

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

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NICOLASA MIRANDA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 03-333-GMS
	)	
JO ANNE B. BARNHART,	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	

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**MEMORANDUM**

**I. INTRODUCTION**

Nicolasa Miranda, the plaintiff, applied for disability insurance benefits (“DIB”) under Title II of the Social Security Act on October 10, 2000. Title II, 42 U.S.C. §§ 401-433 (2003). In her application, she claimed she had been disabled since November 15, 1992, due to bilateral carpal tunnel syndrome, thoracic outlet syndrome, and diabetes mellitus. The Social Security Administration denied her application at the initial level and upon reconsideration. Thus, Miranda requested a hearing before an Administrative Law Judge, and she presented her case on October 4, 2001 before ALJ Antrobus. However, ALJ Antrobus also denied her application for benefits in a written opinion issued on October 26, 2001. Miranda then requested a review of the decision, but the Appeals Council denied her request for review on March 6, 2003.

Having exhausted her administrative remedies, Miranda filed a complaint with this court on March 28, 2003 (D.I. 1), which she subsequently amended on September 2, 2003 (D.I. 14). The Commissioner timely answered on September 11, 2003. (D.I. 16.) Presently before the court are both parties’ motions for summary judgment. (D.I. 19, D.I. 22.) For the following reasons, the court

will deny both motions and remand the case with instructions to proceed in a manner consistent with this opinion.

## **II. BACKGROUND**

Miranda was a 50-year old woman at the time of the hearing before ALJ Antrobus. She has a minimal understanding of the English language (D.I. 10 at 65), and only a seventh grade education, which she received in Puerto Rico (id. at 299). Miranda alleges an onset of disability due to bilateral carpal tunnel syndrome and diabetes mellitus. (Id. at 66.) She has not worked since November of 1992 (id. at 303), before which, she worked as a silver polisher for the Du Pont Country Club (id. at 260). Miranda also has experience as a presser.

### **A. Medical History**

In February of 1992, Miranda entered the care of Dr. Errol Ger, an orthopedic surgeon. (Id. at 107.) Dr. Ger's notes indicate that Miranda complained of problems with her upper left arm, pain in her elbow and shoulder, and numbness in her fingers. (Id. at 106.) Later, in March of 1992, Dr. Ger diagnosed Miranda with carpal tunnel syndrome in both hands. (Id. at 105.) Dr. Ger prescribed medication to help ease her shoulder pain. (Id. at 103.)

In October 1992, Miranda began treatment with Dr. David T. Sowa, an orthopedic surgeon. (Id. at 290.) He concluded that Miranda suffered from bilateral carpal tunnel syndrome, and in December of 1992, Dr. Sowa performed right carpal tunnel release surgery. (Id. at 124.) In February 1993, Dr. Sowa performed left carpal tunnel release surgery. (Id. at 122-123.) During the left release surgery, Dr. Sowa also repaired Miranda's left elbow. (Id. at 141.) Subsequently, in November 1993, Dr. Norman H. Eckbold performed an independent medical examination of Miranda on behalf of her employer's workers' compensation carrier. (Id. at 228.) He concluded that

her carpal tunnel syndrome was resolved and that she was able to return to work without restriction. (Id. at 230.)

Miranda continued to see Dr. Sowa for follow-up examinations, and in April of 1994 she complained of weakness, swelling and occasional numbness in the upper extremities. (Id. at 135.) In response to these complaints, Dr. Sowa referred the plaintiff to his partner, Dr. Bruce J. Rudin. (Id.) In May of 1994, Dr. Rudin examined Miranda and was unable to determine the cause of her discomfort. (Id.)

In a 1995 follow-up, Dr. Sowa reported that Miranda was still experiencing pain in her shoulders, neck and upper extremities. (Id. at 134.) Dr. Sowa believed that the numbness Miranda was experiencing was caused by a diabetic neuropathy and a probable cervical radiculopathy. (Id.) Because previous studies did not show a disk herniation, Dr. Sowa was unsure if surgery was a viable alternative. (Id.) Dr. Sowa did conclude, however, that her symptoms were not a result of carpal tunnel syndrome. (Id.)

Miranda began seeing Dr. Satoshi Ikeda in June of 1996. (Id. at 162.) After a physical examination, Dr. Ikeda concluded that Miranda was suffering from thoracic outlet syndrome on both sides of her chest. (Id. at 162.) He then referred her to thoracic outlet physiotherapy for three weeks. (Id. at 163.)

Dr. Eckbold re-examined the plaintiff in September of 1996 and concluded that Miranda had been improperly diagnosed with thoracic outlet syndrome. (Id. at 227.) In support of his conclusion, Dr. Eckbold noted that Miranda had undergone two Electromyographies (EMG's), neither of which indicated thoracic outlet syndrome. (Id. at 226.) Furthermore, Dr. Eckbold believed that Miranda had only subjective complaints, with absolutely no objective functional

defects. (Id. at 227.) Finally, Dr. Eckbold concluded that Miranda could return to work with minor limitations. (Id. at 227.)

Throughout 1997, Dr. Craig D. Sternberg treated the plaintiff. Dr. Sternberg found that Miranda suffered from chronic neck pain and chronic right upper extremity numbness. (Id. at 168.) He noted that medication eased Miranda's pain and aided her in sleeping (id. at 167, 177), but concluded that there was nothing else he could do for her. Thus, he recommended that Miranda continue taking her medicine, continue her home exercises, and return for annual follow-up appointments. (Id. at 167.)

Miranda returned to Dr. Eckbold in May of 1997, November of 1997, and August of 1998. He again concluded that Miranda did not have thoracic outlet syndrome and suffered only from a voluntary restriction of overhead motion of the arms. (Id. at 222, 225.) In March of 1999, however, Dr. Sternberg concluded that in addition to any restrictions set by Dr. Eckbold, Miranda should also be restricted from lifting anything weighing more than ten to fifteen pounds. (Id. at 231.)

Miranda's first Residual Functional Capacity (RFC) Assessment was completed in December of 2000. (Id. at 269-88.) This December assessment revealed that Miranda could: occasionally lift and/or carry 20 pounds; frequently lift and/or carry 10 pounds; stand, sit or walk for about 6 hours in a workday; and push/pull with unlimited ability. (Id. at 280.) Miranda's second assessment in December of 2001 revealed similar findings, with the exception of a limited ability to push and pull, and a suggestion that she not make highly repetitive use of her upper extremities. (Id. at 270.)

## **B. Miranda's Testimony**

At the hearing before ALJ Antrobus, Miranda testified that she had not worked or earned any money since October of 1992. (Id. at 299.) She confirmed that she had undergone the above-

mentioned surgeries. (Id. at 300.) But despite these surgeries, Miranda testified that she still experiences pain in her wrists, as well as in her shoulders and legs. (Id. at 299-300.) However, she also stated that this pain is not constant, but rather “takes like turns.” (Id. at 300.) Furthermore, Miranda stated that she does not take the pain medication prescribed by her doctors, but instead takes over the counter Tylenol about twice daily because it helps with her pain during the day. (Id. at 301.) Miranda also testified that she suffers from diabetes, and as a result experiences problems with her eyesight, dizziness, headaches and kidney pain. (Id. at 301-302.)

As to her mobility, Miranda stated that she is able to walk for about a block, and sit down with constant shifting. (Id. at 302.) She also testified that she can perform some housework and cooking, but her husband usually helps her. (Id.) Miranda further stated that she is able to drive a car for short periods of time, and sit and watch television or read the Bible. (Id. at 303.) Finally, Miranda explained that she is able to bathe herself, but usually needs help buttoning her shirts and pulling up her zippers. (Id. at 304.)

### **C. Vocational Expert Testimony**

At the hearing, ALJ Antrobus asked the vocational expert her opinion regarding the nature of Miranda’s past jobs. (Id. at 308.) The expert responded that “the work of a presser and the work of a silver polisher are both in the light exertional level and they’re both unskilled.” (Id. at 308.) This was the only question ALJ Antrobus asked the vocational expert, and Miranda’s counsel did not ask any questions of his own. (Id.)

### **D. ALJ’s Findings**

ALJ Antrobus did not find Miranda’s testimony regarding her impairments and pain, or the effect of the alleged impairments and pain on her functional abilities, to be credible. (Id. at 22.) He

also found that Miranda was capable of lifting and carrying 20 pounds and engaging in a “good deal” of standing, walking, or sitting. (Id. at 23.) These abilities, coupled with the vocational expert’s testimony that the work of a presser or silver polisher are unskilled and light, led ALJ Antrobus to conclude that Miranda had the ability to perform her past relevant work. (Id. at 23.)

### **III. STANDARD OF REVIEW**

A reviewing court must uphold the ALJ’s factual determinations if they are supported by “substantial evidence.” 42 U.S.C. §§ 405(g), 1383(c)(3); *Williams v. Sullivan*, 970 F.2d 1178, 1182 (3d Cir. 1992); *see also Fagnoli v. Massanari*, 247 F.3d 34, 38 (3d Cir. 2001) (stating “[w]here the ALJ’s findings of fact are supported by substantial evidence, . . . [the court is] bound by those findings, even if . . . [it] would have decided the factual issue differently”). “Substantial evidence” means more than “a mere scintilla.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). “It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Id.* In determining whether the disability decision is supported by substantial evidence, it must be clear to the reviewing court that the ALJ considered all relevant evidence. *Fagnoli*, 247 F.3d at 41.

The Social Security Act defines “disability” as the inability “to engage in 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. § 1382c(a)(3)(A). This definition has been further refined by the SSA’s five-step sequential analysis. *See* 20 C.F.R. § 404.1520. When evaluating whether a claimant is disabled, the ALJ must answer the following five inquiries in this order:

1. If the claimant is currently engaged in substantial gainful activity, she will be found not disabled.

2. If the claimant does not have a severe impairment – that is, any impairment or combination of impairments which significantly limits her physical or mental ability to do basic work activities – she will be found not disabled.
3. If claimant’s severe impairment or combination of impairments meets or equals a listed impairment in Appendix 1 to Subpart P of Part 404 and meets the duration requirement, she will be deemed disabled.
4. If the claimant’s impairment or combination of impairments do not meet or equal a listed impairment, the claimant’s residual functioning capacity will be examined by looking at whether or not the claimant is capable of performing past relevant work. If she is capable, she will be found not disabled.
5. Finally, if the claimant cannot perform past relevant work, it must be determined whether she can perform other work in the national economy. If she can, the claimant will be deemed not disabled.

*See* 20 C.F.R. § 404.1520(b)-(f); *see also* *Burnett v. Comm’r of Soc. Sec. Admin.*, 220 F.3d 112, 118 (3d Cir. 2000) (summarizing five-step process for determining disability).

The disability determination analysis involves a shifting burden of proof. *See Wallace v. Secretary of Health & Human Servs.*, 722 F.2d 1150, 1153 (3d Cir. 1983). In the first four steps of the analysis, the burden is on the claimant to prove every element of his or her claim by a preponderance of the evidence. At step five, however, the burden shifts to the Commissioner to prove that there is some other kind of substantial gainful employment the claimant is able to perform. *See Sykes v. Apfel*, 228 F.3d 259, 263 (3d Cir. 2000); *see also Kangas v. Bowen*, 823 F.2d 775, 777 (3d Cir. 1987); *Olsen v. Schweiker*, 703 F.2d 751, 753 (3d Cir. 1983).

#### **IV. DISCUSSION**

In this case, ALJ Antrobus undertook the five-step sequential evaluation and found that: (1) Miranda had not engaged in any substantial gainful activity since the alleged onset of disability; (2) her bilateral carpal tunnel syndrome, thoracic outlet syndrome, and diabetes mellitus were considered “severe” impairments; (3) these impairments, although severe, do not meet or medically equal one of the listed impairments in Appendix 1, Subpart P, Regulation No. 4; and (4) she retained

the Residual Functional Capacity to engage in light work, and therefore could return to her past relevant work as a presser or silver polisher – i.e., she was not disabled. (D.I. 10 at 23-24.) Because ALJ Antrobus determined that Miranda was not disabled at step four of the analysis, it was unnecessary for him to proceed to step five. Miranda takes issue with ALJ Antrobus’ findings at step four of the analysis.

At step four, the ALJ must determine whether a claimant’s RFC enables her to perform her past relevant work. This step involves three substeps: (1) the ALJ must make specific findings of fact as to the claimant’s residual functional capacity; (2) the ALJ must make findings of fact as to the physical and mental demands of the claimant’s past relevant work; and (3) the ALJ must make findings of fact that the individual’s RFC would permit her to return to her past job or occupation. *Burnett*, 220 F.3d at 121; *see also* 20 C.F.R. § 404.1561; S.S.R. 82-62. Both RFC and past relevant work may be classified as either “sedentary,” “light,” “medium,” “heavy,” or “very heavy.” *Burnett*, 220 F.3d at 121; *see also* 20 C.F.R. § 404.1567.

At the first substep, ALJ Antrobus determined that Miranda’s RFC allowed her to perform “light” work. (D.I. 10 at 23.) Second, ALJ Antrobus classified Miranda’s past relevant work, as a presser and silver polisher, as “light” work. (Id.) Third, ALJ Antrobus concluded that Miranda had the RFC to perform her past relevant work as a presser and silver polisher. (Id.) Consequently, ALJ Antrobus determined that Miranda was not disabled. (Id.) Miranda contends that ALJ Antrobus erred at each of these three substeps.

**A. Miranda’s RFC (Substep 1)**

Residual Functional Capacity (RFC) is defined as that which an individual is still able to do despite the limitations caused by her impairment(s). *Burnett*, 220 F.3d at 121; *see also* 20 C.F.R.



§ 404.1545(a). The RFC assessment must address both exertional and non-exertional capacities of the individual. S.S.R. 96-8p. Exertional capacity addresses an individual's limitations and restrictions of physical strength, and defines the individual's remaining abilities to perform each of seven strength demands: sitting, standing, walking, lifting, carrying, pushing, and pulling. *Id.* Non-exertional limitations consider an individual's abilities to perform physical activities such as: postural, manipulative, visual, communicative, and mental. *Id.* In making the RFC assessment, the ALJ must consider all evidence before him, *Burnett*, 220 F.3d at 121; *see also Plummer v. Apfel*, 186 F.3d 422, 429 (3d Cir. 1999); *Doak v. Heckler*, 790 F.2d 26, 29 (3d Cir. 1986), and the RFC assessment must "be accompanied by a clear and satisfactory explanation of the basis on which it rests." *Fagnoli*, 247 F.3d at 41. In weighing the evidence, the ALJ must give some indication of the evidence which he rejects and his reason for discounting the evidence. *Burnett*, 220 F.3d at 121. In the absence of such an indication, the reviewing court cannot tell if significant probative evidence was not credited or simply ignored. *Cotter v. Harris*, 642 F.2d 700, 705 (3d Cir. 1981). Moreover, unless the ALJ "has analyzed all evidence and has sufficiently explained the weight he has given to obviously probative exhibits, to say that his decision is supported by substantial evidence approaches an abdication of the court's duty to scrutinize the record as a whole to determine whether the conclusions reached are rational." *Gober v. Matthews*, 574 F.2d 772, 776 (3d Cir. 1978) (internal quotations omitted).

In this case, ALJ Antrobus determined that Miranda retains the ability to "lift and carry 20 pounds; engage in a good deal of standing, walking, or sitting; perform jobs allowing a change in body positions; and perform unskilled job tasks." (D.I. 10 at 24.) The SSA defines this as "light work." *See* 20 C.F.R. § 404.1567(b). After reviewing the record, the court is unable to conclude

that the ALJ's assessment of Miranda's RFC is supported by substantial evidence. In making the RFC determination, ALJ Antrobus considered the following objective medical evidence:<sup>1</sup>

- (1) X-ray's taken by Dr. Ger of Miranda's shoulders showed some osteoarthritic changes in the AC joints, but the shoulder joints appeared normal.
- (2) An x-ray of the cervical spine that was normal.
- (3) An MRI of the cervical spine showed degenerative changes at the C3-4 level.
- (4) Dr. Hunt's evaluation that Miranda had a limited range of motion in the neck, and a significant amount of muscle spasm in the cervical region. A sensory examination was normal, and there was no evidence of muscle atrophy.
- (5) Treatment records from the Delaware Back Pain and Sports Rehabilitation Center indicated that the range of motion of the cervical spine was tender and slightly limited due to pain.
- (6) Dr. Eckbold's found that Miranda had a voluntary restriction of overhead motion in the arms without the complaints usually noted for thoracic outlet syndrome. He wrote that there was no objective basis for determination of a permanent impairment referable to the spine or extremities. Dr. Eckbold concluded that Miranda did not have thoracic outlet syndrome.
- (7) Dr. Sternberg's finding that Miranda should avoid lifting anything greater than 10 to 15 pounds.<sup>2</sup>

(D.I. 10 at 21-22.)

However, ALJ Antrobus failed to mention some contradictory, objective medical evidence, including:<sup>3</sup>

- (1) A 1996 report by Dr. Ikeda stated that because of her working conditions, it was

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<sup>1</sup>This list is merely an abbreviated version of the summary presented in ALJ Antrobus' opinion.

<sup>2</sup>This piece of evidence tends to support Miranda's claim that she should be restricted from "light" work. Although ALJ Antrobus recognized this evidence, his failure to explain how it factored into his decision that Miranda could "lift and carry 20 pounds of weight," which is defined as "light" work, is discussed below.

<sup>3</sup>This is a lay court without medical expertise. Thus, the court does not hold that these conditions could actually cause limitations of the type and extent complained of by Miranda. However, these conditions are suggestive enough in name alone that the court would normally expect the ALJ to explain their impact on his decision. In other words, they are "obviously probative."

reasonable to think that Miranda developed thoracic outlet syndrome as a result of her repetitions of upper extremity exercise. (Id. at 157.) Dr. Ikeda found thoracic outlet syndrome on both sides of her neck, rendering Miranda totally disabled in the upper extremities. (Id. at 161.)

(2) Medical records of Dr. Townsend (id. at 234) and a report by the Disability Determination Services' (DDS) non-examining doctor (id. at 269-278), which indicated certain postural and manipulative limitations.<sup>4</sup>

ALJ Antrobus' failure to mention and explain this contradictory medical evidence renders the court unable to determine whether the RFC assessment was based on substantial evidence. *See Burnett*, 220 F.3d at 122; *see also Adorno v. Shalala*, 40 F.3d 43, 48 (3d Cir. 1994). On remand, the ALJ must review all the pertinent medical evidence, explaining the evidence he accepts and rejects. *Burnett*, 220 F.3d at 122.

Miranda also claims that ALJ Antrobus' RFC assessment failed to account for Dr. Sternberg's conclusion that she should be restricted from lifting anything greater than 10 to 15 pounds.<sup>5</sup> Typically, controlling weight is given to the opinion of a claimant's treating physician regarding the nature and severity of the claimant's impairment when it is not inconsistent with other medical evidence. *Money v. Barnhardt*, 2004 WL 362291 at \*2 (3d Cir. Feb. 25, 2004); *see also* 20 C.F.R. § 404.1527(d)(2). Thus, an ALJ may reject the assessment of a treating physician only on the basis of contradictory medical evidence, and not on the basis of the ALJ's own credibility

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<sup>4</sup>Dr. Townsend's report indicates that Miranda could do no climbing of any type. (D.I. 10 at 234) The DDS non-examining doctor stated that Miranda could not climb any ladders, ropes, or scaffolds, (Id. at 271), could not use her bilateral upper extremities repetitively, (Id. at 270, 272), and could only occasionally perform reaching, fingering, handling, kneeling, stooping, crouching, crawling, or climbing of stairs or ramps (Id. at 272).

<sup>5</sup>The period at issue is the period that Miranda was insured for disability benefits – until December 31, 1998. ALJ Antrobus confined his analysis to the period preceding this date. While Dr. Sternberg's report was issued after January 1999, it was in response to an earlier report by Dr. Eckbold, and is relevant because it relates to the period that Dr. Sternberg treated Miranda prior to January 1999.

judgments, speculation, or lay opinion. *Morales v. Apfel*, 225 F.3d 310, 317-318 (3d Cir. 2000) (citing *Plummer*, 186 F.3d at 429). Although ALJ Antrobus noted the opinion of Dr. Sternberg in his analysis of the evidence (D.I. 10 at 22), he did not give any indication why he rejected it. As a result, the court is once again unable to determine whether the RFC assessment was based on substantial evidence. *Burnett*, 220 F.3d 121; *see also Cotter*, 642 F.2d at 705 (stating that in the absence of such indication, the reviewing court cannot tell if significant probative evidence was not credited or simply ignored). Thus, on remand, the ALJ must give some indication of the evidence which he rejects and his reason for discounting it. *Burnett*, 220 F.3d at 121.<sup>6</sup>

## **B. Miranda's Past Relevant Work (Substep 2)**

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<sup>6</sup>Miranda argues that ALJ Antrobus did not properly account for her other alleged limitations. Similar to the medical reports, the ALJ must also consider and weigh all of the non-medical evidence before him when making the RFC assessment. *Id.*; *see also Cotter*, 642 F.2d at 707; 20 C.F.R. § 404.1529(a) (non-medical evidence includes “statements or reports from you, your treating or examining physician or psychologist, and others about your medical history, diagnosis, prescribed treatment, daily activities, efforts to work, and any other evidence showing how your impairment(s) and any related symptoms affect your ability to work”). The ALJ will consider these allegations, but they must be supported by objective medical evidence. *Hartranft v. Apfel*, 181 F.3d 358, 362 (3d Cir. 1999); *see also* 20 C.F.R. § 404.1529(a). If an ALJ determines that a medical impairment “could reasonably cause” the alleged pain, then the ALJ “must evaluate the intensity and persistence of the pain . . . and the extent to which it affects the individual’s ability to work.” *Hartranft*, 181 F.3d at 362; *see also* 20 C.F.R. § 404.1529(a). This requires the ALJ to determine the extent to which a claimant is accurately stating the degree of pain or the extent to which she is disabled by it. *Hartranft*, 181 F.3d at 362; *see also* 20 C.F.R. § 404.1529(c).

ALJ Antrobus determined that Miranda suffered from some impairments reasonably expected to produce some of these alleged limitations: pain in her shoulder and legs; vision problems and dizziness due to diabetes; ability to walk one block with pain and only sit while shifting positions; and the inability to lift any weight. (D.I. 10 at 22.) However, ALJ Antrobus did not find the alleged severity to be credible. (*Id.*) In weighing contrary evidence, ALJ Antrobus noted the daily activities that Miranda could perform such as: caring for her own personal needs, driving an automobile, attending church, and performing limited household chores. (*Id.*) Thus, ALJ Antrobus properly explained his reasons for rejecting Miranda’s testimony regarding the extent of her pain and other such limitations. (*Id.*)

Miranda challenges ALJ Antrobus' conclusion that her past relevant work as a presser and silver polisher was "light" work as being unsupported by substantial evidence. In particular, Miranda contends that ALJ Antrobus failed to adhere to Social Security Rulings 82-62 and 00-4p, and therefore, his finding that Miranda could perform her past relevant work was not supported by substantial evidence. (D.I. 20 at 19-20.)

SSR 82-62 states that past work experience must be considered carefully to assure that the available facts support a conclusion regarding the claimant's ability or inability to perform the functional activities required in this work. More specifically, the ALJ is required to make a careful appraisal of "(1) the individual's statements as to which past work requirements can no longer be met and the reason(s) for his or her inability to meet those requirements; (2) the medical evidence establishing how the impairment limits ability to meet the physical and mental requirements of the work; and (3) in some cases, supplementary or corroborative information from other sources such as employers, the *Dictionary of Occupational Titles*, etc., on the requirements of the work as generally performed in the economy." S.S.R. 82-62. The decision as to whether the claimant retains the functional capacity to perform past work has far-reaching implications and must be fully explained in the disability decision. *Id.* It is error to make a past relevant work determination that is contrary to the uncontroverted evidence presented by a claimant. *Burnett*, 220 F.3d at 123 (noting that *Brewster* and *Cotter* resulted in a reversal of the ALJ's determination as being unsupported by substantial evidence in the record because the ALJ's assessment was inconsistent with the claimant's uncontroverted testimony about the demands of his past work); *see also Brewster v. Heckler*, 786 F.2d 581, 584 (3d. Cir. 1986); *Cotter*, 642 F.2d at 707.

From the record, it appears as though ALJ Antrobus failed to consider Miranda's statements

concerning her ability to perform her past work requirements. In fact, the record indicates that ALJ Antrobus' only questions to Miranda regarding her past work focused on where she was employed, rather than on the physical requirements of her past employment. (D.I. 10 at 303.) Yet, on her disability report, Miranda indicated that in her job as a silver polisher she walked, stood, climbed, stooped, crouched, and handled big objects for 8 hours out of an 8-hour workday. (D.I. 10 at 67.) She also indicated that she lifted a maximum of 50 pounds at a time, and frequently lifted 25 pounds. (Id.) Contrary to the ALJ's conclusion, this indicates her past relevant work may have involved "medium" work, which is defined as "lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds." *See* 20 C.F.R. § 404.1567©). Furthermore, the December 12, 2000 vocational analysis indicates that "claimant cannot return to past work based on her description," and "claimant cannot return to past work as performed in the national economy." (D.I. 10 at 88.) Since ALJ Antrobus addressed none of this evidence, the court is unable to conclude that his finding that Miranda's "past relevant work as a presser and silver polisher did not require the performance of work-related activities precluded by her residual functional capacity" (id. at 24) was based on substantial evidence. *Cotter*, 642 F.2d at 707; *see also Burnett*, 220 F.3d at 123-124. Therefore, on remand, this finding may not be the basis for a conclusion of "not disabled" unless the above-mentioned evidence is adequately explained away.

As to Miranda's argument that ALJ Antrobus' decision is inconsistent with SSR 00-4p, the court disagrees. Under SSR 00-4p, if a Vocational Expert (VE) provides evidence about the requirements of a job or occupation, the adjudicator has an affirmative responsibility to ask the VE about any possible conflict between that evidence and information provided in the *Dictionary of Occupational Titles* (DOT). In these situations, the ALJ will first ask the VE if the evidence she has

provided conflicts with the information provided in the DOT. If so, the ALJ must obtain a reasonable explanation for the conflict. S.S.R. 00-4p. By its language, SSR 00-4p requires the ALJ to inquire about potential conflicts only where the VE “provides evidence about the requirements of a job or occupation.” *Jackson v. Barhardt*, 2005 WL 23363 at \*1 (3d Cir. Jan. 6, 2005); *see also* S.S.R. 00-4p. Here, the VE did not provide such evidence, so ALJ Antrobus was not required to ask the VE about whether her testimony conflicted with DOT. *Jackson*, 2005 WL 23363 at \*1.

**C. Finding that Miranda’s RFC Would Permit a Return to Her Past Relevant Work (Substep 3)**

Miranda also contends that ALJ Antrobus’ decision is inconsistent with SSR 82-61. In determining whether a claimant retains the capacity to perform her past relevant work, two different tests may be applied.<sup>7</sup> S.S.R. 82-61. The ALJ can determine that the claimant retains the capacity to either (1) perform the particular functional demands and job duties peculiar to an individual job as she actually performed it, or (2) perform the functional demands and job duties of the job as ordinarily required by employers throughout the national economy. S.S.R. 82-61.<sup>8</sup>

Under the second test, ALJ Antrobus found that Miranda retained the capacity to return to her past relevant work as generally required by employers throughout the national economy. (D.I. 10 at 23.) Although there is no discernable error in his method of applying the second test, ALJ Antrobus’ underlying RFC analysis was flawed (as discussed above, *supra* IV.A). Thus, his

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<sup>7</sup>While there is a third test that classifies the past relevant job based on a broad generic occupational classification of that job, generic classifications are likely to be “fallacious and unsupported.” S.S.R. 82-61

<sup>8</sup>Under the second test, if the claimant cannot perform the excessive functional demands and/or job duties actually required in the former job, but can perform the functional demands and job duties as generally required by employers throughout the economy, the claimant should be found “not disabled.” S.S.R. 82-61.

conclusion that Miranda was “not disabled” under SSR 82-61 was tainted, and must be reconsidered on remand.<sup>9</sup>

## V. CONCLUSION

For the foregoing reasons, the court is unable to conclude that ALJ Antrobus’ assessment of Miranda’s RFC was based on substantial evidence. Therefore, the court will remand the case for further proceedings consistent with this opinion.

Dated: March 28, 2005

/s/ Gregory M. Sleet  
UNITED STATES DISTRICT JUDGE

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

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<sup>9</sup>While the evidence Miranda submitted regarding her previous occupation indicates the possibility that it involved “medium work,” if on remand, her RFC is correctly determined to enable her to perform “light work,” and work as a presser and silver polisher as performed in the national economy is “light work,” then correct application of SSR 82-61 may result in a finding of “not disabled,” regardless of the added demands Miranda’s former job may have actually imposed.



NICOLASA MIRANDA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 03-333-GMS
	)	
JO ANNE B. BARNHART,	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	

**ORDER**

IT IS HEREBY ORDERED THAT:

1. The Commissioner’s motion for summary judgment be DENIED;
2. The Plaintiff’s motion for summary judgment be DENIED; and
3. The decision of the Commissioner be VACATED and the case remanded for further proceedings consistent with this opinion.

Dated: March 28, 2005

/s/ Gregory M. Sleet  
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 UNITED STATES DISTRICT JUDGE