

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 04-1357

MICHAEL A. CARROLL,
Appellant

v.

JO ANNE B. BARNHART, COMMISSIONER
OF SOCIAL SECURITY ADMINISTRATION

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE
(D.C. Civ. No. 01-cv-00105)
District Judge: Honorable Kent Jordan

Submitted Under Third Circuit L.A.R. 34.1(a)
November 16, 2004
Before: ROTH, SMITH and WEIS, Circuit Judges.

(Filed December 2, 2004)

OPINION

WEIS, Circuit Judge.

Claimant was injured in 1990 while working as a construction-laborer.

Over the ensuing years, a number of physicians treated and examined him. In some instances, the doctors' reports are inconsistent. Some opined that claimant could have

returned to work years ago, although others found disability.

The District Court remanded the case to the Appeals Council of the Social Security Administration in August 1999. In 2000, an ALJ held a second hearing and, again, found that claimant was not disabled and not entitled to benefits.

On appeal, the District Court again remanded, noting that the ALJ had failed to explain the weight he accorded the opinion of Dr. LeRoy and other medical evidence applicable to the claimant's neuropsychological condition. Claimant has appealed.

We have reviewed the evidence of numerous physicians, treatments and examinations. As the District Court noted, there is "ample evidence" of non-disability; however, the ALJ did not discuss some of the medical reports favorable to the claimant. In the absence of that evaluation, the District Court concluded that the case should be remanded once again.

The Commissioner contends that we should utilize an abuse of discretion standard in reviewing this appeal. We do not find it necessary to choose either the abuse of discretion or *de novo* standard of review. Under either standard, the order of the District Court should be affirmed. There is no abuse of discretion and no error of law.

Accordingly, the order of the District Court will be affirmed.