

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

-----  
LARRY A. RUFFALO,

Plaintiff,

v.

JO ANNE BARNHART, Commissioner  
of Social Security,

Defendant.

-----

ORDER

02-C-0160-C

In a report and recommendation entered on August 14, 2002, the United States Magistrate Judge recommended that this case be remanded to defendant for consideration of evidence that the administrative law judge failed to address in his decision. Defendant has objected to the recommendation. Plaintiff supports it and has filed additional evidence that he believes supports a finding of disabled. I am persuaded that remand is not necessary because it is obvious from the record why the administrative law judge did not give any consideration to Dr. Dale's questionnaire or plaintiff's reports of the effects of the drugs he was taking.

Plaintiff applied for Social Security Disability Benefits on July 12, 1996. His alleged disability was a right knee injury. His claim was denied initially, upon reconsideration and by the administrative law judge after a hearing.

Among the evidence before the administrative law judge were three questionnaires completed

by a Dr. William Dale. The first was entitled “Soft Tissue Injuries Questionnaire.” In it, Dr. Dale gave his opinion that plaintiff had an impairment (apparently to his soft tissue) that equaled the listing level of severity for such an injury. Dr. Dale did not name the impairment, identify its location or provide any findings to support his conclusion. He did not supply any medical records, did not provide any diagnosis or clinical findings in response to questions on the questionnaire and did not say that he had ever treated plaintiff or even examined him. In the second questionnaire, which had no title, Dr. Dale stated that plaintiff’s subjective complaints of constant pain were consistent with the diagnosis and findings (without explaining what the diagnosis or findings were), that the medications plaintiff needed would affect his ability to pay attention and concentrate and that he would need to elevate his leg above waist level for at least two hours each day to reduce the swelling. Answering the third questionnaire, entitled “Rest Questionnaire,” Dr. Dale wrote that plaintiff would require a job that allowed him to rest frequently during the day without limitation.

When the administrative law judge issued his decision, he said nothing whatsoever about the questionnaires Dr. Dale had completed. In light of the facts that Dr. Dale’s opinion focused on a soft tissue injury, which plaintiff did not mention as an impairment, that Dr. Dale supplied no medical records, direct observations or findings to support his opinion and that he never indicated he had treated or examined plaintiff, it is not surprising that the administrative law judge felt no need to take the opinion into consideration. Although he should have explained why he was not giving any weight to the opinion, it is obvious why he gave it short shrift. Sending the case back to defendant to “cure” the omission is unnecessary when it is evident that consideration of this meritless evidence would not

change defendant's decision. Fischer v. Bowen, 869 F.2d 1055, 1057 (7th Cir. 1989) (remand not required "unless there is reason to believe that the remand might lead to a different result").

For the same reason, it is not necessary to remand the case for consideration of the effects of medication upon plaintiff's residual functional capacity. Ordinarily, it would be a significant error for the administrative law judge not to address a claimant's usage of strong medication and its effect on the claimant's ability to work. In this case, however, the record does not provide support for plaintiff's testimony that he was taking prescription painkillers that would play any part in his ability to work. Other than plaintiff's own testimony, the only references to painkillers in the record for the period August 28, 1996 to October 1999 are Dr. Wilson's one non-renewable prescription for 36 Darvocet tablets on August 28, 1996, and Dr. Spottswood's one-refill prescription for Vicodin in October 1999. Without any evidence that plaintiff was taking strong painkillers on a regular or longterm basis, the record would not support a finding that painkillers had any effect on plaintiff's ability to work. Again, there is no reason to believe that a remand would result in a different result for plaintiff.

In responding to defendant's objections, plaintiff has submitted evidence that in his opinion helps substantiate his alleged neck and upper extremity impairment and, in addition, supports his testimony about his medications. This information was not before the administrative law judge at the time of plaintiff's hearing and would not have been considered in any event. Plaintiff testified that his neck pain had begun only about two to three months before the hearing. Pain of such short duration would not have met the twelve-month threshold for establishing a disability. The administrative law judge was not required to consider it or even to acknowledge it. The same is true with respect to the painkillers

plaintiff said he was taking for the neck pain. The administrative law judge had no reason to consider their effect on plaintiff's ability to work, given the fact that plaintiff had not been taking them for a year.

ORDER

IT IS ORDERED that the report and recommendation of the United States Magistrate Judge is NOT ADOPTED with respect to the magistrate judge's recommendation to remand this case to defendant for consideration of Dr. Dale's questionnaire or of the effects of painkillers on plaintiff Larry A. Ruffalo's ability to work. It is ADOPTED in all other respects. FURTHER, IT IS ORDERED that the clerk of court shall enter judgment for defendant Jo Anne Barnhart and close this case.

Entered this 27<sup>th</sup> day of September, 2002.

BY THE COURT:

BARBARA B. CRABB  
District Judge