

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

<b>DARREN KEVIN COOPER,</b>	:	
	:	
<b>Plaintiff,</b>	:	
	:	
v.	:	<b>No. 5:17-cv-80-MTT-CHW</b>
	:	
<b>NANCY A. BERRYHILL,</b> <i>Acting Commissioner of Social Security,</i>	:	<b>Social Security Appeal</b>
	:	
<b>Defendant.</b>	:	
	:	

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**REPORT AND RECOMMENDATION**

This is a review of a final decision of the Commissioner of Social Security denying Plaintiff Darren Kevin Cooper’s application for benefits. Because the ALJ gave inadequate consideration to Plaintiff’s right-hand limitations, it is **RECOMMENDED** that this case be **REMANDED** to the Commissioner for a reevaluation of the evidence.

**BACKGROUND AND SUMMARY**

Plaintiff applied for Social Security benefits in May 2012, alleging disability beginning on November 25, 2011, due primarily to rheumatoid arthritis. (R. 78). After Plaintiff’s application was denied initially and on reconsideration, (R. 69–106), a hearing was held before an administrative law judge (“ALJ”) on January 13, 2015. At that hearing, the ALJ noted the lack of objective medical evidence corroborating Plaintiff’s allegations of rheumatoid arthritis. (R. 39). Plaintiff’s counsel additionally argued that Plaintiff had a diagnosis of right ulnar nerve palsy, which limited Plaintiff’s ability to use his dominant right hand. (R. 37).

On August 7, 2015, the ALJ issued an unfavorable opinion, finding that Plaintiff was not disabled within the meaning of the Social Security Act. The ALJ found that Plaintiff “credibly

ha[d] degenerative changes in his right hand and symptoms of peripheral neuropathy,” but the ALJ determined that there was “no evidence of an inability to perform fine and gross [right-hand] movements.” (R. 25). The ALJ therefore drew no distinction between Plaintiff’s ability to use his left and right hands, finding in particular that Plaintiff could “frequently handle and finger.” (R. 17). Plaintiff subsequently sought further administrative review before the Appeals Council, but on January 5, 2017, the Appeals Council denied review in Plaintiff’s case. Plaintiff now seeks review before this Court pursuant to 42 U.S.C. § 405(g).

### **STANDARD OF REVIEW**

Judicial review of a decision of the Commissioner of Social Security is limited to a determination of whether that decision is supported by substantial evidence, as well as whether the Commissioner applied the correct legal standards. *Winschel v. Comm’r of Soc. Sec.*, 631 F.3d 1176, 1178 (11th Cir. 2011). “Substantial evidence” is defined as “more than a scintilla,” and as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Id.* The Eleventh Circuit has explained that reviewing courts may not decide the facts anew, reweigh the evidence, or substitute their judgment for that of the Commissioner. *Id.* Rather, if the Commissioner’s decision is supported by substantial evidence, the decision must be affirmed even if the evidence preponderates against it.

### **EVALUATION OF DISABILITY**

Social Security claimants are “disabled” if they are unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months. 42 U.S.C. § 423(d)(1)(A).

The Social Security Regulations outline a five-step sequential evaluation process for determining whether a claimant is disabled: “(1) whether the claimant is currently engaged in substantial gainful activity; (2) whether the claimant has a severe impairment or combination of impairments; (3) whether the impairment meets or equals the severity of the specified impairments in the Listing of impairments; (4) based on a residual functional capacity (“RFC”) assessment, whether the claimant can perform any of his or her past relevant work despite the impairment; and (5) whether there are significant numbers of jobs in the national economy that the claimant can perform given the claimant’s RFC, age, education, and work experience.” *Winschel*, 631 F.3d at 1178 (11th Cir. 2011) (citing 20 C.F.R. §§ 404.1520(a)(4)(i)-(v); 416.920(a)(4)(i)-(v)).

### **MEDICAL RECORD**

Few medical records are available in this case. The available records begin in June 2012, when Plaintiff sought treatment at the Medical Center of Central Georgia for skin lesions, a swollen mole, chronic hand pain, and a refill of his hypertension medication. (R. 328). The record appears to state that Plaintiff had suffered from tingling in his fingers “for many years[,] now worse.” (R. 328).

In August 2012, Plaintiff reported for a consultative examination with Dr. William Hutchings. (Ex. 3F). Plaintiff reported suffering from rheumatoid arthritis that “began as tingling in the little fingers but now has spread to his entire hand.” (R. 309). Plaintiff also reported stiffness, decreased sensation and loss of grip. (R. 309). Dr. Hutchings conducted a neurological exam and found that Plaintiff had reduced right-hand grip and pinch strength, as well as reduced distal strength of the right hand. (R. 310, 317). Dr. Hutchings also noted that “[t]here were no deformities in [Plaintiff’s] hands but both were painful to palpation across the MCP joints, and

there was mild hypothenar atrophy in the right hand.” (R. 310). Dr. Hutchings stated that his examination findings were not consistent with rheumatoid arthritis, but instead consistent with a “Right Ulnar Nerve Palsy.” (R. 310). Dr. Hutchings also ordered imaging, which revealed “[n]o evidence of acute injury, advanced degenerative change or asymmetric soft tissue swelling” in Plaintiff’s right hand. (R. 313).

In October 2012, Plaintiff sought treatment for “numbness in right hand [and] radiating pain to wrist x 2 days.” (R. 324). Plaintiff reported moderate pain exacerbated on movement, as well as tingling and numbness. (R. 324). Plaintiff also reported that his pain had been present for about one year, and had gradually worsened during that time. (R. 324). Plaintiff was provided a wrist splint, given Lortab, (R. 325), and referred for medical imaging, which revealed no evidence of a wrist fracture or dislocation (R. 322) but extensive evidence of “multilevel degenerative disc disease” of the cervical spine. (R. 321).

In 2013, Plaintiff sought further treatment for skin lesions, as well as refills of his hypertension medication. (R. 361–69; 469–78). A treatment note from September 2013 lists “tingling hands” as a reported symptom, with a diagnosis of peripheral neuropathy. Plaintiff was prescribed naproxen. (R. 381–82).

Plaintiff sought treatment for a number of different conditions in 2014, including pain in his heels and left elbow in January, (R. 465, 349), neck pain and fatigue in February, (R. 346), a respiratory infection in April, (R. 462), and radiating chest pain associated with hypertensive cardiovascular disease in July. (R. 443–61). In August 2014, based on continued complaints of “weakness and tingling of [his right] hand,” Plaintiff underwent a cervical MRI, which revealed multilevel spondylosis and disc degeneration, along with “findings of bilateral cord signal abnormality presumably related to cord impingement.” (R. 394, 440–41).

In March 2015, after the ALJ's hearing, the ALJ asked Dr. John Warren Axline to review Plaintiff's medical history and complete a medical interrogatory. (R. 23) (Ex. 10F). Dr. Axline found that Plaintiff's spinal degeneration was "without neurologic loss," and noted that no evidence supported diagnoses of rheumatoid arthritis or ulnar neuropathy. (R. 496-97).

### **DISABILITY EVALUATION IN PLAINTIFF'S CASE**

Following the five-step sequential evaluation procedure, the reviewing ALJ made the following determinations in Plaintiff's case. At step one, the ALJ found that Plaintiff had not engaged in substantial gainful activity since November 25, 2011, Plaintiff's alleged onset date. (R. 14). At step two, the ALJ found that Plaintiff had the following severe impairments: "degenerative cervical disc disease; degenerative changes of the right hand; peripheral neuropathy; hypertension; and obesity." (R. 15). The ALJ stated that although Plaintiff had alleged disability due to rheumatoid arthritis, "he had a negative rheumatoid factor in August 2012 (Exhibit 3F) and he admitted during the January 2015 hearing that there is no diagnostic proof he has rheumatoid arthritis." (R. 15). *See also* (R. 39). The ALJ also found that Plaintiff suffered from the non-severe impairments of headaches, "history of cellulitis/hidradenitis," and "anxiety/depression." (R. 15).

At step three, the ALJ found that Plaintiff's impairments did not meet or equal any of the impairments listed in 20 C.F.R. Part 404, Subpart P, Appendix 1. (R. 16). Therefore, the ALJ assessed Plaintiff's RFC and found that Plaintiff could perform light work with the following exceptions:

- He should never climb ladders, ropes or scaffolds, but he can frequently climb stairs and ramps;
- He can frequently balance, stoop, kneel, crouch, and crawl;

- He can occasionally reach overhead and he can frequently reach in all other directions;
- He can frequently handle and finger;
- He can occasionally push/pull with his upper extremities;
- He can have occasional exposure to extreme cold; and
- Consistent with light exertion, he can lift/carry 20-pounds occasionally and 10-pounds frequently and he can sit, stand, and walk, each, for 6-hours during an 8-hour workday.

(R. 17)

Based on this RFC, the ALJ found, at step four, that Plaintiff was unable to perform his past relevant work as a fork lift operator, cleaner (industrial), waste disposal worker, or machine feeder. (R. 25). At step five, the ALJ found that Plaintiff could perform the requirements of the following representative occupations: sales attendant, shipping/receiving weigher, and bakery worker. (R. 26). Based on this step five finding, the ALJ determined that Plaintiff was not disabled within the meaning of the Social Security Act.

### **ANALYSIS**

Plaintiff challenges the Commissioner's decision on three grounds: (1) that the ALJ erred by improperly weighing the opinions of Dr. William Hutchings, an examining physician, and Dr. John Axline, a consulting physician, (2) that the ALJ improperly discounted Plaintiff's credibility, and (3) that the ALJ gave inadequate consideration to Plaintiff's obesity.

Plaintiff's obesity argument does not provide grounds for a remand. In her opinion, the ALJ expressly referenced SSR 02-1p ("Evaluation of Obesity"), stating the following:

In formulating the claimant's residual functional capacity, I have specifically considered the effects of his obesity under SSR 02-1p, which provides that in the course of a residual functional capacity analysis, an assessment should also be

made of the effect obesity has upon the individual's ability to perform routine movement and necessary physical activity within the work environment. This Ruling states that individuals with obesity may have problems with the ability to sustain function over time, and may be restricted from strenuous lifting by their combined physical impairments.

(R. 15)

This consideration by the ALJ was adequate. *See Castel v. Comm'r*, 355 F. App'x 260, 263–64 (11th Cir. 2009). Moreover, before this Court, Plaintiff provides no specific rationale as to why the ALJ's treatment of Plaintiff's obesity was inadequate. Plaintiff argues that the ALJ should have expressly considered whether Plaintiff's obesity "cause[d] additional and specific limitations," (Doc. 12, p. 11), but Plaintiff makes no attempt to explain what additional limitations the ALJ should have acknowledged, and what records support those additional limitations. In other words, Plaintiff's obesity argument is conclusory.

Although Plaintiff's obesity argument does not provide grounds for a remand, the ALJ gave inadequate consideration to the evidence relating to Plaintiff's right-hand limitations, and on that ground, a remand is warranted. Of particular importance is the ALJ's treatment of the August 2012 opinion of Dr. William Hutchings, to whom Plaintiff was referred for an examination in furtherance of his disability application. (Ex. 3F). Dr. Hutchings performed a neurological exam and concluded that Plaintiff had reduced right-hand grip and pinch strength, as well as reduced distal strength of the right hand. (R. 317). Dr. Hutchings also performed an "extremity exam" and concluded that Plaintiff had "mild hypothenar atrophy in the right hand" consistent with a diagnosis of right ulnar nerve palsy. (R. 310).

The ALJ assigned "less weight" to Dr. Hutchings's opinion, finding in particular that "no diagnostic evidence confirms right ulnar palsy and X-rays instead reflect his right hand pain is due to degenerative changes." (R. 20). Imaging reports ordered by Dr. Hutchings directly

contradict the ALJ's statement, showing "*no evidence of ... advanced degenerative change*" in Plaintiff's right hand. (R. 313) (emphasis added).

In discounting Dr. Hutchings's opinion, the ALJ may have relied upon the opinion of Dr. John Warren Axline, who stated in a March 2015 medical interrogatory that Plaintiff's cervical spine degeneration caused no neurologic loss and that no evidence supported diagnoses of rheumatoid arthritis or ulnar neuropathy. (R. 496–97). Dr. Axline did not conduct an examination, and treating medical records from August 2014 plainly contradict Dr. Axline's opinion. Those records, and in particular a cervical-spine MRI report, show "findings of bilateral cord signal abnormality presumably related to [spinal] cord impingement." (R. 440–41). While no medical records list a diagnosis of rheumatoid arthritis, numerous records show treatment for complaints of hand numbness, weakness, tingling and pain—symptoms that were attributed to peripheral neuropathy by some sources, (R. 381–82), and to right ulnar nerve palsy by Dr. Hutchings. Regardless of the diagnosis, and notwithstanding Dr. Axline's opinion to the contrary, the medical evidence amply demonstrates that Plaintiff suffers from limitations in his dominant right hand.

The ALJ found that Plaintiff retained the residual functional capacity to "frequently handle and finger," (R. 17), but this finding is inconsistent with Dr. Hutchings's finding that Plaintiff was "not able to use a keyboard." (R. 310). Further, while Dr. Hutchings did not expressly propose any additional right hand limitations, Dr. Hutchings did make the following statements with regard to Plaintiff's left hand:

This patient is able to ... perform simple manual tasks with the left hand, perform fine manipulation with the left hand, perform repetitive tasks with the left hand ... work overhead with the left hand, sort and handle papers and files with the left

hand, stand to file in a cabinet at or above waist level with the left hand [and] feed self with the left hand.

(R. 310)

By implication, Plaintiff is unable to perform these tasks with his dominant right hand. Thus, it is not clear that Dr. Hutchings's opinion is consistent with several of the ALJ's other RFC findings, such as the ability to occasionally reach overhead and to frequently reach in all other directions with both upper extremities, the ability to occasionally push/pull with both upper extremities, and the ability to lift/carry 20 pounds occasionally and 10 pounds frequently with both upper extremities.

Moreover, the record suggests that the ALJ's decision to fully credit Dr. Hutchings's opinion could have resulted in the significant erosion of Plaintiff's occupational base. *See, e.g., Watson v. Astrue*, 376 F. App'x 953, 957 (11th Cir. 2010) (noting the importance of a vocational expert's testimony in addressing "the difficult judgment[] as to whether the occupational base has been eroded"). In particular, testimony by the vocational expert at Plaintiff's administrative hearing suggests that a finding that Plaintiff was unable to grip, handle and finger with his dominant right hand would have altered the ALJ's step-five determination that Plaintiff was able to adjust to "other work." (R. 64–66).

In summary, substantial evidence does not support the ALJ's decision to partially discredit Dr. Hutchings's opinion, and the record as a whole indicates that the ALJ gave inadequate consideration to Plaintiff's right-hand limitations when crafting Plaintiff's RFC. For that reason, it is recommended that Plaintiff's case be remanded to the Commissioner for a reevaluation of the evidence. Because the Commissioner's reassessment of the medical record may, in turn, alter the Commissioner's findings as to Plaintiff's credibility, there is no need to consider Plaintiff's credibility arguments at this time.

**CONCLUSION**

After a careful review of the record, it is **RECOMMENDED** that Plaintiff's case be **REMANDED** to the Commissioner for a reevaluation of the evidence, and in particular, for a reassessment of (1) the functional limitations resulting from Plaintiff's right hand impairments, and (2) whether those limitations allow Plaintiff to perform "other work" at step five of the sequential evaluation process. Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, WITHIN FOURTEEN (14) DAYS after being served with a copy thereof. The District Judge shall make a de novo determination of those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

The parties are further notified that, pursuant to Eleventh Circuit Rule 3-1, "[a] party failing to object to a magistrate judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice."

**SO RECOMMENDED**, this 25th day of January, 2018.

s/ Charles H. Weigle  
Charles H. Weigle  
United States Magistrate Judge