

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK
3 -----x
4 VINCENT AMOROSO,

5
6 Plaintiff,

7
8 -against-

MEMORANDUM AND ORDER

9
10 CAROLYN W. COLVIN, 1:15-cv-01497 (FB)

11 ACTING COMMISSIONER OF
12 SOCIAL SECURITY,

13
14 Defendant.

15 -----x
16

17 *Appearances:*

18 *For the Plaintiff*
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22

For the Defendant
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23 **BLOCK, Senior District Judge:**

24 Vincent Amoroso (“Amoroso,” “plaintiff,” or “claimant”) seeks review of the final
25 decision of the Commissioner of Social Security (“Commissioner”) denying his application
26 for disability benefits under the Social Security Act (“SSA”). Both parties move for judgment
27 on the pleadings. For the reasons stated below, plaintiff’s motion is DENIED, and the
28 Commissioner’s motion is GRANTED.

I.

2 A resident of Staten Island, New York, Amoroso is a high school graduate in his mid-
3 forties. From 1992 to 2007, his earnings were modest as he worked as a telephone operator
4 and counter attendant. He stopped engaging in substantial gainful activity on August 2, 2009.
5 Beginning on that date, and through at least September 30, 2013, Amoroso allegedly suffered
6 from osteoarthritis in his right foot and ankle due to a congenital deformity, hypertension,
7 obesity, diabetes mellitus, and adjustment disorder with anxious and depressed mood. He filed
8 an application for disability benefits on December 15, 2011. Amoroso's claim was initially
9 denied on April 13, 2012. At Amoroso's request, a hearing was held before an Administrative
10 Law Judge ("ALJ") on October 24, 2013.

11 On November 22, 2013, the ALJ held that Amoroso was not disabled within the
12 meaning of the SSA. Applying the SSA's five-step sequential evaluation process,¹ the ALJ
13 determined that (1) Amoroso had not engaged in substantial gainful activity since August 2,
14 2009, the alleged onset date, and (2) his osteoarthritis, hypertension, obesity, diabetes mellitus,
15 and adjustment disorder constituted severe impairments. Nonetheless, the ALJ concluded that

¹ SSA regulations establish a five-step process for evaluating disability claims. The Commissioner must find that a claimant is disabled if she determines “(1) that the claimant is not working, (2) that he has a ‘severe impairment,’ (3) that the impairment is not one that conclusively requires a determination of disability, . . . (4) that the claimant is not capable of continuing in his prior type of work, [and] (5) there is not another type of work the claimant can do.” *Draegert v. Barnhart*, 311 F.3d 468, 472 (2d Cir. 2002) (citing 20 C.F.R. § 404.1520(b)-(f)). The burden of proof is on the claimant for the first four steps, but shifts to the Commissioner at the fifth step. See 20 C.F.R. § 404.1560(c)(2); *Shaw v. Chater*, 221 F.3d 126, 132 (2d Cir. 2000).

1 Amoroso did not have a specific impairment or combination of impairments that met or
2 medically equaled the SSA's requisite level of severity, as set forth in 20 C.F.R. § 404,
3 Subpart P, Appendix 1, so as to trigger his automatic classification as disabled.

4 The ALJ then determined that Amoroso had the residual functional capacity ("RFC")
5 to perform sedentary work, as defined in 20 C.F.R. § 404.1567(a), with certain exceptions.²

6 In reaching this conclusion, the ALJ relied on objective medical evidence, including "medical
7 evidence of record," AR 16, and nearly a dozen different doctor reports. *See id.* at 13–16,

8 258–60, 344–52. The ALJ thereupon applied this RFC to the remaining step and determined
9 that Amoroso, though unable to perform any past relevant work, could perform other jobs

10 identified in Medical Vocational Guidelines, 20 C.F.R. § 404, Subpart P, Appendix 2, based
11 partly on the testimony of a vocational expert who had been duly informed of plaintiff's

12 physical and mental limitations as substantially evidenced by the overall record. In particular,
13 in light of Amoroso's age, education, past relevant work experience, and RFC, the ALJ

14 concluded that plaintiff possessed skills transferable to other occupations with jobs existing
15 in significant numbers in the national economy, such as charge account clerk or surveillance

²

Namely, the ALJ found that Amoroso had the ability to occasionally lift or carry up to ten pounds. *See* AR 12. In addition, the ALJ concluded that, within one eight-hour workday in which normal breaks are taken, claimant could stand or walk for about two hours and sit for about six hours. *Id.* Lastly, the ALJ determined that "[t]he claimant can occasionally climb ramps or stairs" and "occasionally balance, stoop, or kneel." *Id.* According to the ALJ, however, Amoroso could not climb, crouch, or crawl or perform work requiring operation of foot controls or pedals utilizing his lower extremities. *Id.*

1 system monitor.

2 The Appeals Council denied Amoroso's request for review on January 21, 2015, and
3 the ALJ's decision thereby became the Commissioner's final one. Amoroso has sought
4 timely review, arguing that, because the ALJ improperly discounted his doctors' and his own
5 testimony regarding the nature of his impairments, thereby computing an improper RFC, and
6 mistakenly relied on a vocational expert's opinion, the Commissioner's decision that he was
7 not disabled was in error. The Court considers each reason.

8 **II.**

9 "In reviewing a final decision of the Commissioner, a district court must determine
10 whether the correct legal standards were applied and whether substantial evidence supports
11 the decision." *Butts v. Barnhart*, 388 F.3d 377, 384 (2d Cir. 2004); *see also* 42 U.S.C. §
12 405(g). Substantial evidence . . . means such relevant evidence as a reasonable mind might
13 accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971),
14 *cited in, e.g., Selian v. Astrue*, 708 F.3d 409, 417 (2d Cir. 2013). If contradictions appear in
15 the record and an ALJ fails to reasonably explain why he or she opted for one interpretation
16 over another, the Commissioner's findings cannot stand. *See, e.g., Balsamo v. Chater*, 142
17 F.3d 75, 81 (2d Cir. 1998) ("[T]he ALJ cannot arbitrarily substitute his [or her] own
18 judgment for competent medical opinion"); *cf. Selian v. Astrue*, 708 F.3d 409, 420 (2d
19 Cir. 2013) ("To the extent that record is unclear, the Commissioner has an affirmative duty
20 to 'fill any clear gaps in the administrative record' before rejecting a treating physician's

1 diagnosis.”). “[T]he reviewing court is required to examine the entire record, including
2 contradictory evidence and evidence from which conflicting inferences can be drawn.”
3 *Mongeur v. Heckler*, 722 F.2d 1033, 1038 (2d Cir. 1983); *see also Talavera v. Astrue*, 697
4 F.3d 145, 151 (2d Cir. 2012) (citing *Mongeur*, 722 F.2d at 1038).

5 **A. ALJ’s RFC Computation: Treatment of Opinions Submitted by Plaintiff’s
6 Doctors**

7 Plaintiff first argues that the ALJ failed to correctly apply the treating physician rule
8 when he did not give controlling weight to the opinions submitted by his treating and
9 consultative orthopedists pointing to “a remarkably reduced range of standing and walking
10 that cannot support a finding that . . . Amoroso could perform the jobs cited by the vocational
11 expert.” Pl.’s MSJ at 18. The treating physician rule dictates that “the opinion of a claimant’s
12 treating physician as to the nature and severity of the impairment is given ‘controlling weight’
13 so long as it ‘is well-supported by medically acceptable clinical and laboratory diagnostic
14 techniques and is not inconsistent with the other substantial evidence in [the] case record.’”

16 *Burgess v. Astrue*, 537 F.3d 117, 128 (2d Cir. 2008) (quoting 20 C.F.R. § 404.1527(c)(2)). For
17 purposes of this rule, “medical opinions” include “statements from physicians and
18 psychologists and other acceptable medical sources,” 20 C.F.R. § 404.1527(a)(2), and can take
19 a variety of forms, *cf. Philpot v. Colvin*, No. 12-CV-291 (MAD/VEB), 2014 WL 1312147, at
20 *19 (N.D.N.Y. Mar. 31, 2014) (noting that the relevant treating physician’s opinion had been
21 embodied in a checklist); *Gray v. Astrue*, No. 09-CV-00584, 2011 WL 2516496, at *5
22 (W.D.N.Y. June 23, 2011) (same); *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008)

1 (same). If the ALJ does not give a treating physician's opinion controlling weight, he or she
2 must provide "good reasons" for the weight given to that opinion." *Halloran v. Barnhart*, 362
3 F.3d 28, 32–33 (2d Cir. 2004). The ALJ must apply this same standard to the opinion evidence
4 of non-examining sources, even though he or she must generally afford greater weight to a
5 treating physician's assessment. 20 C.F.R. § 416.927(e)(2)(ii); *see also Wells v. Comm'r*, 338
6 F. App'x 64, 67 (2d Cir. 2009) (citing regulatory predecessor).

7 As his decision explains, the ALJ gave little weight to the conclusions of plaintiff's two
8 favored doctors regarding his disability based on reports submitted by two other medical
9 experts, their detailed notes and examinations, and Amoroso's acknowledged activities. He
10 thus did not discount the opinion of physicians for "no reason" or "the wrong reason." *Morse*
11 *v. Astrue*, No. 12-CV-6225-CJS, 2013 WL 3282883, at *4 (W.D.N.Y. June 27, 2013) (citing
12 *Morales v. Apfel*, 225 F.3d 310, 317 (3d Cir. 2007)); *cf. Sanders v. Comm'r*, 506 F. App'x 74,
13 77 (2d Cir. 2012) ("This Court has consistently held that the failure to provide *good reasons*
14 for not crediting the opinion of a claimant's treating physician is a ground for remand."
15 (emphasis added)). Instead, the ALJ combed through the evidence submitted by Amoroso and
16 compared his doctors' determinations with other medical professionals' comprehensive
17 conclusions. *See* AR 16–20. From this perusal, he first uncovered and then pinpointed
18 apparent inconsistencies that undercut the validity of the medical assertions of Amoroso's
19 preferred professionals as to the extent of his disability. *Id.*

20 The ALJ's decision to give limited weight to Amoroso's favored doctors was therefore

1 supported by “specified reason[s],” mined from an extensive record, *Otts v. Comm’r*, 249 F.
2 App’x 887, 889 (2d Cir. 2007), and “contradictory medical evidence,” *Eiden v. Sec’y of
3 Health, Educ. & Welfare*, 616 F.2d 63, 64 (2d Cir. 1980) (relying on *Alvarado v. Califano*,
4 605 F.2d 34, 35 (2d Cir. 1979)) *see also, e.g., Stevens v. Barnhart*, 473 F. Supp. 2d 357, 362
5 (N.D.N.Y. 2007) (“[T]he less consistent an opinion is with the record as a whole, the less
6 weight it is to be given.”). By so explaining how and why the opinions of Amoroso’s doctors
7 were contradicted by the record’s other substantial evidence, the ALJ avoided any reliance on
8 “his own intuition,” *Sanchez v. Colvin*, No. 14 CV 1008, 2015 WL 4390246, at *15 (E.D.N.Y.
9 July 14, 2015), or “sheer speculation,” *Selian v. Astrue*, 708 F.3d 409, 421 (2d Cir. 2013), and
10 provided the “good reason” sufficient to justify his ultimate decision. *See, e.g., Halloran*, 362
11 F.3d at 32 (“[T]he opinion of the treating physician is not afforded controlling weight where
12 . . . [these] opinions . . . are not consistent with other substantial evidence in the record, such
13 as the opinions of other medical experts.”); *Berry v. Schweiker*, 675 F.2d 464, 468 (2d Cir.
14 1982) (upholding the ALJ’s determination “[where] portions of the ALJ’s decision and the
15 evidence before him indicate[d] that his conclusion was supported by substantial evidence”).

16 **B. Credibility**

17 Plaintiff next argues that the ALJ erred by finding that Amoroso’s statements
18 concerning the intensity, persistence and limiting effect of his impairments were not entirely
19 credible to support his claim of total disability. No ALJ may reject such subjective statements
20 “solely because the available medical evidence does not substantiate” them. 20 C.F.R. §
21 416.929(c)(2) (emphasis added); *see also Hilsdorf v. Comm’r*, 724 F. Supp. 2d 330, 350

1 (E.D.N.Y. 2010) (quoting regulation). However, an ALJ must “consider whether there are any
2 inconsistencies in the evidence and the extent to which there are any conflicts between
3 [claimant’s] statements and the rest of the evidence.” 20 C.F.R. §§ 404.1529(c)(4),
4 416.929(c)(4); *see also Puente v. Comm’r*, 130 F. Supp. 3d 881, 894 (S.D.N.Y. 2015)
5 (quoting regulations). Based on such a review, he or she may then “properly choose not to
6 credit . . . [an applicant’s] claims regarding . . . impairments” if “the other evidence in the
7 record . . . contradict[s] them.” *Brooks v. Comm’r*, No. 15 Civ. 4707 (GWG), 2016 WL
8 4940208, at *9 (S.D.N.Y. Sept. 15, 2016); *see also, e.g., Genier v. Astrue*, 606 F.3d 46, 49
9 (2d Cir. 2010) (ALJ “is not required to accept the claimant’s subjective complaints without
10 question[.]”); *Carroll v. Sec’y of Health & Human Servs.*, 705 F.2d 638, 642 (2d Cir. 1983)
11 (“It is the function of the Secretary, not ourselves, to resolve evidentiary conflicts and to
12 appraise the credibility of witnesses, including the claimant.”).

13 The record here, particularly several doctors’ notes, X-rays, and MRIs, provides ample
14 support for the ALJ’s decision to reject the claimant’s assessments of his own disability. *See*
15 AR 16–17. The ALJ thus did no less than what the law allows and requires, utilizing credible
16 medical findings and testimonial evidence so as to “arrive at an independent judgment . . .
17 regarding the true extent of the pain alleged by the claimant,” *Marcus v. Califano*, 615 F.2d
18 23, 27 (2d Cir. 1979); *accord Genier*, 606 F.3d at 49, that was not “patently unreasonable,”
19 as the law alone forbids. *Pietruni v. Director, Office of Workers’ Comp. Programs*, 119 F.3d
20 1035, 1042 (2d Cir. 1997). Consequently, substantial evidence supports the ALJ’s finding that
21 Amoroso’s assertions were not wholly credible, and his decision cannot be deemed so

1 unreasonable as to be reversed. *See Genier*, 606 F.3d at 49 (“Even where the administrative
2 record may also adequately support contrary findings on particular issues, the ALJ’s factual
3 findings ‘must be given conclusive effect’ so long as they are supported by substantial
4 evidence.” (quoting *Schauer v. Schweiker*, 675 F.2d 55, 57 (2d Cir. 1982))).

5 **C. Vocational Expert**

6 Plaintiff lastly contends that the vocational expert’s testimony as to the jobs for which
7 he is suitable “plainly conflicts with the[se] job[s]’ requirements as set forth in the Dictionary
8 of Occupational Titles.” Pl.’s MSJ at 21. To rebut a prima facie case of disability, the ALJ
9 must prove the existence of alternative substantial gainful activity in the national economy
10 which the claimant is capable of performing. *Parker v. Harris*, 626 F.2d 225, 231 (2d Cir.
11 1980). “An ALJ may make this determination either by applying the Medical Vocational
12 Guidelines or by adducing testimony of a vocational expert.” *McIntyre v. Colvin*, 758 F.3d
13 146, 151 (2d Cir. 2014). So long as substantial record evidence supports the assumptions upon
14 which the vocational expert based his or her opinion, an ALJ is entitled to rely upon that
15 opinion. *Dumas v. Schweiker*, 712 F.2d 1545, 1553–54, 1554 n.4 (2d Cir. 1983); *see also, e.g.*,
16 *Cohen v. Comm’r*, 643 F. App’x 51, 53–54 (2d Cir. 2016) (“The ALJ was well within its
17 discretion to credit the testimony of a vocational expert, who after considering Cohen’s age,
18 education, work experience, and residual functioning capacity, determined that a number of
19 jobs existed in significant numbers in the national economy[.]”).

20 As to this final issue, the record is again clear. The ALJ not only applied the Medical
21 Vocational Guidelines but also was guided by a vocational expert’s opinion that was

1 predicated on substantiated facts. *See* AR 15–19, 51–52; *see also supra* Part I. Because
2 substantial evidence attested to Amoroso’s limitations and because the vocational expert
3 opined on the basis of these demonstrable limitations, the ALJ did not err in his reliance upon
4 this particular expert.³

5 **III.**

6 For the aforementioned reasons, plaintiff’s motion is DENIED, and the Commissioner’s
7 motion is GRANTED.

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9
10 **SO ORDERED**

11 /S/ Frederic Block
12 FREDERIC BLOCK
13 Senior United States District Judge
14

15 Brooklyn, New York
16 January 27, 2016

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Plaintiff spends much time arguing the proper interpretation of certain medical reports and pointing to favorable evidence—and ignoring unfavorable data—peppered a voluminous record. However, the Court’s power of review is limited, and it cannot choose between contradictory, but equally supportable, conclusions as a matter of law. *See Pratts v. Chater*, 94 F.3d 34, 37 (2d Cir. 1996) (holding that it is not an appellate court’s job “to determine *de novo* whether [a plaintiff] is disabled”); *Rutherford*, 685 F.2d at 62 (“Congress has instructed us that the factual findings of the Secretary, if supported by substantial evidence, shall be conclusive.”).