

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

MARY E. EDSON,)	
Plaintiff,)	Case No. 2:07cv00042
)	
v.)	<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

The plaintiff, Mary E. Edson, filed this action challenging the final decision of the Commissioner of Social Security, (“Commissioner”), denying plaintiff’s claim for disability insurance benefits, (“DIB”), under the Social Security Act, as amended, (“Act”), 42 U.S.C.A. § 423 (West 2003 & Supp. 2008). Jurisdiction of this court is pursuant to 42 U.S.C. § 405(g). 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 Edson filed her application for DIB on April 28, 2005, alleging disability as of April 27, 2005, due to neck, hip, back, leg and tailbone pain, severe headaches, anxiety and depression. (Record, (“R.”), at 11, 33-35, 61, 78.) The claim was denied initially and upon reconsideration. (R. at 22-24, 27, 29-31.) Edson then requested a hearing before an administrative law judge, (“ALJ”). (R. at 32.) The ALJ held a hearing on October 31, 2006, at which Edson was represented by counsel. (R. at 151-71.)

By decision dated December 26, 2006, the ALJ denied Edson’s claim. (R. at 11-17.) The ALJ found that Edson met the nondisability insured status requirements for the Act for DIB purposes through the date of the decision. (R. at 16.) The ALJ also found that Edson had not engaged in substantial gainful activity since the alleged onset of disability. (R. at 16.) The ALJ determined that the medical evidence established that Edson suffered from severe impairments, namely degenerative disc disease of the lumbar spine, as well as cervical, thoracic and lumbar strain; however, he found that Edson 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.) In addition, the ALJ found that Edson’s allegations regarding her limitations were not totally credible. (R. at 16.) The ALJ found that Edson had the

residual functional capacity to perform the full range of light¹ work. (R. at 16.) Further, the ALJ determined that Edson was capable of performing her past relevant work as a cashier/department manager because the performance of the relevant work-related activities was not precluded by her residual functional capacity. (R. at 16.) Thus, the ALJ concluded that Edson was not under a disability as defined in the Act and that she was not entitled to benefits. (R. at 16-17.) *See* 20 C.F.R. § 404.1520(f) (2007).

After the ALJ issued his decision, Edson pursued her administrative appeals, (R. at 7A-B), but the Appeals Council denied her request for review. (R. at 3-5.) Edson 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 (2007). This case is before the court on Edson's motion for summary judgment, which was filed on February 14, 2008, and on the Commissioner's motion for summary judgment, which was filed on April 14, 2008.

II. Facts²

Edson was born in 1964, (R. at 33, 154), which classifies her as a "younger

¹Light 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, she also can perform sedentary work. *See* 20 C.F.R. § 404.1567(b) (2007).

²The relevant time period to this court's decision regarding Edson's DIB claim is April 27, 2005, Edson's alleged onset date, through the date of the ALJ's decision. Any medical records summarized within this opinion not relevant to that time period are included only for clarity of the record and to fully represent the extent of Edson's treatment due to the lack of medical evidence contained in the administrative file.

person” under 20 C.F.R. § 404.1563(c). According to the record, Edson completed the ninth grade, (R. at 11, 83, 86-95, 154), which is considered a “limited education.” *See* 20 C.F.R. § 404.1564(b)(3) (2007). Edson has past relevant work experience as a customer service manager/cashier, a caregiver and a sewing machine operator. (R. at 43-49, 155-57.)

At the hearing before the ALJ on October 31, 2006, Edson’s counsel noted that the diminutive amount of medical evidence in this case was due to the fact that Edson did not have insurance. (R. at 153.) Edson testified that she last worked as a customer service manager at Wal-Mart for approximately six months to a year. (R. at 155-56.) She indicated that the job required significant standing, as well as the ability to read and operate a computer. (R. at 156.) Edson also testified that she worked as a caregiver, which she described as a “hard job” that required lifting, bathing and assistance with other personal needs. (R. at 156.) Edson explained that she also worked as a sewing machine operator, and she indicated that a person could be trained to perform the required job tasks within 30 days. (R. at 157.) Edson testified that she was forced to quit her job at Wal-Mart because her doctor informed her that she needed “to get off the floors” due to difficulty walking. (R. at 157-58.)

Edson attributed her walking difficulty to back pain, which she said was related to a past car accident that caused scoliosis. (R. at 158.) Edson testified that she experienced lower and upper back pain, and she stated that she was “eaten up with [a]rthritis.” (R. at 158.) She further testified that her lower back pain caused pain in her legs, which impacted her ability to walk. (R. at 158.) Edson commented that she could not walk, sit or stand for any significant distance or duration. (R. at 158.)

Although Edson testified that she had never undergone back surgery, (R. at 158), she explained that following the hearing she was scheduled for further testing in Charlottesville, Virginia. (R. at 158-59.) However, Edson's attorney stated that it would be a minimum of three months before that testing could take place. (R. at 159.)

Edson also testified that she experienced frequent headaches. (R. at 159.) She attributed the headaches to neck problems, and she explained that she treated her headaches with approximately 10 BC Powders per day. (R. at 159.) Edson testified that she had a bad temper, which she said caused her son to want to live somewhere other than home. (R. at 160.) Edson further testified that she was upset over the fact that her illness forced her to quit her job at Wal-Mart. (R. at 160.) She explained that she did not want to quit work and pointed out that she had worked her entire life; however, she stated that the pain forced her quit. (R. at 160.) Edson acknowledged that she had a valid driver's license and that she drove to her mother's home and to church. (R. at 160.) She indicated that she attended church two times per week, but noted that she missed a lot because she could not sit on the pews for extended periods. (R. at 161.) Edson testified that if she sat for two hours, it caused numbness "all over." (R. at 161.) Edson also commented that her husband carried out most of the grocery responsibilities. (R. at 161.) When asked if she prepared meals for her family, Edson responded, "[n]ot too often . . . I don't cook a lot." (R. at 161.) However, she did acknowledge that she was able to prepare light meals. (R. at 162.)

Edson testified that she liked to walk, and she indicated that she was told she could walk until she began to hurt. (R. at 162.) She stated that she was unable to read much due to her eyesight, but noted that eye care was not an option because she did

not have insurance. (R. at 162.) Edson testified that she usually “just s[a]t around [and that she would] vacuum some.” (R. at 162.) However, she explained that vacuuming caused her to be miserable the next day. (R. at 162.) Furthermore, Edson stated that bending caused her to experience problems with her legs. (R. at 162.) At this point in the questioning, Edson requested to stand, as she explained that it was necessary after sitting for extended periods. (R. at 162.) The ALJ referenced certain medical records that indicated that Edson’s back pain was merely a strain, but Edson disagreed and testified that she had bulging discs. (R. at 163.) Edson denied back spasms, (R. at 163), and she testified that her back often hurt and was constantly “real tight.” (R. at 164.) She stated that she treated the pain with muscle relaxers, pain patches and arthritis medication. (R. at 164.)

Upon questioning by her counsel, Edson testified that her goal was to fix her problems and return to work. (R. at 164.) She indicated that she did not enjoy staying at home. (R. at 164.) Edson testified that her leg pain extended to her knees and ankles, and she noted that she experienced feelings of swelling. (R. at 165.) Edson stated that she “worse[ned] every day . . . like [she] just ke[pt] going down hill.” (R. at 165.) Edson also testified that she suffered from headaches daily, and she reiterated the fact that she treated her headaches with BC Powders. (R. at 165.) She testified that she received most of her medication from Dr. R. Andrews, M.D., who gave her free samples. (R. at 165.) In addition, Edson noted that reading caused confusion and that she experienced sleep difficulties. (R. at 166.) Edson acknowledged that she used a cane during the hearing proceedings due to orders from her doctor. (R. at 166.) Edson stated that she did not use the cane at all times, but noted that she took it with her when she left the house. (R. at 166.) Edson also testified that she experienced

anxiety attacks and indicated that she nearly had an attack the day of the hearing. (R. at 167.) Edson opined that the anxiety was related to her back/pain condition. (R. at 167.) She further testified that it was easier for her to stand than sit because sitting caused numbness. (R. at 167.) Edson reported that when she experienced pain, she would lie down and apply pain patches. (R. at 168.) She stated that she applied the patches to her back and that they helped “a little bit.” (R. at 168.)

Edson explained that her doctor felt that surgery might be necessary to address her problems. (R. at 168.) Edson testified that she was no longer able to lift and carry things, but acknowledged that she continued to vacuum on a limited basis because the vacuum cleaner was not heavy. (R. at 168.) She indicated that vacuuming led to shoulder pain. (R. at 168-69.) Edson described her neck pain “like a headache [that] goes up into the back of [her] head.” (R. at 169.) She commented that the pain prohibited her from turning her neck, which, in turn, limited her ability to drive. (R. at 169.) Edson also testified that her appetite was “not too good” and that her weight fluctuated. (R. at 169.)

In rendering his decision, the ALJ reviewed medical records from Twin City Medical Center; Dr. Carol A. Dewey, M.D.; Dr. William Humphries, M.D.; Dr. Shirish S. Shahane, M.D., a state agency physician; Dr. Frank M. Johnson, a state agency physician, M.D.; E. Hugh Tenison, Ph.D., a state agency psychologist; R.J. Milan Jr., Ph.D., a state agency psychologist; Dr. G.H. Morenings, M.D.; and Dr. R. Andrews, D.O.

Edson sought treatment from Dr. Carol A. Dewey, M.D., from August 20, 2002,

to May 31, 2005. (R. at 104-07.) On August 20, 2002, Dr. Dewey noted that Edson was alert and oriented, with a full range of motion of the back. (R. at 105.) A straight leg raising test was negative bilaterally, and her deep tendon reflexes were active and equal. (R. at 105.) No motor or sensory deficits were noted. (R. at 105.) Dr. Dewey diagnosed Edson with back pain and prescribed Lodine. (R. at 105.) Edson returned on August 26, 2002, and complained that the Lodine was difficult to swallow due to its size; thus, Dr. Dewey prescribed Naprosyn. (R. at 105.) Shortly thereafter, Edson requested results from x-rays of the lumbar spine and thoracic spine, which apparently revealed a tiny curve in the spine. (R. at 105.) The treatment notes indicated that this curvature would not cause any problem. (R. at 105.)

In 2005, Edson returned with complaints of back pain.³ (R. at 105.) The treatment notes indicate that Edson had been previously prescribed Flexeril and Ultram in 2004 to treat her pain. (R. at 105.) However, Edson informed Dr. Dewey that she quit those medications. (R. at 105.) Edson reported back pain that radiated into her legs, as well as numbness and tingling in the left thigh. (R. at 105.) She did not report any weakness. (R. at 105.) Upon examination, Dr. Dewey noted that Edson was alert and that she moved easily. (R. at 105.) No spinal process tenderness with muscle spasm was noted. (R. at 105.) A straight leg raising test was negative bilaterally, and her deep tendon reflexes were active and equal. (R. at 105.) Dr. Dewey reported no motor or sensory deficits. (R. at 105.) Edson was diagnosed with back pain with radiculopathy. (R. at 105.) Dr. Dewey ordered x-rays and a magnetic resonance imaging, (“MRI”), of the lumbar spine. (R. at 105.) Edson was prescribed

³It is unclear as to the exact date of this particular office visit; however, it can be determined that it occurred in 2005. (R. at 105.)

Ultram and was given ibuprofen. (R. at 105.)

On April 19, 2005, an MRI revealed a broad-based left paracentral disc protrusion at the L5-S1 level of the spine that resulted in slight posterior deviation of the passing left S1 nerve root. (R. at 107.) No other abnormalities were evident, and all other lumbar discs appeared to be intact. (R. at 107.) Additionally, all vertebral bodies were intact without evidence of fracture or osteolytic lesion. (R. at 107.) The next day, on April 20, 2005, an x-ray of the lumbar spine revealed minimal degenerative change. (R. at 106.) The frontal view showed a slight levoscoliotic curvature, and the lateral view showed a fairly normal alignment with no suggestion of pars defect. (R. at 106.) The x-ray indicated some slight facet sclerosis at the L4 through S1, levels of the spine. (R. at 106.)

On April 21, 2005, Dr. Dewey noted that the MRI revealed normal findings. (R. at 104.) Also, because Edson reported that the Ultram had not helped her condition, she requested Lortab. (R. at 104.) Dr. Dewey informed Edson that an appointment was necessary in order to prescribe pain medication. (R. at 104.) Edson presented on April 26, 2005, with a chief complaint of back pain. (R. at 104.) Edson also sought medication for pain and reiterated that the Ultram had not worked. (R. at 104.) Dr. Dewey prescribed Voltaren. (R. at 104.)

Edson was treated by Dr. G.H. Morenings, M.D., from November 7, 2002, to July 23, 2003. (R. at 133-39.) Edson complained of back pain, indigestion, headaches, menstrual cramps, neck pain, numbness in both arms, poor circulation and serious injury. (R. at 134.) She indicated that her major complaints related to her

back and neck, with her back causing the most problems. (R. at 135.) Edson also reported numbness/tingling that radiated down her arms and legs. (R. at 135.) Edson claimed that her symptoms were constant, and she indicated that her symptoms were the result of an automobile accident. (R. at 135.) Moreover, Edson noted that activities such as bending, lifting, sitting, squatting, turning her head, lying down and standing aggravated her condition. (R. at 135, 137.) She further noted that walking and reaching relieved her condition. (R. at 135.) Edson claimed that her impairments interfered with her normal daily activities, thereby reducing her productivity and effectiveness in relation to her work and causing problems in her relationships. (R. at 136.) Edson also complained of additional symptoms such as difficulty sleeping, cold sweats, concentration loss/confusion, feelings of head heaviness, irregular cycles, sensitivity to light, pain between her shoulders, “pins and needles” in her arms, ringing in her ears, shortness of breath and an upset stomach. (R. at 136.) Edson stated that she took ibuprofen to treat her condition. (R. at 137.) Edson also indicated that she was committed to addressing her symptoms and their cause, even if it required a change in her lifestyle. (R. at 136.)

Upon examination, Edson’s active range of motion was normal as to her flexion, right lateral flexion, left lateral flexion, right rotation and left rotation of the dorsal-lumbar spine. (R. at 138.) However, Edson’s extension revealed a decreased range of motion with moderate pain. (R. at 138.) Although Edson’s flexion was reported as normal, the examination caused mild pain. (R. at 138.) Dr. Morenings ordered x-rays of the cervical, thoracic and lumbar spines, which were taken on November 13, 2002. (R. at 139.) The x-ray of the cervical spine showed normal alignment, with the vertebral bodies intact. (R. at 139.) No fractures, subluxations

or other abnormalities were noted. (R. at 139.) An x-ray of the thoracic spine revealed mild dextroscoliosis of the lower to mid thoracic spine. (R. at 139.) The vertebral bodies were intact, the disc spaces were well-maintained, and no other abnormalities were reported. (R. at 139.) The x-ray of the lumbar spine showed normal alignment, with the vertebral bodies intact and the disc spaces well-maintained. (R. at 139.) No specific abnormalities were present. (R. at 139.) Edson presented to Dr. Morenings on December 5, 2002, with continued complaints of lower back pain.⁴ (R. at 133.)

Edson presented to Dr. William Humphries, M.D., on July 19, 2005, for a consultative examination. (R. 108-12.) Edson's chief medical complaints included neck, back and tailbone pain. (R. at 108.) Dr. Humphries noted that the pain stemmed from a motor vehicle accident that occurred approximately 14 years prior to the examination. (R. at 108.) Edson reported that, since the accident, her pain had been present most of the time, particularly in the lower back. (R. at 108.) She also indicated that her past job at Wal-Mart required prolonged walking on concrete floors, which increased the pain in her back and legs. (R. at 108.) Furthermore, Edson reported that her low back pain was constant, noting that it was exacerbated by activities such as standing, walking and bending. (R. at 108.) She also indicated that her pain had increased with age. (R. at 108.) However, Edson's condition had not required surgery or injections. (R. at 108.) Edson acknowledged that she was capable of walking a maximum of about one-third of a block without stopping to rest, but noted that walking that distance, or standing for prolonged periods, caused pain in

⁴The treatment notes from Edson's November 7, 2002, and December 5, 2002, are partially illegible. (R. at 133.)

both legs. (R. at 108.)

Upon examination, Edson appeared to be alert and in no distress. (R. at 109.) The range of motion in her neck was slightly reduced, with mild discomfort in the neck on extremes of motion. (R. at 109.) In addition, Edson's neck was mildly tender to palpation of the paraspinous muscles of the cervical spine and the medial trapezius muscles bilaterally. (R. at 109.) Edson's range of motion in her back was minimally reduced without kyphosis, scoliosis or paravertebral muscle spasms. (R. at 109.) Dr. Humphries reported moderate tenderness to palpation of the paraspinous musculature of the bony spine, as well as tenderness to palpation of the sacroiliac regions bilaterally. (R. at 109.) A straight leg raise test was negative to 90 degrees sitting bilaterally. (R. at 109.) An examination of Edson's extremities showed a full range of joint motion in the upper and lower extremities, without tenderness, heat, swelling or deformity. (R. at 109.) However, there was evidence of mild bunion formation of the feet bilaterally. (R. at 109.) Examination of Edson's mental and neurological status revealed normal findings. (R. at 109-10.) Dr. Humphries diagnosed Edson with chronic cervical, thoracic and lumbar strain, with degenerative disc disease of the lumbar spine. (R. at 110.) Dr. Humphries also diagnosed Edson with mild degenerative joint disease in both feet. (R. at 110.) Based upon the objective findings, Dr. Humphries determined that Edson retained the ability to occasionally lift items weighing up to 25 pounds, frequently lift items weighing up to 10 pounds, stand, sit and walk for six hours in a typical eight-hour workday, occasionally climb, stoop, kneel, crouch and crawl, with no restrictions as to working around heights, hazards or fumes. (R. at 110-11.)

On July 25, 2005, Dr. Shirish S. Shahane, M.D., a state agency physician, completed a Physical Residual Functional Capacity Assessment, (“PRFC”), finding that Edson could occasionally lift and/or carry items weighing up to 20 pounds, frequently lift and/or carry items weighing up to 10 pounds, stand and/or walk for a total of about six hours in a typical eight-hour workday, sit for a total of about six hours in a typical eight-hour workday and that she was unlimited in her ability to push and/or pull. (R. at 113-119.) Dr. Shahane opined that Edson could occasionally climb, balance, stoop, kneel, crouch and crawl. (R. at 115.) Dr. Shahane imposed no manipulative, visual, communicative or environmental limitations. (R. at 115-16.) Dr. Shahane also noted that there were no treating/examining source conclusions regarding Edson’s limitations that were significantly different from his own findings. (R. at 117.) Lastly, Dr. Shahane found Edson’s subjective allegations to be only partially credible. (R. at 119.) These findings were reviewed and affirmed by Dr. Frank M. Johnson, M.D., another state agency physician, on November 10, 2005. (R. at 117.)

Also, on July 25, 2005, E. Hugh Tenison, Ph.D., a state agency psychologist, completed a Psychiatric Review Technique form, (“PRTF”), indicating that Edson had no medically determinable impairment from the date of the alleged onset of disability to the time of the assessment. (R. at 120-32.) Tenison noted that Edson’s mental allegations to her examining physicians were not supported by the objective evidence, and he also concluded that Edson’s allegations were not credible. (R. at 132.) On November 10, 2005, Tenison’s findings were reviewed and affirmed by R.J. Milan Jr., Ph.D., another state agency psychologist. (R. at 120.)

Edson was treated at Twin City Medical Center, (“Twin City”), by Dr. R. Andrews, D.O., from August 12, 2005, to September 13, 2006. (R. at 96-103, 140, 142-50.) On August 12, 2005, Edson presented and complained of neck and back pain. (R. at 98-99.) She described the pain as constant and stabbing, and she rated the pain as eight on a 10-point scale. (R. at 98-99.) Edson indicated that heat application improved her condition, but that walking increased her pain. (R. at 98-99.) Edson also indicated that she treated her condition with medications such as Flexeril, ibuprofen, Ultram, Goody’s Powders and BC Powders. (R. at 99.) A review of systems noted that Edson experienced pain from her head all the way down to her lower back area. (R. at 99.) In addition, a questionable bulging disc was reported, but could not be confirmed because Dr. Andrews did not have access to any tests results and Edson could not specifically identify where the bulging disc was located. (R. at 99.) Edson also reported intermittent fatigue and night sweats, in addition to headaches and neck stiffness. (R. at 99.) It was noted that Edson needed reading glasses and that her hearing ability had decreased. (R. at 99.) Edson reported chest pain that she associated with panic attacks. (R. at 99.) She also noted that she had dyspnea when she did excessive amounts of stair work. (R. at 99.) Edson explained that she was having more frequent menstrual cycles and was advised to schedule a gynecological appointment. (R. at 99.) In addition, the following medical problems also were reported: bilateral swollen ankles, lower back pain, neck pain, a questionable herniated disc, intermittent numbness in the lower forearms, hands and lateral sides of bilateral upper portion of her legs, a pins and needles sensation, insomnia, headaches and bilateral shoulder pain. (R. at 99.) Edson reported panic and anxiety attacks, which occurred “once in a great while.” (R. at 99.)

Upon examination, Edson appeared to be in no acute distress and was alert and oriented. (R. at 99.) A restricted range of motion of the neck was noted in her ability to rotate to the left and in her side bending to the right. (R. at 99.) It was noted that Edson had a lot of muscle spasms and strain in the T4-6 area of the back on the left side. (R. at 99.) Edson did not appear to be depressed, anxious or stressed. (R. at 99.) Edson was diagnosed with chronic history of neck and lower back pain. (R. at 99.) Also, Edson was instructed to sign a records release so that the results of an MRI dated April or May 2005, could be reviewed by Dr. Andrews. (R. at 99.) She was prescribed Feldene. (R. at 99.) Dr. Andrews opined that all of Edson's pain related to her neck and back was likely due to early osteoarthritis. (R. at 97.) Dr. Andrews also diagnosed Edson with anxiety and panic attacks; however, because Edson had no way of covering the costs for these medications, Dr. Andrews noted that he would only have her pay for the medication she "really need[ed.]" (R. at 97.) Furthermore, Dr. Andrews recommended a pap smear and pelvic examination, as well as a mammogram. (R. at 97.) Lastly, Dr. Andrews noted a history of headaches and numbness in the arms. (R. at 97.) Dr. Andrews opined that these symptoms could have been the result of arthritis impinging on the nerve, but noted that it would be difficult to know without an MRI report. (R. at 97.) Edson was advised to return in one month, and Dr. Andrews noted that, "if I have to, we can keep her on Flexeril and add some Ultram to that even though Ultram or [t]ramadol is kind of expensive." (R. at 97.)

Edson also presented to Twin City on September 27, 2005, for a follow-up appointment regarding back pain, headaches and numbness. (R. at 96-97.) Dr. Andrews noted that he had not yet received the MRI report that he requested. (R. at

96.) He observed Edson to be very depressed, and he noted that her stress had increased due to her pain. (R. at 96.) Edson rated her pain as eight on a 10-point scale. (R. at 96.) Edson claimed that her pain was located in her head, neck and back area, and she explained that nothing really improved or worsened her pain. (R. at 96.) However, she noted that ibuprofen “help[ed] some” with her pain. (R. at 96.) Edson again noted that she also treated her pain with BC Powders. (R. at 96.) A review of systems noted lower back pain, headaches, insomnia, depression, increased pain and rash on the right upper arm. (R. at 96.) After an otherwise normal examination, Edson was diagnosed with poison ivy dermatitis, insomnia, chronic pain and depression. (R. at 96.) As such, she was prescribed prednisone and Elavil. (R. at 96.) Edson was advised to follow up in two months. (R. at 96.) Dr. Andrews noted that Edson was “not too crazy about surgery and . . . not too crazy about taking medicines.” (R. at 96.) Dr. Andrews informed her that if she agreed to take the Elavil as prescribed, it could help her sleep problems, as well as her chronic pain. (R. at 96.)

Edson returned to Twin City on January 24, 2006, for a check-up regarding her back pain.⁵ (R. at 140, 147.) Edson reported that her back pain was the same as her previous visit on September 27, 2005. (R. at 140, 147.) Edson rated her pain as six on a 10-point scale. (R. at 140, 147.) She explained that resting improved her condition, but also stated that movement for more than five minutes increased the pain. (R. at 140, 147.) Dr. Andrews referenced the findings from the April 2005 MRI and x-ray, which revealed a herniated disc and minimal degenerative changes. (R. at 140, 147.) Edson complained of daily pain from her bilateral hips down to her ankles.

⁵The treatment records from this particular visit are found at two separate locations in the record. (R. at 140, 147.)

(R. at 140, 147.) She also reported intermittent numbness in the left hip that radiated down to the back of her left leg to the knee. (R. at 140, 147.) Edson stated that she treated the pain with Goody's Powders. (R. at 140, 147.) Dr. Andrews noted that Edson had tension around her neck area, for which she requested Flexeril. (R. at 140, 147.) Edson's past medical history included neck and lower back pain, a bulging disc at the L5-S1 level of the spine, anxiety and panic attacks. (R. at 140, 147.)

A review of systems indicated some pain in the bilateral hips that radiated down to Edson's ankles, some numbness in the left hip that radiated down to her knee and some cervical muscle strain in her neck, secondary to anxiety and tension. (R. at 140, 147.) Upon examination, Dr. Andrews found Edson to be pleasant in appearance and in no acute distress. (R. at 140, 147.) A straight leg raising test was positive at nearly 60 degrees, with the left side greater than the right side. (R. at 140, 147.) Flexion of the left leg showed some pulling and pain in the back of her posterior thigh and hamstring area. (R. at 140, 147.) Similarly, pulling and pain also was observed in the right leg. (R. at 140, 147.) Edson's flexion and abduction of the hips range of motion was normal. (R. at 140, 147.) However, tenderness upon palpation over the thoracic spine and cervical spine was noted. (R. at 140, 147.) In addition, Edson also had tenderness on the right side of her neck with restriction of side bending to the left. (R. at 140, 147.) Edson was prescribed Flexeril to treat her pain and discomfort and also was prescribed Elavil for insomnia. (R. at 140, 147.)

Edson also sought treatment on May 8, 2006, at Twin City. (R. at 145-46.) Edson presented with complaints of insomnia and also sought a refill of her Flexeril. (R. at 145-46.) Edson explained that she slept for approximately five hours per night,

but indicated that she had not taken Elavil each night as prescribed. (R. at 145.) Edson also reported a sore throat and feeling cold, but did not complain of fevers or chills. (R. at 145.) She further noted that Flexeril had helped her lower back pain, which she rated as eight on a 10-point scale. (R. at 145.) Edson reported numbness down her legs and daily pain from her bilateral hips down to her ankles. (R. at 145.) Edson also reported intermittent numbness that occurred more in the left hip and radiated from the back of her leg to her knee area. (R. at 145.) Edson stated that she treated the pain with Flexeril and Goody's Powders. (R. at 145.) A review of systems showed pharyngitis, lower back pain and intermittent numbness down the left leg. (R. at 145.) Further examination revealed no other significant findings. (R. at 145.) Edson was diagnosed with acute pharyngitis, which was attributed to sinus drainage. (R. at 145.) Dr. Andrews gave her samples of Durahist. (R. at 145.) Additionally, Dr. Andrews diagnosed Edson with lower back pain, for which he prescribed Lidocaine patches. (R. at 145.) On May 11, 2006, Edson contacted Dr. Andrews and requested medication for sinus drainage. (R. 144.) Thereafter, on June 20, 2006, Edson again contacted Dr. Andrews and requested a Flexeril refill. (R. at 143.)

On September 13, 2006, Edson returned to Twin City with complaints of lower back pain. (R. at 142.) Edson described the pain as constant, aching and stabbing, that worsened when she walked. (R. at 142.) However, Edson noted that her condition improved when taking her medication. (R. at 142.) Edson rated her pain as eight on a 10-point scale. (R. at 142.) She explained that the pain radiated from her lower back down her legs. (R. at 142.) A review of systems indicated lower back pain and shoulder pain. (R. at 142.) Upon examination, Edson was alert and oriented and in no acute distress. (R. at 142.) Dr. Andrews noted lower back pain at the L4-S1

level of the spine upon palpation, as well as a lot of muscle stiffness ranging from the T12 to the L4 level of the spine. (R. at 142.) Edson was diagnosed with lower back pain and strain, and was prescribed Lidocaine patches, Flexeril and Arthrotec. (R. at 142.) Dr. Andrews instructed Edson to follow up in three months. (R. at 142.) He also noted that Edson was tentatively scheduled to receive treatment at the University of Virginia; however, he indicated that scheduling could take six to eight months. (R. at 142.)

III. Analysis

The Commissioner uses a five-step process in evaluating DIB claims. *See* 20 C.F.R. § 404.1520 (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 (2007). 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) (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 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) (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 December 26, 2006, the ALJ denied Edson's claim. (R. at 11-17.) The ALJ found that Edson met the nondisability insured status requirements for the Act for DIB purposes through the date of the decision. (R. at 16.) The ALJ also found that Edson had not engaged in substantial gainful activity since the alleged onset of disability. (R. at 16.) The ALJ determined that the medical evidence established that Edson suffered from severe impairments, namely degenerative disc disease of the lumbar spine, as well as cervical, thoracic and lumbar strain; however, he found that Edson 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.) In addition, the ALJ found that Edson's allegations regarding her limitations were not totally credible. (R. at 16.) The ALJ found that Edson had the residual functional capacity to perform the full range of light work. (R. at 16.) Further, the ALJ determined that Edson was capable of performing her past relevant work as a cashier/department manager because the performance of the relevant work-related activities was not precluded by her residual functional capacity. (R. at 16.) Thus, the ALJ concluded that Edson was not under a disability as defined in the Act, and that she was not entitled to benefits. (R. at 16-17.) *See* 20 C.F.R. § 404.1520(f) (2007).

Edson argues that the ALJ's residual functional capacity determination is not

supported by substantial evidence within the record. (Brief In Support Of Plaintiff's Motion For Summary Judgment, ("Plaintiff's Brief"), at 6-8.) Edson also argues that the ALJ erred in finding that she could perform her past relevant work, as the finding was not supported by substantial evidence within the record. (Plaintiff's Brief at 8-10.)

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

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

Edson first argues that the ALJ erred in his residual functional capacity finding. (Plaintiff's Brief at 6-8.) Specifically, Edson contends that, despite the fact that the ALJ stated that he accepted the findings of Dr. Humphries, the ALJ nonetheless ignored the limitations reported in Dr. Humphries's consultative examination. (Plaintiff's Brief at 7.) Edson claims that the ALJ also ignored the limitations expressed by the state agency physicians. (Plaintiff's Brief at 7-8.) Therefore, Edson argues that the ALJ erred because he did not specifically include the limitations imposed by Dr. Humphries and because he failed to sufficiently explain his apparent rejection of the limitations set forth by both Dr. Humphries and the state agency physicians. (Plaintiff's Brief at 7-8.)

The ALJ found that Edson had the residual functional capacity to perform the full range of light work. (R. at 16.) Edson argues that the ALJ's residual functional capacity finding is not supported by substantial evidence because the ALJ failed to include further restrictions noted by Dr. Humphries, such as the ability to stand and/or walk for six hours in a typical eight-hour workday, sit for six hours in a typical eight-hour workday, the ability to occasionally lift items weighing up to 25 pounds and frequently lift items weighing up to 10 pounds and the ability to occasionally climb, stoop, kneel, crouch and crawl. (R. at 110-11.) Furthermore, Edson argues that the ALJ failed to adequately explain his apparent rejection of the opinions of Dr. Shahane and Dr. Johnson, the state agency physicians, who determined that Edson was limited to occasional lifting and/or carrying of items weighing up to 20 pounds, frequent lifting and/or carrying of items weighing up to 10 pounds, standing and/or walking for a total of about six hours in a typical eight-hour workday, sitting for a total of about six hours in a typical eight-hour workday and occasional climbing, balancing,

stooping, kneeling, crouching and crawling. (R. at 114-15.)

The court recognizes that the ALJ's residual functional capacity finding did not precisely list all of the limitations found by Dr. Humphries and the state agency physicians. However, I am of the opinion that it was not necessary for the ALJ to actually set forth each limitation in his residual functional capacity finding because each limitation noted by Dr. Humphries and the state agency physicians fell within the boundaries of the full range of light work. According to Social Security Ruling 83-10, the residual functional capacity determines a work capability that is exertionally sufficient to allow the performance of at least *substantially all* of the activities of work at a particular exertional level, but is also insufficient to allow the substantial performance of work at greater exertional levels. *See* S.S.R. 83-10, WEST'S SOCIAL SECURITY REPORTING SERVICE, Rulings 1984-1991 (West 1992). Social Security Ruling 83-10 defines "substantially all activities" as nearly all or essentially all of the activities required in an exertional level of work. *See* S.S.R. 83-10, WEST'S SOCIAL SECURITY REPORTING SERVICE, Rulings 1983-1991 (West 1992). Furthermore, Social Security Ruling 83-10 defines "full range of work" as "all or substantially all occupations existing at an exertional level." S.S.R. 83-10, WEST'S SOCIAL SECURITY REPORTING SERVICE, Rulings 1983-1991 (West 1992). Therefore, even though the ALJ determined that Edson was capable of performing the "full range" of light work, it is not necessary that an individual be able to perform each and every activity within an exertional level in order to be deemed capable of performing that exertional level of work; instead, in order to perform the full range of light work, the individual must be able to perform "substantially all" of the occupations at that level.

Light work is defined in the regulations as work that involves lifting items weighing up to 20 pounds at a time, with frequent lifting or carrying of objects weighing up to 10 pounds. *See* 20 C.F.R. § 404.1567(b) (2007). “Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.” 20 C.F.R. § 404.1567(b) (2007). Thus, in order to be capable of performing a full or wide range of light work, the claimant must have the ability to do substantially all of the aforementioned activities. *See* 20 C.F.R. § 404.1567(b) (2007).

In this case, Dr. Humphries and the state agency physicians both determined that Edson could stand and/or walk for a total of six hours and sit for a total of six hours in a typical eight-hour workday,⁶ that she could occasionally climb, stoop, kneel, crouch and crawl and that she could frequently lift and/or carry items weighing up to 10 pounds. (R. at 110-11, 114-15.) The only notable difference in their respective opinions was that Dr. Humphries found that Edson could occasionally lift and/or carry items weighing up to 25 pounds, whereas the state agency physicians found that Edson could occasionally lift and/or carry items weighing up to 20 pounds. (R. at 111, 114.) Also, the state agency physicians determined that Edson could only occasionally balance, while Dr. Humphries did not discuss Edson’s ability to balance. (R. at 111, 115.)

⁶Edson appears to contend that Dr. Humphries found that she was limited to standing, walking and sitting for a combined total of six hours in a typical eight-hour workday. (Plaintiff’s Brief at 7.) However, based upon the evidence of record, I do not find that assertion persuasive. A more fair and reasonable interpretation is that Dr. Humphries determined that Edson was capable of standing/walking for a total of six hours in an eight-hour workday, and that she was capable of sitting for a total of six hours in an eight-hour workday.

According to Social Security Ruling 83-10, “the full range of light work requires standing or walking, off and on, for a total of approximately 6 hours of an 8-hour workday. Sitting may occur intermittently during the remaining time.” S.S.R. 83-10, WEST’S SOCIAL SECURITY REPORTING SERVICE, Rulings 1983-1991 (West 1992). This requirement was fully encompassed in the opinion of Dr. Humphries, an opinion that was accepted by the ALJ, and also was consistent with the findings noted by the state agency physicians. (R. at 110-11, 114-15.) Dr. Humphries found that Edson could occasionally lift items weighing up to 25 pounds, (R. at 111); however, pursuant to the regulations, light work involves lifting of no more than 20 pounds at a time. *See* 20 C.F.R. § 404.1567(b) (2007). The ALJ plainly stated that he accepted the opinion of Dr. Humphries, but he also pointed out that Dr. Humphries’s opinion was generally consistent with the opinions of the state agency physicians, (R. at 15), who specifically found that Edson was limited to occasionally lifting items weighing up to 20 pounds. (R. at 114.) As such, I am of the opinion that the ALJ’s acceptance of Dr. Humphries’s opinion as to the maximum amount of occasional lifting is, at most, harmless error not requiring remand. Errors are harmless in social security cases when it is inconceivable that a different administrative conclusion would have been reached absent the error. *See Austin v. Astrue*, 2007 WL 3070601, *6 (W.D. Va. Oct. 18, 2007) (citing *Camp v. Massanari*, 2001 WL 1658913 (4th Cir. Dec. 27, 2001)) (citing *Newton v. Apfel*, 209 F.3d 448, 458 (5th Cir. 2000)); *see also Fisher v. Bowen*, 869 F.2d 1055, 1057 (7th Cir. 1989) (“No principle of administrative law or common sense requires us to remand a case in quest of a perfect opinion unless there is reason to believe that the remand might lead to a different result.”) By acknowledging that Dr. Humphries’s opinion was generally consistent with the state agency findings, the ALJ also essentially accepted the state agency findings. Thus,

I am of the opinion that the ALJ's residual functional capacity determination properly encompassed the findings of Dr. Humphries and the state agency physicians.

In addition, the court notes that the ALJ's failure to explicitly reference the postural limitations imposed by Dr. Humphries and the state agency physicians also constitutes harmless error. In particular, Social Security Ruling 85-15 states that stooping, kneeling, crouching and crawling "are progressively more strenuous forms of bending parts of the body, with crawling as a form of locomotion involving bending." S.S.R. 85-15, WEST'S SOCIAL SECURITY REPORTING SERVICE, Rulings 1983-1991 (West 1992). Social Security Ruling 85-15 further states that some stooping, which is defined as bending the body downward and forward by bending the spine at the waist, is required to do almost any kind of work, especially when objects below the waist are involved. *See* S.S.R. 85-15, WEST'S SOCIAL SECURITY REPORTING SERVICE, Rulings 1983-1991 (West 1992). The Ruling also explains that "[i]f a person can stoop occasionally (from very little up to one-third of the time) in order to lift objects, the sedentary and light occupational base is virtually intact." S.S.R. 85-15, WEST'S SOCIAL SECURITY REPORTING SERVICE, Rulings 1983-1991 (West 1992). Moreover, Social Security Ruling 85-15 clarifies that crawling on the hands and knees and feet is a relatively rare activity even in arduous work, therefore, any limitations on the ability to crawl would be of little significance in the broad world of work. *See* S.S.R. 85-15, WEST'S SOCIAL SECURITY REPORTING SERVICE, Rulings 1983-1991 (West 1992). Similarly, limitations as to the ability to kneel, which is defined as bending the legs at the knees to come to a rest on one or both knees, would also be of little significant in the workplace. *See* S.S.R. 85-15, WEST'S SOCIAL SECURITY REPORTING SERVICE, Rulings 1983-1991 (West 1992). The ability

to crouch is mostly associated with medium, heavy and very heavy jobs. *See* S.S.R. 85-15, WEST’S SOCIAL SECURITY REPORTING SERVICE, Rulings 1983-1991 (West 1992). Thus, as explained in Social Security Ruling 83-14, “to perform substantially all of the exertional requirements of most . . . light jobs, a person would not need to crouch.” *See* S.S.R. 83-14, WEST’S SOCIAL SECURITY REPORTING SERVICE, Rulings 1983-1991 (West 1992). Lastly, the court notes that Dr. Humphries and the state agency physicians determined that Edson was limited to occasional climbing. (R. at 111, 115.) Social Security Ruling 85-15 clarifies that limitations in climbing and balancing can have different effects on the occupational base depending on the degree of the limitation and the type of job, and that the performance of the light occupation of construction painter *may* be ruled out. *See* S.S.R. 85-15, WEST’S SOCIAL SECURITY REPORTING SERVICE, Rulings 1983-1991 (West 1992) (emphasis added). However, there is nothing to suggest that a restriction to occasional climbing would preclude the ability to perform “substantially all” remaining light occupations. As such, the ALJ’s failure to specifically include these postural limitations in his formal residual functional capacity finding constitutes, at most, harmless error not requiring remand, as these limitations do not impact Edson’s ability to perform the full range of light work.

The court also notes that, contrary to Edson’s argument, the ALJ’s failure to explicitly explain his “apparent rejection” of certain findings made by Dr. Humphries, as well as the findings of the state agency physicians, was not necessary. There is nothing within the ALJ’s opinion that implies that he rejected these findings. The ALJ merely chose not to include the specific postural limitations in his residual functional capacity determination. Based on a review of the ALJ’s findings, and the medical

evidence of record, it is readily apparent that the ALJ did not reject the findings; instead, he accepted them. Therefore, I find that the ALJ did not err with respect to his residual functional capacity finding, as it is consistent with the definition of light work and is supported by substantial evidence within the record.⁷

Next, Edson argues that the ALJ erred in finding that she was capable of performing her past relevant work as a cashier/department manager. (Plaintiff's Brief at 8-10.) Edson argues that, based upon the limitations noted by Dr. Humphries and the state agency physicians, she would be unable to perform her past relevant work. (Plaintiff's Brief at 10.) Thus, Edson claims that the ALJ's determination is not supported by substantial evidence. (Plaintiff's Brief at 10.) I disagree.

Pursuant to the regulations, if a claimant is not found to be disabled at one of the first three steps of the sequential process, "[the ALJ] will consider [the claimant's] residual functional capacity together with [her] vocational background." 20 C.F.R. § 404.1560(a) (2007). In order to determine whether a claimant can perform her past relevant work, the claimant, or others who know about the claimant's work, may be questioned. *See* 20 C.F.R. § 404.1560(b)(2) (2007). Furthermore, "the services of vocational experts or vocational specialists, or other resources, such as the 'Dictionary of Occupational Titles'" may be used to "obtain evidence . . . to help . . . determine whether [the claimant] can [perform her] past relevant work, given [her] residual

⁷Edson also argues that, had Dr. Humphries been provided a copy of the MRI report, he would have noted more severe limitations. (Plaintiff's Brief at 7.) However, as noted by the Commissioner, this argument is purely speculative. In addition, other than the opinions of Dr. Humphries and the state agency physicians, the record is devoid of any medical opinions that placed further physical limitations upon Edson. Thus, this argument is without merit.

functional capacity.” 20 C.F.R. § 404.1560(b)(2) (2007). The United States Court of Appeals for the Fourth Circuit has stated, “a claimant will be found ‘not disabled’ if [she] is capable of performing [her] past relevant work either as [she] performed it in the past *or* as it is generally required by employers in the national economy.” *Pass v. Chater*, 65 F.3d 1200, 1207 (4th Cir. 1995) (citing *Martin v. Sullivan*, 901 F.2d 650, 653 (8th Cir. 1990)).

In this case, the ALJ found that Edson was capable of performing her past relevant work as a cashier/department manager. (R. at 15.) The ALJ determined that, based upon his residual functional capacity finding, and the evidence of record, Edson retained the ability to perform the work as she previously performed it, and as generally performed in the national economy. (R. at 15.) According to the Dictionary of Occupational Titles, (“DOT”), a retail store manager qualifies as light work. *See* 1 DICTIONARY OF OCCUPATIONAL TITLES, Manager, Retail Store, occupational code 185.167-046 (4th ed. rev. 1991). Additionally, multiple cashier occupations qualify as light work. *See* 1 DICTIONARY OF OCCUPATIONAL TITLES, Cashier II (clerical) occupational code 211.462-010, Cashier-Checker (retail trade) occupational code 211.462-014 (4th ed. rev. 1991). Notably, neither job description contains occupational requirements regarding postural activities such as climbing, balancing, stooping, kneeling, crouching or crawling. Therefore, considering the ALJ’s residual functional capacity finding, I am of the opinion that substantial evidence supports the ALJ’s finding that Edson was capable of performing her past relevant work as a cashier/department manager.

Furthermore, the court notes that Edson, at various points in the record, made

conflicting allegations regarding her past relevant work. (R. at 43-50, 80, 156.) In a Work History Report dated May 29, 2005, Edson claimed that her job as a customer service manager never required her to lift more than 10 pounds. (R. at 43, 49.) Edson also claimed that this particular job required four hours of walking and four hours of standing, but that no sitting, climbing, kneeling, crouching or crawling was required. (R. at 49.) Conversely, in a Disability Report dated February 15, 2006, she indicated that the heaviest weight lifted at her job as a cashier/manager was 20 pounds, and, in the same report, she inexplicably stated that she frequently lifted items weighing up to 25 pounds. (R. at 79-80.) The Disability Report also included allegations that Edson's job as a cashier/manager required four hours of walking, four hours of standing, four hours of stooping, four hours of kneeling and four hours of crouching. (R. at 80.) A review of the relevant reports, as well as Edson's testimony at the hearing, calls into question the credibility and reliability of her allegations. The undersigned notes that it is the province of the ALJ to assess the credibility of a witness or a claimant. *See Taylor*, 528 F.2d at 1156. Furthermore, "[b]ecause [the ALJ] had the opportunity to observe the demeanor and to determine the credibility of the claimant, the ALJ's observations concerning these questions are to be given great weight." *Shively v. Heckler*, 739 F.2d 987, 989 (4th Cir. 1984). Therefore, the ALJ's finding that Edson's allegations were not totally credible is justified and supported by substantial evidence within the record. Accordingly, I find that, based upon the record, substantial evidence supports the ALJ's determination that Edson was capable of returning to her past relevant work.

Based on my review of the record and for the above-stated reasons, I find that substantial evidence exists in the record to support the ALJ's findings. I recommend

that the court deny Edson's motion for summary judgment, grant the Commissioner's motion for summary judgment and affirm the Commissioner's decision 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 in the record to support the Commissioner's findings as to Edson's residual functional capacity;
2. Substantial evidence exists in the record to support the Commissioner's finding as to Edson's ability to perform her past relevant work; and
3. Substantial evidence exists in the record to support the Commissioner's finding that Edson was not disabled.

RECOMMENDED DISPOSITION

The undersigned recommends that the court deny Edson's motion for summary judgment, deny the Commissioner's motion for summary judgment, vacate the Commissioner's decision denying benefits and remand the case to the Commissioner for further consideration consistent with this report and recommendation.

Notice to Parties

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

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 finding or recommendation 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 to recommit the matter to the magistrate judge with instructions.

Failure to file 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 the matter to the Honorable James P. Jones, Chief United States District Judge.

The clerk is directed to send copies of this Report and Recommendation to all counsel of record.

DATED: This 26th day of June 2008.

/s/ Pamela Meade Sargent
UNITED STATES MAGISTRATE JUDGE