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

DAVID JOSEPH PARKER,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Civil Action No. 16-1047
	)	
NANCY A. BERRYHILL,[1] ACTING COMMISSIONER OF SOCIAL SECURITY,	)	
	)	
Defendant.	)	

AMBROSE, Senior District Judge.

OPINION AND ORDER

Synopsis

Plaintiff David Joseph Parker ("Parker") brings this action seeking judicial review of the ALJ's decision denying a claim for disability insurance benefits ("DIB") and supplemental security income ("SSI"). Parker filed an application in March of 2013, alleging a disability beginning on October 15, 2010 due to ventral hernias and arthritis in his hands and shoulders. He appeared and testified at a February 3, 2015 hearing, as did a vocational expert. The ALJ denied Parker's claim, finding him capable of performing a significant number of jobs in the national economy. Parker has appealed and challenges the ALJ's decision in several respects. Pending are Cross Motions for Summary Judgment. Docket no. 10 and Docket no. 12. After careful consideration, I find Parker's arguments to be unpersuasive. Consequently, the ALJ's decision is affirmed.

[1] Nancy A. Berryhill because acting Commissioner of Social Security on January 23, 2017, replacing Carolyn W. Colvin.

Legal Analysis

1. Standard of Review

The standard of review in social security cases is whether substantial evidence exists in the record to support the Commissioner's decision. *Allen v. Bowen,* 881 F.2d 37, 39 (3d Cir. 1989). Substantial evidence has been defined as "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate." *Ventura v. Shalala,* 55 F.3d 900, 901 (3d Cir. 1995), *quoting Richardson v. Perales,* 402 U.S. 389, 401 (1971). Determining whether substantial evidence exists is "not merely a quantitative exercise." *Gilliland v. Heckler*, 786 F.2d 178, 183 (3d Cir. 1986) (*citing Kent v. Schweiker*, 710 F.2d 110, 114 (3d Cir. 1983)). "A single piece of evidence will not satisfy the substantiality test if the secretary ignores, or fails to resolve, a conflict created by countervailing evidence. Nor is evidence substantial if it is overwhelmed by other evidence – particularly certain types of evidence (e.g., that offered by treating physicians)." *Id.* The Commissioner's findings of fact, if supported by substantial evidence, are conclusive. 42 U.S.C. §405(g); *Dobrowolsky v. Califano,* 606 F.2d 403, 406 (3d Cir. 1979). A district court cannot conduct a *de novo* review of the Commissioner's decision or re-weigh the evidence of record. *Palmer v. Apfel,* 995 F.Supp. 549, 552 (E.D. Pa. 1998). Where the ALJ's findings of fact are supported by substantial evidence, a court is bound by those findings, even if the court would have decided the factual inquiry differently. *Hartranft v. Apfel*, 181 F.3d 358, 360 (3d Cir. 1999). To determine whether a finding is supported by substantial evidence, however, the district court must review the record as a whole. *See,* 5 U.S.C. §706.

2. Treating Physician's Doctrine

Parker faults the ALJ for allegedly failing to evaluate the opinions offered by his treating physicians in accordance with agency policy and relevant case law. The amount of weight accorded to medical opinions is well-established. Generally, the ALJ will give more weight to the opinion of a source who has examined the claimant than to that of a non-examining source. 20 C.F.R. § 416.927(c)(1). Additionally, the ALJ typically will give more weight to opinions from treating physicians, "since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of [a claimant's] medial impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from the reports of individual examinations, such as consultative examinations or brief hospitalizations." 20 C.F.R. § 416.927(c)(2). If the ALJ finds that "a treating source's opinion on the issue(s) of the nature and severity of [a claimant's] impairment(s) is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence [of] record," he must give that opinion controlling weight. *Id*. If a treating physician's opinion is not given controlling weight, the ALJ must consider all relevant factors that tend to support or contradict any medical opinions of record, including the patient / physician relationship; the supportability of the opinion; the consistency of the opinion with the record as a whole; and the specialization of the provider at issue. 20 C.F.R. § 416.927(c)(4). "[T]he more consistent an opinion is with the record as a whole, the more weight [the ALJ generally] will give to that opinion." 20 C.F.R. § 416.927(c)(4). In the event of conflicting medical evidence, the Court of Appeals for the Third Circuit Court has explained:

> "A cardinal principle guiding disability determinations is that the ALJ accord treating physicians' reports great weight, especially 'when their opinions reflect

> expert judgment based on continuing observation of the patient's condition over a prolonged period of time.'" *Morales v. Apfel*, 225 F.3d 310, 317 (3d Cir. 2000) (*quoting Plummer v. Apfel*, 186 F.3d 422, 429 (3d Cir. 1999)). However, "where … the opinion of a treating physician conflicts with that of a non-treating, non-examining physician, the ALJ may choose whom to credit" and may reject the treating physician's assessment if such rejection is based on contradictory medical evidence. *Id*. Similarly, under 20 C.F.R. § 416.927(c)(2), the opinion of a treating physician is to be given controlling weight only when it is well-supported by medical evidence and is consistent with other evidence in the record.

Becker v. Comm'r. of Soc. Sec., 403 Fed. Appx. 679, 686 (3d Cir. 2010).

The ultimate issue of whether an individual is disabled within the meaning of the Act is for the Commissioner to decide. Thus, the ALJ is not required to afford special weight to a statement by a medical source that a claimant is "disabled" or "unable to work." 20 C.F.R. §416.927(d)(1), (3); *Dixon v. Comm'r. of Soc. Sec.*, 183 Fed. Appx. 248, 251-52 (3d Cir. 2006) (stating, "[o]pinions of disability are not medical opinions and are not given any special significance."). Although the ALJ may choose who to credit when faced with a conflict, he "cannot reject evidence for no reason or for the wrong reason." *Diaz v. Comm'r. of Soc. Sec.*, 577 F.3d 500, 505 (3d Cir. 2009). The ALJ must provide sufficient explanation for his or her final determination to provide a reviewing court with the benefit of the factual basis underlying the ultimate disability finding. *Cotter v. Harris,* 642 F.2d 700, 705 (3d Cir. 1981). In other words, the ALJ must provide sufficient discussion to allow the court to determine whether any rejection of potentially pertinent, relevant evidence was proper. *Johnson v. Comm'r. of Soc. Sec.*, 529 F.3d 198, 203-04 (3d Cir. 2008).

Against this backdrop, I find that, contrary to Parker's assertions, the ALJ gave appropriate weight to the opinions rendered by Dr. Taggert and Dr. Smith. Certainly the record belies any contention by Parker that the ALJ "failed to provide good / specific /

supported reasons" for assigning those opinions little weight. The ALJ explicitly gave Dr. Taggert's opinion "limited weight because it is without substantial support from the treatment records." (R. 18)[2] The ALJ explained that "physical examinations documented normal cervical and lumbar spine range of motion, no back tenderness, normal extremities without deformities, edema or skin discoloration, normal motor function, normal sensory function, and normal gait and station." (R. 18) The ALJ added that Parker was pleasant and cooperative and did not show any distress during the examination. (R 18) She further stated that "the assessed limitations are inconsistent with the claimant's treatment and reported daily activities." (R. 18) With respect to the additional letter regarding jury duty, the ALJ raised these same concerns and added that "the letter does not describe the limitations and offers no analysis supporting the conclusion." (R. 18)

Similarly, the ALJ gave Dr. Smith's opinion "limited weight because it is without substantial support from the treatment records, including physical examinations documenting good strength throughout the lower extremities and normal reflexes." (R. 18)[3] The ALJ added that, although Dr. Smith "noted limited motion, further physical

[2] Dr. Taggert, Parker's treating physician, completed a one page "Physical Capacity Evaluation" dated August 26, 2014. (R. 300) He diagnosed "back pain" and opined that Parker could stand / walk for 2 hours in an 8 hour workday and that he could sit for 3 hours in an 8 hour workday. (R. 300) He added that Parker would "often" require additional breaks, though he did not explain what "increased symptoms" necessitated additional breaks. (R. 300) Finally, Dr. Taggert stated that Parker "experiences approximately 28 bad days per month during which [his] symptoms are increased and [he] would not be able to complete an 8 hour work shift." (R. 300) Dr. Taggert had previously supplied a letter dated December 19. 2013, to the Jury Coordinator's Office of Allegheny County, certifying that Parker was "incapable of rendering efficient jury service because of the following medical infirmity: Lumbar spinal stenosis." (R. 295)

[3] Dr. Patrick Smith, Parker's treating orthopedist, submitted a virtually identical "Physical Capacity Evaluation." (R. 301) As was Dr. Taggert's evaluation, Dr. Smith's is a one page form in which essentially he checked off boxes. Dr. Smith concluded that Parker could stand / walk for 2 hours in an 8 hour workday and could sit for 2 hours in an 8 hour workday. (R. 301) He further opined that Parker would "often" need breaks due to increased symptoms but he declined to identify the symptoms. (R.301).

examinations documented normal range of motion as well as normal gait and station." (R. 18) Further, the ALJ remarked upon the inconsistency between Dr. Smith's notation in the medical records that Parker could stand for any period of time and Parker's own testimony that he could stand for 1- 1 ½ hours. (R. 18)

Thus, contrary to Parker's contentions, the ALJ did explain why the limitations set forth in Dr. Taggert's and Dr. Smith's virtually identical reports were rejected: the findings were inconsistent with the medical record, they were at odds with Parker's appearance at the hearing, they were devoid of any analysis or description of the limitations, and they were inconsistent with his activities of daily living. As set forth above, these are appropriate bases for rejecting a treating physician's report. *See Mason v. Shalala*, 994 F.2d 1058, 1065 (3d Cir. 1993) (stating that reports which amount to little more than a checking of the boxes or fill in the blank constitute "weak evidence"); *Plummer v. Apfel*, 186 F.3d 422, 429 (3d Cir. 1999) (stating that "[a]n ALJ may reject a treating physician's opinion outright only on the basis of contradictory medical evidence, but may afford a treating physician's opinion more or less weight depending on the extent to which supporting explanations are offered."). *See also*, 20 C.F.R. § 404.1527(c)(4) and 20 C.F.R. § 416.927(c)(2)-(4).

Additionally, the ALJ's decision is supported by substantial evidence of record. (R. 14-19). As the ALJ stated, Parker's allegations were inconsistent with the evidence of record. Although he complained of debilitating back pain, Parker walked without a gait. (R. 304, 330, 386) Upon examination, his extremities were "normal", his back was non-tender, his strength was intact and he had good motion in his hips and cervical

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Finally, he observed that Parker would experience approximately 28 bad days per month which would preclude him from completing an 8 hour shift. (R. 301)

spine. (R. 250, 304, 330, 337, 386) Straight leg tests were normal. (R. 304, 330) Parker did not appear to be in acute distress. (R. 303) With respect to activities of daily living, as noted by the ALJ, Parker "is able to maintain personal needs and grooming, prepare his own meals, complete household chores such as washing dishes, laundry, and mowing the lawn, drive a car, shop in stores, spend time with others, and watch television." (R. 16) Further, although he complained of diffuse body pain, "he generally appeared alert and in no distress upon examination." (R. 16) His treatment has been "essentially routine and / or conservative in nature." (R. 17)[4] He declined therapeutic injections and neuropathic medication designed to manage pain, and "he stopped taking prescribed medications such as Hydrocodone and Ibuprofen." (R. 17) As the ALJ noted, "[t]his may be an indication that his condition is less than limiting." (R. 17) Additionally, Parker's testimony was inconsistent in several respects[5] and the ALJ noted that, although the inconsistency "may not be the result of a conscious intention to mislead … such statements suggest that the information provided by the claimant generally may not be entirely reliable." (R. 17) Similarly, the ALJ noted that Parker had worked beyond the alleged onset date. (R. 17) "Although this work activity does not constitute disqualifying substantial gainful activity, it indicates that the claimant's activities have been greater, at least at times, than he has generally reported and that he retains some capacity to work." (R. 17) Finally, Dr. Matthews, a consultative examiner, opined that Parker could sit for 1-2 hours at a time for a total of 7-8 hours; could stand for 1 hour at

[4] Parker assigns error to the ALJ's finding in this regard. He insists that the ALJ was obligated to consider "good reasons" why Parker failed to follow the prescribed treatment. I reject this contention. Although the ALJ noted Parker's refusal to take certain medications, it does not appear that she disqualified him from a finding of disability on the basis that her problems stemmed from unexcused non-compliance with the treatment regimen.

[5] For instance, Parker testified that he drank "here and there," but medical records suggested that Parker drank up to 10 beers each day. (R. 17) Further, while Parker insisted that he could only lift 5-10 pounds, the medical records reveal that Parker lifted 100 pounds. (R. 17) Additionally, Parker testified that he had problems with balance, but the medical records contradict such a claim. (R. 17)

a time for a total of 5-6 hours; and could walk for 1 hour at a time for a total of 5-6 hours. (R. 17, 242-43)[6]

Simply stated, the AJL has adequately set forth the basis for the weight given to the physicians' reports, she has discharged her duty to explain why certain evidence was rejected and the Court finds that substantial evidence supports the ALJ's evaluation of the medical evidence.

[6] Parker faults the ALJ for rejecting Dr. Matthew's finding that Parker could only occasionally reach with his left arm. The ALJ gave this finding only "partial weight" because this limitation was not supported by the record. (R. 17) For the reasons set forth above, the ALJ's finding in this respect is supported by substantial evidence of record.

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Defendant.	)	

AMBROSE, Senior District Judge.

ORDER OF COURT

Therefore, this 6th day of April, 2017, it is hereby ORDERED that Plaintiff's Motion for Summary Judgment (Docket no. 8) is denied and Defendant's Motion for Summary Judgment (Docket no. 10) is granted.

BY THE COURT:

/s/ Donetta W. Ambrose
Donetta W. Ambrose
United States Senior District Judge

[7] Nancy A. Berryhill became acting Commissioner of Social Security on January 23, 2017.