

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

LARRY W. BROOKS,)	
Plaintiff)	
)	
v.)	Civil Action No. 6:10cv00030
)	
MICHAEL J. ASTRUE,)	<u>REPORT AND RECOMMENDATION</u>
Commissioner of Social Security,)	
Defendant)	BY: PAMELA MEADE SARGENT
)	United States Magistrate Judge

I. Background and Standard of Review

Plaintiff, Larry W. Brooks, 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 2003 & Supp. 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 Brooks was originally awarded DIB benefits in 1989 due to chronic back strain, alcoholism and post-traumatic stress disorder. (Record, (“R.”), at 18, 40.) His benefits were terminated effective June 30, 1995. (R. at 18, 40-51.) The termination was appealed to this court, and the court upheld the termination effective January 1, 1997. (R. at 18, 52.) Brooks protectively filed this application for DIB¹ on February 26, 2008, alleging disability as of January 1, 1997, due to post-traumatic stress disorder, (“PTSD”), and back problems. (R. at 115-17, 128, 134, 155-57.) The claim was denied initially and on reconsideration. (R. at 66-69, 70, 71-72.) Brooks then requested a hearing before an administrative law judge, (“ALJ”). (R. at 76-77.) The hearing was held on July 24, 2009, at which Brooks was represented by counsel. (R. at 14-36.)

By decision dated August 19, 2009, the ALJ denied Brooks's claim. (R. at 8-13.) The ALJ found that Brooks met the nondisability insured status requirements

¹ Brooks also filed a claim for Supplemental Security Income, (“SSI”). (R. at 112-14.) While it is not clear from the record, it appears that claim may have been denied based on his monthly veteran's benefits. That denial, apparently, was not appealed.

of the Act for DIB purposes through December 31, 2001.² (R. at 10.) The ALJ also found that Brooks had not engaged in substantial gainful activity from January 16, 1997,³ the alleged onset date, to his date last insured. (R. at 10.) The ALJ determined that, through the date last insured, Brooks did not suffer from a severe impairment, in that he did not suffer from an impairment that would significantly limit his ability to perform basic work-related activities for 12 continuous months. (R. at 11-13.) Therefore, the ALJ found that Brooks was not under a disability as defined under the Act and was not eligible for benefits. (R. at 13.) *See* 20 C.F.R. § 404.1520(c) (2011).

After the ALJ issued his decision, Brooks pursued his administrative appeals, but the Appeals Council denied his request for review. (R. at 1-4.) Brooks 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 (2011). The case is before this court on Brooks's motion for summary judgment filed February 21, 2011, and the Commissioner's motion for summary judgment filed March 22, 2011.

II. Facts

Brooks was born in 1947, (R. at 115), which, at the time of last insured

² Because Brooks last met the insured status requirements of the Act for DIB purposes on December 31, 2001, he must establish that he became disabled on or before this date last insured.

³ Although Brooks's alleged onset is listed on his DIB application as January 1, 1997, at the hearing, Brooks's attorney noted an alleged onset date of January 16, 1997, as this is the day following the date of the last ALJ's decision. (R. at 20-21.)

status, classified him as a “person closely approaching advanced age” under 20 C.F.R. § 404.1563(d). Brooks completed the eighth grade in school. (R. at 22.) He testified that he had not worked since 1987 because of problems with his back and with alcohol. (R. at 22-23.)

Brooks is a Vietnam veteran who has been diagnosed as suffering from PTSD. (R. at 23, 25-26.) Brooks stated that he had suffered from suicidal thoughts and nightmares about his duty in Vietnam since his return in 1973. (R. at 23.) Brooks admits, however, that his symptoms have grown worse over the years. (R. at 26.) Brooks also admits that he did not stop drinking until sometime in 2001. (R. at 27.)

While this record in this case is voluminous, there are only four medical reports contained in the record that relate to Brooks’s condition prior to his date last insured, December 31, 2001. On March 17, 2000, Brooks saw Dr. Surindra Singh, M.D., at the Veterans Administration Medical Center in Salem, VA, (“VA”). (R. at 663-64.) Brooks complained of chronic low back pain since a work-related back injury 13 years earlier. (R. at 663.) Brooks said the pain radiated down his left leg. (R. at 663.) Dr. Singh noted “mild distress from back pain” with “[n]o other acute problem.” (R. at 663.) Dr. Singh reported that an examination showed tenderness at the L2-3 region with no deformity. (R. at 663.) Brooks’s neurological exam showed no focal deficit, equal reflexes and muscle power and a normal gross sensory exam. (R. at 663.) Dr. Singh prescribed analgesics for Brooks’s back pain. (R. at 663.) Brooks did not complain of any

psychological problems. (R. at 663-64.) Brooks did not complain of any cardiac or pulmonary symptoms. (R. at 663-64.)

Brooks had x-rays of his lumbar spine taken at the VA on March 17, 2000. (R. at 476.) According to the radiology report, these x-rays showed mild disc space narrowing at the L4-5 and the L5-S1 levels with mild osteoarthritic changes. (R. at 476.) According to the radiologist, Dr. Dong Kwak, M.D., Brooks had degenerative disc disease at the L4-5 and L5-S1 levels and mild degenerative joint disease changes in the lumbar spine. (R. at 476.)

The record also contains a report of an echocardiogram consult at the VA on October 5, 2000. (R. at 442.) The report showed normal heart size and function. (R. at 442.)

Brooks did not return to the VA until July 24, 2001, when he saw Ruth Elaine Sweat, a nurse practitioner. (R. at 441-42.) Sweat noted that Brooks returned for a scheduled follow-up appointment for depression and low back pain. (R. at 441.) Brooks primarily complained of gastrointestinal problems of one week's duration. (R. at 441.) Sweat noted that Brooks's past medical history included chronic low back pain, chronic obstructive pulmonary disease, ("COPD"), and depression, including a 30-day inpatient psychiatric hospitalization in 1993 for major depression with suicidal ideation. (R. at 441.) Sweat did note, however, that Brooks's depression was stable on sertraline. (R. at 442.)

Brooks did not return to the VA until January 23, 2002, when he complained of being without his medications for the previous month. (R. at 437.) Brooks stated that his back was “still intermittently painful.” (R. at 437.) Brooks stated that he had returned to drinking six beers a day during the prior week. (R. at 437.)

III. Analysis

The Commissioner uses a five-step process in evaluating DIB claims. *See* 20 C.F.R. § 404.1520 (2011); *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. § 404.1250(a) (2011).

The ALJ found that Brooks did not suffer from a severe impairment prior to his last insured date on December 31, 2001. Brooks argues that substantial evidence does not support this decision. Based on my review of the record, I disagree. This medical record contains no medical evidence that Brooks’s complaints/impairments caused any restrictions on Brooks’s work-related abilities prior to his last insured date. In fact, the only medical statement with regard to Brooks’s work-related abilities comes from a licensed clinical social worker in 2009. (R. at 665.) That practitioner only began treating Brooks in 2006 and stated that his opinion was based on Brooks’s deteriorating mental condition. (R. at 665.)

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. 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).

Additionally, Brooks argues that, while he was not formally diagnosed with PTSD until 2005, the medical records support a finding that he suffered from PTSD prior to his last insured date. However, it is well-settled that diagnoses alone are insufficient to show disability. *See Gross v. Heckler*, 785 F.2d 1163, 1166 (4th Cir. 1986). Instead, a claimant must show functional limitations associated with such diagnoses resulting in an inability to perform substantial gainful activity. *See Gross*, 785 F.2d at 1166; *see also Hays*, 907 F.2d at 1458; *Price v. Barnhart*, 2005 WL 3477547, at *6 (W.D. Va. Dec. 13, 2005). Here, no treating or nontreating source placed *any* functional limitations on Brooks during the relevant time period as a result of his mental impairments. Furthermore, Brooks's mental impairment was treated conservatively and effectively during the relevant time period. It is well-settled that "[i]f a symptom can be reasonably controlled by medication or treatment, it is not disabling." *Gross*, 785 F.2d at 1166.

It is for all of these reasons that I find that substantial evidence supports the

ALJ's finding that Brooks did not suffer from a severe impairment prior to his date last insured.

PROPOSED FINDINGS OF FACT

As supplemented by the above summary and analysis, the undersigned now submits the following formal findings, conclusions and recommendations:

1. Substantial evidence exists to support the Commissioner's finding that Brooks did not suffer from a severe impairment; and
2. Substantial evidence exists to support the Commissioner's finding that Brooks was not disabled under the Act and was not entitled to DIB benefits at any time on or prior to his date last insured.

RECOMMENDED DISPOSITION

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

Notice to Parties

Notice is hereby given to the parties of the provisions of 28 U.S.C.A. § 636(b)(1)(C) (West 2006 & Supp. 2011):

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 Michael F. Urbanski, 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: September 6, 2011.

s/ *Pamela Meade Sargent*
UNITED STATES MAGISTRATE JUDGE