

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

SUSAN C. ADAMS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil No. 16-cv-389-JPG-CJP
	)	
NANCY J. BERRYHILL,	)	
Acting Commissioner of Social Security,	)	
	)	
Defendant. <sup>1</sup>	)	

**MEMORANDUM and ORDER**

In accordance with 42 U.S.C. § 405(g), plaintiff Susan C. Adams seeks judicial review of the final agency decision denying her application for Disability Insurance Benefits (DIB) pursuant to 42 U.S.C. § 423.

**Procedural History**

Plaintiff applied for DIB in November 2012, alleging disability beginning on September 26, 2011. After holding an evidentiary hearing, ALJ Stuart T. Janney denied the application in a written decision dated December 12, 2014. (Tr. 11-25). The Appeals Council denied review, and the decision of the ALJ became the final agency decision. (Tr. 1). Administrative remedies have been exhausted and a timely complaint was filed in this Court.

**Issue Raised by Plaintiff**

Plaintiff raises the following issues:

1. The ALJ erred in relying on vocational expert testimony that lacked a reliable basis.

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<sup>1</sup> Nancy A. Berryhill is now the Acting Commissioner of Social Security. See, *Casey v. Berryhill*, 853 F.3d 322 (7th Cir. 2017). She is automatically substituted as defendant in this case. See Fed. R. Civ. P. 25(d); 42 U.S.C. §405(g).

2. The ALJ's residual functional capacity assessment was erroneous where it was expressed in terms of "light exertion" rather than in a function-by-function analysis.

### **Applicable Legal Standards**

To qualify for DIB, a claimant must be disabled within the meaning of the applicable statutes. For these purposes, "disabled" means 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. §423(d)(1)(A).

A "physical or mental impairment" is an impairment resulting from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. 42 U.S.C. §423(d)(3). "Substantial gainful activity" is work activity that involves doing significant physical or mental activities, and that is done for pay or profit. 20 C.F.R. §§ 404.1572.

In order to receive DIB, plaintiff must establish that she was disabled as of her date last insured. *Stevenson v. Chater*, 105 F.3d 1151, 1154 (7th Cir. 1997).

Social Security regulations set forth a sequential five-step inquiry to determine whether a claimant is disabled. 20 C.F.R. § 404.1520. Under this procedure, it must be determined: (1) whether the claimant is presently unemployed; (2) whether the claimant has an impairment or combination of impairments that is serious; (3) whether the impairments meet or equal one of the listed impairments acknowledged to be conclusively disabling; (4) whether the claimant can perform past relevant work; and (5) whether the claimant is capable of performing any work within the economy, given his or her age, education and work experience. *Simila v. Astrue*, 573 F.3d

503, 512-513 (7th Cir. 2009); *Schroeter v. Sullivan*, 977 F.2d 391, 393 (7th Cir. 1992).

The Seventh Circuit Court of Appeals has explained this process as follows:

The first step considers whether the applicant is engaging in substantial gainful activity. The second step evaluates whether an alleged physical or mental impairment is severe, medically determinable, and meets a durational requirement. The third step compares the impairment to a list of impairments that are considered conclusively disabling. If the impairment meets or equals one of the listed impairments, then the applicant is considered disabled; if the impairment does not meet or equal a listed impairment, then the evaluation continues. The fourth step assesses an applicant's residual functional capacity (RFC) and ability to engage in past relevant work. If an applicant can engage in past relevant work, he is not disabled. The fifth step assesses the applicant's RFC, as well as his age, education, and work experience to determine whether the applicant can engage in other work. If the applicant can engage in other work, he is not disabled.

*Weatherbee v. Astrue*, 649 F.3d 565, 568-569 (7th Cir. 2011).

This Court reviews the Commissioner's decision to ensure that the decision is supported by substantial evidence and that no mistakes of law were made. It is important to recognize that the scope of review is limited. "The findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive. . . ." 42 U.S.C. § 405(g). Thus, this Court must determine not whether plaintiff was, in fact, disabled at the relevant time, but whether the ALJ's findings were supported by substantial evidence and whether any errors of law were made. *See Books v. Chater*, 91 F.3d 972, 977-78 (7th Cir. 1996) (citing *Diaz v. Chater*, 55 F.3d 300, 306 (7th Cir. 1995)).

This Court uses the Supreme Court's definition of substantial evidence, i.e., "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971). In reviewing for "substantial evidence," the entire administrative record is taken into consideration, but this Court does not reweigh evidence, resolve

conflicts, decide questions of credibility, or substitute its own judgment for that of the ALJ. *Brewer v. Chater*, 103 F.3d 1384, 1390 (7th Cir. 1997). However, while judicial review is deferential, it is not abject; this Court does not act as a rubber stamp for the Commissioner. *See Parker v. Astrue*, 597 F.3d 920, 921 (7th Cir. 2010), and cases cited therein.

### **The Decision of the ALJ**

ALJ Janney followed the five-step analytical framework described above. He determined that plaintiff had not been engaged in substantial gainful activity since the alleged onset date. She was insured for DIB only through December 31, 2012. The ALJ found that plaintiff had severe impairments of osteoarthritis, lumbar spine degenerative disc disease without herniation, torn medial meniscus in the left knee, chronic obstructive pulmonary disease, neuropathy, and obesity. He further determined that these impairments do not meet or equal a listed impairment.

The ALJ found that plaintiff had the residual functional capacity (RFC) to perform work at the light exertional level with a number of physical limitations. The RFC assessment did not specify how many hours plaintiff could stand/walk or sit. Based on the testimony of a vocational expert (VE), the ALJ found that plaintiff was not able to do her past relevant work as a registered nurse. The VE testified that she had acquired skills from her past work that would transfer to other light exertion jobs that she could do. The ALJ accepted this testimony and concluded that she was not disabled.

### **The Evidentiary Record**

The Court has reviewed and considered the entire evidentiary record in formulating this Memorandum and Order. The following summary of the record is directed to the points raised by plaintiff and is confined to the relevant time period. In view of plaintiff's arguments, the Court

will omit a discussion of the medical evidence.

### **1. Agency Forms**

Plaintiff was born in 1956 and was 56 years old on the date last insured. (Tr. 261). Plaintiff alleged that she had stopped working in July 2007. (Tr. 265). A prior claim for social security disability benefits had been denied in May 2011. (Tr. 114-130). She had worked as a registered nurse beginning in 1989. (Tr. 266).

In a Work History Report, plaintiff stated that she had worked as an R.N. in nursing homes, a hospital and a prison. Her job including supervising other staff, computer work, interviewing employees, paperwork, charting, assisting doctors, taking vital signs, doing patient assessments, giving medications, feeding patients, and giving treatments and emergency care. (Tr. 336-343).

### **2. Evidentiary Hearing**

Plaintiff was represented by an attorney at the evidentiary hearing in January 2014. (Tr. 41). She is represented by a different attorney in this Court.

The VE testified that plaintiff's past relevant work was as a general duty registered nurse. That is categorized in the *Dictionary of Occupational Titles* as medium and skilled. The ALJ asked the VE a hypothetical question which conformed to the ultimate RFC assessment. The VE testified that this person would not be able to do plaintiff's past work as an R.N. The ALJ then asked whether there were any semi-skilled or skilled jobs that the hypothetical person could do "that would require skills acquired in the performance of past relevant work but no additional skills?" The VE replied in the affirmative, identifying three light nursing positions: office nurse, DOT 075.374-014; occupational nurse, DOT 075.374-022; and quality assurance coordinator, DOT 075.167-014. The last job consists of reviewing the quality of care rendered by other

nurses. (Tr. 64-67). The VE testified that plaintiff had acquired transferrable skills of patient care skills, medical terminology, interpersonal skills, record keeping and recording. She described “nursing skills” as “ an all-encompassing type of skill set.” (Tr. 67).

The ALJ asked whether any of the VE’s testimony conflicted with the *DOT* or *SCO* (*Selected Characteristics of Occupations*, a companion publication to the *DOT*). The VE answered, “I don’t think so, judge.” (Tr. 69). Plaintiff’s counsel asked no questions of the VE. (Tr. 69).

### **Analysis**

Both of plaintiff’s points border on the frivolous. Plaintiff worked as a registered nurse and nursing supervisor for almost twenty years. (Tr. 275). She does not dispute that she acquired skills in the areas of patient care, medical terminology, interpersonal skills, record keeping and recording. Nor does she dispute that those skills would transfer to the jobs of office nurse, occupational nurse, and quality assurance coordinator. Rather, she argues that the basis for the VE’s testimony about her skills was not identified.<sup>2</sup>

The *DOT* describes the job of registered nurse as follows:

Provides general nursing care to patients in hospital, nursing home, infirmary, or similar health care facility: Administers prescribed medications and treatments in accordance with approved nursing techniques. Prepares equipment and aids physician during treatments and examinations of patients. Observes patient, records significant conditions and reactions, and notifies supervisor or physician of patient's condition and reaction to drugs, treatments, and significant incidents. Takes temperature, pulse, blood pressure, and other vital signs to detect deviations from normal and assess condition of patient. May rotate among various clinical services of institution, such as obstetrics, surgery, orthopedics, outpatient and admitting, pediatrics, and psychiatry. May prepare rooms, sterile instruments,

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<sup>2</sup> None of the cases cited by plaintiff are on point. Those cases establish the general and unsurprising rule that a VE’s testimony can provide substantial evidence in support of the ALJ’s decision only where the testimony is reliable. None of those cases involved testimony regarding transferability of skills.

equipment and supplies, and hand items to SURGEON (medical ser.) 070.101-094; OBSTETRICIAN (medical ser.) 070.101-054, or other medical practitioner. May make beds, bathe, and feed patients. May serve as leader for group of personnel rendering nursing care to number of patients.

*DOT*, Section 075.364-010, 1991 WL 646751. This description is consistent with plaintiff's description of her job duties set forth in her Work History Report.

The *DOT* describes the job of office nurse as follows:

Cares for and treats patients in medical office, as directed by physician: Prepares patient for and assists with examinations. Administers injections and medications, dresses wounds and incisions, interprets physician's instructions to patients, assists with emergency and minor surgery, and performs related tasks as directed. Maintains records of vital statistics and other pertinent data of patient. Cleans and sterilizes instruments and equipment, and maintains stock of supplies. May conduct specified laboratory tests. May record and develop electrocardiograms. May act as receptionist, perform secretarial duties, and prepare monthly statements.

*DOT*, Section 075.374-014, 1991 WL 646753

The *DOT* describes the job of occupational nurse as follows:

Provides nursing service and first aid to employees or persons who become ill or injured on premises of department store, industrial plant, or other establishment: Takes patient's vital signs, treats wounds, evaluates physical condition of patient, and contacts physician and hospital to arrange for further medical treatment, when needed. Maintains record of persons treated, and prepares accident reports and insurance forms. Develops employee programs, such as health education, accident prevention, alcohol abuse counseling, curtailment of smoking, and weight control regimens. May assist physician in physical examination of new employees.

*DOT*, Section 075.374-022, 1991 WL 646755.

The *DOT* describes the job of quality assurance coordinator as follows:

Interprets and implements quality assurance standards in hospital to ensure quality care to patients: Reviews quality assurance standards, studies existing hospital policies and procedures, and interviews hospital personnel and patients to evaluate effectiveness of quality assurance program. Writes quality assurance policies and procedures. Reviews and evaluates patients' medical records, applying quality assurance criteria. Selects specific topics for review, such as problem procedures,

drugs, high volume cases, high risk cases, or other factors. Compiles statistical data and writes narrative reports summarizing quality assurance findings. May review patient records, applying utilization review criteria, to determine need for admission and continued stay in hospital. May oversee personnel engaged in quality assurance review of medical records.

*DOT*, Section 075.167-014, 1991 WL 646748.

It is apparent that there is considerable overlap between the functions of a registered nurse and the functions of the three jobs which the VE testified plaintiff could do. Plaintiff's argument that the *DOT* does not identify job skills ignores this overlap. She also ignores the applicable regulations. 20 C.F.R. § 404.1565(a) points out that "Work experience means skills and abilities you have acquired through work you have done which show the type of work you may be expected to do. Work you have already been able to do shows the kind of work that you may be expected to do." Regarding transferability of skills, 20 C.F.R. § 404.1568(d)(1) provides that "We consider you to have skills that can be used in other jobs, when the skilled or semi-skilled work activities you did in past work can be used to meet the requirements of skilled or semi-skilled work activities of other jobs or kinds of work. This depends largely on the similarity of occupationally significant work activities among different jobs." § 404.1568(d)(2) explains that transferability of skills is most probable among jobs which require the same or a lesser degree of skill, use the same or similar tools and machines, and involve the same or similar raw materials, products, processes or services.

The *DOT* descriptions of the three jobs identified by the VE and the VE's testimony establish that they require the same level of skill and involve the use of the same or similar tools and machines and the provision of the same or similar services as the job of registered nurse. The VE indicated that her testimony was consistent with information contained in the *DOT*. Plaintiff



has not identified any inconsistency. Her first point is denied.

Plaintiff's second point is that the ALJ erred in expressing his RFC assessment in terms of "light work as defined in 20 C.F.R. § 404.1567(b)" with specified limitations instead of in terms of a function-by-function analysis. This error, if it was an error, is harmless.

Plaintiff makes no substantive challenge to the RFC assessment. She does not argue that she is unable to meet the physical or mental demands of light exertion work with the specified limitations. She does argue that both state agency consultants opined that she could sit, stand and walk for about six out of eight hours. She claims that this is consistent with her "allegation that she experiences limitations in those aspects of functioning." Doc. 17, p. 17. She is incorrect; "the full range of light work requires standing or walking, off and on, for a total of approximately 6 hours of an 8-hour workday. Sitting may occur intermittently during the remaining time." SSR 83-10, 1983 WL 31251, \*6.

In the absence of a substantive challenge to the RFC assessment, any technical flaw in the expression of the RFC assessment is harmless.

### **Conclusion**

After careful review of the record as a whole, the Court is convinced that ALJ Janney committed no errors of law, and that his findings are supported by substantial evidence. Accordingly, the final decision of the Commissioner of Social Security denying Susan C. Adams' application for disability benefits is AFFIRMED.

The clerk of court is **DIRECTED** to enter judgment in favor of defendant.

**IT IS SO ORDERED.**

**DATE:** 7/31/2017

*s/J. Phil Gilbert*

**J. PHIL GILBERT**  
**U.S. DISTRICT JUDGE**