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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

Case No. 5:12-cv-364-0c-PRL

Wednesday, August 7, 2013
Ocala, Florida

SCOTT HIGGINS,
Plaintiff,

vs.

COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

TRANSCRIPT OF EXCERPT FROM ORAL ARGUMENT
BEFORE THE HONORABLE PHILIP R. LAMMENS,
UNITED STATES MAGISTRATE JUDGE

Appearances of Counsel:

For the Plaintiff: Mr. Michael Alan Steinberg
For the Defendant: Mr. John F. Rudy, III

Reported by: Dennis Miracle, Court Reporter

P R O C E E D I N G S

THE COURT: All right. Thank you, Mr. Rudy.

As I said earlier, I have reviewed and considered the record in this case, including the briefs of the parties, the transcript of the hearing before the ALJ, the written opinion of the ALJ, and the records in this case, including those records referenced by the parties, and I do find that the Commissioner's decision should be affirmed because the ALJ correctly applied the law, and there is substantial evidence to support the ALJ's finding that a significant number of jobs exist in the economy; that is, in the national economy. The ALJ made that finding by relying on the testimony of a vocational expert.

The vocational expert also accounted for further limitations of the plaintiff; that is, the sit/stand option, and ultimately found that a 10 percent reduction in the number of jobs should be considered which would leave, between the nut sorter and dowel inspector positions, 261 jobs in Florida and 9,900 jobs in the national economy.

The plaintiff's reliance on Beltran is unpersuasive in part because the number of jobs found in that case were significantly less than the number of jobs found in our case; that is, 135 jobs locally and 1,680 jobs nationally versus, as I said in our case, 261 in Florida and 9,900 nationally.

1 The government also cites importantly, I think, 20
2 CFR, Section 416.966(a)(1) through (3) and (C) where the
3 regulations provide that it does not matter whether the job
4 exists in the immediate area where the plaintiff lives,
5 whether a specific vacancy exists for the particular
6 plaintiff, or whether, if the plaintiff applied for that job,
7 he or she would actually be hired.

8 The government also cites Eleventh Circuit case law
9 which supports its position that the number of jobs found by
10 the vocational expert are a significant number of jobs.

11 For example, the government cites Allen versus
12 Bowen, 816 F.2d 600 at 602, an Eleventh Circuit opinion from
13 1987, where the Court acknowledged that 174 jobs in the
14 claimant's area and 1,600 jobs in the claimant's state and
15 80,000 jobs nationally were a significant number.

16 The government also cited Brooks versus Barnhart, an
17 unreported opinion from the Eleventh Circuit from 2005, cited
18 at 2005 WL 1279099, where the ALJ's decision that 840 jobs in
19 the national economy was a significant number, along with a
20 case out of the Eighth Circuit, Johnson versus Chater, 108
21 F.3d 178 at 180, an Eighth Circuit opinion from 1997, noting
22 that 200 jobs in the state and 10,000 jobs nationally were a
23 significant number.

24 Again, in our case the ALJ, based on the vocational
25 expert's testimony, found that 261 jobs in Florida and 9,900

1 jobs nationally were a significant number.

2 That testimony supports the ALJ's finding and is
3 substantial evidence for it. It is not inconsistent with the
4 law. And, accordingly, I do find that the Commissioner's
5 decision is due to be affirmed.

6 Mr. Rudy, is there anything else to take up from the
7 Commissioner?

8 MR. RUDY: No, Your Honor. Thank you.

9 THE COURT: Mr. Steinberg, from the plaintiff?

10 MR. STEINBERG: No.

11 THE COURT: All right. Thank you both. Have a good
12 day.

13 MR. STEINBERG: Thank you.

14 MR. RUDY: Thank you, Mike.

15 MR. STEINBERG: Thank you.

16 (Thereupon, the proceedings in this case for this
17 date were concluded at this time.)

18 C E R T I F I C A T E

19 I hereby certify that the foregoing is an accurate
20 transcription of the proceedings in the above-entitled
21 matter.

22

23 /s/Dennis Miracle

August 7, 2013

24

25 _____
Dennis Miracle

Date