

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO

3 RAFAEL A. BATISTA-RAMOS,

4
5 Plaintiff,

Civil No. 08-1085 (JAF)

6 v.

7 COMMISSIONER OF SOCIAL SECURITY,

8
9 Defendant.

10 **OPINION AND ORDER**

11 Plaintiff Rafael Batista-Ramos brings this petition under 42
12 U.S.C. § 405(g), asking that we reverse and set aside Defendant
13 Commissioner of Social Security's ("Commissioner") decision not to
14 award Plaintiff social security disability benefits or, in the
15 alternative, remand for a rehearing. Docket No. 4. Defendant opposes.
16 Docket Nos. 9, 12.

17 **I.**

18 **Factual and Procedural History**

19 We derive the following facts from the parties' filings, Docket
20 Nos. 4, 9, 12, and the transcript of the record in this case, Docket
21 No. 8. As Plaintiff has not filed a memorandum of law, despite our
22 order that he do so, we resolve this case without the benefit of his
23 legal arguments.

24 Plaintiff, a high-school graduate, previously worked in the
25 construction industry. Plaintiff applied for disability benefits on
26 February 6, 2003, alleging an inability to work beginning October 10,

1 2002. Plaintiff claimed disability due to mental disorders and
2 intestinal problems. The Social Security Administration ("SSA")
3 denied the application initially and again on reconsideration. On
4 March 26, 2004, Plaintiff requested a hearing before an
5 Administrative Law Judge ("ALJ"), which took place on November 14,
6 2006. On March 2, 2007, the ALJ found that Plaintiff was not disabled
7 during the relevant time period because he remained able to perform
8 work existing in significant numbers in the national economy.
9 Plaintiff subsequently sought review of the ALJ's decision with the
10 SSA Appeals Council, which declined review on November 16, 2007.

11 On January 18, 2008, Plaintiff filed the present action seeking
12 review of the ALJ's decision or, alternatively, a remand for a de-
13 novo hearing. Docket No. 4. Defendant filed a memorandum of law on
14 July 14, 2008. Docket No. 12.

15 II.

16 Analysis

17 As Plaintiff has provided no legal arguments in support of his
18 request for review, we necessarily limit our review to the question
19 of whether substantial evidence supports the ALJ's decision.

20 The Social Security Act (the "Act") provides that "[t]he
21 findings of the Commissioner . . . as to any fact, if supported by
22 substantial evidence, shall be conclusive." 42 U.S.C. § 405(g). We
23 must, therefore, uphold the decision if we determine that substantial
24 evidence supports it, even if we do not agree or would have reached

1 a different conclusion had we reviewed the evidence de novo. Lizotte
2 v. Sec'y of Health & Human Servs., 654 F.2d 127, 128 (1st Cir. 1981).
3 Substantial evidence exists "if a reasonable mind, reviewing the
4 evidence in the record as a whole, could accept it as adequate to
5 support [the] conclusion." Irlanda Ortiz v. Sec'y of Health & Human
6 Servs., 955 F.2d 765, 769 (1st Cir. 1991) (internal quotation marks
7 omitted) (quoting Rodríguez v. Sec'y of Health & Human Servs., 647
8 F.2d 218, 222 (1st Cir. 1981)).

9 An individual is disabled under the Act if he is unable to do
10 his previous work or, "considering his age, education, and work
11 experience, engage in any other kind of substantial gainful work
12 which exists in the national economy." 42 U.S.C. § 423(d). To make
13 this determination, the ALJ must consider all of the evidence in the
14 record. 20 C.F.R. § 404.1520(a)(3). Credibility issues and
15 "[c]onflicts in the evidence are . . . for the [ALJ] - rather than
16 the courts - to resolve." Evangelista v. Sec'y of Health & Human
17 Servs., 826 F.2d 136, 141 (1st Cir. 1987).

18 We find that substantial evidence in the record supports the
19 ALJ's decision in this case. The ALJ considered progress notes from
20 Plaintiff's treatment at the Mario Canales Health Center from July 3,
21 2002, through August 20, 2005, showing that Plaintiff had reported
22 pain, vomiting, gastritis, fatigue, and shortness of breath. The
23 evaluating internist diagnosed Plaintiff with a malingering disorder
24 on December 20, 2004. Plaintiff underwent two gastroscopy reports

1 with biopsies on June 15, 2004, and July 21, 2005, resulting in a
2 diagnosis of a gastrointestinal reflux disease, a hernia, and
3 duodenitis.

4 The ALJ also considered a psychiatric evaluation by Dr. José
5 Luis Galarza on November 6, 2003. Dr. Galarza observed that Plaintiff
6 was able to manage funds, could take care of his personal hygiene,
7 and was logical, coherent, and relevant. Dr. Galarza found that
8 Plaintiff appeared moderately depressed and diagnosed him with
9 undifferentiated schizophrenia. Dr. Galarza stated that Plaintiff
10 remained calm with prescribed medications.

11 In addition, the ALJ reviewed progress notes from Community
12 Cornerstone of Puerto Rico, Inc., for treatment between January 3,
13 2002, and August 18, 2006, which showed that Plaintiff was anxious
14 and fidgety, but on subsequent visits was calm and cooperative. He
15 was diagnosed with single episode major depression. Plaintiff was
16 hospitalized on January 26, 2005, for delirium, hallucinations, and
17 suicidal ideation, but his symptoms diminished and he became stable
18 with treatment and medication. The ALJ also considered a neurological
19 evaluation by Dr. Mayra Vera on April 10, 2006, which revealed no
20 significant abnormalities.

21 The ALJ took into consideration the State Agency psychologists
22 and psychiatrists' evaluation of the record which found Plaintiff's
23 mental functional capacity to be, at worst, moderately limited in
24 eleven out of twenty categories, not significantly limited in eight

1 categories, and markedly limited only in his ability to carry out
2 detailed instructions.

3 Finally, the ALJ also considered Plaintiff's testimony and
4 behavior at the hearing, and concluded that while the medical
5 evidence supported the symptoms alleged, the intensity, persistence,
6 and limiting effects alleged by Plaintiff were not credible. The ALJ
7 noted that there was nothing in the record indicating that Plaintiff
8 was disabled or had significant functional limitations.

9 The ALJ concluded that Plaintiff's condition limited his ability
10 to perform his past relevant work as a construction worker, but that
11 considering his age, education, work experience, residual functional
12 capacity, and all relevant symptoms, work existed in significant
13 numbers in the national economy that Plaintiff could perform. As
14 examples, the ALJ listed jobs such as surveillance system monitor,
15 call out operator, and charge account clerk. As a result, the ALJ
16 found Plaintiff to be not disabled.

17 In light of the evidence in the record, the ALJ was justified in
18 reaching his conclusion that Plaintiff could perform work at all
19 physical exertional levels and that there were a significant number
20 of jobs available in the national economy that he could perform with
21 his emotional limitations. We find no evidence in the record
22 suggesting that Plaintiff was unable to perform such work; to the
23 contrary, substantial evidence supports a finding that he was not
24 disabled.

1 **III.**

2 **Conclusion**

3 In accordance with the foregoing, we find that the ALJ's
4 disability determination was based on substantial evidence in the
5 record and from the hearing. See 42 U.S.C. § 405(g). Consequently, we
6 hereby **AFFIRM** the Commissioner's determination and **DENY** Plaintiff's
7 petition, Docket No. 4.

8 **IT IS SO ORDERED.**

9 San Juan, Puerto Rico, this 30th day of March, 2009.

10 s/José Antonio Fusté
11 JOSE ANTONIO FUSTE
12 Chief U.S. District Judge