

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION
CIVIL ACTION NO. 4:19-CV-00161-HBB**

RAYMOND GROVES

PLAINTIFF

VS.

**ANDREW SAUL, COMMISSIONER
SOCIAL SECURITY ADMINISTRATION**

DEFENDANT

**MEMORANDUM OPINION
AND ORDER**

BACKGROUND

Before the Court is the complaint (DN 1) of Raymond Groves (“Plaintiff”) seeking judicial review of the final decision of the Commissioner pursuant to 42 U.S.C. § 405(g). Both the Plaintiff (DN 14) and Defendant (DN 20) have filed a Fact and Law Summary. For the reasons that follow, the final decision of the Commissioner is **AFFIRMED**, and judgment is **GRANTED** for the Commissioner.

Pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, the parties have consented to the undersigned United States Magistrate Judge conducting all further proceedings in this case, including issuance of a memorandum opinion and entry of judgment, with direct review by the Sixth Circuit Court of Appeals in the event an appeal is filed (DN 10). By Order entered April 8, 2020 (DN 11), the parties were notified that oral arguments would not be held unless a written request therefor was filed and granted. No such request was filed.

FINDINGS OF FACT

On March 17, 2016, Plaintiff protectively filed an application for Disability Insurance Benefits (Tr. 26, 157-63). Plaintiff alleged that he became disabled on November 4, 2015, as a result of a noncancerous tumor on the left side of the brain; he underwent suboccipital surgery for acoustic neuroma which resulted in hearing loss due to the removal of his left eardrum and all nerves, including the balance nerve, on the left side of his head; he still has three brain tumors and they are closely monitored every six months; at age 13 a tumor was removed from right front skull which resulted in the right front forehead being reconstructed; he is easily winded and experiences difficulty breathing which may be COPD; he has rheumatoid arthritis; he has high blood pressure; he has Von Recklinghausen Disease type III; and he experiences headaches (Tr. 27, 72). On April 16, 2018, Administrative Law Judge John R. Price (“ALJ”) conducted a hearing in Paducah, Kentucky (Tr. 44-46). Plaintiff and his attorney, Christopher Rhoades, appeared in person (Id.). Kenneth Boaz, an impartial vocational expert, testified by telephone during the hearing (Id.).¹

In a decision dated September 10, 2018, the ALJ evaluated this adult disability claim pursuant to the five-step sequential evaluation process promulgated by the Commissioner (Tr. 26-38). At the first step, the ALJ found Plaintiff has not engaged in substantial gainful activity since November 4, 2015, the alleged onset date (Tr. 29). At the second step, the ALJ determined that Plaintiff has the following severe impairments: hearing loss and headaches status-post acoustic

¹ In contrast to the hearing transcript, the ALJ’s decision indicates he conducted a video hearing from Louisville, Kentucky (Tr. 27). The decision also indicates that Plaintiff and his attorney, Christopher Rhoads, participated from Madisonville, Kentucky (Id.). The decision indicates that Kenneth Boaz, an impartial vocational expert, participated by telephone (Id.). The Court merely notes the conflict between what is set forth in the hearing transcript and the ALJ’s decision.

neuroma resection; chronic obstructive pulmonary disease; degenerative disc disease; and degenerative joint disease (Id.). The ALJ also determined that Plaintiff's obesity is a "non-severe" impairment because there is no evidence of any specific or quantifiable impact on pulmonary, musculoskeletal, endocrine, or cardiac functioning (Id.).

At the third step, the ALJ concluded that Plaintiff does not have an impairment or combination of impairments that meets or medically equals one of the listed impairments in Appendix 1 (Id.). At the fourth step, the ALJ found that Plaintiff has the residual functional capacity (RFC) to perform light work except that he is limited to: lifting 20 pounds occasionally and 10 pounds frequently; no ladders, ropes, and scaffolds; only occasional ramps and stairs; occasional balancing, stooping, kneeling, crouching, and crawling; avoidance of concentrated dust, gas, fumes, and other pulmonary irritants; avoidance of hazards, such as unprotected heights and dangerous moving machinery; avoidance of bright light situations like outdoor sunlight; avoidance of more than moderate level of noise; and needing an option to sit and stand in 30 minute intervals throughout the workday and take a minute or two to change position from seated to standing or vice versa (Tr. 30-31). Additionally, the ALJ relied on testimony from the vocational expert to find that Plaintiff is unable to perform any past relevant work (Tr. 35).

The ALJ proceeded to the fifth step where he considered Plaintiff's residual functional capacity, age, education, and past work experience as well as testimony from the vocational expert (Tr. 36-37). The ALJ found that Plaintiff is capable of performing a significant number of jobs that exist in the national economy (Id.). Therefore, the ALJ concluded that Plaintiff has not been under a "disability," as defined in the Social Security Act, from November 4, 2015 through the date of the decision (Tr. 37).

Plaintiff timely filed a request for the Appeals Council to review the ALJ's decision (Tr. 156). The Appeals Council denied Plaintiff's request for review (Tr. 1-4).

CONCLUSIONS OF LAW

Standard of Review

Review by the Court is limited to determining whether the findings set forth in the final decision of the Commissioner are supported by "substantial evidence," 42 U.S.C. § 405(g); Cotton v. Sullivan, 2 F.3d 692, 695 (6th Cir. 1993); Wyatt v. Sec'y of Health & Human Servs., 974 F.2d 680, 683 (6th Cir. 1992), and whether the correct legal standards were applied. Landsaw v. Sec'y of Health & Human Servs., 803 F.2d 211, 213 (6th Cir. 1986). "Substantial evidence exists when a reasonable mind could accept the evidence as adequate to support the challenged conclusion, even if that evidence could support a decision the other way." Cotton, 2 F.3d at 695 (quoting Casey v. Sec'y of Health & Human Servs., 987 F.2d 1230, 1233 (6th Cir. 1993)). In reviewing a case for substantial evidence, the Court "may not try the case *de novo*, nor resolve conflicts in evidence, nor decide questions of credibility." Cohen v. Sec'y of Health & Human Servs., 964 F.2d 524, 528 (6th Cir. 1992) (quoting Garner v. Heckler, 745 F.2d 383, 387 (6th Cir. 1984)).

As previously mentioned, the Appeals Council denied Plaintiff's request for review of the ALJ's decision (Tr. 1-4). At that point, the ALJ's decision became the final decision of the Commissioner. 20 C.F.R. §§ 404.955(b), 404.981, 422.210(a); *see* 42 U.S.C. § 405(h) (finality of the Commissioner's decision). Thus, the Court will be reviewing the ALJ's decision and the evidence that was in the administrative record when the ALJ rendered the decision. 42 U.S.C. § 405(g); 20 C.F.R. § 404.981; Cline v. Comm'r of Soc. Sec., 96 F.3d 146, 148 (6th Cir. 1996); Cotton v. Sullivan, 2 F.3d 692, 695-696 (6th Cir. 1993).

The Commissioner's Sequential Evaluation Process

The Social Security Act authorizes payment of Disability Insurance Benefits and Supplemental Security Income to persons with disabilities. 42 U.S.C. §§ 401 et seq. (Title II Disability Insurance Benefits), 1381 et seq. (Title XVI Supplemental Security Income). The term “disability” is defined as an

[I]nability 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 twelve (12) months.

42 U.S.C. §§ 423(d)(1)(A) (Title II), 1382c(a)(3)(A) (Title XVI); 20 C.F.R. §§ 404.1505(a), 416.905(a); Barnhart v. Walton, 535 U.S. 212, 214 (2002); Abbott v. Sullivan, 905 F.2d 918, 923 (6th Cir. 1990).

The Commissioner has promulgated regulations setting forth a five-step sequential evaluation process for evaluating a disability claim. See “Evaluation of disability in general,” 20 C.F.R. §§ 404.1520, 416.920. In summary, the evaluation proceeds as follows:

- 1) Is the claimant engaged in substantial gainful activity?
- 2) Does the claimant have a medically determinable impairment or combination of impairments that satisfies the duration requirement and significantly limits his or her ability to do basic work activities?
- 3) Does the claimant have an impairment that meets or medically equals the criteria of a listed impairment within Appendix 1?
- 4) Does the claimant have the residual functional capacity to return to his or her past relevant work?

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