UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

MARLON C., Plaintiff, v. KILOLO KIJAKAZI, Acting Commissioner of Social Security Administration, Defendant.	C.A. No. 21-43-JJM-PAS

ORDER

Before the Court are competing motions—Plaintiff Marlon C.'s Motion to Remand the Decision of the Commissioner, ECF Nos. 10, and Defendant Kilolo Kijakazi's Motion to Affirm the Decision of the Commissioner, ECF No. 13. Marlon appeals to this Court on two grounds: Marlon first challenges the ALJ findings that assigned little weight to his treating medical providers, Dr. Bayne, Dr. Lui, and Mr. Davis; and second, that he assigned little weight to Marlon's subjective symptoms, pain, and limitations. The Commissioner counters that the ALJ relied on the findings of four state agency consultants and an examiner to support his RFC determination that Marlon could perform a restricted range of light work. After a thorough review of the entire record, and consistent with the law in this Circuit, the Court DENIES the Motion to Reverse, and GRANTS the Motion to Affirm.

I. FACTS

Marlon, now forty-seven years old, worked as a dishwasher before his disability. As he was helping a friend move, he slipped on a flight of stairs and a

television fell on him, fracturing his right forearm. He was diagnosed with radial nerve neuropathy and right median nerve neuropathy at the wrist. He underwent physical therapy, occupational therapy, medication, and use of a wrist splint. He tried to return to work but could not perform the functions of his job.

The Administrative Law Judge ("ALJ") found that he had a severe impairment of carpal tunnel syndrome of the dominant right upper extremity, depression, anxiety, and posttraumatic stress disorder. He found, however, that he kept the residual function capacity ("RFC") to perform restricted range of light work. The ALJ found at Step 5 that Marlon was not disabled.

The Commissioner posits that the ALJ properly resolved these conflicts by relying on substantial evidence and applying the correct legal standards.

II. STANDARD OF REVIEW

"The findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive . . . ." 42 U.S.C. § 405(g). Substantial evidence "means—and means only— 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)).

The Court "must uphold the Secretary's findings . . . if a reasonable mind, reviewing the evidence in the record as a whole, could accept it as adequate to support [their] conclusion." *Rodriguez v. Sec'y of Health & Human Servs.*, 647 F.2d 218, 222 (1st Cir. 1981). However, the ALJ's findings are "not conclusive when derived by ignoring evidence, misapplying the law, or judging matters entrusted to experts."

Nguyen v. Chater, 172 F.3d 31, 35 (1st Cir. 1999). If substantial evidence supports the Commissioner's decision, the Court must affirm it, "even if the record arguably could justify a different conclusion." *Rodriguez Pagan v. Sec'y of Health & Human Servs.*, 819 F.2d 1, 3 (1st Cir. 1987).

III. ANALYSIS

The reviewing court must decide whether the Commissioner's findings are supported by substantial evidence, and whether they apply the correct legal standards. *See Ward v. Comm'r of Soc. Sec.*, 211 F.3d 652, 655–56 (1st Cir. 2000). The Court divides this task into a two-part test.

A. Whether There was Substantial Evidence to Support the RFC Determination

Marlon objects to how the ALJ dealt with a few of the treating medical professionals. A review of the record finds that there was substantial evidence supporting each of his determinations.

1. Primary Care Physician – David Bayne, M.D.

Marlon alleges that the ALJ should have afforded greater weight to Dr. Bayne's opinion based on their treatment relationship, spanning over one year, because his opinion was supported by and consistent with medical records. But the ALJ's finding is supported by substantial evidence.

The ALJ explained that Dr. Bayne's opinion was only partially persuasive because of the lack of support from his treating records and inconsistency with the record. More particularly,

> [t]he medical opinion of Dr. Bayne . . . is persuasive in part, to the extent that it is consistent with the assessed residual functional capacity. However, the overall limitations endorsed by Dr. Bayne are extreme and are inconsistent with the medical evidence of record and with the claimant's overall conservative treatment since the application date. Although the record reflects some decreased right upper extremity grip strength, forearm flexion, and some lost sensation, the rest of the right upper extremity examination has been normal. Additionally, despite some findings of decreased left upper extremity wrist extension, the claimant largely experienced improvement following occupational therapy. Dr. Bayne did not adequately explain how these clinical findings result in the extreme limitations he endorsed with regard to handling, fingering, reaching, lifting, and carrying. Although the undersigned finds that the State agency medical consultants overestimated the claimant's residual functional capacity, Dr. Bayne appears to have underestimated the claimant's residual functional capacity. Therefore, considering the overall record as a whole, the undersigned finds that the claimant is limited with regard to reaching, handling, and fingering, but that he can still do so on a frequent basis. Similarly, although the undersigned finds that the claimant is incapable of work at the medium exertional level, the objective medical evidence of record and overall conservative treatment reflected in the longitudinal record does support a finding that the claimant is capable light work, with some limitations.

ECF No. 6 at 30. Here, the ALJ contrasted Dr. Bayne's limitation opinions with Marlon's functional capabilities and conservative treatment. The ALJ's finding here are supported by substantial evidence, follow the law, and reasonable minds reviewing this evidence could accept it as adequate to support his conclusion.

2. Michael Liu, M.D.

Marlon also faults the ALJ for not developing the record as to Dr. Liu. The ALJ found Dr. Liu's medical statement on Marlon's functional limitations to be unpersuasive because there were no records from Dr. Liu entered into evidence, which left the extent of Dr. Liu's treating and examining relationship with Marlon unclear. The ALJ noted that Dr. Liu's opinions, which held that Marlon only had

only 40-50% function in his right upper extremity, conflicted with Marlon's conservative treatment and the overall objective record medical. As a result, the ALJ concluded that

> [t]he medical opinion of Dr. Liu . . . is unpersuasive. There are no medical records from Dr. Liu in the medical evidence of record, and it is unclear whether he ever treated or examined the claimant. It is unclear what objective laboratory and clinical findings Dr. Liu considered in assessing these limitations. Furthermore, the medical opinions expressed by Dr. Liu in completing this questionnaire are extreme and inconsistent with the claimant's treatment and the overall objective medical evidence of record. Therefore, because this medical opinion is not supported by or consistent with the longitudinal medical evidence of record and other evidence, it is unpersuasive.

ECF No. 6 at 30. The ALJ's finding here is supported by substantial evidence, it complies with the law, and reasonable minds reviewing this evidence could accept it as adequate to support his conclusion.

3. Therapist Joshua Davis

Marlon further argues that the ALJ should have afforded Mr. Davis's opinion more weight based on his treating relationship and supporting records. But the ALJ found that Mr. Davis' treatment notes did not accurately reflect his opinion about Marlon's limitations, including four or more work absences per month. Instead, Mr. Davis consistently showed that Marlon's prognosis was good and that he had made satisfactory progress. The ALJ found that objective medical evidence did not support Mr. Davis' opinion, and his conclusions therefore conflicted with the record.

> The medical opinion by Mr. Davis . . . is unpersuasive. In response to this questionnaire presented by the claimant's representative, Mr. Davis endorsed many signs and symptoms of mental impairment that are not reflected in his contemporaneous treatment notes. Throughout his treatment notes . . . Mr. Davis noted that the claimant's prognosis is

> good and that he has made good progress to date. The mental status exam findings recorded by Mr. David [sic] have been largely within normal limits, despite findings of anxious mood, constricted affect, and fast speech. While Mr. Davis's treatment notes, as well as the consultative examinations and other medical evidence of record support some limitations regarding non-exertional mental activities, the extent of limitation endorsed . . . is not supported by objective medical evidence of record and is inconsistent with the record as a whole. Therefore, this medical opinion is unpersuasive.

ECF No. 60 at 31. The ALJ's finding here are supported by substantial evidence, comply with the law, and reasonable minds reviewing this evidence could accept it as adequate to support his conclusion.

4. ALJ's Failure to Order More Evidence

Marlon argues that because the evidence shows that he had difficulty with reading comprehension, recall, focus, and below average intellectual functioning, the ALJ should have requested a consultative examination for IQ testing to figure out his intellectual deficiencies. An ALJ has discretion whether to order a consultative examination, including testing. Marlon never asked that the ALJ order IQ testing. Moreover, Marlon's argument ignores that the ALJ considered two psychological consultative examinations that addressed Marlon's cognitive functioning. Under such circumstances, the ALJ did not abuse his discretion by not ordering an IQ test.

B. Substantial Evidence Supports the ALJ's Assessment of Marlon's Subjective Complaints.

The ALJ noted Marlon's hearing testimony and other reports about his symptoms associated with his upper extremity impairments, including daily pain, that increased with activity and affected his ability to sleep and concentrate. The ALJ also discussed purported medication side effects of fatigue and dizziness.

The ALJ found Marlon's hearing testimony conflicted with his earlier function report. On the one hand, Marlon originally reported that he had no difficulty with personal care. But on the other, he later testified that he has trouble bathing or showering because he could not reach certain parts of his body. Additionally, Marlon wrote down on the function report that his impairments affected bending, reaching, and using hands, but not lifting, squatting, standing, walking, sitting, kneeling, or stair climbing. Marlon needed only conservative treatment and did not receive any injections, require more surgeries, or hospitalization during the relevant period.

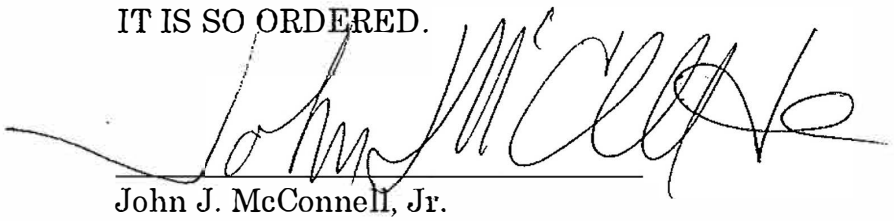
The ALJ also considered Marlon's activities. While Marlon said he could not work since September 1, 2014, because of his right upper extremity impairment, he worked after that date, including as a roofer from April to August 2018, during which he experienced another upper extremity injury on the left while working with a ladder. The ALJ further noted that Marlon reported that he could prepare simple meals, use public transportation, and shop in stores.

Thus, the ALJ supportably found that Marlon's statements conflicted with the longitudinal medical evidence of record and other evidence. *See Bianchi v. Sec'y of Health & Human Servs.*, 764 F.2d 44, 45 (1st Cir. 1985) (per curiam) (holding that the ALJ does not have to accept a claimant's testimony at face value but has a right to weigh it against other evidence in the record).

IV. CONCLUSION

The Court DENIES Marlon C.'s Motion to Reverse (ECF No. 10) and GRANTS the Commissioner's Motion to Affirm (ECF No. 13).

IT IS SO ORDERED.



John J. McConnell, Jr.
Chief Judge
United States District Court

January 3, 2022