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

TRACEY N. MULLINS,	)	
Plaintiff	)	
	)	
	)	Civil Action No. 2:13cv00010
v.	)	**REPORT AND**
	)	**RECOMMENDATION**
CAROLYN W. COLVIN,	)	
Acting Commissioner of Social Security,	)	By: PAMELA MEADE SARGENT
Defendant	)	United States Magistrate Judge

I. Background and Standard of Review

Plaintiff, Tracey N. Mullins, filed this action challenging the final decision of the Commissioner of Social Security, ("Commissioner"), determining that he was not eligible for disability insurance benefits, ("DIB"), under the Social Security Act, as amended, ("Act"), 42 U.S.C.A. § 423. (West 2011). 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 Mullins protectively filed his application for DIB on May 15, 2009, alleging disability as of March 27, 2009, due to shoulder problems, hypothyroidism, sleep apnea, arthritis in the back, severe anxiety and severe acid reflux. (Record, ("R."), at 20, 180, 184, 244.) The claims were denied initially and on reconsideration. (R. at 99-101, 105-07, 110, 111-13, 115-17.) Mullins then requested a hearing before an administrative law judge, ("ALJ"), (R. at 118), which was held on July 12, 2011, and at which Mullins was represented by counsel. (R. at 38-60.)

By decision dated July 28, 2011, the ALJ denied Mullins's claim. (R. at 20-30.) The ALJ found that Mullins met the insured status requirements of the Act through December 31, 2013. (R. at 22.) He found that Mullins had not engaged in substantial gainful activity since March 27, 2009, the alleged onset date of disability. (R. at 22.) The ALJ determined that the medical evidence established that Mullins suffered from severe impairments, including bilateral shoulder pain, right shoulder osteoarthritis, status-post arthroscopy and arthroplasty, back pain, degenerative disc disease, coronary artery disease, ("CAD"), status-post myocardial infarction, and depression, but he found that Mullins 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 22-24.) The ALJ found

that Mullins had the residual functional capacity to perform a range of sedentary[1] work that required lifting and/or carrying no more than 10 pounds occasionally and five pounds frequently, no more than two hours of standing and/or walking in an eight-hour workday, no more than six hours of sitting in an eight-hour workday, no more than occasional bending, stooping, kneeling or crouching and no climbing or crawling. (R. at 24.) The ALJ further found that Mullins would require 10- to 15-minute breaks at two-hour intervals and that he may be absent from work 10 to 12 days annually. (R. at 24.) The ALJ also found that Mullins should avoid use of automotive equipment in a production setting, hazards such as moving machinery and unprotected heights and contact with the public. (R. at 24.) Thus, the ALJ found that Mullins was unable to perform his past relevant work as a truck driver, a loader operator, an auto detailer and a water sample collector. (R. at 28.) Based on Mullins's age, education, work history and residual functional capacity and the testimony of a vocational expert, the ALJ found that Mullins could perform other jobs existing in significant numbers in the national economy, including jobs as an assembler, a packer and an inspector/tester/sorter. (R. at 29.) Therefore, the ALJ found that Mullins was not under a disability as defined under the Act and was not eligible for DIB benefits. (R. at 30.) *See* 20 C.F.R. § 404.1520(g) (2013).

After the ALJ issued his decision, Mullins pursued his administrative appeals, but the Appeals Council denied his request for review. (R. at 1-6.) Mullins 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 (2013). The

[1] Sedentary work involves lifting items weighing up to 10 pounds at a time and occasionally lifting or carrying of items like docket files, ledgers and small tools. Although sedentary work involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. *See* 20 C.F.R. § 404.1567(a) (2013).

case is before this court on Mullins's motion for summary judgment filed August 14, 2013, and the Commissioner's motion for summary judgment filed September 13, 2013.

II. Facts and Analysis[2]

Mullins argues that the ALJ erred by failing to adhere to the treating physician rule and give controlling weight to the opinions of his treating physician, Dr. Thomas Roatsey, M.D. (Plaintiff's Memorandum In Support Of His Motion For Summary Judgment, ("Plaintiff's Brief"), at 6-8.) Mullins further argues that the ALJ erred by failing to give full consideration to the assessments and conclusions of psychologist Patrick Farley, Ed.D., LPC, NCC, regarding his mental impairments and their resulting effects on his ability to work. (Plaintiff's Brief at 8-9.)

The Commissioner uses a five-step process in evaluating DIB claims. *See* 20 C.F.R. § 404.1520 (2013); *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. § 404.1520. 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) (2013).

[2] The relevant time period for the court's consideration in determining whether substantial evidence supports the Commissioner's disability finding is May 15, 2009, the protective filing date, through July 28, 2011, the date of the ALJ's decision.

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) (West 2011); *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).

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).

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 forth at 20 C.F.R. §

404.1527(c), if he sufficiently explains his rationale and if the record supports his findings.

Mullins was born in 1968, (R. at 163), which classifies him as a "younger person" under 20 C.F.R. § 404.1563(c). He has a ninth-grade education[3] and past relevant work as a truck driver, a car salesman, a logger and a field technician for an environmental monitoring laboratory. (R. at 192, 195.) Mullins testified that he last worked as a field technician, collecting water samples and pumping gas well ponds, but had to quit working due to severe right shoulder pain. (R. at 45-46.) He testified that he had undergone a total right shoulder replacement and that he was right-hand dominant. (R. at 56.) Mullins further testified that his left shoulder was getting in the same shape as the right one, noting that he was receiving injections. (R. at 56.)

John Newman, a vocational expert, also was present and testified at Mullins's hearing. (R. at 54-60.) He classified Mullins's past relevant work as a truck driver as unskilled and medium,[4] as a loader operator and as an automobile detailer as semi-skilled and medium and as a water sample collector, as performed by Mullins, as semi-skilled and heavy.[5] (R. at 54-55.) Newman was asked to consider a hypothetical individual of Mullins's age, education and work history,

[3] Although the Disability Report reflects a tenth-grade education, Mullins testified that he completed the ninth grade. (R. at 45.)

[4] Medium work involves lifting items weighing up to 50 pounds at a time with frequent lifting or carrying of items weighing up to 25 pounds. If someone can perform medium work, he also can perform light and sedentary work. *See* 20 C.F.R. § 404.1567(c) (2013).

[5] Heavy work involves lifting items weighing up to 100 pounds at a time with frequent lifting or carrying of items weighing up to 50 pounds. If someone can perform heavy work, he also can perform medium, light and sedentary work. *See* 20 C.F.R. § 404.1567(d) (2013).

who could lift a maximum of 10 pounds, who could lift five pounds occasionally, who could stand for two hours in an eight-hour workday, who could sit for six hours in an eight-hour workday, who should not climb ropes, scaffolds or ladders, who should not work at heights or around dangerous machinery, who should not operate automotive equipment, who should not climb or crawl, who could occasionally bend, stoop, kneel and crouch, who could infrequently reach, who would require breaks of 10 to 15 minutes at approximately two-hour intervals, who would miss 10 to 12 days of work annually, whose work should be simple and repetitive in nature and who should have limited, and preferably no, contact with the public. (R. at 57.) Newman testified that such an individual could perform sedentary, production-oriented unskilled work, including jobs as an assembler, a stuffer and an inspector/tester/grader, all of which are available in significant numbers in the national economy. (R. at 57-58.) Newman testified that if the individual also could not repetitively use the upper extremities, the jobs previously mentioned would be precluded, and the individual likely would be precluded from all employment. (R. at 58, 59.) Newman further testified that if the individual would miss two or more days of work per month, the occupational base would be abolished. (R. at 58-59.)

In rendering his decision, the ALJ reviewed records from Gastroenterology Associates; The Regional Allergy, Asthma and Immunology Center; Mountain View Regional Medical Center; Johnston Memorial Hospital; Wellmont Holston Valley Medical Center; Abingdon Orthopedic Associates; Meadowview Ear, Nose and Throat Specialists; Mountain View Physical Therapy; Dr. Carey McKain, M.D.; Wellmont Physicians' Services; Dr. Michael Wheatley, M.D.; Wellmont Rehabilitation and Sports Clinic; Dr. Morgan Lorio, M.D.; Dr. Thomas Roatsey, D.O.; Bristol Regional Medical Center; Highlands Pathology Consultants; Dr.

Steven Prince, M.D.; Pulmonary Associates – Sleep Center; Medex Labs; Norton Community Hospital; Blue Ridge Medical Specialists; Holston Valley Imaging; Spectrum Labs; Outpatient Diagnostic Center; Cardiovascular Associates; Patrick Farley, Ed.D., LPC, NCC, a licensed professional counselor; Lonesome Pine Hospital; St. Mary's Hospital; Watauga Orthopeadics; The Heart Center; and Dr. Fred Terry, D.O.

In reaching his residual functional capacity finding, the ALJ stated that he was according little weight to the conclusions of Dr. Thomas Roatsey, D.O., because they were inconsistent with his own clinical findings and they failed to correlate functionally with other clinical findings in the record. (R. at 28.) The ALJ must generally give more weight to the opinion of a treating physician because that physician is often most able to provide "a detailed, longitudinal picture" of a claimant's alleged disability. 20 C.F.R. § 404.1527(c)(2) (2013). However, "[c]ircuit precedent does not require that a treating physician's testimony 'be given controlling weight.'" *Craig v. Chater*, 76 F.3d 585, 590 (4th Cir. 1996) (quoting *Hunter v. Sullivan*, 993 F.2d 31, 35 (4th Cir. 1992 (per curiam)). In fact, "if a physician's opinion is not supported by clinical evidence or if it is inconsistent with other substantial evidence, it should be accorded significantly less weight." *Craig*, 76 F.3d at 590.

Based on my review of the record, I find that substantial evidence exists to support the ALJ's decision not to grant controlling weight to Dr. Roatsey's opinions because they are, indeed, inconsistent with his own clinical findings and are not supported by the other clinical findings in the record. After seeing Mullins on only one occasion, Dr. Roatsey completed a physical assessment in March 2010, in which he opined that the likelihood of Mullins's return to work was

doubtful. (R. at 469-71.) However, when Mullins was seen on that one occasion, Dr. Roatsey's physical examination of Mullins was relatively normal, and Dr. Roatsey placed no restrictions on him. (R. at 701.) During the time Dr. Roatsey treated Mullins, physical examinations generally showed tenderness of the back and shoulders with decreased range of motion and some crepitus. (R. at 802-04, 806-08, 812.) There was no edema or cyanosis of the extremities. (R. at 804-06, 812.) There also were no neurologic deficits, and Mullins exhibited negative straight leg raise testing. (R. at 693-701, 804, 809, 812.) Over the entire treatment period, Dr. Roatsey's treatment notes reflect the imposition of no restrictions on Mullins's activities, and he was treated conservatively with medications, epidural steroid injections and a transcutaneous electrical stimulation, ("TENS"), unit. (R. at 693, 696, 699, 701, 802-804, 806-08, 812.) Additionally, there are multiple notations in Dr. Roatsey's treatment notes of Mullins reporting that medications and steroid injections helped him. (R. at 802, 807.) "If a symptom can be reasonably controlled by a medication or treatment, it is not disabling." *Gross v. Heckler*, 785 F.2d 1163, 1166 (4th Cir. 1986).

Nonetheless, despite relatively benign physical findings, conservative treatment methods, lack of physical restrictions and admissions of relief with conservative treatment methods, Dr. Roatsey completed a second physical assessment of Mullins in August 2010, stating that Mullins would "never be able to return to gainful employment due to his cardiac condition [and] his physical conditions." (R. at 750-52.) In June 2011, Dr. Roatsey completed yet a third physical assessment, finding that Mullins could lift and carry items weighing up to 20 pounds occasionally and lift and carry items weighing up to 15 pounds frequently, stand and/or walk for a total of up to two hours in an eight-hour workday, but for up to only 30 minutes without interruption, sit for up to two hours

in an eight-hour workday, but for up to only 30 minutes without interruption, and never climb or balance, but occasionally stoop, kneel, crouch and crawl. (R. at 814-16.) He further opined that Mullins's abilities to reach and to push and/or pull were affected by his impairments and that he should not work around heights, moving machinery, temperature extremes, humidity or vibration. (R. at 815-16.) Dr. Roatsey explained that he was basing these findings on Mullins's coronary artery disease, bilateral shoulder pain and low back pain. (R. at 814-16.)[6]

As for Dr. Roatsey's opinion that Mullins's cardiac condition is, at least, in part, disabling, I note that physical examinations performed by Dr. Roatsey in August, September and November 2010, and January, February, March, April and May 2011, yielded normal cardiac findings. (R. at 802-09.) Thus, it is apparent that Dr. Roatsey's findings of disability are inconsistent with his own treatment notes, and the physical assessments are even inconsistent with each other.

I further find that Dr. Roatsey's opinions also are not supported by the other evidence of record. For instance, with regard to Mullins's cardiac condition, the medical records reveal that he experienced an acute myocardial infarction on July 18, 2010, for which he underwent a successful emergent catheterization with stenting. (R. at 659-69.) An exercise nuclear stress study, performed on March 2, 2011, revealed benign findings. (R. at 797-99.) More specifically, Mullins experienced no angina, and his blood pressure response was normal. (R. at 799.) The analysis of the EKG was no ischemic changes at peak exercise. (R. at 799.) It was found to be a low-risk study with hardly any ischemic burden. (R. at 799.) Likewise, when Mullins saw Dr. Keith Kramer, M.D., a cardiologist, on March 15, 2011, he denied chest pain, edema, syncope, near syncope, angina or palpitations.

[6] The handwritten portions of Dr. Roatsey's assessment are largely illegible.

(R. at 779.) Physical examination was normal, and Dr. Kramer diagnosed ischemic cardiomyopathy, mildly impaired; hyperlipidemia, well-controlled on medical therapy; and orthostatic hypotension. (R. at 781.) Dr. Kramer placed no restrictions on Mullins's activities.

The diagnostic testing and physical examinations related to Mullins's other physical conditions also yielded relatively benign findings. The medical record demonstrates that Mullins underwent a total right shoulder arthroplasty on July 6, 2009, by Dr. Carey McKain, M.D., an orthopaedic surgeon. (R. at 330, 438-39, 450-51.) Following this surgery, Dr. McKain referred Mullins for physical therapy. (R. at 769.) Physical therapy notes from Edward Trent, MPT, show that from July 2009 through September 2009, Mullins was progressing with mobility and range of motion, despite some continued complaints of pain. (R. at 340, 342-45, 349-52, 409, 415-16, 418.) For the most part, Mullins rated his pain, on medications, as a two or three on a 10-point scale, with 10 being the worst pain. (R. at 348, 354, 411-12, 414, 416-18.) Mullins also began complaining of pain in his left shoulder. Dr. McKain advised Mullins in December 2009, that he would not expect the results obtained from an MRI of the left shoulder, which showed tendinopathy, a superior labral tear, a bone contusion and degenerative changes in the AC and glenohumeral joints, to produce very serious pain, and he expected these conditions to respond well to conservative treatment. (R. at 767.) January 2011 x-rays of the left shoulder showed only some early degenerative changes of the humeral joint and Type III acromion, ("AC").[7] (R. at 775.) Additionally, by December 2009, Mullins's right shoulder range of motion had "improved

[7] The shape of the AC plays an important role in impingement syndromes. Type III AC is a hooked shape and most likely to contribute to impingement and irritation. *See* www.physio-pedia.com/Subacromial_Impingement (last visited May 12, 2014).

considerably." (R. at 392, 768.) Likewise, on January 22, 2010, Dr. McKain reported that Mullins's right shoulder was "surprisingly improved from the past to a marked degree." (R. at 654.) By May 25, 2010, Mullins advised Dr. McKain his right shoulder was some better. (R. at 652.) At that time, there was some improved strength with less pain on resistance. (R. at 652.) A January 6, 2011, examination of the left shoulder by Dr. Eric Parks, M.D., revealed full range of motion with pain and crepitus with motion. (R. at 774.) However, Mullins had good strength with resistance. (R. at 774.) Later that month and in February 2011, Dr. Timothy Jenkins, M.D., an orthopedist, treated Mullins conservatively with medication, epidural steroid injections, therapy and exercises. (R. at 771-72.)

Concerning Mullins's back pain, a December 2009 MRI of the lumbar spine showed a disc bulge at the L4-L5 level of the spine and a possible central annular tear at the L5-S1 level. (R. at 458.) An MRI of the thoracic spine showed only mild spondylosis at the T5-T6 through T7-T8 levels of the spine. (R. at 460.) On February 17, 2010, Mullins denied any lower extremity symptoms and stated that heat seemed to alleviate his back pain. (R. at 466.) Physical examination showed only mild tenderness over the lumbar spine and left paraspinal region, and Mullins was only "somewhat tender" over the upper thoracic spine. (R. at 466.) Straight leg raise testing was negative bilaterally, lower extremity strength was full, and flexion was good and equal bilaterally. (R. at 466.) Neurovascular sensation was intact, and gait was normal. (R. at 466.) Dr. Morgan P. Lorio, M.D., diagnosed lumbago and degeneration of lumbar or lumbosacral intervertebral discs. (R. at 467.) Lumbar spine x-rays taken in February 2010 were essentially normal. (R. at 650.) In July 2010, Mullins was able to move all extremities without any difficulty. (R. at 705.) A February 2011 MRI of the cervical spine showed only a minimal disc bulge. (R. at 771.) An April 2011 MRI of the lumbar spine showed

degenerative disc disease at the L4-L5 and L5-S1 levels, as well as mild disc protrusions at these levels without nerve root compromise. (R. at 795.) Later that month, a whole body nuclear bone scan showed no significant abnormal activity in the lumbar spine. (R. at 793-94.) A physical examination performed by Dr. Fred W. Terry, D.O., a physiatrist, on April 21, 2011, showed limited flexion and extension of the lumbar spine, but SI joints were nontender to palpation, as were lumbar spinous processes. (R. at 790.) Lumbar paraspinal musculature was only mildly tender to palpation bilaterally, and straight leg raise testing was equivocal bilaterally. (R. at 790.) Mullins had normal strength in both lower extremities, and muscle stretch reflexes were 2+/4 at the knees and 1+/4 at the ankles bilaterally. (R. at 790.) There was no evidence of clonus, and sensation was intact to light touch throughout both lower extremities. (R. at 790.) No evidence of significant atrophy, cyanosis or edema was noted. (R. at 790.) None of these medical sources placed any restrictions on Mullins's activities in their treatment notes. In fact, Dr. Roatsey encouraged Mullins to increase his activities. (R. at 806.)

Lastly, I find that Dr. Roatsey's opinions that Mullins is disabled are not supported by those of the state agency physicians, one of whom found that Mullins could perform a limited range of light work, (R. at 70), and the other who found that Mullins could perform sedentary work. (R. at 86.) More specifically, Dr. Robert McGuffin, M.D., a state agency physician, completed a Physical Residual Functional Capacity Assessment on August 13, 2009, finding that Mullins could occasionally lift and/or carry items weighing up to 20 pounds and frequently lift and/or carry items weighing up to 10 pounds. (R. at 66-71.) He found that Mullins could stand and/or walk for a total of six hours in an eight-hour workday and that he could sit for a total of six hours in an eight-hour workday. (R. at 67.) Dr.

McGuffin found that Mullins was limited in his ability to push and/or pull with his right upper extremity. (R. at 67.) He also found that Mullins could occasionally climb ramps and stairs, balance, stoop, kneel and crouch, but could never climb ladders, ropes and scaffolds or crawl. (R. at 67.) He further found that Mullins was limited in his ability to reach with the right extremity in front, laterally and overhead. (R. at 67.) Dr. McGuffin found that Mullins also should avoid concentrated exposure to hazards, such as machinery and heights. (R. at 68.) Dr. McGuffin attributed these limitations to Mullins's back pain and shoulder problems. (R. at 67-68.)

On February 3, 2010, Dr. Joseph Duckwall, M.D., another state agency physician, also completed a Physical Residual Functional Capacity Assessment, finding that Mullins could perform sedentary work. (R. at 82-87.) He found that Mullins could occasionally lift and/or carry items weighing up to 10 pounds and frequently lift and/or carry items weighing less than 10 pounds. (R. at 82.) Dr. Duckwall also found that Mullins could stand and/or walk a total of six hours in an eight-hour workday and that he could sit a total of six hours in an eight-hour workday. (R. at 82.) He further found that Mullins could occasionally push and/or pull with both upper extremities. (R. at 82.) Dr. Duckwall found that Mullins could occasionally climb ramps and stairs, balance, stoop and kneel, but never climb ladders, ropes or scaffolds, crouch or crawl. (R. at 82-83.) He found that Mullins could occasionally reach in front and/or laterally, as well as overhead, with both upper extremities. (R. at 83.) Dr. Duckwall found that Mullins should avoid even moderate exposure to hazards, such as machinery and heights. (R. at 83.) Dr. Duckwall explained that these limitations were a result of Mullins's shoulder problems and back pain. (R. at 82-84.)

Given the diagnostic evidence, physical examination findings, conservative treatment methods and positive results, I find that the record evidence as a whole supports the decision to accord little weight to Dr. Roatsey's assessments and, for the same reasons, it supports the ALJ's physical residual functional capacity finding. Therefore, I find that the ALJ's decision not to afford controlling weight to the opinions of Dr. Roatsey is supported by substantial evidence in the record. For the reasons that follow, I also find unpersuasive Mullins's argument that the ALJ failed to give full consideration to Farley's findings regarding his mental impairments and their resulting effects on his work ability.

The ALJ stated that he was according little weight to the assessments and conclusions of Patrick Farley, Ed.D., LPC, NCC, a licensed professional counselor, who is an unacceptable medical source, because they are inconsistent with his own clinical findings, as well as fail to correlate functionally with the other clinical findings in the record. (R. at 28.) Under the Social Security Regulations, only an "acceptable medical source" can establish whether a claimant has a medically determinable impairment. *See* 20 C.F.R. § 404.1513(a) (2013). Acceptable medical sources are licensed physicians, licensed or certified psychologists, licensed optometrists, licensed podiatrists and qualified speech-language pathologists. *See* 20 C.F.R. § 404.1513(a)(1)-(5) (2013). However, the Regulations also allow for the consideration of evidence from "other sources" in determining the severity of a claimant's impairment(s) and how it affects a claimant's ability to work. *See* 20 C.F.R. § 404.1513(d) (2013). "Other sources" include, but are not limited to, nurse practitioners, physicians' assistants, school teachers and therapists. *See* 20 C.F.R. § 404.1513(d)(1)-(4) (2013).

Here, despite not being an "acceptable medical source" under the Regulations for purposes of diagnosing an impairment, Farley, a licensed professional counselor, is considered an "other source" under 20 C.F.R. § 404.1513(d) who can opine on the severity of Mullins's impairments and their effect on his ability to function. The opinions of such an "other source" are to be considered using the same factors set forth at 20 C.F.R. § 404.1527(c) for the evaluation of medical opinions from "acceptable medical sources." Such factors include the length and frequency of treatment, consistency of the opinion with the other evidence, degree of relevant supporting evidence, how well explained the opinion is, whether the source has an area of expertise related to the claimant's impairment(s) and any other factors tending to support or refute the opinion.

Farley completed two mental assessments, one in August 2010, and another in July 2011. (R. at 754-56, 821-23.) On August 16, 2010, Farley opined that Mullins had a seriously limited ability to follow work rules, to relate to co-workers, to interact with supervisors, to function independently, to understand, remember and carry out simple job instructions, to maintain personal appearance, to behave in an emotionally stable manner and to relate predictably in social situations. (R. at 754-55.) Farley also found that Mullins had no useful ability to deal with the public, to use judgment, to deal with work stresses, to maintain attention and concentration, to understand, remember and carry out complex, as well as detailed, job instructions and to demonstrate reliability. (R. at 754-55.) Farley opined that Mullins's impairment(s) or treatment would cause him to be absent from work more than two days monthly. (R. at 756.) Farley completed another mental assessment on July 6, 2011, finding that Mullins had a limited, but satisfactory, ability to maintain personal appearance. (R. at 821-23.) He found that Mullins had a seriously limited ability to follow work rules, to relate to co-workers, to deal with

the public, to interact with supervisors, to function independently, to maintain attention and concentration, to understand, remember and carry out detailed, as well as simple, job instructions, to behave in an emotionally stable manner and to relate predictably in social situations. (R. at 821-22.) Farley also found that Mullins had no useful ability to use judgment, to deal with work stresses, to understand, remember and carry out complex job instructions and to demonstrate reliability. (R. at 821-22.) Farley anticipated that Mullins would be absent from work more than two days monthly due to his impairment(s) or treatment therefor. (R. at 823.) In both assessments, Farley explained that his findings were based on Mullins's symptoms of chronic pain, panic and depression. (R. at 755-56, 822-23.) He found that all of these things significantly and severely impaired Mullins's activities of daily living and cognitive and functional capacities. (R. at 755, 822.) He further found that the consequences of Mullins's extensive physical damage, with surgery, along with his chronic pain and depression, resulted in a poor prognosis for a return to work. (R. at 755, 822.)

However, Farley's treatment notes of Mullins do not support such severe limitations as those contained in these mental assessments. First, Farley's treatment notes do not actually specify any work-related mental limitations. Also, on March 16, 2010, Farley found that Mullins's thought content was rational and coherent, affect was full, and he was fully oriented. (R. at 689.) He assigned his then-current Global Assessment of Functioning, ("GAF"),[8] score at 55,[9] indicating

[8] The 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).

[9] A GAF score of 51 to 60 indicates "[m]oderate symptoms … OR moderate difficulty in social, occupational, or school functioning. …" DSM-IV at 32.

moderate symptoms. (R. at 689.) Farley opined that Mullins was unable to maintain gainful employment at that time. (R. at 690.) Nonetheless, from March 2010 through July 2010, Mullins was consistently cooperative and oriented, and no suicidal ideations were reported. (R. at 683, 685, 687-88.) By April 2010, Mullins reported that his panic was a little better. (R. at 686.) In both March and April 2010, Farley again placed Mullins's then-current GAF score at 55, indicating moderate symptoms. (R. at 686-87.) By May 25, 2010, Mullins reported increased episodes of nervousness and worry, panic anxiety episodes and much frustration. (R. at 685.) He was forgetful and had poor concentration. (R. at 685.) Nonetheless, Mullins reported that his depressed mood was slightly improving, and his then-current GAF score remained at 55. (R. at 685.) By June 23, 2010, Farley reported that Mullins's condition had deteriorated slightly, and he placed his then-current GAF score at 50,[10] indicating serious symptoms. (R. at 684.) The following month, Farley noted that Mullins's condition was deteriorating, and he placed his then-current GAF score at 30.[11] (R. at 683.) However, I note that this was just days after Mullins experienced a heart attack and was discharged from the hospital. Farley continued to opine that Mullins was unable to work. (R. at 683.) When Mullins saw Farley on September 20, 2010, he also was oriented, but withdrawn and restless with increased irritability. (R. at 819.) Farley opined that Mullins's GAF score had increased back to 50, but he found that he was not able to work. (R. at 819.)

[10] A GAF score of 41 to 50 indicates "[s]erious symptoms … OR any serious impairment in social, occupational, or school functioning. …" DSM-IV at 32.

[11] A GAF score of 21 to 30 indicates that an individual's "[b]ehavior is considerably influenced by delusions or hallucinations OR serious impairment in communication or judgment … OR inability to function in almost all areas. …" DSM-IV at 32.

The court notes that Farley did not perform any psychological testing on Mullins, and it appears from the treatment notes that his findings were primarily based on Mullins's subjective complaints. Additionally, the other evidence of record does not support Farley's opinions, including that from the state agency psychologists. For instance, on August 12, 2009, Howard S. Leizer, Ph.D., a state agency psychologist, completed a Psychiatric Review Technique form, ("PRTF"), finding that Mullins was only mildly restricted in his activities of daily living, experienced only mild difficulties in maintaining social functioning, experienced only mild difficulties in maintaining concentration, persistence or pace and had experienced no repeated episodes of decompensation, each of extended duration. (R. at 61-66.) Leizer opined that Mullins's statements regarding the intensity, persistence and functionally limiting effects of the symptoms were not substantiated by the medical evidence. (R. at 65-66.) He concluded that Mullins did not suffer from a severe mental impairment. (R. at 65.) Leizer deemed Mullins's statements regarding his symptoms partially credible. (R. at 66.) Likewise, on February 1, 2010, Eugenie Hamilton, Ph.D., another state agency psychologist, also completed a PRTF, making the exact same findings as Leizer had in 2009. (R. at 73-80.)

Furthermore, other evidence in the record also does not support Farley's opinions. For instance, in a Function Report dated July 14, 2009, Mullins reported that he could go out alone and that he could drive. (R. at 202.) He stated that he was able to shop in stores. (R. at 202.) Mullins reported that he enjoyed spending time with his family, and he spent time with others on a daily basis. (R. at 201.) He reported going to church when able and attending medical appointments. (R. at 201.) He reported having no problems getting along with others. (R. at 200.) While Mullins reported that his ability to complete tasks was affected by his

conditions, he specifically stated that his attention was not affected. (R. at 200.) He further reported that he could follow both written and spoken instructions well. (R. at 200.) Mullins reported getting along well with authority figures, noting that he had never been fired or laid off from a job because of problems getting along with other people. (R. at 199.) He reported that he did not handle stress very well due to anxiety and an inability to relax, and he stated that he did not handle changes in routine well. (R. at 199.) Additionally, in a Disability Report – Appeal, dated September 15, 2009, while Mullins reported that there had been changes in his conditions since the previous Disability Report, they were all physical in nature. (R. at 220.) He listed no new or worsened mental conditions. (R. at 220.) In a Function Report dated November 1, 2009, Mullins reported difficulty going to sleep due, in part, to anxiety and depression. (R. at 233.) However, he again reported that he could go out alone and could drive, and he stated that he shopped for groceries approximately every two weeks. (R. at 235.) Mullins reported spending time with others on a daily basis, including having family dinners and interacting with his children. (R. at 236.) He stated that he was able to go to medical appointments and other places alone and as needed. (R. at 236.) Mullins reported no problems getting along with others, but he reported that his anxiety and depression interfered with his interaction with family and friends. (R. at 237.) He reported that his impairments affected his abilities to complete tasks and to concentrate, noting that his ability to pay attention depended on the "topic or circumstance." (R. at 237.) Mullins reported that he could follow both written and spoken instructions "fair," and he deemed his ability to get along with authority figures as "fair," but noted he had never been fired or laid off from a job because of problems getting along with others. (R. at 237-38.) He reported that he did not handle stress well and did not handle changes in routine well. (R. at 238.) In yet another Disability Report – Appeal, Mullins noted that his anxiety caused

problems, and he was continuing to take Xanax for anxiety and depression. (R. at 244, 246.)

Additionally, treatment notes from Dr. Roatsey, dated February 22, 2010, through July 28, 2010, indicate that Mullins's psychological examinations were consistently within normal limits. (R. at 692-701.) On July 18, 2010, Mullins was anxious. (R. at 711.) On July 30, 2010, he denied depression, although he appeared somewhat depressed. (R. at 704-05.) Nonetheless, he was alert, oriented, had good insight and judgment and good short- and long-term memory. (R. at 705.) On August 13, 2010, Mullins had a flat affect and appeared very tired. (R. at 809.) On November 5, 2010, Mullins advised Dr. Roatsey he felt only a little anxious. (R. at 807.) On March 21, 2011, and again on June 17, 2011, Dr. Roatsey noted that Mullins appeared psychologically stable and not very anxious. (R. at 804, 812.) In September 2010, Mullins was alert and oriented. (R. at 808.) In November 2010, Mullins reported having been hospitalized for mental status changes, which, for no apparent reason, simply resolved. (R. at 807.) However, there are no medical records to corroborate this allegation. Lastly, the court notes that, despite Mullins's allegations of a disabling mental impairment, he had not sought any psychiatric treatment prior to beginning therapy with Farley. (R. at 689.)

It is for all of these above-stated reasons that I find that the ALJ's decision to accord little weight to Farley's assessments and conclusions is supported by substantial evidence. I further find, for the same reasons, that the ALJ's mental residual functional capacity finding is supported by substantial evidence.

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 ALJ's weighing of the medical evidence;

2. Substantial evidence exists in the record to support the ALJ's physical residual functional capacity finding;

3. Substantial evidence exists in the record to support the ALJ's mental residual functional capacity finding; and

4. Substantial evidence exists in the record to support the ALJ's finding that Mullins was not disabled under the Act and was not entitled to DIB benefits.

RECOMMENDED DISPOSITION

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

Notice to Parties

Notice is hereby given to the parties of the provisions of 28 U.S.C.A. § 636(b)(1)(C) (West 2006 & Supp. 2013):

> Within fourteen 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 14 days could waive appellate review. At the conclusion of the 14-day period, the Clerk is directed to transmit the record in this matter to the Honorable James P. Jones, 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: May 13, 2014.

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