NONPRECEDENTIAL DISPOSITION
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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued May 18, 2020
Decided June 26, 2020

Before

DIANE P. WOOD, *Chief Judge*

AMY C. BARRETT, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

No. 19-3196

JOHN J. BRUNO, IV,
Plaintiff-Appellant,

v.

ANDREW M. SAUL, Commissioner of Social Security,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Indiana, Hammond Division.

No. 2:18-cv-223

Joseph S. Van Bokkelen,
Judge.

O R D E R

John Bruno is a young man with mental and physical impairments including obesity, Asperger's Syndrome, bipolar disorder, borderline intellectual functioning, and impulse control disorder. The Commissioner of Social Security denied his application for disability benefits, a decision he now challenges. He argues that the administrative law judge failed to sufficiently account for his difficulties in concentration, persistence, and pace; overemphasized his daily activities; and wrongly credited the vocational expert's unreliable testimony. We disagree and affirm.

I

John Bruno applied for disability benefits a few weeks after his eighteenth birthday. He suffers from several mental impairments, including Asperger's Syndrome, bipolar disorder, borderline intellectual functioning, and impulse control disorder. He also has some physical conditions, like obesity, diabetes, hypothyroidism, hypertension, and dyslipidemia (an abnormal amount of lipids in the blood). After the Commissioner denied his claim, Bruno requested and received a hearing with an administrative law judge.

A

Bruno graduated from high school with the assistance of special education classes, though he struggled with his math coursework. He lives with his parents and spends his free time helping with housework and playing videogames. He requires many reminders from his mother—to clean his room, take his pills, and go to work—and she manages his many medications, which give him the side effects of feeling tired and thirsty. He has friends but mainly socializes online.

After holding a few part-time restaurant jobs with limited success, Bruno landed a job at the bakery where his father works. His father got him the position because he was having trouble in previous employment due to communication issues. For example, if a supervisor would be rude to him, Bruno would both find it difficult to express himself and get very upset.

Bruno's work at the bakery is part-time on a temp-to-hire basis, and the hours vary because he is called in as needed. He usually works eight-hour shifts two or three days a week. His title is "packer," but he is assigned whatever task needs doing, like shoveling dough, packing cookies, or cleaning. Bruno finds the job "really hard" because it is "really physical." He used to work twelve-hour shifts, but it was too much for him. The work required him to stand next to a hot oven and continuously shovel large amounts of cookie dough or oatmeal into it, and it made him sore. As a result, Bruno got a doctor's note recommending his shift be limited to eight hours.

Bruno's father works from his own office at the bakery, but he checks in on his son when he can, about three to four times a shift. Bruno's cousin works at the bakery too and likewise drops in on him once or twice a day. The three of them eat lunch together, and Bruno spends most of his breaks with his family members. Sometimes he brings up issues he is having, and his father and cousin work to calm him down. That

occasionally prompts his father to go speak to his supervisor. Bruno's father provides emotional support, soothing him when the bakery once sent him home in tears. And when his father is not around and work troubles bring Bruno distress, his cousin consoles him.

B

After taking in the testimony about Bruno's life and abilities, the ALJ heard from a vocational expert, or VE. The judge asked him to assume a hypothetical person with Bruno's age and education and no past work experience who is limited to simple tasks and decisions and has only brief and superficial interaction with supervisors and coworkers. The expert responded that, at a medium exertional level, such person could be a dishwasher (541,000 available jobs), cleaner (320,500 available jobs), or an "order picker" (36,600 available jobs).

Bruno's lawyer cross-examined the VE on his methodology. The VE explained that he started with the Department of Labor's Occupational Employment Survey, which organizes its data by standard occupational categories. Within each of those categories, the VE continued, we know which jobs from the Dictionary of Occupational Titles is included in the category and the skill and exertional level of those DOT jobs. Pushed for more, the VE said that from there he used what he called the "SkillTRAN approach," which "uses also the other part of the OES survey which provides employment numbers by industry." He provided a couple of examples. In the case of cleaners, the VE described how there are nine cleaner jobs within a standard occupational category and those nine belong to different industries, like hospitality and production. Knowing that hospitality cleaners are at a light exertional level and production cleaners are at a medium level, you can "simply sum those numbers in the various industr[ies]."

Bruno's attorney objected to the VE's testimony "on the basis that a proper and rational methodology has not been explained." The ALJ, finding that the expert adequately explained his calculations, overruled the objection.

C

The ALJ followed the familiar five-step evaluation process to conclude that Bruno is not disabled. She found him to have the severe impairments of obesity, Asperger's Syndrome, bipolar disorder, borderline intellectual functioning, and impulse control disorder but determined that none met the requirements to establish a

presumptive disability. In analyzing the mental impairments, the ALJ found that Bruno had "moderate" limitations with regard to concentrating, persisting, or maintaining pace. Bruno's residual functional capacity, or RFC, was defined as the ability to do "medium work . . . except [he] can understand, remember and carryout simple routine tasks; use judgment limited to simple work related decisions; and have brief and superficial interaction with supervisors and coworkers." Based on the VE's testimony about jobs fitting that definition, the ALJ concluded that the national economy holds jobs in significant numbers that he can perform and so he is not disabled.

Bruno unsuccessfully requested review from the Appeals Council before bringing his case to the courthouse, where the district court found no error and affirmed the ALJ's decision. He now appeals.

II

Because the Appeals Council declined review, we take the ALJ's decision as the Commissioner's final determination. See *Jeske v. Saul*, 955 F.3d 583, 587 n.2 (7th Cir. 2020). That decision will stand unless it contains a legal error or rests on less than substantial evidence. See *Martin v. Saul*, 950 F.3d 369, 373 (7th Cir. 2020). Substantial evidence is not a high hurdle to clear—it means only "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019). The ALJ must also build an "accurate and logical bridge" from the evidence to the conclusion. See *Jeske*, 955 F.3d at 587.

A

Bruno argues that the ALJ failed to sufficiently account for his limitations in concentration, persistence, and pace, often referred to as CPP limitations. CPP "refers to the abilities to focus attention on work activities and to stay on-task at a sustained rate." 20 C.F.R. § Pt. 404, Subpt. P, App. 1, Listing 12.00E(3). An ALJ must incorporate a claimant's limitations, including moderate CPP limitations, when crafting the RFC and hypothetical for the VE. See *Crump v. Saul*, 932 F.3d 567, 570 (7th Cir. 2019).

The ALJ determined that Bruno has moderate CPP limitations. To accommodate them, the RFC finding and hypothetical limited him to "simple routine tasks," using "judgment limited to simple work related decisions," and having "brief and superficial interaction" with coworkers. Bruno is right to point out that we have frowned at the notion that restriction to simple tasks adequately accommodates moderate CPP limitations. See *id*.

Crump teaches that a restriction to simple tasks is "generally" not enough to account for moderate CPP limitations. *Id*. ("[W]e have likewise underscored that the ALJ generally may not rely merely on catch-all terms like 'simple, repetitive tasks' because there is no basis to conclude that they account for problems of concentration, persistence or pace." (quotation marks omitted)). The concern is that the restriction is used as a one-size-fits-all solution without delving into an individualized assessment of the claimant's specific symptoms. See *Martin*, 950 F.3d at 373–74. But here we do not have a general assumption that people who have moderate difficulties focusing and keeping up will be able to do so when the task is easy—we have a specific finding that Bruno struggles to concentrate only when the assignment at hand is a complex one.

The ALJ explained that she limited Bruno to simple tasks specifically because of "evidence of decreased concentration, when handling more complex tasks, as evidenced by past poor performance on long tests and testimony that he was unable to keep a job due to being unable to pass an entrance test." The ALJ also noted that Bruno's testimony of math limitations and his diagnosis of borderline intellectual functioning "appeared to primarily relate to his difficulties with more complex tasks as noted by his school," but there was "no evidence that he was unable to maintain focus at his present job" in the bakery.

The ALJ found Bruno to have moderate CPP limitations, a conclusion consistent with the evidence, and accounted for them by restricting him to simple tasks based on a specific finding that his CPP struggles arise during complex undertakings. That approach contains no reversible error.

B

Bruno next contends that the ALJ overemphasized his daily activities, especially his part-time employment at the bakery. This goes to the ALJ's credibility determination, which we will not disturb unless it is patently wrong. See *Pepper v. Colvin*, 712 F.3d 351, 367 (7th Cir. 2013). Bruno specifically faults the ALJ for making too much of his bakery work without acknowledging that it was made possible only by his father's "regular coaching."

But the record does not compel the conclusion that Bruno was able to perform the work only because his father was there to encourage and care for him. The evidence was that Bruno's father provided emotional support by checking in on him and sometimes speaking to his supervisor. The ALJ was not required to conclude that he could not do his job without that encouragement. This is especially so because, as the

ALJ noted, Bruno complained only about the job's physical demands, a complaint that led her to restrict him to medium exertion-level work. It was not patently wrong for the ALJ to take from Bruno's part-time bakery work, along with the other record evidence, that he had the ability to work full-time. Nor are any of the ALJ's other findings regarding Bruno's subjective symptoms, including those about his other daily activities, patently wrong.

C

Bruno's last challenge is to the VE's methodology. "[A]ny method that the agency uses to estimate job numbers must be supported with evidence sufficient to provide some modicum of confidence in its reliability." *Chavez v. Berryhill*, 895 F.3d 962, 969 (7th Cir. 2018). In other words, the job estimate must be supported by substantial evidence. See *id*. at 967–68.

VEs are expected to say what jobs are available and in what numbers in the national economy. In carrying out that role, many of them refer to job categories as listed in the Dictionary of Occupational Titles, a publication that regulations allow the Social Security Administration to consider. See *id*. at 965. We explained in *Chavez* that the problem is that VEs primarily rely on data from the Department of Labor's Occupational Employment Survey for the estimates of the number of jobs available, and the OES provides its statistics not by DOT classifications but by its own categorization system, so-called "standard occupational classification." See *id*. at 965–66. The question is how to translate the OES data into job number estimates for the DOT jobs despite the classification mismatch. In *Chavez*, we found a VE's testimony unreliable because in response to questioning, the expert gave almost no reason at all for choosing one method for bridging this gap over another and seemed to lack confidence in both. See *id*. at 970.

The VE here provided more. He testified that his estimate was based on what he called the "SkillTRAN approach," which uses not just the occupational category specific OES data but "also the other part of the OES survey which provides employment numbers by industry." He went on to give the example of cleaners and dishwashers, and explained how he looked at the OES data organized by standard occupational category but then also looked at the data sorted by industry to come up with the numbers he provided. Though the VE's description did not reveal the precise mechanics and statistical model involved, it nevertheless constitutes a "reasoned and principled explanation," at least by the low substantial evidence standard. *Id*.

* * *

For these reasons, we conclude that the ALJ supported her decision with substantial evidence and therefore AFFIRM.