FILED
United States Court of Appeals
Tenth Circuit

April 7, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

ESTER C. ONEAL,

Plaintiff - Appellant,

v.

COMMISSIONER, SSA,

Defendant - Appellee.

No. 22-1102
(D.C. No. 1:20-CV-03179-MEH)
(D. Colo.)

ORDER AND JUDGMENT*

Before **MORITZ**, **EID**, and **ROSSMAN**, Circuit Judges.

Ester Oneal appeals from the district court's order affirming the Social Security Commissioner's denial of her application for disability insurance benefits under the Social Security Act. Exercising jurisdiction under 28 U.S.C. § 1291 and 42 U.S.C. § 405(g), we affirm.

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* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

BACKGROUND

Ms. Oneal was born in 1962. Before she applied for benefits, she worked as a Certified Nursing Assistant, as a post office clerk, and in different roles for a hospital including valet, courtesy attendant, and cashier. In July 2017, she applied for Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) benefits alleging disability since March 13, 2016, when she suffered an injury to her left ankle and shoulder after a workplace fall. After she received care from her employer's workers' compensation provider, she returned to work in February 2017 but ceased work in June 2017.

The Commissioner initially denied Ms. Oneal's claims in September and on reconsideration in December 2017. Ms. Oneal filed a request for a hearing before an administrative law judge (ALJ), which the ALJ held in April 2019. At the hearing, the ALJ took testimony from Ms. Oneal and a vocational expert. The ALJ also reviewed Ms. Oneal's medical records from the date of her fall to the hearing date. The ALJ issued a written decision following the five-step sequential evaluation process the Social Security Administration uses to review disability claims.[1] Based

[1] We have described the five-step process as follows:

> Social Security Regulations mandate that the ALJ who determines a claim for benefits under the Social Security Act follow a five-step evaluation: (1) whether the claimant is currently working; (2) whether the claimant has a severe impairment; (3) whether the claimant's impairment meets an impairment listed in appendix 1 of the relevant regulation; (4) whether the impairment precludes the claimant from doing his past relevant work; and

on the testimony and medical records (consisting of 14 exhibits totaling over 300 pages), the ALJ concluded Ms. Oneal had

> the residual functional capacity [RFC] to perform light work . . . except she can lift and carry twenty pounds occasionally and ten pounds frequently. She can sit for six hours in an eight-hour day and stand and/or walk for six hours in an eight-hour day. She can occasionally climb ramps and stairs, but never ladders, ropes or scaffolds. She can occasionally balance, stoop, crouch, kneel, and crawl. She can occasionally reach overhead bilaterally. She can never work at unprotected heights or around moving and/or dangerous machinery.

Aplt. App. vol. 1 at 59. Based on this RFC determination and the vocational expert's testimony, the ALJ determined, at step four, Ms. Oneal could still perform her past relevant work as a postal clerk, valet, or cashier, so she was not "disabled" under the Social Security Act and not entitled to SSI or SSDI benefits.

After the Social Security Appeals Council denied Ms. Oneal's request for review and affirmed the denial of benefits, she filed an action under 42 U.S.C. § 405(g), seeking review of the ALJ's decision in the United States District Court for the District of Colorado. The parties consented to jurisdiction by a magistrate judge, who upheld the adverse benefits determination because it was supported by substantial evidence. This appeal followed.

> (5) whether the impairment precludes the claimant from doing any work. If at any point in the process the [Commissioner] finds that a person is disabled or not disabled, the review ends.

Trimiar v. Sullivan, 966 F.2d 1326, 1329 (10th Cir. 1992) (citation, footnote, and internal quotation marks omitted).

DISCUSSION

In an appeal of a social security benefits determination, "we engage in de novo review of the district court's ruling." *Smith v. Colvin*, 821 F.3d 1264, 1266 (10th Cir. 2016). "In conducting de novo review, we must determine whether the administrative law judge correctly applied legal standards and made findings supported by substantial evidence." *Id.* "[T]he threshold for such evidentiary sufficiency is not high." *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019). "We do not reweigh the evidence or retry the case, but we meticulously examine the record as a whole, including anything that may undercut or detract from the ALJ's findings in order to determine if the substantiality test has been met." *Flaherty v. Astrue*, 515 F.3d 1067, 1070 (10th Cir. 2007) (internal quotation marks omitted). "A finding of no substantial evidence will be found only where there is a conspicuous absence of credible choices or no contrary medical evidence." *Trimiar v. Sullivan*, 966 F.2d 1326, 1329 (10th Cir. 1992) (internal quotation marks omitted).

Ms. Oneal raises two primary arguments on appeal. First, she argues substantial evidence controverts the ALJ's RFC determination. Aplt. Opening Br. at 25; *see id.* at 22-28. Ms. Oneal maintains the ALJ improperly "cherry picked" medical records to support his decision while ignoring those records that did not. Second, she argues the hypotheticals the ALJ posed to the vocational expert did not adequately account for the effects of her subjective conditions, including her complaints of pain. *See id.* at 28–30. We consider and reject both arguments.

1. The ALJ appropriately considered all of the evidence.

"The ALJ is not required to discuss every piece of evidence," and "we will generally find the ALJ's decision adequate if it discusses the uncontroverted evidence the ALJ chooses not to rely upon and any significantly probative evidence." *Wall v. Astrue*, 561 F.3d 1048, 1067 (10th Cir. 2009) (internal quotation marks omitted). Here, the ALJ stated he arrived at the RFC determination after considering "the entire record," including "all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence" and "medical opinion(s) and prior administrative medical finding(s)." Aplt. App. vol. 1 at 59.

The ALJ considered and discussed Ms. Oneal's entire course of treatment, which was conservative, and in which only two physicians—state agency physicians who reviewed her medical record in late 2017—assessed any long-term work limitations. And in his RFC determination, the ALJ nonetheless found Ms. Oneal to need more work restrictions than either of those physicians. Ms. Oneal presents various criticisms of the ALJ's conclusion and points to different portions of the record that may have supported a more restrictive RFC. We will not disturb the ALJ's findings based merely on the possibility that the ALJ could have arrived at a different conclusion. *See Flaherty*, 515 F.3d at 1070 (noting that "[w]e do not reweigh the evidence" on review of social security benefits determinations); *see also Buxton v. Halter*, 246 F.3d 762, 772 (6th Cir. 2001) ("The findings of the Commissioner are not subject to reversal merely because there exists in the record

substantial evidence to support a different conclusion."). Because substantial evidence supports the ALJ's RFC determination, the district court correctly declined to disturb it.

2. The ALJ posed appropriate hypotheticals to the vocational expert.

Ms. Oneal argues the ALJ's hypotheticals to the vocational expert did not adequately account for the effects of her conditions. She argues the hypotheticals "did not . . . include any limitations reflecting the impingement of both shoulders, [carpal tunnel syndrome] of the right arm, [osteoarthritis], tendinitis and tendinosis of both ankles, peripheral neuropathy, or the effects of narcotic medications." Aplt. Opening Br. at 30. But the ALJ's hypotheticals were based on his RFC determination, and because we have concluded that determination "enjoys substantial evidentiary support," the hypotheticals to the vocational expert "adequately reflected the impairments and limitations that were borne out by the evidentiary record." *Newbold v. Colvin*, 718 F.3d 1257, 1268 (10th Cir. 2013) (internal quotation marks and brackets omitted). And "[t]he ALJ was not required to accept the answer to a hypothetical question that included limitations claimed by plaintiff but not accepted by the ALJ as supported by the record." *Bean v. Chater*, 77 F.3d 1210, 1214 (10th Cir. 1995).[2]

[2] Ms. Oneal also notes that she filed a subsequent, successful claim for social security benefits after the appeals council denied this one. This decision has no bearing on the validity of that later determination.

In a related argument, Ms. Oneal contends the vocational expert failed to identify and resolve a conflict between his testimony and the job descriptions in the Dictionary of Occupational Titles (DOT). Specifically, the vocational expert retitled one of her past jobs—courtesy attendant—as "greeter," Aplt. Opening Br. at 30, and erroneously cited a non-existent entry in the DOT for that position. To be sure, before relying on the testimony of a vocational expert, an ALJ must "[i]dentify and obtain a reasonable explanation for any conflicts between occupational evidence provided by [vocational experts] and information in the [DOT]." SSR 00-4P, 2000 WL 1898704 at *1 (Dec. 4, 2000). But here, the ALJ did not find Ms. Oneal could perform her past work as a courtesy attendant or greeter. He found she could perform the jobs of postal clerk, valet, and cashier. Any conflict between the vocational expert's testimony regarding the "greeter" job and the DOT is harmless and not a basis for reversal. *See Shinseki v. Sanders*, 556 U.S. 396, 409 (2009) ("[T]he burden of showing that an error is harmful normally falls upon the party attacking the agency's determination.").

CONCLUSION

We affirm the judgment of the district court.

Entered for the Court

Veronica S. Rossman
Circuit Judge