

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

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STEVEN ARNOLD,

Plaintiff,

v.

MEMORANDUM AND ORDER

JO ANNE B. BARNHART,  
COMMISSIONER OF SOCIAL SECURITY,

05-C-006-S

Defendant.

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Plaintiff Steven Arnold 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) and Supplemental Security Income (SSI). He asks the Court to reverse the decision or to remand for further proceedings.

Plaintiff applied for DIB and SSI on February 18, 2000 alleging disability since October 1, 1988 because of a severe head injury suffered in a motorcycle collision with a deer on September 15, 1986. His application was denied initially and upon reconsideration. A hearing was held on May 1, 2001 before Administrative Law Judge (ALJ) Roger W. Thomas. In a written decision dated February 27, 2002 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 November 5, 2004.

## FACTS

Plaintiff was born on May 31, 1961. He graduated from high school and received additional training in auto mechanics. He previously worked as a meat processor and pulp cutter.

On September 15, 1986 plaintiff suffered a severe head injury when he struck a deer with his motorcycle. He was taken to St. Luke's Hospital in Duluth, Minnesota where an emergency craniotomy was performed. After the surgery he had major cognitive problems in remaining oriented to task and impulsive behavior.

On September 22, 1986 Dr. Silvestrini evaluated plaintiff as a possible candidate for rehabilitation. Plaintiff was transferred to the Miller Dwan rehabilitation Center on September 26, 1986.

When he was discharged from the rehabilitation center in October 1986 the psychologists noted that plaintiff had a reduced frustration tolerance. His overall IQ score was 73 with a verbal score of 80 and a performance IQ of 65.

In November 1989 plaintiff went to the hospital emergency room with two grand mal seizures. A CT scan performed on November 21, 1989 showed bifrontal temporal cephalomalacia. He was diagnosed with temporal lobe seizures and prescribed Dilantin.

On March 29, 2000 Dr. Desmonde, a Social Security medical consultant, evaluated plaintiff and concluded he had low average to borderline memory impairment. Dr. Desmonde noted, "The claimant is capable of understanding simple instructions and carrying out tasks

with reasonable persistence and pace. He may have problems interacting appropriately with supervisors, co-workers and the general public (due to his absence from competitive employment for the last 14 years). He may have difficulty tolerating the stress and pressure of full time competitive employment at this time."

Dr. Culbertson, a psychologist, reviewed the record evidence for the state agency in April 2001 and concluded plaintiff was cognitively capable of one to three step jobs, could relate "ok" to co-workers and supervisors and handle basis stress. In August 2000, Dr. Mahlberg, a state agency psychologist, reviewed the record evidence and affirmed Dr. Culbertson's assessment.

At the May 1, 2001 hearing before the ALJ plaintiff appeared with counsel and testified that he was tired after working for 45 to 60 minutes at a time and had to rest 45 minutes before continuing to work. He indicated that he napped for 2 hours a day. He further testified that he experienced angry outbursts and had to take breaks to regain his composure. At the time of the hearing plaintiff was performing limited auto repair in his home garage. He stated that he did not obtain medical treatment because he had no insurance.

Plaintiff's neighbors Terry Hendricks and Anthony Coletta testified at the hearing that plaintiff was unable to stay on tasks, unable to handle stress and withdraws when he reaches his stress limit.

Mary Louise Steven, Ph.D., a medical expert, testified that plaintiff's impairment was not equal to a listed impairment and he would be able to perform simple, repetitive, low production, low stress work tasks. She testified that plaintiff was not able to process visual material well but that he had no impairment in verbal processing. She considered only the medical evidence and not the testimony of the neighbors because she believed it to be subjective. Dr. Stevens concluded that plaintiff had slightly impaired activities of daily living, moderate impairment in social functioning and moderate impairment in concentration, persistence and pace and agreed that the evidence showed plaintiff had problems with frustration. She recommended that plaintiff have a current, valid neuropsychological evaluation,

Edward Utities, 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 for work requiring simple repetitive work tasks, with low production standards and a low stress work environment. The expert testified that such an individual could perform 60,000 jobs as a cleaner available in the national economy.

On July 16, 2001 plaintiff underwent a psychological evaluation by Dr. Hoffman. He was diagnosed with an amnesic

disorder due to a traumatic brain injury. Dr, Hoffman concluded that plaintiff showed great slowness in pace and persistence which would affect only his ability to perform complex instructions. He also noted that plaintiff would most likely have problems with occasional angry outbursts when frustrated or overwhelmed.

After this evaluation plaintiff submitted Dr. Hoffman's report together with interrogatories to Dr. Stevens. She affirmed her opinion that plaintiff's impairment did not meet or equal a listed impairment and that he was able to do simple, resistive work in a low production and low stress environment. She did not request any further testing.

In his February 27, 2002 decision the ALJ concluded that plaintiff had an organic mental disorder which was severe but did not meet or equal the listed impairment. The ALJ found that as a result of impairment plaintiff has mild restriction of activities of daily living, mild to moderate difficulties in maintaining social functioning, moderate difficulties in maintaining concentration, persistence or pace and no episodes of decompensation of extended duration.

The ALJ evaluated plaintiff's subjective complaints in accordance with Social Security Ruling 96-7p. The ALJ concluded that plaintiff retained the residual functional capacity for work requiring simple repetitive work tasks, with low production standards and a low stress work environment. The ALJ states, "In

reaching this conclusion regarding the claimant's functional capacity, the undersigned has given the plaintiff the benefit of every doubt regarding his subjective complaints and reduced his residual functional capacity accordingly. However, the undersigned finds no substantial support for further reduction in this residual functional capacity due to significant inconsistencies in the record as a whole."

Based on the vocational expert's testimony the ALJ concluded that plaintiff could perform as a cleaner which jobs are available in significant numbers in the national economy. 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 October 1, 1988, his alleged onset of disability, and continued to meet them only through June 30, 1994.
2. The claimant has not engaged in substantial gainful activity at any time since October 1, 1988.
3. The medical record establishes that the claimant is severely impaired by an amnestic disorder secondary to a traumatic brain injury, but that he does not have an impairment or combination of impairments that meets or equals the relevant criteria of any impairment listed at 20 C.F.R. Part 404, Subpart P, Appendix 1.
4. The claimant's subjective complaints and functional limitations are inconsistent with the record as a whole.

5. The claimant retains the residual functional capacity for work requiring simple repetitive work tasks, with low production standards, and a low stress work environment.

6. The claimant has no past relevant work experience.

7. The claimant is a younger individual, with a high school education.

8. Considering the claimant's maximum sustained work capability, age, education, and past work experience, there are other jobs the claimant is capable of performing which exist in significant numbers in the national economy, including cleaner.

9. The claimant has not been under a disability as defined in the Social Security Act at any time since October 1, 1988.

#### 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 an organic mental disorder which was severe but did not meet or equal the listed impairment. The ALJ further concluded that plaintiff retained the residual functional capacity for work requiring simple repetitive work tasks, with low production standards and a low stress work environment. Based on the vocational expert's testimony that plaintiff could perform 60,000 jobs as a cleaner available in the national economy the ALJ concluded plaintiff was not disabled.

Plaintiff argues that the ALJ erred in failing to instruct Dr. Stevens, the medical expert, to consider the testimony of the neighbors. She testified that she listened to the testimony but did not consider it in reaching her opinion concerning plaintiff's impairment because she believed it to be subjective. The expert's discounting of the testimony of the neighbors is consistent with the Social Security Handbook, §550.3 which requires the expert to



look at all medical evidence in the case file together with the testimony of plaintiff and other witnesses.

Plaintiff claims that the ALJ erred in his assessment of plaintiff's 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 under Social Security Ruling 96-7p and 20 C.F.R. 404.1529(c). The ALJ concluded that plaintiff's subjective complaints were not fully credible because of significant inconsistencies in the record as a whole. The evidence does not support limitation beyond the extent of the residual functional capacity found by the ALJ. 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 fully credible.

Plaintiff also argues that the ALJ failed to make any credibility determination regarding the neighbors' testimony. The ALJ did address the testimony of the neighbors and rejected it only in so far as it was inconsistent with plaintiff's residual functional capacity to perform simple repetitive work tasks with low production standards and a low stress work environment.

Plaintiff argues that the ALJ did not properly credit the opinion of Dr. Hoffman that plaintiff would likely have problems with occasional angry outbursts when frustrated. The ALJ did not

disregard this opinion but concluded that occasional angry outbursts would not further reduce plaintiff's residual functional capacity.

Plaintiff contends that the hypothetical posed by the ALJ to the vocational expert did not list all plaintiff's characteristics. In the hypothetical the ALJ described plaintiff as an individual capable of simple, repetitive work with low production standards and a low stress environment. This hypothetical accurately addresses plaintiff's limitations which are supported by substantial evidence in the record.

Plaintiff objects to the fact that a neuropsychological exam was not performed pursuant to Dr. Stevens' suggestion. The psychological exam that was performed on plaintiff by Dr. Hoffman addressed Dr. Steven's concern for more current testing and she was satisfied with Dr. Hoffman's report. No further examination was required.

There is substantial evidence to support the Commissioner's finding that plaintiff was not disabled 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.

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

Entered this 24<sup>th</sup> day of June, 2005.

BY THE COURT:

/s/

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JOHN C. SHABAZ  
District Judge