

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

DANA DRIVER,

Plaintiff,

vs.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

4:07-cv-00419-JAJ

ORDER

This matter comes before the court pursuant to briefs on the merits of Plaintiff Dana Driver's applications for Disability Insurance Benefits under Title II of the Social Security Act and Supplemental Security Income under Title XVI of the Social Security Act. The final decision of the Commissioner of Social Security is affirmed and this matter is dismissed.

I. PROCEDURAL BACKGROUND

Dana Driver applied for disability benefits and supplemental security income benefits on March 7, 2006, alleging an inability to work since October 1, 2003, due to osteomyelitis in her left leg, fibromyalgia, and equilibrium problems (Tr. 68-78; 91). Driver's applications were denied initially, and on reconsideration (Tr. 27-30; 32-35). Driver requested a hearing by an Administrative Law Judge ("ALJ") (Tr. 36). A hearing before ALJ George Gaffney was held on March 15, 2007 (Tr. 293-323). The ALJ denied Driver's appeal in a decision dated May 15, 2007 (Tr. 9-20). The Appeals Council denied Driver's request for review of the ALJ's decision on July 27, 2007, making the decision of the ALJ the final decision of the defendant, subject to judicial review under 42 U.S.C. § 405(g) (Tr. 4-7). This action for judicial review was filed on September 19, 2007.

II. FACTUAL BACKGROUND

A. Medical History

Driver was seen at UIHC on October 8, 2002, for generalized musculoskeletal pain (Tr. 170-72). Her examination revealed no erythema, swelling, increased warmth, tenderness, or limitation of range of motion, but tender points were palpable in the occipital, neck, trapezius, supraspinatus, rib, epicondylar, gluteal, and trochanteric bilaterally (Tr. 171). Driver's assessment states, in part, that "[h]er tender points would suggest Fibromyalgia if underlying systemic illnesses are excluded." (Tr. 171). It was recommended that she return in four months (Tr. 171).

Driver established care with Dr. Jay Rosenberger, D.O. on October 10, 2003, and continued treating with Dr. Rosenberger until March 27, 2006, when she transferred her care to Dr. Miller of Broadlawns Medical Center, as part of the Iowa Cares Program (Tr. 173-83, 253-54). At her initial visit with Dr. Rosenberger, Driver presented with a non-healing ulcer on her left leg which had been there for some time (Tr. 181). Driver also complained of problems with equilibrium after receiving a high dose of a certain antibiotic (Tr. 181). Driver reported that her tension headaches had been more frequent, but that her migraine headaches were stable in that she had a migraine approximately every three months and got relief from Maxalt (Tr. 181). Driver complained of chronic body pain which interfered with her sleep and reported that she took an occasional Xanax for anxiety (Tr. 181). Dr. Rosenberger advised Driver to start using compression and Silvadine cream for her ulcer and started her on Amitriptyline for her headaches and chronic pain (Tr. 180).

Driver saw Dr. Rosenberger on March 15, 2004, with "a lot of anxiety and depression" relating to the recent loss of her mother (Tr. 179). Driver reported that she had not been able to get a job because of the issues with the estate and because of her anxiety (Tr. 179). She was started on Lexapro (Tr. 179). At her September 9, 2005, visit

Driver noted that the chronic ulcer on her left leg seemed to go away when she was diligent about wearing her compression stocking, but that she had been “a little lax” and was now experiencing a return of swelling, drainage and pain (Tr. 177). Also at this visit Driver asked Dr. Rosenberger about applying for disability (Tr. 177). Dr. Rosenberger’s notes state, “I think that is something she could explore but I am really not in a position to help her with that in terms of understanding all the ins and outs of that.” (Tr. 177). At her March 27, 2006 visit, Driver was taking three MS-Contin three times daily for her leg pain, as well as 4-5 Lortab (Tr. 173). Dr. Rosenberger’s notes state, “I do have concerns she has been pushing the envelope a bit here.” (Tr. 173).

Driver was seen at UIHC on March 30, 2005, complaining of bilateral lower extremity swelling and an eight-year history of a non-healing ulcer on her left lower extremity (Tr. 166-69). There was no evidence of DVT bilaterally, but she was diagnosed with venous insufficiency of her bilateral lower extremities (Tr. 166-69). She was prescribed compression stockings (Tr. 166-69).

Driver established care with Broadlawns Medical Center on April 19, 2006 (Tr. 198-99). During her initial visit with Dr. Randy N. Malgaard, M.D., Driver complained of chronic bone pain (Tr. 198). Dr. Malgaard’s examination of Driver’s extremities revealed a chronic non-healing ulcer with venous stasis tissue on her lower extremity, but no evidence of acute cellulitis (Tr. 199). Driver saw Dr. Joseph A. Miller, D.O. in follow-up on May 19, 2006 (Tr. 194-95). During this visit Driver stated that her ulcer is fairly stable on her lower extremity and that she does not “follow with anybody as far as wound management to that region.” (Tr. 194).

At her September 29, 2006, follow-up visit with Dr. Miller, Driver “state[d] that things are fairly stable at this point.” (Tr. 263). Dr. Miller’s notes further state that “[h]er pain is controlled on her current regimen of Lortab and MS Contin. She also has a history of anxiety that is very well-controlled on the Xanax and Lexapro.” (Tr. 263).

During her October 2, 2006, visit to the Broadlawns Medical Center Podiatry Clinic, Driver “state[d] that she has not been doing any type of treatment to it and that she has never had it cared for.” (Tr. 260). Her assessment revealed venous stasis ulceration and venous stasis insufficiency of the left leg (Tr. 260).

On December 1, 2006, Driver was seen by Dr. Alan Hilgerson, D.O. at the Broadlawns Medical Center (Tr. 258). Dr. Hilgerson’s notes of this visit state, in pertinent part:

She has also not undergone any chronic wound healing management and in fact, she has in the past turned down the offer for Wound Center and/or bariatric treatments, “I just don’t have time.” Yet, in spite of some potentially good attempts and/or options for her chronic problems, she also today requests Disability status and/or documentation to reflect her current problems as she continues to fight for social aid.

She would also like to continue to pursue discussion regarding Disability for which today I denied any assistance as I am not going to be her chronic treating doctor. Of note, I am somewhat surprised and even call it appalled that she would request Disability as she is not interested in what may be definitive treatment for her - chronic wound healing center plus/minus bariatric treatment, or at least evaluation by a chronic wound specialist. I certainly do not see why she would be unable to perform a job where she is able to sit, for example, telemarketing, etc. This would certainly not put any strain on her fairly localized leg lesion.

(Tr. 258).

B. Consultative Examinations

Dr. Laura Griffith, D.O., completed a Physical Residual Functional Capacity Assessment of Driver on May 18, 2006 (Tr. 185-92). Dr. Griffith opined that Driver could occasionally lift and/or carry 20 pounds, frequently lift and/or carry 10 pounds,

stand and/or walk at least two hours in an eight-hour workday, sit about six hours in an eight-hour workday, and was unlimited in her ability to push and/or pull (Tr. 186). In support of these findings, Dr. Griffith notes that Driver is able to do “light house keeping, drive and shop.” (Tr. 186). Dr. Griffith further opined that Driver could occasionally climb ramps/stairs, kneel, crouch and crawl, frequently balance and stoop, and never climb ladders/ropes/scaffolds (Tr. 187). Dr. Griffith found no manipulative, visual, communicative, or environmental limitations (Tr. 188-89). Dr. May noted that “While the claimant has had a non-healing left leg ulcer she has had only intermittent care.” (Tr. 190). Dr. Griffith additionally commented:

There is no objective data of fibromyalgia due to the lack of longitudinal care for this condition and an MDI can not be established. She has a history of disequilibrium from previous prescribed gentamycin. However she has no [sic] care this complaint since 10/03. Her neurologic exams have been normal.

(Tr. 192).

On May 24, 2005, Dr. Robert A. Straight, Ph.D., conducted a Mental Status Examination of Driver, at the request of SSA (Tr. 200). During this examination Driver reported that she terminated her most recent employment to care for her ill mother, that she has one to four migraine headaches per month and that she has had “surgery on her left leg to the extent of eight in eight years” (Tr. 200). Driver noted that she sleeps up to 12 hours per night (Tr. 201). Driver reported that it is hard for her to stand on her feet for more than 20 minutes and is limited to 20 to 30 minutes of walking (Tr. 201). Dr. Straight found Driver to be fully oriented with logical thoughts and directed goals (Tr. 201). No psychotic symptoms were present (Tr. 201). Dr. Straight further noted:

Attention and concentration was found to be grossly within normal limits as she could recall two out of three items on the Mini Mental Status Exam after a short distraction. She has good social skills and would relate well to others. Persistence

and pace are likely to be problematic based on pain and difficulty ambulating. Judgment and the ability to respond to change in a work environment would be within normal limits.

(Tr. 202).

On June 5, 2006, Dr. Herbert Notch, Ph.D., conducted a Psychiatric Review Technique on Drive (Tr. 204-17). Dr. Notch found that Driver had no restriction on her activities of daily living, no difficulties in maintaining social functioning, no episodes of decompensation, each of extended duration, and only mild difficulties in maintaining concentration, persistence or pace (Tr. 214). Ultimately, Dr. Notch opined that Driver's "impairments do not cause more than a minimal impact on her daily functioning and would be considered non-severe." (Tr. 216). Dr. John Tedesco, Ph.D. conducted a Psychiatric Review Technique of Driver on October 2, 2006 wherein he reviewed and affirmed the findings of Dr. Notch's June 5, 2006 assessment (Tr. 235-48).

Dr. James D. Wilson, M.D. conducted a Physical Residual Functional Capacity Assessment of Driver on August 7, 2006 (Tr. 227-34). Dr. Wilson opined that Driver could occasionally lift and/or carry 20 pounds, frequently lift and/or carry 10 pounds, stand and/or walk about six hours in an eight-hour workday, sit about six hours in an eight-hour workday, and was unlimited in her ability to push and/or pull (Tr. 228). Dr. Wilson further opined that Driver could occasionally climb ramps/stairs, kneel, crouch and crawl, frequently balance and stoop, and never climb ladders/ropes/scaffolds (Tr. 229). Dr. Wilson found no manipulative, visual, communicative, or environmental limitations (Tr. 230-31). In support of his findings, Dr. Wilson noted a May 19, 2006, visit to Broadlawns Medical Clinic where Driver "denied any concerns, stated the ulcer is fairly stable." (Tr. 234). Dr. Wilson further noted that Driver "does not follow with anybody as far as wound management is concerned." (Tr. 234).

C. Hearing Testimony

At her March 15, 2007, hearing before ALJ George Gaffaney, Driver testified that she is unable to work because of the pain in her legs (Tr. 299). Driver testified that she had most recently worked at her uncle's hotel, where her medical condition kept her from doing probably three-quarters of what she was hired to do, but that her uncle made exceptions for her and delegated those duties to other employees (Tr. 301). Driver further testified that she missed work when she had her eight surgeries and that she would go home early on the average of four to six times per month (Tr. 302). Driver stopped working at this job when her uncle passed away and the hotel was sold (Tr. 302).

In describing her leg pain, Driver testified that she can walk, but she cannot walk like she used to and that she cannot stand for very long periods of time (Tr. 303). Driver estimated that she could stand in one spot from two to five minutes at the most (Tr. 303). She testified that she can walk no further than one block (Tr. 304). Driver testified that she elevates her leg to reduce swelling and pain (Tr. 304).

With respect to her pain medications, Driver testified that the side effects include sleepiness, confusion, failing to understand a lot, and misinterpreting what people tell her (Tr. 307). Driver testified that she takes a one to three hour planned nap per day and then dozes off a couple of other times during the day (Tr. 307).

In explaining Dr. Hilgerson's medical notes regarding Driver's "refusal" to treat with the wound center, Driver testified that she merely declined the recommendation that she try a hyperbaric chamber because it would involve months of daily treatment and her moving to Iowa City, and the results were only 50 percent guaranteed (Tr. 308).

Driver testified that her other medical conditions affecting her ability to work include migraine headaches, some anxiety and panic attacks, depression, fibromyalgia, circulation problems, a bone infection, and poor equilibrium (Tr. 309). Driver testified that she gets four to six migraines per month, but that each never lasts more than three

days (Tr. 309). For her migraines, Driver testified that she takes Maxalt and tried to lie in a dark room with no noise and a cold washcloth on her head (Tr. 309). As a result of her equilibrium issues, Driver testified that she falls a lot and runs into doorframes (Tr. 311).

The ALJ, assuming an individual currently age 43, age 39 at the alleged onset date with two years of college and past relevant work as agreed by the parties, posed the following hypothetical to the vocational expert, Elizabeth Albrecht:

The first one I'll limit lifting to 20 pounds occasionally and 10 pounds frequently, stand and sit six hours each in an eight-hour workday, walk one block, non-exertional would provide for no ladder climbing and no occasional stair climbing, balance, stoop, kneel, crouch and crawl. I'm going to limit to semiskilled work, more than simple, routine work but not complex with only occasional production rate pace, defined as strict quotas or time frames. With regard to the left ear hearing, I would say that she could frequently hear all sounds with her left ear. No problems with the right. With this residual functional capacity, could any of the past relevant work be performed?

(Tr. 318-19).

Albrecht responded that, based on the above hypothetical, Driver could perform all of her past relevant work (Tr. 319). The ALJ then posed another hypothetical question to Albrecht.

I would limit standing to two hour - - I'm going to lower the exertional limits to 10 pounds occasional, five pounds frequent, stand two hours in an eight-hour workday, limited to 30 minutes at a time, and then a slight positional change required, sit six hours in an eight-hour workday. Non-exertional stays the same as does the rest. In addition, miss one day a month of work. With this residual functional capacity, could any of the past relevant work be performed?

(Tr. 319).

Albrecht responded that, based on this hypothetical, Driver would be precluded from performing her past relevant work, but that she could perform sedentary, semiskilled jobs such as payroll clerk, COD clerk, and credit card clerk (Tr. 319-20). The ALJ then added one unscheduled rest break of one hour per day to the second hypothetical, which Albrecht testified would preclude all competitive employment (Tr. 321).

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 Lochner v. Sullivan, 968 F.2d 725, 727 (8th Cir. 1992); Cruse v. Bowen, 867 F.2d 1183, 1184 (8th Cir. 1989). Substantial evidence is more than a mere scintilla. It means relevant evidence a reasonable mind might accept as adequate to support a conclusion. Richardson v. Perales, 402 U.S. 389, 401 (1997); Cruse, 867 F.2d at 1184; Taylor v. Bowen, 805 F.2d 329, 331 (8th Cir. 1986). The court must take into account evidence that fairly detracts from the ALJ's findings. Cruse, 867 F.2d at 1184; Hall v. Bowen, 830 F.2d 906, 911 (8th Cir. 1987). Substantial evidence requires "something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence." Cruse, 867 F.2d at 1184 (quoting Consolo v. Fed. Mar. Comm'n, 383 U.S. 607, 620 (1966)). 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.

Under the first step of the analysis, the ALJ found that Driver had not engaged in substantial gainful activity since October 1, 2003, the alleged onset date (Tr. 14). At the second step, the ALJ determined that Driver has the following severe impairments: non-healing ulcer on the left leg, venous insufficiency in both legs, depression and anxiety (Tr. 14). At the third step, the ALJ found that Driver did not have an impairment or combination of impairments that meets or medically equals a listed impairment (Tr. 16). Proceeding to the fourth step, the ALJ determined that Driver was unable to perform any of her past relevant work (Tr. 18). At the fifth step, the ALJ found that Driver was able to perform other work that exists in significant numbers in the national economy, taking into consideration her age, education, work experience and residual functional capacity (Tr. 19). Therefore, the ALJ found that Driver was not disabled within the meaning of the Social Security Act at any time through the date of the decision (Tr. 20).

C. Improper Hypothetical

An improper hypothetical cannot serve as substantial evidence. Whitmore v. Bowen, 785 F.2d 262, 263-64 (8th Cir. 1986). The hypothetical should precisely describe the claimant's impairments in order for the expert to properly evaluate the availability of jobs the claimant can perform. Newton v. Chater, 92 F.3d 688, 694-95 (8th Cir. 1996). However, the question need only include impairments supported by substantial evidence and not impairments rejected by the ALJ as untrue. See Long v. Chater, 108 F.3d 185, 188 (8th Cir. 1997). "Likewise, the testimony of a vocational expert who responds to a

hypothetical based on such evidence is not substantial evidence upon which to base a denial of benefits.” Singh v. Apfel, 222 F.3d 448, 452 (8th Cir. 2000) (“These assessments alone [of non-treating physicians] cannot be considered substantial evidence in the face of the conflicting assessment of a treating physician.”) Id. (citing Henderson v. Sullivan, 930 F.2d 19, 21 (8th Cir. 1991)); Baker v. Apfel, 159 F.3d 1140, 1144 (8th Cir. 1998) (“If a hypothetical question does not include all of the claimant’s impairments, limitations, and restrictions, or is otherwise inadequate, a vocational expert’s response cannot constitute substantial evidence to support a conclusion of no disability.”).

Driver argues that the ALJ erred in failing to include her hearing loss in the hypothetical question posed to the vocational expert. Driver’s argument fails. In the first hypothetical posed, the ALJ stated: “With regard to the left ear hearing, I would say that she could frequently hear all sounds with her left ear. No problem with the right.” (Tr. 318-319). The second and third hypothetical questions posed by the ALJ changed only the sitting, standing, and lifting restrictions, as well as the time Driver would be off per month (Tr. 319-320). As the court reads the transcript, the hearing limitation remained part of the second and third hypothetical questions. Cox v. Astrue, 495 F.3d 614, 621 (8th Cir. 2007). Further, Driver has pointed to no evidence in the record demonstrating that her hearing loss would prevent her from performing the jobs identified by the vocational expert. The hypothetical question relied on by the ALJ precisely described Driver’s impairments which were supported by substantial evidence.

D. Listed Impairment

Listed impairment 8.04 encompasses “Chronic infections of the skin or mucous membranes, with extensive fungating or extensive ulcerating skin lesions that persist for at least 3 months despite continuing treatment as prescribed.” 20 C.F.R. Pt. 404, Subpt. P, App. 1. For the skin disorder to meet the “duration requirement,” it must result in

“extensive skin lesions that persist for at least three months despite continuing treatment as prescribed.” Id. “Persistent” is demonstrated if the “longitudinal clinical record shows that, with few exceptions, [the] lesions have been at the level of severity specified in the listing.” Id.

The ALJ did not err in finding that Driver does not have an impairment or combination of impairments that meets or medically equals one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1. The plain language of Listed Impairment 8.04 requires “extensive ulcerating skin lesions that persist for at least 3 months despite continuing treatment as prescribed.” Driver has a single skin lesion that improves when she follows her doctors’ treatment recommendations. She has been less than fully compliant in this area. The ALJ committed no error in this respect.

E. Treating Physician’s Opinion

“A treating physician’s opinion should not ordinarily be disregarded and is entitled to substantial weight. A treating physician’s opinion regarding an applicant’s impairment will be granted controlling weight, provided the opinion is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the record.” Singh v. Apfel, 222 F.3d 448, 452 (8th Cir. 2000) (citation omitted). The regulations require the ALJ to give reasons for giving weight to or rejecting the statements of a treating physician. See 20 C.F.R. § 404.1527(d)(2). Whether the ALJ gives great or small weight to the opinions of treating physicians, the ALJ must give good reasons for giving the opinions that weight. Holmstrom v. Massanari, 270 F.3d 715, 720 (8th Cir. 2001). “The ALJ may discount or disregard such an opinion if other medical assessments are supported by superior medical evidence, or if the treating physician has offered inconsistent opinions.” Hogan v. Apfel, 239 F.3d 958, 961 (8th Cir. 2001). Moreover, a treating physician’s opinion does not deserve controlling weight when

it is nothing more than a conclusory statement. Piepgras v. Chater, 76 F.3d 223, 236 (8th Cir. 1996). See also Thomas v. Sullivan, 928 F.2d 255, 259 (8th Cir. 1991) (holding that the weight given a treating physician's opinion is limited if the opinion consists only of conclusory statements).

On March 1, 2007, Dr. Miller, who was Driver's treating physician at Broadlawns Medical Center, wrote a letter to Driver's Social Security Disability attorney which stated, in pertinent part:

This letter is on behalf of Dana Driver. There was paperwork submitted for a functional capacity which I did not fill out. Ms. Driver suffers from chronic ulcerations of her lower extremities which also cause chronic pain for her. She has been on chronic pain medication for a significant period of time. These conditions obviously limit her ability to work.

(Tr. 269).

On March 12, 2007, Dr. Rosenberger offered the following opinions with respect to Driver's physical restrictions (Tr. 271). Dr. Rosenberger opined that Driver could lift and/or carry less than 10 pounds occasionally and frequently, could stand and/or walk less than two hours in an eight-hour workday, and could engage in continuous reaching, handling, fingering, and feeling on a seldom basis (Tr. 271). Dr. Rosenberger disagreed with the Social Security Administration's findings that Driver could sit six hours in an eight-hour workday and occasionally climb, stoop, kneel, crouch or crawl, but did not offer his own specific restriction (Tr. 271). Dr. Rosenberger noted that he had not treated Driver since April of 2006, but that he had been her treating physician for three years prior to that (Tr. 272). Dr. Rosenberger stated that Driver is not capable of functioning in a competitive work setting on a full-time basis due to her ongoing pain and need to elevate her leg as much as possible (Tr. 272). Dr. Rosenberger further opined that Driver's medical condition would result in more than three absences from work per month because of her ongoing pain (Tr. 272). Finally, Dr. Rosenberger stated that Driver's subjective

need to lie down at least once per day for one to three hours is consistent with her medical condition, again due to her chronic leg pain (Tr. 273).

In analyzing the weight to be given Dr. Rosenberger's opinion, the ALJ noted:

Dr. Rosenberger indicated March 12, 2007, that as of April 2006, when he had last treated the claimant, she could lift and carry less than 10 pounds and could not sit for six hours in an eight-hour workday with normal breaks. He indicated further that the claimant could climb, stoop, kneel, crouch and crawl occasionally but was seldom capable of reaching, handling, fine manipulation or feeling. (Exhibit 20F) The record is not consistent with the limitations that Dr. Rosenberger views as present. The claimant has not been found on examination to have such weakness in her arms that it would be reasonable for once [sic] to conclude that her lifting ability is limited so significantly. Her daily activities, described above, are also inconsistent with such limitations. Finally, even though she needs to elevate her leg, the record does not show that she cannot do this while seated . . . The undersigned also finds that the opinions expressed by medical professionals with the Disability Determination Services of Iowa are to be accorded more weight than the opinions of independent physicians, such as Dr. Rosenberger.

(Tr. 18).

In compliance with the regulations, the ALJ gave good reasons for rejecting the opinion of Dr. Rosenberger. Dr. Rosenberger's opinion is not well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not consistent with the other substantial evidence in the record. Driver's primary medical problem is a non-healing ulcer on her left leg. Dr. Rosenberger's opinion imposing severe lifting, reaching, handling, feeling, fingering, and sitting restrictions is unsupported and inconsistent with the other medical evidence. While Dr. Miller, who was Driver's most recent treating physician opined generally that her non-healing ulcer and pain medication would "obviously limit her ability to work," no specific evidence in the record supports

Dr. Rosenberger's conclusions. The ALJ did not err in refusing to give them controlling weight.

Upon the foregoing,

IT IS ORDERED that the decision of the ALJ is affirmed and this matter is dismissed. The Clerk of Court shall enter judgment accordingly.

DATED this 5th day of March, 2009.



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