

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

DAVID L. SHOELL,

Plaintiff,

vs.

JO ANNE B. BARNHART, Commissioner
of the Social Security Administration

Defendant.

No. 3:02-cv-40073

O R D E R

Plaintiff seeks review of the Social Security Commissioner's decision denying disability insurance benefits and supplemental security income ("SSI") benefits under Titles XVI and II, respectively, of the Social Security Act ("the Act"), 42 U.S.C. §§ 401 et seq., 42 U.S.C. §§ 1381 et seq. The Court reviews the final decision of the Social Security Commissioner pursuant to 42 U.S.C. § 405(g) (judicial review of final decision on disability insurance benefits) and 42 U.S.C. § 1383(c)(3) (judicial review of final decision on SSI benefits).

PROCEDURAL HISTORY

The Plaintiff, David L. Shoell ("Shoell"), protectively filed an application for SSI payments on May 18, 2000, and subsequently filed an application for a period of disability and disability insurance benefits on June 7, 2000. The Social Security

Administration (“the SSA” or “the Administration”) denied the applications on both the initial determination and the reconsidered determination.

Shoell then sought a hearing with an administrative law judge. The requested hearing was held by video in front of Administrative Law Judge Andrew T. Palestini (“ALJ”) on October 4, 2001. On December 20, 2001, the ALJ issued a decision denying SSI and disability benefits. On January 14, 2002, Shoell requested review of the ALJ’s decision from the Social Security Administration Appeals Council. The Appeals Council denied the request for review on May 9, 2002. Therefore, the ALJ’s decision of December 20, 2001, stands as the final decision of the Commissioner. Shoell commenced the present action seeking review by the United States District Court for the Southern District of Iowa, Davenport Division, on July 8, 2002.

BACKGROUND

A. Facts¹

While Shoell had experienced chronic low back pain off and on for several years, in August 1999 he injured his back moving furniture. He was diagnosed as having acute and chronic low back pain. In February 2000, Shoell injured his left wrist while working

¹ The Court has thoroughly reviewed the record in this case. The Court finds the factual summary, and specifically the review of Shoell’s medical history related to his back and left wrist, in the ALJ’s opinion both accurate and exhaustive; therefore, the Court finds it unnecessary to repeat that summary in this Order.

on a car. He was found to have significant degenerative changes in the radial scaphoid joints and around the radial styloid. In addition, x-rays on his left wrist revealed avascular necrosis with nonunion of the scaphoid, which Shoell states occurred approximately 13 years before. As a result of the wrist injury, Shoell has undergone several surgeries to the left wrist. It is the injuries to his back and left wrist that Shoell contend make him eligible for the benefits he seeks. Shoell claims the rehabilitative measures undertaken thus far have been unsuccessful and that the pain and limitations in his back and left wrist prohibit him from finding and keeping substantial gainful employment.

B. Findings of the Commissioner

In determining whether Shoell is disabled, the ALJ employed the five-step sequential evaluation pursuant to 20 C.F.R. § 404.1520 (2002). After consideration of the entire record and the testimony from the video hearing, the ALJ made the following findings:

1. The claimant met the disability insured status requirements of the Act in May 2000, the date the claimant stated he became unable to work, and continues to meet them at least through the date of this decision.
2. The claimant has not engaged in substantial gainful activity since his alleged onset of disability, May 2000.
3. The medical evidence establishes that the claimant has severe impairments of cardiac abnormality, status post left intercarpal fusion

with scaphoid excision and carpal tunnel release, and degenerative joint disease of the lumbar spine.

4. The claimant does not have an impairment or combination of impairments listed in, or medically equal to, one listed in Appendix 1, Subpart P, Regulations No. 4.
5. The claimant is not a fully credible witness about his symptoms and limitations for the reasons stated herein.
6. The claimant has the maximum residual functional capacity to lift and carry no more than 10 pounds frequently and 20 pounds occasionally. The claimant can sit, stand, and/or walk for up to six hours each in an eight-hour workday. He must mainly carry weight with his right hand. He can no more than occasionally stoop, bend, crouch, crawl, and climb. He must avoid ladders. He cannot repetitively use his left hand for gripping or for more than occasional light grasping and fingering. This residual functional capacity reflects an ability to perform a range of light work (20 C.F.R. §§ 404.1545 and 416.945).
7. The claimant is unable to perform his past relevant work.
8. The claimant is 39 years old, which is defined as a younger individual (20 C.F.R. §§ 404.1563 and 416.963).
9. The claimant has a high school education (20 C.F.R. §§ 404.1564 and 416.964).
10. The claimant has skilled past relevant work experience but any skills he might have acquired would not be transferable to work within his residual functional capacity (20 C.F.R. §§ 404.1568 and 416.968).
11. Noting the testimony of the vocational expert, a significant number of jobs exist in the state and national economies that the claimant can perform. Such jobs include: an investigator dealer account (DOT # 241.367-038), of which there are 400 jobs in the state and 49,000

jobs in the nation; a furniture rental consultant (DOT # 296.357-018), of which there are 800 jobs in the state and 98,000 jobs in the nation; an usher (DOT # 344.677-014), of which there are 270 jobs in the state and 33,000 jobs in the nation; a call out operator (DOT # 237.367-014), of which there are 400 jobs in the state and 47,400 jobs in the nation; and a surveillance system monitor (DOT # 379.367-010), of which there are 70 jobs in the state and 5,500 jobs in the nation.

12. The claimant was not under a “disability”, as defined in the Social Security Act, at any time through the date of this decision (20 C.F.R. §§ 404.1520(f) and 416.920(f)).

In conclusion, the ALJ stated his Decision as follows:

It is the decision of the Administrative Law Judge that, based on the application protectively filed on May 18, 2000, and on the application filed on June 7, 2000, the claimant is not disabled for purposes of entitlement to a period of disability and disability insurance benefits under §§ 216(I) and 223 of the Social Security Act, and for purposes of eligibility for supplemental security income payments under § 1614(a)(3)(A) of the Act, at any time through the date of this decision.

ANALYSIS

To establish entitlement to benefits, a claimant must show that he or she is unable to engage in any substantial gainful activity by reason of a medically determinable impairment which has lasted or can be expected to last for a continuous period of not less than twelve months. See 42 U.S.C. §§ 423(d), 1382c(a)(3)(A); see also Barnhart v. Walton, 535 U.S. 212, 221-24 (2002) (upholding the Commissioner’s interpretation of this statutory definition, which requires that the disability, and not only the impairment,

must have existed or be expected to exist for twelve months). An individual that can perform past relevant work or other work which exists in significant numbers in the national economy is not disabled. See 20 C.F.R. §§ 404.1520, 416.920 (2002).

Title 20 C.F.R. § 404.1520 sets forth the five-step sequential evaluation process which the ALJ must use in assessing the claimant's disability claim. 20 C.F.R. § 404.1520. A claimant has the burden of establishing that he is entitled to disability benefits by proving the existence of a disability. Roth v. Shalala, 45 F.3d 279, 282 (8th Cir. 1995) (citing Locher v. Sullivan, 968 F.2d 725, 727 (8th Cir. 1992)). If the claimant is able to prove that he is unable to perform her past relevant work, the burden of proof shifts to the Social Security Administration to demonstrate that he can perform other jobs available in the national economy. See Lowe v. Apfel, 226 F.3d 969, 974 (8th Cir. 2000) (citing Cox v. Apfel, 160 F.3d 1203, 1206 (8th Cir. 1998)).

A. Standard of Review

A court must affirm the decision of the Commissioner if substantial evidence in the record as a whole supports the decision. 42 U.S.C. § 405(g); Smith v. Shalala, 31 F.3d 715, 717 (8th Cir. 1994) (citing Richardson v. Perales, 402 U.S. 389, 401 (1971)). “Substantial evidence is less than a preponderance, but enough evidence that a reasonable mind might find it adequate to support the conclusion.” Moad v. Massanari, 260 F.3d 887, 890 (8th Cir. 2001). In determining whether existing evidence is substantial, the Court considers “evidence that detracts from the Commissioner’s decision as well as

evidence that supports it.” Young v. Apfel, 221 F.3d 1065, 1068 (8th Cir. 2000) (citing Prosch v. Apfel, 201 F.3d 1010, 1012 (8th Cir. 2000)).

A court may not reverse merely because substantial evidence would have supported a contrary decision. Craig v. Apfel, 212 F.3d 433, 436 (8th Cir. 2000). Moreover, a court may not reverse merely because it would have decided the case differently. Krogmeier v. Barnhart, 294 F.3d 1019, 1022 (8th Cir. 2002) (citing Woolf v. Shalala, 3 F.3d 1210, 1213 (8th Cir. 1993)). “If, after reviewing the record, the Court finds that it is possible to draw two inconsistent positions from the evidence and one of those positions represents the Commissioner’s findings, the court must affirm the commissioner’s decision.” Pearsall v. Massanari, 274 F.3d 1211, 1217 (8th Cir. 2001).

A reviewing court must also ascertain whether the ALJ’s decision is based on legal error. Berger v. Apfel, 200 F.3d 1157, 1161 (8th Cir. 2000); Keller v. Shalala, 26 F.3d 856, 858 (8th Cir. 1994). The court may reverse the Commissioner’s decision if the ALJ applies an erroneous legal standard. Ingram v. Chater, 107 F.3d 598, 601 (8th Cir. 1997) (citing Nettles v. Schweiker, 714 F.2d 833, 835-36 (8th Cir. 1983)).

If the reviewing court determines that there does not exist substantial evidence to support the Commissioner’s decision, ordinarily the appropriate remedy is to remand for further administrative proceedings rather than to award benefits. See Buckner v. Apfel, 213 F.3d 1006, 1011 (8th Cir. 2000); see also Cox, 160 F.3d at 1210 (remanding for further proceedings because of court’s “abundant deference to the ALJ”). In fact, an

immediate finding of disability is appropriate only if the record “overwhelmingly supports” such a finding. Thompson v. Sullivan, 957 F.2d 611, 614-15 (8th Cir. 1992).

B. Discussion

Shoell alleges three points of error which he argues necessitate remand. First, Shoell contends the ALJ erred in his assessment of Shoell’s residual functional capacity by failing to include limitations documented by the medical evidence. Second, Shoell claims the ALJ failed to evaluate the credibility of Plaintiff’s testimony according to the prevailing legal principles. Third, Shoell argues the Commissioner failed to meet her burden of proving there are a significant number of jobs Shoell can perform with his injured hand.

1. ALJ Assessment of Residual Functional Capacity

The residual functional capacity (“RFC”) of a claimant is a medical question. Lauer v. Apfel, 245 F.3d 700, 704 (8th Cir. 2001) (quoting Singh v. Apfel, 222 F.3d 448, 451 (8th Cir. 2000)). The ALJ should obtain medical evidence that addresses the claimant’s “ability to function in the workplace,” Nevland v. Apfel, 204 F.3d 853, 858 (8th Cir. 2000), as at least some medical evidence must support the determination of the claimant’s RFC. Dykes v. Apfel, 223 F.3d 865, 867 (8th Cir. 2000). Thus, while the ALJ is not limited to considering medical evidence, the ALJ is required to at least consider some supporting evidence from a professional and medical evidence is required to

establish how claimant's impairments affect his RFC. See Lauer, 245 F.3d at 704; Nevland, 204 F.3d at 858.

Under the Commissioner's regulations, the opinions of treating sources are generally given more weight due to their unique position. See 20 C.F.R. § 404.1527(d)(2); Chamberlain v. Shalala, 47 F.3d 1489, 1494 (8th Cir. 1995) (recognizing the opinions of a treating physician are entitled to substantial weight). The treating physician's continuing relationship with the claimant makes the treating physician especially qualified to evaluate reports from other examining doctors, to integrate medical information provided, and to form an overall conclusion as to the functional capacities and limitations of the claimant. Lester v. Chater, 81 F.3d 821, 833 (9th Cir. 1996); see also Hancock v. Sec'y of Dept. of Health, Educ. & Welfare, 603 F.2d 739, 740 (8th Cir. 1979). However, such an opinion is not conclusive and must be supported by other evidence. See 20 C.F.R. § 404.1527(d)(2). Indeed, "[a] treating physician's opinion is afforded less deference when the medical evidence in the record as a whole contradicts the opinion itself." Haggard v. Apfel, 175 F.3d 591, 595 (8th Cir. 1999).

The regulations also set out a framework for analyzing a treating source's opinion. See 20 C.F.R. § 404.1527(d)(2); Vonbisch v. Apfel, 132 F. Supp. 2d 785, 796-98 (D. Neb. 2001). If the ALJ determines the treating physician's opinion as to the nature and severity of the claimant's impairment is "well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with other substantial

evidence,” then the ALJ must give it controlling weight. 20 C.F.R. § 404.1527(d)(2); see also Holmstrom v. Massanari, 270 F.3d 715, 720 (8th Cir. 2001); Prosch, 201 F.3d at 1012-13.

Even when the ALJ determines the treating physician’s opinion is not entitled to controlling weight, the opinion is not simply disregarded. See SSR 96-2p (July 2, 1996) (“In many cases, a treating source’s medical opinion will be entitled to the greatest weight and should be adopted, even if it does not meet the test for controlling weight.”). Rather, the ALJ looks at the factors delineated in 20 C.F.R. § 404.1527(d)(2)-(6) to determine how much weight should be given to that opinion. 20 C.F.R. § 404.1527(d).² Furthermore, “[w]hether the weight accorded the treating physician’s opinion by the ALJ is great or small, the ALJ must give good reasons for that weighting.” Meinders v. Barnhart, 195 F. Supp. 2d 1136, 1144 (S.D. Iowa 2002); 20 C.F.R. § 404.1527(d)(2) (requiring the ALJ to “always give good reasons . . . for the weight [he gives the] treating source’s opinion”); see also Singh, 222 F.3d at 452.

Shoell contends the ALJ erred by rejecting the opinions of the treating sources regarding his ability to lift. He claims the ALJ failed to note the treating source opinions and to evaluate them as required by the regulations. Shoell further contends the opinions

² The factors outlined in 20 C.F.R. § 404.1527(d)(2)-(6) include the following: treatment relationship, including length of the relationship, frequency of examination, and the nature and extent of the relationship; supportability; consistency; specialization; and other factors.

relied on by the ALJ, i.e., the opinions of non-examining state agency consultants, do not constitute “substantial evidence” to support the ALJ’s decision. Shoell seeks to have the ALJ clarify Dr. Hendricks’ and Dr. Martens’ conclusions of his restrictions on lifting and using his hands. In addition, Shoell seeks to have the Court instruct the ALJ on remand to obtain a consultive examination of his back or other medical evidence regarding his ability to sit and stand.

Defendant notes that the ALJ did not fully state the medical opinion of Dr. Martens. The ALJ does note that Dr. Martens opined Plaintiff was able to do “light duties.” However, Dr. Martens’ definition of “light duty” differs from that used by the SSA in that Dr. Martens stated Plaintiff was restricted to lifting 10 pounds, whereas the SSA defines light work to include lifting up to 20 pounds occasionally. The ALJ’s decision adopts the ability to lift 20 pounds occasionally as part of the RFC.

Defendant argues remand to follow the 10-pound restriction is not warranted because it would not alter the result. Dr. Martens did not believe that Plaintiff was disabled, but that he could work. Moreover, at least two of the jobs, call out operator and surveillance system monitor, identified by the vocational expert and relied on by the ALJ, were sedentary jobs and could be performed by an individual limited to lifting 10 pounds.

In addition, contrary to Plaintiff’s contentions, the ALJ did note Dr. Hendricks’ opinion. While the opinion does place a 5-pound weight limit on Plaintiff, this appears

to be limited to what Plaintiff could do with his left hand and does not prevent his ability to lift with his right hand. Moreover, Dr. Hendricks noted this was a temporary condition and endorsed a statement that he would not recommend Plaintiff apply for long-term disability benefits. Likewise, the physical therapist's assessment states Plaintiff had a 21-pound grip with his left hand and a 106-pound grip with his right hand. These statements support the ALJ's decision by showing some limitations, but not total incapacity, with the left hand, and considerable capability with the right hand.

The Court finds the ALJ properly considered and weighed the medical opinions in the present case. Furthermore, the Court finds the ALJ's determination of RFC is supported by substantial evidence. The ALJ noted that the objective medical evidence was not consistent with disability. Furthermore, the ALJ correctly noted that no physician opined that Plaintiff was disabled. In finding the ALJ considered the medical evidence available, the Court holds Nevland v. Apfel, 204 F.3d 853 (8th Cir. 2000), and Lauer v. Apfel, 245 F.3d 700 (8th Cir. 2001), do not require remand in the present case. These cases found *no medical* evidence existed as to the plaintiffs' impairments and the determination of RFC. See Nevland, 204 F.3d at 858. The courts remanded these cases stating the ALJ was required to consider some supporting medical evidence. See Lauer, 245 F.3d at 704. The ALJ did consider medical evidence in this case, and there is enough medical evidence to support his findings. See Krogmeier, 294 F.3d at 1023-24 (noting lack of medical evidence in distinguishing Lauer and finding medical evidence

supported determination that claimant was not disabled). In the present case two treating physicians, Dr. Martens and Dr. Hendricks, believed Plaintiff could work.

Concerning the back problems, the ALJ noted examinations of Plaintiff's back failed to show Plaintiff had abnormalities that were as significant as were alleged. On August 4, 1999, Shoell had full range of motion of the back and performed well in other tests. On August 6, 1999, an MRI of the lumbar spine showed no disc herniation and only mild disc bulging at L2-3. On December 23, 1999, Plaintiff's back had only "slight tenderness". On January 11, 2000, Shoell had normal gait, excellent flexion and extension, intact strength and normal sensation. On January 21, 2000, Plaintiff's back was slightly tender, but he was able to walk on heels and toes without difficulty. On June 8, 2000, Shoell had normal range of motion with no gross sensory deficiencies in the lower extremities, reflexes and gait were normal, and he could walk on heels and toes without difficulty. On August 15, 2000, Plaintiff had no tenderness, had a normal gait, good range of motion, full strength, and had no active radiculopathy. On August 16, 2000, Plaintiff had no significant radiculopathy symptoms.

Concerning Shoell's wrist problems, the ALJ noted the evidence revealed abnormalities as to the left wrist but not to the severity alleged. Shoell did have surgery to fuse a portion of his wrist as well as carpal tunnel surgery. As of September 2001, he had minimal swelling and tenderness and no atrophy. His treating doctor, Dr. Adams, did not believe a broken screw was contributing to his present symptoms. Shoell

responded positively to the carpal tunnel release. Thus, the ALJ's consideration of medical evidence was consistent with applicable standards, and his determination of RFC is supported by substantial evidence.

2. **Evaluation of Subjective Complaints and Claimant's Credibility**

The framework for considering a claimant's subjective allegations is set forth in Polaski v. Heckler, 739 F.2d 1320 (8th Cir. 1984). See Polaski v. Heckler, 739 F.2d 1320, 1321-22 (8th Cir. 1984); see also 20 C.F.R. §§ 404.1529, 416.929, and SSR 96-7p (July 2, 1996). The ALJ accepts the subjective allegations of a claimant unless inconsistencies or other evidence diminishing the credibility of the claimant are present in the record. Polaski, 739 F.2d at 1321-22.

While the lack of objective medical evidence is not dispositive to the question of a claimant's credibility, it is an important factor. See Kisling v. Chater, 105 F.3d 1255, 1257-58 (8th Cir. 1997); 20 C.F.R. §§ 404.1529(c)(2), 416.929(c)(2). In addition, it can be significant when no examining physician has submitted a medical conclusion that Plaintiff is disabled and unable to perform any type of work. See Brown v. Chater, 87 F.3d 963, 965 (8th Cir. 1996) (finding lack of significant restrictions imposed by treating physicians supported ALJ's determination of no disability); Anderson v. Shalala, 51 F.3d 777, 779 (8th Cir. 1995) (finding fact that reviewing physicians found no disability can be considered by ALJ so long as ALJ conducts independent analysis of medical evidence in the record); Cruse v. Brown, 867 F.2d 1183, 1186 (8th Cir. 1989) (finding "lack of

objective medical evidence to support the degree of severity alleged pain is a factor to be considered”).

Drug-seeking behavior also diminishes credibility. See Anderson, 51 F.3d at 780 (finding drug-seeking behavior can “cast a cloud” over the legitimacy of a claimant’s numerous doctor visits and discredits allegations of disabling pain). In addition, failure to follow a prescribed course of remedial treatment without good reason is inconsistent with complaints of a disabling condition. Holley v. Massanari, 253 F.3d 1088, 1092 (8th Cir. 2001).

Moreover, engaging in daily activities that are inconsistent with the level of alleged pain diminishes credibility of a claimant. See Rankin v. Apfel, 195 F.3d 427, 429 (8th Cir. 1999); Gray v. Apfel, 192 F.3d 799, 804 (8th Cir. 1999); Riggins v. Apfel, 177 F.3d 689, 693 (8th Cir. 1999). However, engaging in minimal household activities cannot be dispositive on its own in determining disability. Burress v. Apfel, 141 F.3d 875, 881 (8th Cir. 1998); Eback v. Chater, 94 F.3d 410, 413 (8th Cir. 1996); see, e.g., Hogg v. Shalala, 45 F.3d 276, 278 (8th Cir. 1995) (noting claimant lived with her mother and cooked twice a day, washed dishes, made beds, occasionally did laundry and cleaned house, went shopping, and drove a car); Harris v. Sec’y of Dept. of Health & Human Servs., 959 F.2d 723, 726 (8th Cir. 1992) (noting claimant shopped for food, children’s school supplies, and household items, occasionally drove a car, and did some cooking, ironing, and laundry); Thomas v. Sullivan, 876 F.2d 666, 669 (8th Cir. 1989) (finding

claimant's ability to do light housework with assistance, attend church, and visit with friends on the phone does not demonstrate claimant's ability to work).

The issue is not whether the claimant actually experiences the subjective complaints alleged, but whether those symptoms are credible to the extent they prevent claimant from performing substantial gainful activity. Baker v. Apfel, 159 F.3d 1140, 1145 (8th Cir. 1998). The Commissioner may discount subjective complaints where there are inconsistencies in the medical evidence in the record as a whole, or where the credibility of the claimant is diminished by inconsistencies or other evidence. Kisling, 105 F.3d at 1257-58.

The ALJ noted in his decision that the objective medical evidence was not consistent with disability and that no physician opined that Plaintiff was disabled.³ In this case, not only is there no finding by a treating physician that Plaintiff is disabled and unable to work any type of job, two of Plaintiff's treating physicians stated Plaintiff was *not* disabled. The ALJ also found Plaintiff exhibited drug-seeking behavior. This is well documented in the record. The ALJ further noted Plaintiff was not always compliant or earnest with treatment. This also is well documented in the record. Finally, the ALJ noted Plaintiff performed activities that were inconsistent with his allegations. The Court again finds there is substantial evidence in the record to support this finding.

³ See discussion supra, Section B.1.

The Court finds the ALJ's evaluation of the Plaintiff's credibility complied with the principles from Polaski. The ALJ's determinations regarding Shoell's credibility are well established in the record and supported by substantial evidence.

3. Burden of Proving Significant Number of Jobs Exist Which Plaintiff Can Perform as Injured

If the claimant is unable to perform past work, the burden shifts to the Commissioner to prove there are other jobs in the national economy that the claimant can perform. 20 C.F.R. § 404.1520; see Simmons v. Massanari, 264 F.3d 751, 754-55 (8th Cir. 2001); Cox, 160 F.3d at 1206. The testimony of a vocational expert is relevant to the determination in steps four and five of the Commissioner's sequential analysis of whether a claimant with a severe impairment has the RFC to do past relevant work or other work available in the national economy. Gilbert v. Apfel, 175 F.3d 602, 604 (8th Cir. 1999).

Hypothetical questions posed to vocational experts should precisely set out the claimant's particular physical and mental impairments. Roberts v. Apfel, 222 F.3d 466, 471 (8th Cir. 2000); Warburton v. Apfel, 188 F.3d 1047, 1050 (8th Cir. 1999). "Testimony elicited by hypothetical questions that do not relate *with precision* all of a claimant's impairments cannot constitute substantial evidence to support" the Commissioner's decision. Montgomery v. Shalala, 30 F.3d 98, 100 (8th Cir. 1994) (quoting Pratt v. Sullivan, 956 F.2d 830, 836 (8th Cir. 1992)). Moreover, the ALJ must

consider all of the impairments of the claimant and not fragmentize them in evaluating their effects. See Delrosa v. Sullivan, 922 F.2d 480, 484 (8th Cir. 1991). A high degree of accuracy in questioning vocational experts is demanded of an ALJ. See Hogg, 45 F.3d at 278.

The ALJ properly accounted for Plaintiff's partial loss of the use of one hand in the RFC determination. This RFC was used in the hypothetical question posed to the vocational expert. The ALJ found Plaintiff could not repetitively use his left hand for gripping or for more than occasional light grasping or fingering, and this restriction was posed to the vocational expert. Based on this hypothetical, the vocational expert listed several jobs the Plaintiff could do. While the vocational expert found no jobs could be performed by an individual with the RFC in the second hypothetical, which assumed infrequent light grasping or fingering of less than one-third of the time, this question and answer is irrelevant because the ALJ found a different RFC than that posed in the second question.

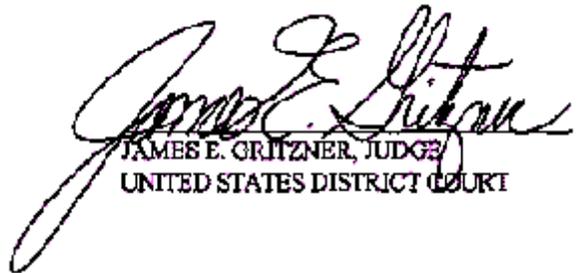
The Court previously determined substantial evidence supported the ALJ's determination of the Plaintiff's RFC. Shoell's RFC, as determined by the ALJ, did take into account those impairments of the Plaintiff's wrist and back determined to be credible. The RFC was presented to a vocational expert who found there were a significant number of jobs Shoell could perform.

CONCLUSION

The Court finds the decision of the Commissioner is supported by substantial evidence, and remand is not warranted in this case. The decision of the Commissioner is **affirmed**, and the case is **dismissed**. The Clerk of Court is directed to enter judgment for the Defendant and against the Plaintiff.

IT IS SO ORDERED.

Dated this 22nd day of March, 2004.



JAMES E. GRITZNER, JUDGE
UNITED STATES DISTRICT COURT