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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

CAROL L. ZMOLEK,)	
)	
Plaintiff,)	No. 15 cv 58 EJM
vs.)	
)	ORDER
CAROLYN W. COLVIN,)	
ACTING COMMISSIONER OF)	
SOCIAL SECURITY,)	
)	
Defendant.)	

Plaintiff brings this action seeking judicial review of the Commissioner's denial of her application for social security disability income benefits. Briefing concluded January 12, 2016. The court has jurisdiction pursuant to 42 USC §405(g). Affirmed.

Plaintiff claims disability due to various mental and physical limitations. The mental limitations include severe depression and cognitive disorder. The physical limitations include severe coronary artery disease with congestive heart failure and cervical degenerative disease. She asserts the Administrative Law Judge (ALJ) failed to consider her mental limitations severe, and asserts that the Commissioner's decision that her mental condition is not severe is not supported by substantial evidence on the record as a whole.

[R]eview of the agency decision is limited to whether there is substantial evidence on the record as a whole to support the [Commissioner's] decision...Substantial evidence is less than a preponderance, but enough so that a reasonable mind might find it adequate to support the conclusion.

Robinson v. Sullivan, 956 F2d 836, 838 (8th Cir. 1992.)

Plaintiff was 57 years old at the time of alleged onset, and had previously been employed as a secretary. The ALJ held a hearing, evaluated plaintiff's mental impairments pursuant to the technique mandated by 20 C.F.R. § 404.1520a. The ALJ found that the plaintiff had no limitations in her daily activities, social functioning and concentration, (Tr. 14), that she did have mental limitations, but that those limitations were not severe so that she was not disabled. Her personal daily activities showed that she sometimes worked 12 to 15 hours per week. (Tr. 39, 46-47.) The ALJ's findings were based on her daily activities and her own testimony, the opinions of two agency medical experts, and also on the expert testimony of Richard A. Martin, Ph.D., the examining psychologist, to whom both sides point to support their case.

Dr. Martin's testimony was long and internally inconsistent, containing many points that support the ALJ's finding that plaintiff's mental impairments were not severe, while at the same time equivocating and providing some support for the position that they were severe. Dr. Martin described plaintiff's social abilities as "generally intact" (Tr. 927), and opined that she could handle semi-skilled tasks, despite potential problems with memory and a history of depression. Id. Dr. Martin testified that plaintiff could handle "simple instructions and procedures," and could maintain attention sufficient for "simplified vocational situations," and would not have "significant problems with her interactions with supervisors, co-workers,

and the public.” Id. On the other hand, after saying all this, he went on to testify that extended-contact positions were “not recommended.” Id. There are other statements and equivocations from Dr. Martin that point in the opposite direction from the above quotes. There are also other medical opinions that support the ALJ’s finding, in addition to Dr. Martin, although those other sources point in both directions as well, with the majority supporting the ALJ’s finding.

In such an environment, it is within the “zone of choice” of the ALJ to find the mental limitations severe or not. Hacker v. Barnhart, 459 F.3d 934, 936 (8th Cir. 2006.) The court finds that there was sufficient basis for the ALJ to hold that on balance the greater weight of the evidence supports the conclusion that plaintiff did have mental limitations, but that they were not severe or disabling. Hurd v. Astrue, 621 F.3d 734 (8th Cir. 2010.)

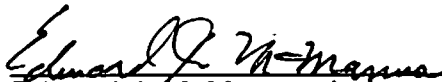
Upon the foregoing, it is the court’s view that the record supports the Commissioner’s decision.

It is therefore

ORDERED

Affirmed.

March 10, 2016



Edward J. McManus, Judge
UNITED STATES DISTRICT COURT