

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

JAMES M. McFARLIN,)
)
 Plaintiff,)
)
 v.) No. 1:02 CV 52 DDN
)
 JO ANNE B. BARNHART,)
 Commissioner of)
 Social Security,)
)
 Defendant.)

MEMORANDUM OPINION

This action is before the court for judicial review of the final decision of the defendant Commissioner of Social Security denying plaintiff's applications for disability insurance benefits under Title II of the Social Security Act (the Act), 42 U.S.C. §§ 401, et seq., and for supplemental security income (SSI) benefits based on disability under Title XVI of the Act, 42 U.S.C. §§ 1381, et seq. The parties have consented to the exercise of plenary authority by the undersigned United States Magistrate Judge under 28 U.S.C. § 636(c). A hearing was held on July 22, 2003.

In May 2000, plaintiff James M. McFarlin applied for benefits claiming that he, who was born on June 12, 1968, had been disabled since July 6, 1999, due to back trouble, depression, trouble sleeping, and leg pain. (Tr. 203.)

A. The ALJ's decision

On August 23, 2001, the Administrative Law Judge (ALJ) denied plaintiff's applications for disability benefits. In doing so he made eight enumerated findings:

1. Plaintiff meets and would continue to meet the Act's required disability insured status through December 31, 2004.¹
2. He has not engaged in substantial gainful activity since May 16, 2000.
3. He suffers from mild degenerative disc disease, borderline intellectual functioning, situational depression, post-traumatic stress disorder (PTSD), and a history of having had an electrocution injury to his foot and the palms of both hands which resulted in the amputation of his left big toe. None of these impairments are listed in or are the medical equivalent of an impairment in the Commissioner's list of disabling impairments.
4. Plaintiff's allegations that his symptoms preclude light work are not credible, due to inconsistencies in the record.
5. "[Plaintiff] can lift twenty pounds occasionally, ten pounds frequently, occasionally climb ladders, ropes, and scaffolding, stooping, and crouching. He should avoid exposure to vibrations to the body. He was moderately limited in his ability to understand, remember, and carry [out] detailed instructions, maintain his attention and concentration for extended periods, complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods, and set realistic goals or make plans independently of others (20 CFR 404.1545 and 416.945)."
6. Plaintiff's past relevant work, as a molding machine operator and a security guard, is not precluded by the above limitations.
7. His impairments do not prevent him from performing his past relevant work.
8. Plaintiff is not disabled under the Act.

¹For disability insurance benefits under Title II of the Act, a claimant must be fully insured, based upon his or her employment earnings record, during the period of disability. 20 C.F.R. § 404.101(a). For SSI supplemental security insurance benefits under Title XVI, a claimant need only be disabled when the application for benefits is filed. 20 C.F.R. § 416.202(a)(3).

(Tr. 21-22.)

The Appeals Council denied plaintiff's request for review of the ALJ's decision. Thus, the ALJ's decision became the final decision subject to this judicial review.

B. General legal framework

Under the Act, to be entitled to benefits on account of disability, plaintiff must prove that he is unable to perform any substantial gainful activity due to any medically determinable physical or mental impairment which would either result in death or which has lasted or could be expected to last for at least 12 months. See 42 U.S.C. §§ 423(a)(1)(D), (d)(1)(A), 1382c(a)(3)(A).

Under the Commissioner's regulations, plaintiff must first prove that one or more impairments prevent him from performing his past relevant work. See Pickner v. Sullivan, 985 F.2d 401, 403 (8th Cir. 1993). If he satisfies this burden, the burden shifts to the Commissioner to prove that he is able to perform some other substantial gainful activity in the national economy, given his residual functional capacity (RFC), age, education, and work experience. Id. As set forth above, plaintiff did not sustain this burden.

The court's role on review is to determine whether the Commissioner's findings are supported by substantial evidence in the record as a whole. See Krogmeier v. Barnhart, 294 F.3d 1019, 1022 (8th Cir. 2002). "Substantial evidence is less than a preponderance but is enough that a reasonable mind would find it adequate to support the Commissioner's conclusion." Id.; accord Jones v. Barnhart, 335 F.3d 697, 698 (8th Cir. 2003). In determining whether the evidence is substantial, the court must consider evidence that detracts from, as well as supports, the Commissioner's decision. See Brosnahan v. Barnhart, 336 F.3d 671, 675 (8th Cir. 2003). So long as substantial evidence supports the final decision, the court may not reverse it merely because opposing substantial evidence exists in the record or because the

court would have decided the case differently. See Krogmeier, 294 F.3d at 1022.

C. Administrative record

The record before the Commissioner indicates that plaintiff had been employed from 1988 to 1992 in a plastics factory, in 1991 as a saw mill worker, from 1996 to 1999 as a truck driver, from January to March 2000 as a security guard, and from March to April 2000 as a cab driver. (Tr. 138-39, 204.) On September 4, 1996, while working as a truck driver, plaintiff fell and injured his left foot and ankle. (Tr. 189.) On July 6, 1999, plaintiff strained his back unloading rolls of carpet padding. (Tr. 188.)

On July 8, 1999, plaintiff went to the emergency room complaining of soreness in his back. He was given medications and referred to his employer's physician, Michael C. Trueblood, M.D., an orthopedist. (Tr. 215-16.)

On July 12, 1999, plaintiff saw Dr. Trueblood for treatment of his back. His examination was unremarkable, except for discomfort at the extreme ranges of motion. Dr. Trueblood prescribed Relafen and restricted plaintiff to light duty at work, involving the lifting of no more than 30 pounds. (Tr. 226.)

On August 4, 1999, Dr. Trueblood found that plaintiff had reached his maximum medical improvement. His neurological condition and reflexes were intact. Straight leg raising was negative and his muscle power and sensibility were intact. He returned plaintiff to work without any restrictions. (Tr. 224.)

On November 19, 1999, plaintiff's attorney referred him to Charles P. McGinty, Sr., M.D., for a work-related injury. The examination indicated that plaintiff's lumbar spine was tender to touch at the low midline, with some evidence of spasm. He had good range of motion in all the upper extremity joints. He also had good range of motion in the lower extremities, except that manipulation of his hips caused pain in the low back. The neurological examination was unremarkable. Dr. McGinty's

impression was "severe low back sprain with no imaging studies other than plain x-rays. Rule out herniated nucleus pulposus." (Tr. 234.) Dr. McGinty stated that plaintiff had no other medical condition, except intermittent untreated hypertension. He recommended further diagnostic studies. (Tr. 231-37.)

On February 8, 2000, plaintiff was examined by Dr. Trueblood for lumbosacral pain that radiated to both buttocks and half-way down both thighs. Plaintiff reported that he was having little difficulty with all the standing required by his security guard job.² He complained of pain from the vibration of sitting in an automobile. However, he had no difficulty sitting at home. He found Motrin more effective than Tylenol. He said he could lift 25 pounds without discomfort. His hip range of motion was normal. Straight leg raising was negative. (Tr. 223-24.)

Dr. Trueblood saw plaintiff on March 1, 2000. An MRI showed mild degenerative disk disease and dessication at L4-L5, with no evidence of herniated disk, no spinal stenosis, no destructive changes, and no serious disease. The neurological examination was unremarkable. Dr. Trueblood did not think that surgical intervention was required. He further said:

I feel there is no anatomic evidence of serious injury. I encourage him to remain employed and fully active. I find no anatomic reasons that he should not be able to be fully active and able to hold down whatever job he chooses. I have once again recommended that he stop smoking cigarettes because of the deleterious effects it has on his back.

(Tr. 222.)

On May 11, 2000, Dr. McGinty again examined plaintiff at the request of plaintiff's attorney. Plaintiff was currently driving a cab and used Excedrin to manage his pain. Dr. McGinty noted that

²Plaintiff testified before the ALJ that he quit this job because he could not stand all night on a concrete floor. (Tr. 31.)

plaintiff could flex and extend his lumbar spine fairly well. Straight leg raising was positive on the right at 70 degrees and on the left at 40 degrees. There was no significant neurological finding. Dr. McGinty noted that plaintiff had become much less symptomatic after working at a lower level of exertion. Plaintiff's records revealed low back sprain with moderate degenerative disc disease at L4-L5, but no evidence of nerve root compression. Dr. McGinty believed plaintiff should avoid lifting more than 25 pounds frequently and 50 pounds occasionally. In addition, he felt that, if plaintiff wanted to drive trucks again, he should be allowed to do so. (Tr. 228-29.)

On August 12, 2000, plaintiff's vehicle was rear-ended by another vehicle. At the hospital, he complained of neck pain but denied back problems. He was given a cervical collar and x-rays showed that his cervical spine was within normal limits. The diagnosis was cervical strain and he was prescribed Flexeril and Naprosyn for one week. (Tr. 249-54.)

On August 16, 2000, Stephen Jordan, Ph.D., conducted a mental evaluation of plaintiff at the request of the state disability determinations agency. Plaintiff's chief complaints were insomnia for the past two years and periodic depression. He had nightmares about the accidental electrocution death of his pregnant wife. Plaintiff reported he had received special education during his eight years of formal education. Intelligence testing indicated that plaintiff functioned in the low average to borderline range of intelligence.³ His performance on the Word Memory Test suggested inadequate effort. (Tr. 238-41.)

During the Mental Status Examination (MSE), Dr. Jordan found that plaintiff was alert and fully oriented; exhibited low average

³On the Wechsler Adult Intelligence Scale-III (WAIS-III), plaintiff scored as follows: verbal IQ - 76, performance IQ - 76, and full scale IQ - 74. The Word Memory Test results raised concerns about the validity of the WAIS-III findings, due to a perceived inconsistent effort by plaintiff. (Tr. 241.)

attentional capacity; had inadequate remote memory; had a low average fund of information; and had a moderately slow cognitive processing rate with delayed response latency to questions. During spontaneous conversation, his speech was fluent; the content of his speech revealed some vagueness but no dysnomia and possible blocking; plaintiff could perform simple addition but his multiplication was impaired; plaintiff reported no delusional thoughts; he denied hallucinations; there was no evidence of active psychosis; plaintiff's level of reasoning was concrete, but his overall problem-solving was in the low average range; plaintiff demonstrated irritable and dysphoric affect; and he related to the examiner pleasantly and cooperatively. Dr. Jordan found that plaintiff's cognitive endurance was fairly good, with no breaks being required over the course of the evaluation. Plaintiff had no complaints and did not appear impulsive during the testing. His frustration tolerance was intact; no pain behaviors were exhibited. (Tr. 240-41.)

Dr. Jordan's diagnoses were major depression, recurrent, severe without psychotic features; PTSD; and insomnia. His current Global Assessment of Functioning (GAF) score was 45.⁴ (Tr. 238.)

Dr. Jordan stated he believed that plaintiff's psychiatric disorders were "fairly ingrained," but that he would benefit from "aggressive psychiatric intervention." (Tr. 238.)⁵ Dr. Jordan further opined that plaintiff could understand and remember simple instructions. He believed that depression, anxiety, irritability,

⁴The GAF Scale indicates an individual's level of psychological, social, and occupational functioning. See Diagnostic and Statistical Manual of Mental Disorders 34 (4th ed. rev. 2000) (DSM-IV-TR). A GAF score of 41 to 50 indicates serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g., no friends, unable to keep a job).

⁵However, plaintiff had no history of psychiatric treatment. (Tr. 238-44.)

and low frustration tolerance would limit his ability to persist in any stressful task. He felt that plaintiff's social skills and ability to tolerate normal daily stressors were "markedly" impaired. (Tr. 238.)

On August 18, 2000, plaintiff began treatment with the Cross Trails Medical Center. On August 18 and 25, and September 26, 2000, he complained of cervical strain, which was resolved by the time of the last visit. (Tr. 256-58.)

On December 14, 2000, plaintiff was seen at Cross Trails for low back pain and difficulty sleeping due to the pain. The diagnosis was lumbar strain. Plaintiff was given a Medrol dosepak, ibuprofen, back exercises, and alternating applications of heat and ice. (Tr. 259.)

On January 31, 2001, plaintiff complained of insomnia and back pain. At L4-L5 and L5-S1 his back was tender. He could raise both legs only 50 to 60 degrees. He could not quite touch his toes, but had good stability and strength in his low back muscles. He was kept on conservative treatment. (Tr. 260.)

On February 22, 2001, plaintiff complained of back pain and of a long-standing burning sensation in his stomach. He said he got relief from his father's Prevacid. A musculoskeletal examination was unchanged from the prior visit. He was prescribed Prevacid. (Tr. 261.)

On March 1, 2001, plaintiff complained of chest pain. An electrocardiogram showed a normal sinus rhythm and no ST elevations or depressions. (Tr. 262.)

On March 13, 2001, plaintiff was seen again for insomnia and back pain. His musculoskeletal examination was unchanged. He was given Flexeril for the insomnia; he was advised to see his physician for an increase in his Prozac dosage. (Tr. 263.)

On March 28, 2001, plaintiff complained of sinus problems. He made no mention of his back pain or difficulty sleeping. (Tr. 264.)

On April 3, 2001, plaintiff complained of numbness in his left hand after he sat at a computer for three hours without moving his left hand. At this time, plaintiff did not complain of any back pain or insomnia. (Tr. 265.)

On April 12, 2001, plaintiff complained of "situational depression." He had stopped Prozac for a week due to his elevated blood pressure. He was changed to Zoloft. Again, he did not complain of any back pain or insomnia. (Tr. 266.)

On April 20, 2001, plaintiff was seen at Cross Trails for complaints of numbness in his hand. It was noted that he had stopped his Zoloft. He did not complain of any back pain or insomnia. (Tr. 267.)

D. DISCUSSION

In support of his complaint, plaintiff argues that the ALJ failed to give proper weight to the opinion of psychologist Stephen Jordan, Ph.D., who determined that plaintiff suffered from disabling mental impairments; and that the ALJ failed to make sufficient findings about the functional demands of plaintiff's past relevant work, in order to properly compare these demands with the RFC found by the ALJ. Defendant argues that the ALJ properly assessed the plaintiff's credibility, gave appropriate weight to Dr. Jordan's opinions, and properly found that plaintiff could perform his past relevant work.

Plaintiff's credibility

Of cardinal importance in the ALJ's decision are the findings of the ALJ regarding plaintiff's RFC. The ALJ found that, even with his impairments, plaintiff could occasionally lift twenty pounds and ten pounds frequently; he could occasionally climb ladders, ropes, and scaffolding; and he could stoop and crouch. He should avoid exposure to vibrations to his body. Mentally, he was moderately limited as set forth above. Ultimately, the ALJ found that this RFC precluded plaintiff from some of his past relevant

work, but not his work as a molding machine operator or as a security guard.

In holding that plaintiff's testimony and allegations were not sufficiently credible to support disability, the ALJ articulated the factors required for consideration by Polaski v. Heckler, 739 F.2d 1320 (8th Cir. 1984). The ALJ lawfully considered that the objective medical evidence did not support plaintiff's allegations. (Tr. 18.) See Brown v. Chater, 87 F.3d 963, 965 (8th Cir. 1996). Plaintiff alleges an onset of disability on May 16, 2000. In spite of his borderline intellectual functioning and PTSD attributable to a tragic 1991 electrocution, plaintiff was able to perform substantial gainful activity and to earn \$12,678.75 in 1997. When an individual works with an impairment for a significant time, unless there is a significant deterioration, that impairment is properly considered not disabling presently. Cf. Orrick v. Sullivan, 966 F.2d 368, 370 (8th Cir. 1992) (per curiam).

The ALJ's finding that plaintiff's degenerative disc disease was "mild" (Tr. 21) is consistent with the MRI report of February 25, 2000. That report indicated that he had moderate degenerative disc disease at L4-L5, with no evidence of nerve root compression. Plaintiff was never considered a candidate for surgery. Following the accident of August 12, 2000, plaintiff had unremarkable range of motion in his arms and legs. There was no evidence of significant sensory, reflex, or motor deficit.

The ALJ properly declined to give controlling weight to the opinion of Dr. Jordan, the psychologist who examined plaintiff on behalf of the state agency. Other doctors who examined or treated plaintiff stated he could and should return to work. On July 12, 1999, Dr. Trueblood, an orthopedist, returned plaintiff to work, with a 30-pound lifting restriction. Dr. Trueblood found that plaintiff had reached maximum medical improvement with respect to his July 12, 1999, injury, and recommended that he return to any work he could tolerate without any restrictions. In March 2000, Dr. Trueblood stated that there were no anatomic reasons why

plaintiff should not be fully active and hold down whatever job he chose.

As of May 11, 2000, Dr. McGinty noted that plaintiff had become much less symptomatic with complaints of pain since he had changed his work and avoided heavy lifting. He assigned plaintiff a 15 percent permanent partial disability rating of the lumbar spine. He reported that plaintiff should avoid lifting more than 25 pounds frequently and 50 pounds occasionally.

The ALJ also lawfully considered that plaintiff's work history did not support his credibility. See O'Donnell v. Barnhart, 318 F.3d 811, 817 (8th Cir. 2003); Pearsall v. Massanari, 274 F.3d 1211, 1218 (8th Cir. 2001) ("A lack of work history may indicate a lack of motivation to work rather than a lack of ability."). Plaintiff's earnings were generally very low for a long, steady work history. The ALJ also noted that plaintiff quit his last job, a daytime job, because he preferred to work nights. (Tr. 20, 240.) Although plaintiff stated that the vibration produced by the vehicle was painful, he did not point to any new trauma, after his hiring, that justified him leaving this job on medical grounds. The ALJ also pointed out that, on two occasions, plaintiff had filed workers' compensation claims shortly after starting new jobs. (Tr. 20.)

The ALJ lawfully considered the inconsistency between plaintiff's allegations and the medical treatment he received. See Davis v. Apfel, 239 F.3d 962, 968 (8th Cir. 2001); Kisling v. Chater, 105 F.3d 1255, 1257 (8th Cir. 1997). There was no record of inpatient admission during the relevant period. Plaintiff obtained a medical card, which facilitated his access to essential medical care. (Tr. 16, 40-41.) Although plaintiff had been prescribed an antidepressant for his depression, he did not see a counselor. (Tr. 15, 33, 44, 56.) He received relief from his back pain from Motrin, an over-the-counter medication. (Tr. 15, 137.) While driving a cab in 2000, he needed only Excedrin for his back pain. (Tr. 11, 38, 228.)

The ALJ considered plaintiff's inconsistent statements. Although he complained of disabling back pain, plaintiff went for months without complaining of back pain. (Tr. 19.) Although plaintiff complained of ulcers, the record indicated only gastroenterological reflux disease. (Tr. 19, 34.)

Finally, the ALJ found that plaintiff's daily activities did not indicate disabling limitations. (Tr. 15-16, 20.) Plaintiff testified that he could lift a gallon of milk,⁶ stand for 15 to 20 minutes at a time, for no more than two hours total in the day, could walk no farther than one-half block, and could not bend. (Tr. 15-16, 37-38.) Plaintiff said that he did no household chores, watched television while seated in a recliner, and paced the floor. (Tr. 16, 39, 53.) The medical evidence does not support a need for a severe restriction of activity. Plaintiff admitted that Reno Cova, M.D., his treating doctor, never placed any specific restriction upon his lifting, carrying, sitting, standing, or walking. Rather, Dr. Cova generally told him to go home and take it easy. (Tr. 57.)

All in all, the ALJ's credibility determination is supported by substantial evidence in the record as whole.

Dr. Jordan's opinions

In his opinion, the ALJ reviewed the record and found that plaintiff's impairments were "severe" because they had "more than a minimal effect on his ability to work." (Tr. 15.) Plaintiff argues that the ALJ should have given significant weight to the opinion of Dr. Jordan, the consultative psychologist. Dr. Jordan believed his depression and anxiety would markedly limit plaintiff's ability to persist in work. In addition, he expected that plaintiff's irritability and low frustration tolerance would

⁶Plaintiff also testified "Oh, I'd say I could probably lift 20, 25 pounds without having a whole lot of trouble with it." (Tr. 35.) Shortly thereafter, he testified he rarely did any lifting. (Tr. 36.)

preclude him from persisting in any stressful task. (Tr. 12, 238.) Plaintiff exhibited marked impairment in social skills and in the ability to tolerate normal daily stressors. (Tr. 12, 238.)

There are standards for assessing the strength of medical opinions. The opinion of a consulting physician who examines a claimant once or not at all does not generally constitute substantial evidence. See Goodale v. Halter, 257 F.3d 771, 773 (8th Cir. 2001), cert. denied, 535 U.S. 908 (2002). Regardless of who retained the medical consultation, Dr. Jordan's opinion must be weighed in accordance with the criteria set forth at 20 C.F.R. §§ 404.1527(d), 416.927(d). While Dr. Jordan examined plaintiff, he was not plaintiff's treating doctor. 20 C.F.R. §§ 404.1527(d)(1), (2), 416.927(d)(1), (2).

A medical opinion that is supported by relevant evidence, especially medical signs and laboratory findings, and a well-articulated explanation, is accorded substantial weight. See 20 C.F.R. §§ 404.1527(d)(3), 416.927(d)(3). Further, the ALJ must consider whether the subject opinion is consistent with the record as a whole. See 20 C.F.R. §§ 404.1527(d)(4), 416.927(d)(4).

In plaintiff's case, the ALJ considered inconsistencies within Dr. Jordan's own report. These included the GAF score of 45 and his findings that plaintiff was alert and fully oriented; exhibited low average attentional capacity; had inadequate remote memory; had a low average fund of information; had a moderately slowed cognitive processing rate; during spontaneous conversation, had fluent speech; and while the content of his speech revealed some vagueness, he had no dysnomia or possible blocking. Dr. Jordan found that plaintiff's ability to do simple addition was intact but that he had difficulty doing multiplication; he reported no delusional thoughts or hallucinations. He found no evidence of active psychotic thought. Plaintiff's level of reasoning was concrete, but his overall problem-solving was low average. He demonstrated irritable and dysphoric affect, but related to the examiner in a pleasant and cooperative manner. Plaintiff's

cognitive endurance was good and he showed no significant impulsivity during the testing. His frustration tolerance was intact. He did not appear to be in pain. (Tr. 240-41.)

The court agrees with defendant that neither Dr. Jordan's examination results nor plaintiff's ability to undergo the prolonged evaluation without distress supported Dr. Jordan's opinion that plaintiff's social skills and his ability to tolerate normal daily stressors were impaired. (Tr. 19-20, 238.) Ordinarily, substantial weight is given to a specialist's opinions in his or her area of speciality. See 20 C.F.R. §§ 404.1527(d)(5), 416.927(d)(5). In this regard, Dr. Jordan spoke in the area of his speciality. However, the ALJ lawfully considered that the inconsistent nature of his opinions discredited them. See Krogmeier, 294 F.3d at 1023. Although Dr. Jordan found that plaintiff demonstrated irritable and dysphoric affect, he related to Dr. Jordan in a pleasant and cooperative manner. (Tr. 19, 241.) More specifically, the record supports the ALJ's finding that there is insufficient evidence of a depressive condition or a borderline intellectual functioning that produced marked limitation in any area of mental status functioning. (Tr. 20, 238-44.) Plaintiff did not quit his jobs because of psychological stressors. He testified he quit his jobs as a cabdriver, truck driver, and security guard because of physical problems. (Tr. 30-32.) Thus, the record supports the ALJ's crediting the opinion of the state agency psychological consultant that plaintiff's mental limitations were no more than moderate and were largely related to his borderline intellectual functioning. (Tr. 20, 157-60.)

The ALJ's discrediting of the opinions of Dr. Jordan was supported by substantial evidence.

Plaintiff's ability to perform his past work

Plaintiff argues that the ALJ failed to make express findings about the specific functional demands of his past work as a molding machine operator and a security guard. Without such findings, it

is plaintiff's position that the ALJ erred in finding that he could perform that past work and was therefore not disabled at step four of the sequential evaluation process. (Tr. 11-15.)

The issue raised by this argument is critical to the outcome of this judicial review. "Where the claimant has the [RFC] to do either the specific work previously done or the same type of work as it is generally performed in the national economy, the claimant is found not to be disabled." See Lowe v. Apfel, 226 F.3d 969, 973 (8th Cir. 2000) (citing Jones v. Chater, 86 F.3d 823, 826 (8th Cir. 1996)); see also 20 C.F.R. § 404.1520(e), § 416.920(e).

In this regard, the ALJ must make explicit findings regarding the actual physical and mental demands of a claimant's past work and compare the actual demands of the past work with the claimant's RFC. See Pfitzner v. Apfel, 169 F.3d 566, 569 (8th Cir. 1999); Ingram v. Chater, 107 F.3d 598, 604 (8th Cir. 1997) (citing Groeper v. Sullivan, 932 F.2d 1234, 1238-39 (8th Cir. 1991)); 20 C.F.R. §§ 404.1520(e) and 404.1560(b).

Plaintiff relies heavily upon Groeper and its progeny. In Groeper, the court commented on the application of Social Security Ruling 82-62. The court ruled that the ALJ must fully investigate the demands of the claimant's past relevant work, "make *explicit* findings as to the physical and mental demands" of his past relevant work, and compare these findings with the claimant's capabilities, before deciding whether the claimant can perform the past relevant work. Groeper, 932 F.2d at 1238 (internal quotations omitted). A conclusory statement that the claimant can perform the past work is insufficient; the ALJ must make the required findings. Id. at 1239.

In Groeper's case, the ALJ made findings about his RFC, i.e., he could perform only simple repetitive tasks that have minimal memory requirements. The ALJ said only that his work as a bus boy and a baker's helper fit within these limitations. The Eighth Circuit held that the ALJ did not fully investigate the demands of these jobs and, more specifically, did not evaluate his ability to

perform this work. More specifically, the court held that "there was no evidence regarding the mental demands of these jobs." Id.

In Pfitzner, the Eighth Circuit noted that the ALJ's hypothetical question to the vocational expert "included virtually any limitation supported by the objective evidence and Pfitzner's subjective complaints." 169 F.3d at 567. The court held the "ALJ never specifically articulated Pfitzner's [RFC], rather he described it only in general terms." Id. at 568.⁷

In the case at bar, the relevant findings by the ALJ are disparate. The ALJ made express and detailed findings describing plaintiff's RFC.⁸ The ALJ never made detailed findings describing plaintiff's own past relevant work as a security guard and a molding machine operator. However, at Step Four in the prescribed administrative analysis, if the ALJ properly determined that the claimant can perform his past relevant work "as it is generally performed in the national economy, the claimant is found not to be disabled." Lowe, 226 F.3d at 973. In his opinion, the ALJ described plaintiff's RFC in recounting his hypothetical question to the vocational expert:

The [ALJ] posed the following hypothetical situation of an individual of similar age, educational, and work experience as the claimant, who was diagnosed with degenerative disc disease, an affective disorder, borderline intellectual functioning, and anxiety related stress, and could lift twenty pounds occasionally and ten pounds frequent[ly], occasionally climb ladders, ropes, and scaffolding, stooping, crouching, avoid exposure to vibrations to the body, and was moderately limited in his ability to understand, remember, and carry [out] detailed instructions, maintain his attention and concentration

⁷Near the end of his decision, the ALJ stated that Pfitzner retained the RFC to perform a wide range of medium work. In his findings, the ALJ stated that Pfitzner retained the capacity to perform work related activities except for work involving limitations described in the body of this decision. Pfitzner, 169 F.3d at 568.

⁸See RFC, supra, at page 2, paragraph 5.

for extended periods, complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods, and set realistic goals or make plans independently of others, to the vocational expert. Dr. Smith testified that the claimant could return to his past work as a molding machine operator (16,000) and a security guard (18,000), as these jobs are both performed in the national economy. These jobs were performed long enough for claimant to learn the duties and were performed at substantial gainful activity level within the last fifteen year period prior to the date of this decision. Therefore, the undersigned finds that the claimant has not established an inability to engage in his past work activity that would have been related to medically determinable impairment precluding his past work for any continuous period of twelve full months prior to the date of this decision. Therefore, the Administrative Law Judge concludes that at no time pertinent herein has the claimant been disabled within the meaning of the Act.

(Tr. 20-21 (ALJ's opinion), Tr. 63-64 (hearing transcript).)
(Emphasis added.)

Plaintiff does not argue that the ALJ's findings about his RFC are not supported by substantial evidence.

The vocational expert testified that plaintiff's past work as a security guard was light and semiskilled (Tr. 20, 61) and that his work as a molding machine operator, as performed in the general economy, was light and unskilled. (Tr. 20, 61-62.) The ALJ asked the vocational expert whether a hypothetical individual of the same age, education, work experience as plaintiff, who was subject to the same limitations set forth in the RFC finding, could perform any of plaintiff's past relevant work. (Tr. 21, 62-63.) The vocational expert testified that the hypothetical individual could perform plaintiff's past work as a molding machine operator and a security guard, as those jobs are performed in the national economy. (Tr. 21, 63-64.) "It is not unusual for an ALJ to consult a vocational expert on the question of a claimant's ability to do past relevant work." Miller v. Callahan, 971 F. Supp. 393, 396-97 (S.D. Iowa 1997) (citing Trossauer v. Chater, 121 F.3d 341,

(8th Cir. 1997)); accord Priest v. Apfel, 109 F. Supp.2d 1102, 1116 (E.D. Mo. 2000). Such questioning can provide substantial evidence to support the ALJ's decision. See Walters v. Apfel, 998 F. Supp. 1078, 1084 (E.D. Mo. 1988).

The ALJ assessed the demands of plaintiff's past relevant work as it is performed in the national economy and compared it with plaintiff's RFC. All of these findings are supported by substantial evidence. The failure of the ALJ to describe expressly plaintiff's past relevant work, as plaintiff performed it, is merely an arguable deficiency in opinion writing that had no practical effect on the outcome of the case. See Brown, 87 F.3d at 966. The ALJ's findings and conclusions are sufficient for the court to determine whether the final decision is supported by substantial evidence. In this case the court determines that the decision is supported by substantial evidence.

The final decision of the Commissioner is affirmed. An appropriate order is issued herewith.

DAVID D. NOCE
UNITED STATES MAGISTRATE JUDGE

Signed this _____ day of September, 2003.