitations. (Tr. 157-158).

Plaintiff's medical evidence of record was also reviewed by a state agency physician consultant. The state agency physician opined that Plaintiff did not have a severe impairment on or before his date last insured. (Tr. 161-162).

B. The A.L.J.'s Decision

In his decision dated November 2, 1999, the A.L.J. concluded that on June 30, 1984, the date his insured status expired, Plaintiff did not have any impairment which significantly limited his ability to perform basic work-related functions. The A.L.J. also found that Plaintiff's statements concerning his impairment and its impact on his ability to work were not entirely credible. Because Plaintiff did not suffer a disability at any time through June 30, 1984, the A.L.J. denied Plaintiff's application for DIB.

**STANDARD OF REVIEW**

Pursuant to 42 U.S.C. § 405(g), findings of fact made by the

Commissioner of Social Security are conclusive, if they are supported by substantial evidence. Accordingly, judicial review of the Commissioner's decision is limited to determining whether "substantial evidence" supports the decision. Monsour Medical Ctr. v. Heckler, 806 F.2d 1185, 1190 (3d Cir. 1986). In making this determination, a reviewing court may not undertake a de novo review of the Commissioner's decision and may not re-weigh the evidence of record. Id. In other words, even if the reviewing court would have decided the case differently, the Commissioner's decision must be affirmed if it is supported by substantial evidence. Id. at 1190-91.

The term "substantial evidence" is defined as less than a preponderance of the evidence, but more than a mere scintilla of evidence. As the United States Supreme Court has noted substantial evidence "does not mean a large or significant amount of evidence, but rather such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Pierce v. Underwood, 487 U.S. 552, 555 (1988).

With regard to the Supreme Court's definition of "substantial evidence," the Court of Appeals for the Third Circuit has further instructed, "A single piece of evidence will not satisfy the substantiality test if the [Commissioner] ignores or fails to resolve a conflict created by countervailing evidence. Nor is evidence substantial if it is overwhelmed by



other evidence . . . or if it really constitutes not evidence but mere conclusion.” Kent v. Schweiker, 710 F.2d 110, 114 (3d Cir. 1983). Thus, the substantial evidence standard embraces a qualitative review of the evidence, and not merely a quantitative approach. Id.; Smith v. Califano, 637 F.2d 968, 970 (3d Cir. 1981).

## DISCUSSION

### I. Evaluation Of Social Security Disability Claims

Within the meaning of social security law, a “disability” is defined as the “inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment.” 20 C.F.R. § 404.1505(a). To be found disabled, an individual must have a “severe impairment” which precludes the individual from performing previous work or any other “substantial gainful activity which exists in the national economy.” Id. The claimant bears the initial burden of proving disability. 42 U.S.C. § 423(d)(5). In order to qualify for DIB, the claimant must establish that he or she was disabled prior to the date he or she was last insured. 20 C.F.R. §§ 404.131, Matullo v. Bowen, 926 F.2d 240, 244 (3d Cir. 1990).

In determining whether a person is disabled, the Regulations require the A.L.J. to perform a sequential five-step analysis. 20 C.F.R. § 404.1520. In step one, the A.L.J. must determine whether the claimant is currently engaged in substantial gainful

activity. In step two, the A.L.J. must determine whether the claimant is suffering from a severe impairment. If the claimant fails to show that his or her impairment is severe, he or she is ineligible for benefits. Plummer v. Apfel, 186 F.3d 422, 427 (3d Cir. 1999).

If the claimant's impairment is severe, the A.L.J. proceeds to step three. In step three, the A.L.J. must compare the medical evidence of the claimant's impairment with a list of impairments presumed severe enough to preclude any substantial gainful work. Id. at 428. If the claimant's impairment meets or equals a listed impairment, the claimant is considered disabled. If the claimant's impairment does not meet or equal a listed impairment, the A.L.J.'s analysis proceeds to steps four and five. Id.

In step four, the A.L.J. is required to consider whether the claimant retains the residual functional capacity to perform his or her past relevant work. Id. The claimant bears the burden of establishing that he or she cannot return to his or her past relevant work. Id.

In step five, the A.L.J. must consider whether the claimant is capable of performing any other available work in the national economy. At this stage the burden of production shifts to the Commissioner, who must show that the claimant is capable of performing other work if the claimant's disability claim is to be

denied. Id. In making this determination, the A.L.J. must show that there are other jobs existing in significant numbers in the national economy, which the claimant can perform consistent with the claimant's medical impairments, age, education, past work experience and residual functional capacity. Id. In making this determination, the A.L.J. must analyze the cumulative effect of all of the claimant's impairments. It is at this step, that the A.L.J. may seek the assistance of a vocational expert. Id. at 428.

## **II. Whether The A.L.J.'s Decision Is Supported By Substantial Evidence**

After reviewing the A.L.J.'s decision in light of the record evidence in this case, the Court concludes that the A.L.J.'s decision is supported by substantial evidence. Plaintiff was required to establish that he was disabled on or before June 30, 1984, the date his insured status expired. 20 C.F.R. § 404.131; Matullo, 926 F.2d at 244. To establish disability, Plaintiff is also required to submit medical evidence confirming the existence of a physical or mental impairment. 20 C.F.R. § 404.1513. Plaintiff alleges that he became disabled beginning on December 15, 1979. However, the record indicates that Plaintiff had no history of any medical treatment for any mental disorder since his 1967 discharge from the military until his 1989 treatment with the New Castle County Community Health Center. Plaintiff's treatment with the New Castle County Community Health Center was

nearly four years after his date last insured. Plaintiff was hospitalized in April 1967 prior to his discharge, but this evidence is not sufficient to establish disability. No physician opined that Plaintiff suffered from a condition impairing his ability to work, and the record evidence suggests that Plaintiff did work following his military discharge. Because the record is void of any evidence establishing that Plaintiff had a physical or mental disability on or before his date last insured, Plaintiff could not meet his burden of establishing a disability, and therefore, the A.L.J. correctly denied Plaintiff's claim for benefits. See e.g. Jones v. Commissioner, 2002 WL 31018818, \*1 (3d Cir. 2002) (holding that plaintiff failed to prove disability where she failed to produce any medical records prior to the date she was last insured); Callahan v. Massanari, 2001 WL 868635, \*3, 6-7 (D. Del. Aug. 1, 2001) (affirming denial of benefits where plaintiff failed to produce objective medical evidence from the relevant time frame and finding plaintiff's testimony and that of her mother and friend insufficient to establish disability absent such medical evidence); Brando v. Chater, 972 F. Supp. 867, 871-872 (D.N.J. 1997) (affirming denial of benefits where no medical evidence of hospitalization or medical treatment existed prior to date last insured).

To the extent that Plaintiff seeks to rely on his testimony that he suffers from a mental impairment, the Court observes that

testimony alone is insufficient to establish disability under the Social Security Regulations. 20 C.F.R. § 404.1529; Hartranft v. Apfel, 181 F.3d 358, 362 (3d Cir. 1999). Further, the A.L.J. determined that Plaintiff's testimony was not entirely credible based on several inconsistencies in Plaintiff's testimony. Credibility determinations by the A.L.J. are afforded great deference, where as here, the A.L.J. has adequately explained the reasons for his determination. See e.g. Griffiths v. Callahan, 138 F.3d 1150, 1152 (8th Cir. 1998); Wilson v. Apfel, 1999 WL 992723, \*3 (E.D. Pa. Oct. 29, 1999); Schonewolf v. Callahan, 972 F. Supp. 277, 286 (D.N.J. 1997) (citations omitted).

Moreover, to the extent that the A.L.J. examined medical records generated subsequent to Plaintiff's date last insured, the Court also concludes that the A.L.J. correctly found that Plaintiff was not disabled at the relevant time. A non-examining physician can provide substantial evidence to support the A.L.J.'s decision. See e.g. Jones v. Sullivan, 954 F.2d 125, 128-129 (3d Cir. 1991). In this case, the state agency physician opined that Plaintiff did not have a severe mental impairment and noted that Plaintiff did not receive any treatment from 1967 through 1989, a period of more than twenty years. (Tr. 161-162). Because Plaintiff cannot establish that he was disabled on or before his date last insured, the Court concludes that the A.L.J. properly denied Plaintiff's claim for benefits. Accordingly, the

Court will affirm the A.L.J.'s November 2, 1999 decision.

**CONCLUSION**

For the reasons discussed, Defendant's Motion For Summary Judgment will be granted, and Plaintiff's Motion For Summary Judgment will be denied. The decision of the Commissioner dated November 2, 1999 will be affirmed.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

EDWARD J. BELLINI, :  
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 Plaintiff, :  
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 v. : Civil Action No. 00-853-JJF  
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 JO ANNE B. BARNHART, :  
 Commissioner of Social :  
 Security, :  
 :  
 Defendant. :

**O R D E R**

At Wilmington, this 31st day of March 2003, for the reasons discussed in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. Defendant's Cross-Motion For Summary Judgment (D.I. 14) is GRANTED.
2. Plaintiff's Motion For Summary Judgment (D.I. 13) is DENIED.
3. The final decision of the Commissioner dated November 2, 1999 is AFFIRMED.

JOSEPH J. FARNAN, JR.  
UNITED STATES DISTRICT JUDGE