IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

ARLENE G. KAHN,	)	
Plaintiff,	)	
	)	Civil Action No: 02-1428-GMS
v.	)	
JOANNE B. BARNHART, Commissioner of Social Security	)	
Defendant.	)	

MEMORANDUM AND ORDER

I. INTRODUCTION

On February 10, 1998, the plaintiff, Arlene Kahn ("Kahn"), applied for Social Security Disability Insurance Benefits ("DIB"), alleging that she had been disabled since May 24, 1996. She was denied DIB initially and again upon reconsideration. Kahn timely filed a request for a hearing before an Administrative Law Judge ("ALJ"). The ALJ held the hearing on May 18, 1999 and by a decision dated June 14, 1999, determined that she was not entitled to DIB under Title II of the Social Security Act (the "Act"). Kahn subsequently filed a request for review by the Appeals Council. On June 19, 1999, the Appeals Council denied her request as it found no basis to review the ALJ's decision.

Having exhausted her administrative remedies, Kahn filed the above-captioned complaint on August 22, 2002. Kahn moved for summary judgment on April 3, 2003, and the Commissioner of Social Security ("the Commissioner") filed a cross-motion for summary judgment on April 30, 2003. Because the court finds that the ALJ's denial of DIB is supported by substantial evidence, the court will deny Kahn's motion, grant the Commissioner's motion, and enter judgment accordingly.

II. BACKGROUND

Kahn alleges that she became disabled when she injured her back during a fall at work in November 1995. A physician subsequently diagnosed Kahn with a herniated disk of the lumbar spine with radiculopathy. Kahn attempted to return to work after physical therapy treatment, but as her treatment progressed, she experienced greater pain in her lower back. Due to this pain, Kahn ceased working and has not engaged in any substantial gainful employment since May 26, 1996. Kahn alleges that her chronic back pain is the direct cause of her disability.

A. Medical Evidence

Dr. Joseph Henry ("Dr. Henry") provided Kahn with medical care from November 20, 1995 through June 12, 1996. During the initial visit, Dr. Henry performed an examination which revealed tenderness in Kahn's left lower lumbar spine. Other results showed normal reflexes and strength. Dr. Henry then performed an MRI and an electromyography ("EMG"). He also permitted her to engage in sedentary work while the results were pending. The EMG revealed possible mild left radiculopathy, and the MRI showed a moderate central disk herniation. After a follow-up visit in December 1995 which revealed normal leg strength and sensation, Dr. Henry recommended continued conservative treatment. Subsequently, from December 27, 1995 through March 15, 1996, Kahn underwent physical therapy training, including massage and use of a TENS unit for pain management. The final physical therapy report indicated that Kahn had normal range of motion and no neurological abnormalities. Dr. Henry did note, however, that she would be unable to return to her previous position.

On January 9, 1996, Dr. Henry requested that Dr. Michael Sugarman ("Dr. Sugarman") evaluate Kahn for leg and back pain complaints. Dr. Sugarman found that Kahn had a good range

of motion in her back, but complained of pain during certain flexion and extension movements. He further found that Kahn had normal strength and reflexes, normal gait and heel/toe walk, with diminished sensation to light touch in her left foot. Finally, Dr. Sugarman noted that Kahn had a degenerated disk disease at specific discs and recommended conservative care.

Dr. Henry continued to examine Kahn and reported good clinical findings. He found good strength, as well as good straight leg raising and range of motion. On January 9, 1996, Dr. Henry requested that Dr. Kelly Eschbach ("Dr. Eschbach") further evaluate Kahn for complaints of leg and back pain. Upon review of the laboratory studies, Dr. Eshbach determined that the MRI revealed a moderately-sized central disc herniation. Kahn had no tenderness in her spinous or SI joint, but had mild tenderness over the left sciatic notch. Kahn also had full range of motion of the hips, cervical and lumbar spine. Moreover, the examination showed normal gait, straight leg reflexes, muscle strength and sensation. Dr. Eschbach diagnosed Kahn with chronic left S1 radiculopathy and noted improvement while stating there was no neurological deficit.

On May 1, 1996, Dr. Henry requested that Dr. Maurice Romy ("Dr. Romy") evaluate Kahn for complaints of leg and back pain. Dr. Romy found that Kahn had reduced range of motion in her lumbar spine, had normal gait and heel/toe walking, and full motor function. The examination showed no muscle atrophy and normal straight leg raising. After reviewing the lab studies, Dr. Romy recommended a repeat MRI. The repeat MRI revealed a decrease in the size of the disc herniation. Finally, Dr. Romy recommended steroid injections for pain relief.

Kahn underwent physical therapy at another facility from May 15, 1996 to July 12, 1996. Prior to ending treatment, Kahn participated in a functional capacity assessment ("FCA"). The FCA indicated that Kahn could carry seven pounds frequently, and thirty-two pounds occasionally, sit for

one hour at fifteen minute intervals, stand for one hour at fifteen minute intervals, and walk for three hours. On July 12, 1996, Dr. Henry stated that Kahn was not able to return to work in her current position.

Dr. Tony Cucuzzella, ("Dr. Cucuzzella"), a physical medicine and rehabilitation specialist, provided treatment from August 13, 1996 until January 16, 1997. Dr. Cucuzzella found normal motor strength, full flexion, but limited extension range of motion, and decreased sensation in the left lateral calf region. Following these results, Dr. Cucuzzella opined that Kahn could not resume her previous job, but could perform sedentary work with a sit and stand option if her pain were reduced.

Dr. Curtis Slipman ("Dr. Slipman"), a rehabilitation specialist, examined Kahn at Dr. Cucuzzella's request. Dr. Slipman found tenderness in the sacroiliac joint region and that her right side bending had been limited by twenty degrees. Also, Kahn demonstrated normal sensation, the ability to heel/toe walk, and slightly diminished motor functioning in the left gluteus medius. Upon review of the EMG, he noted a fifty percent loss of disc height at S1 and a central disc protrusion. He recommended diagnostic blocks.

In January 1997, Kahn sought treatment from Dr. Donald Archer ("Dr. Archer"). His examination report revealed similar results. Dr. Archer stated that his findings did not justify her continued disability. He recommended that Kahn perform sedentary work and completed a form which indicated Kahn could work four hours per day for eight weeks and eights hours per day thereafter. Dr. Archer re-evaluated Kahn on March 18, 1998. The examination yielded similar results from his previous diagnosis. He stated that she should be able to return to work in her previous position.

Kahn then obtained treatment from Dr. Carl Sternberg ("Dr. Sternberg"), a pain specialist who treated her from September 5, 1997 to October 9, 1998. Dr. Sternberg's initial report showed tenderness in the cervical and lumbar regions with a functional range of motion. He diagnosed Kahn with chronic mid and lower back pain with a history of strain and sprain, herniated lumbar disc, and abnormal gait and reflex changes and muscle spasms. Dr. Sternberg reported that Kahn continued to complain of pain and stated that he removed her from work for a six-week period. He found that she had normal sensation, straight leg raising, strength, and reflexes of the lower extremities. He ordered another MRI which revealed a somewhat larger disc protrusion in the lumbar region. Additionally, Dr. Sternberg recommended that Kahn not return to work.

On April 30, 1998, a state agency physician reviewed the record evidence and rendered an opinion of Kahn's residual functional capacity. The physician found that Kahn can sit, stand, or walk six hours in an eight hour day. Further, the physician determined Kahn can lift twenty pounds occasionally, and ten pounds frequently. On July, 19, 1998, another state agency physician found that Kahn can lift fifty pounds occasionally, twenty pounds frequently, and sit six hours per day. Finally, Dr. Sternberg completed an RFC assessment in January 1999, stating Kahn could only lift ten pounds occasionally, sit five hours, and stand or walk less than two hours.

B. Vocational Testimony

A vocational expert ("VE") testified before the ALJ. The VE described Kahn's past occupations as semi-skilled to skilled sedentary work. To consider whether any jobs existed in the region, the ALJ posed the following hypothetical question:

> Assuming younger individual, college educated, work history as described without regard to any testimony capable of sedentary-I'm picking up a light residual functional capacity not to exclude sedentary. Must be able to alternate frequently

> between sitting and standing. I want to put less than ten-pound weight limitation on lift/carry. Because of the level of pain I want to limit it to a simple routine little decision-making operations. With those limitations what, if any, job exists?

In response to the hypothetical, the VE described several jobs that satisfied the criteria. She stated that an individual described with those limitations would probably be able to do security monitoring, interviewing or charge account clerking, and could also perform the job of a sedentary, unskilled cashier, even with the weight limitation.

The ALJ then added the factors included in Dr. Sternberg's record, and the vocational expert conceded that the cited jobs would probably not be appropriate. Nonetheless, aside from Dr. Sternberg's additional limitations, the VE stated that within the local economy, there were 150 jobs (45,000 nationally) for security monitoring, 70 jobs (21,000 nationally) for an account clerk, and an excess of 2100 (132,000 nationally) cashier jobs. To account for a ten-pound weight limitation, the number of cashier positions both locally and nationally would have to be reduced by one half.

C. ALJ's Findings

The ALJ found that Kahn had not engaged in substantial gainful activity since her alleged onset date of May 24, 1996. *See* Tr. at 17-18. He also found that her herniated disc of the lumbar spine with radiculopathy was a severe impairment. *See id*. at 18. At step three of the sequential evaluation process, the ALJ found that Kahn did not have an impairment that met or equaled any of the impairments listed in 20 C.F.R. part 404, subpart P, appendix 1. *See id*. Specifically, the ALJ found that Kahn's medical records did not satisfy the requirements of listing Section 1.05C because there was no evidence of a significant limitation of motion or appropriate radicular distribution of significant motor loss with muscle weakness and sensory and reflex loss. *See id*. The ALJ then determined that Kahn could not perform her past relevant work, but that she could perform a

significant number of sedentary jobs in the national economy. *See id*. at 22-23. Accordingly, the ALJ found that Kahn was not disabled and denied her application for DIB.

Kahn now argues that the ALJ erred by failing to give her treating physician's opinion appropriate weight.

III. STANDARD OF REVIEW

The court must uphold the Commissioner's factual decisions if they are supported by "substantial evidence." *See* 42 U.S.C. §§ 405 (g), 1383 (c)(3). Substantial evidence does not mean a large or a considerable amount of evidence. *Pierce v. Underwood,* 487 U.S. 552, 565 (1988) (citing *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). Rather, it has been defined as "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate." *Ventura v. Shalala*, 55 F.3d 900, 901 (3d Cir. 1995) (quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971)).

Credibility determinations are the province of the ALJ, and should only be disturbed on review if not supported by substantial evidence. *Pysher v. Apfel*, Civ. A. No. 00-1309, 2001 WL 793305, at *2 (E.D. Pa. Jul. 11, 2001) (citing *Van Horn v. Schweiker*, 717 F.2d 871, 973 (3d Cir. 1983)). To demonstrate that the ALJ's opinion is based on substantial evidence, the ALJ must make specific findings of fact to support his or her ultimate findings. *Portlock v. Apfel*, Civ. A. No. 99-931, 2001 WL 753879, at *7 (D. Del. Jul. 3, 2001) (citing *See Stewart v. Secretary of HEW*, 714 F.2d 287, 290 (3d Cir. 1983)). Thus, the inquiry is not whether the court would have made the same determination, but rather, whether the Commissioner's conclusion was reasonable. *See Brown v. Bowen*, 845 F.2d 1211, 1213 (3d Cir. 1988). In social security cases, this substantial evidence standard applies to motions for summary judgment brought pursuant to Fed. R. Civ. P. 56(c). *See*

Woody v. Sec. of the Dep't of Health and Human Serv., 859 F.2d 1156, 1159 (3d Cir. 1988).

IV. DISCUSSION

The Act defines "disability" in terms of the effect that a physical or mental impairment has on an individual's ability to function in the workplace. *See Heckler v. Campbell*, 461 U.S. 458, 459-60 (1983). In order to be eligible for benefits, the claimant must not only show that she has a medically determinable physical or mental impairment, she must also show that it is so severe that it prevents her from engaging in any substantial gainful activity that exists in the national economy. *See* 42 U.S.C. §§ 423 (d)(1)(A), (d)(2)(A); *see also Cambell*, 461 U.S. at 460. Thus, under the Act, and its implementing regulations, the claimant bears the burden of proving that she is "disabled." *See* 42 U.S.C. § 423(d)(5)(A); 20 C.F.R. § 404.1512 (2002).

The Commissioner uses a sequential five-step process in evaluating DIB claims. Specifically, the Commissioner considers whether the claimant: (1) is engaged in substantial gainful activity; (2) has a severe impairment; (3) has an impairment that meets or equals the requirements of a listed impairment; (4) can return to his or her past relevant work; and (5) if not, whether a significant number of other jobs exist in the national economy that he or she can perform. *See* 20 C.F.R. § 404.1520 (2002). If the Commissioner finds that a claimant is "disabled" or "not disabled" at any point in the sequential evaluation, review does not need to proceed to the next step. *See id*.

Kahn's only argument on appeal is that the ALJ did not properly evaluate and credit Dr. Sternberg's medical opinion that she was disabled. To the contrary, however, the court finds that the ALJ thoroughly considered Dr. Sternberg's medical evidence and opinion, as well as the other evidence and opinions of record, before concluding that Kahn was not disabled. *See e.g.* Tr. at 17-23.

Specifically, the ALJ properly noted that Dr. Sternberg's medical opinion was inconsistent with the objective medical evidence that he submitted and that was submitted by other medical sources. *See id*. at 21. Other than tenderness and subjective complaints of pain, Kahn's physical examinations yielded consistently normal findings. In 1996, Dr. Henry reported that Kahn's strength, reflexes, range of motion, gait, and straight leg raising were all good. *See* Tr. at 193, 326-29, 334-66. In March 1996, Dr. Eschbach reported that Kahn had a full range of motion of the cervical and lumbar spine and hips. *See id*. at 209. She also reported that Kahn had normal reflexes, strength, sensation, and straight leg-raising. *See id*. In May 1996, Dr. Romy reported that Kahn had a normal gait and could heel/toe walk. *See id*. at 222. Her motor function and straight leg-raising were normal, and she had no evidence of muscle atrophy. *See id*.

Kahn's 1997 medical records also support a finding that she is not disabled. In January 1997, Dr. Cucuzzella reported that her strength and sensation were normal. *See id*. at 385. Although she exhibited positive straight leg-raising on the left, Dr. Slipman reported that her cross straight leg-raising and reverse straight leg-raising were negative. *See id*. at 389. Also, Kahn could heel/toe walk, had normal reflexes, and her sensation was normal. *See id*. Similarly to Dr. Slipman, Dr. Archer found inconsistent straight leg-raising results. Although straight leg-raising was painful on the left in the supine position, it was negative in the sitting position bilaterally. *See id*. at 466. Moreover, Dr. Archer reported that Kahn's reflexes, strength, and sensation were all normal in her upper extremities. *See id*. at 467. A follow-up examination with Dr. Archer in 1998 continued to show that her sensation, reflexes, and strength were all good. *See id*. at 462.

Additionally, Dr. Sternberg's own medical evidence strongly supports a finding that Kahn was not disabled. Despite reporting that she was disabled, he reported few abnormalities. Instead,

he reported that she had normal muscle strength, reflexes, and sensation. *See id*. at 533. In November 1997, he reported that her straight leg-raising, sensation, strength, and reflexes were all normal. *See id*. at 529. In 1998, he continued to report few clinical abnormalities. *See id*. at 502, 513, 519, 523, 551. Additionally, in 1999, Dr. Sternberg reported that her physical examination, including straight leg-raising, strength, sensation, and reflexes, were all within functional limits. Based on this clinical evidence alone, the ALJ acted reasonably in rejecting Dr. Sternberg's opinion that Kahn was disabled.

Moreover, Dr. Cucuzzella concluded that Kahn could perform sedentary work. *See* Tr. at 386. Dr. Archer also stated that there were no objective findings which would support a conclusion that Kahn was disabled. *See id*. at 462, 568. He too recommended that she perform sedentary work. *See id*. These medical opinions further support the ALJ's determination that Kahn could perform a limited range of sedentary work.

Finally, Kahn's treatment history supports a finding that she was not disabled by her impairment. *See* 20 C.F.R. § 404.1529. Kahn was treated conservatively and rejected more aggressive treatments. For example, Dr. Romy recommended conservative steroid injections. *See* Tr. at 217. Dr. Cucuzzella treated her with a sacroiliac joint belt and VAX-D. *See id*. at 386. Finally, Dr. Sternberg treated her with myofascial release, medication, and therapy. *See id*. at 533, 547.

In sum, the regulations provide that, in order for a treating physicians's opinion to be entitled to great weight, it must be "well supported by medically acceptable clinical and laboratory diagnostic techniques and . . . not [be] inconsistent with other substantial evidence" of record." 20 C.F.R. § 404.1527(d)(2). Here, Dr. Sternberg's medical opinion was inconsistent with his normal clinical

findings, as well as the other medical evidence of record. Therefore, the ALJ properly accorded his medical opinion limited weight. Furthermore, the ALJ's limitation to a reduced range of sedentary work fully accounted for the limitations associated with Kahn's back impairment. Accordingly, substantial evidence supports the ALJ's finding that Kahn has the physical residual functional capacity to perform a limited range of sedentary work and is not disabled under the Act.

V. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. Kahn's Motion for Summary Judgment (D.I. 10) is DENIED.

2. The Commissioner's Motion for Summary Judgment (D.I. 11) is GRANTED.

3. Judgment BE AND IS HEREBY ENTERED in favor of the Commissioner.

Dated: June 23, 2003

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE