IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

DARRIN DUNCAN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	**No. 17-cv-02919-TMP**
NANCY A. BERRYHILL, Acting Commissioner of Social Security,	)	
	)	
Defendant.	)	

ORDER AFFIRMING THE COMMISSIONER'S DECISION

Before the court is plaintiff Darrin Duncan's appeal from a final decision of the Commissioner of Social Security ("Commissioner") denying his application for disability insurance benefits under Title II of the Social Security Act ("Act"), 42 U.S.C. §§ 401 *et seq*. (ECF No. 1.) After the parties consented to the jurisdiction of the United States magistrate judge, pursuant to 28 U.S.C. § 636(c), this case was referred to the undersigned. (ECF No. 13.) For the following reasons, the Commissioner's decision is affirmed.

I. FINDINGS OF FACT

Duncan applied for disability benefits under Title II of the Act on April 22, 2014, with an alleged onset date of October 1, 2013. (R. 179-85.) Duncan alleged disability due to the following medical conditions: "back pain, ankle pain, acid reflux, [and]

depression." (R. 228.) The Social Security Administration ("SSA") denied Duncan's application initially and upon reconsideration. (R. 95, 101.) At Duncan's request, a hearing was held before an Administrative Law Judge ("ALJ") on November 4, 2016. (R. at 103-04, 116.) On March 24, 2017, the ALJ issued a decision denying Duncan's request for benefits after finding that he was not under a disability because he retained the residual functional capacity ("RFC") to perform jobs that exist in significant numbers in the national economy. (R. 15–30.)

In his decision, the ALJ concluded that Duncan has the following severe impairments: "degenerative changes of the lumbar spine, osteoarthritis, peripheral vascular disease, obesity, and a depressive disorder." (R. 17.) However, the ALJ found that Duncan did not have an impairment or combination of impairments listed in or medically equal to one of the listed impairments contained within 20 C.F.R. Part 404, Subpart P, Appendix 1. (R. 18.) Next, the ALJ concluded that Duncan has the RFC:

> to perform light work as defined in 20 C.F.R. 404.1567(b) except with no climbing of ladders, ropes, or scaffolds; occasional postural (climbing of ramps and stairs, balancing, stooping, kneeling, crouching, and crawling); occasional overhead reaching with the right upper extremity; and avoiding concentrated exposure to hazards and vibrations. In addition, he would be limited to simple unskilled work requiring occasional contact with coworkers, supervisors, and the public, working better with things than people.

(R. 19.)

After describing the basis for that RFC, the ALJ proceeded to

the fourth step and concluded that Duncan was unable to perform any past relevant work. (R. 28.) The ALJ's analysis advanced to step five where he stated that:

> considering the claimant's age, education, work experience, and residual functional capacity, there are jobs that exist in significant numbers in the national economy that the claimant can perform.

(R. 29.) Accordingly, the ALJ concluded that Duncan was not disabled and was therefore not entitled to disability benefits under Title II of the Act. On October 27, 2017, the Appeals Council denied Duncan's request for review, making the ALJ's decision the final decision of the Commissioner. (R. 1.)

Duncan filed the instant action on December 20, 2017, seeking review of the ALJ's decision. (ECF No. 1.) In his appeal, Duncan raises two arguments. Duncan initially argues that the ALJ erred by inadequately analyzing Duncan's VA disability rating and the opinions that supported the VA's rating. (ECF No. 15 at 12-17.) Next, Duncan argues that the ALJ erred when making the RFC determination because it does not address Duncan's alleged need to use a cane. (Id. at 18-19.)

II. CONCLUSIONS OF LAW

A. Standard of Review

Under 42 U.S.C. § 405(g), a claimant may obtain judicial review of any final decision made by the Commissioner after a hearing to which he or she was a party. "The court shall have power to enter, upon the pleadings and transcript of the record, a

judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing." 42 U.S.C. § 405(g). Judicial review of the Commissioner's decision is limited to whether there is substantial evidence to support the decision and whether the Commissioner used the proper legal criteria in making the decision. Id.; Winn v. Comm'r of Soc. Sec., 615 F. App'x 315, 320 (6th Cir. 2015); Cole v. Astrue, 661 F.3d 931, 937 (6th Cir. 2011); Rogers v. Comm'r of Soc. Sec., 486 F.3d 234, 241 (6th Cir. 2007). Substantial evidence is more than a scintilla of evidence but less than a preponderance, and is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Kirk v. Sec'y of Health & Human Servs., 667 F.2d 524, 535 (6th Cir. 1981) (quoting Richardson v. Perales, 402 U.S. 389, 401 (1971)).

In determining whether substantial evidence exists, the reviewing court must examine the evidence in the record as a whole and "must 'take into account whatever in the record fairly detracts from its weight.'" Abbott v. Sullivan, 905 F.2d 918, 923 (6th Cir. 1990) (quoting Garner v. Heckler, 745 F.2d 383, 388 (6th Cir. 1984)). If substantial evidence is found to support the Commissioner's decision, however, the court must affirm that decision and "may not even inquire whether the record could support a decision the other way." Barker v. Shalala, 40 F.3d 789, 794 (6th Cir. 1994) (quoting Smith v. Sec'y of Health & Human Servs.,

893 F.2d 106, 108 (6th Cir. 1989)). Similarly, the court may not try the case *de novo*, resolve conflicts in the evidence, or decide questions of credibility. Ulman v. Comm'r of Soc. Sec., 693 F.3d 709, 713 (6th Cir. 2012) (citing Bass v. McMahon, 499 F.3d 506, 509 (6th Cir. 2007)). Rather, the Commissioner, not the court, is charged with the duty to weigh the evidence, to make credibility determinations, and to resolve material conflicts in the testimony. Walters v. Comm'r of Soc. Sec., 127 F.3d 525, 528 (6th Cir. 1997); Crum v. Sullivan, 921 F.2d 642, 644 (6th Cir. 1990); Kiner v. Colvin, No. 12-2254-JDT, 2015 WL 1295675, at *1 (W.D. Tenn. Mar. 23, 2015).

B. The Five-Step Analysis

The Act defines disability as the "inability 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). Additionally, section 423(d)(2) of the Act states that:

> An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy"

> means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

Under the Act, the claimant bears the ultimate burden of establishing an entitlement to benefits. Oliver v. Comm'r of Soc. Sec., 415 F. App'x 681, 682 (6th Cir. 2011). The initial burden is on the claimant to prove she has a disability as defined by the Act. Siebert v. Comm'r of Soc. Sec., 105 F. App'x 744, 746 (6th Cir. 2004) (citing Walters, 127 F.3d at 529); see also Born v. Sec'y of Health & Human Servs., 923 F.2d 1168, 1173 (6th Cir. 1990). If the claimant is able to do so, the burden then shifts to the Commissioner to demonstrate the existence of available employment compatible with the claimant's disability and background. Born, 923 F.2d at 1173; see also Griffith v. Comm'r of Soc. Sec., 582 F. App'x 555, 559 (6th Cir. 2014).

Entitlement to social security benefits is determined by a five-step sequential analysis set forth in the Social Security Regulations. See 20 C.F.R. §§ 404.1520 & 416.920. First, the claimant must not be engaged in substantial gainful activity. See 20 C.F.R. §§ 404.1520(b) & 416.920(b). Second, a finding must be made that the claimant suffers from a severe impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii) & 416.920(a)(5)(ii). In the third step, the ALJ determines whether the impairment meets or equals the severity criteria set forth in the Listing of Impairments contained in the Social Security Regulations. See 20 C.F.R. §§ 404.1520(d),

404.1525, 404.1526. If the impairment satisfies the criteria for a listed impairment, the claimant is considered to be disabled. On the other hand, if the claimant's impairment does not meet or equal a listed impairment, the ALJ must undertake the fourth step in the analysis and determine whether the claimant has the RFC to return to any past relevant work. See 20 C.F.R. §§ 404.1520(a)(4)(iv) & 404.1520(e). If the ALJ determines that the claimant can return to past relevant work, then a finding of not disabled must be entered. Id. But if the ALJ finds the claimant unable to perform past relevant work, then at the fifth step the ALJ must determine whether the claimant can perform other work existing in significant numbers in the national economy. See 20 C.F.R. §§ 404.1520(a)(4)(v), 404.1520(g)(1), 416.960(c)(1)-(2). Further review is not necessary if it is determined that an individual is not disabled at any point in this sequential analysis. 20 C.F.R. § 404.1520(a)(4).

C. Whether the ALJ Erred in Analyzing the VA Disability Rating and the Medical Opinions Supporting that Rating

"Though other agencies make their own decisions about benefits eligibility, the Social Security Administration's regulations clearly instruct that the Commissioner is not bound by those decisions." Joseph v. Comm'r of Soc. Sec., 741 F. App'x 306, 310 (6th Cir. 2018) (citing 20 C.F.R. § 404.1504). "The basis for this regulation is sound: different rules applied by other agencies 'may limit the relevance of a determination of disability made by

another agency.'" Id. (quoting LaRiccia v. Comm'r of Soc. Sec., 549 F. App'x 377, 387 (6th Cir. 2013)). "But the Commissioner may nonetheless find an agency's determination relevant, depending on the similarities between the rules and standards each agency applies to assess disability." LaRiccia, 549 F. App'x at 388. While the Sixth Circuit "has not set forth a specific standard regarding the weight the Commissioner should afford a 100% disability determination by the VA," it has stated that "an ALJ 'should explain the consideration given to these decisions in the notice of decision.'" Id. (quoting Soc. Sec. Rul. 06-03, 2006 WL 2329939, at *7 (Aug. 9, 2006)).

When making the RFC finding, the ALJ addressed the VA rating as follows:

> The undersigned also notes that the record contains VA rating decisions (Exhibit 15E). Based upon the VA's rating guide, found at 38 C.F.R. Part 4, Subparts A and B, the claimant's ratings are based upon criteria that are completely different from the criteria that the Social Security Administration must use to determine disability. The VA's ratings are based upon the mere diagnosis of, and treatment for, the alleged impairments, rather than on the functional limitations caused by the impairments. Further, VA ratings represent the average impairment in earning capacity resulting from the veteran's impairments and consider the effect the veteran's impairments would be expected to have on a hypothetical average person's ability to earn income. The VA, in assigning ratings, then, does not make a determination concerning the impact of the limitation on the individual claimant's ability to sit, stand, walk, lift, carry, push, pull, or engage in the mental demands of work that Social Security must make. For these reasons, VA rating[s] have little to no relevance to a Social Security disability decision. These ratings do not take into account the impact of the claimant's

> impairments on their ability to work or perform the seven exertional requirements that the Social Security Administration must consider.

(R. 27.) On appeal, Duncan argues that the ALJ erroneously analyzed the VA's disability rating. Courts within this circuit have rejected this argument where, as here, the ALJ discounts the relevance of a VA disability rating because of the differences between the VA and Social Security Administration's disability standards. See Miller v. Comm'r of Soc. Sec., No. 1:16-cv-1441, 2018 WL 1516847, at *5 (W.D. Mich. Mar. 28, 2018) ("The ALJ . . . ultimately concluded that [the claimant's] receipt of a VA disability was not dispositive of his claim for [disability insurance benefits] because the standards for VA disability are very different from this program. The ALJ considered the evidence of plaintiff's receipt of VA benefits. Accordingly, plaintiff's claim of error will be denied." (internal citation and quotation omitted)); Riley v. Berryhill, No. 3:16-cv-776, 2017 WL 3468556, at *5 (W.D. Ky. Aug. 11, 2017) ("The ALJ focused on the well-established fact that the VA disability rating process is substantively different from the Social Security disability determinations. The ALJ's comparison of the VA disability standards to the Social Security disability standards is accurate. The VA relies on criteria that is independent and distinct from that of the Social Security Act when assessing disability. . . . Courts within the Sixth Circuit have noted that claimants seeking

disability under the Social Security Act are subject to a more stringent standard than those under the Department of Veterans Affairs." (internal citation and quotation omitted)). Moreover, the decisions in Miller and Riley are in line with the Sixth Circuit's recent decision in Joseph. In Joseph, the Sixth Circuit stated:

> And importantly, [the ALJ] explained why Joseph's impairments led her to a different determination than the one that the VA reached. Specifically, [the ALJ] explained the difference between the VA's disability system and Social Security's: the VA expresses disability as a percentage of diminished earning capacity applied to a hypothetical average person's ability to earn income, whereas Social Security does not assess degrees of disability and determines whether the applicant can make an adjustment that allows him to perform any other substantial gainful work that exists in the national economy.

Joseph, 741 F. App'x at 310-11 (internal citation and quotation omitted). Accordingly, the court concludes that the ALJ did not err in analyzing the applicability of the VA disability rating to Duncan's claim for social security benefits.

D. Whether the ALJ Erred in Weighing the Medical Opinions in the Record

Duncan argues that the ALJ did not give proper weight to the medical opinions contained within the record. (ECF No. 15 at 15-17.) Specifically, Duncan claims that the ALJ improperly weighed the opinions of Dr. Sarah Rack, Dr. Alison Dowd, and Dr. Joshua Sykes. (Id.) In formulating an RFC finding, "the ALJ evaluates all relevant medical and other evidence and considers what weight

to assign to treating, consultative, and examining physicians' opinions." Eslinger v. Comm'r of Soc. Sec., 476 F. App'x 618, 621 (6th Cir. 2012) (citing 20 C.F.R. § 404.1545(a)(3)); see also Ealy v. Comm'r of Soc. Sec., 594 F.3d 504, 514 (6th Cir. 2010). "An opinion from a treating physician is 'accorded the most deference by the SSA' because of the 'ongoing treatment relationship' between the patient and the opining physician. A nontreating source, who physically examines the patient 'but does not have, or did not have an ongoing treatment relationship with' the patient, falls next along the continuum. A nonexamining source, who provides an opinion based solely on review of the patient's existing medical records, is afforded the least deference." Norris v. Comm'r of Soc. Sec., 461 F. App'x 433, 439 (6th Cir. 2012) (quoting Smith v. Comm'r of Soc. Sec., 482 F.3d 873, 875 (6th Cir. 2007)) (internal citations omitted). "ALJs must evaluate every medical opinion [they] receive by considering several enumerated factors, including the nature and length of the doctor's relationship with the claimant and whether the opinion is supported by medical evidence and consistent with the rest of the record." Stacey v. Comm'r of Soc. Sec., 451 F. App'x 517, 519 (6th Cir. 2011). When an ALJ's decision rejects the opinion of a medical expert who is not a treating physician, the decision "must say enough to allow the appellate court to trace the path of [the ALJ's] reasoning." Id. (internal citation and quotation omitted).

1. Whether the ALJ Gave Proper Weight to Dr. Rack's Opinion

In making the RFC finding, the ALJ stated:

> On October 8, 2013, a Dr. Sarah Rack completed a Mental Disorders Disability Benefits Questionnaire. The claimant reported depression related to his physical limitations. On mental status evaluation, the claimant was alerted and oriented. He described his mood as depressed and his affect was downcast. Dr. Rack observed that the claimant was casually dressed and appropriately groomed. The claimant denied auditory hallucinations, but stated he occasionally experienced visual hallucinations. There was no evidence of psychosis or paranoia. Speech was appropriate and he maintained good eye contact. He was able to recall three of three objects immediately and after a delay. Insight and judgment were intact and there was no evidence of cognitive deficits. Dr. Rack opined that the claimant had mild to moderate impairment in social and industrial functioning.

(R. 26) (citing Dr. Rack's report). The ALJ gave great weight to the opinion of Dr. Rack and concluded that her opinion was "consistent with ongoing mental health treatment and medication regiment." (R. 29.) Duncan argues that the ALJ erred when weighing Dr. Rack's opinion because "the RFC assessment does not account for Dr. Rack's finding that Duncan would have difficulty establishing and maintaining effective work and social relationships, and difficulty in adapting to stressful circumstances, including work or work-like settings." (ECF No. 15 at 15.) The court rejects this argument as it is factually incorrect. The ALJ fashioned Duncan's RFC in a manner that incorporated Dr. Rack's limitations. In making the RFC finding, the ALJ said that Duncan "would be limited to simple unskilled work

requiring *occasional* contact with coworkers, supervisors, and the public, [but would] work[] better with things than people." (R. 19) (emphasis added). Therefore, the court finds that the ALJ did not err in the amount of weight he afforded to Dr. Rack's opinion.

2. Whether the ALJ Gave Proper Weight to Dr. Dowd's Opinion

In his opinion, the ALJ considered and gave Dr. Dowd's opinion some weight and stated that "records show that the claimant's ability to interact socially improved with medications." (R. 28.) According to Duncan, the ALJ erred in assigning Dr. Dowd's opinion some weight and should have instead assigned the opinion great weight. (ECF No. 15 at 16.) The court rejects this argument. In Dr. Dowd's report, she indicated that Duncan "reported that his medication has been helping his mood." (R. 26.) In addition, Dr. Dowd recognized that Duncan was likely overreporting or exaggerating during their consultation. (Id.) ("On the MMPI-2, the claimant produced a profile that was probably invalid due to high endorsement of items reflecting non-normative beliefs, psychopathy, somatic symptoms, and general destress, which lead to extreme scale elevations. Test results were interpreted with caution, given signs of probably over-reporting during test completion. Elevations obtained on the validity scaled were suggestive of some degree of over-reporting or exaggeration of symptomatology on psychometric testing, possible due to a high overall degree of subjective distress of possibly as related to an intentional effort to

exaggerate psychopathology and affective distress."). Therefore, the court finds that the ALJ's decision to assign Dr. Dowd's opinion some weight was supported by substantial evidence.

3. Whether the ALJ Gave Proper Weight to Dr. Sykes' Opinion

Finally, Duncan argues that the ALJ erred by failing to consider Dr. Sykes' opinion. (ECF No. 15 at 16-17.) While the "ALJ must consider all medical opinions in conjunction with any other relevant evidence received in order to determine if a claimant is disabled, . . . he need not specifically address each medical opinion or piece of evidence in order to adequately consider the record in its entirety." Grant v. Colvin, No. 3:14-cv-399, 2015 WL 4713662, at *12 (E.D. Tenn. Aug. 7, 2015). Here, however, the ALJ discussed Dr. Sykes' opinion in great detail. Specifically, the ALJ stated:

> On January 18, 2014, Dr. Joshua Sykes completed a disability benefits questionnaire for the VA regarding the claimant's ankle condition. . . . Examination showed normal range of motion with no objective evidence of pain of the right ankle. Range of motion of the left ankle was decreased; however, he was able to perform repetitive use testing with both ankles. Dr. Sykes noted that the claimant had less movement, pain with movement, and disturbance of locomotion of the left ankle. There was tenderness to the left ankle; however, muscle strength was normal. Anterior drawer test and tarlar tilt test showed no laxity to either ankle. There was no ankylosis of the ankle. . . . The claimant reported that he used a cane on a regular basis.

(R. 23-24.) The ALJ ultimately recognized that "the opinions of the VA Medical Center physicians [were given] during Compensation and Pension examinations." (R. 27.) Those opinions, which include

Dr. Sykes' opinion, were rendered in the context of Duncan's VA benefit claims and not in the context of a social security benefit claim. Moreover, Duncan only argues that the ALJ erred by failing to discuss Dr. Sykes' opinion. The court rejects this argument because the ALJ extensively addressed Dr. Sykes' opinion. In addition, the court concludes that the ALJ did not err in the amount of weight he afforded to Dr. Sykes' opinion.

E. Whether the ALJ's Erred When Making the RFC Determination Because it Does not Address Duncan's Alleged Need to use a Cane

The "Social Security Act instructs that the ALJ — not a physician — ultimately determines a claimant's RFC." Coldiron v. Comm'r of Soc. Sec., 291 F. App'x 435, 439 (6th Cir. 2010); see also Rudd v. Comm'r of Soc. Sec., 531 F. App'x 719, 728 (6th Cir. 2013) ("[T]o require the ALJ to base her RFC finding on a physician's opinion, would, in effect, confer upon the treating source the authority to make the determination or decision about whether an individual is under a disability, and thus would be an abdication of the Commissioner's statutory responsibility to determine whether an individual is disabled.") (internal quotation marks and citation omitted); Nejat v. Comm'r of Soc. Sec., 359 F. App'x 574, 578 (6th Cir. 2009) ("Although physicians opine on a claimant's residual functional capacity to work, ultimate responsibility for capacity-to-work determinations belongs to the Commissioner."); Webb v. Comm'r of Soc. Sec., 368 F.3d 629, 633

(6th Cir. 2004) (stating that under the SSA regulations, "the ALJ is charged with the responsibility of evaluating the medical evidence and the claimant's testimony to form an 'assessment of [her] residual functional capacity'" (quoting 20 C.F.R. § 416.920(a)(4)(iv))).

Duncan argues that the ALJ's "decision should also be remanded because the RFC assessment fails to account for Duncan's need to use a cane for ambulation." (ECF No. 15 at 18.) The Sixth Circuit has "explained that unless a cane is a necessary device, it will not be considered an exertional limitation that reduces a claimant's ability to work." Swearengin v. Berryhill, No. 3:17-cv-32, 2018 WL 5045216, at *4 (E.D. Tenn. Oct. 17, 2018) (citing Carreon v. Massanari, 51 F. App'x 571, 575 (6th Cir. 2002)). "To find that a hand-held assistive device is medically required, there must be medical documentation establishing the need for a hand-held assistive device to aid in walking or standing, and describing the circumstances for which it is needed." Soc. Sec. Rul. 96-9P, 1996 WL 374185, at *7 (July 2, 1996). Thus, "SSR 96–9p requires more than generalized evidence of a condition that might require use of a cane." Staples v. Astrue, 329 F. App'x 189, 192 (10th Cir. 2009). When describing Duncan's medical treatment, the ALJ recognized that Duncan "was issued a cane and given instructions for [a] continued exercise program." (R. 23.) Additionally, in the medical questionnaire completed by Dr. Sykes, he notes that

Duncan regularly uses a cane. (R. 482-83.) The record therefore contains medical evidence that Duncan may need a cane to walk. Because the record contains this evidence, the ALJ was required to either reject Duncan's need to use the cane or include the use of the cane as a limitation in the RFC. See Harris v. Berryhill, No. 3:16-cv-110, 2017 WL 3668424, at *2 (E.D. Tenn. Aug. 24, 2017) ("The Court finds that the ALJ's RFC finding, upon which the ALJ concluded that Harris could do light work, did not include the use of a cane. Although the ALJ made reference to the cane in the Decision, the Court finds that the ALJ did not adequately explain the omission of the cane use from the RFC. Plaintiff's use of a cane could affect his ability to do light work, depending on the extent of the need to use the cane.").

In making the RFC determination, the ALJ concluded that Duncan retains the RFC to perform light work and did not indicate that Duncan must use a cane. (R. 19.) When the ALJ described the basis for Duncan's RFC, he also did not explicitly reject that Duncan needs to regularly use a cane. However, the ALJ recognized that the record contained medical evidence supporting the conclusion that Duncan did not need the cane. This medical evidence includes the treatment notes from Dr. Waggoner (Duncan's treating physician) and the results from Duncan's February 26, 2014, functional capacity evaluation, which was conducted by Sarena Headley-

Martinez, MS and Will Murphy, PT.[1] (See R. 20-22.) Therefore, substantial evidence exists that the ALJ implicitly rejected that Duncan needed to use a cane to walk and therefore the ALJ did not err when determining Duncan's RFC. See Maze v. Colvin, No. 16-cv-1138, 2018 WL 3599968, at *5 (W.D. Tenn. July 27, 2018) ("[A] plethora of evidence still undermines [the claimant's] claim that she needs a cane, and as mentioned in the standard of review section, it is the duty of the ALJ, not the court, to resolve conflicts in evidence. . . . Because substantial evidence in the record supports the ALJ's conclusion, the court finds that the ALJ did not err when determining that [the claimant] does not need to use a cane.").

III. CONCLUSION

For the reasons above, the Commissioner's decision is affirmed.

IT IS SO ORDERED.

s/ Tu M. Pham
TU M. PHAM
United States Magistrate Judge

February 14, 2019
Date

[1]The court recognizes that the record contains several other pieces of evidence supporting the conclusion that Duncan does not need to use a cane. In her brief, the Commissioner described that evidence at length. (ECF No. 16 at 10-14.)