

NA 05-0155-C H/H Knox v Barnhart  
Judge David F. Hamilton

Signed on 08/22/06

**NOT INTENDED FOR PUBLICATION IN PRINT**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

SHERRI L. KNOX,	)	
	)	
Plaintiff,	)	
vs.	)	NO. 4:05-cv-00155-DFH-WGH
	)	
JO ANNE B.	)	
BARNHART, COMMISSIONER OF THE	)	
SOCIAL SECURITY ADMINISTRATION,	)	
	)	
Defendant.	)	



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

SHERRI KNOX, )  
 )  
 Plaintiff, )  
 )  
 v. ) CASE NO. 4:05-cv-0155-DFH-WGH  
 )  
 JO ANNE B. BARNHART, )  
 Commissioner of Social Security, )  
 )  
 Defendant. )

ENTRY ON JUDICIAL REVIEW

Plaintiff Sherri Knox seeks judicial review of a decision by the Commissioner of Social Security denying her claim for disability insurance benefits under the Social Security Act. Acting for the Commissioner, an Administrative Law Judge (“ALJ”) determined that Ms. Knox had severe impairments of degenerative disc disease and obesity. The ALJ concluded, however, that she was not disabled for purposes of the Social Security Act because she was still capable of performing a restricted range of sedentary work. Ms. Knox claims that substantial evidence does not support the ALJ’s finding that she was not fully credible and could perform a reduced range of sedentary work. For the reasons explained below, the ALJ’s decision is affirmed.

*Background*

Ms. Knox was born in 1957. R. 58. She has a general equivalency degree and has completed two years of college. R. 88. She has past work experience as a deli worker, cashier, factory production worker, and freight handler. R. 81. She alleges that she became disabled on October 29, 2002 as a result of low back pain, hip pain, right leg pain, and being overweight. R. 58, 75. Ms. Knox further alleges that she suffers from a sporadically weak bladder. R. 298, 307.

In December 1989 Ms. Knox fractured her right tibia and fibula when her leg was pinned by machinery at her place of work. R. 97, 117. In that same year, she fell and landed on her tailbone. R. 215, 281. She began complaining of low back pain in December 2000 after a motor vehicle accident. R. 154. Ms. Knox returned to work after each of these incidents, however. She did not suffer her allegedly disabling injury until October 25, 2002. R. 75, 286, 289. The injury occurred while Ms. Knox was working at the deli in Wal-Mart. She lifted a fryer filter weighing approximately 25 pounds and heard a pop in her back. R. 289.

Ms. Knox initially sought treatment on October 25, 2002 from Dr. Joseph Koenigsmark of Back to Health Chiropractic. R. 161, 290. She complained of low back pain and pain in both hips. R. 62. After approximately 33 visits, Ms. Knox did not improve and she was referred to Dr. Ronald Ahlbrand, an orthopedist. R. 161.

In January 2003, Ms. Knox fell down steps and injured her tailbone and lower back. She was seen by Dr. Alan Culbreth and was given an air cast to wear for a soft tissue injury to the left ankle. R. 235, 236.

In March 2003, through a referral by Dr. Koenigsmark, Ms. Knox visited Dr. Ahlbrand. Dr. Ahlbrand diagnosed her with Lumbar Syndrome and a herniated nucleus pulposus at L5-S1 and referred her to a neurosurgeon. R. 236, 242. On April 15, 2003 Ms. Knox sought a neurosurgical opinion from Dr. Steven James. Dr. James determined that Ms. Knox's condition could not be addressed through surgery and recommended that she continue conservative management.

On May 14, 2003, Ms. Knox visited Dr. Michael Cronen, who diagnosed her as having a cervical and lumbar radiculopathy. R. 245. He recommended a series of caudal steroid epidural nerve blocks. *Id.* Dr. Cronen also ordered that Ms. Knox not lift more than ten pounds and refrain from repetitive bending. R. 222.

On July 2, 2003, Ms. Knox saw Dr. Alan Culbreth, who noted that Ms. Knox's low back pain was likely the result of her morbid obesity and recommended that she lose weight. R. 246-247.

On July 28, 2003, at the request of Dr. Culbreth, Ms. Knox visited Dr. Thomas Becherer, a neurosurgeon. R. 271. Dr. Becherer diagnosed musculoskeletal strain superimposed upon degenerative disc disease. He

recommended that she get a physical medicine and rehab opinion, and referred her back to Dr. Cronen. R. 272.

On September 26, 2003, through a referral by Dr. Becherer, Ms. Knox visited Dr. William Williamson, who recommended a trial of fentanyl patch. R. 281. A fentanyl patch provides a continuous delivery of pain reliever to a patient with ongoing pain. Dr. Williamson stated that there was little else he could offer her in light of the previous unsuccessful treatments by other doctors. *Id.*

On October 23, 2003, Ms. Knox visited Dr. Kevin Britt, who recommended that she continue use of the fentanyl patch. In addition, he prescribed Lortab as a pain reliever. R. 259. Ms. Knox also complained of urinary incontinence. Dr. Britt prescribed Ditropan and refilled these prescriptions on subsequent visits. R. 260-267.

Ms. Knox applied for disability benefits on February 3, 2003. Her claim was denied initially and upon reconsideration. At her request, a hearing was held before Administrative Law Judge Ronald T. Jordan on February 22, 2005.

#### *Testimony at the Hearing*

During the hearing, Ms. Knox testified that her low back pain prevented her from doing any major lifting, vacuuming, or mopping around the house. R. 302.

Her daily routine included preparing breakfast for herself and dusting, with breaks to sit down every few minutes. *Id.* She testified that she was able to drive a car but did so as little as possible. R. 303. She went shopping once every other week when possible. R. 303. She testified that she was able to sit comfortably for 15 to 20 minutes at a time, making her unable to sit through the one hour church service that she tried to attend regularly. R. 305, 307. She was able to lift ten pounds. R. 301, 307. She testified that on a scale of one to ten, with ten being excruciating pain and one being negligible, she was ordinarily experiencing a pain level of five or six. R. 296.

Ms. Knox also testified that she had a sporadically weak bladder that required her to carry a change of undergarments with her. R. 298. She further testified that her incontinence required her to go to the bathroom every 30 to 40 minutes and that she wore pads as a result. R. 307. Finally, she testified that lifting more than 10 pounds on a continual basis would aggravate her incontinence. R. 308.

Given the limitations described to him by Judge Jordan, which discounted to some extent the credibility of Ms. Knox's testimony, vocational expert George Edwards Parsons testified that Ms. Knox could perform production work and inspection work. R. 316. Mr. Parsons stated that there were 56 production worker positions in the local Cincinnati economy and 347,000 in the national

economy. R. 316-17. He testified that there were 14 inspection worker positions in the local Cincinnati economy and 87,000 nationally. R. 317.

### *Procedural History*

The ALJ concluded that Ms. Knox was not disabled for purposes of the Social Security Act and issued his decision denying benefits on April 21, 2005. The Appeals Council denied Ms. Hall's request for review, leaving the ALJ's decision as the final decision of the Commissioner of Social Security. See *Smith v. Apfel*, 231 F.3d 433, 437 (7th Cir. 2000); *Luna v. Shalala*, 22 F.3d 687, 689 (7th Cir. 1994). Ms. Knox now seeks this court's review of the denial of her application. The court has jurisdiction in the matter under 42 U.S.C. § 405(g).

### *The Statutory Framework for Determining Disability*

To be eligible for disability insurance benefits, a claimant must establish that she suffers from a disability within the meaning of the Social Security Act. To prove disability under the Act, the claimant must show that she is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that could be expected to result in death or that has lasted or could be expected to last for a continuous period of not less than 12 months. 42 U.S.C. § 423(d). Ms. Knox was disabled before the ALJ's decision on April 21, 2005 only if her impairments were of such severity that she was unable to perform work that she had previously done and if, based on her age, education, and work experience, she also could not engage in any other kind of substantial work existing in the national economy, regardless of whether such work was actually available to her. *Id.*

This standard is a stringent one. The Act does not contemplate degrees of disability or allow for an award based on partial disability. *Stephens v. Heckler*, 766 F.2d 284, 285 (7th Cir. 1985). Even claimants with substantial impairments are not necessarily entitled to benefits, which are paid for by taxes, including taxes paid by those who work despite serious physical or mental impairments and for whom working is difficult and painful.

The implementing regulations for the Act provide the familiar five-step process to evaluate disability. The steps are:

- (1) Has the claimant engaged in substantial gainful activity? If so, she was not disabled.
- (2) If not, did the claimant have an impairment or combination of impairments that are severe? If not, she was not disabled.
- (3) If so, did the impairment(s) meet or equal a listed impairment in the appendix to the regulations? If so, the claimant was disabled.
- (4) If not, could the claimant do her past relevant work? If so, she was not disabled.
- (5) If not, could the claimant perform other work given her residual functional capacity, age, education, and experience? If so, then she was not disabled. If not, she was disabled.

See generally 20 C.F.R. § 404.1520. When applying this test, the burden of proof is on the claimant for the first four steps and on the Commissioner for the fifth step. *Young v. Barnhart*, 362 F.3d 995, 1000 (7th Cir. 2004).

Applying the five-step process, the ALJ found that Ms. Knox satisfied step one because she had not engaged in substantial gainful activity since her alleged onset date of disability. At step two, the ALJ found that Ms. Knox suffered the severe impairments of degenerative disc disease and obesity. At step three, the ALJ found that Ms. Knox failed to demonstrate that any of her severe impairments met or equaled any listed impairment. At step four, the ALJ found that Ms. Knox was not able to perform any of her past relevant work. The ALJ then considered Mr. Knox's residual functional capacity at step five and found that, despite her severe impairments, she retained the residual functional capacity to "do sedentary work with the option to sit or stand at will, and lift, carry, push or pull up to 10 pounds occasionally and 5 pounds frequently, stooping, bending, and balancing and climbing steps or ramps occasionally, and to understand and carry out simple instructions and perform simple one-to-two step tasks." R. 20. Despite her inability to perform the full range of sedentary work, the ALJ concluded there were a significant number of jobs in the national economy that Ms. Knox could perform.

#### *Standard of Review*

"The standard of review in disability cases limits . . . the district court to determining whether the final decision of the [Commissioner] is both supported by substantial evidence and based on the proper legal criteria." *Briscoe v. Barnhart*, 425 F.3d 345, 351 (7th Cir. 2005), quoting *Scheck v. Barnhart*, 357 F.3d 697, 699 (7th Cir. 2004). Substantial evidence is "such relevant evidence as a

reasonable mind might accept as adequate to support a conclusion.” *Diaz v. Chater*, 55 F.3d 300, 305 (7th Cir. 1995), quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971). To determine whether substantial evidence exists, the court must “conduct a critical review of the evidence,’ considering both the evidence that supports, as well as the evidence that detracts from, the Commissioner’s decision . . . .” *Briscoe*, 425 F.3d at 351, quoting *Lopez v. Barnhart*, 336 F.3d 535, 539 (7th Cir. 2003); see also *Zurawski v. Halter*, 245 F.3d 881, 888 (7th Cir. 2001). The court must not attempt to substitute its judgment for the ALJ’s judgment by reweighing the evidence, resolving material conflicts, or reconsidering facts or the credibility of witnesses. *Cannon v. Apfel*, 213 F.3d 970, 974 (7th Cir. 2000); *Luna v. Shalala*, 22 F.3d 687, 689 (7th Cir. 1994). Where conflicting evidence allows reasonable minds to differ as to whether a claimant is entitled to benefits, the court must defer to the Commissioner’s resolution of that conflict. *Binion v. Chater*, 108 F.3d 780, 782 (7th Cir. 1997).

A reversal and remand may be required, however, if the ALJ committed an error of law, *Nelson v. Apfel*, 131 F.3d 1228, 1234 (7th Cir. 1997), or based his decision on serious factual mistakes or omissions. *Sarchet v. Chater*, 78 F.3d 305, 309 (7th Cir. 1996). This determination by the court requires that the ALJ’s decision adequately discuss the relevant issues: “In addition to relying on substantial evidence, the ALJ must also explain her analysis of the evidence with enough detail and clarity to permit meaningful appellate review.” *Briscoe*, 425 F.3d at 351, citing *Herron v. Shalala*, 19 F.3d 329, 333-34 (7th Cir. 1994).

Although the ALJ need not provide a complete written evaluation of every piece of testimony and evidence, *Schmidt v. Barnhart*, 395 F.3d 737, 744 (7th Cir. 2005), a remand may be required if the ALJ has failed to “build a logical bridge from the evidence to her conclusion.” *Steele v. Barnhart*, 290 F.3d 936, 941 (7th Cir. 2002).

### *Discussion*

Ms. Knox argues that the ALJ erred by: (1) finding that a significant number of jobs existed in the national economy that she could perform and (2) failing to include all of her medical impairments in the hypothetical question posed to the vocational expert.

#### I. *Number of Jobs Available to Ms. Knox*

Knox argues that the Commissioner of Social Security may not rely on the total number of jobs that exist in the national economy to deny a claimant’s application but instead must consider only the number of jobs that exist locally. Knox argues that the only relevant numbers in this context are the 56 production worker positions and the 14 inspection worker positions that the vocational expert identified as existing in the local Cincinnati economy. To support this argument, Knox relies on *Barrett v. Barnhart*, 355 F.3d 1065 (7th Cir. 2004). The court in *Barrett* said that “the test for entitlement to social security benefits . . . is whether [the claimant] is so disabled that there are no jobs *in reasonable proximity to where she lives* that she is physically able to do.” *Id.* at 1067 (emphasis added). The

Commissioner petitioned for rehearing asking the Seventh Circuit to modify that particular sentence. See *Barrett v. Barnhart*, 368 F.3d 691 (7th Cir. 2004).

The Seventh Circuit declined to modify the sentence, but went on to say that the sentence was merely descriptively accurate, in that “vocational experts . . . almost always confine their testimony to indicating the number of . . . jobs that exist in the applicant’s state, or an even smaller area.” *Id.* at 692. The court further stated that its formulation “was not intended to alter the statutory standard.” *Id.*

In determining the correct statutory standard, the relevant provision of the Social Security statute reads as follows:

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

42 U.S.C.A. § 423(d)(2)(A) (emphasis added). Congress amended the Social Security statute in 1968 to include this language. See Pub. L. No. 90-248 § 158(d)(2) (1968), 81 Stat. 821. Prior to the amendment, the definition of disability did not circumscribe the labor market by referring to either the national or the local economy, but simply defined disability in broad terms. See S. Rep. No. 90-744 (1967), reprinted in 1967 U.S.C.C.A.N. 2834, 2880-83. The legislative

history indicates that Congress amended the statute to stem the rising cost of the Social Security disability program being caused in part by a broad interpretation of the definition of disability. *Id.*; see also *Lafont v. Secretary of Health, Education and Welfare*, 363 F. Supp. 443, 444 (E.D. La. 1973) (discussing legislative history of 1968 amendment to 42 U.S.C. § 423). Prior to the amendment, some courts had interpreted the definition of disability such that benefits could be denied only if jobs that the claimants could perform existed within a reasonable commuting distance from their homes rather than within the national economy. 1967 U.S.C.C.A.N. at 2881-82.

In setting out to define more precisely – and to limit – the criteria necessary to qualify for disability benefits, Congress adopted language in § 423 making crystal clear that the availability of work close to home and the chances of being hired in one’s locale would not control the determination of disability. With the 1968 amendment, Congress intended to “provide guidelines to reemphasize the predominate importance of medical factors in the disability determination” and “to provide a definition of disability which can be applied with uniformity and consistency throughout the Nation, without regard to where a particular individual may reside, to local hiring practices or employer preferences, or to the state of the local or national economy.” 1967 U.S.C.C.A.N. at 2882. The new language was intended to avoid the result whereby a person would be deemed capable of work in one area and disabled in another area simply because jobs were harder to come by there.

Given this statutory standard, the ALJ did not err by relying on the vocational expert's testimony concerning the number of jobs that Ms. Knox could perform in the national economy. The vocational expert testified that there were 434,000 such jobs. R. 317. Thus, the ALJ's decision that Ms. Knox could perform a significant number of jobs is supported by substantial evidence and does not reflect a legal error that would require remand.

## II. *Hypothetical Question to the Vocational Expert*

Ms. Knox argues that the ALJ committed error by not including her alleged medical impairment of incontinence in the hypothetical question posed to the vocational expert. The key hypothetical question to the vocational expert must fully set forth the claimant's impairments only to the extent that the ALJ finds them to be credibly supported by the medical evidence in the record. *Jens v. Barnhart*, 347 F.3d 209, 213 (7th Cir. 2003); *Herron v. Shalala*, 19 F.3d 329, 337 (7th Cir. 1994); *Cass v. Shalala*, 8 F.3d 552, 556 (7th Cir. 1993). The ALJ found that Ms. Knox's testimony describing her frequent urination and bladder problems was not supported by the medical record and therefore not fully credible.

Ordinarily a reviewing court defers to an ALJ's credibility determination. *Indoranto v. Barnhart*, 374 F.3d 470, 474 (7th Cir. 2004). Absent legal error, an ALJ's credibility finding will not be disturbed unless "patently wrong." *Powers v. Apfel*, 207 F.3d 431, 435 (7th Cir. 2000); *Diaz v. Chater*, 55 F.3d 300, 308 (7th

Cir. 1995). Nevertheless, the ALJ must explain adequately the reasons behind a credibility finding and must provide more than a conclusory statement that a claimant's allegations are not credible. *Brindisi v. Barnhart*, 315 F.3d 783, 787 (7th Cir. 2003). The ALJ may not disregard a claimant's subjective complaints merely because they are not fully supported by objective medical evidence, *Knight v. Chater*, 55 F.3d 309, 314 (7th Cir. 1995), but the ALJ may discount subjective complaints that are inconsistent with the evidence as a whole. *Id.*; 20 C.F.R. § 404.1529.

Here, the ALJ searched the medical record for evidence of Ms. Knox's incontinence but could find evidence of only one visit to Dr. Britt where the issue was discussed. R. 18. Dr. Britt prescribed Ditropan 5 mg to treat this problem and refilled these prescriptions on subsequent visits. R. 259-267. Based on the fact that there were no further complaints in the record concerning incontinence, the ALJ concluded that Ms. Knox's bladder problem was being adequately treated and did not cause her the magnitude of impairment that she alleged at the hearing. R. 18. The ALJ did not completely discount Ms. Knox's credibility, but held only that her testimony was not credible to the extent that it was not supported by the medical evidence in the record. Accordingly, the court cannot say that the ALJ's credibility finding, in light of his analysis of the medical evidence, was erroneous.

*Conclusion*

For the foregoing reasons, the ALJ's decision denying benefits is supported by substantial evidence and does not reflect a legal error that would require remand. Accordingly, the ALJ's decision is affirmed. Final judgment will be entered accordingly.

So ordered.

Date: August 22, 2006

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DAVID F. HAMILTON, JUDGE  
United States District Court  
Southern District of Indiana

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