

1 THE COURT: We're back in the matter of Trina Marie
2 Myers versus Nancy Berryhill, the acting commissioner for the
3 Social Security Administration. The parties have made their
4 oral arguments and I'm prepared to render an opinion on the
5 record now.

6 Just by way of background or kind of setting things
7 up, plaintiff argues here legal error regarding the
8 application of the regulations to the residual functioning
9 capacity. Does not seek remand for further proceedings but a
10 remand to award benefits. And by way of background, plaintiff
11 filed an application for disability insurance benefits and
12 supplemental security income in March of 2012. She alleged
13 disability beginning November 2008 due to previous
14 applications -- I'm sorry. Strike that. After her
15 application was denied initially and on review, a hearing was
16 requested and held and the ALJ denied plaintiff's application.
17 The appeals counsel denied review, making the ALJ's decision
18 the final decision in this matter.

19 At Step 2, the ALJ found that plaintiff's severe
20 impairments were degenerative joint disease in the right knee,
21 obesity, bipolar disorder, depressive disorder, anxiety
22 disorder, and a history of substance abuse. Considered singly
23 or in combination, these impairments, nor plaintiff's
24 nonsevere impairments, were not found to meet the listings.
25 The ALJ's residual functional capacity was as follows, and I'm

1 quoting here directly.

2 Light work is defined in 20 Code of Federal
3 Regulations 404.1567(b) and 416.967(b). This includes lifting
4 and carrying up to 20 pounds occasionally or less than 20
5 pounds frequently; sitting six hours in an eight-hour workday;
6 standing and/or walking for at least two hours in an
7 eight-hour workday; no climbing ladders, ropes or scaffolds;
8 no exposure to unprotected heights; occasional bending,
9 stooping, kneeling, balancing and climbing of stairs; work
10 that is unskilled in nature, such that it involves only simple
11 and repetitive tasks; only occasional contact with the public
12 or peers; work that is regular in expectations; and work that
13 does not involve fast-paced tasks or factor-like tasks.

14 At Step 4 the ALJ found Ms. Myers was able to
15 perform past relevant work as a house cleaner. This resulted
16 in a finding of no disability and there was no Step 5 analysis
17 conducted as a result of that.

18 Now, this Court reviews the commissioner's decision
19 to determine if it, as a whole, is supported by substantial
20 evidence and whether the commissioner has employed the correct
21 legal standards. The ALJ in this case found the claimant
22 capable of the residual function capacity to perform light
23 work as defined by the regulations; and in particular, we're
24 talking about 20 C.F.R. 404.1567(b), including and relevant to
25 this appeal, standing and/or walking for at least two hours in

1 an eight-hour workday. Plaintiff here contends that it was
2 legal error for the ALJ to find her standing and/or walking
3 was limited to two hours a day and that she could still do
4 light work.

5 The regulations, however, provide in relevant part
6 that light work requires a good deal of walking or standing
7 and Social Security Ruling 83-10 further provides light work
8 includes frequent lifting or carrying. This necessitates
9 being on one's feet up to two-thirds of a workday. Thus, a
10 full range -- and I quote, a "full range" of light work
11 requires standing or walking off and on for a total of
12 approximately six hours of an eight-hour workday.

13 A plain reading of these regulations does not
14 support the contention that light work must equate to the
15 ability to stand or walk for one-third or two-thirds of a
16 workday. The ruling only makes it clear that a full range of
17 light work requires up to two-thirds of a workday standing or
18 walking. Does not say that something less than a full range
19 might still be light work. Importantly, where it may be that
20 some or even most light work requires the ability to stand or
21 walk for a third to two-thirds of the day, it does not
22 necessarily mean that plaintiff's past relevant work of a
23 housekeeper required the full range of light work. I think
24 that's what's important in this case.

25 And here an impartial medical expert, Dr. Besen,

1 testified as to the plaintiff's physical impairments. There's
2 no contesting his findings, including the standing/walking
3 capabilities where his testimony was consistent with the
4 claimant was capable of walking/standing at least two hours of
5 an eight-hour workday, and that's at the transcript pages 76
6 through 77.

7 The vocational expert was present for the
8 examination. During the VE's testimony, the ALJ asked, based
9 on the limitations alluded to by Dr. Besen, could the
10 plaintiff perform past relevant work either as she performed
11 it or as it's generally performed in the state or national
12 economy. The VE testified that based on that hypothetical,
13 cleaner/housekeeper would be available.

14 The ALJ then downgraded the hypothetical to that of
15 a sedentary, to which the VE responded that it would no longer
16 be available. In his decision the ALJ adopted and RFC that
17 aligned with Dr. Besen's testimony; and in fact, plaintiff
18 doesn't object that the ALJ's RFC is not supported by
19 substantial evidence. Just that it was legal error to find
20 someone capable of light work position based on the
21 walking/standing restrictions that were included in the RFC.
22 But the VE's testimony, of course discounts that argument.

23 This case is -- the Court has looked at *Johnson v.*
24 *Barnhart*, 2014 Westlaw case 1427118 out of the Northern
25 District of Illinois. This case is distinguishable, I

1 believe, from *Johnson v. Barnhart*. There, the Northern
2 District remanded -- Northern District of Illinois remanded
3 where the ALJ's RFC, which he characterized as light work, yet
4 limited the plaintiff to two hours standing/sitting. But it's
5 important to note that that was a Step 5 finding that the
6 claimant could complete light work jobs.

7 In *Johnson*, the Court relied on Medical-Vocation
8 Guidelines instead of employing a vocational expert. This is
9 important because when an RFC does not coincide with a full
10 range of a category of work, such as here where the
11 plaintiff's RFC did not fully align with either light work or
12 sedentary work, it's appropriate to employ the vocational
13 expert. And that was expressly stated in *Haynes v. Barnhart*,
14 416 F.3d 621, a 7th Circuit case from 2005.

15 The VE then considered the plaintiff's past relevant
16 work as to the specific limitations provided from the medical
17 expert's testimony. Also, the ALJ in *Johnson* found that the
18 claimant was unable to perform past relevant work and instead
19 said that although the plaintiff could stand/walk at least two
20 hours, he could perform a significant range of light work at
21 Step 5. Again, this is Step 5 analysis in *Johnson* and we're
22 talk talking about Step 4 analysis here.

23 Here it appears the ALJ did not identify specific
24 jobs in Step 5, a point the Court took issue with and noted --
25 I'm sorry. In *Johnson*, the ALJ did not identify specific jobs

1 in Step 5 and that was a point the Court took issue with and
2 noted that's what necessitated the remand there.

3 In sum, this case is not akin to *Johnson*. The
4 regulations and rulings do not support plaintiff's arguments
5 that plaintiff's sit/stand limitations ruled out all light
6 work jobs, particularly plaintiff's past relevant work which
7 the VE testified based on limitations and impairments, she was
8 still capable of performing. In that context I find that that
9 was not legal error. For these reasons the Court affirms the
10 decision of the ALJ in this matter. Mr. Staggs, any further
11 record that you wish to make today?

12 MR. STAGGS: No. No further record at this time.
13 Thank you, Your Honor.

14 THE COURT: Ms. Cohn, any further record that on the
15 commissioner would like to make at this time?

16 MS. COHN: No, not at this time. Thank you, Your
17 Honor.

18 THE COURT: Thank you all. I appreciate the
19 arguments today. I appreciate your work on the briefs. We
20 will get the appropriate docket entries on the docket just as
21 soon as we can. Otherwise, we'll be in recess. Thank you.

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