

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BEVERLY ESCHENBACH,)
)
 Plaintiff,)
)
 v.) Civ. No. 04-313-SLR
)
 SECRETARY OF HEALTH AND)
 HUMAN SERVICES)
)
 Defendant.)

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Delaware. Counsel for Plaintiff.

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Administration, Philadelphia, Pennsylvania.

MEMORANDUM OPINION

Dated: June 7, 2004
Wilmington, Delaware


ROBINSON, Chief Judge

I. INTRODUCTION

Plaintiff Beverly Eschenbach filed this action against defendant the Secretary of Health and Human Services on May 14, 2004. (D.I. 1) Plaintiff seeks review of an Administrative Law Judge's (ALJ) decision pursuant to § 205(g) of the Social Security Act, as amended in 42 U.S.C. § 405(g), denying her claim for disability insurance benefits under Title II of the Social Security Act. 42 U.S.C. § 401-433. Currently before the court are the parties' cross motions for summary judgment. (D.I. 10, 13) For the reasons set forth below, the court denies plaintiff's motion and grants defendant's motion.

II. BACKGROUND

A. Procedural History

On November 14, 2000, plaintiff filed an application for disability insurance benefits under Title II of the Social Security Act, 42 U.S.C. §§ 401-433. (D.I. 8 at 140-42) Plaintiff requested benefits for injuries she allegedly suffered as a result of an accident while working with a horse. (Id. at 54-55) Plaintiff's complaint was denied both initially and upon reconsideration. (Id. at 87-90, 93-96) Plaintiff requested, and subsequently received, a hearing before an ALJ, which was held on June 11, 2002.¹ (Id. at 44) On September 6, 2002, the ALJ

¹ The transcript incorrectly lists the date of the hearing as June 11, 2003. (D.I. 12 at 1)

issued a decision denying plaintiff's claim. (Id. at 18-28) In considering the entire record, the ALJ found the following:

1. The claimant meets the nondisability requirements for a period of disability and Disability Insurance Benefits set forth in Section 216(i) of the Social Security Act and is insured for benefits through the date of this decision.
2. The claimant has not engaged in substantial gainful activity since the alleged onset of disability.
3. The claimant has an impairment or a combination of impairments considered "severe" based on the requirements in the Regulations 20 CFR § 404.1520(b).
4. These medically determinable impairments do not meet or medically equal one of the listed impairments in Appendix 1, Subpart P, Regulation No. 4.
5. The undersigned finds the claimant's allegations regarding her limitations are not totally credible for the reasons set forth in the body of the decision.
6. The undersigned has carefully considered all of the medical opinions in the record regarding the severity of the claimant's impairments (20 CFR § 404.1527).
7. The claimant has the following residual functional capacity: sit six to eight hours in an eight-hour work day, stand and walk up to two hours, lift weights of up to ten pounds frequently, perform tasks requiring bilateral manual dexterity, and sustain physical and mental activities without limitation secondary to mild pain.
8. The claimant's past relevant work as a dispatcher for a truck maintenance company did not require the performance of work-related activities precluded by her residual functional capacity (20 CFR § 404.1565).
9. The claimant's medically determinable degenerative disc and degenerative joint disease of the cervical spine with stenosis and myelopathy, mild bilateral carpal tunnel syndrome, and plantar fasciitis do not prevent her from performing her past relevant work.
10. The claimant was not under a "disability" as defined in the Social Security Act, at any time through the date of the decision (20 CFR § 404.1520(e)).

(Id. at 27-28) On April 9, 2004, the Appeals Council denied plaintiff's request for review, and the ALJ's decision became

final. (Id. at 7-10) Pursuant to 42 U.S.C. § 405(g), plaintiff now requests that this court review the ALJ's decision.

B. Facts Evinced at the Administrative Law Hearing

Plaintiff was born on November 18, 1950. (Id. at 45) She has an eleventh grade education and was last employed in 1998. (Id. at 47-48) Around 1990 or 1991, plaintiff was injured while working with a horse. (Id. at 54) According to plaintiff, as she removed the horse's halter it smashed its head down on plaintiff's head, causing a severe concussion, a C-1 hairline crack and occipital neuralgia with cervical vertigo. (Id. at 54-55) Subsequent to this injury, plaintiff claims to have experienced increasing weakness in her hands, arms and shoulders (id. at 55, 56, 62-63); migraine headaches (id. at 55, 56, 60-61); neck pain (id. at 56, 57, 65-66); memory problems (id. at 66); poor energy levels (id. at 62); problems maintaining her balance (id. at 64); constant muscle spasms (id. at 52, 67); and foot problems (id. at 58-60). Plaintiff allegedly experiences pain every day. (Id. at 56) Because of her ailments plaintiff claims to have trouble sleeping, and has given up piano playing, aerobics classes and choir. (Id. at 61-62, 63, 64)

In an effort to treat her ailments, plaintiff participated in physical therapy (id. at 50, 51, 57); underwent surgery on her spine (id. at 50-51, 63, 64); put ice on her neck (id. at 58); and took numerous medications such as amitriptyline, Tylenol, and

muscle relaxers (id. at 50, 52, 55, 57, 60, 66).

Since her alleged injury, plaintiff has had five separate jobs. Of these jobs, plaintiff worked the longest as a dispatcher at Truck Maintenance Services. (Id. at 50) Plaintiff stopped working at Truck Maintenance Services because the company was sold. (Id. at 54) Plaintiff also worked at a bridal shop for about a week, but quit because she could not lift the gowns. (Id. at 49) Plaintiff worked at a clothing store for two or three months, but once again quit because she could not put clothing on the racks. (Id.) The Department of Motor Vehicles employed plaintiff for three months. (Id.) However, plaintiff terminated her employment there because she kept dropping licenses and could not take photographs for licenses. (Id.) Finally, plaintiff worked for eight to ten weeks as a dispatcher for a plumbing company. (Id. at 48-49) Plaintiff quit this job because she could not hold phones or pens long enough to do her work. (Id.)

Plaintiff claims she can drive, but only for short distances. (Id. at 46) She shops for groceries, but her husband has to carry the bags. (Id.) Plaintiff has trouble drying her hair in the morning and she allegedly has difficulty walking longer than a few city blocks at a time. (Id. at 53, 59) She claims she can only write or hold a phone for a few minutes before her hands go numb. (Id. at 64) As far as household

chores are concerned, plaintiff can put dry clothes into a washing machine, but her husband must remove the clothes after they have been washed. (Id. at 46-47) She puts dishes in the dishwasher, but her husband takes care of heavy dishes. (Id. at 47) Plaintiff helps prepare meals, and helps to make the bed. (Id.) She does not do any yard work, such as mowing the lawn, and does not vacuum. (Id. at 46-47)

C. Medical Evidence

West Chester Family Practice examined plaintiff several times between February of 1996 and May of 1998. (Id. at 252-56) Reports of these visits indicate that plaintiff experienced right shoulder pain which radiated down her arm, mid-thoracic pain, herniated or bulging discs, muscle spasms, heel pain, and back and neck pain. (Id.) The reports also noted that plaintiff has a history of arthritis and fibromyalgia. (Id. at 253)

Dr. Jeffrey Yablon is one of several doctors who examined plaintiff. (Id. at 232-33) According to Dr. Yablon, plaintiff complained of pain radiating from the right side of her head down her right arm into her hand, but she denied any weakness in her arms or hands. (Id. at 232) Dr. Yablon interpreted a March 1995 Magnetic Resonance Image (MRI) of plaintiff as showing mild to moderate cervical stenosis. (Id.) Dr. Yablon's tests did find trace weakness in plaintiff's right grip strength, which warranted a cervical myelogram/CT and an EMG/NCV study. (Id. at

233) He felt plaintiff "will require [a] decompressive posterior laminectomy or anterior cervical diskectomies to treat her spinal cord compression." (Id.)

On July 29, 1996, The Brandywine Radiology Group performed a MRI on plaintiff. (Id. at 234) The MRI indicated cervical spondylosis with canal stenosis. However, a reviewing physician concluded that this was a somewhat equivocal finding since it was only seen clearly on one of the axial scans. (Id.)

Dr. Samuel Lyness of Brandywine Neurosurgical Associates examined plaintiff on December 11, 1996. (Id. at 235) At this visit plaintiff complained of pain in her neck and of headaches. (Id.) Dr. Lyness noted that plaintiff had a full range of motion in her neck and extremities. (Id.) He found cervical spondylosis and cervical stenosis and recommended that plaintiff strongly consider an anterior cervical diskectomy. (Id.) However, "[b]ecause she has no evidence of neurological deficit, the timing of the procedure would not be crucial." (Id.) Furthermore, Dr. Lyness believed that plaintiff's lower back pain was due to arthritis and that neck surgery would not relieve the pain. (Id.)

On January 27, 1997, plaintiff complained to Dr. Joan Marie Von Feldt of stiffness when she woke up and pain in her shoulders, back, left hip and both wrists. (Id. at 236-37) Dr. Von Feldt noted plaintiff had some cervical disc disease and

recurrent occipital neuralgia and that she had previously been diagnosed with fibromyalgia. (Id.) She found plaintiff suffered from fibromyalgia with significant sleep disturbance. (Id. at 237)

Mark Reitz, a physical trainer at The Atlantic Health Group, found plaintiff had a limited cervical range of motion, that her low back exam was benign, and that her upper and lower extremity strength was within normal limits. (Id. at 241) Three months later Mr. Reitz notified one of plaintiff's doctors that he felt plaintiff had achieved the maximum benefit from supervised care. (Id. at 240) Several months later plaintiff returned to Mr. Reitz because she started a new job which placed more stress on her body. (Id. at 238) Mr. Reitz found that plaintiff's trunk range of motion was generally intact. (Id.)

On April 11, 1998, the Chester County Hospital Department of Radiology performed an MRI on plaintiff. (Id. at 245) Plaintiff had no signal abnormalities in her cervical spinal cord but two of her discs were moderately narrowed. (Id.) Plaintiff had moderate to severe posterior spondylitic ridging at her narrowed disc spaces. (Id.)

Kyle Brooks, a physical trainer at The Center for Physical Therapy & Sports Medicine, reported that plaintiff complained of pain in her heel and had trouble with all forms of walking. (Id. at 247) Mr. Brooks observed plaintiff walked with a major limp.

(Id.) According to Mr. Brooks, plaintiff appeared to have "a little bit of Achilles tendonitis and some severe plantar fasciitis." (Id. at 248)

Dr. Stephen Dante examined plaintiff on May 26, 1998 and noted she was still having persistent problems with her neck and right upper extremity despite trying several non-surgical techniques and using a spectrum of medications. (Id. at 249) Dr. Dante noted that although plaintiff had cut back on her activities, her condition had worsened. (Id.) He also noted that a recent MRI scan showed continued presence of spondylitic disease, but that there was no clear-cut compromise of nerve roots and no areas of cord compression. (Id.) Dr. Dante felt "surgery would be predicated by documentation of clear-cut nerve compression[.]" (Id.)

Dr. David A. Lenrow found plaintiff had a full functional range of motion at all joints and a full range of motion in her hips. (Id. at 260) Dr. Lenrow believed that plaintiff had spondylosis of the cervical spine and recommended an EMG and nerve conduction studies to determine nerve root impingement. (Id. at 261) In a follow-up visit, Dr. Lenrow concluded that plaintiff's major complaint was tendonitis of her shoulder. (Id. at 257)

Delaware DDS physicians performed four Residual Functional Capacity Assessments (RFC Assessments) on plaintiff from

September of 1998 to July of 2001. (Id. at 263-71, 275-82, 312-21, 337-46) All of these assessments found plaintiff could occasionally lift 20 pounds, frequently lift 10 pounds, stand or walk six hours in an eight-hour workday, and sit six hours in an eight-hour workday. (Id. at 264, 276, 313, 338)

Dr. Peter Coveleski noted that plaintiff had trouble walking, lost her balance, and that her grip was barely noticeable on the right side, but that plaintiff also had a normal range of motion and did not have any muscle spasms. (Id. at 272-74) Dr. Coveleski asked plaintiff to perform various activities to test her physical abilities, but viewed plaintiff's effort in these activities as "suspect." (Id. at 274)

Beebe Medical Center performed an MRI on plaintiff's cervical spine on March 13, 2000. (Id. at 307) This MRI showed moderately severe degenerative disc disease. (Id.) The MRI showed no evidence of nerve root impingement. (Id.)

Dr. Paul Peet noted that plaintiff was weak in her left upper extremity. (Id. at 336) He also noted that the March 13, 2000 MRI indicated that plaintiff had moderate cervical disease, and that a CT myelogram of plaintiff did not suggest that surgical intervention was required. (Id. at 329, 333) According to Dr. Peet, a May 21, 2001 MRI of the cervical spine indicated evidence of moderate spinal canal stenosis. (Id. at 322) Dr. Peet came to the conclusion that plaintiff exhibited cervical

degenerative disc disease, degenerative joint disease, and cervical canal stenosis. (Id. at 336)

On March 27, 2000, Dr. Bizhan Aarabi examined plaintiff. (Id. at 352-53) Dr. Aarabi concluded that plaintiff suffered from a mild case of radiculopathy and also possibly carpal tunnel syndrome. (Id. at 353) Dr. Aarabi noted that a March 13, 2000 MRI of plaintiff showed essentially no evidence of radicular compression and no evidence of cord compression. (Id. at 351)

Dr. E. Francois Aldrich noted that plaintiff had numbness in both hands and legs and felt unsteady on her feet. (Id. at 383) Plaintiff complained to Dr. Aldrich that her piano skills had deteriorated in the previous months. (Id.) Dr. Aldrich found plaintiff to be spastic, although he was unsure of the exact etiology. (Id. at 383-84) After conducting a myelogram and a CT scan on plaintiff, Dr. Aldrich found mild degenerative disc disease but no canal stenosis. (Id. at 379) He found "absolutely no cord compression whatsoever at any level." (Id. at 378) In October of 2001, plaintiff's condition worsened. (Id. at 376) Dr. Aldrich concluded that "it is probably a reasonable approach at this stage to perform surgery" (Id. at 377) On November 20, 2001, Dr. Aldrich performed a cervical fusion. (Id. at 372-73) Subsequent to this procedure plaintiff's pain decreased, but the numbness and tingling in her hands persisted. (Id. at 369) Dr. Aldrich concluded that

plaintiff exhibited bilateral carpal tunnel syndrome and did not evidence cervical radiculopathy. (Id. at 369-70) On March 18, 2002, Dr. Aldricht performed a cervical myelogram on plaintiff. (Id. at 367) He concluded that plaintiff exhibited mild posterior spondylolytic ridging that did not impress upon the cervical cord. (Id. at 368)

Dr. Christopher Baldt, plaintiff's chiropractor, examined plaintiff on December 30, 2000, and concluded that a significant decrease in normal cervical motion and increased muscle spasms incapacitated plaintiff and made her unable to work. (Id. at 311)

Plaintiff complained to Dr. Julius Zant of difficulty driving, typing, and sleeping. (Id. at 359) Dr. Zant observed that plaintiff had mild to moderate stenosis. (Id. at 359-60) He found it difficult to assess plaintiff's motor skills "as I'm not certain she's always giving the maximal effort" (Id. at 360) Dr. Zant's examination of an MRI of plaintiff led him to conclude that plaintiff had cervical degeneration. (Id. at 358) Dr. Zant interpreted a discogram to reveal that plaintiff had a major discopathic pain mechanism. (Id. at 357)

Dr. Otto Medinilla reviewed a May 21, 2001 MRI of plaintiff and concluded that it showed spondylitic changes and narrowing of the spinal canal. (Id. at 362) Plaintiff told Dr. Medinilla that "she has been having slowness of the right hand when she

plays the piano and even her teacher noticed it." (Id. at 362) Dr. Medinilla found plaintiff's right hand was significantly weaker and slower than her left. (Id.) He concluded plaintiff had cervical radiculopathy, but felt that "cervical spine surgery was not definitely indicated now" (Id. at 364)

On April 12, 2002, plaintiff complained to Dr. Kenneth Henschel that her headaches got worse during her aerobics classes. (Id. at 386) Plaintiff did not complain of a total relapse of her symptoms, but did describe a gradual worsening. (Id. at 385) Dr. Henschel concluded that plaintiff's condition improved after her cervical spine surgery, and that there was little suspicion for a demyelating process. (Id. at 387)

D. ALJ Decision

After determining that plaintiff was not engaged in substantial gainful work, that she suffered severe impairments, and that these severe impairments did not meet or medically equal any of the listed impairments presumed to be severe enough to preclude any gainful work, the ALJ then considered whether plaintiff retained the residual functional capacity to perform the requirements of her past relevant work. (Id. at 22-26) He began by evaluating plaintiff's written statements and testimony. (Id. at 26) The ALJ did not find plaintiff to be fully credible as to the frequency and severity of her symptoms or as to the extent of her functional limitations. (Id. at 26) He also did

not find the medical evidence overcame his doubt of plaintiff's credibility. (Id.) The ALJ found that plaintiff retained a residual functional capacity to sit six to eight hours in an eight-hour work day and to lift weights of up to ten pounds frequently. (Id.) The ALJ also found that plaintiff's work as a dispatcher entailed sitting up to eight hours a day and lifting weights less than ten pounds. (Id. at 27) The ALJ concluded that plaintiff could perform her past work as a dispatcher and, therefore, was not under a disability as defined by the Social Security Act.² (Id.)

III. STANDARD OF REVIEW

"The findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, [are] conclusive." 42 U.S.C. § 405(g). The court will set aside the Commissioner's denial of plaintiff's claim only if it is "unsupported by substantial evidence." 5 U.S.C. § 706(2)(E). The Supreme Court has held that

"substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Accordingly, it "must do more than create a suspicion of the existence of the fact to be established. . . . It must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion

² Because the ALJ determined plaintiff retained the residual functional capacity to perform the requirements of her past work, he did not look to see whether work existed in significant numbers in the national economy to accommodate plaintiff's residual functional capacity. See 20 C.F.R. § 404.1520(a)(3).

sought to be drawn from it is one of fact for the jury."

Universal Camera Corp. v. NLRB, 340 U.S. 474, 477 (1951) (quoting NLRB v. Columbian Enameling & Stamping Co., 306 U.S. 292, 300 (1939)).

The Supreme Court also has embraced this standard for determining the availability of summary judgment pursuant to Federal Rule of Civil Procedure 56:

The inquiry performed is the threshold inquiry of determining whether there is the need for a trial – whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party.

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250-51 (1986) (internal citations omitted). Thus, in the context of judicial review under § 405(g),

[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 – particularly certain types of evidence (e.g., that offered by treating physicians) – or if it really constitutes not evidence but mere conclusion.

Brewster v. Heckler, 786 F.2d 581, 584 (3d Cir. 1986) (quoting Kent v. Schweiker, 710 F.2d 110, 114 (3d Cir. 1983)).

"Despite the deference due to administrative decisions in disability benefit cases, 'appellate courts retain a responsibility to scrutinize the entire record and to reverse or remand if the [Commissioner]'s decision is not supported by

substantial evidence.'" Morales v. Apfel, 225 F.3d 310, 317 (3d Cir. 2000) (quoting Smith v. Califano, 637 F.2d 968, 970 (3d Cir. 1981)). "A district court, after reviewing the decision of the [Commissioner] may, under 42 U.S.C. 405(g) affirm, modify, or reverse the [Commissioner]'s decision with or without a remand to the [Commissioner] for rehearing." Podeworny v. Harris, 745 F.2d 210, 221 (3d Cir. 1984).

IV. DISCUSSION

A. Standards for Determining Disability

"Disability" is defined in the Social Security Act as an 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. § 423(d)(1)(A). The Act also specifies that a person must "not only [be] unable to do his previous work but [must be unable], considering his age, education, and work experience, [to] engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work." 42 U.S.C. § 423(d)(2)(A). The Commissioner makes this determination based upon the regulations promulgated by the Social Security

Administration that set out a five-step sequential evaluation process. See 20 C.F.R. §§ 404.1520, 416.920. The Third Circuit concisely outlined this process in Plummer v. Apfel, 186 F.3d 422 (3d Cir. 1999).

In order to establish a disability under the Social Security Act, a claimant must demonstrate there is some "medically determinable basis for an impairment that prevents him from engaging in any 'substantial gainful activity' for a statutory twelve-month period." A claimant is considered unable to engage in any substantial activity "only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy."

The Social Security Administration has promulgated regulations incorporating a sequential evaluation process for determining whether a claimant is under a disability. In step one, the Commissioner must determine whether the claimant is currently engaging in substantial gainful activity. If a claimant is found to be engaged in substantial activity, the disability claim will be denied. In step two, the Commissioner must determine whether the claimant is suffering from a severe impairment. If the claimant fails to show that her impairments are "severe", she is ineligible for disability benefits.

In step three, the Commissioner compares the medical evidence of the claimant's impairment to a list of impairments presumed severe enough to preclude any gainful work. If a claimant does not suffer from a listed impairment or its equivalent, the analysis proceeds to steps four and five. Step four requires the ALJ to consider whether the claimant retains the residual functional capacity to perform her past relevant work. The claimant bears the burden of demonstrating an inability to return to her past relevant work.

If the claimant is unable to resume her former occupation, the evaluation moves to the final step. At

this stage, the burden of production shifts to the Commissioner, who must demonstrate the claimant is capable of performing other available work in order to deny a claim of disability. The ALJ must show there are other jobs existing in significant numbers in the national economy which the claimant can perform, consistent with her medical impairments, age, education, past work experience, and residual functional capacity. The ALJ must analyze the cumulative effect of all the claimant's impairments in determining whether she is capable of performing work and is not disabled. The ALJ will often seek the assistance of a vocational expert at this fifth step.

Id. at 427-28 (internal citations omitted). If the Commissioner finds that a claimant is disabled or not disabled at any point in the sequence, review does not proceed to the next step. See 20 C.F.R. § 404.1520(a)(3).

B. Application of the Five-Step Test

In the case at bar, plaintiff challenges the ALJ's application of step four. (D.I. 12 at 19-24) First, plaintiff argues that the ALJ erred in his evaluation of plaintiff's residual functional capacity. (Id. at 19-23) Second, plaintiff claims that the ALJ erred in his finding that plaintiff could perform her past relevant work. (Id. at 23-24)

1. Residual function capability

There is substantial evidence to support the ALJ's finding that plaintiff was not fully credible as to the frequency and severity of her symptoms or as to the extent of her functional limitations. The ALJ noted that, despite plaintiff's alleged foot pain and balance problems, she did not use a cane or

crutches to ambulate; despite her reported lifting restrictions and hand weakness, her doctors did not prescribe surgery for her bilateral carpal tunnel syndrome. (D.I. 8 at 26) Plaintiff's treatment, other than her November 2001 surgery, was conservative in nature. (Id. at 235, 238-41, 247-48, 357-61) Plaintiff shops, cooks, drives her car, reads, watches television, takes walks, visits with her sister and, until shortly before her hearing, sang in a choir, played piano, and participated in aerobics classes. (Id. at 46-47, 61-62, 63, 64, 383, 362, 386).³ Two of plaintiff's doctors noted that plaintiff did not give maximum effort in physical tests conducted during their examination of her. (Id. at 273-74, 360)

There is also substantial evidence supporting the ALJ's conclusion that the medical evidence did not overcome the ALJ's doubts as to plaintiff's credibility. Plaintiff's physicians were not in agreement as to the need for surgery. (Id. at 235, 249, 329, 364, 377) Plaintiff's pain decreased after her surgery. (Id. at 369, 387) A March 2002 CT scan and myelogram showed no spinal cord compression. (Id. at 367) Additional diagnostic studies ruled out a demyelinating process and revealed virtually normal sensation and very mild upper extremity weakness

³ The ALJ did not use plaintiff's activities to establish that plaintiff could perform substantial gainful activity. Rather, the ALJ used these activities to question the plaintiff's credibility regarding the frequency and severity of her symptoms and her functional limitations.

with no impairment of coordination. (Id. at 386-87) Objective diagnostic test results revealed that plaintiff's bilateral carpal tunnel syndrome was mild. (Id. at 357, 369-70) Plaintiff's plantar fasciitis was treated through physical therapy and her Achilles tendinitis was ruled out by an MRI. (Id. at 122, 247-47) Plaintiff's most recent neurological evaluation revealed only mild abnormalities of the upper and lower extremities. (Id. at 387)

Finally, there is substantial evidence supporting the ALJ's determination of plaintiff's residual functional capacity. In addition to the evidence cited above, from September of 1998 through July of 2001, four state agency physicians performed RFC Assessments on plaintiff. (Id. at 263-71, 275-82, 312-21, 338) Each of these RFC Assessments concluded that plaintiff was capable of lifting a maximum of 20 pounds, frequently lifting 10 pounds, standing or walking about six hours in an eight-hour workday, and sitting about six hours in an eight-hour workday.⁴ (Id. at 264, 276, 313, 338) The court concludes that the ALJ did not err in his determination of plaintiff's residual functional capability.

⁴ These RFC Assessments did take into account nonexertional limitations. Postural, manipulative, visual, communicative, and environmental limitations considered in the RFC Assessments are precisely the sort of nonexertional limitations envisioned by the Code of Federal Regulations. See 20 C.F.R. §404.1569a(c) (2004).

2. Finding that plaintiff could perform her past relevant work

Substantial evidence exists for the ALJ's conclusion that plaintiff could perform her past relevant work. The ALJ's determination of plaintiff's residual functional capacity was supported by substantial evidence.⁵ Plaintiff's previous work as a dispatcher required sitting up to eight hours a day, lifting weights of less than ten pounds, answering phones, and scheduling jobs. (Id. at 48, 147, 160, 191-92, 207) Thus, plaintiff's residual functional capacity was consistent with the tasks she performed in her previous work as a dispatcher.

V. CONCLUSION

For the reasons set forth above, the court denies plaintiff's motion for summary judgment (D.I. 10) and grants defendant's motion for summary judgment (D.I. 13). An appropriate order shall issue.

⁵ The ALJ did consider the alleged non-exertional limitations of neck pain, upper extremity weakness, upper extremity spasticity, and chronic plantar fasciitis throughout his decision and in his evaluation of plaintiff's residual capacity for work. (D.I. 8 at 23-26) Furthermore, the court is unable to find, and plaintiff did not identify, anything suggesting that the ALJ relied on grids to make his determinations.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BEVERLY ESCHENBACH,)
)
 Plaintiff,)
)
 v.) Civ. No. 04-313-SLR
)
SECRETARY OF HEALTH AND)
HUMAN SERVICES)
)
 Defendant.)

O R D E R

At Wilmington this 7th day of June, 2005, consistent with the memorandum opinion issued this same date;

IT IS ORDERED that:

1. Plaintiff's motion for summary judgment (D.I. 10) is denied.
2. Defendant's motion for summary judgment (D.I. 13) is granted.
3. The Clerk of Court is directed to enter judgment in favor of defendant and against plaintiff.



United States District Judge