

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PATRICIA M. SNOW,)
)
 Plaintiff,)
)
 v.) Civil Action No. 99-602-RRM
)
 KENNETH S. APFEL,)
)
 Defendant.)

MEMORANDUM OPINION

Gary C. Linarducci, Esquire, New Castle, Delaware; counsel for plaintiff.

Paulette K. Nash, Esquire, United States Attorney's Office, Wilmington, Delaware;
counsel for defendant.

Dated: December 7, 2000

McKELVIE, District Judge

This is a social security case. Plaintiff Patricia M. Snow is a resident of Delaware. Defendant Kenneth S. Apfel is the Commissioner of Social Security. On September 8, 1999, Snow filed the complaint seeking judicial review pursuant to 42 U.S.C. 405(g) of the Commissioner's decision to deny her claim for Supplemental Security Income ("SSI") benefits. The Commissioner answered the complaint on December 1, 1999. In his answer, the Commissioner denies that Snow is entitled to SSI benefits and asserts the affirmative defense that the findings of fact leading to his decision are supported by substantial evidence and are conclusive. On January 21, 2000 and February 22, 2000, respectively, Snow and the Commissioner moved for summary judgment. This is the court's decision on the motions for summary judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Application for SSI Benefits

On September 30, 1996, Snow filed an application with the Social Security Administration requesting SSI benefits under Title XVI of the Social Security Act. Snow alleged in her application that she has been disabled since June 15, 1992 due to a variety of ailments including hearing loss, degenerative disc disease, mental slowness, and spastic colon. On February 18, 1997, Larry Massanari, the Regional Commissioner for the Social Security Administration, denied her claim stating that her condition did not prevent her from working. On February 28, 1997, Snow requested the Social Security

Administration to reconsider her claim. On June 11, 1997, Massanari reconsidered and again denied her claim. On July 7, 1997, Snow requested a hearing before an Administrative Law Judge.

B. Administrative Hearing

On January 28, 1998, Judge Timothy C. Pace conducted a hearing to determine whether Snow qualified as disabled under §1614(a)(3)(A) of the Social Security Act. At the hearing, Judge Pace considered testimony from Snow and Nancy Harter, a Vocational Expert, and reviewed twenty-nine documents related to Snow's medical history.¹ Snow was represented by counsel. On March 23, 1998, Judge Pace denied Snow's claim in a comprehensive opinion.

¹ The disability and medical reports in the record are: Disability Report dated 9/30/96; Vocational Report dated 10/11/96; Report of contact with Snow dated 10/30/96; Residual Physical Functional Capacity Assessment Form dated 1/6/97; Psychiatric Review Technique form dated 2/10/97; Mental Residual Functional Capacity Assessment Form dated 2/10/97; Reconsideration Disability Report dated 2/27/97; T-16 Recon Consultation report dated 4/28/97; Snow's statement when request for hearing was filed dated 6/17/97; Drug and Alcohol Questionnaire dated 1/20/98; Daily Activities Questionnaire dated 1/20/98; Fatigue Questionnaire dated 1/20/98; List of Snow's medications - undated; Inpatient Record, Medical Center of Delaware covering 2/22/93 to 2/23/93; Inpatient Record, Medical Center of Delaware covering 5/5/93 to 5/5/93; Consultant examination by Dr. Irwin L. Lifrak, M.D., dated 11/22/96; Emergency/Outpatient Record, Medical Center of Delaware, dated 1/13/97; Consultant examination by Dr. George Reynolds, M.D., dated 2/5/97; Outpatient Record, Medical Center of Delaware dated 4/22/97; Progress notes, Medical Center of Delaware covering 1/14/96 to 4/29/97; Mental Residual Functional Capacity Assessment dated 4/30/97; Psychiatric Review Technique dated 4/30/97; Residual Physical Functional Capacity Assessment dated 5/6/97; Medical Consultant's Review of Psychiatric Review Technique dated 6/9/97; Professional Qualifications of Irwin L. Lifrak, M.D.; Professional Qualifications of George A. Reynolds, M.D.; Residual Physical Functional Capacity Assessment dated 1/6/97; Patient Self-Care Instructions from Foot Care Group dated 9/25/97; X-ray Report from Christiana Imaging Center dated 1/27/98.

1. What the Parties Dispute

Snow argues that Judge Pace's findings were not supported by substantial evidence. Specifically, Snow contends that Judge Pace made three errors. First, Snow argues that Judge Pace erred in evaluating the medical record by overlooking evidence that she suffered eighteen concussions and by discrediting her subjective descriptions of her physical and mental limitations. Second, Snow argues that Judge Pace erred in assessing her mental limitations by failing to fully consider the negative scores that she received in her course work. Finally, she contends that Judge Pace erred by asking Harter a hypothetical question that did not reflect all of Snow's impairments and by ignoring Harter's opinion concerning Snow's ability to work in a competitive work environment.

2. Snow's Testimony at the Administrative Hearing

Snow stated that she is 54 years old, she graduated from high school, and she can read and write. She testified that pain in her lower back and knees prevent her from standing more than half an hour at a time. She added that asthma and shortness of breath prevent her from walking more than an hour at a time. She claimed to have "short term memory problems from past [drug and alcohol] abuse," depression, difficulty sleeping, and mental limitations with math. She stated that she is "on 100 milligrams of Zoloft" for depression and that "once every couple of weeks" she goes into a "depressed stage" where she will "just lay around and sleep." She testified that she takes six credit hours at school, works part-time as a file clerk, does some of her own laundry, cleans her home, cooks her own meals, handles her own finances, drives a car, and uses public

transportation.

Judge Pace asked Snow how many concussions she has suffered. She responded, “according to my doctors, I’ve been told from my medical records around sixteen, seventeen, somewhere around there.” She testified that she received the concussions through abusive boyfriends and husbands, fights, and auto accidents, and added that most occurred during her addictions and marriages. She also testified that “[t]he doctors told me not to have no more blows to the head because I was on the borderline, like from injuries to my head, I was like borderline to have convulsions and seizures.”

Judge Pace asked Snow what grades she has been receiving in school. Snow answered, “[b]asically C’s, one or two B’s in the whole time I’ve been there.” She testified that she has also received some R’s and WT’s, which she describes as “recycled” and “withdrawal,” respectively. She also testified that she had to withdraw from one of her classes because she had surgery on her right foot.

3. Harter’s Testimony at the Administrative Hearing

Harter testified to the classifications of Snow’s current and past jobs. She classified Snow’s current job as a part-time student and file clerk as light, semi-skilled work. She classified Snow’s past work as a security guard as light, unskilled work. The remainder of Harter’s testimony can be broken down to three parts. In part one, Judge Pace asked her to evaluate the employment opportunities for a person of Snow’s age and education with similar lifting abilities, hearing limitations and manual dexterity. In part two, he asked Harter to also consider Snow’s sitting and standing limitations. Finally, in

part three, Judge Pace asked Harter to consider all limitations that Snow alleged in her testimony.

In part one, Harter testified that Judge Pace's hypothetical person could perform certain clean indoor work, such as serving as a security guard, duplicating machine operator, inventory clerk, file clerk, or interoffice messenger. She also testified to the number of such positions available in Snow's geographic area and nationwide. In part two, Harter testified that the standing and sitting limitations would not affect the person's eligibility for the duplicating machine operator position; however, she opined that only half of the other positions would be available. In part three, Harter classified Snow's current work as a protected work environment, and stated, "if how [Snow is] doing in the protected environment was transferred to a competitive environment, it would not be tolerated by an employer, she would not be successful." Explaining this, Harter added, "[absenteeism is] the primary issue [for Snow]."

4. Disability and Medical Records

The file contains twenty-nine disability and medical records and is nearly two hundred pages long. According to the records, Snow has joint arthritis and a partial rotator cuff tear in her right shoulder, post traumatic degeneration of her right wrist, degenerative changes and a disc herniation in her lumbar spine, angina, and asthma. The records also indicate that Snow has a history of polysubstance abuse, spastic colon, cirrhosis, and hepatitis C and has been diagnosed with dysthymia.²

² According to the National Institute of Mental Health, "dysthymia, a less severe yet typically more chronic form of depression, is diagnosed when depressed mood persists

Two medical records mention Snow's alleged concussions. The first reference is in the Emergency/Outpatient Record from the Medical Center of Delaware dated 1/13/97. In it, the Initial Nurse Assessment section states, "Assessment: Concussions, Fell - LOC - at 0930 this am, small red dot over right eyebrow, complains of feeling 'fuzzy.'"³ The second reference is in the Consultant Examination by Dr. George Reynolds, M.D. In it, Dr. Reynolds writes, "I asked what the problem was that brought her here and she said that she has been disabled for eight years but she said that she works five to 13 hours a week between classes on a work study program. She said she has multiple health problems, arthritis, fractures. She has had head injuries to her face and she has had 17 or 18 concussions."

C. Judge Pace's Decision

On March 23, 1998, Judge Pace denied Snow's claim. In his opinion, Judge Pace lists the following significant findings:

(1) [Snow] has not engaged in substantial gainful activity since September 30, 1996.

(2) The medical evidence establishes that [Snow] has severe impairments, including AC joint arthritis, post-traumatic degeneration of the right wrist, asthma, degenerative changes and a disc herniation of the lumbar spine, a history of a spastic colon, cirrhosis of the liver and hepatitis C, angina, dysthymia, and a history of polysubstance abuse, but that she

for at least two years in adults . . . and is accompanied by at least two other depressive symptoms. Many people with dysthymic disorder also experience major depressive episodes." See National Institute of Mental Health: Fact Sheet, available at <http://www.nimh.nih.gov/publicat/depresfact.htm> (Last modified Apr. 13, 1999).

³ The parties did not brief and the court is not familiar with the abbreviation "LOC"; otherwise, the court has altered the quote to eliminate abbreviations.

does not have an impairment or combination of impairments listed in, or medically equal to one listed in Appendix 1, Subpart P, regulations No. 4.

(3) [Snow's] subjective complaints, including pain, shortness of breath, fatigue, decreased hearing, vertigo, sinus problems, allergies, mental retardation, depression and anxiety, were neither fully credible nor fully corroborated by the objective medical evidence.

(4) [Snow] has the residual functional capacity to perform work-related activities except work involving standing and walking for more than six hours out of an eight-hour workday, and lifting weights of more than five pounds.

(5) [Snow's] past relevant work as a security guard did not require the performance of the work related activities precluded by the above limitations.

(6) [Snow's] impairments do not prevent [her] from performing her past relevant work.

(7) [Snow] was not under a "disability" as defined in the Social Security Act, at any time through the date of the decision.

D. Final Action of the Commissioner

On April 9, 1998, Snow requested that the Social Security Appeals Council review Judge Pace's decision. In her request, Snow argued, "[t]he Administrative Law Judge failed to fully develop the record. The Administrative Law Judge failed to show how the claimant would be able to maintain gainful employment when she is currently unable to maintain her work study program." On July 10, 1999, the Appeals Council denied Snow's request stating that it had "considered the contentions raised in the request for review dated April 9, 1998, but concluded that these contentions do not provide a basis for changing the Administrative Law Judge's decision."

II. DISCUSSION

A. What is the Standard of Review?

This court's review of the Commissioner's factual findings is limited. If the Commissioner's findings are supported by substantial evidence, the court must uphold the finding. See 42 U.S.C. §405(g); Ventura v. Shalala, 55 F.3d 900, 901 (3d Cir. 1995). The Supreme Court has defined "substantial evidence" as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971). "Substantial evidence" is more than a scintilla of evidence but less than a preponderance. Id. at 401. To show that his decision is based on substantial evidence, an Administrative Law Judge is expected to do more than simply state factual conclusions; he must make specific findings of fact to support his ultimate findings. Stewart v. Secretary of HEW, 714 F.2d 287, 290 (3d Cir. 1983).

When deciding whether a person is disabled and entitled to SSI benefits, the Administrative Law Judge uses a five-part test. 20 C.F.R. §§404.1520 and 416.920 (1995); see also Sullivan v. Zebley, 493 U.S. 521, 525 (1990). This test requires the Administrative Law Judge to sequentially consider whether the claimant:

(1) is currently engaged in substantial gainful employment;

(2) has a medically demonstrable severe impairment;

(3) has an impairment that meets or equals the requirements of a "listed" impairment (i.e., one which the Commissioner has listed as sufficiently severe to conclusively presume disability). "For a claimant to show that his impairment matches a listing, it must meet all of the specified medical criteria. An impairment that manifests only some of those criteria, no matter how severely, does not qualify." Id. at 530.

(4) if the claimant does not have a listed impairment or its equivalent, whether the claimant can return to her past relevant work; and

(5) if she can not return to her past relevant work, whether she can perform other work available in the national economy.

See 20 C.F.R. §§404.1520 and 416.920; see also Welch v. Heckler, 808 F.2d 264, 268-69 (3d Cir. 1986).

B. Was the AJL's decision supported by substantial evidence?

Snow contends that Judge Pace made three errors that preclude this court from finding that his decision was based on substantial evidence: he overlooked evidence of her eighteen concussions and discredited her subjective descriptions of her physical and mental limitations; he incorrectly evaluated her mental limitations by not fully considering the negative scores she received in her course work; and he improperly asked Harter a hypothetical question that did not reflect all of Snow's impairments and then ignored her opinion concerning Snow's ability to work in a competitive work environment.

1. Snow's Concussions and Subjective Complaints

Judge Pace twice notes in his opinion that Snow has had sixteen or seventeen concussions, but he does not state a specific conclusion as to the import of this information. Judge Pace mentions Snow's concussions in the portion of his opinion where he analyzes the objective medical evidence in an attempt to credit or discredit Snow's subjective complaints. Following this analysis, Judge Pace concludes "[t]he objective medical evidence in this case establishes the existence of impairments

reasonably likely to cause some of the symptoms and limitations alleged by the claimant. However, the claimant's allegations were not entirely credible as to the frequency or severity of her symptoms, or the extent of her functional limitations." Judge Pace further notes that Snow testified that she attends school and church, works part-time, attends AA and NA meetings, engages in crafts, drives a car, handles her own finances, and does her own cooking, laundry, and grocery shopping. He adds, "[a]lthough she alleged disabling fatigue, shortness of breath and limitations on her ability to walk, stand and sit, the claimant admitted that her asthma is under relatively good control and that she has not had a problem with alcohol or drugs for the past nine years."

The court has conducted an independent review of the medical record and finds only three references to Snow's concussions: Snow's testimony at the hearing, Dr. George Reynolds's description of what he was told by Snow during his examination of her, and the Emergency/Outpatient Record from the Medical Center of Delaware in which the Initial Nurse Assessment section describes an injury Snow sustained on January 13, 1997. The court finds that the first two references do not substantially establish a history of concussions. Rather, they are Snow's firsthand and repeated statements of her own medical condition. The third reference to Snow's concussions establishes, at most, only one concussion in Snow's history. Given this, the court finds that Judge Pace did not err in his consideration of Snow's concussions and subjective complaints.

2. Snow's Mental Limitations as Indicated by Her Course Work Grades

Judge Pace concluded that Snow is not “significantly restricted” in her mental capacity. The court finds that he based this conclusion on substantial evidence. Snow argues that because Judge Pace failed to note in his opinion that Snow received some ‘R’ grades in her classes, that he did not give serious consideration to the evidence of her mental limitations. Judge Pace notes in his opinion that “[Snow] said she is taking six credit hours at school and is making mostly C’s with some B’s.” He further notes, “[Snow] testified that when stressed or upset she has difficulty concentrating; however, her performance in college classes indicates that she is not significantly restricted in the area of attention or concentration. The claimant also reported reading and engaging in crafts, activities requiring persistence.” The court finds that this evidence is sufficiently substantial to support that Judge Pace’s conclusion that Snow is not “significantly restricted” in her mental capacity.

3. Snow’s Ability to Return to Past Relevant Work

The court finds that Judge Pace based his finding that Snow can return to her past relevant work on substantial evidence. In his opinion, Judge Pace states, “[Snow’s] admitted daily activities and functional capabilities would not preclude her from performing light tasks entailing standing and walking six hours in an eight-hour workday, with the further limitation that [she] not be required to lift more than five pounds.” He further notes that “[her] past work as a security guard, as described by her, and as described in the Dictionary of Occupational Titles, section 372.667-034, required light exertion, but did not require significant amounts of lifting,” and that “vocational expert

Nancy Harter advised at the hearing that [Snow's] past work as a security guard was in the light exertional range." The court finds that this evidence is substantial and that it supports Judge Pace's conclusion that Snow can return to her past relevant work.

Snow further argues, citing Podedworny v. Harris, 745 F.2d 210 (3d Cir. 1984) and Chrupcala v. Heckler, 829 F.2d 1269 (3d Cir. 1987), that Judge Pace's findings are flawed because he posed an improper hypothetical question to Harter. Podedworny and Chrupcala stand for the principle that answers to hypothetical questions cannot serve as substantial evidence where the hypotheticals do not take into account all impairments that "are medically undisputed and could seriously affect appellant's ability to engage in alternative employment." Podedworny 745 F.2d at 218. Here, Judge Pace subjected Harter to a three-part line of questions that progressively worked toward evaluating all the limitations that Snow claimed. The first two questions were hypothetical to the extent that they did not incorporate every deficiency alleged by Snow. The third question reflected every mental and physical impairment that Snow claimed during her testimony.

The court has carefully reviewed the administrative hearing transcript and Judge Pace's opinion and can not agree with Snow that the questioning was improper. Snow's medical condition was not "medically undisputed." Indeed, after a complete review of the entire record, Judge Pace discounted much of Snow's allegations. Judge Pace's three-part line of questions served to provide intermediate opinions to span the range of Snow's alleged deficiencies and to test the basis of Harter's conclusions. Notwithstanding this question, in his opinion Judge Pace does not appear to rely on Harter's testimony for

anything more than a classification of Snow's past work as a security guard as light exertional work. Thus, the court finds that Judge Pace based his finding that Snow can return to her past relevant work on substantial evidence.

III. CONCLUSION

The court has carefully considered and rejected Snow's arguments that the Judge Pace erred in refusing her SSI benefits. In sum, the court finds that there is substantial evidence to support the Judge Pace's decision that Snow is not under a "disability" as defined in the Social Security Act.

For the reasons set out above, the court will grant the Commissioner's motion for Summary Judgment and enter an Order in accordance with this Memorandum Opinion.