



Mathis v. Commissioner of Social Security Administration

2018 | Cited 0 times | D. South Carolina | November 28, 2018

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

GREENVILLE DIVISION

Justin Mathis,)

Civil Action No. 6:17-2242-TLW-KFM Plaintiff,)

REPORT OF MAGISTRATE JUDGE vs.)

Nancy A. Berryhill, Acting) Commissioner of Social Security,)

Defendant.)

This case is before the court for a report and recommendation pursuant to Local Civil Rule 73.02(B)(2)(a)(D.S.C.), concerning the disposition of Social Security cases in this District, and Title 28, United States Code, Section 636(b)(1)(B). 1

The plaintiff brought this action pursuant to Section 205(g) of the Social Security Act, as amended (42 U.S.C. 405(g)) to obtain judicial review of a final decision of the Commissioner of Social Security denying his claim for disability insurance benefits under Title II of the Social Security Act.

ADMINISTRATIVE PROCEEDINGS The plaintiff filed an application for disability insurance benefits (“DIB”) on July 30, 2015, alleging that he became unable to work on September 1, 2011. The application was denied initially and on reconsideration by the Social Security Administration. On September 14, 2016, the plaintiff requested a hearing. The administrative law judge (“ALJ”), before whom the plaintiff and Karl S. Weldon, an impartial vocational expert, appeared on February 2, 2017, considered the case de novo and, on March 22, 2017, found that the plaintiff was not under a disability as defined in the Social Security Act, as amended (Tr. 12-

1 A report and recommendation is being filed in this case, in which one or both parties declined to consent to disposition by the magistrate judge. 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 1 of 29



Mathis v. Commissioner of Social Security Administration

2018 | Cited 0 times | D. South Carolina | November 28, 2018

43). The ALJ's finding became the final decision of the Commissioner of Social Security when the Appeals Council denied the plaintiff's request for review on July 13, 2017 (Tr. 1-3). The plaintiff then filed this action for judicial review.

In making the determination that the plaintiff is not entitled to benefits, the Commissioner has adopted the following findings of the ALJ:

(1) The claimant last met the insured status requirements of the Social Security Act on December 31, 2016. (2) The claimant did not engage in substantial gainful activity during the period from his alleged onset date of September 1, 2011, through his date last insured of December 31, 2016 (20 C.F.R. § 404.1571 et seq). (3) Through the date last insured, the claimant had the following combination of severe impairments: degenerative disc disease of the lumbar spine, affective disorder, including bipolar disorder, and neurocognitive disorder resulting from traumatic brain injury (20 C.F.R. § 404.1520(c)). (4) Through the date last insured, the claimant did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1 (20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526). (5) After careful consideration of the entire record, I find that, through the date last insured, the claimant has the residual functional capacity to perform medium work as defined in 20 C.F.R. § 404.1567(c) except the claimant could lift 50 pounds occasionally and 25 pounds frequently. He is limited to occasional use of moving machinery and occasional exposure to unprotected heights. He is limited to simple, routine, repetitive tasks performed in a work environment free of fast-paced production requirements involving only simple work-related decisions with few, if any, workplace changes. The claimant is capable of learning simple vocational tasks and completing them with persistence for two-hour blocks of time with normal rest breaks during an eight-hour workday. The claimant could have no interaction with the public and occasional interaction with coworkers. (6) Through the date last insured, the claimant was unable to perform any past relevant work (20 C.F.R. § 404.1565).

2 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 2 of 29

(7) The claimant was born on July 13, 1987, and was 29 years old, which is defined as a younger individual age 18-49, on the date last insured (20 C.F.R. § 404.1563). (8) The claimant has at least a high school education and is able to communicate in English (20 C.F.R. § 404.1564). (9) Transferability of job skills is not material to the determination of disability because using Medical-Vocational Rules as a framework supports a finding that the claimant is "not disabled," whether or not the claimant has transferable job skills (See SSR 82-41 and 20 C.F.R. Part 404, Subpart P, Appendix 2). (10) Through the date last insured, considering the claimant's age, education, work experience, and residual functional capacity, there were jobs that existed in significant numbers in the national economy that the claimant could have performed (20 C.F.R. §§ 404.1569, 404.1569(a)). (11) The claimant was not under a disability, as defined in the Social Security Act, at any time from September 1, 2011, the alleged onset date, through December 31, 2016, the date last insured (20 C.F.R. §



Mathis v. Commissioner of Social Security Administration

2018 | Cited 0 times | D. South Carolina | November 28, 2018

404.1520(g)). The only issues before the court are whether proper legal standards were applied and whether the final decision of the Commissioner is supported by substantial evidence.

APPLICABLE LAW Under 42 U.S.C. § 423(d)(1)(A), (d)(5), as well as pursuant to the regulations formulated by the Commissioner, the plaintiff has the burden of proving disability, which is defined as an “inability to do 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.” 20 C.F.R. § 404.1505(a).

To facilitate a uniform and efficient processing of disability claims, the Social Security Act has by regulation reduced the statutory definition of “disability” to a series of five sequential questions. An examiner must consider whether the claimant (1) is engaged

3 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 3 of 29

in substantial gainful activity, (2) has a severe impairment, (3) has an impairment that meets or medically equals an impairment contained in the Listing of Impairments found at 20 C.F.R. Pt. 404, Subpt. P, App. 1, (4) can perform his past relevant work, and (5) can perform other work. Id. § 404.1520. If an individual is found not disabled at any step, further inquiry is unnecessary. Id. § 404.1520(a)(4).

A claimant must make a prima facie case of disability by showing he is unable to return to his past relevant work because of his impairments. *Grant v. Schweiker*, 699 F.2d 189, 191 (4th

Cir. 1983). Once an individual has established a prima facie case of disability, the burden shifts to the Commissioner to establish that the plaintiff can perform alternative work and that such work exists in the national economy. Id. (citing 42 U.S.C. § 423(d)(2)(A)). The Commissioner may carry this burden by obtaining testimony from a vocational expert. Id. at 192.

Pursuant to 42 U.S.C. § 405(g), the court may review the Commissioner's denial of benefits. However, this review is limited to considering whether the Commissioner's findings “are supported by substantial evidence and were reached through application of the correct legal standard.” *Craig v. Chater*, 76 F.3d 585, 589 (4th Cir. 1996). “Substantial evidence” means “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance.” Id. In reviewing the evidence, the court may not “undertake to re-weigh conflicting evidence, make credibility determinations, or substitute [its] judgment for that of the [Commissioner].” Id. Consequently, even if the court disagrees with Commissioner's decision, the court must uphold it if it is supported by substantial evidence. *Blalock v. Richardson*, 483 F.2d 773, 775 (4th

Cir. 1972). **EVIDENCE PRESENTED** The plaintiff was 24 years old on his alleged disability onset



Mathis v. Commissioner of Social Security Administration

2018 | Cited 0 times | D. South Carolina | November 28, 2018

date (September 1, 2011) and 29 years old on his date last insured (December 31, 2016). He has a high

4 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 4 of 29

school education and past relevant work as a heavy equipment mechanic and heavy equipment operator (Tr. 41-42). The plaintiff served in the United States Marine Corps from April 17, 2007, until August 30, 2011 (Tr. 192). He received a medical discharge after he was injured in a motor vehicle accident and was granted 100% unemployability by the Department of Veterans Affairs (“VA”) effective August 31, 2011 (Tr. 75, 185-91, 306).

On October 25, 2011, the plaintiff reported to the emergency room at the VA Medical Center in Columbia, South Carolina (“VAMC”). He stated that he was trying to get into the VA system after being discharged from the Marine Corps. He reported back pain since 2009. He had an L5 pars interarticularis fracture, which was diagnosed on myelogram. Surgery was recommended, but the plaintiff was unsure if he was going to pursue it. He complained of pain that radiated to both feet at times. Physical examination showed non-tenderness of his back, but pain in his lumbar spine with movement and bending. He was diagnosed with history of pars interarticularis fracture of L5, acute/chronic low back pain, and degenerative arthritis of the spine. He was started on etodolac, Robaxin, and tramadol (Tr. 792-94).

On November 23, 2011, Olga M. Colon, M.D., of the VAMC, evaluated the plaintiff for complaints of low back pain. He reported back pain since 2009 after he injured his back at work. Dr. Colon found the plaintiff had limited range of motion of the lumbar spine. Dr. Colon diagnosed chronic low back pain and bipolar/attention deficit hyperactivity disorder (“ADHD”). Dr. Colon ordered a lumbar MRI and physical therapy. She referred the plaintiff to the pain clinic and mental health/psychiatry (Tr. 786-88).

On April 18, 2012, Dr. Colon evaluated the plaintiff for followup. The plaintiff stated that tramadol had not helped his chronic low back pain. He missed his MRI, ultrasound, and DEXA scan appointment and requested that those studies be reordered. Dr. Colon diagnosed chronic low back pain. She reordered diagnostic testing and referred

5 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 5 of 29

the plaintiff to the pain clinic. Dr. Colon added Flexeril and ibuprofen to his medication regimen (Tr. 782-84).

On September 11, 2012, Croft W. Stone, M.D., of the VAMC, performed a compensation and pension evaluation regarding the plaintiff’s chronic low back pain. The plaintiff reported difficulty sitting and standing for prolonged periods as well as sleep disruption. Dr. Stone diagnosed spondylosis and L5 pars interarticularis fractures. Dr. Stone indicated that the plaintiff had functional



Mathis v. Commissioner of Social Security Administration

2018 | Cited 0 times | D. South Carolina | November 28, 2018

loss/impairment of his low back and pain with movement (Tr. 766-76).

On January 5, 2013, Pamela M. Crawford, M.D., of the VAMC, performed a compensation and pension evaluation of the plaintiff regarding his mental disorders. Dr. Crawford indicated that the plaintiff had bipolar disorder, cognitive disorder, chronic low back pain, history of traumatic brain injury, social/occupational/family, and economic problems. His symptoms included depressed mood, anxiety, chronic sleep impairment, mild memory loss, difficulty in understanding complex commands, impaired judgment, disturbance of motivation and mood, inability to establish and maintain effective relationships, intermittent inability to perform activities of daily living, and circumstantial, circumlocutory or stereotyped speech. Dr. Crawford noted occupational and social impairment with deficiencies in most areas, such as work, school, family relations, judgment, activities of daily living, thinking and/or mood. Dr. Crawford also noted that due to his extremely impulsive and volatile anger/rage episodes when he worked with the public in retail, he had significant difficulties. Dr. Crawford explained that the plaintiff had a cognitive disorder and bipolar disorder. She indicated that his cognitive disorder was a result of a head injury sustained on active duty in 2009. Dr. Crawford stated, "There is much crossover between the illnesses and problems with attention, focus, impulsivity are likely related to both and cannot be effectively parsed." Dr. Crawford opined that, based on her evaluation,

6 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 6 of 29

the plaintiff was unable to acquire or sustain gainful employment of either an active or sedentary nature (Tr. 739-58).

On January 5, 2013, Connie Matthews, an audiologist at the VAMC, performed a compensation and pension examination of the plaintiff regarding hearing disability. The plaintiff's hearing was normal in both ears with no hearing loss present. However, she noted that the plaintiff indicated he had difficulty hearing in noise and at a distance and that the plaintiff had worked with heavy equipment, explosives, and tract vehicles while in the Marines. She also noted that the plaintiff reported ringing in his ears once a month for less than five minutes (Tr. 730-39).

On January 19, 2013, Kevin F. Johnson, M.D., of the VAMC, completed an examination of the plaintiff and indicated that any prolonged weight bearing activity, bending, stooping, or lifting would be limited due to the plaintiff's lumbar spine condition. He noted that the plaintiff's left shoulder condition and bilateral pes planus should have no significant impact on physical or sedentary forms of employment (Tr. 695-728).

On February 20, 2013, Dr. Colon evaluated the plaintiff in followup of chronic low back pain, bipolar disorder, and history of traumatic brain injury. The plaintiff reported that his current pain medication was not working. Dr. Colon diagnosed chronic low back pain, bipolar disorder, and history of traumatic brain injury. Dr. Colon added Tylenol #3 to the plaintiff's medications and



Mathis v. Commissioner of Social Security Administration

2018 | Cited 0 times | D. South Carolina | November 28, 2018

referred him to the pain clinic/physical therapy. Dr. Colon also referred the plaintiff to the traumatic brain injury team (Tr. 693-94).

On March 18, 2013, Casey Dellabarca, M.D., of the VAMC Pain Clinic, evaluated the plaintiff for complaints of low back pain. The plaintiff reported that his pain was sharp and achy, but fluctuated in intensity. Dr. Dellabarca found lumbosacral myofascial tenderness and pain with facet loading and noted that an MRI scan of the lumbar spine on May 1, 2012, showed no abnormalities. Dr. Dellabarca diagnosed bilateral L5

7 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 7 of 29

spondylosis and chronic pain with psychologic factors and scheduled a bilateral L4-L5 therapeutic medial branch block (Tr. 944-47).

On May 30, 2013, Jessica Mowry, D.O., of the VAMC, evaluated the plaintiff for complaints of back pain and the need for traumatic brain injury rehabilitation services. He was noted to have sustained a concussion status-post a motor vehicle accident in April 2009. Records regarding his low back pain showed that he had a CT scan in August 2012 that showed spondylosis. Dr. Mowry diagnosed bipolar disorder for which she recommended mental health services. For his low back pain, she advised him to follow up with the pain clinic regarding a steroid injection. An MRI of his brain was normal, and he required no further services from the traumatic brain injury clinic. The plaintiff also reported issues with mood/anger. He had significant pre-military psychosocial difficulties, including a history of two suicide attempts. Charles Lee Flake, M.D., a psychiatrist, discussed with the plaintiff that it appeared that the majority of his mood/anger issues stemmed from his disappointment in not being able to fulfill his expectations of being a Marine and feeling like he did not receive timely treatment required to be deployed. The plaintiff reported that his goal was to open his own personal training studio, noting that he exercises on a daily basis. Dr. Flake referred him to Charles Edwards, a nurse practitioner, for follow up of his mental complaints (Tr. 682-84).

On June 18, 2013, Mr. Edwards evaluated the plaintiff who reported difficulty falling asleep and having a “horrible” appetite. He indicated that he lost 12 pounds in six months. He reported that his mood was a lot better, but he still complained of being an “angry person.” He also reported being distrustful and paranoid about people and their intentions. Mr. Edwards found the plaintiff had a flat affect and noted that he exhibited intense verbiage. Mr. Edwards diagnosed insomnia, bipolar disorder, ADHD, and alcoholism (early remission). He assessed the plaintiff with a Global Assessment of

8 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 8 of 29

Functioning (“GAF”) score of 55.



Mathis v. Commissioner of Social Security Administration

2018 | Cited 0 times | D. South Carolina | November 28, 2018

2 Mr. Edwards started the plaintiff on a trial of Risperdal, continued bupropion, and suggested psychotherapy (Tr. 675-77).

On July 24, 2013, Mr. Edwards evaluated the plaintiff in followup. The plaintiff complained of some continued intermittent anger and feeling “stuck” with regard to being able to work and accomplish some of his goals. He also complained of some ADHD symptoms. He reported being less angry and better able to be around his family and friends, but he still had problems becoming angry while driving. The plaintiff also reported that he was staying home all the time and wanted to get a part-time job. His GAF score was 60. Mr. Edwards diagnosed insomnia, bipolar disorder, and ADHD. He continued the plaintiff’s Risperdal and bupropion (Tr. 668-69). On October 21, 2013, the plaintiff had complaints of a professional/academic/identity crisis that was affecting his mood. He presented as bothered and concerned. Mr. Edwards diagnosed insomnia, bipolar disorder, and ADHD. Mr. Edwards adjusted his medication. The plaintiff’s GAF score was 62 (Tr. 658-61). 3

On January 21, 2014, Mr. Edwards evaluated the plaintiff in followup. He complained of anger and irritability. Mr. Edwards found the plaintiff appeared distressed, but cooperative. He was also hyper-verbal with pressured and fragmented speech. He was easily distracted, derailed, and also displayed hyper-religiosity. He showed flight of ideas

2 A GAF score is a number between 1 and 100 that measures “the c linician’s judgment of the individual’s overall level of functioning.” See Am. Psychiatric Ass’n, Diagnostic & Statistical Manual of Mental Disorders, 32-34 (Text Revision 4 th

ed. 2000) (“ DSM-IV”). A GAF score between 51 and 60 indicates moderate symptoms or moderate difficulty in social, occupational, or school functioning. Id. The court notes that the fifth edition of the DSM, published in 2013, has discontinued use of the GAF for several reasons, including “its conceptual lack of clarity (i.e., including symptoms, suicide risk, and disabilities in its descriptors) and questionable psychometrics in routine practice.” See Am. Psychiatric Ass’n, Diagnostic & Statistical Manual of Mental Disorders, 16 (5th ed. 2013) (“ DSM-V ”). 3 A GAF score between 61 and 70 indicates some mild symptoms or some difficulty in social, occupational, or school functioning, but generally functioning pretty well. See DSM- IV, 32-34.

9 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 9 of 29

and slight paranoia. His GAF was 55. Mr. Edwards diagnosed bipolar (hypo-manic) and insomnia. Mr. Edwards discontinued Risperdal and started the plaintiff on a trial of Depakote (Tr. 647-49). On March 17, 2014, the plaintiff complained of having spurts where he spent money he did not have. Mr. Edwards found that the plaintiff showed some residual fragmentation of thought. Mr. Edwards diagnosed bipolar disorder, insomnia, and ADHD (by history). Mr. Edwards wanted to increase Depakote, but the plaintiff wanted to remain on the current dose for another month (Tr. 639-40). On April 18, 2014, he complained of excessive sleep, mood issues, and a situational crisis. When he



Mathis v. Commissioner of Social Security Administration

2018 | Cited 0 times | D. South Carolina | November 28, 2018

received news that his great aunt, with whom he was very close, had died unexpectedly, he worried his father may have committed suicide. He reported that his father was diagnosed with bipolar disorder, and his grandfather committed suicide. Mr. Edwards found the plaintiff was in distress. His speech was rapid and pressured, and he displayed some fragmentation and circumstantial verbiage. Mr. Edwards diagnosed bipolar disorder and insomnia. He increased the plaintiff's dose of Depakote and continued bupropion (Tr. 633-35).

On May 29, 2014, Mr. Edwards evaluated the plaintiff in followup. The plaintiff complained of variable mood and impulsivity of anger. He reported erratic sleeping and eating habits. Mr. Edwards indicated that the plaintiff was logical, but tangential with thought processes reflective of flight of ideas. His speech was pressured and rapid at times, and he showed some hyper-religiosity. Mr. Edwards diagnosed bipolar disorder, insomnia and suspected ADHD. Mr. Edwards increased the plaintiff's Depakote and continued bupropion (Tr. 628-30). On July 14, 2014, he complained of ongoing concentration and focus issues, as well as some intermittent excessive energy and irritability toward the end of the day. He reported having some lethargy and sedation from his medications. Mr. Edwards diagnosed bipolar disorder, insomnia, and history of ADHD. He increased the plaintiff's Depakote and bupropion and ordered a neuropsychology consult to rule out ADHD (Tr. 622-24).

10 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 10 of 29

On August 27, 2014, Mr. Edwards evaluated the plaintiff in followup. He complained of sleep cycle alteration and a lack of motivation and "drive." He also indicated that his appetite was "horrible," but he was able to maintain his weight. Mr. Edwards found the plaintiff was logical, but he had some fragmentation of thought and was easily derailed. His concentration and focus were suboptimal. Mr. Edwards diagnosed bipolar disorder and insomnia, and he continued the plaintiff on bupropion and Depakote (Tr. 610-12).

On September 19, 2014, the plaintiff presented to the VAMC as a walk-in patient after meeting with the neuropsychologist. He complained of feelings of lethargy, sleeping in late and not going to bed until the early morning hours. Mr. Edwards explained that the plaintiff had been manic and a decrease in his Depakote was sub-therapeutic. However, since his dose had since been increased and was at a therapeutic level, this would make him have the symptoms he complained of and that given time, his body would adjust and regulate. The plaintiff stated the neuropsychologist said he would never have put him on Depakote and that Abilify was the correct medication to treat his bipolar disorder. Mr. Edwards explained the importance of the use of mood stabilizers for this disorder before trying atypical antipsychotics, but advised the plaintiff how to titrate to a lower dose of Depakote for fear that he would stop Depakote abruptly (Tr. 607-09).

On September 25, 2014, J.P. Ginsberg, Ph.D., performed a neuropsychological evaluation of the plaintiff. Dr. Ginsberg determined that the plaintiff's cognitive performance was within normal limits (Tr. 349).



Mathis v. Commissioner of Social Security Administration

2018 | Cited 0 times | D. South Carolina | November 28, 2018

On October 8, 2014, the plaintiff reported decreasing his Depakote dosage because he “couldn’t take the way he was feeling anymore.” At this appointment, he reported better motivation and sleep, but that his appetite was still declining though he was able to maintain his weight and go to the gym. He reported being less irritable and more humble, but he was quickly enraged when reports from the neuropsychologist were discussed. He was able to be calmed. Mr. Edwards indicated that the plaintiff was

11 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 11 of 29

hyper-verbal with some fragmentation of thought and easy derailment. The plaintiff also had some hyper-religiosity and presented as hypo-manic. Mr. Edwards diagnosed bipolar disorder and insomnia. Mr. Edwards continued bupropion and wrote an order to decrease Depakote to the current level the plaintiff reported taking (although this dose was sub-therapeutic, the dose was still better than no mood stabilizer) (Tr. 598-600).

On December 15, 2014, Mr. Edwards evaluated the plaintiff in followup. He complained of decreased appetite, excessive sleep, and poor memory/concentration despite his reported “awesome” mood. Mental status examination showed the plaintiff had ease of derailment intermittently and slow tangential thought and verbiage. Mr. Edwards diagnosed bipolar disorder and decreased the plaintiff’s dose of bupropion and continued Depakote (Tr. 593-95). On February 3, 2015, the plaintiff reported increased appetite since his decrease in bupropion. He complained of emotional upheaval related to his father’s cancer diagnosis that his father had kept secret from him for a year. Mr. Edwards diagnosed bipolar disorder and continued him on bupropion and Depakote (Tr. 585-87).

On May 14, 2015, Mr. Edwards evaluated the plaintiff in followup. He reported that he was sleeping too much (ten to 12 hours/day). He also reported lack of appetite and a ten pound weight loss since his previous visit. He was concerned about lack of motivation. Mr. Edwards indicated that the plaintiff had some distractibility and that his responses were slowed and tangential at times. Mr. Edwards diagnosed bipolar disorder and circumstantial crisis. He continued bupropion and Depakote and explained to the plaintiff that the absence of manic-like symptoms could be perceived as lack of motivation (Tr. 577-79). On June 25, 2015, the plaintiff reported a more regular sleep pattern and good appetite. Mr. Edwards diagnosed bipolar disorder and insomnia. He continued bupropion and Depakote. (Tr. 571-72). On July 27, 2015, the plaintiff reported better sleep, but his appetite had slightly declined. He reported that sometimes he did not want to or would forget to eat but could maintain his weight. He stated his mood was “pretty good.” He

12 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 12 of 29

complained of struggling with some aspects of his interpersonal relationships, but this had improved. He tolerated his medications well. Mr. Edwards diagnosed bipolar disorder and continued the plaintiff on bupropion and Depakote (Tr. 564-66).



Mathis v. Commissioner of Social Security Administration

2018 | Cited 0 times | D. South Carolina | November 28, 2018

On August 31, 2015, Mr. Edwards evaluated the plaintiff in followup. He indicated that his mood was “good,” and he had a bright and engaged affect. He stated he was tolerating his medications well. Upon mental status examination, he had more rapid and pressured speech than at previous appointments. He also had more fragmented and hyper-religious thought processes. Mr. Edwards diagnosed bipolar disorder. Although the plaintiff appeared more manic, he reported no issues. Mr. Edwards continued bupropion and Depakote (Tr. 560-61).

On October 26, 2015, Lary R. Korn, D.O., performed a consultative examination of the plaintiff at the Commissioner’s request for complaints of back pain and traumatic brain injury. Dr. Korn noted that he did not think the plaintiff should take on a job that required heavy lifting but that he did not have any physical limitations. Dr. Korn indicated that the plaintiff’s mental health evaluation should be reviewed since this seemed to be the “biggest issue” he was having to overcome in the work place (Tr. 796-98).

On October 27, 2015, Todd Morton, Ph.D., performed a consultative examination of the plaintiff at the Commissioner’s request due to allegations of traumatic brain injury and bipolar disorder. The plaintiff drove himself to the evaluation. He reported that when he did not take his medication, he had an abundance of energy and did not sleep. He reported being easily angered and having severe depression without medication. He reported that he became anxious when he saw people move quickly, when he was by himself, when he was in crowded places, or when he was around people he did not know. He reported that, during a typical day, he got up in the morning, read the Bible, and prayed. The plaintiff reported that he spent his time with his roommate and worked out. He tried to find opportunities to help people. He was capable of doing most household chores and

13 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 13 of 29

managed his own needs. He indicated that he suffered a significant head injury in 2009, and since that injury, he had more difficulty focusing and being able to be still. The plaintiff reported that he was more easily angered and did not hold back on what he would say. Dr. Morton found the plaintiff to be appropriately oriented. His speech was clear but pressured and mildly fragmented. Dr. Morton indicated that the plaintiff’s long term memory was generally intact. His mood was neutral, and he displayed a normal range of affect. Dr. Morton stated, “He tended to be quite intense in his presentation.” Dr. Morton indicated that the plaintiff put forth good effort during cognitive testing and that the results given were believed to be a valid estimate of his functioning. Dr. Morton administered psychological testing. The plaintiff’s full scale IQ score was 84. His reading skills were at the 8:7 grade level, and his math skills were at the 5:8 grade level. Dr. Morton indicated that the plaintiff had low average intelligence and that he had symptoms of bipolar disorder in that he has manic episodes as well as depressive episodes. Dr. Morton explained that it appeared that the plaintiff was primarily in a state of high energy level and had difficulty slowing his mind down. Dr. Morton indicated that when he was in this state the plaintiff was quite irritable and rude. Dr. Morton indicated that the plaintiff was quite intense in his manner of interaction. Dr. Morton diagnosed



Mathis v. Commissioner of Social Security Administration

2018 | Cited 0 times | D. South Carolina | November 28, 2018

bipolar I disorder, most recent episode manic, and mild neurocognitive disorder due to traumatic brain injury. He concluded that due to his high energy levels and difficulty focusing his mind, the plaintiff “would not be able to maintain his attention on a simple, repetitive task for an extended period of time.” He believed that the plaintiff would be able to understand, recall, and carry out simple work actions. Dr. Morton also indicated that the plaintiff was easily irritated, and he believed that the plaintiff would generally have poor relationships with coworkers and would be prone to conflicts with them. Dr. Morton stated that there was no indication of malingering or significant exaggeration of his symptoms (Tr. 800-03).

14 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 14 of 29

On December 1, 2015, Mr. Edwards evaluated the plaintiff in followup. He reported a more consistent mood but alluded to some despair and suicidal ideation intermittently. He also indicated that he felt like a zombie. Mr. Edwards found the plaintiff was hyper-verbal and had somewhat pressured speech. He indicated that the plaintiff was fragmented and easily derailed. Mr. Edwards diagnosed bipolar disorder. Mr. Edwards continued the plaintiff’s medication regimen (Tr. 831-33). On December 31, 2015, the plaintiff reported becoming easily frustrated with people looking at him. Mr. Edwards indicated that the plaintiff presented as more intense and irritable, easily derailed, and somewhat hypomanic. Mr. Edwards diagnosed bipolar and insomnia. Mr. Edwards continued medication regimen without any changes (Tr. 821-23).

On January 21, 2016, Jamie C. Goodman, M.D., of the VAMC, evaluated the plaintiff for back pain and bipolar (noting he was manic and 100% disabled). Dr. Goodman diagnosed chronic back pain and bipolar disorder. Dr. Goodman ordered ibuprofen as needed and advised him to continue his workout regimen and follow up with mental health (Tr. 819-20).

On February 1, 2016, Xanthia Harkness, Ph.D., a state agency psychologist, reviewed the plaintiff’s claim for benefits (including Dr. Morton’s report).

4 Dr. Harkness opined that, despite moderate limitations in maintaining social functioning and maintaining concentration, persistence, or pace, the plaintiff had the mental residual functional capacity (“RFC”) to perform simple, unskilled tasks in a setting that did not require frequent public contact (Tr. 94-96, 100-102).

On February 2, 2016, Adrian Corlette, M.D., a state agency medical consultant, completed a physical RFC assessment and indicated that the plaintiff was

4 In the state agency psychologist’s explanation, Dr. Morton is referred to as Dr. Todd, which is Dr. Morton’s first name (Tr. 95, 800).

15 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 15 of 29



Mathis v. Commissioner of Social Security Administration

2018 | Cited 0 times | D. South Carolina | November 28, 2018

capable of performing medium work with postural and environmental limitations (Tr. 97-100).

On February 17, 2016, Dr. Goodman reevaluated the plaintiff and gave him an injection his left shoulder, which Dr. Goodman noted was related to osteoarthritis (Tr. 818-19).

On April 8, 2016, Mr. Edwards answered a questionnaire regarding the plaintiff's conditions and disabilities based on interactions with him starting on July 8, 2013. Mr. Edwards indicated that the plaintiff would have profound difficulty in maintaining focus and concentration and would definitively have difficulty in task maintenance and completion. Mr. Edwards indicated that the plaintiff had significant difficulty with relationships as his psychiatric status and emotional state caused misperception of intent and impulsivity of judgment and behaviors. Mr. Edwards explained that the plaintiff had "proven intolerable to sufficient medication to provide complete stability of this condition and felt over-medicated and less functional on sufficient levels of medication." Mr. Edwards explained that during the time he treated him, the plaintiff had various levels of stability and instability but predominantly had mood and emotional instability, as seen in bipolar disorder. Mr. Edwards explained that this was complicated by the plaintiff's traumatic brain disease, periods of psychosis, and esteem issues. Mr. Edwards indicated that the plaintiff's illness impacted his ability to maintain relationships and that he could quickly misperceive a person's verbiage, glance, or behavior as being disrespectful and demeaning to him. Mr. Edwards explained that this led to conflict with others and was complicated by family issues, which all work in concert to diminish his self-esteem/perception, which often in turn increased his misperceptions of others. Mr. Edwards stated:

He is often fragmented in his thoughts and this is reflected in his verbiage and conversation. He has impulsive anger and aggressive tendencies, which have been controlled for some time. There also can be some verbiage interpreted as grandiosity and hyper-religiosity and his impulses and

16 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 16 of 29

convictions are often in conflict, which is difficult and at times confusing to him, which can lead to frustration and fatigue with the emotional/mental battle. Mr. Mathis is a respectful, kind and compassionate person, who could contribute significantly to others however, has mental/emotional disorders and conditions, which limit his ability to do so effectively and certainly to work in the confines of a schedule and work setting productively. Treatment continues, as does this providers hope for improved outcomes for this remarkable human. (Tr. 861-63).

On April 27, 2016, Mr. Edwards evaluated the plaintiff for followup. He complained of ongoing struggles with self-worth and anger impulses driven from the same. Mr. Edwards indicated that mental status examination was improved from his previous visit. Mr. Edwards diagnosed bipolar disorder, issues with self-worth/esteem, and relational conflict. He continued the plaintiff's current medication regimen (Tr. 928-31). On May 28, 2016, the plaintiff complained of having nightmares



Mathis v. Commissioner of Social Security Administration

2018 | Cited 0 times | D. South Carolina | November 28, 2018

relating to his past in the Marines and racing thoughts when he tried to sleep. He also complained of feelings of worthlessness and of low self-esteem, continued struggles with impulsivity, and being triggered quickly. On mental status examination, he was fragmented at times and hyper-verbal. Mr. Edwards increased his Depakote and continued bupropion. Mr. Edwards also gave him a referral for a psychotherapy appointment (Tr. 812-14). On May 31, 2016, the plaintiff complained of racing thoughts, increased dreams, and relational complications. Mr. Edwards indicated that the plaintiff's mental status examination was improved from his previous visit. Mr. Edwards diagnosed bipolar disorder. He increased the dose of Depakote and continued bupropion (Tr. 918-20).

On June 7, 2016, James N. Ruffing, Psy.D., performed a consultative examination of the plaintiff at the Commissioner's request for an evaluation of bipolar disorder and traumatic brain injury. Dr. Ruffing indicated that the plaintiff made vague and

17 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 17 of 29

uncertain reference to a history of traumatic brain injury but was unable to communicate much more detailed information. The plaintiff reported that he had depression highs and lows and bipolar. He felt depressed, had suicidal thoughts, and angry highs and lows. He explained that he went from depression to acting impulsively and having an abundance of energy. He reported that when he was working, if people said things or irritated him, he could not control himself, and he became verbally aggressive. Dr. Ruffing noted the plaintiff's VA rating of 100%, and he reviewed his hi stories. The plaintiff reported going to the gym six days a week for five hours at a time and that he was able to care for his personal needs. He also stated that he went to his grandparents' house to help care for them. He stated that he received counseling at the VA and that he was never psychiatrically hospitalized. Dr. Ruffing indicated that the plaintiff was calm at first, but by the end of the interview he was "communicating rather intensely on somewhat of a tirade because he was not being treated in a way that demanded the respect that he deserves and also being questioned as far as his bipolar disorder." Dr. Ruffing indicated that the plaintiff seemed to have difficulty restraining himself from his thoughts and his anger. He noted that the plaintiff did not become physically violent but rather verbally intense. Dr. Ruffing indicated that the plaintiff had a generally appropriate affect but again, escalated to a fairly intense emotional presentation. Dr. Ruffing indicated that the plaintiff was appropriately oriented with intact thought processes and thought content. Dr. Ruffing indicated that the plaintiff attended and focused without distractibility and demonstrated normal cognitive processing speed. He was able to recall three unrelated words immediately and two of three after a five minute delay with interference task. He was unable to recall the third word with forced choice assisted cuing. His Folstein Mini-Mental Status Exam produced a raw score of 30/30, which suggested mental status functioning was within normal limits. Dr. Ruffing indicated that he was given no records to document a history of traumatic brain injury or bipolar disorder "though his presentation would be consistent with an individual who has potentially suffered

18 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 18 of 29



Mathis v. Commissioner of Social Security Administration

2018 | Cited 0 times | D. South Carolina | November 28, 2018

traumatic brain injury particularly frontal lobe involving extensive restraint and control.” Dr. Ruffing concluded that the plaintiff was able to understand and respond to the spoken word and stated, “Given his lack of emotional and cognitive restraint, he would have difficulty with concentration, persistence, and pace” (Tr. 835-37).

On June 8, 2016, Charles William Kelly Parke, M.D., performed a consultative examination of the plaintiff at the Commissioner’s request for complaints of traumatic brain injury, chronic low back pain, history of tinnitus, history of migraine attacks, and bipolar disorder. Dr. Parke indicated that his tinnitus was almost resolved. He noted that he had migraine attacks every two months. Dr. Parke indicated that the plaintiff had continuous low back pain related to his L5-S1 fracture and stated, “With prolonged sitting, prolonged walking, he does have severe low back pain” (Tr. 839-42).

On June 30, 2016, Mr. Edwards evaluated the plaintiff in followup. He complained of ongoing circumstantial issues with perception. His mental status examination was improved from his previous visit. Mr. Edwards diagnosed bipolar disorder and insomnia and continued his medications (Tr. 904-06).

On August 2, 2016, Seham El-Ibiary, M.D., a state agency medical consultant, completed a physical RFC assessment indicating that the plaintiff could perform medium work with postural and environmental limitations (Tr. 115-18).

On August 12, 2016, Mr. Edwards evaluated the plaintiff for followup. He complained of interpersonal relationship issues/perceptions and ongoing mood issues. Mr. Edwards diagnosed bipolar disorder, mixed, and he increased the plaintiff’s Depakote and continued bupropion (Tr. 891-93).

On August 22, 2016, Dr. Goodman evaluated the plaintiff for complaints of low back pain. He reported doing his workout regimen to control back pain and left shoulder pain. He stated his last shoulder injection lasted six to seven months and that he wanted another injection. Physical examination was within normal limits. Dr. Goodman diagnosed

19 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 19 of 29

left shoulder pain and chronic back pain. Dr. Goodman prescribed naproxen as needed, and he advised the plaintiff to continue his workout regimen and follow up with mental health (Tr. 885-87).

On September 1, 2016, Larry Clanton, Ph.D., a state agency psychologist, reviewed the plaintiff’s claim for benefits (including both Dr. Morton’s and Dr. Ruffing’s findings), and concurred with Dr. Harkness’ conclusions that the plaintiff’s medically determinable mental impairments caused mild and moderate limitations (Tr. 112-14, 118-20).



Mathis v. Commissioner of Social Security Administration

2018 | Cited 0 times | D. South Carolina | November 28, 2018

On September 8, 2016, Dr. Goodman evaluated the plaintiff for complaints of left shoulder pain when he lifted weights. Dr. Goodman diagnosed osteoarthritis and injected his left shoulder (Tr. 878-79).

On September 13, 2016, Mr. Edwards evaluated the plaintiff in followup. He complained of ongoing mood dysregulation. His mental status examination showed improvement from his previous visit. After much conversation, he admitted that he had not been taking his Depakote so he could feel good for his workouts. He also admitted that he had been taking the Depakote “pre-workout” to get pumped up for his workout. Mr. Edwards explained the importance of taking his medications as prescribed (Tr. 871-74). On October 14, 2016, the plaintiff complained of ongoing interpersonal struggles with perception and responses as well as dysfunctional thinking. Mr. Edwards diagnosed bipolar disorder and insomnia and continued the current medication regimen (Tr. 1023-25).

On November 14, 2016, John L. Eady, M.D., of the VAMC, evaluated the plaintiff for complaints of left “SITS” tear. He reported pain when raising his left arm about 45 degrees. Physical examination showed a complex injury to right shoulder joint capsule, with what appeared to be an incomplete Bankhart defect anteriorly. Dr. Eady diagnosed right shoulder instability. He advised the plaintiff that he needed a sports medicine trained orthopaedist to address the injury (Tr. 978-80).

20 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 20 of 29

On November 15, 2016, Mr. Edwards evaluated the plaintiff for followup. The plaintiff stated that he could spend up to eight hours a day in the gym. He filled his time with cardio workouts and assisting others in instruction on proper workout protocol. He complained of pain and physical limitations. Mr. Edwards diagnosed bipolar disorder and continued bupropion. Mr. Edwards also instructed the plaintiff how to manipulate time of dosing to work with his tolerance as long as he took the correct dose in a 24-hour period (Tr. 1006-08). On January 19, 2017, the plaintiff complained of ongoing internal struggles with family and socially, as well as issues of self-worth. Mental status examination showed that he could easily lose his train of thought, and he remained somewhat tangential. Mr. Edwards diagnosed bipolar and continued his current medication regimen (Tr. 984-86).

At the hearing on February 2, 2017, the plaintiff testified that he went to the gym five times a week for three hours at a time. Subsequent to his alleged onset date, he started to obtain his personal training certificate in order to be a personal trainer but stopped once he learned that he was going to be approved for VA benefits. The plaintiff drove, performed yard work, cleaned his laundry, cleaned around the house, and went shopping. He stated that he “hung out” with his roommate, and they read the Bible together. He had a Facebook account and a cell phone, and he went to the movies (Tr. 56, 59, 65-68).

A vocational expert also testified at the hearing. After identifying the plaintiff’s past relevant work, the ALJ asked the vocational expert the following hypothetical:



Mathis v. Commissioner of Social Security Administration

2018 | Cited 0 times | D. South Carolina | November 28, 2018

So if you would assume a hypothetical individual who's able to lift up to 50 pounds occasionally; lift or carry up to 25 pounds frequently in medium work as defined by the regulations; who can frequently climb ladders, ropes or scaffolds; frequently stoop and crawl; who is limited to occasional exposure to excessive noise; occasional use of moving machinery and occasional exposure to unprotected heights; who has only occasional interaction with the public and only occasional interaction with co-workers. Can an individual with these limitations perform the claimant's past work as he performed it or as customarily performed?

21 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 21 of 29

(Tr. 81-82). The vocational expert indicated that the plaintiff's past work would be precluded, but that there would be other work available such as an industrial cleaner, an order picker or a hand packer (Tr. 82).

Next, the ALJ asked: If you please assume a person claimant's age, education, work experience and skill set who is able to do medium work and by that I mean lift up to 50 pounds occasionally; lift and carry up to 25 pounds frequently in medium work as defined by the regulations; who is limited to occasional use of moving machinery and occasional exposure to unprotected heights; and who's work is limited to simple, routine and repetitive tasks performed in a work environment free of fast paced production requirements involving only simple work-related decisions and with few, if any, workplace changes; who is capable of learning simple vocational tasks and completing them at an adequate pace with persistence in a vocational setting. The individual can perform simple tasks with two-hour blocks of time with normal rest breaks during an eight-hour workday; who has no interaction with the public and only occasional interaction with co-workers. Are there jobs available for someone with those limitations? (Tr. 82-83). The vocational expert responded that this hypothetical would allow for jobs such as an auto detailer, a hand packer, or an order picker (Tr. 83-84).

The ALJ then asked: If you'd please assume a person the claimant's age, education, work experience and skill set who did not have any exertional limitations, but who's work was limited to simple, routine and repetitive tasks performed in a work environment free of fast paced production requirements involving only simple work-related decisions and with few, if any workplace changes; who is capable of learning simple vocational tasks and completing them at an adequate pace with persistence in a vocational setting. The individual can perform simple tasks with two-hour blocks of time with normal rest breaks during an eight-hour workday who has no interaction with the public and only occasional interaction with co-workers. Are there jobs available for someone with those limitations? (Tr. 84-85). The vocational expert responded that this hypothetical would allow work as a dryer operator helper as well as the previously identified jobs. The ALJ also asked about

22 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 22 of 29



Mathis v. Commissioner of Social Security Administration

2018 | Cited 0 times | D. South Carolina | November 28, 2018

the impact of an additional limitation of “due to severe mental impairments would be off task 20 percent or more of the workday.” The vocational expert responded that with this addition, there would be no work available (Tr. 85-86).

The plaintiff’s attorney asked: Please assume the same age, education and work experience that you assumed in the Judge’s first hypothetical, but instead of any other limitations let’s assume that Mr. Mathis would have -- I’m hoping this will be specific enough – a profound difficulty maintaining focus and concentration during employment. The vocational expert indicated that he would understand the word “profound” to mean a severe impact, which would not allow any work. Next the attorney asked, “Let’s assume that he would not be able to maintain his attention on a simple, repetitive task for as much as two hours. In that case, any competitive employment?” The vocational expert responded that there would be no work (Tr. 87-88).

ANALYSIS The plaintiff argues that the ALJ erred (1) by improperly relying on vocational expert testimony and (2) in failing to properly evaluate the opinion evidence from consultative examiners Drs. Morton and Ruffing (doc. 10 at 25-35). Vocational Expert Testimony

The plaintiff first argues that remand is warranted because the ALJ failed to obtain an explanation for the apparent conflict between the mental limitations provided in the RFC assessment and the requirements in the Dictionary of Occupational Titles (“DOT”) for the jobs identified by the vocational expert (doc. 10 at 25-28). Further, the plaintiff argues that the ALJ failed to fulfill his duty under Social Security Ruling 00-4p to identify and obtain a reasonable explanation for the apparent conflict (id.). The undersigned agrees.

Social Security Ruling (“SSR”) 00-4p provides in pertinent part:

When a [vocational expert (“VE”)] . . . provides evidence about the requirements of a job or occupation, the adjudicator has an affirmative responsibility to ask about any possible conflict

23 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 23 of 29

between that VE . . . evidence and information provided in the DOT. In these situations, the adjudicator will: Ask the VE . . . if the evidence he or she has provided conflicts with information provided in the DOT; and If the VE’s . . . evidence appears to conflict with the DOT, the adjudicator will obtain a reasonable explanation for the apparent conflict. When vocational evidence provided by a VE . . . is not consistent with information in the DOT, the adjudicator must resolve this conflict before relying on the VE . . . evidence to support a determination or decision that the individual is or is not disabled. The adjudicator will explain in the determination or decision how he or she resolved the conflict. The adjudicator must explain the resolution of the conflict irrespective of how the conflict was identified. 2000 WL 1898704, at *4.



Mathis v. Commissioner of Social Security Administration

2018 | Cited 0 times | D. South Carolina | November 28, 2018

In *Pearson v. Colvin*, the Court of Appeals for the Fourth Circuit ruled that an “ALJ independently must identify conflicts between the expert's testimony and the [DOT]” and that merely asking the vocational expert if there are any conflicts is insufficient. 810 F.3d 204, 209 (4th Cir. 2015). In addition, the court held that a vocational expert’s testimony that apparently conflicts with the DOT can only provide substantial evidence if the ALJ receives an explanation from the vocational expert explaining the conflict and determines both that the explanation is reasonable and that it provides a basis for relying on the testimony rather than the DOT. *Id.* at 209–10 (citing SSR 00-4p, 2000 WL 1898 704, at *2). The court further decided that “[a]n ALJ has not fully developed the record if it contains an unresolved conflict between the expert's testimony and the [DOT]” and that an ALJ errs if he “ignores an apparent conflict because the expert testified that no conflict existed.” *Id.* at 210. The court concluded that, because there was no explanation regarding the apparent conflict, there was no reasonable basis in that case for relying on the vocational expert's testimony, and therefore the testimony could not provide substantial evidence for a denial of benefits. *Id.* at 211.

24 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 24 of 29

In the RFC assessment, the ALJ limited the plaintiff, *inter alia*, to “simple, routine, repetitive tasks performed in a work environment free of fast-paced production requirements involving only simple work-related decisions with few, if any, workplace changes” (Tr. 19). In response to the ALJ’s hypothetical that corresponded with the RFC assessment, the vocational expert testified that the following medium, unskilled jobs would still be available: automotive detailer, DOT no. 915.687-034; hand packager, DOT no. 920.587-018; and order picker, DOT no. 922.687-058 (Tr. 82-86). At step five of the sequential evaluation process, the ALJ relied on this testimony in finding that there are jobs that exist in significant numbers in the national economy that the plaintiff can perform (Tr. 42-43).

The DOT provides that each of the identified jobs has a General Educational Development (“GED”) Reasoning Development Level of 2. See automotive detailer, DOT no. 915.687-034, 1991 WL 687878; hand packager, DOT no. 920.587-018, 1991 WL 687916; and order picker, DOT no. 922.687-058, 1991 WL 688132. The GED “embraces those aspects of education (formal and informal) [that] are required of the worker for satisfactory job performance. This is education of a general nature [that] does not have a recognized, fairly specific occupational objective. . . .” DOT, app. C (4th

ed. Rev. 1991), 1991 WL 688702. “The GED Scale is composed of three divisions: Reasoning Development, Mathematical Development, and Language Development.” *Id.* A GED Reasoning Development Level of 2 indicates that the job requires a worker to be able to “[a]pply commonsense understanding to carry out detailed but uninvolved written or oral instructions. Deal with problems involving a few concrete variables in or from standardized situations.” *Id.*

The plaintiff argues that there is a conflict between the requirements for these positions as set forth in the DOT and the vocational expert’s testimony that the plaintiff could perform these jobs with the RFC limiting him to “simple, routine, repetitive tasks.” The Court



Mathis v. Commissioner of Social Security Administration

2018 | Cited 0 times | D. South Carolina | November 28, 2018

25 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 25 of 29

of Appeals for the Fourth Circuit has not spoken on this issue in a published case, but in a recent unpublished case, the court held that there was an apparent conflict between the vocational expert's testimony that the claimant could perform certain specified jobs, each of which had a GED Reasoning Development Level of 2, and an RFC that limited him to performing simple one-to-two step tasks with low stress. *Henderson v. Colvin*, 643 F. App'x 273, 276-77 (4th Cir. 2016). The court explained, "Unlike GED reasoning Code 1, which requires the ability to '[a]pply commonsense understanding to carry out simple one-or-two-step instructions,' GED Reasoning Code 2 requires the employee to '[a]pply commonsense understanding to carry out detailed but uninvolved written or oral instructions.'" *Id.* (citing DOT, app. C, 1991 WL 688702; *Rounds v. Comm'r Soc. Sec. Admin.*, 807 F.3d 996, 1003-04 (9th Cir. 2015) (holding that GED Reasoning Development Code 2 requires additional reasoning and understanding above the ability to complete one- to-two step tasks)). Accordingly, the court found that the ALJ erred in relying on the vocational expert's conclusory testimony and in failing to inquire further. *Id.* at 277-78 (citing *Pearson*, 810 F.3d at 209-10).

This case is similar to *Henderson* in that the RFC assessment limited the plaintiff to "simple" tasks, but it differs from *Henderson* in that the ALJ did not specify that the plaintiff was limited to one-to-two step tasks. Rather, he was limited to "simple, routine, repetitive tasks . . ." (Tr. 19). The Commissioner argues that, based on this distinction, *Henderson* does not apply in this case (doc. 11 at 8-10). However, the majority of courts in this District have applied *Henderson* to hold that there is an apparent conflict between jobs that require Reasoning Development Levels of 2 and 3 and RFC limitations like the plaintiff's. See, e.g., *Pack v. Berryhill*, C.A. No.: 9:17-2271-BHH, 2018 WL 5023608, at *3-4 (D.S.C. Oct. 17, 2018) (finding apparent conflict between RFC limiting the plaintiff to "simple routine tasks in an environment free of fast-paced production requirements" and DOT's description of the identified jobs as having Reasoning Development Level of 2); *Williams v. Comm'r of*

26 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 26 of 29

Soc. Sec., C.A. No. 2:17-864-DCC, 2018 WL 4501239, at *3 (D.S.C. Sept. 20, 2018) (finding apparent conflict between RFC limiting the plaintiff to "simple, routine, and repetitive tasks" and the Reasoning Development Levels of 2 and 3 in the three jobs identified at the hearing); *Rogers v. Berryhill*, C.A. No. 1:17-1317-TMC-SVH, 2018 WL 1474429, at *12-14 (D.S.C. Mar. 9, 2018), R&R adopted by 2018 WL 1471905 (Mar. 26, 2018) (finding apparent conflict between RFC limiting the plaintiff to "simple routine tasks" and DOT's description of the identified jobs as having Reasoning Development Level of 2).

The Commissioner further argues that the plaintiff "overreaches in urging this Court to divine a conflict between his [RFC] for simple, routine jobs and a job described in the DOT as reasoning level two. There may be district court decisions that have done so, but they are not persuasive once their underpinning is more closely examined" (doc. 11 at 10). The Commissioner notes that the court in



Mathis v. Commissioner of Social Security Administration

2018 | Cited 0 times | D. South Carolina | November 28, 2018

Henderson relied on *Rounds v. Comm'r of Soc. Sec.*, 807 F.3d 996, 1004 (9th Cir. 2015), in which the Court of Appeals for the Ninth Circuit explained that the ALJ “did not merely restrict Rounds to ‘simple’ or ‘repetitive’ tasks,” but instead “expressly limited her to ‘one to two step tasks.’” In *Rounds*, the Ninth Circuit ultimately determined that remand was in order because the ALJ did not recognize the apparent conflict between Rounds’ RFC and the demands of a Reasoning Development Level of 2. 807 F.3d at 1004. The court in *Rounds* also cited other appellate authority holding that an “RFC limitation to ‘simple’ or ‘repetitive’ tasks is consistent with Level Two reasoning.” See *id.* at 1004 n.6 (citing *Moore v. Astrue*, 623 F.3d 599, 604 (8th Cir. 2010); *Abrew v. Astrue*, 303 F. App’x 567, 569 (9th Cir. 2008); *Lara v. Astrue*, 305 F. App’x 324, 326 (9th Cir. 2008); *Hackett v. Barnhart*, 395 F.3d 1168, 1176 (10th Cir. 2005); and *Money v. Barnhart*, 91 F. App’x 210, 215 (3d Cir. 2004)).

In considering this same argument in a recent case, the Honorable Donald C. Coggins, Jr., United States District Judge, stated:

There is authority from other circuits supporting a finding of no apparent conflict. For example, the Fourth Circuit favorably cited

27 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 27 of 29

Rounds v. Commissioner Social Security Administration, 807 F.3d 996 (9th Cir. 2015) in Henderson. . . . However, in light of the absence of authority from the Fourth Circuit and given the overwhelming weight of authority from district courts in the District of South Carolina, the Court agrees there is an apparent conflict in this case warranting a remand. The issue presented in this case is one that has troubled district courts within the Fourth Circuit. . . . [C]onsistency among the courts of this district is important to litigants and counsel, and absent contrary authority from the Fourth Circuit, the Court . . . reverses and remands to the Commissioner. Williams, 2018 WL 4501239 at *3. See also Pack, 2018 WL 5023608, at *3-4 (“[W]hile Defendant is correct that other courts, including other district courts in the Fourth Circuit, have reached different conclusions on this issue, the Court finds that the Magistrate Judge’s recommendation is consistent with this District’s application of Henderson, and that remand is therefore in order so the ALJ can resolve the apparent conflict between Plaintiff’s RFC and the VE’s explanation of jobs available to her.”).

In accordance with the reasoning of the above-cited cases, the undersigned finds that there is an apparent conflict between the DOT’s Reasoning Development Level of 2 for the identified jobs and the vocational expert’s testimony that the plaintiff could perform the identified jobs with the RFC limitation to “simple, routine, repetitive tasks.” While there may be a reasonable explanation for the apparent conflict, the ALJ never identified and resolved it. Accordingly, it would be speculation for the court to assume the vocational expert realized the conflict and necessarily considered it. Therefore, this action should be remanded so the ALJ can resolve the apparent conflict between the reasoning level for the jobs identified by the vocational expert and the limitations imposed in the RFC assessment. Remaining Allegation of Error



Mathis v. Commissioner of Social Security Administration

2018 | Cited 0 times | D. South Carolina | November 28, 2018

The plaintiff also argues that the ALJ erred in failing to properly evaluate the opinions of consultative examiners Drs. Morton and Ruffing (doc. 10 at 28-35). Because the court recommends that this matter be remanded to the ALJ for resolution of an apparent

28 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 28 of 29

conflict at step five of the sequential evaluation process, this remaining allegation of error will not be specifically addressed. The ALJ will be able to reconsider and re-evaluate the evidence in toto as part of the reconsideration of this claim. *Hancock v. Barnhart*, 206 F. Supp.2d 757, 763-764 n.3 (W.D. Va. 2002) (on remand, the ALJ's prior decision has no preclusive effect, as it is vacated and the new hearing is conducted de novo). Accordingly, on remand, the ALJ should consider and address this allegation of error.

CONCLUSION AND RECOMMENDATION Based upon the foregoing, this court recommends that the Commissioner's decision be reversed under sentence four of 42 U.S.C. § 405(g), with a remand of the cause to the Commissioner for further proceedings as discussed above.

IT IS SO RECOMMENDED.

s/Kevin F. McDonald United States Magistrate Judge November 28, 2018 Greenville, South Carolina

29 6:17-cv-02242-TLW Date Filed 11/28/18 Entry Number 18 Page 29 of 29

