

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

JODI LYNN WALDOR,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 16-306
	)	
CAROLYN W. COLVIN, ACTING	)	
COMMISSIONER OF SOCIAL SECURITY,	)	
	)	
Defendant.	)	

ORDER

AND NOW, this 19<sup>th</sup> day of July, 2017, upon consideration of Defendant’s Motion for Summary Judgment (Doc. No. 11) filed in the above-captioned matter on September 1, 2016,

IT IS HEREBY ORDERED that said Motion is DENIED.

AND, further, upon consideration of Plaintiff’s Motion for Summary Judgment (Doc. No. 8) filed in the above-captioned matter on August 5, 2016,

IT IS HEREBY ORDERED that said Motion is GRANTED IN PART and DENIED IN PART. Specifically, Plaintiff’s Motion is granted to the extent that it seeks a remand to the Commissioner of Social Security (“Commissioner”) for further evaluation as set forth below, and denied in all other respects. Accordingly, this matter is hereby remanded to the Commissioner for further evaluation under sentence four of 42 U.S.C. § 405(g) in light of this Order.

**I. Background**

On January 28, 2011, Plaintiff Jodi Lynn Waldor filed a claim for Disability Insurance Benefits under Title II of the Social Security Act, 42 U.S.C. §§ 401-434. Specifically, Plaintiff

claimed that she became disabled on February 10, 2010, due to occipital neuralgia, depression, bipolar, diabetes, and high blood pressure. (R. 168).

After being denied initially on May 20, 2011, Plaintiff sought, and obtained, a hearing before an Administrative Law Judge (“ALJ”) on August 30, 2012. (R. 5-6, 84-88, 29-66). In a decision dated September 7, 2012, the ALJ denied Plaintiff’s request for benefits. (R. 7-28). The Appeals Council declined to review the ALJ’s decision on September 23, 2013. (R. 1-4). Plaintiff filed an appeal with this Court, and, upon review, the Court remanded the case to the ALJ for reconsideration consistent with the Court’s order.

Upon remand, another hearing was held before the ALJ on October 8, 2015. (R. 761-805). In a decision dated November 17, 2015, the ALJ again denied Plaintiff’s request for benefits. (R. 737-56). Plaintiff did not file exceptions to the ALJ’s decision, and the Appeals Council declined to assume jurisdiction. The ALJ’s decision dated November 17, 2015, thus became final 61 days later. See 20 C.F.R. § 404.984(d). Plaintiff filed a timely appeal with this Court, and the parties have filed cross-motions for summary judgment.

## **II. Standard of Review**

Judicial review of a social security case is based upon the pleadings and the transcript of the record. See 42 U.S.C. § 405(g). The scope of review is limited to determining whether the Commissioner applied the correct legal standards and whether the record, as a whole, contains substantial evidence to support the Commissioner’s findings of fact. See *Matthews v. Apfel*, 239 F.3d 589, 592 (3d Cir. 2001) (noting that “[t]he findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive” (quoting 42 U.S.C. § 405(g))); *Schaudeck v. Commissioner of Soc. Sec. Admin.*, 181 F.3d 429, 431 (3d Cir. 1999)

(stating that the court has plenary review of all legal issues, and reviews the ALJ's findings of fact to determine whether they are supported by substantial evidence).

“Substantial evidence” is defined as “more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate” to support a conclusion. Plummer v. Apfel, 186 F.3d 422, 427 (3d Cir. 1999) (quoting Ventura v. Shalala, 55 F.3d 900, 901 (3d Cir. 1995)). However, a “single piece of evidence will not satisfy the substantiality test if the [Commissioner] ignores, or fails to resolve, a conflict created by countervailing evidence.” Morales v. Apfel, 225 F.3d 310, 317 (3d Cir. 2000) (quoting Kent v. Schweiker, 710 F.2d 110, 114 (3d Cir. 1983)). “Nor is evidence substantial if it is overwhelmed by other evidence—particularly certain types of evidence (e.g., that offered by treating physicians)—or if it really constitutes not evidence but mere conclusion.” Id.

A disability is established when the claimant can demonstrate some medically determinable basis for an impairment that prevents him or her from engaging in any substantial gainful activity for a statutory twelve-month period. See Fagnoli v. Massanari, 247 F.3d 34, 38-39 (3d Cir. 2001). “A claimant is considered unable to engage in any substantial gainful activity ‘only if 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 . . . .’” Id. at 39 (quoting 42 U.S.C. § 423(d)(2)(A)).

The Social Security Administration has promulgated regulations incorporating a five-step sequential evaluation process for determining whether a claimant is under a disability as defined by the Act. See 20 C.F.R. § 404.1520. In Step One, the Commissioner must determine whether the claimant is currently engaging in substantial gainful activity. See 20 C.F.R. § 404.1520(b).

If so, the disability claim will be denied. See Bowen v. Yuckert, 482 U.S. 137, 140 (1987). If not, the second step of the process is to determine whether the claimant is suffering from a severe impairment. See 20 C.F.R. § 404.1520(c). “An impairment or combination of impairments is not severe if it does not significantly limit [the claimant’s] physical or mental ability to do basic work activities.” 20 C.F.R. § 404.1522(a). If the claimant fails to show that his or her impairments are “severe,” he or she is ineligible for disability benefits. If the claimant does have a severe impairment, however, the Commissioner must proceed to Step Three and determine whether the claimant’s impairment meets or equals the criteria for a listed impairment. See 20 C.F.R. § 404.1520(d). If a claimant meets a listing, a finding of disability is automatically directed. If the claimant does not meet a listing, the analysis proceeds to Steps Four and Five.

Step Four requires the ALJ to consider whether the claimant retains the residual functional capacity (“RFC”) to perform his or her past relevant work, see 20 C.F.R. § 404.1520(e), and the claimant bears the burden of demonstrating an inability to return to this past relevant work, see Adorno v. Shalala, 40 F.3d 43, 46 (3d Cir. 1994). If the claimant is unable to resume his or her former occupation, the evaluation then moves to the fifth and final step.

At this stage, the burden of production shifts to the Commissioner, who must demonstrate that the claimant is capable of performing other available work in the national economy in order to deny a claim of disability. See 20 C.F.R. § 404.1520(g). In making this determination, the ALJ should consider the claimant’s RFC, age, education, and past work experience. See id. The ALJ must further analyze the cumulative effect of all the claimant’s impairments in determining whether he or she is capable of performing work and is not disabled. See 20 C.F.R. § 404.1523.

### **III. The ALJ's Decision**

The ALJ found here that Plaintiff met the insured requirements of the Social Security Act through March 31, 2015. (R. 742). To be eligible for Disability Insurance Benefits, Plaintiff had to establish that she was disabled on or before that date. See 42 U.S.C. §§ 423(a)(1)(A), (c)(1)(B); 20 C.F.R. §§ 404.101, .110, .131.

The ALJ then applied the sequential evaluation process when reviewing Plaintiff's claim for benefits. In particular, the ALJ found that Plaintiff had not been engaged in substantial gainful activity since the alleged onset of disability. (R. 742). The ALJ also found that Plaintiff met the second requirement of the process insofar as she had several severe impairments, specifically, degenerative disc disease, occipital neuralgia/headaches, affective disorder, anxiety, diabetes mellitus, carpal tunnel syndrome, COPD, history of venous insufficiency lower extremities, tibial tendonitis, and obesity. (R. 742). The ALJ further concluded that Plaintiff's impairments did not meet any of the listings that would satisfy Step Three. (R. 742-44).

The ALJ next found that Plaintiff retained the RFC to perform sedentary work as defined in 20 C.F.R. § 404.1567(a), except she would be limited to jobs not requiring working at unprotected heights, around dangerous machinery, or other similar workplace hazards; no working in areas of concentrated fumes, odors, gases, temperature extremes, or other similar environmental irritants; requiring no more than frequent handling, fingering, or feeling; limited to routine, repetitive tasks; requiring only occasional judgment, decision-making, and workplace changes; and involving only occasional interaction with the public, co-workers and supervisors. (R. 745-48). At Step Four, the ALJ found, based on this RFC, that Plaintiff had established that she is incapable of returning to her past employment, so he moved on to Step Five. (R. 748).

The ALJ then used a vocational expert (“VE”) to determine whether or not a significant number of jobs existed in the national economy that Plaintiff could perform. The VE testified that, based on Plaintiff’s age, education, past relevant work experience, and RFC, Plaintiff could perform jobs that exist in significant numbers in the national economy, such as document preparer, surveillance system monitor and addresser. (R. 749, 800). Accordingly, the ALJ found that Plaintiff was not disabled. (R. 749-50).

#### **IV. Legal Analysis**

Plaintiff raises several arguments regarding the ALJ’s alleged errors in formulating her RFC and in finding her to be not disabled. Although the Court does not agree with all of Plaintiff’s contentions, the Court does agree that remand is warranted in this case. Specifically, the Court finds that the ALJ, in determining Plaintiff’s RFC, failed either to include in that RFC one of the limitations found in the medical opinion evidence, or, alternatively, to provide an adequate explanation for his decision to omit that limitation from the RFC. Accordingly, the Court finds that the record does not fully support the ALJ’s decision, and the Court will remand the case for further consideration.

RFC is defined as “that which an individual is still able to do despite the limitations caused by his or her impairment(s).” Fagnoli, 247 F.3d at 40 (quoting Burnett v. Comm’r of Soc. Sec. Admin., 220 F.3d 112, 121 (3d Cir. 2000)); see also 20 C.F.R. § 404.1545(a). Not only must an ALJ consider all relevant evidence in determining an individual’s RFC, the RFC finding “must ‘be accompanied by a clear and satisfactory explication of the basis on which it rests.’” Fagnoli, 247 F.3d at 41 (quoting Cotter v. Harris, 642 F.2d 700, 704 (3d Cir. 1981)). “[A]n examiner’s findings should be as comprehensive and analytical as feasible and, where appropriate, should include a statement of subordinate factual foundations on which ultimate

factual conclusions are based, so that a reviewing court may know the basis for the decision.”  
Id. (quoting Cotter, 642 F.2d at 705); see also S.S.R. 96-8p, 1996 WL 374184 (S.S.A.), at \*7  
 (“The RFC assessment must include a narrative discussion describing how the evidence supports  
each conclusion, citing specific medical facts (e.g., laboratory findings) and nonmedical  
evidence (e.g., daily activities, observations).”).

Among the arguments raised in her brief, Plaintiff asserts that the ALJ failed to include in  
Plaintiff’s RFC the postural and manipulative limitations found by the state agency physician,  
Margel Guie, D.O. Specifically, Plaintiff points to the fact that Dr. Guie indicated that Plaintiff  
could only occasionally climb ramps/stairs, balance, stoop, kneel, crouch and crawl, could never  
climb ladders/ropes/scaffolds, and that Plaintiff has a manipulative limitation on her ability to  
reach left overhead. (R. 76).

In his decision, the ALJ acknowledged that “some weight” was given to Dr. Guie’s  
opinion, but his discussion of that opinion is insufficient to permit meaningful review. (R. 748).  
The ALJ specified in his decision that Dr. Guie’s opinion was given some weight “to the extent  
that it supports a finding of not disabled, as it is supported by the objective findings and the  
claimant’s course of treatment.” (R. 748). The Court notes that the fact that the ALJ did not  
specifically discuss the postural limitations of climbing, balancing, stooping, kneeling, crouching  
and crawling does not alone necessitate remand for clarification because the ALJ explained that  
he “further reduced the claimant to sedentary work based on other evidence of record, including  
obesity.” (R. 748). As other courts have agreed, the need to “only occasionally perform postural  
activities, no climbing ladders, ropes or scaffolds, and need to avoid concentrated exposure to  
excessive vibration or work hazards does not significantly erode the ability to perform sedentary  
and light work as most jobs at these exertion levels do not require these activities.” Atkinson v.

Barnhart, 2006 WL 1455473, \*6 (D. Nev. May 19, 2006); see also Lassor v. Astrue, 2007 WL 2021924, at \*4 (D. Maine July 11, 2007) (denying remand where the ALJ did not address the non-exertional impairments of climbing ladders, ropes or scaffolds, and climbing of ramps or stairs, which were found by a state agency physician reviewer); Penaloza-Clemente v. Secretary of Health & Human Servs., 1993 WL 33329, at \*\*5-6 (1<sup>st</sup> Cir. Feb. 12, 1993) (finding that where non-exertional limitations on sedentary work consisted of occasional climbing, kneeling, crouching and crawling, the ALJ did not err in relying exclusively on the Grid).

More problematic, however, is the fact that the ALJ's decision never addressed the manipulative limitation found by Dr. Guie regarding overhead reaching. The ALJ provided no mention whatsoever of this particular limitation in discussing his conclusions regarding Plaintiff's RFC. Therefore, it is not evident to the Court whether the ALJ rejected that manipulative limitation after due consideration, or whether he simply overlooked that limitation in his review of the evidence of record and his formulation of the RFC. Although the ALJ was certainly not required to adopt straightaway all of the limitations contained in each of the medical opinions, he was required to provide an adequate explanation for his decision not to include relevant limitations in the RFC. Because the ALJ's discussion of Dr. Guie's opinion evidence does not allow the Court to determine the reason for the omission of this manipulative limitation from the RFC, remand is necessary in this case.

The Court does not express an opinion as to whether the ALJ's RFC determination is in fact fully supported by the record, but it is the need for further explanation by the ALJ that mandates remand on this issue.<sup>1</sup>

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<sup>1</sup> The Court takes no position as to Plaintiff's remaining issues, but the Court emphasizes that the ALJ should ensure that proper weight be accorded to the opinions and all of the medical evidence presented in the record. The ALJ should also verify that his conclusions concerning



**V. Conclusion**

Thus, the ALJ failed to provide an adequate explanation for his evaluation of the opinion of Dr. Guie and his decision to omit the limitation regarding overhead reaching from the RFC. Accordingly, the Court finds that substantial evidence does not support the ALJ's decision, and the Court hereby remands this case to the ALJ for reconsideration consistent with this Order.

s/ Alan N. Bloch  
United States District Judge

ecf: Counsel of record

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Plaintiff's RFC are adequately explained, and that such explanations are accompanied by clear, specific citations to the medical evidence of record, in order to eliminate the need for any future remand, as this case has already proceeded for entirely too long.