NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted June 30, 2023*
Decided July 20, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 21-2563

EARL EQUITZ,
Plaintiff-Appellant,

v.

KILOLO KIJAKAZI, Acting Commissioner of Social Security,
Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Wisconsin.

No. 20-C-1072

William C. Griesbach,
Judge.

O R D E R

Earl Equitz challenges the denial of his application for Social Security benefits. The administrative law judge concluded that Equitz could perform his past work and therefore was not disabled. The district court upheld that determination. Because substantial evidence supports the ALJ's decision, we affirm.

---

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

Equitz applied for disability insurance benefits in early 2017. He asserted that he became disabled in December 2011, when his impairments, including hypertension and arthritis in his neck, back, knees and feet, caused him to stop working as a municipal truck driver. His insured status ended on December 31, 2017; therefore, he had to establish that he became disabled on or before that date.

After he left his job in 2011, Equitz's medical treatment was sporadic. He attended physical therapy in 2012 for knee pain and hand numbness that gradually improved. A physical examination in early 2015 showed normal range of motion in his back and normal neurological strength, sensation, and reflexes, but still he reportedly attended physical therapy every other month in 2015 for back pain. In mid-2016 he reported continued back and knee pain and difficulty walking long distances. His physical examination was normal, but his primary-care doctor diagnosed him with generalized osteoarthritis and told him to use naproxen as needed for joint pain. In early 2017, his doctor observed a mildly antalgic gait (a limp caused by pain) and recommended Tylenol and physical therapy, which Equitz stated he did not wish to continue. Later that year, Equitz complained of insomnia and chronic pain in his neck, back, and feet. His physical examination showed normal range of motion but a continued mild limp. His doctor diagnosed degenerative joint disease and sleep apnea, prescribed naproxen for pain, and referred him to physical therapy again. Equitz also had consistently high blood pressure but did not want to take hypertension medication.

Equitz had a consultative medical exam in April 2017. The doctor observed a slight curvature of Equitz's spine, full range of motion without deformity of his knees, and a slightly raised area on top of his left foot that did not affect Equitz's normal gait. The consultant suggested x-rays, but Equitz refused. When the Administration contacted Equitz about further testing, he again refused x-rays and said that he would try to obtain his own MRI. He also declined a psychological consultative exam.

Next, two state-agency physicians reviewed Equitz's application materials and medical records. Based on Equitz's description of his past work and the paucity of objective medical evidence, these reviewers opined that he could lift and carry 50 pounds occasionally and 20 pounds frequently, and that during an eight-hour workday, he could stand and walk for six hours and sit for six hours. (These parameters equate with the ability to do work at the medium exertional level, *see* 20 C.F.R. § 404.1567(c)).

An ALJ held a hearing on Equitz's application in February 2019. Equitz, represented by counsel, testified about his work history and current physical abilities. He testified that he was 63 years old and lived alone; his neighbors helped him with

outdoor chores, but otherwise he did not have assistance completing daily activities. He also testified that his pain caused him to lie down during most of the day since he had left his job. He explained that he received a pension and had "limited" health insurance. He also stated that, when he stopped working, he was able to lift about 50 pounds but had trouble getting in and out of vehicles. The ALJ asked Equitz if he ever had "any procedures" on his back, such as surgery or injections. Equitz stated that he had seen a chiropractor and attended physical therapy, but his medical providers had not "been able to do much." The ALJ inquired whether Equitz had been able to discuss everything he wanted the ALJ to know, and Equitz's counsel asked a similar question. Equitz added that he had breathing problems and trouble staying awake when he left work.

Applying the familiar five-step analysis, 20 C.F.R. § 404.1520, the ALJ found that Equitz was not disabled between December 2011 and December 2017. The ALJ determined that Equitz had not engaged in substantial gainful activity (step one) and had the severe impairments of degenerative disc disease, degenerative joint disease, and hypertension (step two). But none met or equaled the criteria in any regulatory listing for a presumptively disabling impairment (step three). The ALJ found that Equitz had the residual functional capacity (RFC) to perform medium work, and could engage in frequent balancing but no more than occasional climbing of ladders, ropes, scaffolds, ramps, or stairs, and only occasional stooping, kneeling, and crawling (step four). The ALJ determined the RFC based in part on his finding under SSR 16–3p that Equitiz's impairments could reasonably be expected to cause his subjective symptoms, but that the intensity, persistence, or limiting effects he claimed were inconsistent with the record, which lacked imaging of the affected areas but contained evidence of normal physical exams and medication refusal. The RFC would allow Equitz to perform his past relevant work as a truck driver, and so he was not disabled under the regulations. Thus, the ALJ did not proceed to the fifth step.

The Appeals Council denied Equitz's request for review. The ALJ's decision therefore became the final decision of the Acting Commissioner. Equitz then sought judicial review, *see* 42 U.S.C. § 405(g), and the district court upheld the decision.

Now, Equitz contends that the ALJ improperly discounted his subjective complaints of pain and based the adverse decision on an incomplete record. We will vacate the denial of benefits only if the ALJ applied incorrect legal standards or relied on less than substantial evidence. *Jeske v. Saul*, 955 F.3d 583, 587 (7th Cir. 2020); 42 U.S.C. § 405(g). Substantial evidence 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) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)).

Equitz argues that, before making a credibility determination, the ALJ should have inquired into the absence of records of imaging tests or more aggressive treatment. We will uphold an ALJ's weighing of a claimant's subjective symptoms unless it "is 'patently wrong.'" *Wilder v. Kijakazi*, 22 F.4th 644, 653 (7th Cir. 2022) (quoting *Stepp v. Colvin*, 795 F.3d 711, 720 (7th Cir. 2015)). The ALJ did not violate that standard here. Equitz now explains that he refused x-rays and medication because he is wary of radiation and potential side effects. But he has not shown these to be legitimate fears nor established that they excuse him from submitting objective medical evidence. In any case, the ALJ and Equitz's representative asked about his treatment history and inquired if he wanted to explain anything else; he did not mention his aversions or provide other insight. *See Summers v. Berryhill*, 864 F.3d 523, 527 (7th Cir. 2017).

Equitz further asserts that the ALJ erred by basing his decision on reports from the state-agency doctors who never examined him. Regardless of the source, the ALJ will evaluate medical opinions in light of factors such as the treatment relationship, the supportability of the opinions, and their consistency with the entire record. *See* 20 C.F.R. § 404.1527(c). Further, the burden of proof is on the claimant. 20 C.F.R. § 404.1512(a). Equitz did not offer medical evidence or opinions to contradict the reviewing physicians' assessments of his limitations, and he declined the consultative physician's recommendation of x-ray testing and forwent a psychological evaluation. With little to contradict the opinions in the record, the ALJ did not err in giving them great weight.

Next, Equitz contends that the ALJ did not fully develop the administrative record as applied, *see Biestek*, 139 S. Ct. at 1158, and that some medical records are missing. But when a claimant has counsel at the agency level, he is presumed to have put forth his best case. *See Summers*, 864 F.3d at 527. Equitz does not give us any reason to disregard this presumption. Before the hearing, Equitz's counsel submitted medical records and a brief detailing a theory of disability. At the hearing, counsel developed testimony from Equitz and a vocational expert, asked the ALJ to hold the record open for additional evidence, and then submitted supplemental records. Equitz does not identify what relevant medical evidence was missing from the record before the ALJ.

Since his hearing, Equitz has submitted more recent medical records to the Appeals Council, the district court, and this court, asserting that they warrant reversal of the ALJ's decision. To rely on this evidence, Equitz must establish, among other things, that it is "new" (but relates to his condition on or before the ALJ's decision—

here, April 19, 2019) and "material." 42 U.S.C. § 405(g); 20 C.F.R. 404.970(b); *see also Stepp*, 795 F.3d at 721. And the evidence must bear on whether he was disabled *before* his date last insured— here, in December 2017. *See* 42 U.S.C. § 423(a)(1)(A); 20 C.F.R. § 404.131. Equitz's proffered records relate to an accident in November 2019, and they include assessments about his abilities that post-date the hearing. The records are irrelevant to his condition and abilities before his date last insured or the ALJ's decision and therefore do not require remand for evaluation by the Administration.

Finally, Equitz contends that his counsel at the administrative hearing was ineffective. Although he had a statutory right to representation at the hearing, *see* 42 U.S.C. § 406, there is no constitutional right to counsel in Social Security proceedings. *See Smith v. Sec'y. of Health, Educ. & Welfare*, 587 F.2d 857, 860 (7th Cir. 1978). Therefore, counsel's allegedly deficient performance at the agency proceedings is not a basis for vacating the decision.

The remaining matters that Equitz raises in his briefs do not warrant discussion because they are unrelated to his claim for Social Security benefits.

AFFIRMED