

WESTERN DISTRICT OF OKLAHOMA

CHRISTOPHER ALLEN HALL,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-16-1201-R
)	
NANCY A. BERRYHILL,)	
Acting Commissioner of the Social)	
Security Administration,¹)	
)	
Defendant.)	

ORDER

Before the Court are the Report and Recommendation of United States Magistrate Judge Gary M. Purcell [Doc. 19], and Plaintiff’s Objections to the Report and Recommendation [Doc. 20]. Pursuant to 28 U.S.C. § 636(b)(1)(B), the Court reviews the Report and Recommendation de novo in light of Plaintiff’s Objections.

First, some short background. Plaintiff is challenging the Social Security Commissioner’s decision to deny his application for disability insurance and supplemental security income benefits under Title II and Title XVI of the Social Security Act (SSA). The Commissioner based his decision on the opinion of the Administrative Law Judge (ALJ), who found that Plaintiff is not disabled within the meaning of the SSA because, while Plaintiff has some limitations, there are jobs he can still perform in the national economy. In arriving at that conclusion, the ALJ made several findings:

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Nancy A. Berryhill, the current Acting Commissioner of the Social Security Administration, is substituted as the Defendant in this proceeding.

- Plaintiff had not engaged in substantial gainful activity since May 16, 2013—his amended alleged onset date.
- Plaintiff *did have* some severe impairments: peripheral vascular disease (PVD), asthma/emphysema, plantar swelling, paroxysmal atrial fibrillation, and status post remote left inguinal hernia repair.
- Though these impairments, taken in isolation or in combination, did not meet or equal the requirements of impairments listed in 20 C.F.R. Part 404, Subpart P, App. 1, they did result in a residual functional capacity (RFC) to perform work at a light exertional level with some physical limitations:

[Plaintiff can] lift and carry 20 pounds occasionally and 10 pounds frequently[,] sit for about 6 hours during an eight-hour workday and can stand and walk for about 6 hours during an eight-hour workday[, and can] occasionally climb, balance, stoop, kneel, crouch, and crawl.

Transcript, Doc. 11, at 15.

- Given these impairments, Plaintiff could not perform the jobs he had performed in the past. He could, however, perform other jobs that exist in the national economy, including price marker, cashier clerk II, and fruit distributor.

After the ALJ issued his decision, the Appeals Council denied Plaintiff's request for review, thus making final the decision of the Commissioner. 20 C.F.R. §§ 404.981, 416.1481; *See Wall v. Astrue*, 561 F.3d 1048, 1051 (10th Cir. 2009). On review, the Magistrate Judge considered—and rejected—Plaintiff's arguments that (1) the ALJ failed to properly consider the opinion of Plaintiff's treating physician, Dr. Samant, and (2) that the ALJ erred in discounting Plaintiff's credibility. *See Doc. 20*, at 5, 20.

Some of Plaintiff's arguments in his Objection are old. Some are new. Some overlap. For clarity's sake, the Court will address them in three parts. The Court reviews the Commissioner's decision to determine whether the factual findings are supported by substantial evidence in the record and whether the correct legal standards were applied. *Andrade v. Sec'y of Health & Human Servs.*, 985 F.2d 1045, 1047 (10th Cir. 1993). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion," *Fowler v. Bowen*, 876 F.2d 1451, 1453 (10th Cir. 1989), and "requires more than a scintilla, but less than a preponderance." *Lax v. Astrue*, 489 F.3d 1080, 1084 (10th Cir. 2007). "Evidence is not substantial if it is overwhelmed by other evidence in the record or constitutes mere conclusion." *Grogan v. Barnhart*, 399 F.3d 1257, 1261–62 (10th Cir. 2005). While the Court will "consider whether the ALJ followed the specific rules of law that must be followed in weighing particular types of evidence in disability cases . . . [the Court] will not reweigh the evidence or substitute [its] judgment for the Commissioner's." *Hackett v. Barnhart*, 395 F.3d 1168, 1172 (10th Cir. 2005).

Plaintiff first complains that the ALJ focused exclusively on the reports from Dr. Winkler, who physically examined Plaintiff several times, rather than the reports and opinion of Dr. Samant. Further—and perhaps conceding that the ALJ did not entirely ignore Dr. Samant's findings—Plaintiff contends that the ALJ failed to consider *all* the findings of Dr. Samant.

The ALJ's decision, though, does not bear out Plaintiff's claims. For one, the ALJ did not rely exclusively on the report from Dr. Winkler; instead the ALJ specifically acknowledged several of Dr. Samant's findings, including that Plaintiff had paroxysmal

atrial fibrillation and PVD in September 2014. Doc. 11, at 16. Moreover, the ALJ concurred with Dr. Samant's findings that Plaintiff could only lift and carry 10 pounds frequently, *id.* at 15, and that Plaintiff had plantar swelling. *Id.* at 16. He also considered the ALJ's observations that Plaintiff could only stand and walk twenty minutes per day and that Plaintiff could not walk 200 feet without stopping to rest. *Id.* at 17. To say that the ALJ ignored Dr. Samant's findings does not account for the ALJ's entire decision.

Granted, the Court did not regurgitate every bit of evidence recorded from the numerous visits Plaintiff made to Dr. Samant. Yet that alone does not invalidate the reasoning of the ALJ and the Magistrate Judge. "The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence." *Clifton v. Chater*, 79 F.3d 1007, 1009–10 (10th Cir. 1996). And the record demonstrates just that. The ALJ stated in his decision that he had taken "careful consideration of the entire record." Doc. 11, at 15. "The Court take[s] the ALJ at his word, unless shown otherwise." *Richards v. Colvin*, 640 F. App'x 786, 791 (10th Cir. 2016) (citing *Wall*, 561 F.3d at 1070). And here, no reason exists to dismiss the ALJ's assurances.

Further, the Court agrees with the Magistrate Judge that, when viewed in the context of the entire decision, the ALJ's opinion shows that he considered the findings of both Dr. Samant and Dr. Winkler. *See* Doc. 19, at 13. Of course, the ALJ did not expressly adopt Dr. Samant's findings. That, though, is not fatal. The question is whether the ALJ's decision (and by extension, the Commissioner's) is supported by substantial evidence. As the Magistrate Judge found, it is. And nothing in the record overwhelms the ALJ's conclusion.

Plaintiff's second, though related objection, is that the ALJ was logically inconsistent because he concluded that Plaintiff was not disabled despite accepting Dr. Samant's findings that Plaintiff had PVD, asthma, plantar swelling, atrial fibrillation, and hernia repair. This argument is a nonstarter. The ALJ agreed with Dr. Samant that Plaintiff had certain impairments, which the ALJ deemed severe. Those impairments did not, however, render Plaintiff disabled because he could still perform available jobs, *i.e.*, engage in substantial gainful activity.

Plaintiff also seems to argue that the ALJ improperly relied on Dr. Winkler's report to reject Dr. Samant's opinion since the Court found that Dr. Winkler's report was not probative. This too does not make much sense. After all, Dr. Winkler's report provided the "longitudinal medical evidence" used to dismiss some of Plaintiff's allegations of pain. Doc. 11, at 16. To say that Dr. Winkler's report was not "probative" is to mischaracterize the ALJ's treatment of Dr. Winkler's findings. As the Magistrate Judge pointed out, a treating physician's opinion is entitled to controlling weight if it is supported by medically acceptable clinical and laboratory diagnostic techniques. *Watkins v. Barnhart*, 350 F.3d 1297, 1300 (10th Cir. 2003). The ALJ never found, though, that Dr. Samant's findings were not *medically acceptable*. He simply gave them "little weight" because they were "not consistent with the longitudinal medical evidence." Doc. 11, at 17. "Medical evidence may be discounted if it is internally inconsistent or inconsistent with other evidence." *Pisciotta v. Astrue*, 500 F.3d 1074, 1078 (10th Cir. 2007) (internal quotes omitted).

Plaintiff's third and final argument is the same one the Magistrate Judge flatly rejected: that the ALJ erred by dismissing Plaintiff's credibility. And in doing so, Plaintiff

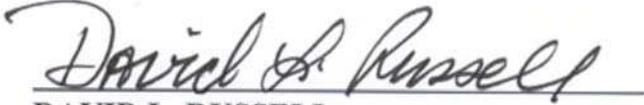
argues, the ALJ erred by (1) not discussing Dr. Samant's findings from October 13, 2014; (2) relying only on Dr. Winkler's objective findings rather than Plaintiff's "subjective" allegations of pain; and (3) failing to specifically address the factors in 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3) for how to evaluate symptoms. The Court turns to these arguments, mindful that "[c]redibility determinations are peculiarly the province of the finder of fact" and will not be overturned when substantial evidence supports the determination. *Wilson*, 602 F.3d at 1144.

As for his contention that the ALJ did not discuss Dr. Samant's findings from October 13, 2014, again, the ALJ need not discuss each piece of evidence. *Clifton*, 79 F.3d at 1009–1010. Now, for the Plaintiff's arguments that the ALJ did not properly consider Plaintiff's "subjective" allegations of pain and the factors in 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3), the Court admits that the ALJ did not meticulously march through every factor. "But so long as the ALJ sets forth the specific evidence he relies on in evaluating the claimant's credibility, he need not make a formalistic factor-by-factor recitation of the evidence. *Keyes-Zachary v. Astrue*, 695 F.3d 1156, 1167 (10th Cir. 2012) (quotes omitted). "[C]ommon sense, not technical perfection, is our guide." *Id.* The ALJ expressly noted the specific evidence upon which he was relying: Dr. Winkler's objective findings, made over the course of several months, that Plaintiff's bill of health was normal. Doc. 11, at 16. Those findings led the ALJ to discredit Plaintiff's complaints about pain: "Treatment notes in the record to not sustain the claimant's allegations of disabling pain. More specifically, the medical findings do not support the existence of limitations greater than the above listed residual functional capacity." *Id.* at 17. And the ALJ's rejecting Plaintiff's allegations in

favor of other medical evidence was not error. An ALJ does not err by “consider[ing] whether an individual’s statements about the intensity, persistence, and limiting effects of his or her symptoms are consistent with the medical signs and laboratory findings of record.” SSR 16-30, 2016 WL 119029, *4 (Mar. 26, 2016). Here, the ALJ found that Plaintiff’s allegations were undermined by the medical records from Dr. Winkler. Because that conclusion has substantial evidence in the record, the Court will not second-guess it.

In closing, the Report and Recommendation of the Magistrate Judge [Doc. 19] is ADOPTED in its entirety and the decision of the Commissioner of the Social Security Administration is AFFIRMED.

IT IS SO ORDERED THIS 21st day of July 2017.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE