

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION

SUSANNA BALDWIN,	)	
	)	Civil Action No. 5:04CV00040
Plaintiff,	)	
	)	
v.	)	<b><u>MEMORANDUM OPINION</u></b>
	)	
JO ANNE B. BARNHART, Commissioner	)	
of Social Security,	)	
	)	By: Honorable Glen E. Conrad
Defendant.	)	United States District Judge

Plaintiff has filed this action challenging the final decision of the Commissioner of Social Security denying plaintiff's claims for disability insurance benefits and supplemental security income benefits under the Social Security Act, as amended, 42 U.S.C. §§ 416(i) and 423, and 42 U.S.C. § 1381 et seq., respectively. Jurisdiction of this court is pursuant to 42 U.S.C. § 405(g) and 42 U.S.C. § 1383(c)(3). As reflected by the memoranda and argument submitted by the parties, the issues now before the court are whether the Commissioner's final decision is supported by substantial evidence, or whether there is "good cause" to necessitate remanding the case to the Commissioner for further consideration. See 42 U.S.C. § 405(g).

The plaintiff, Susanna Baldwin, was born on April 28, 1966 and eventually completed her high school education. The Administrative Law Judge found that Ms. Baldwin has worked as a cashier, animal caretaker, factory packer, and machine operator. (TR 14). Plaintiff alleged that she became disabled for all forms of substantial gainful employment on March 1, 2001. The Administrative Law Judge recognized that plaintiff had employment activity after her alleged disability onset date. (TR 14-

15). However, the Law Judge found that the work activity after March 1, 2001 constituted unsuccessful work attempts and did not amount to substantial gainful activity. (TR 15). Ms. Baldwin filed applications for disability insurance benefits and supplemental security income benefits on August 3, 2002. Plaintiff alleged that she became disabled for all forms of substantial gainful employment on March 1, 2001 due to Crohn's disease, migraine headaches, depression, anxiety, and allergies. Ms. Baldwin now maintains that she has remained disabled to the present time. As to her application for disability insurance benefits, the record reveals that plaintiff met the insured status requirements of the Act at all relevant times covered by the final decision of the Commissioner. See, generally, 42 U.S.C. §§ 414 and 423.

Ms. Baldwin's claims were denied upon initial consideration and reconsideration. She then requested and received a de novo hearing and review before an Administrative Law Judge. In an opinion dated September 25, 2003, the Law Judge also determined that Ms. Baldwin is not disabled. The Law Judge found that plaintiff suffers from Crohn's disease and major depression. Despite these problems, the Law Judge ruled that plaintiff retains sufficient functional capacity to return to her past relevant work as a cashier. Accordingly, the Law Judge ultimately concluded that Ms. Baldwin is not disabled, and that she is not entitled to benefits under either federal program. See, generally, 20 C.F.R. §§ 404.1520(e) and 416.920(e). The Law Judge's opinion was adopted as the final decision of the Commissioner by the Social Security Administration's Appeals Council. Having exhausted all available administrative remedies, Ms. Baldwin has now appealed to this court.

While plaintiff may be disabled for certain forms of employment, the crucial factual determination is whether plaintiff was disabled for all forms of substantial gainful employment. See 42 U.S.C. §§ 423(d)(2) and 1382c(a). There are four elements of proof which must be considered in making such an

analysis. These elements are summarized as follows: (1) objective medical facts and clinical findings; (2) the opinions and conclusions of treating physicians; (3) subjective evidence of physical manifestations of impairments, as described through a claimant's testimony; and (4) the claimant's education, vocational history, residual skills, and age. Vitek v. Finch, 438 F.2d 1157, 1159-60 (4th Cir. 1971); Underwood v. Ribicoff, 298 F.2d 850, 851 (4th Cir. 1962).

After a review of the record in this case, the court is unable to conclude that the Commissioner's final decision is supported by substantial evidence. Stated succinctly, there is a discrepancy between the Law Judge's finding that plaintiff's employment after the date of her alleged disability onset did not amount to substantial gainful activity and the Law Judge's finding that Ms. Baldwin retains sufficient functional capacity to return to her past relevant work as a cashier. In finding that plaintiff had past relevant work activity as a cashier, the Law Judge made reference in his opinion to the two very same work roles which he had previously found to have constituted unsuccessful work attempts.<sup>1</sup> (TR 19). Thus, it is clear that, in finding that plaintiff retains sufficient functional capacity to perform past relevant work, the Law Judge specifically referred to two cashier jobs which the Law Judge had already found not to have constituted substantial gainful activity.

Under the Social Security regulations, "past relevant work" is defined as substantial gainful activity done within the past 15 years. See 20 C.F.R. § 404.1560(b)(1) and § 416.960(b)(1). In his opinion, the Law Judge noted that employment can constitute "past relevant work" only if it meets the definition of substantial gainful activity. (TR 18-19). In finding that plaintiff's work as a cashier after March 1, 2001

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<sup>1</sup> The Law Judge noted that plaintiff described her work as a cashier at Exhibit 6E, pp. 2 and 5. (TR 19) These two pages reflect work as a cashier at a Pilot gas station in February and March, 2002, and at a Shell gas station in June, 2001. As previously noted, Ms. Baldwin alleged that she became disabled in March, 2001, and the Law Judge found that her work after that time was not substantial gainful activity.

was not substantial gainful activity, the Law Judge observed that these jobs did not last long enough to be so characterized.<sup>2</sup> For these reasons, the court concludes that the Law Judge's finding of residual functional capacity for past relevant work is not supported by substantial evidence. The court finds "good cause" for remand of this case to the Commissioner for further consideration of plaintiff's claims at Step 4 of the sequential disability analysis.<sup>3</sup>

Given the court's disposition in this matter, the court finds it unnecessary to consider plaintiff's alternative arguments in support of her motion for remand of her case to the Commissioner for further development and consideration. In passing, the court notes that it does appear that the Social Security Administration's Appeals Council offered no meaningful reasons for concluding that a new report from psychiatric treatment, tendered by plaintiff after the Administrative Law Judge issued his decision, failed to present adequate cause for requiring further consideration of the case by the Law Judge. It does seem that the new report tends to indicate that Ms. Baldwin's depression is more severe than found by the Administrative Law Judge, and much more intractable to treatment than noted by the Law Judge. In similar circumstances, the court sometimes finds "good cause" for remand of the case so that the Appeals Council can provide some rationale in support of the determination that the "interim evidence" does not provide a basis for changing the Administrative Law Judge's decision. See, Alexander v. Apfel, 14 F.Supp.2d 839, 843 (W.D.Va. 1998).

For the reasons stated, the court finds that plaintiff has established "good cause" for remand of her

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<sup>2</sup> The duration of past employment activity is another factor considered under the definition of "past relevant work." See 20 C.F.R. § 404.1560(b)(1) and 416.960(b)(1).

<sup>3</sup> The court is not prepared to conclude, at least at this point, that Ms. Baldwin is disabled for all past relevant work activity. Plaintiff's earnings records list a number of jobs which were not discussed by plaintiff in her testimony, or referenced by the Law Judge. (TR 49-61). It appears to the court that several of these jobs, performed before March 1, 2001, might have been cashier work, though such jobs may also have been prior to the 15 year cut-off point.

case to the Commissioner for further development and consideration. See, 42 U.S.C. § 405(g). An appropriate order will be entered this day. Upon remand, if the Commissioner is unable to decide this case in plaintiff's favor on the basis of the existing record, the Commissioner will conduct a supplemental hearing at which both sides will be allowed to present additional evidence and argument.

The clerk is directed to send certified copies of this Memorandum Opinion to all counsel of record.

DATED: This 29<sup>th</sup> day of September, 2004.

/S/ GLEN E. CONRAD  
UNITED STATES DISTRICT JUDGE



necessary for plaintiff to initiate a new civil action within sixty (60) days from the date of the Commissioner's final decision on remand. See 42 U.S.C. § 405(g).

The Clerk is directed to send certified copies of this Order to all counsel of record.

ENTER: This 29<sup>th</sup> day of September, 2004.

/S/ GLEN E. CONRAD  
UNITED STATES DISTRICT JUDGE