

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF INDIANA
 SOUTH BEND DIVISION

JOHNNIE COATS,)	
)	
Plaintiff,)	
)	
v.)	CAUSE NO. 3:14-cv-813-CAN
)	
CAROLYN W. COLVIN,)	
Acting Commissioner of Social Security,)	
)	
Defendant.)	

ORDER

On April 9, 2014, Plaintiff Johnnie Coats (“Coats”) filed his complaint in this Court seeking reversal of the Commissioner’s final decision denying his application Supplemental Security Income (“SSI”) and Disability Insurance Benefits (“DIB”). On August 6, 2014, Coats filed his Memorandum Of Law In Support Of A Social Security Appeal. [Doc. No. 15]. On October 30, 2014, Defendant Commissioner of Social Security (“Commissioner”) filed a response, asking the Court to affirm the Administrative Law Judge’s (“ALJ”) decision denying Coats’s applications for SSI and DIB. Coats filed a reply on November 13, 2014. This Court may enter a ruling in this matter based on the parties consent, 28 U.S.C. § 636(c), and 42 U.S.C. § 405(g).

I. RELEVANT BACKGROUND

On July 12, 2011, Coats filed applications for DIB and SSI alleging an onset date of January 15, 2011, due to a neck injury. After the SSA denied Coats’s applications initially and upon reconsideration, an ALJ held a hearing regarding Coats’s applications on January 3, 2013.

Coats was born on January 12, 1961, making him 50 years old at the alleged onset date. Coats completed the eleventh grade but did not obtain a GED. He lives with his girlfriend and

her son. Before the alleged onset date, Coats worked as a furnace operator, grinder, temporary worker, and wire cutter. At his hearing before the ALJ, Coats testified that he broke his neck while intoxicated and attempting to retrieve his spare key from a window ledge to unlock the door to his house. Coats provided medical evidence, including records of doctor visits and treatment for neck pain, from the date of the injury through the date of the hearing.

More specifically, Coats provided the ALJ with the medical opinions and treatment notes from Dr. Roman Filipowicz, his treating neurosurgeon, and an RFC analysis by Dr. Ruiz, a State agency reviewing physician. Dr. Filipowicz's notes show that Coats was admitted to the hospital after his fall for a fracture of the cervical spine. Coats underwent stabilization surgery on January 26, 2011, and was instructed to wear a neck brace until told otherwise. In July 2011, Dr. Filipowicz referred Coats to the Center for Pain Control after Coats was kicked out of the physical therapy program. On September 22, 2011, Dr. Ruiz performed a physical RFC assessment as part of Coats's disability application process. Dr. Ruiz's RFC assessment projected that by January 15, 2012, twelve months after the alleged onset date, Coats would be able to perform light work. Treatment notes from the Center for Pain Control on January 13, 2012, reported findings consistent with a December 30, 2011, examination that showed guarded walking and guarded performance of other activities. Later treatment notes in February 2012, from the Center for Pain Control showed hypersensitivity and signs of nerve inflammation. In August of 2012, Dr. Filipowicz wrote a letter opining that Coats was incapable of physical labor.

After the hearing, the ALJ issued a written decision reflecting the following findings based on the five-step disability evaluation prescribed in the Social Security Administration's ("SSA's") regulations. At Step One, the ALJ found that Coats had not engaged in substantial gainful activity since January 15, 2011, the alleged onset date. At Step Two, the ALJ found that

the residual effects of a neck fracture were a severe impairment. At Step Three, the ALJ found that Coats's impairments did not meet or medically equal the severity of a listed impairment. The ALJ also found that Coats had the residual functional capacity to perform light work with the following limitations: lift and carry up to 20 pounds occasionally and 10 pounds frequently; not limited in the amount of time that he is able to sit, stand, or walk throughout an eight hour workday but required a cane while walking; could perform no more than occasional balancing, stooping, kneeling, crouching, crawling, and climbing of ramps or stairs; could not climb ladders, ropes, or scaffolds; limited in the ability to rotate, flex, or extend his neck; able to perform bilateral overhead reaching occasionally; could not tolerate concentrated exposure to extreme cold; could not drive, operate moving machinery, work at unprotected heights, around exposed flames, or around large, unguarded bodies of water; or tolerate exposure to unguarded, hazardous machinery. At Step Four, the ALJ found that Coats was unable to perform any past relevant work. At Step Five, the ALJ considered Coats's, education, work experience, and residual functional capacity, from which he determined that jobs existed in the national economy that Coats could perform, such as an encapsulator or school bus monitor.

Based on these findings, the ALJ determined that Coats had not been disabled from January 15, 2011, which was reflected in his written decision issued on January 24, 2013. Coats requested that the Appeals Council review the decision of the ALJ and on February 7, 2014, the Appeals Council denied the request. Thus, the ALJ's decision became the final decision of the Commissioner for the purposes of judicial review.

II. ANALYSIS

A. Standard of Review

The Social Security Act authorizes judicial review of the final decision of the agency and indicates that the Commissioner's factual findings must be accepted as conclusive if supported by substantial evidence. 42 U.S.C. § 405(g). Thus, a court reviewing the findings of an ALJ will reverse only if the findings are not supported by substantial evidence or if the ALJ has applied an erroneous legal standard. *See Briscoe v. Barnhart*, 425 F.3d 345, 351 (7th Cir. 2005). Substantial evidence is more than a mere scintilla but may be less than the weight of the evidence. *Scheck v. Barnhart*, 357 F.3d 697, 699 (7th Cir. 2004) (citations omitted). Thus, substantial evidence is simply the relevant evidence needed for a reasonable mind to accept as adequate support for a conclusion. *Kepple v. Massanari*, 268 F.3d 513, 516 (7th Cir. 2001) (citations omitted).

A court reviews the entire administrative record but does not reconsider facts, re-weigh the evidence, resolve conflicts in evidence, decide questions of credibility, or substitute its judgment for that of the ALJ. *See Boiles v. Barnhart*, 395 F.3d 421, 425 (7th Cir. 2005). Thus, the question upon judicial review of an ALJ's finding that a claimant is not disabled within the meaning of the Social Security Act is not whether the claimant is, in fact, disabled, but whether the ALJ "uses the correct legal standards and the decision is supported by substantial evidence." *Roddy v. Astrue*, 705 F.3d 631, 636 (7th Cir. 2013) (citations omitted). "[I]f the Commissioner commits an error of law," the Court may reverse the decision "without regard to the volume of evidence in support of the factual findings." *White v. Apfel*, 167 F.3d 369, 373 (7th Cir. 1999) (citation omitted).

At a minimum, an ALJ must articulate his analysis of the evidence in order to allow the reviewing court to trace the path of his reasoning and to be assured that the ALJ considered the important evidence. *See Scott v. Barnhart*, 297 F.3d 589, 595 (7th Cir. 2002). An ALJ must "build an accurate and logical bridge from the evidence to [the] conclusion so that [the court]

may assess the validity of the agency’s final decision and afford [a claimant] meaningful review.” *Giles v. Astrue*, 483 F.3d 483, 487 (7th Cir. 2007) (quoting *Scott*, 297 F.3d at 595) (internal quotation marks omitted). Although the ALJ is not required to specifically address every piece of evidence in the record, there must be a “logical bridge” from the evidence to the ALJ’s conclusions. *O’Connor Spinner*, 627 F.3d at 618. The ALJ must provide a glimpse into the reasoning behind the ALJ’s analysis and decision to deny benefits. *Zurawski v. Halter*, 245 F.3d 881, 889 (7th Cir. 2001).

B. Disability Standard

To be eligible for disability benefits, a claimant must establish that he suffers from a “disability” as defined by the Social Security Act and regulations. The Act defines “disability” as an inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months. 42 U.S.C.

§§ 423(d)(1)(A), 1382c(a)(3)(A). To be found disabled, the claimant’s impairment must not only prevent him from doing his previous work, but considering his age, education, and work experience, it must also prevent him from engaging in any other type of substantial gainful activity that exists in significant numbers in the economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B); 20 C.F.R. §§ 404.1520(e)-(f), 416.920(e)-(f).¹

When a claimant alleges a disability, Social Security regulations provide a five-step inquiry to evaluate whether the claimant is entitled to benefits. 20 C.F.R. §§ 404.1520(a)(4). The steps are: (1) Is the claimant engaged in substantial gainful activity? If yes, the claimant is not disabled, and the claim is denied; if no, the inquiry proceeds to step two; (2) Does the claimant

¹ Because both SSI and DIB regulations are identical, the Court will only refer to the DIB regulations found in 20 C.F.R. pt. 404 in this order.

have an impairment or combination of impairments that are severe? If not, the claimant is not disabled, and the claim is denied; if yes, the inquiry proceeds to step three; (3) Do(es) the impairment(s) meet or equal a listed impairment in the appendix to the regulations? If yes, the claimant is automatically considered disabled; if not, then the inquiry proceeds to step four; (4) Can the claimant do the claimant's past relevant work? If yes, the claimant is not disabled, and the claim is denied; if no, then the inquiry proceeds to step five; (5) Can the claimant perform other work given the claimant's residual functional capacity ("RFC"), age, education, and experience? If yes, then the claimant is not disabled, and the claim is denied; if no, the claimant is disabled. 20 C.F.R. § 404.1520(a)(4)(i)-(v); *see also Scheck*, 357 F.3d at 699-700 (7th Cir. 2004).

At steps four and five, the ALJ must consider an assessment of the claimant's RFC. The RFC "is an administrative assessment of what work-related activities an individual can perform despite [the individual's] limitations." *Dixon v. Massanari*, 270 F.3d 1171, 1178 (7th Cir. 2001). The RFC should be based on evidence in the record. *Craft v. Astrue*, 539 F.3d 668, 676 (7th Cir. 2008) (citing 20 C.F.R. § 404.1545(a)(3)). The claimant bears the burden of proving steps one through four, whereas the burden at step five is on the ALJ. *Zurawski*, 245 F.3d at 886; *see also Knight v. Chater*, 55 F.3d 309, 313 (7th Cir. 1995).

C. Issues Presented for Review

Coats seeks remand in this case and contends it is appropriate for three reasons. First, Coats contends that the ALJ's RFC finding was not supported by substantial evidence. Second, Coats contends that the ALJ erred in making the credibility determination. Third, Coats contends that the ALJ's step 5 finding was not supported by substantial evidence. The Commissioner

generally contends that the ALJ's findings and decisions were supported by substantial evidence. The Court addresses each contention in turn.

1. Coats's RFC Argument

First, Coats contends that the ALJ's RFC finding was not supported by substantial evidence. More specifically, Coats argues that the ALJ erred in weighing and evaluating the medical evidence and opinions in the record. Coats seems to be particularly concerned that the ALJ over-valued Dr. Ruiz's projected RFC, which Coats asserts is inconsistent with later treatment notes from the Center for Pain Control, and under-valued Dr. Filipowicz's opinions about Coats's limitations. The opinions of treating physicians are generally entitled to greater weight than those of examining physicians, and opinions of examining physicians are entitled to greater weight than those of non-examining physicians. 20 C.F.R. § 416.927(d)(1)-(2). As long as a treating physician's opinion is "well-supported by medically acceptable clinical and laboratory diagnostic techniques" and is "not inconsistent with other substantial evidence" in the case record, the ALJ should give it controlling weight. *Id.* When well-supported contradicting evidence is introduced, the treating physician's evidence is no longer entitled to controlling weight. 20 C.F.R. § 404.1527(d)(2). Medical evidence may be discounted if it is internally inconsistent or inconsistent with other evidence. 20 C.F.R. § 404.1527(c).

The essence of Coats's argument, as the Court interprets it, is that the ALJ should have given greater weight to Dr. Filipowicz's July 2011 opinion, included in his letter referring Coats to the Center for Pain Control, that Coats was "not a candidate to return to work" and his August 2012 opinion that Coats was "rendered incapable of physical labor." [Doc. No. 15 at 16; 11 at 24, 25, 505, 532]. The ALJ gave minimal weight to Dr. Filipowicz's July 2011 referral letter because it did not contain any specific functional limitations and was written before Coats began

treatment at the Center for Pain Control. The ALJ also gave minimal weight to Dr. Filipowicz's August 2012 letter, which state Coats was incapable of performing physical labor due to arm pain, because the record did not show any functional limitations with arms. The ALJ gave great weight to Dr. Ruiz's RFC assessment performed on September 22, 2011, which predicted that by January 15, 2012, Coats would be able to perform light work, because it was consistent with the evidence in record that showed a history of treatment for pain in his spine. Coats argues that the ALJ's rationale for distribution of weight is without basis and that the record needed to be further developed. Coats contends that the ALJ should have re-contacted Dr. Filipowicz, the treating neurosurgeon, or ordered an updated consultative examination to properly develop a full and fair record. The Commissioner provides a general argument that the ALJ supported his decision with substantial evidence. While the Commissioner provided accurate statements of Social Security law and analysis for the facts in this case, it is difficult to discern how these statements affect the separate and specific issues raised by Coats.

Coats's first argument for why the RFC is not supported by substantial evidence is that the ALJ overly relied on the projected RFC assessment by Dr. Ruiz. Coats contends this was error because the projected RFC assessment is contradicted by the Center for Pain Control's treatment notes in January 13, 2012, two days from when Dr. Ruiz had projected that Coats would be able to perform light work. Coats points to treatment notes in December 2011 and January 2012, which note his guarded ambulation and guarded performance of other activities, to show that Coats's impairments had not improved to the level predicted by Dr. Ruiz. [Doc. No. 15 at 19-20].

An ALJ must create a logical bridge from the evidence to the decision so that a reviewing court can trace the path of his reasoning and be assured that the ALJ considered the important

evidence. *See Scott*, 297 F.3d at 595; *Giles*, 483 F.3d at 487. Here, the ALJ has not articulated his reasoning in balancing the treatment notes and Dr. Ruiz’s projected RFC. [See Doc. No. 13 at 24]. The ALJ’s discussion of the treatment notes in exhibit 12F and 14F relates to the treatment received by Coats, and the discussion of Dr. Ruiz’s RFC assessment does not mention the evidence considered in support or opposition of Dr. Ruiz’s assessment. [Doc. No. 13 at 24]. Therefore, this Court is unable to determine whether substantial evidence supports the ALJ’s decision to give great weight to Dr. Ruiz’s opinion and the resulting RFC determination and remand is appropriate.

Coats’s second argument for remand was that the ALJ failed to ensure a full and fair record on which to base the RFC determination. Although the ALJ has the duty to ensure a full and fair record, a court will only determine that the ALJ inadequately performed this duty when there are significant gaps in the claimant’s medical record. *Nelms v. Astrue*, 553 F.3d 1093, 1098 (7th Cir. 2009). *See also* 20 C.F.R. § 404.1519a(b) (“A consultative examination may be purchased when the evidence as a whole, both medical and nonmedical, is not sufficient to support a decision on [the] claim.”). An omission or gap is significant only when it is prejudicial. *Nelms*, 553 F.3d at 1098. To prove prejudice, the claimant must set forth specific, relevant facts that the ALJ did not consider. *Id.*

Here, Coats first argues that the ALJ did not ensure a full and fair record because the ALJ neither re-contacted Dr. Filipowicz nor ordered an updated consultative examination to supply the specific functional limitations that were not present in Dr. Filipowicz’s July 2012 letter referring Coats to the Center for Pain Control. Coats contends that the “ALJ should have recontacted Dr. Filipowicz for a function-by-function assessment” and that the ALJ “would have made a more informed opinion with a functional assessment” from Coats’s treating

neurosurgeon. [Doc. No 15 at 17-18]. However, a claimant's mere speculation that more information might have been obtained in the case does not warrant remand. *Nelms*, 553 F.3d at 1098. To succeed on this argument, Coats must provide specific evidence that the ALJ did not consider, and show that the omitted evidence was relevant to the decision. Coats has failed to meet this burden. Coats speculates that additional evidence may have been obtained from Dr. Filipowicz had the ALJ re-contacted him. If Coats believed that he needed more evidence to prove or show specific functional limitations, then he should have submitted the evidence at or before the hearing. The ALJ was under no affirmative duty to pursue every piece of possible evidence. *See Nelms*, 553 F.3d at 1098 ("there is no absolute requirement that an ALJ update the medical records to the time of the hearing") (*citing Luna v. Shalala*, 22 F.3d 687, 692-93).

Coats's second argument for why the record was not complete is that the ALJ overly relied on the projected RFC assessment by Dr. Ruiz. Coats contends this was error because the projected RFC assessment is contradicted by the Center for Pain Control's treatment notes in January 13, 2012, two days from when Dr. Ruiz had projected that Coats would be able to perform light work. Coats points to treatment notes in December 2011 and January 2012, which note his guarded ambulation and guarded performance of other activities, to show that Coats's impairments had not improved to the level predicted by Dr. Ruiz. [Doc. No. 15 at 19-20].

This argument is similarly unpersuasive in proving a significant gap or omission in the record because the evidence that Coats claims contradicts Dr. Ruiz's projected assessment was actually considered by the ALJ. The ALJ cited to exhibits 12F and 14F, which include the relevant treatment notes, when discussing Coats's medication regimen. [Doc. No. 13 at 24].

Therefore, as discussed above, this Court is unable to determine whether substantial evidence supports the ALJ's decision to give great weight to Dr. Ruiz's opinion and the resulting RFC determination and remand is appropriate.

2. Coats's Credibility Argument

Coats's second main contention is that the ALJ's credibility determination was not supported by substantial evidence because the ALJ did not discuss or analyze his daily activities, which Coats claims would have supported a higher credibility determination. The Commissioner argues that the ALJ properly considered the medical and non-medical evidence in the record and provided sufficient reasons for discounting Coats's credibility. When making a credibility determination, the ALJ must consider the record as a whole, including objective medical evidence, the claimant's statement about symptoms, any statements or other information provided by treating or examining physicians and other persons about the conditions and how they affect the claimant, and any other relevant evidence. *See* SSR 96-7p. The standard of review for an ALJ's credibility determination is very deferential. *Prochaska v. Barnhart*, 454 F.3d 731, 738 (7th Cir. 2006). Generally, the credibility determination is considered a factual matter where the ALJ is in the best position to determine the truthfulness and forthrightness of a witness, and therefore courts will only overturn an ALJ's credibility determination if it is patently wrong. *See Shideler v. Astrue*, 688 F.3d 306, 310-11 (7th Cir. 2012); *Herron v. Shalala*, 19 F.3d 329, 335 (7th Cir. 1995). An ALJ's credibility determination is "patently wrong" only when the determination lacks any explanation or support. *See Elder v. Astrue*, 529 F.3d 408, 413-14 (7th Cir. 2008).

In determining Coats's credibility, the ALJ noted that there were "a number of factors that weigh against the credibility of [Coats's] allegations that his impairments are so severe that

they cause him to be unable to work.” [Doc. No. 11 at 25]. First, the ALJ noted that there were no functional limitations in the record from any of Coat’s doctors that would suggest greater limitations than provided for in the RFC. Second, the ALJ noted that Coats was discharged from physical therapy for failing to attend 5 sessions in a three month span and refusing further treatment. Further, ALJ noted that the evidence of record reflected that Coats’s treatments were successful in minimizing his symptoms and that Coats testified that his “medications work well when he takes them.” [Doc. No. 11 at 25 (internal quotation marks omitted)]. The ALJ noted that these were inconsistent with Coats’s claims that he needs to rest for 15 minutes after walking for a block and that he could not sit for more than 2 hours.

Coats contends that the ALJ erred by discussing Coats’s noncompliance with recommended therapy, dismissal from physical therapy for missing too many sessions, and the lack of any documented opinion containing specific functional limitations. Coats also contends that the ALJ erred by interpreting Coats’s testimony that his medicine worked well when he took them as inconsistent with his claimed physical limitations. Finally, Coats contends that the ALJ failed to discuss Coats’s daily activities, which Coats claims would support finding him more credible. However, the ALJ provided specific support and explanations of the evidence that lessened Coats’s credibility and thus, this Court cannot say that the determination was patently wrong.

3. Coats’s Step 5 Argument

Finally, Coats argues the ALJ’s Step 5 determination was err because it did not include further limitations, which would have been required if the ALJ had given more weight to Dr. Filipowicz’s opinion in making the RFC determination. Although, Coats does not provide any specific limitations that should have been included, the Court need not reach a decision on these

arguments because the case is being remanded and the hypotheticals posed may change based on the analysis provided in determining the RFC.

III. CONCLUSION

For the reasons set out above, the Court **GRANTS** Coats's request for remand this case. [Doc. No. 15]. The decision of the ALJ is **REMANDED** for further proceedings consistent with this opinion.

SO ORDERED.

Dated this 19th day of May, 2015.

s/Christopher A. Nuechterlein
Christopher A. Nuechterlein
United States Magistrate Judge