

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

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| <b>FRANKLIN D. GOSS, JR.,</b>                       | ) |                                |
| Plaintiff   | ) |                                |
|   | ) |                                |
| v.  | ) | Civil Action No. 1:06cv00043   |
|   | ) | <b><u>REPORT AND</u></b>       |
|   | ) | <b><u>RECOMMENDATION</u></b>   |
| <b>MICHAEL J. ASTRUE,</b>                           | ) |                                |
| <b>Commissioner of Social Security,<sup>1</sup></b> | ) | By: PAMELA MEADE SARGENT       |
| Defendant   | ) | United States Magistrate Judge |

*I. Background and Standard of Review*

Plaintiff, Franklin D. Goss, Jr., 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. 2006). 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

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<sup>1</sup>Michael J. Astrue became the Commissioner of Social Security on February 12, 2007, and is, therefore, substituted for Jo Anne B. Barnhart as the defendant in this suit pursuant to Federal Rule of Civil Procedure 25(d)(1).

(4<sup>th</sup> 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 (4<sup>th</sup> 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 (4<sup>th</sup> Cir. 1990) (quoting *Laws*, 368 F.2d at 642).

The record shows that Goss protectively filed his applications for DIB and SSI on February 14, 2003, alleging disability as of October 15, 2002, based on a bad back and a nerve condition. (Record, (“R.”), at 53-57, 69, 78, 272-73.) Goss’s claims were denied both initially and on reconsideration. (R. at 30-32, 37, 39-41, 275-77.) Goss then requested a hearing before an administrative law judge, (“ALJ”). (R. at 42.) The ALJ held a hearing on April 20, 2005, at which Goss was represented by counsel. (R. at 279-314.)

By decision dated June 6, 2005, the ALJ denied Goss’s claims. (R. at 18-27.) The ALJ found that Goss met the nondisability insured status requirements of the Act for DIB purposes through the date of the decision. (R. at 25.) The ALJ found that Goss had not engaged in substantial gainful activity since the alleged onset date. (R. at 25.) The ALJ also found that the medical evidence established that Goss had severe impairments, namely degenerative disc disease, degenerative joint disease and a history of carpal tunnel syndrome with some residuals in the nondominant hand/arm, but he found that Goss 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 25-26.) The ALJ further found that Goss's allegations regarding his limitations were not totally credible. (R. at 26.) The ALJ found that Goss retained the residual functional capacity to perform light<sup>2</sup> work that allowed for a sit/stand option on an hourly basis and that allowed for at least some mild limitations on his ability to handle objects with the left nondominant hand. (R. at 26.) In addition, the ALJ found that Goss could occasionally crouch, stoop, kneel, crouch, crawl, climb stairs or ramps and balance. (R. at 26.) The ALJ found that Goss could not perform his past relevant work. (R. at 26.) Based on Goss's age, education, work experience and residual functional capacity and the testimony of a vocational expert, the ALJ concluded that Goss could perform jobs existing in significant numbers in the national economy, including those of a gate attendant, a cashier and an office messenger. (R. at 26.) Thus, the ALJ found that Goss was not disabled under the Act and was not eligible for benefits. (R. at 26-27.) *See* 20 C.F.R. §§ 404.1520(g), 416.920(g) (2006).

After the ALJ issued his decision, Goss pursued his administrative appeals, (R. at 14), but the Appeals Council denied his request for review. (R. at 8-11.) Goss 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 (2006). The case is before this court on Goss's motion for summary judgment filed July 20, 2006, and the Commissioner's motion for summary judgment filed August 21, 2006.

## *II. Facts*

Goss was born in 1956, (R. at 53, 272), which, at the time of the ALJ's hearing,

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<sup>2</sup>Light 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 someone can perform light work, he also can perform sedentary work. *See* 20 C.F.R. §§ 404.1567(b), 416.967(b) (2006).

classified him as a “younger person” under 20 C.F.R. §§ 404.1563(c), 416.963(c). He obtained his General Equivalency Development, (“GED”), diploma and has past relevant work experience as an crate handler, a truck mechanic, a machine shop tender and a truck driver. (R. at 285-86.) At his hearing, Goss testified that he had to stop working in 2002 due to pain. (R. at 286.) Goss testified that he could stand for 15 to 20 minutes, walk for 50 to 60 yards and sit for an hour. (R. at 291-92.) He stated that he wandered around the house, listened to the radio and watched television. (R. at 295.)

Goss testified that although he had undergone surgery on his left thumb and for carpal tunnel of the left hand, his condition had worsened. (R. at 296.) He stated that he experienced constant numbness in his left hand and had difficulty picking up objects. (R. at 296-97.) He described his back pain as a “numb, gnawing, constant sharp numbing pain in [his] back [and left] hip.” (R. at 297.) Goss stated that this pain was aggravated by walking, lifting objects and sitting. (R. at 298.) He testified that he could not climb many stairs. (R. at 298.) Goss stated that he took hydrocodone for pain, which caused dizziness and forgetfulness. (R. at 298.) He also testified to difficulty concentrating and sleep interference. (R. at 298.) Goss stated that he enjoyed golfing, fishing and bowling, but he had not been able to do any of these activities for more than three years due to his back pain. (R. at 301.) He stated that he drove once or twice a week. (R. at 301.)

Gina Baldwin, a vocational expert, also was present and testified at Goss’s hearing. (R. at 303-13.) Baldwin classified Goss’s past work as an assembly line

worker as light and unskilled, as a truck driver, as performed by Goss, as medium<sup>3</sup> and semiskilled and as a truck mechanic as medium to heavy<sup>4</sup> and skilled. (R. at 305.) Baldwin was asked to consider an individual of Goss's age, education and work history who could perform medium work with an occasional ability to climb, to balance, to stoop, to kneel, to crouch and to crawl and some limited ability to use the nondominant left upper extremity. (R. at 306.) Baldwin testified that such an individual could perform the jobs of a gate attendant, an office messenger and a cashier at the light level of exertion. (R. at 308.) Baldwin was next asked to consider the same individual, but who also had a sit/stand option. (R. at 308.) Baldwin testified that such an individual would be able to perform the jobs previously mentioned. (R. at 308.) Baldwin further testified that the same individual who also experienced mild to moderate pain with the use of medication would be able to perform these jobs. (R. at 309.) Baldwin testified that if an individual suffered from pain that caused him to miss three days of work per month, he would not be able to work. (R. at 311-12.) Lastly, Baldwin testified that an individual who had to lie down at least twice during a shift for up to 30 minutes to an hour and at times other than normal break times, would not be able to work. (R. at 313.)

In rendering his decision, the ALJ reviewed records from Johnston Memorial Hospital; Bristol Regional Medical Center; Abingdon Orthopedic Associates; The

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<sup>3</sup>Medium work involves lifting items weighing up to 50 pounds at a time with frequent lifting or carrying of items weighing up to 25 pounds. If someone can perform medium work, he also can perform light and sedentary work. *See* 20 C.F.R. §§ 404.1567(c), 416.967(c) (2006).

<sup>4</sup>Heavy work involves lifting items weighing up to 100 pounds at a time with frequent lifting or carrying of items weighing up to 50 pounds. If someone can perform heavy work, he also can perform medium, light and sedentary work. *See* 20 C.F.R. §§ 404.1567(d), 416.967(d) (2006).

Know Pain Clinic; University of Virginia Health System; Dr. Richard M. Surrusco, M.D., a state agency physician; Dr. Robert O. McGuffin, M.D., a state agency physician; Joseph Leizer, Ph.D., a state agency psychologist; Pain Management Center of Roanoke; Crestview Medical Center; Stone Mountain Health Services; Tazewell Community Hospital; and Dr. Sharat Narayanan, M.D.

Goss presented to the emergency department at Tazewell Community Hospital on July 5, 2000, with complaints of back pain after falling the previous day. (R. at 260-64.) He noted that his pain was exacerbated by movement and that it radiated into his hips and legs. (R. at 261.) Physical examination revealed negative straight leg raising. (R. at 264.) Goss exhibited no apparent motor deficit and normal reflexes. (R. at 264.) He received a Toradol injection which improved his condition. (R. at 264.) An x-ray of the lumbar spine showed mild rotary scoliosis, degenerative joint disease and a narrowed L5-S1 disc interspace. (R. at 265.) Goss was diagnosed with acute low back pain and strain and was advised to follow-up with his primary care physician. (R. at 263-64.) He was prescribed Vioxx and Norflex. (R. at 263.)

On February 2, 2001, Goss underwent a left carpal tunnel release by Dr. Wallace Huff Jr., M.D., an orthopedist. (R. at 99-100.) On March 20, 2001, Dr. Huff noted that x-rays showed advanced degenerative changes of the metacarpophalangeal, ("MP"), joint. (R. at 119.) He received an injection and was returned to light-duty work the following week. (R. at 119.) He was restricted from lifting items weighing more than 15 pounds and from repetitive gripping and was given Vicodin to be used sparingly. (R. at 119.) On May 8, 2001, Goss reported continued significant pain in the left thumb with triggering which Dr. Huff noted was palpable on examination. (R.

at 119.) He opted to proceed with another trigger finger release. (R. at 119.) Goss reported that his back pain was intolerable without Oxycontin. (R. at 119.) Dr. Huff prescribed Oxycontin on a short-term basis until Goss could begin attending a pain clinic. (R. at 119.) The following month, Goss underwent the trigger thumb release. (R. at 118.) On June 20, 2001, Dr. Huff noted that Goss had good range of motion of the thumb and he was neurovascularly intact. (R. at 118.) On July 16, 2001, Goss reported that his thumb was doing well with no triggering. (R. at 117.) He continued to complain of chronic pain. (R. at 117.) Goss's Oxycontin prescription was refilled, but he was referred to a pain management clinic. (R. at 117.) Dr. Huff noted that Goss would not be able to obtain narcotics after this point. (R. at 117.)

On August 9, 2001, Goss's thumb was doing well with no further locking. (R. at 116.) He complained of numbness along the radial aspect of the thumb, and Dr. Huff noted a little wasting there, suspicious for an injury to the recurrent motor branch. (R. at 116.) Dr. Huff scheduled an electromyogram, ("EMG"), to rule out recurrent motor branch of the median nerve injury. (R. at 116.) On October 9, 2001, Dr. Huff noted that the EMG showed a near complete injury of the recurrent motor branch of the median nerve. (R. at 116.) However, Goss's function was "fairly good." (R. at 116.) On January 29, 2002, Goss continued to show signs of thenar atrophy of the left thumb with no return of function. (R. at 114.) He had weakness in palmar abduction of the thumb. (R. at 114.) Dr. Huff opined that Goss would be a candidate for tendon transfer and referred him to University of Virginia. (R. at 114.) Dr. Huff noted that Goss was chronically dependent on Oxycontin. (R. at 114.) He was advised that no more prescriptions would be written. (R. at 114.)

Goss was seen at The Know Pain Clinic from April 24, 2001, through February 14, 2002. (R. at 120-41.) Over this time, Goss complained of low back pain that radiated into his left leg. (R. at 120-41.) On several occasions, Dr. Shishir Shah, M.D., Dr. Bruce Cannon, D.O., Dr. Robert Blok, D.O., and Dr. Cecil C. Graham, M.D., noted tenderness in the lumbar region of the back, the sacroiliac joints bilaterally and around the T12 area of the spine. (R. at 121, 123, 125, 127, 129, 132, 134-35, 138, 140.) Goss reported that hot showers and medication helped to alleviate his pain. (R. at 121, 123, 125, 127, 129, 131, 133, 135, 137.) He further reported that he tried to exercise regularly and walk daily. (R. at 125, 127, 133, 137, 140.) On May 22, 2001, Dr. Shah administered a lumbar facet joint injection and a sacroiliac joint injection. (R. at 139.) He did not receive any other injections over the time he was seen at The Know Pain Clinic because the physicians did not feel that such was indicated. Goss was diagnosed with lumbar facet joint arthropathy, sacroiliitis and lumbar radiculopathy. (R. at 122-23, 125, 127, 129, 132, 134-35, 138, 140.) He was treated conservatively with medications, including Zanaflex, Oxycontin, oxycodone, MS Contin, morphine, Elavil, Soma and Neurontin. (R. at 121-23, 125-27, 129, 131-34, 136-38, 140-41.) He was advised to perform exercises at home. (R. at 125, 128, 138.) It was noted that Goss did not need surgical intervention. (R. at 138.) On July 20, 2001, Dr. Shah noted that Goss ambulated with a cane. (R. at 133.) The following month, Dr. Blok noted that Goss was “holding very well with the medication [and that he was] able to perform activities of daily living with greater than 50% reduction in pain.” (R. at 132.) On September 20, 2001, Goss reported doing fairly well over the previous month. (R. at 129.) Motor sensory and deep tendon reflexes were within normal limits. (R. at 129.) On November 19, 2001, it was reported that Goss had done “fairly well.” (R. at 125.) His sensation was within normal limits, and his deep

tendon reflexes were 2+ and symmetrical throughout. (R. at 125.) Dr. Graham noted that he remained “very stable” on his current regimen. (R. at 126.) By January 17, 2002, Goss reported doing much better than before. (R. at 121.) On February 14, 2002, Goss was discharged from the clinic for drug-seeking behavior. (R. at 120.)

Goss saw Dr. Cyrus E. Bakhit, M.D., at the Pain Management Center of Roanoke from January 2, 2002, through March 20, 2003, for his complaints of neck pain, shoulder discomfort and back pain. (R. at 170-214.) On January 2, 2002, Goss reported that he was taking Oxycontin, Percocet and Xanax, which provided 85 percent pain relief. (R. at 204.) An examination of the cervical spine showed decreased lordosis. (R. at 212.) Palpation of the cervical spine was within normal limits. (R. at 212.) Range of motion of the cervical spine, as well as of the extremities, was grossly within normal limits. (R. at 212.) Range of motion of all other joints was reduced with mild pain elicited in extension and bilaterally in rotation and flexion. (R. at 212.) Examination of motor strength of the upper extremities was grossly within normal limits and no wasting was noted. (R. at 212.) Goss’s grip strength was normal as were his reflexes. (R. at 212.) Decreased sensation in the distal thumb of the left hand was noted. (R. at 212.) Examination of the lumbar spine revealed decreased lordosis. (R. at 212.) Palpation of the lumbar spine showed tenderness bilaterally in the paravertebral and the SI joint. (R. at 212.) Range of motion of the lumbar spine, bilateral hips, knees and ankles was reduced with moderate pain elicited in extension, with mild pain elicited in flexion, deflexion and bilaterally in rotation and flexion. (R. at 213.) Goss also showed positive signs

bilaterally for Patrick-Fabere's test.<sup>5</sup> (R. at 213.) His motor strength in the lower extremities was grossly intact, and no sensory deficits were noted. (R. at 213.) Superficial reflexes were within normal limits. (R. at 213.)

Goss was diagnosed with lumbar disc displacement without myelopathy, lumbar degenerative disc disease, lumbar facet joint arthropathy, cervical facet joint arthropathy and sacroiliitis. (R. at 213.) Dr. Bakhit noted that Goss's pain would be managed with a home exercise program. (R. at 213.) Goss opted to undergo lumbar facet joint nerve blocks. (R. at 213.) Goss's prognosis was deemed fair to good. (R. at 214.) From January 21, 2002, through March 20, 2003, Goss received a series of epidural injections which provided relief for periods ranging from five days to three weeks. (R. at 178-79, 181-82, 184-85, 187-88, 190-91, 193-94, 200.) Goss's physical examinations and diagnoses remained unchanged. (R. at 170-214.) In January 2002, Goss's range of motion was reduced with pain upon extension. (R. at 200.) Sensory and motor examination of the lower extremities revealed no significant abnormalities. (R. at 200.) Over this time period Goss was prescribed various medications and received various medication refills. (R. at 170-73, 175-201, 204.) Moreover, Goss reported doing "fair" and doing "a little better" on several occasions. (R. at 178, 181, 190, 196, 199.) In July 2002, Goss reported that he was tolerating his then-current medication regimen and that it allowed him to conduct his daily activities. (R. at 181.) In December 2002, Goss was diagnosed with neck pain secondary to cervical facet joint arthropathy, in addition to his previous diagnoses. (R. at 173.) In March 2003, he noted that his then-current medication regimen helped. (R. at 170.)

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<sup>5</sup>Patrick-Fabere's test is used to diagnose arthritis of the hip. *See* DORLAND'S ILLUSTRATED MEDICAL DICTIONARY (27<sup>th</sup> ed. 1988), ("Dorland's"), 1688.

Goss presented to the emergency department at Tazewell Community Hospital on May 30, 2001, with complaints of moderate back pain with radiation down the left leg after lifting a transmission. (R. at 253-59.) He noted that the pain was aggravated by movement. (R. at 254.) Straight leg raising was positive on the left at 30 degrees. (R. at 257.) He was diagnosed with acute low back pain and was prescribed ibuprofen and Darvocet. (R. at 257.) He received a Nubain and Vistaril injection with good results and was advised to use ice and heat therapy and to follow-up with his primary care physician. (R. at 256-57.) Goss was written a note to return to work on June 1, 2001. (R. at 258.)

On June 8, 2001, Goss underwent a left trigger thumb release and A-1 pulley by Dr. Huff. (R. at 101, 105-08.) He was discharged home in good condition to take Vicodin as directed. (R. at 101.) Goss was advised to avoid heavy lifting. (R. at 101.) An MRI of the lumbar spine on June 14, 2001, showed decreased disc signal consistent with dehydration and a moderate posterior, central disc protrusion effacing the thecal sac at the L4-L5 level of the spine. (R. at 112, 243-44.) It further showed a moderate eccentric disc protrusion at the L5-S1 level of the spine, being more dominant on the right side and resulting in right neural foraminal stenosis and moderate narrowing of the left neural foramen. (R. at 112, 244.) The MRI also showed extruded disc material at the superior margin of the S1 adjacent to the left S1 nerve root, consistent with disc herniation. (R. at 112, 244.)

On April 1, 2002, Goss saw Dr. Michael E. Pannunzio, M.D., at the University of Virginia Health System Department of Orthopaedic Surgery, for an evaluation of his thumb. (R. at 142-43.) Dr. Pannunzio noted that Goss had done well following

carpal tunnel and trigger thumb release in regards to his preoperative complaints, but he appeared to have a mononeuropathy of the recurrent motor branch to the thenar as well as a loss of function of the radial digital nerve to the thumb. (R. at 142.)

Dr. Richard M. Surrusco, M.D., a state agency physician, completed a Physical Residual Functional Capacity Assessment on October 1, 2003, finding that Goss could perform medium work. (R. at 147-54.) He found that Goss could occasionally climb, balance, stoop, kneel, crouch and crawl. (R. at 150.) Dr. Surrusco further found that Goss was limited in his ability to handle objects with his left hand. (R. at 150.) He imposed no visual, communicative or environmental limitations. (R. at 151-52.) These findings were affirmed by Dr. Robert O. McGuffin, M.D., another state agency physician, on January 27, 2004. (R. at 154.)

On March 22, 2004, Goss saw Dr. Sharat Narayanan, M.D., with complaints of chronic low back pain and neck pain. (R. at 230-31.) Dr. Narayanan noted that the most recent physician to treat him recommended back surgery, but Goss declined. (R. at 230.) Goss reported taking Lorcet from his father and Xanax from his mother. (R. at 227, 230.) Dr. Narayanan noted that Goss was fully oriented and in no acute distress. (R. at 231.) No edema of the extremities was noted, and deep tendon reflexes were brisk bilaterally. (R. at 231.) Plantar reflexes were downgoing bilaterally and peripheral pulses were 2+ bilaterally. (R. at 231.) Straight leg raising was equivocal bilaterally. (R. at 231.) Dr. Narayanan diagnosed Goss with chronic low back pain and chronic neck pain. (R. at 231.) He prescribed Ultram. (R. at 231.) On June 21, 2004, Goss again saw Dr. Narayanan. (R. at 227-28.) Dr. Narayanan strongly cautioned Goss against taking the Lorcet and Xanax. (R. at 227.) He noted

that Goss had declined to be sent to orthopedics for a surgical evaluation. (R. at 227.) Instead Goss wished to seek pain management. (R. at 227.) He was diagnosed with chronic low back pain and chronic neck pain and was given Ultram. (R. at 228.) He was referred to the University of Virginia Pain Management Department. (R. at 228-29.) On September 29, 2004, Goss reported worsening neck pain. (R. at 223.) Physical examination revealed no extremity edema, and straight leg raising was equivocal bilaterally. (R. at 223.) An x-ray of the cervical spine showed a mild degree of spur formation and osteoarthritis of the distal cervical spine. (R. at 225.) Goss was diagnosed with chronic low back pain and chronic neck pain. (R. at 223.) He was given Ultram. (R. at 224.)

On January 6, 2005, Goss saw Dr. Mark J. Cooper, M.D., at Crestview Medical Clinic, with complaints of back pain radiating down the left leg. (R. at 216-18.) No edema of the lower extremities was noted, and Goss exhibited tenderness along the spinous processes of the lower thoracic/upper lumbar spine. (R. at 217.) Straight leg raising was negative and Goss's motor strength was full bilaterally. (R. at 217.) Sensation was intact and deep tendon reflexes were 2+ and brisk bilaterally. (R. at 217.) Goss's gait was antalgic. (R. at 217.) Goss was diagnosed with back pain with radiation. (R. at 217.) He was offered pain management locally, but Goss stated that he could not afford it. (R. at 217.) Dr. Cooper recommended a repeat MRI and physical therapy, but Goss declined for financial reasons. (R. at 217.) Dr. Cooper prescribed Lorcet. (R. at 217.) On February 7, 2005, Dr. Cooper noted no change in Goss's clinical status. (R. at 219.) Goss reported that Lortab was not providing long-lasting pain relief so his dosage was increased. (R. at 219-20.)

On May 12, 2005, Dr. Narayanan completed a Physical Assessment Of Ability To Do Work-Related Activities. (R. at 268-69.) He found that Goss could lift a gallon of milk occasionally, stand and/or walk for a total of one hour in an eight-hour workday, but for only 15 minutes without interruption and sit for a total of three to four hours in an eight-hour workday, but for only 30 minutes without interruption. (R. at 268.) He further found that Goss could occasionally climb, but could never stoop, kneel, balance, crouch or crawl. (R. at 269.) Dr. Narayanan opined that Goss's abilities to reach, to handle objects, to feel and to push/pull were limited. (R. at 269.) Finally, Dr. Narayanan found that Goss was restricted from working around heights, moving machinery, temperature extremes, chemicals, dust, noise, fumes, humidity and vibration. (R. at 269.)

### *III. Analysis*

The Commissioner uses a five-step process in evaluating DIB and SSI claims. *See* 20 C.F.R. §§ 404.1520, 416.920 (2006); *see also Heckler v. Campbell*, 461 U.S. 458, 460-62 (1983); *Hall v. Harris*, 658 F.2d 260, 264-65 (4<sup>th</sup> 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 (2006). 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) (2006).

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. 2006); *McLain v. Schweiker*, 715 F.2d 866, 868-69 (4<sup>th</sup> Cir. 1983); *Hall*, 658 F.2d at 264-65; *Wilson v. Califano*, 617 F.2d 1050, 1053 (4<sup>th</sup> Cir. 1980).

By decision dated June 6, 2005, the ALJ denied Goss's claims. (R. at 18-27.) The ALJ found that the medical evidence established that Goss had severe impairments, namely degenerative disc disease, degenerative joint disease and a history of carpal tunnel syndrome with some residuals in the nondominant hand/arm, but he found that Goss 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 25-26.) The ALJ found that Goss retained the residual functional capacity to perform light work that allowed for a sit/stand option on an hourly basis and that allowed for at least some mild limitations on his ability to handle objects with the left nondominant hand. (R. at 26.) In addition, the ALJ found that Goss could occasionally crouch, stoop, kneel, crouch, crawl, climb stairs or ramps and balance. (R. at 26.) The ALJ found that Goss could not perform his past relevant work. (R. at 26.) Based on Goss's age, education, work experience and residual functional capacity and the testimony of a vocational expert, the ALJ concluded that Goss could perform jobs existing in significant numbers in the national economy, including those

of a gate attendant, a cashier and an office messenger. (R. at 26.) Thus, the ALJ found that Goss was not disabled under the Act and was not eligible for benefits. (R. at 26-27.) *See* 20 C.F.R. §§ 404.1520(g), 416.920(g) (2006).

In his brief, Goss argues that the ALJ erred by failing to accord proper weight to the opinion of Dr. Narayanan, his treating physician. (Plaintiff's Brief In Support Of Motion For Summary Judgment, ("Plaintiff's Brief"), at 9-12.) Goss further argues that the ALJ erred by failing to adequately explain why he rejected Dr. Narayanan's opinion. (Plaintiff's Brief at 11-12.) Goss also argues that the ALJ failed to properly evaluate his pain. (Plaintiff's Brief at 12-15.) Finally, Goss argues that the Commissioner failed to sustain his burden of establishing that a significant number of jobs exists in the national economy that he can perform. (Plaintiff's Brief at 16-18.)

As stated above, the court's function in this case is limited to determining whether substantial evidence exists in the record to support the ALJ's findings. This court must not weigh the evidence, as this court lacks authority to substitute its judgment for that of the Commissioner, provided his 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 (4<sup>th</sup> Cir. 1997).

Goss argues that the ALJ erred by failing to accord proper weight to the opinion

of his treating physician, Dr. Narayanan. (Plaintiff's Brief at 9-12.) I disagree. 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), 416.927(d)(2) (2006). However, "circuit precedent does not require that a treating physician's testimony 'be given controlling weight.'" *Craig v. Chater*, 76 F.3d 585, 590 (4<sup>th</sup> Cir. 1996) (quoting *Hunter v. Sullivan*, 993 F.2d 31, 35 (4<sup>th</sup> Cir. 1992)). In fact, "if a physician's opinion is not supported by the clinical evidence or if it is inconsistent with other substantial evidence, it should be accorded significantly less weight." *Craig*, 76 F.3d at 590.

Here, the ALJ noted in his decision that Dr. Narayanan's assessment was inconsistent with his treatment notes and the other medical evidence of record. (R. at 20.) I agree. Dr. Narayanan's treatment notes from March 22, 2004, reflect the following findings on physical examination: no edema of the extremities; deep tendon reflexes that were brisk bilaterally; downgoing bilateral plantar reflexes; 2+ bilateral peripheral pulses; and equivocal bilateral straight leg raising. (R. at 231.) Dr. Narayanan noted that Goss was in no acute distress. (R. at 231.) He diagnosed him with chronic low back pain and chronic neck pain and prescribed Ultram. (R. at 231.) Dr. Narayanan placed no restrictions on Goss's activities. On June 21, 2004, Goss's diagnoses and treatment remained unchanged. (R. at 227-28.) Dr. Narayanan noted that Goss had declined to be sent for an orthopedic surgical evaluation, instead opting to pursue pain management. (R. at 227.) On September 29, 2004, findings on physical examination remained unchanged, as did Dr. Narayanan's conservative treatment of Goss. (R. at 223-24.) Dr. Narayanan placed no restrictions on Goss's activities. Thus, as the ALJ noted in his decision, Dr. Narayanan's treatment notes are

inconsistent with his assessment dated May 12, 2005, in which he found, among other things, that Goss could occasionally lift and carry a gallon of milk, stand and/or walk for a total of one hour in an eight-hour workday and sit for a total of three to four hours in an eight-hour workday. (R. at 268.)

I further find that the other objective evidence of record contradicts Dr. Narayanan's assessment. For instance, a lumbar MRI dated June 14, 2001, showed a disc herniation at the L5-S1 level of the spine. (R. at 112, 244.) X-rays of Goss's cervical spine, taken in September 2004, showed mild spur formation and osteoarthritis of the distal cervical spine. (R. at 225.) Nonetheless, despite these objective findings, physical examinations consistently revealed no motor or sensory deficits and normal reflexes. (R. at 125, 200, 213, 217.) Tenderness was noted in the lumbar region of the back, the sacroiliac joints bilaterally and the T12 area of the spine. (R. at 121, 123, 125, 127, 129, 132, 134-35, 138, 140, 212, 217.) Goss was treated conservatively with medications and received epidural injections which he reported helped in relieving his pain. (R. at 178, 181, 184, 187, 190, 193.) Goss also reported on several occasions that hot showers and medications helped to alleviate his pain. (R. at 121, 123, 125, 127, 129, 131, 133, 135, 137.) Over his course of treatment at The Know Pain Clinic, from April 2001 to February 2002, Goss received only one epidural injection. (R. at 139.) At other visits, it was noted that an injection was not indicated. In May 2001, it was noted that Goss did not need surgical intervention. (R. at 138.) In August 2001, Dr. Blok noted that Goss was "holding very well with the medication [and that he was] able to perform activities of daily living with greater than 50% reduction in pain." (R. at 132.) In November 2001, it was noted that Goss remained "very stable" on his then-current medication regimen.

(R. at 126.)

By January 2002, Goss reported doing much better than before. (R. at 121.) He reported 85 percent pain relief with medication. (R. at 204.) At that time, Dr. Bakhit opted to manage Goss's pain with a home exercise program. (R. at 213.) The following month, Goss reported that his function had improved overall. (R. at 196.) In July 2002, Goss stated that he was tolerating his then-current medication regimen and that it allowed him to conduct his daily activities. (R. at 181.) The record states that Goss was scheduled to undergo a six-week course of physical therapy beginning in September 2002. (R. at 180.) However, the record contains no evidence that Goss ever participated in physical therapy. In March 2003, Goss stated that medications helped to relieve his pain. (R. at 170.) I further note that Dr. Narayanan's assessment also is contradicted by state agency physician Dr. Surrusco's assessment, in which he opined that Goss could perform a diminished range of medium work. (R. at 147-54.)

For these reasons, I find that substantial evidence supports the ALJ's rejection of Dr. Narayanan's assessment. For the reasons that follow, I further find Goss's argument that the ALJ erred by failing to adequately explain why he rejected Dr. Narayanan's assessment unpersuasive. The ALJ stated in his decision that he was rejecting Dr. Narayanan's assessment because it was inconsistent with his own treatment notes and with the other medical evidence of record. I find that this is a sufficient explanation. All that the ALJ is required to do is explain his rationale in crediting evidence. *See Sterling Smokeless Coal Co.*, 131 F.3d at 439-40. The ALJ did precisely that here. Thus, I find Goss's argument unpersuasive.

Next, Goss argues that the ALJ erred in his pain analysis. (Plaintiff's Brief at 12-15.) Again, I disagree. I find that the ALJ considered Goss's allegations of pain in accordance with the regulations. 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. *See 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. *See Craig*, 76 F.3d 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. *See Craig*, 76 F.3d at 595. This does not mean, however, that the ALJ may not use objective medical evidence in evaluating the intensity and persistence of pain. In *Craig*, the court stated:

Although a claimant's allegations about [his] 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, including objective evidence of the underlying impairment, and the extent to which that impairment can reasonably be expected to cause the pain the claimant alleges [he] suffers....

76 F.3d at 595.

I find that substantial evidence supports the ALJ's finding that Goss's subjective complaints of disabling functional limitations were not credible. The ALJ properly considered the objective evidence of record. (R. at 23.) As the ALJ noted in his decision, there is no evidence of focal deficits, and physical examination

consistently revealed full strength and motor power in both upper and lower extremities with no muscle wasting. Furthermore, the ALJ correctly noted that back surgery has not been recommended to Goss, and I note that when Dr. Narayanan suggested referring Goss to an orthopedic surgeon for an evaluation, Goss declined, instead opting to continue with pain management. (R. at 227.) Moreover, physical examinations, as outlined above, simply are not consistent with disabling pain as alleged by Goss. The ALJ correctly noted that despite a diagnosis of a herniated disc, there is no evidence of nerve root impingement. Finally, the ALJ considered Goss's activities of daily living, which include driving and taking care of his personal hygiene. (R. at 23.) Based on this, I find that the ALJ considered Goss's allegations of pain in accordance with the regulations.

Lastly, Goss argues that the Commissioner failed to sustain his burden of establishing that a significant number of jobs in the national economy exists that he can perform. (Plaintiff's Brief at 16-18.) Goss argues that the hypothetical questions posed to the vocational expert did not accurately reflect the ALJ's residual functional capacity finding or Goss's limitations. It is true that "[i]n order for a vocational expert's opinion to be relevant or helpful, it must be based upon a consideration of all ... evidence in the record, ... and it must be in response to proper hypothetical questions which fairly set out all claimant's impairments." *Walker v. Bowen*, 889 F.2d 47, 50 (4<sup>th</sup> Cir. 1989) (citations omitted). The Commissioner may not rely upon the answer to a hypothetical question if the hypothesis fails to fit the facts. *See Swaim v. Califano*, 599 F.2d 1309 (4<sup>th</sup> Cir. 1979).

It is true that the ALJ asked the vocational expert to assume an individual who

could occasionally lift items weighing up to 50 pounds and frequently lift items weighing up to 25 pounds even though the ALJ determined that Goss could occasionally lift items weighing up to 20 pounds and frequently lift items weighing up to 10 pounds. Nonetheless, the following exchange took place at the hearing between the ALJ and the vocational expert:

ALJ: Let's make it clear on the record what we're, that we're on the same page. All right, would there be, obviously there would be other jobs at the medium and light level that could be performed, is that correct?

VE: Yes, Your Honor.

ALJ: However, most medium jobs do require bimanual dexterity, do they not?

VE: That is correct, Your Honor.

ALJ: It's not until you get into the light range that you're talking about doing jobs that can be more one-handed or one hand with some support from the other hand, is that correct?

VE: That is correct, Your Honor.

ALJ: So we're really talking about light jobs?

VE: That is correct.

ALJ: ... [L]et's skip the medium because I think there are probably very few that ... can be performed. ...

VE: That is correct. ...

ALJ: Light, unskilled, is that correct?

The vocational expert then proceeded to list jobs at the light level of exertion that the hypothetical individual could perform. Thus, contrary to Goss's argument, the hypothetical ultimately posed to the vocational expert included the residual functional capacity that the ALJ found Goss could perform. Furthermore, with regard to Goss's contention that the ALJ did not account for his chronic neck pain, I, likewise, disagree. While the ALJ did not specifically mention neck pain, he did ask the vocational expert to add to the previously-cited limitations that of mild to moderate pain with the use of medications. (R. at 309.) The vocational expert testified that such a level of pain would not impact the individual's ability to perform the jobs enumerated. (R. at 309.) The vocational expert testified that an individual who had to miss approximately three days of work monthly due to pain would not be able to work. (R. at 311-12.) However, the ALJ properly found that Goss's allegations of such disabling pain were not credible for the reasons discussed above.

For all of these reasons, I find that substantial evidence supports the Commissioner's finding that a significant number of jobs exists in the national economy that Goss can perform.

### **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 exists to support the ALJ's weighing of the medical evidence;

2. Substantial evidence exists to support the ALJ's evaluation of Goss's pain; and
3. Substantial evidence exists to support the Commissioner's finding that a significant number of jobs exists in the national economy that Goss can perform.

### **RECOMMENDED DISPOSITION**

The undersigned recommends that the court deny Goss's motion for summary judgment, grant the Commissioner's motion for summary judgment and affirm the Commissioner's decision denying Goss benefits.

### **Notice to Parties**

Notice is hereby given to the parties of the provisions of 28 U.S.C.A. § 636(b)(1)(c) (West 2006):

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 3<sup>rd</sup> day of April 2007.

*/s/ Pamela Meade Sargent*  
UNITED STATES MAGISTRATE JUDGE