[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-12411
Non-Argument Calendar

D.C. Docket No. 5:16-cv-00355-GKS-PRL

ANTONI WILLIAM CHIAPPINI,

Plaintiff - Appellant,

versus

COMMISSIONER OF SOCIAL SECURITY,

Defendant - Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(June 20, 2018)

Before WILSON, JORDAN and JILL PRYOR, Circuit Judges.

PER CURIAM:

Antoni Chiappini appeals the district court's judgment affirming the Commissioner of Social Security's (the "Commissioner") final decision denying his application for supplemental security income ("SSI"). On appeal, Chiappini argues that the administrative law judge ("ALJ") should have found that he was disabled at step five of the sequential disability analysis because he needs more and longer breaks than fulltime workers generally are permitted. He also argues that the ALJ erred by concluding that he could perform semi-skilled work and by failing to account for the impact of Chiappini's hearing loss when assessing his residual functional capacity ("RFC"). After careful review, we affirm the district court's judgment in favor of the Commissioner.[1]

I.

Chiappini applied for SSI in 2013, claiming that he was disabled beginning June 10, 1989, his date of birth. After a hearing, the ALJ denied his application, finding that because Chiappini could make a successful adjustment to jobs that exist in significant numbers in the national economy, he was not disabled. The Appeals Council denied Chiappini's request for review. Chiappini filed an action in federal district court, asking the district court to reverse the Commissioner's decision. The district court adopted the magistrate judge's report and

[1] Because we write only for the parties, we set forth only those facts necessary to explain our decision.

recommendation over Chiappini's objections and affirmed the ALJ's decision. This is Chiappini's appeal.

II.

We review the decision of an ALJ as the Commissioner's final decision when, as here, the ALJ denies benefits and the Appeals Council denies review of the ALJ's decision. *Doughty v. Apfel*, 245 F.3d 1274, 1278 (11th Cir. 2001). "[W]e review *de novo* the legal principles upon which the Commissioner's decision is based." *Moore v. Barnhart*, 405 F.3d 1208, 1211 (11th Cir. 2005). We review factual findings with deference; such "findings are conclusive if they are supported by substantial evidence, consisting of such relevant evidence as a reasonable person would accept as adequate to support a conclusion." *Doughty*, 245 F.3d at 1278 (internal quotation marks omitted). "This limited review precludes deciding the facts anew, making credibility determinations, or re-weighing the evidence." *Moore*, 405 F.3d at 1211.

III.

An individual claiming eligibility for SSI must be disabled. 42 U.S.C. § 1382(a)(1)-(2). In determining whether a claimant is disabled, the ALJ applies a five-step, sequential evaluation to determine whether the claimant (1) is engaged in substantial gainful activity, (2) has a severe impairment or combination of impairments, (3) has an impairment, or combination of impairments, that meets or

equals the severity of the specified impairments in the Listing of Impairments, (4) can, based on his RFC, perform any of his past relevant work despite the impairment, and (5) can make an adjustment to work in the national economy, based on his RFC, age, education, and work experience. 20 C.F.R. § 416.920(a)(4). The claimant bears the burden of persuasion through step four and, at step five, the burden shifts to the Commissioner. *Bowen v. Yuckert*, 482 U.S. 137, 146 n.5 (1987).

If, at step four, a claimant has a severe impairment that does not equal or meet the severity of a listed impairment, the ALJ assesses the claimant's RFC. 20 C.F.R. § 416.920(e). The RFC "is an assessment, based upon all of the relevant evidence, of a claimant's remaining ability to do work despite his impairments." *Lewis v. Callahan*, 125 F.3d 1436, 1440 (11th Cir. 1997); *see* 20 C.F.R. § 416.945(a)(1). If, at step five, a significant number of jobs that the claimant can perform exist in the national economy, then the claimant is not disabled. 20 C.F.R. § 416.920(g)(1). The ALJ may determine that such jobs exist through the testimony of a vocational expert ("VE"). *Winschel v. Comm'r of Soc. Sec.* 631 F.3d 1176, 1180 (11th Cir. 2011). For the testimony of a VE to constitute substantial evidence, however, "the ALJ must pose a hypothetical question which comprises all of the claimant's impairments." *Id.* (internal quotation marks omitted). After the ALJ determines that there are a significant number of jobs that

the claimant can perform, the claimant bears the burden to prove that he cannot perform the suggested jobs. *Hale v. Bowen*, 831 F.2d 1007, 1011 (11th Cir. 1987).

On appeal, Chiappini argues that the ALJ should have found that he was disabled because he needs more and longer breaks than fulltime workers generally are permitted during a typical work day and week. He also asserts that the ALJ erred by determining that he could perform low semi-skilled work and by disregarding his hearing loss in the RFC finding. We consider these arguments in turn.

A.

Chiappini first argues the ALJ should have found that he was disabled at step five of the sequential disability analysis because the record shows he is unable to work a regular eight hour day over a five day work week without extra breaks. Assuming *arguendo* that a claimant is disabled at step five if he is unable to work full time without additional breaks, we disagree with Chiappini that the record shows he is unable to work a regular work day and week.

In his brief, Chiappini cites one doctor's questionnaire response, which suggested that he was unable to complete a regular work day or week without additional break time. The ALJ afforded only "some weight" to this response because it was completed two years after the doctor saw Chiappini for a one-time visit, consisted only of checkmarks indicating that Chiappini had a disability "so

extreme that [the response] essentially describe[d] an institutionalized individual," was an "extreme view[]" supported by "very little either in medical evidence of record or in [Chiappini's] life," and was not supported by the same doctor's earlier examination. Doc. 13-2 at 37.[2]

Supporting the ALJ's detailed reasons for rejecting this response was other evidence in the record suggesting that Chiappini was able to work a regular work day and week. For example, school officials noted that Chiappini should be able to transition from school to work without significant assistance, and a psychologist suggested that Chiappini could engage in supervised, unskilled repetitive work. Neither of these reports qualified that his success at work might depend on his ability to take more or longer breaks. Additionally, agency experts tasked with reviewing Chiappini's application for SSI determined that he could be expected to "meet the basic mental demands of work on a sustained basis." Doc. 13-3 at 27. Accordingly, the ALJ's finding that Chiappini was not disabled at step five—and, implicitly, that Chiappini was able to work a regular work day and week—is supported by substantial evidence.

B.

Chiappini next argues that the ALJ erred by determining, at step four, that he could perform low semi-skilled work despite also finding that he had no past

[2] Citations to "Doc. #" refer to the numbered entries on the district court's docket.

relevant work. Even assuming the ALJ erred in finding that Chiappini could perform low semi-skilled work, however, the error was harmless. *See Diorio v. Heckler*, 721 F.2d 726, 728 (11th Cir. 1983) (explaining that when an incorrect factual finding results in harmless error because the correct finding would not contradict the ultimate findings, the ALJ's decision will stand).

The ALJ found that Chiappini had the RFC to perform "work which [was] simple and unskilled, or low semi-skilled in nature." Doc. 13-2 at 29. At the hearing, the VE testified that an individual with Chiappini's RFC would be able to perform four *unskilled* jobs—tagger, electrode cleaner, silver wrapper, and laundry sorter. The ALJ specifically relied on this testimony in concluding that Chiappini was capable of making a successful adjustment to jobs that exist in significant numbers in the national economy. Thus, the ALJ's ultimate finding that Chiappini was not disabled was based on his ability to adjust successfully to *unskilled* jobs, not low semi-skilled jobs. On appeal, Chiappini does not argue that he is unable to perform these unskilled jobs, and it is the claimant's burden to prove he is "unable to perform the jobs suggested by the [ALJ]," *Hale*, 831 F.2d at 1011. Chiappini has failed to meet this burden.

C.

Lastly, Chiappini argues that the ALJ erred by determining that his hearing loss in his left ear was a severe impairment under step two of the sequential

disability analysis, yet failing to account for the impact of the hearing loss in the RFC finding at step four. Specifically, he argues that the ALJ failed to apply a function-by-function assessment as required by Social Security Ruling ("SSR") 96-8p. Under SSR 96-8p, an ALJ conducting an RFC assessment must "first identify the individual's functional limitations or restrictions and assess his or her work-related abilities on a function-by-function basis" before expressing the RFC in terms of exertional work levels. SSR 96-8p, 1996 WL 374184 (July 2, 1996). The "mere existence" of an impairment is insufficient to establish limitations on a claimant's ability to work or to undermine the ALJ's RFC finding. *Moore*, 405 F.3d at 1213 n.6.

Chiappini insists that the ALJ failed to consider properly the opinion of a school district audiologist who had evaluated him seven years prior while he was in high school. He contends that the audiologist opined that he needed "adjustments" to "proceed with educational speech and/or language," including the recommendation that Chiappini complete any diagnostic testing while sitting in front of the examiner in a quiet and well-lit room. Appellant's Br. at 36-37. The ALJ did consider the audiologist's evaluation, but only insofar as it established that Chiappini had a hearing impairment in his left ear and normal hearing in his right**.** The ALJ was not required, however, to adopt the evaluation's recommendations,

which pertained to diagnostic testing accommodations, not to Chiappini's ability to work.

In evaluating Chiappini's RFC, the ALJ specifically accounted for Chiappini's hearing loss, finding that he had "left sided deafness, but [that] his right-sided hearing [was] normal" and that he had "no difficulties in hearing normal conversation." Doc. 13-2 at 29. The ALJ's assessment of Chiappini's hearing impairment is supported by substantial evidence. For example, a state agency audiologist found that Chiappini was "deaf in [his] left ear, OK in [his] right, [and could] participate[] in conversation readily." Doc. 13-6 at 2. A doctor who examined Chiappini similarly stated that "[r]apport was easy to establish and was easily maintained." Doc. 13-8 at 15. Chiappini fails to explain how his hearing loss would otherwise impact his ability to do unskilled work. *See Moore*, 405 F.3d at 1213 n.6. Accordingly, his argument that the ALJ committed reversible error by failing to consider his hearing impairment in the RFC finding is unpersuasive.[3]

IV.

For the reasons set forth above, we affirm the district court's judgment.

[3] Chiappini briefly states that the ALJ's RFC finding assumed a "greater emotional functional ability" than he is capable of performing. Appellant's Br. at 34. Because he makes only a passing reference to this argument, however, he has abandoned it. *See Sapuppo v. Allstate Floridian. Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014) ("We have long held that an appellant abandons a claim when he either makes only passing references to it or raises it in a perfunctory manner without supporting arguments and authority.").

AFFIRMED.