

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

JAMES E. SNEAD,)	
Plaintiff)	
)	
v.)	Civil Action No. 1:05cv00069
)	<u>REPORT AND</u>
)	<u>RECOMMENDATION</u>
JO ANNE B. BARNHART,)	
Commissioner of Social Security,)	By: PAMELA MEADE SARGENT
Defendant)	United States Magistrate Judge

I. Background and Standard of Review

Plaintiff, James E. Snead, filed this action challenging the final decision of the Commissioner of Social Security, (“Commissioner”), denying plaintiff’s claims for disability insurance benefits, (“DIB”), and supplemental security income, (“SSI”), under the Social Security Act, as amended, (“Act”), 42 U.S.C.A. §§ 423, 1381 *et seq.* (West 2003 & Supp. 2005). Jurisdiction of this court is pursuant to 42 U.S.C. § 405(g) and § 1383(c)(3). This case is before the undersigned magistrate judge by referral pursuant to 28 U.S.C. § 636(b)(1)(B). As directed by the order of referral, the undersigned now submits the following report and recommended disposition.

The court’s review in this case is limited to determining if the factual findings of the Commissioner are supported by substantial evidence and were reached through application of the correct legal standards. *See Coffman v. Bowen*, 829 F.2d 514, 517 (4th Cir. 1987). Substantial evidence has been defined as “evidence which a reasoning mind would accept as sufficient to support a particular conclusion. It 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). ““If there is evidence to justify a refusal to direct a verdict were the case before a jury, then there is “substantial evidence.””” *Hays v. Sullivan*, 907 F.2d 1453, 1456 (4th Cir. 1990) (quoting *Laws*, 368 F.2d at 642).

The record shows that Snead filed his applications for DIB and SSI on or about June 27, 2003, alleging disability as of July 4, 2000,¹ based on a back injury, depression and nervousness. (Record, (“R.”), at 52-54, 61, 292-94.) The claims were denied initially and upon reconsideration. (R. at 36-38, 41, 42-44, 296-98, 302-04.) Snead then requested a hearing before an administrative law judge, (“ALJ”). (R. at 45.) The ALJ held a hearing on March 18, 2004, at which Snead was represented by counsel. (R. at 574-605.)

By decision dated May 13, 2004, the ALJ denied Snead’s claims. (R. at 19-28.) The ALJ found that Snead had not engaged in substantial gainful activity since the alleged onset date of disability, except for during the period from June 2002 through April 27, 2003, when he did engage in substantial gainful activity and he was not disabled. (R. at 27.) The ALJ also found that the medical evidence established that Snead suffered from severe impairments, namely musculoskeletal impairments and a history of drug abuse, but he found that Snead did not have an impairment or combination of impairments listed at or medically equal to one listed at 20 C.F.R. Part 404, Subpart P, Appendix 1. (R. at 27.) The ALJ found that Snead’s allegations were not credible. (R. at 27.) The ALJ found that Snead, absent his drug abuse, retained the

¹The record shows that Snead worked at a number of jobs from June 2002 through April 27, 2003. (R. at 62, 71-72.) Therefore, Snead’s disability onset was amended to April 27, 2003. (R. at 21, 57.)

residual functional capacity to perform light work² that allowed frequent postural changes. (R. at 27.) Thus, the ALJ found that Snead could not perform any of his past relevant work. (R. at 27.) Based on Snead's age, education and work history and the testimony of a vocational expert, the ALJ concluded that Snead could perform jobs existing in significant numbers in the national economy. (R. at 27-28.) Thus, the ALJ found that Snead was not disabled under the Act. (R. at 28.) *See* 20 C.F.R. §§ 404.1520(g), 416.920(g) (2005).

After the ALJ issued his decision, Snead pursued his administrative appeals, (R. at 14), but the Appeals Council denied his request for review. (R. at 6-11.) Snead then filed this action seeking review of the ALJ's unfavorable decision, which now stands as the Commissioner's final decision. *See* 20 C.F.R. §§ 404.981, 416.1481 (2005). The case is before this court on Snead's motion for summary judgment filed December 26, 2005, and the Commissioner's motion for summary judgment filed January 30, 2006.

II. Facts

Snead was born in 1971, (R. at 52), which classifies him as a "younger person" under 20 C.F.R. §§ 404.1563(c), 416.963(c) (2005). Snead obtained his general equivalency development, ("GED"), diploma, and attended truck driving school. (R. at 67.) Snead has past relevant work experience as a truck driver, a cashier, a fueler, an assembler, a cook, a dishwasher, a bus boy and a general laborer. (R. at 62, 79.)

²Light work involves lifting items weighing up to 20 pounds at a time with frequent lifting or carrying of items weighing up to 10 pounds. If an individual can do light work, he also can do sedentary work. *See* 20 C.F.R. §§ 404.1567(b), 416.967(b) (2005).

Snead testified that he had recently lost 30 pounds in an attempt to relieve the pressure off of his back. (R. at 578.) He stated that medication helped his “nerve problem” and his symptoms of anxiety. (R. at 598-99.)

Donna Bardsley, a vocational expert, also testified at Snead’s hearing. (R. at 602-03.) Bardsley was asked to consider an individual of Snead’s age, education and work experience and who had the residual functional capacity to perform light work that required frequent postural changes. (R. at 602.) Bardsley stated that there were jobs available that such an individual could perform, including those of a cashier, an information clerk, an order clerk, a ticket seller, a hand packager, a sorter and an assembler. (R. at 602-03.) Bardsley was asked to consider the same individual who was mentally limited as indicated by Dr. Laramie C. Tripplett, M.D. (R. at 285-86, 603.) Bardsley stated that there were no jobs available that such an individual could perform. (R. at 603.)

In rendering his decision, the ALJ reviewed reports from Dr. Laramie C. Tripplett, M.D.; Johnston Memorial Hospital; Dr. Melvin L. Heiman, M.D., an orthopedic surgeon; Hugh Tenison, Ph.D., a state agency psychologist; Dr. Frank M. Johnson, M.D., a state agency physician; Dr. Neal A. Jewell, M.D., an orthopedic surgeon; University of Virginia Health System; Abingdon Psychological Services; and Washington County School Board. Snead’s attorney also submitted medical reports from Johnston Memorial Hospital; University of Virginia Health System; Dr. Tripplett; Dr. Mia R. Wessels, M.D.; and Dr. Naum Spiegel, M.D., to the Appeals Council.³

³Since the Appeals Council considered this evidence in reaching its decision not to grant review, (R. at 6-11), this court also should consider this evidence in determining whether substantial evidence supports the ALJ’s findings. *See Wilkins v. Sec’y of Dep’t of Health & Human Servs.*, 953 F.2d 93, 96 (4th Cir. 1991).

On April 4, 2000, Snead saw Dr. Laramie C. Triplett, M.D., to discuss help getting off of Oxycontin. (R. at 117.) Snead reported that he had used Oxycontin on and off for at least two years and occasionally used marijuana. (R. at 117.) Dr. Triplett reported that Snead had several apparent needle tracks overlying a vein on the back of his right hand. (R. at 117.) Dr. Triplett prescribed Clonidine to help alleviate withdrawal symptoms and to lower Snead's blood pressure and Vistaril, if needed, for anxiety and irritability. (R. at 117.) Snead was next seen on July 23, 2001, for complaints of low back pain. (R. at 115-16.) He reported that he had not used Oxycontin in one year. (R. at 115.) He reported that he would be starting a job with the Town of Abingdon the following day. (R. at 115.) On September 20, 2001, Snead complained of back pain and requested a refill on Soma. (R. at 114.) Dr. Triplett reported that Snead had a slight limp, which may have been exaggerated. (R. at 114.) On October 9, 2001, Snead reported that he had taken his entire prescription for Lortab, which was prescribed the previous day. (R. at 109.)

On May 12, 2003, Snead complained of depression. (R. at 108.) He reported thoughts of death and suicide, but admitted that he had no active plan. (R. at 108.) Dr. Triplett reported that Snead had lost 16 pounds in the last seven months. (R. at 108.) He reported that Snead was upset, became tearful and appeared depressed. (R. at 108.) On June 30, 2003, Snead complained of low back pain after helping a friend gather hay on his farm. (R. at 107.) Dr. Triplett diagnosed low back pain with documented bulging disc by prior MRI scan, presumably degenerative disc disease. (R. at 107.) Dr. Triplett completed a Medical Evaluation form indicating that Snead's expected duration of incapacitation was three months to one year based on degenerative disc disease of the lumbar spine. (R. at 225-26.) He reported that Snead could lift items weighing up to 25 pounds. (R. at 225.) He reported that Snead could sit for a total of

four to six hours in an eight-hour workday with breaks and stoop and walk as tolerated. (R. at 225.) Dr. Triplett reported that Snead's ability to bend was limited and that he could stand for a total of four to six hours in an eight-hour workday. (R. at 225.) He indicated that Snead could drive for a total of four hours in an eight-hour workday and that he could do so for one hour without interruption. (R. at 225.) He reported that Snead could reach below shoulder level only. (R. at 225.)

On July 25, 2003, Snead reported that he felt like he was sinking deeper into depression. (R. at 260.) He stated that he did not want to leave his home and that he felt tearful and very withdrawn. (R. at 260.) On August 29, 2003, Snead requested a refill on his pain medication stating that he did not receive the correct amount of pills from the pharmacy. (R. at 257.) A refill was not prescribed, but samples of Vioxx was given. (R. at 257.) On October 8, 2003, a drug screen was positive for methadone, hydroxy alprazolam, nordiazepam, oxazepam and cannabinoids. (R. at 255.) Snead denied personal use of marijuana but admitted that he had acquaintances who did use, stating that he had absorbed it by being around them. (R. at 255.) Dr. Triplett reported that he would begin to taper Snead off of Xanax. (R. at 255.)

On February 16, 2004, Dr. Triplett completed an assessment indicating that Snead's ability to lift and carry objects would be affected by his impairment, but could be determined only by a functional capacity evaluation. (R. at 281-82.) He reported that Snead could stand and/or walk up to four hours in an eight-hour workday and that he could do so for up to 30 minutes without interruption. (R. at 281.) Dr. Triplett reported that Snead could sit up to four hours in an eight-hour workday and that he could do so for up to 45 minutes without interruption. (R. at 281.) He indicated that Snead should never climb or stoop and occasionally kneel, balance, crouch and crawl.

(R. at 282.) He indicated that Snead's ability to reach and push/pull was affected. (R. at 282.) He also indicated that Snead was restricted from working around heights, moving machinery and vibration. (R. at 282.) Dr. Triplett also completed a mental assessment indicating that Snead had a more than satisfactory ability to understand, remember and carry out simple instructions and a limited but satisfactory ability to understand, remember and carry out detailed instructions. (R. at 285-86.) He also indicated that Snead was seriously limited, but not precluded, in all other areas. (R. at 285-86.)

On September 20, 2004, Snead saw Dr. Triplett requesting assistance with getting off of Methadone. (R. at 468.) However, he also requested a refill, which would have been 10 days early, stating that he had taken one or two extra because of pain. (R. at 468.) Dr. Triplett diagnosed severe psoriasis, perirectal fissure and chronic low back pain. (R. at 468.)

The record shows that Snead has a history of emergency room treatment received at Johnston Memorial Hospital. (R. at 120-224, 261-65.) There is evidence of at least 23 incidents of emergency department treatment from May 2000 through August 2003 and that some of these visits were for drug-seeking purposes. (R. at 120-224, 261-65.) On May 17, 2000, Snead reported an injury to his left hand while moving a washing machine. (R. at 129-33.) X-rays were normal. (R. at 132.) On July 4, 2000, Snead complained of lumbar spine pain following a motor vehicle accident. (R. at 124-28.) X-rays of Snead's lumbar spine showed L5 spondylolysis. (R. at 125.) He was seen again on July 9, 2002, complaining of low back pain. (R. at 120-23.) On July 28, 2000, Snead was admitted for complaints of coughing, pain and hemoptysis. (R. at 134-48.) He reported that Xanax helped his symptoms of anxiety. (R. at 134.)

On October 7, 2000, Snead informed an emergency room nurse that his wife and children were in the car, but he was later observed, after receiving Percocet for alleged pain, getting into an empty car and driving away. (R. at 210-13.) On January 17, 2001, Snead complained of back pain after helping his wife move furniture. (R. at 198-202.) On August 12, 2001, Snead reported back pain after helping his wife move a dresser. (R. at 182-85.) On September 9, 2001, x-rays of Snead's lumbar spine showed only grade I spondylolisthesis at the L5-S1 level, but Snead requested narcotics. (R. at 176-81.) On September 23, 2001, Snead complained of left arm weakness, but when a CT scan of the head was negative, emergency room officials questioned whether Snead's left arm weakness was real or voluntary. (R. at 171-75.) On December 27, 2001, Snead was seen after he had cut his hand with a pocketknife while trying to get into a locked door. (R. at 157-60.) On January 7, 2002, Snead reported back pain after falling on icy steps, but hospital officials reported that various discrepancies were found in his story. (R. at 152-56.) It was again noted that staff should be very cautious about prescribing narcotic medication to Snead. (R. at 154.) On May 10, 2002, Snead complained of low back pain and headaches. (R. at 150-51.) He reported that he was involved in a motor vehicle accident earlier that day. (R. at 150-51.) He was asked to show his driver's license but when he went to his vehicle to get his license he failed to return. (R. at 150-51.)

On July 18, 2003, Dr. Melvin L. Heiman, M.D., an orthopedic surgeon, saw Snead for his complaints of back pain and weakness in his left leg. (R. at 227-28.) Strength testing in both the upper and lower extremities was decreased bilaterally. (R. at 228.) X-rays of Snead's lumbar spine showed mild degenerative disc space at the L5-S1 level and some mild facet arthrosis at the L5-S1 level. (R. at 228.) Dr. Heiman diagnosed back pain and indicated that Snead was not a surgical candidate. (R. at

228.)

On August 22, 2003, Hugh Tenison, Ph.D., a state agency psychologist, indicated that Snead suffered from a severe affective disorder that was not expected to exceed 12 months. (R. at 229-43.) Tenison reported that Snead had mild limitation in his activities of daily living, in maintaining social functioning and in maintaining concentration, persistence or pace. (R. at 239.) He further indicated that Snead had not experienced episodes of decompensation. (R. at 239.) Tenison reported that Snead's mental allegations appeared to be credible and with adequate treatment Snead would be able to engage in competitive employment within 12 months. (R. at 241.) This assessment was affirmed by Julie Jennings, Ph.D., another state agency physician. (R. at 229.)

On August 27, 2003, Dr. Frank M. Johnson, M.D., a state agency physician, indicated that Snead at the residual functional capacity to perform light work. (R. at 244-51.) He indicated that Snead's ability to push and/or pull was limited in his lower extremities. (R. at 245.) He also indicated that Snead could frequently climb ramps and stairs and never climb ladders, ropes or scaffolds. (R. at 246.) Dr. Johnson indicated that Snead could frequently balance and occasionally stoop, kneel, crouch and crawl. (R. at 246.) No manipulative, visual, communicative or environmental limitations were noted. (R. at 247-48.) This assessment was affirmed by Dr. Randall Hayes, M.D., another state agency physician, on October 20, 2003. (R. at 251.)

On November 5, 2003, Snead was seen at Abingdon Psychological Services. (R. at 321-28.) It was reported that his affect was flat and his mood was sad. (R. at 326.) He was diagnosed with an anxiety disorder, not otherwise specified, depression

disorder, not otherwise specified and polysubstance dependence. (R. at 328.) Snead was next seen on June 28, 2004. (R. at 329.) It was reported that Snead's affect was appropriate, his mood was anxious and his activity level and thought processes were normal. (R. at 329.) He was diagnosed with an anxiety disorder, not otherwise specified, depression disorder, not otherwise specified and polysubstance dependence. (R. at 329.)

On December 11, 2003, Dr. Neal A. Jewell, M.D., an orthopedic surgeon, evaluated Snead for his complaints of back pain, left foot and leg numbness and headaches associated with neck pain. (R. at 273-76.) Dr. Jewell reported that Snead's motor strength appeared grossly within normal limits. (R. at 274.) Dr. Jewell diagnosed L5-S1 spondylolisthesis, degenerative lumbar disc disease at L5-S1 and moderate central and bilateral foraminal stenosis at the L5-S1 level. (R. at 275.) Dr. Jewell also reported that Snead's subjective presentation was not supported by his objective findings. (R. at 275.) Snead requested muscle relaxants, but none was prescribed. (R. at 275.)

Snead was admitted to the University of Virginia Health System on July 6, 2004, where he underwent a L5-S1 decompression and instrumented fusion. (R. at 353-58.) At a follow-up visit on July 22, 2004, Snead reported that he was doing well and that his symptoms had greatly improved. (R. at 482.) Dr. Frances H. Shen, M.D., reported that Snead was ambulating without aids and had good strength. (R. at 482.) On September 3, 2004, Snead reported that he had started to develop right leg pain. (R. at 480.) He reported that he had increased his activities, which was more than he could tolerate. (R. at 480.) He had good strength in his lower extremities. (R. at 480.) He was told to back off on his activities, but to continue walking. (R. at 480.) On

December 15, 2004, Dr. Shen completed an assessment indicating that Snead could occasionally lift and carry objects weighing up to 30 pounds. (R. at 464-65.) She indicated that Snead could stand and/or walk a total of six hours in an eight-hour workday with a 15-minute break after two hours of sitting. (R. at 464.) Dr. Shen also reported that Snead could sit a total of two hours in an eight-hour workday and that he could do so for two hours without interruption. (R. at 464.) She reported that Snead could never climb, balance, crouch or crawl and occasionally stoop and kneel. (R. at 465.) She also reported that Snead was unable to push and pull. (R. at 465.)

On October 8, 2004, Dr. Mia R. Wessels, M.D., diagnosed an infectious eczematoid dermatitis and plague-type psoriasis. (R. at 501-02.)

III. Analysis

The Commissioner uses a five-step process in evaluating DIB and SSI claims. *See* 20 C.F.R. §§ 404.1520, 416.920 (2005). *See also Heckler v. Campbell*, 461 U.S. 458, 460-62 (1983); *Hall v. Harris*, 658 F.2d 260, 264-65 (4th Cir. 1981). This process requires the Commissioner to consider, in order, whether a claimant 1) is working; 2) has a severe impairment; 3) has an impairment that meets or equals the requirements of a listed impairment; 4) can return to his past relevant work; and 5) if not, whether he can perform other work. *See* 20 C.F.R. §§ 404.1520, 416.920 (2005). If the Commissioner finds conclusively that a claimant is or is not disabled at any point in this process, review does not proceed to the next step. *See* 20 C.F.R. §§ 404.1520(a), 416.920(a) (2005).

Under this analysis, a claimant has the initial burden of showing that he is

unable to return to his past relevant work because of his impairments. Once the claimant establishes a prima facie case of disability, the burden shifts to the Commissioner. To satisfy this burden, the Commissioner must then establish that the claimant has the residual functional capacity, considering the claimant's age, education, work experience and impairments, to perform alternative jobs that exist in the national economy. *See* 42 U.S.C.A. §§ 423(d)(2)(A), 1382c(a)(3)(A)-(B) (West 2003 & Supp. 2005); *McLain v. Schweiker*, 715 F.2d 866, 868-69 (4th Cir. 1983); *Hall*, 658 F.2d at 264-65; *Wilson v. Califano*, 617 F.2d 1050, 1053 (4th Cir. 1980).

By decision dated May 13, 2004, the ALJ denied Snead's claims. (R. at 19-28.) The ALJ found that the medical evidence established that Snead suffered from severe impairments, namely musculoskeletal impairments and a history of drug abuse, but he found that Snead did not have an impairment or combination of impairments listed at or medically equal to one listed at 20 C.F.R. Part 404, Subpart P, Appendix 1. (R. at 27.) The ALJ found that Snead, absent his drug abuse, retained the residual functional capacity to perform light work that allowed frequent postural changes. (R. at 27.) Thus, the ALJ found that Snead could not perform any of his past relevant work. (R. at 27.) Based on Snead's age, education and work history and the testimony of a vocational expert, the ALJ concluded that Snead could perform jobs existing in significant numbers in the national economy. (R. at 27-28.) Thus, the ALJ found that Snead was not disabled under the Act. (R. at 28.) *See* 20 C.F.R. §§ 404.1520(g), 416.920(g) (2005).

As stated above, the court's function in the case is limited to determining whether substantial evidence exists in the record to support the ALJ's findings. The court must not weigh the evidence, as this court lacks authority to substitute its

judgment for that of the Commissioner, provided her decision is supported by substantial evidence. *See Hays*, 907 F.2d at 1456. In determining whether substantial evidence supports the Commissioner's decision, the court also must consider whether the ALJ analyzed all of the relevant evidence and whether the ALJ sufficiently explained his findings and his rationale in crediting evidence. *See Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 439-40 (4th Cir. 1997).

Thus, it is the ALJ's responsibility to weigh the evidence, including the medical evidence, in order to resolve any conflicts which might appear therein. *See Hays*, 907 F.2d at 1456; *Taylor v. Weinberger*, 528 F.2d 1153, 1156 (4th Cir. 1975). Furthermore, while an ALJ may not reject medical evidence for no reason or for the wrong reason, *see King v. Califano*, 615 F.2d 1018, 1020 (4th Cir. 1980), an ALJ may, under the regulations, assign no or little weight to a medical opinion, even one from a treating source, based on the factors set forth at 20 C.F.R. §§ 404.1527(d), 416.927(d), if he sufficiently explains his rationale and if the record supports his findings.

Snead argues that the ALJ's decision that he is not disabled is not supported by substantial evidence of record. (Plaintiff's Brief In Support Of Motion For Summary Judgment, ("Plaintiff's Brief"), at 12.) Snead argues that the ALJ erred by finding that he did not suffer from a severe mental impairment except possibly for a drug abuse disorder. (Plaintiff's Brief at 12-16.) He also argues that the ALJ erred by finding that he could perform light work. (Plaintiff's Brief at 17-20.) Snead further argues that the ALJ failed to establish that there is other work in the national economy that he could perform. (Plaintiff's Brief at 20-21.)

Snead argues that the ALJ erred by finding that he could perform light work and that the ALJ failed to establish that there is other work in the national economy that he could perform. (Plaintiff's Brief 17-21.) The ALJ found that Snead had the residual functional capacity to perform light work that allowed frequent postural changes. (R. at 27.) Based on my review of the record, I do not find that substantial evidence exists to support this finding. In addition to the need for frequent postural changes, Dr. Triplett reported that Snead could reach below shoulder level only, (R. at 225), and that Snead's ability to push and pull was affected by his impairments. (R. at 282.) Dr. Heiman also noted that strength testing in Snead's upper extremities was decreased bilaterally. (R. at 228.) Furthermore, Dr. Shen also found that Snead was unable to push and pull. (R. at 465.) The ALJ's opinion makes no mention of these findings. Nor does it make any attempt to weigh the evidence with regard to any restriction on Snead's use of his upper extremities. That being the case, I find that substantial evidence does not support the ALJ's physical residual functional capacity finding.

Also, the ALJ presented a hypothetical to the vocational expert identifying an individual who could perform light work which required frequent postural changes. (R. at 602.) The limitations on Snead's ability to reach and push/pull were not provided to the vocational expert to determine if there were jobs available that he could perform with these limitations. That being the case, I find that substantial evidence does not support the ALJ's finding that other jobs were available which Snead could perform.

Snead also argues that the ALJ erred by failing to find that he suffered from a

severe mental impairment, other than a drug abuse disorder. (Plaintiff's Brief at 12-16.) Based on my review of the record, I find that substantial evidence supports the ALJ's finding that Snead did not have a severe mental impairment, other than a drug abuse disorder. The record indicates that medications helped to control Snead's mental impairments, that he received little mental health treatment and that he had very minimal complaints. At the hearing, Snead testified that his medications helped to control his mental impairments. (R. at 598-99.) "If a symptom can be reasonably controlled by medication or treatment, it is not disabling." *Gross v. Heckler*, 785 F.2d 1163, 1166 (4th Cir. 1986).

The record shows that the only treatment that Snead received from Dr. Triplett was medication management. While Snead visited Abingdon Psychological Services on two occasions, these records fail to reveal any limitations. (R. at 325-34.) On June 28, 2004, it was reported that Snead's affect was appropriate, his mood was anxious and his activity level and thought processes were normal. (R. at 329.) The record further shows that Snead complained of mental impairments for only nine months from May 12, 2003, to February 13, 2004. (R. at 108, 497.) After that time, Snead visited Dr. Triplett on seven occasions between February 13, 2004, and January 7, 2005, and did not mention a mental impairment or limitation. (R. at 466-70, 488-95.) Furthermore, in August 2003, Tenison indicated that with adequate treatment, Snead would be able to engage in competitive employment within 12 months. (R. at 241.) Based on this, I find that substantial evidence exists to support the ALJ's finding that Snead did not suffer from a severe mental impairment other than a drug abuse disorder.

PROPOSED FINDINGS OF FACT

As supplemented by the above summary and analysis, the undersigned now submits the following formal findings, conclusions and recommendations:

1. Substantial evidence does not exist to support the ALJ's finding with regard to Snead's physical residual functional capacity;
2. Substantial evidence does not exist to support the ALJ's finding that a significant number of jobs exist that Snead could perform;
3. Substantial evidence exists to support the ALJ's finding that Snead did not suffer from a severe mental impairment, other than a drug abuse disorder; and
4. Substantial evidence does not exist to support the ALJ's finding that Snead was not disabled under the Act.

RECOMMENDED DISPOSITION

The undersigned recommends that the court deny Snead's and the Commissioner's motions for summary judgment, vacate the Commissioner's decision denying benefits and remand this case to the Commissioner for further development.

Notice to Parties

Notice is hereby given to the parties of the provisions of 28 U.S.C.A. § 636(b)(1)(c) (West 1993 & Supp. 2005):

Within ten days after being served with a copy [of this Report and Recommendation], any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

Failure to file timely written objections to these proposed findings and recommendations within 10 days could waive appellate review. At the conclusion of the 10-day period, the Clerk is directed to transmit the record in this matter to the Honorable James P. Jones, Chief United States District Judge.

The Clerk is directed to send certified copies of this Report and Recommendation to all counsel of record at this time.

DATED: This 29th day of March 2006.

/s/ Pamela Meade Sargent
UNITED STATES MAGISTRATE JUDGE