

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

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RICHARD A. BRADLEY,

Plaintiff,

v.

MEMORANDUM AND ORDER

COMMISSIONER OF SOCIAL SECURITY,

04-C-755-S

Defendant.

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Plaintiff Richard A. Bradley brings this action pursuant to 42 U.S.C. § 405(g) for review of the defendant Commissioner's final decision denying him Disability Insurance Benefits (DIB). He asks the Court to reverse the decision.

Plaintiff applied for DIB on February 29, 2000 alleging disability since November 20, 1999 because of fibromyalgia, high blood pressure and a bad rotator cuff. His application was denied initially and upon reconsideration. A hearing was held on July 30, 2002 before Administrative Law Judge (ALJ) Arthur Schneider. In a written decision dated January 31, 2003 the ALJ found plaintiff not disabled. The ALJ's decision became the final decision of the Commissioner when the Appeals Council denied plaintiff's request for review on August 13, 2004.

## FACTS

Plaintiff was born on September 22, 1946 and his insured status expired on December 31, 1999. He graduated from high school and worked in the past as a farmer, metal fabricator and mechanic.

In 1994 plaintiff was diagnosed with fibromyalgia at the Tomah Veterans Administration Clinic. Plaintiff saw Dr. Allen Bridges at the Rheumatology Clinic in Middleton 25 times in the next five years. In January 1995 a doctor at the Rheumatology Clinic noted that plaintiff's fibromyalgia was much improved.

On July 23, 2002 Dr. Bridges completed a fibromyalgia residual functional capacity questionnaire for plaintiff's limitations as of January 2000. He limited the plaintiff to sedentary work and that he would likely be absent from work more than four days a month because of his impairments or treatment. Dr. Bridges also indicated that plaintiff's condition had worsened since January 2000. The record indicates that Dr. Bridges was not seeing plaintiff in January 2000 and last saw him in March 1999.

In late 1999 plaintiff had some symptoms of depression but was home schooling his 8 year old son. In January 2000 plaintiff was prescribed Nortriptyline when he was seen at the outpatient clinic at the Veteran's Administration Medical Center. His sleep and mood improved on the medication.

On July 12, 2000 Pat Chan, M.D., a state agency medical consultant, reviewed the record and concluded plaintiff was able to

do light work. On July 16, 2001 Michael Baumblatt M.D., another state agency medical consultant, also concluded that plaintiff could perform light work.

At the July 30, 2002 hearing before the ALJ plaintiff appeared with counsel and testified he had been treated for fibromyalgia and depression. He testified that he could sit one to two hours and stand one to two hours in an eight hour work day, but suffered pain and fatigue. Plaintiff's daily activities included driving, some household chores and watching his son.

Larry Larrabee, Ph.D., a medical expert, testified that plaintiff had an affective disorder which did not meet or medically equal the B or C limitations before his insured status expired. Larrabee testified that plaintiff had no restrictions of activities of daily living and only mild difficulties in social functioning. He further concluded that plaintiff had moderate difficulties in maintaining concentration, persistence or pace and no episodes of decompensation of extended duration.

Leslie H. Goldsmith, a vocational expert, was present at the hearing and had reviewed the record. The ALJ asked the expert whether an individual with the claimant's age, education, work experience and residual functional capacity could perform any jobs in the regional economy. The ALJ indicated plaintiff retained the residual functional capacity to lift/carry ten pounds frequently and twenty pounds occasionally and sit six hours and stand six hours in an eight hour work day. He was limited in his hearing but

could hear normal conversation, must avoid constant bending, kneeling and squatting and fine finger manipulation. He could perform simple, routine, repetitive, low stress work.

The expert testified that such an individual could perform thousands of jobs in Wisconsin as a visual inspector, security guard, gate keeper and messenger.

On August 23, 2002 the plaintiff obtained an additional opinion from vocational expert Pul Mallucci that there are not a significant number of security guard positions that could be performed by the plaintiff. Mallucci concluded that there were 500 to 1000 surveillance monitor-type positions available in the Wisconsin economy.

In his January 31, 2003 decision the ALJ concluded that plaintiff had severe osteoarthritis, chronic right shoulder pain, status post left carpal tunnel surgery, Gastroesophageal reflux disease, hearing impairment and depression from November 20, 1999 through December 31, 1999. In his decision, the ALJ specifically stated as follows:

Dr. Bridges states that the claimant met the American College of Rheumatology criteria for fibromyalgia in 1994, but that was five years before the date last insured. Additionally, he states that the claimant now has more of chronic fatigue syndrome, but that refers to the current time period which is after his insured status expires.

The ALJ found that plaintiff retained the residual functional capacity to lift ten pounds frequently and twenty pounds

occasionally and to sit six and stand six hours in an eight hour day but had to avoid constant bending, kneeling and squatting and fine finger manipulation. He noted that he had hearing problems but could hear normal conversation and was available for simple, routine, repetitive, and low stress work. The ALJ discounted Dr. Bridges opinion because he was not seeing plaintiff in January 2000. The ALJ found plaintiff's testimony not credible because the clinic notes did not support his complaints.

The ALJ concluded that the testimony of the vocational expert established that there were significant number of jobs in the Wisconsin economy as an inspector, surveillance monitor, gatekeeper and messenger that could be performed by plaintiff on or before December 31, 1999. Accordingly, the ALJ found that plaintiff was not disabled.

The ALJ made the following findings:

1. The claimant met the disability insured status requirements of the Act on November 20, 1999, the date the claimant stated he became unable to work and continued to meet them through December 31, 1999.
2. The medical evidence established that, on or before December 31, 1999, the claimant had severe osteoarthritis, chronic right shoulder pain, status post left carpal tunnel surgery, gastroesophageal reflux disease, hearing impairment, and depression, but that he did not have an impairment or combination of impairments listed in, or medically equal to one listed in Appendix 1, Subpart P, Regulations No. 4.

3. When the claimant's complaints and allegations concerning the impairments and limitations are considered in light of all objective medical evidence, as well as the record as a whole, they do not show that he was so severely impaired by pain, and other discomfort that he was incapable of engaging in all substantial gainful activity on or before December 31, 1999 when his insured status expired.

4. On or before December 31, 1999, the claimant could lift a maximum of 20 pounds occasionally and 20 pounds frequently. He could sit six out of eight hours but had to avoid constant bending, kneeling and squatting. He had hearing problems but could hear normal conversation. He was only available for simple, routine, repetitive, and low stress work. He also needed to avoid fine finger manipulation (20 CFR 404.1545).

5. On or before December 31, 1999, the claimant was unable to perform his past relevant work as a farmer, metal fabricator, or mechanic.

6. On or before December 31, 1999, the claimant's residual functional capacity for the full range of light work was reduced by the limitations set forth above.

7. The claimant was 53 years old on December 31, 1999 which is defined as closely approaching advanced age (20 CFR 404.1463).

8. The claimant has more than a high school education (20 CFR 404.1564).

9. The claimant does not have any acquired work skills which are transferable to the skilled or semiskilled work functions of other work (CFR 404.1568).

10. Based on an exertional capacity for light work, and the claimant's age, education and work experience, section 404.1569 and Rule 202.14, Table No. 2, Appendix 2, Subpart P,

Regulations No. 4 would direct a conclusion of "not disabled," on or before December 31, 1999.

11. Although the claimant's additional nonexertional limitations did not allow him to perform the full range of light work on or before December 31, 1999, using the above-cited rule as a framework for decisionmaking, there were a significant number of jobs in the national economy which he could perform as inspector, surveillance monitor, gate keeper and messenger.

12. The claimant was not under a "disability," as defined in the Social Security Act, at any time on or before his insured status expired on December 31, 1999 (20 CFR 404.1520 (f)).

#### OPINION

This Court must determine whether the decision of the Commissioner that plaintiff was not disabled is based on substantial evidence pursuant to 42 U.S.C. § 405(g). See Arbogast v. Bowen, 860 F.2d 1400, 1402-1403 (7th Cir. 1988). Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971).

Disability determinations are made pursuant to a five-step sequential evaluation procedure. 20 CFR § 404.1520(a)-(f). First, the claimant must not be performing substantial gainful activity. Second, the claimant must have a severe, medically determinable impairment. Third, a claimant will be found disabled if his or her

impairment is equal in severity to a listed impairment in 20 C.F.R. Subpart P, Appendix 1. Fourth, if the claimant does not meet the third test, he/she must not be able to perform his/her past work. Fifth, if the claimant cannot perform his/her past work, he or she must not be able to perform any existing jobs available in the national economy given his or her educational background, vocational history and residual functional capacity.

The ALJ found that plaintiff had severe osteoarthritis, chronic right shoulder pain, status post left carpal tunnel surgery, gastroesophageal reflux disease, hearing impairment and depression from November 20, 1999 through December 31, 1999 but that none of these impairments singly or in combination met or equaled a listed impairment. Plaintiff contends that the ALJ failed to discuss plaintiff's impairment of fibromyalgia. The ALJ discussed the impairment at p. 20 of his decision but did not find it to be a severe impairment. The ALJ did not err by not addressing the fibromyalgia. Further the finding that plaintiff's fibromyalgia was not a severe impairment in 1999 is supported by Dr. Bridges' clinic notes.

Plaintiff also contends that the ALJ did not give Dr. Bridges's opinion of plaintiff's residual functional capacity controlling weight. In order to be entitled to controlling weight, a medical opinion must be rendered by a treating source, be well supported by medically acceptable clinical and laboratory



diagnostic techniques and not inconsistent with other substantial evidence in the record. See 20 C.F.R. §404.1527(d)(2), Social Security Ruling 96-2p. The ALJ found that Dr. Bridges' opinion should not be given controlling weight because it was not supported by his own clinical notes and was inconsistent with other substantial evidence in the record. The ALJ properly disregarded Dr. Bridges' opinion.

Plaintiff claims that the opinions of Dr. Chan and Dr. Baumblatt should not be given any weight because they did not review all the records, specifically, the V.A. records from July 28, 1994 to January 14, 2000. Those records which related to plaintiff's condition from November 20, 1999 to December 31, 1999 were in the record and reviewed by Dr. Chan and Dr. Baumblatt. Accordingly, the ALJ reasonably relied on these opinions. Brooks v. Chater, 91 F. 3d 972, 979 (7<sup>th</sup> Cir. 1996).

Plaintiff also claims that the ALJ did not properly assess his credibility. The ALJ's credibility decision must be upheld unless it is "patently wrong." Powers v. Apfel, 207 F.3d 421, 435 (7<sup>th</sup> Cir. 2000). In his decision the ALJ specifically addressed plaintiff's subjective complaints and concluded that they were not fully credible based on the objective medical evidence and the record as a whole. This finding is consistent with the law. Donohue v. Barnhardt, 279 F.3d 441 (7<sup>th</sup> Cir. 2002). An examination

of the record supports the ALJ's conclusion that plaintiff's testimony was not wholly credible.

Plaintiff contends that the hypothetical posed by the ALJ to the vocational expert did not itemize his various mental nonexertional impairments. The ALJ concluded that plaintiff could perform low stress work based on his symptoms of depression. The ALJ's hypothetical included this nonexertional impairment.

There is substantial evidence to support the Commissioner's finding that plaintiff was not disabled from November 20, 1999 to December 31, 1999 because he could perform jobs existing in the national economy. Accordingly, the Commissioner's decision will be affirmed.

#### ORDER

IT IS ORDERED that plaintiff's motion to reverse the decision of the Commissioner is DENIED.

IT IS FURTHER ORDERED that the decision of the defendant Commissioner denying plaintiff Disability Insurance Benefits (DIB) is AFFIRMED.

Entered this 13<sup>th</sup> day of April, 2005.

BY THE COURT:

/s/

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JOHN C. SHABAZ  
District Judge