

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

EDWIN CRUZ-GUADALUPE,

Claimant,

v.

COMMISSIONER OF SOCIAL SECURITY,

Respondent.

Civil No. 08-1475 (JAF)

OPINION AND ORDER

Claimant, Edwin Cruz-Guadalupe, petitions this court under 42 U.S.C. § 405(g) to review the decision of Respondent, Commissioner of Social Security ("Commissioner"), denying disability benefits to Claimant. (Docket No. 1.) Commissioner opposes the petition. (Docket No. 7), and Claimant replies (Docket No. 8).

I.

Factual and Procedural History

We derive the following facts from the parties' filings (Docket Nos. 1, 7, 8) and the record in this case ("R.") (Docket No. 4).

On July 2, 2003, Claimant applied for disability insurance benefits, alleging disability as of June 2001. (R. at 65-74.) Claimant stated in his application that he suffered from "omphalocele, back condition, right thigh pain." (R. at 66.) Claimant asserted that his illness caused pain, "dizzy spells, nausea, headache, tiredness, and weakness," which restricted his ability to work. (R. at 66.)

1 Commissioner denied Claimant's application on November 7, 2003
2 (R. at 38-40), and again upon reconsideration on March 24, 2004 (R.
3 at 45-46). After conducting a hearing on April 5, 2006 (R. at 27-30),
4 an administrative law judge ("ALJ") issued a decision on May 25,
5 2006, finding that Claimant was not disabled at any time on or before
6 December 31, 2003 (R. at 14). On September 22, 2006, the Appeals
7 Council affirmed the ALJ's findings, but remanded for consideration
8 of Claimant's condition from January 1, 2004, to September 30, 2004,
9 the date he was last insured. (R. at 14.) Claimant submitted no
10 additional evidence (R. at 249), and the ALJ conducted a hearing on
11 November 3, 2006 (R. at 254-55).

12 On January 22, 2007, the ALJ issued a second decision finding
13 that Claimant was not disabled between the remaining period, from
14 January 1, 2004, until September 30, 2004 ("second decision"). (R. at
15 14-18.) Applying the five-step inquiry under 20 C.F.R. § 404.1520(a),
16 the ALJ found that, under 20 C.F.R. § 404.1520(c), "the objective
17 medical evidence fail[ed] to establish the existence of a medically
18 determinable impairment that could reasonably be expected to produce
19 the claimant's symptoms." (R. at 15-18.) After the Appeals Council
20 denied Claimant's request for review on February 26, 2008 (R. at 4-
21 6.), the second decision became Commissioner's final determination in
22 Claimant's case. See 20 C.F.R. § 404.981.

23 On April 23, 2008, Claimant filed the instant petition seeking
24 review of the ALJ's second decision. (Docket No. 1.) Commissioner

1 filed a memorandum of law in opposition to Claimant's petition on
2 November 21, 2008. (Docket No. 7.) Claimant filed a memorandum of law
3 in support of his claim on January 6, 2009. (Docket No. 8.)

4 II.

5 Analysis

6 Claimant contends there was not substantial evidence for the ALJ
7 to conclude that he was not disabled. (Docket No. 1.) An individual
8 is disabled under the Social Security Act ("the Act") if he is unable
9 to do his prior work or, "considering his age, education, and work
10 experience, engage in any other kind of substantial gainful work
11 which exists in the national economy." 42 U.S.C. § 423(d).

12 The Act provides that "[t]he findings of the Commissioner . . .
13 as to any fact, if supported by substantial evidence, shall be
14 conclusive." 42 U.S.C. § 405(g). Substantial evidence exists "if a
15 reasonable mind, reviewing the evidence in the record as a whole,
16 could accept it as adequate to support [the] conclusion." Irlanda-
17 Ortíz v. Sec'y of Health & Human Servs., 955 F.2d 765, 769 (1st Cir.
18 1991) (internal quotation marks omitted) (quoting Rodríguez v. Sec'y
19 of Health & Human Servs., 647 F.2d 218, 222 (1st Cir. 1981)).

20 We must uphold Commissioner's decision if we determine that
21 substantial evidence supports the ALJ's findings, even if we would
22 have reached a different conclusion had we reviewed the evidence de
23 novo. Lizotte v. Sec'y of Health & Human Servs., 654 F.2d 127, 128
24 (1st Cir. 1981). In reviewing a denial of benefits, the ALJ must

1 consider all evidence in the record. 20 C.F.R. § 404.1520(a)(3).
2 Credibility and “[c]onflicts in the evidence are . . . for the [ALJ]
3 - rather than the courts - to resolve.” Evangelista v. Sec’y of
4 Health & Human Servs., 826 F.2d 136, 141 (1st Cir. 1987). We reverse
5 the ALJ only if we find that he “ignor[ed] evidence, misappl[ied] the
6 law, or judg[ed] matters entrusted to experts.” Nguyen v. Chater, 172
7 F.3d 31, 35 (1st Cir. 1999).

8 Claimant challenges the ALJ’s second decision, arguing that
9 (1) the ALJ failed to consider all relevant evidence in assessing
10 Claimant’s residual functional capacity (“RFC”); (2) the ALJ
11 improperly compared Claimant’s RFC with the physical and mental
12 requirements of his past work; and (3) the ALJ improperly considered
13 Claimant’s subjective complaints in assessing his credibility.
14 (Docket No. 8.) We address each contention in turn.

15 Firstly, Claimant misconstrues the ALJ’s reasoning in support of
16 his second decision. Pursuant to 20 C.F.R. § 404.1520(a), the ALJ
17 must engage in a five-step test for disability. Under this approach,
18 the ALJ may terminate the inquiry at any stage if he finds that the
19 medical evidence does not meet the appropriate standard.
20 § 404.1520(a)(4). At the second step, the ALJ must be satisfied that
21 a claimant has “a severe medically determinable physical or mental
22 impairment . . . or a combination of impairments that is severe.”
23 § 404.1520(a)(ii). A severe impairment is one that “significantly

1 limits [the claimant's] physical or mental ability to do basic work
2 activities." § 404.1520(c).

3 In finding that "the objective medical evidence fails to
4 establish the existence of a medically determinable impairment that
5 could reasonably be expected to produce the claimant's symptoms" (R.
6 at 17), the ALJ determined that the evidence failed to satisfy step
7 two of the inquiry. Accordingly, the ALJ had no occasion to consider
8 Claimant's RFC under step three of the inquiry. See 20 C.F.R.
9 § 404.1520(a)(iii), (e).

10 Secondly, the ALJ did not compare Claimant's RFC to his past
11 relevant work under § 404.1520(a)(iv), step four of the inquiry. (R.
12 at 16-18.) As explained above, the ALJ terminated his inquiry at the
13 second step.

14 Thirdly, contrary to Claimant's argument (Docket No. 8), the ALJ
15 may weigh the credibility of a claimant's allegations of impairments
16 by noting all inconsistencies in the record between the claimant's
17 assertions and the medical findings. Evangelista, 826 F.2d at 141;
18 S.S.R. 96-7p (Cum. Ed. 1996). The ALJ "noted that the lack of
19 objective medical findings are [sic] not consistent with the level of
20 severity alleged by the claimant." (R. at 17.) Therefore, the ALJ
21 properly considered Claimant's "allegations of disabling pain and
22 other symptoms" to determine that "the record as a whole does not
23 show any disabling disorder, during the crucial period at issue and
24 no exertional limitations can be established" (R. at 17).

1 Lastly, we address, without assistance by either party, the
2 overall sufficiency of evidence to sustain the second decision.¹ In
3 reference to the period from January 1, 2004, until September 30,
4 2004, the ALJ concluded, “[A]ny symptoms of the claimant were not of
5 a duration, frequency, or intensity as to be disabling, nor would
6 they have precluded the performance of basic work-related tasks.”
7 (R. at 17.) In support, the ALJ cited the dearth of medical evidence
8 in the record to support Claimant’s allegations of disability for the
9 relevant period, as well as Claimant’s express waiver of his
10 opportunity to present additional evidence. (R. at 17-18.)

11 Other than the transcript of the second hearing (R. at 252-55),
12 the record contains scant evidence relating to Claimant’s condition
13 during the relevant period. Indeed, the only relevant evidence we can
14 discern is a report dated March 23, 2004, which referenced a
15 consultative examination that predated the period at issue. (R. at
16 219.) The report found that “Claimant’s condition [did] not meet or
17 equal any listing.” (R. at 219.) The only remaining item in the
18 record postdating this report is a list of medications prescribed in
19 2005 and 2006 to treat Claimant’s inflammation and pain. (R. at 229.)
20 This evidence is irrelevant, as it falls outside the relevant period.

¹ While Claimant has evidently misapprehended the ALJ’s reasoning, counsel for Commissioner also wholly missed the mark in his defense of the ALJ’s determination. (See Docket No. 7.)

