

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

DENNIS W. GIBSON,)	
Plaintiff)	
)	
v.)	Civil Action No. 2:13cv00011
)	
CAROLYN W. COLVIN,)	<u>REPORT AND RECOMMENDATION</u>
Acting Commissioner of)	
Social Security,)	
Defendant)	
)	BY: PAMELA MEADE SARGENT
)	United States Magistrate Judge

I. Background and Standard of Review

Plaintiff, Dennis W. Gibson, 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 Gibson protectively filed an application¹ for DIB on July 7, 2009, alleging disability as of January 3, 2009, due to a broken left femur bone, left knee problems, pain and lack of mobility. (Record, (“R.”), at 153-54, 183, 187, 230.) The claim was denied initially and on reconsideration. (R. at 96-98, 101-03, 104.) Gibson then requested a hearing before an administrative law judge, (“ALJ”), (R. at 109.) The hearing was held on October 4, 2011, at which, Gibson was represented by counsel. (R. at 26-76.)

By decision dated October 24, 2011, the ALJ denied Gibson’s claim. (R. at 14-24.) The ALJ found that Gibson met the nondisability insured status requirements of the Act for DIB purposes through December 31, 2013.² (R. at 16.) The ALJ also found that Gibson had not engaged in substantial gainful activity since January 3, 2009, the alleged onset date. (R. at 16.) The ALJ found that the medical evidence established that Gibson suffered from severe impairments,

¹ The record also contains an application for supplemental security income, (“SSI”). (R. at 157-59.)

² Therefore, Gibson must show that he became disabled between January 3, 2009, the alleged onset date, and December 31, 2013, the date last insured, in order to be entitled to DIB benefits.

namely residual pain and weakness, status-post left tibial plateau, healed; post traumatic osteoarthritis of the left knee; bilateral hip numbness and weakness; back numbness and weakness; and obesity, but he found that Gibson 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 16-17.) The ALJ also found that Gibson had the residual functional capacity to perform light work³ that allowed an at-will sit/stand option, occasional pushing and pulling with the left lower extremity, occasional kneeling and that did not require crawling and climbing of ladders, ropes or scaffolds. (R. at 17.) The ALJ found that Gibson was unable to perform his past relevant work. (R. at 22.) Based on Gibson's age, education, work history and residual functional capacity and the testimony of a vocational expert, the ALJ found that jobs existed in significant numbers in the national economy that Gibson could perform, including the job as an usher/lobby attendant, a coat room attendant and a parking lot attendant. (R. at 23.) Thus, the ALJ found that Gibson was not under a disability as defined under the Act and was not eligible for benefits. (R. at 24.) *See* 20 C.F.R. § 404.1520(g) (2013).

After the ALJ issued his decision, Gibson pursued his administrative appeals, (R. at 10), but the Appeals Council denied his request for review. (R. at 1-4.) Gibson 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 case is before this court on Gibson's motion for summary judgment

³ Light 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, he also can perform sedentary work. *See* 20 C.F.R. § 404.1567(b) (2013).

filed October 30, 2013, and the Commissioner's motion for summary judgment filed December 2, 2013.

II. Facts

Gibson was born in 1964, (R. at 34, 153), which classifies him as a “younger person” under 20 C.F.R. § 404.1563(c). Gibson has a ninth-grade education and past relevant work experience as a shuttle car operator. (R. at 36, 68, 192, 235.)

Vocational expert, AnnMarie E. Cash, was present and testified at Gibson's hearing. (R. at 67-73.) Cash classified Gibson's work as a shuttle car operator as medium⁴ and semi-skilled. (R. at 68.) Cash was asked to consider a hypothetical individual of Gibson's age, education and work history, who would be limited to occasionally lifting and carrying items weighing 20 pounds, 10 pounds frequently, stand and/or walk up to four hours a day with normal breaks, sit for up to six hours in a workday, occasionally use his left leg to push and pull, occasionally kneel and crouch and never crawl or climb ladders or scaffolds. (R. at 68.) Cash stated that such an individual would not be able to perform Gibson's past work. (R. at 69.) She stated that other jobs existed in significant numbers that such an individual could perform, including jobs as an usher, a lobby attendant, a coat room attendant and a parking lot attendant. (R. at 69.) Cash was asked to consider a hypothetical individual who frequently could lift and carry items weighing up to five pounds, who could stand for up to four hours with a break every hour, who could sit for up

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 an individual can do medium work, he also can do sedentary and light work. *See* 20 C.F.R. § 404.1567(c) (2013).

to eight hours and who would have no exposure to heights, chemicals or fumes. (R. at 70.) Cash stated that the individual could perform the previously mentioned jobs. (R. at 70.) Cash was asked to consider the same hypothetical individuals, but who had a satisfactory ability to maintain attention and concentration, to maintain emotional stability and to demonstrate reliability. (R. at 70.) Again, she stated that the individual could perform the jobs previously identified. (R. at 70.) Cash stated that, if the individual would miss one day of work per week, that there would be no jobs available that he could perform. (R. at 70.) She stated that there would be no jobs available if an individual would miss more than two days of work a month. (R. at 71.) Cash also stated that there would be no jobs available that an individual could perform who was limited as indicated by the assessments of Dr. Means and Dr. Shehzad. (R. at 71-73, 403-05, 434-36.)

In rendering his decision, the ALJ reviewed medical records from Wise County Public Schools; Dr. Robert McGuffin, M.D., a state agency physician; Dr. Michael Hartman, M.D., a state agency physician; Norton Community Hospital; Park Avenue Physical Therapy; Dr. Robert E. Means, M.D.; Dr. Kevin Blackwell, D.O.; Dr. Nazia I. Shehzad, M.D.; Dr. Steven J. Hospodar, M.D.; and Sabrina Mitchell, F.N.P., a family nurse practitioner.

On January 4, 2009, Gibson presented to the emergency room at Norton Community Hospital following a left knee injury. (R. at 247-57, 269-79, 325-35.) X-rays revealed a fracture of Gibson's left fibula. (R. at 247.) His leg was placed in an immobilizer. (R. at 254.) X-ray studies on January 22 and January 29, 2009, revealed a fracture of Gibson's lateral tibial plateau. (R. at 266-67, 307-09, 341-

42.) On April 1, 2010, x-rays of Gibson's left knee revealed irregularity at the lateral tibial plateau, suspected to be a fabella,⁵ but was otherwise unchanged from January 29, 2009. (R. at 336-40, 431.) He was diagnosed with left knee pain. (R. at 263.) On June 16, 2011, Gibson received emergency room treatment for a laceration to his right knee, which required stitches. (R. at 418-27.) The sutures were removed on July 2, 2011. (R. at 406-11.)

The record shows that Gibson received physical therapy treatments to his left knee at Park Avenue Physical Therapy from February 2009 through May 2009. (R. at 280-91, 302-06.) It was noted on May 4, 2009, that Gibson had made significant improvements in his gait pattern. (R. at 287.) Gibson had decreased heel contact and decreased knee extension on the left during gait. (R. at 287.) Continued physical therapy was recommended. (R. at 287.)

On January 8, 2009, Dr. Robert E. Means, M.D., saw Gibson for left knee pain. (R. at 301, 369-70.) Dr. Means reported that Gibson was in no acute distress. (R. at 301, 369.) Dr. Means diagnosed left lateral tibial plateau. (R. at 301, 369-70.) On January 22, 2009, Dr. Means reported that Gibson was in no acute distress, and he had no swelling of the left foot. (R. at 300.) Gibson had good motor function of the toes. (R. at 300.) On January 29, 2009, Gibson's cast was intact, and he had no swelling. (R. at 299, 364, 366.) On February 12, 2009, Gibson reported stabbing pain in his left knee cap. (R. at 298, 363, 365.) Dr. Means reported that Gibson was in no acute distress. (R. at 298, 363.) Gibson's cast was

⁵ A fabella is a sesamoid fibrocartilage occasionally found on the gastrocnemius muscle and visible roentgenographically as a small bony shadow behind the knee joint. *See* DORLAND'S ILLUSTRATED MEDICAL DICTIONARY, ("Dorland's"), 602 (27th ed. 1988).

removed, and he showed no pain on palpation of the lateral joint line of the left knee. (R. at 298, 363.) On March 26, 2009, Dr. Means reported that Gibson was in no acute distress. (R. at 297, 360, 389.) He showed tenderness on palpation of the lateral aspect of the left knee. (R. at 297, 360, 389.) There was no instability of Gibson's left knee on stress testing. (R. at 297, 360, 389.) On May 5, 2009, Gibson complained of leg pain in the morning hours. (R. at 296, 358-89, 387-88.) Gibson was in no acute distress, and his gait was slow, but within normal limits. (R. at 296, 358, 387.) He had no pain on palpation of the left knee. (R. at 296, 358-59, 387-88.) On May 26, 2009, Gibson complained of a moderate achy sensation in the left knee. (R. at 295, 356, 385.) He denied numbness, paresthesia or weakness. (R. at 295, 356, 385.) Dr. Means reported that Gibson was in no acute distress. (R. at 295, 356, 385.) Gibson's gait and arm swing were within normal limits. (R. at 295, 356, 385.) Gibson showed no pain on palpation of the left lateral joint line of the knee. (R. at 295, 356-57, 385-86.) Gibson had functional range of motion with no swelling or effusion. (R. at 295, 356-57, 385-86.) On July 7, 2009, Dr. Means reported that Gibson was in moderate distress, secondary to left knee pain. (R. at 294, 353, 382.) Gibson had pain on palpation of the lateral joint line of the left knee and lateral tibial plateau. (R. at 294, 353, 355, 382.) He had no swelling, ecchymosis, abrasions, wounds or drainage. (R. at 294, 353, 382.) Gibson had limited range of motion. (R. at 294, 353, 382.) On August 18, 2009, Gibson complained of pain and stiffness in his left knee. (R. at 293, 352, 354, 381, 383.) Dr. Means reported that Gibson was in no acute distress. (R. at 293, 352, 381.) Gibson had functional range of motion with no instability. (R. at 293, 352, 354, 381.) Dr. Means diagnosed residual pain and stiffness in the left knee. (R. at 293, 352, 381.) He prescribed Motrin and discharged Gibson from orthopedic care. (R.

at 293, 352, 354, 381.)

On April 1, 2010, Gibson returned to Dr. Means with complaints of left knee pain, stiffness and swelling, which started the previous week. (R. at 350-51, 379-80.) Gibson reported that he had been doing well since he was discharged from orthopedic care in August 2009. (R. at 350, 379-80.) Dr. Means diagnosed osteoarthritis of the left knee and left knee residual pain, status-post left lateral tibia plateau fracture. (R. at 350, 379-80.) On May 4, 2010, Gibson reported less pain and swelling since starting Mobic. (R. at 349, 378.) He reported that he was able to perform his activities of daily living. (R. at 349, 378.) Dr. Means reported that Gibson ambulated with a stable gait and station. (R. at 349, 378.) Dr. Means diagnosed osteoarthritis of the left knee and left knee residual pain status-post left lateral tibia plateau fracture. (R. at 349, 378.) On August 3, 2010, Gibson reported that Mobic was helping control his discomfort, but stated that it did not resolve his pain. (R. at 346-47, 374, 376.) Dr. Means reported that Gibson was ambulatory with stable gait and station. (R. at 347.) Gibson's left knee was without edema or ecchymosis. (R. at 347.) Gibson had functional range of motion. (R. at 347.) On September 2, 2010, Gibson reported that Mobic was helping control his discomfort, but stated that it did not resolve his pain. (R. at 344-45, 375.) Dr. Means reported that Gibson was ambulatory with stable gait and station. (R. at 344.) Gibson's left knee was without edema or ecchymosis. (R. at 344.) Dr. Means diagnosed left knee pain, secondary to osteoarthritic change versus internal derangement. (R. at 344.) On October 19, 2010, Dr. Means opined that Gibson could occasionally and frequently lift and carry items weighing five pounds. (R. at 403-05.) He found that Gibson could stand and/or walk up to four hours in an

eight-hour workday and that he could do so for up to one hour without interruption. (R. at 403.) He placed no restrictions on Gibson's ability to sit. (R. at 404.) Dr. Means opined that Gibson could occasionally crawl, frequently balance and never climb, stoop, kneel and crouch. (R. at 404.) He found that Gibson's ability to push and pull was impaired. (R. at 404.) He also found that Gibson would be restricted from working around heights, moving machinery, chemicals and fumes. (R. at 405.) Dr. Means completed a statement indicating that Gibson suffered from post-traumatic arthritis of the left knee and internal derangement of the left knee. (R. at 402.) He reported that Gibson was unable to return to work with or without restrictions. (R. at 402.)

On February 2, 2011, Dr. Steven J. Hospodar, M.D.,⁶ saw Gibson for chronic left knee pain. (R. at 433.) Examination showed a large effusion of the left knee. (R. at 433.) Gibson had limited active range of motion. (R. at 433.) Grinding was noted in the patellofemoral articulation. (R. at 433.) Dr. Hospodar diagnosed post-traumatic osteoarthritis of the left knee versus possible meniscal tear or internal derangement, status-post left tibial plateau fracture, healed, in nonanatomic alignment. (R. at 433.)

On October 13, 2009, Dr. Robert McGuffin, M.D., a state agency physician, opined that Gibson had the residual functional capacity to perform a limited range of medium work. (R. at 82-84.) He opined that Gibson's ability to push and/or pull was limited in his lower extremities. (R. at 82-83.) He found that Gibson could occasionally climb ramps and stairs and never climb ladders, ropes or scaffolds.

⁶Dr. Hospodar is in the same practice as Dr. Means.

(R. at 83.) Dr. McGuffin found that Gibson could occasionally balance, kneel, crouch and crawl and frequently stoop. (R. at 83.) No manipulative, visual or communicative limitations were noted. (R. at 83.) He opined that Gibson should avoid concentrated exposure to working hazards, such as machinery and heights. (R. at 83.)

On March 25, 2010, Dr. Kevin Blackwell, D.O., examined Gibson at the request of Disability Determination Services. (R. at 316-20.) Dr. Blackwell noted that Gibson was in no acute distress. (R. at 319.) Gibson had good mental status. (R. at 319.) Dr. Blackwell reported that Gibson's gait was asymmetrical. (R. at 319.) Upper and lower extremities were normal for size, shape, symmetry and strength. (R. at 319.) Grip strength was good. (R. at 319.) Fine motor movement skill activities of the hands were normal. (R. at 319.) Reflexes were within normal limits. (R. at 319.) Dr. Blackwell opined that Gibson could sit for up to six hours in an eight-hour workday and stand for up to two hours in an eight-hour workday, assuming normal positional changes. (R. at 319-20.) He opined that Gibson could operate a vehicle, bend at the waist and reach above the head a total of two-thirds of an eight-hour workday. (R. at 320.) Dr. Blackwell found that Gibson could kneel, stoop and operate foot pedals for up to one-third of an eight-hour workday. (R. at 320.) He opined that Gibson should avoid squatting, crouching, crawling, unprotected heights and repetitive ladder climbing. (R. at 320.) He found that Gibson could occasionally lift and carry items weighing up to 45 pounds and frequently lift and carry items weighing up to 25 pounds. (R. at 320.) No visual, communicative, hearing or environmental limitations were noted. (R. at 320.) Dr. Blackwell noted that Gibson had reached maximum medical improvement, and a

significant change in limitations would not be anticipated. (R. at 320.)

On April 8, 2010, Dr. Michael Hartman, M.D., a state agency physician, opined that Gibson had the residual functional capacity to perform a limited range of light work. (R. at 91-92.) He opined that Gibson's ability to push and/or pull was limited in his left lower extremities. (R. at 91.) He found that Gibson could occasionally climb ramps and stairs and never climb ladders, ropes or scaffolds. (R. at 91.) Dr. Hartman found that Gibson could occasionally balance, kneel and crouch, frequently stoop and never crawl. (R. at 91.) No manipulative, visual or communicative limitations were noted. (R. at 92.) He opined that Gibson should avoid concentrated exposure to working hazards, such as machinery and heights. (R. at 92.) Dr. Hartman found that Gibson could not perform his past work. (R. at 94.)

On September 1, 2010, Gibson saw Dr. Nazia I. Shehzad, M.D., for complaints of left knee pain. (R. at 455-56.) Examination of Gibson's left knee showed no erythema, swelling or redness. (R. at 455.) He had very limited range of motion of the left knee. (R. at 455.) Gibson was diagnosed with left knee pain and obesity. (R. at 456.) On October 27, 2010, Gibson reported that his left knee pain was controlled with Mobic. (R. at 449.) On June 8, 2011, Gibson complained of left knee pain and requested an injection. (R. at 451-52.) On August 18, 2011, Dr. Shehzad opined that Gibson could stand, walk and/or sit a total of one hour in an eight-hour workday and that he could do so for up to 30 minutes without interruption. (R. at 434-36.) Dr. Shehzad opined that Gibson could frequently climb, stoop, kneel, balance, crouch and crawl. (R. at 435.) Dr. Shehzad opined

that Gibson's abilities to reach, to push and to pull were restricted. (R. at 435.) Dr. Shehzad found that Gibson could not work around heights, moving machinery, noise and vibration. (R. at 436.)

Despite never diagnosing Gibson with any mental or emotional condition, Dr. Shehzad also completed a mental assessment indicating that Gibson had a limited, but satisfactory, ability to follow work rules, to relate to co-workers, to deal with the public, to use judgment, to interact with supervisors, to deal with work stresses and to function independently. (R. at 438-40.) Dr. Shehzad found that Gibson had an unsatisfactory ability to maintain attention and concentration, to understand, remember and carry out complex, detailed and simple instructions, to maintain personal appearance, to behave in an emotionally stable manner, to relate predictably in social situations and to demonstrate reliability. (R. at 438-39.) Dr. Shehzad did not state any medical or clinical findings to support this assessment. (R. at 438-39.) Dr. Shehzad opined that Gibson would miss about two days of work a month due to his physical impairments. (R. at 440.)

On May 9, 2011, Sabrina Mitchell, F.N.P., a family nurse practitioner, saw Gibson for complaints of left knee pain. (R. at 446-47.) Gibson requested a knee injection. (R. at 446.) Mitchell administered an injection to Gibson's left knee. (R. at 447.) On July 12, 2011, Gibson complained of left knee pain and numbness in his back, which radiated into his hip. (R. at 443-44.) Mitchell diagnosed osteoarthritis, not otherwise specified, and sciatica. (R. at 444.) On August 29, 2011, Gibson complained of left knee pain and stiffness and lower back pain. (R. at 441-42.) Gibson requested a steroid injection to his left knee. (R. at 441.) He

reported that the injections helped his pain. (R. at 441.) Mitchell administered an injection to Gibson's left knee. (R. at 442.)

III. Analysis

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).

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 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).

Gibson argues that the ALJ failed to find that he suffered from a severe mental impairment. (Plaintiff's Memorandum In Support Of His Motion For Summary Judgment, ("Plaintiff's Brief"), at 5.) Gibson also argues that the ALJ erred by failing to find that his impairment met or equaled Listing 1.02(A). (Plaintiff's Brief at 6-7.) He further argues that the ALJ erred by improperly finding that a significant number of jobs existed in the national economy that he could perform. (Plaintiff's Brief at 7-8.)

Gibson argues that the ALJ failed to find that he suffered from a severe mental impairment. (Plaintiff's Brief at 5.) The Social Security regulations define a "nonsevere" impairment as an impairment or combination of impairments that does not significantly limit a claimant's ability to do basic work activities. *See* 20 C.F.R. § 404.1521(a) (2013). Basic work activities include walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, handling, seeing, hearing, speaking, understanding, carrying out and remembering simple job instructions, use of judgment, responding appropriately to supervision, co-workers and usual work situations and dealing with changes in a routine work setting. *See* 20 C.F.R. § 404.1521(b) (2013). The Fourth Circuit held in *Evans v. Heckler*, that "[a]n impairment can be considered as 'not severe' only if it is a *slight abnormality* which has such a *minimal effect* on the individual that it would not be expected to interfere with the individual's ability to work, irrespective of age, education, or work experience." 734 F.2d 1012, 1014 (4th Cir. 1984) (quoting *Brady v. Heckler*, 724 F.2d 914, 920 (11th Cir. 1984)) (citations omitted).

The ALJ found that the evidence of record failed to support the conclusion that Gibson had a severe mental impairment. (R. at 22.) Based on my review of the

record, I agree. The ALJ discussed the assessment completed by Dr. Shehzad, wherein she indicated that Gibson had a limited, but satisfactory, ability to follow work rules, to relate to co-workers, to deal with the public, to use judgment, to interact with supervisors, to deal with work stresses and to function independently. (R. at 438-40.) Dr. Shehzad found that Gibson was seriously limited in his ability to maintain attention and concentration, to understand, remember and carry out complex, detailed and simple instructions, to maintain personal appearance, to behave in an emotionally stable manner, to relate predictably in social situations and to demonstrate reliability. (R. at 438-39.) Dr. Shehzad opined that Gibson would miss about two days of work a month due to his physical impairments. (R. at 440.) Dr. Shehzad's assessment lists no medical or clinical findings to support this assessment. Also, neither Dr. Shehzad nor any of Gibson's treating physicians ever diagnosed him with a mental or emotional impairment or documented any mental or emotional symptoms.

To the contrary, Dr. Blackwell opined that Gibson was alert, cooperative, oriented in all spheres and displayed a good mental state. (R. at 319.) Gibson reported that he was able to care for his horse, socialize with others, shop in stores, pay bills, count change and handle a savings account, and that he could handle stress and changes in routine. (R. at 199, 201-03, 221, 223-24.) In addition, Gibson never alleged that he experienced a disabling mental impairment. Agency employees observed that Gibson had no difficulty understanding or concentrating throughout the administrative process, and noted that he was alert and cooperative. (R. at 184, 207.) Based on this, I find that substantial evidence, including the objective medical evidence, the observations of agency employees and Gibson's reported activities, support the ALJ's finding that Gibson did not experience a

severe mental impairment.

Gibson next argues that the ALJ erred by failing to find that his impairments met or equaled listing 1.02(A), found at 20 C.F.R. Part 404, Subpart P, Appendix 1, § 1.02(A). Section 1.02(A) relates to major dysfunction of a joint(s) (due to any cause). This listing requires a showing that an individual is unable to ambulate effectively. *See* 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 1.02(A) (2013). Inability to ambulate effectively means an extreme limitation of the ability to walk, for example, an impairment that interferes very seriously with the individual's ability to independently initiate, sustain or complete activities. *See* 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 1.00B(2)(b)(1) (2013). Ineffective ambulation is defined generally as having insufficient lower extremity functioning to permit independent ambulation without the use of a hand-held assistive device that limits the functioning of both upper extremities. *See* 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 1.00B(2)(b)(1). To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. *See* 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 1.00B(2)(b)(2) (2013). They must have the ability to travel without companion assistance to and from a place of employment or school. *See* 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 1.00B(2)(b)(2).

There is no evidence in the record that Gibson cannot ambulate effectively. By May 2009, Gibson made significant improvement in his gait pattern and no longer used a crutch. (R. at 287.) Later that month, his gait pattern was within normal limits, he showed no pain on palpation of the left knee, no swelling or effusion, and he had functional range of motion. (R. at 295.) In September 2010,

Gibson was ambulatory and weight bearing with good station and a stable, nonantalgic gait. (R. at 344.) The record fails to demonstrate that Gibson did not have the ability to travel without companion assistance. Gibson testified that he had a driver's license and was able to drive. (R. at 35-36.) Furthermore, Gibson repeatedly reported that medication relieved his pain and that he was able to perform his activities of daily living. (R. at 344, 347, 349, 441, 449.) "If a symptom can be reasonably controlled by medication or treatment, it is not disabling." *Gross v. Heckler*, 785 F.2d 1163, 1166 (4th Cir. 1986). Thus, the undersigned finds that there is no evidence contained in the record showing that Gibson could not ambulate effectively. That being said, the undersigned finds that substantial evidence supports the ALJ's finding that Gibson's impairment did not meet or equal § 1.02(A).

Gibson further argues that the ALJ erred by finding that a significant number of jobs existed that he could perform. (Plaintiff's Brief at 7-8.) The ALJ included all of Gibson's exertional and nonexertional impairments supported by the objective medical evidence in his hypothetical question to the vocational expert. *See Walker v. Bowen*, 889 F.2d 47, 50 (4th Cir. 1989) (concluding that an ALJ's hypothetical question need only include those impairments supported by the record). The vocational expert identified light jobs with a sit/stand option that Gibson could perform. (R. at 69.) The vocational expert testified that the jobs were "outside" the Dictionary of Occupational Titles, ("DOT"), because they included a sit/stand option that she was familiar with. (R. at 69.) Social Security Ruling 00-4p provides:

When a [vocational expert] provides evidence about the requirements

of a job or occupation, the adjudicator has an affirmative responsibility to ask about any possible conflict between that [vocational expert's] evidence and information provided in the DOT. In these situations, the adjudicator will:

- Ask the [vocational expert] if the evidence he or she has provided conflicts with information provided in the DOT; and
- If the [vocational expert's] evidence appears to conflict with the DOT, the adjudicator will obtain a reasonable explanation for the apparent conflict.

S.S.R. 00-4p, WEST'S SOCIAL SECURITY REPORTING SERVICE, Rulings (West 2013 Supp.).

Here, the vocational expert explained that, based on her own knowledge, experience, education and training, the jobs identified would allow a sit/stand option. (R. at 69.) Thus, the vocational expert properly identified a significant number of jobs in the national economy that Gibson could perform.

Based on this, I find that substantial evidence exists to support the ALJ's finding with regard to Gibson's residual functional capacity. I also find that substantial evidence exists to support the ALJ's finding that a significant number of jobs existed in the economy that Gibson could perform.

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 finding that Gibson did not suffer from a severe mental impairment;
2. Substantial evidence exists in the record to support the ALJ's finding that Gibson's impairment did not meet or equal listing § 1.02(A);
3. Substantial evidence exists in the record to support the ALJ's finding that a significant number of jobs existed that Gibson could perform; and
4. Substantial evidence exists in the record to support the Commissioner's finding that Gibson was not disabled under the Act and was not entitled to DIB benefits.

RECOMMENDED DISPOSITION

The undersigned recommends that the court deny Gibson'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. 2014):

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: August 11, 2014.

s/ *Pamela Meade Sargent*
UNITED STATES MAGISTRATE JUDGE