

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

LAWRENCE J. CIBA,)
)
 Plaintiff)
)
 v.) Case No. 2:02 cv 517
)
 COMMISSIONER OF SOCIAL)
 SECURITY,)
)
 Defendant)

ORDER

This matter is before the court on the Motion for Summary Judgment filed by the plaintiff, Lawrence J. Ciba, on July 15, 2003. For the reasons set forth below, the motion is **GRANTED**.

Background

The plaintiff, Lawrence J. Ciba, initially applied for Disability Insurance Benefits on October 5, 2000, alleging a disability onset date of October 12, 1999. (Tr. 44) The claim was denied initially on November 6, 2000 and upon reconsideration on February 28, 2001. (Tr. 21, 26) Ciba requested a hearing before an Administrative Law Judge ("ALJ") on March 9, 2001, and a hearing was held before ALJ Robert Asbille on April 3, 2002. (Tr. 31, 323) Subsequent to the hearing, in which Ciba and Vocational Expert ("VE") William J. Schweihs testified, the ALJ denied Ciba's application by written decision dated April 18, 2002. (Tr. 9-18) Following a denial of his request for review by the Appeals Council on September 19, 2002, Ciba filed a complaint in this court on December 31, 2002. (Tr. 5)

Ciba was born on February 13, 1962 and is now 42 years old. (Tr. 330) He is 5'7" tall and weighs 200 pounds. (Tr. 62) He does not smoke, and he drinks approximately six beers over each weekend. (Tr. 135) He lives in a house by himself in East Chicago, Indiana. (Tr. 331) He completed high school as well as a two-year machine tool program at Ivy Tech College. (Tr. 332, 338) Ciba most recently was employed as a machine operator from 1987 until October 12, 1999. (Tr. 333) As a machinist, he set up and operated various machines including a lathe, a milling machine, a vertical lathe, and a horizontal bar. (Tr. 333) He primarily stood in this job, with frequent bending and stooping. (Tr. 333) The heaviest weight Ciba lifted was 30 to 40 pounds, and he frequently would lift ten pounds. (Tr. 64) In 1992, Ciba had two herniated discs in his cervical spine. (Tr. 89, 96, 111) These discs were treated successfully in 1996, and he was pain free until 1999. (Tr. 111)

On October 12, 1999, Ciba was involved in a motor vehicle accident in which his car was rear-ended by a van. (Tr. 135) On October 13, 1999, Ciba went to the emergency room at St. Margaret Mercy Hospital complaining of neck pain and aching in his left shoulder. (Tr. 89) At the hospital, he was diagnosed with cervical strain ("whiplash") by Dr. Anthony Wilko, who referred Ciba to Dr. Herbert A. Jones for follow-up care. (Tr. 88-91) At the time of the ALJ hearing, Ciba had a lawsuit pending on the auto accident. (Tr. 334)

Dr. Jones treated Ciba from October 15, 1999 to April 13, 2000. (Tr. 92-97) On October 22, 1999, Dr. Jones stated that Ciba's neck had improved by 25 percent and that his lower back was 30 percent improved. (Tr. 96) On November 1, 1999, Dr. Jones noted that Ciba experienced achy pain in his left shoulder that radiated to his wrist, occasional left arm numbness, and tenderness in his left anterior shoulder but that his low back and neck were 60 percent better. (Tr. 96) On November 8, 1999, Dr. Jones stated that Ciba experienced intermittent shoulder pain radiating from his neck approximately four hours a day and that his lower back ached. (Tr. 95) Finally, on April 13, 2000, Dr. Jones stated that Ciba was experiencing headaches and blurred vision with occasional dizziness. (Tr. 93)

An MRI of Ciba's spine taken November 19, 1999 revealed "diffuse lumbar degenerative disc disease with decreased T2 signal as well as decreased height at L1-L2 and L2-L3." (Tr. 141) This MRI also showed mild disc bulge at L3-L4, L4-L5, and L5-S1 without significant central stenosis or nerve impingement. (Tr. 141) As to Ciba's cervical spine, the MRI showed "diffuse spondylitic change" at C3-C4 as well as a hard right disc and a "very moderately compressed" ventral surface of the spinal cord. (Tr. 142) It also revealed mild diffuse spondylitic change at C4-C5, with disc bulging and mild stenosis, and spondylitic change at C5-C6 with a large spur and moderately severe stenosis at this junction. (Tr. 142)

Dr. Marc Levin treated Ciba from November 29, 1999 to March 29, 2001. (Tr. 135, 155) On November 29, 1999, Dr. Levin noted that Ciba's pain had improved but that Ciba continued to have intermittent aching pain in his left arm and lower back, questionable weakness, and episodes of numbness in his left arm and hand. (Tr. 135) Dr. Levin also noted that Ciba's pain was "aggravated by lifting, sitting, sitting in a car and raising arms over the head." (Tr. 135) Following this session, Dr. Levin referred Ciba to St. Catherine Hospital for physical therapy. (Tr. 136)

On November 30, 1999, St. Catherine physical therapist Naureen Habib noted that Ciba rated his pain at four on a scale of ten. (Tr. 132) She established short term goals that included reducing the pain to minimal intensity and gaining a pain free arc of motion in the neck and back. (Tr. 133) Notes from December 17, 1999 indicated that he no longer felt arm pain except occasional achiness at night and that he only felt back pain after prolonged sitting. (Tr. 131) By January 3, 2000, physical therapist Devota Dubach reported that Ciba had achieved his short term therapy goals and would be discharged. (Tr. 127)

Subsequent progress notes from Dr. Levin indicated that on January 19, 1999, Ciba continued to have pain in his neck despite physical therapy. (Tr. 125) Dr. Levin recommended that Ciba attend the Pain Clinic and receive a cervical epidural block, which Dr. Levin noted made Ciba feel "much better" as of February 17, 2000. (Tr. 124-25) On May 12, 2000, Dr. Levin stated that a

second epidural block did not improve Ciba's condition, so Ciba probably would return for a third block. (Tr. 109) Dr. Levin also stated that he discussed returning to work with Ciba and that "at some point [Ciba] is going to need to try to return to work, and try working I don't feel that there is any specific operative procedure that needs to be done at this point. Therefore, probably after the third block, he will return and we will return him to work." (Tr. 109) On June 1, 2000, Dr. Levin reported that Ciba still was complaining of an aching left shoulder and arm with a pain level of two out of ten, and low back pain with a pain level of five to seven out of ten. (Tr. 105) He noted that Ciba primarily had problems with stiffness and low back pain, with occasional shooting pain. (Tr. 105) He also recommended that Ciba return for a trial of work in four weeks. (Tr. 105) On October 16, 2000, Dr. Levin stated that Ciba was released to work with restrictions in September, but that his company would not take him back. (Tr. 99) He also stated that Ciba continued to experience neck, bilateral arm, and low back pain, as well as blurred vision. (Tr. 99-100)

On March 29, 2001, Dr. Levin stated that Ciba still complained of "neck pain, headache, shoulder and arm pain, and also low back pain with pain radiating into the left hip and down the left leg." (Tr. 155) He noted that a myelogram ordered by Dr. Frederick Hartker on November 30, 2000 showed that Ciba had cervical and lumbar degenerative disease and spondylosis, with a bulging at L4, and that Ciba had a diminished range of motion in

both his cervical and lumbosacral spine. (Tr. 155) This myelogram further showed no evidence of significant stenosis or spinal block in Ciba's lower spine, but minimal stenosis through the lower cervical spine. (Tr. 138) Dr. Levin believed these degenerative changes were aggravated by the vehicle accident in 1999. (Tr. 155) He concluded that Ciba was not working and could not return to work because his employer did not have light duty work for him. (Tr. 155)

Dr. Linda Stewart treated Ciba from June 15, 2000 to July 25, 2000. On June 15, 2000, Dr. Stewart noted that Ciba had neck and back pain across his lower back and down his left leg and that the "pain in his back can be shooting, it is constant. Nothing seems to make it better. It seems to be worse with any kind of increased activity which causes increased soreness." (Tr. 102) She also noted that Ciba had gotten improvement from the various epidurals and blocks, but not sustained relief. (Tr. 102) On June 29, 2000, she noted that therapy two or three times a week was helping Ciba. (Tr. 144) Finally, on July 25, 2000, Dr. Stewart noted that following therapy, Ciba still had back soreness, but no more pain. (Tr. 143) She determined that he had made "maximum medical improvement" and stated that she did "not believe he is off work per [her] order, but if so, he may return to work with the restrictions of no lifting, pushing, or pulling greater than 20 lbs." (Tr. 143) She released Ciba to perform light work. (Tr. 239)

At Dr. Stewart's direction, Ciba attended therapy from June 19, 2000 to July 21, 2000. (Tr. 251) His therapy discharge notes state that Ciba described his pain as "My back has improved. Some days my whole spine hurts." (Tr. 251) The therapist's assessment was that Ciba's lower back condition was chronic but that he could exercise independently at home. (Tr. 251)

Dr. Rajive Atlaka treated Ciba from February 3, 2000 to February 22, 2001 through a series of three cervical epidurals, two lumbar epidurals, and two medial branch blocks on the left side of his lower back. (Tr. 305-22) On February 3, 2000, Dr. Atlaka reported that Ciba described his back pain as "aching, shooting, tight type of pain that comes on throughout the day." (Tr. 305) Ciba also told Dr. Atlaka that the pain "increases with sitting, lifting, weather, driving, lying down, and physical therapy." (Tr. 305) Following Ciba's first cervical epidural on February 8, 2000, Dr. Atlaka stated that Ciba had a dramatic improvement in his neck pain, with a forty-fifty percent overall reduction in pain. (Tr. 308) Dr. Atlaka stated that a second cervical epidural on February 25, 2000 nearly completely resolved Ciba's neck pain but that his back pain was feeling "much worse." (Tr. 310) The first lumbar epidural, on March 17, 2000, did not resolve Ciba's lower back pain. (Tr. 312) A second lumbar epidural on April 4, 2000 gave Ciba some improvement, but it did not remove his pain. (Tr. 313) On April 25, 2000, Dr. Atlaka ordered Ciba to receive a branch block on his left lower back because Ciba was complaining of radiating pain on his left side.

(Tr. 314) Although the first branch block left Ciba pain-free for three days, a second branch block had no effect whatsoever. (Tr. 317-18) In addition, on February 1, 2001, Dr. Atlaka reported that Ciba again was experiencing "quite significant axial neck pain as well as back pain." (Tr. 321) Consequently, Ciba had a third and final cervical epidural on February 9, 2001. (Tr. 320) However, by February 22, 2001, Ciba reported some decrease in pain "but not a major improvement." (Tr. 322) Dr. Atlaka stated that Ciba did not have a great deal of pain in his neck but was having more severe problems with his lower back again. (Tr. 322) He also stated that Ciba did well while not at work but that Ciba believed he would have a "significant amount of trouble" if he were to attempt to return to his job as a machinist. (Tr. 322)

When Ciba filled out an application for Social Security benefits on October 5, 2000, Social Security Administration ("SSA") interviewer L. Ballard observed that Ciba had difficulty sitting and that he had to stand up during the interview. (Tr. 60) In his reconsideration interview on December 19, 2000, Ballard noted that Ciba seemed to be in discomfort while sitting. (Tr. 76)

On February 19, 2001, evaluating physicians Drs. A. Landwehr and D. Dubois completed a physical residual functional capacity assessment ("RFC") for Ciba based on the opinions of Dr. Stewart. (Tr. 147-54) They determined that Ciba had unlimited ability to push and pull, could occasionally lift 20 pounds, frequently lift ten pounds, stand for about six hours, and sit for about six

hours. (Tr. 148) The doctors determined that Ciba should avoid all exposure to machinery and other hazards and that he had occasional difficulty with climbing, balancing, stooping, kneeling, crouching, and crawling, but they found no other limitations. (Tr. 150-51) In addition, they found Ciba to be credible in his description of his symptoms. (Tr. 152) The physicians based their opinion on Dr. Stewart's June 15, 2000 and July 25, 2000 notes. (Tr. 149)

During the ALJ hearing on April 3, 2002, Ciba testified that he no longer was being treated by any physician but that he was still taking Ultram, Ultraset, Robaxin, and Extra Strength Tylenol. (Tr. 334) He stated that since his accident, his condition had improved but had stayed the same in the last year. (Tr. 335) He testified that sitting in a car for more than an hour bothered his lower back and the bumps in the road aggravated his neck. (Tr. 332) He said that the longest he has driven was an hour and forty-five minutes but that he frequently drove about 15 minutes to pick his girlfriend's daughter up from school. (Tr. 332, 337) He also testified that he had trouble sleeping due to his back pain. (Tr. 335) He stated that after he drove his girlfriend's daughter to school, he would rest for several hours to relieve his neck and recover from not sleeping at night. (Tr. 341)

Ciba testified that he could cook for himself but that after about 15 minutes of standing doing dishes, his back hurt (Tr. 335); he could stand for about an hour before needing to sit down

again (Tr. 338); lifting a gallon of milk would cause his arm to ache about half an hour later; but he had no trouble using his fingers and hands to button or write. (Tr. 338-39) Ciba also could do yard work, but carrying clippings to the front of his house made his arms and neck ache. (Tr. 335) He testified that the longest he had walked was for about an hour through the mall with his girlfriend's daughter as she shopped for an Easter gift. (Tr. 336) He had difficulty sitting through an hour-long church service, and his back began to get tight after sitting about 25 minutes and hurt after about 45 minutes. (Tr. 336-37, 340) In addition, sitting for long periods of time would give Ciba daily headaches that would last from two hours to all day. (Tr. 338)

Following Ciba's testimony, the ALJ posed several hypotheticals to Vocational Expert William Schweihs. (Tr. 342-49) The ALJ based his first hypothetical on the RFC that Drs. Landwehr and Dubois completed in reliance on Dr. Stewart's notes. (Tr. 344) The ALJ concluded that a claimant who needed a sit/stand option and who could "essentially do light work with the additional limitations of occasional posturals and cannot work around hazardous machinery and at unprotected heights" was able to perform 10,000 jobs as a cashier, 7,000 jobs as a gate tender or lobby attendant, and 15,000 jobs in assembly. (Tr. 344-45) Under hypothetical two, which was for the same restrictions plus the condition that the claimant had frequent headaches that required him to rest for more than half an hour each day, VE Schweihs stated that no jobs were available. (Tr. 345) On cross-examina-

tion by counsel for Ciba, the VE stated that Ciba also could not perform the cashier and assembly jobs the VE previously listed if Ciba were limited in the ability to occasionally reach two feet in all directions with his arms and shoulders. (Tr. 346-48) However, VE Schweih's stated that Ciba could still perform 7,000 jobs as an information clerk and 6,000 to 7,000 jobs as a telephone solicitor. (Tr. 349) At the close of VE Schweih's testimony, Ciba expressed concern that phone solicitation and gate attending would require him to sit and stand for too long. (Tr. 350)

In reaching a decision that Ciba was not disabled, ALJ Asbille determined that within nine months of his accident, Ciba's condition had significantly improved. (Tr. 14) The ALJ based this opinion on Dr. Stewart's July 25, 2000 notes in which she stated that Ciba continued to have back soreness but no pain, and that his back flexion range was 90 percent of normal and extension was 50 percent of normal. (Tr. 14) The ALJ noted that according to Dr. Stewart, Ciba had achieved his maximum medical improvement and "could return to work with the restrictions of no lifting, pushing or pulling greater than 20 pounds." (Tr. 14) The ALJ also considered the RFC completed by Drs. Landwehr and Dubois. (Tr. 14) The ALJ concluded that he agreed with the conclusions expressed in the RFC but that he would add that Ciba needed to be able to sit or stand at his option and that he was restricted to occasional lifting in all directions. (Tr. 14) He further stated that the remaining medical reports did not support

additional limitations. (Tr. 15) He also noted that Dr. Stewart had released Ciba to work, but that Dr. Levin had said Ciba did not return to work because his former employer had no light work for him. (Tr. 15)

As to Ciba's credibility, the ALJ stated that he did not find that Ciba's allegations or testimony justified any other additional limitations beyond the reaching and sit/stand restrictions the ALJ had imposed. (Tr. 14, 15) ALJ Asbille said that the additional evidence showed continued problems with Ciba's neck and back but did not reflect any "significant clinical abnormalities that would explain his claims of problems." (Tr. 14) The ALJ noted that Ciba had responded well to the epidurals and physical therapy and that the evidence did not indicate any problems with gait or motor, sensory, or reflex loss. (Tr. 14) He concluded that Ciba's claims were "out of proportion" with the report of his daily activities because Ciba testified that "he does yard work, cares for himself, walks for about an hour at a time in the mall, and goes to church. He has a girlfriend." (Tr. 15) The ALJ opined that Ciba either felt he should be found disabled until he was ready to return to work or that he was asserting disability because he had a pending lawsuit about the accident. (Tr. 15)

Finally, the ALJ concluded that Ciba had an RFC for light work with the restrictions that he could "occasionally climb, balance, stoop, kneel, crouch or crawl; he should not work around hazards, such as machinery or heights, he could occasionally

reach in all directions; and he should be allowed to sit or stand at his option." (Tr. 15) He found that based on this RFC, Ciba could not perform his past relevant work. (Tr. 15) However, the ALJ determined that Ciba could perform 15,000 lobby attendant jobs, 7,000 information clerk jobs, and 6,000 to 7,000 telephone solicitor jobs. (Tr. 16)

Discussion

The standard for judicial review of an ALJ's finding that a claimant is not disabled within the meaning of the Social Security Act is limited to a determination of whether those findings are supported by substantial evidence. 42 U.S.C. § 405(g) ("The findings of the Secretary, as to any fact, if supported by substantial evidence, shall be conclusive."); **Golembiewski v. Barnhart**, 322 F.3d 912, 915 (7th Cir. 2003); **Dixon v. Massanari**, 270 F.3d 1171, 1176 (7th Cir. 2001). Substantial evidence has been defined as "such relevant evidence as a reasonable mind might accept to support such a conclusion." **Richardson v. Perales**, 402 U.S. 389, 401, 91 S.Ct 1420, 1427, 28 L.Ed.2d 852 (1972) (quoting **Consolidated Edison Company v. NLRB**, 305 U.S. 197, 229, 59 S.Ct. 206, 217, 83 L.Ed.2d 140 (1938)). See also **Sims v. Barnhart**, 309 F.3d 424, 428 (7th Cir. 2002); **Green v. Shalala**, 51 F.3d 96, 101 (7th Cir. 1995). An ALJ's decision must be affirmed if the findings are supported by substantial evidence and if there have been no errors of law. **Golembiewski**, 322 F.3d at 915; **Cannon v. Apfel**, 213 F.3d 970, 974 (7th Cir. 2000). However, "the decision cannot stand if it lacks evidentiary

support or an adequate discussion of the issues." **Lopez v. Barnhart**, 336 F.3d 535, 539 (7th Cir. 2003).

Disability insurance benefits are available only to those individuals who can establish "disability" under the terms of the Social Security Act. The claimant must show that he is 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 enumerate the five-step sequential evaluation to be followed when determining whether a claimant has met the burden of establishing disability. 20 C.F.R. § 404.1520. The ALJ first considers whether the claimant is presently employed or "engaged in substantial gainful activity." 20 C.F.R. § 404.1520(b). If he is, the claimant is not disabled and the evaluation process is over; if he is not, the ALJ next addresses whether the claimant has a severe impairment or combination of impairments which "significantly limits . . . physical or mental ability to do basic work activities." 20 C.F.R. § 404.1520(c). Third, the ALJ determines whether that severe impairment meets any of the impairments listed in the regulations. 20 C.F.R. § 401, pt. 404, subpt. P, app. 1. If it does, then the impairment is acknowledged by the Commissioner to be conclusively disabling. However, if the impairment does not so limit the claimant's remaining capabilities, the ALJ reviews the claimant's "residual functional capacity" (RFC) and the physical

and mental demands of his past work. If, at this fourth step, the claimant can perform his past relevant work, he will be found not disabled. 20 C.F.R. § 404.1520(e). However, if the claimant shows that his impairment is so severe that he is unable to engage in his past relevant work, then the burden of proof shifts to the Commissioner to establish that the claimant, in light of his age, education, job experience and functional capacity to work, is capable of performing other work and that such work exists in the national economy. 42 U.S.C. § 423(d)(2); 20 C.F.R. § 404.1520(f).

Ciba first contends that the ALJ erred in finding that the plaintiff's evaluations of his pain was not credible. He argues that the ALJ did not fulfill the procedural steps of a credibility determination set forth by the SSA in SSR 96-7p and 20 C.F.R. §404.1529 because the ALJ did not consider the entire case record or the most recent reports from Ciba's treating physicians.

The court will sustain the ALJ's credibility determination unless it is "patently wrong" and not supported by the record. **Jens v. Barnhart**, 347 F.3d 209, 213 (7th Cir. 2003); **Powers v. Apfel**, 207 F.3d 431, 435 (7th Cir. 2000). Furthermore, the ALJ's "unique position to observe a witness" entitles his opinion to great deference. **Nelson v. Apfel**, 131 F.3d 1228, 1237 (7th Cir. 1997). However, if the ALJ does not make explicit findings and does not explain them "in a way that affords meaningful review,"

the ALJ's credibility determination is not entitled to deference. **Steele v. Barnhart**, 290 F.3d 936, 942 (7th Cir. 2002).

The ALJ must determine a claimant's credibility only after considering all of the claimant's "symptoms, including pain, and the extent to which [the claimant's] symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence." 20 C.F.R. §404.1529(a). If the claimant's impairments reasonably could produce the symptoms of which the claimant is complaining, the ALJ next must evaluate the intensity and persistence of the claimant's symptoms through consideration of the claimant's "medical history, the medical signs and laboratory findings, and statements from [the claimant, the claimant's] treating or examining physician or psychologist, or other persons about how [the claimant's] symptoms affect [the claimant]." 20 C.F.R. §404.1529(c).

Although a claimant's complaints of pain cannot be totally unsupported by the medical evidence, the ALJ may not make a credibility determination "solely on the basis of objective medical evidence." SSR 96-7p, at *1. See also **Indoranto v. Barnhart**, 374 F.3d 470, 474 (7th Cir. 2004); **Carradine v. Barnhart**, 360 F.3d 751, 754 (7th Cir. 2004) ("If pain is disabling, the fact that its source is purely psychological does not disentitle the applicant to benefits."). Rather, if the

claimant indicates that pain is a significant factor of his or her alleged inability to work, the ALJ must obtain detailed descriptions of the claimant's daily activities by directing specific inquiries about the pain and its effects to the claimant. She must

investigate all avenues presented that relate to pain, including claimant's prior work record, information and observations by treating physicians, examining physicians, and third parties. Factors that must be considered include the nature and intensity of the claimant's pain, precipitation and aggravating factors, dosage and effectiveness of any pain medications, other treatment for relief of pain, functional restrictions, and the claimant's daily activities. (internal citations omitted).

Luna v. Shalala, 22 F.3d 687, 691 (7th Cir. 1994)

See also **Zurawski v. Halter**, 245 F.3d 881, 887-88 (7th Cir. 2001).

In addition, when the ALJ discounts the claimant's descriptions of pain because it is inconsistent with the objective medical evidence, he must make more than "a single, conclusory statement The determination or decision must contain specific reasons for the finding on credibility, supported by the evidence in the case record, and must be sufficiently specific to make clear to the individual and to any subsequent reviewers the weight the adjudicator gave to the individual's statements and the reasons for that weight." SSR 96-7p, at *2. See **Zurawski**, 245 F.3d at 887; **Diaz v. Chater**, 55 F.3d 300, 307-08 (7th Cir. 1995) (finding that the ALJ must articulate, at some minimum level, his analysis of the evidence). He must "build an accurate and logical bridge from the evidence to [his] conclusion." **Zurawski**, 245 F.3d at 887 (quoting **Clifford v. Apfel**, 227 F.3d 863, 872 (7th Cir. 2000)). When the evidence conflicts regarding the extent of the claimant's limitations, the ALJ may not simply

rely on a physician's statement that a claimant may return to work without examining the evidence the ALJ is rejecting. See **Zurawski**, 245 F.3d at 888 (quoting **Bauzo v. Bowen**, 803 F.2d 917, 923 (7th Cir. 1986)) ("Both the evidence favoring the claimant as well as the evidence favoring the claim's rejection must be examined, since review of the substantiality of evidence takes into account whatever in the record fairly detracts from its weight.") (emphasis in original).

It is impossible for this court to determine whether ALJ Asbille reached his credibility determination after considering all the objective medical evidence because he appears to base his opinion solely on Dr. Stewart's notes and the RFC that two evaluating physicians completed based on those notes. (Tr. 14-15) The record contains only three treatment notes from Dr. Stewart spanning a treatment period of approximately six weeks, June 15 to July 25, 2000. (Tr. 122, 143-44) By contrast, Dr. Atlaka treated Ciba for over a year, from February 3, 2000 to February 22, 2001 (Tr. 305-22), and Dr. Levin treated Ciba for nearly one and one-half years, from November 29, 1999 to March 29, 2001. (Tr. 135, 155) In sum, both Dr. Levin and Dr. Atlaka treated Ciba more recently than Dr. Stewart and for substantially longer periods of time than did Dr. Stewart, and yet the ALJ made no mention of Dr. Atlaka's opinions and stated only that Dr. Levin believed the car accident exacerbated Ciba's pre-existing degenerative condition. (Tr. 14)

Subsequent to Dr. Stewart's treatment, Dr. Atlaka reported that Ciba was experiencing "quite significant axial neck pain as well as back pain" and ordered a third cervical epidural in early February 2001. (Tr. 320-21) Several weeks later, Dr. Atlaka stated that the epidural had helped Ciba's neck some, but not significantly, and that Ciba was having more severe problems with his lower back again. (Tr. 322) By the end of March 2001, Dr. Levin reported that Ciba was still complaining of "neck pain, headache, shoulder and arm pain, and also low back pain with pain radiating into the left hip and down the left leg." (Tr. 155) In addition, a myelogram ordered by Dr. Hartker on November 30, 2000 showed a diminished range of motion in Ciba's spine, as well as both cervical and lumbar degenerative disease. (Tr. 155) At a minimum, the ALJ must mention the existence of these physicians and explain how their reports measure against Dr. Stewart's opinion before determining that Ciba was not credible based on that opinion. See **Zurawski**, 245 F.3d at 887-88; **Groves v. Apfel**, 148 F.3d 809, 811 (7th Cir. 1998) (holding that the ALJ did not build a logical bridge between his conclusions and the evidence, which presented conflicting accounts of the severity of the claimant's disability).

Ciba further argues that the ALJ's credibility determination was erroneous because he did not indicate how much weight he gave Ciba's descriptions of pain and did not ask Ciba to expand on his restrictions of daily activities. Ciba also argues that the ALJ

erroneously interpreted his testimony regarding walking in the mall.

The ALJ's credibility determination was:

I have considered the claimant's allegations and testimony at the hearing, but I did not find them to be fully credible or persuasive enough to justify any further limitations or restrictions. The claimant does have problems related to the whiplash injury, but his claims of problems are out of proportion to the medical findings, which fail to identify significant clinical abnormalities, and are out of proportion with his daily activities. The claimant testified that he does yard work, cares for himself, walks for about an hour at a time in the mall, and goes to church. He has a girlfriend.

(Tr. 15)

The ALJ noted that Dr. Stewart and Dr. Levin recommended that Ciba try to return to work. (Tr. 15) The ALJ opined that Ciba had not returned because his employer would not take him back, which suggested to the ALJ that Ciba did not want to return until he could do his previous job or else that he wanted to remain "disabled" until the resolution of his pending lawsuit. (Tr. 15)

As this court outlined above, the ALJ's exploration of the total evidence was deficient. However, the ALJ's credibility statements did build a minimal bridge between the evidence that the ALJ did consider and the ALJ's decision. Prior to his credibility determination, the ALJ noted Ciba's previous medical history, observed that Ciba had some success with physical therapy and epidurals, and discussed the medical opinions of Dr. Stewart and the RFC completed by Drs. Landwehr and Dubois. (Tr.

14) This discussion is enough for the court to see the medical bases on which the ALJ's opinion was grounded. See **Diaz**, 55 F.3d at 307-08. Nevertheless, the ALJ's assessment of Ciba's daily activities was critically flawed.

Ciba's second argument in support of reversal or remand is that the ALJ erred in equating Ciba's activities of daily living with "substantial gainful activity" as defined by 20 C.F.R. §202.1572. This regulation defines "substantial work activity" as "work activity that involves doing significant physical or mental activities." However, the SSA does not consider "activities like taking care of yourself, household tasks, hobbies, therapy, school attendance, club activities, or social programs to be substantial gainful activity." 20 C.F.R. §404.1572(c). Because Ciba's argument regarding 20 C.F.R. §202.1572 overlaps with several of his arguments regarding the ALJ's credibility determination, the court will consider it in that context.

As a preliminary matter, Ciba argues that the ALJ had a duty to inquire further into Ciba's daily activities than he did during the hearing, impliedly arguing that had the ALJ done so, he would have discovered Ciba's limited ability to function. A claimant who is represented by counsel is presumed to have presented his best case. **Glenn v. Secretary of Health and Human Services**, 814 F.2d 387, 391 (7th Cir. 1987). Counsel for Ciba had the opportunity to elicit greater explanation on cross-examination of Ciba if she was concerned that his testimony was

too sparse. Consequently, the ALJ's extent of inquiry is not a basis for reversible error.

In any event, a claimant does not need to be totally incapacitated and asocial in order to be eligible for benefits. See **Carradine**, 360 F.3d at 755-56; **Clifford**, 227 F.3d at 872-73. Furthermore, an ALJ may not merely list a claimant's daily activities "as substantial evidence that [he] does not suffer disabling pain . . . because minimal daily activities . . . do not establish that a person is capable of engaging in substantial physical activity." **Clifford**, 227 F.3d at 872. See also **Carradine**, 360 F.3d at 755 (finding that the ALJ erred when he "failed to consider the difference between a person's being able to engage in sporadic physical activities and [him] being able to work eight hours a day five consecutive days of the week.").

ALJ Asbille merely listed Ciba's ability to do yard work, care for himself, attend church, and walk in the mall "for about an hour at a time" as evidence that Ciba's claims of pain were out of proportion, without further discussion of Ciba's description of those activities. (Tr. 15) Inability to provide self-care is not a pre-requisite of disability. See, e.g., **Carradine**, 360 F.3d at 756-57; **Zurawski**, 245 F.3d at 887; **Clifford**, 227 F.3d at 872. Furthermore, Ciba testified that he had discomfort sitting through an hour-long church service, which is not inconsistent with his other statements about the length of time he could sit comfortably or the observations of SSA interviewer Ballard, who noted that Ciba was uncomfortable sitting and had to

stand during one of their interviews. (Tr. 60, 76, 332-37) Ciba's statement that he could do yard work but could not carry "clippings" to the front yard also was not inconsistent with his general description of pain that increased with increased activity. (Tr. 335-40) The ALJ's final statement, without qualification, that Ciba could walk in the mall for an hour at a time suggests that the ALJ fundamentally misunderstood Ciba's testimony. Ciba testified that once he walked for about an hour with his girlfriend's daughter as she shopped. (Tr. 336) Ciba did not testify that he walked routinely, for exercise, or for any particular distance. (Tr. 335-36)

Ciba's third argument in support of reversal or remand is that the commissioner has not met her burden of proving that there are jobs in the national economy that Ciba can perform. Because this argument is essentially based on her first two arguments - that the ALJ failed to consider the full range of the evidence and did not sufficiently explain why he discounted Ciba's testimony - the court will not address it.

In sum, because of the flaws in the ALJ's analysis, this court cannot determine whether the ALJ's credibility determination can be upheld. On remand, the ALJ must conduct a reevaluation of Ciba's complaints of pain, with an accurate account of Ciba's daily activities and discussion of the total evidence consistent with *Luna*. 22 F.3d at 691.

For the foregoing reasons, the Motion for Summary Judgment filed by the plaintiff, Lawrence J. Ciba, on July 15, 2003 is **GRANTED**. This matter is **REMANDED** back to the SSA for proceedings consistent with this opinion.

ENTERED this 7th day of January, 2005

s/ ANDREW P. RODOVICH
United States Magistrate Judge