

Klein filed the instant action on November 11, 2015. The magistrate judge issued an R&R on July 28, 2015, recommending that the case be remanded to the Commissioner. The Commissioner filed a Response of No Objections to the R&R on July 29, 2015. Upon review, this Court adopted the Magistrate Judge's R&R on August 17, 2015.

II. DISCUSSION

A. Prevailing Party

Under the EAJA, a court shall award reasonable attorney's fees to a prevailing party in certain civil actions against the United States unless the court finds that the government's position was substantially justified or that special circumstances render an award unjust. 28 U.S.C. § 2412(d)(1)(A). To qualify as a "prevailing party," a party "must succeed on the merits of a claim." S-1 By & Through P-1 v. State Bd. of Educ. of N.C., 6 F.3d 160, 170 (4th Cir. 1993) (Wilkinson, J., dissenting), adopted as majority opinion, 21 F.3d 49 (4th Cir. 1994) (en banc). "In other words, success must be something buttressed by a court's authority or required by a rule of law. The lawsuit must materially alter the 'legal relationship' between plaintiffs and defendants." Id. Because this court reversed and remanded Klein's case to the Commissioner for administrative action pursuant to 42 U.S.C. § 405(g), Klein is considered the "prevailing party" under the EAJA. See Shalala v. Schaefer, 509 U.S. 292, 302 (1993).

B. Substantially Justified

The government has the burden of proving that its position was substantially justified. Crawford v. Sullivan, 935 F.2d 655, 658 (4th Cir. 1991). Evaluating whether the government's position was substantially justified is not an "issue-by-issue analysis" but an examination of the "totality of circumstances." Roanoke River Basin Ass'n v.

Hudson, 991 F.2d 132, 139 (4th Cir. 1993); see also Hensley v. Eckerhart, 461 U.S. 424, 437 (1983) (“A request for attorney’s fees should not result in a second major litigation.”). “The government’s position must be substantially justified in both fact and law.” Thompson v. Sullivan, 980 F.2d 280, 281 (4th Cir. 1992). Substantially justified does not mean “justified to a high degree, but rather justified in substance or in the main—that is, justified to a degree that could satisfy a reasonable person.” Pierce v. Underwood, 487 U.S. 552, 565 (1988) (internal quotation marks omitted). “The government’s non-acquiescence in the law of the circuit entitles the claimant to recover attorney’s fees.” Crawford, 935 F.2d at 658; see also Adams v. Barnhart, 445 F. Supp. 2d 593, 595 (D.S.C. 2006) (“Where the government’s position was a result of its failure to perform a certain analysis required by the law and its regulations, the government’s position was not substantially justified.”). There is no presumption that losing the case means that the government’s position was not substantially justified. Crawford, 935 F.2d at 656.

1. Treating Physician Testimony

Klein argues that the Commissioner’s position in this action was unreasonable because the ALJ failed to properly evaluate Klein’s treating physician’s multiple opinions. Pl.’s Mot. 7. The court agrees.

The requirement that an ALJ must give specific reasons for discounting a treating physician’s testimony is well-established. Under the applicable regulations, when an ALJ decides to give a treating physician’s opinion less than controlling weight, he or she “must be sufficiently specific to make clear to any subsequent reviewers the weight the adjudicator gave to the treating [physician’s] medical opinion and the reasons for that

weight.” Titles II & XVI: Giving Controlling Weight to Treating Source Med. Opinions, SSR 96-2P (S.S.A. July 2, 1996). In Rivers v. Astrue, No. 4:11-cv-01386, 2012 WL 2590498, at *3 (D.S.C. July 5, 2012), the court held that if the ALJ “determines that a treating physician’s opinion should not be afforded controlling weight,” the ALJ must then “analyze and weigh all the evidence of record” under the following factors: (1) the length of the treatment relationship and the frequency of examinations; (2) the nature and extent of the treatment relationship; (3) the evidence with which the physician supports his opinion; (4) the consistency of the opinion; and (5) whether the physician is a specialist in the area in which he is rendering an opinion. See also Avant v. Astrue, No. 4:11-cv-822, 2012 WL 1952657, at *5 (D.S.C. May 9, 2012) (finding that the ALJ “did not comply with the proper analysis” under SSR 96-2p because he did not explain what weight he was giving the treating physician’s opinions or specify what contradictory evidence he was relying on.); Hilton v. Astrue, No. 6:10-cv-2012, 2011 WL 5869704, at *3 (D.S.C. Nov. 21, 2011) (finding the ALJ’s “conclusory reason” that the treating physician’s opinion “is against the weight of the record as a whole” insufficient to satisfy SSR 96-2p); see also Ellis v. Astrue, No. 3:07-cv-3996, 2009 WL 578539 at *8 (D.S.C. Mar. 5, 2009) (rejecting post hoc rationale for ALJ’s decision).

Here, a review of the record reveals that the ALJ failed to properly analyze the multiple opinions of the treating physician Dr. Julius C. Hedden, who treated Klein from June of 2002 to December of 2010. Indeed, the magistrate judge concluded—and this court agrees—that the ALJ’s written decision “contains next to no analysis of [Dr. Hedden’s] opinions.” ECF No. 18, R&R at 8. The ALJ’s explanation for his decision consisted entirely of the following:

I assign less weight to Dr. Hedden's opinions, as his opinions appear to rely on claimant's subjective complaints as opposed to his treatment notes. His treatment notes reflect claimant reported chronic back pain with constant discomfort; however, he was treated conservatively prior to the date last insured with prescription pain medication.

Tr. 25. In Strong v. Astrue, No. 0:09-cv-2101, 2010 WL 4822565 at *4-5 (D.S.C. Oct. 18, 2010), the court found the ALJ's conclusion that the treating physician's opinions were entitled to little weight because they were not supported by the treatment records to be insufficient. Even though the ALJ explained his conclusion by pointing to evidence in the record, the Strong court found it persuasive that the ALJ failed to address portions of the treatment notes that supported the treating physician's opinions. Similarly, although there may be inconsistencies in the record here, the court finds that the ALJ failed to explain how these inconsistencies affected the weight he gave to Dr. Hedden's opinion.

The Commissioner now argues that the ALJ's failure "to adequately analyze the medical opinions does not entitle a claimant to attorney's fees when the medical record contains meaningful inconsistencies." Def.'s Resp. 3. However, this explanation was not offered in the ALJ's decision. The Commissioner lacks substantial justification to uphold an ALJ's decision because the ALJ failed to properly articulate its findings. The court cannot look to post-hoc offerings to support the Commissioner's decision. Canady v. Colvin, No. CA 5:12-2507, 2014 WL 4063155, at *3 (D.S.C. Aug. 14, 2014) (internal citation omitted). The Commissioner's position was unjustified because the ALJ failed to follow well-established procedures in considering Dr. Hedden's opinions.

2. Credibility Determination

Klein also argues that the Commissioner's position was unreasonable because the ALJ failed to articulate his rationale in determining Klein's credibility. Pl.'s Mot. 7.

In making a credibility determination, “[i]t is not sufficient for [the adjudicator] to make a single, conclusory statement [regarding a claimant’s credibility].” Soc. Sec. Ruling 16-3p; Titles II & XVI: Evaluation of Symptoms in Disability Claims, SSR 16-3P (S.S.A. Mar. 16, 2016). Instead, “[t]he determination or decision must contain specific reasons for the finding on credibility, supported by the evidence in the case record, and must sufficiently specific to make clear to any subsequent reviewers the weight the adjudicator gave to the individual’s statements and the reasons for that weight.” Id.; see also Mascio v. Colvin, 780 F.3d 632, 640 (4th Cir. 2015) (finding “[n]owhere . . . did the ALJ explain how he decided which of [the claimant’s] statements to believe and which to discredit, other than the vague (and circular) boilerplate statement that he did not believe any claims of limitations beyond what he found when considering [the claimant’s] residual functional capacity).

Here, the ALJ’s credibility determination regarding Klein consists of the following:

In terms of claimant’s allegations, I find his testimony and assertions to be generally credible; however, the record reflects he retained the ability to work prior to his date last insured. I note the claimant’s condition has worsened; however, his decline did not occur prior to the date last insured. After careful consideration of the evidence, I find that claimant’s medically determination impairments could reasonably be expected to cause the alleged symptoms; however, claimant’s statements concerning the intensity, persistence and limiting effects of these symptoms are not credible to the extent they are inconsistent with the above residual functional capacity.

Tr. at 26. The Magistrate Judge found that this “credibility determination [was] conclusory.” ECF No. 18, R&R at 11. The court agrees.

The Commissioner argues that “even if the ALJ did not point to supporting evidence, we may have an articulation error that merits remand. But we do not have a

situation” that merits an award of attorney’s fees. Def. Resp. 9. Not so. Here, as in Mascio, the ALJ indicated that he found Klein’s “testimony and assertions generally credible” but then failed to explain how he decided which statements to believe and which to discredit. Tr. 26. This court has previously held that an ALJ’s failure to comport with the basic requirements of SSR 96-7p means that the government’s actions are not substantially justified by law. Adams v. Barnhart, 445 F.Supp.2d 593, 596 (D.S.C. 2006). In line with Adams and Mascio, after carefully considering the circumstances of this case, the court concludes that the government’s position was not “substantially justified” as required to avoid a fee award. Klein’s motion for attorney’s fees is granted in full.

III. CONCLUSION

For these reasons, the court concludes that the Commissioner has not met its burden of showing that its position was substantially justified. The court does not find any special circumstances that make an award of attorney's fees unjust. Therefore the court **GRANTS** Klein's motion for attorney's fees in the amount of \$5,041.25.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'D. Norton', written over a horizontal line.

DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

July 24, 2017
Charleston, South Carolina