APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-1053

TIMOTHY S. CHALFANT,

Appellant

v.

COMMISSIONER SOCIAL SECURITY

(D.C. Civ. No. 2-15-cv-01555)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, MCKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, JR., VANASKIE, SHWARTZ, KRAUSE, RESTREPO, BIBAS and *ROTH, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the

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* Vote of the Honorable Jane R. Roth limited to panel rehearing only.

circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ JANE R. ROTH
Circuit Judge

Dated: October 25, 2018
Tmm/cc: Timothy S. Chalfant
Patrick J. Roach, Esq.

APPENDIX C

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-1053

TIMOTHY S. CHALFANT,
Appellant

v.

COMMISSIONER SOCIAL SECURITY

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil Action No. 2-15-cv-01555)
District Judge: Honorable Donetta W. Ambrose

Submitted Pursuant to Third Circuit LAR 34.1(a)
July 27, 2017

Before: GREENAWAY, JR., VANASKIE and ROTH, Circuit Judges

(Opinion filed: June 19, 2018)

OPINION*

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

PER CURIAM

Timothy A. Chalfant appeals from the District Court's order affirming the Commissioner of Social Security's denial of his application for disability benefits. We will affirm.

I.

Chalfant applied for disability benefits in 2012 alleging that a number of conditions rendered him disabled between October 2004 and March 2010. Those conditions were of two kinds. First, Chalfant claimed to suffer disabling knee and back pain resulting from injuries. Second, Chalfant claimed to suffer disabling depression, headaches and memory loss, the last two of which he attributed to surgery that he had to remove a brain tumor. The Social Security Administration denied his application.

Chalfant then obtained counsel and appealed to an Administrative Law Judge ("ALJ"). The ALJ received evidence, held a hearing, and found that Chalfant was not disabled during the relevant time. In doing so, the ALJ applied the five-step, sequential evaluation process that governs disability determinations. See Zirnsak v. Colvin, 777 F.3d 607, 611-12 (3d Cir. 2014). The ALJ ultimately concluded that, although Chalfant's conditions prevented him from returning to his former employment and would have required some accommodation, Chalfant was not disabled as defined by 42 U.S.C. § 423(d) because he was capable of engaging in other "substantial gainful work which exists in the national economy." 42 U.S.C. § 423(d)(2)(A).

The ALJ based that conclusion primarily on Chalfant's medical records, which included the unanimous opinions of five treating and examining physicians that Chalfant was able to work during the relevant time. Among them was Dr. David Hartmann, who performed surgery on Chalfant's right knee in 2005. Dr. Hartmann opined before and for several months after the surgery that Chalfant could perform sedentary work (R. 268, 276-77, 283), and he later opined in 2006 that Chalfant "may return to a light-duty job" (R.266).[1] The other physicians opined at various times between 2006 and 2009 that Chalfant could return to either full, medium, or light-duty work. (R.176, 179, 183, 199, 201, 207-08.) These physicians' opinions on Chalfant's functional capacity were not controlling, see Brown v. Astrue, 649 F.3d 193, 196 n.2 (3d Cir. 2011), but the ALJ did not treat them as such and instead reviewed several of these physicians' diagnostic findings and techniques. The ALJ also relied on the testimony of a vocational expert who opined that Chalfant could have performed sedentary work with appropriate accommodations in occupations such as bench worker or general sorter. (R.50-51.)

Chalfant appealed to the Appeals Council and submitted a letter that Dr. Hartmann sent to his counsel in 2014 about two weeks after the ALJ's decision. Dr. Hartmann (who had since retired) stated that he had reviewed Chalfant's files again and, in contrast to the opinions noted above, expressed the opinion that "Mr. Chalfont [sic] was unable to perform any type of work prior to March 31, 2010." (R.318.) The Appeals Council

[1] Record citations are to the administrative record, which is available on the District Court's docket at ECF No. 5.

made the letter part of the record but determined that there was no basis to review the ALJ's ruling. With that decision, the Commissioner's denial of benefits became final.

Chalfant then obtained new counsel and filed this civil action seeking review of the Commissioner's decision. On the parties' cross-motions for summary judgment, the District Court denied Chalfant's motion, granted the Commissioner's motion, and affirmed the Commissioner's denial of benefits. In doing so, the District Court rejected the five arguments that Chalfant raised, including his argument that Dr. Hartmann's 2014 letter warranted an award of benefits or a remand. Chalfant appeals pro se.[2]

II.

On appeal, Chalfant does not raise any of the arguments that he raised in the District Court and does not directly challenge the District Court's rulings. Instead, he raises several arguments addressed to proceedings before the ALJ. Chalfant waived those arguments by not raising them below. They also lack merit.

Chalfant's primary argument is that his previous counsel failed to submit various medical records to the ALJ. Counsel's alleged negligence, however, does not state a basis for relief in this context. See Pitts v. Shinseki, 700 F.3d 1279, 1284-86 (Fed. Cir. 2012) (collecting cases involving "claimants seeking federal benefits"); see also Skinner v. Astrue, 478 F.3d 836, 842 (7th Cir. 2007) ("[A] claimant represented by counsel is

[2] The District Court had jurisdiction to review the Commissioner's decision under 42 U.S.C. § 405(g), and we have jurisdiction under 28 U.S.C. § 1291. Like the District Court, we review the ALJ's decision under the deferential substantial evidence standard. See Zirnsak, 777 F.3d at 610-11.

presumed to have made his best case before the ALJ[.]"); Walker v. Sun Ship Inc., 684 F.2d 266, 268-69 (3d Cir. 1982) (rejecting argument that counsel's alleged negligence should not be imputed to the client in agency proceeding). Even if it did, Chalfant has alleged no reason to believe that any additional records might have affected the outcome of his application. Chalfant refers generally to neurological records regarding his brain surgery, records regarding his back injury, and records from other orthopedic physicians. With one exception, however, Chalfant has not identified any specific records and has not argued what they would have shown or how they would have supported his claim.[3]

The exception is Dr. Hartmann's 2014 letter. As noted above, Dr. Hartmann reported in 2004 and 2005 that Chalfant could perform sedentary work and reported in 2006 that he could return to a light-duty job. After the ALJ denied Chalfant's claim for benefits, however, Dr. Hartmann reported to Chalfant's former counsel that, on the basis of his subsequent review of the records, "it is my opinion that Mr. Chalfont [sic] was unable to perform any type of work prior to March 31, 2010." (R.318)

Chalfant relied on this letter in the District Court. The District Court properly concluded that it could not consider the letter for purposes of conducting substantial evidence review but that it could remand for the ALJ to consider the letter if it was new, material evidence that Chalfant had good cause for not presenting before. See 42 U.S.C.

[3] Chalfant has attached various medical records from 2012 through 2014 to his brief. He does not raise any argument based on those records. They do not appear to be the allegedly omitted records, and they do not address his condition during the relevant time.

§ 405(g); Chandler v. Comm'r Soc. Sec., 667 F.3d 356, 360 (3d Cir. 2011); Matthews v. Apfel, 239 F.3d 589, 592-94 (3d Cir. 2001). The District Court concluded that the 2014 letter was not "new" because Dr. Hartmann based his new opinion on treatment notes that already were before the ALJ. The District Court also concluded that Chalfant did not show good cause for not presenting it to the ALJ because his former counsel merely mentioned his unsuccessful efforts to contact Dr. Hartmann and did not request a continuance or request that ALJ keep the record open. Chalfant does not directly challenge those conclusions and instead relies on the second one as support for his argument that former counsel was negligent.

Even if there were any basis to review and question those conclusions, however, we agree with the Commissioner that a remand was not warranted because Dr. Hartmann's 2014 letter was not material. New evidence is material if there is "a reasonable possibility that [it] would have changed the outcome of the [Commissioner's] determination." Szubak v. Sec'y of Health & Human Servs., 745 F.2d 831, 833 (3d Cir. 1984); see also Matthews, 239 F.3d at 592-94 (applying Szubak in the Social Security context). Dr. Hartmann's opinion in his 2014 letter conflicts, not only with the opinion of every other treating and examining physician of record, but with his own contemporaneous opinions. Dr. Hartmann did not acknowledge or attempt to explain the conflict. Dr. Hartmann also based his new opinion on medical records that already were before the ALJ. Thus, there is no reasonable possibility that Dr. Hartmann's letter would have led the ALJ to reach a different result.

Chalfant raises two other arguments that (despite their waiver) we will briefly address. Both are related to his claim that he suffered a disabling mental incapacity, which his counsel did not raise before the District Court. First, Chalfant challenges the ALJ's assessment of his brain surgery. The ALJ wrote that Chalfant "reported to Dr. Hartmann that his brain surgery had gone well and the longitudinal record reflects no additional treatment during the period at issue due to this condition." (R.20.) Chalfant argues that the ALJ should not have relied on the opinion of Dr. Hartmann, an orthopedic doctor, to assess the effects of his brain surgery. But the ALJ merely noted Chalfant's own statement to Dr. Hartmann and, as the ALJ further noted, there is no other evidence regarding any brain-related condition during the relevant time. Chalfant also has provided no reason to believe that additional records would have supported his claim.

Second, Chalfant challenges the ALJ's description of his history of treatment for depression. The ALJ wrote that Chalfant sought treatment for depression only from his family doctor, Dr. Sridhar Patnam, who reported in January 2007 that it was stable. The ALJ further wrote that "[t]he medical evidence of record reflects that [Chalfant] has never sought specialized mental health treatment." (R.20.) Chalfant argues that he sought such treatment from a Dr. Mehta. Our review confirms that, in his disability

statement, Chalfant stated that Dr. Ravindra Metha (apparently a misspelling) treated him for major depression and bipolar disorder[4] from 1993 to 2000. (R.136.)

Thus, the ALJ may have misstated Chalfant's history of treatment for depression in this regard. Even if he did, however, his finding that Chalfant's depression was not disabling during the relevant time remains supported by substantial evidence. As noted above, the ALJ relied on Dr. Patnam's opinion in 2007 that Chalfant's depression was "stable." (R.212.) Three years later, and still within the relevant time period, Dr. Patnam went one step further and characterized Chalfant's depression as "resolved." (R.224.) There is no other medical evidence regarding Chalfant's depression during the relevant period, and Chalfant has provided no reason to believe that Dr. Mehta's records might have supported his claim for benefits, particularly when his treatment with Dr. Mehta ended some four years before the relevant period began. Thus, even if this issue were preserved for review, it would not provide a basis for relief.[5]

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[4] This is the only reference in the administrative record to Chalfant having suffered from bipolar disorder. Chalfant also did not mention bipolar disorder in his counseled filings with the District Court and has not mentioned it in his pro se briefs on appeal.

[5] Chalfant did not argue below, and has not argued on appeal, that the ALJ had a duty to develop the record in this regard even though Chalfant was represented by counsel. Cf. Reefer v. Barnhart, 326 F.3d 376, 380 (3d Cir. 2003) (addressing ALJs' duties to pro se litigants); Plummer v. Apfel, 186 F.3d 422, 434 (3d Cir. 1999) (addressing ALJs' duty to develop record regarding potential mental impairments in a counseled case). We thus do not decide whether the ALJ had such a duty or breached it in this case. Even if we were to reach the issue, however, neither Chalfant's two separate counsel nor Chalfant himself has provided, at any stage of this proceeding, any reason to believe that any unpresented records might have supported his claim that his depression was disabling during the relevant time. In his disability statement, Chalfant wrote that he stopped seeing Dr.

III.

For these reasons, we will affirm the judgment of the District Court.

Mehta in 2000 for insurance reasons but that Dr. Patnam treated him for depression "once in a while" thereafter. (R.136.) And, as explained above, Dr. Patnam's records describe Chalfant's depression during the relevant time as "stable" and ultimately "resolved." Thus, the record in this case does not contain the kinds of red flags that might have invited further inquiry. Cf. Plummer, 186 F.3d at 426, 434.

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-1053

TIMOTHY S. CHALFANT,
Appellant

v.

COMMISSIONER SOCIAL SECURITY

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil Action No. 2-15-cv-01555)
District Judge: Honorable Donetta W. Ambrose

Submitted Pursuant to Third Circuit LAR 34.1(a)
July 27, 2017

Before: GREENAWAY, JR., VANASKIE and ROTH, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Western District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on July 27, 2017. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered December 6, 2016, be and the same is hereby affirmed. Costs will not be taxed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: June 19, 2018

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TIMOTHY CHALFANT, Plaintiff, -vs- CAROLYN W. COLVIN, COMMISSIONER OF SOCIAL SECURITY, Defendant.	)	Civil Action No. 15-1555

AMBROSE, Senior District Judge.

OPINION AND ORDER

Synopsis

Plaintiff Timothy Chalfant ("Chalfant") appeals an ALJ's denial of his claim for Social Security Disability ("SSD") under Title II of the Social Security Act "(the Act"), 42 U.S.C. § 401-433. Chalfant applied for SSD benefits in October of 2012 alleging a disability beginning on October 19, 2004. (R. 13) He alleges a number of impairments, including, residual symptoms from a brain tumor, complications from right knee pain, gout and obesity. (R. 16) Following a hearing and consultation with a vocational expert, the ALJ denied his claim, concluding that he retained the residual functional capacity ("RFC") to perform sedentary work with certain restrictions (R. 17-21) Chalfant appealed. Pending are Cross Motions for Summary Judgment. *See ECF Docket Nos.* [9] and [13]. After careful consideration and for the reasons set forth below, this case is affirmed.

Legal Analysis

1. Standard of Review

The standard of review in social security cases is whether substantial evidence exists in the record to support the Commissioner's decision. *Allen v. Bowen,* 881 F.2d 37, 39 (3d Cir. 1989). Substantial evidence has been defined as "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate." *Ventura v. Shalala,* 55 F.3d 900, 901 (3d Cir. 1995), *quoting Richardson v. Perales,* 402 U.S. 389, 401 (1971). Determining whether substantial evidence exists is "not merely a quantitative exercise." *Gilliland v. Heckler*, 786 F.2d 178, 183 (3d Cir. 1986) (*citing Kent v. Schweiker*, 710 F.2d 110, 114 (3d Cir. 1983)). "A single piece of evidence will not satisfy the substantiality test if the secretary ignores, or fails to resolve, a conflict created by countervailing evidence. Nor is evidence substantial if it is overwhelmed by other evidence – particularly certain types of evidence (e.g., that offered by treating physicians)." *Id.* The Commissioner's findings of fact, if supported by substantial evidence, are conclusive. 42 U.S.C. §405(g); *Dobrowolsky v. Califano,* 606 F.2d 403, 406 (3d Cir. 1979). A district court cannot conduct a *de novo* review of the Commissioner's decision or re-weigh the evidence of record. *Palmer v. Apfel,* 995 F.Supp. 549, 552 (E.D. Pa. 1998). Where the ALJ's findings of fact are supported by substantial evidence, a court is bound by those findings, even if the court would have decided the factual inquiry differently. *Hartranft v. Apfel*, 181 F.3d 358, 360 (3d Cir. 1999). To determine whether a finding is supported by substantial evidence, however, the district court must review the record as a whole. *See,* 5 U.S.C. §706.

To be eligible for social security benefits, the plaintiff must demonstrate that he cannot engage in substantial gainful activity because of a 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 at least 12 months. 42 U.S.C. § 423(d)(1)(A); *Brewster v. Heckler*, 786 F.2d 581, 583 (3d Cir. 1986).

The Commissioner has provided the ALJ with a five-step sequential analysis to use when evaluating the disabled status of each claimant. 20 C.F.R. § 404.1520(a). The ALJ must determine: (1) whether the claimant is currently engaged in substantial gainful activity; (2) if not, whether the claimant has a severe impairment; (3) if the claimant has a severe impairment, whether it meets or equals the criteria listed in 20 C.F.R., pt. 404, subpt. P, apps. 1; (4) if the impairment does not satisfy one of the impairment listings, whether the claimant's impairments prevent him from performing his past relevant work; and (5) if the claimant is incapable of performing his past relevant work, whether he can perform any other work which exists in the national economy, in light of his age, education, work experience and residual functional capacity. 20 C.F.R. § 404.1520. the claimant carries the initial burden of demonstrating by medical evidence that he is unable to return to his previous employment (steps 1-4). *Dobrowolsky*, 606 F.2d at 406. Once the claimant meets this burden, the burden of proof shifts to the Commissioner to show that the claimant can engage in alternative substantial gainful activity (step 5). Id.

A district court, after reviewing the entire record, may affirm, modify or reverse the decision with or without remand to the Commissioner for rehearing. *Podedworny v. Harris*, 745 F.2d 210, 221 (3d Cir. 1984).

2. The ALJ's Evaluation of "Severe Impairment" at the Second Step

At Step 2 of the analysis, an ALJ must determine whether the claimant has a medically determinable impairment or a combination of impairments that is severe. 20 C.F.R. § 404.1520(a) An impairment is not severe if it does not significantly limit the

physical or mental ability to do basic work activities. 20 C.F.R. § § 404.1520(c), 404.1521(a). If a claimant is found to have a severe impairment, then the ALJ proceeds to the next step. 20 C.F.R. § 404.1520(a). Urging that severity is a *de minimis* requirement, Chalfant contends that the ALJ erred in failing to find his back pain a "severe impairment."

Even accepting Chalfant's proposition, for purposes of argument, such error would be harmless. The ALJ found that Chalfant had several severe impairments including status post left knee surgery, gout, obesity, status post residuals from brain surgery, headaches and depression. (R. 16)[1] Because the ALJ found in Chalfant's favor at the second step, the fact that the ALJ did not describe the back pain as a severe impairment is harmless. *See Salles v. Comm'r. of Soc. Security*, 229 Fed. Appx., 140, 145 n. 2 (3d Cir. 2007) (stating that "[b]ecause the ALJ found in Salle's favor at Step Two, even if he had erroneously concluded that some of her other impairments were non-severe, any error was harmless."), *citing Rutherford v. Barnhart*, 399 F.3d 546, 553 (3d Cir. 2005). *See also, Roberts v. Astrue*, Civ. No. 8-625, 2009 WL 3183084 (W.D. Pa. Sept. 30, 2009) (finding that, "[e]ven assuming that the ALJ failed to include all of the Plaintiff's severe impairments at step two, this would be harmless error, as the ALJ did not make his disability determination at this step. Indeed, remand would not affect the outcome of this case and is not warranted."); and *Bliss v. Astrue*, Civ. No. 8-980, 2009 U.S. District LEXIS 12172, 2009 WL 413757 (W.D. Pa. Feb. 18, 2009) (stating that, "as long as a claim is not denied at step two, it is not generally necessary for the

[1] For this reason, Chalfant's citation to the Third Circuit Court's decision in *McCrea v. Comm'r. of Soc. Sec.*, 370 F.3d 357 (3d Cir. 2004) is unpersuasive. In *McCrea*, the ALJ denied the claimant's application for benefits at step two. *McCrea*, 370 F.3d at 360. Here, Chalfant's application was not denied at the second step. The ALJ's conclusion that Chalfant's back injuries did not constitute a "severe impairment" was not fatal to his case – analysis continued.

ALJ to have specifically found any additional alleged impairments to be severe .... Since Plaintiff's claim was not denied at step two, it does not matter whether the ALJ correctly or incorrectly found Plaintiff's neuropathy and sleep apnea to be non-severe."). Because the ALJ found in Chalfant's favor at step two, any alleged error was harmless and does not require reversal or remand.

3. New Evidence

As I mentioned previously, the instant review of the ALJ's decision is not *de novo*.[2] The ALJ's findings of fact are conclusive if supported by substantial evidence. *Matthews v. Eldridge*, 424 U.S. 319, 339 96 S. Ct. 893, 905 n. 21 (1976); *Matthews v. Apfel*, 239 F.3d 589, 594 (3d Cir. 2001), *citing, Jones v. Sullivan*, 954 F.2d 125, 128 (3d Cir. 1991) ("[E]vidence that was not before the ALJ cannot be used to argue that the ALJ's decision was not supported by substantial evidence."). My review of the ALJ's decision is limited to the evidence that was before him. *Id*; 42 U.S.C. 405(g). Therefore, in this case, pursuant to Sentence Four of § 405(g), I cannot look at the post-decision evidence that was not first submitted to the ALJ when reviewing his decision.

However, if a claimant proffers evidence that was not previously presented to the ALJ, then a district court may remand pursuant to Sentence Six of 42 U.S.C. § 405(g), but only when the evidence is new and material and supported by a demonstration of good cause for not having submitted the evidence before the decision of the ALJ. *Matthews*, 239 F.3d at 591-93 (3d Cir. 2001) (Sentence Six review), *citing, Szubak v.*

[2] Chalfant invites this Court to follow approaches taken in other Circuits and "consider evidence that the claimant did not present to the [ALJ], but submitted for the first time to the Appeals Council, which accepted and considered the evidence but denied review of the ALJ decision." *See ECF Docket No.* [10], p., 9, *citing, Higginbotham v. Barnhart*, 405 F.3d 332, 334 (5th Cir. 2005). As this is contrary to Third Circuit case law, I decline Chalfant's invitation.

Sec'y of HHS, 745 F.2d 831, 833 (3d Cir. 1984). In *Szubak v. Sec'y of HHS*, 745 F.3d 831, 833 (3d Cir. 1984), the Third Circuit Court explained the following:

> As amended in 1980, § 450(g) now requires that to support a "new evidence" remand, the evidence must first be "new" and not merely cumulative of what is already in the record. Second, the evidence must be "material;" it must be relevant and probative. Beyond that, the materiality standard requires that there be a reasonable possibility that the new evidence would have changed the outcome of the Secretary's determination. An implicit materiality requirement is that the new evidence relates to the time period for which benefits were denied, and that it not concern evidence of a later-acquired disability or of the subsequent deterioration of the previously non-disabling condition. Finally the claimant must demonstrate good cause for not having incorporated the new evidence into the administrative record.

(citations omitted). All three requirements must be satisfied in order to justify remand. *Szubak*, 745 F.2d at 833.

In this case, Chalfant submitted a report dated July 31, 2014 from Dr. Hartmann, Chalfant's treating physician, to the Appeals Council. (R. 318) He contends that it meets the standard set forth in *Szubak*. After careful consideration, I disagree. Evidence is "new" if it was "not in existence *or available* to the claimant at the time of the administrative proceeding." *See Sullivan v. Finkelstein*, 496 U.S. 617, 626 (1990) (emphasis added). While I acknowledge that Dr. Hartmann's letter may not have existed at the time of the ALJ's decision, the treatment records upon which Dr. Hartmann's July 31, 2013 letter is based *were in existence* at the time the ALJ issued his decision. As such, the letter is merely indicative of his condition during and based upon records in existence during the relevant period of time but crafted after the ALJ issued his decision. As such, it does not constitute "new" evidence. Further, Chalfant cannot demonstrate "good cause" for not having submitted the evidence before the decision of the ALJ. Chalfant knew that Dr. Hartmann had treated him during the period at issue.

He had records related to his care. He was represented by counsel at the hearing and at no time did counsel object or indicate that the record should be held open for the submission of additional evidence. Indeed, at most counsel informed the Court that he had unsuccessfully attempted to contact Dr. Hartmann. (R. 52) Consequently, I find that Dr. Hartmann's report does not provide a basis for remand.

4. Post-Insured Date Evidence

Chalfant also criticizes the ALJ for discussing an exhibit (B5F) during the oral hearing which he did not subsequently reference in his opinion. The exhibit in question post-dates Chalfant's date last insured. Specifically, Chalfant contends that he became disabled on October 19, 2004. His insured status expired on March 31, 2010. (R. 15) The records at issue post-date 2010. The medical records relate to exams from 2012 to 2014. (R. 297-317) Consequently, they are not relevant to the issue of whether Chalfant was disabled on or before March 31, 2010 and the ALJ was not required to reference them in his opinion. *See Cardinal v. Colvin*, Civ. No. 14-1368, 2016 WL 1237783 at * 5 (E.D. Pa. March 30, 2016) (stating that "the ALJ need only consider medical records prior to the date of last insured), *citing Ortega v. Comm'r. of Soc. Servs.*, 232 F. App'x. 194, 197 (3d Cir. 2007) (holding that the ALJ need not consider medical evidence "after [the] last insured date"); *Hyler v. Colvin*, Civ. No. 12-4974, 2013 WL 3766817, at *9 (E.D. Pa. July 18, 2013) ("The relevant time period that the ALJ in this case must consider is whether plaintiff was disabled for DIB purposes at any time between plaintiff's alleged onset date ... and the date plaintiff was last insured"); *Jennings v. Astrue*, Civ. No. 9-1642, 2009 WL 7387721, at *15 (E.D. Pa. Nov. 30, 2009 (stating that the ALJ is "not required to evaluate" evidence after the date last insured); *see also,*

Fricker v. Halter, 45 F. App'x. 85, 87 n. 1 (3d Cir. 2001) (evidence post-dating the date last insured is "not directly relevant"); *Spires v. Colvin*, Civ. No. 15-920, 2015 WL 7422014, at *9 (E.D. Pa. Nov. 5, 2015) ("evidence that does not relate to the period between the alleged disability date and the date last insured is not probative.").

5. The ALJ's Step Three Analysis

Chalfant next contends that the ALJ's analysis under step three was deficient. As set forth above, in step three of the analysis the ALJ must determine if the claimant's impairment meets or equals one of the impairments listed in 20 C.F.R. Pt. 404, Subpt. P, Appx. 1. *Jesurum v. Secretary of Health and Human Services*, 48 F.3d 114, 117 (3d Cir. 1995). An applicant is *per se* disabled if the impairment is equivalent to a listed impairment and, thus, no further analysis is necessary. *Burnett v. Commissioner of Social Security*, 220 F.3d 112, 119 (3d Cir. 2000.

Here, Chalfant urges that the ALJ offered only a cursory analysis of relevant listings. Specifically, Chalfant contends that the ALJ failed to provide a meaningful analysis with respect to whether his knee and back conditions met the criteria under 1.00 Musculoskeletal System. The Third Circuit Court has held that an ALJ's bare conclusory statement that an impairment did not match, or was not equivalent to, a listed impairment was insufficient. *Burnett v. Commissioner of Social Security*, 220 F.3d 112, 119-20 (3d Cir. 2000). But it is important to note that "*Burnett* does not require the ALJ to use particular language or adhere to a particular format in conducting his analysis. Rather, the function of *Burnett* is to ensure that there is sufficient development of the record and explanation of findings to permit meaningful review. In this case, "the ALJ's decision, *read as a whole*, illustrates that Jones did not meet the requirements for

any listing, including Listing 3.02(A)." *Jones v. Barnhart*, 364 F.3d 501, 504-05 (3d Cir. 2004) (emphasis added) (citations omitted). Here, although the ALJ may have abbreviated his findings in his step three analysis, a further articulation of his position and analysis of Chalfant's impairments can be found at subsequent parts of his analysis. (R. 18-19) Consequently, in reading his decision as a whole, his reasoning for finding that Chalfant did not meet the requirements for any Listing is clear and supported by substantial evidence of record.

6. Residual Functional Capacity Assessment

Finally, Chalfant contends that the ALJ's RFC assessment is not supported by substantial evidence of record. His argument rests upon the assertion addressed above, that his back impairment is "severe." For the reasons set forth elsewhere in this opinion, Chalfant's argument is unconvincing. Similarly, Chalfant urges that the ALJ did not properly take into account his need to prop up and ice his leg. This argument is undeveloped and wholly inadequate, consisting of no more than three sentences. *See Pennsylvania v. U.S. Dept. of Health & Human Serv.*, 101 F.3d 939, 945 (3d Cir. 1996) (stating that conclusory assertions, unaccompanied by a substantial argument, will not suffice to bring an issue before the court). Consequently, I will not address the theory set forth in this topic heading.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TIMOTHY CHALFANT,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Civil Action No. 15-1555
	)	
CAROLYN W. COLVIN, COMMISSIONER OF SOCIAL SECURITY,	)	
	)	
Defendant.	)	

AMBROSE, Senior District Judge.

ORDER OF COURT

Therefore, this 6th day of December, 2016, it is hereby ORDERED that the decision of the ALJ is affirmed and that Plaintiff's Motion for Summary Judgment (Docket No. 9) is denied and Defendant's Motion for Summary Judgment (Docket No. 13) is granted.

BY THE COURT:

/s/ Donetta W. Ambrose
Donetta W. Ambrose
United States Senior District Judge

Additional material from this filing is available in the Clerk's Office.