

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

EDWARD E. STROUPE, JR.,)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:07cv00090
)	<u>REPORT AND</u>
)	<u>RECOMMENDATION</u>
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	By: PAMELA MEADE SARGENT
Defendant.)	UNITED STATES MAGISTRATE JUDGE

I. Background and Standard of Review

Plaintiff, Edward E. Stroupe, Jr., filed this action challenging the final decision of the Commissioner of Social Security, (“Commissioner”), denying plaintiff’s claim for supplemental security income, (“SSI”), under the Social Security Act, as amended, (“Act”), 42 U.S.C.A. § 1381 *et seq.* (West 2003 & Supp. 2008). This court has jurisdiction 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 Stroupe initially filed his application for SSI on August 30, 2002, alleging disability beginning September 30, 1994, based on problems with his head, back, right hip, left shoulder and leg and cognitive functioning. (Record, (“R.”), at 73-76, 97.) The claim was denied initially and on reconsideration. (R. at 28-33, 34-38, 40-42.) Stroupe then requested a hearing before an Administrative Law Judge, (“ALJ”). (R. at 46.) The ALJ held a hearing on November 12, 2003, at which Stroupe was not present nor was he represented by counsel.¹ (R. at 282-91.)

By decision dated July 29, 2004, the ALJ denied Stroupe’s claim. (R. at 16-23.) The ALJ found that Stroupe did not suffer from a severe impairment and was not disabled under the Act. (R. at 22-23.) The Appeals Council subsequently denied Stroupe’s request for review, (R. at 6-9), and Stroupe filed a *pro se* action in this court. *See Stroupe v. Barnhart*, Civil Action No. 1:04cv00120. On August 11, 2005, this court ordered that the case be remanded to the Commissioner for further development. (R. at 320.) Upon remand, the ALJ held a supplemental hearing on May 16, 2007, but Stroupe again did not appear. (R. at 301, 412-55.)

¹Stroupe indicated that he did not desire to appear at a hearing and that he wished to have a decision made based on the evidence in the record. (R. at 300.)

By decision dated July 5, 2007, the ALJ denied Stroupe's claim. (R. at 300-13.) The ALJ found that Stroupe had not engaged in any substantial gainful activity since his alleged onset date. (R. at 306.) The ALJ found that the medical evidence established that Stroupe had severe impairments, namely degenerative disc disease, degenerative joint disease, chronic thoracic/lumbar strain, posttraumatic left shoulder strain and myofascial pain syndrome, but he found that Stroupe's impairments did not meet or medically equal the requirements of any impairment listed at 20 C.F.R. Part 404, Subpart P, Appendix 1. (R. at 306-08.) The ALJ also found that Stroupe had the residual functional capacity to perform medium work² with an occasional ability to climb, kneel and crawl and that did not involve work around hazards, such as unprotected heights. (R. at 308.) The ALJ found that Stroupe could perform his past relevant work as a retail clerk and cashier. (R. at 312.) The ALJ further found, based on Stroupe's age, education, work experience and residual functional capacity and the testimony of a vocational expert, that Stroupe had acquired work skills that were transferable to other occupations existing in significant numbers in the national economy. (R. at 312-13.) Therefore, the ALJ found that Stroupe was not under a disability as defined in the Act at any time through the date of his decision, and that he was not eligible for benefits. (R. at 313.) *See* 20 C.F.R. § 416.920(f)&(g) (2008).

After the ALJ issued his decision, Stroupe pursued his administrative appeals, (R. at 295), but the Appeals Council denied his request for review. (R. at 292-94.) Stroupe 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. § 416.1481 (2008).

²Medium work involves lifting items weighing up to 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If an individual can do medium work, he also can do sedentary and light work. *See* 20 C.F.R. § 416.967(c) (2008).

The case is before this court on the Commissioner's Motion for Summary Judgment filed December 4, 2008.³

II. Facts

Stroupe was born in 1951, (R. at 74), which classifies him as a person of advanced age under 20 C.F.R. § 416.963(e). He has a high school education with four or more years of college. (R. at 103.) Stroupe has past relevant work experience as a sales clerk and a janitor. (R. at 98.)

Medical expert, Dr. H. C. Alexander, III, M.D., testified at Stroupe's hearings. (R. at 285-90, 417-48.) At Stroupe's November 2003 hearing, Dr. Alexander stated that his review of the medical evidence showed that Stroupe's medical condition involved the lumbar spine and was described as chronic low back pain. (R. at 286.) He stated that the x-ray of Stroupe's lumbar spine taken on June 18, 1996, showed disc space narrowing with osteoarthritis at the L5-S1 level. (R. at 286-87.) He stated that there was not enough documentation in the file to determine whether or not Stroupe's condition met or equaled the listed impairment for disorders of the spine found at 20 C.F.R. Part 404, Subpart P, Appendix 1, § 1.04. (R. at 289.)

At the second hearing held on May 16, 2007, Dr. Alexander reviewed the record and testified that there was no objective evidence of any significant cerebral dysfunction. (R. at 438, 445-48.) He stated that there was no objective findings

³Stroupe has not filed a motion for summary judgment or a brief in support of such a motion.

supporting Dr. Knox's opinions regarding Stroupe's inability to work. (R. at 423-37, 441.) Dr. Alexander testified that there were no objective findings supporting Truhlik's opinions regarding Stroupe's inability to work. (R. at 418-23, 441.) He stated that Stroupe did not have a medically determinable impairment. (R. at 419.)

Vocational expert, James Williams, also testified at Stroupe's hearing. (R. at 449-54.) He stated that Stroupe's past work as a clerk at Radio Shack was classified as light,⁴ skilled work, his job as a cashier was classified as light, unskilled work and his job as a stock clerk was classified as heavy,⁵ semiskilled work. (R. at 450.) Williams was asked to consider an individual of Stroupe's age, education and past work experience who was limited as indicated by Dr. William Humphries, M.D. (R. at 403-07, 451.) Williams stated that such an individual could perform Stroupe's past work as a clerk and cashier. (R. at 451.) He also stated that Stroupe would have transferable sales skills, which would allow him to transfer to jobs which existed in significant numbers in the national economy, including jobs as a sales clerk, a sales representative and a sales person. (R. at 452-53.)

In rendering his decision, the ALJ reviewed records from Charlene M. Truhlik, D.C., a chiropractor; Blue Ridge Physical Therapy; David W. Harrison, Ph.D., a licensed clinical psychologist; Dr. Cecil B. Knox, III, M.D.; and Dr. William

⁴Light 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. § 416.967(b) (2008).

⁵Heavy work involves lifting objects weighing no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, he also can do medium, light and sedentary work. *See* 20 C.F.R. § 416.967(d) (2008).

Humphries, M.D.

The record shows that on November 24, 1993, Stroupe was seen by Charlene M. Truhlik, D.C., a chiropractor, for complaints of right hip pain resulting from a work-related injury. (R. at 206.) On April 12, 1996, Truhlik completed a medical form to aide Stroupe with his application for food stamps. (R. at 182.) Truhlik indicated that Stroupe suffered from chronic right sacroiliac sprain accompanied by right lower extremity radiculopathy and paresthesias complicated by a lumbar hyperlordosis. (R. at 182.) She indicated that as a result of this diagnosis, Stroupe was unable to sit, stand, bend or walk for prolonged periods of time and that lifting would aggravate his back problem. (R. at 182.) Truhlik indicated that Stroupe's condition would not improve and would possibly worsen with time. (R. at 182.) She reported that Stroupe's diagnosis rendered him unable to work or severely limited his capacity for self-support for 12 months. (R. at 182.) On June 10, 1996, Truhlik reported that Stroupe's back pain had progressed, and he was extremely limited in all of his activities. (R. at 206.) Truhlik indicated that any prolonged sitting, standing or bending would aggravate Stroupe's right hip pain. (R. at 206.) She further indicated that Stroupe was unable to do any lifting. (R. at 206.) In July 1997, examination of Stroupe's back showed tenderness over the L5 area and right sacroiliac joint. (R. at 204.) Dorsolumbar range of motion was 70 degrees in flexion and 30 degrees in extension with pain in both motions. (R. at 204.) Neurological testing showed hyperesthesia on the right at the L4 level. (R. at 204.) X-rays of Stroupe's lumbar spine showed disc degeneration at the L5/S1 level. (R. at 205.) Truhlik indicated that Stroupe had developed chronic myofascial pain syndrome and that he would continue to have back and hip pain. (R. at 204.)

The record shows that Stroupe saw Dr. Cecil B. Knox, III, M.D., from July 1996 through July 2001 for complaints of chronic pain syndrome associated with a sacroiliac joint dysfunction. (R. at 210-61.) In November 1996, Dr. Knox referred Stroupe for a functional capacity evaluation. (R. at 374-75.) The evaluator reported that Stroupe's alleged pain was the primary limiting factor in the evaluation, and Stroupe was placed in the sedentary⁶ physical demand classification. (R. at 375.) Stroupe reported that he had been looking at opportunities for employment as a sound engineer. (R. at 375.)

On April 29, 1997, Dr. Knox reported that Stroupe continued to show clinical signs of depressive symptomatology secondary to chronic pain syndrome. (R. at 256.) In July 1997, Dr. Knox reported that Stroupe could sit in a work posture for less than 20 minutes at a time and that he could not stand or walk for more than 20 minutes at a time. (R. at 255.) Dr. Knox reported that Stroupe was capable of less than sedentary work for repetitive activities and less than 15 pounds on a very limited occasional basis. (R. at 255.) He reported that Stroupe was cognitively impaired in his ability to maintain concentration for prolonged periods as well as dealing with the routine stress of work activity. (R. at 255.) Dr. Knox reported that Stroupe met Listing § 1.05(C) due to the severity of his chronic pain syndrome with consistent clinical findings of active somatic dysfunction involving the pelvic girdle associated with his low back pain. (R. at 255.) He reported that Stroupe was fully disabled from any work activity. (R. at 255.) On September 10, 2001, Dr. Knox reported that Stroupe was diagnosed with multi-level degenerative disc disease and sacroiliac joint dysfunction with

⁶Sedentary work involves lifting items weighing up to 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. *See* 20 C.F.R. § 416.967(a) (2008).

secondary multi-level somatic dysfunction as well as psychological sequelae associated with chronic and severe pain syndrome. (R. at 210.)

The record indicates that Stroupe participated in physical therapy at Blue Ridge Physical Therapy from March 1998 through February 2001 for his complaints of low back pain and right hip pain. (R. at 191-202.) Initially, his treatment was frequent. For example, in April 1998, Stroupe had nine visits. (R. at 202.) By June 1998, the visits decreased to an average of four visits per month. (R. at 200-01.) From January through December 1999, Stroupe was attending on average only twice a month. (R. at 194-97.) From November 1999 through February 2001, Stroupe was attending only once or twice a month. (R. at 191-94.) Stroupe reported that he felt better, that his pain was not as bad and that he was walking daily. (R. at 191-95.)

On October 16, 1998, David W. Harrison, Ph.D., a licensed clinical psychologist, evaluated Stroupe and administered various psychological tests. (R. at 183-90.) The Beck Depression Inventory, (“BDI”), test was administered, which indicated that Stroupe had mild depression versus adjustment disorder with dysphoria. (R. at 187.) Testing also indicated that Stroupe suffered from mild anxiety. (R. at 187.) Testing further indicated that Stroupe’s memory was impaired, with his full-scale memory quotient being borderline impaired. (R. at 188.) Harrison opined that Stroupe displayed a pattern of behavioral, learning and affective difficulties suggestive of cerebral dysfunction. (R. at 188.)

A consultative evaluation was scheduled with Dr. Glen Sublette, M.D., on April 21, 2003; however, Stroupe failed to attend. (R. at 262.) On January 22, 2007, Dr.

William Humphries, M.D., examined Stroupe at the request of Disability Determination Services. (R. at 403-07.) Stroupe reported that his medications included Tylenol, multivitamins, antacids, aspirin, glucosamine and garlic. (R. at 404.) Dr. Humphries reported that Stroupe was alert, answered questions appropriately and related well to the examiner. (R. at 404.) Stroupe's neck range of motion was slightly reduced. (R. at 404.) He had mild tenderness to palpation of the cervical spine and medial trapezius muscles bilaterally. (R. at 404.) Stroupe's back range of motion was slightly reduced without significant kyphosis. (R. at 404.) He had diffuse tenderness to palpation of the paraspinous muscles of the thoracic and lumbar region, as well as the right gluteal region and the right sacroiliac region. (R. at 404.) He had full range of motion in his upper extremities with mild tenderness to motion of the left shoulder joint. (R. at 404.)

Stroupe was oriented to three spheres with sustained and intelligible speech. (R. at 405.) Stroupe's thought and idea content was normal, and his memory was intact for recent and remote events. (R. at 405.) Stroupe displayed normal intelligence. (R. at 405.) His affect was slightly flat and slightly depressed. (R. at 405.) Stroupe's range of motion of his upper extremities was full without tenderness, heat, swelling or deformity except for mild tenderness to motion of the left shoulder joint. (R. at 404.) Stroupe's lower extremity joint range of motion was slightly reduced in both hips, but his knee and ankle motion were within normal limits. (R. at 404-05.) Stroupe's strength was within normal limits in all four extremities, and there was no muscle wasting. (R. at 405.) Stroupe's deep tendon reflexes were trace to 1+ and equal in his knees, 1+ and equal in his ankles, and he had mild sensory loss to light touch of both lower extremities from ankles to toes. (R. at 405.) Stroupe had no motor

loss of his lower extremities. (R. at 405.) Dr. Humphries diagnosed borderline hypertension, chronic thoracic/lumbar strain, posttraumatic with peripheral neuropathy, and posttraumatic left shoulder strain. (R. at 406.) Dr. Humphries opined that Stroupe would be able to handle his own funds should he be awarded benefits. (R. at 405.)

Dr. Humphries opined that Stroupe could lift and carry items weighing up to 50 pounds occasionally and 20⁷ pounds frequently, stand and/or walk for six hours in an eight-hour workday and sit for six hours in an eight-hour workday. (R. at 406, 408-11.) He limited Stroupe to occasional climbing, balancing, kneeling and crawling and restricted him from working around heights, vibration and hazards. (R. at 406, 409, 411.) Dr. Humphries indicated that Stroupe's ability to push and/or pull was limited in his upper and lower extremities. (R. at 409.) He noted that Stroupe could occasionally push and/or pull with his left upper extremity and that he should not continuously use foot controls with his lower extremities. (R. at 409.) Dr. Humphries also indicated that Stroupe could occasionally crouch, stoop and bend and that his ability to reach overhead was limited in his left shoulder. (R. at 409-10.)

III. Analysis

The Commissioner uses a five-step process in evaluating SSI claims. *See* 20 C.F.R. § 416.920 (2008); *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

⁷Dr. Humphries indicated that Stroupe could frequently lift and carry items weighing up to 25 pounds in his written report. (R. at 406.) However, he indicated on the physical assessment form that Stroupe could frequently lift and carry up to 20 pounds. (R. at 408.)

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. § 416.920. If the Commissioner finds conclusively that a claimant is or is not disabled at any point in the process, review does not proceed to the next step. *See* 20 C.F.R. § 416.920(a) (2008).

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. § 1382c(a)(3)(A)-(B) (West 2003 & Supp. 2008); *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 July 5, 2007, the ALJ denied Stroupe's claim. (R. at 300-13.) The ALJ found that the medical evidence established that Stroupe had severe impairments, namely degenerative disc disease, degenerative joint disease, chronic thoracic/lumbar strain, posttraumatic left shoulder strain and myofascial pain syndrome, but he found that Stroupe's impairments did not meet or medically equal the requirements of any impairment listed at 20 C.F.R. Part 404, Subpart P, Appendix 1. (R. at 306-08.) The ALJ also found that Stroupe had the residual functional capacity to perform medium work with an occasional ability to climb, kneel and crawl and that

did not involve work around hazards, such as unprotected heights. (R. at 308.) The ALJ found that Stroupe could perform his past relevant work as a retail clerk and cashier. (R. at 312.) The ALJ further found that Stroupe had acquired work skills that were transferable to other occupations existing in significant numbers in the national economy. (R. at 312-13.) Therefore, the ALJ found that Stroupe was not under a disability as defined in the Act at any time through the date of his decision, and that he was not eligible for benefits. (R. at 313.) *See* 20 C.F.R. § 416.920(f)&(g) (2008).

Stroupe has filed a Complaint, (“Plaintiff’s Brief”), in this matter. It appears that Stroupe is arguing that the ALJ’s decision is not based on substantial evidence. (Plaintiff’s Brief at 1-9.) Stroupe further argues that the ALJ erred by failing to find that he suffered from a severe mental impairment. (Plaintiff’s Brief at 8.) For the following reasons, I find Stroupe’s arguments unpersuasive.

The ALJ in this case accorded little weight to the opinions of Truhlik and Drs. Knox and Harrison, noting that their opinions contained inconsistent medical findings, their treatment and medications were not indicative of disabling impairments and they were not well-supported by medically acceptable clinical and laboratory techniques. (R. at 309-11.) The ALJ gave greater weight to the opinions of Dr. Humphries and Dr. Alexander, noting that their opinions were well-supported by medically acceptable clinical and laboratory techniques and were consistent with the other substantial evidence of record, including Stroupe’s conservative treatment and lack of any medical treatment since 2001. (R. at 311.) Dr. Humphries examined Stroupe in January 2007. (R. at 403-07.) Dr. Humphries reported that Stroupe’s memory was intact for recent and remote events. (R. at 405.) Stroupe displayed normal

intelligence, and his affect was slightly depressed. (R. at 405.) Dr. Humphries placed limitations on only Stroupe's physical work-related abilities. (R. at 408-11.) Dr. Alexander testified that there was no objective evidence of any significant cerebral dysfunction, which the ALJ noted was supported by the overall record, including Dr. Humphries' examination and Stroupe's use of a computer to compose his various "pleadings." (R. at 311, 438, 445-48.) He further testified that Stroupe did not have a medically determinable impairment. (R. at 419.)

For the following reasons, I find that substantial evidence supports such a weighing of the evidence. It is well-settled that 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*, 715 F.2d at 869. 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. § 416.927(d)(2) (2008). However, "circuit precedent does not require that a treating physician's testimony 'be given controlling weight.'" *Craig v. Chater*, 76 F.3d 585, 590 (4th Cir. 1996) (quoting *Hunter v. Sullivan*, 993 F.2d 31, 35 (4th Cir. 1992)). "[I]f 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.

For all of the above-stated reasons, the undersigned finds that substantial evidence supports the ALJ's weighing of the medical evidence.

Based on my findings above, I recommend that the court grant the Commissioner's motion for summary judgment and affirm the final decision of the Commissioner denying benefits.

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 evidence;
2. Substantial evidence exists to support the ALJ's finding as to Stroupe's physical residual functional capacity; and
3. Substantial evidence exists to support the ALJ's finding that Stroupe was not disabled under the Act.

RECOMMENDED DISPOSITION

The undersigned recommends that the court grant the Commissioner's motion for summary judgment and affirm the final decision of the Commissioner denying 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 26th day of January 2009.

/s/ Pamela Meade Sargent
UNITED STATES MAGISTRATE JUDGE