

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

MICHAEL A. CARROLL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 01-105-KAJ
	)	
	)	
COMMISSIONER OF SOCIAL	)	
SECURITY	)	
	)	
Defendant.	)	

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**MEMORANDUM OPINION**

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Gary L. Smith, Esquire, 1400 People's Plaza, Suite 110, Newark, Delaware 19702, counsel for plaintiff.

Colm F. Connolly, United States Attorney, District of Delaware; Paulette K. Nash, Assistant United States Attorney, District of Delaware; 1201 Market Street, Suite 1100, P.O. Box 2046, Wilmington, Delaware 19899-2046, counsel for defendant.

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December 5, 2003  
Wilmington, Delaware

## **JORDAN, District Judge**

### **I. INTRODUCTION**

Before the court is plaintiff Michael Carroll's ("Carroll") motion for summary judgment (Docket Item "D.I." 11) and defendant Commissioner of Social Security's ("Commissioner") cross motion for summary judgment (D.I. 15).<sup>1</sup> Carroll brings this action under 42 U.S.C. § 405(g), seeking review of the Commissioner's decision denying him disability insurance benefits under Title II of the Social Security Act ("the Act"), 42 U.S.C. §§ 401-434. (D.I. 12 at 1; D.I. 19 at 1.) The court has jurisdiction to review the Commissioner's decision under 42 U.S.C. § 405(g) of the Act.

For the reasons that follow, the court denies Carroll's motion (D.I. 11) and denies the Commissioner's motion (D.I. 15).

### **II. BACKGROUND**

#### **A. Procedural History**

On November 1, 1994, Carroll filed a claim for disability insurance benefits with the Social Security Administration ("SSA") alleging disability since March 21, 1990 due to back pain and head aches. (D.I. 7 at 14; D.I. 12 at 1.) The SSA denied his claim originally and upon reconsideration. (*Id.*) Carroll then requested a hearing before an administrative law judge ("ALJ") and a hearing followed on March 7, 1997 by video conference. (D.I. 7 at 14.) At the hearing, Carroll was represented by counsel and he and his wife testified. (D.I. 19 at 1.) After the hearing and the receipt of additional evidence, the ALJ determined that Carroll was not disabled under the Act. (D.I. 7 at 14.)

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<sup>1</sup> 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.*)

Carroll then appealed the ALJ's decision to the SSA's Appeals Council. (*Id.* at 5.) The Appeals Council found that there was "no basis under the regulations for granting" Carroll's "request for review." (*Id.*) The August 21, 1997 decision of the ALJ, therefore, became the final decision of the Commissioner. (*Id.*); see 20 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) Thereafter, Carroll sought judicial review in this court<sup>2</sup>. (D.I. 19 at 1.) On August 31, 1999, the court granted the Commissioner's motion to remand and upon remand, the ALJ was to give "further consideration to the medical opinions of record, reassess [Carroll's] residual functional capacity, and obtain vocational expert testimony , if necessary." (D.I. 7 at 783.)

On July 7, 2000, the ALJ held a second hearing. (D.I. 19 at 2.) At the hearing, Carroll was represented by counsel and a medical expert and vocational expert testified. (*Id.*) However, on August 24, 2000, the ALJ once again determined that Carroll was not disabled under the Act. (*Id.*)

Carroll appealed the ALJ's decision to the Appeals Council. (*Id.*) The Appeals Council denied Carroll's request for review, making the ALJ's August 24, 2000 decision the final decision of the Commissioner. (*Id.*); see 20 C.F.R. §§ 404.955, 404.981, 422.210; see also *Sims*, 530 U.S. at 106-107; *Matthews*, 239 F.3d at 592. Carroll now seeks review by this court under 42 U.S.C. § 405(g). (D.I. 12 at 1.)

## B. Facts

Carroll was thirty-three years old at the time of the alleged onset of his disability. (*Id.*)

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<sup>2</sup> *Carroll v. Apfel*, C.A. No. 98-589-JJF

at 3.) He has an eighth grade education and past work experience as a construction laborer. (*Id.*)

Carroll alleges that he has been unable to work since March 21, 1990, due to a work-related accident while employed by Cheval Construction Company. (*Id.*) According to Carroll, he fell off a ladder while repairing a section of PVC pipe. (D.I. 12 at 3.) Carroll was reportedly unconscious when Emergency Medical Technicians arrived on the scene and he was semi-conscious when he was taken to the hospital. (*Id.*) The hospital discharged Carroll two-hours after his arrival. (*Id.* at 4.) As a result of the accident, Carroll alleges an inability to work due to pain in the back, shoulders, neck, arms, fingers, legs and feet, as well as headaches, antisocial personality disorder, depression, and drug and alcohol addiction. (D.I. 7 at 204, 739.)

1. Medical Evidence

In April 1990, Dr. Richard P. DuShuttle began treating Carroll for his alleged back and leg pain and headaches. (D.I. 12 at 4.; D.I. 19 at 5.) Dr. DuShuttle scheduled a magnetic resonance imaging (“MRI”) examination and an electroneuromyography (“EMG”) examination of Carroll’s spine. (*Id.*) The MRI revealed disc herniation with focal protrusion on the left side. (*Id.*) The EMG revealed bilateral nerve entrapment, or carpal tunnel syndrome. (D.I. 12 at 4-5.) A subsequent MRI and lumbar myelogram was performed on May 22, 1990, which revealed disc abnormalities, protrusions and posterior and left lateral herniation. (*Id.* at 6.) Dr. DuShuttle opined that Carroll had a herniated disc and would need surgery at a later date. (*Id.*) Dr. DuShuttle ceased treating Carroll after May 1990. (*Id.*)

In June 1990, Dr. John B. Coll performed a neurologic consultation on Carroll. (D.I.

19 at 6.) Dr. Coll's consultation revealed that Carroll's back injuries were not substantiated by any objective neurologic deficits. (*Id.* at 7.) Dr. Coll, thus, had no objective medical explanation for Carroll's symptoms. (*Id.*)

From August 1990 to July 1991, Carroll was treated by physicians at the Dickinson Medical Group ("Dickinson"). (*Id.*) Dr. David A. Harris of Dickinson performed a neurological evaluation. (*Id.*) Dr. Harris's examination revealed that Carroll's motor skills and strength were normal and his sensory examination was "intact to pin, touch, vibration, position and temperature." (*Id.*) Carroll was also examined and treated by Dr. Joann Mace of Dickinson. (*Id.* at 8.) From September 1990 to February 1991, Carroll underwent a regimen of physical therapy with Dr. Mace. (*Id.*) Dr. Mace opined that Carroll could perform "light work activities with restrictions of no prolonged standing, walking, or work to be performed at or above the shoulder level." (D.I. 12 at 6.) Dr. Mace referred Carroll to Dr. Pierre L. LeRoy for future treatment and pain management. (*Id.*)

In April 1991, Carroll underwent another MRI examination. (D.I. 19 at 8.) The MRI of the lumbar spine revealed a central disc bulge at the L3-4 level, small central disc protrusion, and small left disc herniation. (*Id.*) The MRI of the thoracic, dorsal and cervical spine was normal. (*Id.*)

Dr. LeRoy treated Carroll from April 1991 to November 1993. (D.I. 7 at 459-488.) Dr. LeRoy noted that Carroll continually complained of neck and low back pain, headaches, frequent periods of uncontrollable body tremors, decreased range of motion, and severe muscle spasms. (*Id.*) Dr. LeRoy determined that Carroll's functional activity tolerances were standing for twenty minutes, sitting for twenty minutes, and walking one-half of a block; Dr. LeRoy found Carroll limited in his ability to bend, stoop and squat. (*Id.*) Dr.

LeRoy further opined that Carroll suffered from post-traumatic stress, anxiety and depression, and on several occasions advised Carroll to restrict his activities of daily living and to “not [] work until [the] next office visit.” (*Id.*) Carroll also underwent three thermogram tests and an EEG test while under the care of Dr. LeRoy. (*Id.* at 478, 482-484.) Those tests revealed “cervical-dorsal myositis, neuropathy, lumbosacral strain [and] . . . cortical irritability. (*Id.*)

At the Commissioner’s request, Dr. Harold Graff performed a psychiatric evaluation of Carroll in March 1993. (D.I. 19 at 9.) Dr. Graff determined that Carroll did not suffer from delusions or hallucinations and that his “stream of consciousness was intact.” (*Id.*) Dr. Graff diagnosed Carroll with alcoholism and mixed personality disorder with antisocial and narcissistic features. (*Id.* at 10.) A psychiatric review technique form revealed that Carroll had slight restrictions in activities of daily living, slight difficulties in maintaining social functioning, deficiencies of concentration, persistence, or pace, and had one or two episodes of deterioration or decompensation in work or work-like settings. (*Id.*)

In April 1993, a subsequent MRI of Carroll’s spine affirmed that Carroll continued to have a disk herniation. (D.I. 7 at 742.)

In November 1994, Dr. Ali Kalamchi performed a neurological examination on Carroll. (*Id.*) Dr. Kalamchi determined that Carroll suffered from no sensory or motor deficit and his examination was normal. (*Id.*) Dr. Kalamchi assessed that Carroll had sustained injuries related to his spine from his work-related injuries; however, Dr. Kalamchi opined that Carroll should have already recovered from those injuries and should have resumed normal activities once again. (*Id.*) Dr. Kalamchi recommended that Carroll undergo a “work-hardening vocational program.” (*Id.* at 11.)

Carroll was then examined by Dr. Bruce J. Rodin in January 1995. (D.I. 7 at 742.) Dr. Rodin noted that Carroll walked without difficulty, his reflexes were intact, and his sensory and motor examinations were normal. (*Id.*) Dr. Rodin opined that Carroll “was extremely reticent to return to work.” (*Id.*) Carroll then underwent x-rays of the cervical, dorsal, and lumbar spines, which revealed only mild disc space herniation. (*Id.*)

In March 1995, the Commissioner requested that Dr. Irene C. Szeto examine Carroll. (D.I. 19 at 12.) Dr. Szeto reported that Carroll’s motor, sensory, and reflex examinations were normal. (D.I. 7 at 742.) Dr. Szeto observed Carroll walk with a normal gait and had no problem tying his shoes and getting on and off the examining table. (*Id.*) Dr. Szeto further noted that Carroll was fully weight bearing and had no evidence of muscle spasms. (*Id.*)

Dr. James A. Holdnack performed a neuropsychological evaluation of Carroll in May and June 1997. (D.I. 12 at 7.) Dr. Holdnack diagnosed Carroll with a “mood disorder due to a general medical condition with major depressive-like episode; personality change due to a general medical condition - labile and aggressive types; and alcohol abuse.” (*Id.*) Dr. Holdnack opined that Carroll would be unable “to hold a job for more than 1-2 months as a direct result of his physical, cognitive and psychological problems.” (*Id.*)

## 2. 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

engaged in substantial gainful activity. If that individual is engaged in substantial gainful activity, he 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 he does not, the [ALJ] must determine if the individual is capable of performing his past relevant work considering his severe impairment. If the [ALJ] determines that the individual is not capable of performing his past relevant work, then [the ALJ] must determine whether, considering the claimant's age, education, past work experience and residual functional capacity, he is capable of performing other work which exists in the national economy.

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

In this case, after applying the five-step evaluation, the ALJ determined that Carroll was not disabled within the meaning of the Act and its regulations. (D.I. 7 at 738.) The ALJ first found that Carroll was not engaged in substantial gainful activity. (*Id.* at 746.) Next, the ALJ concluded that Carroll suffered from a “combination of impairments considered ‘severe.’” (*Id.*) These included a back impairment, a personality disorder, cyclothmia, depression and alcohol abuse. (*Id.*) However, none were impairments listed in Appendix I of sub-part P of Regulations No. 4 of the Code of Regulations. (*Id.*) The ALJ then determined, after hearing testimony from medical expert Dr. Dewey Nelson who opined that Carroll was capable of light work, that Carroll had a residual functional capacity to perform light work. (*Id.* at 743-744.) However, because Carroll's previous employment experience as a construction laborer, farm



laborer and factory worker required him to perform heavy work, the ALJ determined that he was not able to perform his past relevant work. (*Id.* at 744.) As such, the ALJ had to determine, given Carroll's vocational profile (age, education, work experience and residual functional capacity), whether there are a significant number of jobs existing in the national economy that he could perform. (*Id.*); see *Morales*, 225 F.3d at 316. To help make this determination, the ALJ solicited the testimony of a vocational expert. (*Id.* at 745.) At the July 7, 2000 hearing, the vocational expert testified that Carroll could work as a cleaner (2,000 jobs locally, 275,000 nationally) given his vocational profile. (*Id.*) In addition, when asked to assume Carroll's vocational profile with an additional restriction of no "prolonged standing/walking or over the shoulder lifting[.]" the vocational expert testified that Carroll could still perform jobs as a locker room attendant (200 jobs locally, 68,000 nationally) and marketing clerk (150 locally, 89,000 nationally). (*Id.*) The ALJ, in reliance on the vocational expert's testimony, concluded that there are jobs in the national economy that Carroll could perform and, therefore, found Carroll not disabled under the Act and its regulations. (*Id.*)

### 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. *Plummer v. Apfel*, 186 F.3d 422, 427 (3d Cir. 1999).

#### IV. DISCUSSION

Carroll submits that the ALJ failed to consider and evaluate relevant evidence. (D.I. 12 at 11.) Specifically, Carroll argues that the ALJ failed to address the assessments of Dr. LeRoy, ignored numerous diagnostic medical tests, and merely “picked and chose evidence which would support his [ALJ’s] conclusions.” (*Id.*) Carroll further contends that the ALJ failed to properly evaluate Carroll’s subjective complaints and did not give proper weight to the opinions of Dr. Holdnack. (*Id.* at 12, 18.)

##### A. Whether the ALJ properly considered and evaluated medical evidence in the record.

An ALJ is not expected “to make reference to every relevant treatment note in a case where the claimant . . . has voluminous medical records,” however, an ALJ is expected, “as the factfinder, to consider and evaluate the medical evidence in the record[.]” *Fargnoli v. Massanari*, 247 F.3d 34, 42 (3d Cir. 2001). While an ALJ may “weigh the credibility of [such] evidence, he must give some indication of the evidence that he rejects and his reason(s) for discounting that evidence.” *Fargnoli*, 247 F.3d at 43. There is “a particularly acute need for an explanation of the reasoning behind the ALJ’s conclusions” when the record contains conflicting probative evidence, “and [a reviewing court] will vacate or remand a case where such an explanation is not

provided.” *Id.*; see *Cotter v. Harris*, 642 F.2d 700, 706 (3d Cir. 1981) (provides a list of cases remanded for the ALJ’s failure to give an explanation for rejecting or not addressing relevant probative evidence).

In this case, the ALJ failed to properly consider and evaluate medical evidence in the record by providing no indication that he accepted, rejected or discounted Dr. LeRoy’s conflicting assessments of Carroll’s condition. Carroll was under the care of Dr. LeRoy from April 1991 to November 1993. (D.I. 7 at 459-488.) On several office visits during that two-and-one-half year period, Dr. LeRoy advised Carroll to “not [] work until [the] next office visit.” (*Id.* at 459-479.) Dr. LeRoy also documented that Carroll continually complained of neck and low back pain, headaches, frequent periods of uncontrollable body tremors, decreased range of motion, severe muscle spasms, and that he suffered from post-traumatic stress, anxiety and depression. (D.I. 12 at 12; D.I. 7 at 459-479.) Further, Dr. LeRoy determined that Carroll’s functional activity tolerances were standing for twenty minutes, sitting for twenty minutes, and walking one-half of a block. (D.I. 7 at 459-479.) Dr. LeRoy also found Carroll limited in his ability to bend, stoop and squat, and on several occasions advised Carroll to restrict his activities of daily living. (*Id.*) However, the ALJ makes no mention of Dr. LeRoy’s assessments in his August 21, 1997 written decision nor his August 20, 2000 written decision. (D.I. 12 at 14-23, 738-747.) Because the “ALJ makes no mention of any of these significant contradictory findings, [it leaves the Court] to wonder whether he considered and rejected them, considered and discounted them, or failed to consider them at all.” *Fagnoli*, 247 F.3d at 43-44. Therefore, “[t]he ALJ’s failure to explain his implicit rejection of this evidence or even to acknowledge it’s presence was error.” *Id.*

quoting *Cotter*, 642 F.2d at 707.

However, as the Commissioner correctly states, Dr. LeRoy's numerous "opinions of temporary [disability]" are not determinative of Carroll's disability under the Act and its regulations. (D.I. 19 at 21.) Nevertheless, it is not this court's function to determine whether a claimant is disabled by relying on medical records found during its own independent analysis in an attempt to rectify an ALJ's failure to address the relevant evidence. *Fargnoli*, 247 F.3d at 44 fn7. The Court "has no fact-finding role in reviewing social security disability cases," and, thus, may only rely on the administrative record as provided by the ALJ. *Lloyd v. Barnhart*, No. 02-1498, 2002 WL 31111988, at \*3 (3d Cir. Sept. 24, 2002); see *Grant v. Shalala*, 898 F.2d 1332, 1338 (3d Cir. 1983) quoting *Hummel v. Heckler*, 736 F.2d 91, 93 (3d Cir. 1984) ("[T]he district courts have no fact-finding role in Social Security cases"). Such an attempt by the Court to engage in a fact-finding role, and rely on medical records found in the course of its own investigation, would "run[] counter to the teaching of *SEC v. Chenery Corporation*, 318 U.S. 80, 63 S.Ct. 454, 87 L.Ed. 626 (1943), that '[t]he grounds upon which an administrative order must be judged are those upon which the record discloses that its action was based.'" *Fargnoli*, 247 F.3d at 44 fn7.

Therefore, while Dr. LeRoy's assessments may not be determinative in establishing that Carroll is disabled, and, indeed, there appears to be ample evidence to the contrary, the further consideration and evaluation of the conflicting assessments by the ALJ is necessary to comply with *Fargnoli* and effectuate this court's previous

remand order<sup>3</sup>. Remand of this case is therefore warranted so that Dr. LeRoy's assessments, and other probative medical evidence<sup>4</sup> the ALJ failed to mention, may be considered by the ALJ in the evaluation of this case.

B. Carroll's remaining arguments.

Carroll additionally submits that the ALJ failed to properly evaluate Carroll's subjective complaints and did not give proper weight to the opinions of Dr. Holdnack. (*Id.* at 12, 18.) Upon remand, the ALJ should consider, evaluate, weigh, and compare his initial findings of Carroll's subjective complaints with Dr. LeRoy's documentation of Carroll's continuous complaints of pain. (D.I. 7 at 459-479.) In addition, the ALJ should consider, evaluate, weigh, and compare the opinions of Dr. Holdnack regarding Carroll's neuropsychological exam with Dr. LeRoy's assessment that Carroll suffers from anxiety and depression. (*Id.*)

IV. CONCLUSION

For the reasons stated, the Court denies plaintiff's motion (D.I. 11), denies defendant's motion (D.I. 15), and remands this case to the Commissioner for additional proceedings consistent with this opinion. An appropriate order will issue.

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<sup>3</sup> This case was initially remanded to the ALJ to give "further consideration to the medical opinions of record, reassess [Carroll's] residual functional capacity, and obtain vocational expert testimony, if necessary." (D.I. 7 at 783.) Although the ALJ solicited the testimony of a vocational expert, it appears the ALJ did not give further consideration to the medical opinions of record since he did not mention Dr. LeRoy's assessments in the written decision.

<sup>4</sup> Other probative medical evidence includes the multiple MRIs, EEGs, EMGs and thermograms performed on Carroll. (D.I. 7 at 254, 264, 260, 264, 478, 482-484; D.I. 12 at 11-12.)

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FOR THE DISTRICT OF DELAWARE

MICHAEL A. CARROLL,	)	
	)	
Plaintiff,	)	
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v.	)	Civil Action No. 01-105-KAJ
	)	
	)	
COMMISSIONER OF SOCIAL	)	
SECURITY	)	
	)	
Defendant.	)	

ORDER

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

IT IS ORDERED that Plaintiff's motion for summary judgment (D.I. 11) is DENIED, and the Defendant's cross motion for summary judgement (D.I. 15) is DENIED.

IT IS FURTHER ORDERED that the decision of the Defendant denying Plaintiff disability insurance benefits is VACATED and REMANDED to the Defendant for further evaluation of Plaintiff's disability claim consistent with the Court's Memorandum Opinion.

Kent A. Jordan  
UNITED STATES DISTRICT JUDGE

December 5, 2003  
Wilmington, Delaware