

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

Richard N. Raducha,

Plaintiff,

v.

Carolyn W. Colvin,
Acting Commissioner of Social Security
Administration,

Defendant.

Case No. 2:13-CV-196-JVB

OPINION AND ORDER

Plaintiff Richard N. Raducha seeks judicial review of the final decision of Defendant Carolyn W. Colvin, Acting Commissioner of Social Security, who denied his application for Disability Insurance Benefits and Supplemental Security Income disability benefits under the Social Security Act. For the following reasons, the Court affirms the decision of the Administrative Law Judge.

A. Procedural Background

Plaintiff applied for Disability Insurance Benefits and Supplemental Security Income disability benefits in 2010, alleging disability beginning on February 20, 2010. (R. at 11.) His claim was denied initially, as well as upon reconsideration. Plaintiff requested a hearing with an Administrative Law Judge (“ALJ”). (R. at 102–193.) His hearing was held before ALJ Henry Kramzyk. On February 6, 2012, the ALJ determined that Plaintiff has not been disabled as defined in the Social Security Act from his alleged onset date through the date of the ALJ’s

decision. (R. at 22.) The ALJ's opinion became final when the Appeals Council denied Plaintiff's request for review on April 12, 2013. (R. at 1–3.)

B. Factual Background

(1) Plaintiff's Background and Testimony

Plaintiff was born on December 6, 1958. (R. at 86.) His highest level of education is a GED. (R. at 35.) Since the alleged onset date of February, 20, 2010, Plaintiff's only income was unemployment benefits, which he received for nine months after being terminated from his job as a building maintenance worker. (R. at 36–38.) Plaintiff worked in building maintenance for about one year. (R. at 38.)

Previously, in 2004, Plaintiff was self-employed, performing building maintenance for about one year. (R. at 38–39.) He lifted up to 250 pounds and spent a great deal of time on his knees, rarely sitting. (R. at 40.) In 2002, Plaintiff worked at P & R Stevens Electric for about one year, performing maintenance on car wash machines. (R. at 40–41.) He lifted up to 250 pounds and stood five to six hours a day. (R. at 42.) He spent another three and a half hours driving. (*Id.*) Plaintiff also previously performed gas station and car wash maintenance for Ridgeway Petroleum. (*Id.*) He built and maintained a car wash for an employer named Nicholas Lombardi for one year, and did similar work for 3G Enterprises beginning in 1998, and lasting for six years. (R. at 44–45.) At 3G Enterprises, Plaintiff lifted up to 250 pounds, stood for approximately six hours every day, and spent two hours driving. (R. at 45.)

Plaintiff claimed his disability began February 20, 2010, soon after he was fired from his job as a maintenance worker, and when he began having severe health problems. (R. at 37–38.) Plaintiff testified that pain in his legs, ankles and back kept him from working. (R. at 45–46.) On

March 16, 2011, Plaintiff suffered a heart attack. (R. at 1129.) Plaintiff testified that he has cysts in his ankles and knees and that he has had back problems since falling off of a ladder in 2005 (R. at 46–48.) Plaintiff attributes this accident to the loss of a kidney and diagnosis of prostate cancer in 2008. (R. at 48.) Plaintiff suffers from chronic kidney disease as a result of this fall, as well as severe stress incontinence. (R. at 63.) Plaintiff also testified that he sees a therapist for treatment of depression and anxiety. (R. at 49.)

Plaintiff said he often feels severe shooting pain in his legs due to his ailments. (R. at 50.) He is on medication for depression, pain, and his heart condition which leads to severe heartburn, drowsiness, mood swings, weakness and bruising. (R. at 51–53.) He testified that he has been prescribed a cane which he uses roughly 80 percent of the time because his left ankle will not support his weight. (R. at 53.) He said he has swelling in his legs and is only able to walk for 8-10 minutes before he gets tired, or possibly up to 20 minutes on a “great day.” (R. at 54–55.)

Plaintiff further testified that he could lift a gallon of milk, but not two bags of groceries (R. at 54.) Plaintiff claimed that that he can only sit in one position for 20-25 minutes before having to change positions. (R. at 55.) He can bend over, but cannot stoop or squat without support. (R. at 56.) Plaintiff asserted that he often suffers from chest pain and shortness of breath, which forces him to sit or lay down. (R. at 65–66.) He also suffers from hearing loss and has trouble getting along with others, as well as difficulties concentrating. (R. at 66–68.)

(2) Medical Evidence

Plaintiff claimed that his severe, medically determinable impairments left ankle pain following surgery, arthritis of the left ankle, borderline peripheral neuropathy at the left ankle, a heart condition, four post-coronary artery bypass grafts, and obesity. (R. at 13.)

Plaintiff injured his chest and abdomen after falling off a ladder in June 2005. (R. at 277.) He was treated by Dr. Ramkrishna Unni and diagnosed with a laceration on his right kidney. (R. at 285.) Plaintiff was treated with a stent after suffering a urinoma around his right kidney. (R. at 295.) He was advised that he could wait for the urinoma to resolve itself, or replace the previous stent. (R. at 296.)

In October 2008, Plaintiff's prostate gland was removed. (R. at 312.) Two years later, in October 2010, a cyst was removed from his left foot. (R. at 313.) He began physical therapy in November 2010, which continued until February 2011 when he reported doing better. (R. at 1054–1055.) Also in November 2010, Patrick McKian, a licensed clinical psychologist, diagnosed Plaintiff with symptoms of depression and anxiety. (R. at 389.)

The following year, March 2011, Plaintiff suffered a heart attack. (R. at 1129.) He underwent an angioplasty and stent placement in his right coronary artery. (*Id.*) He underwent four coronary artery bypass grafts, which were performed without complication. (R. at 1263–65.) Plaintiff underwent cardiac therapy and reported his condition improved, despite continuing pain in his left foot. (R. at 1484–93).

Before his heart attack, Plaintiff underwent a consultative medical examination at the request of the State agency on November 17, 2010. (R. at 390–395.) Dr. Kanyao K. Odeluga found Plaintiff had limited lateral flexion in his lumbar spine, but otherwise had full motion in all other joints, including his left ankle. (R. at 392.) Plaintiff was unable to tandem walk, walk on his toes, walk on his heels or hop, and had moderate difficulty squatting. (R. at 395.)

Dr. Fernando Montoya performed Plaintiff's physical residual functional capacity ("RFC") assessment on December 14, 2010. He determined that Plaintiff could occasionally climb ramps and stairs, balance, stoop, kneel, crouch and crawl, but could never climb ladders,

ropes and scaffolds. (R. at 608.) In addition, Plaintiff could occasionally lift or carry up to 20 pounds, frequently lift or carry up to 10 pounds and stand, walk or sit for about six hours in an eight-hour workday. (R. at 607.) He also found no manipulative, visual, communicative, or environmental limitations. (R. at 609–610.) Thereafter, Dr. M. Brill reviewed Plaintiff’s file and affirmed Dr. Montoya’s assessment without any further explanation. (R. at 1127.) Five months later, on April 15, 2011, treating physician Dr. Nada Mukoski opined that Plaintiff is no longer able to work because of his kidney disease and kidney injury, prostatectomy, left ankle injury, back strain, complications as a result of the removal of a cyst from his left foot, osteoarthritis and bypass surgery. (R. at 1180.) Plaintiff’s medications at that time included Plavix, Metoprolol, Simvastatin, Mirtazapine, Alprazolam, Ranitidine, Vicodin and Aspirin. (R. at 1184).

(3) Vocational Expert’s Testimony

Vocational expert Leonard Fisher (“VE”) testified at Plaintiff’s hearing before the ALJ. (R. at 74-85.) The VE classified Plaintiff’s former jobs of building maintenance repairer as skilled and medium, carpenter maintenance as skilled and medium (R. at 74), and maintenance mechanic as skilled and heavy. (R. at 75).

The ALJ provided the VE with several hypotheticals to evaluate, all of which included Plaintiff’s 53 years of age, GED education, and work experience. (R. at 75–78.) The first scenario also incorporated the limitations from the Dr. Montoya’s RFC assessment. (R. at 75–76, 607–610.) The VE opined that, under these facts, Plaintiff could not perform his past work, which was medium or heavy and skilled, but he could perform light unskilled work. (R. at 76–77.) Examples of positions in the regional economy were hand mounters (540 existing jobs), addresser (790 existing jobs), and touch-up screener, printed circuit board assembly (16,000

existing jobs). (R. at 80.)

For the second hypothetical, the ALJ added the limitation that the claimant could never crouch, kneel or crawl. (R. at 79.) The VE explained the positions he identified could accommodate that limitation. (R. at 79.) Another hypothetical built on the second but with a different variable: having to elevate his legs three times during the workday for 10 or 15 minutes at a time. (*Id.*) The VE determined that no jobs could accommodate that requirement. (R. at 79–80.)

(5) ALJ's Decision

The ALJ found that Plaintiff was not disabled as of the alleged onset date of February 20, 2010. (R. at 13.) The ALJ determined that, since the alleged onset date, Plaintiff had multiple severe impairments: status post left ankle surgery, arthritis of the left ankle, borderline peripheral neuropathy at the left ankle, status post myocardial infarction and angioplasty, status post coronary artery bypass grafts times four, and obesity. (*Id.*) Nonetheless, these did not meet any of the impairments listed in 20 C.F.R. § 404, Subpart P, Appendix 1. (R. at 15.)

The ALJ further found that Plaintiff had not engaged in substantial gainful activity since February 20, 2010 (R. at 13), nor was he able to perform his past relevant work since then (R. at 21). The ALJ determined that he could perform light work with the exceptions listed by Dr. Montoya. (R. at 15), and several jobs exist in significant numbers in the national economy that Plaintiff could perform. (R. at 22.)

C. Standard of Review

This Court has the authority to review Social Security Act claim decisions under 42

U.S.C. § 405(g). The Court will uphold an ALJ’s decision if it is reached under the correct legal standard and supported by substantial evidence. *Briscoe ex rel. Taylor v. Barnhart*, 425 F.3d 345, 351 (7th Cir. 2005). Substantial evidence consists of “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971). This Court will not reconsider facts, re-weigh the evidence, resolve conflicts in the evidence, decide questions of credibility, or substitute its judgment for that of the ALJ. *Boiles v. Barnhart*, 395 F.3d 421, 425 (7th Cir. 2005). This Court will, however, ensure that the ALJ built an “accurate and logical bridge from the evidence to his conclusion so that, as a reviewing court, we may assess the validity of the agency’s ultimate findings and afford a claimant meaningful judicial review.” *Scott v. Barnhart*, 297 F.3d 589, 595 (7th Cir. 2002).

D. Disability Standard

To qualify for DIB or SSI benefits, the claimant must establish that he suffers from a disability. A disability is 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 Social Security Administration (“SSA”) established a five-step inquiry to evaluate whether a claimant qualifies for disability benefits. A successful claimant must show:

- (1) he is not presently employed;
- (2) his impairment is severe;
- (3) his impairment is listed or equal to a listing in 20 C.F.R. § 404, Subpart P, Appendix 1;
- (4) he is not able to perform her past relevant work; and
- (5) he is unable to perform any other work within the national and local economy.

Scheck v. Barnhart, 357 F.3d 697, 699–700 (7th Cir. 2004).

An affirmative answer leads either to the next step or, on steps three and five, to a finding that the claimant is disabled. *Zurawski v. Halter*, 245 F.3d 881, 886 (7th Cir. 2001). A negative answer at any point other than step three stops the inquiry and leads to a finding that the claimant is not disabled. *Id.* The burden of proof lies with the claimant at every step except the fifth, where it shifts to the Commissioner. *Clifford v. Apfel*, 227 F.3d 863, 868 (7th Cir. 2000).

E. Analysis

Plaintiff contends that the ALJ erred in four respects: (1) his assessment of Plaintiff's RFC; (2) failing to order an additional examination in regards to Plaintiff's anxiety and depression; (3) his assessment of Plaintiff's credibility; and (4) giving little weight to Dr. Mukoski's opinion (DE 13 at 15, 20, 21, 24.)

This Court must decide whether the ALJ's assessments were reached under the correct legal standard and supported by substantial evidence—that is, evidence that is relevant and reasonably adequate to support the ALJ's conclusions. *See Briscoe*, 425 F.3d at 351; *Richardson*, 402 U.S. at 401. For the reasons explained below, the Court affirms the ALJ decision.

(1) *The ALJ did not legally err in his assessment of Plaintiff's RFC.*

Plaintiff claims the ALJ legally erred in his assessment of Plaintiff's RFC because he did not fully discuss Plaintiff's chronic pain symptoms or how Plaintiff's obesity affected his impairments. (DE 13 at 16–20.) The Court finds the ALJ justified his decision about Plaintiff's pain and obesity with substantial evidence.

(a) *Plaintiff's pain*

Plaintiff's contention that the Court should overturn the ALJ's decision because he did not fully discuss Plaintiff's pain symptoms is incorrect. An ALJ "is not required to discuss every piece of evidence but is instead required to build a logical bridge from the evidence to her conclusions." *Similia v. Astrue*, 573 F.3d 503, 516 (7th Cir. 2009).

When medical signs or laboratory results show that medically determinable impairments could reasonably be expected to produce a claimant's symptoms, the ALJ must consider all available evidence to evaluate the intensity and persistence of pain symptoms. 20 CFR 404.1529(c)(3). In arguing that the ALJ improperly discounted Plaintiff's complaints of pain, Plaintiff primarily relies upon *Parker v. Astrue*, 597 F.3d 920, 922 (7th Cir. 2010) (stating that "the etiology of extreme pain often is unknown, and so one can't infer from the inability of a person's doctors to determine what is causing her pain that she is faking it.")

Parker can be distinguished from the present case as it involved a claimant who had been examined by a dozen medical professionals who were in unanimous agreement that Parker suffered from chronic debilitating pain. *Parker* at 921. The ALJ discounted all of these opinions, however, to rely on the opinions of two nonexamining physicians. *Id.* at 922. In the instant case, there was no medical consensus as to the severity of Plaintiff's pain. Plaintiff himself was inconsistent as to the intensity and persistence of his pain. In September 2010, Plaintiff complained of pain in his knees hips and back, yet also reported that pain medications were controlling his pain. (R. at 17.) Following surgery to his left ankle, Plaintiff again complained of pain and swelling in his left foot and ankle, yet during physical examinations exhibited few signs of pain. (*Id.*). Similarly, in May and June 2011, Plaintiff complained of pain and numbness in his left foot, yet examinations found he had normal strength and sensation in his legs, and he

tolerated cardiac rehab exercises quite well, only having to use his cane occasionally. (R. at 18.) However, Plaintiff complained June 2011 that he was in constant pain since his surgery the previous year, and his pain medications only “make the pain tolerable.” (R. at 1485, 1523.) Thus, the ALJ built a logical bridge to his conclusion that Plaintiff’s complaints of pain were incredible, and findings of credibility are not to be decided by this Court. *Boiles v. Barnhart*, 395 F.3d 421, 425 (7th Cir. 2005).

Plaintiff contends that the ALJ’s failure to note several reports of crepitus in his knees is further evidence of the ALJ not fully considering the severity of his pain. (DE 13 at 18.) But as the Commissioner points out in his brief, nothing in the record links crackling or grating in Plaintiff’s knees to resulting functional limitations that the ALJ should have considered. (DE 18 at 8).

While Plaintiff argues that the ALJ erred in failing to consider his prescriptions to Vicodin and Morphine because it is unlikely a claimant would take strong doses of heavy drugs for faked pain, he misconstrues the rule from *Carradine v. Barnhart*, 360 F.3d 751 (7th Cir. 2004), which also takes into account much more serious surgical intervention than is at issue in the present case. “What is significant is the improbability that Carradine would have undergone the pain-treatment procedures that she did, which included not only heavy doses of strong drugs such as Vicodin, Toradol, Demerol, and even morphine, but also the surgical implantation in her spine of a catheter and a spinal-cord stimulator, merely in order to strengthen the credibility of her complaints of pain and so increase her chances of obtaining disability benefits. . . .” *Carradine v. Barnhart* at 755/ In this case the ALJ took full account of the surgeries Plaintiff has undergone. (R. at 15–22). However, there is no allegation here that Plaintiff is a malingerer; the ALJ merely found that despite surgical intervention, Plaintiff’s impairments were not severe

enough to make him disabled.

Plaintiff next argues that the ALJ's assessment of his complaints of pain amounted to inappropriate paraphrasing of record material. He relies on *Sarchet v. Chater*, 78 F.3d 305 (7th Cir. 1996), for the presupposition that an ALJ's decision will be reversed where an ALJ inaccurately paraphrases the record. In the instant case, the ALJ's conclusion that Plaintiff's ailments were "relatively benign," which Plaintiff argues for as one basis for reversal, was based on inconsistent medical reports as well as the ALJ's credibility findings. This is a far cry from *Sarchet* where the ALJ displayed "a shaky understanding of the medical facts," and misunderstood the testimony of the vocational expert. *Id.* at 307. In this case, the ALJ's statement that Plaintiff's ailments "relatively benign" came after a discussion of the condition of Plaintiff's left ankle and foot, which had "full-range of motion," "no crepitus and "no leg edema," findings that were indeed relatively benign. (R. at 18.)

(b) *Plaintiff's obesity*

SSR 02-1p defines obesity as a medically determinable impairment and requires adjudicators to consider its effects when evaluating a claimant's disability. "The combined effects of obesity with other impairments can be greater than the effects of each of the impairments considered separately." SSR 02-1p. Consequently, obesity must be considered for its incremental effect when combined with other impairments. Here, the ALJ found that Plaintiff's obesity was a severe impairment, and indeed specifically took the Plaintiff's obesity into account along with Plaintiff's other impairments by limiting him to light work with additional postural limitations. (R. at 14, 18.) Thus, the ALJ did not err in taking obesity into account in Plaintiff's RFC.

(2) The ALJ did not legally err in declining to order an additional examination regarding Plaintiff's anxiety and depression

An ALJ has a basic obligation to develop a full and fair record. *Smith v. Apfel*, 231 F.3d 433, 437-38 (7th Cir. 2000). However, the requirement to develop the record can reasonably require only so much. *Scheck v. Barnhart*, 357 F.3d 697, 702 (7th Cir. 2004). *See also Kendrick v. Shalala*, 998 F.2d 455, 456 (7th Cir.1993) (“The difficulty is that no record is ‘complete’—one may always obtain another medical examination, seek the views of one more consultant, wait six months to see whether the claimant's condition changes, and so on.”)

In arguing that the ALJ should have ordered further psychological examination, Plaintiff relies on *Smith v. Apfel*, 231 F.3d 433 (7th Cir. 2000), in which the ALJ erred in not ordering recent x-rays of the claimant. However, *Smith* is not analogous to the instant case because there the ALJ had plainly erred in relying on x-rays that were ten years old and no other recent medical evidence. *Id.* at 437-38. Only four months passed between Plaintiff's evaluation by a state agency psychiatrist and his first follow-up visit in 2011 with an advanced practice registered nurse, and the ALJ discussed all of those mental status examinations that Plaintiff claimed showed his deteriorating condition. (R. at 14). However, the ALJ noted that those examinations found only that Plaintiff had some difficulty caring for his nails and getting dressed, which had more to do with his physical impairments than his mental impairments, and that in fact Plaintiff claimed medication was helping his anxiety. (*Id.*)

While follow-up visits continued to catalog Plaintiff's mild psychological impairments, the ALJ found his medical impairments were not severe and caused no more than mild impairments. Furthermore, as the Commissioner correctly pointed out, Plaintiff's attorney did

not suggest at the hearing before the ALJ that the record was incomplete or that the ALJ needed to order further psychological or psychiatric examination of Plaintiff. (DE 18 at 9). “A claimant represented by counsel is presumed to have made his best case before the ALJ.” *Skinner v. Astrue*, 478 F.3d 836, 842 (7th Cir. 2007). Thus, the ALJ did not err in not ordering further psychiatric examination of Plaintiff.

(3) *The ALJ did not legally err in his assessment of Plaintiff’s credibility*

The ALJ’s credibility determination will not be reversed unless it is “patently wrong” and not supported by the record. *Schmidt v. Astrue*, 496 F.3d 833, 843 (7th Cir.2007); *Prochaska v. Barnhart*, 454 F.3d 731, 738 (7th Cir.2006) (“Only if the trier of fact grounds his credibility finding in an observation or argument that is unreasonable or unsupported . . . can the finding be reversed.”). The ALJ’s “unique position to observe a witness” entitles his opinion to great deference. *Nelson v. Apfel*, 131 F.3d 1228, 1237 (7th Cir.1997); *Allord v. Barnhart*, 455 F.3d 818, 821 (7th Cir.2006). However, if the ALJ does not make explicit findings and does not explain them “in a way that affords meaningful review,” the ALJ’s credibility determination is not entitled to deference. *Steele v. Barnhart*, 290 F.3d 936, 942 (7th Cir.2002).

Likewise, “[w]e will reverse an ALJ’s credibility determination only if the claimant can show it was ‘patently wrong.’” *Powers v. Apfel*, 207 F.3d 431, 435 (7th Cir. 2000) (citation omitted). “Patently wrong” is a high burden. *Turner v. Astrue*, 390 Fed. Appx. 581, 587 (7th Cir. 2010). “An ALJ’s credibility determination need not be flawless.” *Adams*, 880 F. Supp. 2d at 905 (citing *Simila v. Astrue*, 573 F.3d 503, 516 (7th Cir. 2008)). “It is only when the ALJ’s determination lacks any explanation or support that we will declare it to be ‘patently wrong’ . . . and deserving of reversal.” *Elder v. Astrue*, 529 F.3d 408, 413–414 (7th Cir. 2008) (citations

omitted).

The ALJ must determine a claimant's credibility only after considering all of the claimant's "symptoms, including pain, and the extent to which [the claimant's] symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence." 20 C.F.R. § 404.1529(a); *Arnold v. Barnhart*, 473 F.3d 816, 823 (7th Cir.2007)("subjective complaints need not be accepted insofar as they clash with other, objective medical evidence in the record.") If the claimant's impairments reasonably could produce the symptoms of which the claimant is complaining, the ALJ must evaluate the intensity and persistence of the claimant's symptoms through consideration of the claimant's "medical history, the medical signs and laboratory findings, and statements from [the claimant, the claimant's] treating or examining physician or psychologist, or other persons about how [the claimant's] symptoms affect [the claimant]." 20 C.F.R. § 404.1529(c); *Schmidt*, 395 F.3d at 746-47 ("These regulations and cases, taken together, require an ALJ to articulate specific reasons for discounting a claimant's testimony as being less than credible, and preclude an ALJ from merely ignoring the testimony or relying solely on a conflict between the objective medical evidence and the claimant's testimony as a basis for a negative credibility finding.").

The ALJ made his credibility determination after a lengthy discussion of Plaintiff's alleged medical and mental impairments and medical history. (R at 15-18.) The ALJ found that Plaintiff's alleged physical limitations were not fully supported by the record due to normal physical evaluations. (R. at 19). The ALJ then noted that despite Plaintiff's claims that he can only walk 8-10 minutes a day or 15-20 minutes on a great day, stand for 20-25 minutes and sit for 10-12 minutes before changing positions, he can cook, wash dishes, vacuum, sweep, go fishing and ride his bike four to five times a week, testimony which seems to conflict and

contradict itself. (R. at 18.) Also notable, and discussed in more detail below, was the fact that Plaintiff received unemployment benefits and certified that he was able to work while simultaneously seeking disability benefits because he claimed he could no longer work. (*Id.*) The court finds that the ALJ's credibility determination was based on objective medical evidence as well as Plaintiff's testimony. The ALJ's credibility determination was not patently wrong because it was sufficiently explained and supported by the record.

Plaintiff also claims the ALJ legally erred in his assessment of Plaintiff's credibility because he relied on boilerplate language, as well as his own statements about his disability. In recent years, the Seventh Circuit has criticized SSA ALJs for the use of "opaque" and "meaningless" boilerplate in decisions denying disability benefits without articulating specific factual support. *Bjornson v. Astrue*, 671 F.3d 640, 644 (7th Cir. 2012); *Parker v. Astrue*, 597 F.3d 920, 922 (7th Cir. 2010). But "[w]hile this sort of boilerplate is inadequate, *by itself*, to support a credibility finding, . . . its use[] does not make a credibility determination invalid. Not supporting a credibility determination with explanation and evidence from the record does." *Adams v. Astrue*, 880 F. Supp. 2d 895, 906 (N.D. Ill. 2012) (emphasis in original) (citing *Richison v. Astrue*, 462 Fed. Appx. 622, 625 (7th Cir. 2012)).

In the instant case, Plaintiff takes issue with the boilerplate language "statements concerning the intensity, persistence and limiting effects of these symptoms are not credible to the extent they are inconsistent with the above residual functional capacity assessment." (R. at 16.) While this language is inadequate by itself, as discussed above, the ALJ supported his credibility determination with a lengthy discussion and explanation of both objective medical evidence and subjective evidence from the record. (R at 15–19.) Thus, use of the language did not amount to an error.

Next, Plaintiff claims it was improper for the ALJ to rely in part on his receipt of unemployment benefits in coming to a negative credibility determination. While using this basis alone to deny benefits may be prejudicial, the Seventh Circuit Court of Appeals stated in *Schmidt v. Barnhart*, 395 F.3d 737, 746 (7th Cir. 2005) “we are not convinced that Social Security claimants decision to apply for unemployment benefits and represent to state authorities and prospective employers that he is able and willing to work should play absolutely no role in assessing his subjective complaints of disability.” However, a disabled claimant may seek unemployment benefits because he is desperate and has no other source of income. *Richards v. Astrue*, 370 Fed. Appx. 727, 731 (7th Cir. 2010). While Plaintiff and his wife wrote letters stating that they needed money (R. at 145, 149.), this case can also be distinguished from *Richards* because Plaintiff actively sought employment. (R. at 19, 37.) In addition, the application for unemployment was not the sole basis for the ALJ's findings. Thus, when taken with the aforementioned factors, the ALJ did not err when assessing Plaintiff's credibility.

(4) *The ALJ did not legally err in giving little weight to Dr. Mukoski's opinion*

A treating physician's medical opinion is entitled to controlling weight if it is well supported by objective medical evidence and consistent with other substantial evidence in the record. 20 C.F.R. § 404.1527(c)(2). If an ALJ rejects the opinion of a treating physician, he is required to provide a sound explanation for his decision. 20 C.F.R. § 404.1527(c)(2);. “If the treating physician's opinion is inconsistent with the consulting physician's opinion, internally inconsistent or based solely on the patient's subjective complaints, the ALJ may discount it.” *Ketelboeter v. Astrue*, 550 F.3d 620, 625 (7th Cir. 2008).

Dr. Mukoski opined in April 2011 that Plaintiff could no longer work, but as noted by the

ALJ, her regular examinations of Plaintiff revealed normal strength and sensation in his legs, no edema in his extremities, and that he could walk well, only requiring a cane at times. (R. at 20.) As the ALJ noted, Dr. Mukoski's opinion was not supported even by her own treatment notes. (*Id.*). As the ALJ found that Dr. Mukoski's opinion was internally inconsistent, the court holds that the ALJ did not legally err in giving this opinion little weight.

F. Conclusion

The Court finds that the ALJ built an accurate and logical bridge from the evidence to his conclusions. Thus, the Court affirms the decision of the ALJ.

SO ORDERED on September 30, 2014.

S/ Joseph S. Van Bokkelen
JOSEPH S. VAN BOKKELEN
UNITED STATES DISTRICT JUDGE