

Wright protectively filed for benefits in September 2006, alleging disability beginning July 28, 2006, due to a crushed left foot, a back condition and high blood pressure. His claim was denied initially and upon reconsideration. Wright requested and was granted a hearing before an administrative law judge (“ALJ”), during which he testified and was represented by counsel. A vocational expert (“VE”) also testified at the hearing. The ALJ denied Wright’s claim and the Social Security Administration’s Appeals Council denied Wright’s request for a review of the ALJ’s opinion. Wright then filed his Complaint with this court, objecting to the Commissioner’s final decision.

The parties have filed cross motions for summary judgment and have briefed the issues. The case is ripe for decision.

II

Wright, who was 40 years old at the time of the ALJ’s decision, is classified as a younger person under the regulations. *See* 20 C.F.R. § 404.1563(c) (2009). Wright has a high school education and past employment as a tractor trailer driver and as a lead driving instructor. Wright has not engaged in substantial gainful activity since the alleged onset of disability.

Prior to the alleged onset of disability date, the record shows that Wright was primarily treated for back pain and a foot injury that were the result of an April 2004 work-related injury. In November 2004, Wright was diagnosed with low back strain. In December 2004, Wright continued to report problems with low back pain, as well as pain while sitting and numbness in his right thigh.

During April 2005, Wright underwent a back evaluation. It was concluded that he had a sprain/contusion of the lumbar spine, with possible cervical spine sprain and degenerative disc disease of the lumbar spine. A magnetic resonance imaging (“MRI”) of the lumbar spine was then ordered, and it revealed small to moderate disc protrusions at the L3-L4 and L4-L5 disc levels.

In July 2005, James T. Chandler, M.D., an orthopaedic surgeon, performed surgery on Wright’s left foot, and in December 2005, performed a second procedure where the installed plate and screws were removed.

Thereafter, Wright was routinely treated for pain in his lower back and left foot. He underwent several injections to treat his foot pain and discomfort. During the relevant time period, Wright consistently reported left foot pain, and he also reported that he experienced difficulties standing or walking for prolonged periods.

Wright continued to report more of the same symptoms during October 2006, and he also complained of persistent left ankle pain. An October 2006 MRI showed

mild annular bulges at L3-L4 and L4-L5, which were more prominent at the L4-L5 levels. Wright continued to seek treatment from January 2007 to August 2007, complaining of pain in the lumbar spine, as well as right hip and thigh pain, and chronic pain in the left ankle and foot. The clinical assessments noted left foot and ankle pain due to his injury, sacroiliitis, insomnia, urinary retention, low back pain, muscle spasms, hypertension, restricted motion, chronic pain syndrome, and hip pain.

After reviewing Wright's medical history, the ALJ found that he suffered from severe impairments from obesity, injury to the left foot, and degenerative disc disease of the lumbar spine. However, he found that Wright did not have an impairment or combination of impairments that met or medically equaled one of the listed impairments of 20 C.F.R. Part 404, Subpart P, Appendix 1.

The ALJ found that Wright retained the residual functional capacity ("RFC") to perform light work as follows: lift, carry, push, and pull 10 pounds frequently and 20 pounds occasionally; sit for six hours during an eight-hour workday; stand and/or walk for two hours during an eight-hour workday; the ability to occasionally balance, stoop, kneel, crouch, crawl, and climb ramps of stairs, and the inability to perform jobs requiring work around hazardous machinery, unprotected heights, or climbing of ladders, ropes, or scaffolds. The ALJ further noted that Wright's foot injury

limited him nonexertionally, in that he would have to elevate his left foot on a foot stool as needed. The VE, Robert Jackson, testified that, based upon the previously mentioned limitations, Wright would be unable to perform his past relevant work. However, Jackson indicated that there would be jobs available that Wright could perform, including jobs as a telephone order clerk, survey worker, and as a telemarketer. As a result, the ALJ found that Wright was not disabled. Wright now argues that this decision was not supported by substantial evidence.

III

The plaintiff bears the burden of proving that he is suffering from a disability. *Blalock v. Richardson*, 483 F.2d 773, 775 (4th Cir. 1972). The standard for disability is strict. The plaintiff must show that his “physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy” 42 U.S.C.A. § 423(d)(2)(A).

In assessing claims, the Commissioner applies a five-step sequential evaluation process. The Commissioner considers whether the claimant: (1) has worked during the alleged period of disability; (2) has a severe impairment; (3) has a condition that

meets or equals the severity of a listed impairment; (4) could return to his past relevant work; and (5) if not, whether he could perform other work present in the national economy. *See* 20 C.F.R. § 404.1520(a)(4) (2009). If it is determined at any point in the five-step analysis that the claimant is not disabled, the inquiry immediately ceases. *Id.*; *Bennett v. Sullivan*, 917 F.2d 157, 159 (4th Cir. 1990). The fourth and fifth steps of the inquiry require an assessment of the claimant's RFC, which is then compared with the physical and mental demands of the claimant's past relevant work and of other work present in the national economy. *See Reichenbach v. Heckler*, 808 F.2d 309, 311 (4th Cir. 1985).

In accordance with the Act, I must uphold the ALJ's findings if substantial evidence supports them and they were reached through application of the correct legal standard. *Craig v. Chater*, 76 F.3d 585, 589 (4th Cir. 1996). Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (internal quotation marks and citation omitted). This standard "consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance." *Laws v. Celebrezze*, 368 F.2d 640, 642 (4th Cir. 1966). It is the role of the ALJ to resolve evidentiary conflicts, including inconsistencies in the evidence. *Hays v. Sullivan*, 907

F.2d 1453, 1456 (4th Cir. 1990). It is not the role of this court to substitute its judgment for that of the Commissioner. *See id.*

In challenging the Commissioner's ruling, Wright argues that the ALJ erred by failing to accord proper weight to the opinion of Dr. Chandler, Wright's treating physician. Dr. Chandler opined on August 11, 2006, that Wright was "unable to do any work standing, but [that] he [could] work in a sit down job, and this is permanent." (Record ("R.") at 231.) In contrast to Dr. Chandler's opinion, two state agency, non-examining physicians, Richard Surrusco, M.D., and Michael Hartman, M.D., were both of the opinion that Wright was merely limited to "standing for 4 hours" during an eight-hour day. (R. at 275, 292.)

In his opinion, the ALJ recited the state agency physicians' opinions as Wright having the capacity to perform light work "with standing and walking limited to two hours of an eight hour workday." (R. at 20.) The ALJ stated that she concurred "as this opinion is consistent with the opinion of the claimant's treating physician, James Chandler, MD." (*Id.*) Of course, the state agency physicians' opinions were not consistent with Dr. Chandler's opinion, at least as to the ability to work while standing.

The ALJ must consider objective medical facts and the opinions and diagnoses of both treating and examining medical professionals, which constitute a major part

of the proof of disability cases. *See McLain v. Schweiker*, 715 F.2d 866, 869 (4th Cir. 1983). The ALJ must generally give more weight to the opinion of a treating physician because that physician is often most able to provide “a detailed, longitudinal picture” of a claimant’s alleged disability. 20 C.F.R. § 404.1527(d)(2) (2009).

I recognize that when determining whether substantial evidence supports the Commissioner’s decision, I must consider whether the ALJ analyzed all of the relevant evidence and whether the ALJ sufficiently explained her findings and rationale in crediting evidence. *See Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 439-40 (4th Cir. 1997).

Errors are harmless in social security cases when it is inconceivable that a different administrative conclusion would have been reached absent the error. *See Austin v. Astrue*, 2007 WL 3070601 at *6 (W.D. Va. Oct. 18, 2007) (citing *Camp v. Massanari*, 22 F. App’x 311 (4th Cir. 2001)); *see also Fisher v. Bowen*, 869 F.2d 1055, 1057 (7th Cir. 1989) (“No principle of administrative law or common sense requires us to remand a case in quest of a perfect opinion unless there is reason to believe that the remand might lead to a different result.”)

The jobs identified by the VE upon which the ALJ based her opinion that Wright was not disabled were not jobs that required standing at all. Indeed, the ALJ’s

hypothetical question to the VE required a condition of employment that the person “be allowed to elevate his leg, left foot on a footstool to relieve swelling on an as-needed basis.” (R. at 47.) As the VE testified,

In my opinion, the telephone order clerk, the survey worker, and also the telemarketer position would allow one to elevate their foot perhaps up to a foot or so off the ground. We frequently see things like secretary type stools under desks where an individual is able to do that, and it really doesn’t interfere with their ability to work.

(R. at 48.)

Accordingly, the fact that the ALJ apparently misstated the medical opinions in this limited fashion is not significant to her ultimate decision. The ALJ’s ultimate finding was not inconsistent with accepting Dr. Chandler’s opinion in full. In other words, the ALJ found that Wright had the RFC to perform sitting-only jobs.¹

Next, Wright asserts that the ALJ erred by failing to consider the side effects of medications and their impact on his ability to work. This argument is without merit. There are several instances in the ALJ’s written opinion in which she

¹ Wright also argues that the ALJ erred by failing to explain her apparent rejection of a portion of the state agency opinions. While the ALJ stated that she generally agreed with the state agency medical opinions, her RFC finding did not include the physicians’ opinions that Wright could never push and/or pull with the left lower extremity. The ALJ clearly analyzed and considered the opinions of the state agency physicians, as she relied upon those opinions in rendering her decision. In fact, the ALJ recognized that the state agency physicians found that Wright was limited in his ability to push/pull with the lower extremities. The fact that the ALJ did not specifically recite that particular limitation, or offer an explanation as to why she may or may not have rejected that opinion, is immaterial and is nothing more than harmless error.

recognizes the side effects of Wright's medication. Furthermore, the record contains no medical opinion indicating that Wright's alleged side effects from his various medications would prevent him from performing work. Notably, treating physicians Dr. Chandler and Dr. Richard Wilson opined that Wright was able to work. The record shows that when Wright reported alleged side effects, medicine modifications and adjustments were promptly made. Therefore, after a review of the record, the undersigned is of the opinion that the ALJ properly considered the side effects of Wright's medications and any impact those side effects would have on his ability to work.

Lastly, Wright argues that he suffers from impairments capable of producing disabling pain, noting that the combined effect of his subjective allegations of pain, side effects from his medication, and the evidence of record demonstrates that he is unable to work. The Fourth Circuit has adopted a two-step process for determining whether a claimant is disabled by pain. First, there must be objective medical evidence of the existence of a medical impairment which could reasonably be expected to produce the actual amount and degree of pain alleged by the claimant. *Craig*, 76 F.3d at 594. Second, the intensity and persistence of the claimant's pain must be evaluated, as well as the extent to which the pain affects the claimant's ability to work. *Id.* at 595. Once the first step is met, the ALJ cannot dismiss the

claimant's subjective complaints simply because objective evidence of the pain itself is lacking. *Id.* Although a claimant's allegations about pain may not be discredited solely because they are not substantiated by objective evidence of the pain itself or its severity, they need not be accepted to the extent they are inconsistent with the available evidence. *Id.*

Furthermore, an ALJ's assessment of a claimant's credibility regarding the severity of pain is entitled to great weight when it is supported by the record. *See Shively v. Heckler*, 739 F.2d 987, 989-90 (4th Cir. 1984). "Subjective evidence of pain cannot take precedence over objective medical evidence or the lack thereof." *Parris v. Heckler*, 733 F.2d 324, 327 (4th Cir. 1984). As in the case of other factual questions, credibility determinations as to a claimant's testimony regarding his pain are for the ALJ to make. *See Shively*, 739 F.2d at 989-90.

In this case, the ALJ found that the evidence of record showed that Wright's medically determinable impairments could reasonably be expected to produce the alleged symptoms that he reported. However, the ALJ determined that Wright's statements concerning the intensity, persistence, and limiting effects of the symptoms were not entirely credible. For example, Wright acknowledged in written statements that he had no difficulty caring for his personal needs, and he also referenced performing certain activities of daily living that could not have been accomplished

if his pain was as severe as he alleged. I note that the ALJ's credibility finding that questioned Wright's allegations of the intensity, persistence, and limiting effects was supported by the state agency physicians who also determined that Wright's allegations were only partially credible. In addition, the objective medical evidence of record did not support Wright's complaints of disabling pain, as the physicians he reported such complaints to found that he was capable of working.

I must accept the ALJ's assessment of credibility and her finding that the objective evidence did not support Wright's allegations of disabling pain. Accordingly, I find that Wright's allegations of pain and the combined effect of his impairments were properly evaluated.

IV

For the foregoing reasons, the plaintiff's Motion for Summary Judgment will be denied, and the Commissioner's Motion for Summary Judgment will be granted. An appropriate final judgment will be entered affirming the Commissioner's final decision denying benefits.

DATED: May 4, 2010

/s/ James P. Jones
Chief United States District Judge