

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MISSOURI

3 DOUGLAS EUGENE SMITH,

4 Plaintiff,

Cause No. 4:14cv-1722CDP

5 Vs.

6 CAROLYN W. COLVIN,
Acting Commissioner of Social Security,

7 Defendant.
8

9 =====
EXCERPT OF RULING FROM HEARING
MARCH 10, 2016

10 BEFORE THE HONORABLE CATHERINE D. PERRY
11 UNITED STATES DISTRICT JUDGE
12 EASTERN DIVISION
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13 APPEARANCES:

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1 The plaintiff has raised arguments that the -- both
2 in the briefs and here today -- criticizing the credibility
3 analysis and the residual functional capacity determination,
4 and although today's arguments have focused on whether the
5 RFC adequately considered the moderate limitations on
6 concentration, persistence, and pace, the briefs did talk
7 about the physical issues as well, and so I'm going to
8 address both of them.

9 The ALJ is not required -- let me talk about
10 credibility first. These obviously run together. But the
11 ALJ is not required to explicitly discuss each Polaski
12 factor. It is sufficient if he acknowledges and considers
13 those factors before discounting the claimant's subjective
14 complaint. And so, but he is allowed to disbelieve
15 subjective complaints, if there are inconsistencies in the
16 record as a whole, and I must defer to the ALJ's credibility
17 findings as long as he explicitly discredits the testimony
18 and gives a good reason for doing so.

19 I agree with the counsel for the Commissioner that
20 in this case, the ALJ was thorough in explaining the how each
21 limitation ties to the residual functional capacity, and also
22 explaining and citing medical evidence in the record, and
23 also explaining his credibility determinations.

24 The ALJ did conclude that he -- that Mr. Smith's
25 impairments could cause some of the alleged symptoms, but not

1 -- didn't agree, didn't find credible, the statements
2 concerning the intensity, persistence, and limiting effect of
3 those symptoms. He noted noncompliance with treatment, and
4 objective evidence that was inconsistent with the plaintiff's
5 claims, as well as some other credibility issues. And those
6 are all supported by the record.

7 with regard to the noncompliance, there are several
8 reports of times that Smith was not taking his medications,
9 and also the ALJ concluded that the condition generally
10 improved when he was getting regular treatment and was
11 compliant with his medications. And noncompliance is a
12 reason to discredit allegations, especially where the
13 evidence tends to show that the impairments are
14 well-controlled when the claimant is in compliance, but the
15 ALJ has to consider whether a good reason supports the
16 failure to comply.

17 Obviously, financial -- lack of financial resources
18 to follow treatment is something that could be considered a
19 justifiable cause for noncompliance; and additionally, the
20 mental health issues can also sometimes be a cause for
21 noncompliance.

22 The evidence in the case does show that there were
23 many times when the claimant reported difficulty in obtaining
24 medication for financial reasons, and that could constitute
25 justifiable cause, except that there are many times when the

1 medication was available to the plaintiff, and he refused to
2 take it. And in particular, he was incarcerated for sometime
3 in early 2012 and again in December of 2012. And during
4 those times, there is many references that the claimant
5 refused his medications time and again, and there were a
6 couple of references in the record that were noted by
7 plaintiff's counsel here today where he said that he had side
8 effects of the medication. He said they made his head spin.
9 But if you look at those records, or take the record as a
10 whole, during that time, he was refusing everything. He was
11 refusing to even be evaluated a couple of times. He
12 basically was just saying "no" to everything. There is no
13 evidence that that was because of side effects, and when you
14 look at all of the other medical records, the others don't
15 indicate that he had side effects; in fact, they indicate the
16 contrary.

17 He does have, obviously, a history of major
18 depressive disorder as well as suicidal ideation. He spent
19 days when he was in jail on suicide watch and made statements
20 that sounded like, you know, that sounded suicidal, saying
21 things like "It is my time to go." At one point, he said he
22 was trying to give himself a heart attack. There was one, at
23 least, apparent suicide attempt; however, there is also
24 references that he was manipulative and often manipulated the
25 system. This was while in prison certainly that there really

1 -- the doctors there said they agreed there was some mental
2 illness, including depression, but that his actions seem to
3 be more motivated by trying to, you know, get certain things,
4 or get what he wanted.

5 so I think because there is substantial evidence in
6 the records to conclude that the noncompliance was not a
7 result of his mental illness, the ALJ's reliance on this was
8 within the zone of reasonable choice. I note also in making
9 the credibility determinations, the financial noncompliance
10 is in there, but there is so much else that indicates other
11 reasons that he was simply noncompliant, because that's what
12 he chose to do. On at least one occasion, he told the
13 hospital personnel that he wasn't really suicidal, but he
14 told the police that he was, because he wanted to get into
15 the hospital.

16 so I think that the noncompliance reason for
17 discrediting his opinions is supported by evidence, and the
18 ALJ did not err in doing that. The other reason he gave was
19 for discrediting, or not, the credibility determination, has
20 to do with the claimant's physical issues, and he has -- he
21 has some physical issues obviously the degenerate disk
22 disease, the joint disease in his hips, the coronary artery
23 disease, COPD, those are all -- the ALJ did find those to be
24 severe, but the ALJ's -- the claimant's testimony about those
25 things was the ALJ found not to be credible; and you know, he

1 complained he had difficulty ambulating, but there were
2 several instances where the claimant had reported to the
3 police, or the hospital personnel, that he ran or walked
4 great distances.

5 I saw that he said he walked 12 miles. He said
6 that he was running from the police. There was an extreme
7 example where he said he walked 50 or 60 miles, or he had
8 been walking 20 hours, and although that sounded kind of
9 incredible, it may have, in fact, been true, based on what
10 the records show about where he was, and how he got where he
11 was. But in any event, it looks pretty clear that he had --
12 was physically able to walk much better than he -- and move
13 about and do things much better than he claims. So that's a
14 legitimate reason for discrediting his testimony.

15 The ALJ also found his testimony about illegal
16 drugs to be -- to have not been true, and then there was an
17 issue about his shoveling snow. I know that was shortly
18 before the alleged onset date, but these were all things that
19 the ALJ was entitled to consider, and I believe that he did
20 give sufficient reasons for his adverse credibility finding,
21 and so substantial evidence supports those reasons, and he
22 wasn't required to say, under Polaski factor A, Polaski
23 factor B, as long as he did consider the daily activities and
24 the effectiveness of the medication and the objective medical
25 evidence, this is not err.

1 And again, even if, as counsel has reminded us, as
2 they do, if there is evidence to support the ALJ's
3 determination, I have to affirm it, even if there is other
4 evidence as well, as long as you consider all of it.

5 Now the residual functional capacity, in the
6 briefs, the plaintiff argued that he had not argued a number
7 of things, and here today, has focused on the mental issue of
8 not being -- and argued that there should have been
9 limitation on not staying on task. I will get to that in a
10 moment, but I want to briefly discuss the physical
11 limitations as well. And those physical limitations -- hold
12 on a second -- I believe the ALJ did thoroughly consider and
13 discuss all of the medical evidence on the activities of
14 daily living, etc., and supported by reference to the medical
15 records each of the physical limitations, such as the lifting
16 requirements, the ability to ambulate, and the ability to sit
17 and stand, and things like that.

18 So the ALJ talks about the medical evidence that he
19 believes supported each of those, and he did have a
20 limitation in his RFC that the claimant would need to change
21 positions every 30 minutes for one or two minutes, although
22 he did conclude that he could remain on task while doing so.
23 So I believe the physical issues were adequately determined
24 by the ALJ.

25 with regard to the mental issues, the plaintiffs

1 argued that the ALJ failed to give sufficient weight to the
2 opinion of treating doctor, the psychiatrist, Dr. Arain, and
3 that the plaintiff had received psychiatric care under the
4 Crider Health Center in 2013 and 2014. The plaintiff also
5 argues that the ALJ should have included limitations
6 regarding concentration, persistence, and pace, and the ALJ
7 did find that he had moderate difficulties in this area, and
8 limited him to simple and routine tasks.

9 Limiting him to simple and routine tasks, there are
10 cases that I would cite the Howard v. Massanari case 255 F.3d
11 577, from the Eighth Circuit, saying that a limitation of
12 doing simple routine repetitive tasks does capture
13 deficiencies in concentration, persistence, and pace. There
14 are other cases saying the same thing. And so I don't think
15 that the ALJ erred by failing to include any specific
16 limitations regarding production quotas, or the other things
17 that the plaintiff has argued for.

18 And I just want to -- you know, when the ALJ
19 carefully analyzed his credibility, and found his testimony
20 not to be credible, that included his statement that he
21 didn't, because of that finding, he did not err in excluding
22 limitations arising from his statements that he had crying
23 spells, you know, as often as he did, because I think that
24 there is evidence to show that's not credible.

25 So in terms of the treating doctor's opinions, they

1 are to be given, obviously, the treating source opinions are
2 to be given controlling weight, if they are well-supported by
3 medically-acceptable clinical and laboratory techniques, and
4 are not inconsistent with other evidence in the records, or
5 other substantial evidence. But it doesn't automatically
6 control, and the record has to be evaluated as a whole.

7 Dr. Arain did find, in his opinion letter, that the
8 claimant had a history of anxiety and mood swings that caused
9 episodes of decompensation, although these were more limited
10 in duration than would count under the other part of the
11 analysis, but also difficulties in maintaining social
12 functioning. And he said that the plaintiff may have
13 difficulty working full-time, dealing with work-related
14 stress, demonstrating reliability, and that his impairment
15 may cause him to be absent from work.

16 The ALJ actually quoted this, and treated this as
17 if he said he would have those limitations, which is the same
18 argument that plaintiff's counsel has made here today. So I
19 think the ALJ treated him as if he had said "would" instead
20 of "may". If I were evaluating it, I might not have done it
21 the same way, but assuming that that should be the same. I
22 know Dr. Arain also recommended vocational rehabilitation,
23 which the ALJ noted was indicative that the plaintiff was
24 capable of working in some capacity. But the ALJ didn't
25 credit Dr. Arain's opinion, because he concluded that it was

1 inconsistent with the mental health treatment history, the
2 clinical notes, and the mental status examination finding,
3 which all showed only mild to moderate limitations, and also
4 with the treatment records from his own clinic, which showed
5 he had appropriate cooperative behavior, intact abstract
6 reasoning, and fair judgment and reasoning, as well as normal
7 intellect and memory.

8 I concluded that the ALJ's accounting for the
9 mental concerns related to the depression and anxiety were
10 appropriate, as he did include it in his residual functional
11 capacity, and that the limitations he used were supported by
12 substantial evidence on the record as a whole, and that was
13 that limiting it to simple and routine tasks, which does
14 adequately account for potential concentration or persistence
15 issues, concentration, persistence, and pace, and then
16 limiting him to the limitations that accounted for the social
17 anxiety, and the interactions with coworkers and supervisors
18 were limited, as well as work regarding negotiation or
19 working with the general public.

20 So when you consider everything in the records,
21 including the timeframes when Dr. Arain treated the claimant,
22 as well as when other people had treated him, and you
23 consider all of the records, the ALJ did not err in affording
24 no weight to that opinion that the plaintiff would have
25 difficulty maintaining full-time employment.

1 So for all of the reasons I believe that the
2 Administrative Law Judge's or the Commissioner's decision is
3 supported by substantial evidence on the record as a whole,
4 and I'm not, under the standards, I am to make that
5 determination, whether the decision complies with the
6 relevant legal requirements. I'm not to reweigh the
7 evidence, and so because it is so supported, I will affirm
8 the decision.

9 So that is my opinion in the case. I will affirm
10 the Commissioner. I will issue a judgment consistent with
11 this opinion. I will attach a transcript of this oral
12 opinion to that judgment. Because we need to prepare the
13 transcript, the judgment won't come out immediately, although
14 our court reporter is pretty fast on these things, so it
15 might be a few days that you will get the judgment with the
16 attached opinion fairly soon. All right, anything further
17 from either counsel at this time?

18 MR. WOLF: No, your Honor.

19 MR. LEIFERT: Nothing further, Judge. Thank you.

20 THE COURT: Thank you all. So I will disconnect
21 the phone, and court is in recess.

22 (End of proceedings)

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1 REPORTER'S CERTIFICATE

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3 I, LISA M. PACZKOWSKI, RPR, CCR, Official Court
4 Reporter for the United States District Court for the Eastern
5 District of Missouri do hereby certify that the foregoing is
6 a true and correct transcript of the proceedings had in this
7 cause as same appears from my stenotype notes made personally
8 during the progress of said proceedings.

9
10 /S/ Lisa M. Paczkowski

11 LISA M. PACZKOWSKI RPR, CCR
12 Official Court Reporter
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