IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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GREGORY ALAN URBANEK,

OPINION AND ORDER

Plaintiff,

12-cv-347-bbc

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

- -

Plaintiff Gregory Urbanek seeks reversal of the commissioner's decision that he is not disabled and therefore ineligible for Disability Insurance Benefits under Title II of the Social Security Act, codified at 42 U.S.C. §§ 416(I) and 423(d). The administrative law judge found that plaintiff did not have any severe impairments under 20 C.F.R. § 404.1520(c). Plaintiff contends that the administrative law judge erred by rejecting the opinions of a treating physician and two state agency physicians in the absence of any contrary medical evidence. I find that the administrative law judge's conclusion is supported by substantial evidence. Therefore, I am denying plaintiff's motion for summary judgment and ordering the entry of judgment in favor of defendant.

The following facts are drawn from the administrative record (AR).

FACTS

A. Background

Plaintiff was born on July 21, 1965 and graduated from high school in 1983. AR 114, 217. From March 1992 until March 1994, he worked as an assembly worker in a car parts factory, AR 141; from March 1994 until November 14, 2008, he worked as a production worker in a wood factory. Id. On November 14, 2008, plaintiff's employer granted his request for a voluntary layoff from his position at the wood factory. AR 141.

Plaintiff filed an application for disability insurance benefits and supplemental security income on May 27, 2009, AR 121, saying that his sleep apnea and low back pain limited his ability to work. (Other medical conditions are discussed in the record, but these are the only two relevant to plaintiff's appeal.) The state agency denied plaintiff's application. AR 65-68. Plaintiff then requested and received a hearing before an administrative law judge. AR 84-85. On March 22, 2011, the administrative law judge issued a written decision finding that plaintiff was not disabled. AR 10-24. The appeals council denied review on March 14, 2012. AR 1-6.

B. Medical Evidence

The medical record contains notes and reports from (1) two treating physicians; (2) a consultative physician, Dr. Steven Bowman; (3) a psychologist to whom plaintiff was referred by the Wisconsin Disability Determination Bureau; and (4) two state agency physicians and one state agency psychologist.

1. David Momont, M.D., and Daren Tobert, M.D.

Plaintiff began seeing Dr. David Momont, M.D., in 2004 or 2005. AR 57. In December 2008, plaintiff asked Dr. Momont whether "there [was] any chance of his getting any sort of Disability due to his health issues." AR 203. Dr. Momont noted he "would not agree to that." AR 203.

Plaintiff began seeing Dr. Daren Tobert, M.D., in 2002 or 2003. AR 57. On November 30, 2009, he asked Dr. Tobert for a "letter stating he can only work 4 hours a day" because of fatigue. AR 280. Dr. Tobert had last seen plaintiff in January 2008, AR 280, and declined to issue the letter because he had not been seeing plaintiff on a routine basis. AR 280.

Plaintiff followed up with Dr. Tobert about two and a half months later, on January 11, 2010. AR 281. After spending ten minutes with plaintiff and reviewing Dr. Momont's notes, Dr. Tobert wrote a letter for plaintiff, saying that plaintiff's obstructive sleep apnea and complex chronic insomnia are associated with daytime sleepiness, fatigue, and difficulty concentrating for long periods of time. AR 266, 281. As a result, Dr. Tobert stated, plaintiff's sleeping impairments "would make it difficult for him to hold down a full-time job." AR 266. In his treatment notes from the same date, Dr. Tobert noted that he "suspect[s] most of the problem is with sleep hygiene and poor sleep-wake habits" and he "suspect[ed] [plaintiff] would like to use this as a reason to avoid full-time work down the line." AR 281.

2. Steven Bowman, D.O., M.P.H.

Dr. Steven Bowman, D.O., M.P.H., performed a consultative examination of plaintiff regarding his back pain on September 9, 2009. AR 210. Dr. Bowman found that plaintiff had a full range of motion in his neck and back and a normal gait. AR 212. Dr. Bowman attributed plaintiff's back pain to deconditioning and thought that with physical therapy plaintiff "could handle almost any job that he may be skilled for." AR 213. Additionally, Dr. Bowman found that plaintiff should have no problems sitting or standing. Id. Plaintiff mentioned to Dr. Bowman that he "currently bowl[s] on a regular basis" in a league. AR 211.

3. James Hobart, Ph.D.

Dr. James Hobart, Ph.D., conducted plaintiff's mental status evaluation and performed psychometric tests on September 23, 2009. AR 216. Plaintiff told Dr. Hobart that he asked for a voluntary layoff in November 2008 because of breathing problems related to wood dust and back pain caused by long periods of standing. AR 216, 220.

In his mental status evaluation notes, Dr. Hobart noted that plaintiff "admits that he has some difficulty motivating himself to do things." AR 217. From his review of the psychometric tests, Dr. Hobart found that plaintiff had excellent attention and concentration. AR 219. Dr. Hobart concluded that plaintiff "would have no difficulty understanding, remembering, and carrying out simple work-related instructions." AR 220.

4. Pat Chan, M.D., Eric Edelman, Ph.D., and Mina Khorshidi, M.D.

On September 25, 2009, state agency physician Dr. Pat Chan, M.D., signed a Disability Determination and Transmittal in which he concluded that plaintiff was not disabled. AR 61. On September 29, 2009, Dr. Chan completed a physical residual functional capacity assessment of plaintiff, AR 224-31, finding that plaintiff could lift twenty pounds occasionally, ten pounds frequently, plus sit, stand, or walk for six out of eight hours. AR 225. Dr. Chan also noted that he found plaintiff's statements about his symptoms and "their effect on functioning to be only partially credible." AR 231.

On September 29, 2009, state agency psychologist, Dr. Eric Edelman, Ph.D., reviewed plaintiff's record and concluded that plaintiff had a non-severe affective disorder. AR 232. Dr. Edelman also found no restriction of activities of daily living, no difficulties in maintaining social functioning, no episodes of decompensation and mild difficulties in maintaining concentration, persistence or pace. AR 242.

State agency physician Dr. Mina Khorshidi, M.D., reached conclusions similar to Dr. Chan's. On November 20, 2009, Dr. Khorshidi signed a Disability Determination and Transmittal in which she concluded that plaintiff was not disabled. AR 62. On November 23, 2009, Dr. Khorshidi completed a physical residual functional capacity assessment of plaintiff, AR 254-61, concluding that plaintiff could lift twenty pounds occasionally, ten pounds frequently, plus sit, stand, or walk for six out of eight hours. AR 255. Because plaintiff "has sleep apnea" and "report[ed] some daytime sleepiness," Dr. Khorshidi recommended that he avoid concentrated exposure to hazards. AR 258.

Dr. Khorshidi also noted that plaintiff reported his low back pain "did not significantly affect his mobility, strength, or dexterity." AR 259. Moreover, the lumbar x-ray "showed no significant degenerative changes." Id. Plaintiff also "reported in [October 2009] that his pain was improved and he was walking 2-3 miles a day." Id. Finally, Dr. Khorshidi noted that the plaintiff did not "really report severe functional limitations" and that these statements were credible. Id.

C. Hearing Testimony

On December 7, 2010, plaintiff testified during a hearing in front of the administrative law judge. AR 32-33. Plaintiff provided the following testimony:

- his back and neck pain, combined with his fatigue and a lack of concentration, prevented him from working more than four hours per day, AR 36-43;
- his back problems started in 1986, AR 42;
- because of the 2008 economic downturn, the wood factory "started to do a lot of layoffs," AR 43;
- he approached his supervisors and asked for a voluntary layoff because his "health conditions" prevented him from continuing his current job, AR 43;
- he goes to bed around 10:00 p.m. or 11:00 p.m. and wakes up around 7:00 a.m. or 8:00 a.m., AR 58;
- he wakes up feeling exhausted because he's "not getting the correct sleep," AR 58;
- the fatigue affected his performance at the wood factory, AR 59.

Plaintiff's then-attorney mentioned that he thought "it's more the fatigue and sleep than it is the pain that is preventing [plaintiff] from" holding a full-time job. AR 57.

The administrative law judge asked for more documentation from plaintiff's wood factory employer, AR 59-60, and plaintiff subsequently submitted a letter and performance appraisal. AR 300-02.

D. Plaintiff's Post-Hearing Submissions

In a short letter dated December 28, 2010, plaintiff's employer said that during the year leading up to his voluntary layoff, plaintiff "complained about being tired all the time." AR 302. In a 2007 performance appraisal, plaintiff's supervisor rated his overall job performance as 74/100 ("Doing Fine," "an acceptable level of performance") which was one point from "Great Job," "a high level of achievement." AR 300-01. Plaintiff's supervisor noted that the only areas where plaintiff could improve were attendance and attitude. Id.

E. Administrative Law Judge's Written Decision

The administrative law judge issued his written decision on March 22, 2011, finding plaintiff not disabled. AR 10, 13. In reaching his conclusion, he referred to the required five step sequential analysis, 20 C.F.R. § 404.1520, but considered only the first two steps. AR 15-20. At step one, he found that although plaintiff had performed some work activity after the alleged onset date, the work did not constitute substantial gainful activity. AR 15.

At step two, he found that although plaintiff has a number of medically determinable impairments, none of the impairments individually, nor any in combination, could be considered a severe impairment under 20 C.F.R. § 404.1520(c). AR 15. The administrative

law judge found "no evidence of functional loss." AR 16. Therefore, he concluded, because plaintiff did not have a severe impairment, he did not suffer from a disability within the meaning of the Social Security Act from November 14, 2008 through March 22, 2011. AR 13, 20.

The administrative law judge found plaintiff's testimony about the reasons he stopped working to be "inconsistent." AR 16. At various times, plaintiff cited back pain, neck pain, fatigue and poor concentration, the poor economy and wood dust allergies. Id. In the administrative law judge's opinion, the medical evidence contradicted plaintiff's testimony. Id.

The administrative law judge addressed each of plaintiff's alleged impairments. With respect to plaintiff's back pain, the administrative law judge summarized Dr. Bowman's findings: no incapacitating limitations; plaintiff "could handle almost any job that he may be skilled for"; a normal lumbar spine x-ray; no sign of pain; a full range of motion; and normal gait. AR 16. Further, Dr. Bowman found, plaintiff could sit, stand, walk, lift, handle and hear without any difficulty. Id. Dr. Bowman concluded the low back pain was muscular in nature and caused by deconditioning and, by plaintiff's own admission, relieved by ibuprofen. Id. The administrative law judge mentioned that plaintiff bowled on a regular basis. Id.

Next, the administrative law judge noted that plaintiff did not take pain medication for his back, has never had surgery on his back and has not required hospitalization to treat his back pain. AR 17. The administrative law judge concluded that plaintiff's "pain and

limitation was only temporary," as evidenced by the lack of treatment sessions. Id.

In turn, the administrative law judge addressed plaintiff's obesity, alleged knee pain, Tourette syndrome and left eye blindness. With regard to each of these impairments, the administrative law judge concluded that none of them caused functional loss or work limitations. AR 17.

With respect to Dr. Hobart's psychological findings, the administrative law judge acknowledged that plaintiff was not alleging a mental impairment, but he discussed a number of statements plaintiff made to Dr. Hobart. Id. Specifically, the administrative law judge highlighted plaintiff's statement to Dr. Hobart that he sought a voluntary layoff because of the company's downsizing and his sawdust-related breathing problems, which was inconsistent with plaintiff's testimony at the hearing that back problems and fatigue were the reasons he quit. Id. Further, the administrative law judge noted plaintiff's admission that he lacked motivation and that Dr. Hobart thought the structure provided by a work environment would be good for plaintiff. Id. The administrative law judge expressly assigned "great weight" to Dr. Hobart's opinion and found it "well-supported by the evidence." Id.

With respect to plaintiff's sleep apnea, the administrative law judge noted that plaintiff was prescribed a continuous positive airway pressure (CPAP) device but, by his own admission, did not use it. AR 18. The administrative law judge then noted that in August 2009, Dr. Winga diagnosed mild to moderate sleep apnea, insomnia and a history of depression. AR 18. As a remedy, Dr. Winga recommended that plaintiff "adhere to a

regular sleep schedule, decrease his calories, walk 30 minutes a day" and work. Id. Turning to Dr. Tobert's January 11, 2010 treatment notes, which "indicated that the claimant's problems were with sleep hygiene and poor sleep-wake habits," the administrative law judge concluded that plaintiff's fatigue was attributable "to his behavioral habits, and not to a medical condition." Id.

Next, the administrative law judge discussed Dr. Tobert's January 11, 2010 letter in which he stated that plaintiff's sleeping impairments "would make it difficult to hold down a full-time job." Id. In assigning "little, if any, weight" to Dr. Tobert's opinion, the administrative law judge discussed two things. First, Dr. Tobert did not explain how the plaintiff was able to work for fourteen years despite his alleged sleep problems. Id. Second, because there had been a gap in treatment between Dr. Tobert's letter and when he regularly saw plaintiff, it appeared that Dr. Tobert's letter "was based on the claimant's subjective complaints rather than ongoing treatment." Id.

With respect to plaintiff's testimony, the administrative law judge pointed to plaintiff's statement that he slept between ten and eleven hours per night. AR 19. Further, the administrative law judge noted that plaintiff did not use a prescribed CPAP device "because it did not work." Id. The administrative law judge found that "the evidence does not indicate that he returned the device to ensure that it was functioning properly." Id. Later in his written decision, the administrative law judge found plaintiff's "active efforts to obtain documentation from medical professionals limiting him to working only 4 hours per day" were additional evidence of plaintiff's questionable credibility. Id.

The administrative law judge discussed evidence from plaintiff's former employer, finding that this evidence showed that plaintiff could work at an acceptable pace. AR 19. Interpreting a performance appraisal of 74, which the administrative law judge labeled "exemplary . . . just 1 point short of excellent," the administrative law judge found that plaintiff's former employer's praise about his work undermined his complaints about fatigue. Id. The administrative law judge added that "it is unlikely that an individual with a severe sleep disorder could bowl on a bowling team on a regular basis or walk 2 miles at a time." Id.

With respect to the state agency physicians Dr. Pat Chan and Dr. Mina Khorshidi, the administrative law judge noted that they both determined plaintiff was "capable of work at the light exertional level." AR 19. The administrative law judge expressly assigned little weight to their opinions that plaintiff was limited in any way, finding them unsupported by the evidence. Id. In support of his position, the administrative law judge said he agreed "with the opinion of those doctors that found [plaintiff] can work" and that the "objective medical evidence" and plaintiff's daily activities do not "support a conclusion that he has functional limitations." Id. He also thought that the state agency physicians must have accorded the plaintiff's subjective complaints some degree of credibility. Id. He concluded there was no evidence that showed plaintiff had any impairments causing functional limitations, and that any muscle pain was attributable to plaintiff's "poor physical condition." AR 20.

Finally, the administrative law judge briefly discussed Dr. Eric Edelman's report that

plaintiff did not have a severe mental impairment. AR 20. The administrative law judge assigned Edelman's opinion "great weight as it is well-supported by the evidence." Id. Therefore, the administrative law judge found none of plaintiff's mental impairments to affect plaintiff's ability to work.

OPINION

A. Standard of Review

The standard by which a federal court reviews a final decision by the commissioner is well settled: the commissioner's findings of fact are "conclusive" so long as they are supported by "substantial evidence." 42 U.S.C. § 405(g). Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971). When reviewing the commissioner's findings under § 405(g), the court cannot reconsider facts, reweigh the evidence, decide questions of credibility or otherwise substitute its own judgment for that of the administrative law judge regarding what the outcome should be. Clifford v. Apfel, 227 F.3d 863, 869 (7th Cir. 2000). Thus, where conflicting evidence allows reasonable minds to reach different conclusions about a claimant's disability, the responsibility for the decision falls on the commissioner. Edwards v. Sullivan, 985 F.2d 334, 336 (7th Cir. 1993). Nevertheless, the court must conduct a "critical review of the evidence" before affirming the commissioner's decision, id., and 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. Medical Opinions of Doctors Tobert, Khorshidi and Chan

Plaintiff's appeal focuses on the administrative law judge's rejection of the opinion of treating physician Daren Tobert that plaintiff's sleeping impairments "would make it difficult for [plaintiff] to hold down a full-time job," AR 266, and the opinions of state agency physicians Mina Khorshidi and Pat Chan that plaintiff's back pain would limit him to light work. Plaintiff argues that the administrative law judge rejected "all" medical opinions and "played doctor" by substituting his judgment for that of the physicians without relying on contrary medical evidence. Although plaintiff does not say so expressly, presumably he means to argue that each of these doctor's opinions is inconsistent with the administrative law judge's finding at step two that plaintiff did not suffer from any severe impairments. An impairment is "not severe" when it "has no more than a minimal effect on the ability to do basic work activities," SSR 96-3p, which include "[p]hysical functions such as . . . lifting." 20 C.F.R. § 404.1521(a), (b)(1).

As an initial matter, the statement that the administrative law judge rejected all medical opinions is incorrect. The administrative law judge accepted the opinions of Dr. Bowman, AR 16, Dr. Hobart, AR 18, and Dr. Edelman, AR 20. Dr. Bowman assessed plaintiff's assertions of low back pain and Dr. Hobart and Dr. Edelman completed a mental

consultative examination and a psychiatric review, respectively.

I will consider each of plaintiff's individual objections below.

1. Treating physician Dr. Tobert

Plaintiff raises numerous objections to the administrative law judge's rejection of Dr. Tobert's medical opinion:

- the administrative law judge failed to accord proper weight to a treating physician's opinion;
- the administrative law judge did not rely on other medical opinions to reject Dr. Tobert's opinion;
- the administrative law judge should have followed up with Dr. Tobert for more information;
- the administrative law judge should not have relied upon the amount of time between plaintiff's visits to Dr. Tobert in rejecting Dr. Tobert's opinion;
- the administrative law judge should have considered the checklist of factors and determined the amount of weight to accord Dr. Tobert's opinion.

a. Whether the administrative law judge properly accorded little weight to Dr. Tobert

The administrative law judge did not have to give the opinion in Dr. Tobert's letter controlling weight because the letter is inconsistent with both his contemporaneous treatment notes and his previous actions. Skarbek v. Barnhart, 390 F.3d 500, 503 (7th Cir. 2004) (so long as he articulates his reasons, administrative law judge may give less weight to treating physician's opinion if it is internally inconsistent). Although Dr. Tobert stated that plaintiff's impairments would make it difficult for him to hold down a full-time job, AR

18, his conclusion is undermined by at least two other statements he made.

First, on November 30, 2009, when plaintiff asked Dr. Tobert to write a letter on plaintiff's behalf, stating that he could work for only four hours a day, Dr. Tobert refused to do so because he had not seen plaintiff for almost two years. AR 280. Despite his concern about gaps in treatment, less than two months later, Dr. Tobert wrote plaintiff's requested letter after a ten-minute examination without having seen plaintiff in the interim. AR 281.

Second, Dr. Tobert's January 11, 2010 treatment notes provide important context for the opinion in his letter. In those notes, Dr. Tobert wrote that he

> suspect[ed] most of the problem is with sleep hygiene and poor sleep-wake habits. I am not sure how sleepy and tired he is during the daytime, but clearly his sleep disorders could create some of that. I suspect he would like to use this as a reason to avoid full-time work down the line.

AR 281. Thus, the same day Dr. Tobert questioned whether plaintiff could work full-time because of lack of sleep, he suggested that at least part of the reason for the problem was poor sleep hygiene, not sleep apnea. Because Dr. Tobert's own notes and previous actions undermine the view that plaintiff's sleep apnea is a severe impairment, the administrative law judge did not err by refusing to credit the statement in Dr. Tobert's letter that plaintiff's sleeping impairments might interfere with his ability to hold down a full-time job.

b. Whether the administrative law judge should have recontacted Dr. Tobert

Plaintiff argues that the administrative law judge should have followed up with Dr. Tobert in accordance with 20 C.F.R. §§ 404.1512(e) and 416.912(e) "if the ALJ was

confused by Dr. Tobert's opinion." Plt.'s Br., dkt. #13, at 15-16. This argument has a false premise, which is that the administrative law judge somehow was "confused" by Tobert's opinion. Although an administrative law judge must recontact medical sources when he finds that ambiguities in the record make it impossible for him to make a disability determination, Skarbek v. Barnhart, 390 F.3d 500, 504 (7th Cir. 2004), he is not required to do so simply because he finds an opinion unpersuasive, Simila v. Astrue, 573 F.3d 503, 516 (7th Cir. 2009), which was the situation in this case.

c. Whether the administrative law judge should have considered plaintiff's inability to pay

When he accorded little weight to Dr. Tobert's opinion, the administrative law judge noted that "although the evidence indicates that Dr. Tolbert [sic] has treated the [plaintiff] in the past, there had been a gap in treatment at the time of the letter." AR 18. Relying on this gap in treatment, the administrative law judge concluded that Dr. Tobert's opinion was not based on his ongoing treatment of plaintiff. Plaintiff argues that the administrative law judge should have considered plaintiff's inability to pay for more regular care before discounting Dr. Tobert's opinion. Plt.'s Br., dkt. #13, at 16-17.

Plaintiff's argument makes no sense. In the case plaintiff cites in support of his argument, Shauger v. Astrue, 675 F.3d 690, 696 (7th Cir. 2012), the administrative law judge had questioned the plaintiff's testimony about the severity of his condition because of gaps in treatment, but the administrative law judge had not considered whether the plaintiff failed to seek treatment more consistently because he could not afford care. In this

case, the administrative law judge did not rely on treatment gaps to question plaintiff's credibility, but to question the treating physician's ability to diagnose plaintiff's condition. In that situation, the reason plaintiff did not seek more frequent care is irrelevant, so there would be no point in asking plaintiff whether he limited his treatment for financial reasons.

d. Whether the administrative law judge properly applied the checklist factors

How much weight an administrative law judge should give to a treating physician's opinion depends on various factors: "the length, nature, and extent of the treatment relationship; frequency of examination; the physician's specialty; the types of tests performed; and the consistency and support for the physician's opinion." Larson v. Astrue, 615 F.3d 744, 751 (7th Cir. 2010). Plaintiff contends that a remand is required because the administrative law judge did not consider each of these factors in his decision. Plt.'s Br., dkt. #13, at 20-21.

The law does not require the administrative law judge to invoke each factor expressly in his opinion. Rather, it is sufficient if he has "minimally articulated" his reasons for discounting the physician's opinion. Elder v. Astrue, 529 F.3d 408, 415 (7th Cir. 2008) (describing standard as "very deferential" and "lax"). In this case, the administrative law judge considered the relevant factors. For instance, he considered the extent of the treatment relationship and the consistency and support for the physician's opinion. Because plaintiff does not suggest that Tobert performed any tests on him, that factor is a nonissue. This leaves Tobert's speciality, but plaintiff does not explain why it matters. The

administrative law judge did not reject Tobert's opinion because Tobert did not have sufficient expertise or because another physician had greater expertise.

e. Whether the administrative law judge failed to accord weight to Dr. Tobert's opinion

Plaintiff asserts that the administrative law judge failed to determine the amount of weight to accord Dr. Tobert's opinion. Plt.'s Br., dkt. #13, at 20-21. In fact, the administrative law judge did determine how much weight to give Dr. Tobert's opinion. In his decision, the administrative law judge says that he "has fully considered the opinion of Dr. Tobert and assigns it little, if any, weight." AR 18. In sum, under the "very deferential standard," the administrative law judge adequately discounted Dr. Tobert's opinion.

2. State agency physicians Dr. Khorshidi and Dr. Chan

With regard to plaintiff's assertion of low back pain, both Dr. Khorshidi and Dr. Chan concluded that plaintiff has some exertional limitations. According to their assessments, plaintiff could occasionally "lift and/or carry" 20 pounds and frequently "lift and/or carry" 10 pounds. AR 225, 255. By concluding that plaintiff could not lift more than 20 pounds, both doctors reached the implicit conclusion that plaintiff was limited to light work. Because a light work limitation is more than a minimal limitation, the state agency physicians' opinions contradict the administrative law judge's finding that plaintiff does not have a severe impairment that significantly affects his ability to work.

Although both Khorshidi and Chan found that plaintiff was limited to light work,

both also found that plaintiff was not disabled, so it is not clear whether reversal would be required even if I assume that their opinions are correct. However, because the commissioner does not make a harmless error argument and I conclude that the administrative law judge's rejection of Khorshidi's and Chan's opinion is supported by substantial evidence, I need not address that issue.

In supporting his opinion, the administrative law judge wrote that he "concurs with the opinion of those doctors that the claimant can work" and that "neither the objective medical evidence nor the claimant's own daily activities support a conclusion that he has functional limitations." AR 19. The administrative law judge also noted that "[a]pparently the DDS physicians accorded [plaintiff's] subjective complaints some degree of credibility." Id. Although the administrative law judge could have stated his opinion more clearly, I understand him to be saying that the opinions of other doctors, such as Dr. Bowman, were more persuasive because there was no objective evidence supporting plaintiff's pain limitations and the administrative law judge did not find plaintiff credible, as the agency physicians apparently did.

Plaintiff asserts that the administrative law judge improperly formed his own medical opinion of the evidence. An administrative law judge "must not substitute his own judgment for a physician's opinion without relying on other medical evidence or authority in the record." Clifford v. Apfel, 227 F.3d 863, 870 (7th Cir. 2000). However, an administrative law judge may give less weight to non-treating physicians' opinions if their conclusions are not supported by other evidence of record. Filus v. Astrue, 694 F.3d 863, 868-69 (7th Cir.

2012).

A review of Dr. Chan's opinion shows that Chan relied heavily on plaintiff's assertions of pain. He commented that he gave "careful consideration" to plaintiff's statements about his "alleged [symptoms] and their effect on functioning." AR 231. This comment by Dr. Chan came immediately after he noted that there was "[n]o evidence of pain," there was "full range of motion in flexion, extension, side bending, and rotation," joint examination was normal, gait was normal, plaintiff could easily climb and descend stairs and x-rays showed "no significant degenerative changes." AR 231. Dr. Chan then noted the alleged symptoms were "not consistent with the totality of the medical evidence contained in this file" and that he found plaintiff's statements about his symptoms "only partially credible." AR 231.

Dr. Khorshidi's comments suggest that she relied on plaintiff's subjective complaints as well. Dr. Khorshidi noted that plaintiff reported that his low back pain "was intermittent and did not significantly affect his mobility, strength or dexterity." AR 259. Like Dr. Chan, Dr. Khorshidi also listed some test results that indicated no evidence of physical limitations. AR 259. Dr. Khorshidi commented that plaintiff "does not really report severe functional limitations on the Function Report [from July 2009]." AR 259.

Neither Dr. Chan nor Dr. Khorshidi found objective evidence to support functional limitations, so it was reasonable for the administrative law judge to infer that they relied on plaintiff's subjective complaints to support a light work limitation. Plaintiff points to no evidence to the contrary.

In sum, although the administrative law judge's opinion may not have been perfect, he gave logical, well-supported reasons for rejecting the opinions of Dr. Tobert, Dr. Chan, and Dr. Khorshidi. Moreover, there is substantial evidence in the record that plaintiff's impairments do not have more than a minimal effect on his ability to do basic work activities. Therefore, I conclude that the administrative law judge did not err in determining that plaintiff's impairments were not severe.

ORDER

IT IS ORDERED that the decision of defendant Michael J. Astrue, Commissioner of Social Security, is AFFIRMED, and plaintiff Gregory Urbanek's appeal is DISMISSED. The clerk of court is directed to enter judgment in favor of defendant and close this case.

Entered this 12th day of March, 2013.

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