

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

TORRENCE L. JACKSON,)	
)	
Plaintiff,)	
)	
v.)	No. 15-cv-02619-TMP
)	
CAROLYN W. COLVIN,)	
ACTING COMMISSIONER OF SOCIAL)	
SECURITY,)	
)	
Defendant.)	
)	

ORDER AFFIRMING THE ALJ'S DECISION

Before the court is plaintiff Torrence L. Jackson's appeal from a final decision of the Commissioner of Social Security ("Commissioner") denying his application for disability insurance benefits under Title II of the Social Security Act ("Act"), 42 U.S.C. §§ 401 *et seq.* The parties have consented to the jurisdiction of the United States magistrate judge pursuant to 28 U.S.C. § 636(c). For the reasons set forth below, the decision of the Commissioner is affirmed.

I. FINDINGS OF FACT

On June 11, 2012, Jackson applied for disability insurance benefits under Title II of the Act. (R. 145.) Jackson alleged disability beginning on June 7, 2012, due to hypertension, diabetes, high cholesterol, arthritis, joint muscle pain,

dizziness, lack of focus/concentration, bone spurs, panic attacks, depression, and anxiety. (R. 169.) Jackson's application was denied initially and upon reconsideration by the Social Security Administration ("SSA"). (R. 11.) At Jackson's request, a hearing was held before an Administrative Law Judge ("ALJ") on February 6, 2014. (Id.) On April 23, 2014, the ALJ issued a decision denying Jackson's request for benefits after finding that Jackson was not under a disability because he retained the residual functional capacity ("RFC") to perform past relevant work as a probation officer and case worker. (R. 11-19.) On July 24, 2015, the SSA's Appeals Council denied Jackson's request for review. Therefore, the ALJ's decision became the final decision of the Commissioner. (R. 1.) Subsequently, on September 21, 2015, Jackson filed the instant action. Jackson argues that: (1) the ALJ's decision is not supported by substantial evidence; (2) the ALJ erred in analyzing Jackson's diabetic peripheral neuropathy; and (3) the ALJ failed to apply the proper test for considering Jackson's allegations of pain. (ECF No. 14.)

II. CONCLUSIONS OF LAW

A. Standard of Review

Under 42 U.S.C. § 405(g), a claimant may obtain judicial review of any final decision made by the Commissioner after a hearing to which he or she was a party. "The court shall have power to enter, upon the pleadings and transcript of the record, a

judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing." 42 U.S.C. § 405(g). Judicial review of the Commissioner's decision is limited to whether there is substantial evidence to support the decision and whether the Commissioner used the proper legal criteria in making the decision. Id.; Winn v. Comm'r of Soc. Sec., 615 F. App'x 315, 320 (6th Cir. 2015); Cole v. Astrue, 661 F.3d 931, 937 (6th Cir. 2011); Rogers v. Comm'r of Soc. Sec., 486 F.3d 234, 241 (6th Cir. 2007). Substantial evidence is more than a scintilla of evidence but less than a preponderance, and is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Kirk v. Sec'y of Health & Human Servs., 667 F.2d 524, 535 (6th Cir. 1981) (quoting Richardson v. Perales, 402 U.S. 389, 401 (1971)).

In determining whether substantial evidence exists, the reviewing court must examine the evidence in the record as a whole and "must 'take into account whatever in the record fairly detracts from its weight.'" Abbott v. Sullivan, 905 F.2d 918, 923 (6th Cir. 1990) (quoting Garner v. Heckler, 745 F.2d 383, 388 (6th Cir. 1984)). If substantial evidence is found to support the Commissioner's decision, however, the court must affirm that decision and "may not even inquire whether the record could support a decision the other way." Barker v. Shalala, 40 F.3d 789, 794 (6th Cir. 1994) (quoting Smith v. Sec'y of Health & Human Servs.,

893 F.2d 106, 108 (6th Cir. 1989)). Similarly, the court may not try the case *de novo*, resolve conflicts in the evidence, or decide questions of credibility. Ulman v. Comm'r of Soc. Sec., 693 F.3d 709, 713 (6th Cir. 2012) (citing Bass v. McMahon, 499 F.3d 506, 509 (6th Cir. 2007)). Rather, the Commissioner, not the court, is charged with the duty to weigh the evidence, to make credibility determinations, and to resolve material conflicts in the testimony. Walters v. Comm'r of Soc. Sec., 127 F.3d 525, 528 (6th Cir. 1997); Crum v. Sullivan, 921 F.2d 642, 644 (6th Cir. 1990); Kiner v. Colvin, No. 12-2254-JDT, 2015 WL 1295675, at *1 (W.D. Tenn. Mar. 23, 2015).

B. The Five-Step Analysis

The Act defines disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1). Additionally, section 423(d)(2) of the Act states that:

An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any

individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

Under the Act, the claimant bears the ultimate burden of establishing an entitlement to benefits. Oliver v. Comm'r of Soc. Sec., 415 F. App'x 681, 682 (6th Cir. 2011). The initial burden is on the claimant to prove she has a disability as defined by the Act. Siebert v. Comm'r of Soc. Sec., 105 F. App'x 744, 746 (6th Cir. 2004) (citing Walters, 127 F.3d at 529); see also Born v. Sec'y of Health & Human Servs., 923 F.2d 1168, 1173 (6th Cir. 1990). If the claimant is able to do so, the burden then shifts to the Commissioner to demonstrate the existence of available employment compatible with the claimant's disability and background. Born, 923 F.2d at 1173; see also Griffith v. Comm'r of Soc. Sec., 582 F. App'x 555, 559 (6th Cir. 2014).

Entitlement to social security benefits is determined by a five-step sequential analysis set forth in the Social Security Regulations. See 20 C.F.R. §§ 404.1520 & 416.920. First, the claimant must not be engaged in substantial gainful activity. See 20 C.F.R. §§ 404.1520(b) & 416.920(b). Second, a finding must be made that the claimant suffers from a severe impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii) & 416.920(a)(5)(ii). In the third step, the ALJ determines whether the impairment meets or equals the severity criteria set forth in the Listing of Impairments contained in the

Social Security Regulations. See 20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526. If the impairment satisfies the criteria for a listed impairment, the claimant is considered to be disabled. On the other hand, if the claimant's impairment does not meet or equal a listed impairment, the ALJ must undertake the fourth step in the analysis and determine whether the claimant has the RFC to return to any past relevant work. See 20 C.F.R. §§ 404.1520(a)(4)(iv) & 404.1520(e). If the ALJ determines that the claimant can return to past relevant work, then a finding of not disabled must be entered. Id. But if the ALJ finds the claimant unable to perform past relevant work, then at the fifth step the ALJ must determine whether the claimant can perform other work existing in significant numbers in the national economy. See 20 C.F.R. §§ 404.1520(a)(4)(v), 404.1520(g)(1), 416.960(c)(1)-(2). Further review is not necessary if it is determined that an individual is not disabled at any point in this sequential analysis. 20 C.F.R. § 404.1520(a)(4).

C. Whether the ALJ's Decision is Supported by Substantial Evidence

First, Jackson argues that the ALJ's RFC finding is not supported by substantial evidence. Specifically, Jackson asserts that the ALJ erred by not ordering a consultative examination by a state medical examiner to assist him in making his decision. As Jackson acknowledges, it is within the ALJ's discretion to decide

whether or not to obtain the opinion of a state medical consultant. See 20 C.F.R. §§ 404.1519a, 404.1520b, 404.1529(b). However, Jackson argues that the ALJ has the duty to properly develop the record, and that "the record is devoid of any medical expert opinions upon which the ALJ could, or did, reasonably rely." As such, Jackson contends that the ALJ should have hired an additional state medical expert or should have explained why he chose not to do so.

Jackson is correct that the ALJ must develop a claimant's complete medical history before making a determination that the claimant is not disabled. 20 C.F.R. § 404.1512. However, the Sixth Circuit "has consistently affirmed that the claimant bears the burden of producing sufficient evidence to show the existence of a disability." Watters v. Comm'r of Soc. Sec. Admin., 530 F. App'x 419, 425 (6th Cir. 2013) (citing Harley v. Comm'r of Soc. Sec., 485 F. App'x 802, 803 (6th Cir. 2012)). As mentioned previously, the SSA regulations provide that "ALJs 'may ask for and consider opinions from medical experts,' but it does not impose a requirement on them to do so." Id.; see also Brown v. Comm'r of Soc. Sec., 602 F. App'x 328, 331 (6th Cir. 2015) (stating that none of the cases cited by the magistrate judge in opinion below "even remotely suggests that an ALJ must, as a matter of law, seek out a physician's medical opinion where one is not offered."). Here, the ALJ considered the opinion of state medical consultant Dr. Larry

Caldwell, who reviewed the evidence in the record and concluded that none of Jackson's physical impairments were severe. The ALJ gave "limited weight" to Dr. Caldwell's opinion, because the ALJ determined that the evidence indicated that some of Jackson's impairments were in fact severe. Additionally, the ALJ also considered and accepted the testimony of a vocational expert who testified at the hearing regarding Jackson's ability to perform past relevant work. Furthermore, the ALJ discussed in detail the medical records provided by Jackson regarding his previous treatment for his various physical impairments. The evidence in the record was sufficient for the ALJ to determine that Jackson was not disabled without the assistance of any additional medical expert opinions. "The ALJ was under no obligation to investigate [Jackson's] case for him," nor was the ALJ required to explain why he did not obtain additional expert medical evidence.¹ Id. Based on a review of the entire record, the court finds that the ALJ did not err by declining to consult with additional state medical experts, and finds that the ALJ's decision is supported by substantial evidence. See Robertson v. Comm'r of Soc. Sec., 513 F. App'x 439, 441 (6th Cir. 2013) (holding that "the ALJ was not

¹The court notes that even if the ALJ had elected to obtain additional opinion evidence from state medical experts, he would not have been required to base his RFC findings on those opinions. See Rudd v. Comm'r of Soc. Sec., 531 F. App'x 719, 728 (6th Cir. 2013).

obligated to order a consultative examination" given the substantial evidence in the record supporting the ALJ's decision and the lack of any significant inconsistencies in the evidence).

Jackson also argues that the ALJ's decision is not supported by substantial evidence because "the ALJ uses factual misstatements to support his conclusions." Jackson provides only two examples of alleged "factual misstatements." First, Jackson argues that the ALJ's statement that Jackson testified at the hearing that he "can walk one-fourth mile before his legs begin to hurt" is a misstatement. However, the following is an excerpt from the hearing testimony:

Q: How far do you think you are able to walk now before you would have to stop?

A: Probably like about a quarter of a mile or less.

Q: What would be happening?

A: Sir?

Q: Then what would be happening?

A: My legs will start hurting . . .

(R. 50-51.) This testimony indicates that contrary to Jackson's assertion, the ALJ's statement was factually correct. Second, Jackson alleges that the ALJ's statement that Jackson testified that he "shops for groceries using a buggy" is a misstatement, because he actually testified that he uses a motorized cart. The relevant portion of the hearing testimony is as follows:

Q: What about grocery shopping, do you do that?

A: Kids.

Q: Do you think you'd be able to do it?

A: I use a buggy, the little buggy thing.

Q: Motor car?

A: Yeah. I just go around with them.

(R. 52.) The ALJ's statement was factually correct, because he stated that Jackson used a buggy to do his grocery shopping, which presumably would have been unnecessary unless the ALJ found that (consistent with the testimony) Jackson used a motorized buggy. Otherwise, it would have been unnecessary for the ALJ to have included a reference to a buggy, since it is commonplace to grocery shop with buggies. Regardless, Jackson's argument is without merit, because these alleged "factual misstatements" do not alter the court's determination that the ALJ's decision is supported by substantial evidence.

D. Whether the ALJ Erred in Analyzing Jackson's Diabetic Peripheral Neuropathy

Next, Jackson argues that the ALJ's decision should be reversed because he failed to properly analyze Jackson's diabetic peripheral neuropathy at step three of the sequential analysis. The ALJ concluded that Jackson's diabetes mellitus with neuropathy was a severe impairment, but ultimately determined that Jackson did

not have an impairment or combination of impairments that met or medically equaled the severity of one of the impairments listed in the governing SSA regulations. The ALJ reasoned as follows:

Treatment records show the claimant has a history of diabetes mellitus and received oral medications as well as insulin to treat his symptoms. Such records further show the claimant's diabetes mellitus is well controlled with medication. For example, at a visit to the doctor in May 2012, it was noted the claimant's diabetes mellitus was well controlled. While there is evidence the claimant has associated neuropathy symptoms, there is no evidence that such symptoms are disabling in nature as the claimant reported at a visit to the doctor in August 2013 that he exercised at least three times per week. There is no evidence the claimant's diabetes mellitus significantly impairs his functional abilities as the claimant reported he could prepare meals, wash dishes, vacuum, sweep and do laundry. Further, there is no evidence the claimant's diabetes mellitus prevents him from engaging in some level of work as he testified he performed some work after the alleged onset date and continues to seek employment. Moreover, no treating physician has concluded the claimant's diabetes mellitus is disabling. In light of the foregoing, the undersigned finds the claimant's diabetes mellitus with neuropathy causes some limitations. However, such limitations have been adequately addressed in the above residual functional capacity by reducing the claimant's exertional capacity to light work and imposing postural limitations and a sit/stand option.

(R. 16-17.) (internal citations omitted).

Jackson argues that "no medical expert ever reviewed the file in this case in its entirety," and that "the lack of any medical opinion as to [Jackson's peripheral neuropathy] is due to the ALJ's failure to request an updated medical opinion." He further asserts that "as there was no review by any acceptable medical source and no opinion from an examining or treating source" regarding the

evidence in the record, "only the ALJ's own lay interpretation of the medical findings can be cited in support of his conclusion [that] there is a lack of 'clinical evidence' supporting any listing." Jackson's argument is unavailing. As discussed at length above, the ALJ was under no obligation to obtain the opinions of additional medical experts to support Jackson's claims. Rather, it is the claimant's burden to "demonstrate that her impairment satisfies the diagnostic description for the listed impairment in order to be found disabled thereunder." Foster v. Halter, 279 F.3d 348, 354 (6th Cir. 2001); see also Thacker v. Soc. Sec. Admin., 93 F. App'x 725, 728 (6th Cir. 2004) ("When a claimant alleges that he meets or equals a listed impairment, he must present specific medical findings that satisfy the various tests listed in the description of the applicable impairment or present medical evidence which describes how the impairment has such equivalency."). Moreover, the SSA has made clear that the ALJ "is responsible for deciding the ultimate legal question whether a listing is met or equaled," and he or she is not bound by the opinions of any state medical experts. SSR 96-6P, 1996 WL 374180, at *3 (July 2, 1996).

Here, based on the evidence available in the record, the ALJ determined that Jackson's peripheral neuropathy did not meet or equal any listing. He explained his decision at length, as is demonstrated by the excerpt from his opinion provided above. Based

on a review of the entire record, the court finds that the ALJ did not err in considering Jackson's peripheral neuropathy, and that his determination regarding this impairment is supported by substantial evidence.²

E. Whether the ALJ Failed to Properly Consider Jackson's Allegations of Pain

Lastly, Jackson argues that the ALJ's decision should be reversed because the ALJ failed to properly apply the "two-part 'pain standard' that applies when a claimant attempts to establish disability through testimony of pain or other subjective symptoms." Jackson asserts that an electromyogram test in the record categorizing his peripheral neuropathy as "moderate to severe," along with his testimony at the hearing, demonstrate that his pain was disabling.

As the Sixth Circuit has explained, "there is a two-part test to evaluate a claimant's assertion of disability due to pain." Massey v. Comm'r of Soc. Sec., 409 F. App'x 917, 921 (6th Cir. 2011). First, a claimant must establish an underlying medical condition. Id. Second, the claimant "must establish either that

²In this section of his brief, Jackson also takes issue with the ALJ's statement in his opinion that "the claimant has not alleged meeting or equaling any listing." (R. 15.) Jackson argues that the "ALJ is responsible for analyzing the medical evidence, with the assistance of appropriate medical advisors and [for making] this [disability] determination regardless or any articulated or non-articulated allegation by the claimant." As discussed at length above, the ALJ did not err in analyzing the available medical evidence, irrespective of the allegations of disability

objective medical evidence confirms the extent of the alleged pain or that the objective medical evidence could reasonably be expected to produce the pain." Id. In evaluating the intensity and persistence of a claimant's allegations of pain, the ALJ considers all of the evidence in the record, including the claimant's medical history, medical signs, laboratory findings, and the claimant's statements regarding his or her pain. 20 C.F.R. § 404.1529. The SSA regulations recognize that "symptoms sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone." Id. Therefore, the ALJ is also instructed to consider other factors in evaluating a claimant's allegations of pain, such as his or her daily activities, precipitating and aggravating factors, medication, and functional limitations. Id. However, a claimant's statements about his or her pain are not enough alone to establish that the claimant is disabled. Id.

The ALJ found that Jackson's medically determinable impairments could reasonably be expected to cause his alleged symptoms. However, he found that Jackson's statements concerning the intensity, persistence, and limiting effects of those symptoms were not entirely credible. With regard to Jackson's credibility, the ALJ noted that Jackson reported to a doctor in August 2013 that he exercised at least three times per week. Additionally, the ALJ

made by Jackson. Therefore, this argument is without merit.

pointed out that Jackson reported that he was able to do household chores such as prepare meals, wash dishes, vacuum, sweep, laundry, and get his children ready for school. The ALJ also mentioned that Jackson testified at his hearing that he was occasionally employed at the time through a temporary staffing agency, and that he performed some work after his alleged disability onset date. Furthermore, the ALJ noted that no treating physician opined that Jackson's impairments were disabling. Based on a review of the entire record, the court finds that the ALJ did not err in analyzing Jackson's allegations of pain and that he adequately explained his assessment of Jackson's credibility. Moreover, the court finds that his decision in this regard is supported by substantial evidence. See Ritchie v. Comm'r of Soc. Sec., 540 F. App'x 508, 512-13 (6th Cir. 2013) (explaining that an ALJ's credibility findings "may not be disturbed absent 'compelling reason'"); Payne v. Comm'r of Soc. Sec., 402 F. App'x 109, 113 (6th Cir. 2010) (holding that "[t]he ALJ's credibility findings are unchallengeable"); Cruse v. Comm'r of Soc. Sec., 502 F.3d 532, 543 (6th Cir. 2007) (finding that substantial evidence supported ALJ's decision to discount plaintiff's credibility).

III. CONCLUSION

For the foregoing reasons, the ALJ's decision is affirmed.

IT IS SO ORDERED.

s/ Tu M. Pham

TU M. PHAM
United States Magistrate Judge

June 3, 2016

Date