

# **Rheumatoid Arthritis and Social Security Disability**

## **ALJ Hearing Case Study**

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Claimant profile: 47 year old female

Past Work: my client worked for 13 years as a server, cashier and assistant manager at a restaurant, resigning in November, 2008 because of her medical condition. From 2006 through 2008, she worked a second job as a cashier at a grocery store. My client made one work attempt following her “onset date” - she tried to work as a day care attendant but could not handle the physical demands of that job (lifting babies, etc.)

Education: high school graduate, plus 1 ½ years of college. She also obtained a CNA (certified nursing assistant) certificate.

Claim background: my client applied for benefits in December, 2009, alleging an onset date in December, 2008. The hearing in this case was held in December, 2010.

Medical and vocational background: my client asserted that she was disabled and unable to work because of rheumatoid arthritis, depression, and severe side effects of medications. She was diagnosed with rheumatoid (inflammatory) arthritis in 2004 and experienced painful swelling in her hands and feet. In 2007, she injured her right shoulder while lifting a box - and eventually underwent arthroscopic surgery on that shoulder. By the end of 2008, she was unable to continue working because of constant swelling in her hands and feet, unresolved pain in her shoulder, and side effects of medication (Methotrexate and Plaquinil) that included breathing problems, fatigue and a frequent need to urinate. My client also experienced symptoms of depression - arising from her inability to work or contribute to the household income and a 50 lb. weight gain. My client and her husband are raising 5 children and their loss of income has resulted in significant debt and a pending foreclosure.

My strategy: in reviewing the file: I felt that there were both positives and negatives. Working our favor was my client’s long and productive work history. During her last two years of work, my client held down two jobs. I generally find that Social Security judges assign a lot of credibility to claimants who have a solid work history. I also was pleased to see that my client had been consistent in seeking medical treatment despite the financial hardship involved. There was some gaps (resulting from temporary lapses in insurance coverage) but in general my client had been consistent in seeking treatment. Further, the observations from the treating physicians was fairly consistent. There was no suggestion of malingering or symptom exaggeration - although there was little in the way of diagnostic testing for the rheumatoid arthritis. It seemed as if that diagnosis was made back in 2004 and treating doctors had accepted it thereafter.

The primary concern I had was with the absence of clear diagnostic test results. Rheumatoid arthritis can be detected in blood levels as well as by x-rays and the tests results in this regard

were not conclusive. I do not doubt that my client was experiencing pain, swelling and depression - my concern was that she might have been misdiagnosed back in 2004 - her symptoms seemed almost like fibromyalgia as opposed to inflammatory arthritis. I suspected (correctly as it turns out) that the medical expert called by the judge to testify in this case would not help us with regard to the claimed medical diagnosis of rheumatoid arthritis.

Overall, however, I felt positive about this case. I was very familiar with the judge assigned to this case and my experience with him has been good and he tends to give claimants the benefit of the doubt. There was also a psychological consultative evaluation that identified a high level of depression, while finding the claimant very credible.

I decided to focus on the symptoms as opposed to the diagnosis and argue that the combination of experienced symptoms left my hardworking client unable to reliably perform either her past work or any other job.

Hearing report: this hearing was held in Athens, Georgia. The judge appeared in person along with a vocational witness. The medical expert was not present in the hearing - he appeared by video. When we started the hearing, the vocational witness had not yet returned from lunch - but the judge wanted to get started. The vocational witness arrived about 10 minutes late and received a withering look from the judge for his tardiness.

The judge opened the hearing by asking some preliminary questions, then he turned the direct examination over to me. Normally I would start my direct examination with my client's work background but I held off on that because the vocational witness was late arriving back from lunch. I went right into the arthritis complaints - I had my client testify about her problems back in 2004 when her condition was diagnosed and I had her describe in detail where she experienced pain, the effects of medication and the effect of her shoulder injury and subsequent poor results with treatment.

I made sure to emphasize that my client continued working and even added a part time job while her health was declining. By this time the vocational witness had arrived and I concluded my direct examination by going over past work, including her unsuccessful work attempt at a day care facility.

The judge then turned to the medical expert. This was the first time I had seen this medical expert - he was an orthopedist who had carefully reviewed the medical record. As I expected, the medical expert identified my client's complaints but noted that the record was short on diagnostic studies. This doctor suggested that my client had been misdiagnosed and that the few test results in the file suggested minimal impairment.

I had an opportunity to cross examine the doctor and I asked him if there was any suggestion of malingering ("no") or any suggestion that my client was not experiencing pain as testified ("no"). I also asked him if his conclusions contemplated the mental health impairments set out in the consultative psychological evaluation and he responded that he was not qualified to evaluate mental health problems.

The judge then turned to the vocational witness and asked him to describe the claimant's past work, all of which was light or medium level work (none of it was "sedentary" or sit-down).

The judge then asked a hypothetical question that tracked the medical expert's conclusions - i.e. mild limitations. The VE testified that the claimant could return to some of her past work and some other jobs.

The judge then added to the hypothetical a severe mental health impairment - severe depression, including crying spells and likely decompensation in a work setting. The vocational expert testified that this mental health limitation would make it impossible for the claimant to perform any type of work reliably.

Conclusions: the judge issued a fully favorable decision in this case. In his decision he noted that he was giving the medical expert's testimony minimal weight because it did not consider the combined effect of all of the claimant's impairments. He also noted that he found the claimant to be credible in her assertions of pain and other symptoms.

This is a case that would not have been approved by several of the judges that hold hearings in the Atlanta area. Some judges will never approve a case if the medical expert is not fully supportive. Fortunately, our judge factored in the claimant's credibility and his belief that she was truly experiencing the limitations testified to in the hearing.