NONPRECEDENTIAL DISPOSITION
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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued April 25, 2023
Decided August 1, 2023

Before

KENNETH F. RIPPLE, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-2379

ANDREW CASE,
Plaintiff-Appellant,

v.

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

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

No. 1:21-cv-00051-SLC

Susan Collins,
Magistrate Judge.

O R D E R

Andrew Case, a former construction worker, has physical impairments that affect his back, left knee, and left shoulder. An administrative law judge (ALJ) denied his application for Social Security disability benefits after concluding that, despite Case's limitations and inability to return to construction work, he could perform other jobs that exist in significant numbers in the national economy, and thus was not disabled. This conclusion was based on the testimony of a vocational expert who provided job-number estimates. Adopting the vocational expert's estimates over Case's

objection, the ALJ determined that the expert's testimony was reliable and consistent with jobs found in the Dictionary of Occupational Titles (DOT). The district court, proceeding through a magistrate judge with the parties' consent under 28 U.S.C. § 636(c), upheld the ALJ's decision, and Case appealed. Because substantial evidence supports the ALJ's decision that a significant number of jobs exist in the national economy that someone with Case's limitations could perform, we affirm.

Background

Case applied for disability insurance benefits and supplemental security income in 2018. After the agency denied his claim initially and upon reconsideration, Case received a hearing before an ALJ in 2020.

At the hearing, Case testified that he had previously worked in construction, welding, and housing manufacturing, but that he could not return to those jobs because of numerous impairments. He presented evidence of his physical limitations, stemming largely from degenerative disc disease. He testified that he experienced problems with his back, left shoulder, and left knee, along with other conditions such as asthma and hypoglycemia.

Following Case's testimony, a vocational expert testified about jobs which are prevalent in the national economy that a hypothetical claimant could perform in light of various restrictions. The expert testified about the work available to someone with Case's age, experience, and physical limitations. The ALJ posed hypothetical examples of a worker's limitations. The vocational expert testified that some combinations of these limitations were work-preclusive, while others would allow the person to perform jobs that exist in the national economy in significant quantities. The vocational expert explained that this hypothetical individual could perform such jobs as retail marker, sales attendant, and bakery conveyor worker. He further testified that, in the national economy, there were 271,000 retail marker jobs, 210,000 sales attendant jobs, and 18,000 bakery conveyor worker jobs.

On cross examination, Case's counsel probed the vocational expert's estimates and asked the witness to explain his methodology. The vocational expert responded that he used the "SkillTRAN numbers." Counsel then questioned whether the expert agreed that the SkillTRAN software operated by starting with a Standard Occupational

Code (SOC) and then allocating job estimates to a DOT title.[1] The vocational expert affirmed. When pressed for more detail, however, regarding how the software functioned, the vocational expert was unable to describe either the allocation factors or mathematical formulas that SkillTRAN used to arrive at the DOT numbers. In response to further questioning by the ALJ, the expert testified that he identified three job classifications appropriate for the hypothetical claimant the ALJ inquired about and relied on SkillTRAN software to estimate the availability of the jobs in the national economy based on government survey data. The expert described SkillTRAN's role in his analysis in very broad strokes, explaining why the results were reliable more than how the software generated those results.

The expert further explained that he relied on his four decades of research and job counseling experience, as well as his personal observations. He testified that the estimates the software produced seemed reasonable in light of his four decades' experience observing these job categories.

The ALJ issued her opinion in August 2020. Following the five-step process explained in 20 C.F.R. § 404.1520(a)(4), the ALJ concluded that Case is not disabled. At step one, the ALJ found that Case had not engaged in substantial gainful activity since his alleged onset date of May 1, 2015. At steps two, the ALJ acknowledged Case's physical impairments and chronic fatigue syndrome. At step three, the ALJ determined that Case's severe impairments did not meet or equal the severity of the presumptively disabling impairments listed at 20 C.F.R. Pt. 404, Subpart. P, Appendix 1.

Moving to step four, the ALJ had to first establish Case's residual functional capacity, which is the most that he could do given his limitations, and then to evaluate

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[1] Vocational experts frequently rely on the U.S. Department of Labor's DOT job classification system because the Social Security Administration regulations authorize the agency to take administrative notice of reliable job information from the DOT. *See* 20 C.F.R. § 404.1566(d)(1). The DOT divides jobs into groups and describes particular job titles within each group. The DOT, however, does not provide estimates of the number of positions that exist in the national economy for each job title. Accordingly, vocational experts will rely on the United States Bureau of Labor Statistics' Occupational Employment Statistics (OES), which contains annual employment estimates for 800 occupations. *Fetting v. Kijakazi*, 62 F.4th 332, 337 (7th Cir. 2023). OES, however, uses a different classification system from DOT called Standard Occupational Codes (SOC). *See Chavez v. Berryhill*, 895 F.3d 962, 965–66 (7th Cir. 2018). SOC codes sort jobs into broad occupational categories which encompass multiple DOT job titles. *Ruenger v. Kijakazi*, 23 F.4th 760, 762 (7th Cir. 2022). Because of this matching problem, vocational experts, when calculating job number estimates, must convert the information in the OES from the SOC system to the DOT system. *Fetting*, 62 F.4th at 337.

whether Case could perform any relevant past work. The ALJ found Case had the residual functional capacity to perform light work with various restrictions concluding that "the claimant can occasionally climb ramps and stairs, he can never climb ladders, ropes, or scaffolds, he can occasionally balance, stoop and crouch, he can never kneel or crawl, he can never reach overhead with the bilateral upper extremities, and he should avoid concentrated exposure to extreme heat, extreme cold, wetness, humidity, vibration, fumes, odors, dusts, gases, poorly ventilated areas, and hazards such as unprotected heights and unguarded moving machinery."

Concluding Case could not perform his past work, the ALJ proceeded to step five, at which the Commissioner bears the burden of showing that there is work that exists in significant numbers in the national economy. Relying on the vocational expert's testimony at the final step, the ALJ concluded that, in spite of his limitations, Case could perform certain jobs in the economy—including retail marker, sales attendant, and bakery conveyor worker—meaning that Case was not disabled.

After the Appeals Council declined review, Case appealed to the district court. He challenged the residual functional capacity determination on the ground that it did not account for his need for frequent breaks and time off, and he argued that the vocational expert's testimony was insufficient to support the ALJ's step five conclusion. The district court concluded that substantial evidence supported both the residual functional capacity and the step five determination concerning jobs in the national economy Case could perform.

Discussion

On appeal, Case solely argues that the vocational expert did not establish that his estimates of job prevalence were the product of a reliable methodology. Because of this deficit, Case contends, the Acting Commissioner did not meet her burden at step five of showing that sufficient jobs exist in the national economy that Case can perform with his residual functional capacity. *See* 42 U.S.C. § 423(d)(2); 20 CFR § 404.1560(c)(1); *Brace v. Saul*, 970 F.3d 818, 820 (7th Cir. 2020). The agency defends the methodology, arguing that the vocational expert's testimony provided a sufficiently reliable foundation for the ALJ's decision.

This court reviews the ALJ's decision under the substantial evidence standard, which is not a high threshold. 42 U.S.C. § 405(g); *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019). It requires only enough "relevant evidence as a reasonable mind might accept as

adequate to support a conclusion." *Biestek*, 139 S. Ct. at 1154. With respect to a vocational expert's testimony about job prevalence, "the substantial evidence standard requires the ALJ to ensure that the approximation is the product of a reliable method." *Chavez v. Berryhill*, 895 F.3d 962, 968 (7th Cir. 2018). Thus, the expert's explanation of the methodology that he used to produce his estimate must be "reasoned and principled" enough to instill some confidence that the estimate was not "conjured out of whole cloth." *Ruenger*, 23 F.4th at 763 (quoting *Donahue v. Barnhart*, 279 F.3d 441, 446 (7th Cir. 2002)).

Case primarily takes issue with the vocational expert's explanation of SkillTRAN. As we have explained, there is a mismatch between the DOT codes and Occupational Employment Survey (OES) data because they use different classification schemes. *See Chavez*, 895 F.3d at 965–66. Accordingly, vocational experts must employ some analytical method to match DOT job categories with OES data on job prevalence. But Case contends that the reliability of the expert's method is unknown because he did not testify clearly about *how* the SkillTRAN software operates to reconcile the two classification systems.

The inability of the vocational expert to precisely explain the software's algorithms does not render his explanation unreliable. *See Fetting*, 62 F.4th at 339 (vocational expert not required to a use a market study, computer program, or publication to make his calculations); *Bruno v. Saul*, 817 F. App'x 238, 243 (7th Cir. 2020) (vocational expert's testimony sufficient, though description of SkillTRAN "did not reveal the precise mechanics and statistical model involved"); *Purdy v. Berryhill*, 887 F.3d 7, 16–17 (1st Cir. 2018) (vocational expert not required to "duplicat[e] the software analysis of the basic material"). At minimum, the vocational expert made clear that he uses the SkillTRAN approach, and that the software can sometimes directly estimate how many jobs exist for a DOT code. Other times, the software calculates DOT estimates by predicting whether certain DOT codes are more likely to be found in some industries than others. In other words, some of SkillTRAN's estimates for DOT codes are straightforward because the software derives its estimates from SOC categories, and certain SOC categories contain only one DOT code. In other situations, the software begins with an SOC category whose estimate has been adjusted to reflect the number of jobs available for that category in a given industry. The software then determines how that industry-adjusted estimate distributes to its relevant DOT codes by predicting how likely each DOT job title is to arise in that industry.

Case insists, however, that the expert must be more specific about the factors and formulas underlying his analysis, and we agree that the expert could have explained the SkillTRAN methodology more clearly. *See Brace*, 970 F.3d at 822 ("Testimony that incants unelaborated words and phrases such as 'weighting' and 'allocation' and 'my information that I have' cannot possibly satisfy the substantial-evidence standard."). Here, however, the ALJ conducted a deeper inquiry into the vocational expert's methodology before relying on it. When questioned, the vocational expert explained that his estimates were not only the product of the software, but also of his experience providing job counseling, his prior research, and his observations of the jobs in question. The vocational expert here explained that SkillTRAN produces consistent data year over year and that he has personally observed and researched these job categories through four decades of placing workers in jobs. The ALJ was entitled to conclude that both the expert's use of the software and his prior research and professional experience produced sufficiently reliable estimates.

This supports the ALJ's finding that the vocational expert's methodology was "sufficient" and that his job estimates were not "conjured out of whole cloth." *Ruenger*, 23 F.4th at 763; *cf. Brace*, 970 F.3d at 822 (expert explanation of methodology "entirely unilluminating"). A vocational expert can buttress estimates from survey data with his own observations and experience placing people in jobs to provide a "reasoned and principled explanation." *Chavez*, 895 F.3d at 970; *see also Fetting*, 62 F.4th at 339 (vocational expert's methodology explanation sufficiently reliable when combined with testimony of his professional experience).

Finally, Case argues that the ALJ failed to probe the expert's methodology enough during the hearing, which had the result of shifting the burden of proof to Case. *See Chavez*, 895 F.3d at 970. But the record suggests the ALJ did question the expert's methodology at some length, *see Ruenger* 23 F.4th at 764, and though we would prefer to see the ALJ push for more specific, responsive answers, the ALJ did not shift the burden of proof to Case to disprove the existence of sufficient jobs in the national economy.

AFFIRMED