[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-12664

D.C. Docket No. 8:16-cv-01410-JBT

CLIFFORD BELLAMY, JR.,

Plaintiff-Appellant,

versus

COMMISSIONER OF SOCIAL SECURITY,

Defendant-Appellee.

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

(May 31, 2018)

Before NEWSOM, BRANCH, and ANDERSON, Circuit Judges.

PER CURIAM:

Appellant Clifford Bellamy, Jr. appeals the denial of his application for a period of disability and supplemental security income ("SSI"). Specifically, he

argues that the ALJ who affirmed the denial of his application erred by relying on a vocational expert's ("VE's") testimony without resolving alleged conflicts between the VE's testimony and a Department of Labor publication, the Dictionary of Occupational Titles ("DOT").[1] As discussed below, we conclude that there was no conflict between the DOT's description of the marker job and the VE's testimony that an individual with Bellamy's limitations could perform the job of a marker. We therefore conclude that the ALJ's finding that Bellamy is not disabled is supported by substantial evidence; we need not address Bellamy's argument that there is such a conflict with regards to one or two other jobs that the VE testified Bellamy could do.

This Court "affirm[s] the Commissioner's decision on a disability benefits application if it is supported by substantial evidence and the Commissioner applied the correct legal standards." Jones v. Apfel, 190 F.3d 1224, 1228 (11th Cir. 1999). "Substantial evidence is defined as more than a scintilla, i.e., evidence that must do more than create a suspicion of the existence of the fact to be established . . . and such relevant evidence as a reasonable person would accept as adequate to support

[1] In his Summary of Argument section, Bellamy also claims that the ALJ erred by relying on the VE's response to an incomplete or vague hypothetical question. But Bellamy abandoned this argument by failing to brief the issue. See Timson v. Sampson, 518 F.3d 870, 874 (11th Cir. 2008) (per curiam).

the conclusion." Foote v. Chater, 67 F.3d 1553, 1560 (11th Cir. 1995) (per curiam) (internal citation omitted).

"An individual who files an application for Social Security disability benefits must prove that []he is disabled." Jones, 190 F.3d at 1228. The Social Security Regulations outline a five-step process used to make this determination. 20 C.F.R. § 416.920(a)(4). Under the first two steps, the claimant must show that he is not currently engaged in substantial gainful activity and that he has a severe impairment. Jones, 190 F.3d at 1228. Next, the claimant may show that he is disabled by proving that his impairment meets or equals one of the impairments listed in a Listing of Impairments attached to the regulations. Id. If the claimant's impairment does not meet or equal one of the listed impairments, the claimant must proceed to step four where he must prove that he is unable to perform his past relevant work. Id. If the claimant satisfies step four, "[a]t the fifth step, the burden shifts to the Commissioner to determine if there is other work available in significant numbers in the national economy that the claimant is able to perform." Id. The ALJ may rely on a VE's testimony regarding whether other jobs exist in the national economy that the claimant could perform. Id. at 1229. "In order for a VE's testimony to constitute substantial evidence, the ALJ must pose a hypothetical question which comprises all of the claimant's impairments." Id.

In this case, the ALJ asked the VE whether a hypothetical individual with the following limitations could perform work in the national economy:

> I want limit [sic] the individual to the light exertional level except is [sic] limited to, only able to stand and walk for 60 minutes at a time before needing to alternate to get up and stretch for a few minutes at a time, occasional balance, stooping, crouching and crawling, occasional climbing, ascending of stairs, never ropes, ladders or scaffolds, frequent use of the non-dominant left hand for handling, fingering, grasping and turning, limited to frequent flexion or extension of the neck, able to only read 12 point print but has a limited depth perception and field of vision such the [sic] individual is unable to make accurate judgments of distance and speed but is able to avoid ordinary work place hazards and that's such as floors, boxes on floors, doors ajar, etcetera. Such an individual is unable to drive a motor vehicle, needs to avoid working in direct sunlight, working with computer monitors and is limited to a moderate noise environment as defined by the SCO.

The VE opined that an individual with the specified limitations could work as: (1) a hand packager, of which there are 231,000 jobs in the national economy and 1,100 in Florida, where Bellamy resides; (2) an assembler, of which there are 231,000 jobs nationally and 900 in Florida; and (3) a marker, of which there are 264,000 jobs nationally and 1,300 in Florida. Based on the VE's testimony, the ALJ found that Bellamy is not disabled because he could perform jobs that exist in significant numbers in the national economy.

Bellamy argues that the VE's testimony that an individual with his limitations could perform jobs as a hand packager, assembler, and marker conflicts with the DOT. According to Bellamy, the VE's testimony and the DOT conflict because (1) the ALJ found that Bellamy is limited to working in a moderate noise environment, whereas the DOT indicates that the hand packager occupation involves a noise level of "4," or "[l]oud," Inspector and Hand Packager, Dictionary of Occupational Titles 559.687-074, 1991 WL 683797; (2) the ALJ found that Bellamy "has limited depth perception and field of vision," whereas the DOT indicates that the assembler occupation involves constant depth perception, Assembler, Small Products II, Dictionary of Occupational Titles 739.687-030, 1991 WL 680180; and (3) the ALJ found that Bellamy is only able to read 12-point print, whereas the DOT indicates that the marker occupation involves frequent near visual acuity, Marker, Dictionary of Occupational Titles 209.587-034, 1991 WL 671802. We focus our discussion on the alleged conflict between the VE's testimony and the DOT with regards to the marker occupation.

According to the DOT, a marker performs the following tasks:

> Marks and attaches price tickets to articles of merchandise to record price and identifying information: Marks selling price by hand on boxes containing merchandise, or on price tickets. Ties, glues, sews, or staples price ticket to each article. Presses lever or plunger of mechanism that pins, pastes, ties, or staples

> ticket to article. May record number and types of articles marked and pack them in boxes. May compare printed price tickets with entries on purchase order to verify accuracy and notify supervisor of discrepancies. May print information on tickets, using ticket-printing machine . . . .

Marker, Dictionary of Occupational Titles 209.587-034, 1991 WL 671802. The DOT also indicates that the marker occupation involves "Near Acuity: Frequently," meaning one-third to two-thirds of the time. Id. "Near acuity" means "[c]larity of vision at 20 inches or less." Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles, app. C, Physical Demands (1993 ed.). Bellamy argues that the DOT's indication that a marker must frequently use near visual acuity conflicts the VE's testimony that an individual with his limitations could work as a marker.

We disagree. The ALJ did not specifically find that Bellamy has a limited ability to see objects at twenty inches or less. Nor did the ALJ limit the frequency with which Bellamy can accurately view objects at a close distance. Rather, the ALJ translated Bellamy's loss of visual acuity into the requirement that Bellamy cannot read any smaller than 12-point print. The DOT does not indicate that the marker occupation requires an individual to read text or numbers that are smaller than 12-point print. Given that the ALJ did not find that Bellamy has a limited capacity to see close objects and that the DOT does not indicate that a marker must

be able to read smaller than 12-point print, we conclude that there is no conflict between the VE's testimony and the DOT with regards to the marker occupation.

In concluding that Bellamy is not disabled, the ALJ relied in part on the VE's testimony that there are 264,000 marker jobs in the national economy and 1,300 marker jobs in Florida. Bellamy did not offer any evidence to dispute the VE's testimony regarding the number of marker jobs available nationally and in Florida. We therefore conclude that substantial evidence supports the finding that Bellamy is not disabled regardless of the alleged conflicts between the VE's testimony and the DOT with regards to one or two other jobs. See Rutherford v. Barnhart, 399 F.3d 546, 557 (3d Cir. 2005) (holding that substantial evidence supported the ALJ's finding that the claimant was not disabled where there were not inconsistencies as to each of the jobs that the VE listed and also noting that "inconsistencies need not be fatal if substantial evidence exists in other portions of the record that can form an appropriate basis to support the result").

AFFIRMED.