

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

HELEN R. GOODMAN,)	
Plaintiff)	
)	
v.)	Civil Action No. 2:06cv00068
)	
)	<u>REPORT AND</u>
)	<u>RECOMMENDATION</u>
MICHAEL J. ASTRUE,¹)	
Commissioner of Social Security,)	By: PAMELA MEADE SARGENT
Defendant)	United States Magistrate Judge

I. Background and Standard of Review

Plaintiff, Helen R. Goodman, 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 and § 1381 *et seq.* (West 2003 & Supp. 2007). 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

¹ 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).

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 Goodman filed her applications for DIB and SSI on August 17, 2004, alleging disability as of April 23, 2004, due to carpal tunnel syndrome, depression and headaches. (Record, (“R.”), at 39-41, 73, 93, 313-14.) The claims were denied initially and upon reconsideration. (R. at 29-31, 34, 35-37, 316-18.) Goodman then requested a hearing before an administrative law judge, (“ALJ”). (R. at 38.) A hearing was held on July 18, 2006, at which Goodman was represented by counsel. (R. at 323-39.)

By decision dated September 5, 2006, the ALJ denied Goodman’s claims. (R. at 15-22.) The ALJ found that Goodman met the insured status requirements of the Act for DIB purposes through the date of the decision. (R. at 21.) The ALJ also found that Goodman had not engaged in any substantial gainful activity since April 23, 2004. (R. at 21.) The ALJ found that the medical evidence established that Goodman had severe impairments, namely obesity, mild degenerative joint disease of the hands and feet, degenerative changes of the lumbar spine, status post right carpal tunnel release and status post right wrist fracture and wrist fusion with post-traumatic arthrosis, but that she did not have an impairment or combination of impairments

listed in or medically equal to one listed in 20 C.F.R. Part 404, Subpart P, Appendix 1. (R. at 20-21.) He also found that Goodman’s allegations regarding her limitations were not totally credible. (R. at 22.) The ALJ found that Goodman had the residual functional capacity to perform a limited range of light work² that did not require repetitive gripping and grasping with the right hand, climbing or crawling or exposure to heights or hazards. (R. at 22.) The ALJ found that Goodman’s impairments did not prevent her from performing her past relevant work as a fast food worker. (R. at 22.) Therefore, the ALJ found that Goodman was not under a “disability,” as defined in the Act, at any time through the date of his decision and was not entitled to benefits. (R. at 22.) *See* 20 C.F.R. §§ 404.1520(f), 416.920(f) (2007).

After the ALJ issued his decision, Goodman pursued her administrative appeals, (R. at 10-11), and the Appeals Council denied her request for review. (R. at 6-9.) Goodman 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 (2007). The case is before this court on Goodman’s motion for summary judgment filed April 30, 2007, and on the Commissioner’s motion for summary judgment filed May 31, 2007.

II. Facts

Goodman was born in 1962, which classifies her as a “younger person” under

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, she also can do sedentary work. *See* 20 C.F.R. §§ 404.1567(b), 416.967(b) (2007).

20 C.F.R. §§ 404.1563(c), 416.963(c) (2007). (R. at 39.) Goodman has a high school education, and she has past relevant work as a fast food worker, a cashier, a dishwasher, a cook, a secretary and a house cleaner. (R. at 55, 327.)

In rendering his decision, the ALJ reviewed records from Holston High School; Johnston Memorial Hospital; Dr. Maria C. Abeleda, M.D.; Dr. Brett A. Manthey, D.O.; Dr. Wendy R. Strawbridge, M.D.; Dr. Paul Derden, M.D.; Dr. William Humphries, M.D.; Dr. Carey W. McKain, M.D.; Dr. Melvin L. Heiman, M.D.; Dr. Michael J. Hartman, M.D., a state agency physician; Dr. Randall Hays, M.D., a state agency physician; E. Hugh Tenison, Ph.D., a state agency psychologist; Joseph Leizer, Ph.D., a state agency psychologist; Edward E. Latham, Ph.D., a clinical psychologist; Dr. Iacovelli, M.D.; and CVS Pharmacy.

On June 14, 2002, Dr. Maria C. Abeleda, M.D., saw Goodman for her complaints of depression. (R. at 120-21, 310-11.) Goodman reported various stressors. (R. at 120, 311.) Goodman reported that she had no history of psychiatric treatment. (R. at 120, 311.) Dr. Abeleda reported that Goodman's affect was full and her mood was depressed. (R. at 121, 310.) Goodman's insight was good, and her memory and judgment were intact. (R. at 121, 310.) Dr. Abeleda diagnosed major depression, recurrent, severe, and assessed a Global Assessment of Functioning, ("GAF"), score of 50.³ (R. at 121, 310.) On July 26, 2002, Goodman reported that she

³The 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 41-50 indicates that the individual has "[s]erious symptoms ... OR any serious impairment in social, occupational, or school functioning" DSM-IV at 32.

was not doing well. (R. at 312.) She reported side effects from her medication. (R. at 312.) She reported that she had been working regularly and was planning to begin a new job. (R. at 312.)

The record shows that Goodman saw Dr. Paul Derden, M.D., from August 2004 through June 2005 for depression and insomnia. (R. at 166-81.) Dr. Derden diagnosed situational depression. (R. at 177.)

The record shows that Goodman saw Dr. Melvin L. Heiman, M.D., for her symptoms of carpal tunnel syndrome and right shoulder pain from October 1994 through June 1995. (R. at 204-06.) In November 1994, Goodman underwent a right carpal tunnel release. (R. at 116-17.) In January 1995, Dr. Heiman reported that Goodman was doing better; however, Goodman's left wrist was a "little symptomatic." (R. at 204.) In June 1995, Goodman complained of shoulder pain. (R. at 204.) Dr. Heiman reported that he believed Goodman was "overdoing it" by performing a lot of activities. (R. at 204.)

In February 2005, Dr. Carey W. McKain, M.D., reported that Goodman had a good grasp. (R. at 202.) On May 4, 2005, a wrist fusion of Goodman's right wrist was performed. (R. at 207-08, 241-43.) In June 2005, Goodman reported that she had been doing very well and had not had any problems. (R. at 199.) Dr. McKain reported that Goodman had a restricted range of motion of the fingers secondary to the wrist. (R. at 199.) Goodman was neurovascularly intact. (R. at 199.) She had limited supination and pronation of the wrist. (R. at 199.)

On December 17, 2004, Goodman presented to the emergency room at Johnson Memorial Hospital, (“Johnston Memorial”), after falling. (R. at 182-84.) X-rays of Goodman’s right wrist showed a fracture of the distal radius. (R. at 185-86.) This was surgically corrected. (R. at 209-12.) In 1995, and again in 2005, Goodman participated in physical therapy at Johnston Memorial Hospital. (R. at 115, 229-37.) However, Goodman was discharged from therapy due to nonattendance. (R. at 251.)

On December 21, 2004, Dr. William Humphries, M.D., examined Goodman at the request of Disability Determination Services. (R. at 191-95.) Goodman reported that she smoked two cartons of cigarettes a week and consumed a case of beer a week. (R. at 192.) Goodman had normal range of motion of her neck and back. (R. at 192, 195.) Goodman had reduced range of motion in both hips and the right knee. (R. at 192, 195.) X-rays of Goodman’s lumbar spine showed osteophytes at the L3-L4 level. (R. at 162, 196.) X-rays of Goodman’s right wrist showed an impaction fracture of the distal radius. (R. at 162, 196.) X-rays of Goodmans’s right knee were normal. (R. at 162, 196.) Dr. Humphries diagnosed recent multiple trauma to the left orbit and left parietal scalp, right knee and a fracture to right wrist, recurrent headaches, syncopal episodes,⁴ unknown etiology, and possible carpal tunnel syndrome of the left hand. (R. at 193-94.) Dr. Humphries reported that Goodman would be limited to sitting, standing and walking six hours in an eight-hour workday. (R. at 194.) He also indicated that Goodman could occasionally lift items weighing up to 25 pounds and frequently lift items weighing up to 10 pounds. (R. at 194.) He reported that when Goodman’s right wrist fracture healed, she should be able to occasionally lift items

⁴Dr. Humphries reported that he could not rule out ethanol relation to Goodman’s syncopal episodes, nor could he rule out a seizure disorder. (R. at 194.)

weighing up to 50 pounds and frequently lift items weighing up to 20 pounds. (R. at 194.) He reported that Goodman should avoid heights and hazards. (R. at 194.) He reported that Goodman's carpal tunnel symptoms should resolve with appropriate management. (R. at 194.)

On January 31, 2006, Dr. Humphries examined Goodman at the request of Disability Determination Services. (R. at 266-70.) Goodman reported that she smoked three packs of cigarettes a day and consumed a 12-pack of beer a day. (R. at 267.) Range of motion in Goodman's neck was moderately reduced, and she had mild tenderness to palpation of the posterior aspect of the cervical spine. (R. at 267.) Dr. Humphries reported that Goodman had a moderately reduced range of motion of her back. (R. at 267.) She had reduced range of motion in both shoulders. (R. at 267.) She had no significant range of motion of the right wrist joint, and the left wrist joint motion was within normal limits. (R. at 267-68.) Dr. Humphries reported that Goodman would not be able to handle her own funds should they be awarded based on her reported daily beer intake. (R. at 269.) Dr. Humphries diagnosed obesity, atypical pain syndrome, status post fracture, right wrist with fusion and mild degenerative joint disease in both hands and feet. (R. at 269.)

Dr. Humphries completed an assessment indicating that Goodman could occasionally lift and carry items weighing up to 25 pounds and frequently lift and carry items weighing up to 10 pounds. (R. at 271-74.) He indicated that Goodman could sit for up to six hours in an eight-hour workday, and that her ability to push and/or pull was limited in her upper extremities. (R. at 272.) He indicated that Goodman could never climb and could only occasionally balance, kneel, crouch, crawl

and stoop. (R. at 272.) Dr. Humphries indicated that Goodman was limited in her ability to reach, to handle, to perform fine manipulation and to feel with her right extremity. (R. at 273.) He indicated that Goodman was limited from working around vibration and hazards. (R. at 274.)

On January 28, 2005, Dr. Michael J. Hartman, M.D., a state agency physician, indicated that Goodman had the residual functional capacity to perform light work. (R. at 216-22.) He indicated that Goodman could occasionally climb ramps and stairs and never climb ladders, ropes or scaffolds. (R. at 218.) No manipulative, visual, communicative or environmental limitations were noted. (R. at 218-19.) This assessment was affirmed by Dr. Randall Hays, M.D., another state agency physician. (R. at 222.)

On January 31, 2005, E. Hugh Tenison, Ph.D., a state agency psychologist, completed a Psychiatric Review Technique form, (“PRTF”), indicating that Goodman suffered from a nonsevere affective disorder. (R. at 223-28.) Tenison indicated that Goodman had mild limitations in her activities of daily living, in maintaining social functioning and in maintaining concentration, persistence or pace. (R. at 225.) He indicated that Goodman had not experienced any episodes of decompensation. (R. at 225.) Tenison reported that Goodman’s allegations were not supported by objective medical findings. (R. at 228.) This assessment was affirmed by Joseph Leizer, Ph.D., another state agency psychologist, on April 5, 2005. (R. at 228.)

On February 6, 2006, Edward E. Latham, Ph.D., a clinical psychologist, evaluated Goodman. (R. at 275-79.) Goodman reported that she consumed up to a

case or more of beer per week. (R. at 275.) She also reported that she smoked marijuana two or three times per week. (R. at 276.) Latham diagnosed alcohol dependence sustained, cannabis abuse and borderline intelligence. (R. at 278.)

Latham completed a mental assessment indicating that Goodman had mild limitations in her ability to understand, remember and carry out simple instructions. (R. at 281-83.) He indicated that Goodman had a satisfactory ability to understand, remember and carry out detailed instructions, to make judgments, to interact appropriately with the public, to interact appropriately with supervisors and to interact appropriately with co-workers. (R. at 281-82.) Latham reported that he could not rate Goodman on her ability to respond appropriately to work pressures or to respond appropriately to changes in a routine work setting because of “apparent dissimulation.” (R. at 282.)

III. Analysis

The Commissioner uses a five-step process in evaluating DIB and SSI claims. *See* 20 C.F.R. §§ 404.1520, 416.920 (2007); *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 her past relevant work; and 5) if not, whether she can perform other work. *See* 20 C.F.R. §§ 404.1520, 416.920 (2007). 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. §§ 404.1520(a), 416.920(a) (2007).

Under this analysis, a claimant has the initial burden of showing that she is unable to return to her past relevant work because of her 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 maintains 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), 1382c(a)(3)(A)-(B) (West 2003 & Supp. 2007); *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 September 5, 2006, the ALJ denied Goodman's claims. (R. at 15-22.) The ALJ found that the medical evidence established that Goodman had severe impairments, namely obesity, mild degenerative joint disease of the hands and feet, degenerative changes of the lumbar spine, status post right carpal tunnel release and status post right wrist fracture and wrist fusion with post-traumatic arthrosis, but that she did not have an impairment or combination of impairments listed in or medically equal to one listed in 20 C.F.R. Part 404, Subpart P, Appendix 1. (R. at 20-21.) The ALJ found that Goodman had the residual functional capacity to perform a limited range of light work that did not require repetitive gripping and grasping with the right hand, climbing or crawling or exposure to heights or hazards. (R. at 22.) The ALJ found that Goodman's impairments did not prevent her from performing her past relevant work as a fast food worker. (R. at 22.) Therefore, the ALJ found that Goodman was not under a "disability," as defined in the Act, at any time through the date of his decision and was not entitled to benefits. (R. at 22.) *See* 20 C.F.R. §§ 404.1520(f), 416.920(f) (2007).

In her brief, Goodman argues that the ALJ erred in finding that she could return to her past relevant work as a fast food worker. (Memorandum In Support Of Plaintiff's Motion For Summary Judgment, ("Plaintiff's Brief"), at 9-20.) In particular, Goodman argues that the ALJ erred by finding that she could perform her past work as a fast food worker as she actually performed the job and as that job generally is performed in the national economy. (Plaintiff's Brief at 9-20.)

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 that 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 (4th Cir. 1997).

Based on my review of the record, I do not find that substantial evidence exists to support the ALJ's finding that Goodman had the residual functional capacity to return to her work as a fast food worker. The ALJ noted that he was relying on the assessments of Dr. Humphries and the state agency physician in finding that Goodman had the residual functional capacity to perform a limited range of light work. (R. at 20.) Dr. Humphries opined that Goodman could not perform repetitive gripping and grasping with her right hand, but that she could use her right hand for positioning. (R. at 270.) Dr. Humphries indicated that Goodman was limited in her ability to perform

manipulative functions with her right upper extremity. (R. 273.) He reported that Goodman could occasionally handle, perform gross and fine manipulation and feel. (R. 273.) Furthermore, in Goodman's work history report, she reported that her jobs as a fast food worker required her to "use[d] my hands all the time." (R. 56-58, 61.) She indicated that her jobs as a fast-food worker required her to walk, to stand, to climb, to stoop, to kneel, to crouch, to crawl, to handle, to grab or grasp big objects and to reach for big objects throughout the entire workday. (R. at 56-58, 61.)

In addition, the Dictionary of Occupational Titles, ("DOT"), describes a fast-foods worker as:

Serves customer of fast food restaurant: Requests customer order and depresses keys of multicounting machine to simultaneously record order and compute bill. Selects requested food items from serving or storage areas and assembles items on serving tray or in takeout bag. Notifies kitchen personnel of shortages or special orders. Serves cold drinks, using drink dispensing machine, or frozen milk drinks or desserts, using milkshake or frozen custard machine. Makes and serves hot beverages, using automatic water heater or coffeemaker. Presses lids onto beverages and places beverages on serving tray or in takeout container. Receives payment. May cook or apportion french fries or perform other minor duties to prepare food, serve customers, or maintain orderly eating or serving areas.

See I DICTIONARY OF OCCUPATIONAL TITLES fast-foods worker, occupational code 311.472-010 (4th ed. rev. 1991). Based on this description and on Goodman's description of her duties as she actually performed her jobs as a fast food worker, it appears that she would be required to do more than occasional handling and performance of gross and fine manipulation.

For all of the reasons stated above, I find that substantial evidence does not exist to support the ALJ's finding that Goodman had the residual functional capacity to perform her past relevant work as a fast food worker, and I recommend that the court deny her motion for summary judgment, deny the Commissioner's motion for summary judgment and remand this case to the Commissioner for further development.

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 that Goodman had the residual functional capacity to perform her past relevant work as a fast food worker; and
2. Substantial evidence does not exist to support the ALJ's finding that Goodman was not disabled under the Act.

RECOMMENDED DISPOSITION

The undersigned recommends that the court deny Goodman's motion for summary judgment, deny the Commissioner's motion for summary judgment 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 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 2nd day of January 2008.

/s/ Pamela Meade Sargent
UNITED STATES MAGISTRATE JUDGE