

Plaintiff, *inter alia*, argues that the ALJ was an unconstitutionally appointed officer, pursuant to *Lucia v. S.E.C.*, 138 S. Ct. 2044 (2018).² This issue was stayed pending the Court of Appeals' decision in several cases, including *Cirko v. Berryhill*, 948 F. 3d 148 (3d Cir. 2020). (ECF No. 19). The stay was continued pending the exhaustion of pertinent appellate proceedings. *Id.* Presently, Defendant has filed a Status Report, stating that it will not seek Supreme Court review of *Cirko*, and disavowing an argument that *Cirko* is inapplicable here. (ECF No. 22, ¶3). As a result, I am lifting the stay on this issue *sua sponte*.

In *Lucia*, the Supreme Court held that ALJs of the Securities and Exchange Commission must be appointed by the President, a court of law, or the Department head. *Lucia*, 138 S. Ct. at 2053. In *Cirko*, our Court of Appeals determined that a Social Security claimant is not required to exhaust her administrative remedies before raising an appointments clause issue with the District Court. *Cirko*, 948 F. 3d at 152, 155. Pursuant to *Lucia* and *Cirko*, the Court concludes that Plaintiff is entitled to have all claims adjudicated by a constitutionally appointed ALJ other than the ALJ who presided over the prior hearing. *See id.* at 159-60; *Bauer v. Saul*, No. 19-2563, 2020 WL 1955595, at *2 (E.D. Pa. Apr. 23, 2020). Consequently, remand is warranted.³

An appropriate order shall follow.

²Following *Lucia*, on July 16, 2018, the Acting Commissioner of Social Security appointed Defendant's ALJs in accordance with the Appointments Clause, United States Constitution Art. II, § 2, cl. 2. This action had no retroactive effect. *Flynn v. Saul*, No. 19-0058, 2020 WL 509164, at *2 (E.D. Pa. Jan. 30, 2020).

³Additionally, Plaintiff submits that the ALJ erred in arriving at her residual functional capacity (RFC) as it relates to her left-hand impairment and her lumbar spine because the ALJ "failed to obtain any medical opinion regarding" the same. (ECF No. 10, p. 7). As a result, Plaintiff argues that remand is warranted. I need not address this issue, as the hearing on remand will be conducted *de novo*. *See, e.g., Bauer*, 2020 U.S. Dist. LEXIS 72011, at *4. Nonetheless, for clarity, I note that "[r]arely can a decision be made regarding a claimant's [RFC] without an assessment from a physician regarding the functional abilities of the claimant." *Gormont v. Astrue*, No. 11-2145, 2013 WL 791455 at *7 (M.D. Pa. Mar. 4, 2013), *citing Doak v. Heckler*, 790 F.2d 26 (3d Cir. 1986). While this is not a requirement, the ALJ must support his/her determination with substantial evidence.

