

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

MATTHEW FREDERICK FEHLING)

Plaintiff,)

-vs-)

MICHAEL MARTIN BORAS,)

Defendant.)

Civil Action 20-577

AMBROSE, Senior District Judge.

OPINION AND ORDER

Synopsis

Plaintiff Michael Martin Boras (“Boras”) brought this action for review of the final decision of the Commissioner of Social Security denying his claim for disability insurance benefits (“DIB”). Boras contends that he became disabled on April 1, 2015. (R. 10). He was represented by counsel at a hearing before an Administrative Law Judge (“ALJ”) in January 2019. (R. 10). During the hearing both Boras and a vocational expert (“VE”) testified. (R. 10) Ultimately, the ALJ denied benefits. Martin subsequently filed a Request for Review with the Appeals Council. The Appeals Council denied the request and Martin then filed this appeal. The parties have filed Cross-Motions for Summary Judgment. See ECF Docket Nos. 14 and 16.

Opinion

1. **Standard of Review**

Judicial review of the Commissioner’s final decisions on disability claims is provided by statute. [42 U.S.C. §§ 405\(g\)](#) and 1383(c)(3)(7). Section 405(g) permits a district court

to review the transcripts and records on which a determination of the Commissioner is based, and the court will review the record as a whole. See [5 U.S.C. § 706](#). When reviewing a decision, the district court's role is limited to determining whether the record contains substantial evidence to support an ALJ's findings of fact. [Burns v. Barnhart, 312 F.3d 113, 118 \(3d Cir. 2002\)](#). 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 \(3d Cir. 1979\)](#); [Richardson, 402 U.S. at 390, 91 S. Ct. 1420](#).

A district court cannot conduct a *de novo* review of the Commissioner's decision, or re-weigh the evidence; the court can only judge the propriety of the decision with reference to the grounds invoked by the Commissioner when the decision was rendered. [Palmer v. Apfel, 995 F.Supp. 549, 552 \(E.D. Pa. 1998\)](#); [S.E.C. v. Chenery Corp., 332 U.S. 194, 196-7, 67 S.Ct. 1575, 91 L.Ed. 1995 \(1947\)](#). Otherwise stated, "I may not weigh the evidence or substitute my own conclusion for that of the ALJ. I must defer to the ALJ's evaluation of evidence, assessment of the credibility of witnesses,

and reconciliation of conflicting expert opinions. If the ALJ's findings of fact are supported by substantial evidence, I am bound by those findings, even if I would have decided the factual inquiry differently." [Brunson v. Astrue, 2011 WL 2036692](#), 2011 U.S. Dist. LEXIS 55457 (E.D. Pa. Apr. 14, 2011) (citations omitted).

2. The ALJ's Decision

At step one, the ALJ determined that Boras had not engaged in substantial gainful activity since the alleged onset date. (R. 12). At step two, the ALJ found that Boras suffered from the following severe impairments: degenerative disc disease, spinal stenosis, lumbar radiculopathy, post-laminectomy syndrome, chronic pain syndrome, bilateral lateral epicondylitis, and obesity. (R. 12-13). Turning to the third step, the ALJ concluded that those impairments, considered singly or in combination, did not meet or medically equal the severity of a listed impairment. (R. 13-14). The ALJ then found that Boras had the residual functional capacity ("RFC") to perform light work with certain restrictions. (R. 14-17). At the fourth step the ALJ concluded that Boras was unable to perform any of his past relevant work. (R. 17). Ultimately, at the fifth step of the analysis, the ALJ determined that Boras was capable of performing work in jobs existing in significant numbers in the national economy. (R. 18-19). Consequently, the ALJ denied benefits.

3. Discussion

Boras takes issue with the ALJ's assessment of medical opinions. In this case, the ALJ had opinions from both the treating physician and the state agency medical consultant. Dr. Hanna, the treating physician, submitted a Medical Source Statement of Ability to do Work-Related Activities. (R. 951-957). Specifically, Dr. Hanna reported that

Boras could occasionally lift and carry up to 10 pounds, but nothing heavier; could, at one time and without interruption, sit for 30-45 minutes, stand for 30-45 minutes, and walk at no grade for 30-45 minutes; and could, during a total 8-hour workday, sit for two hours, stand for two hours, and walk for one hour. (R. 951-952). Dr. Hanna explained that Boras needed frequent rest periods, including the need to lie down multiple times a day. (R. 952). Further, although he is never to push/pull with either his right or left hand, he is capable of occasionally reaching with both hands and frequently handling and feeling with both hands. (R. 953). He can occasionally operate foot controls with his right foot but never can with his left. (R. 953). His symptoms are “predominantly left leg and left foot” with pain, numbness, and weakness. (R. 953). Dr. Hanna found Boras to be very limited with respect to his postural activities, opining that he can “never” climb ladders or scaffolds, stoop, kneel, crouch, or crawl, and could only “occasionally” climb stairs and ramps, and balance. (R. 954). With respect to environmental limitations, Dr. Hanna stated that Boras could never work at unprotected heights or with moving mechanical parts, but could occasionally operate a motor vehicle, encounter humidity and wetness, dust, odors, fumes, and pulmonary irritants, extreme cold or heat, and vibrations. (R. 955). Dr. Hanna also anticipates that Boras would miss work at least four days per month due to pain and medical appointments, that he would be “off-task” at least 25% of the time due to the severity of his symptoms, and that he would need to take hourly breaks. (R. 957).

Dr. Singh, the state agency medical consultant, neither treated nor examined Boras. However, upon reviewing the medical record, Dr. Singh opined that Boras: could lift and/or carry up to 20 pounds occasionally and 10 pounds frequently; could stand

(with normal breaks) and/or walk for a total of six hours in an eight-hour workday; could sit (with normal breaks) for a total of six hours in an eight-hour workday; had unlimited ability to push and pull, including operating hand and/or foot controls (with the noted limitations regarding lifting and carrying); had no visual, manipulative, communicative, or environmental limitations; and had only some postural limitations. (R. 75-77). Dr. Singh further noted that exams showed Boras displayed normal muscle tone, had negative straight leg tests, and intact muscle strength. (R. 77).

The amount of weight accorded to medical opinions is well-established. Generally, the opinions of a claimant's treating physicians are entitled to substantial and, at times, even controlling weight. 20 C.F.R. 404.1527.¹ To be entitled to controlling weight, however, the treating physician's opinion must be well supported by medical techniques and consistent with the other substantial evidence of record. See *Fargnoli v. Massanari*, 247 F.3d 34, 43 (3d Cir. 2001). To determine the weight of a treating physician's opinion, the ALJ may consider a number of factors, including consistency, length of treatment, corroborating evidence, and supportability. 20 C.F.R. 404.1527. As the Court of Appeals for the Third Circuit 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. [404.1527](d)(2)], the opinion of a treating physician is to be given controlling weight only when it is well-

¹ Although the regulations governing the evaluation of medical evidence were amended (and S.S.R. 06-03p concomitantly rescinded), the version effective March 27, 2017 does not apply to the present claim. See 20 C.F.R. 404.1527 (2017); 20 C.F.R. 404.1520c (2017).

supported by medical evidence and is consistent with other evidence in the record.

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

Although the ALJ may choose whom to credit when faced with a conflict, (s)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).

Boras contends that the ALJ erred in giving “little weight” to the opinion tendered by Boras’s treating physician, Dr. Hanna, while giving “significant, but not great weight” to the opinion offered by the state agency medical consultant, Dr. Singh. The ALJ discounted Dr. Hanna’s conclusions, finding that the “record does not support such an extreme degree of functional limitation.” (R. 17). Specifically, the ALJ determined that “there is insufficient objective support for her opinion that the claimant could not work for more than five hours per day, that he needs to lay down multiple times per day, or that he would be absent from work at least four times per month.” (R. 17). These are valid and acceptable reasons for discounting opinion evidence. See 20 C.F.R. 404.1527; S.S.R. 06-03p. In contrast, the ALJ concluded that “the objective medical evidence generally supports Dr. Singh’s conclusion that the claimant would be capable of performing light work with additional postural limitations.” (R. 17). Again, these are appropriate reasons for crediting evidence. 20 C.F.R. 404.1527. Nevertheless, the ALJ noted that Dr. Singh “understated the severity of the claimant’s impairments by failing to address his manipulative limitations or his need to change positions or work at his own pace.” (R. 17).

Further, after careful consideration, I find that substantial evidence supports the ALJ's conclusions in this regard. Recent imaging of Boras's back showed "minimal" degenerative changes resulting in only a mild degree of stenosis. (R. 16, 854-56) Further, electrodiagnostic testing did not reveal any evidence of acute radiculopathy or neuropathy. (R. 16, 929, 932). In addition, medical reports indicate that Boras made good progress in physical therapy with respect to functional mobility. (R. 16, 530, 567, 575-76, 592, 598, 604). Indeed, the physical therapist reported that Boras's functional ability was improving and that he was poised for further progression. (R. 604). Boras himself declined further physical therapy, and medical records indicate that "[a]nticipated goals and expected outcomes have been achieved...." (R. 527). Boras himself noted that he noticed an improvement in functional mobility, that he was moving around much better, that his symptoms were "very mild at worst," and that therapy helped to increase his strength. (R. 575-576, 560, 923). Boras's activities of daily living also support the ALJ's findings. For instance, he can walk ½ a mile without difficulty, swim regularly, he shops for groceries, can prepare simple meals, does some yard work, and watches his daughter's athletic events. (R. 38-39, 54-56, 209-215, 358, 635).

For all of these reasons, I find that the ALJ properly evaluated the medical opinion evidence using appropriate factors as set forth in the then -applicable regulations and that substantial evidence of record supports the ALJ's weighing of those opinions.

