

NA 05-0185-C H/H Isaacs v Barnhart
Judge David F. Hamilton

Signed on 10/13/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

TERESA L. ISAACS,)	
)	
Plaintiff,)	
vs.)	NO. 4:05-cv-00185-DFH-WGH
)	
JO ANNE B.)	
BARNHART, COMMISSIONER OF THE)	
SOCIAL SECURITY ADMINISTRATION,)	
)	
Defendant.)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

TERESA ISAACS,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 4:05-cv-0185-DFH-WGH
)	
JO ANNE B. BARNHART,)	
Commissioner of Social Security,)	
)	
Defendant.)	

ENTRY ON JUDICIAL REVIEW

Plaintiff Teresa Isaacs 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. Isaacs had a variety of impairments including foot spurs and nerve damage, arthritis in the lumbar spine, obesity, and anxiety disorder. 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. On judicial review, Ms. Isaacs contends that the testimony of the vocational expert concerning jobs she could perform is not sufficient to support denial of her claim. As explained below, the court concludes that the vocational evidence is sufficient to support the ALJ’s decision, which is affirmed.

Background

Ms. Isaacs was born in 1958. R. 72. She has the equivalent of a high school education. R. 84. She has past work experience as counter help at a craft store and at a bakery, cook and counter help at a restaurant, and an assembly line worker and quality inspector at a factory. R. 79, 88, 357-62. She alleges that she became disabled on February 18, 1997 due to impairments involving her feet and ankles. R. 72, 330. Ms. Isaacs further alleges that she suffers from a herniated spinal disk, anxiety, and panic-like symptoms. R. 341, 343-44. Ms. Isaacs has not performed substantial gainful activity since her alleged disability onset date. R. 315.

Ms. Isaacs has a history of orthopedic complaints. She was diagnosed with heel spurs at least as early as January 24, 1997. R. 134. She underwent an endoscopic plantar fasciotomy involving her right foot in February 1997 and again in July 1997. R. 141-43. She continued experiencing foot pain and reported an onset of lower back pain. R. 173. Dr. James Fesenmeier, a neurologist, examined her on January 9, 1998 and noted no motor, sensory or reflex abnormalities. R. 174. Electromyography and nerve conduction studies performed on January 16, 1998 revealed no abnormalities. R. 176. Ms. Isaacs reported no relief in symptoms with use of Elavil. *Id.*

In May 1998, Ms. Isaacs had surgery on her right foot for medial calcaneal neurolysis, posterior tibial nerve release at the abductor canal, neurectomy, and resection of the right calcaneal spur. R. 148. In July 1998, she received instruction for use of a cryocuff for her right foot. R. 199. On October 6, 1998, Ms. Isaacs saw Dr. Robert Kravitz for her ongoing foot symptoms. R. 153-55. Dr. Kravitz noted that her sensory examination was “nondermatomal and patchy with some loss in the right foot and about the left heel.” R. 154. A bone scan of both feet on October 13, 1998 revealed mild degenerative changes and calcaneal spurring. R. 156. Ms. Isaacs began a course of physical therapy with reports of improvement. R. 160, 168-72.

Ms. Isaacs was evaluated intermittently for continuing complaints of foot and back pain. There is a gap in treatment between July 2000 and January 2002. Treatment notes dated July 28, 2000 and January 7, 2002 from Dr. Richard Lundeen, an attending podiatrist, refer to the mailing and updating of “disability papers.” R. 204, 208. An MRI scan of Ms. Isaacs lumbar spine in October 2000 revealed only slight disc degeneration at the L5-S1 level. R. 186. A second lumbar MRI scan in August 2001 revealed no significant abnormalities. R. 188.

Ms. Isaacs was involved in an automobile accident in June 2001. R. 189. She was evaluated for physical therapy in September 2001 due to complaints of back stiffness and headache. *Id.* Subsequent treatment and evaluation records, however, do not refer to ongoing problems in this regard. R. 193-94.

On March 11, 2003, Dr. Montasa Shaheen performed a consultative physical examination on behalf of the state disability determination service. R. 209-11. Ms. Isaacs reported that she took Vicodin, Tylenol, and Ibuprofen for her foot pain, back discomfort and moderate hip and knee pain. R. 209. Dr. Shaheen noted tenderness to palpation of Ms. Isaacs' heels bilaterally, but there was no evidence of clubbing, cyanosis, or edema. R. 210. Ms. Isaacs walked with a slow gait but did not use an assistive device. *Id.* The range of motion of her spine was normal; a straight leg raise test was negative. *Id.* Dr. Shaheen noted only mild tenderness to percussion over Ms. Isaacs' low back area. *Id.* There was no evidence of any significant joint abnormalities. *Id.* Her foot joint movements were normal. *Id.*

Dr. Lundeen saw Ms. Isaacs again in August 2003 and March 2004. R. 240, 242-43. He referred to "a significant amount of nerve entrapment of the posterior tibial nerve and two main branches distal to the ankle," but he did not support that assessment with citation to specific clinical evidence and he did not refer to specific functional limitations. R. 240. Dr. Lundeen's treatment notes from these visits refer to "extreme pain" and "extreme hypersensitivity" that appeared to be "out of proportion." R. 242-43.

Dr. Abraham Fontanilla, a family physician, began treating Ms. Isaacs in early to mid 2004. R. 273-97. Treatment notes intermittently refer to complaints

of low back pain but do not refer to specific clinical abnormalities. *Id.* An MRI scan on May 19, 2004 revealed no significant abnormalities. R. 297.

Ms. Isaacs has also been evaluated for mental and emotional problems. She referred to a long history of anxiety and panic-like symptoms during Dr. Shaheen's physical examination. R. 209. In September 2000, Ms. Isaacs sought treatment at Community Mental Health Center. R. 245-69. She reported that she had first experienced symptoms of anxiety since about fifteen or sixteen years of age and that she had become fearful of taking medication after undergoing surgery at twenty-four years of age. R. 249, 316.

On February 14, 2001, Dr. Lowell Foster evaluated Ms. Isaacs overnight at the Community Mental Health Center. R. 270-72. Dr. Foster diagnosed Ms. Isaacs as having an anxiety disorder with phobic, manic-like and general anxiety features, possible post-traumatic stress disorder from childhood abuse, depression, and possible dysthymia. R. 271. Ms. Isaacs reported that she could not swallow pills during her inpatient stay. *Id.* Attending nurses confirmed that Ms. Isaacs made no progress in taking prescribed medications. *Id.* She was discharged to the care of her primary case manager without psychotropic medication. R. 272.

In June, July, and December 2002, Ms. Isaacs reported worsening symptoms of anxiety to her case manager, often associated with situational

stressors. R. 256-57, 260. Nevertheless, in February 2003 Ms. Isaacs reported that she had been able to manage her anxiety despite increasing stress in her life. R. 261. In September 2003 and October 2004, she reported that her mood was stable. R. 264, 269.

As of the end of 2004, Ms. Isaacs was seeing only Dr. Fontanilla, her family physician, for her foot and back pain. R. 273-97, 340. At the hearing, Ms. Isaacs reported that she got a stiff back when she sat for prolonged periods and experienced foot pain with prolonged standing. R. 347. She indicated that she elevated her feet much of the time. R. 347, 356.

Ms. Isaacs continued to see Mr. Doyle, her mental health case manager every twelve weeks or so. R. 344. At the hearing before the ALJ, she testified that she experienced panic attacks when she felt she was not in control and that it might take her all day to recover from a panic attack. R. 313. Ms. Isaacs said that her most severe panic episodes occurred at night. R. 317-18. She testified that she could not take anti-anxiety medication because of her phobia associated with pills, but that she could take pain medications. R. 312, 345. Ms. Isaacs also described compulsive behavior associated with hand washing, problems with claustrophobia, and difficulty being around people. R. 346, 354-55. In terms of daily activities, she tried to help her spouse with shopping and cooking. R. 351-53. She crocheted, read, watched television, and took care of household finances.

R. 352. She drove to the first hearing. R. 351. She was capable of taking care of her personal hygiene without assistance. R 97.

Ms. Isaacs met the nondisability requirements set forth in 42 U.S.C. § 416(i) on her alleged disability onset date, and she remained insured for disability benefits through March 31, 2003. R. 12. Therefore, Ms. Isaacs must establish that she was disabled on or before that date to receive disability insurance benefits. *Id.* Ms. Isaacs filed an unsuccessful application for disability benefits in July 1997. *Id.* On October 23, 2002, Ms. Isaacs filed the pending application for a period of disability and disability insurance benefits. *Id.* Her claim was denied initially and upon reconsideration. At her request, hearings were held before Administrative Law Judge Ronald T. Jordan on December 8, 2004 and on June 1, 2005.

Testimony at the Hearing

During the December 8, 2004 hearing, Ms. Isaacs testified that she could not do even sedentary work due to her feet and back pain. R. 346-47. Ms. Isaacs said that she got a stiff back and her feet started swelling when she sat down for more than fifteen minutes. R. 347. She had to elevate her feet to alleviate the pain. *Id.* She could walk for about fifteen to twenty minutes. R. 348. Although she tried to help with housework, her husband and daughter did most of it. R. 351, 353. Ms. Isaacs could load dishes in a dishwasher and do some light

cooking. *Id.* Her husband did most of the driving, but she drove to the hearing herself. *Id.* She helped with grocery shopping. R. 352. She liked to read, do crossword puzzles, do embroidery, and watch television. *Id.* She took care of paying bills and balancing the checkbook. *Id.*

Ms. Isaacs was taking extra-strength Vicodin for her pain. R. 337-38. On a scale of one to ten (ten being excruciating, one being negligible), Ms. Isaacs rated her foot pain at seven when she was taking pain medication regularly. R. 338. She rated her back pain at five to six on the same scale. R. 342.

Ms. Isaacs had been diagnosed with compulsive obsessive disorder, panic and anxiety disorder. R. 344. She could take pain medication but not medication for her mental disorders due to her phobia. R. 345. She cried a lot, felt depressed and anxious. R. 346. Ms. Isaacs was obsessive compulsive about washing her hands, especially if the substance such as lotion, soap, or medicine came in a packaging that said “twenty-four hours” on it. R. 354. She was uncomfortable around large groups of people and hardly went to family functions. R. 355. When she was in a place with a closed door, she was “fighting” for her control. *Id.*

During the June 1, 2005 hearing, Ms. Isaacs provided more information regarding the panic and anxiety disorder. R. 312. Since she could not take any medication due to her phobia, she used breathing exercises and “mental pictures” to try to relax, and avoided being out in public. R. 313. She stated that she had

had panic attacks once or twice a day that lasted from an hour up to three days. *Id.* The bad panic attacks occurred at night about fifty to sixty percent of the time. R. 317-18.

Given the limitations described to him by Judge Jordan, vocational expert William Cody testified that Ms. Isaacs could work as a sedentary inspector or hand packer. R. 320. Mr. Cody stated that there were 100 sedentary inspector positions in the “local economy” and 300,000 in the national economy. *Id.* He testified that there were 125 hand packer positions in the “local economy” and 235,000 nationally. *Id.*

Procedural History

The ALJ concluded that Ms. Isaacs was not disabled for purposes of the Social Security Act and issued his decision denying benefits on June 7, 2005. The Appeals Council denied Ms. Isaacs’ 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. Isaacs 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. Isaacs was disabled before March 31, 2003, 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. Isaacs 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. Isaacs suffered severe impairments consisting of a history of foot spurs and nerve damage, status-post surgery, osteoarthritis of the lumbar spine, and an anxiety disorder. At step three, the ALJ found that Ms. Isaacs failed to demonstrate that any of her severe impairments met or equaled any listed impairment. The ALJ also noted that Ms. Isaacs' "allegations regarding her limitations are not entirely supported by the record." R. 20. At step four, the ALJ found that Ms. Isaacs was not able to perform any of her past relevant work. The ALJ then considered Ms. Isaacs' residual functional capacity at step five and found that, despite her severe

impairments, she retained the residual functional capacity to “perform work that is primarily done while seated over the course of a typical eight-hour workday.” *Id.* Ms. Isaacs needed the option to stand and stretch briefly. She had the capacity to “lift, carry, push and/or pull up to twenty pounds occasionally and up to ten pounds frequently. She also ha[d] the capacity to only occasionally climb stairs and ramps, balance, kneel, crouch, or crawl.” *Id.* She could not climb scaffolds, ladders or ropes. Due to her anxiety Ms. Isaacs “must avoid contact with the general public. She must work at her own work station.” *Id.* She could have infrequent face to face contact with co-workers, but she could not work in a team-like work setting and could not perform piece rate work or assembly line work with established quotas. Despite her inability to perform the full range of jobs at any exertional level, the ALJ concluded there were a significant number of jobs in the national economy that Ms. Isaacs 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 the 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. Isaacs argues that the ALJ erred by finding that a significant number of jobs existed in the national and local economy that she could perform.

I. *National Job Market*

Ms. Isaacs argues that the Commissioner may not rely on the total number of jobs that exist in the national economy to deny her application but instead must consider the number of jobs per region. To support this argument, Ms. Isaacs relies on *Barrett v. Barnhart*, 368 F.3d 691 (7th Cir. 2004). The Seventh Circuit wrote in *Barrett* that “the principal significance of the ‘other regions’ language in the statute is to prevent the Social Security Administration from denying benefits on the basis of ‘isolated jobs that exist only in very limited numbers in relatively few locations outside of the region where [the applicant] live[s]’.” *Id.* at 692.

Ms. Isaacs interprets the statement to mean that the jobs identified should be jobs that are found in several regions of the country and not confined to one particular area, and that the phrase “several other regions” in the regulation does not mean “all regions” and therefore does not mean all national numbers. In other words, Ms. Isaacs says that if all 535,000 national positions identified by the vocational expert are found in only one region of the country and that region is remote from where Ms. Isaacs lives, then that would not satisfy the statutory

requirement that the jobs are found in significant numbers either in the region where she lives or in several other regions of the country. Consequently, Ms. Isaacs insists that the ALJ should not have used the national number of jobs identified by the vocational expert to deny the claim because the ALJ did not determine in what regions of the country these positions exist. In addition, Ms. Isaacs argues that 225 local positions is not a significant number, so that the ALJ erred in denying the claim based on this number.

Ms. Isaacs has misinterpreted the regulation and its application by courts. Ms. Isaacs is evaluating the number of national positions and the number of local positions separately. This approach is incorrect. The statutory standard and case law indicate that both of these numbers should be considered together. Viewed that way, the existence of local positions indicate that the national numbers provided are not all outside the region where Ms. Isaacs lives. The existence of national jobs adds to the overall availability of the jobs even if all of them are not available in the region where Ms. Isaacs lives.

The relevant provision of the Social Security Act 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 had not circumscribed 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 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.

In determining the work that exists in the national economy, the relevant Social Security regulation provides: “We consider that the work exists in the national economy when it exists in significant numbers either in the region where you live or in several other regions of the country. It does not matter whether – (1) Work exists in the immediate area in which you live; (2) A specific job vacancy exists for you; or (3) You would be hired if you applied for work.” 20 C.F.R. § 404.1566(a).

Courts have frequently used national numbers to determine that a sufficiently significant number of jobs exists that a claimant can perform and deny Social Security disability benefits. The Eleventh Circuit court specifically stated: “The appropriate focus under the regulation . . . is the national economy.” *Allen v. Bowen*, 816 F.2d 600, 603 (11th Cir. 1987), citing *Mathews v. Eldridge*, 424 U.S. 319, 336 (1976). In *Allen*, the court held that 174 local positions, 1,600 positions in the state, and 80,000 jobs nationwide showed a significant number of positions

available and affirmed denial of the disability claim. *Id.* at 602. The Seventh Circuit court followed *Allen* in *Lee v. Sullivan*, 988 F.2d 789, 794 (7th Cir. 1993).

To determine whether work exists in significant numbers, courts have adopted the standards set forth in *Hall v. Bowen*, 837 F.2d 272 (6th Cir. 1988). In *Hall*, the court said that “we cannot set forth one special number which is to be the boundary between a ‘significant number’ and an insignificant number of jobs.” *Id.* at 275. A judge should view any number provided in the context of the particular case and should consider many criteria, including but not limited to the level of claimant’s disability, the reliability of vocational expert and claimant’s testimony, the distance the claimant is capable of traveling, the isolated nature of the jobs, and so on. *Id.* “The decision should ultimately be left to the trial judge’s common sense in weighing the statutory language as applied to a particular claimant’s factual situation.” *Id.*

Using this standard, the Eighth Circuit court affirmed a finding that 200 positions in a state and 10,000 positions nationwide were significant numbers of positions. *Johnson v. Chater*, 108 F.3d 178, 180 (8th Cir. 1997). The court found that the cases cited by the claimant showing that a certain number of positions was not a significant number of jobs available were all fact-intensive and “none stand for the proposition that 200 jobs in Iowa is not a significant number.” *Id.*

Courts have found that the number of jobs was not significant only in the situations where the vocational expert was not sure of the numbers provided or did not indicate the number of national positions at all. The number of positions was not significant where the vocational expert presented no evidence on the availability of national or regional jobs and where the claimant could not perform 117 jobs out of 182 local jobs due to the incorrect job title provided. *Lenon v. Apfel*, 191 F. Supp. 2d 968, 979 (E.D. Tenn. 2001). Local positions between 750 and 1000 and national positions between 50,000 and 100,000 were not a significant number of jobs where the vocational expert testified that only one-fourth or one-third of the employers for the types of jobs hired people with physical handicaps, where he was unsure what weight to assign claimant's pain, and where he stated that if the pain allegations were taken as true, the claimant would be absolutely unemployable. *Graves v. Secretary of Health, Education, and Welfare*, 473 F.2d 807, 809-10 (6th Cir. 1973).

Similarly, 870 positions was not a significant number of jobs where "the vocational expert's report framed 'region' in terms of the State of Texas and the Dallas and Houston urban areas." *Mericle v. Secretary of Health and Human Services*, 892 F. Supp. 843, 847 (E.D. Tex. 1995). One thousand jobs within the entire state was not a significant number of positions because there was no evidence regarding work that existed in the national economy in regions other than the state. *Waters v. Secretary of Health and Human Services*, 827 F. Supp. 446, 449-50 (W.D. Mich. 1992). Two hundred positions was not a significant

number of jobs where the vocational expert's opinion was based on guess or surmise. *Ray v. Secretary of Health, Education and Welfare*, 465 F. Supp. 832, 836 (E.D. Mich. 1978). Two hundred to 250 local jobs was not a significant number of positions where the claimant did not fit the classification grid and the vocational expert doubted the availability of the jobs for the claimant. *Jimenez v. Shalala*, 879 F. Supp. 1069, 1075-76 (D. Colo. 1995).

In Ms. Isaacs' case, the vocational expert provided numbers confidently for both local and national positions. Therefore, the situation where local jobs in a two-hundred range or a national number of jobs were insufficient do not apply in the present case.

II. *Statistical Significance of the Number of Jobs Available.*

Ms. Isaacs argues that the ALJ incorrectly determined that 535,000 national jobs is a significant number because the ALJ did not determine what percentage of total jobs in the national economy this number represents.

The regulation does not contemplate such a ratio analysis. The regulation speaks in terms of whether a significant number of jobs exists that the claimant is capable of performing:

How we determine the existence of work. Work exists in the national economy when there is a significant number of jobs . . . having requirements which you are able to meet with your physical or mental

abilities and vocational qualifications. Isolated jobs that exist only in very limited numbers in relatively few locations outside of the region where you live are not considered “work which exists in the national economy.” We will not deny you disability benefits on the basis of the existence of these kinds of jobs.

20 C.F.R. § 404.1566(b).

“The requirement of ‘significance’ in the law applies to the absolute number of jobs and not the relative percentage.” *Lanier v. Bowen*, 682 F. Supp. 938, 940 (N.D. Ill. 1988), citing *Martinez v. Heckler*, 807 F.2d 771, 775 (9th Cir. 1987). The Sixth Circuit has also rejected the “percentage” approach. *Barker v. Secretary of Health and Human Services*, 882 F.2d 1474, 1479 (6th Cir. 1989), quoting *Hall*, 837 F.2d at 275 (“when there is testimony that a significant number of jobs exists . . . it is immaterial that this number is a small percentage of the total number of jobs in a given area.”) The ALJ did not err by determining that 535,000 national jobs was a significant number by relying on the absolute number itself without determining what percentage of total jobs in the national economy this number represented.

Given this statutory standard, the ALJ did not err by relying on the vocational expert’s testimony concerning the number of jobs that Ms. Isaacs could perform in the national and local economy. The vocational expert testified that there were 535,000 national jobs and 225 local jobs. R. 320. Thus, the ALJ’s decision that Ms. Isaacs could perform a significant number of jobs is supported

by substantial evidence and does not reflect a legal error that would require remand.

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: October 16, 2006

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

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