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

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VINCENT JOHNSON,

Plaintiff,

v.

LINDA McMAHON[1],
Acting Commissioner of Social Security,

Defendant.

REPORT AND
RECOMMENDATION

06-C-0391-C

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REPORT

This is an action for judicial review of an adverse decision of the Commissioner of Social Security brought pursuant to 42 U.S.C. § 405(g). Plaintiff Vincent Johnson contends that he is unable to work because of residual effects of burns that he sustained on more than 50 percent of his body approximately 20 years ago. The commissioner determined that plaintiff is not disabled because his impairments do not prevent him from performing light work under certain conditions and because numerous jobs meeting those conditions exist in the national economy. Plaintiff challenges that determination on the ground that the administrative law judge who denied his claim at the administrative level failed to account for plaintiff's headaches. As explained below, that claim has no merit. Accordingly, I am recommending that this court affirm the decision of the commissioner.

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

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[1]After this action was filed, Linda McMahon replaced Jo Anne Barnhart as Commissioner of Social Security. I have changed the caption to reflect the change in the defendant.

FACTS

On January 16, 2003, plaintiff filed an application for Disability Insurance Benefits under sections 216(I) and 223 of the Social Security Act, codified at 42 U.S.C. §§ 416(I) and 423(d), alleging that he was disabled since December 2002 as a result of residual effects of third degree burns to his upper body. Plaintiff was 49 years old, had a high school education and had past work experience as a production laborer. Medical records submitted in connection with his claim show that plaintiff suffered extensive burns on more than 50% of his body during an apartment fire in 1987. As a result of the extensive skin grafting he received for his burns, plaintiff is able to perspire only through his face. As a result, he becomes exceedingly hot in warm temperatures or when he exerts himself. He also has problems with temperatures below 50°.

In April 2002, plaintiff saw Dr. Michael McGrail, an occupational health specialist. Plaintiff was employed on an assembly line building patio doors for Anderson Windows, a job he had held for 15 years. Plaintiff said he liked his job but had difficulty performing it during the summer months because of his problems regulating body temperature. He said that he usually took leave without pay during the summer months. Plaintiff said he agreed with the recommendation of his past doctor, Dr. Solem, that plaintiff should not work in temperatures above 82°. Dr. McGrail concurred with that recommendation. AR 199-200.

At a follow up visit in June 2002, Dr. McGrail modified his recommendation, indicating that plaintiff should only work in conditions when the wet bulb globe temperature

was 69 degrees or less or, in the absence of a wet bulb globe temperature reading, when the dry bulb temperature was 80 degrees or less. AR 197. On June 27, 2002, plaintiff told Dr. McGrail that his employer was not following these recommendations. Plaintiff also complained of continuous mid-sternal chest pain, shortness of breath and lightheadedness. Plaintiff denied having a headache. AR 195. Dr. McGrail recommended that plaintiff stay off work for about three months. Plaintiff did not return to work but instead pursued long term disability, first from his employer and then from social security.

After the local disability agency denied his application, plaintiff requested a hearing before an administrative law judge (ALJ), which was held June 15, 2005. The ALJ heard testimony from plaintiff, a medical expert and a vocational expert (VE). Plaintiff testified that he had to stop working his assembly line job because of the warm temperature in the factory, claiming that he would get so hot that he felt like his head was going to explode. AR 225. Plaintiff testified that he gets headaches, but only when he gets too hot. AR 236.

Dr. Andrew Steiner, the medical expert, was asked to give his opinion from his review of the medical records concerning what work-related limitations he thought were appropriate for plaintiff. Dr. Steiner opined that plaintiff should be limited to: lifting at the light exertional level (20 pounds occasionally and 10 pounds frequently); only occasionally using power tools or performing tasks requiring finger manipulation; working in temperatures between 50° and 82°; and be exposed only occasionally to direct sunlight or in the alternative, to wear protective clothing. AR 237-38.

In response to a hypothetical question by the ALJ incorporating these limitations and plaintiff's other relevant information, the VE testified that such a person would be unable to perform plaintiff's past work, which was at the medium level of exertion. However, the VE identified numerous light jobs that such a person could perform, including of counter clerk, locker room attendant, ticket seller, survey worker, or cashier, as well as sedentary jobs such as telephone solicitor, surveillance system monitor and gate guard. The VE indicated that thousands of these jobs existed in the state and national economies. AR 241-42.

On October 5, 2005, the ALJ issued a decision finding plaintiff not disabled. Employing the commissioner's five-step sequential process for evaluating disability claims, *see* 20 C.F.R. § 404.1520(a), the ALJ found that plaintiff had not engaged in substantial gainful activity after his alleged onset date (step one); plaintiff had severe impairments, namely, status-post burns with skin grafting affection 50 to 51% of his upper body with residuals, non-cardiac chest pain, and chronic varicose veins of the left ankle (step two); these impairments were not severe enough singly or in combination to meet or medically equal any presumptively-disabling impairment listed in 20 C.F.R., Subpart P, Appendix 1 (step three); plaintiff was unable to perform his past relevant work as a production laborer (step four); and plaintiff was capable of making a vocational adjustment to numerous other jobs existing in significant numbers in the national economy (step five). As a predicate to his findings at steps four and five, the ALJ determined that plaintiff retained the residual functional capacity to perform a light level of work requiring only occasional bilateral fine

manipulation and power gripping or grasping; no work in temperatures less than 50° or more than 82°; and minimal exposure to direct sunlight or the ability to wear protective clothing to avoid direct sunlight.

## ANALYSIS

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), this court cannot reconsider facts, reweigh the evidence, decide questions of credibility, or otherwise substitute its own judgment for that of the ALJ 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 differ as to whether a claimant is disabled, the responsibility for that 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 ALJ denies benefits, she must build a logical and accurate bridge from the evidence to his conclusion. *Zurawski v. Halter*, 245 F.3d 881, 887 (7th Cir. 2001).

Plaintiff asks this court to reverse or remand the ALJ's decision. Although plaintiff recites various aspects of the medical record and the ALJ's decision in his brief, his challenge to the ALJ's decision consists of a single argument: the ALJ erred in rejecting plaintiff's testimony that he cannot work because of headaches.

Plaintiff's contention is a nonstarter. In his decision, the ALJ acknowledged plaintiff's testimony concerning his headaches, stating:

> The claimant has also reported he is impaired due to headaches, occurring when the claimant is exposed to temperature extremes, and requiring little significant treatment. As this impairment has not resulted in significant functional limitations, the undersigned will not be considering headaches to be a severe impairment in this decision.

AR 18.

Plaintiff argues that because it is undisputed that he suffers from heat intolerance, the ALJ should have accepted his uncontradicted testimony as to how that intolerance manifests itself. However, plaintiff acknowledged that he gets headaches only when he gets too hot. The ALJ accounted for plaintiff's heat intolerance–and therefore his headaches–when he found that plaintiff could not perform jobs which exposed him to temperature extremes. Plaintiff suggests that the evidence shows that he gets headaches even in moderate temperatures, asserting that "the record demonstrates that at his previous employment the claimant worked in temperatures that would be considered moderate." Even if this is true, the record also shows that at that job, plaintiff was performing strenuous, high-speed production work that required continual reaching and lifting doors weighing 50 pounds or

more. AR 191. None of the jobs identified by the vocational expert come close to demanding the level of exertion that plaintiff performed at his past assembly line job.

Plaintiff acknowledges that this court must sustain the ALJ's decision if it is adequately explained and supported by substantial evidence in the record. The ALJ's decision in this case meets these thresholds. Reasonable minds easily could conclude from the record, including plaintiff's own testimony, that he would not experience headaches on the job if he was not required to perform strenuous activities and was limited to moderate temperatures. Because the ALJ reasonably accounted for plaintiff's headaches by limiting his exposure to temperature extremes and because plaintiff raises no other challenges to the ALJ's decision, this court ought to sustain it.

## RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1)(B), I recommend that the decision of the Commissioner denying plaintiff Vincent Johnson's application for Disability Insurance Benefits be affirmed.

Entered this 2nd day of February, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN
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February 2, 2007

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Re: Johnson v. McMahon
Case No. 06-C-391-C

Dear Counsel:

The attached Report and Recommendation has been filed with the court by the United States Magistrate Judge.

The court will delay consideration of the Report in order to give the parties an opportunity to comment on the magistrate judge's recommendations.

In accordance with the provisions set forth in the newly-updated memorandum of the Clerk of Court for this district which is also enclosed, objections to any portion of the report may be raised by either party on or before February 22, 2007, by filing a memorandum with the court with a copy to opposing counsel.

If no memorandum is received by February 22, 2007, the court will proceed to consider the magistrate judge's Report and Recommendation.

Sincerely,

/s/

Connie A. Korth
Secretary to Magistrate Judge Crocker

Enclosures
cc: Honorable Barbara B. Crabb, District Judge