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

ROBERT TINKHAM,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,[1]

Defendant.

OPINION AND
ORDER

06-C-486-C

This is an action for judicial review of an adverse decision of the Commissioner of Social Security pursuant to 42 U.S.C. § 405(g). Plaintiff Robert Tinkham challenges the commissioner's determination that he is not disabled and therefore ineligible for Disability Insurance Benefits under the Social Security Act, codified at 42 U.S.C. §§ 416(I) and 423(d). Plaintiff contends that the administrative law judge who denied his claim made an improper credibility determination, failed to consider all of the medical evidence in the record and other evidence related to his subjective complaints, improperly framed a hypothetical, misstated the medical evidence and improperly analyzed his past work experience. For the reasons explained below, I am denying plaintiff's motion for summary judgment and affirming the administrative law judge's decision.

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

LEGAL AND STATUTORY FRAMEWORK

To be entitled to disability insurance benefits under the Social Security Act, a claimant must establish that he is under a disability. The Act defines "disability" as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." 42 U.S.C. § 1382c(a)(3)(A). A physical or mental impairment is "an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques." 42 U.S.C. § 1382c(a)(3)(c).

The commissioner has promulgated regulations setting forth the following five-step sequential inquiry to determine whether a claimant is disabled:

(1) Is the claimant currently employed?

(2) Does the claimant have a severe impairment?

(3) Does the claimant's impairment meet or equal one of the impairments listed by the SSA?

(4) Can the claimant perform his past work? and

(5) Is the claimant capable of performing work in the national economy?

See 20 C.F.R. §§ 404.1520.

The inquiry at steps four and five requires assessment of the claimant's "residual functional capacity," which the commissioner defines as "an assessment of an individual's

ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis." Social Security Ruling 96-8p. "A 'regular and continuing basis' means 8 hours a day, for 5 days a week, or an equivalent work schedule." Id.

In seeking benefits, the initial burden is on the claimant to prove that a severe impairment prevents him from performing past relevant work. If he can show this, then the burden shifts to the commissioner to show that the claimant was able to perform other work in the national economy despite the severe impairment. Stevenson v. Chater, 105 F.3d 1151, 1154 (7th Cir. 1997); Brewer v. Chater, 103 F.3d 1384, 1391 (7th Cir. 1997).

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

FACTS

A. Procedural History

Plaintiff filed an application for disability insurance benefits on December 30, 2003, alleging that he was disabled because of back pain and leg numbness and tingling resulting from a herniated disc. After the local disability agency denied his application initially and on reconsideration, plaintiff requested a hearing before an administrative law judge. The administrative law judge, George Gaffaney, convened a hearing on September 19, 2005, at which plaintiff and a vocational expert testified. Plaintiff was represented by a lawyer at the hearing.

On March 24, 2006, the administrative law judge issued a decision in which he found that plaintiff was not disabled because he could perform past relevant work as a work order

clerk. That decision became the final decision of the commissioner when the Appeals Council denied plaintiff's request for review.

B. Background

Plaintiff was 53 years old on the date of his administrative hearing, making him a "person closely approaching advanced age" for the purposes of his application for disability benefits. 20 C.F.R. § 404.1563. Plaintiff graduated from high school and has past work experience as a janitor, assembly inspector/helper and work order clerk.

Plaintiff injured his back while working in the parts department at John Deere in June 1989 when he tripped over a small motor sitting on the floor and fell forward, landing on his arms. Plaintiff saw doctors both at John Deere and Medical Associates at that time and subsequently underwent physical therapy. AR 50, 275. In a resulting worker's compensation claim, plaintiff was assessed as having with a 10 percent total permanent disability and received a $20,000 settlement. AR 53-54, 275. Plaintiff returned to work following the injury. In 1994, at the age of 43, he was diagnosed with coronary stenosis, which required angioplasty. Plaintiff retired from John Deere in April 2002 after 30 years of service. AR 17, 274-75, 397.

C. Medical Evidence

Magnetic resonance imaging studies taken in 1998 showed that plaintiff had a moderately large disc herniation at L4-L5 with subligamentous caudal extension causing mild spinal stenosis. AR 408-10. On June 19, 2000, Dr. Douglas Sedlacek at Mercy Medical Center noted that plaintiff had long-standing, chronic low back pain and a diagnosis of possible facet arthropathies bilaterally at L4-5, L5-S1 versus discogenic pain, marked myofascial discomfort and decondition of spinal muscles. Plaintiff reported that although his ability to sleep had markedly improved, his pain had improved only slightly. Dr. Sedlacek gave plaintiff bilateral L4-L5 and L5-S1 facet joint injections, which improved his extension and extension lateral flexion. AR 427-28.

Updated magnetic resonance imaging studies were taken on March 13, 2002 and revealed no significant change since 1998, showing a small to medium-sized midline disc herniation at L4-L5 with no stenosis at any level. AR 274, 405. On April 9, 2002, Dr. Meester noted that the studies showed no reason for plaintiff's numbness, tingling and increasing pain in his left leg. He recommended a neurological evaluation. AR 206.

Plaintiff began seeing a neurologist, Dr. Patrick Sterrett, on May 14, 2002 and reported that his pain had not improved since 1989. Dr. Sterrett noted that plaintiff had been treated with anti-inflammatories, muscle relaxants and facet and epidural steroid injections in the past, but prior notes indicated that he did not manifest a neurological deficit. After reviewing the earlier magnetic resonance imaging studies and performing a

neurological examination, Dr. Sterrett noted that there was no evidence of a neurological deficit or complex regional pain syndrome, but the paresthesias in plaintiff's feet and calves were probably due to the irritated nerve root at L4-L5. AR 272-75.

On May 18, 2002, Dr. Sterrett performed electromyography and nerve conduction studies and found abnormalities in the left peroneal motor nerve, right and left superficial peroneal sensory nerves and right and left posterior tibial motor nerves. Dr. Sterrett diagnosed plaintiff with chronic low back pain with chronic radicular pain bilaterally, which follows an L4-L5 dermatomal distribution. Dr. Sterrett outlined plaintiff's treatment options, which included physical therapy or surgical removal of the herniated disc. Dr. Sterrett noted that surgery had only a 50 percent chance of reducing his pain. AR 269-271. In a telephone conversation with plaintiff's attorney on June 20, 2002, Dr. Sterrett said that he believed that plaintiff's herniated L4-L5 disc was caused by the fall in 1989 and exacerbated by continuous bending, reaching and stooping at work. AR 268.

During an August 14, 2002 visit with Dr. Sterrett, plaintiff complained of difficulty sleeping as a result of back spasms that radiated into his mid-thoracic area. Plaintiff also reported terrible pain during the daytime and worsening paresthesias in his feet. Dr. Sterrett diagnosed plaintiff with severe lumbar paravertebral muscle spasms, prescribed Naprosyn EC 500mg and Ultram 50mg, and suggested Botox injections if worker's compensation approved it. AR 267-68.

Plaintiffs spasms continued, and on September 11, 2002, he received Botox injections. Dr. Sterrett noted that plaintiff had failed back syndrome because he had had every conceivable treatment with no relief. AR 266-67. On October 23, 2002, Dr. Sterrett noted no changes except that plaintiff was no longer taking Naprosyn or Ultram because they did not work. Dr. Sterrett noted that plaintiff had mild relief from the Botox and recommended repeating the injections at a greater depth. Dr. Sterrett also prescribed Neurontin for plaintiff to take in increasing dosages over time. AR 265-66.

Plaintiff returned to Dr. Sterrett on December 11, 2002 for further Botox injections. Plaintiff reported no real improvement and rated his pain as a seven out of 10 in the morning, with improvement to five out of 10 during the day. Plaintiff also reported that his pain decreased when lying down with his feet elevated or when walking. Dr. Sterrett noted that plaintiff would be in California for the winter and recommended another magnetic resonance imaging study after his return. AR 263-64. Plaintiff called Dr. Sterrett's office in February and March of 2003 to report increasing back and leg pain, and on each occasion, Dr. Sterrett prescribed higher dosages of Neurontin. AR 262.

On April 26, 2003, Dr. Sterrett noted plaintiff was temporarily living in Denver but was home for the weekend. Plaintiff reported that the Botox alleviated his pain for a while but it was wearing off. Dr. Sterett noted that the Neurontin 600mg curbed plaintiff's pain and enabled him to walk a few blocks a day but plaintiff continued to report spasms in his lower back that he rated as a seven out of 10 in severity. Dr. Sterrett increased plaintiff's

Neurontin dosage to 800mg, prescribed Zanaflex and asked him to return after he was home in August. AR 261-62.

Records from the Medical Associates Clinic show that between 2002 and 2004, Dr. Brian Sullivan, an internist, treated plaintiff for a variety of conditions, including diabetes, coronary artery disease, hypertension, hypercholesterolemia and erectile dysfunction. AR 362-78, 389-394. During his visits in July and October 2002, plaintiff's chronic back pain was noted. AR 389-90, 393. Dr. Sullivan and his nurse, Naomi Vonhollen, also noted several times in 2002 and 2003 that plaintiff traveled often. AR 359, 364, 368, 370, 373, 376, and 392. Although plaintiff was encouraged to walk 30 minutes a day and swim to control his diabetes, AR 373, he did not report regular exercise until June 2003, when he said he had been using the treadmill. AR 364, 370, 374.

Plaintiff next saw Dr. Sterrett on September 22, 2003, missing an August appointment because of travel. Dr. Sterrett referred plaintiff to a neurosurgeon, Dr. Chad Abernathy, who saw plaintiff on October 6, 2003. AR 259-61. Dr. Abernathy recommended continuing conservative treatment because of "a paucity of clinical and radiographic findings." AR 208, 258. On November 20, 2003, plaintiff saw Dr. Sterrett and reported trouble sleeping, sitting and standing and rated his pain a six to seven out of 10. Dr. Sterrett noted that he would follow Dr. Abernathy's recommendation and continue to treat plaintiff conservatively with Neurontin 800mg four times a day, Zanaflex 8mg at

bedtime and Naprosyn 500mg once daily. Dr. Sterrett also recommended that plaintiff try using a medical stimulator and return to see him every four or five months. AR 258-59.

On December 4, 2003, plaintiff saw Dr. Sterrett, complaining of neck pain and burning in his hands. Concerned that plaintiff might have a herniated disc compressing the cervical cord, Dr. Sterrett ordered x-rays and a magnetic resonance imaging study of his neck, referred him to physical therapy, gave him a cervical collar and prescribed Percocet for pain. AR 257. On December 10, 2003, plaintiff reported that he was much better and stopped physical therapy. Dr. Sterrett diagnosed plaintiff with degenerative disc disease at C6-7, with a small herniated disc on the left at C6-7. Dr. Sterrett noted no evidence of cervical myelopathy and prescribed Tylenol for pain. AR 255.

On February 14, 2004, after slipping and falling on ice the day before, plaintiff saw Dr. Frederick Isaak for neck pain, injury to his left wrist and elbow and tingling in his right hand. Dr. Isaak noted that x-rays and computerized axial tomography (a CAT scan) did not show any fractures but there were mild degenerative changes in plaintiff's cervical spine. AR 388, 399-400. Dr. Isaak gave plaintiff a wrist splint and prescribed pain medication. AR 388. At a follow-up visit on February 23, 2004, plaintiff presented with numbness and weakness in his left hand. Dr. Issak noted that plaintiff had a weaker hand grasp on the left side and neck pain with some evidence of possible compressive neuropathy. Dr. Isaak referred him to physical therapy three times a week. AR 387.

On March 2, 2004, plaintiff began physical therapy with Louis Greenwald, P.T. Plaintiff rated his functional abilities between seven and 10 out of 10, with 10 meaning

"completely unable to do." AR 383. He rated his neck and arm pain at two to three out of 10 and numbness and tingling at a 10 out of 10. AR 379, 384. Greenwald had plaintiff perform repeated retraction, which reduced the numbness in both of his hands, and provided him with a program to do at home. AR 379.

On March 10, 2004, plaintiff saw Dr. Laurie Garms for a neurological consultation for his neck. Plaintiff reported dull, aching deep pain from his shoulder into his arm, his hands falling asleep at night, weakness in his left arm and occasional sharp, stabbing pains in his neck. AR 358. On March 12, 2004, Dr. Garms noted that a magnetic resonance imaging study of plaintiff's cervical spine showed a moderate sized disc herniation at C6-7 with no evidence of cord compression or spinal stenosis. Dr. Garms noted that electromyography and nerve conduction studies showed mild carpal tunnel syndrome, probably bilateral. AR 352, 355-57. Dr. Garms encouraged plaintiff to use a wrist splint, continue his physical therapy and get cervical epidurals. Plaintiff refused the epidurals because they had been ineffective for his back pain. AR 355.

On March 10, 2004, Dr. Jan Hunter, a state disability agency consulting physician, assessed plaintiff with the following exertional and postural limitations: occasionally lift or carry 20 pounds; frequently lift or carry 10 pounds; sit, walk and stand for six hours in an eight-hour workday; no climbing ladders, ropes or scaffolds; and occasional stair climbing, balancing, stooping, kneeling, crouching and crawling. AR 276-80. With regard to plaintiff's reported limitations of being able to walk for only 15 minutes, stand for three minutes and sit for 10 minutes, Dr. Hunter stated that "the credibility of his alleged

limitations is eroded to the degree he stated in [sic] his daily activities." Dr. Hunter noted that the medical records indicated that plaintiff reported "only 'some back pain' with minimal clinical and radiographic findings" and was "doing 'a lot of traveling'" and "compliant with exercises of 'walking and swimming.'" AR 280-81. On May 27, 2004, Dr. Claude Koons, another state disability agency consulting physician, reconsidered plaintiff's physical assessment and determined that there was no new information to support plaintiff's claims that his condition had worsened and noted that his limitations were consistent with the initial assessment. AR 281-82.

On April 15, 2004, plaintiff saw Dr. Sterrett and rated his back pain at an eight to nine out of 10, reporting no change in his pain or its characteristics. Plaintiff reported difficulty sleeping and worsening pain with standing, walking and sitting. Dr. Sterrett noted that plaintiff was not developing any neurological deficit and his symptoms and neurological examination remained the same. AR 247-48.

On April 26, 2004, plaintiff returned to Dr. Garms, who noted that plaintiff continued to have a "fair amount of disability and pain" and mild weakness in his left arm. When plaintiff again refused epidurals, Dr. Garms referred plaintiff to Dr. Chapman for a neurosurgical consultation. AR 346. Plaintiff saw Dr. Chapman on May 13, 2004 and rated his pain at a three out of 10. He reported that he had a lot of numbness and pins and needles, mostly in the left arm. Plaintiff also reported having continuing problems with his lower back. Dr. Chapman diagnosed him with cervical radiculopathy from left-sided disc

herniation at C6-7 and discussed treatment options, including epidurals and surgery. AR 321, 324.

Between March and July 2004, plaintiff regularly visited the physical therapist, Greenwald, for his neck and arm and experienced some improvement, rating his neck and arm pain at a three to four out of 10 on most visits. During this period, plaintiff rated his back pain a two to three out of 10 on most visits. Plaintiff continued to rate his functional abilities as severely limited: nine to 10 out of 10 for daily activities and between two and seven for sitting, standing and walking. AR 300-354. On August 23, 2004, Greenwald noted that plaintiff had an extended absence from physical therapy but had been doing fairly well on his home exercise program. Plaintiff reported significant neck pain (rated at an eight out of 10) but stated that he was much less symptomatic after therapy that day. AR 296-98. During plaintiff's visits on August 23 and 25, 2004, Greenwald noted that plaintiff was having significant difficulty with cervical rotations. AR 294-96. On September 9, 2004, plaintiff reported decreased pain (rating neck, back and arm pain at a three out of 10) and demonstrated increased range of motion. AR 291-92. During plaintiff's last visit of record with Greenwald on September 16, 2004, he reported continued neck, arm and back pain, which he rated between a four and six out of 10. AR 287-88. 5-96.

Plaintiff asked Dr. Sterrett to complete several forms on his behalf. On July 20, 2004, Dr. Sterrett completed a federal student aid form, indicating with a check mark that plaintiff did not have the ability to ever engage in future employment. On September 25, 2004, Dr. Sterrett completed a social security form on which he wrote that plaintiff had a large

herniated disc (L4-L5) centrally, which abutted on the origin of the transmitting LS nerve roots bilaterally, explaining his radicular pain in both lower limbs. AR 241-43, 246, 249-52.

On November 1, 2004, plaintiff saw Dr. Sterrett before leaving town. Plaintiff reported that he was "really disabled" and "not able to do anything," claiming that any lifting, bending, reaching or stooping puts him in bed. Dr. Sterrett noted that plaintiff's diagnosis and symptoms had not changed but ordered an updated magnetic resonance imaging study, which was taken on November 5, 2004 . AR 243-44.

Plaintiff did not return to see Dr. Sterrett until January 11, 2005. AR 241-43. He reported terrible pain (a 10 out of 10) that had prevented him from lifting his legs in the shower that morning. Dr. Sterrett noted that the November magnetic resonance imaging study showed annular tears at L4-L5 and L5-S1 with degenerative disc disease at L4-L5. AR 241, 418-19. Dr. Sterrett also noted a mild disc protrusion at L4-L5, which actually was smaller than the protrusion noted on the March 13, 2002 scan. Dr. Sterrett noted there was no progression of pathology and that plaintiff had "very significant symptoms [for] the minimal pathology that we see on his MRI." AR 241. Dr. Sterrett recommended electric stimulation to help the pain, but this treatment had to be delayed because plaintiff was leaving town and would not return until April. AR 240-41.

On April 6, 2005, Dr. Sterrett noted the following:

> The patient came in indicating that he wanted to know why I marked on his financial relief forms that he brings in constantly for his chronic low back pain that he is capable of some employment in the future. I told him that does not mean that he has to work full time but he could do odds and ends where he

> is sitting. After all, he is traveling around the country back and forth with his wife to Arizona and I cannot imagine him just sitting in a chair all day. . . . When I told him that, he said "Bullshit." When he said that, I felt that this guy needs another opinion. My conscience tells me that I do not truly feel that this patient's back pain is in proportion with what we are finding physically or . . . on imaging studies with the MRI. . . . The patient tells me he soon will be getting disability and I am not at all convinced that his condition deserves such. I think a thorough psychological evaluation of this patient should be undertaken to see if there is any malingering.

AR 239. Dr. Sterrett asked plaintiff to get a second opinion from Dr. Traynelis at the Iowa City Department of Neurosurgery, but Dr. Luke at John Deere did not approve that referral as a worker's compensation expense. AR 239. Plaintiff received electric sequential stimulation in April 2005. AR 234, 236-37.

D. Hearing Testimony

At his September 19, 2005 hearing, plaintiff testified that in the past 15 years, he had worked as an unskilled janitor and an assembly inspector and helper. As a janitor, he was on light duty and lifted 10-15 pounds occasionally. Plaintiff testified that for the last seven years of his employment, he was performing sedentary telephone and computer work in a "make work" position created by his employer to accommodate his light duty needs. Specifically, he made phone calls to dealers and service managers, keyed in equipment serial numbers and arranged for equipment repairs. AR 50-56. In that job, plaintiff sat for fewer than six hours total during the work day and did not sit, stand or walk for more than an hour at a time before having to shift positions. AR 59. He said that he stood or walked around

as needed during the day and took two 15-20 minute breaks to lie down and apply a heating pack to his back. AR 55.

Plaintiff testified that he retired because he had become eligible after working for his employer for 30 years but believed that his back was getting worse from sitting all the time. He said that he could not do that job now. Plaintiff's work restriction before retiring included no bending, lifting, turning or twisting and a weight limitation of five pounds. AR 51-52, 55-56, 65.

Plaintiff testified that his condition makes it difficult to sleep and prevents him from doing chores around the house, including mowing the lawn, shoveling snow, raking, cleaning gutters, climbing a ladder and doing dishes and laundry. Plaintiff said that since injuring his back, he can no longer play softball, hunt or walk on uneven surfaces. He also moved from a two-story house to a ranch-style house to avoid having to climb stairs. AR 56-57, 68. Per doctor recommendations, plaintiff swims either recreationally or for exercise (doing a backstroke) in a small pool three times a week. Although he also was walking a half mile on a nearby trail once a week, walking up a hill became hard on his back, so he now occasionally walks in the mall for about a half hour. AR 63-66.

Plaintiff testified that he has pain when he bends his back or reaches for things and he cannot lift a gallon of milk without it affecting his back. His pain consists of tightness in his lower back and at times, a sharp pain down the back of his legs. He also has numbness in his feet and toes. Plaintiff testified that he always has some degree of pain, regardless of what he is doing, but he can sit or walk comfortably for 10-20 minutes at a time. Plaintiff

testified that he could not sit, stand or walk for six hours out of an eight-hour work day. He said that medical testing (electromyography) showed that he has nerve damage. Plaintiff believes that his back pain has worsened over time. AR 57-60, 67.

Plaintiff testified that he injured a disc in his neck in a non-work related incident. As a result, he has neck stiffness; occasional sharp neck pain; difficulty turning his head; and numbness, tingling and a loss of feeling in his hands. He also occasionally has trouble with gripping and fine finger movement. AR 60-62.

Plaintiff testified that he has not tried working even part time since his retirement because he does not think he could given his back and neck pain. AR 67. When plaintiff's attorney noted that there were comments in his file about his not being disabled given the amount of travel he was doing, plaintiff explained that his wife is a traveling nurse and is often gone for months at a time. He said that he travels with his wife to warmer climates because he believes it to be better for his back, but they fly to make the trip shorter. AR 68. Plaintiff testified that he did not travel to a wedding in San Diego because it was too far. AR 69.

The administrative law judge asked plaintiff about his other health problems, and plaintiff responded that his heart condition and diabetes are under control, his right knee has improved with his sedentary lifestyle and his headaches are gone. Although plaintiff said that he does get depressed, he is not being treated. He currently takes Neurontin for his back and neck pain and Trazadone to help him sleep, and he does not suffer from any side

effects to these medications. AR 69-70. Plaintiff testified that he has a hard time concentrating while watching television or trying to carry on a conversation. He also lies down during the day more often than he used to at work. AR 71.

The vocational expert, Elizabeth Albrecht, testified that in light of plaintiff's testimony, she was revising his past relevant work summary (Exhibit 13E) to change the janitor position from medium to light and to include a sedentary, semi-skilled work order clerk position (221.382-022). AR 73. Albrecht wrote that as a work order clerk, plaintiff received work orders for repairs, routed the work orders, keyed in data and maintained records. AR 177. The administrative law judge first asked Albrecht to consider a person of plaintiff's age and education who was limited to work that required lifting up to 20 pounds but only 10 pounds frequently, six hours of sitting or standing in an eight-hour work day, walking up to one mile, no ladder climbing and no more than occasional stair climbing, balancing, stooping, kneeling, crouching or crawling. When asked whether this person could perform any of plaintiff's past work, Albrecht replied that he could not perform the janitorial work but could perform the assembly inspector and work order clerk jobs. Second, the administrative law judge asked Albrecht to consider the first hypothetical but with walking limited to 30 minutes and a sit and stand option. Albrecht replied that this person could perform the work order clerk position. AR 74. Third, the administrative law judge asked Albrecht to consider whether such a person could perform the work order clerk job if the second hypothetical was limited to 10 pounds of lifting with only five pounds being lifted

frequently, and Albrecht responded yes. Albrecht also testified that a semi-skilled worker with the limitations in hypothetical three could perform as a work order clerk. Fourth, when the administrative law judge asked Albrecht to add two unscheduled, 15-minute rest breaks to hypothetical three, Albrecht responded that such a person would be precluded from performing any of plaintiff's past relevant work. AR 75.

Albrecht testified that there are no transferable skills on the assembly inspector job but there would be similar work order clerk or dispatcher jobs available. AR 75. Albrecht said that a person with all of the above limitations could not perform any other types of jobs on a competitive, full-time basis in the national economy. AR 76.

Plaintiff's attorney then asked Albrecht to add a restriction of only occasional handling and fingering to the above hypotheticals, and Albrecht stated that the person would be precluded from performing any of plaintiff's past relevant work. AR 77.

At the request of plaintiff's attorney, the administrative law judge agreed to keep the record open to admit into evidence a statement by plaintiff's wife and medical records from Sed Lasek [sic] Treatment Center. The administrative law judge specifically stated that he would consider the statement from plaintiff's wife. AR 52.

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. The administrative law judge found at step one that plaintiff had not engaged in substantial

gainful activity since his retirement and alleged onset date in April 2002. At step two, he found that plaintiff was severely impaired by degenerative disc disease of the cervical and lumbar spine. The administrative law judge also noted plaintiff's other diagnoses of record, including diabetes mellitus type II, hypertension, coronary artery disease, hypercholesterolemia and erectile dysfunction. He explained that plaintiff's impairments, when considered in combination with his other medical conditions, could reasonably be expected to impose work-related limitations. However, the administrative law judge noted that plaintiff's other medical conditions remained well-controlled when plaintiff was compliant with medical treatment. AR 17. 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 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 perform work with the following limitations: lifting 10-20 pounds occasionally and five to 10 pounds frequently; sitting and standing at will for no more than six out of eight hours in a work day; walking up to one-half mile or 30 minutes at a time; occasionally performing postural maneuvers, including balancing, stooping, kneeling, crouching, crawling and climbing stairs; and never climbing ladders, ropes or scaffolds. AR 19. In reaching his conclusion, the administrative law judge placed controlling weight on the opinion of plaintiff's treating physician, Dr. Sterrett, who was of

the opinion that plaintiff's condition did not warrant his receipt of disability benefits. AR 19-20. The administrative law judge also found that plaintiff's allegations regarding the intensity, duration and limiting effects of his symptoms were not entirely credible given the inconsistencies cited by state agency physicians and plaintiff's ability to maintain his daily living activities since his retirement. The administrative law judge was not persuaded that plaintiff's functional limitations had changed significantly since his injury in 1989. AR 21.

Relying on the testimony of the vocational expert, the administrative law judge found at step four that plaintiff retained the residual functional capacity to perform his past relevant work as a work order clerk. AR 21.

OPINION

A. Standard of Review

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). When the administrative law judge denies benefits, he must build a logical and accurate bridge from the evidence to his conclusion. Zurawski v. Halter, 245 F.3d 881, 887 (7th Cir. 2001). Remand is not required unless there is reason to believe that it might lead to a different result. Fisher v. Bowen, 869 F.2d 1055, 1057 (7th Cir. 1989); see also Keys v. Barnhart, 347 F.3d 990, 994 (7th Cir. 2003) (doctrine of harmless error applies to judicial review of administrative decisions).

B. Credibility Determination

Plaintiff asserts generally that the administrative law judge failed to follow the requirements of Social Security Ruling 96-7p by making inadequate findings, not considering all of the evidence available and committing error in finding his subjective complaints not credible. Plaintiff faults the administrative law judge for relying solely on the opinion of Dr. Sterrett and not fully developing the record regarding plaintiff's ability to travel. Plaintiff also contends that the administrative law judge failed to consider his substantial work history.

Under Social Security Ruling 96-7p, an administrative law judge must follow a two-step process in evaluating an individual's own description of his or her impairments: 1) determine whether an "underlying medically determinable physical or mental impairment" could reasonably be expected to produce the individual's pain or other symptoms; and 2) if such a determination is made, evaluate the "intensity, persistence, and limiting effects of the individual's symptoms to determine the extent to which the symptoms limit the individual's ability to do basic work activities." Social Security Ruling 96-7p, 1996 WL 374186, *1 (1996); see also Scheck v. Barnhart, 357 F.3d 697, 702 (7th Cir. 2004). When conducting this evaluation, the administrative law judge may not reject the claimant's statements regarding his symptoms solely on the ground that the statements are not substantiated by objective medical evidence. Instead, the administrative law judge must consider the entire case record to determine whether the individual's statements are credible. Relevant factors the administrative law judge must evaluate are the individual's daily activities; the location, duration, frequency and intensity of the individual's pain or other symptoms; factors that precipitate and aggravate the symptoms; the type, dosage, effectiveness and side effects of any medication the individual takes or has taken to alleviate pain or other symptoms; other treatment or measures taken for relief of pain; and any other factors concerning the individual's functional limitations and restrictions. Social Security Ruling 96-7p; 20 C.F.R. § 404.1529(c). See also Scheck, 357 F.3d at 703; Zurawski, 245 F.3d at 887.

An administrative law judge's credibility determination is given special deference because the administrative law judge is in the best position to see and hear the witness and to determine credibility. Shramek v. Apfel, 226 F.3d 809, 812 (7th Cir. 2000). In general, an administrative law judge's credibility determination will be upheld unless it is "patently wrong." Prochaska v. Barnhart, 454 F.3d 731, 738 (7th Cir. 2006); Sims v. Barnhart, 442 F.3d 536, 538 (7th Cir. 2006) ("Credibility determinations can rarely be disturbed by a reviewing court, lacking as it does the opportunity to observe the claimant testifying."). However, the administrative law judge still must build an accurate and logical bridge between the evidence and the result. Shramek, 226 F.3d at 811.

In reaching his conclusion at step four as to plaintiff's residual functional capacity, the administrative law judge found that although plaintiff's medically determinable impairments could be expected to produce his alleged symptoms, plaintiff's statements concerning the intensity, duration and limiting effects of his symptoms were not entirely credible. Contrary to plaintiff's assertions, the administrative law judge cited numerous reasons to support this finding. After reviewing the record, I find that each of the administrative law judge's findings are well founded and that his rationale is discernible from his decision.

The administrative law judge considered and agreed with the inconsistencies cited by the state agency consulting physicians who questioned plaintiff's subjective complaints given the minimal clinical and radiographic findings and the scope of his daily activities, including

walking, swimming and considerable traveling (AR 280-81). AR 21. The administrative law judge noted that in March 2002, a magnetic resonance imaging study failed to show any significant change from the 1998 study and Dr. Sterrett's neurological examination and electromyography and nerve conduction studies showed no neurological deficit. The administrative law judge also noted that Dr. Abernathy cited a paucity of clinical and radiographic findings in 2003. AR 18. Although the administrative law judge recognized that plaintiff had a degenerative condition with chronic and variable pain and some limited range of motion, he was not persuaded that plaintiff's functional limitations had significantly changed since his injury in 1989. AR 21. The administrative law judge wrote that with conservative treatment, plaintiff continued to work light duty following his injury in 1989. AR 18. The administrative law judge also noted that since retirement in 2002, plaintiff had maintained daily living activities that failed to demonstrate more restrictive functional abilities. AR 21. The administrative law judge wrote that plaintiff was able to travel to accompany his wife on extended job assignments and even had delayed medical studies and treatment because of travel. AR 18-19.

The administrative law judge noted inconsistencies in plaintiff's subjective reports during physical therapy visits that addressed his neck and low back pain between March and October 2004. Although plaintiff reported improvement and rated his neck and back pain between two and eight on a scale of one to 10, he continued to report significant functional limitations during this period. AR 18. Additionally, although a magnetic resonance imaging

study taken in 2005 failed to evidence further progression of plaintiff's pathology, plaintiff rated his pain at a 10 out of 10. AR 19. Powers v. Apfel, 207 F.3d 431, 435-36 (7th Cir. 2000) ("The discrepancy between the degree of pain attested to by the witness and that suggested by the medical evidence is probative that the witness may be exaggerating.").

The administrative law judge found the statements of plaintiff's treating physician, Dr. Sterrett, particularly persuasive because of his significant treatment history of plaintiff. See 20 C.F.R. § 404.1527(d) (controlling weight given to opinion of treating physician when well supported by medical findings and not inconsistent with other substantial evidence in the record). The administrative law judge noted that although Dr. Sterrett checked a statement on a form dated July 20, 2004, indicating that plaintiff would not be able to engage in future employment, Dr. Sterrett changed his opinion later. In what the administrative law judge described as a "more considered, narrative opinion" dated April 6, 2005, Dr. Sterrett defended his assessment by stating that plaintiff "was traveling around the country, back and forth with his wife, suggesting that he was not just sitting around in a chair all day." AR 19. Dr. Sterrett also opined that plaintiff's back pain was out of proportion to objective clinical findings and history and that his condition did not warrant disability benefits. The administrative law judge noted that when plaintiff disagreed, Dr. Sterrett recommended a second opinion and a psychological evaluation to see whether plaintiff was malingering. AR 19.

Relying on Thompson v. Sullivan, 933 F.2d 581, 585 (7th Cir. 1991), plaintiff argues that the administrative law judge had an obligation to develop a full and fair hearing record regarding his travel. Without citing supporting evidence, plaintiff asserts that if the administrative law judge had created a proper record, he would have learned that plaintiff did not drive more than an hour at a time and that only on rare occasions, sat in the back seat so he could shift his legs, and limited travel to eight hours a day. Dkt. 7 at 3-4.

In Thompson, 933 F.3d at 585-86, the court of appeals recognized the basic obligation of the administrative law judge to develop a full and fair record but further explained that this obligation rises to a special duty for unrepresented claimants. Where the claimant is unassisted by counsel, "the ALJ has a duty to scrupulously and conscientiously probe into, inquire of, and explore for all the relevant facts." Id. (quoting Smith v. Secretary of Health, Education, and Welfare, 587 F.2d 857, 860 (7th Cir. 1978)). In this case, plaintiff was represented at his hearing by counsel, who questioned him specifically about his travel and comments in his file that he was not disabled given the amount of travel he was doing. See Glenn v. Secretary of Health and Human Services, 814 F.2d 387, 391 (7th Cir. 1987) (claimant represented by counsel assumed to have presented his strongest case for benefits). At his hearing, plaintiff had every opportunity to develop the record and explain how his travel did not contradict his subjective complaints. Further, even if the administrative law judge erred in not questioning plaintiff on his travel at the hearing, that error was harmless.

Plaintiff also asserts that the administrative law judge failed to consider his 30-year work history with John Deere as a factor weighing in his favor. "An administrative law judge should explore a claimant's prior work history to determine whether his absence from the workplace cannot be explained adequately (making appropriate a negative inference), or whether his absence is consistent with his claim of disability." Schaal v. Apfel, 134 F.3d 496, 502 (2d Cir. 1998). However, because work history is only one of several factors weighing on credibility, id., plaintiff is not entitled to a presumption of credibility based solely on his long work history. Sarchet v. Chater, 78 F.3d 305, 308 (7th Cir. 1996) (administrative law judge erred in discounting claimant's credibility based on work history where he failed to consider claimant's minimal education, long list of medical ailments and numerous medications).

Plaintiff's work history seems to have played only a minor role, if any, in the administrative law judge's credibility determination. Although the administrative law judge specifically noted plaintiff's work history with John Deere, AR 17, he did not make any findings based solely on plaintiff's work history. Having reviewed the record, I do not find that the administrative law judge erred by not weighing plaintiff's work history in his favor. Plaintiff was injured in 1989 but worked (with restrictions) for another 13 years. Plaintiff testified that he was given his sedentary job seven years prior to his retirement (about 1994-1995), which actually coincides with his angioplasty. He claims a disability onset date of April 20, 2002, which is the day after he retired from John Deere. Although plaintiff

testified at his hearing that he believed that sitting at work made his back worse, he also testified that he retired because he was eligible after 30 years of service. Plaintiff did not make any further work attempts, even though his treating physician later stated that he was capable of employment.

Further, as outlined above, the administrative law judge made numerous other findings in support of his credibility determination that are reasonably supported by the record. In conducting his credibility analysis, the administrative law judge considered not only the objective medical evidence but the other relevant Social Security Ruling 96-7p factors, including plaintiff's daily activities; the location, duration, frequency, and intensity of his pain and other symptoms; factors that aggravated his symptoms; his medications; other treatment or measures taken for relief of pain; and other factors concerning his functional limitations. Even if the administrative law judge technically erred in failing to address the Social Security Rulig 96-7p factors, including past work history, that error was harmless. Accordingly, plaintiff has not demonstrated that this is one of those rare occasions on which the court should disturb the administrative law judge's credibility finding.

C. Failure to Consider Medical Evidence

Plaintiff argues that the administrative law judge committed reversible error under 20 C.F.R. § 404.1527(b) (administrative law judge will consider medical opinions in the case record) when he ignored all of the medical evidence and opinions in the record except those

of plaintiff's treating physician, Dr. Sterrett. Plaintiff does not point to favorable medical evidence that the administrative law judge failed to consider and admits that the administrative law judge properly accorded controlling weight to the opinion of his treating physician under 20 C.F.R. § 404.1527(d). Dkt. #7 at 5. Instead, plaintiff asserts only that the administrative law judge did not consider the "many other pieces of medical evidence and medical opinions" in the record. Id. at 5-6. The only clue as to which opinions plaintiff is referring is in his proposed findings of fact, where he states that he received treatment from Dr. Doug Sedlacek, Dr. R.F. Neiman, Dr. Michael Chapman, Dr. Laurie Garms, Dr. Brian Sullivan, Louis Greenwald, P.T., and Mercy Medical Center. Dkt. #8 at 3.

Although an administrative law judge must consider all of the evidence in the record, 20 C.F.R. § 404.1527(b), he is not required to provide a written evaluation of every piece. 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.

Although the administrative law judge did not identify the above providers by name, he did consider and even summarize relevant portions of their opinions. The administrative law judge specifically cited to the records of Dr. Garms and Greenwald and summarized their diagnosis and treatment of plaintiff's neck pain. AR 18 (citing Exh. #8F). Dr. Chapman's records relating to his diagnosis of plaintiff's cervical radiculopathy and herniated disc at C6-7 are contained within the same exhibit as the records of Dr. Garms and Greenwald. AR 321 and 324. Although the administrative law judge did not specifically mention the visit,

he found that plaintiff had degenerative disc disease of the cervical spine. AR 17. The administrative law judge also accurately summarized plaintiff's other diagnoses of record, which were treated by plaintiff's internist, Dr. Sullivan. Citing Dr. Sullivan's records, the administrative law judge reasonably concluded that "[t]he primary focus of primary care was directed toward monitoring blood sugars with minimal reference to residuals of degenerative disc disease." AR 17-18 (citing Exh. #8F).

At the hearing, the administrative law judge agreed to keep the record open to admit into evidence Dr. Sedlacek's records, AR 52, and those records, which included records from Mercy Medical Center, are included in the administrative record, AR 427-28. Although the administrative law judge did not address the records specifically, they establish only that plaintiff received facet joint injections in his back on June 19, 2000. AR 427-28. There are no opinions from Dr. Neiman. In fact, the only reference to Dr. Neiman in the record is in plaintiff's disability report where he states that Dr. Neiman evaluated him sometime between 1994 and 1997. AR 154.

Accordingly, I find that the administrative law judge satisfied his duty to consider the entire record and at least minimally articulate his reasoning. Further, even assuming *arguendo* that the administrative law judge erred in not properly considering a medical opinion of one of plaintiff's providers, that error is harmless. Plaintiff has failed to identify any medical opinion that contradicts either the administrative law judge's findings or the medical opinions on which he expressly relied.

D. Failure to Consider Non-Medical Evidence

Plaintiff argues that the administrative law judge committed reversible error by failing to consider a statement from plaintiff's wife and the observations of unidentified Social Security Association employees. In support, plaintiff cites 20 C.F.R. § 404.1529(c)(3) and Social Security Ruling 96-7p, which provide that the administrative law judge must consider all of the evidence in the case record, including any observations by Social Security Association employees and statements by other persons concerning the individual's symptoms. As with medical opinion evidence, the administrative law judge must sufficiently articulate his assessment of the record to assure the court that he considered the important evidence. Carlson v. Shalala, 999 F.2d 180, 181 (7th Cir. 1993) (citations omitted). "If an ALJ were to ignore an entire line of evidence, that would fall below the minimal level of articulation required." Id.

Plaintiff fails to identify the observations by Social Security Administration employees that he wanted the administrative law judge to consider. As the commissioner notes, the only observations of record are those of the state disability agency consulting physicians, Dr. Hunter and Dr. Koons, and those unfavorable observations were considered and adopted by the administrative law judge. AR 20-21.

Regarding plaintiff's wife's statement, the administrative law judge agreed to keep the record open to allow for its late admission and stated that he would consider it. AR 52. Although plaintiff claims he submitted the statement via facsimile on September 20, 2005,

dkt. 7 at 6, it is absent from the record and is not mentioned in the administrative law judge's decision. Plaintiff asserts in his proposed findings of fact that the statement describes plaintiff's "impairments resulting in permanent nerve damage, sciatica pain, and lower and upper back pain." Dkt. #8 at 5. Plaintiff states that his wife also "describes the housework that will never get done because even the easy labor involves stooping or climbing, which simple tasks claimant is completely unable to perform due to his impairments." Id.

Given plaintiff's lengthy testimony about his impairments and limited activities, including housework, the statement from his wife does not constitute a separate line of evidence, but rather serves to reiterate and thereby corroborate plaintiff's testimony. Books v. Chater, 91 F.3d 972, 980 (7th Cir. 1996); see also Briscoe ex rel Taylor v. Barnhart, 425 F.3d 345, 354 (7th Cir. 2005); Carlson, 999 F.2d at 181. To the extent that the administrative law judge found plaintiff's testimony not credible, he necessarily found his wife's statement unconvincing. Books, 91 F.3d at 980. Accordingly, the administrative law judge did not err by failing to discuss the statement specifically. Even if the administrative law judge did not honor his word, his failure to consider the statement would be harmless error.

E. Improper Hypothetical

Plaintiff faults the administrative law judge for not specifying in the hypothetical posed to the vocational expert whether the lifting restriction was from the waist or floor

level, arguing that he can lift only from waist level. In addition, plaintiff asserts that the administrative law judge exceeded the weight restriction of 15 pounds for lifting imposed by his former employer.

"The hypothetical question posed by the administrative law judge to the vocational expert must fully set forth the claimant's impairments to the extent that they are supported by the medical evidence in the record." Herron v. Shalala, 19 F.3d 329, 337 (7th Cir. 1994); see also Jens v. Barnhart, 347 F.3d 209, 213 (7th Cir. 2003). In this case, the administrative law judge posed a series of hypotheticals with increasing restrictions to the vocational expert at the hearing. In the first hypothetical, the administrative law judge asked the vocational expert to consider an individual who was limited to lifting 10 pounds frequently and 20 pounds maximum. Then in the third hypothetical, the administrative law judge limited lifting to five pounds frequently and 10 pounds maximum. AR 19.

In support of his argument that he can lift up to 15 pounds only from waist level, plaintiff refers to two documents detailing his work restrictions at John Deere. AR 444-45. However, plaintiff submitted these documents for the first time in 2006 to the Appeals Council, which denied review. As a result, the administrative law judge's decision is the final decision of the Social Security Administration, 20 C.F.R. § 404.981, and any evidence submitted for the first time to the Appeals Council cannot be considered in determining the correctness of the administrative law judge's decision. Diaz v. Chater, 55 F.3d 300, 305 n.1 (7th Cir. 1995); Eads v. Secretary of Department of Health and Human Services, 983 F.2d

815, 817 (7th Cir. 1993). However, plaintiff testified at the hearing that he had trouble lifting even a gallon of milk and believed his lifting restriction at John Deere was five pounds. AR 56 and 60. Additionally, in his request for reconsideration, plaintiff stated that he could not lift more than 15 pounds and had a five-pound lifting restriction for most of his time at John Deere. AR 85-86.

The state disability agency consulting physicians assessed plaintiff with the exertional limitations of occasionally lifting 10 to 20 pounds and frequently lifting five to10 pounds. AR 277. There is no evidence in the record supporting plaintiff's claim that he can lift only from the waist level. Apart from plaintiff's own statements, which the administrative law judge did not find entirely credible, there is no evidence that he cannot lift more than 15 pounds. Because plaintiff has not cited medical evidence to the contrary, I find that the administrative law judge properly set forth impairments supported by the medical evidence in the record.

F. Misstates Medical Evidence

Plaintiff asserts that the administrative law judge was confused by what he thought were apparent discrepancies between plaintiff's subjective complaints of pain and impairment and the medical evidence. In support, plaintiff cites the administrative law judge's statement that "[i]n 2005, a repeat MRI failed to evidence further progression of pathology; however the claimant endorsed a 10 out of 10 pain complaints." Dkt. #7 at 8 (citing AR 19). Plaintiff argues that if the administrative law judge had fully considered the

record, he would have learned that this discrepancy is explained by the statement that Dr. Sterrett made on the social security form that he completed on September 25, 2004:

> Patient has a large herniated disc, L4-L5, centrally. This abuts on the origin of the transmitting LS nerve roots bilaterally. That would explain his radicular pain in both lower limbs and objective findings listed above.

Id. at 8-9.

Plaintiff is incorrect. The administrative law judge was neither confused or inaccurate in his assessment of the medical evidence. The administrative law judge thoroughly considered plaintiff's treatment history with Dr. Sterrett and specifically discussed Dr. Sterrett's completion of the social security form in 2004. AR 19. However, as the administrative law judge noted, two months after completing the form, Dr. Sterrett took an updated magnetic resonance imaging study, which showed no progression of pathology. In fact, the updated magnetic resonance imaging study showed that the disc protrusion at L4-L5 was smaller than it had been at the time of the last magnetic resonance imaging study in 2002. Further, Dr. Sterrett noted expressly that plaintiff had very significant symptoms given the minimal pathology seen on his magnetic resonance imaging study. AR 241. Later in 2005, Dr. Sterrett gave his opinion that plaintiff's back pain was not proportional to the objective clinical findings and clinical history. As the commissioner notes, the administrative law judge understood that plaintiff had pain, he just questioned its severity.

G. Ability to Perform Past Relevant Work

Plaintiff argues without specificity that the administrative law judge failed to properly develop the requirements, nature and characteristics of a work order clerk, as required under 20 C.F.R. § 404.1560(b), Social Security Ruling 96-9p, and Social Security Ruling 82-62.

Social Security Ruling 82-62 requires the administrative law judge to make a finding of fact as to the individual's residual functional capacity, the physical and mental demands of the past job and that the individual's residual functional capacity would permit a return to the past job. To determine whether an individual can perform his past relevant work, the administrative law judge may ask the claimant for information about work done in the past or use the services of a vocational expert. 20 C.F.R. § 404.1560(b)(2). The vocational expert may 1) rely on his knowledge of the physical and mental demands of the past relevant work or 2) offer expert opinion testimony in response to a hypothetical question about whether a person with the claimant's physical and mental limitations can meet the demands of the claimant's previous work. Id. In assessing a claimant's ability to perform his prior work, an administrative law judge must look specifically at the demands of the particular type of work previously performed by plaintiff and not merely describe the former job in generic terms like sedentary or light. Nolen v. Sullivan, 939 F.2d 516, 518 (7th Cir. 1991) (citing Strittmatter v. Schweiker, 729 F.2d 507, 509 (7th Cir. 1984)); see also Smith v. Barnhart, 388 F.3d 251, 252 (7th Cir. 2004).

Plaintiff is correct that the administrative law judge's decision does not list the demands or describe the tasks required in his work order clerk job. The administrative law

judge listed plaintiff's past jobs and wrote that the vocational expert determined that these unskilled and semi-skilled jobs were performed within a range of light to sedentary physical demands as plaintiff performed the work. AR 21. However, the administrative law judge further stated that he concurred with the testimony of the vocational expert, who compared plaintiff's residual functional capacity with the physical and mental demands of that job. AR 22.

At the hearing, the administrative law judge questioned plaintiff about the physical demands and tasks required in his position as work order clerk. Plaintiff testified that he performed sedentary telephone and computer work: making phone calls to dealers and service managers, keying in data and arranging for equipment repairs. AR 50-56. He testified that he sat for less than six hours total during the work day and did not sit, stand or walk for more than an hour at a time before having to shift positions. AR 59. He also said that he stood or walked around as needed during the day and took two 15-20 minute breaks to lie down and apply a heating pack to his back. AR 55. Also at the hearing, the vocational expert amended her written summary of plaintiff's past relevant work to include the tasks and physical demands of the work order clerk position: receiving work orders for repairs, routing the work orders, keying in data and maintaining records. AR 73, 177.

The administrative law judge posed a series of hypotheticals to the vocational expert setting forth the claimant's impairments to the extent that they were supported by the medical evidence in the record (see section II.E) and asked for her opinion about whether

a person with plaintiff's physical limitations could meet the demands of a work order clerk position. AR 74-75. The administrative law judge then adopted the opinion of the vocational expert.

Although the administrative law judge did not detail his reasoning in his decision, I am satisfied that he reasonably relied on the vocational expert to determine the physical demands of plaintiff's prior work as a work order clerk and compare those demands to plaintiff's present capabilities. Strittmatter, 729 F.2d at 509; 20 C.F.R. § 404.1560(b)(2). This is not a case in which the administrative law judge simply concluded that because plaintiff was able to perform sedentary work and his past job was sedentary, he could do it. Id. Unlike in Nolen or Strittmatter, there is substantial evidence in the record to support the administrative law judge's finding that plaintiff was able to perform his past relevant work. Strittmatter, 729 F.2d at 509 (holding administrative law judge must ascertain demands of past work in relation to claimant's abilities *at least where evidence that claimant's impairments are worse than when she was working*) (emphasis added). Therefore, even if the administrative law judge technically erred in not expressly listing the specific physical requirements of plaintiff's previous job before assessing his ability to perform those requirements, that error was harmless.

ORDER

IT IS ORDERED that the decision of the Commissioner of Social Security is AFFIRMED and plaintiff Robert Tinkham'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 7th day of June, 2007.

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