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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

<p>JOSE JESUS SAUCEDO, Plaintiff,</p> <p>v.</p> <p>JO ANNE B. BARNHART, Commissioner of Social Security Administration, Defendant.</p>	<p>Case No. 2:03-CV-625 SA</p> <p>MEMORANDUM DECISION AND ORDER</p>
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Before the court is an action filed by Plaintiff, Jose Jesus Saucedo, asking the court to reverse the final agency decision denying his application for Supplemental Security Income (hereafter referred to as "SSI") under Title XVI of the Social Security Act. See 42 U.S.C.A. § 1381-1383c (2003). Plaintiff's application was denied because the Administrative Law Judge (hereafter referred to as "ALJ") found that although Plaintiff is unable to return to his past relevant work, he is capable of making an adjustment to work that exists in significant numbers in the national economy, and therefore is not disabled.

Plaintiff challenges the ALJ's decision by arguing that it is legally erroneous and it is not supported by substantial evidence. Specifically, Plaintiff argues: (1) the ALJ's finding

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that Plaintiff's impairments did not meet or equal the criteria of a listed impairment is not supported by substantial evidence and was reached through legal error; (2) the nurse practitioner's opinion should not be discounted or discredited merely because it comes from a nurse practitioner; (3) the ALJ's finding that Plaintiff is not entirely credible was legally erroneous and not supported by substantial evidence; (4) the ALJ's determination of Plaintiff's residual functional capacity (hereafter referred to as "RFC") is not supported by substantial evidence; and (5) Plaintiff cannot perform the jobs listed by the vocational expert.

Having carefully considered the parties' memoranda and the complete record in this matter, the court rejects Plaintiff's arguments. The court instead concludes that the ALJ's decision is supported by substantial evidence and is not legally erroneous. As a result, the ALJ's decision is affirmed.

BACKGROUND

Plaintiff applied for both Disability Insurance Benefits (hereafter referred to as "DIB") and SSI on the protective filing date of March 26, 2001, alleging an inability to work since January 1, 1998. (The Certified Copy of the Transcript of the Entire Record of the Administrative Proceedings Relating to Jose Jesus Saucedo (hereafter referred to as "Tr. at ___") at 76-78, 288-90, 291.) Plaintiff's claims were denied at the initial and reconsideration levels of administrative review. (Tr. 68-70, 72-

74.) Plaintiff requested a hearing before an ALJ, which was held on September 18, 2002. (Tr. 26-64, 67.)

During the hearing before the ALJ, Plaintiff amended his alleged disability onset date to January 1, 2002. (Tr. 33-34, 48.) Plaintiff's representative then withdrew Plaintiff's DIB application because his amended alleged disability onset date was after June 30, 2000, the date his DIB insurance expired. (Tr. 14, 33-34, 87.)

The ALJ issued his decision on January 28, 2003. (Tr. 21.) The ALJ noted that Plaintiff's DIB application had been withdrawn. (Tr. 14.) The ALJ also denied Plaintiff's SSI claim, finding that Plaintiff is not disabled because he is capable of making an adjustment to work that exists in significant numbers in the national economy. (Tr. 20, 21.)

On July 16, 2003, after receiving the denial of his request for review from the Appeals Council, Plaintiff filed the instant action, and the case was assigned to United States District Judge Tena Campbell. (File Entry #1.) Defendant filed her answer, along with the administrative record, on September 2, 2003. (File Entries #2, 3.) On October 7, 2003, Judge Campbell referred the case to United States Magistrate Judge Samuel Alba pursuant to 28 U.S.C. § 636(b)(1)(B). (File Entries #6, 7.)

On December 3, 2003, Plaintiff filed his brief. (File Entry #11.) On February 2, 2004, Defendant filed her brief. (File

Entry #14.) Then, on March 8, 2004, Plaintiff filed his reply brief. (File Entry #17.)

On November 10, 2003, the parties filed a joint statement consenting to have the magistrate judge conduct all proceedings and enter the final judgment in this case pursuant to 28 U.S.C. § 636(c). (File Entry #10.) Accordingly, on March 9, 2004, Judge Campbell referred the case to Magistrate Judge Alba pursuant to 28 U.S.C. § 636(c). (File Entry #18.)

On July 20, 2004, the court held oral arguments. (File Entry #25; Official Transcript of Oral Arguments, held July 20, 2004 (hereafter referred to as "Tr. 7/20/04 at __").) Thereupon, the court took the matter under advisement.

STANDARD OF REVIEW

The court reviews the Commissioner's decision "to determine whether the factual findings are supported by substantial evidence in the record and whether correct legal standards were applied." Doyal v. Barnhart, 331 F.3d 758, 760 (10th Cir. 2003); accord Angel v. Barnhart, 329 F.3d 1208, 1209 (10th Cir. 2003).

The Commissioner's findings, "if supported by substantial evidence, shall be conclusive." 42 U.S.C.A. § 405(g) (2003). "Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."" Doyal, 331 F.3d at 760 (citation omitted). "Substantial evidence' requires 'more than a scintilla, but less than a preponderance,' and is satisfied by such relevant 'evidence that a reasonable

mind might accept to support the conclusion.'" Gossett v. Bowen, 862 F.2d 802, 804 (10th Cir. 1988) (citation omitted).

"Evidence is not substantial 'if it is overwhelmed by other evidence--particularly certain types of evidence (e.g., that offered by treating physicians)--or if it really constitutes not evidence but mere conclusion.'" Id. at 805 (citations omitted); see also O'Dell v. Shalala, 44 F.3d 855, 858 (10th Cir. 1994) ("Evidence is insubstantial if it is overwhelmingly contradicted by other evidence."); Trimiar v. Sullivan, 966 F.2d 1326, 1329 (10th Cir. 1992) ("A finding of 'no substantial evidence' will be found only where there is a 'conspicuous absence of credible choices' or 'no contrary medical evidence.'" (citations omitted)).

In conducting its review, the court "must examine the record closely to determine whether substantial evidence supports" the Commissioner's decision. Winfrey v. Chater, 92 F.3d 1017, 1019 (10th Cir. 1996). The court may "neither reweigh the evidence nor substitute [its] judgment for that of the agency.'" White v. Barnhart, 287 F.3d 903, 905 (10th Cir. 2001) (citation omitted). However, the court is not required to mechanically accept the Commissioner's findings. See Ehrhart v. Secretary of Health & Human Servs., 969 F.2d 534, 538 (7th Cir. 1992) ("By the same token, we must do more than merely rubber stamp the decisions of the [Commissioner]."). Rather, the court must "examine the record as a whole, including whatever in the record fairly

detracts from the weight of the [Commissioner's] decision and, on that basis, determine if the substantiality of the evidence test has been met.'" Glenn v. Shalala, 21 F.3d 983, 984 (10th Cir. 1994) (citation omitted). The court's review of the record includes any evidence Plaintiff presented for the first time to the Appeals Council. See O'Dell, 44 F.3d at 858-59.

The court typically defers to the ALJ on issues of witness credibility. See Hamilton v. Secretary of Health & Human Servs., 961 F.2d 1495, 1499 (10th Cir. 1992). Nonetheless, "[f]indings as to credibility should be closely and affirmatively linked to substantial evidence.'" Winfrey, 92 F.3d at 1020 (citation omitted).

The court's review also extends to determining whether the Commissioner applied the correct legal standards. Qualls v. Apfel, 206 F.3d 1368, 1371 (10th Cir. 2000). Besides the lack of substantial evidence, reversal may be appropriate where the Commissioner uses the wrong legal standards or the Commissioner fails to demonstrate reliance on the correct legal standards. See Glass v. Shalala, 43 F.3d 1392, 1395 (10th Cir. 1994); Thompson v. Sullivan, 987 F.2d 1482, 1487 (10th Cir. 1993); Andrade v. Secretary of Health and Human Servs., 985 F.2d 1045, 1047 (10th Cir. 1993).

ANALYSIS

Plaintiff makes several arguments. Plaintiff challenges:
(1) the ALJ's finding that his impairments did not meet or equal

a listed impairment; (2) the weight given to the nurse practitioner's opinion; (3) the ALJ's credibility finding; (4) the ALJ's RFC determination; and (5) the ALJ's finding regarding the jobs Plaintiff could perform in the national economy. The court addresses each of Plaintiff's arguments in turn.

1. Listings

Plaintiff argues that the ALJ's finding that Plaintiff's impairments did not meet or equal a listed impairment is not supported by substantial evidence and was reached through legal error. Plaintiff makes two specific arguments to support this general challenge to the ALJ's finding at step three of his analysis.

First, Plaintiff argues that the ALJ erred by not specifying which listings he reviewed at step three of the five part disability analysis or discussing the evidence he accepted or rejected with respect to the requirements of those listings. Rather, Plaintiff argues that the ALJ simply stated that Plaintiff did not meet the criteria of any listing. Plaintiff argues that "[s]uch a bare conclusion is beyond meaningful judicial review." Clifton v. Chater, 79 F.3d 1007, 1009 (10th Cir. 1996).

The court has carefully reviewed Plaintiff's argument and the record and concludes that the argument lacks merit. Although the ALJ generally expressed on page three of his decision that Plaintiff's impairments did not meet or equal a listed

impairment, on page six of his decision, the ALJ more specifically addressed Listings 12.04, 12.06, and 12.08. (Tr. at 15, 18.) The ALJ's analysis of whether Plaintiff's impairments met the requirements of these three listings was specific and detailed. As a result, the court rejects Plaintiff's first argument.¹

Second, Plaintiff argues that the ALJ erred by not evaluating the criteria of subsection C of Listing 12.04. That listing provides as follows:

Affective disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently

¹Plaintiff attaches an appendix to his reply brief containing six listings Plaintiff argues should have been analyzed with regard to Plaintiff's claim. However, although Plaintiff earlier provides a timeline of facts for the court, Plaintiff does not describe to the court how those facts show that Plaintiff's impairments meet or equal the six listings. It is not the court's place to construct Plaintiff's arguments for him. See Perry v. Woodward, 199 F.3d 1126, 1141 n.13 (10th Cir. 1999) (stating that reviewing court will not craft a party's argument for him), cert. denied, 529 U.S. 1110, 120 S. Ct. 196 (2000). In addition, the court is not to weigh the evidence or substitute its opinion for that of the agency. See White, 287 F.3d at 905.

attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

20 C.F.R. Subpart P, Appendix 1, § 12.04. In addition, Listing 12.00 provides:

. . . We will assess the paragraph B criteria before we apply the paragraph C criteria. We will assess the paragraph C criteria only if we find the paragraph B criteria are not satisfied. We will find that you have a listed impairment if the diagnostic description in the introductory paragraph and the criteria of both paragraphs A and B (or A and C, when appropriate) of the listed impairment are satisfied.

20 C.F.R., Subpart P, Appendix 1, § 12.00(A). Plaintiff argues that he arguably meets the criteria set forth in Listing 12.04(C)(2), and the regulations provide that the ALJ will examine the C criteria if the ALJ finds that the B criteria are not met. Because the ALJ found Plaintiff did not meet the B criteria but did not specifically evaluate the C criteria, Plaintiff argues that the ALJ erred in his evaluation of the listings and his decision is not supported by substantial evidence.

However, Plaintiff has wholly failed to meet his burden of showing he met or equaled any part of subsection (C)(2) of Listing 12.04. See Riddle v. Halter, 10 Fed. Appx. 665, 667, 2001 WL 282344 (10th Cir. 2001) (citing Sullivan v. Zebley, 493 U.S. 521, 530, 110 S. Ct. 885, 891 (1990)). Granted, Dr. Swaner, a psychologist, diagnosed Plaintiff with major depressive disorder, borderline personality disorder, a history of extensive drug and alcohol dependency and abuse, posttraumatic stress disorder, and marital problems (Tr. at 280-81), and the ALJ acknowledged and addressed those diagnoses (Tr. at 15, 17, 18). Nevertheless, simply receiving these diagnoses does not provide evidence for meeting the requirements of Listing 12.04(C)(2). Plaintiff has not shown that he has a "[m]edically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support." Furthermore, Plaintiff has not shown any support, even from Dr. Swaner's evaluation, that "even a minimal increase in mental demands or change in the environment would be predicted to cause [him] to decompensate." In fact, the ALJ specifically found that no evidence existed to support that Plaintiff had experienced episodes of decompensation in work or work-like settings. (Tr. at 18.) Plaintiff has not challenged that finding. Furthermore, Dr. Swaner wrote in his evaluation of Plaintiff that

"psychologically and intellectually, [Plaintiff] is able to function if he can get into the proper place." (Tr. 279.) As a result, the court rejects Plaintiff's argument regarding Listing 12.04(C)(2) because Plaintiff has not shown that he meets that listing's criteria.

In summary, Plaintiff has not shown that the ALJ's finding that Plaintiff's impairments do not meet or equal a listed impairment is not supported by substantial evidence.

B. Nurse Practitioner's Opinion

Plaintiff appears to make an argument regarding the weight that should be given to the opinions of Ms. Mol, the nurse practitioner who treated Plaintiff on several occasions. The court is unclear as to what Plaintiff's precise argument is, but it appears that Plaintiff argues that Ms. Mol's opinions should not be discounted or discredited merely because she is a nurse practitioner.

The ALJ did not discount or discredit Ms. Mol's opinions merely because she is a nurse practitioner. Instead, the ALJ carefully and accurately summarized Ms. Mol's findings and opinion in his analysis. (Tr. at 18.) The ALJ simply did not give Ms. Mol's opinion the same controlling weight he would have given a treating doctor's opinion because Ms. Mol is not a medical doctor.

Although, citing Shontos v. Barnhart, 322 F.3d 532, 539 (8th Cir. 2003), opinion withdrawn and superceded on denial of

rehearing by 328 F.3d 418 (8th Cir. 2003), Plaintiff argues in his brief that the court should find that Ms. Mol qualified as an "other medical source" and that her opinion could be counted as a "medical opinion" under 20 CFR § 404.1527, at oral argument Plaintiff's counsel clarified that he agreed that Ms. Mol's opinion was not given the same deference as a treating physician's opinion. (Tr. 7/20/04 at 7-9.)

Having carefully examined Plaintiff's briefs, the record, the ALJ's decision, and the arguments made by Plaintiff's counsel at oral arguments, the court concludes that the ALJ considered the findings and opinions of Ms. Mol and gave them the proper amount of deference under the law.

C. Credibility

Plaintiff challenges the ALJ's finding that Plaintiff was not entirely credible. Plaintiff argues that the ALJ did not engage in the required credibility analysis and that substantial evidence does not support his credibility finding.

"Credibility determinations are peculiarly the province of the finder of fact, and [this court] will not upset such determinations when supported by substantial evidence.'" Kepler v. Chater, 68 F.3d 387, 391 (10th Cir. 1995) (quoting Diaz v. Secretary of Health & Human Servs., 898 F.2d 774, 777 (10th cir. 1990)). "However, '[f]indings as to credibility should be closely and affirmatively linked to substantial evidence and not just a conclusion in the guise of findings.'" Id. (quoting

Huston v. Bowen, 838 F.2d 1125, 1133 (10th Cir. 1988) (footnote omitted)). Nevertheless, "[c]redibility is the province of the ALJ," Hamilton v. Secretary of Health & Human Servs., 961 F.2d 1495, 1499 (10th Cir. 1999), and a reviewing court should "generally treat credibility determinations made by an ALJ as binding upon review" where the ALJ has given specific, legitimate reasons for disbelieving the claimant's testimony, Gosset, 861 F.2d at 807.

In this case, the ALJ found:

The claimant's statements [regarding] his impairments and their impact on his ability to work are not entirely credible in light of the degree of medical treatment required, the reports of the treating and examining practitioners, the findings made on examination, and the claimant's assertions concerning his ability to work.

(Tr. at 20.) The ALJ explained that he found that Plaintiff's allegations were not fully credible for the following seven reasons: (1) Plaintiff has had hemorrhoid surgery, which should end his rectal bleeding and improve his HCT; (2) the record showed that Plaintiff's anemia, hypothyroid, GERD, and Duodenitis had stabilized with medication; (3) Plaintiff is now sober and attends AA meetings; (4) although Plaintiff has Hepatitis C and chronic liver disease, he is not taking medication for either one; (5) Plaintiff has neither been hospitalized for his mental impairments, nor has he taken medication or received treatment for them; (6) the record reveals that Plaintiff has excellent

concentration when he is sober, as evidenced by Plaintiff's ability to read at the college level and love of reading; and (7) Plaintiff's testimony that he did not earn \$9,800 in 2001 contradicts his earnings report. (Tr. at 18-19.) The ALJ further noted:

The undersigned understands that the claimant may experience some degree of pain and discomfort with certain activities. However, mild-to-moderate pain or discomfort is not, in itself, incompatible with the performance of sustained work activity. Neither the objective medical evidence nor the testimony of the claimant establishes that the ability to function has been so severely impaired as to preclude all types of work activity.

(Tr. at 19.)

Thus, the ALJ considered Plaintiff's objective pain-producing impairments, the connection between those impairments and Plaintiff's complaints, and whether, considering both the objective and subjective evidence, Plaintiff's pain was disabling. See Kepler, 68 F.3d at 390. In doing so, the ALJ considered whether all of Plaintiff's subjective statements regarding his impairments were credible. The ALJ reached his decision and supported it with the above-listed seven specific reasons.

Plaintiff has not shown that the specific reasons listed by the ALJ to support his decision are not legitimate, and the court's review of the record reveals that they are properly supported. Therefore, because the ALJ supported his credibility

determination with specific, legitimate reasons, the court will not disturb that finding on review. See Gosset, 862 F.2d at 807.²

D. Residual Functional Capacity

²Plaintiff makes two additional arguments in his credibility sections of his briefs that the court briefly addresses.

First, Plaintiff attaches in his appendix to his reply brief a copy of a description of the drug Chlordiazepoxide (Libritabs, Librium), apparently to prove to the court that Plaintiff was on medication to treat anxiety. However, the information provided to the court also explains that this drug is used to treat symptoms of acute alcohol withdrawals, and it is undisputed that Plaintiff has been a heavy alcohol user in the past. Furthermore, simply attaching a printout regarding this drug to the appendix of a brief and alluding to Plaintiff taking this drug at some point in his treatment does not set forth substantial evidence to support Plaintiff's argument. Instead, such a technique does not provide the court with any cohesive, meaningful argument to review.

Second, Plaintiff appears to argue that the ALJ erred by not obtaining medical records that were "clearly" left out of the administrative record. Plaintiff argues that Plaintiff was repeatedly treated by doctors whose records do not appear among the administrative record. Plaintiff argues that the ALJ had a duty to obtain those records.

The court asked Plaintiff's counsel to further explain this argument at oral arguments. Counsel was unable to do so. (Tr. 7/20/04 at 7, 20.) Based on counsel's oral arguments and the court's review of the record and briefs, the court concludes that the ALJ did not err in not obtaining these records. Plaintiff is under some duty to provide the ALJ with relevant medical records. Nevertheless, an ALJ has a duty to develop the record "by obtaining pertinent, available medical records which come to his attention during the course of the hearing," Carter v. Chater, 73 F.3d 1019, 1022 (10th Cir. 1996); however, it does not appear that these records came to the ALJ's attention during the hearing. Because the ALJ appeared to be unaware of these records, the court concludes the ALJ did not err by not obtaining them. Furthermore, the court notes that it would be unaware of these records but for Plaintiff's somewhat confusing reference to them. Plaintiff has neither sought for this court to remand the case so that the records could be admitted, nor has Plaintiff done anything to prove the actual existence of such records and explain their contents to this court other than make a general, passing reference to them.

Plaintiff also appears to challenge the ALJ's RFC determination. Specifically, Plaintiff argues that the ALJ's finding that Plaintiff is capable of doing sustained work at the sedentary level is not supported by substantial evidence.

Having carefully considered Plaintiff's argument and reviewed the record, the court again rejects Plaintiff's argument. The ALJ carefully reviewed the evidence in the record, including Plaintiff's limitations, and the RFC determination reflects the consideration of those limitations. For example, the ALJ limited Plaintiff's RFC by stating that it was reduced by the need of a 30-minute sit/stand/walk option; by the need to avoid stressful relationships; by the need to have little contact with co-workers and supervisors; by the need to perform only non-confrontational telephone work; by the need to avoid a hazardous work environment; by the need to recline and rest part of the morning, lunch time, and afternoon; and by the need to miss up to twenty-four days of work a year.

In addition to the other evidence outlined by the ALJ's decision, the ALJ's finding is supported by the report of the non-examining State agency physician, who opined that Plaintiff could perform at the light exertional level. Tr. 266-275. Thus, the ALJ actually gave Plaintiff the benefit of the doubt as compared to the opinion of the non-examining State agency physician.

Furthermore, Plaintiff has not specifically explained what the ALJ failed to consider in arriving at his RFC determination and what would prevent Plaintiff from working at the sedentary level with the reductions found by the ALJ. Instead, Plaintiff has simply generally argued that the ALJ did not meet his burden in reaching his RFC determination.

In summary, having carefully examined the record and the ALJ's decision, the court concludes that the RFC determination is supported by substantial evidence.

E. Jobs Plaintiff Was Found Capable of Performing

The vocational expert testified that the hypothetical person who had Plaintiff's RFC and past work history, education, age, and so forth, would be capable of performing three specific jobs: a security systems monitor, a call-out operator, and a final assembler. Based on the vocational expert's testimony, the ALJ found at step five of his analysis that a significant number of jobs existed in the national economy that Plaintiff could perform. Plaintiff now contests this finding by arguing he could not perform the jobs specified by the vocational expert.³

Plaintiff's argument appears to be that the ALJ erred in finding that Plaintiff was capable of performing the three jobs

³Although Plaintiff originally appeared to contest his ability to perform all three jobs listed by the vocational expert, at oral arguments Plaintiff's counsel conceded that Plaintiff's limitations did not preclude him from performing the job of final assembler (Tr. 7/20/04 at 20). The ALJ found that 155,000 such jobs exist nationally. (Tr. at 20.)

listed by the vocational expert because Plaintiff's felony convictions would preclude him from performing the surveillance systems monitor and call-out operator jobs. Plaintiff appears to argue that the ALJ should have included Plaintiff's felony convictions in his hypothetical to the vocational expert so that Plaintiff's criminal history could be taken into consideration in determining whether he was capable of performing a significant number of jobs that exist in the national economy. This argument lacks merit. As the government has pointed out, the Social Security Act defines disability as the inability to perform any substantial gainful activity by reason of a medically determinable 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 months. See 42 U.S.C.A. § 423(d)(1)(A) (2003); see also 20 C.F.R. § 404.1505(a). However, a felony conviction is neither a medically determinable impairment nor a functional limitation caused by a medically determinable impairment. Therefore, it should not be considered by the ALJ in determining whether Plaintiff is entitled to SSI benefits. Furthermore, Plaintiff's felony convictions should not give him an advantage over another SSI claimant who has no felony convictions. The Social Security Administration has explained that it will not consider non-medical factors that disallow a claimant from finding work. See 20 C.F.R. § 416.966(c). Thus,

because Plaintiff's argument is unsupported by law, the court rejects it.⁴

CONCLUSION

Based on the above analysis, the court concludes that the ALJ's decision that Plaintiff is not disabled is supported by substantial evidence. As a result, **THE COURT HEREBY ORDERS** that the Commissioner's decision be **AFFIRMED** and that this social security appeal be **DISMISSED**.

DATED this 8th day of October, 2004.

BY THE COURT:



Samuel Alba
United States Chief Magistrate Judge

⁴Plaintiff also appears to argue that the testimony of the vocational expert is not credible because the vocational expert's testimony was found not to be credible in another social security case. Plaintiff's undeveloped argument is neither supported by any evidence relevant to the instant case nor by any legal citations. Therefore, the court rejects it.

United States District Court
for the
District of Utah
October 12, 2004

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00625

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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