IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JACQUELINE GEORGE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 03-875-KAJ
	)	
	)	
JO ANNE B. BARNHART,	)	
Commissioner of Social Security	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

Stephen A. Hampton, Esquire; Grady & Hampton, 6 N. Bradford Street, Dover, Delaware, 19702, counsel for plaintiff.

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November 2, 2004
Wilmington, Delaware

JORDAN, District Judge

I. INTRODUCTION

Presently before me is a motion for summary judgment (Docket Item ["D.I."] 11) filed by plaintiff Jacqueline George ("Plaintiff") and a cross motion for summary judgment (D.I. 14) filed by defendant Jo Anne B. Barnhart, Commissioner of Social Security ("Defendant"). Plaintiff brings this action under 42 U.S.C. §§ 405(g), 1383(c)(3) (2004), seeking review of Defendant's decision denying her disability insurance benefits ("DIB") under Title II of the Social Security Act ("the Act"), 42 U.S.C. §§ 401-434. 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, I will deny Plaintiff's motion (D.I. 11) and grant Defendant's motion (D.I. 14).

II. BACKGROUND

A. Procedural History

On March 13, 2002, Plaintiff filed an application for DIB with the Social Security Administration ("SSA"), alleging disability since March 26, 2001. (D.I. 7 at 86-88.) The SSA denied Plaintiff's claims initially and upon reconsideration. (*Id*. at 60-63, 65-68.) Upon Plaintiff's request, an Administrative Law Judge ("ALJ") held a hearing on May 21, 2003, at which Plaintiff testified and was represented by counsel. (*Id*. at 24-57.) A vocational expert ("VE") also appeared and testified. (*Id*. at 53.)

On May 30, 2003, the ALJ issued a decision denying Plaintiff's application. (*Id*. at 12-22.) In accord with the regulations, *see* 20 C.F.R. § 404.1520 (2004), the ALJ found that Plaintiff was not engaged in substantial gainful activity since her alleged

onset of disability; she suffered from "severe" disorders, including dysthymic disorder, disogenic and degenerative back disorders, and cervical spine disorders; her disorders did not meet or medically equal one of the listed impairments under the regulations; she maintained the residual functional capacity to perform "light"[1] work at a low stress level; and she was unable to perform any of her past relevant work. (D.I. 7 at 21-22.) Nevertheless, the ALJ did find her able to perform other work in the national economy. (*Id.* at 22.) The ALJ accordingly held Plaintiff not "disabled" under the Act. (*Id.* at 22.)

On July 1, 2003, Plaintiff filed a request for review of the ALJ's decision with the SSA's Appeals Council. (*Id*. at 7-8.) Plaintiff's request was subsequently denied (*id.* at 21), however, and Plaintiff did not pursue any further appeals. Thus, the ALJ's adverse decision of May 21, 2003 was the final decision of the Commissioner. *See* 20 C.F.R. §§ 404.955, 404.981, 422.210 (2004), *see also Sims v. Apfel*, 530 U.S. 103, 106-107 (2000); *Matthews v. Apfel*, 239 F.3d 589, 592 (3d Cir. 2001). This case is now before me for disposition on the parties' cross-motions for summary judgment.

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[1]Under the regulations, light work is defined as:

> involv[ing] lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

20 C.F.R. § 404.1567(b).

B. Facts

Plaintiff was forty-five years old at the time of the ALJ's decision (D.I. 7 at 86), making her a "younger individual" under the regulations. *See* 20 C.F.R. § 404.1563. She has a high school education. (*Id.* at 104.) She has past work experience as a slot attendant, credit analyst, manager of a rental auto facility, bookkeeper, and warranty clerk. (*Id.* at 108-12.)

In her application for DIB, Plaintiff alleges an inability to work as of March 26, 2001, due to "horrible" and "distressing" back, leg, and neck pain. (*Id.* at 98, 126.) Plaintiff also states that on a typical day she washes dishes; takes her children to school; makes the bed; does the laundry; feeds the dogs; picks her children up from school; helps them with their homework; and gets them ready for bed. (*Id.* at 137.) She also dusts once a week, vacuums a little, and shops for food. (*Id.* at 138-39.)

1. Medical Evidence

Plaintiff was involved in a motor vehicle accident on March 26, 2001. (*Id.* at 160.) She was taken to the Bayhealth Medical Center emergency room with complaints of left elbow, knee, back, and neck pain. (*Id.* at 157.) She was prescribed Tylenol for pain in conjunction with ice and heat treatment. (*Id.* at 162.)

In March 2001, Plaintiff saw Brian J. Horn, M.D., because of her injuries from the car accident. (*Id.* at 180.) She saw Dr. Horn again in April 2001. (*Id.* at 181.) Dr. Horn noted that Plaintiff's hands were still going numb, her neck and back were bothering her, and she continued to suffer paraspinal and cervical muscle spasms. (*Id.*) Plaintiff returned to Dr. Horn again the next week, complaining of soreness in her arm, neck and back. (*Id.* at 179.)

Plaintiff attended physical therapy with Smith & Brown PT several times from April 2001 to June 2001. (*Id.* at 204-13.) In June, a therapist noted that Plaintiff exhibited range of motion ("ROM") in her trunk of 25% and cervical ROM of 25% in most planes. (*Id.* at 204.) Segmental mobility was most restricted at the transition areas of lumbopelvic/lumbosacral and cervical/thoracic. (*Id.* at 204.) Left shoulder ROM was limited especially when reaching behind her back. (*Id.*)

In April 2001, Plaintiff saw Eric T. Schwartz, M.D., an orthopedist, for complaints of neck and lower back pain resulting from the car accident. (*Id.* at 200.) Dr. Schwartz diagnosed her with cervical thoracic strain, lumbosacral strain and degenerative disc disease of the lumbar spine. (*Id.*) He prescribed physical therapy and medication, including Vioxx and Xanaflex. (*Id.*)

An MRI of Plaintiff's lumbar spine performed in May 2001 showed mild hypertrophic changes at L3-4 and L4-5. (*Id.* at 203.) The MRI displayed no disc protrusion, stenosis or neural forminal narrowing at any lumbar level. (*Id.* at 203.) An MRI of Plaintiff's cervical spine performed in June 2001 showed a moderate left paracentral disc herniation at C6-7 with mild impression on the cord and compromise of the left C7 nerve root, and mild bulging at C5-6 without significant stenosis. (*Id.* at 202.)

In May 2001, Plaintiff saw Dr. Schwartz again, complaining of occasional bilateral hand numbness. (*Id.* at 199.) Motor and sensory examinations of both the cervical and lumbar spines were normal. (*Id.*) Dr. Schwartz recommended that Plaintiff discontinue therapy and commence chiropractic treatment. (*Id.*) He also stated that Plaintiff was capable of light to medium work with no lifting over twenty pounds. (*Id.*) On several

other occasions, Dr. Schwartz repeated his opinion that Plaintiff was capable of performing light to medium work. (*Id.* at 182, 195, 196, 197, 198.)

An EMG performed in August 2001 revealed no evidence of cervical radiculopathy but showed signs of right median neuropathy at the wrist consistent with right mild carpal tunnel syndrome. (*Id.* at 196, 262-63.) The EMG report stated there was an "abnormal study of the right upper extremity." (*Id.* at 263.) In February 2002, Michael Cho, M.D., examined Plaintiff for complaints of severe neck pain and low back pain. (*Id.* at 264.) Motor examination revealed full strength in all muscle groups. (*Id.* at 265.) Dr. Cho diagnosed neck and low back pain of a musculoskeletal etiology and recommended continued conservative therapy. (*Id.* at 265.)

In April 2002, a state agency physician found that Plaintiff was capable of occasionally lifting twenty pounds and frequently lifting ten pounds; she was capable of standing, walking and sitting for about six hours in an eight-hour work day; she was unlimited in her ability to push/ and/or pull; and she had no manipulative limitations and occasional postural limitations. (*Id.* at 231-35.) In June 2002, Joseph B. Keyes, Ph.D., performed a psychological evaluation of Plaintiff. (*Id.* at 218.) He noted that Plaintiff was independent in her self-care skills and was able to perform some household/domestic tasks and chores. (*Id.* at 219-20.) Dr. Keyes diagnosed dysthymic disorder. (*Id.* at 220.) In June 2002, a state agency psychologist opined that Plaintiff was capable of performing low-stress work. (*Id.* at 240.)

2. The ALJ's Hearing

At the hearing before the ALJ, Plaintiff testified that her hands go to sleep if she sits, stands or lays for too long and that she has trouble holding things. (*Id.* at 33.) She

also claimed that she has difficulty typing due to problems with her fingers. (*Id.* at 37, 38.) She said that her lower back hurts when she tries to bend. (*Id.* at 34.) She has discomfort in her lower back any time she sits or stands for too long. (*Id.* at 35.) Her neck is sore and it hurts her to hold her head straight up. (*Id.* at 34.) She also stated that the only medication she takes for pain is aspirin, and she does not take her prescribed medicines because they make her sleepy and prevent her from concentrating. (*Id.* at 39.)

According to Plaintiff, she has trouble going up stairs because of left knee problems. (*Id.* at 40.) Her husband and children do most of the cooking and cleaning. (*Id.* at 40.) She does a little vacuuming and needs assistance doing the laundry. (*Id.* at 40.) She also testified that she uses a special stick to pick things up from the floor. (*Id.* at 41.)

Also, a VE testified at the hearing concerning Plaintiff's ability to work. (*Id.* at 53.) First, the ALJ asked the VE to assume an individual of Plaintiff's age, education, and experience, who was limited to light work in a low-stress environment. (*Id.* at 54.) The VE testified that such an individual could perform work as a small parts assembler and office cleaner. (*Id.* at 55.) The ALJ also asked the VE, whether, if Plaintiff's allegations of hand numbness were believed and the condition ultimately prevented her from doing repetitive tasks, she would still be capable of performing these jobs. (*Id.* at 53.) The VE answered no. (*Id.*) In finding Plaintiff not disabled, the ALJ concluded that Plaintiff's complaint of hand numbness was not credible. (*Id*. at 18.)

III. STANDARD OF REVIEW

Courts apply 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.* The entire record is pertinent to that review. *See 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 I am bound by those factual findings. *Plummer*, 186 F.3d at 427.

IV. DISCUSSION

Under the regulations, an ALJ must perform a five-step evaluation to determine if a claimant is "disabled." *See* 20 C.F.R. § 404.1520. The evaluation involves the following sequential analysis:

> If the claimant is performing substantial gainful work, she is not disabled.
>
> If the claimant is not performing substantial gainful work, her impairment(s) must be severe before she can be found to be disabled.
>
> If the claimant is not performing substantial gainful work and has a severe impairment (or impairments) that has lasted or is expected to last for a continuous period of at least twelve months, and her

> impairment (or impairments) meets or medically equals a listed impairment contained in Appendix 1, Subpart P, Regulation No. 4, the claimant is presumed disabled without further inquiry.
>
> If the claimant's impairment (or impairments) does not prevent her from doing her past relevant work, she is not disabled.
>
> Even if the claimant's impairment or impairments prevent her from performing her past relevant work, if other work exists in significant numbers in the national economy that accommodates her residual functional capacity and vocational factors, she is not disabled.

20 C.F.R. § 404.1520; *see also Plummer v. Apfel*, 186 F.3d 422, 428-29 (3d Cir. 1999).

In this case, Plaintiff argues that the ALJ's decision should be reversed and the matter remanded for further proceedings because, at step five of the analysis, the ALJ 1) failed to demonstrate that Plaintiff could perform other work in the national economy, and 2) failed to properly evaluate the credibility of Plaintiff's subjective complaints in determining her residual functional capacity. (D.I. 11 at 7-24.) The Commissioner contends that the ALJ's determination that Plaintiff had a residual functional capacity to perform light work at a low stress level, and hence was able to perform other work as a small parts assembler and office cleaner, was supported by substantial evidence. Therefore, Defendant argues that the ALJ's decision denying Plaintiff's application for DIB should be upheld. (D.I. 14 at 11-15.)

A. Determination of Plaintiff's Ability to Perform Other Work

First, Plaintiff insists that the ALJ failed to give adequate recognition to "severe limitations to her hands" when instructing the VE. (D.I. 11 at 17-18.) The record indicates that the ALJ, in determining whether Plaintiff was capable of working as a small parts assembler and office cleaner, specifically asked the VE if Plaintiff was

precluded from these jobs, "*if* [] found that because of hand numbness she could not do repetitive tasks." (D.I. 7 at 55 (emphasis added).) The VE replied that such a limitation would ultimately preclude Plaintiff from performing these jobs. (*Id.*) As a result, Plaintiff believes this case should be remanded due to a lack of evidence supporting the ALJ's finding that Plaintiff was capable of performing other work in the national economy based on her ability to work as a small parts assembler and office cleaner. (D.I. 11 at 17-18.) Defendant contends, on the other hand, that the ALJ was justified in finding Plaintiff's "fine upper extremity movements [only] somewhat restricted" (*id.*), and was not required to impose any resulting work-related limitations. (D.I. 14 at 12.) Thus, Defendant argues that the ALJ correctly disregarded the VE's testimony concerning Plaintiff's limited ability to work due to hand numbness. (*Id.*)

In light of the record as a whole, Defendant's argument is most persuasive. The ALJ was not required to give significant weight to Plaintiff's complaints of hand numbness because the record shows that it did not prevent her from doing repetitive tasks. Significantly, Dr. Schwartz, Plaintiff's treating orthopedist, repeatedly opined that she was capable of performing work at least at a light level of exertion. (D.I. 7 at 182, 195-99.) An EMG performed in August 2001 suggested only "right mild carpal tunnel syndrome." (*Id.* at 196, 262-63.) As late as June 2002, Dr. Keyes mentioned that Plaintiff was independent in her self-care skills and was capable of performing some activities of daily living. (*Id.* at 219-20.) A state agency physician also concluded upon examination of Plaintiff's medical records that Plaintiff suffered no manipulative limitations whatsoever. (*Id.* at 233.)

In addition, Plaintiff's hand numbness was not even severe enough that she felt the need to mention it as a physical limitation in her DIB application (*id.* at 98), and the problem was never severe enough to warrant any medications or treatments besides aspirin (*id.* at 33). Plaintiff's medical records note that at times she did subjectively complain to her doctors of hand numbness. (*Id.* at 181, 214, 218, 262). However, no objective evidence has been offered to support her alleged hand problems. In light of substantial evidence, the ALJ was not required to impose any work-related limitations concerning Plaintiff's hand complaints.

B. Evaluation of Plaintiff's Subjective Complaints

Second, Plaintiff argues that the ALJ improperly evaluated her subjective complaints of back, leg, and neck pain. (D.I. 11 at 18-24.) Plaintiff contends that the ALJ's determination that "[c]laimant's perceived functional limitations are not supported by the objective evidence of record" is "conclusory" under Social Security Ruling 96-7p. (*Id.* at 19-20.) Conversely, Defendant argues that the ALJ properly assessed Plaintiff's credibility under the Act and the ALJ's decision should consequently be affirmed. (D.I. 14 at 14-15.)

Under the Act, there is no doubt that an ALJ is responsible for making credibility determinations as to a Plaintiff's subjective complaints, *see Van Horn v. Schweiker*, 717 F.2d 871, 873 (3d Cir. 1983) (stating "the ALJ is empowered to evaluate the credibility of witnesses") (internal citations omitted); and complaints of pain may be discounted as not credible if grossly disproportionate to other medical findings. *Murphy v. Schweiker*, 524 F. Supp. 228, 232 (E.D. Pa. 1981) (citing *Baith v. Weinberger*, 378 F.Supp. 596

(E.D. Pa. 1974). On the other hand, Plaintiff correctly asserts that Ruling 96-7p requires an ALJ to provide specific reasons when making credibility determinations.[2] It is generally understood, however, that the ALJ's determination is entitled to deference when the ALJ does provide specific reasons. *See, e.g.*, *Murphy*, *524* F. Supp. 232 . Moreover, the determination is not conclusory if supported by substantial evidence. *See Van Horn,* 717 F.2d at 873 ("an ALJ's findings of fact must be taken as conclusive when supported by 'substantial evidence'").

In the instant case, the ALJ did provide specific reasons for discrediting Plaintiff's subjective complaints. The ALJ specifically states: "The claimant's allegations regarding her limitations are not fully credible for the reasons set forth in the body of the decision." (I.D. 7 at 21). Standing alone, this statement could be considered conclusory under Ruling 96-7p. *See* SSR 96-7p. The body of the ALJ's decision supplements this conclusion, however, by providing that "the claimant's perceived functional limitations are not supported by the objective evidence of record . . . [or] the criteria of 20 C.F.R. § 404.1527 . . . [or] Social Security Ruling 96-7p." (*Id.* at 18.) The ALJ's opinion also extensively discusses the objective evidence of record that her decision was based on.

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[2] Ruling 96-7p states:

> it is not sufficient to make a conclusory statement that "the individual's allegations have been considered" or that "the allegations are (or are not) credible." It is also not enough for the adjudicator simply to recite the factors that are described in the regulations for evaluating symptoms. The determination or decision must contain specific reasons for the finding on credibility, supported by the evidence in the case record, and must be sufficiently specific to make clear to the individual and to any subsequent reviewers the weight the adjudicator gave to the individual's statements and the reasons for that weight.

SSR 96-7p., *effective* July 2, 1996.

(*Id.* at 13-20.) In light of the ALJ's thorough opinion, I cannot conclude that her explanation for discrediting Plaintiff was merely conclusory under Ruling 96-7p.

Furthermore, the ALJ's decision to reject Plaintiff's testimony as lacking credibility is supported by substantial evidence. Plaintiff's claim of disabling back, neck, and leg pain is not supported by the record as a whole. Although Plaintiff testified to disabling pain, her treating orthopedist repeatedly stated that she was capable of performing work at least at a light level of exertion. (*Id.* at 182, 195-99.) Further, her DIB application indicates that she enjoys a relatively healthy pattern of daily living. On a typical day, Plaintiff admitted that she washes dishes, takes her children to school, makes the bed, does the laundry, feeds the dogs, vacuums, picks her children up from school, helps them with their homework, and gets them ready for bed. (*Id.* at 137.) She also testified that she dusts once a week, vacuums a little, and shops for food. (*Id.* at 138-39.) The ALJ could properly consider that lifestyle to be inconsistent with Plaintiff's claim of disabling pain in her back, legs, and neck.

Plaintiff's credibility is also suspect considering that, despite her alleged disabling pain, she was only on a conservative medication regime. As noted above, Plaintiff testified that the only thing she took for pain was aspirin. (*Id.* at 39.) She failed to take prescribed medicine only because, as she testified, "it makes [her] sleepy and [she] can't . . . concentrate." (*Id.*) Almost one year after her alleged disability began, Dr. Cho acknowledged that Plaintiff's condition was not severe enough to warrant surgery, but only required "conservative" therapy. (*Id.* at 265.) This evidence undercuts Plaintiff's allegations of such "horrible" and "distressing" pain.

In light of the record as a whole, the ALJ's credibility determination is justified under the Act and deserves conclusive weight in this case.

V. CONCLUSION

For the reasons stated, the court will grant Defendant's motion (D.I. 14) and will deny Plaintiff's motion (D.I. 11). An appropriate order will issue.

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FOR THE DISTRICT OF DELAWARE

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ORDER

For the reasons set forth in the Court's Memorandum Opinion issued today,

IT IS HEREBY ORDERED that Defendant's cross motion for summary judgment (D.I. 14) is GRANTED, and Plaintiff's motion for summary judgment (D.I. 11) is DENIED.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

November 2, 2004
Wilmington, Delaware