

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GEORGE H. WILSON	:	CIVIL ACTION
	:	
v.	:	No. 16-2411
	:	
Nancy A. Berryhill, ¹	:	
<i>ACTING COMMISSIONER OF SOCIAL</i>	:	
<i>SECURITY</i>	:	

ORDER

AND NOW, this 14th day of July, 2017, upon consideration of Plaintiff George H. Wilson's Motion for Summary Judgment, the Commissioner of Social Security's response, and Wilson's reply, and after careful and independent review of the Report and Recommendation of United States Magistrate Judge Timothy R. Rice, Wilson's objections, and the Commissioner's response, it is ORDERED:

1. Wilson's objections to the Report and Recommendation (Document 15) are OVERRULED²;

¹ Nancy A. Berryhill became the Acting Commissioner of Social Security on January 23, 2017. Pursuant to Federal Rule of Civil Procedure 25(d), Berryhill is substituted for Carolyn W. Colvin as the Defendant in this case.

² Wilson seeks review of the denial of his application for Supplemental Security Income by the Commissioner of Social Security. In a decision issued on January 21, 2015, an Administrative Law Judge (ALJ), applying the Social Security Administration's five-step sequential evaluation process for determining whether an individual is disabled, *see* 20 C.F.R. § 416.920, concluded Wilson was not disabled at any time during the relevant period. The ALJ found Wilson was severely impaired by the dysfunction of his major joints resulting from bone fractures caused by a motorcycle accident. However, the ALJ concluded Wilson's severe impairment did not meet or medically equal a listed impairment. Upon consideration of the record, including Wilson's medical records and hearing testimony, as well as the hearing testimony of a vocational expert, the ALJ concluded Wilson retained the residual functional capacity (RFC) to perform light work, subject to the additional limitations that he can stand and walk only two hours during an eight-hour workday, has no functional use of his right arm, and cannot lift above shoulder level with his left arm. Based on this RFC assessment, the ALJ found Wilson was capable of performing his past relevant work as a community outreach worker as he had actually performed this job, or,

alternatively, was capable of working as a school bus monitor, surveillance system monitor, and compact assembler.

In his motion, Wilson argues the ALJ's decision is not supported by substantial evidence because the ALJ failed to (1) properly consider Wilson's mental impairments and (2) support his RFC assessment with substantial evidence. On February 7, 2017, the Magistrate Judge issued a Report and Recommendation (R&R) addressing these alleged errors, concluding the ALJ's decision was supported by substantial evidence, and recommending the Commissioner's denial of benefits be affirmed. Wilson filed objections to the R&R, reasserting the two issues raised in his motion.

Under 28 U.S.C. § 636(b)(1), this Court reviews de novo "those portions of the report or specified proposed findings or recommendations to which objection is made." Upon de novo review of the record, this Court finds Wilson's objections meritless.

As to the first issue, Wilson argues the ALJ erred by failing to make any specific findings regarding his mental impairments. The ALJ reviewed the evidence regarding mental impairments, including Wilson's testimony that he was depressed and felt unable to be himself, his report of posttraumatic stress disorder to Dr. Alexander Klufas in February 2013, the notations by Wilson's primary care physician, Dr. Lawrence Alwine, that Wilson reported suffering from depression and posttraumatic stress disorder, and a psychiatric examination within Dr. Alwine's treatment records indicating normal results. As the Magistrate Judge correctly noted, Wilson had never sought mental health treatment, was never prescribed medication to address his alleged mental health issues, failed to testify those issues resulted in any functional impairment, and failed to include any psychiatric diagnoses when instructed to list all of the conditions that affected his ability to work in his application for SSI benefits in January 2013. Thus, although the ALJ failed to make an explicit finding as to Wilson's alleged mental impairments, the Court is able to conclude the ALJ neither credited nor ignored mental health diagnoses because no such diagnoses existed in the record. *See Dixon v. Barnhard*, No. 03-5291, 2005 WL 113411, at *7 (E.D. Pa. Jan. 19, 2005) ("At the very least, the ALJ [i]s required to address each diagnosis and offer some explanation as to why he did or did not afford it significant weight."); *Lozado v. Barnhart*, 331 F. Supp. 2d 325, 330 (E.D. Pa. 2004) ("A reviewing court must be able to determine whether 'significant probative evidence was not credited or simply ignored'" (quoting *Fargnoli v. Massanari*, 247 F.3d 34, 41 (3d Cir. 2001))). The ALJ therefore did not err by failing to make an explicit determination regarding Wilson's alleged mental health issues. *Cf. Rutherford v. Barnhart*, 399 F.3d 546, 553 (3d Cir. 2005) (holding ALJ did not err by failing to consider obesity in his disability determination, as plaintiff "did not raise obesity as an impairment or limitation before the ALJ," and failed to "specif[y] how that factor would affect the [ALJ's] five-step analysis); *Wiggins v. Berryhill*, No. 16-3991, 2017 WL 1532038, at *8 (E.D. Pa. Feb. 24, 2017) (holding "plaintiff's argument that the ALJ's analysis of plaintiff's mental impairment was deficient is without merit," as "the record was devoid of any mental health treatment notes," plaintiff's counsel informed the ALJ that plaintiff had received no treatment regarding his mental health disorder, and plaintiff never testified to his alleged mental disorder limiting his ability to work (citing *Lane v. Comm'r of Soc. Sec.*, 100 F. App'x 90, 95 (3d Cir. 2004))), *report and recommendation adopted*, No. 16-3991, 2017 WL 1493279 (E.D. Pa. Apr. 26, 2017); *Wilson v. Colvin*, 218 F. Supp. 3d 439, 451 (E.D. Pa. 2016) ("It is well-settled that an ALJ is under no obligation to consider impairments that a claimant does not allege are disabling."); *Cefalu v. Barnhart*, 387 F. Supp. 2d 486, 495 (E.D. Pa. 2005)

(holding ALJ did not err by failing to discuss evidence of plaintiff's mental limitations, as plaintiff never alleged or offered evidence that he had a mental impairment that would hinder his ability to work and plaintiff testified he had never received any treatment from a mental health professional).

Wilson further argues the ALJ erred by "failing to resolve the . . . insufficiency" of the evidence in the record concerning Wilson's mental impairments, pursuant to 20 C.F.R. § 416.920b. "The burden lies with the claimant to develop the record regarding his or her disability because the claimant is in a better position to provide information about his or her own medical condition." *Money v. Barnhart*, 91 F. App'x 210, 215 (3d Cir. 2004) (citing *Bowen v. Yuckert*, 482 U.S. 137, 146 n.5 (1987)). "The ALJ's only duty in this respect is to ensure that the claimant's complete medical history is developed on the record before finding that the claimant is not disabled." *Id.* (citing 20 C.F.R. § 416.912(d)); *see* 20 C.F.R. § 416.920b (providing that an ALJ may seek additional information when the evidence or record is conflicting or insufficient to make a disability determination). Here, the ALJ was not obligated to further develop the record because there was no indication the existing record was incomplete, much less that a more developed record would contain any information about the alleged mental impairment. *See Hornyak v. Colvin*, No. 15-74-E, 2016 WL 1255288, at *1 (W.D. Pa. Mar. 30, 2016) (holding ALJ did not err in failing to further develop the record where plaintiff never communicated "to the ALJ that certain evidence was missing, nor did [p]laintiff's counsel ever indicate to the ALJ that his assistance was needed in order to obtain additional records," and plaintiff failed to identify specific records that actually existed); *Glass v. Colvin*, No. 14-237, 2015 WL 5732175, at *1 (W.D. Pa. Sept. 30, 2015) (finding "[n]othing in the record . . . demonstrate[d] that the ALJ failed to fulfill his duty" to develop the record where plaintiff failed to indicate any additional evidence needed to be included in the record).

As to the second issue, the Court agrees with the Magistrate Judge that the ALJ sufficiently supported his RFC determination with substantial evidence, and that Wilson's three claims of error as to the ALJ's RFC determination are meritless.

First, Wilson admits that an ALJ's failure to perform a function-by-function analysis may be harmless error if the ALJ's RFC is otherwise supported by substantial evidence, but argues that here, the error was not harmless because the ALJ supported his RFC with Wilson's reported daily and work activities—"unquantified" activities that do not demonstrate Wilson can work on a regular and continuous basis. The ALJ, however, properly considered Wilson's daily activities and work history during the alleged disability period in determining the RFC. *See Cunningham v. Comm'r of Soc. Sec.*, 507 F. App'x 111, 118 (3d Cir. 2012) (dismissing plaintiff's argument that the "ALJ should not have used her ability to perform some minimal activities of daily living to determine that she was able to work full time" because "it is appropriate for an ALJ to consider the number and type of activities in which a claimant engages when assessing his or her residual functional capacity" (citing *Burns v. Barnhart*, 312 F.3d 113, 129-30 (3d Cir. 2002))); *Russo v. Astrue*, 421 F. App'x 184, 189 (3d Cir. 2011) (finding substantial evidence supported ALJ's RFC determination, including the fact that plaintiff continued her past relevant work after the alleged disability onset date, as "work done during alleged disability period may show that claimant can work at a substantial gainful activity" (citing 20 C.F.R. § 404.1571)).

Second, Wilson maintains that the ALJ, and the Magistrate Judge, mis-stated his work history in the assembly line and at the salvage yard, and that his actual work was far more limited than described by the ALJ and the Magistrate Judge. Both the ALJ and the Magistrate

2. The Report and Recommendation (Document 14) is APPROVED and ADOPTED;
3. Harrison's Motion for Summary Judgment (Document 10) is DENIED;
4. Judgment is entered affirming the decision of the Commissioner of Social Security;
and
5. The Clerk of Court is directed to mark this case CLOSED.

BY THE COURT:

/s/ Juan R. Sánchez
Juan R. Sánchez, J.

Judge, however, accurately summarized Wilson's work history, as he described it himself, and Wilson has failed to identify any factual error that would warrant remand.

Finally, Wilson admits the ALJ's failure to specifically explain why he did not credit Dr. Carl Ritner's pushing and pulling, postural, and environmental limitations is harmless error, but argues that, taken together with other "failures to discuss, evaluate, and reconcile the evidence," the errors warrant remand. Because the Court finds the ALJ otherwise adequately discussed and evaluated the evidence, and agrees with the Magistrate Judge that the ALJ's decision "was supported by VE testimony and provides ample support for the RFC," R&R 17, the error remains harmless and does not warrant remand.

Accordingly, the Court adopts the R&R and denies Wilson's request for review.