

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CARL CASTAGNA,	:	
	:	
Plaintiff,	:	16 Civ. 6908 (AJP)
	:	
-against-	:	<u>OPINION & ORDER</u>
	:	
NANCY A. BERRYHILL,	:	
Acting Commissioner of Social Security,	:	
	:	
Defendant.	:	
	:	

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ANDREW J. PECK, United States Magistrate Judge:

Plaintiff Carl Castagna, represented by counsel, brings this action pursuant to § 205(g) of the Social Security Act, 42 U.S.C. § 405(g), challenging the final decision of the Commissioner of Social Security denying his application for Disability Insurance Benefits and Supplemental Security Income. (Dkt. No. 1: Compl.) Presently before the Court are the parties' cross motions for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c). (Dkt. No. 18: Castagna Notice of Mot.; Dkt. No. 20: Comm'r Notice of Mot.) The parties have consented to decision of the case by a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). (Dkt. No. 14.)

For the reasons set forth below, the Commissioner's motion for judgment on the pleadings (Dkt. No. 20) is GRANTED and Castagna's motion (Dkt. No. 18) is DENIED.

FACTS

Procedural Background

Castagna filed for benefits on April 13, 2011, alleging a disability onset date of October 17, 2010. (Dkt. No. 15: Administrative Record ("R.") 396-97.) The Social Security

Administration ("SSA") initially denied Castagna's application. (R. 263-74.) On June 7, 2012, Castagna, represented by counsel, had a hearing before Administrative Law Judge ("ALJ") Robert Gonzalez. (R. 177-223.) On August 13, 2012, ALJ Gonzalez issued a decision denying Castagna's claim. (R. 231-46.) Upon Castagna's request for review, the Appeals Council remanded the case on September 20, 2013 for further administrative proceedings. (R. 253-55.) A second hearing was held before ALJ Gonzalez on February 7, 2014 (R. 144-76) and continued on May 20, 2014 (R. 110-43). On December 11, 2014, ALJ Gonzalez issued a written decision finding Castagna not disabled within the meaning of the Social Security Act. (R. 71-97.) ALJ Gonzalez's decision became the Commissioner's final decision when the Appeals Council denied Castagna's request for review on July 5, 2016. (R. 1-4.)

Non-Medical Evidence and Testimony

Castagna was born on November 24, 1966, making him almost 44 years old at the time of his alleged disability onset. (R. 418.) Castagna claims that he is disabled within the meaning of the Act as a result of injuries sustained when he was struck by a moving vehicle on October 17, 2010. (See R. 824-26.) At that time, Castagna was employed as a police officer for the Town of Mount Pleasant Police Department; he previously was employed as a construction worker. (R. 463.) Castagna was injured in the course of his duties as a police officer when he responded to a disturbance, was struck by a moving vehicle's side-mirror, spun around, and fell to the ground, sustaining injuries to the hip and lower back. (R. 824-26.) Another officer fired into the moving vehicle that had struck Castagna and killed the driver. (R. 831.) Castagna alleges that several months after this incident, the Chief of Police told him to "put [his] papers in and retire." (R. 184.) Castagna testified that "a lot of people" erroneously believe that he shot the driver, and that these beliefs constitute a "big problem" for him. (R. 202.)

Castagna testified that as a result of his injury, he experienced pain in his left knee, both legs, lower back and neck. (R. 195-96.) Castagna testified that to manage his pain, he takes pain medications "once or twice a week." (R. 152-53.) He also has received "trigger point injections" and epidurals in order to help relieve his neck and lower back pain, and testified at his February 7, 2014 hearing that the treatments help him out for "a month or two." (R. 165.) Castagna further alleged at this hearing that he experiences numbness in his right hand when he extends his right arm, causing difficulty utilizing that hand for things such as grabbing or typing. (R. 170.) He noted that "[s]itting for a long period of time" causes him to stiffen up, which is uncomfortable if he does not get up to walk around. (R. 210-11.) As a result of his injuries and the incident that led to them, Castagna testified that he experiences panic attacks and flashbacks, feels isolated, and purposefully avoids contact or interaction with other people. (R. 203, 209-10.)

Castagna lives alone and "basically just take[s] care of [him]self." (R. 193.) He shops, cooks, and cleans for himself, and he visits his parents twice a day to socialize. (R. 168-69.) He drives daily, and he still owns a motorcycle that he last rode in 2013. (R. 169, 171.) Castagna visits the gym to exercise "at least twice a week," performing military presses, leg extensions, and leg curls, using weights of approximately 20 to 30 pounds. (R. 199-200.) He is able to use the elliptical machines, but experiences pain in the groin and hip area when he does so. (R. 200.) He testified that he can go up and down the nine steps to get into his house from the outside, but that it is a "little bit uncomfortable." (R. 156-57.)

At Castagna's May 2014 hearing, vocational expert Linda Vause testified. (R. 121-41, 393-94.) Ms. Vause considered a hypothetical person who is able to do sedentary work and "frequently feel with the right upper extremity"; "frequently handle and finger with the bilateral upper extremities"; "occasionally reach overhead with the dominant right upper extremity";

"frequently reach over head with the left, non-dominant upper extremity"; "occasionally crouch"; "frequently flex, extend and rotate the neck"; "occasionally interact with the supervisors, coworkers and the public"; and who must avoid "working at unprotected heights" and "police work." (R. 123-24.) Ms. Vause testified that this hypothetical individual could perform the sedentary jobs of document preparer, addresser, touch-up screener and ampoule sealer, all of which exist in significant numbers in the national economy. (R. 124-25.) She further stated that even a person who could not reach overhead with one hand would not be precluded from performing these jobs if he or she was able to reach overhead with the other hand. (R. 126-27.)

Medical Evidence Before ALJ Gonzalez

ALJ Gonzalez considered medical evidence from October 17, 2010, the date of the alleged onset of Castagna's disability, to December 11, 2014, the date of ALJ Gonzalez's decision.^{1/}

Dr. Jeffrey Yormak

On September 25, 2009, prior to the alleged disability onset date, Castagna received surgery for an unrelated medial meniscus tear in his left knee by Dr. Jeffrey Yormak, an orthopedic surgeon at Northern Westchester Hospital. (R. 584-85.) After the operation, Castagna stated that he was doing well, although running caused him to experience "significant [left knee] pain the following day." (R. 559.)

Following his on-the-job accident on October 17, 2010, Castagna was admitted to

^{1/} The record contains documents submitted after ALJ Gonzalez rendered his most recent decision. Although new and material evidence may be submitted to the Appeals Council subsequent to an ALJ decision, such evidence must "relate[] to the period on or before the date of the administrative law judge hearing decision." 20 C.F.R. § 404.970(c); see also, e.g., Cahill v. Colvin, 12 Civ. 9445, 2014 WL 7392895 at *31 (S.D.N.Y. Dec. 29, 2014). The Court therefore does not address the examination reports supplied by Castagna dated after December 11, 2014. (R. 8-14, 15-19, 21-26, 27-29, 30-36, 37-41, 42-46, 47-50, 51-55, 56-61, 62-65, 66-68.)

Westchester Medical Center for treatment, and diagnosed with a "back strain" and a "hip contusion" as a result of being struck by a vehicle. (R. 802.) Two days later, on October 19, Castagna visited Dr. Yormak complaining of "severe low back pain" extending into his left thigh, left knee, spine, neck, and trapezials, as well as "occasional tingling to his right neck, shoulder, and arm into his right pinky, ring, and middle fingers." (R. 549.) Dr. Yormak observed that Castagna appeared to be in "severe distress" getting onto the examining table, and moved his lumbar spine with "significant rigidity and stiffness." (R. 550.) Dr. Yormak noted mild bruising on the right hip and "spasm and tenderness" in the musculature on the right and left sides of his neck, concluding that Castagna likely had suffered a "cervical/lumbar severe strain," and "possible lumbar disc bulge, herniation or occult injury." (R. 550-51.) Dr. Yormak offered to prescribe either opioids or benzodiazepines for pain management, but Castagna refused such medications, and Dr. Yormak prescribed Medrol^{2/} and Skelaxin^{3/} instead. (R. 551.)

Castagna returned to Dr. Yormak on November 4, 2010, complaining of the same issues with pain and weakness; he claimed that the prescribed medications had been largely ineffective and that his symptoms had continued to keep him out of work. (R. 547.) Dr. Yormak observed that Castagna had stiffness while moving around, "extreme caution with moving his head," and "reluctance to utilize his right shoulder." (Id.) The examination also showed that Castagna's lumbar range of motion was "somewhat restricted" and flexion, extension, and bending resulted in discomfort. (Id.) Dr. Yormak noted that CT and MRI scans revealed no spinal fracture, normal

^{2/} Medrol is a glucocorticoid/adrenocortical steroid used to treat inflammation. See <http://www.rxlist.com/medrol-drug.htm> (last visited 7/20/2017).

^{3/} Skelaxin (generic name Metaxalone) is a muscle relaxant used to relieve pain. See <http://www.rxlist.com/skelaxin-drug.htm> (last visited 7/20/2017).

alignment, and no acute disc herniations, as well as no definitive evidence of fracture or tear of the right shoulder. (R. 547-48.) Dr. Yormak instructed Castagna to attend physical therapy. (R. 548.)

Dr. Richard Weinstein

Throughout the relevant time period, Castagna was seen by orthopedic surgeon Dr. Richard Weinstein at Bone & Joint Associates in White Plains. Castagna first saw Dr. Weinstein on November 11, 2010. (R. 680.) Dr. Weinstein noted reduced cervical and thoracolumbar spinal range of motion, as well as decreased left knee range of motion. (Id.) Upon examining Castagna, Dr. Weinstein noted no sensory or motor deficits in either his upper or lower extremities. (Id.) Castagna was advised to attend physical therapy for his neck, lower back, left knee, and right hip pain and tenderness. (Id.)

Castagna next saw Dr. Weinstein on January 3, 2011, reporting pain in similar sites (R. 679.) Dr. Weinstein noted that the affected knee had swelling, "especially posteriorly." (Id.) An MRI of the left knee indicated a grade 3 posterior tear of the medial meniscus, a grade 2 signal within the lateral meniscus, joint effusion, and proximal patella tendinosis. (R. 670-71.) A bilateral straight leg raise test was negative. (R. 677.)^{4/} A January 2011 MRI of Castagna's right hip was normal. (R. 672.) A March 2011 MRI of Castagna's cervical spine showed a central disc protrusion between the C5 and C6 vertebrae, and some osteophyte formation. (R. 597, 673.) A June 2011 MRI of Castagna's right shoulder showed mild acromioclavicular arthropathy, mild subacromial subdeltoid bursitis, and a probable SLAP tear (a tear of the labrum). (R. 702.)

In light of these MRI results and "[m]inimal improvement despite stretching and strengthening" exercises along with chiropractic treatment, Dr. Weinstein opined in both April 2011

^{4/} A straight leg raise test checks for signs of herniation in the lumbar discs. See http://www.physio-pedia.com/Straight_Leg_Raise_Test (last visited 7/20/2017).

and July 2011 that Castagna was unable to work at that time, could not sit for long periods of time or do significant lifting, and that he could not do light duty at his present job due to the risk of injury. (R. 597, 666.)

Dr. Weinstein saw Castagna again on January 13, 2012, noting that there continued to be slightly decreased range of motion in Castagna's right shoulder and left knee, as well as tenderness in the lateral retinaculum of the left knee. (R. 708.) Castagna had continued pain in his left knee, as well as continued pain in the right shoulder, particularly with overhead activities and lifting. (Id.) At June, September, October and November 2012 follow up visits (R. 866, 887, 891, 899), Dr. Weinstein reiterated that Castagna was not capable of working at the time, and that he could not do any significant lifting with his right arm, use stairs well, or run on his left knee (R. 887). In June 2012, Dr. Weinstein also noted that Castagna would benefit from continuing his exercise program at the gym for improving range of motion and strengthening the affected areas, so long as he avoids "excessive" weight lifting overhead. (R. 866.) In November 2012, Dr. Weinstein stated that Castagna had "[m]ild discomfort and limitation with internal and external rotation" of the right shoulder, and that he could not do "any significant lifting or overhead use" of the right arm. (R. 899.)

On January 24, 2013, Dr. Weinstein performed surgery on Castagna's right shoulder, which included extensive debridement, arthroscopic subacromial decompression, and injection. (R. 995.) At follow up visits on March 13, 2013 and June 12, 2013, Dr. Weinstein noted that the surgery had improved Castagna's range of motion in his shoulder and had helped with his pain, but that Castagna still experienced some weakness and pain in his neck and right arm. (R. 910, 919.) Castagna reported that physical therapy had improved his symptoms and Dr. Weinstein advised him to continue with the physical therapy. (Id.)

On October 1, 2013, Dr. Weinstein completed a medical source statement of ability to do work-related activities for the SSA. (R. 951-56.) Dr. Weinstein stated that Castagna could frequently lift and carry up to 20 pounds and occasionally lift and carry up to 100 pounds. (R. 951.) Further, Dr. Weinstein stated that in an eight hour work day, Castagna could sit for one hour at a time (four hours total), stand for two hours at a time (four hours total), and walk for one hour at a time (two hours total). (R. 952.) Dr. Weinstein concluded that Castagna could only occasionally reach with his right arm, but could continuously handle, finger, feel, push or pull with both arms. (R. 953.) Dr. Weinstein advised that Castagna could never kneel, crouch or crawl, and only occasionally was able to stoop or climb stairs and ladders. (R. 954.) Dr. Weinstein identified no limitations on exposure to unprotected heights or to moving mechanical parts or operating a motor vehicle (R. 955), nor any limitations on daily life activities such as shopping, caring for personal hygiene, sorting or handling paper and files, or traveling without the help of a companion (R. 956). Finally, Dr. Weinstein stated that the above limitations have lasted, or will continue to last, for twelve consecutive months. (Id.)

Castagna next saw Dr. Weinstein on October 29, 2013. (R. 970-71.) Dr. Weinstein reported that Castagna's right shoulder strength was improving but that he still needed to avoid using the right arm, especially overhead, and must limit use of the left knee and avoid prolonged sitting or squatting. (Id.) Dr. Weinstein made similar observations on March 3, 2014. (R. 1038-39.) On April 1, 2014, Dr. Weinstein stated that Castagna's shoulder may require surgery in the future, but that he was still improving with physical therapy. (R. 1042-43.)

Castagna had a MRI of his left shoulder on May 22, 2014, after complaining of clicking, pain and locking in that shoulder. (R. 1050, 1052.) The results showed mild acromioclavicular arthropathy, a small glenohumeral joint effusion, a probable SLAP tear, and a tear

of the inferior labrum with adjacent paralabral cysts. (R. 1050.) Dr. Weinstein noted that the left shoulder injury was "causally related to the right shoulder injury and right shoulder surgery," but that it was "secondary to [the] right shoulder problem." (R. 1053.) Dr. Weinstein scheduled Castagna for left shoulder surgery. (Id.) In November 2014, Dr. Weinstein again opined that Castagna required left shoulder surgery for subacromial decompression and labral repair on his left shoulder; this procedure was not performed during the relevant time period. (R. 1133.) Finally, Dr. Weinstein concluded that as a result of the injuries to Castagna's knee and both of his shoulders, Castagna was not able to return to work as a police officer. (Id.)

Castagna's last appointment with Dr. Weinstein during the relevant period occurred on December 8, 2014. (R. 1145-46.) Dr. Weinstein noted that Castagna had continued pain, quite sharp at times, especially in the left knee, and clicking and locking in his left shoulder. (R. 1145.) Dr. Weinstein again recommended surgery for Castagna's left shoulder, and concluded that the injury and symptoms in Castagna's left shoulder were causally related to his right shoulder injury as a result of overcompensating for an inability to use the right shoulder and arm normally. (R. 1146.)

Dr. Syed Rahman

Dr. Syed Rahman, a physiatrist of back, neck and diagnostic medicine with Bone & Joint Associates LLP, saw Castagna on January 5, 2012, on referral from Dr. Weinstein. (R. 704-05.) Dr. Rahman noted that Castagna had been attending physical therapy for three months, which had been helping, but that he still was having "significant tightness pain" in his neck and occasional numbness in his right hand. (R. 704.) Dr. Rahman suggested Flexiril,^{5/} ibuprofen, a back brace for

^{5/} Flexiril is a muscle relaxant utilized to treat painful muscle spasms.
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comfort and stability, home exercises for strength, and a trial of trigger point injections. (R. 705.) Castagna elected to have the trigger point injection, which Dr. Rahman performed on June 14, 2012.^{6/} (R. 865.) Castagna returned to Dr. Rahman on July 31, 2012 complaining of returning pain in the neck and back, and that the trigger point injection had helped at first but was losing its effectiveness. (R. 867.) Dr. Rahman opined that Castagna's pain emanated from cervical and lumbar strains. (Id.) At the July 31, 2012 visit, Dr. Rahman performed another trigger point injection to the right shoulder. (R. 869.)

Castagna saw Dr. Rahman again in June, July and August 2013. (R. 923-29.) Dr. Rahman noted that Castagna reported the trigger point injections as having "definitely helped" and that, while still stiff, his back pain was "tolerable." (R. 924.) Dr. Rahman noted that prolonged standing and bending is "somewhat painful" for Castagna. (R. 928.) Dr. Rahman's suggestions included physical therapy, moist heat, anti-inflammatories, and small doses of muscle relaxants. (R. 929.) In December 2013, Castagna went back to Dr. Rahman for a follow-up after a cervical facet block. (R. 990-91.)^{7/} Castagna reported that he was feeling "more than 50% better" after the procedure and was "[a]ble to move his neck [a] lot better." (R. 990.) Dr. Rahman concluded, in

^{5/} (...continued)

See <http://www.rxlist.com/flexeril-drug.htm> (last visited 7/20/2017).

^{6/} The trigger point injections involved identifying four tender points on the shoulder and injecting them with a combination of Depo Medrol and marcaine. (R. 865.) Depo Medrol is a steroidal anti-inflammatory used to treat pain and swelling. See <http://www.rxlist.com/depo-medrol-drug.htm> (last visited 7/20/2017). Marcaine is an anesthetic. See <http://www.rxlist.com/marcaine-drug.htm> (last visited 7/20/2017).

^{7/} A cervical facet block is an injection of steroid medication into small joints in the cervical spine, with the intention of providing pain relief. See <https://www.spine-health.com/treatment/injections/cervical-thoracic-and-lumbar-facet-joint-injections> (last visited 7/20/2017.)

December 2013 and again in March 2014, that Castagna suffers from a partial permanent disability precluding him from returning to work as a police officer. (R. 991, 1040-41.)

Dr. Sathish Modugu

Dr. Sathish Modugu, a pain management specialist of the Sports Spine & Treatment Center of Westchester, treated Castagna between November 2010 and April 2011. (R. 611.) Dr. Modugu referred Castagna for a cervical spine MRI on March 15, 2011, which revealed straightening of the normal lordosis, a mild circumferential disc bulge between the C3 and C4 vertebrae flattening the thecal sac and mild right foraminal narrowing, a disc protrusion with osteophyte between the C4 and C5 vertebrae causing moderate left neural foraminal narrowing, and a central disc protrusion between the C5 and C6 vertebrae mildly indenting the anterior aspect of the spinal cord. (R. 625.) On April 28, 2011, Dr. Modugu opined that Castagna could stand and walk for up to six hours per day, and sit for up to eight hours per day. (R. 614.) Dr. Modugu noted no limitations on pushing or pulling, and opined that Castagna had the ability to frequently carry 20 pounds and occasionally carry 30 pounds. (R. 614-15.) Dr. Modugu stated that it was "[t]oo early" to express an opinion on Castagna's ability to return to work-related activities. (R. 615.)

Dr. George Burak

Dr. George Burak, an orthopedic surgeon, examined Castagna on March 16, 2011. (R. 852-55.) Dr. Burak observed that Castagna's range of cervical spine flexion, extension, and rotation were normal, and that he was able to ambulate with a normal gait. (R. 854.) Dr. Burak noted a mild paravertebral muscle spasm and decreased range of motion in Castagna's lumbar spine. (R. 855.) Dr. Burak concluded that Castagna had a "marked partial disability" primarily to his back, and could return to work in a light duty capacity, but needed to avoid lifting anything above ten pounds and avoid repetitive bending. (Id.)

Dr. John Mazella

In November 2011, Dr. John Mazella, an orthopedic surgeon, performed a consultative examination of Castagna. (R. 1002-12.) Dr. Mazella found no deformity of the lumbar or cervical spine and normal range of motion in both. (R. 1009-10.) Dr. Mazella also found full range of motion and strength in Castagna's right hip, and that the range of motion in Castagna's left knee was comparable to that of his right knee. (R. 1010.) Dr. Mazella's impression was that Castagna had suffered a lumbar and cervical spinal strain or sprain without radiculopathy. (R. 1011.) Dr. Mazella also concluded that Castagna had a "[v]ery mild" right shoulder impingement, his right hip strain had been resolved, and the outcome of his left knee after the 2009 surgery was satisfactory. (Id.) Dr. Mazella's opinion was that Castagna was "not permanently disabled" and that his subjective complaints were not supported by the medical findings. (Id.) Dr. Mazella issued another report on August 30, 2013 (R. 998-1001), opining that Castagna could return to full employment-related duties with continued physical therapy (R. 1000).

Dr. Ronald Mann

Dr. Ronald Mann, an orthopedic surgeon, performed an independent medical examination of Castagna on January 18, 2012. (R. 711-16.) Dr. Mann concluded that Castagna's cervical spine strain, right shoulder strain, and right hip strain were resolved, and that his lumbar spine strain was still resolving. (R. 715.) Dr. Mann observed normal range of motion in the hips and right shoulder, with decreased range of motion in the cervical and lumbar spine. (R. 713-14.) He found no muscle spasm or atrophy in either the cervical or lumbar spine. (Id.) Dr. Mann recommended nonsteroidal anti-inflammatories as treatment but did not believe that Castagna's injuries required physical therapy. (R. 715.)

Dr. Mann examined Castagna again in September 2012. (R. 876-81.) He made

similar findings but noted that Castagna had slightly decreased range of motion in his right hip and right shoulder. (R. 879.) In Dr. Mann's opinion, Castagna had a moderate disability, but was capable of working so long as restrictions were placed on prolonged walking, prolonged standing, prolonged sitting, repetitive use of right arm, grabbing, and no heavy lifting over 40 pounds. (Id.) Although Dr. Mann believed that Castagna's condition warranted further treatment, he still did not believe that Castagna's injuries showed a need for physical therapy. (Id.)

Dr. Amy Weiss-Citrome

Dr. Amy Weiss-Citrome, a specialist in physical medicine and rehabilitation and a New York State certified acupuncturist, conducted an independent examination of Castagna on August 7, 2013. (R. 930-35.) Dr. Weiss-Citrome noted that Castagna had normal cervical spinal range of motion but that Castagna complained of back pain during range of motion testing. (R. 933.) She also observed moderate tenderness and moderate muscle spasm on palpation of the cervical paraspinal musculature. (Id.) Further, she noted decreased range of motion in the thoracolumbar spine, and moderate tenderness and severe muscle spasm on the musculature. (R. 934.) Dr. Weiss-Citrome's conclusion was that Castagna had a marked partial disability with the ability to work in a sedentary job with no lifting over ten pounds and no overhead work with the right arm. (R. 935.) She noted that his prognosis for further recovery was poor. (Id.)

Dr. Michael McKeown

Dr. Michael McKeown, a chiropractic specialist, treated Castagna two times a week between November 2010 and May 2011. (R. 618.) His clinical diagnoses were a sprain/strain of the lumbar and cervical spine, lumbar radiculopathy, and lumbar disc degeneration. (Id.) Dr. McKeown instructed, in his May 2011 assessment of Castagna's limitations on use of his upper extremities: "Do not pull anything!" (R. 620.) Dr. McKeown's report did not list any other

functional limitations related to Castagna's injuries.

Dr. Shariar Sotudeh

Castagna was consultatively examined by Dr. Shariar Sotudeh, an orthopedic surgeon, on September 4, 2013. (R. 938-40.) Dr. Sotudeh concluded that there was functional impairment to Castagna's right shoulder, right hip and left knee. (R. 939.) Dr. Sotudeh concluded that Castagna was limited from "prolonged bending, squatting, standing, or walking," repetitive reaching above shoulder level, any pushing or pulling, and heavy lifting or carrying over 30 pounds. (Id.) Dr. Sotudeh did not note any restrictions on sitting. (Id.)

Dr. Robert Michaels

Dr. Robert Michaels, an orthopedic surgeon, conducted independent orthopedic examinations of Castagna on August 11, 2014 and September 15, 2014. (R. 1098-100.) Castagna reported that his pain levels on the Visual Analog Pain Scale were "3/10 to the neck, 5/10 to the back, 3/10 to the right shoulder, 3/10 to the right hip, 2/10 to the left knee and 3/10 to the left shoulder." (R. 1098.) Dr. Michaels noted that Castagna reported taking Tramadol^{8/} for pain relief. (R. 1099.) Dr. Michaels' examinations of Castagna's shoulders revealed tenderness with no swelling, ecchymosis or erythema, and no rotator cuff weakness in either shoulder. (Id.)

Dr. Michaels filed an addendum to this report on November 21, 2014, after reviewing the left shoulder MRI findings. (R. 1139-42.) Dr. Michaels concluded that the "tears" indicated by the MRI were consequential and likely due to normal degenerative changes. (R. 1141.) He concluded that it would be "reasonable and appropriate" to order a new left knee MRI, since the last one had taken place three years prior. (R. 1142.)

^{8/} Tramadol is an opioid used to treat pain. See <http://www.rxlist.com/ultram-drug.htm> (last visited 7/20/2017)._

Dr. Bradley Wiener

Castagna saw Dr. Bradley Wiener, an orthopedic surgeon, on September 12, 2014 for a second opinion in evaluation of his symptoms. (R. 1120-22.) Dr. Wiener noted discomfort on palpation of Castagna's right shoulder, and restriction of internal rotation and abduction of the left shoulder. (R. 1120.) Dr. Wiener observed tenderness on palpation along the medial joint line of the left knee, but no sign of swelling or effusion. (R. 1120-21.) Dr. Wiener recommended that Castagna undergo another surgery on his left knee, and also suggested that a surgical procedure on the left shoulder might be a good idea. (R. 1121.) Dr. Wiener's ultimate conclusion was that, while he did not believe additional orthopedic treatment would allow Castagna to return to full duty work activities as a police officer, Castagna could perform sedentary work activities. (Id.)

Psychiatric Evaluations

Castagna received psychiatric and psychological treatment from various specialists for post-traumatic stress disorder ("PTSD"), anxiety and depression following the on-duty altercation that led to his alleged disability. Dr. Norman Weiss, who began treating Castagna in October 2010, prepared a psychiatric report in July 2011, opining that Castagna's feelings of "depression, poor sleep, social isolation and a feeling of humiliation, derive . . . from the treatment [Castagna] describes as having received from his police department" related to the incident that caused Castagna's injury. (R. 684; see page 2 above.)

On June 27, 2011, Dr. Fredelyn Engelberg Damari, a psychologist, conducted a consultative psychiatric examination of Castagna. (R. 632-36.) Dr. Damari noted that Castagna's medications included Metaxalone, Pantoprazole,^{9/} Zolpidem tartrate,^{10/} bupropion,^{11/} and

^{9/} Pantoprazole treats gastrointestinal problems. See
(continued...)

paroxetine.^{12/} (R. 632.) Dr. Damari observed Castagna's mood as being "[d]ysthymic," and his affect "[d]ysphoric and anxious," but that his "manner of relating, social skills, and overall presentation" were adequate, and that he was "[c]oherent and goal directed." (R. 633.) Dr. Damari further concluded that Castagna's attention, concentration, memory skills, cognitive functioning, insight and judgment were all intact and appropriate. (R. 634.) Dr. Damari diagnosed Castagna with "[p]osttraumatic stress disorder, chronic," but concluded that his prognosis for recovery was good if he continued to receive psychiatric treatment. (R. 635.) Nevertheless, Castagna's "stress-related problems . . . may significantly interfere with [his] ability to function on a daily basis." (Id.)

Dr. Solomon Miskin conducted an independent psychiatric examination of Castagna on January 31, 2012, and diagnosed him with severe, chronic PTSD and moderate, chronic major depressive disorder. (R. 722-24.) He opined that Castagna was permanently disabled and could not go back to his job as a police officer. (R. 724.)

Dr. Alain De La Chappelle conducted an independent medical examination of Castagna on March 4, 2011, diagnosed him with PTSD, and concluded that Castagna would be able to return to work "on a part-time basis with light duties to minimize stress." (R. 838-39.) Castagna also was seen by Dr. Ronald Kaitz on June 16 and June 28, 2011. (R. 845-47.) Dr. Kaitz found

^{9/} (...continued)
<http://www.rxlist.com/protonix-drug.htm> (last visited 7/20/2017).

^{10/} Commonly known as Ambien, zolpidem is a sedative used for sleep inducement. See <http://www.rxlist.com/ambien-drug.htm> (last visited 7/20/2017).

^{11/} Bupropion is an aminoketone, which is a category of antidepressant. See <http://www.rxlist.com/wellbutrin-drug.htm> (last visited 7/20/2017).

^{12/} Paroxetine is a selective serotonin re-uptake inhibitor used to treat depression and other mental health disorders. See <http://www.rxlist.com/paxil-drug.htm> (last visited 7/20/2017).

Castagna to be "anxious, depressed, and frustrated," and found that "[h]is insight and judgement are impaired." (R. 846.) Dr. Kaitz opined that Castagna is "chronically and persistently disabled." (R. 847.)

Medical consultant A. Herrick prepared a report on July 5, 2011 evaluating Castagna's residual functional capacity with respect to work-related activities considering his mental health limitations. (R. 657-59.) The report noted that Castagna had reported, in his consultation with Dr. Damari, "distressing recollections . . . problems with sleep . . . [and symptoms] of depression and anxiety," and that his affect was "dysphoric and anxious." (R. 659.) Herrick diagnosed chronic PTSD. (Id.) The medical consultant opined that, while Castagna could no longer work as a police officer, he had sufficient mental capacity (including the ability to remember, concentrate, and interact with others) to perform other general work-related tasks. (Id.)

ALJ Gonzalez's 2014 Decision^{13/}

On December 11, 2014, ALJ Gonzalez denied Castagna's application for benefits. (R. 71-97.) ALJ Gonzalez applied the appropriate five step legal analysis. (R. 75-76.) First, he found that Castagna "has not engaged in substantial gainful activity since October 17, 2010, the alleged onset date." (R. 77.) Second, ALJ Gonzalez found that Castagna had the "following severe impairments: left knee medial meniscus tear, right shoulder impingement and SLAP tear, right bicep

^{13/} The Appeals Council remanded ALJ Gonzalez's August 13, 2012 decision for two reasons. (R. 254.) First, ALJ Gonzalez incorrectly stated in his opinion that Dr. Burak's report limited Castagna to lifting and carrying a maximum of twenty pounds (the correct amount being ten pounds), meaning that the assessment was more limiting than ALJ Gonzalez gave it credit for. (See R. 855.) Furthermore, the Appeals Council noted that new and material evidence had been submitted after ALJ Gonzalez's decision in support of the request for review, including an opinion from Dr. Weinstein stating that Castagna was not capable of work at the time, could not perform overhead activities or do significant lifting with his right arm, as well as that Castagna recently had shoulder surgery. (R. 254, 708, 887, 995.)

tendonitis, left shoulder impingement and labrum tear, cervical spine herniation, lumbar spine bulging discs, mild bilateral carpal tunnel syndrome, post-traumatic stress disorder, generalized anxiety disorder, and major depressive disorder." (Id.)

Third, ALJ Gonzalez found that Castagna did "not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1." (R. 77.) In doing so, ALJ Gonzalez compared Castagna's ailments to the relevant CFR listings. (R. 77-79.) ALJ Gonzalez first addressed Castagna's bilateral carpal tunnel syndrome, left knee impairment, and bilateral shoulder impairments, finding no evidence that these conditions met the criteria of "major dysfunction of a joint that involves at least one major peripheral weight-bearing joint, resulting in an inability to ambulate effectively; or major dysfunction of a joint that involves at least one major peripheral joint in each upper extremity, resulting in an inability to perform fine and gross movements effectively," as required by Listing 1.02. (R. 77-79.) Further, ALJ Gonzalez found that Castagna does not "suffer from an inability to ambulate effectively," as required to meet or medically equal Listing 1.03. (R. 78.)

ALJ Gonzalez next turned to Castagna's spinal condition, and determined whether it met the criteria of listing 1.04, requiring:

[E]vidence of a spinal disorder that results in compromise of a nerve root or the spinal cord with: nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine); spinal arachnoiditis, confirmed by an operative note or pathology report of the tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every two hours; or lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic non-radicular pain and

weakness, and resulting in an inability to ambulate effectively.

(R. 78.) Because ALJ Gonzalez found that the record did not support a finding of nerve root compression or arachnoiditis and the evidence showed that Castagna could ambulate effectively, ALJ Gonzalez found this listing not satisfied. (Id.)

ALJ Gonzalez next determined whether any of Castagna's mental health impairments were equivalent to listings 12.04 or 12.06 by considering both "paragraph B" and "paragraph C" criteria from these listings. (R. 78-79.) "Paragraph B" criteria require satisfying at "least two of the following: marked restriction of activities of daily living; marked difficulties in maintaining social functioning; marked difficulties in maintaining concentration, persistence, or pace; or repeated episodes of decompensation, each of extended duration." (R. 78.) ALJ Gonzalez found that Castagna's difficulties in these areas only were mild or moderate.^{14/} (R. 79.) "Paragraph C" criteria require that the "claimant suffers from repeated episodes of decompensation, that any marginal adjustment or minimal increase in mental demands or change in the environment would cause decompensation, or a current history of one or more years' inability to function outside a highly supportive living arrangement," or that the claimant is "completely unable to function independently outside the area of his home." (R. 79.) Finding no evidence that Castagna experienced any episodes of decompensation or is unable to function independently outside of his home, ALJ Gonzalez found neither listing 12.04 or 12.06 satisfied. (R. 79.)

Before proceeding to the next step of the analysis, ALJ Gonzalez evaluated and determined Castagna's level of residual functional capacity ("RFC"), defined as his "ability to do physical and mental work activities on a sustained basis despite limitations from his impairments."

^{14/} "Marked" difficulties are defined as "more than moderate but less than extreme." (R. 78.)

(R. 76.) In evaluating the RFC, an ALJ must consider "all of the claimant's impairments, including impairments that are not severe." (Id.) ALJ Gonzalez determined that Castagna had the RFC to

perform the full range of sedentary work as defined in 20 CFR 404.1567(a), except that he can frequently feel with the right upper extremity; occasionally reach overhead with the dominant right upper extremity; frequently reach overhead with the left upper extremity; occasionally crouch; frequently flex, extend, and rotate his neck; occasionally interact with supervisors, co-workers, and the public; and can frequently handle and finger with the bilateral upper extremities; must avoid working at unprotected heights; and must avoid police work.

(R. 80.) In making this finding, ALJ Gonzalez first evaluated "whether there is an underlying medically determinable physical or mental impairment(s)—i.e., an impairment(s) that can be shown by medically acceptable clinical and laboratory diagnostic techniques—that could reasonably be expected to produce the claimant's pain or other symptoms." (Id.) ALJ Gonzalez found that Castagna's medically determined impairments, including "post-traumatic stress disorder (PTSD), a neck condition, injuries in both shoulders, a left knee condition, a lower back injury, and depression," could reasonably be expected to cause the type of symptoms that Castagna was experiencing. (Id.)

Next, ALJ Gonzalez evaluated the "intensity, persistence, and limiting effects of [Castagna's] symptoms to determine the extent to which they limit [his] functioning," making an analysis of the "credibility of the statements based on a consideration of the entire case record." (Id.) He found that Castagna's statements concerning the intensity, persistence, and limiting effects of his symptoms were not entirely credible. (Id.) Considering the medical and non-medical evidence and testimony, ALJ Gonzalez did not find persuasive evidence that Castagna's injuries restricted his daily activities as much as he claimed. (R. 94.) Giving weight to the fact that Castagna has received only routine, conservative treatment for his impairments, only sporadically used anti-inflammatories and/or Celebrex with mild side-effects that would not prevent Castagna

from engaging in the above RFC, and is capable of lifting overhead occasionally and lifting light weights with his right arm, ALJ Gonzalez concluded that Castagna's complaints of his symptoms were not fully credible. (R. 94-95.) He further opined that Castagna's stated limitations would be fully accommodated in the workplace if he were limited to sedentary work where he only would occasionally lift a maximum of ten pounds. (Id.)

At the fourth step, ALJ Gonzalez concluded that Castagna would not be able to perform his past relevant work as either a police officer or a carpenter based on the vocational expert's testimony and medical expert opinions. (R. 95-96.)

At the fifth and final step, ALJ Gonzalez considered whether there was evidence that "other work exists in significant numbers in the national economy that the claimant can do, given the residual functional capacity, age, education, and work experience." (R. 76.) Based on the vocational expert's testimony, ALJ Gonzalez determined that Castagna could perform the occupations of document preparer, addresser, touch-up screener, and amtoule sealer. (R. 96-97.) Because these jobs exist in significant numbers in the national economy, ALJ Gonzalez concluded that Castagna is capable of fulfilling the requirements of substantial gainful employment. (R. 97.)

ALJ Gonzalez concluded that Castagna was not under a disability, as defined by the Social Security Act, during the relevant time period from October 17, 2010 to December 11, 2014. (Id.)

ANALYSIS

I. THE APPLICABLE LAW

A. Definition Of Disability

A person is considered disabled for Social Security benefits purposes when he is unable "to engage in any substantial gainful activity by reason of any medically determinable

physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A); see, e.g., Barnhart v. Thomas, 540 U.S. 20, 23, 124 S. Ct. 376, 379 (2003); Barnhart v. Walton, 535 U.S. 212, 214, 122 S. Ct. 1265, 1268 (2002); Impala v. Astrue, 477 F. App'x 856, 857 (2d Cir. 2012).^{15/}

An individual shall be determined to be under a disability only if [the combined effects of] his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work.

42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B); see, e.g., Barnhart v. Thomas, 540 U.S. at 23, 124 S. Ct. at 379; Barnhart v. Walton, 535 U.S. at 218, 122 S. Ct. at 1270.^{16/}

In determining whether an individual is disabled for disability benefit purposes, the Commissioner must consider: "(1) the objective medical facts; (2) diagnoses or medical opinions based on such facts; (3) subjective evidence of pain or disability testified to by the claimant or

^{15/} See also, e.g., Salmini v. Comm'r of Soc. Sec., 371 F. App'x 109, 111 (2d Cir. 2010); Betances v. Comm'r of Soc. Sec., 206 F. App'x 25, 26 (2d Cir. 2006); Surgeon v. Comm'r of Soc. Sec., 190 F. App'x 37, 39 (2d Cir. 2006); Rodriguez v. Barnhart, 163 F. App'x 15, 16 (2d Cir. 2005); Malone v. Barnhart, 132 F. App'x 940, 941 (2d Cir. 2005); Butts v. Barnhart, 388 F.3d 377, 383 (2d Cir. 2004), amended on other grounds, 416 F.3d 101 (2d Cir. 2005); Veino v. Barnhart, 312 F.3d 578, 586 (2d Cir. 2002); Draegert v. Barnhart, 311 F.3d 468, 472 (2d Cir. 2002); Shaw v. Chater, 221 F.3d 126, 131 (2d Cir. 2000); Brown v. Apfel, 174 F.3d 59, 62 (2d Cir. 1999); Rosa v. Callahan, 168 F.3d 72, 77 (2d Cir. 1999); Tejada v. Apfel, 167 F.3d 770, 773 (2d Cir. 1999); Balsamo v. Chater, 142 F.3d 75, 79 (2d Cir. 1998); Perez v. Chater, 77 F.3d 41, 46 (2d Cir. 1996).

^{16/} See also, e.g., Salmini v. Comm'r of Soc. Sec., 371 F. App'x at 111; Betances v. Comm'r of Soc. Sec., 206 F. App'x at 26; Butts v. Barnhart, 388 F.3d at 383; Draegert v. Barnhart, 311 F.3d at 472; Shaw v. Chater, 221 F.3d at 131-32; Rosa v. Callahan, 168 F.3d at 77; Balsamo v. Chater, 142 F.3d at 79.

others; and (4) the claimant's educational background, age, and work experience." Mongeur v. Heckler, 722 F.2d 1033, 1037 (2d Cir. 1983) (per curiam).^{17/}

B. Standard Of Review

A court's review of the Commissioner's final decision is limited to determining whether there is "substantial evidence" in the record as a whole to support such determination. E.g., 42 U.S.C. § 405(g); Giunta v. Comm'r of Soc. Sec., 440 F. App'x 53, 53 (2d Cir. 2011).^{18/} "Thus, the role of the district court is quite limited and substantial deference is to be afforded the Commissioner's decision." Morris v. Barnhart, 02 Civ. 0377, 2002 WL 1733804 at *4 (S.D.N.Y. July 26, 2002) (Peck, M.J.).^{19/}

The Supreme Court has defined "substantial evidence" as "more than a mere scintilla [and] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401, 91 S. Ct. 1420, 1427 (1971); accord, e.g.,

^{17/} See, e.g., Brunson v. Callahan, No. 98-6229, 199 F.3d 1321 (table), 1999 WL 1012761 at *1 (2d Cir. Oct. 14, 1999); Brown v. Apfel, 174 F.3d at 62.

^{18/} See also, e.g., Prince v. Astrue, 514 F. App'x 18, 19 (2d Cir. 2013); Salmini v. Comm'r of Soc. Sec., 371 F. App'x 109, 111 (2d Cir. 2010); Acierno v. Barnhart, 475 F.3d 77, 80-81 (2d Cir.), cert. denied, 551 U.S. 1132, 127 S. Ct. 2981 (2007); Halloran v. Barnhart, 362 F.3d 28, 31 (2d Cir. 2004); Jasinski v. Barnhart, 341 F.3d 182, 184 (2d Cir. 2003); Veino v. Barnhart, 312 F.3d 578, 586 (2d Cir. 2002); Shaw v. Chater, 221 F.3d 126, 131 (2d Cir. 2000); Brown v. Apfel, 174 F.3d 59, 61 (2d Cir. 1999); Rosa v. Callahan, 168 F.3d 72, 77 (2d Cir. 1999); Tejada v. Apfel, 167 F.3d 770, 773 (2d Cir. 1999); Perez v. Chater, 77 F.3d 41, 46 (2d Cir. 1996); Rivera v. Sullivan, 923 F.2d 964, 967 (2d Cir. 1991); Mongeur v. Heckler, 722 F.2d 1033, 1038 (2d Cir. 1983) (per curiam); Dumas v. Schweiker, 712 F.2d 1545, 1550 (2d Cir. 1983).

^{19/} See also, e.g., Florencio v. Apfel, 98 Civ. 7248, 1999 WL 1129067 at *5 (S.D.N.Y. Dec. 9, 1999) (Chin, D.J.) ("The Commissioner's decision is to be afforded considerable deference; the reviewing court should not substitute its own judgment for that of the Commissioner, even if it might justifiably have reached a different result upon a de novo review." (quotations & alterations omitted)).

Selian v. Astrue, 708 F.3d 409, 417 (2d Cir. 2013); Rosa v. Callahan, 168 F.3d at 77; Tejada v. Apfel, 167 F.3d at 773-74.^{20/} "[F]actual issues need not have been resolved by the [Commissioner] in accordance with what we conceive to be the preponderance of the evidence." Rutherford v. Schweiker, 685 F.2d 60, 62 (2d Cir. 1982), cert. denied, 459 U.S. 1212, 103 S. Ct. 1207 (1983). The Court must be careful not to "substitute its own judgment for that of the [Commissioner], even if it might justifiably have reached a different result upon a de novo review." Jones v. Sullivan, 949 F.2d 57, 59 (2d Cir. 1991).^{21/}

The Court, however, will not defer to the Commissioner's determination if it is "the product of legal error." E.g., Duvergel v. Apfel, 99 Civ. 4614, 2000 WL 328593 at *7 (S.D.N.Y. Mar. 29, 2000) (Peck, M.J.); see also, e.g., Douglass v. Astrue, 496 F. App'x 154, 156 (2d Cir. 2012); Butts v. Barnhart, 388 F.3d 377, 384 (2d Cir. 2004), amended on other grounds, 416 F.3d 101 (2d Cir. 2005); Tejada v. Apfel, 167 F.3d at 773 (citing cases).

The Commissioner's regulations set forth a five-step sequence to be used in evaluating disability claims. 20 C.F.R. §§ 404.1520, 416.920; see, e.g., Barnhart v. Thomas, 540 U.S. 20, 24-25, 124 S. Ct. 376, 379-80 (2003); Bowen v. Yuckert, 482 U.S. 137, 140, 107 S. Ct. 2287, 2291 (1987). The Supreme Court has articulated the five steps as follows:

Acting pursuant to its statutory rulemaking authority, the agency has promulgated regulations establishing a five-step sequential evaluation process to determine disability. If at any step a finding of disability or nondisability can be made, the SSA will not review the claim further. [1] At the first step, the agency will find nondisability unless the claimant shows that he is not working at a "substantial

^{20/} See also, e.g., Halloran v. Barnhart, 362 F.3d at 31; Jasinski v. Barnhart, 341 F.3d at 184; Veino v. Barnhart, 312 F.3d at 586; Shaw v. Chater, 221 F.3d at 131; Brown v. Apfel, 174 F.3d at 61; Perez v. Chater, 77 F.3d at 46.

^{21/} See also, e.g., Campbell v. Astrue, 465 F. App'x 4, 6 (2d Cir. 2012); Veino v. Barnhart, 312 F.3d at 586.

gainful activity." [2] At step two, the SSA will find nondisability unless the claimant shows that he has a "severe impairment," defined as "any impairment or combination of impairments which significantly limits [the claimant's] physical or mental ability to do basic work activities." [3] At step three, the agency determines whether the impairment which enabled the claimant to survive step two is on the list of impairments presumed severe enough to render one disabled; if so, the claimant qualifies. [4] If the claimant's impairment is not on the list, the inquiry proceeds to step four, at which the SSA assesses whether the claimant can do his previous work; unless he shows that he cannot, he is determined not to be disabled. [5] If the claimant survives the fourth stage, the fifth, and final, step requires the SSA to consider so-called "vocational factors" (the claimant's age, education, and past work experience), and to determine whether the claimant is capable of performing other jobs existing in significant numbers in the national economy.

Barnhart v. Thomas, 540 U.S. at 24-25, 124 S. Ct. at 379-80 (fns. & citations omitted).^{22/}

The claimant bears the burden of proof as to the first four steps; if the claimant meets the burden of proving that he cannot return to his past work, thereby establishing a prima facie case, the Commissioner then has the burden of proving the last step, that there is other work the claimant can perform considering not only his medical capacity but also his age, education and training. See, e.g., Barnhart v. Thomas, 540 U.S. at 25, 124 S. Ct. at 379-80.^{23/}

C. The Treating Physician Rule

The "treating physician's rule" is a series of regulations set forth by the Commissioner in 20 C.F.R. § 404.1527 detailing the weight to be accorded a treating physician's opinion. Specifically, the Commissioner's regulations provide that:

^{22/} Accord, e.g., Talavera v. Astrue, 697 F.3d 145, 151 (2d Cir. 2012); Rosa v. Callahan, 168 F.3d at 77; Tejada v. Apfel, 167 F.3d at 774; see also, e.g., Jasinski v. Barnhart, 341 F.3d at 183-84; Shaw v. Chater, 221 F.3d at 132; Brown v. Apfel, 174 F.3d at 62; Balsamo v. Chater, 142 F.3d 75, 79-80 (2d Cir. 1998); Perez v. Chater, 77 F.3d at 46; Dixon v. Shalala, 54 F.3d 1019, 1022 (2d Cir. 1995); Berry v. Schweiker, 675 F.2d 464, 467 (2d Cir. 1982).

^{23/} See also, e.g., Selian v. Astrue, 708 F.3d at 418; Betances v. Comm'r of Soc. Sec., 206 F. App'x 25, 26 (2d Cir. 2006); Green-Younger v. Barnhart, 335 F.3d 99, 106 (2d Cir. 2003); Rosa v. Callahan, 168 F.3d at 80; Perez v. Chater, 77 F.3d at 46; Berry v. Schweiker, 675 F.2d at 467.

If we find that a treating source's medical opinion on the issue(s) of the nature and severity of your impairment(s) is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in your case record, we will give it controlling weight.

20 C.F.R. § 404.1527(c)(2); see, e.g., Rugless v. Comm'r of Soc. Sec., 548 F. App'x 698, 699-700 (2d Cir. 2013); Meadors v. Astrue, 370 F. App'x 179, 182 (2d Cir. 2010); Colling v. Barnhart, 254 F. App'x 87, 89 (2d Cir. 2007); Lamorey v. Barnhart, 158 F. App'x 361, 362 (2d Cir. 2006).

Further, the regulations specify that when controlling weight is not given a treating physician's opinion (because it is not well-supported by other medical evidence), the ALJ must consider the following factors in determining the weight to be given such an opinion: (1) the length of the treatment relationship and the frequency of examination; (2) the nature and extent of the treatment relationship; (3) the evidence that supports the treating physician's report; (4) how consistent the treating physician's opinion is with the record as a whole; (5) the specialization of the physician in contrast to the condition being treated; and (6) any other factors which may be significant. 20 C.F.R. § 404.1527(c)(2)-(6); see, e.g., Cichocki v. Astrue, 534 F. App'x 71, 74 (2d Cir. 2013); Gunter v. Comm'r of Soc. Sec., 361 F. App'x 197, 197 (2d Cir. 2010).^{24/}

When a treating physician provides a favorable report, the claimant "is entitled to an express recognition from the [ALJ or] Appeals Council of the existence of [the treating physician's] favorable . . . report and, if the [ALJ or] Council does not credit the findings of that report, to an explanation of why it does not." Snell v. Apfel, 177 F.3d 128, 134 (2d Cir. 1999); see, e.g., Cichocki v. Astrue, 534 F. App'x at 75; Zabala v. Astrue, 595 F.3d 402, 409 (2d Cir. 2010) (ALJ's

^{24/} See also, e.g., Foxman v. Barnhart, 157 F. App'x 344, 346-47 (2d Cir. 2005); Halloran v. Barnhart, 362 F.3d 28, 32 (2d Cir. 2004); Shaw v. Chater, 221 F.3d 126, 134 (2d Cir. 2000); Clark v. Comm'r of Soc. Sec., 143 F.3d 115, 118 (2d Cir. 1998); Schaal v. Apfel, 134 F.3d 496, 503 (2d Cir. 1998).

failure to consider favorable treating physician evidence ordinarily requires remand pursuant to Snell but does not require remand where the report was "essentially duplicative of evidence considered by the ALJ"); Ferraris v. Heckler, 728 F.2d 582, 587 (2d Cir. 1984) ("We of course do not suggest that every conflict in a record be reconciled by the ALJ or the Secretary, but we do believe that the crucial factors in any determination must be set forth with sufficient specificity to enable [reviewing courts] to decide whether the determination is supported by substantial evidence." (citations omitted)); Ramos v. Barnhart, 02 Civ. 3127, 2003 WL 21032012 at *7, *9 (S.D.N.Y. May 6, 2003) (The ALJ's "'failure to mention such [treating physician report] evidence and set forth the reasons for his conclusions with sufficient specificity hinders [this Court's] ability . . . to decide whether his determination is supported by substantial evidence.'").

The Commissioner's "treating physician" regulations were approved by the Second Circuit in Schisler v. Sullivan, 3 F.3d 563, 568 (2d Cir. 1993).^{25/}

II. APPLICATION OF THE FIVE STEP SEQUENCE

A. Castagna Was Not Engaged In Substantial Gainful Activity

The first inquiry is whether Castagna was engaged in substantial gainful activity since October 17, 2010, the alleged disability onset date. "Substantial gainful activity" is defined as work that involves "doing significant and productive physical or mental duties" and "[i]s done (or intended) for pay or profit." 20 C.F.R. § 404.1510. ALJ Gonzalez's conclusion that Castagna did not engage in substantial gainful activity during the applicable time period (see page 17 above) is not disputed and benefits Castagna. (See generally Dkt. No. 21: Comm'r Br.) The Court therefore

^{25/} Although not relevant here, the Court notes that the regulations governing the "treating physician rule" recently changed as to claims filed on or after March 27, 2017. See 20 C.F.R. §§ 404.1527, 404.1520c; Revisions to Rules Regarding the Evaluation of Medical Evidence, 82 FR 5844-01, 2017 WL 168819 at *5844, *5867-68 (Jan. 18, 2017).

proceeds with the analysis.

B. Castagna Demonstrated "Severe" Impairments That Significantly Limited His Ability To Do Basic Work Activities

The second step of the analysis is to determine whether Castagna suffered from a "severe" impairment, or combination of impairments that "significantly limit[ed his] physical or mental ability to do basic work activities." 20 C.F.R. § 404.1520(c). The ability to do basic work activities is defined as "the abilities and aptitudes necessary to do most jobs." 20 C.F.R. § 404.1522(b). "Basic work activities" include:

walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling . . . seeing, hearing, and speaking . . . [u]nderstanding, carrying out, and remembering simple instructions . . . [u]se of judgment . . . [r]esponding appropriately to supervision, co-workers and usual work situations . . . [d]ealing with changes in a routine work setting.

20 C.F.R. § 404.1522(b)(1)-(6).

ALJ Gonzalez determined that Castagna's severe impairments were a left knee medial meniscus tear, right shoulder impingement and SLAP tear, right bicep tendonitis, left shoulder impingement and labrum tear, cervical spine herniation, lumbar spine bulging discs, mild bilateral carpal tunnel syndrome, post-traumatic stress disorder, generalized anxiety disorder, and major depressive disorder. (See pages 17-18 above.) ALJ Gonzalez's findings regarding the step-two severity of these impairments benefit Castagna, and Castagna does not contest those findings. (See generally Dkt. No. 19: Castagna Br.) Accordingly, the Court proceeds to the third step of the five-part analysis.

C. Castagna Did Not Have A Disability Listed In Appendix 1 Of The Regulations

The third step of the five-step test requires a determination of whether Castagna had an impairment listed in Appendix 1 of the Regulations. 20 C.F.R. Pt. 404, Subpt. P, App. 1. "These

are impairments acknowledged by the [Commissioner] to be of sufficient severity to preclude gainful employment. If a claimant's condition meets or equals the 'listed' impairments, he or she is conclusively presumed to be disabled and entitled to benefits." Dixon v. Shalala, 54 F.3d 1019, 1022 (2d Cir. 1995).

ALJ Gonzalez found that notwithstanding Castagna's severe impairments, he "does not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525 and 404.1526)." (R. 77.) ALJ Gonzalez compared the medical evidence in the record to the criteria in listings 1.02 (major joint dysfunction), 1.03 (inability to ambulate effectively), 1.04 (spinal disorder), and 12.04 and 12.06 (mental impairments); he found that Castagna did not meet the necessary criteria for any of these listings. (See pages 18-19 above.) Because ALJ Gonzalez's finding that Castagna's impairments do not meet or medically equal the listed conditions is not disputed by the parties (see generally Dkt. No. 19: Castagna Br.; Dkt. No. 21: Comm'r Br.), the Court proceeds with the five-step analysis.

D. ALJ Gonzalez's Credibility and RFC Determinations

Before proceeding to step four, the Court will address ALJ Gonzalez's credibility and residual functional capacity ("RFC") determinations.

1. Credibility Determination

Because subjective symptoms only lessen a claimant's RFC where the symptoms "can reasonably be accepted as consistent with the objective medical evidence and other evidence," the ALJ is not required to accept allegations regarding the extent of symptoms that are inconsistent with the claimant's statements or similar evidence." Moulding v. Astrue, 08 Civ. 9824, 2009 WL 3241397 at *7 (S.D.N.Y. Oct. 8, 2009) (citation & emphasis omitted); see, e.g., Campbell v. Astrue,

465 F. App'x 4, 7 (2d Cir. 2012) ("As for the ALJ's credibility determination, while an ALJ 'is required to take the claimant's reports of pain and other limitations into account,' he or she is 'not require[d] to accept the claimant's subjective complaints without question.' Rather, the ALJ 'may exercise discretion in weighing the credibility of the claimant's testimony in light of the other evidence in the record.'" (citations omitted)); Genier v. Astrue, 606 F.3d 46, 49 (2d Cir. 2010) ("When determining a claimant's RFC, the ALJ is required to take the claimant's reports of pain and other limitations into account, but is not required to accept the claimant's subjective complaints without question; he may exercise discretion in weighing the credibility of the claimant's testimony in light of the other evidence in the record." (citations omitted)); Brown v. Comm'r of Soc. Sec., 310 F. App'x 450, 451 (2d Cir. 2009) ("Where there is conflicting evidence about a claimant's pain, the ALJ must make credibility findings."^{26/} In addition, "courts must show special deference to an ALJ's credibility determinations because the ALJ had the opportunity to observe plaintiff's demeanor while [the plaintiff was] testifying." Marquez v. Colvin, 12 Civ. 6819, 2013 WL 5568718 at *7

^{26/} See also, e.g., Rivers v. Astrue, 280 F. App'x 20, 22 (2d Cir. 2008) (same); Thompson v. Barnhart, 75 F. App'x 842, 845 (2d Cir. 2003) (ALJ properly found that plaintiff's "description of her symptoms was at odds with her treatment history, her medication regime, and her daily routine"); Snell v. Apfel, 177 F.3d 128, 135 (2d Cir. 1999); Norman v. Astrue, 912 F. Supp. 2d 33, 85 (S.D.N.Y. 2012) ("It is 'within the discretion of the [Commissioner] to evaluate the credibility of plaintiff's complaints and render an independent judgment in light of the medical findings and other evidence regarding the true extent of such symptomatology."); Astolos v. Astrue, No. 06-CV-678, 2009 WL 3333234 at *12 (W.D.N.Y. Oct. 14, 2009) (ALJ properly determined that plaintiff's subjective pain complaints were not supported by the medical record); Speruggia v. Astrue, No. 05-CV-3532, 2008 WL 818004 at *11 (E.D.N.Y. Mar. 26, 2008) ("The ALJ 'does not have to accept plaintiff's subjective testimony about her symptoms without question' and should determine a plaintiff's credibility 'in light of all the evidence.'"); Soto v. Barnhart, 01 Civ. 7905, 2002 WL 31729500 at *6 (S.D.N.Y. Dec. 4, 2002) ("The ALJ has the capacity and the discretion to evaluate the credibility of a claimant and to arrive at an independent judgment, in light of medical findings and other evidence, regarding the true extent of pain alleged by the claimant."); Brandon v. Bowen, 666 F. Supp. 604, 608 (S.D.N.Y. 1987) (same).

(S.D.N.Y. Oct. 9, 2013).^{27/}

When an ALJ determines that a claimant's own statements regarding his or her symptoms are not supported by the record, that "decision must contain specific reasons for the weight given to the individual's symptoms, be consistent with and supported by the evidence, and be clearly articulated so the individual and any subsequent reviewer can assess how the adjudicator evaluated the individual's symptoms." SSR 16-3p, 2016 WL 1119029 at *9 (Mar. 16, 2016). The regulations set out a two-step process for assessing a claimant's statements about pain and other limitations:

At the first step, the ALJ must decide whether the claimant suffers from a medically determinable impairment that could reasonably be expected to produce the symptoms alleged. . . . If the claimant does suffer from such an impairment, at the second step, the ALJ must consider the extent to which the claimant's symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence of record. The ALJ must consider statements the claimant or others make about his impairment(s), his restrictions, his daily activities, his efforts to work, or any other relevant statements he makes to medical sources during the course of examination or treatment, or to the agency during interviews, on applications, in letters, and in testimony in its administrative proceedings.

Genier v. Astrue, 606 F.3d at 49 (quotations, citation & brackets omitted) (citing 20 C.F.R. §§ 404.1529(a), 404.1529(b), and the now-superseded SSR 96-7p); see also SSR 16-3p, 2016 WL 1119029 at *2; Burgess v. Colvin, 15 Civ. 9585, 2016 WL 7339925 at *11 (S.D.N.Y. Dec. 19, 2016) (quoting SSR 16-3p for an explanation of the two-step process for assessing claimants' statements

^{27/} Accord, e.g., Campbell v. Astrue, 465 F. App'x at 7 ("[W]e have long held that '[i]t is the function of the [Commissioner], not ourselves, . . . to appraise the credibility of witnesses, including the claimant."); Nunez v. Astrue, 11 Civ. 8711, 2013 WL 3753421 at *7 (S.D.N.Y. July 17, 2013); Guzman v. Astrue, 09 Civ. 3928, 2011 WL 666194 at *7 (S.D.N.Y. Feb. 4, 2011); Ruiz v. Barnhart, 03 Civ. 10128, 2006 WL 1273832 at *7 (S.D.N.Y. May 10, 2006); Gernavage v. Shalala, 882 F. Supp. 1413, 1419 & n.6 (S.D.N.Y. 1995); Mejias v. Soc. Sec. Admin., 445 F. Supp. 741, 744 (S.D.N.Y. 1978) (Weinfeld, D.J.); Wrennick v. Sec'y of Health, Educ. & Welfare, 441 F. Supp. 482, 485 (S.D.N.Y. 1977) (Weinfeld D.J.).

about their symptoms).

In March 2016, the SSA released SSR 16-3p, which provides updated guidance on evaluating a claimant's claims about the work-preclusive nature of his symptoms. See generally SSR 16-3p, 2016 WL 1119029; accord, e.g., Duran v. Colvin, 14 Civ. 8677, 2016 WL 5369481 at *13 n.27 (S.D.N.Y. Sept. 26, 2016) ("SSR 16-3p supersedes SSR 96-7p, 1996 WL 374186 (July 2, 1996), and clarifies the policies set forth in the previous SSR.").

The purpose of [SSR 16-3p] is to provide "guidance about how [to] evaluate statements regarding the intensity, persistence, and limiting effects of symptoms in disability claims." S.S.R. 16-3P, 2016 WL 1119029, at *1. The Ruling supersedes . . . S.S.R. 96-7p, which placed a stronger emphasis on the role of the adjudicator to make a "finding about the credibility of the individual's statements about the symptom(s) and its functional effects." S.S.R. 96-7P, 1996 WL 374186, at *1. In contrast, S.S.R. 16-3p espouses a more holistic analysis of the claimant's symptoms, and "eliminate[s] the use of the term 'credibility'" from sub-regulation policy. S.S.R. 16-3P, 2016 WL 1119029, at *1. The Commissioner notes that the "regulations do not use this term," and by abandoning it, "clarif[ies] that subjective symptom evaluation is not an examination of an individual's character." Id.

Acosta v. Colvin, 15 Civ. 4051, 2016 WL 6952338 at *18 (S.D.N.Y. Nov. 28, 2016).

ALJ Gonzalez appropriately applied the two-part test (see pages 20-21 above) and supported his findings with substantial evidence found in Castagna's treatment records and testimony regarding his physical impairments. Castagna testified that, as a result of his injury, he has experienced left knee, right shoulder, right hip, back, and neck pain, and restricted range of motion and weakness in the right shoulder. (See page 3 above.) Castagna testified that he takes pain medications on a regular basis to manage this pain. (Id.) Castagna testified that trigger point injections help his symptoms for approximately a month or two, but do not provide permanent relief. (Id.) Castagna further alleged that he experiences numbness in his right hand when he extends his right arm, which gives him difficulty utilizing that hand for things such as grabbing or typing. (Id.) Finally, Castagna alleges that "[s]itting for a long period of time" causes him to stiffen up if he does

not have a chance to get up and move about. (Id.)

ALJ Gonzalez found that Castagna's "medically determinable impairments could reasonably be expected to cause the alleged symptoms," but that Castagna's "statements concerning the intensity, persistence and limiting effects of these symptoms [were] not entirely credible." (R. 80.) After reviewing the relevant medical records (R. 81-94), ALJ Gonzalez gave several reasons for discounting Castagna's credibility (R. 94-95). ALJ Gonzalez first found that "there is little evidence in this record that [Castagna's] daily activities have been restricted to the degree [Castagna] alleges based upon his impairments." (R. 94.) Second, ALJ Gonzalez found that "although [Castagna] has received treatment for the allegedly disabling impairments, that treatment has been essentially routine and/or conservative in nature." (Id.) ALJ Gonzalez noted that Castagna has "mostly undergone physical therapy and taken medications," and that while he did have right shoulder surgery, the procedure "appears to have reached its intended result." (Id.)

Third, ALJ Gonzalez found that, considering the type, dosage, effectiveness and side effects of the medication Castagna takes and the fact that he only takes them "sporadically," the overall effect of his medications on his functioning has been "mild" and "would not prevent [him] from engaging in the above [RFC]." (Id.) Fourth, ALJ Gonzalez found that, while Castagna claimed that "strenuous activity" would aggravate his symptoms, the fact that he exercises with 20 pound weights without such aggravation suggests that sedentary work, where he would only lift a maximum of ten pounds occasionally, would accommodate him. (Id.) Finally, ALJ Gonzalez acknowledged that although Castagna's counsel's brief argued that a finding of disability is justified, this conclusion was not consistent with the overall medical evidence, and that it incorrectly evaluated Castagna's RFC. (R. 95, 513.)

Substantial evidence in Castagna's medical history supports ALJ Gonzalez's

conclusion. Castagna's lumbar spine was negative for radiculopathy (see page 12 above), negative for straight leg raise test (see page 6 above), and negative for any spinal fracture or acute disc herniations (see pages 5-6 above). Much of the medical evidence did note that Castagna had slightly reduced spinal range of motion and some tenderness, resulting from a sprain or strain and a mild disc bulge, but that such ailments did not entirely preclude him from movements such as bending over or sitting down. (See pages 6-15 above.)

The medical evidence notes that Castagna's right shoulder also displayed decreased range of motion, but that the surgical procedure had been largely effective (see pages 7, 13 above) and that Castagna's shoulder function was continuing to improve with time and strengthening exercises (see page 7 above). Castagna's shoulder tears were described by Dr. Michaels as being likely due to normal degenerative changes (see page 14 above), and Castagna reported that his pain levels were "3/10[.]" (id). Dr. Mazella concluded that Castagna's shoulder impingement was "[v]ery mild." (See page 12 above.) The primary limitation recommended by physicians concerning Castagna's shoulder injuries is that he avoid overhead use of his arms and avoid heavy lifting, but he was not restricted in handling or touching things with his arms based on his injuries. (See page 13 above.)

Medical evidence showed that Castagna's left knee had a grade 3 posterior tear of the medial meniscus, a grade 2 signal within the lateral meniscus, joint effusion, and proximal patella tendinosis, though Castagna himself noted that his pain levels in the knee were "2/10[.]" (See page 14 above.) Castagna previously had arthroscopic surgery on that knee in 2009 and had recovered satisfactorily from the procedure. (See page 4 above.) The diagnosis and decreased range of motion in his knee were noted by examining physicians to suggest imposing limitations on kneeling, stooping, and prolonged walking, but did not suggest any limitations on sitting. (See pages 11, 14

above.)

Moreover, Dr. Mazella explicitly opined that Castagna's subjective complaints are not supported by the medical evidence. (See page 12 above.) This corroborates ALJ Gonzalez's similar conclusion.

Castagna's own testimony as to his activities of daily living also provides evidence undermining his statements regarding his physical limitations. He testified that he is able to shop, cook, and clean for himself, and climb stairs to get into his home. (See page 3 above.) He stated that he still drives an automobile on a regular basis. (Id.) Finally, Castagna testified that he visits the gym approximately twice a week and performs weightlifting exercises including military presses, leg extensions, and leg curls using 20 to 30 pound weights. (See page 3 above.) This testimony is at odds with Castagna's overarching contentions about the way in which his pain physically limits his range of motion, and ALJ Gonzalez properly factored Castagna's statements into his conclusion that the evidence did not support Castagna's alleged limitations, but rather indicated that he has the capacity to perform "sustained work with adequate restrictions." (R. 95.) Castagna also testified that he frequently visits his parents to socialize. (See page 3 above.) ALJ Gonzalez concluded that this fact, taken together with his ability to perform tasks of daily living and to be cooperative during his examinations and hearings, indicated only mild functional limitations from his PTSD and depressive disorder. (R. 95.)

Substantial evidence supports ALJ Gonzalez's conclusion that Castagna's subjective complaints of his physical and mental limitations were not supported by the record evidence.

2. Residual Functional Capacity Determination

ALJ Gonzalez determined that Castagna had the RFC to perform the full range of sedentary work as defined in 20 CFR 404.1567(a), except

that he can frequently feel with the right upper extremity; occasionally reach overhead with the right upper extremity; frequently reach overhead with the left upper extremity; occasionally crouch; frequently flex, extend, and rotate his neck; occasionally interact with supervisors, co-workers, and the public; and can frequently handle and finger with the bilateral upper extremities; must avoid working at unprotected heights; and must avoid police work.

(See page 20 above.) Sedentary work

involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

20 C.F.R. § 404.1567(a).

Substantial evidence from Castagna's medical record supports ALJ Gonzalez's conclusions about Castagna's RFC. ALJ Gonzalez's RFC determination was based on his review of Castagna's testimony and the medical evidence. (R. 24-31.) ALJ Gonzalez considered, for example, that much of the medical evidence demonstrated that Castagna had reduced range of motion in his lumbar spine, cervical spine, and right shoulder, and that these movements came with at least some pain; thus, some limitations on tasks like reaching overhead, lifting, and crouching were warranted, and are reflected in the ultimate RFC determination. (R. 80.) Further, ALJ Gonzalez recognized that Castagna did have some mental health impairments that justified limitations on the amount of interpersonal interactions that Castagna would be able to perform in a job setting. (R. 95.)

The functional limitations reflected in Castagna's RFC, as determined by ALJ Gonzalez, are substantially consistent with the medical records and opinions of the medical professionals who examined, or were consulted about, Castagna's injuries and capabilities. Castagna had numerous surgical injections for pain relief in his shoulder and cervical spine, which he reported

as being helpful for a limited period, decreasing his pain and allowing him more freedom of motion. (See pages 7-10 above.) Yet even when Castagna had not recently had an injection to an affected area, his conditions only were noted as being mild to moderate. (See pages 12-13 above.) Further, there was significant medical testimony indicating that Castagna could return to work in a limited capacity with certain restrictions on physical movement. (See pages 10-15 above.) Some physicians observed mild limitations on Castagna's range of movement in his spine, shoulder, and knee, whereas at other times, physicians observed no limitations on range of motion in these affected areas at all. (See pages 4-15 above.) Castagna did not have any spinal fractures or acute disc herniations, and was able to straight leg raise (see pages 5-6 above); the spinal abnormalities noted were mild, and the lumbar and cervical spinal strain that he suffered from his accident on October 17, 2010 continued to resolve (see page 12 above). Although Castagna did report significant pain in his back, as noted above, his subjective complaints were not corroborated by the medical evidence. (See pages 3, 12 above.)

Castagna's right shoulder impingement was noted to be mild, and his torn labrum, after being operated on in January 2013, was improving over time. (See page 7 above.) Examinations of the shoulder indicated tenderness, but no swelling, ecchymosis, erythema or rotator cuff weakness. (See page 14 above.) Further, the steroid trigger point injections that were performed by Dr. Rahman were effective at reducing pain, albeit to a limited extent and for a limited time. (See page 10 above.) Medical evidence indicates that Castagna should avoid heavy lifting with his right arm, but that he was generally able to lift lighter weights; further, repetitive use of the right arm was advised to be avoided. (See pages 7-8 above.) Thus, substantial evidence exists in the medical record to justify ALJ Gonzalez's conclusion that limitation on overhead reach and use of the right extremity is proper.

Medical evidence notes that Castagna's left knee was affected by a grade 3 posterior tear of the medial meniscus, a grade 2 signal within the lateral meniscus, joint effusion and proximal patella tendinosis. (See page 6 above.) Swelling around the knee was noted to be negligible or mild (see pages 14-15 above), and Castagna was able to ambulate with a normal gait, with no signs of disturbances (see page 11 above). The outcome of Castagna's 2009 knee surgery was found to be "satisfactory." (See page 12 above.) Castagna himself reported in September 2014 that his pain levels in the left knee were "2/10[.]" (See page 14 above.) Castagna was also advised by his treating physician to undertake an exercise program to continue to strengthen his knee and increase his range of motion. (See page 7 above.) The medical opinions in the record suggest that restrictions on prolonged standing and walking, and restrictions on squatting, are advisable. (See pages 4-15 above.) Substantial evidence supports ALJ Gonzalez's RFC determination limiting Castagna to sedentary work, which requires only occasional standing and walking, and indicates that the limitation on crouching noted in the RFC determination is proper.

Although Castagna suffered a right hip strain as a result of the October 17, 2010 accident, an MRI performed in January 2011 on the right hip was normal, and tests showed full range of motion and strength in the hip. (See page 6 above.) Castagna noted that his pain in the right hip was "3/10[.]" and medical evidence showed it to be positive for tenderness, but substantial medical evidence supports ALJ Gonzalez's conclusion that Castagna's right hip strain had been "resolved." (See page 12 above.)

Non-medical evidence also supports ALJ Gonzalez's RFC determination. As noted previously, Castagna testified that he is still able to shop, cook, and clean for himself, and climb stairs to get into his home. (See page 3 above.) Further, Castagna still drives an automobile on a regular basis. (Id.) Finally, Castagna testified that he visits the gym approximately twice a week

and performs weightlifting exercises including military press, leg extensions, and leg curls using 20 to 30 pound weights. (Id.) All of this testimony indicates that Castagna possessed a wide array of functionality in his daily life, and thereby provides substantial support for ALJ Gonzalez's determination that Castagna maintained the capacity to perform sedentary work.

Psychological evaluations of Castagna indicated mostly mild psychiatric impairments as a result of his PTSD, anxiety, and depression. Dr. Damari noted that Castagna had an "anxious" affect, but that his attention, concentration, memory skills, cognitive functioning, insight, and judgment were all intact. (See page 16 above.) She also found him to be "coherent and goal directed," with a good prognosis to continue to improve his mental health with continued psychiatric treatment. (Id.) Dr. De La Chappelle indicated that Castagna would be able to return to work, so long as his duties were limited to minimize stress. (Id.) Medical consultant A. Herrick concluded that Castagna could adequately perform general work-related duties because he had sufficient ability to remember, concentrate, and interact with others. (See page 17 above.) Dr. Weiss noted that Castagna's general ailments included depression, poor sleep, and feelings of social isolation, but that these feelings stemmed from the incident while he was employed as a police officer, and as such primarily precluded him from returning to work as a police officer. (See page 15 above.) Substantial psychiatric evidence supports ALJ Gonzalez's assessment that Castagna had the RFC to perform work-related activities so long as his interactions with supervisors, co-workers and the public are limited.

Castagna argues that ALJ Gonzalez erred because he should have given all of Dr. Weinstein's medical findings "great weight" or "controlling weight," rather than "slight weight," because of Dr. Weinstein's role as Castagna's long-term treating physician. (Dkt. No. 19: Castagna Br. at 3-4.) Castagna's argument is that, based on Dr. Weinstein's opinions, the proper RFC included

a limitation of no more than occasional rotation, flexion, and extension of the neck. (Id. at 5.)^{28/} ALJ Gonzalez acknowledged that Dr. Weinstein was Castagna's treating physician. (R. 86.) However, ALJ Gonzalez's determination that Dr. Weinstein's opinions deserved only "slight weight" (R. 86) or "some weight" (R. 87) was a proper application of the treating physician rule, in light of that opinion's consistency with the record as a whole, including other relevant medical evidence. The Commissioner's regulations provide that a treating physician's opinion need not be given controlling weight if it is not well-supported by other medical evidence. (See pages 26-27 above.) Substantial evidence supports ALJ Gonzalez's finding that Dr. Weinstein's opinion was not well-supported by other medical evidence and should be given less than controlling weight. For example, Dr. Weinstein's finding that Castagna must avoid all overhead lifting is at odds with Castagna's own admission that he performs military press exercises at the gym using weight of approximately 20-25 pounds. (See page 3 above.)^{29/} Further, Dr. Weinstein's claim that Castagna is limited to occasional rotation of the neck is not reflected in the reports of any other medical examiners, who do not note any restrictions on neck rotation. (See pages 4-15 above.)

Additionally, Dr. Weinstein's assertion that Castagna could only remain seated for one hour at a time and four hours total in an eight-hour workday, and remain standing for two hours at a time and four hours total in an eight-hour workday (see page 8 above), differs strikingly from virtually all other medical professionals' conclusion that Castagna could return to work in a

^{28/} Limiting Castagna's RFC to occasional rotation of the neck, as Castagna requests, would be outcome determinative, as the vocational expert testified that a person who can only occasionally (as opposed to frequently) rotate their neck would be precluded from meeting the requirements of any job. (See R. 141.)

^{29/} A military press is also commonly known as an overhead press, and primarily works the shoulder muscles and upper arms; it requires that the person extend a barbell over their head. See <https://www.youtube.com/watch?v=2yjwXTZQDDI> (last visited 7/20/2017.)

sedentary occupation so long as adequate restrictions were imposed on tasks such as overhead reaching and repetitive bending. Dr. Modugu stated that Castagna could sit for up to eight hours per day, stand and walk for up to six hours per day, and did not have any pushing or pulling limitations. (See page 11 above.) Dr. Burak concluded that Castagna could return to work in a light duty capacity so long as he avoided lifting anything above ten pounds and avoided repetitive bending. (Id.) Dr. Sotudeh stated that Castagna could not bend, squat, stand, or walk for prolonged periods, but did not have any limitations on sitting. (See page 14 above.) Dr. Mazella stated that Castagna's subjective reports of pain were not supported by the results of his medical examination and that Castagna could return to full employment-related duties. (See page 12 above.) Dr. Weiss-Citrome opined that Castagna could perform sedentary job duties with no lifting over ten pounds and no overhead work with the right arm. (See page 13 above.) Dr. Wiener also concluded that Castagna could perform sedentary work activities. (See page 15 above.) Dr. Rahman opined that Castagna would benefit from a course of physical therapy and stretching and strengthening exercises for his neck, but that the level of back pain that he experienced was "tolerable." (See page 10 above.) Additionally, Dr. Rahman found that cervical facet blocks allowed Castagna to move his neck much better and also effectuated a significant improvement on the pain he experiences. (Id.) Psychiatric specialists Dr. Damari and Dr. De La Chappelle opined that Castagna had sufficient functional capacity to interact with others on a limited basis and perform general work-related tasks. (See pages 15-17 above.)

Substantial medical evidence from treating physicians and consulting doctors supports ALJ Gonzalez's decision to give Dr. Weinstein's opinions slight or some weight. "While the opinions of a treating physician deserve special respect, they need not be given controlling weight where they are contradicted by other substantial evidence in the record." Veino v. Barnhart,

312 F.3d 578, 588 (2d Cir. 2002) (citations omitted); see also, Price v. Comm'r of Soc. Sec., 14 Civ. 9164, 2016 WL 1271501 at *4 (S.D.N.Y. Mar. 31, 2016) ("The ALJ remains free to discount the views of a treating physician if they are inconsistent with substantial evidence.").

The medical evidence, which shows that Castagna's lumbar spine was negative for radiculopathy (see page 12 above), negative for straight leg raise test (see page 6 above), and negative for any spinal fracture or acute disc herniations (see pages 5-6 above), supports the opinions of the majority of physicians who suggest less restrictive limitations on Castagna's abilities than does Dr. Weinstein. Further, Dr. Weinstein's overall conclusions about Castagna's RFC are at odds with his own previous recommendation that Castagna continue his home exercise program, with the limitation only that he avoid "excessive" weight overhead. (See page 7 above.) Yet Dr. Weinstein goes on to conclude that Castagna could not work because he was incapable of "any significant lifting or overhead use with the right arm," despite finding that his discomfort and limitation with the use of his shoulder were "mild[.]" (Id.) These internal inconsistencies are noted by ALJ Gonzalez in his opinion. (See R. 87.)

Following the guidelines of the treating physician rule, ALJ Gonzalez correctly considered the following factors in determining the amount of weight to be given to Dr. Weinstein's opinions: (1) the length of the treatment relationship and the frequency of examination; (2) the nature and extent of the treatment relationship; (3) the evidence that supports the treating physician's report; (4) how consistent the treating physician's opinion is with the record as a whole; (5) the specialization of the physician in contrast to the condition being treated; and (6) any other factors which may be significant. (See page 26 above.) ALJ Gonzalez recognized that Dr. Weinstein had treated Castagna over a significant period of time and had written many opinions on Castagna's limitations. (See R. 86.) However, ALJ Gonzalez's conclusion was that only "slight weight" was

to be afforded to Dr. Weinstein's opinions because of their lack of support in the record, and the internal inconsistencies of Dr. Weinstein's own opinions. (See R. 86-87.) ALJ Gonzalez's conclusion is supported by the record.

Castagna argues that Dr. Weinstein's opinions must be given greater weight because of his specialization as an orthopedic surgeon, given the orthopedic nature of Castagna's conditions, pursuant to factor five as listed above. (Dkt. No. 19: Castagna Br. at 5.) This argument ignores the fact that the record also contains medical opinions from seven other orthopedic surgeons, whose medical findings differed from Dr. Weinstein's. (See pages 9-15 above.) Therefore, allowing ALJ Gonzalez deference in his balancing of the various factors,^{30/} there is substantial evidence supporting his decision to give Dr. Weinstein's opinions only slight or some weight. The Court finds that ALJ Gonzalez's RFC determination was supported by substantial evidence and adhered to the treating physician rule.

3. ALJ Gonzalez's Decision Not to Solicit an Additional Independent Medical Examiner Did Not Constitute Reversible Legal Error

Castagna argues that ALJ Gonzalez "erred in not requesting that an independent medical expert give testimony on this matter" because "ALJ [Gonzalez] made his decision on an incomplete record," and that "this matter must be remanded to obtain complete the record." (Dkt. No. 19: Castagna Br. at 5-6.) It is the "well-established rule in [the Second] circuit" that the ALJ must develop the record:

"[T]he social security ALJ, unlike a judge in a trial, must on behalf of all claimants . . . affirmatively develop the record in light of the essentially non-adversarial nature of a benefits proceeding." Social Security disability determinations are "investigatory, or inquisitorial, rather than adversarial." "[I]t is the ALJ's duty to investigate and develop the facts and develop the arguments both for and against the

^{30/} See fn. 19, above.

granting of benefits."

Moran v. Astrue, 569 F.3d 108, 112-13 (2d Cir. 2009) (citations omitted). The Second Circuit has clarified, however, that "where there are no obvious gaps in the administrative record, and where the ALJ already possesses a "complete medical history," the ALJ is under no obligation to seek additional information in advance of rejecting a benefits claim." Swiantek v. Comm'r of Soc. Sec., 588 F. App'x 82, 84 (2d Cir. 2015) (quoting Rosa v. Callahan, 168 F.3d 72, 79 n.5 (2d Cir. 1999) (citing Perez v. Chater, 77 F.3d 41, 48 (2d Cir. 1996))).^{31/}

The ALJ's duty to develop the record is not a duty to go on a fishing expedition. See, e.g., Schaal v. Apfel, 134 F.3d 496, 505 (2d Cir. 1998) ("Plaintiff suggests that the ALJ failed adequately to develop the record concerning the possibility that plaintiff was mentally disabled. However, we find little indication in the record suggesting a disabling mental disorder during the period in question that would have obliged the ALJ to develop the record further.").^{32/} Here, the Court finds no reason to believe that ALJ Gonzalez was working with an incomplete record where the record before him already spanned approximately 1,000 pages and included an extensive number

^{31/} See also, e.g., Ramos v. Comm'r of Soc. Sec., 13 Civ. 6561, 2015 WL 708546 at *18 (S.D.N.Y. Feb. 4, 2015) (ALJ had no further obligation to develop the record where the medical record from the treating clinic was "extensive, including more than two years of consistent treatment notes."); Matos v. Colvin, 13 Civ. 4525, 2014 WL 3746501 at *9 (S.D.N.Y. July 30, 2014) (ALJ properly fulfilled duty to develop the record where he questioned claimant thoroughly, solicited testimony from medical and vocational experts and admitted voluminous submissions from physicians), aff'd, 618 F. App'x 14 (2d Cir. 2015).

^{32/} Accord, e.g., Miller v. Colvin, No. 15-CV-0552, 2016 WL 4402035 at *7-8 (N.D.N.Y. Aug. 18, 2016) ("[A]lthough Plaintiff argues that the ALJ should have sought additional information regarding her diagnosis [of fibromyalgia], she fails to articulate what this evidence consists of and whether it was missing from the record."); Santiago v. Astrue, No. 10-CV-937, 2011 WL 4460206 at *2 (D. Conn. Sept. 27, 2011) ("The plaintiff makes only a general argument that any missing records possibly could be significant, if they even exist. That argument is insufficient to carry his burden.").

of reports from medical professionals of various specialties. Castagna's counsel's brief fails to identify a time period constituting a gap in the record or any other basis to indicate a need for an independent medical examiner to be retained. Accordingly, the Court finds that ALJ Gonzalez was not under a duty to further develop the record by requesting an independent medical examination.

E. Castagna Did Not Have The Ability to Perform His Past Relevant Work

The fourth step of the five-step analysis asks whether Castagna had the residual functional capacity to perform his past relevant work. (See page 25 above.) Castagna previously worked as a police officer and construction worker/carpenter. (See page 2 above.) ALJ Gonzalez concluded that Castagna did not have the ability to perform his past relevant work. (See page 21 above.) Because this finding favors Castagna and is not contested by either party, the Court proceeds to the fifth and final step of the analysis.

F. There Are Jobs In Substantial Numbers In The Economy That Castagna Can Perform

In the fifth step, the burden shifts to the Commissioner, "who must produce evidence to show the existence of alternative substantial gainful work which exists in the national economy and which the claimant could perform, considering not only his physical capability, but as well his age, his education, his experience and his training." Parker v. Harris, 626 F.2d 225, 231 (2d Cir. 1980).^{33/} In meeting his burden under the fifth step, the Commissioner:

may rely on the medical-vocational guidelines contained in 20 C.F.R. Part 404, Subpart P, App. 2, commonly referred to as "the Grid". The Grid takes into account the claimant's residual functional capacity in conjunction with the claimant's age, education and work experience. Based on these factors, the Grid indicates whether

^{33/} See, e.g., Roma v. Astrue, 468 F. App'x 16, 20 (2d Cir. 2012); Arruda v. Comm'r of Soc. Sec., 363 F. App'x 93, 95 (2d Cir. 2010); Butts v. Barnhart, 388 F.3d 377, 381 (2d Cir. 2004), amended on other grounds, 416 F.3d 101 (2d Cir. 2005); Rosa v. Callahan, 168 F.3d 72, 77 (2d Cir. 1999).

the claimant can engage in any other substantial gainful work which exists in the national economy. Generally the result listed in the Grid is dispositive on the issue of disability.

Zorilla v. Chater, 915 F. Supp. 662, 667 (S.D.N.Y. 1996) (fn. omitted); see, e.g., Heckler v. Campbell, 461 U.S. 458, 461-62, 465-68, 103 S. Ct. 1952, 1954-55, 1956-58 (1983) (upholding the promulgation of the Grid); Roma v. Astrue, 468 F. App'x at 20-21; Martin v. Astrue, 337 F. App'x 87, 90 (2d Cir. 2009); Rosa v. Callahan, 168 F.3d at 78; Perez v. Chater, 77 F.3d 41, 46 (2d Cir. 1996); Bapp v. Bowen, 802 F.2d 601, 604 (2d Cir. 1986).

However, "relying solely on the Grids is inappropriate when nonexertional limitations 'significantly diminish' plaintiff's ability to work so that the Grids do not particularly address plaintiff's limitations." Vargas v. Astrue, 10 Civ. 6306, 2011 WL 2946371 at *13 (S.D.N.Y. July 20, 2011); see also, e.g., Travers v. Astrue, 10 Civ. 8228, 2011 WL 5314402 at *10 (S.D.N.Y. Nov. 2, 2011) (Peck, M.J.), R. & R. adopted, 2013 WL 1955686 (S.D.N.Y. May 13, 2013); Lomax v. Comm'r of Soc. Sec., No. 09-CV-1451, 2011 WL 2359360 at *3 (E.D.N.Y. June 6, 2011) ("Sole reliance on the grids is inappropriate, however, where a claimant's nonexertional impairments 'significantly limit the range of work permitted by his exertional limitations.'").

Rather, where the claimant's nonexertional limitations "significantly limit the range of work permitted by his exertional limitations,' the ALJ is required to consult with a vocational expert." Zabala v. Astrue, 595 F.3d 402, 410 (2d Cir. 2010) (quoting Bapp v. Bowen, 802 F.2d at 605); see also, e.g., Selian v. Astrue, 708 F.3d 409, 421 (2d Cir. 2013) ("We have explained that the ALJ cannot rely on the Grids if a non-exertional impairment has any more than a 'negligible' impact on a claimant's ability to perform the full range of work, and instead must obtain the testimony of a vocational expert."); Rosa v. Callahan, 168 F.3d at 82 ("Where significant nonexertional impairments are present at the fifth step in the disability analysis, however, 'application of the grids

is inappropriate.' Instead, the Commissioner 'must introduce the testimony of a vocational expert (or other similar evidence) that jobs exist in the economy which claimant can obtain and perform.'" (quoting & citing Bapp v. Bowen, 802 F.2d at 603, 605-06)); Suarez v. Comm'r of Soc. Sec., No. 09-CV-338, 2010 WL 3322536 at *9 (E.D.N.Y. Aug. 20, 2010) ("If a claimant has nonexertional limitations that 'significantly limit the range of work permitted by his exertional limitations,' the ALJ is required to consult with a vocational expert." (quoting Zabala v. Astrue, 595 F.3d at 411)).

ALJ Gonzalez properly relied on the testimony of vocational expert Linda Vause, who testified that an individual with Castagna's vocational profile and residual functional capacity would be unable to perform any of his previous work positions, but could be employed as a document preparer, addresser, touch-up screener, or ampoule sealer. (See page 4 above.) These jobs are all unskilled sedentary positions that the vocational expert testified exist in significant numbers in the national economy. (Id.) ALJ Gonzalez relied upon Vause's testimony in reaching his step five determination when he specifically referred to those jobs in his findings, and explicitly referenced Vause's testimony in determining that these jobs exist in significant numbers. (See R. 96-97.) Accordingly, ALJ Gonzalez's decision at step five was supported by substantial evidence. See, e.g., Frazier v. Comm'r of Soc. Sec., 16 Civ. 4320, 2017 WL 1422465 at *18 (S.D.N.Y. Apr. 20, 2017) (Peck, M.J.).

CONCLUSION

For the reasons set forth above, the Commissioner's determination that Castagna was not disabled within the meaning of the Social Security Act during the period from October 17, 2010 to December 11, 2014 is supported by substantial evidence. Accordingly, the Commissioner's motion for judgment on the pleadings (Dkt. No. 20) is GRANTED and Castagna's motion (Dkt. No. 18) is DENIED.

SO ORDERED.

Dated: New York, New York
July 20, 2017



Andrew J. Peck
United States Magistrate Judge

Copies ECF to: All Counsel