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

ANTHONY MELTON,	)	
	)	
Plaintiff,	)	
	)	CIVIL NO. 4-03-CV-10053
vs.	)	
	)	
JO ANNE B. BARNHART,	)	
Commissioner of Social	)	
Security,	)	
	)	ORDER
Defendant.	)	

Plaintiff seeks review of the Commissioner of Social Security's decision denying him disability insurance benefits under Title II of the Social Security Act (the "Act"), 42 U.S.C. §§ 401 *et seq*, and supplemental security income ("SSI") benefits under Title XVI of the Act, 42 U.S.C. §§ 1381 *et seq*. Pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3), this Court may review the final decision of the Commissioner.

I. PROCEDURAL HISTORY

Anthony Melton, age 44 on the date of the hearing, applied for disability benefits and SSI on October 17, 2000, alleging disability since March 28, 2000. Plaintiff's applications were denied initially and on reconsideration. On June 28, 2002, following a hearing, an administrative law judge ("ALJ") found plaintiff was not disabled under the meaning of the Act.

On January 13, 2003, the Appeals Council of the Social Security Administration denied plaintiff's request for review. Plaintiff commenced the present action for judicial review on January 31,

2003.

II. FINDINGS OF THE COMMISSIONER

The ALJ found the medical evidence to establish that plaintiff suffers from:

> severe impairments of early degenerative disc disease of the lumbar spine, left upper extremity pain, obesity, and mental impairments variably diagnosed as different disorders such as disorder of written expression, anti-social personality disorder, and mood disorder due to head injury with depressive features.

Tr. 22. The ALJ concluded, however, that plaintiff 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. Tr. 22. Likewise, the ALJ also concluded plaintiff's mental disorders "do not precisely satisfy" the diagnostic criteria of either Part A or Part B of the relevant Listings of Impairments. Tr. 23. The ALJ determined plaintiff's allegations of total disability were not credible. Tr. 22.

The ALJ found plaintiff has the residual functional capacity ('RFC") to:

> lift and carry no more than 10 pounds frequently and 20 pounds occasionally. The claimant can sit for up to six hours each in an eight-hour workday. He cannot stand for prolonged periods without an occasional chance to rest. He cannot perform complex work but can perform two to three step tasks. He can have no close supervision in [his] job. He can have only short superficial interaction with co-workers, no direct work with [the] public. He can read and spell at [the] high school level. He has high average ability at problem solving, planning, organizing, and being in control of work process. He should have no strict quotas or deadlines. This residual functional capacity reflects an ability to perform a range of light work.

Tr. 23. With regard to plaintiff's mental RFC, the ALJ found:

> He has slight limitation of activities of daily living; moderate limitation of social functioning; and slight to moderate limitation of concentration, persistence, or pace. The claimant's slight to moderate limitation in concentration, persistence or pace limits his ability to perform detailed or complex work, but it does not significantly limit his

> ability to perform simple, repetitive and routine, i.e., unskilled work. The claimant has no episodes of decompensation within one year, each lasting for at least two weeks. His mental impairments do not meet the Part C criteria of a listing (20 CFR §§ 404.1520a and 416.920a).

Tr. 23. The ALJ found plaintiff was unable to perform his past relevant work. Tr. 23. The ALJ nevertheless concluded, however, that a significant number of jobs exist in the national economy that plaintiff is able to perform. Jobs available at the light, unskilled level include: office helper, mail clerk and office machine operator photocopy. Tr. 23. Jobs available at the sedentary, unskilled level include mail clerk/sorter/document preparer. Accordingly, the ALJ concluded plaintiff was not under a "disability" as defined in the Social Security Act, "at any time through the date of this decision." Tr. 24.

III. APPLICABLE LAW AND DISCUSSION

A. Governing Law

A court must affirm the decision of the Commissioner if substantial evidence on the record as a whole supports the decision. 42 U.S.C. § 405(g). "Substantial evidence is less than a preponderance, but enough so that a reasonable mind might accept it as adequate to support a conclusion." *Johnson v. Chater*, 108 F.3d 942, 943 (8th Cir. 1997). A court may not reverse merely because substantial evidence would have supported an opposite decision. *Locher v. Sullivan*, 968 F.2d 725, 727 (8th Cir. 1992). "If, after review, [the Court] find[s] it possible to draw two inconsistent positions from the evidence and one of those positions represents the Commissioner's findings, [the Court] must affirm the denial of benefits." *Mapes v. Chater*, 82 F.3d 259, 260 (8th Cir. 1996).

B. Whether ALJ Erred in Discounting Treating Physician's Opinion

Plaintiff first argues the ALJ erred in discounting the opinions of treating psychiatrists Christopher Clark, M.D. and James Fleming, M.D. Specifically, on April 18, 2002, Dr. Clark opined plaintiff was "markedly limited" in the following areas:

> -The ability to perform activities with a schedule, maintain regular attendance and be punctual within customary tolerances. . . .
>
> -The ability to complete a normal workday and workweek without interruption from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. . . .
>
> -The ability to accept instructions and respond appropriately to criticism from supervisors . . . .
>
> -The ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes, (e.g. crying spells, etc). . . .
>
> -Maintaining concentration, persistence, or pace resulting in failure to complete tasks in a timely manner (in work setting or elsewhere).

Tr. 359-61. In a Medical Questionnaire dated May 6, 2002, Dr. Fleming indicated without explanation that he agreed with the April 18, 2002 assessment prepared by Dr. Clark.

Ordinarily, the opinions of a treating physician are entitled to great weight. "It is well established [however,] that an ALJ may grant less weight to a treating physician's opinion when that opinion conflicts with other substantial medical evidence contained within the record." *Prosch v. Apfel*, 201 F.3d 1010, 1013 (8th Cir. 2000).

In the present case, the ALJ discounted the above opinions of Drs. Clark and Fleming based not only on the fact they were "not well supported by medically acceptable clinical and laboratory diagnostic techniques" but also because they were inconsistent with the psychiatrists' examination notes and other substantial medical evidence. Tr. 21. For example, in February 2002, less than two months

prior to the date on which he completed his mental questionnaire, Dr. Clark noted that plaintiff was doing well with the current medication, with "minimal" depression, and that he recently had experienced difficulties with his classwork only because he ran out of medication two weeks earlier. Tr. 347-48. Although plaintiff apparently experienced temporary setbacks in November and December 2001, Dr. Fleming reported in August and October 2001 that plaintiff was "doing well" despite financial and other pressures, and that the medication had "essentially eliminated significant depressive episodes." Tr. 351-54.

The ALJ also noted the opinions provided in April and May 2002 were inconsistent with evidence the claimant was able to work throughout 2001, and "worked and attended college classes without significant difficulties." Tr. 21. The Court therefore finds substantial evidence on the record as a whole supports the ALJ's evaluation of the medical evidence.

C. Whether RFC Findings are Supported by Substantial Evidence

In related arguments, plaintiff contends that in forming plaintiff's RFC, the ALJ erred in placing more weight on non-examining agency consultants than on the opinions of Drs. Clark and Fleming. *See, e.g., Jenkins v. Apfel*, 196 F.3d 922, 925 (8th Cir. 1999) (opinions of physicians who have not personally examined claimant generally do not constitute substantial evidence on the record as a whole). This Court does not agree.

A review of the ALJ's written decision makes clear the ALJ considered the mental RFC given by the non-examining consultants, psychologist Dee E. Wright, Ph.D. and Phillip R. Laughlin, Ph.D., as evidence "to be considered and weighed *along with the medical evidence from other sources*." See SSR 96-6p (emphasis added) (providing guidance on weight to be given various medical sources). *See*

ALJ discussion at Tr. 21, Psychiatric Technique Review at Tr. 282-83, and Medical Consultant Review Comments at 289. As stated above, the ALJ appropriately discredited the opinions provided by Drs. Clark and Fleming that plaintiff was markedly limited in several areas of function. Tr. 21. It was well within his authority to rely instead on the RFC provided by the agency consultants. *See* SSR 96-6p (indicating that findings of fact and opinions made by non-examining agency physicians must be treated as "expert opinion evidence of non examining sources," and evaluated in conjunction with other medical evidence of record). Plaintiff's arguments on this issue is without merit.

D. Whether ALJ Appropriately Evaluated Plaintiff's Credibility

Plaintiff next argues the ALJ erred in discounting plaintiff's subjective complaints, as well as those of his fiancé, Theresa Loofbourrow. Again, this Court does not agree.

An ALJ may discredit the plaintiff's "subjective complaints of pain only if they are inconsistent with the record as a whole." In analyzing the plaintiff's credibility as to his subjective complaints, an ALJ must consider several factors "including the claimant's prior work record, and observations by third parties and treating and examining physicians relating to such matters as: (1) the claimant's daily activities; (2) the duration, frequency and intensity of the pain; (3) precipitating and aggravating factors; (4) dosage, effectiveness and side effects of medication; (5) functional restrictions." *Polaski v. Heckler*, 739 F.2d 1320, 1322 (8th Cir. 1984).

In the present case, the ALJ noted that plaintiff's treatment records suggest plaintiff's mental condition was well controlled with medication, without significant side effects. Tr. 19; *See, e.g., Wilson v. Chater*, 76 F.3d 238, 241 (8th Cir. 1996) (condition that can be controlled through treatment or medication is not disabling). The ALJ also appropriately considered plaintiff's ability to work for as

many as 36 hours per week during 2001--while attending college classes. Tr. 19. Such a schedule belies the existence of a disabling mental condition. S*ee Orrick v. Sullivan*, 966 F.2d 368, 370 (8th Cir. 1992) (absent showing of significant worsening of condition, ability to work with impairment detracts from finding of disability). Although plaintiff stated in the hearing he lost one job on the basis of his personality disorder, Tr. 44-45, other evidence suggests he was simply "laid off" due to a lack of business Tr. 242, 248.

With regard to daily activities, plaintiff indicated in his supplemental disability report that he socializes "as much as he can, limited only by the fact he was new to the area, and thought it was "rude" to try to visit with someone while changing positions frequently. Tr. 135. He also cooks his own meals and performs his own personal care, Tr. 135, does light housework, Tr. 135, crochets and watches television. Tr. 136. He also works on the computer, exercises regularly and attends college classes. Tr. 166, 347. Although plaintiff's ability to perform these activities does not disprove disability as a matter of law, it was within the ALJ's province to conclude they were inconsistent with total disability. *See, e.g., Curran-Kicksey*, 315 F.3d 964, 969 *9th Cir. 2003) (claimant who "maintained a steady exercise program, performed light housework, worked on a part-time basis, and volunteered for the 'St. Patrick's Society'" found not disabled). The Court therefore finds no reversible error with regard to the ALJ's credibility analysis.[1]

E. Whether Hypothetical Question Posed to Vocation Expert was Inaccurate

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[1] Although the ALJ found Ms. Loofbourrow's testimony credible with regard to her observations of erratic behavior, he noted there was no support in the record for the proposition that such mood swings occurred "on a constant basis." Tr. 20.

Lastly, plaintiff contends the hypothetical question posed to the vocational expert as "inconsistent with lay testimony and medical observations." Plaintiff's Brief at 15. As discussed in parts II(B), (C) and (D) above, the Court finds the ALJ included within his hypothetical questions all limitations he found to be supported by the record. *See, e.g., Pickney v. Chater*, 96 F.3d 294, 296 (8th Cir. 1996) (to constitute substantial evidence in the record as a whole, a hypothetical question must contain all impairments found to be credible by the ALJ).

IV. CONCLUSION

For the reasons outlined above, IT IS ORDERED that the decision of the Commissioner is **affirmed.** The Clerk of Court is directed to enter judgment in favor of defendant and against plaintiff.

IT IS ORDERED.

Dated this 4th day of August, 2003.

RONALD E. LONGSTAFF, Chief Judge
United States District Court