

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

---

JANICE LISTENBEE,

Plaintiff,

v.

MEMORANDUM AND ORDER

JO ANNE B. BARNHART,  
COMMISSIONER OF SOCIAL SECURITY,

05-C-655-S

Defendant.

---

Plaintiff Janice Listenbee brings this action pursuant to 42 U.S.C. § 405(g) for review of the defendant Commissioner's final decision denying her Disability Insurance Benefits (DIB). She asks the Court to reverse the decision.

Plaintiff applied for DIB on April 25, 2001 alleging disability since November 8, 2000 due to a knee injury. Her application was denied initially and upon reconsideration. A hearing was held on December 16, 2002 before Administrative Law Judge (ALJ) John H. Pleuss. In a written decision dated January 13, 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 September 23, 2005.

FACTS

Plaintiff was born on October 26, 1959 and her insured status expired on December 31, 2005. She graduated from high school and

worked in the past as an assembler and machine operator for General Motors.

Plaintiff injured her right knee at work in late 1998. She underwent arthroscopic surgery to repair a partially torn lateral meniscus. After the surgery, Dr. Todd Swenson concluded that she had reached a healing plateau and was left with a partial disability of 5% of the knee. He recommended a work hardening program for plaintiff.

In March 2000 an MRI showed a small amount of inflammation of plaintiff's right knee but not evidence of cartilage or ligament tears. Plaintiff brought the MRI study to Dr. P.N. Horswill for a second opinion. He noted that Plaintiff had close to normal knee motion. He recommended a non-weight bearing exercise program and taking chondroitin and glucosamine.

In September 2001, Dr. Robert Braco examined plaintiff at the request of the state agency. Dr. Braco's examination revealed full passive motion in the right knee but limited active motion. He observed no redness or enlargement of the right knee, no instability, no active crepitus and no edema. Her gait was satisfactory and her balance and coordination were normal. X-rays of plaintiff's right knee were normal. Dr. Braco diagnosed plaintiff with patellofemoral syndrome with some softening of the knee cartilage which should not necessarily limit her activity.

Dr. Braco noted that the fact that plaintiff said no to simple range of motion exercises indicated voluntary activity limitation.

In October 2001 Dr. Joan Crennan reviewed plaintiff's record and noted that plaintiff showed good stability in the right knee and was capable of light work.

At the December 16, 2002 hearing before the ALJ plaintiff appeared with counsel and testified that she experienced constant knee pain and swelling on a daily basis. She further testified that she used pain medication three to four times a day along with ice and heat to relieve pain. She also testified that she elevated her right leg for over half of every day because of knee swelling. She arrived at the hearing using a cane. Her activities included driving, occasional housework, cooking and grocery shopping.

Paul Maulucci, 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 advising that plaintiff retained the residual functional capacity to perform sedentary work not requiring lifting of more than ten pounds with occasional stair climbing, stooping, bending and crouching with no climbing ladders or scaffolds, kneeling or crawling.

The expert testified that such an individual could perform work as an inspector, assembler, office clerk or factory laborer and that approximately 11,400 such jobs existed in Wisconsin.

In his decision the ALJ concluded that plaintiff had a severe knee impairment but that it did not meet or equal a listed impairment. He also found she retained the residual functional capacity to perform sedentary work not requiring lifting of more than ten pounds with occasional stair climbing, stooping, bending and crouching and no climbing of ladders or scaffolds, crawling or kneeling. The ALJ further found that plaintiff's subjective complaints lacked a reasonable medical basis and were not credible. The ALJ concluded that plaintiff could not perform her past work but that she was not disabled because she could perform a significant number of jobs available in the regional economy.

The ALJ made the following findings:

1. The claimant met the disability insured status requirements of the Act on November 28, 2000, the date the claimant stated she became unable to work, and continued to meet them through December 31, 2005.
2. The claimant has not engaged in substantial gainful activity since her alleged onset of disability of November 28, 2000.
3. The claimant has a "severe" knee impairment, status-post meniscectomy surgery, but she does not have an impairment or combination of impairments listed in or medically equal to one listed in Appendix 1, Subpart P, Regulations No. 4.
4. The claimant's subjective allegations of pain and disability lack a reasonable medical basis and are not credible.
5. The claimant has the residual functional capacity to perform sedentary work not requiring lifting of more than ten pounds.

She could not perform more than occasional stair climbing, stooping, bending or crouching. She should not perform any climbing of ladders or scaffolds, crawling or kneeling (20 CFR § 404.1545).

6. The claimant is unable to perform her past relevant work.

7. The claimant is 43 years old, which is defined as a younger person (20 CFR § 404.1563).

8. The claimant has 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 semi-skilled work functions of other work (20 CFR § 404.1568).

10. Based on an exertional capacity for sedentary work, and the claimant's age, education and work experience, section 404.1569 and Rule 201.27, Table No. 1, Appendix 2, Subpart P, Regulations No. 4 would direct a conclusion of "not disabled".

11. Although the claimant's additional limitations do not allow her to perform the full range of sedentary work, using the above cited rule as a framework for decisionmaking and the testimony of the vocational expert, there are a significant number of jobs in the Wisconsin economy which she could perform. Examples of such jobs are: 1,000 inspection jobs, 6,000 assembly jobs, 2,400 office clerking positions and 2,000 factory laborer jobs.

12. The claimant was not under a "disability," as defined in the Social Security act at any time through the date of this decision (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 a severe knee impairment but that it did not meet or equal a listed impairment. He also found she retained the residual functional capacity to perform sedentary work not requiring lifting of more than ten pounds with occasional

stair climbing, stooping, bending and crouching and no climbing of ladders or scaffolds, crawling or kneeling. The ALJ further found that plaintiff's subjective complaints lacked a reasonable medical basis and were not credible. The ALJ concluded that plaintiff could not perform her past work but that she was not disabled because she could perform a significant number of jobs available in the regional economy.

Plaintiff argues that the ALJ erred in finding that her subjective complaints were not credible. The ALJ's credibility decision must be upheld unless it is "patently wrong." Powers v. Apfel, 207 F.3d 421, 435 (7th 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. He noted that the medical evidence was scanty and did not support her allegations of limitation of movement of her right knee. He also noted that her daily activities did not support the allegations of her limited movement.

The ALJ's credibility finding is consistent with the law. Donohue v. Barnhardt, 279 F.3d 441 (7th Cir. 2002). An examination of the record supports the ALJ's conclusion that plaintiff's testimony was not wholly credible.

There is substantial evidence to support the Commissioner's finding that plaintiff was not disabled because she 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 12<sup>th</sup> day of May, 2006.

BY THE COURT:

s/

---

JOHN C. SHABAZ  
District Judge