

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

ANNETTE J. NAVE,
Plaintiff,

No. 3:07-cv-0036-JAJ

vs.

MICHAEL J. ASTRUE,
Commissioner of Social Security,
Defendant.

ORDER

This matter comes before the court pursuant to briefs on the merits of this application for disability insurance benefits. This court finds that the decision of the Social Security Administration is supported by substantial evidence. The case is dismissed.

I. PROCEDURAL BACKGROUND

Plaintiff Annette Nave (hereinafter “Nave”) filed an application for Disability Insurance Benefits on April 27, 2004, alleging an inability to work since May 2, 2002 (Tr. 68-70) due to depression, anxiety, and back problems. The Social Security Administration (“SSA”) denied Nave’s application initially and again upon reconsideration (Tr. 46-49, 52). Administrative Law Judge (“ALJ”) Andrew Palestini held a video hearing on Nave’s claim on November 23, 2005. The ALJ denied Nave’s appeal on August 23, 2006 (Tr. 23). Nave filed a request for review on October 3, 2006 (Tr. 10). The Appeals Council denied her request for review on (Tr. 5-7). Nave filed this action for judicial review on April 27, 2007 (Dkt. No. 1).

II. FACTUAL BACKGROUND

At the time of the hearing, Annette Nave was forty-seven years old. She was forty-five at the time of her alleged disability onset date. Nave went to school through ninth grade and later received her GED. She is also a certified nurse assistant. Her vocationally

relevant work experience includes work as a order clerk, telemarketer, salesperson, caterer helper, nurse aide, cashier, and waitress.

A. Relevant Medical History

On June 1, 1998, Nave sought treatment for depression at the Gannon Center in Clinton, Iowa, from Julian Burn, M.D. At that time, she had been out of work for several months. Dr. Burn indicated that Nave's goals "would be to seek the help she needs and to perhaps get medication for the depression and headaches and hopefully this would allow her to seek employment and stability." (Tr. 161).

On February 11, 2002, Nave visited Dr. Alberto Sanchez, M.D., at the Gannon Center. Dr. Sanchez noted that her mood was "mildly to moderately anxious and depressed. Her affect is mildly constricted but mobile appropriate." (Tr. 156). Dr. Sanchez diagnosed Nave with Major Depressive Disorder and Anxiety disorder. He prescribed Wellbutrin and recommended that she continue psychotherapy.

On July 30, 2002, Nave was again treated by Dr. Depala, at which time he again diagnosed Nave with Major Depressive Disorder and Anxiety Disorder and prescribed Zoloft (Tr. 154).

On October 21, 2003, Dr. Juergen Holl, M.D., administered a radiological exam of Nave's spine and left shoulder. Dr. Holl concluded that her shoulder was normal and there was "no evidence of fracture." (Tr. 158). The exam of Nave's back revealed "degenerative changes of the lower cervical spine manifested by changes due to subarticular sclerosis and spur formation." (Tr. 158). The problems were most pronounced at the 5th and 6th interspaces.

On June 29, 2004, an orthopedic doctor, Dr. Daniel Arnold, D.O., examined Nave's back and shoulders and assessed her psychological state. The report stated that her back problems began in 1993 after an auto accident. At the time of the exam, she was

taking no medication for back pain. Of her mental health, Dr. Arnold wrote that she has had depression since 1993 and that it is medically controlled.

Dr. Arnold evaluated her functional abilities, finding that she “[c]an lift and carry 20-30 pounds. Can stand for 1 hour. Can sit for 2 hours. Can walk for one block. Can stoop, climb 6 stairs. Cannot kneel and crawl. Can handle objects for approximately 10 minutes.” (Tr. 163). Dr. Arnold recommended that she “avoid employment that required prolonged standing” due to her back pain and employment with repetitive motions due to her repetitive motions. However, Dr. Arnold stated, “I do feel patient is employable.” (Tr. 164). He recommended avoiding “employment that required prolonged standing.” (Tr. 164).

From December 16, 2003 to September 8, 2005, Dr. Prabhakar Pisipati, M.D., treated Nave for depression and anxiety. In his initial assessment, Dr. Pisipati found that her “[m]ood is depressed and affect is constricted.” (Tr. 180). He diagnosed her with recurrent Major Depressive Disorder without psychotic features. (Tr. 180). He gave her a Global Assessment of Functioning rating of 55-60. This diagnosis remained consistent throughout the course of treatment. He prescribed Effexor for her anxiety and depression. Nave responded well to the medications and Dr. Pisipati often wrote that her mood and affect were good. (Tr. 170, 172, 174, 175, 210-212, 214).

During the course of his treatment of Nave, Dr. Pisipati noted relapses in her mood and affect. On July 19, 2004, he wrote, “Occasionally she has some anxiety/nervousness/panic symptoms because of the situation going on at home. Otherwise she is doing well.” (Tr. 172). On June 7, 2004, Dr. Pisipati wrote that Nave was “tearful/sad/crying. She has been having some problems because of the stressful situation at home. . . . She is having some difficulty sleeping.” (Tr. 173). At that time, Dr. Pisipati started her on Klonopin for anxiety. He also prescribed a sleep aid, Trazodone. On September 8, 2005, Dr. Pisipati noted some improvement due to medication. “She has some

anxiety/nervousness and panic symptoms. Her mood is better only with Effexor. The anxiety/nervousness symptoms are to some extent better with Effexor.” (Tr. 209).

On February 16, 2005, Dr. Pisipati wrote that Nave had stopped taking her medications. “Now without the medication she has increased, poor concentration, poor sleep and increased anxiety/nervousness. Also notes low self-esteem and poor memory.” (Tr. 215). Dr. Pisipati re-started her on Effexor. At her next appointment, he noted that she was “[d]oing much better mood-wise” but was having some side effects to the medication. (Tr. 214).

Throughout the nearly two years of treatment, Dr. Pisipati expressed optimism for the outcome of her treatment, consistently writing, “With patient compliance the treatment outcome appears good.” (Tr. 170-176; 209-215).

B. Plaintiff’s Subjective Complaints

On June 30, 2004, Nave completed a Daily Activities Questionnaire. She indicated that she regularly bathes, dresses, and self-grooms. She said that she has no problems falling asleep “but can’t stay asleep and I take naps once or twice daily.” (Tr. 105). Her household chores include regularly changing bed sheets and taking out the trash. Nave wrote that she prepares meals once or twice per day. She helps her mother feed and take care of her dogs.

Nave drives a car daily. She does not use public transportation because she doesn’t “care to be around . . . bunches of people on buses or otherwise.” (Tr. 106). Nave visits her mother and a friend regularly but she does not participate in group activities. She states that people agitate her.

Nave wrote that she has a lot of difficulty concentrating and remembering. “I just forget a lot of stuff.” (Tr. 108). She said she is greatly bothered by change and when dealing with stress, “I have panic attacks and go home.” (Tr. 108). She wrote that she has a lot of trouble completing a task or chore and some difficulty following directions.

On July 1, 2004, Nave completed a pain/fatigue questionnaire. She indicated that she had sharp, dull, aching pain in her back every day, at all times of the day. She also said she feels numbness in her fingers and toes. She was not taking pain medications because she cannot afford them. She deals with the pain by using heat and cold to control it. She said her pain restricts her activities such as swimming, biking, boating, golf, and “everyday normal life.” (Tr. 110).

She wrote that the pain often made it difficult for her to sleep. She has trouble staying asleep and once she wakes up, she has difficulty getting comfortable enough to fall back asleep. Since the onset of pain, she has lost almost eighty pounds. The pain also made it difficult to think and concentrate. “It’s hard to focus. I don’t usually complete a task at once. I have to come back to it another time.” (Tr. 111).

On August 18, 2004, Nave submitted a Disability Report Appeal in which she indicated that her panic attacks had increased and was not leaving her home as much because of her fearfulness. “I am isolating more, I am fearful when I get these attacks that I will die. I am fearful that I am going crazy. . . . I feel like my heart will jump out of my chest. I cry more when I have these attacks.” (Tr. 117). She stated that she also felt very fearful about working with others.

C. Residual Functional Capacity

On July 13, 2004, Dr. John C. May, M.D. completed a Physical Residual Functional Capacity Assessment. Regarding exertional limitations, Dr. May found that Nave can occasionally lift or carry thirty pounds, frequently lift or carry ten pounds, stand or walk for a total of six hours in an eight-hour workday, sit for a total of six hours in an eight-hour workday, and push or pull an unlimited amount. Dr. May also found that she can frequently climb stair, stoop, kneel, crouch, and can occasionally climb ladders and crawl.

In his assessment, Dr. May wrote that Nave has some “credibility issues.” (Tr. 186).

Despite having back pain, the claimant has no treatment for her condition. . . . She takes no pain medication, including over the counter medication. Her recent exam was unremarkable except for a slight decrease in ROM of the lumbar spine. Her ADLS indicate that she is rather active despite her condition. While she indicates experiencing numbness in her fingers and toes, she does indicate any limitations due to this condition. For these reasons, the credibility of the claimant’s allegations is eroded to some degree.

(Tr. 186).

Clinical psychologist Philip R. Laughlin, Ph.D., completed a Mental Functional Capacity Assessment on July 15, 2004. Dr. Laughlin found that her understanding, memory, concentration and persistence were not significantly limited, while some of her social interactions were moderately limited. Nave was also moderately limited in her ability to respond to changes in the work environment and her ability to make and achieve realistic goals.

On July 15, 2004, Dr. Laughlin also completed a Psychiatric Review Technique. He indicated that Nave had 12.04 Affective Disorders, specifically, Major Depressive Disorder. Dr. Laughlin found that she had mild restrictions on her daily living, moderate difficulties maintaining social functioning and maintaining concentration, persistence and pace. He found no evidence of “C” criteria.

D. Hearing Testimony

ALJ Andrew Palestini held Name’s hearing on November 23, 2005. At the time of the hearing, Nave was forty-seven years old. Vocational expert (“VE”) Vanessa May also testified.

Nave discussed her most recent work experience at that time, which included waitressing at a “dine-in type restaurant.” The most she could lift at that job was one or two plates, the equivalent of about ten pounds. She testified that she would work one four-hour shift and would often lift the plates for about two of those hours. She said she could not lift anything heavy such as large boxes. Nave left that job because she “couldn’t get along with some of the people there.” (Tr. 235).

Prior to working at the restaurant, Nave worked at Swiss Colony in a sales and service position, which included “answering telephone [sic], trying to do customer service, order taking.” (Tr. 236). While it was a “desk-type job,” Nave testified that she had to get up and down a lot. She said that the work “got to [her]” if she worked too many hours without a break. (Tr. 236). She said her employer accommodated her needs. Nave was fired from the position because she of misuse of the company’s incentive program. (Tr. 236).

Nave also worked at a jewelry store for two or three months. She struggled interacting with customers. “Sometimes it would get hectic and I’d just – I’d take a break.” (Tr. 238). She said that she could not return to that work because of her panic attacks.

Nave also worked at Hy-Vee as a catering helper for about four months. She said that in that job, she never had to lift anything over twenty pounds and could sit down whenever she needed to. She left that job because she was having problems “[j]ust coping with things.” (Tr. 239).

In 1992, Nave received her CNA license. She worked as a CNA at Harvard Crest nursing home in Fulton. In September of 1993, she was in a car accident which caused the back injuries of which she currently complains. She said she “had problems with [her] back from that point on.” (Tr. 240).

Nave also worked as a cashier and waitress at the Clinton Family Restaurant. She left because “it was just getting too much for me to handle. . . . I got to the point where everybody started bothering me, and there were people trying to be my boss that weren’t my boss.” (Tr. 241).

After summarizing her employment history, Nave discussed the car accident that caused her back problems. She said that the injury caused permanent tissue damage in her lower back. She said she later developed arthritis in her back and that she is “in pain a lot from it on a regular basis.” She stated that the pain was located “on both sides of my spine, the lower part, and it goes into my one hip sometimes on my right side.” (Tr. 242). She said this causes motivational difficulties: “some days it’s hard to motivate and get anything done, even get out of bed or get out of a chair. And a lot of times – I’ve got a TENS unit from at the time when I did the therapy in ‘93, that I still use up to this day.” (Tr. 242).

Nave stated that she has not had any medical treatment in recent years because she lacks medical insurance. She said she applied for the Iowa Program, which requires her to be seen in Iowa City. She has not gone there because she says she has no transportation.¹

In the middle of the hearing, Nave said that she was having a panic attack. When questioned about the frequency of such attacks she said they happen “[a] lot of times” when she is nervous or around many people. (Tr. 244).

Nave discussed her current physical limitations, stating that she “can’t even walk [her] dog around the block without getting halfway and having to come back.” (Tr. 244).

¹ While the ALJ did not specifically address the inconsistency between this testimony and Nave’s subjective complaints where she stated that she drives daily (Tr. 106), the ALJ did make an adverse credibility finding. “After considering the evidence of record, the undersigned finds the claimant’s statements concerning the intensity, duration and limiting effects of her symptoms are not credible. The Administrative Law Judge particularly finds her pain testimony and statements about pain are not at all credible.” (Tr. 22).

If she sits for a long time, her back “[g]ets stiff to the point where it’s hard to move, and when I do it’s extremely painful until I can work it out and move around a little, or use my TENS unit.” (Tr. 244). She said that she can usually sit for a couple of hours before her back begins to bother her.

Nave said that she lives on a first-floor apartment and does very few chores around her apartment. For meals, she usually cooks microwaved meals, “or a lot of times I’ll go over to my mom’s and she makes stuff, or she takes me out to eat or whatever.” (Tr. 245). She goes grocery shopping once or twice a month and her daughter helps her with cleaning and laundry. Nave stated that she currently has no source of income and that the U.S. Department of Housing and Urban Development (“HUD”) pays her rent. She also receives food stamps.

Nave estimates that in one week, she has two or three “good days” in terms of her anxiety. She said that she doesn’t “like interacting with people. The more I stay home, the better off I am, and I have less panic attacks. And when I do have a panic attack, I take a prescription pill that helps me calm down.” (Tr. 247). She said she started getting the panic attacks when she was working at Swiss Colony and since that time, the attacks have gotten “a lot worse.” (Tr. 247). Nave expressed hesitancy about her ability to go back to work full-time: “I just don’t like people anymore.” (Tr. 247).

She also testified about helping her mother after various surgeries she had. “I just kind of go over, and I’d help her, you know, like when she needed – she couldn’t get out of bed, she had to lay still. I’d get a glass of water or whatever.” (Tr. 249).

VE Vanessa May then testified. The ALJ posed the following hypothetically:

[The Claimant] was able to lift and carry 20 pounds occasionally, 10 pounds frequently. Could sit for six to eight hours in a day with normal breaks, if the breaks did not come longer than two hours at a time. . . . Could stand and move about six to eight hours a day with normal breaks. Could frequently bend. Occasionally squat, crawl, or kneel. Could

frequently stoop. Occasionally climb stairs, occasionally use ladders or work at heights. Is able to use the right hand and the left hand, but with less than repetitive frequency. Work should involve no more than superficial interaction with the public. The public may be present in the work area. Should involve no more than superficial interaction with coworkers when performing any job duties. With those limitations could the Claimant return to any of her past relevant work?

(Tr. 250-51). The VE said that based on those limitation, she could obtain work as an order clerk. Her other past jobs would require more than a superficial interaction with other people, which Nave would not be able to maintain.

The ALJ then asked,

I would like you to consider what effect it would have on her ability to perform such work if up to one to two-thirds of the time she might be unable to complete her tasks, or to attend to work site or remain at the work site because of panic attacks with crying, or because of episodes of back pain. How would that affect her ability to perform that past work?

The VE said that with such limitations, “[s]he would not be competitive.” (Tr. 251). Nave’s attorney then asked the VE to compare the levels of public interaction between an order clerk and a telemarketer. The VE said that telemarketing requires a higher level of interaction because the telemarketer must “convinc[e] someone to purchase something. An order clerk is simply taking orders. . . . The interaction with a telemarketer, it would be rather stressful.” (Tr. 252). Nave’s attorney then asked Nave whether she agreed with this difference and Nave responded, “[a]bsolutely not. . . . [b]ecause I had people who – because of my order-taking skills, I was also customer service at the same time. And when their orders weren’t there, they weren’t very happy or pleasant.” (Tr. 253). The VE then said that it is not typical for an order clerk to also perform customer service.

III. CONCLUSIONS OF LAW

A. Scope of Review

In order for the court to affirm the ALJ's findings of fact, those findings must be supported by substantial evidence appearing in the record as a whole. See Baker v. Barnhart, 457 F.3d 882, 892 (8th Cir. 2006). "Substantial evidence is less than a preponderance, but is enough that a reasonable mind would find it adequate to support the Commissioner's conclusion." McKinney v. Apfel, 228 F.3d 860, 863 (8th Cir. 2000). The court must take into account evidence that fairly detracts from the ALJ's findings, as well as evidence that supports it. Id. (citing Craig v. Apfel, 212 F.3d 433, 436 (8th Cir. 2000)). The court must consider the weight of the evidence appearing in the record and apply a balancing test to contradictory evidence. Gunnels v. Bowen, 867 F.2d 1121, 1124 (8th Cir. 1989); Gavin v. Heckler, 811 F.2d 1195, 1199 (8th Cir. 1987).

B. ALJ's Disability Determination

Determining whether a claimant is disabled involves a five-step evaluation. See 20 C.F.R. § 404.1520(a)-(f); Bowen v. Yuckert, 482 U.S. 137, 140 (1987).

The five steps are:

- (1) If the claimant is engaged in substantial gainful activity, disability benefits are denied.
- (2) If the claimant is not engaged in substantial gainful activity, her medical condition is evaluated to determine whether her impairment, or combination of impairments, is medically severe. If the impairment is not severe, benefits are denied.
- (3) If the impairment is severe, it is compared with the listed impairments the Secretary acknowledges as precluding substantial gainful activity. If the impairment is equivalent to one of the listed impairments, the claimant is disabled.
- (4) If there is no conclusive determination of severe impairment, then the Secretary determines whether the

claimant is prevented from performing the work she performed in the past. If the claimant is able to perform her previous work, she is not disabled.

- (5) If the claimant cannot do her previous work, the Secretary must determine whether she is able to perform other work in the national economy given her age, education, and work experience.

Trenary v. Bowen, 898 F.2d 1361, 1364 n.3 (8th Cir. 1990) (citing Yuckert, 482 U.S. at 140-42); 20 C.F.R. § 404.1520(a)-(f).

“To establish a disability claim, the claimant bears the initial burden of proof to show that he is unable to perform his past relevant work.” Frankl v. Shalala, 47 F.3d 935, 937 (8th Cir. 1995) (citing Reed v. Sullivan, 988 F.2d 812, 815 (8th Cir. 1993)). If the claimant meets this burden, the burden of proof then shifts to the Commissioner to demonstrate that the claimant retains the physical residual functional capacity (“RFC”) to perform a significant number of other jobs in the national economy that are consistent with the claimant’s impairments and vocational factors such as age, education and work experience. Id.

At the first step, the ALJ found that Nave had not engaged in substantial gainful activity since her alleged onset date. At the second step, the ALJ determined that Nave had a severe impairment, that being degenerative changes of the lower cervical spine, history of affective disorder, history of back pain following a 1993 car accident, and obesity. (Tr. 17). At the third step, the ALJ determined that Nave’s impairments did not meet or equal one of the listed impairments (Tr. 18-19). At the fourth step, the ALJ determined that Nave could perform her past relevant work as an order clerk. (Tr. 23).

C. Development of the Record

Nave first argues that the ALJ did not fully develop the record and improperly drew inferences from the notes and treatment history of her treating physician, Dr. Pisipati. She argues that the ALJ should have sought medical evidence regarding her functional

capabilities before he assigned an RFC. Nave contends that the RFC was based only on the opinion of non-treating physicians and not that of her treating physician, Dr. Pisipati. The Commissioner responds that the ALJ properly developed the record and it was not necessary to supplement the record with further evidence from Dr. Pisipati.

A claimant bears a heavy burden to show improper development of the record. Onstad v. Shalala, 999 F.2d 1232, 1234 (8th Cir. 1993). She must first show that the ALJ failed to develop the record and second, that the failure was prejudicial. Id.

An ALJ has a duty to fully and fairly develop the record. Snead v. Barnhart, 360 F.3d 834, 838 (8th Cir. 2004). The duty to develop the record applies whether or not the claimant was represented by counsel. Id. The social security regulations state, “When the evidence we receive from your treating physician or psychologist or other medical source is inadequate for us to determine whether you are disabled, we will need additional information to reach a determination or a decision.” 20 C.F.R. § 404.1512(e). The ALJ must also “seek additional evidence or clarification . . . when the report from your medical source contains a conflict or ambiguity that must be resolved, the report does not contain all necessary information, or does not appear to be based on medically acceptable clinical and laboratory diagnostic techniques.” 20 C.F.R. § 404.1512(e)(1).

In terms of an RFC, Nave contends that the record was incomplete because her treating physician did not specifically give an opinion of her work-related limitations. “The ALJ should determine a claimant’s RFC ‘based on all the relevant evidence, including the medical records, observations of treating physicians and others, and an individual's own description of his limitations.’” Strongson v. Barnhart, 361 F.3d 1066, 1070 (8th Cir. 2004) (quoting McKinney v. Apfel, 228 F.3d 860, 863 (8th Cir. 2000)). “The record must include some medical evidence that supports the ALJ’s residual functional capacity finding.” Dykes v. Apfel, 223 F.3d 865, 867 (8th Cir. 2000). The opinion of non-treating, non-examining physicians does not constitute medical evidence.

See Nevland, 204 F.3d at 858. If reports of non-treating, non-examining physicians are the only evidence in the record, the ALJ has a duty to seek more evidence to supplement the record. Id. An ALJ may not draw inferences from medical reports. Shontos v. Barnhart, 328 F.3d 418, 427 (8th Cir. 2003) (citing Lund v. Weinberger, 520 F.2d 782, 785 (8th Cir. 1975)).

Nave cites three cases in support of her position, all of which are distinguishable. In Lund v. Weinberger, the little medical evidence in the record contradicted the ALJ's finding that the claimant could work. 520 F.2d 782, 785 (8th Cir. 1985). "The only medical evidence in the record of Lund's ability to do work is favorable to him; his own doctor stated that he did 'not know of any jobs that would not increase his headaches and neck pains.' The other reports were merely diagnostic in nature. An administrative law judge may not draw upon his own inferences from medical reports." Id. In Lund, there was *no* medical support for the ALJ's determination that Lund could return to work. In contrast, the record here reveals a wealth of evidence supporting the ALJ's conclusion that Nave could return to work with social functioning limitations.

This evidence first includes the treatment notes from Nave's sixteen visits to Dr. Pisipati. The course of treatment indicates that she suffered from moderate Major Depressive Disorder, which was controlled by medication. While on medication, Dr. Pisipati notes marked improvement and that her mood and affect were good. He did identify external stressors that aggravated her depression and anxiety, including strained relationships with family members and her social security case. Second, the record includes the report of Dr. Arnold, who examined Nave and reviewed her records. He found that she is employable and that her depression is medically controlled. Third, the record includes two agency consultations consistent with Dr. Pisipati's treatment record. Together, these reports and records are all consistent – they indicate that Nave suffers from depression and anxiety, which can be medically controlled. The ALJ thus

appropriately found that Nave is employable, while assigning social limitations that reflect her anxiety in social situations. All of this evidence is in stark contrast to Lund, where there was no medical evidence that Lund could return to work, only evidence that raised doubt that Lund would be unable to return to any of his past jobs.

Nave also cites Nevland v. Apfel, in which there was “no medical evidence about how Nevland’s impairments affect his ability to function. . . .” 204 F.3d at 858. The Nevland court stated that the ALJ should have gotten another opinion from Nevland’s treating physician or ordered a consultative exam evaluating his functional limitations. Id. Here, there is a consultative exam from Dr. Arnold who examined Nave and reviewed her medical records. In addition to the voluminous treatment notes discussed above, there is ample medical evidence on which to base a RFC. His recommendations that she can work, albeit with limitations, are consistent with Dr. Pisipati’s treatment notes.

Last, Nave cites Bowman v. Barnhart, where the Eighth Circuit Court of Appeals reversed and remanded an ALJ’s finding of no disability. The court found that the ALJ should have recontacted Bowman’s treating physician “for ‘additional clarification,’ and for an assessment of how the ‘impairments limited [Bowman’s] ability to engage in work-related activities.’” The court found that the treating physician’s notes were “cursory” and that the ALJ “improperly relied on the report of a state consultant, who did not examine Bowman.” Id. at 1085.

The court distinguished Bowman in a case similar to the one here. In Cox v. Astrue, the treating physician did not specifically address her ability to work. Relying on Bowman, Cox urged reversal on the grounds that the ALJ did not re-contact the treating physician before assigning a RFC. The court rejected the argument and clarified its holding in Bowman:

Cox appears to believe that Bowman supports her contention that the absence of any explicit reference to ‘work’ in close proximity to the description of her various medically evaluated

limitations makes it impossible for the ALJ to ascertain her work-related limitations from that evaluation. It does not. Such explicit language is unnecessary here because Dr. Al-Taher's evaluations describe Cox's functional limitations with sufficient generalized clarity to allow for an understanding of how those limitations function in a work environment.

Cox v. Astrue, 495 F.3d 614, 620 (8th Cir. 2007).

The court finds that Nave's situation is much closer to Cox v. Astrue than Bowman v. Barnhart. The medical evidence is much more voluminous here than in Bowman. In Bowman, the ALJ relied solely on the evaluation of *one* non-treating, non-examining physician. In the present case, the ALJ thoroughly analyzed *all* of the medical evidence – (1) the notes and records of Dr. Pisipati, the treating physician; (2) the work limitations outlined by Dr. Arnold, a consulting physician who examined Nave; and (3) the evaluations of two non-examining agency physicians.

Like in Cox, there may have been no specific reference to “work,” but the volume and contents of Dr. Pisipati's notes give a clear indication of her capabilities. Dr. Pisipati's notes were not “cursory” as they were in Bowman. In each entry, he described Nave's mental and physical state at the time of the examination, he described her reactions to medications, summarized the treatment plan, and gave an assessment of the projected outcome. While Dr. Pisipati did not expressly mention “work,” the record contains a wealth of information that the ALJ drew upon in determining Nave's RFC.

For the reasons stated above, the Court finds that Dr. Pisipati's treatment notes were complete, unambiguous and consistent. There was sufficient medical evidence in the record upon which the ALJ could make his RFC finding. Therefore, it was not necessary for the ALJ to recontact Nave's treating physician, Dr. Pisipati.

D. Medical Source Opinion

Nave argues that the ALJ substituted his opinion for that of Dr. Laughlin, a non-examining agency psychiatrist who provided an opinion of Nave's limitations. Nave

argues that the ALJ's restrictions did not account for her "limitations in attention and concentration, persistence, pace or her ability to regularly attend and be punctual to the workplace," nor did he consider her limitations in social functioning. (Pet. Br. at 20-21). She argues that by disregarding these limitations, there is no medical basis for the ALJ's findings.

The Court fails to see how the ALJ's decision contradicts or fails to account for Dr. Laughlin's opinion. Dr. Laughlin indicated in his Psychiatric Review Technique that Nave has moderate difficulties in "maintaining social functioning" and "maintaining concentration, persistence or pace." (Tr. 205). Dr. Laughlin wrote, "the claimant does manifest moderate restrictions of function with social interaction, sustained pace, concentration and attention, and adaptive/executive function." (Tr. 194).

Nave believes that the ALJ found "no limitations in social functioning, concentration, persistence or pace." (Pet. Br. at 21). The Court does not read the ALJ's opinion that way. The ALJ specifically wrote that the claimant has "'moderate' difficulties in social functioning and maintaining concentration, persistence or pace." (Tr. 22). He found, however, that these difficulties could be managed in the right work environment. The ALJ wrote,

She would have no significant difficulties in these regards in a work environment which does not require (a) more than superficial interaction with co-workers when performing any job duties, or (b) more than superficial interaction with the public, but allowing for public presence in the work area. This is intended to accommodate a degree of social anxiety.

(Tr. 22). To modify her working conditions in order to address her limitations is not to disregard those limitations. The ALJ appropriately considered her limitations as discussed by Dr. Laughlin in his Psychiatric Review Technique, as well as the opinions of other medical sources.

E. Substantial Evidence of Nave's Ability to Perform Past Work

Last, Nave argues that the ALJ's mental RFC was not supported by substantial evidence and therefore, the vocational expert's testimony based on that RFC is not substantial evidence. The Commissioner responds that the RFC was properly determined and there was substantial evidence to support the finding that Nave can perform her past relevant work as an order clerk.

In support of her argument, Nave reiterates the arguments discussed in Part III.C regarding development of the record. Because the Court found that the record was complete and it was unnecessary to re-contact Dr. Pisipati, there was no flaw in the determination of Nave's RFC. That RFC was appropriately incorporated into a hypothetical that was posed to the vocational expert at the administrative hearing. Therefore, the conclusion that Nave could perform her past relevant work is supported by substantial evidence.

Upon the foregoing,

IT IS ORDERED that the decision of the Commissioner of Social Security is hereby affirmed. This matter is dismissed. The Clerk of Court shall enter judgment accordingly.

DATED this 15th day of August, 2008.



JOHN A. JARVEY
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF IOWA