

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CHARLES BURGESS, :
 :
 Plaintiff, :
 :
 V. : CASE NO.3:02-CV-1248 (RNC)
 :
 MICHAEL J. ASTRUE,¹ :
 COMMISSIONER OF SOCIAL :
 SECURITY, :
 :
 Defendant. :

ORDER

This is an action under 42 U.S.C. § 405(g) seeking review of a final decision of the Commissioner of Social Security denying an application for disability benefits. At step four of the sequential evaluation process, the ALJ found that plaintiff's impairment would not prevent him from returning to his past relevant work as a book stacker. (Record at 20.) The ALJ's finding that plaintiff's job as a book stacker qualifies as past relevant work is not supported by substantial evidence. Accordingly, it is necessary to reverse the decision and remand for further proceedings.

Step four of the sequential evaluation process requires an inquiry into a claimant's ability to perform past relevant work. Work experience is relevant if it was performed within the preceding fifteen years and constituted substantial gainful

¹ Pursuant to Fed. R. Civ. P. 25(d)(1), the Court substitutes Michael J. Astrue as the defendant in this action.

activity ("SGA"). See Melville v. Apfel, 198 F.3d 45, 53 (2d Cir. 1999). Whether work qualifies as substantial gainful activity requires an evaluation of, among other things, the claimant's duties and how well the claimant performed them. Id. at 54. The ALJ is required to develop the record in order to make the evaluation required by the regulatory scheme. Id. at 51. Here, the record was not adequately developed and the necessary evaluation was not made.

The ALJ's decision states in pertinent part:

The evidence in this case establishes that the claimant has past relevant work as book stacker/presser and auto shop car waxer/tire changer. Based on his residual functional capacity, the claimant could return to his past relevant work as a book stacker/presser. The evidence indicates the claimant could return to this occupation as performed by the claimant and as the job is performed in the national economy.

The claimant stated that his work as a stacker for a book publisher required him to take work the web press operator had finished off the line and stack it on skids. The claimant's past work as a book stacker/presser does not require work activities precluded by his residual functional capacity for light work with only occasional climbing, balancing, stooping, kneeling, crouching and crawling.

(Record 19-20).

The ALJ's findings appear to be based on the following pieces of evidence: (1) a vocational analysis summary form completed by Natalie B. Harbesa, which describes plaintiff's "past relevant work" as "book stacker/presser," (Record 352); (2) a vocational report form, which indicates that plaintiff had a

job as a "staker" (sic), where he "staked (sic) book[s] when they came off the press," (Record 256); and (3) a disability report form, which indicates that plaintiff "did not have to lift or carry anything except for books or a few equipments (sic)," (Record 241). These pieces of evidence provide no information as to the dates when plaintiff worked as a book stacker and whether the work constituted substantial gainful activity.

The only evidence in the record concerning when plaintiff might have worked as a book stacker is found in a "Report of Contact" form, signed by "C. Gershensen," which includes the following entry: "Past Work: Stacker, Book Publishing - 9/98 - 5/99." (Record 341). The record provides no indication as to the source of these dates. Even assuming the dates are accurate, which is far from clear, the record is still insufficient to support a finding that plaintiff's job as a book stacker qualifies as past relevant work. In particular, the record does not show whether this work experience "lasted long enough for [plaintiff] to learn the job," or whether it "consisted of SGA," a determination that "requires evaluation of, *inter alia*, how well the claimant performed [his] duties, whether those duties were minimal and made little or no demand on [him], what [his] work was worth to the employer, and whether [his] income was tied to [his] productivity." Melville, 198 F.3d at 53, 54.

Accordingly, the decision is hereby reversed and the case is

remanded for further proceedings to enable the Commissioner to make a reliable determination whether plaintiff's job as a book stacker qualifies as past relevant work under applicable law.

So ordered this 31st day of March 2009.

/s/ RNC
Robert N. Chatigny
United States District Judge