

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KIMBERLY A. RODGERS,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 02-561-JJF
	:	
JO ANNE BARNHART,	:	
Commissioner of Social	:	
Security,	:	
	:	
Defendant.	:	
	:	
	:	

Gary C. Linarducci, Esquire of GARY C. LINARDUCCI, New Castle, Delaware.

Colm F. Connolly, Esquire, United States Attorney, and Leonard P. Stark, 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 Amanda M. Kent, Esquire, Assistant Regional Counsel of the SOCIAL SECURITY ADMINISTRATION, Philadelphia, Pennsylvania.
Attorneys for Defendant.

MEMORANDUM OPINION

September 29, 2003

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is an appeal pursuant to 42 U.S.C. § 405(g), filed by Plaintiff, Kimberly A. Rodgers, seeking review of the final administrative decision of the Commissioner of the Social Security Administration concluding that Plaintiff was not entitled to disability insurance benefits ("DIB") under Title II or supplemental security income ("SSI") under title XVI of the Social Security Act, 42 U.S.C. §§ 401-433, 1381-1383f. Plaintiff has filed a Motion For Summary Judgment¹ requesting the Court to reverse the decision of the Commissioner and award Plaintiff benefits. In response to Plaintiff's Motion, Defendant has filed a Cross-Motion For Summary Judgment (D.I. 15) requesting the Court to affirm the Commissioner's decision. For the reasons set forth below, Defendant's Motion For Summary Judgment is granted and Plaintiff's Motion For Summary Judgment is denied. The decision of the Commissioner dated April 13, 2000 will be affirmed.

BACKGROUND

I. Procedural Background

Plaintiff filed a concurrent application for SSI and DIB on June 3, 1998, initially alleging a disability onset date of

¹ It appears to the Court that Plaintiff did not file a formal, separate Motion for Summary Judgment, but only an Opening Brief. For purposes of this action, however, the Court will construe Plaintiff's Opening Brief (D.I. 14) as her Motion For Summary Judgment.

September 23, 1997 due to bipolar disorder, a personality disorder and alcoholism. (Tr. 16, 100-102). Plaintiff subsequently amended her application to allege an onset date of May 16, 1998. (Tr. 16, 40). Plaintiff's application was denied initially and on reconsideration. (Tr. 72-77, 80-83). On April 13, 2000, the A.L.J. issued a decision concluding that Plaintiff was not entitled to SSI or DIB. (Tr. 13-22). Following the unfavorable decision, Plaintiff filed a timely Request For Review Of Hearing Decision. On May 20, 2002, the Appeals Council denied Plaintiff's request for review (Tr. 10-11), and the A.L.J.'s decision became the final decision of the Commissioner. Sims v. Apfel, 530 U.S. 103, 107 (2000); 20 C.F.R. §§ 404.981, 416.1481 (2002).

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 her claim for DIB and SSI. In response to the Complaint, Defendant filed an Answer (D.I. 9) and the Transcript (D.I. 11) of the proceedings at the administrative level.

Thereafter, Plaintiff requested summary judgment and filed an Opening Brief in support of her request. In response, Defendant filed a Cross-Motion For Summary Judgment and a combined Opening and Answering Brief requesting the Court to affirm the A.L.J.'s decision. Thereafter, Plaintiff filed a

Reply Brief. Accordingly, this matter is fully briefed and ripe for the Court's review.

II. Factual Background

A. Plaintiff's Medical History, Condition and Treatment

At the time of the A.L.J.'s decision, Plaintiff was 31 years old. Plaintiff has a high school education and past relevant work as a bill collector, an insurance clerk, and a customer service representative. (Tr. 21, 39-40).

From June 9, 1997 to August 10, 1998, Plaintiff treated with Robert Winter, M.D. at Christiana Care. Dr. Winter diagnosed Plaintiff with depression, bipolar disorder and alcohol dependence. (Tr. 144-172). Dr. Winter noted that Plaintiff had a long history of substance abuse, including the use of alcohol and cocaine. (Tr. 160). Plaintiff was prescribed Paxil to treat her depression, and Dr. Winter noted that Plaintiff's mood improved. (Tr. 157). However, in August 1997, Plaintiff voluntarily stopped taking the Paxil, because she believed it was not helping her condition. As a result, Dr. Winter noted that Plaintiff's depressive symptoms were increasing. (Tr. 154). In September 1997, Dr. Winter noted that Plaintiff remained depressed and that she continued to drink, despite her efforts at receiving treatment for alcohol abuse. (Tr. 152). Dr. Winter referred Plaintiff for a psychiatric evaluation. (Tr. 153).

Upon receiving this referral, Plaintiff underwent an

evaluation with Kathryn Poppiti, M.C., a clinician at Pathways Assessment and Referral Service. (Tr. 173-175). Plaintiff reported that she was going to outpatient treatment for alcoholism, but stated that she was depressed and lethargic. (Tr. 173). Upon examination of her mental status, Ms. Poppiti noted that Plaintiff was anxious and tearful. Her eye contact was adequate, her speech was a bit pressured, and her mood was dysphoric. (Tr. 174). Ms. Poppiti noted that Plaintiff's thought process was coherent and goal directed, and she exhibited no evidence of a thought disorder. (Tr. 175). Ms. Poppiti further observed that Plaintiff was alert and oriented, her judgment was intact and her insight was fair. (Tr. 175). Ms. Poppiti noted that Plaintiff's target symptoms were mood swings marked by irritability, hyperactivity, poor concentration, poor attention, dysphoric mood and impulsivity. Ms. Poppiti recommended the use of psychotropic medication to prevent the "heighten[ed] risk for her relapse back to alcohol." (Tr. 175).

Ms. Poppiti also noted that Plaintiff had been evaluated by Michael Marcus, M.D. from October 3, 1997 to August 3, 1998. Dr. Marcus diagnosed Plaintiff with bipolar disorder and alcohol dependence and prescribed medication to her to prevent an alcohol relapse and control her mood swings. (Tr. 175, 185-186).

In November of 1997, Dr. Winter completed an "Attending Physician's Statement" for State Farm Automobile Insurance

Company. (Tr. 162-163). Dr. Winter noted that Plaintiff had bipolar disorder and alcohol dependence, which caused her to stop working in August 1997. Dr. Winter opined that Plaintiff was disabled due to her condition from August 26, 1997.

In January 1998, Plaintiff returned to Dr. Marcus and reported that she was drinking and not taking her medication. (Tr. 181). Dr. Marcus restarted Plaintiff's medications, and noted that by the end of January, Plaintiff's symptoms improved. Plaintiff was stable and in euthymic mood. (Tr. 180). In March 1998, Plaintiff was less irritable, but admitted to Dr. Marcus that she missed a few doses of her medication. (Tr. 179).

In May 1998, Plaintiff was admitted to Charter Rockford Center for depression and binge drinking. (Tr. 190-191). Plaintiff's mental status was examined and the examiner's notes indicate that Plaintiff was oriented and communicative. Plaintiff was depressed, but her speech was normal and she denied any suicidal ideations. Upon discharge, Plaintiff was diagnosed with bipolar disorder and alcohol abuse.

In June 1998, Plaintiff was admitted to Charter Rockford Center a second time for depression and binge drinking. Plaintiff's admission notes indicate that she was supposed to be attending outpatient therapy since her last discharge, but that she failed to attend therapy due to drinking episodes. (Tr. 194-198). Plaintiff's mental status examination and diagnoses were

the same as her previous admission.

In June 1998, Plaintiff also visited Dr. Marcus and Dr. Winter. Dr. Marcus noted that Plaintiff had been treated at Charter Rockford Center on an inpatient basis and recommended that she seek further inpatient rehabilitation. (Tr. 178-179). Dr. Winter noted that Plaintiff complained of chest pain, and was "depressed appearing." (Tr. 148).

In July 1998, Plaintiff called Dr. Marcus to cancel her appointment because she had binged on alcohol. (Tr. 178). She denied any mood swings at that time. (Tr. 177). Thereafter, Plaintiff went to detoxification for five days, but then resumed her alcohol consumption after she left treatment. (Tr. 177). At the end of July 1998, Dr. Marcus noted that Plaintiff was hypomanic, had pressured speech, racing thoughts, and was impulsive. (Tr. 177). Also in July 1998, Dr. Winter indicated that Plaintiff was admitted to the hospital for twelve hours for an alcohol overdose. (Tr. 147).

In August 1998, Plaintiff reported that she was arrested for driving under the influence ("DUI") of alcohol. (Tr. 144). Treatment notes from Christiana care indicate that Plaintiff was taking Paxil and Depakote. She was diagnosed with alcoholism and high blood pressure. (Tr. 144-145).

In September 1998, Plaintiff called Dr. Marcus and reported that she had another DUI arrest. Plaintiff also wondered if she

had an attention deficit hyperactivity disorder ("ADHD"). (Tr. 176).

Also in September 1998, Plaintiff was admitted to the Medical Center of Delaware for two weeks. Plaintiff was disheveled and depressed upon admission, but cooperative. Plaintiff's thought processes were normal, but she had decreased concentration, attention, and memory due to blackouts. (Tr. 206). Dr. Marcus diagnosed Plaintiff with alcohol dependence and bipolar disorder. He recorded a current Global Assessment of Functioning ("GAF") score of 30.² (Tr. 201). Plaintiff reported that she had a hallucination prior to her admission, when she was "coming down" from alcohol. (Tr. 202). Treatment notes indicate that Plaintiff complied sporadically with her treatment and medication and that Plaintiff admitted that she drank heavily while taking her medication. (Tr. 202). During her admission, Plaintiff attended group and individual therapy sessions directed at her drinking and the need to prevent her from relapsing upon discharge. (Tr. 214-215).

Plaintiff's treatment was also assessed during her admission by Shelley Braunstein, M.D. Dr. Braunstein noted that Plaintiff was not vested in the recovery process and that her main focus

² A GAF score of 30 indicates "[b]ehavior is considerably influenced by delusions or hallucinations or serious impairment in communication or judgment or inability to function in almost all areas." Diagnostic and Statistical Manual of Mental Disorders ("DSM-IV") 34 (4th 3d. 1994).

needed to be on controlling her substance abuse problems. (Tr. 210). At discharge, Plaintiff's alcohol dependence was still severe, but her bipolar disorder stabilized with medication. Discharge notes indicate that Plaintiff was unwilling to make significant changes in her life to address her alcohol abuse problems. Plaintiff was referred to outpatient rehabilitation for further treatment. (Tr. 211).

In November 1998, Plaintiff resumed drinking and voluntarily committed herself to the Delaware Psychiatric Center for twenty-four hours. Plaintiff then extended her stay until February 1999. At intake, Plaintiff admitted that she stopped taking her medications three weeks prior to admission and was drinking heavily. (Tr. 260). Plaintiff was unkempt and her mood was unstable, but she was cooperative and calm. (Tr. 260). Plaintiff reported depression, racing thoughts, and paranoia. (Tr. 261). While an inpatient, Plaintiff attended therapy sessions. (Tr. 312-321). Plaintiff's condition improved with her cessation from drinking, and by mid-January 1999, Plaintiff did not exhibit any evidence of emotional instability or depression. (Tr. 310-311).

Upon her discharge in early February 1999, a staff psychiatrist, Hugo Del Villar, M.D., opined that Plaintiff was "in excellent contact with reality, was fully oriented, [and] was no longer depressed or manic." (Tr. 262). Dr. Villar assessed

Plaintiff with a GAF score of 70.³

Between May 1999 and September 1999, Plaintiff treated at Northeast Treatment Centers. Plaintiff admitted to her alcohol dependence and emotion problems. She stated that she did not have any side-effects from her medication aside from dry mouth. (Tr. 341). A mental status examination of Plaintiff was conducted by Patricia Lifrak, M.D. Dr. Lifrak indicated that Plaintiff was alert and cooperative, but depressed and had difficulty concentrating and remembering on a short term basis. Plaintiff was diagnosed with alcohol dependence in early full remission, post-traumatic stress disorder and bipolar disorder. (Tr. 341-344). Dr. Lifrak assessed Plaintiff with a GAF of 50-55, down from a GAF during the past year of 55-60.⁴ (Tr. 344).

Plaintiff attended therapy and medication check-ups several times a month until September 1999. (Tr. 325-340). Treatment notes during this time indicate that Plaintiff was improving while she was taking her medications, but that she became symptomatic when she stopped taking her medications. (Tr. 325-

³ A GAF score of 70 indicates "[s]ome mild symptoms . . . or some difficulty in social, occupational, or school functioning . . . but generally functioning pretty well, has some meaningful interpersonal relationships." DSM-IV, supra at 34.

⁴ A GAF score in the range of 51-60 indicates "[m]oderate symptoms . . . or moderate difficulty in social, occupational, or school functioning . . ." DSM-IV, supra at 34. A GAF score in the range of 41-50 indicates "[s]erious symptoms or any serious impairment in social, occupational or school functioning." Id.

340).

B. Assessments From State Agency Physicians

In December 1998, a state agency psychologist reviewed the medical evidence of record and opined that Plaintiff had no restrictions in the activities of daily living, but moderate difficulties in maintaining social functioning. He further opined that Plaintiff had deficiencies in concentration, persistence and pace, and one or two episodes of decompensation at work or work-like settings. However, he also opined that Plaintiff had the ability to remember locations and work-like procedures; to understand, remember and carry out simple and detailed instructions; to sustain an ordinary routine and work with others and the public; to make work related decisions; and maintain socially appropriate behavior. Plaintiff's ability to maintain attention and concentration for extended period of time, perform activities within a schedule to complete a normal week work, accept instructions and respond to criticism, respond to changes in the work setting and set realistic goals was "moderately limited." The state agency physician opined that Plaintiff's alcohol abuse was material to her condition (Tr. 275) and that her mood was stable when she did not use alcohol and took her medication. The state agency physician opined that Plaintiff was capable of performing simple work when she was not using alcohol. (Tr. 286).

In May 1999, a second state agency physician reviewed the evidence of record and made a similar assessment to the first reviewing physician. The second reviewing physician also opined that Plaintiff could perform simple work. (Tr. 300).

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

On October 27, 1999, the A.L.J. conducted a hearing on Plaintiff's application for benefits. At the hearing, Plaintiff was represented by counsel. Plaintiff testified at the hearing that she stopped working in May 1998, because she had a "nervous breakdown." (Tr. 40). Plaintiff admitted to repeated binge drinking and that her drinking would resume after she was released from treatment. (Tr. 40-42). Plaintiff testified that she washed dishes, made her bed, vacuumed, did laundry and shopped. Plaintiff testified that she had friends in Alcoholics Anonymous and that she tried to go out with her social group. Plaintiff stated that her medications helped her mood swings a lot and that she was "pretty careful" about taking her medication in the manner prescribed by her doctors.

Plaintiff testified that she stopped binge drinking in November 1998 when she was admitted to the Delaware State Hospital. (Tr. 48). Plaintiff testified that she believed her emotional stability had not improved since she stopped drinking. (Tr. 49). Plaintiff further testified that she could perform a simple job as long as "not too many people were around." (Tr.

52).

The A.L.J. consulted a vocational expert during the hearing and posed a hypothetical question taking into account Plaintiff's age, education and past work experience. The A.L.J. added the limitation that the hypothetical individual could perform work at any exertional level as long as it was limited to one and two step tasks. Based on this hypothetical, the vocational expert identified two jobs, a packer and a cleaner, that the individual could perform. The A.L.J. then asked the vocational expert if his opinion would change if the individual was also limited to "low contact with colleagues and the public." (Tr. 67). In response, the vocational expert testified that the identified jobs required very little contact with colleagues and the general public.

Following the hearing, the A.L.J. also sent medical interrogatories to Richard Saul, M.D., a psychiatrist. (Tr. 346-349). Dr. Saul indicated that Plaintiff had bipolar disorder which was aggravated by alcohol and alcohol abuse, and a personality disorder. Dr. Saul opined that Plaintiff's impairments met Listings 12.04, 12.08 and 12.09 of Appendix I, Subpart P of Regulations No. 4, but only as a result of Plaintiff's alcoholism. (Tr. 347). Without alcohol abuse, Dr. Saul opined that Plaintiff would not meet or equal any of the listed impairments. (Tr. 347). Dr. Saul further opined that

without alcohol, Plaintiff could maintain control and perform simple work as long as she took her medication. (Tr. 348).

In his decision dated May 4, 2000, the A.L.J. concluded that Plaintiff had three severe impairments: bipolar disorder, personality disorder and alcoholism. Including the effects of alcoholism, the A.L.J. concluded that Plaintiff's impairments met the criteria for three Listed Impairments, 12.04, 12.08 and 12.09. Without the abuse of alcohol, the A.L.J. concluded that Plaintiff could not return to her past relevant work as a bill collector, an insurance clerk, or a customer service representative, but that she could perform work at all exertional levels involving simple, routine tasks with low contact with the public and colleagues. Based on this residual functional capacity and her vocational profile, the A.L.J. concluded that Plaintiff could perform, in the absence of alcoholism, the jobs of packer and cleaner. Because Plaintiff was capable of performing these jobs and significant numbers of them existed in the national economy, the A.L.J. concluded that Plaintiff was not disabled within the meaning of the Act.

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 Disability Insurance Benefits Claims And Supplemental Security Income 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, which can be expected to result in death, or which has lasted or can be expected to last, for a continuous period of not less than 12 months. 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The claimant bears the initial burden of proving disability. 20 C.F.R. §§ 404.1512(a), 416.912(a).

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, 416.920. 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. Specifically, the A.L.J. must find 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. At this step, the A.L.J.

often seeks the assistance of a vocational expert. Id. at 428.

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

By her Motion, Plaintiff contends that the A.L.J.'s decision is not supported by substantial evidence. Specifically, Plaintiff contends that the A.L.J. erred in (1) rejecting the opinion of Plaintiff's treating physicians and embracing the opinion of a consultative physician without properly stating his reasons for rejecting the treating physician's opinions; and (2) posing an inadequate hypothetical question to the vocational expert, which did not properly evaluate or describe Plaintiff's limitations.

After reviewing the decision of the A.L.J. in light of the record evidence in this case, the Court concludes that the A.L.J.'s decision was supported by substantial evidence. Pursuant to Public Law 104-121, "an individual shall not be considered to be disabled . . . if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the determination that the individual is disabled." 42 U.S.C. §§ 423(d)(1)(C), 1382c(a)(3)(J). In this case, the A.L.J. found that Plaintiff's alcoholism was material to finding Plaintiff disabled, and that, without considering the effects of Plaintiff's alcoholism, she could perform work at any exertional level involving simple, routine tasks and low contact with the public and colleagues. The A.L.J.'s finding is supported by both

the assessments of her treating physicians, as well as the assessments of the state agency reviewing physicians, all of which indicate that Plaintiff's condition worsened with her alcohol abuse and stabilized when she refrained from consuming alcohol and took her medication regularly. (Tr. 154, 180-181, 177, 202, 210-211, 310-311, 262, 325-340). In addition, the A.L.J.'s finding is consistent with the majority of treatment notes regarding Plaintiff's admission to various centers. These treatment notes express concern for Plaintiff's alcohol abuse over her bipolar disorder and demonstrate that Plaintiff's condition worsened with the use of alcohol and improved significantly with medication and without the use of alcohol. (Tr. 310-311, 210-211, 194-198, 190-191).

Plaintiff contends that the A.L.J. rejected the opinions of her treating physicians without explanation and improperly adopted the opinion of Dr. Saul, a consultative psychiatrist. The Court disagrees with Plaintiff's contentions regarding the A.L.J.'s treatment of her treating physicians' opinions. The A.L.J. did not reject these opinions, but rather, found that the treatment notes of Plaintiff's physicians were consistent with the opinions of Dr. Saul. As the A.L.J. noted, Plaintiff's treating physicians found that she had severe bipolar disorder, but also noted that Plaintiff's symptoms and condition improved greatly and stabilized when she stopped using alcohol and took

her medications. As the A.L.J. noted, the record indicates that Plaintiff's admission to various treatment centers occurred after episodes of binge drinking and that upon discharge from these centers, Plaintiff's condition improved when she took her medication and refrained from alcohol use. That Plaintiff's mood improved and stabilized with medication and without alcohol was documented by several of Plaintiff's treating physicians, including Dr. Winter, Dr. Marcus and Dr. Del Villar. (Tr. 157, 211, 310, 324-344, 262).

Plaintiff relies heavily on the opinion of Dr. Lifrak, that Plaintiff was still experiencing depression and other symptoms while her alcoholism was in full remission. Although Dr. Lifrak noted that Plaintiff's alcoholism was in early full remission and Plaintiff still suffered symptoms of bipolar disorder, Dr. Lifrak, like Plaintiff's other treating physicians, also noted that Plaintiff's condition worsened when she stopped taking her medication and stabilized when she took her medication. (Tr. 324-344). As such Dr. Lifrak's opinion is also consistent with the other treating physicians' opinions which the A.L.J. considered and found to be consistent with the opinions of Dr. Saul and the other state agency reviewing physicians who found that Plaintiff's alcohol use aggravated her bipolar and personality disorders.

Plaintiff next contends that the A.L.J. erred in posing an

inadequate hypothetical question to the vocational expert. Plaintiff contends that, upon cross-examination, the vocational expert concluded that Plaintiff could not perform the identified jobs of packer or cleaner if she had marked restrictions in the ability to concentrate. While the record does reflect that Plaintiff had concentration difficulties, the record also suggests that these difficulties did not rise to the level of "marked" difficulties, absent alcohol abuse, which would preclude Plaintiff from performing simple, routine work.⁵ (Tr. 259, 261, 322, 310, 328). As Plaintiff points out the state agency physicians recognized Plaintiff's concentration problems. However, the state agency physicians also concluded that

⁵ Whether Plaintiff suffered marked difficulties and episodes of decompensation is also relevant to the A.L.J.'s conclusion that Plaintiff's condition only met Listing Section 12.04 (Affective Disorders), 12.08 (Personality Disorders) and 12.09 (Substance Addiction Disorders) if her alcoholism was considered. Listings 12.04 and 12.08 both require at least two of the following: (1) marked restrictions of activities of daily living; (2) marked difficulties in maintaining social functioning; (3) marked difficulties in maintaining concentration, persistence, or pace; or (4) repeated episodes of decompensation. As the Court observed in its previous discussion, there is substantial evidence supporting the A.L.J.'s conclusion that Plaintiff's limitations, including her concentration difficulties, were not "marked" absent her alcohol abuse. Further, as the A.L.J. found, the record evidence only supports one or two episodes of decompensation absent Plaintiff's alcoholism, and not the repeated episodes needed to meet the Listing Requirements for 12.04 and 12.08. (Tr. 275-286; 289-300; 346-349). For these additional reasons, the Court concludes that substantial evidence supports the A.L.J.'s assessment that Plaintiff's alcoholism was a material contributing factor to her disability.

Plaintiff could perform simple, routine work. (Tr. 275-286, 289-300). Dr. Saul agreed with this assessment (Tr. 346-349), and Plaintiff has not presented the Court with contrary evidence suggesting that her concentration difficulties precluded her from performing such work.⁶ Further, it is evident from the A.L.J.'s decision that he took Plaintiff's decreased ability to concentrate into consideration when he posed his hypothetical question by limiting the hypothetical individual "to simple, routine tasks because of some loss of concentration." (Tr. 20). Because the A.L.J.'s hypothetical question took into consideration those restrictions supported by the record in this case, the Court concludes that it was not erroneous.

In sum, the Court concludes that the A.L.J. properly evaluated Plaintiff's disability application under the five-step analysis. The A.L.J. also assessed the evidence and posed a hypothetical question in a manner consistent with the applicable law. Accordingly, the Court will grant Defendant's Motion For Summary Judgment and deny Plaintiff's Motion For Summary

⁶ Even Dr. Lifrak's assessment of Plaintiff is consistent with this conclusion. Dr. Lifrak assessed Plaintiff with a GAF range of 50-60. Although a GAF score of 50 suggests serious symptoms, the bulk of the range assessed by Dr. Lifrak indicates "moderate symptoms" which would not necessarily equate with a finding of disability, particularly where, as here, there is other medical evidence suggesting that Plaintiff was not disabled absent her alcohol abuse. See e.g. Schuh v. Commissioner, 2003 WL 21087132, *8 (D. Del. May 6, 2003) (Jordan, J.) (finding that GAF score of 55 did not support conclusion that Plaintiff was precluded from working).

Judgment. The decision of the Commissioner dated April 13, 2000 will be affirmed.

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 April 13, 2000 will be affirmed.

An appropriate Order will be entered.

KIMBERLY A. RODGERS,
Plaintiff,
v.
JO ANNE BARNHART,
Commissioner of Social
Security,
Defendant.

At Wilmington, this 29TH day of September 2003, for the reasons discussed in the Memorandum Opinion issued this date;

1. Defendant's Cross-Motion For Summary Judgment (D.I. 15)
is GRANTED.

3. The final decision of the Commissioner dated April 13, 2000 is AFFIRMED.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KIMBERLY A. RODGERS,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 02-561-JJF
	:	
JO ANNE BARNHART,	:	
Commissioner of Social	:	
Security,	:	
	:	
Defendant.	:	
	:	
	:	

JUDGMENT IN A CIVIL CASE

For the reasons set forth in the Court's Memorandum Opinion
and Order dated September 29, 2003;

IT IS ORDERED AND ADJUDGED that judgment be and is hereby
entered in favor of Defendant Jo Anne Barnhart and against
Plaintiff Kimberly A. Rodgers.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE

Dated: September 29, 2003

ANITA BOLTON
(By) Deputy Clerk