

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION**

GEORGE M. LARGE,)	
Plaintiff)	
)	
v.)	Civil Action No. 2:04cv00063
)	<u>MEMORANDUM OPINION</u>
)	
)	
JO ANNE B. BARNHART,)	
Commissioner of Social Security,)	By: PAMELA MEADE SARGENT
Defendant)	United States Magistrate Judge

In this social security case, I vacate the final decision of the Commissioner denying benefits and remand the case for further proceedings.

I. Background and Standard of Review

Plaintiff, George M. Large, 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). 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 upon transfer pursuant to the consent of the parties under 28 U.S.C. § 636(c)(1).

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 Large protectively filed his application for SSI on or about September 9, 2002, alleging disability as of May 18, 2001, due to back and left hip and leg pain. (Record, (“R.”), at 47-49, 53, 81.) Large’s claim was denied both initially and on reconsideration. (R. at 30-32, 37, 38-40.) Large then requested a hearing before an administrative law judge, (“ALJ”). (R. at 41.) The ALJ held two hearings -- the first on December 4, 2003, and the second on April 9, 2004. Large was represented by counsel at both hearings. (R. at 114-35, 136-46.)

By decision dated April 16, 2004, the ALJ denied Large’s claim. (R. at 11-17.) The ALJ found that Large had not engaged in substantial gainful activity since the alleged onset of disability. (R. at 16.) The ALJ found that the medical evidence established that Large had severe impairments, namely chronic back strain, a mood disorder due to a general medical condition with mixed features of depression and anxiety and borderline intellectual functioning, but he found that Large 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 14, 16.) The ALJ further found that Large had the residual functional capacity to perform simple, unskilled light work,¹ which did not involve working with the public. (R. at 16.) The ALJ found that Large was unable to perform any of his past relevant work. (R. at 16.) Based on Large's age, education, past work experience and residual functional capacity and the testimony of a vocational expert, the ALJ further found that there were other jobs available that Large could perform. (R. at 17.) Thus, the ALJ found that Large was not under a disability as defined in the Act, and that he was not entitled to benefits. (R. at 17.) *See* 20 C.F.R. § 416.920(g) (2004).

After the ALJ issued his opinion, Large pursued his administrative appeals, (R. at 6), but the Appeals Council denied his request for review. (R. at 3-5.) Large 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 (2004). The case is before this court on Large's motion for summary judgment filed January 10, 2005, and the Commissioner's motion for summary judgment filed February 8, 2005.

II. Facts

Large was born in 1963, (R. at 47), which classifies him as a "younger person" under 20 C.F.R. § 416.963(c). He completed the eighth grade in school and participated in special education classes. (R. at 59, 84, 118.) Large has past relevant

¹Light work involves lifting items weighing up to 20 pounds occasionally and 10 pounds frequently. If a person can do light work, he also can perform sedentary work. *See* 20 C.F.R. § 416.967(b) (2004).

work experience as an equipment operator and a truck driver. (R. at 54.)

Large testified at his hearing that his most serious health problem was his “nerves.” (R. at 121.) He stated that he had no problem being around people. (R. at 122.) Large stated that he had experienced seizures, but had not had one in two years. (R. at 123.) He stated that he suffered from back pain. (R. at 123-24.) Large stated that he could walk up to one-quarter of a mile without interruption and stand for 20 minutes without interruption. (R. at 125-26.) He stated that he could not squat and that he experienced pain when he reached his arm above his head. (R. at 126.)

Donna Bardsley, a vocational expert, also testified at Large’s hearing. (R. at 144-45.) Bardsley was asked to consider an individual of Large’s age, education and work background, who had the residual functional capacity for simple, unskilled light work activity that did not require regular interaction with the general public. (R. at 144.) Bardsley testified that there were jobs available that such an individual could perform, including jobs as a cleaner, food service occupations, a hand packager, a sorter, an assembler and an inspector. (R. at 145.) Bardsley also was asked to consider the same individual whose ability to concentrate and persist at work tasks would be greater than moderately impaired. (R. at 145.) Bardsley stated that there would be no jobs available. (R. at 145.)

In rendering his decision, the ALJ reviewed records from Dr. Norman C. Ratliffe, M.D.; St. Mary’s Hospital; Dr. Richard M. Surrusco, M.D., a state agency physician; Dr. Donald P. K. Chan, M.D.; B. Wayne Lanthorn, Ph.D., a licensed clinical psychologist; Donna Abbott, M.A., a licensed psychological examiner; and

Dickenson County School Board.

Dr. Norman C. Ratliffe, M.D., was Large's primary care physician, treating him from 1996 to 2002 for various complaints including muscle strain. (R. at 89.) In June 1999, Large described an event described as a possible seizure. (R. at 89.) Dr. Ratliffe ordered an electroencephalogram, ("EEG"). (R. at 89.) No medications for control or prevention of seizures were ever prescribed. (R. at 89.) There is no indication that Large reported any seizure-like occurrences since 1999. (R. at 89, 122.) Dr. Ratliffe diagnosed back strain in March and August 2002. (R. at 89.)

On March 29, 2002, Lambert presented to the emergency room at St. Mary's Hospital, ("St. Mary's"), for complaints of low back pain. (R. at 92-94.) Upon examination, Large's muscle strength and tone was normal. (R. at 92.) X-rays of Large's lumbar spine showed mild scoliosis. (R. at 91, 93.) He was diagnosed with back problems. (R. at 94.) On September 4, 2002, an MRI of Large's lumbar spine was normal. (R. at 90.)

On October 28, 2002, Dr. Donald P. K. Chan, M.D., saw Large for complaints of back pain, which radiated into his left buttock and left groin. (R. at 96-97.) Large had tenderness in the lower lumbar spine. (R. at 96.) Dr. Chan reported that Large's sensation was intact. (R. at 96.) Straight leg raising tests were negative and Large had normal motor strength and range of motion. (R. at 96.) Dr. Chan diagnosed lumbar back strain, chronic and recommended that Large participate in a rehabilitation program. (R. at 97.)

On June 19, 2003, Dr. Richard M. Surrusco, M.D., a state agency physician, indicated that Large did not suffer from a severe physical impairment. (R. at 95.) He indicated that Large's allegations were not credible. (R. at 95.)

On December 29, 2003, B. Wayne Lanthorn, Ph.D., a licensed clinical psychologist, and Donna Abbott, M.A., a licensed psychological examiner, evaluated Large. (R. at 106-10.) They reported that Large's memory processes appeared to be intact. (R. at 108.) Large was able to attend and concentrate, and he could follow simple instructions. (R. at 108.) Large's affect reflected some nervousness and depression. (R. at 108.) They reported that Large walked with a limp and used a cane. (R. at 108.) Large reported that he was applying for disability because of chronic back pain. (R. at 108.) The Wechsler Adult Intelligence Scale-III, ("WAIS-III"), test was administered, and Large obtained a verbal IQ score of 72, a performance IQ score of 73 and a full-scale IQ score of 70. (R. at 109.) Large was diagnosed with mood disorder due to a general medical condition with mixed features of depression and anxiety and borderline intellectual functioning. (R. at 110.) It was reported that Large had a current Global Assessment of Functioning, ("GAF"), score of 60.² (R. at 110.)

Abbott completed a mental assessment indicating that Large had a more than satisfactory ability to understand, remember and carry out simple job instructions. (R. at 111-13.) She indicated that Large had a satisfactory ability to follow work rules, to

²The GAF scale ranges from zero to 100 and "[c]onsider[s] psychological, social, and occupational functioning on a hypothetical continuum of mental health-illness." DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS FOURTH EDITION, ("DSM-IV"), 32 (American Psychiatric Association 1994). A GAF of 60 indicates that the individual has "[m]oderate symptoms ... OR moderate difficulty in social, occupational, or school functioning" DSM-IV at 32.

relate to co-workers, to use judgment, to interact with supervisors, to maintain personal appearance, to behave in an emotionally stable manner and to relate predictably in social situations. (R. at 111-12.) Abbott indicated that Large had a seriously limited, but not precluded, ability to deal with the public, to deal with work stresses, to function independently, to maintain attention and concentration, to understand, remember and carry out complex and detailed job instructions and to demonstrate reliability. (R. at 111-12.) Abbott indicated that she based these restrictions, in part, on Large's self-report of chronic pain. (R. at 111-12.)

III. Analysis

The Commissioner uses a five-step process in evaluating SSI claims. *See* 20 C.F.R. § 416.920 (2004); *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. § 416.920 (2004). 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. § 416.920(a) (2004).

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); *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 April 16, 2004, the ALJ denied Large's claim. (R. at 11-17.) The ALJ found that the medical evidence established that Large had severe impairments, namely chronic back strain, a mood disorder due to a general medical condition with mixed features of depression and anxiety and borderline intellectual functioning, but he found that Large 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 14, 16.) The ALJ further found that Large had the residual functional capacity to perform simple, unskilled light work, which did not involve working with the public. (R. at 16.) The ALJ found that Large was unable to perform any of his past relevant work. (R. at 16.) Based on Large's age, education, past work experience and residual functional capacity and the testimony of a vocational expert, the ALJ further found that there were other jobs available that Large could perform. (R. at 17.) Thus, the ALJ found that Large was not under a disability as defined in the Act, and that he was not entitled to benefits. (R. at 17.) See 20 C.F.R. § 416.920(g) (2004).

In his brief, Large argues that the ALJ's decision is not supported by substantial evidence. (Motion For Summary Judgment And Memorandum Of Law On Behalf Of The Plaintiff, ("Plaintiff's Brief"), at 4-8.) Large also argues that the ALJ erred in discrediting his allegations. (Plaintiff's Brief at 6.) Large further argues that the ALJ

erred by finding that a significant number of jobs existed that he could perform. (Plaintiff's Brief at 6-7.)

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 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).

The ALJ in this case found that Large had the residual functional capacity to perform simple, unskilled light work which did not involve working with the public. (R. at 16.) Based on my review of the record, I find that substantial evidence exists to support the ALJ's finding with regard to Large's physical residual functional capacity. No physician diagnosed Large with any serious back disorder or with any serious physical impairment. There is no indication that any physician instructed Large to use a cane or prescribed use of a cane. Physical examinations of Large were normal apart from finding "mild" scoliosis, which required no treatment and some tenderness in the lower lumbar spine. (R. at 96.) X-rays of Large's lumbar spine showed mild right scoliosis and an MRI was normal. (R. at 90, 91, 96.)

I do not, however, find that substantial evidence exists to support the ALJ's finding regarding Large's mental residual functional capacity. The ALJ found that

Large could perform simple, unskilled light work, which did not involve working with the public. (R. at 16.) The ALJ stated that he relied on the assessment of Lanthorn and Abbott in making this determination. (R. at 14-15.) Abbott indicated that Large had a seriously limited, but not precluded, ability to deal with the public, to deal with work stresses, to function independently, to maintain attention and concentration, to understand, remember and carry out complex and detailed job instructions and to demonstrate reliability. (R. at 111-12.) Therefore, the evidence the ALJ relied upon does not support his finding. Furthermore, these limitations were not posed to the vocational expert. Thus, I also cannot find that substantial evidence exists to support the ALJ's finding that a significant number of jobs existed that Large could perform.

IV. Conclusion

For the foregoing reasons, Large's and the Commissioner's motions for summary judgment will be denied, the Commissioner's decision to deny benefits is vacated, and the case is remanded to the ALJ for further consideration of the severity of Large's mental impairments and their impact on his work-related abilities.

An appropriate order will be entered.

DATED: This 1st day of March 2005.

/s/ Pamela Meade Sargent
UNITED STATES MAGISTRATE JUDGE