



## Antoniolo v. Colvin

2016 | Cited 0 times | D. Delaware | September 15, 2016

IN UNITED STATES DISTRICT COURT

FOR DISTRICT OF ANTONIOLO,

CAROLYNW. COLVIN, Social

Siegel Wilmington,

Oberly Ill, United Special United Office Social

Counsel Of Ill Office Counsel Social

\_i±\_,

MEMORANDUM OPINION THE

THE DELAWARE MARSHALL E.

Plaintiff, v.

Acting Commissioner of

Security,

Defendant.

Civ. No. 15-713-SLR

Angela Pinto Ross, Esquire, of Doroshow, Pasquale, Krawitz, & Bhaya,

Delaware. Counsel for Plaintiff. Charles M. States Attorney, Wilmington, Delaware and Dina White Griffin, Assistant States Attorney, of the General Counsel Security Administration. for Defendant. Counsel: Nora Koch, Esquire, Acting Regional Chief Counsel, and Maija DiDomenico, Assistant Regional Counsel, Region of the of the General Security Administration, Philadelphia, Pennsylvania.



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Dated: September 2016 Wilmington, Delaware

### I. INTRODUCTION

Plaintiff Marshall Antoniolo ("plaintiff") appeals Carolyn Colvin, Social ("defendant"), application disability ("DIB") Title II Social U.S.C. 401-434. U.S.C. 405(g).

Currently (D.I. 7, below, plaintiff's will

### will II. BACKGROUND

filed DIB 8, 2011, alleging

1, 2006. claim initially 10, 2011, July 2011. (Id.)

("ALJ"), held 2013.

alleged 2010. On 2013, unfavorable

(Id.) On 2015, Appeals

plaintiff (D.I. E. from a decision of W. Acting Commissioner of Security denying her for insurance benefits under of the Security Act, 42

§§ The court has jurisdiction pursuant to 42 §

before the court are the parties' cross-motions for summary judgment. 9) For the reasons set forth motion be denied and defendant's motion be granted.

A. Procedural History Plaintiff an application for on February disability beginning on February (Tr. 26) Plaintiff's was denied on March

and after reconsideration on 19, Plaintiff requested a hearing before an Administrative Law Judge which was on May 29, At the hearing, plaintiff, who was represented by counsel, amended her onset date to June 8, (Id.)

July 31, the ALJ issued an decision finding that plaintiff was not disabled. March 23, the Council denied plaintiff's request for review, making the ALJ's decision the final decision of defendant. (Tr. 1) Having exhausted her administrative remedies, initiated the present action. 1)



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Medical Plaintiff old disability 2010. (D.I. She laundry Several plaintiff's

limited functional lumbar carpal (D.I. Following medical appeal.

In 2006,

100 (D.I. 10 MRI 2006,

normal alignment.

"tiny O

only, level. (Id.) MRI following 2007, mild lower lumbar levels, focal

spinal

lead

(last 2016). MRI SI

2016). B. History

was 45 years as of the amended onset date of June 8, 8 at 3) has an 11th grade education and past work experience as a attendant and housekeeper. (Id.) of treating physicians opined that she had a residual capacity due to chronic pain, disc disease, and/or tunnel syndrome. 8 at 8-9) is a summary of plaintiff's history with respect to those impairments at issue in this

1. Chronic back pain January over four years before the amended onset date, plaintiff injured her back while on the job, pushing a laundry cart that weighed about pounds.

at 3) An of the lumbar spine dated March 29, a few months after the injury, showed lumbar (Tr. 469) The flexion/extension sequences were degraded by motion, but showed no gross segmental instability. (Id.) There was a right central protrusion" at the T9-T1 that could be seen in the extension position and no cord compression at any A second taken the

year, on March 26 showed neuroforaminal narrowing at the

secondary to early facet disease. 1

(Tr. 468) There was no disc abnormality. (Id.)



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Neuroforaminal narrowing refers to a reduction in the size of the opening in the column through which the spinal nerve exits. As this opening narrows, the nerve becomes compressed, which can to pain that radiates along the path of the nerve.

<http://www.spine-health.com/glossary/neuroforaminal-narrowing> visited September 12, Here, the showed that plaintiff's nerve roots were not impinged. (Tr. 468) Facet disease occurs when the joints degenerate. [https://www.laserspineinstitute.com/back\\_problems/facet\\_disease/](https://www.laserspineinstitute.com/back_problems/facet_disease/) (last visited September 12,

2

2006 2007, plaintiff

2006 2007.

following

In 2007, level

2007, "discomfort" "overall

2007 In 2007,

("FCE")

2007 PRO 410-D.I. "considerable

plaintiff "crippled,"

"not Physical

POL." Instead,

following

lateral From July to October received treatment for her back pain from Dr. Emmanuel Devotta, a pain management specialist. Plaintiff received four injections between July and May (Tr. 632-35) Plaintiff said she experienced relief for approximately two weeks an injection, but experienced no significant improvement. (Tr. 629) Dr. Devotta also prescribed pain medication and muscle relaxers. (Tr. 624-630) June plaintiff's pain dropped to zero. (Tr. 624) Dr. Devotta noted that if plaintiff remained pain free after a month, he would discharge her. (Id.)



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A month later, in July plaintiff reported in the lumbar region that was tolerable" and rated as a 3/10 in severity. (Tr. 623) Dr. Devotta noted that the pain was not as severe as before the May injection and had been stable. (Id.) September plaintiff reported pain as a 7/10. (Tr. 621-22) To formulate a plan of treatment, Dr. Devotta asked plaintiff to complete a functional capacity evaluation which would determine her work capacity. (Tr. 622)

An FCE was conducted on September 11, by Physical Therapy. (Tr. 4-8 at 51-54) The FCE reported that question be drawn as to the reliability/accuracy of [plaintiff's] subjective reports of pain/limitation" and that while

considered herself to be this did not match with clinical observations as she was able to complete the four hour FCE. (Tr. 411) The FCE ultimately concluded that plaintiff did meet the Medium Demand Level of a Laundry Person as she tested at the Light (Id.) plaintiff

demonstrated decreased tolerance with walking, standing, sustained bending, and sustained low level work. Ms. Antoniolo demonstrated the

AROM and strength deficits: 75% limited lumbar flexion and 25% limited lumbar extension, left flexion, and tight lateral flexion;

3

left (Id.). plaintiff laundry limit

limit walking (5-10 (Id.) 2007 2010, 620-21)

2008 2008, plaintiff

In 2008, level 5/10. 496-502) She

(Id.) (Id.)

In 2008,

full leg bilaterally. (Id.)

lumbosacral

(Id.) MRI 2008 mild

2006). 4/5 bilateral hip flexion and left knee flexion, 4+/5 right knee flexion, bilateral knee extension



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and ankle dorsiflexion. The FCE recommended that return to modified/restricted duty as a

technician subject to restrictions: standing to an occasional basis with frequent positional change, and to an occasional basis only minute increments). There are no records from Dr. Devotta between October and May suggesting that plaintiff stopped treatment with him during that time. (Tr.

From February to August sought treatment for her back pain from her primary care physician, Dr. Marcia Castro. August she reported a pain of (Tr. tried flagging work at one point but quit because of severe back pain. Dr. Castro prescribed pain medication to be taken as needed.

Plaintiff also saw orthopedic surgeon, Dr. Bruce Katz. (Tr. 364-422) an examination on September 18, Dr. Katz noted tenderness in the lumbosacral junction and restriction to the lumbar range of motion. (Tr. 369) Plaintiff's hip range of motion was and pain free and a straight raise test was negative An x-ray of the spine on the same date showed no gross instability and normal disc space height. An of the lumbar spine dated October 1, showed isolated degenerative changes at the L5-S1 facet joints. (Tr. 371, 467) There was no evidence of disc herniation and no significant stenosis. 2

(Tr. 467) At that time, Dr. Katz concluded that plaintiff was capable of light duty status. (Tr. 388) This

2

Stenosis is a stricture of any canal or orifice. Stedman's Medical Dictionary, p. 1832 (28th Ed.

4

conclusion included plaintiff capable

walking In available low blocks,

On 2009, concluded plaintiff

plaintiff only plaintiff "conservative"

(Id.) Until would

(Id.)

April 2009 Physical 380, "near full, entirely full,

plaintiff's 405) plaintiff "may able



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(Id.) "Overall clinical reliability/accuracy pain/limitation." (Id.) "may

able currently (Id.)

should (Id.) concluded plaintiff capable able laundry

(Id.; 380) an opinion that was of sitting 8 hours, standing 4 hours, and 4 hours per work day. (Tr. 382-388)

an initial consultation, Dr. Katz had discussed the different treatment options for back pain including facet joint surgery, and additional testing. (Tr. 365) January 27, however, Dr. Katz that was not a candidate for surgery, because a discogram showed that received pain under very high pressurization. (Tr. 376) Dr. Katz advised to continue with her

pain management and undergo an FCE to determine her permanent work status. then, his recommended work status of light duty remained unchanged.

A second FCE was completed on 24, by Pro Therapy. (Tr. 404-14) The FCE noted the presence of though not effort" on behalf. (Tr. Thus, be to do more physically at times than was demonstrated." The FCE also noted that: test findings, in combination with observation, suggest considerable question be drawn as to the

of [plaintiff's] subjective reports of Plaintiff be to do more at times than she states or perceives." Accordingly, the FCE recommended that "[s]ignificantly more weight be placed upon objective findings versus subjective reports." Finally, the FCE that was

of light duty work, but not to return to her previous position as a technician, because it had a medium physical demand. Tr. Afterwards, Dr. Katz released plaintiff for work, with the following restrictions adopted from the FCE:

5

tolerance walking light lifting, pulling.

2009, plaintiff lower

relief. (Id.) In 2010, plaintiff

helping. (Id.) In 2010, plaintiff physical "somewhat helping." 480) Also 2010, plaintiff complaining low

607) Plaintiff large cleaners. (Id.; 620) Upon



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607) leg 60 bilateral MRI lumbar revealed 607) bilateral lumbar 607)

2010 2011, plaintiff's

607-20; "some relief," plaintiff's would 610,

plaintiff level 2010, "she look like level 9." In 2011,

"[a]ny Medical 2006).

(last work 8 hours per day; a maximum of 1-2 hours each of sitting, standing, and

per work day; and carrying, pushing, and (Tr. 380-81) At the end of reported to Dr. Castro that she was experiencing pain in her back after working in a nursing home. (Tr. 486) She had been taking Motrin with no the beginning of reported that she was working part-time pushing carts which aggravated her hand and back pain. (Tr. 482-86) Pain medications were March reported that she was going to therapy three times a week, which was (Tr.

in March returned to Dr. Devotta of back pain. (Tr. attributed the pain to heavy duty work pushing carts at a dry Tr. 613, examination, Dr. Devotta noted tenderness at the L4-S1. (Tr. A straight raise test was degrees and an of the spine facet arthropathy. 3

(Tr. Dr. Devotta diagnosed facet joint syndrome. 4

(Tr. From March to June Dr. Devotta treated back pain with medication and injections. (Tr. 674-76) The treatment seemed to provide

but pain increase to an 8 or 9 with activity. (Tr. 612- 14) When reported a pain of 9 in October Dr. Devotta noted that

does not she has a pain of (Tr. 612) May Dr. Devotta

3

Arthropathy is disease affecting a joint." Stedman's Dictionary, p. 161 (28th Ed. 4

Facet joint syndrome is pain at the joint between two vertebrae in the spine. Another term for facet joint syndrome is osteoarthritis. <https://www.depuysynthes.com/patients/aabp/understandingconditions/facetjointsyndrome> visited September 12, 2016).

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plaintiff MRI cervical MRI would plan MRI, (D.I. last plaintiff

control; complained primarily losing plaintiff

Adult primarily Michael Kanapathippillai initial consultation plaintiff bulging lower She also

Upon physical limited flexion normal leg also

"controlled Ibuprofen 800." Adult physical follow-up plaintiff

Nevertheless, Kanapathippillai abnormal leg

plaintiff fill disability Kanapathippillai limited flexion

leg normal Plaintiff

In leg plaintiff's limited instructed to obtain an of the spine, and once he reviewed the he her future treatment. (Tr. 676) An however, was never obtained.

8 at 5) At her office visit with Dr. Devotta, in June 2011, reported that her back pain was under she of neck pain. (Tr. 675)

After her insurance, switched her care from Dr. Katz and Dr. Devotta to Christiana Care Medicine, where she was seen by Dr.

Gross M.D., and Dr. Narrani M.D. (Tr. 728-77) At her

on September 28, 2011, reported that she had a history of two discs in her back. (Tr. 773) reported a pain of 7 in her back. (Tr. 770) examination, Dr. Gross noted and extension of the back, a gait, and a negative straight raise test. (Tr. 776) Dr. Gross noted that the back pain was on (Tr. 765, 776) The treating physicians at Christiana Care Medicine continued to prescribe pain medication, and recommend therapy. (Tr. 728-77)

At a appointment on December 16, 2011, reported that her back pain had not changed in character or intensity. (Tr. 770) upon examination, Dr. found an gait and a positive straight raise test. (Tr. 771) When returned in January 2012 to out paperwork, Dr. observed and extension of the back and a positive straight raise test, but a gait. (Tr. 766) reported back pain as a 6/10. (Tr. 765) March 2012, Dr. Gross noted that on a straight raise test,

pain was to the upper thigh. (Tr. 761) Dr. Gross did not indicate whether this meant the test was negative or positive.



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In July plaintiff physical helped "[l]ooking [I]

actual results

(Id.) In plaintiff plaintiff

In lower

40) Upon along lumbar L5-S1,

leg bilaterally. (Id.) controlled

(Id.) last plaintiff

In 2009, plaintiff Gelman,

She (Id.) Upon Gelman plaintiff full all

tunnel. (Id.) also plaintiff "provocative" Tinel's while Phalen's (Id.)

vertebral column. 2006). only

tingling, "pins felt along Medical 2006). 2012, finished a course of therapy which she reported some. (Tr. 751) At that time, Dr. Gross noted that back, don't have the from prior imaging." (Tr. 752) He made a note to attempt to obtain copies of the imaging, but there are no notes that the imaging was ever obtained or that new imaging was done. August 2012, denied back pain. (Tr. 748) The next month, however, reported back pain and that her disability hearing was next month. (Tr. 744)

November 2012, plaintiff reported that she continued having back pain from a herniated disc. (Tr. 7 examination, Dr. Gross noted tenderness the spine non-radiating and no paravertebral tenderness. 5

(Tr. 741) A straight raise test was negative The back pain was with heating pad and intermittent ibuprofen. At her appointment in the record, in March 2013, denied back pain. (Tr. 735)

2. Carpal tunnel syndrome June saw orthopedic surgeon, Dr. Andrew for right hand complaints. (Tr. 567) described a numbness sensation in all her digits.

examination, Dr. found that had movement of digits and wrist, no thenar atrophy, and no pain over Guyon's He found that



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had the test was negative. 6

Dr.

5

Paravertebral means adjacent to the Stedman's Medical Dictionary, p. 1424 (28th Ed. Dr. Gross is stating that the tenderness is along the lumbar spine and does not extend to adjacent areas. 6

Tinel's is a sensation of or of and needles" the course of a nerve. Stedman's Dictionary, p. 1772 (28th Ed.

8

Gelman include

Plaintiff declined In 2010 2010, plaintiff Gelman complaining

until Gelman's "nonspecific" "leery

In 2010, plaintiff Craig

still physical facility

plaintiff

physical April 2010. She "much better" 201 O goal 660) In 2010, carpal release, Gelman follow-up Gelman.

D.O., "less

"some tingling."

On 2010, completed Residual Evaluation could:

recommended conservative care to a brace, ibuprofen, and an injection. (/d.) the injection. (Id.)

January and February saw Dr. again of right hand symptoms. (Tr. 565-566) He increased her medication and decided to wait on any injections it was determined that the medication was ineffective. (Tr. 566) At that time, Dr. findings were and he was towards any type of operative treatment." (Tr. 565)



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March reported to Katz, a certified physician assistant in Dr. Gelman's office, that she was experiencing some discomfort in her hand and had not gotten into therapy because the did not offer hand therapy. (Tr. 564) P.A. Katz instructed to continue her medications and change physical therapists. (Id.) Plaintiff obtained therapy for her hand from to May (Tr. 655-67) reported that her hands were and was discharged in June with satisfactory achievement. (Tr. 655,

September plaintiff requested a right tunnel which Dr. performed on February 9, 2011. (Tr. 563, 568) There are no records of the with Dr. A month after surgery, plaintiff reported to Steven D. Grossinger, a specialist in neuropain, that she was recovering and had hand symptoms," but there continued to be numbness and (Tr. 653) He prescribed Neurontin. (/d.)

### C. Medical Opinions

December 28, Dr. Devotta a Functional Capacity on a check-box form. (Tr. 514-516) Dr. Devotta indicated that plaintiff

9

lift frequently occasionally; walk

also plaintiff would lie elevate legs unscheduled

result

plaintiff could: climb ladders, push/pull; rarely occasionally climb handle, feel "may Finally, plaintiff capable

full-time On completed Residual Functional plaintiff

On Kanapathippillai completed Residual

Evaluation She "lumbar displacement" plaintiff could: lift frequently occasionally; walk

Kanapathippillai also plaintiff would lie elevate legs

result

only light, It also select level physical plaintiff

10 pounds and 20 pounds and stand 5-10 minutes; sit for 15-20 minutes; remain at a work station with a sitting or standing option a maximum of 2-3 hours in an 8-hour work day. (Id.) Dr. Devotta



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indicated that need to: down or her 30-60 minutes per work day; take 2-3 breaks; and miss 3-4 days a month as a of her pain. (Tr. 514) When asked about restricted activities, Dr. Devotta indicated that never crouch/squat,

or twist, stoop, or reach; and stairs, finger, or objects. (Tr. 515) Dr. Devotta noted that the restricted activities aggravate her pain." (Id.) when asked if was of performing sedentary work, Dr. Devotta checked no on a basis, but yes on a part-time basis. 7

(Tr. 516) May 2, 2011, Dr. Cross a Capacity Evaluation for on the same check-box form and provided the exact same answers and notations as Dr. Devotta for every question. (Tr. 583-85)

January 26, 2012, Dr. a Functional Capacity on the check-box form. (Tr. 647-49) diagnosed disc

and indicated that 5 pounds and 20 pounds sit, stand, or for 30 minutes at a time and 2 hours maximum in an 8- hour work day; remain at a work station with a sitting or standing option a maximum of 4 hours in an 8-hour work day. (Tr. 647) Dr. indicated that

need to: down or her 30-60 minutes per work day; take 3 unscheduled breaks; and miss 3-4 days a month as a of her pain. (Id.) For

7

The form asks about sedentary work, not medium, or heavy work. does not ask the physician to the of exertion can perform on a range from sedentary to heavy.

10

Kanapathippillai Finally, Kanapathippillai plaintiff capable full-time

2006 "which She relied MRI

2012. lumbar carpal plaintiff lift 10 lift 10 occasionally

plaintiffs medical 2011. limited lifting 20 occasionally, 10

following

light 90) file July 2011 Michel's 93-100)

Vocational



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laundry unskilled, light (Id.)

MRI 2006 2008 previously 11(8)(1). (See restricted activities, Dr. gave the same answers as Dr. Devotta. (Tr. 648) Dr. opined that was not of sedentary work, because she had a work related incident on January 26, caused severe disc (lumbar) disease." (Tr. 649) noted that she on an and EMG to reach her conclusions. 8

(Id.) Dr. Gross completed a one-page check box evaluation on September 6, (Tr. 651) He diagnosed plaintiff with disc displacement and tunnel syndrome. (Id.) He indicated that could: less than pounds rarely; never

pounds or more; rarely finger and grasp; handle; never stoop, bend, or crouch; and miss more than 4 days a month due to her impairments. (Id.)

Finally, Dr. Joseph Michel, of the state agency, evaluated evidence on March 2, (Tr. 83-91) He plaintiff to pounds

pounds frequently, 4 hours standing and walking, and 6 hours sitting. (Tr. 88) The activities were limited to occasional: climbing stairs, balancing, stooping, kneeling, crouching, and crawling. (Id.) Dr. Michel concluded that plaintiff's residual functional capacity ranged from modified to sedentary. (Tr. Dr. Vinod Kataria evaluated plaintiffs on 19, and affirmed Dr. decision. (Tr.

D. Expert's Testimony Plaintiff has relevant past work history as a housekeeper and worker. (Tr. 66) The housekeeper position is work. The laundry worker

8

Dr. Kanapathippillai does not identify the on which she relied. There are no MRIs in the record other than the three between and described in Section Tr. 467-69)

11

unskilled, hypothetical, vocational ("VE") plaintiff's

able lift 20 occasionally 10 frequently; stand/walk occasionally climb balance,

kneel, crawl, handle, feel; climb ladders.

could plaintiff's

national could usher/lobby



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hypothetical all postural limitations, individual exertional

ability will. Under

virtually available.

Plaintiff last Social 30, Plaintiff substantial gainful

alleged 2010 last

plaintiff lumbar carpal tunnel release. Plaintiff's plaintiff's medically equaled listed

concluded last plaintiff residual functional ("RFC") light following additional position is medium work. (Id.) For the first the ALJ asked the

expert to consider a person of age, education, and work experience; to pounds and pounds sit for 6 hours and for 4 hours in an eight-hour workday; stairs, stoop, crouch, finger, and and not (Tr. 67) The VE testified that such a person not perform past work, but there were other jobs that existed in significant numbers in the economy that the person perform. (Id.) Those jobs were: chaperone, attendant, and hostess. (Tr. 67-68) The second contained the same

but the had the capacity for sedentary work, needs to have the to change positions from sitting to standing at (Tr. 68) these circumstances, the VE testified that there was no work (Id.)

### E. The ALJ's Findings

met the insured status requirements of the Security Act on June 2012. (Tr. 28) did not engage in activity from her amended onset date of June 8, through her date insured. (Id.) The ALJ determined that had severe facet joint syndrome; tension/migraine headaches; and syndrome on the right, status post (Tr. 28)

Graves disease was not severe. (Tr. 28-9) The ALJ found that none of impairments or combination of impairments met or a impairment. (Tr. 29)

The ALJ that, through the date insured, had the

capacity to perform work with the

12

(Id.)



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Social 2010, alleged 30, Ill. OF REVIEW

will

U.S.C. Williams Sullivan, 970

differently. 2001). "substantial" scintilla.

2005). "such conclusion." v. 402 U.S. 401

305 U.S. In

806 1190 restrictions: sit 6 hours and stand/walk 4 hours in an 8-hour workday; occasionally climb stairs, balance, stoop, kneel, crouch and crawl; never climb ladders. Accordingly, plaintiff was unable to perform any past relevant work. (Tr. 33) Considering plaintiff's age, education, work experience, and residual functional capacity, however, the ALJ concluded that she was capable of performing jobs that existed in significant numbers in the national economy. (Id.) As a result, plaintiff was not under a disability, as defined in the Security Act, at any time from June 8, the onset date, through June 2012. (Tr. 34)

STANDARD A reviewing court reverse the ALJ's decision only if the ALJ did not apply the proper legal standards or if the decision was not supported by "substantial evidence" in the record. 42 § 405(g); v. F.2d 1178, 1182 (3d Cir. 1992). Where the ALJ's findings of fact are supported by substantial evidence, the court is bound by those findings even if it would have decided the case *Fagnoli v. Massanari*, 247 F.3d 34, 38 (3d Cir. Evidence is considered

if it is less than a preponderance but more than a mere *Rutherford v. Barnhart*, 399 F.3d 546, 552 (3d Cir. Substantial evidence means

relevant evidence as a reasonable mind might accept as adequate to support a

*Richardson Perales*, 389, (1971) (quoting *Consol. Edison Co. v. NLRB*, 197, 229 (1938)). determining whether substantial evidence supports the ALJ's findings, the court may not undertake a de novo review of the decision, nor may it re-weigh the evidence of record. *Monsour Med. Ctr. v. Heckler*, F.2d 1185, (3d Cir. 1986).

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In Social applies

Federal Rule Civil See Sec'y





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### IV. DISCUSSION

Plaintiff essentially

little (D.I. 12-18) formulated RFC failed include all plaintiff's (Id. 19-20)

Plaintiff claims "little weight"

(D.I. If

"well-supported medically clinical laboratory

will controlling 20 §404.1527. little

medical Sullivan, Cir.

Soc. Sec., 2007). If

20 C. Security cases, the substantial evidence standard to motions for summary judgment brought pursuant to of Procedure 56(c). *Woody v. of the Dep't of Health & Human Servs.*, 859 F.2d 1156, 1159 (3d Cir. 1988).

makes two arguments in support of her motion for summary judgment. First, the ALJ erred in assigning weight to the opinions of her treating physicians. 8 at Second, the ALJ an that to

of credibly established limitations. at Each of these arguments are addressed in turn.

#### A. Opinions of Treating Physicians

that the ALJ erred in giving to the opinions of her treating physicians. 14 at 11-15) a treating physician's opinion on the nature and severity of a claimant's impairment is by acceptable

and diagnostic techniques and is not inconsistent with the other substantial evidence" in the record, it be given weight. C.F.R.

Thus, an ALJ may give weight to a physician's opinion that is inconsistent with the evidence of record and with her own examination findings. *Jones v.* 954 F.2d 125, 129 (3d 1991) (holding that an unsupported diagnosis is not entitled to significant weight); *Hall v. Comm'r of* 218 F.App'x 212, 215 (3d Cir. the ALJ does not give a treating physician's opinion controlling weight, she must provide her reasons. F .R. §404.1527.



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14

"little weight."

"on palpation." (See,

"may

discounted." 820, 2003). 2011,

609,

essentially "identical"

2010 Here, the ALJ gave several specific reasons why each treating physician's opinion was entitled to Overall, the ALJ found that the treating physicians' severe restrictions were inconsistent with or unsupported by the physicians' contemporaneous treatment notes and other objective medical evidence in the record. (Tr. 31-32) More specifically, the ALJ observed that Dr. Devotta's treatment notes documented few physical findings, and his opinion was founded upon plaintiff's subjective pain complaints. (/d.) For each of plaintiff's visits, Dr. Devotta's treatment notes would state examination of her lower back, there is ... tenderness to

e.g., Tr. 629) Presumably, Dr. Devotta would detect the tenderness, because plaintiff would report feeling pain upon palpation. As a result, the physical findings of tenderness ultimately depended upon plaintiff's subjective reports. An ALJ

discredit a physician's opinion on disability that was premised largely on the claimant's own accounts of her symptoms and limitations when the claimant's complaints are properly Morris v. Barnhart, 78 F. App'x. 824-25 (3d Cir. The ALJ also noted that in April and June of after Dr. Devotta issued his opinion, he reported that plaintiff's back pain was under control. (Tr. 31; see also Tr.

675) The ALJ noted that Dr. Castro issued an opinion that was to Dr. Devotta's, but her treatment notes documented only a few office visits since her amended onset date in June and repeatedly stated that the plaintiff treated elsewhere for her back pain. (Tr. 32) As the ALJ correctly observed, plaintiff had five office visits with Dr. Castro in the year after her amended onset date. (Tr. 470-476, 68- 83) At each of those visits, plaintiff's chief complaint for which she sought treatment

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low (Id.) 2010 plaintiff's



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still physical (See,

Kanapathippillai's little

well (Id.; Kanapathippillai "try "continue gel," follow

plaintiff's follow-up "reported

"only occasionally" "conservative treatment"

plaintiff's

See 20

2008) "[t]he

(Id.) was unrelated to back pain. 9

None of Dr. Castro's treatment notes after June contain either objective physical findings or subjective reports regarding back pain. (Id.) Before the amended onset date, some of Dr. Castro's notes contained subjective reports of back pain, but no objective findings. e.g., Tr. 478,482,484,486)

The ALJ gave Dr. opinion weight, because the notes from the corresponding office visit when she completed the disability paperwork were not consistent with the severe restrictions in the opinion. (Tr. 32) As the ALJ noted, plaintiff reported during the visit that a gel worked very in controlling her back pain and that she did not use heating pads anymore. Tr. 766) Dr. recommended that plaintiff physical therapy," using the and up in two months. (Tr. 32, 766) Moreover, in visit, plaintiff that her back pain was generally better," she had not yet started physical therapy, and was using lidocaine patches. (Id.; Tr. 763) The ALJ concluded that this did not support the severe limitations in the opinion. (Tr. 32)

The ALJ appropriately found that conservative treatment history (and her favorable response to it) was directly at odds with the doctors' opinions that plaintiff was totally debilitated due to chronic back pain. C.F.R. § 404.1527(c)(2){i}, (ii) (noting that the nature and extent of treatment is a relevant factor for evaluating medical opinion evidence); *Garrett v. Comm'r*, 274 Fed. App'x 159, 164 (3d Cir. (finding substantial evidence supported ALJ's decision where ALJ noted that the

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The complaints would range from sore throat to headache.



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16

debilitating claimed").

would functional carpal

complaint In

minimal physical

walking, lifting. Finally, physical 20, 2012, helped. Accordingly,

little

claims should relied

limitations

Del. conservative treatment [claimant] received for her impairments indicated that they were not as as she

The ALJ identified several instances where Dr. Grass's opinion was not supported by his medical records. For example, Dr. Gross opined that plaintiff have severe manipulative limitations and restricted capacity due to tunnel syndrome, but his medical records do not even mention a related to carpal tunnel syndrome. (Tr. 32) addition, the treatment notes documented conservative treatment and contained diagnostic and exam findings, which did not support the severe restrictions in sitting, standing, and (Id.) the ALJ noted that plaintiff stopped attending therapy after June

even though she reported that it (Id.; Tr. 685) the ALJ gave weight to Dr. Grass's opinion.

The other evidence in the record to which plaintiff points does not contradict the ALJ's findings. First, plaintiff that the ALJ have on Dr. Katz's opinion regarding plaintiff's physical as support for giving the opinions of other treating physician's great weight. However, "[t]he decision to deny great weight to a treating source opinion must be supported by objective medical evidence." *Griffies v. Astrue*, 855 F.Supp.2d 257, 274 (D. 2012). Another physician's opinion is not objective medical evidence. The ALJ's reasons for the weight she attributed to each

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medical



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claims failed leg (D.I. plaintiff failed

could leg

2006 2007 "SLRT 60 bilateral," unclear

leg

(See 2008);

plaintiff MRIs. (D.I.

claimed additional disabled. 2006 MRI

plaintiffs

1 ° similar claims,

Michel, weight," conclusions plaintiff's residual (See D.I. treating physician's opinion was appropriately confined to the objective evidence. 10

Second, plaintiff that the ALJ to consider a positive straight raise test by Dr. Devotta. 8 at 16-17) But to provide an accurate cite to the record and the court not find a positive straight test by Dr. Devotta. (Id. {citing Tr. 604, 610, 612, 613, 620}) The court did find a note by Dr. Devotta in December and January of degrees but it is whether that means the straight raise test was positive or negative. (Tr. 627-28) Even if it was positive, the test was over three years before plaintiff's amended onset date, and plaintiff had several negative straight leg tests after this date. Tr. 369 (Sept. Tr. 776 (Sept. 2011); Tr. 741 {Nov. 2012}).

Third, the ALJ did not err, as claims, by failing to discuss plaintiff's three

8 at 17) As plaintiff admits, the MRIs were taken several years before the amended onset date, making them somewhat stale. (/d.) The MRIs were also either irrelevant to plaintiffs impairments or provided evidence that the plaintiff was not The March was of plaintiffs thoracic spine, not her lumbar spine, which was the source of impairments. (Tr. 469) Moreover, the

For reasons, the ALJ was not required, as plaintiff to reconcile the fact that Dr. in his state agency review, gave Dr. Devotta's opinion "controlling

but reached different as to functional capacity. 8 at 18; Tr. 87) The ALJ was only required to consider whether the opinion was supported by objective medical evidence. Griffies, 855 F.Supp.2d at 274.



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MRI, like MRIs, essentially normal, only mild

Finally, Del. 2014}, (D.I. In relied

well full

low 501.

preclude lower rely medical conclusion. Instead,

little plaintiffs Credibly Established Finally, claims

failed include all plaintiff's credibly established (D.1.

all "credibly limitations." Cir. 2005). limitation medical record," hypothetical. 607, Cir. 2014).  
"However, medical

It

2012, 2012, still thoracic spine the two lumbar spine were showing

degenerative changes. 11

(Tr. 467-68) the case on which plaintiff relies, *Bentzen v. Astrue*, 46 F.Supp.3d 489 (D. is inapposite. 8 at 18} that case, the ALJ on normal findings of alertness, reflexes, and gait, as as muscle strength and tone to conclude that the claimant was not disabled by severe back pain. *Bentzen*, 46 F.Supp.3d at The court appropriately reversed the ALJ's findings on the grounds that those objective medical findings do not a diagnosis of severe back pain. *Id.* Here, the ALJ did not on similar types of evidence to reach her

she appropriately identified substantial evidence relevant to the severe impairments plaintiff claimed. Accordingly, the ALJ did not err is giving weight to the opinions of treating physicians.

### B. Limitations

plaintiff that the ALJ erred by presenting a defective hypothetical question that to of the limitations. 8 at 19) A hypothetical question must include of the claimant's established

*Rutherford v. Barnhart*, 399 F.3d 546, 554 (3d Accordingly, a that is supported by evidence, and



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"otherwise uncontroverted in the must be included in the Zimsak v. Colvin, 777 F.3d 614 (3d

where a limitation is supported by evidence, but is

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Considering the essentially normal findings in the MRIs, it is puzzling that Dr. Kanapathippillai's opinion claims to have relied on the MRI's to diagnose lumbar disc displacement. (Tr. 647) is particularly puzzling considering that Dr. Kanapathippillai completed her opinion in January but as of July her co-worker, Dr. Gross, noted that the office needed to obtain copies of plaintiff's imaging. (Tr. 752)

19

include

should controlling

I.

See, Miller 2015 \*10 Del. 2015) (holding

CONCLUSION

shall

20 opposed by other evidence in the record, the ALJ has discretion to choose whether to

that limitation in the hypothetical." Id. According to plaintiff, the ALJ have given weight to the opinions of plaintiff's treating physicians and, as a result, included the limitations in those opinions in her hypothetical questions. (D. 8 at 19) Because the ALJ did not err in giving little weight to the opinions of plaintiffs treating physicians, for the reasons explained above, the hypothetical questions were not deficient for the reasons plaintiff claims. e.g., v. Colvin, WL 9484464, at (D. Dec. 29,

that a hypothetical question was not incomplete when the ALJ did not include limitations from treating physicians' opinions that were appropriately given little weight). V.

For the foregoing reasons, plaintiffs motion for summary judgment is denied, and the defendant's motion for summary judgment is granted. An appropriate order issue.

