

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

DIANE L. LENTON,

Plaintiff,

vs.

COMMISSIONER OF SSA,

Defendant.

No. C07-1028

RULING ON JUDICIAL REVIEW

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I. INTRODUCTION

This matter comes before the Court on the Complaint (docket number 3) filed by Plaintiff Diane L. Lenton on December 3, 2007, requesting judicial review of the Social Security Commissioner's decision to deny her applications for Title II disability insurance benefits and Title XVI supplemental security income ("SSI") benefits. Lenton asks the Court to reverse the decision of the Social Security Commissioner ("Commissioner") and order the Commissioner to provide her disability insurance benefits and SSI benefits. In the alternative, Lenton requests the Court to remand this matter for further proceedings.

II. PRIOR PROCEEDINGS

On November 5, 2004, Lenton applied for both disability insurance benefits and SSI benefits. In her applications, Lenton alleged an inability to work since February 21, 2003 due to neck, back, and arm pain. Lenton's application for SSI benefits was denied on November 12, 2004 because she had resources worth more than \$2,000. Her application for disability insurance benefits was denied on December 20, 2004. On April 23, 2005, Lenton's application for disability insurance benefits was denied on reconsideration. On May 17, 2005, Lenton requested an administrative hearing before an Administrative Law Judge ("ALJ"). On June 15, 2005, Lenton re-applied for SSI benefits.¹ On June 8, 2006, Lenton appeared without counsel, via video conference, before ALJ John E. Sandbothe.² Lenton and vocational expert Marian Jacobs testified at the hearing. In a decision dated January 17, 2007, the ALJ denied Lenton's claim. The ALJ determined that Lenton was not disabled and not entitled to disability insurance benefits or SSI benefits because she was functionally capable of performing her past relevant work as an assistant manager, cabinet

¹ Lenton's application for SSI benefits filed on June 15, 2005, was escalated to the hearing level for consideration by the ALJ.

² On March 7, 2006, Lenton appeared before ALJ Sandbothe for the administrative hearing, but it was rescheduled for a later date so that Lenton could obtain legal representation. However, she apparently was unable to retain representation.

assembler, garment assembler, and vending machine attendant. Lenton appealed the ALJ's decision. On October 29, 2007, the Appeals Council denied Lenton's request for review. Consequently, the ALJ's January 17, 2007 decision was adopted as the Commissioner's final decision.

On December 3, 2007, Lenton filed this action for judicial review. The Commissioner filed an answer on February 7, 2008. On April 10, 2008, Lenton filed a brief arguing there is not substantial evidence in the record to support the ALJ's finding that she is not disabled and that she could perform her past relevant work. On June 5, 2008, the Commissioner filed a responsive brief arguing the ALJ's decision was correct and asking the Court to affirm the ALJ's decision. On December 19, 2007, both parties consented to proceed before the undersigned in this matter pursuant to the provisions set forth in 28 U.S.C. § 636(c).

III. PRINCIPLES OF REVIEW

Title 42, United States Code, Section 405(g) provides that the Commissioner's final determination following an administrative hearing not to award disability insurance benefits is subject to judicial review. 42 U.S.C. § 405(g). Pursuant to 42 U.S.C. § 1383(c)(3), the Commissioner's final determination after an administrative hearing not to award SSI benefits is subject to judicial review to the same extent as provided in 42 U.S.C. § 405(g). 42 U.S.C. § 1383(c)(3). 42 U.S.C. § 405(g) provides the Court with the power to: "[E]nter . . . a judgment affirming, modifying, or reversing the decision of the Commissioner . . . with or without remanding the cause for a rehearing." 42 U.S.C. § 405(g). "The findings of the Commissioner . . . as to any fact, if supported by substantial evidence, shall be conclusive . . ." *Id.*

The Court must consider "whether the ALJ's decision is supported by substantial evidence on the record as a whole." *Vester v. Barnhart*, 416 F.3d 886, 889 (8th Cir. 2005) (citing *Harris v. Barnhart*, 356 F.3d 926, 928 (8th Cir. 2004)). Evidence is "substantial evidence" if a reasonable person would find it adequate to support the ALJ's

determination. *Id.* (citing *Sultan v. Barnhart*, 368 F.3d 857, 862 (8th Cir. 2004)). Furthermore, “[s]ubstantial evidence is ‘something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions does not prevent an administrative agency’s findings from being supported by substantial evidence.’” *Baldwin v. Barnhart*, 349 F.3d 549, 555 (8th Cir. 2003) (quoting *Cruse v. Bowen*, 867 F.2d 1183, 1184 (8th Cir. 1989), in turn quoting *Consolo v. Fed. Mar. Comm’n*, 282 U.S. 607, 620 (1966)).

In determining whether the ALJ’s decision meets this standard, the Court considers “all of the evidence that was before the ALJ, but it [does] not re-weigh the evidence.” *Vester*, 416 F.3d at 889 (citing *Guilliams v. Barnhart*, 393 F.3d 798, 801 (8th Cir. 2005)). The Court not only considers the evidence which supports the ALJ’s decision, but also the evidence that detracts from his or her decision. *Guilliams*, 393 F.3d at 801. “[E]ven if inconsistent conclusions may be drawn from the evidence, the agency’s decision will be upheld if it is supported by substantial evidence on the record as a whole.” *Id.* (citing *Chamberlain v. Shalala*, 47 F.3d 1489, 1493 (8th Cir. 1995)).

IV. FACTS

A. Lenton’s Education and Employment Background

Lenton was born in 1954. She earned her GED in 1975. The record contains a detailed earnings report for Lenton. The report covers Lenton’s employment from 1990 to 2005.³ Between 1990 and 1995 her yearly earnings fluctuated between a low of \$3503.55 in 1990 and a high of \$15,476.45 in 1992. Beginning in 1996, Lenton’s earnings generally increased from \$10,607.57 to \$22,032.44 in 2002. In 2003, her earnings decreased to \$4458.44 and \$738.40 in 2004. She had no earnings in 2005.⁴

³ The record also contains an ICERS Earnings Record which shows that Lenton had nominal earnings from 1969 to 1971 and regular earnings from 1972 to 1989.

⁴ Lenton’s testimony at the June 8, 2006 administrative hearing, however, provides
(continued...)

B. Administrative Hearing Testimony

1. Lenton's Testimony

At the administrative hearing, Lenton appeared before the ALJ without legal representation and was questioned by the ALJ. The ALJ first asked her what prevented her from holding a job. Lenton replied that she has “a lot of fatigue, a lot of pain, and . . . just can't do repetitive jobs.”⁵ She also indicated that she gets lightheaded, dizzy, and has difficulty remembering things. The ALJ also asked her if anything happened in February 2003, her disability onset date, to cause her alleged disability. According to Lenton, she injured her neck and back after striking her head on a conveyor belt at work. Lenton testified that her doctor diagnosed her with degenerative arthritis of the neck and lower spine. She claimed that her “whole” spine had been affected. She testified that she takes OxyContin and Skelaxin three times per day to relieve her neck and back pain. She also does home exercises to treat the pain.

Next, the ALJ questioned Lenton about her carpal tunnel syndrome. Lenton testified that she was first diagnosed with carpal tunnel syndrome in 1991 or 1992. She had surgery to correct the problem, but recently started having occasional problems with her right hand again. The ALJ asked her to describe the problems with her hand:

Q: And describe it, please.

A: My -- just my hand falls asleep and I have tingling in my -- and my pain in my wrist.

Q: Is there anything that brings it on?

A: Well, if I try to do something like tightening something or, you know, trying to use a lot of strength.

Q: Can you still open a door and use a doorknob, use a pen, use a typewriter?

⁴(...continued)

that she worked part-time at Wal-Mart from June 2005 through March 2006. *See* Administrative Record at 484.

⁵ *See* Administrative Record at 479.

A: Yes, I can still open a door. I don't type and I can still write but it's not real clear.

(Administrative Record at 482.)

The ALJ also asked Lenton a series of questions regarding her functional capacity. First, the ALJ asked how much Lenton thought she could lift on an occasional basis. She replied that she could lift five or six pounds. She indicated that she might be able to lift twenty pounds as well. Next, the ALJ asked her:

Q: How long can you sit in a work chair?

A: A half hour to an hour.

Q: And then what would you need to do?

A: I get up and walk around.

Q: And for how long before you could sit for another hour?

A: Five to 10 minutes.

Q: How long can you be on your feet just standing about?

A: A half hour to an hour.

Q: And then what would you need to do?

A: I sit down.

Q: And for how long before you could stand again?

A: Ten to 15 minutes.

Q: How far can you walk at a time?

A: I don't walk that much. I suppose from my back of my house to my alley I can walk that far.

Q: Do you do your own shopping?

A: Yeah.

Q: Can you walk around the grocery store?

A: Yeah.

Q: And how long does that take you to do your shopping?

A: Maybe 20 to 25 minutes.

(Administrative Record at 483-84.)

The ALJ further inquired about Lenton's part-time job at Wal-Mart. According to Lenton, she worked at Wal-Mart for about nine months as a cashier and bagging groceries. She worked twenty-five hours per week. Lenton quit because her job duties caused her problems with her wrist and Wal-Mart management was unable to move her into a less strenuous job.

The ALJ also asked Lenton to describe her typical day. Lenton testified that she gets up around 5:30 a.m. or 6:00 a.m. and has breakfast. After breakfast, she watches television and walks around the house. On some days, she lays back down around 10:30 a.m. or 11:00 a.m. In the afternoon, she eats lunch, walks around the house, and watches television. In the evening, she eats dinner and watches television. She goes to bed around 10:00 p.m. Lenton also indicated that she has no hobbies and only socializes with her sister and her family.

2. Vocational Expert's Testimony

At the hearing, the ALJ provided vocational expert Marian Jacobs with a hypothetical for an individual who would be able to: (1) occasionally lift 20 pounds, (2) frequently lift 10 pounds, and (3) occasionally balance, stoop, crouch, kneel, crawl, and climb. The vocational expert testified that under such limitations, Lenton could perform her past relevant work as an assistant manager, cabinet assembler, garment assembler, and vending machine attendant. The ALJ provided the vocational expert with a second hypothetical with the same limitations, except that the individual would be limited to no repetitive gross or fine manipulation with the right hand, no neck movement, and would work at a slow pace for up to one-third of the workday. The vocational expert concluded that under such limitations, Lenton would not be employable.

C. Lenton's Medical History

Lenton was first diagnosed with carpal tunnel syndrome in 1992. Dr. Brian Sires, M.D., found that Lenton had diminished sensation in the first three digits of her right hand and positive Tinel's sign in her wrist. Dr. Sires also found that her hand grips were mildly weak. Dr. Sires concluded that Lenton had moderately severe carpal tunnel syndrome with mild axonal damage.⁶

⁶ The record contains no treatment advice from Dr. Sires' 1992 report. See Administrative Record at 187-88.

On February 27, 2003, Lenton saw Dr. Steven Gorsch, M.D., in the emergency department at the Covenant Medical Center in Waterloo, Iowa, complaining of dizziness.

Dr. Gorsch reviewed Lenton's symptoms:

[L]ast Friday[, Lenton] hit her head at work. She had hit the top of her head. She had had a headache ever since that time[.] . . . I did review the head CT result which was done yesterday and that was negative. . . . She had been taking Tylenol #3 as well as Vioxx for the pain. She had continued headaches, but over the last few days has had spinning dizziness. She has also felt intermittent nausea when she has the spinning dizziness. That is the reason she came into the emergency department.

(Administrative Record at 209.) After examining her, Dr. Gorsch concluded that Lenton was suffering from postconcussive vertigo. Dr. Gorsch prescribed meclizine as treatment and instructed her to have close follow-up with her regular physician.

On April 14, 2003, Lenton met with Dr. Russell Buchanan, M.D., complaining of severe occipital type headaches, right and left arm pain, right knee pain, and pain and numbness down the left lower extremity. Upon examination, Dr. Buchanan found Lenton's neck to be supple with some limitation in extension. Dr. Buchanan also found that Lenton's back had good range in flexion, but limitation in extension and lateral bending with pain toward the left. Dr. Buchanan concluded that she had posttraumatic swelling from hitting her head at work in February 2003 and L5 radiculopathy. Dr. Buchanan recommended cervical strengthening and flexibility training as treatment.⁷

On May 8, 2003, Lenton met with Dr. Sires for a neurological examination. Dr. Sires noted that Lenton continued to have constant daily headaches. Dr. Sires further noted that her head pain was "an aching, pressure quality pain that radiates through the

⁷ Dr. Buchanan also ordered an MRI of Lenton's lumbar spine. The MRI showed "mild central disc bulging at L4-5, with an associated annular tear or posterior hyperintense zone. No significant canal stenosis or evidence of nerve spot impingement." See Administrative Record at 197. Otherwise, the MRI was negative.

occipital area and into her neck and down into the lumbar spine.”⁸ Lenton also complained of numbness and weakness in her left arm and leg. Upon neurological examination, Dr. Sires found that:

[Lenton] sits extremely stiffly and bold upright without hardly any head movement at all. She appears to be in mild to moderate discomfort with movements initially. She never turns her head. . . . After working with her I was able to get her into a Hallpike bilaterally and this was negative. Strength, tone and bulk in the extremities is 5/5. Reflexes are normoactive to hypoactive throughout with no pathologic reflexes present. Sensory examination is intact to soft touch and pinprick over all cervical and lumbosacral dermatomes. Tests of cerebellar function are well-performed. . . . Initially [Lenton’s] active range of motion was nearly negligible in the neck. In the low back she was able to bend forward approximately 20 degrees, bent backwards and to the side minimally. . . . I worked with her cervical range of motion and could get it nearly normal in rotation to the right, 10 degrees off of normal to the left and I could get flexion about half of normal. Extension was also 60-70% of normal. When I asked her to go through active range of motion she once again made minimal movements until I encouraged her at which point she was able to perform back through the range of motion that I got passively. . . . There was a little tenderness in the left cervical paraspinal area. There wasn’t much tenderness of any consequence over any cervical spinal process. I could tilt her head from side-to-side reasonably well.

(Administrative Record at 258-59.) Dr. Sires’ impression was that Lenton suffered from “[m]usculoskeletal complaints following a closed head injury in which [she] stood up under a fixed object.”⁹ Dr. Sires opined that a major aspect of Lenton’s problem was fear of pain from movement. Dr. Sires reassured Lenton that she had nothing “dramatically

⁸ See Administrative Record at 257.

⁹ *Id.* at 259.

abnormal” and needed to get more movement into her daily activities. Dr. Sires recommended physical therapy that was focused on movement as treatment.

On August 1, 2003, Lenton visited Dr. Gayathry Inamdar, M.D., with complaints of neck pain. Lenton rated her pain as 5 out of 10 on a 10-point scale. She also informed Dr. Inamdar that she continued to have occasional headaches. Upon examination, Dr. Inamdar noted that Lenton seemed “very stiff.” She was able to flex her spine, but with “severe stiffness.” She also had difficulty turning her head to either side. She had some spasm in the lower lumbar spine and severe spasms along the cervical facets bilaterally in the trapezius muscle group. Lenton also had “significant” tenderness throughout the cervical neck and shoulder. Lastly, Dr. Inamdar noted that Lenton had full range of movement in all of her upper and lower extremities and her muscle strength was 5/5 throughout. Dr. Inamdar diagnosed Lenton with myofascial pain syndrome, neck and shoulder pain, and mid-back pain mainly in the trapezius muscle group. Dr. Inamdar performed trigger point injections in the trapezius, levator scapulae, and paraspinals as treatment.

On August 22, 2003, Lenton had a follow-up visit with Dr. Inamdar. She informed Dr. Inamdar that her neck pain was “much improved.” She rated her pain as 3 out of 10. Lenton indicated, however, that she had increased pain in the lower back. After examination, Dr. Inamdar determined that Lenton had myofascial pain syndrome in the low back paraspinal, especially on the left side at levels 2-3 and 3-4. Dr. Inamdar performed trigger point injections in her neck and low back as treatment.

On September 19, 2003, Lenton was evaluated by Dr. Barbara Malicka-Rozek, M.D., for pain in lower neck, upper back, and occasional spasms in neck extensors. Dr. Malicka-Rozek noted that Lenton’s pain was a 2 or 3 on a scale of 10. Dr. Malicka-Rozek indicated that the main reason for Lenton’s visit was limited range of motion in her neck. Upon examination, Dr. Malicka-Rozek found that Lenton had: (1) normal strength in bilateral upper and lower extremities; (2) the ability to transfer from a sitting to standing

position without difficulty; (3) normal deep tendon reflexes throughout the upper and lower extremities; and (4) mild tenderness around C7 spinous process and between bilateral scapula. Dr. Malicka-Rozek noted that Lenton avoided any movement of her neck due to pain and muscle spasms. Dr. Malicka-Rozek diagnosed Lenton with a neck strain and some symptoms typical of a rhomboid strain. Overall, Dr. Malicka-Rozek found Lenton's prognosis to be excellent. Dr. Malicka-Rozek recommended medication and physical therapy as treatment.

On October 8, 2003, a physical therapist, John Hurley ("Hurley"), administered a performance assessment for Lenton. Hurley concluded that Lenton's pain rating in the cervical region equaled 3, and in the low back equaled 4 on a 10-point scale. Hurley also found that she:

demonstrated consistency between trials during upper extremity active range of motion repetitive testing while also demonstrating 5/5 strength bilateral upper extremities. She did not demonstrate a strength deficit in the lower extremities nor did her range of motion appear to be affected. . . . In terms of dynamic material handling for the 12 inches to waist and the waist to shoulder level she fell in the light physical demand level for occasional material handling per the dictionary of occupational titles. She fell in the sedentary range during the shoulder to above head lift and the lift and carry of 20 feet and she fell in the medium physical demand level at 50 pounds during the push and pull of 20 feet.

(Administrative Record at 230-31.)

On November 3, 2003, Dr. David Kinkle, D.O., provided an impairment rating for Lenton. Based on the performance assessment conducted by Hurley, Dr. Kinkle opined that Lenton's impairment rating was 7% whole person with a permanent restriction of "no lifting over 28 lbs occasionally from 12" above the floor to her waist and no lifting and

carrying more than 15 lbs.”¹⁰ Dr. Kirkle also opined that Lenton could push and pull 50 pounds without any difficulty.

On June 1, 2004, Lenton visited Dr. Caple A. Spence, M.D., complaining of right arm pain and numbness. Lenton described the pain as aching with a pins and needles sensation. At its most severe, she rated the pain as a 9 out of 10. Dr. Spence noted that “[d]espite the fact that she believes it is a 9 out of 10 today she says it causes some aching but it is not really debilitating.”¹¹ Dr. Spence diagnosed Lenton with right C 5-6 neural foraminal stenosis, right C-6 radiculitis, and cervicalgia. Dr. Spence concluded that Lenton:

has a clear discomfort in the cervical region however she has a normal physical examination. As she states it, her pain syndrome is mild. I recommend she continue her pain management at this time.

(Administrative Record at 290.)

On September 28, 2004, Lenton was examined by Dr. Anthony Markham, M.D., for headaches.¹² The headaches started several days after Lenton had undergone a myelogram. She informed Dr. Markham that her headaches were worse when she was standing. She also indicated that she had had some nausea, but no vomiting. Lenton’s physical examination was normal. She had good strength and range of motion in all of her extremities. A CT scan of her lumbar spine was negative. Dr. Markham diagnosed Lenton with postural puncture headache and malingering. Dr. Markham prescribed Vicodin for pain relief.

¹⁰ See Administrative Record at 226.

¹¹ *Id.* at 289.

¹² Initially, Lenton went to the emergency room, where she was examined by Dr. Luis Avila, M.D. In addition to headaches, she complained of leg weakness and low back pain.

On September 29, 2004, Lenton met with Dr. Keith D. Ruffcorn, M.D., for back pain. Upon examination, Dr. Ruffcorn found that:

The upper extremities have good strength and sensation with good radial pulses. The lower extremities are able to move equally. She seems to have adequate strength bilaterally. She can ambulate, although it does seem to hurt her to move. Negative straight leg test bilaterally. Good perianal sensation.

(Administrative Record at 314-15.) Dr. Ruffcorn diagnosed Lenton with back pain and neck pain. He gave her shots of Toradol and Zofran as treatment.

On September 30, 2004, Lenton met with Dr. Amarnath Kathresal, M.D., for increased neck pain. Upon examination, Dr. Kathresal found that Lenton had limited movement and tenderness of the cervical spine. Upon reviewing Lenton's CT myelogram report, Dr. Kathresal noted posterior bony ridging at C5 interspace with posterior disc bulge, mild to moderate spinal cord stenosis, disc space narrowing at C6, broad based disc bulging at L4-L5, and mild canal stenosis with thecal sac flattening. Dr. Kathresal diagnosed Lenton with mild to moderate cervical spine stenosis. Dr. Kathresal treated Lenton with pain relief medication.

On October 2, 2004, Lenton visited Dr. Buchanan for weakness in both lower extremities. Upon examination, Dr. Buchanan found that: (1) her gait was wide based, but coordinated and smooth; (2) she was able to squat and regain standing without difficulty; (3) her cervical spine had good motion in both flexion and extension; (4) her lumbar spine had no tenderness to palpation and good motion in both flexion and extension; and (5) she had some weakness in dorsiflexion of the feet bilaterally to confrontation. Dr. Buchanan diagnosed Lenton with cervical spondylosis of cervical disc with radiculopathy, lumbar spondylosis with no foraminal stenosis, and new onset of weakness, so far unexplained by radiographic images. Dr. Buchanan recommended that she continue her pain medication and anti-inflammatory medicine as treatment. Dr. Buchanan also encouraged ambulation as treatment.

On October 5, 2004, Lenton met with Dr. Spence for a follow-up appointment. Upon examination, Dr. Spence found that Lenton had: (1) no “significant” weakness in her upper extremities, (2) 5/5 strength in the bilateral upper and lower extremities, (3) a smooth and coordinated gait, and (4) normal sensation to light touch in the bilateral upper and lower extremities. Dr. Spence diagnosed her with cervicgia, right C 5-6 neuroforaminal stenosis, and possible right C-6 radiculitis. Dr. Spence recommended evaluation by neurology or rheumatology for pain disorder. Specifically, Dr. Spence concluded:

Lenton possibly has some pain disorder, however, there is no disease the [sic] can be demonstrated on imaging studies that would correspond with her complaints. Additionally from a historical prospective her complaints are somewhat vague but she is adamant that she can be no more specific about her symptomology. There is little I can offer her given the imaging studies.

(Administrative Record at 356.)

On October 12, 2004, Lenton met with Dr. Ivo Bekavac, M.D., Ph.D., for nerve conduction velocity testing/electromyography on her right upper extremity. The testing revealed: (1) median neuropathy at/or distal to the wrist consistent with carpal tunnel syndrome, mild in degree electrically; (2) EMG evidence of ulnar neuropathy probably distal to the elbow, mild in degree electrically; and (3) no EMG evidence for acute cervical motor radiculopathy, polyneuropathy, or myopathy.

On December 9, 2004, Dr. Jan Hunter, D.O., reviewed Lenton’s medical records and provided Disability Determination Services (“DDS”) with a physical residual functional capacity (“RFC”) assessment. Dr. Hunter determined that Lenton could: (1) occasionally lift and/or carry 20 pounds, (2) frequently lift and/or carry 10 pounds, (3) stand and/or walk with normal breaks for a total of about six hours in an eight-hour workday, (4) sit with normal breaks for a total of about six hours in an eight-hour workday, and (5) push and/or pull without limitations. Dr. Hunter further determined that

Lenton could climb, balance, stoop, kneel, crouch, and crawl occasionally. Dr. Hunter found that Lenton would be limited in her handling (gross manipulation) and fingering (fine manipulation) abilities with her right hand. Dr. Hunter found no visual, communicative, or environmental limitations. Dr. Hunter concluded that:

[Lenton] does have evidence of degenerative changes involving the cervical spine. However, she has been found to have no evidence of a cervical radiculopathy or myopathy. EMG testing of the right wrist has been consistent with mild carpal tunnel syndrome and mild ulnar neuropathy. This would impact her ability to perform manipulative functions. She would be advised to avoid frequent manipulative activities to include handling and fingering employing the right upper extremity. It must be noted that [Lenton] has generally had essentially normal physical examination findings and no evidence of sensory or reflex loss. . . . By [Lenton's] own report, she is capable of performing activities of daily living as noted above to include housekeeping, shopping, and care of a pet. Therefore, the preponderance of evidence in this case supports the conclusion that [Lenton] would be capable as outlined. The credibility of her allegations is somewhat eroded by the absence of physical examination findings supportive of the degree of limitations she alleges.

(Administrative Record at 367.)

On April 6, 2005, Lenton met with Carroll Roland, Ph.D., for a psychological evaluation. DDS requested the evaluation and asked Dr. Roland to focus on Lenton's allegations of memory impairment. Dr. Roland found Lenton's recent and remote memory and immediate retention and recall to be intact. Dr. Roland concluded that Lenton's "immediate memory was normal for females in her age group. Thus, there is no support for any indication of memory impairment."¹³ Dr. Roland opined that Lenton's memory

¹³ See Administrative Record at 406.

was sufficient for entry-level competitive employment and she was “not deemed incapable of remembering 2 and 3 steps instructions given by supervisory personnel.”¹⁴

On April 13, 2005, Lenton had a follow-up appointment with Dr. Inamdar for her neck pain and low back pain. Dr. Inamdar noted that Lenton received adequate pain relief from injection therapy. Dr. Inamdar further noted, however, that although her pain was under control, some pain still persisted. Dr. Inamdar indicated that her persistent pain may be related to some component of anxiety and depression or may be the result of degenerative changes in her neck and low back. Dr. Inamdar concluded that Lenton was “at maximum medical improvement. The injections can be repeated in the future if the pain persists and as needed.”¹⁵

On April 20, 2005, Dr. Dee Wright, Ph.D., reviewed Lenton’s medical records and provided DDS with a Psychiatric Review Technique assessment for Lenton. Dr. Wright diagnosed her with depression. Dr. Wright found that Lenton would have mild limitations in her restriction of activities of daily living, maintaining social functions, and maintaining concentration, persistence, or pace. Dr. Wright concluded that:

In reviewing the medical evidence of record, [Lenton] is diagnosed with a medically determinable mental impairment - depression (not otherwise specified) per treating physician. [Lenton’s] diagnosed medically determinable mental impairment does not currently create significant limitations of function for [Lenton] cognitively, socially, or with activities of daily living. . . . [Lenton’s] diagnosed medically determinable mental impairment would be considered nonsevere at this time. There is some mild discrepancy between [Lenton’s] allegation of memory problems and the objective medical evidence. As previously mentioned, weight is given to the preponderance of the behavioral evidence that does not indicate significant limitations of function.

¹⁴ See Administrative Record at 407.

¹⁵ *Id.* at 435.

(Administrative Record at 408.)

On January 5, 2006, Dr. Arnold E. Delbridge, M.D., examined Lenton and reviewed her medical records for the purpose of determining her total impairment. Dr. Delbridge found that Lenton had a total whole body impairment of 11%. Dr. Delbridge opined that Lenton should not lift more than 30 pounds at one time and no more than 15-20 pounds on a repetitive basis. Dr. Delbridge also determined that:

She should not be required to do a job where she has to turn her head frequently such as backing up a vehicle or a fork lift. She should not be required to look overhead or work above shoulder level consistently because of limitations of her neck and headaches. She should avoid work that requires repetitive lifting and twisting of her cervical or lumbar spine.

(Administrative Record at 441.)

V. CONCLUSIONS OF LAW

A. ALJ's Disability Determination

The ALJ determined that Lenton is not disabled. In making this determination, the ALJ was required to complete the five-step sequential test provided in the social security regulations. *See* 20 C.F.R. § 404.1520(a)-(f); *Bowen v. Yuckert*, 482 U.S. 137, 140-42 (1987); *Page v. Astrue*, 484 F.3d 1040, 1042 (8th Cir. 2007); *Anderson v. Barnhart*, 344 F.3d 809, 812 (8th Cir. 2003). The five steps an ALJ must consider are:

(1) whether the claimant is gainfully employed, (2) whether the claimant has a severe impairment, (3) whether the impairment meets the criteria of any Social Security Income listings, (4) whether the impairment prevents the claimant from performing past relevant work, and (5) whether the impairment necessarily prevents the claimant from doing any other work.

Goff v. Barnhart, 421 F.3d 785, 790 (8th Cir. 2005) (citing *Eichelberger v. Barnhart*, 390 F.3d 584, 590 (8th Cir. 2004)); *see also* 20 C.F.R. § 404.1520(a)-(f). "If a claimant fails to meet the criteria at any step in the evaluation of disability, the process ends and the

claimant is determined to be not disabled.” *Eichelberger*, 390 F.3d at 590-91 (citing *Ramirez v. Barnhart*, 292 F.3d 576, 580 (8th Cir. 2002)).

“To establish a disability claim, the claimant bears the initial burden of proof to show that he [or she] is unable to perform his [or her] past relevant work.” *Frankl v. Shalala*, 47 F.3d 935, 937 (8th Cir. 1995) (citing *Reed v. Sullivan*, 988 F.2d 812, 815 (8th Cir. 1993)). If the claimant meets this burden, the burden of proof then shifts to the Commissioner to demonstrate that the claimant retains the residual functional capacity to perform a significant number of other jobs in the national economy that are consistent with claimant’s impairments and vocational factors such as age, education, and work experience. *Id.* The RFC is the most an individual can do despite the combined effect of all of his or her credible limitations. 20 C.F.R. § 416.945. “‘It is the ALJ’s responsibility to determine a claimant’s RFC based on all relevant evidence, including medical records, observations of treating physicians and others, and claimant’s own descriptions of his [or her] limitations.’” *Tellez v. Barnhart*, 403 F.3d 953, 957 (8th Cir. 2005) (quoting *Pearsall v. Massanari*, 274 F.3d 1211, 1217 (8th Cir. 2001)).

The ALJ applied the first step of the analysis and determined that Lenton had not engaged in substantial gainful activity since her alleged disability onset date, February 21, 2003. At the second step, the ALJ concluded that Lenton had the following impairments “a status post concussion with neck pain; carpal tunnel syndrome on the right; low back pain from degenerative joint disease; and nonsevere depression.” At the third step, the ALJ found that Lenton did not have an impairment or combination of impairments that “meets or medically equals one of the listed impairments in 20 C.F.R. [§] 404, [Appendix 1, Subpart P, Regulations No. 4 (the Listing of Impairments)].” At the fourth step, the ALJ determined Lenton’s RFC as follows:

[Lenton] has the residual functional capacity to lift 20 pounds occasionally and 10 pounds frequently. She can occasionally balance, stoop, crouch, kneel, crawl, and climb.

Using this RFC, the ALJ determined that Lenton could perform her past relevant work as an assistant manager, cabinet assembler, garment assembler, and vending machine attendant. Therefore, the ALJ concluded that because Lenton was capable of performing her past relevant work, she was not disabled.

B. Whether the ALJ Fully and Fairly Developed the Record

Lenton contends that the ALJ erred in four respects. First, Lenton argues that the ALJ erred by substituting his own opinion for that of a medical expert in finding that she has no manipulative limitations. Second, Lenton argues that the ALJ failed to properly weigh the opinions of her long-term treating physician, Dr. Inamdar, and develop the opinion evidence from Dr. Inamdar. Third, Lenton argues that the ALJ's finding that she had no limitations in the use of her neck is not supported by substantial evidence. Lastly, Lenton argues that the ALJ's finding that she is functionally capable of performing her past work as an assistant manager, cabinet assembler, garment assembler, and vending machine attendant is not supported by substantial evidence.

1. Manipulative Limitations

Lenton argues that the ALJ's finding that she suffers no manipulative limitations is not supported by substantial evidence. Specifically, Lenton points out that in December 2004, Dr. Hunter, a consultative physician, opined that she was limited in her ability to handle and finger with her right hand. Lenton maintains that the ALJ's failure to include any manipulative limitations in her RFC shows that the ALJ improperly replaced the opinions of Dr. Hunter with his own reading of the medical record.

In his decision, the ALJ determined that:

The state agency medical consultant doctors suggested a restriction against frequent handling and fingering with the right upper extremity. The undersigned does not give the limitation weight. Testing showed merely mild carpal tunnel syndrome. Examinations have persistently been normal/negative with full strength. Physicians who actually examined or treated [Lenton] have not persistently opined [her] to have such a limitation (see, e.g., Exhibits 6F, 26F) and

those opinions are given greater weight as more consistent with the record as a whole.

[Lenton] was examined by an orthopedic specialist [on] January 5, 2006. Based on her history, examination, x-rays and review of many medical records, the specialist was of the opinion to [Lenton that she] should not lift more than 20 pounds maximum and no more than 15 to 20 pounds on a repetitive basis. There was no limitation expressed concerning the hands (Exhibit 26F). The opinion concerning limitations expressed is found well supported and consistent with other evidence in the record as a whole and has been given a good deal of weight. The opinion supports the functional capacity assigned by the undersigned. Other limits are given lesser weight as not consistent with other evidence and inconsistencies in the record as a whole for the time period in question.

(Administrative Record at 24.)

An ALJ has the responsibility of assessing a claimant's RFC, and his or her assessment must be based on all of the relevant evidence. *Guilliams*, 393 F.3d at 803; *see also Roberts v. Apfel*, 222 F.3d 466, 469 (8th Cir. 2000) (same). Relevant evidence for determining a claimant's RFC includes "medical records, observations of treating physicians and others, and an individual's own description of his [or her] limitations.'" *Lacroix v. Barnhart*, 465 F.3d 881, 887 (8th Cir. 2006) (quoting *Strongson v. Barnhart*, 361 F.3d 1066, 1070 (8th Cir. 2004)). However, "RFC is a medical question, and an ALJ's finding must be supported by some medical evidence." *Guilliams*, 393 F.3d at 803 (citing *Masterson v. Barnhart*, 363 F.3d 731, 738 (8th Cir. 2004)). In considering a physician's RFC assessment, an ALJ is not required to give controlling weight to the physician's assessment if it is inconsistent with other substantial evidence in the record. *Strongson*, 361 F.3d at 1070; *see also Travis v. Astrue*, 477 F.3d 1037, 1041 (8th Cir. 2007) ("A physician's statement that is 'not supported by diagnoses based on objective evidence' will not support a finding of disability. *Edwards v. Barnhart*, 314 F.3d 964, 967 (8th Cir. 2003). If the doctor's opinion is 'inconsistent with or contrary to the medical

evidence as a whole, the ALJ can accord it less weight.’ *Id.*”). The resolution of conflicts of opinion among various treating and examining physicians is the proper function of an ALJ. *Cabrnoch v. Bowen*, 881 F.2d 561, 564 (8th Cir. 1989).

In his decision, the ALJ offers several reasons for according less weight to Dr. Hunter’s opinion that Lenton has manipulative limitations with her right hand. First, the ALJ noted that testing showed “merely mild carpal tunnel syndrome.” The ALJ also noted that on examination, Lenton’s upper extremities were consistently normal with full strength. Lastly, the ALJ found that examining physicians persistently opined that she did not have any manipulative limitations. Lenton argues, however, that the ALJ only discusses two medical exhibits to support his conclusions, Exhibits 6F and 26F. The Court bears in mind that “[a]lthough required to develop the record fully and fairly, an ALJ is not required to discuss every piece of evidence submitted.” *Black v. Apfel*, 143 F.3d 383, 386 (8th Cir. 1998) (citing *Miller v. Shalala*, 8 F.3d 611, 613 (8th Cir. 1993)). Failure to cite specific evidence does not indicate that the evidence was not considered by the ALJ. *Id.* (citing *Montgomery v. Chater*, 69 F.3d 273, 275 (8th Cir. 1995)). In his decision, the ALJ indicated that he considered the entire record, including all symptoms consistent with the objective medical evidence and other evidence and the opinion evidence of treating, examining, and consultative doctors. In his review of Lenton’s medical history, the ALJ discussed medical evidence in the record which provided that Lenton had normal use of her upper extremities and normal upper extremity strength.¹⁶ Accordingly, the Court finds that the ALJ properly considered all of the relevant evidence in determining Lenton’s RFC. *See Guilliams*, 393 F.3d at 803. Furthermore, the Court finds that the weight afforded Dr. Hunter’s opinions by the ALJ is supported by substantial evidence. *See Strongson*, 361 F.3d at 1070; *Travis*, 477 F.3d at 1041. Therefore, having reviewed the entire record, the Court finds that the ALJ did not err in assessing Lenton’s RFC with regard to manipulative limitations. *See Guilliams*, 393 F.3d at 801 (“[E]ven if inconsistent

¹⁶ *See Administrative Record* at 23-26.

conclusions may be drawn from the evidence, the agency’s decision will be upheld if it is supported by substantial evidence on the record as a whole.”).

2. *Dr. Inamdar’s Opinions*

Lenton points out that the ALJ’s decision lacks any discussion of the opinions of her treating physician of three years, Dr. Inamdar.¹⁷ Specifically, Lenton argues that the ALJ “erred by failing to consider Dr. Inamdar’s opinion that [her] underlying impairments can cause the pain she alleges.”¹⁸ Lenton also argues that because she was not represented by an attorney at the administrative hearing, the ALJ had a heightened duty to develop the record and contact Dr. Inamdar to obtain the doctor’s opinions on whether she had any functional limitations as a result of her impairments.

The Commissioner acknowledges that Lenton is “correct that under the regulations, the ALJ should have attempted to recontact Dr. Inamdar to obtain a statement describing [Lenton’s] work-related functional limitations.”¹⁹ The Commissioner contends, however, that considering the record as a whole, it is “sufficiently developed to allow the ALJ to make a decision.”²⁰ The Commissioner concludes that “if the Court believes that the failure to obtain further evidence from Dr. Inamdar was unfair or prejudicial, [the

¹⁷ The record provides 24 instances where Lenton met with Dr. Inamdar for low back pain and neck pain between August 1, 2003 and February 15, 2006. *See* Administrative Record at 245-46, 324, 326, 328-29, 332, 365, 368-74, 377-86, 391, 428-30, 432-33, 435.

¹⁸ *See* Lenton’s Memorandum in Support of Appeal (docket number 14) at 21. *See also* Administrative Record at 435 (Dr. Inamdar opined that Lenton had “underlying degenerative changes which could be contributing to [her] persistent pain.”).

¹⁹ *See* Defendant’s Brief at 11.

²⁰ *Id.*

Commissioner] agrees with [Lenton] that remand for further development would be the proper remedy.”²¹

An ALJ has a duty to develop the record fully and fairly. *Cox v. Astrue*, 495 F.3d 614, 618 (8th Cir. 2007); *Sneed v. Barnhart*, 360 F.3d 834, 838 (8th Cir. 2004); *Wilcutts v. Apfel*, 143 F.3d 1134, 1137 (8th Cir. 1998). Because an administrative hearing is a non-adversarial proceeding, the ALJ must develop the record fully and fairly in order that “deserving claimants who apply for benefits receive justice.” *Wilcutts*, 143 F.3d at 1138 (quoting *Battles v. Shalala*, 36 F.3d 43, 44 (8th Cir. 1994)). This duty is heightened when a claimant is not represented by counsel. *Highfill v. Bowen*, 832 F.2d 112, 115 (8th Cir. 1987) (quotation omitted). “Although mere lack of counsel does not itself deprive a claimant of a fair hearing, it does enhance the ALJ’s duty to bring out the relevant facts.” *Id.* (Citations omitted). “Unfairness or prejudice resulting from an incomplete record—whether because of lack of counsel or lack of diligence on the ALJ’s part—requires a remand.” *Id.*

Based on Lenton’s long and significant physician-patient relationship with Dr. Inamdar, the Court finds the ALJ’s lack of any discussion of Dr. Inamdar’s opinions constitutes a failure to fully and fairly develop the record. *See Cox*, 495 F.3d at 618; *Highfill*, 832 F.2d at 115. The Court further finds that Lenton was prejudiced by the ALJ’s failure to consider or discuss Dr. Inamdar’s opinions in his decision. Accordingly, the Court finds that remand is necessary. *See Highfill*, 832 F.2d at 115. On remand, the ALJ shall fully and fairly develop the record with regard to Dr. Inamdar’s opinions.

3. *Dr. Delbridge’s Opinions*

Lenton argues that the record is incomplete regarding whether she has any limitations with the use of her neck. Specifically, Lenton argues that the ALJ failed to consider the limitations opined by Dr. Delbridge. After examining Lenton, Dr. Delbridge concluded that:

²¹ *See* Defendant’s Brief at 11.

She should not be required to do a job where she has to turn her head frequently such as backing up a vehicle or a fork lift. She should not be required to look overhead or work above shoulder level consistently because of limitations of her neck and headaches. She should avoid work that requires repetitive lifting and twisting of her cervical or lumbar spine.

(Administrative Record at 441.) The ALJ's decision provides no discussion of Dr. Delbridge's opinions regarding Lenton's neck limitations. Accordingly, the Court finds that the ALJ failed to meet his duty to fully and fairly develop the record on this issue. *See Cox*, 495 F.3d at 618. Therefore, the Court determines that remand is necessary. On remand, the ALJ shall fully and fairly develop the record with regard to any limitations Lenton may have regarding the use of her neck, especially, the opinions of Dr. Delbridge on that issue.

4. Hypothetical Question

Lenton argues that because the record in this matter is incomplete, the hypothetical questions presented to the vocational expert failed to accurately capture her RFC and functional limitations. Hypothetical questions posed to a vocational expert, including a claimant's RFC, must set forth his or her physical and mental impairments. *Goff*, 421 F.3d at 794. "The hypothetical question must capture the concrete consequences of the claimant's deficiencies." *Hunt v. Massanari*, 250 F.3d 622, 625 (8th Cir. 2001) (citing *Taylor v. Chater*, 118 F.3d 1274, 1278 (8th Cir. 1997)). The ALJ is required to include only those impairments which are substantially supported by the record as a whole. *Goose v. Apfel*, 238 F.3d 981, 985 (8th Cir. 2001); *see also Haggard v. Apfel*, 201 F.3d 591, 595 (8th Cir. 1999) ("A hypothetical question 'is sufficient if it sets forth the impairments which are accepted as true by the ALJ.' *See Davis v. Shalala*, 31 F.3d 753, 755 (8th Cir. 1994) (quoting *Roberts v. Heckler*, 783 F.2d 110, 112 (8th Cir. 1985)."). In sections *V.B.2* and *V.B.3* of this decision, the Court remanded this matter for further consideration of the opinions of Drs. Inamdar and Delbridge. Accordingly, the Court determines that on remand, the ALJ should also reconsider the hypothetical question posed to the

vocational expert to make sure that it captures the concrete consequences of Lenton's limitations based on the medical evidence as a whole, including the opinions of Drs. Inamdar and Delbridge. *See Hunt*, 250 F.3d at 625.

C. Reversal or Remand

The scope of review of the Commissioner's final decision is set forth in 42 U.S.C. § 405(g) which provides in pertinent part:

The court shall have the power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing.

42 U.S.C. § 405(g). The Eighth Circuit Court of Appeals has stated that:

Where the total record is overwhelmingly in support of a finding of disability and the claimant has demonstrated his [or her] disability by medical evidence on the record as a whole, we find no need to remand.

Gavin v. Heckler, 811 F.2d 1195, 1201 (8th Cir. 1987); *see also Beeler v. Brown*, 833 F.2d 124, 127 (8th Cir. 1987) (finding reversal of denial of benefits was proper where "the total record overwhelmingly supports a finding of disability"); *Stephens v. Sec'y of Health, Educ., & Welfare*, 603 F.2d 36, 42 (8th Cir. 1979) (explaining that reversal of denial of benefits is justified where no substantial evidence exists to support a finding that the claimant is not disabled). In the present case, the Court concludes that the medical records as a whole do not "overwhelmingly support a finding of disability." *Beeler*, 833 F.2d at 127. Instead, the ALJ simply failed to fully and fairly develop the record with regard to the opinions of Drs. Inamdar and Delbridge. Accordingly, the Court finds that remand is appropriate.

VI. CONCLUSION

The Court concludes that this matter should be remanded to the Commissioner for further proceedings. On remand, the ALJ should develop the record fully and fairly with regard to the opinions of Drs. Inamdar and Delbridge, provide clear reasons for accepting or rejecting their opinions, and support his reasons with evidence from the record. The ALJ should also reconsider the hypothetical question he posed to the vocational expert in accordance with his reconsideration of the other issues on remand.

VII. ORDER

For the foregoing reasons, it is hereby **ORDERED**:

This matter is **REVERSED** and **REMANDED** to the Commissioner of Social Security pursuant to sentence four of 42 U.S.C. § 405(g), for further proceedings as discussed herein.

DATED this 15 day of October, 2008.



JON STUART SCOLES
United States Magistrate Judge
NORTHERN DISTRICT OF IOWA