IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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TROY D. KOWALK,

OPINION AND ORDER

Plaintiff,

11-cv-464-bbc

v.

MICHAEL ASTRUE,
Commissioner of Social Security,

Defendant.

- -

Plaintiff Troy D. Kowalk brought this suit for judicial review of the final administrative decision of defendant Commissioner of Social Security, contending that defendant erred in denying his application for Supplemental Security Income. I conclude that, although the question is a close one, the administrative law judge made the right decision in finding that plaintiff could perform a wide range of light, unskilled jobs existing in the state and local economy and that he was therefore ineligible for Supplemental Security Income.

RECORD EVIDENCE

A. Plaintiff

Plaintiff Troy D. Kowalk was born on November 14, 1976. He went to school

through the tenth grade.

B. Medical Evidence

1. Physical restrictions

Plaintiff's physical restrictions are not at issue, so it is unnecessary to review his treatment history on that score. The parties agree that he is obese, that he has permanent restrictions resulting from degenerative changes in his spine and that he can lift 20 pounds occasionally, 10 pounds frequently, stand or walk for about six hours, sit for about six hours, engage in occasional stooping and crouching and has no other physical limitations.

2. Mental restrictions - treatment history

a. Wood County Unified Services - Richard Hadfield

The record includes four reports prepared by Richard Hadfield, a therapist working for Wood County Unified Services. The first, dated October 27, 2006, is a report of a 55-minute therapy session, in which Hadfield says that he told plaintiff that because plaintiff had moved out of Wood County, Hadfield would be unable to see him for any more appointments. AR 292. The next report from Hadfield is dated March 9, 2007; in it Hadfield explains that plaintiff had first sought outpatient services from Wood County in May 2006 on referral from his probation officer, that plaintiff had kept a number of appointments, but had moved out of the country and was likely seeking services elsewhere. AR 291. Plaintiff's discharge diagnosis was

Axis I: ADHD, combined type, 314.01
Sexual abuse of a child, V61.21
Rule out paraphilias
Axis II: Deferred.
Axis III: None.
Axis IV: Probation; financial stressors.
Axis V: Current GAF: 55

Id.

The report was reviewed and signed by a psychiatrist, Steven C. Andrews.

b. Stuart Waltonen, Ph.D.

Plaintiff had a consultative examination on April 23, 2007, performed by Dr. Stuart Waltonen, Ph.D., who is in the neuropsychology department of the Marshfield Clinic and a member of the American Board of Professional Psychology. AR 278-83. Waltonen summarized plaintiff's childhood in his report: in 1983, the Marshfield Clinic had diagnosed ADHD, for which plaintiff was treated with ritalin with little success. In fifth grade, he was described as being hostile, totally unmanageable and lacking response to medication. When he entered junior high, he was placed in a program for the emotionally disturbed. AR 278. At about this time, Wood County Unified Services became involved. Plaintiff was taken off stimulants, which made him less irritable, but one month later his school notified "the clinic" [presumably the Marshfield Clinic] that plaintiff's behavioral problems were increasing. AR 279. After plaintiff's family moved to Wausau, plaintiff saw a psychiatrist, who diagnosed oppositional defiant disorder and a conduct disorder. Id. In 1993, when he would have been 15 or 16, plaintiff was placed involuntarily with a foster family. Id. As an adult,

plaintiff was seen by a psychiatrist for about three years, but his therapy was discontinued after he sold his prescribed Dexedrine on the street. Id. Waltonen noted that testing showed that plaintiff had a verbal IQ of 73 and a performance IQ of 73. Waltonen's diagnosis was

DSM-IV

Axis I:

- 314.01 Attention deficit hyperactivity disorder, combined type.
- 307.23 Tourette's disorder, by history.
- 305.20 Cannabis abuse.

Axis II:

- 301.9 Personality disorder, not otherwise specified, with antisocial features.

Axis III:

- Chronic back pain.

Axis IV:

- Legal:
- 1. Conviction for sexual assault of an underage girl.
- 2. Conviction for selling Dexedrine
- 3. Repeated incarceration for violation of probation.
- Housing

Axis V:

- Global Assessment of Functioning: 41.

Waltonen believed that plaintiff's personality disorder and inability to tolerate any criticisms had interfered significantly with his adaptive functioning. AR 282. As for plaintiff's capacity, he found that

> [Plaintiff] is able to understand, remember, and carry out simple instructions. He will likely experience difficulty maintaining his concentration and attention. I would expect that he is going to have some difficulties responding appropriately to supervisors and coworkers. Routine work stresses are likely to produce an exaggerated response. We expect that he could adapt to minor changes on the job but may become overwhelmed if the changes are too dramatic.

Id.

c. Employment services

In 2007, plaintiff received employment services through the Wisconsin Department of Workforce Development, Division of Vocational Rehabilitation. AR 339-54. He was placed at the Occupational Development Corporation, a sheltered workshop. In a report dated May 31, 2007, Paul Untiet, a counselor working for the Division of Vocational Rehabilitation, wrote that plaintiff had ended his evaluation period at the ODC before using all his hours. AR 342. At that time, plaintiff was found to have the ability to learn new jobs, to judge quality well and to work to speed, with an above minimum wage rate of production. Id. Untiet noted plaintiff's deficiencies: anger management, inability to handle jobs he did not like, potential explosiveness on the job and mood changes. Id. Plaintiff had reduced his working time from full-time to three-hour shifts but still had to leave work at times to avoid an explosive incident. Id. To plaintiff's credit, he discussed each situation with his caseworker before he left and never blew up on the job. Id. In Unteit's opinion, plaintiff seemed genuine in his desire to change and to be successful as a worker, but Unteit noted that plaintiff's ODC case worker, Lynn Haefer, had said she would not recommend that plaintiff look for work until he could deal with his emotional problems and obtain an alcohol and drug assessment. Id. Haefer believed that plaintiff would fail in a competitive job unless he learned how to deal with his anger and frustration. Id.

In an assessment report completed on May 29, 2007, Haefer listed the potential barriers to employment that plaintiff faced: his sometimes angry, uncooperative and sarcastic personality; his unpredictability, leaving his supervisors unsure whether he would

be pleasant or difficult to work with; his difficulty in handling stressful situations; his physical limitations; and the possibility of undiagnosed anxiety or other mental health problems. AR 354. She concluded that plaintiff had many challenges in his life, including a recent eviction from his residence, "legal issues, relationships with peers, finances and others" and that "[s]ucceeding in community employment would be very unlikely at this point based on these things and the findings during the assessment." Id.

d. Wood County Unified Services - Hadfield

On August 27, 2007, Hadfield reported on what he thought would be his last session with plaintiff before he was discharged from supervision. He noted that plaintiff seemed to taking responsibility for specific actions he had identified as necessary for him. AR 402.

On August 30, 2007, Hadfield reported that plaintiff had been referred again to Hadfield by the probation officer. AR 287. Hadfield evaluated plaintiff, noting that he had gained 50 pounds since the previous February. AR 288. He assessed plaintiff's GAF score as 52.

In a report dated November 11, 2008, Hadfield reported that plaintiff had seemed to benefit from treatment and that he had worked on a relapse plan. Hadfield believed that plaintiff had met his treatment goals. He assessed plaintiff as having a GAF score of 55.

e. State-employed psychologist, Keith Bauer, Ph.D.

Keith Bauer, Ph.D., is a psychologist employed by the state of Wisconsin. He filled

out a form entitled Psychiatric Review Technique on November 2, 2007, in which he found that plaintiff met the "A" criteria set out in 20 C.F.R. Ch. III, Pt. 404, Subpt. P. App., Listing § 12.02, for an organic mental impairment and the criteria in § 12.08 for personality disorder with antisocial features. AR 372. He found that plaintiff had mild limitations in activities of daily living and moderate difficulties in concentration, persistence and pace and in social functioning. AR 382. In his evaluation of plaintiff's mental residual functional capacity, Bauer found that plaintiff would have moderate limitations in the following areas: understanding, remembering and carrying out detailed instructions; the ability to maintain attention and concentration for extended periods; the ability to work in coordination with or in proximity to others without being distracted by them; the ability to maintain regular attendance and be punctual within customary tolerances; the ability to work in coordination with or in proximity to others without being distracted by them; the ability to complete a normal workday and workweek without interruptions from psychologically-based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods; the ability to accept instructions and respond appropriately to criticism from supervisors; the ability to get along with coworkers or peers without distracting them or exhibiting behavioral extremes; and the ability to respond appropriately to changes in work setting. AR 368-69. Bauer's findings on plaintiff's mental residual functional capacity and psychiatric review technique were affirmed by Michael Mandli, Ph.D., on behalf of the Social Security Administration, on December 19, 2007. AR 391.

C. Administrative Proceedings

Plaintiff applied for supplemental security income on August 30, 2007, when he was 30, alleging that he had been disabled since June 16, 2006. His claim was denied initially and on reconsideration. At his request, he was granted a hearing, which took place by video conference on April 23, 2009, before Administrative Law Judge Kevin McCormick. Plaintiff was present in Wisconsin with his counsel, Dana Duncan. Also participating in the hearing were an impartial medical expert, Craig C. Rath, Ph.D., and an impartial vocational expert, Kelly Winn-Boaltey.

D. Administrative Hearing

In response to questioning by the administrative law judge and by his own attorney, plaintiff testified that he had been on supplemental security income disability from the time he was 15 until he was 25 because of his Tourette's Syndrome and Attention Deficit Hyperactivity Disorder. AR 38. In 2006, he worked as a whey protein bagger for Lynn Protein for nine months, but he had not worked since then. AR 39. He lived either with his mother or with a friend. AR 40. He has prior convictions for possession of drug paraphernalia, burglary and sexual assault. AR 40-41.

Plaintiff weighed 355, which made it hard for him to work, AR 41, and he had trouble with supervisors who criticized him or yelled at him. He had lost several jobs because of his inability to get along with supervisors. AR 42. He had several sessions of counseling for this problem, AR 42-43, and he had job counseling as well. AR 43. He

consulted two doctors because of problems with his back but neither was able to help him. AR 45-46. The second doctor told him to lose weight first and then come back for an evaluation. AR 45.

Plaintiff takes no medication for his Tourette's Syndrome or his ADHD. AR 46. The ADHD makes it hard for him to stay focused on a job and on tasks. Id. He has not asked a doctor for medication for the Tourette's because he is afraid of going to the doctor. AR 47. He deals with his stress and irritability by staying away from people. AR 48.

Medical expert Rath testified at the hearing that plaintiff had attention deficit hyperactivity disorder and personality disorder not otherwise specified. AR 50. He said that plaintiff had mild restrictions of daily living, moderate difficulties with social functioning and moderate difficulties maintaining concentration, persistence or pace, with no decompensation. Id. Rath thought that plaintiff would do best with object-oriented jobs, with limited social interaction and no more than a moderate degree of stress from all sources. AR 50-51. Plaintiff could be around heavy machinery and needed no hazard restrictions. Id. His production quotas could be no greater than moderate. Id.

Rath noted plaintiff's history "of blowing up, a short fuse, impulsivity," AR 51, and observed that plaintiff's childhood diagnosis of opposition defiant disorder and his 1993 diagnoses of a conduct disorder and Tourette's Syndrome might be precursors to his personality disorder. AR 52. Dr. Rath noted that plaintiff was given a GAF level of 41, which Rath said was severe, but that the doctor making the assessment [Waltonen] indicated that it was primarily plaintiff's personality disorder that caused the problems. In Rath's

opinion, if the personality disorder was the cause, this "would be partly volitional behavior on [plaintiff's] part." Id. He noted that plaintiff had a subsequent GAF score of 55 [from Hadfield], which would be moderate. AR 53.

In Rath's opinion, plaintiff could sustain object-oriented work for an extended period of time, with a shortened attention span and concentration. Id. He said that plaintiff's personality disorder would come into play when plaintiff was unhappy with his job or angry with his supervisors. AR 54. In that situation plaintiff would not handle his anger well. Id. Rath did not think that plaintiff would have problems with attendance if he was in the kind of job Rath had described. AR 55. He said that his opinion would change if plaintiff tried a large number of jobs and could not perform them. Id. He added that he viewed plaintiff's personality disorder as volitional in nature, as demonstrated by plaintiff's ability to work quickly at a job he enjoyed. AR 57.

The vocational expert, Kelly Winn-Boaltey, testified that plaintiff was a younger individual with ten years of formal schooling and experience at two jobs. The first one was as a bagger of whey product, which she classified as a medium level, unskilled job; the second was as a farm hand at a mink farm when he was on work-release status, AR 57-58, where he skinned dead cows and fed them to the mink, AR 60. Winn-Boaltey rated this job as medium, semiskilled. AR 61. When asked a hypothetical question by the administrative law judge about an individual who could lift 20 pounds occasionally, 10 pounds frequently, stand or walk for about six hours, sit for about six hours, limited to occasional stooping and crouching, with no other physical limitations, but was limited mentally to routine, unskilled

work, the vocational expert said that the individual would be able to perform the full range of light, unskilled work. AR 61. She estimated that there would be many thousands of such jobs statewide and in the national economy. AR 61-62.

When asked whether the same hypothetical individual could perform the same range of jobs if the limitations included object-oriented work with limited social interaction and no more than moderate stress from supervisors and production levels, Winn-Boaltey gave a response, but the transcriber found it too inaudible to transcribe in full. However, plaintiff conceded in his brief that her answer to this question was that he could not perform his past relevant work but could perform the full range of light, unskilled work, as well as the work of an assembler. Plt.'s Br., dkt. #13, at 11. Her answer to a question about a hypothetical individual who would consistently miss two days of work a month was mostly inaudible, but it appears that her answer was that if the individual missed work at least twice a month, there would be no jobs he could perform. AR 64.

In response to a question from plaintiff's counsel, Boaltey testified that if the hypothetical individual had the same physical limitations set out in the other questions, along with difficulty maintaining his concentration and attention, difficulties responding appropriately to supervisors and coworkers, exaggerated responses to changes in routine work stresses and the probability of being overwhelmed by minor changes on the job, the individual would not be capable of performing any job in the national economy. AR 68-69.

E. Administrative Law Judge's Decision

The administrative law judge performed the required five-step analysis. At step one, he found that plaintiff had not engaged in substantial gainful activity since August 30, 2007, AR 19; at step two he found that plaintiff had severe impairments in the form of Tourette's Syndrome, lumbar spine degenerative disc disease, obesity, attention deficit hyperactivity disorder, personality disorder not otherwise specified and substance abuse. Id. (He did not acknowledge that both Drs. Bauer and Waltonen had found that plaintiff's personality disorder had "anti-social features.")

At step three, the administrative law judge found that plaintiff did not have an impairment or combination of impairments that met or medically equaled one of the listed impairments, AR 20, specifically the criteria of listing 12.08 (personality disorders) or 12.10 (developmental disorders) because they did not result in marked restrictions of activities of daily living, marked difficulties in maintaining social function, marked difficulties in maintaining concentration, persistence or pace; or repeated episodes of decompensation. Id. (For social security purposes, "marked" means more than moderate but less than severe. 20 C.F.R. III, Pt. 404, Subpt. P, App. 1, Listing 12.00(C).) The administrative law judge relied on Dr. Rath's testimony that plaintiff's limitations in these four areas were less than marked and that he had had no episodes of decompensation of extended duration since 2007, which the administrative law judge said was consistent with the State Agency Psychiatric Review Technique form [completed by Dr. Bauer].

The administrative law judge noted that plaintiff had a GAF score of 52 in August 2007, indicating no more than moderate mental functional limitations, and that this score,

another score in March 2007 and another in 2008, were about the same. AR 20-21. [These scores were all determined by Richard Hadfield at Wood County Unified Services.] He found these scores more credible than the lower score of 41 assessed by Dr. Waltonen in April 2007, because, he said, they were assessed by a psychiatrist who was in a treating relationship with plaintiff and had personal knowledge of his impairments, whereas Waltonen saw plaintiff only once and his opinion was not based on the most recent evidence. AR 21. (In fact, it is not clear that the Wood County Unified Services reports to which the administrative law judge was referring were "rendered" by a psychiatrist. The reports were signed by a psychiatrist, who said he had reviewed the reports. The reports themselves were prepared by Richard Hadfield, M.S. AR 289, 291, 409.).

The administrative law judge found that Waltonen's score was not fully supported by his report of the examination, at which plaintiff denied low energy, irritability, sense of worthlessness, crying spells, anhedonia, social withdrawal, suicidal thoughts or plans, somatic complaints, psychomotor agitation, hallucination, homicidal ideation, delusions and paranoid thoughts. Id. Waltonen had found no evidence of tangentiality, circumstantiality or illogical thinking, he found that plaintiff was oriented to person, place, time and situation and he wrote that plaintiff's remote memory seemed to be intact, that plaintiff was able to follow a three-step command accurately, that his fund of knowledge was adequate and that his affect appeared congruent with his mood. Id. Finally, Waltonen found "indications of malingering," id. (quoting exh. 1F at AR 280), which in the administrative law judge's opinion lessened plaintiff's credibility. Id.

At step four, the administrative law judge found that the claimant had the residual functional *physical* capacity to lift or carry up to 20 pounds occasionally and up to ten pounds; sit stand or walk up to six hours with normal breaks in an eight-hour workday; and occasionally stoop and crouch. AR 22. Plaintiff had the residual functional *mental* capacity to do object-oriented work with limited social interaction and no greater than a moderate degree of stress from all sources including supervisors, coworkers and production quotas, and he could use machinery. Id. In explaining why he reached the conclusions he did about plaintiff's mental ability, AR 24, the administrative law judge said that he had given greatest weight to Dr. Rath's testimony, saying that although "Dr. Rath is only a nonexamining physician, Dr. Rath had the benefit of reviewing the entire record, including the testimony at the hearing. Further, [he] is a psychologist, which is the medical specialty most relevant to [plaintiff's] mental impairments and mental functional limitations." Id. He found that the State Agency Mental Residual Functional Capacity Assessment indicated that plaintiff had only moderate limitations in specific categories of mental work activities and that the agency had found that plaintiff retained adequate abilities to sustain unskilled work. AR 25. He explained that the functional capacity assessment was "only a recording of Summary Conclusions preceding the ultimate opinion of Functional Capacity Assessment—they are not the ultimate opinion of mental functioning. That opinion is furnished by the Electronic Worksheet prepared by the state agency, which indicated that plaintiff retained "adequate abilities to sustain unskilled work." Id. (citing exh. 14F at AR 395. (The full notation on the worksheet is "Mentally, has ADHD and Personality Disorder

with no treatment with MSE's indicating that he retains adequate abilities to sustain unskilled work." The form does not say what MSEs are.)

At step five, the administrative law judge found that plaintiff was unable to perform any past relevant work, but given his age, education, work experience and residual functional capacity, he could perform jobs that existed in significant numbers in the national economy. These would include office helper (5,600 jobs in Wisconsin; 340,000 in the national economy), electronics worker (9,200 jobs in Wisconsin and 310,000 jobs in the national economy) and assembler (2,100 jobs in Wisconsin and 310,000 national jobs).

OPINION

A. Standard of Review

In reviewing a final decision by the commissioner, the court must find the commissioner's findings of fact "conclusive" so long as they are supported by "substantial evidence," 42 U.S.C. § 405(g), that is, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971). The decision cannot stand if it lacks evidentiary support or "is so poorly articulated as to prevent meaningful review." Steele v. Barnhart, 290 F.3d 936, 940 (7th Cir. 2002). When the administrative law judge denies benefits, he must build a logical and accurate bridge from the evidence to his conclusion. Zurawski v. Halter, 245 F.3d 881, 887 (7th Cir. 2001).

B. Plaintiff's Disagreement with Administrative Law Judge's Decision

Neither party contests the administrative law judge's finding with respect to step one, that plaintiff had not been engaged in any substantial gainful employment since August 30, 2007; with respect to step two that plaintiff has the severe limitations of Tourette's Syndrome, lumbar spine degenerative disc disease, obesity, attention deficit hyperactivity disorder, personality disorder NOS and substance abuse; or, with respect to step three, that plaintiff does not have an impairment or combination of impairments that meets or medically equals a listed impairment. Plaintiff's disagreement is with the finding at step four that he retains sufficient mental functional capacity to perform jobs in the state and national economy. He contends that the administrative law judge erred in his decision to give more weight to the opinions of Dr. Rath, the medical expert who never examined plaintiff, than to the opinions of Dr. Waltonen, who was not a treating doctor, but who did examine plaintiff. The result of this error, he argues, is that the administrative law judge did not pose the proper hypothetical question concerning concentration, persistence and pace to the vocational expert.

The administrative law judge explained why he gave Dr. Rath's opinions more weight: (1) Dr. Rath had the benefit of reviewing the entire record, including the testimony at the hearing; (2) Rath is a psychologist, which is the medical speciality most relevant to plaintiff's mental impairments and mental functional limitations; (3) Dr. Waltonen found some evidence of malingering, which rendered "suspect plaintiff's scores at the low end of the average range," although not actually below average; and (4) Dr. Waltonen's GAF score is

not fully supported by his examination of plaintiff. The reasons vary in their persuasiveness. As to the first one, the administrative law judge never explained specifically what significance there was to the later reports, why it mattered that Woltonen had not had the chance to review them and why Rath would have learned more from hearing plaintiff's testimony at the hearing than Waltonen would have learned from examining plaintiff at length. However, the significance of the later evidence can be gleaned from a mention elsewhere in the decision of the fact that plaintiff's higher GAF scores (52-55) were assessed in evaluations that took place after Waltonen examined plaintiff and of Dr. Bauer's assessment of plaintiff's residual mental functional capacity. In addition, it is true that because Rath was present at the hearing and was able to observe plaintiff, he had the opportunity to assess plaintiff two years after Waltonen had evaluated him.

As to the second reason, the fact that Rath is a psychologist does not give him more credibility than Waltonen, because, so far as the record shows, Waltonen is also a psychologist. This reason gives the administrative law judge little support for his conclusion.

As to the third reason, the administrative law judge did not explain why the "scores"(presumably the GAF score; he does not mention any other score) that Waltonen gave plaintiff was affected adversely by plaintiff's possible malingering or lack of credibility. A review of Waltonen's reports shows that plaintiff gave correct answers to most of the questions directed to his intellectual functioning and his answers to questions about his situation did not seem to be attempts to overstate his emotional or mental difficulties. One would expect, moreover, that it is the psychologist who points out the likelihood of

malingering that would be most apt to take it into account when assessing the suspected malingerer. If the GAF score depends on credibility and Waltonen had some doubts about plaintiff's credibility, why would he give plaintiff a lower GAF score than the Wood County Unified Services therapist assessed?

On the other hand, when he gave his fourth reason, the administrative law judge was on solid ground. He found that Waltonen's score was not fully supported by his examination of plaintiff. Waltonen's report reflects a person who "declared his mood to be good," was cooperative, with no evidence of irritability, belligerence, temper tantrums, paranoid thinking or apathy and whose "affect appeared congruent with his mood." AR 21 (citing AR 280). It was not unreasonable for the administrative law judge to find that scores in the low 50s were more accurate than Waltonen's score of 41. (GAF scores between 41 and 50 reflect "Serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) OR any serious impairment to social, occupational, or school functioning (e.g., no friends, unable to keep a job)"; scores in the 50-60 range reflect "Moderate symptoms (e.g., flat affect and circumstantial speech, occasional panic attacks) OR moderate difficulty in social, occupational, or school functioning (e.g., few friends, conflicts with peers or coworkers)." Diagnostic and Statistical Manual of Mental Disorders, 34 (4th Ed. 2000).)

Plaintiff contends that even if the administrative law judge had one good reason for giving less weight to Waltonen than to Rath, he should have taken into account the requirement that he give greater weight to the opinion of an examining expert than to a consulting expert. Instead, plaintiff says, the administrative law judge based his hypothetical

on the limitations found by two consulting medical experts (Drs. Bauer and Rath), who did not examine plaintiff and who had assessed less severe limitations that Waltonen had. It is true that the opinions of *treating* physicians are entitled to substantial weight, depending on the length and nature of the treatment relationship, the frequency of examination and other factors, SSR 96-2p, but examining, non-treating doctors are only slightly higher on the scale than consulting, non-examining doctors. 28 U.S.C. § 404.1527(d)(1) ("Generally, we give more weight to the opinion of a source who has examined you than to the opinion of a source who has not examined you."). The administrative law judge had a reasonable explanation for not believing that Waltonen's GAF score reflected the results of his examination of plaintiff and thus, for giving less weight to Waltonen's evaluation.

Plaintiff contends that the questions the administrative law judge posed to vocational expert Winn-Boaltey were inadequate because they did not reflect Waltonen's assessment and therefore, did not include all the limitations that Waltonen had found would make work difficult for plaintiff, such as difficulty maintaining his concentration, having some difficulties responding appropriately to supervisors and coworkers, having exaggerated responses to routine work stresses and becoming overwhelmed by minor changes. The administrative law judge explained why he did not find Waltonen's assessment completely credible, particularly in light of the responses Waltonen elicited from plaintiff and his observations of plaintiff's demeanor, mood, fund of knowledge and cooperative attitude. In contrast, he found that the state Department of Vocational Rehabilitation notes showed that plaintiff had the ability to learn new jobs, judge quality pretty well, work at a good speed and

achieve a production rate that raised him above minimum wage, all of which indicated that he was capable of basic mental work activities and willing to engage in them. In addition, the state social security agency found that plaintiff retained adequate abilities to sustain unskilled work.

In light of these findings, it was not error for the administrative law judge to ask the questions of the vocational expert he did or for him to ignore the vocational expert's answer to the question posed by plaintiff's counsel, which was based on Waltonen's report. Plaintiff cites O'Connor-Spinner v. Astrue, 627 F.3d 614 (7th Cir. 2010), in support of his argument but in O'Connor-Spinner, the vocational expert was unaware of the medical evidence in the claimant's case and was not asked a specific question about the claimant's difficulty with concentration, persistence and pace. The court of appeals reversed the district court's decision in favor of the commissioner on the ground that a question dealing only with a restriction to repetitive tasks with simple instructions failed to take into account the claimant's depression-related problems in concentration, persistence and pace. Id. at 620. See also Craft v. Astrue, 539 F.3d 668, 677-78 (7th Cir. 2008) (reversing commissioner on ground that administrative law judge's hypothetical question was inadequate because it assumed claimant was limited to simple, unskilled work without accounting for his memory loss and mood swings); Stewart v. Astrue, 561 F.3d 679, 684 (7th Cir. 2009) (hypothetical question failed to take into account all of the plaintiff's "documented limitations of 'concentration, persistence and or pace'") (quoting Ramirez v. Barnhart, 372 F.3d 546, 554 (3d Cir. 2004)). In this case, Winn-Boaltey had heard Dr. Rath's testimony before she was

asked about plaintiff's limitations and the question itself incorporated more limitations than those considered by the court of appeals in O-Connor-Spinner. Winn-Boaltey was not asked whether plaintiff was limited to simple, repetitive tasks, but whether there were jobs that could be performed by a person limited mentally to object-oriented work with limited social interaction and the need to avoid more than a moderate degree of stress such as supervisors, coworkers and production quotas.

Plaintiff's prior work experience showed that he could not only persist at object-oriented jobs that he enjoyed but work to speed. It showed also that he would not do well with interference from coworkers and supervisors and that he did not react well to production quotas. The hypothetical question incorporated these limitations and was therefore adequate to allow the vocational expert to form a valid opinion. I conclude, therefore, that plaintiff has failed to show that defendant erred in denying his claim for supplemental security income.

ORDER

IT IS ORDERED that the decision of defendant Michael J. Astrue, Commissioner of Social Security, denying plaintiff Troy D. Kowalk's application for disability insurance benefits is AFFIRMED. Plaintiff's motion for summary judgment is DENIED. The clerk

of court is directed to enter judgment for defendant and close the case.

Entered this 14th day of March, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge