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

GERALD OVERMAN,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.[1]

OPINION AND ORDER

06-C-484-C

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 Gerald Overman seeks reversal of the commissioner's decision that he is not disabled and therefore is ineligible for either Disability Insurance Benefits or Supplemental Security Income under Titles II and XVI of the Social Security Act, codified at 42 U.S.C. §§ 416(i), 423(d) and 1382c(a). Plaintiff alleges that the decision of the administrative law judge who denied his claim at the hearing level is not supported by substantial evidence because the judge ignored medical evidence in making his residual functional capacity finding, improperly weighed the opinion of plaintiff's treating physician and relied on vocational expert testimony that was unfounded in making his step five determination. For the reasons set forth below, I am denying plaintiff's motion for summary judgment and affirming the administrative law judge's decision.

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

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[1] Michael Astrue was sworn in as Commissioner of Social Security on February 12, 2007. The case caption has been changed to reflect the new defendant.

FACTS

A. Procedural History

Plaintiff filed applications for Social Security Disability Insurance Benefits and Supplemental Security Income on December 9, 2003, alleging that he suffered from thyroid and vision problems and a variety of other conditions. After the local disability agency denied his applications initially and upon reconsideration, plaintiff requested a hearing, which was held on November 14, 2005 before Administrative Law Judge Roger Thomas in Duluth, Minnesota. Plaintiff was represented by counsel. The administrative law judge heard testimony from plaintiff, neutral medical expert Dr. Julianne Koski and neutral vocational expert Kenneth Ogren. AR 16. On February 14, 2006, the administrative law judge issued his decision, finding plaintiff not disabled. AR 13-26. This decision became the final decision of the commissioner on July 12, 2006, when the Appeals Council denied plaintiff's request for review. AR 7-9.

B. Background

Plaintiff was 56 years old on the date of the hearing, making him a "person of advanced age" for the purposes of his applications for disability benefits. AR 17 and 73; 20 C.F.R. §§ 404.1563(e) and 416.963(e). Plaintiff has a twelfth grade education and received vocational training in office machine repair. His past work experience includes employment in golf course irrigation and resort maintenance.

C. Medical Evidence

Plaintiff suffers from severe myopia and glaucoma, for which he has been treated for many years. His best corrected visual acuity at the time of the administrative hearing was 20/100. In addition, plaintiff has been diagnosed and treated for moderate to severe obesity; non-insulin dependent diabetes, Type II; hyperlipidemia; and hypertension. AR 229-30, 238-274, 278-79, 281-300, 362-403. His treating physician for these conditions is Dr. John McKevett.

On November 17, 2003, plaintiff reported losing almost 50 pounds in the past year but indicated that he had not reduced his food intake to a degree that would account for this weight loss. He also reported episodes of hypoglycemia, low blood sugar levels, occasional diarrhea and constipation, feeling overheated and frequent sweating. Dr. McKevett ordered several laboratory tests and a consult with an endocrinologist. A month later, plaintiff was diagnosed with hyperthyroidism secondary to Graves' disease. Plaintiff underwent radioactive iodine therapy on December 22, 2003. AR 377-80, 383, 386-88.

On January 15, 2004, Dr. McKevett noted that plaintiff's fatigue, debilitation and weight loss secondary to Graves' disease were improving slowly. Plaintiff reported that he had been off work since November 20, 2003 but now was able to do light housework. In a follow-up visit with Dr. McKevett on March 19, 2004, plaintiff reported that he was less fatigued and that he was walking an average of five miles a day, including on hills. Dr. McKevett noted that plaintiff's Graves' disease was improving and that his diabetes and hypertension were well controlled. He recommended an x-ray for plaintiff's continued

reports of nagging left shoulder pain, but plaintiff declined because of cost. Dr. McKevett also noted that it was reasonable for plaintiff to seek light duty employment that "could be advanced as tolerated" and recommended that plaintiff continue exercising and walking. AR 371-72.

On April 9, 2004, Dr. McKevett noted that he had spoken with plaintiff's wife, who questioned why he included only plaintiff's hyperthyroidism on the social security disability form that he completed on February 2, 2004. Although Dr. McKevett agreed to revise the form to include plaintiff's other conditions, he noted the following:

> I explained that I felt that his major impairment, i.e. the reason he was not currently working, was severe fatigue and debilitation secondary to his Graves' disease, which has been improving.

AR 369. In April 2004, laboratory tests revealed that plaintiff's thyroid stimulating hormone level was high (17.48), so he was prescribed Synthroid 150 mcg daily. On May 20, 2004, plaintiff reported to Dr. McKevett that he was mowing the lawn, walking a mile daily and performing minor household chores. Plaintiff also reported difficulty lifting objects more than 20 pounds, moderate generalized weakness, tiring easily, mild shortness of breath with moderate exertion and an ability to sit, stand and walk without problem. Upon examination, Dr. McKevett found no focal weakness and only some mild generalized weakness. AR 364-67.

3. Residual functional capacity assessments

On January 7, 2004, Dr. Craig Florine completed a residual functional capacity

questionnaire in which he noted that his ophthalmology practice had seen plaintiff every four months since 1988. He noted plaintiff's diagnoses as open angle glaucoma and myopic degeneration and that these condition would not improve. Dr. Florine further noted that plaintiff had poor vision in general, almost no night vision and should avoid all hazards. AR 343-46, 412-15.

On March 4, 2004, Dr. M. Baumblatt, a consulting physician for the social security agency, completed a Residual Physical Functional Capacity Assessment of plaintiff. Dr. Baumblatt concluded that because of plaintiff's limited visual acuity (far and near) and limited depth perception, plaintiff had the following work restrictions: rarely climbing ladders, ropes or scaffolds; occasional fine visual manipulation (or fingering); and avoiding even moderate exposure to hazards (machinery, heights). On the form, Dr. Baumblatt checked "limited" for "fingering (fine manipulation)" and wrote the following in explanation: "Fine visual manipulation limited to occasional due to ↓visual acuity." Dr. Baumblatt noted that the file did not contain any statements from plaintiff's treating or examining physicians regarding his physical capacities. AR 301-08.

On April 6, 2004, Dr. L.E. Erickson completed a residual functional capacity questionnaire in which he wrote that he had performed annual eye examinations on plaintiff for 30 years and plaintiff had pathologic myopia, glaucoma and cataracts that would continue to deteriorate. He also noted that plaintiff should avoid all hazards and that his visual acuity of 20/80 would make any visual task difficult. AR 309-312, 408-411.

At the request of plaintiff's wife, Dr. McKevett wrote a letter dated April 12, 2004,

detailing plaintiff's work restrictions and stating that over the previous several months, plaintiff has demonstrated "slow but sure" improvement in his energy level, strength and endurance following treatment for Graves' disease. Dr. McKevett noted the following work restrictions as of March 19, 2004: stand and walk up to four hours with a break every two hours, sit for eight hours, 15-minute breaks every two to three hours, lift 30 pounds occasionally and 10 pounds frequently, bend or twist 25 percent of an eight-hour workday and avoid concentrated exposure to extreme heat, cold and high humidity. AR 368.

On May 20, 2004, Dr. McKevett completed a revised residual functional capacity questionnaire in which he wrote that plaintiff had a good long-term prognosis, his thyroid condition would improve, his visual impairment might worsen and his hypertension and diabetes would remain the same. Dr. McKevett concluded that plaintiff had the following functional limitations: sit for six hours and stand or walk for four hours in an eight-hour workday, unscheduled breaks of 15 minutes every three to four hours, frequent lifting or carrying of 10 pounds, occasional lifting or carrying of 20 pounds, bending and twisting 25 percent of an eight-hour work day, avoiding concentrated exposure to extreme cold and hazards, avoiding even moderate exposure to extreme heat and high humidity, absences of twice a month and limited vision. AR 404-07.

Another consulting physician for the social security agency completed a Residual Physical Functional Capacity Assessment of plaintiff on August 4, 2004, concluding that plaintiff had the following work restrictions: occasional lifting or carrying 50 pounds; frequent lifting or carrying 25 pounds; sitting, standing or walking six hours in an eight-hour

workday; occasional overhead reaching on the left side; limited near acuity; and avoiding even moderate exposure to hazards. AR 313-320. In noting that plaintiff had limited near acuity, he wrote that "vision is limited to gross discrimination only." AR 316. The physician had reviewed Dr. McKevett's April 12, 2004 assessment and found no objective findings to support the sedentary restrictions, noting that plaintiff was improving steadily and walking one mile a day. He found that Dr. McKevett had based his findings on plaintiff's subjective reports of tiring easily. AR 319.

D. Hearing Testimony

1. Plaintiff

At his November 14, 2005 hearing, plaintiff testified that he earns $500 a year as an officer with his local fire department where he does paperwork. He is five feet 10 inches tall and weighs 280 pounds, but his weight decreased to 200 pounds in 2003 because of Graves' disease. Plaintiff testified that he is able to drive only in daylight because of vision problems. He can work on the computer but types with only one finger. Plaintiff testified that he can walk a half-mile on flat terrain in warm weather. In cold weather, he loses the feeling in his extremities because of his diabetes. Plaintiff stated that he experiences tingling and needles in his fingers but he is able to button and zip, differentiate between hot and cold water with the backs of his hands and determine consistencies of substances with his fingers. AR 458-61. He is able to read and watch television from five feet away with glasses; the closer he is to things, the better he sees them. Plaintiff testified that he is able to feed and bathe himself

and help with household chores. He noticed no significant change in these abilities after the onset of his disability. AR 463-64.

Plaintiff testified that he experiences a lot of fatigue, especially during the past six months. After sitting for only five minutes, he falls asleep. Plaintiff stated that his doctor told him the fatigue would improve after he became used to his medications. AR 466-67. Plaintiff testified that he currently takes only oral medication for his diabetes and his blood sugar level remains at about 120. He takes a generic form of Synthroid as a thyroid supplement, but the dosage still needs adjustment. AR 462-63. Plaintiff testified that he tries to walk on his doctor's recommendation. AR 468.

2. Medical expert

Dr. Julianne Koski testified that she had reviewed the available medical evidence and noted that plaintiff had the following impairments: Type II diabetes mellitus, Grave's disease, status post radioactive iodine treatment resulting in iatrogenic hypothyroidism, hypertension, severe myopia with glaucoma and obesity. She also noted that there was mention of cataracts in plaintiff's file but they did not appear to be visually significant. Dr. Koski testified that none of plaintiff's impairments met or equaled the Social Security medical listings. AR 471-72. She stated that plaintiff had the following limitations: no fine discrimination, no significant reading, avoid hazards, limit exposure to extreme temperatures, no ropes or scaffolding, occasional ladder climbing, lifting limited to 20 pounds frequently and 50 pounds total, and no repetitive lifting or lifting of 50 pounds

above the shoulder. Dr. Koski testified that she could not determine why Dr. McKevett had determined that plaintiff had sitting and standing limitations. She stated that plaintiff would not have unusual absences because his diabetes is under control and his thyroid had improved. Dr. Koski also testified that a morning, lunch and afternoon break were reasonable for plaintiff. AR 473-75.

3. Vocational expert

The vocational expert, Ogren, testified that the golf maintenance work as performed by plaintiff required light physical demands. The administrative law judge then asked Ogren to consider a person of plaintiff's age, education and work history who had the impairments and limitations identified by Dr. Koski. When asked whether this person could perform any of plaintiff's past work, Ogren replied "no," because both of plaintiff's past jobs involved extreme temperatures of less than 50 degrees and more than 75 degrees. AR 477-78. The administrative law judge asked Ogren to further limit the hypothetical with the following: sitting a total of six hours, walking and standing a total of four hours, walking only four to six blocks at a time, 15-minute breaks every three to four hours, occasionally lifting 20 pounds, frequently lifting 10 pounds and bending and twisting 25 percent. Ogren replied that this person would be limited to sedentary work and could not perform plaintiff's past work. AR 479.

Ogren testified that the individual in the first hypothetical could perform the jobs of hand packager and rack room worker. He stated that 1,200 hand packager jobs and 800

rack room worker jobs existed in the state of Minnesota. In response to the administrative law judge's inquiry, Ogren replied that his testimony was consistent with the Dictionary of Occupational Titles. AR 479-80.

Plaintiff's attorney then questioned Ogren as follows:

Plaintiff's Attorney: And then if you assume a person couldn't do, couldn't do close up work because of finger problems, hand problems, that sort of thing, would that change your opinion on this?

Vocational Expert: Yes.

Plaintiff's Attorney: How would it change it?

Vocational Expert: It would eliminate the two jobs.

Plaintiff's Attorney: Pardon me?

Vocational Expert: It would eliminate both occupations.

Plaintiff's Attorney: And why is that?

Vocational Expert: Basically you have to have at least some vision to do the packaging I'm talking about and some vision to hang articles on racks.

Plaintiff's Attorney: And as I understand the doctor, she was saying he could do things with gross discrimination, but he couldn't do it with the fine discrimination?

Vocational Expert: Yes. That's the way I understood it too.

Plaintiff's Attorney: And as I understand it, that means, and correct me if I'm wrong, he can't work up close because he can't really see his hands, is that it?

Vocational Expert: I guess the way I interpreted that is that he couldn't do like small assemblies and things like that, smaller type work.

Plaintiff's Attorney: Uh-huh. But we're talking about packaging of objects into a box then versus actual fine manipulation?

Vocational Expert: Yes.

Plaintiff's Attorney: Then I guess it's a matter of degree, isn't it.

Vocational Expert: Yes.

Plaintiff's Attorney: So those may well be eliminated as well?

Vocational Expert: The smaller parts, yes.

Plaintiff's Attorney: By the fact that he's sitting there trying to do things close up, right?

Vocational Expert: Exactly.

Plaintiff's Attorney: All right. And I suppose I would have to, that would also get in to the issue of what's on the labeling and how you would package it and how it would have to be packaged, that sort of thing.

Vocational Expert: If he had to read to do it, I would say those jobs would be eliminated, yes.

Plaintiff's Attorney: So then there would be no jobs in the national economy, if you assume he couldn't do it because it was close work?

Vocational Expert: Yeah, I eliminated those possibilities all ready [sic].

AR 480-82.

E. The Administrative Law Judge's Decision

In reaching his conclusion that plaintiff was not disabled, the administrative law judge performed the required five-step sequential analysis. See 20 C.F.R. §§ 404.1520, 416.920. The administrative law judge found at step one that plaintiff had not engaged in substantial

gainful activity since November 20, 2003, his alleged onset date. At step two, he found that plaintiff was severely impaired by Graves' disease, Type II diabetes mellitus, hypertension, glaucoma, severe myopia and obesity. At step three, the administrative law judge found that plaintiff did not have an impairment or combination of impairments that met or medically equaled any impairment listed in 20 C.F.R. 404, Subpart P, Appendix 1. AR 17-18.

At step four, the administrative law judge assessed plaintiff's residual functional capacity, taking into account plaintiff's subjective complaints regarding his symptoms and limitations, as well as the various medical opinions in the record. He determined that plaintiff had the residual functional capacity to lift 50 pounds occasionally but never over the shoulder; lift 20 pounds frequently; sit, stand and walk without limitation; climb ladders occasionally and perform gross discrimination but not fine discrimination. In addition, plaintiff could not perform work requiring significant reading, unprotected hazards or extreme temperatures, climbing ropes or scaffolds or repetitive over-the-shoulder tasks. In reaching his conclusion, the administrative law judge gave some weight to Dr. Florine's opinion and great weight to Dr. Erickson's opinion regarding plaintiff's visual limitations but found that the limitations assessed by Dr. McKevett were based primarily on plaintiff's subjective complaints and were not supported by objective medical evidence or the record as a whole. The administrative law judge weighed the opinions of the state agency consulting physicians as statements from non-examining, expert sources, finding their assessments of plaintiff's abilities to be generally consistent with the record. AR 19-22.

The administrative law judge gave plaintiff's testimony about the level and severity

of his limitations only partial weight, concluding that his subjective complaints were not consistent with the record or his daily activities. AR 22. In reaching that conclusion, he wrote that plaintiff had a sporadic work history that was indicative of an individual not highly motivated to work. Id. (citing AR 90). The administrative law judge listed the fairly active daily activities that plaintiff had reported on a Physical Activities Questionnaire dated February 17, 2004. He then concluded that because plaintiff had testified that he performed essentially the same daily activities prior to his alleged onset date, his ability to function had not significantly changed. The administrative law judge also noted that although plaintiff testified that if he falls asleep if he sits for more than five minutes, he reported on the February 2004 questionnaire that he does not take naps. AR 22-23 (citing AR 99-103).

Relying on the testimony of the vocational expert, the administrative law judge found that plaintiff could not perform his past relevant work because it exceeded the exertional limitations of his residual functional capacity assessment. AR 23. However, he found that the vocational expert's testimony was sufficient to satisfy the commissioner's burden at step five to show that other jobs existed in significant numbers in the national economy that plaintiff could perform, namely hand packager and rack room worker. AR 24.

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 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).

B. Fine Visual Manipulation Limitation

Because of plaintiff's visual impairments, the administrative law judge determined in part that plaintiff had the residual functional capacity to perform work that required only gross discrimination and not fine discrimination or significant reading. AR 22-23. Plaintiff argues that the administrative law judge's finding, hypothetical and resulting step five determination are erroneous because he did not include any additional limitation on fingering or fine manipulation. As evidence that his ability to perform fine manipulation is

limited, plaintiff points to the residual functional capacity assessment completed by Dr. Baumblatt, who checked the "limited" box next to "Fingering (fine manipulation)" on the agency's residual functional capacity assessment form. Plaintiff contends that the failure to include such a limitation was reversible error because the vocational expert admitted on cross examination that an inability to perform fine manipulation would prevent plaintiff from performing both jobs that he had identified in response to the administrative law judge's hypothetical question. I find neither argument persuasive.

An administrative law judge must consider all of the evidence in the record, including opinions of the state agency medical consultants. 20 C.F.R. §§ 404.1527(b) and (f)(2), 416.927(b) and (f)(2). However, the administrative law judge is not required to provide a written evaluation of every piece of evidence. Rice v. Barnhart, 384 F.3d 363, 371 (7th Cir. 2004). An administrative law judge need only "minimally articulate" his reasoning so as to "make a bridge" between the evidence and his conclusions. Id.

In making his residual functional capacity finding, the administrative law judge cited the opinions of Dr. Florine and Dr. Erickson that plaintiff had visual limitations and the testimony of Dr. Koski that plaintiff could perform tasks requiring gross discrimination but not fine discrimination or significant reading. AR 19-20. Although the administrative law judge did not analyze the opinion of either state agency physician, he stated that he weighed the opinions of Dr. Baumblatt and the other state agency consulting physician as statements from non-examining, expert sources, finding their limitation assessments for plaintiff to be generally consistent with the record. AR 22.

Plaintiff finds fault with the administrative law judge's reasoning, asserting that fine discrimination is not the same thing as fine manipulation. Dr. Baumblatt explained his conclusion that plaintiff was limited in his ability to perform fine manipulation as follows: "Fine visual manipulation limited to occasional due to ↓visual acuity." AR 304. This additional remark by Dr. Baumblatt suggests that, in finding that plaintiff was limited in his ability to perform fine manipulation, it was not because of any problems with his fingers or hands but because of his vision problems.

No other physician, including the second state agency physician or Dr. McKevett, limited plaintiff's fingering or assessed any other manipulative limitations except for reaching. See AR 316 (second state agency consulting physician limited overhead reaching). Further, plaintiff testified that although he experiences tingling and needles in his fingers, he is able to button and zip, differentiate between hot and cold water with the backs of his hands and determine consistencies of substances with his fingers. AR 458-61. This evidence provides ample support for the administrative law judge's conclusion that plaintiff had no limitations related to his hands or fingers.

Plaintiff argues also that if the administrative law judge had included the limitation of fine visual manipulation in his residual functional capacity determination, he would have found plaintiff disabled. In response to the hypothetical posed by the administrative law judge, the vocational expert testified that an individual who, because of visual limitations, could not do a significant amount of reading or perform fine discrimination would be able to perform work as a hand packager and rack room worker. As plaintiff notes, however, the

vocational expert testified on cross examination that the two jobs would be eliminated if plaintiff "couldn't do close up work because of finger problems, hand problems."

Admittedly, the vocational expert's testimony is not a model of clarity. However, I am satisfied that the administrative law judge was correct when he found that the vocational expert had accounted for plaintiff's limited ability to see small objects or read when he found that plaintiff could perform the jobs of hand packager and rack room worker. Notably, although the question by plaintiff's attorney asked the expert to assume a finger or hand limitation, the expert's later testimony suggests that, to the extent he found limitations on plaintiff's ability to do "close up work," his opinion was based upon visual versus manipulative limitations. When asked to explain his testimony, the vocational expert stated that "you have to have at least some vision to do the packaging I'm talking about and some vision to hang articles on racks." AR 480-81. After further questioning, the vocational expert testified that he understood "no fine discrimination" to mean that plaintiff "couldn't do like small assemblies and things like that, smaller type work." AR 481. He also testified that plaintiff would be unable to package small parts or read labels instructing him on how to package items because it necessitated close up work. However, the vocational expert testified that he had "eliminated those possibilities already" when citing the types and numbers of jobs that plaintiff could perform. AR 481.

In sum, the administrative law judge considered the entire record and adequately articulated his reasoning. The administrative law judge reasonably concluded that no fine discrimination and no significant reading aptly described the limitations resulting from

plaintiff's visual impairments, posed a proper hypothetical and reasonably relied on the testimony of the vocational expert.

C. Dr. McKevett's Opinion

"[T]he weight properly to be given to testimony or other evidence of a treating physician depends on circumstances." Hofslien v. Barnhart, 439 F.3d 375, 377 (7th Cir. 2006). When a treating physician's opinion is well supported and no evidence exists to contradict it, the administrative law judge has no basis on which to refuse to accept the opinion. Id.; 20 C.F.R. §§ 404.1527(d)(2) and 416.927(d)(2). When, however, the record contains well-supported contradictory evidence, the treating physician's opinion "is just one more piece of evidence for the administrative law judge to weigh," taking into consideration the various factors listed in the regulation. Id. These factors include how often the treating physician has examined the claimant, whether the physician is a specialist in the condition claimed to be disabling, how consistent the physician's opinion is with the evidence as a whole, and other factors. 20 C.F.R. §§ 404.1527(d)(2) and 416.927(d)(2). An administrative law judge must provide "good reasons" for the weight he gives a treating source opinion. Id. He also must base his decision on substantial evidence and not mere speculation. White v. Apfel, 167 F.3d 369, 375 (7th Cir. 1999).

The administrative law judge explained that he was not giving Dr. McKevett's work restrictions controlling weight because they were not well supported by the record. He cited good reasons for this conclusion. The administrative law judge summarized the limitations

assigned to plaintiff by Dr. McKevett on April 12, 2004 and May 20, 2004, noting an overall increase in limitations between the two dates. He stated that Dr. McKevett's records did not offer an explanation to account for the increased limitations, especially when the physician's notes indicated that plaintiff's symptoms were steadily improving. He also found that Dr. McKevett did not provide any basis for the sitting, standing, walking and bending limitations or unscheduled breaks other than fatigue and weakness, which were not supported by his physical examinations of plaintiff. AR 21.

Contrary to plaintiff's contention, the administrative law judge did not base his conclusion on speculation but on the weight of the medical evidence, including the following treatment notes of Dr. McKevett:

- On March 19, 2004, plaintiff reported that his energy was improving and he was walking an average of five miles a day, including hills.
- On April 12, 2004, Dr. McKevett noted that plaintiff had demonstrated slow but sure improvement in his energy level, strength and endurance following treatment for Graves' disease in December 2003.
- On May 20, 2004, Dr. McKevett again reported that plaintiff's energy level and generalized weakness were improving, finding no focal weakness and only some mild generalized weakness upon examination.

AR 20-21. Although the administrative law judge did not cite the notation, Dr. McKevett also wrote on March 19, 2004 that it was reasonable for plaintiff to seek light duty employment that "could be advanced as tolerated" and recommended ongoing exercise and walking. AR 371-72.

From the above, the administrative law judge reasonably concluded that Dr. McKevett's assessment of sedentary restrictions was based primarily on plaintiff's

complaints, which the administrative law judge found only partially credible. It is well settled that an administrative law judge may properly disregard a medical opinion when it is premised on the claimant's self-reported symptoms and the administrative law judge has reasons to doubt the claimant's credibility. E.g., Diaz v. Chater, 55 F.3d 300, 307 (7th Cir. 1995) (administrative law judge could properly reject portion of physician's report that was based upon plaintiff's own statements of functional restrictions where administrative law judge properly found that plaintiff's subjective statements were not credible); Mastro v. Apfel, 270 F.3d 171, 177-78 (4th Cir. 2001); Morgan v. Commissioner of Social Security, 169 F.3d 595, 602 (9th Cir. 1999). The administrative law judge cited numerous reasons to support his finding that plaintiff's subjective statements about his limitations were not entirely credible, including his sporadic work history, no significant change in his daily activities after his alleged onset date and inconsistencies in reporting his symptoms. Plaintiff has not challenged any of these credibility findings. My independent review of the record shows that they are well founded. Prochaska v. Barnhart, 454 F.3d 731, 738 (7th Cir. 2006) (administrative law judge's credibility determination will be upheld unless it is "patently wrong"). Accordingly, the administrative law judge committed no error in determining that Dr. McKevett's opinion was not deserving of controlling weight.

D. Vocational Expert Testimony

1. Noncompliance with SSR 00-4p

Plaintiff contends that the administrative law judge failed to comply with his

mandatory duty under Social Security Ruling 00-4p regarding vocational expert testimony about the requirements of a job or occupation. Social Security Ruling 00-4p explains that in meeting his burden at step five, the commissioner can rely on information contained in the Dictionary of Occupational Titles, which is published by the Department of Labor and gives detailed physical requirements for a variety of jobs. See also 20 C.F.R. §§ 404.1566(d)(1) and 416.966(d)(1) (Social Security Administration has taken administrative notice of the Dictionary). Alternatively, the administrative law judge can rely on testimony from the vocational expert. 20 C.F.R. §§ 404.1366(e) and 416.966(e); SSR 00-4p. However, an administrative law judge who takes testimony from a vocational expert about the requirements of a particular job must ask the expert whether his testimony is consistent with the dictionary. Prochaska, 454 F.3d at 735; SSR 00-4p. If there is an apparent unresolved conflict, the administrative law judge must obtain a reasonable explanation for the apparent conflict. Id.

Plaintiff agrees that the administrative law judge satisfied the first requirement by asking the vocational expert whether his testimony was consistent with the information contained in the dictionary. Dkt. #9 at 2, 15, and 33; see also AR 480. However, plaintiff argues that the administrative law judge did not meet the second requirement because he failed to elicit an explanation why the job requirements identified by the vocational expert were not consistent with the Dictionary of Occupational Titles. Plaintiff contends that the vocational expert's testimony clearly deviated from the dictionary because the hand packager and rack room worker jobs required near visual acuity and reading skills, both of which the

administrative law judge specifically asked the vocational expert to exclude.

At the hearing, the administrative law judge asked the vocational expert whether the job requirements that he identified were consistent with the Dictionary of Occupational Titles, and the vocational expert responded yes. AR 480. The hearing testimony did not reveal any apparent conflict with the dictionary that should have prompted the administrative law judge to further question the vocational expert. In fact, it was only after the hearing that plaintiff himself identified a conflict between the vocational expert's testimony and the Dictionary of Occupational Titles. Plaintiff's attorney did not cross-examine the vocational expert on this issue, did not ask him to explain the job requirements in more detail and did not ask the administrative law judge to keep the record open so that he could cross-check the jobs identified by the vocational expert with the dictionary. Plaintiff apparently believes that reversal is warranted any time a plaintiff identifies a potential conflict with the dictionary, even if the administrative law judge complied with his duty to question the vocational expert under SSR 00-4p and plaintiff does not identify a conflict until after the hearing.

Hearing the vocational expert's affirmative response, the administrative law judge had no obligation under SSR 00-4p to inquire further. Prochaska, 454 F.3d at 735 ("*If* the VE's or VS's evidence appears to conflict with the Dictionary of Occupational Titles, the adjudicator will obtain a reasonable explanation for the apparent conflict." (emphasis added)). The administrative law judge was entitled to conclude from the vocational expert's qualifications and his testimony that the vocational expert's testimony was reliable.

Donahue v. Barnhart, 279 F.3d 441, 446 (7th Cir. 2002) ("an expert is free to give a bottom line, provided that the underlying data and reasoning are available on demand"). Neither Prochaska nor SSR 00-4p lend any support to plaintiff's suggestion that more was required.

2. Improper database

Under 42 U.S.C. § 423(d)(2)(A), an individual is not disabled if he can engage in substantial gainful work that exists in the national economy, "regardless of whether such work exists in the immediate area in which he lives." "'[W]ork which exists in the national economy' means work which exists in significant numbers either in the region where such individual lives or in several regions of the country." Id. As plaintiff notes in his supporting brief, dkt. #9 at 47, the court of appeals has further interpreted this statutory language to include work in reasonable proximity to the claimant's residence. Barrett v. Barnhart, 355 F.3d 1065, 1067 (7th Cir. 2004); Barrett v. Barnhart, 368 F.3d 691, 692 (7th Cir. 2004) (upholding "reasonable proximity" wording as descriptively accurate formulation of statutory language).

Plaintiff argues that because he lives in Wisconsin, the vocational expert incorrectly relied on the Minnesota database in evaluating the number of jobs available. This argument is not convincing. Plaintiff lives in Hayward, Wisconsin, AR 13, which is a little more than 75 miles from Duluth, Minnesota, where the hearing took place. See http://maps.google.com. Hayward is closer to the metropolitan area of Minneapolis and St. Paul, Minnesota than it is to any major city in Wisconsin. Id. Although plaintiff technically

resides in the state of Wisconsin, the state of Minnesota is both in the region and in reasonable proximity to where plaintiff lives. Accordingly, the administrative law judge did not err in relying on the testimony of the vocational expert.

ORDER

IT IS ORDERED that the decision of defendant Michael Astrue, Commissioner of Social Security, is AFFIRMED and plaintiff Gerald Overman's appeal is DISMISSED.

The clerk of court is directed to enter judgment for defendant on plaintiff's claim and close this case.

Entered this 21st day of June, 2007.

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