In the

United States Court of Appeals

For the Seventh Circuit

No. 22-2236

DENNIS LEE BAKKE,

Plaintiff-Appellant,

v.

KILOLO KIJAKAZI,
Acting Commissioner of Social Security,

Defendant-Appellee.

Appeal from the United States District Court for the
Western District of Wisconsin.
No. 3:21-CV-178-BBC — **Barbara B. Crabb**, *Judge*.

ARGUED FEBRUARY 16, 2023 — DECIDED MARCH 13, 2023

Before RIPPLE, SCUDDER, and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Dennis Lee Bakke's severe back pain impacts both his quality of life and his ability to work. It led him to apply for disability benefits in 2019. When this request was denied, he had a hearing before an administrative law judge ("ALJ"), who found that Bakke could still work full time. He sought review in the District Court for the Western

District of Wisconsin, where the judge affirmed the denial as supported by substantial evidence. He now appeals.

I. Background

A. Factual History

Bakke, a Wisconsin beef farmer, began suffering from serious back pain in 2017. At first, epidural steroid injections eased the pain. But over time, the steroids offered less and less relief. After his fourth injection, Bakke saw little to no improvement, and by April 2018, he was "very limited in all activities of daily living." He decided to consult with a surgeon regarding other treatment options.

After a consultation with surgeon Mark Dekutoski, Bakke decided to move forward with a spinal fusion surgery in May. And the operation helped. Despite some persistent pain and numbness, Bakke was able to walk increasing distances and, by June 2018, was cutting back on his pain medication. Bakke reported that his pain was lessening, he was getting stronger, and he was able to use his farm equipment for short periods of time. Doctors encouraged him to continue physical therapy for another four to six weeks. And by his July 2018 physical, Bakke reported "significant improvement," stood taller than he had pre-surgery, and had lost weight. Nevertheless, his doctor described him as "slow to recover."

Around the same time, Bakke began missing physical therapy appointments. He stopped going altogether in July. By December, "the pain in his back ha[d] gotten more intense," "becoming 'unbearable.'" He had also gained more than forty pounds since his improvements and weight loss in July, exacerbating his symptoms. In response, the doctor prescribed him a new pain medication. The new medication

helped, but Bakke remained "fairly limited". The pain changed his life in tangible ways: he sold his farm because the upkeep was too physically demanding; and hunting trips, previously a regular activity for Bakke, left him in severe pain. Around February 2019, Bakke returned to physical therapy.

As his pain persisted, Bakke underwent a variety of medical tests and examinations relevant to this appeal. Two state agency physicians examined him. First, in April 2019, Dr. Marc Young evaluated him and concluded that Bakke was capable of light, full-time work. The following month, Bakke had a nerve test called an electromyography ("EMG"). Dr. Sai Nimmagadda, another state agency physician, considered the EMG and found that it was an "abnormal study." Nevertheless, he concluded, like Dr. Young, that Bakke was capable of light, full-time work.

In June 2019, Bakke began receiving steroid injections in his back again. Although he saw significant improvement in the first week post-injection, the pain returned within three weeks. Bakke also reported that his pain medication was helping less than it had previously. His general practitioner, Dr. Andrea Peterson, ordered a test in August 2019 called a computed tomography ("CT") myelogram. Bakke's surgeon, Dr. Dekutoski, subsequently reviewed the CT myelogram and recommended only physical therapy and weight loss.

That October, Bakke saw Nurse Practitioner Amelia Zellner for a "follow up [on] his medications for chronic low back pain." He reported mostly good news: his medication was helping. He was able to sleep "and [said] he actually wakes up in the morning feeling reasonably well" with "minimal pain and stiffness in the morning." In a subsequent February 2020 visit with the same nurse, Bakke reported that his pain

was "under reasonably good control." "[H]e [was] able to do most of the things he want[ed] to do[,] [h]e continue[d] to help with farm work, [he was] quite active in the woods, and [he went] deer hunting." According to Nurse Zellner's notes, he was even able to snowshoe into the woods to tap maple trees with his family.

Bakke had two more medical evaluations in 2020 that are of note. In April, he had a telehealth appointment with Dr. Peterson. She concluded that he could tolerate no more than four hours of work per day—a permanent work restriction. And in July, Bakke was referred to a new surgeon, Dr. Vivekananda Gonugunta. Dr. Gonugunta did not make any specific findings about Bakke's capacity for work. Instead, he "reassured [Bakke] that [he] d[id] not see any evidence of complications of surgery." The doctor further noted that "it is not unusual to have persisting back pain or leg/thigh numbness after multilevel fusion surgery along with lateral interbody fusions." He called the surgery "excellent" and concluded that Bakke was "definitely better than before surgery."

B. Procedural History

Bakke first filed a request for disability benefits in the spring of 2019. His request was denied in April of that year. Bakke subsequently had a hearing before an ALJ on August 19, 2020.

At his hearing, Bakke testified about his own symptoms. He described intense pain, with some days so bad he could not get out of bed. He told the ALJ that he could not sit for more than two hours, which made it difficult to drive. He stated that he could not sustain work because the pain made it impossible for him to sit or stand for long periods of time,

often requiring him to lay down to get through the day; on top of that, he said he could not lift or carry much weight. Taken together, Bakke explained these factors made it difficult to find employment. But he also struggled personally because of the pain. Bakke said he had a hard time going up and down the stairs because numbness in his left leg made him unsteady on his feet. And the inability to sit or stand for long periods of time made it difficult to attend his son's basketball games, where he could not comfortably sit in the bleachers.

After reviewing the record evidence and Bakke's testimony, the ALJ performed the Social Security Administration's required five-step disability analysis: First, the ALJ considers whether the claimant is engaged in substantial gainful activity. If the claimant is not, the ALJ asks whether the claimant suffers from any "severe" impairments. If so, the ALJ proceeds to the third step—deciding whether any impairments meet or equal the impairments listed in 20 C.F.R. Part 404 (a particular set of impairments that warrant disability benefits). If not, the ALJ determines the claimant's "residual functional capacity"—that is, his ability to perform work. And finally, in light of the claimant's residual functional capacity, the ALJ must decide whether jobs which the claimant can perform exist in significant numbers in the national economy. *Wilder v. Kijakazi*, 22 F.4th 644, 651 (7th Cir. 2022) (quoting *Butler v. Kijakazi*, 4 F.4th 498, 501 (7th Cir. 2021)).

Here, the ALJ agreed that Bakke could not engage in substantial gainful activity due to his back injury and obesity but concluded that his impairments were not as severe as those listed in 20 C.F.R. Part 404. Next, he considered Bakke's residual functional capacity and determined that he could still perform light, full-time work. And after considering the

vocational expert's testimony, the ALJ decided that light, full-time work was available in significant numbers in the national economy, precluding a finding that Bakke was disabled. Bakke appealed, and the district court affirmed the denial as supported by substantial evidence. This appeal followed.

II. Analysis

While "we assess the ALJ's legal conclusions de novo," our factual review is limited. *Poole v. Kijakazi*, 28 F.4th 792, 794 (7th Cir. 2022). "We will affirm a decision on disability benefits [so long as] the ALJ supported her conclusion with substantial evidence." *Karr v. Saul*, 989 F.3d 508, 511 (7th Cir. 2021). This "is not a high threshold, as it means only 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Prill v. Kijakazi*, 23 F.4th 738, 746 (7th Cir. 2022) (quoting *Karr*, 989 F.3d at 511). "An ALJ need not specifically address every piece of evidence, but must provide a 'logical bridge' between the evidence and his conclusions." *Butler*, 4 F.4th at 501 (citation omitted).

Bakke's arguments all attack the same conclusion by the ALJ in the fourth step of the disability analysis: that despite his back pain, Bakke's "residual functional capacity" allowed light, full-time work. Bakke believes the ALJ erred in three ways: it (1) over-credited the state agency physicians' opinions; (2) improperly discredited the opinion from Bakke's personal physician; and (3) improperly dismissed Bakke's subjective symptoms. Because none of these arguments warrants reversal on our deferential review and because the ALJ's decision is supported by substantial evidence, we now affirm.

A. State Agency Physicians

According to Bakke, the ALJ erred in crediting the conclusions of the state agency physicians, Drs. Young and Nimmagadda. He maintains that the doctors did not take all of Bakke's medical testing into account and that the ALJ did not properly explain why their opinions were reliable.

1. Medical Evidence Considered

Bakke contends first that the state agency physicians' opinions were not well-founded because the doctors made their conclusions based on outdated medical information. He argues that because neither Dr. Young nor Dr. Nimmagadda had access to his 2019 CT myelogram[1] when determining his residual functional capacity, their assessments lacked critical information and were unreliable.

"An ALJ should not rely on an outdated assessment if later evidence containing new, significant medical diagnoses reasonably could have changed the reviewing physician's opinion." *Moreno v. Berryhill*, 882 F.3d 722, 728 (7th Cir.), *as amended on reh'g* (Apr. 13, 2018); *Deloney v. Saul*, 840 F. App'x 1, 5 (7th Cir. 2020). But older assessments can still constitute "substantial evidence" supporting the ALJ's decision where the new tests do not "necessarily undermine [previous

[1] Bakke also contends that the March 2019 EMG was "never evaluated by a medical expert to determine the impact of those findings on the residual functional capacity." This is simply untrue. Dr. Nimmagadda *did* review this EMG and analyze it as part of Bakke's disability application. In his notes, he writes explicitly: "seen for Nerve Conduction Study/EMG Report." A detailed analysis, including discussion of the EMG, precedes Dr. Nimmagadda's conclusion that Bakke is capable of light work.

medical] conclusions." *Pavlicek v. Saul*, 994 F.3d 777, 784 (7th Cir. 2021).

The 2019 CT myelogram did not include the kind of "new diagnosis" that would undermine previous conclusions about Bakke's disability status. Although Drs. Young and Nimmagadda were not able to review the myelogram, at least two doctors did. Neither found it concerning or noted a significant impact on Bakke's functional capacity. First, Dr. Dekutoski, who performed Bakke's surgery, reviewed the results with Bakke personally. Upon review and comparison to past images, the doctor recommended only physical therapy and weight loss. He did not note that he was concerned, nor did he increase Bakke's pain medication or recommend another surgical intervention. Second, Dr. Gonugunta, the surgeon who examined Bakke in July 2020, also reviewed the CT myelogram. He "reassured [Bakke] that [there was no] evidence of complications of surgery," and stated that "[i]t is not unusual to have persisting back pain … after multilevel fusion surgery." And critically, he "reassure[d]" Bakke that "there was nothing serious going on in the spine." "In fact, [Bakke wa]s definitely better than before surgery."

These mild reactions show that the CT myelogram was not a "new, significant medical diagnos[is that] reasonably could have changed the reviewing physician's opinion," *Moreno*, 882 F.3d at 728, and the ALJ was entitled to rely on the state agency physicians' opinions, despite the intervening test.[2]

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[2] It is for the same reason that we reject Bakke's argument under *Akin v. Berryhill*, 887 F.3d 314, 317 (7th Cir. 2018) that the ALJ impermissibly "played doctor" by interpreting either the March 2019 EMG or the August 2019 CT myelogram without the help of medical expertise. As addressed

2. Weighing of Medical Opinions

Section 404.1520c(c) requires ALJs to explicitly explain why particular medical opinions are consistent with the record as a whole. 20 C.F.R. § 404.1520c(b)(2), (c)(1); *see also Lambert v. Berryhill*, 896 F.3d 768, 774 (7th Cir. 2018) (noting the importance of consistency with record evidence under the previous rule, the "treating-physician rule," which has been replaced through revisions to § 404.1520c). As part of this process, "[a]n ALJ has the obligation to consider all relevant medical evidence" and not to selectively cite only the evidence that supports his conclusion. *Denton v. Astrue*, 596 F.3d 419, 425 (7th Cir. 2010) (per curiam).

Contrary to Bakke's contention, the ALJ properly articulated why the state agency physicians' opinions were consistent with other record evidence in compliance with § 404.1520c. He compared the state agency doctors' opinions that Bakke could perform light work to medical records showing "imaging studies … [which] showed some abnormal signs, [but were] overall, … generally unremarkable," "examinations … [with] some abnormal signs, but [which] were, overall, generally unremarkable," and conservative post-surgery treatment.[3] The ALJ also analyzed the state

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above, the ALJ properly relied on the expert interpretations of the tests from Drs. Nimmagadda, Dekutoski, and Vivekananda to evaluate Bakke's case. He did not independently interpret the tests.

[3] Bakke suggests in passing that the ALJ failed to properly justify his conclusion that Bakke's treatment post-surgery was "conservative." But the ALJ devoted only three sentences to this portion of the analysis in his roughly fifteen-page, detailed opinion. And the conservative course of treatment is clearly not the crux of his conclusion, which emphasizes the opinions of agency physicians and evidence of Bakke's improvement over

agency doctors' findings in light of Bakke's own subjective pain, which was sometimes very severe. The ALJ noted Bakke's increased pain and "profound deconditioning." But the ALJ also observed that by February 2020, this pain was "under reasonably good control, noting [Bakke] was able to do most things he wanted to do." Nor did the ALJ simply cherry-pick the record, as Bakke claims—the judge acknowledged the abnormal scans and exams and noted increases in Bakke's subjective pain. But the ALJ found that the balance of the evidence reflected normal imaging and pain that was under control according to Bakke's medical records. This explicit weighing is precisely within the purview of the ALJ—and it is not our place to reweigh evidence, even where reasonable minds might disagree about the outcome. *See Karr*, 989 F.3d at 513.

B. Dr. Peterson

As explained above, § 404.1520c requires an ALJ to consider whether a medical opinion is consistent with the record as a whole. *Lambert*, 896 F.3d at 774. The same regulation requires an ALJ, in reaching his conclusions, to consider the internal supportability of a physician's medical opinion. This means that ALJs should give more weight to medical opinions with more internal explanation and support than to those without. § 404.1520c(c)(1).

Beginning with § 404.1520c's consistency prong, Bakke objects to the conclusion that Dr. Peterson's opinion was "generally inconsistent with the overall record." But the ALJ

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time. Accordingly, any possible error is harmless and does not warrant remand. *Schomas v. Colvin*, 732 F.3d 702, 707 (7th Cir. 2013) (such arguments are subject to harmless error review).

articulated why it found Dr. Peterson's opinions inconsistent with the record—her conclusions were "not supported by [Bakke's] statements that were made just a few months prior." In February 2020, Bakke noted that his pain was under "reasonably good control." Medical records also reflect that "he [was] able to do most of the things he want[ed] to do … [and was] quite active in the woods" at that time.

As for the supportability prong, Bakke argues that the ALJ erred in finding that Dr. Peterson "did not provide any reasoning or support for [Bakke's] proposed limitations." Bakke points to Dr. Peterson's April 2020 telehealth evaluation, which includes a list of symptoms, treatments, and medical testing on which she relied during the evaluation. But Bakke misapprehends the ALJ's rejection of Dr. Peterson's conclusions—it is not that Dr. Peterson did not rely on any medical evidence. He rejected her conclusions because she failed to explain the *link* between the medical evidence she listed and the recommended work restrictions. In fact, every test result on which Dr. Peterson relied in her analysis had been noted on Bakke's chart since at least August 2019. It was reasonable for the ALJ to expect an explanation as to why Dr. Peterson suddenly recommended a permanent work restriction based on tests that were more than six months old.

In sum, the ALJ examined Dr. Peterson's medical opinions for consistency with the record and internal supportability and found them lacking, articulating each of those analyses in his opinion.[4] He therefore did not err in choosing to discount

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[4] Bakke mentions briefly that Dr. Peterson's opinion warranted *more* consideration because of her role as Bakke's treating physician. But treating physicians' opinions are not given controlling weight in claims filed

Dr. Peterson's opinions and credit the state agency physicians' conclusions. *See Karr*, 989 F.3d at 513 (affirming the rejection of one doctor's opinion as "extreme" in light of the other evidence in the record, even though that doctor had reviewed at least one MRI that no other doctor had reviewed).

C. Bakke's Symptoms

In his last set of challenges, Bakke argues that the ALJ failed to build a "logical bridge" between the record evidence and his conclusions about Bakke's subjective experience and abilities, as our case law requires. *Butler*, 4 F.4th at 501.

1. Subjective Pain

Bakke first criticizes the ALJ's conclusions about how well his pain was being managed. Bakke contends that the ALJ gave a selective summary of the evidence, ignoring records and hearing testimony indicating that he was significantly impaired.[5]

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after March 27, 2017. *Cf. Karr v. Saul*, 989 F.3d 508, 511 (7th Cir. 2021); § 404.1520c. Here, the ALJ clearly acknowledged Dr. Peterson's role as Bakke's treating physician and was not required to articulate exactly how he accounted for that relationship in his final decision, so long as he properly articulated his consistency and supportability analyses. § 404.1520c(b)(2). As explained above, the ALJ did exactly that. Any suggestion that Dr. Peterson's role as treating physician means the ALJ erred is incorrect.

[5] He especially criticizes reliance on statements about his pain made during an annual physical, which he argues should be discounted because the appointment was not focused on his pain management. But Bakke had previously visited that same nurse for consultations on pain management. It was logical for the ALJ to credit Bakke's statements to the nurse

An ALJ cannot rely solely on the parts of the record that support his opinion in reaching his conclusion. *Bates v. Colvin*, 736 F.3d 1093, 1099 (7th Cir. 2013). But he also "need not mention every piece of evidence, so long he builds a logical bridge from the evidence to his conclusion." *Denton*, 596 F.3d at 425. "In other words, as with any well-reasoned decision, the ALJ must rest its denial of benefits on adequate evidence contained in the record and must explain why contrary evidence does not persuade." *Berger v. Astrue*, 516 F.3d 539, 544 (7th Cir. 2008).

Here, the ALJ repeatedly acknowledged both the positive and negative developments in Bakke's condition that could be gleaned from each medical document. He pointed to some "abnormal signs" in Bakke's scans; occasional changes in gait and strength; "absent reflexes; a limited range of motion; tenderness; and the inability to do a single heel raise." But the ALJ also pointed to sixteen separate documents reflecting normal gait, strength, reflexes, and range of motion. The ALJ pointed to variations in Bakke's reported level of pain and improvements over several months in Bakke's pain management, but also acknowledged "significant left thigh numbness with persisting low back pain;" "postur[e] that was quite abnormal; an antalgic gait; a significantly decreased range of motion; and decreased sensation in the left anterolateral thigh." And although the ALJ did not mention every statement from Bakke's testimony, he did acknowledge Bakke's difficulty sitting and walking, the need to lay down

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practitioner who prescribed him several of his pain medications and had previously met with him about pain management.

throughout the day, and the fact that Bakke could not lift more than a bag of groceries.

With these repeated acknowledgments of Bakke's improvements and setbacks, this is not a case of cherry-picking evidence. Rather, Bakke's objection is that the ALJ "did not assign the significance to [certain evidence] that [Bakke] prefers." *Denton*, 596 F.3d at 426. Where the ALJ clearly notes all evidence—that which supports his conclusion and that which undermines it—we cannot replace his judgment with ours.

2. Treatment of his Obesity

Finally, relying on *Barrett v. Barnhart*, 355 F.3d 1065, 1068 (7th Cir.), *on reh'g*, 368 F.3d 691 (7th Cir. 2004), Bakke argues that the ALJ improperly held his obesity against him, "impl[ying] some malevolence to his deconditioning without considering that his medically determinable impairment, pain, or surgery may have been the reason for it." In *Barrett*, this Court remanded the case where an ALJ seemed to have discounted obesity's exacerbation of other impairments, treating it instead as a self-imposed problem, independent from disabling impairments. 355 F.3d at 1067–68. Since *Barrett*, we have clarified that ALJs properly account for a claimant's obesity by acknowledging the ways that obesity can impact and compound each of the claimant's impairments. *See Brown v. Colvin*, 845 F.3d 247, 251 (7th Cir. 2016).

To support his claim that *Barrett* controls, Bakke points only to the ALJ's statement that he was "profoundly deconditioned."[6] But the reference to Bakke's "profound

[6] This is the entirety of Bakke's obesity position. We likely need not address such a perfunctory argument. *Nelson v. Napolitano*, 657 F.3d 586, 590 (7th Cir. 2011) ("Neither the district court nor this court are obliged to

deconditioning" was not a mechanism to shift blame. Rather, the ALJ was quoting directly from Bakke's medical records. Unlike in *Barrett*, the ALJ did not discount the claimant's obesity or its exacerbation of other impairments. 355 F.3d at 1067–68. To the contrary, the ALJ specifically noted that "[t]he combined effects of obesity with other impairments may be greater than might be expected without the disorder." Thus, the ALJ viewed Bakke's obesity as a cause of worsening symptoms, to be considered throughout the evaluation. And the ALJ relied on expert medical opinions, each of which incorporated Bakke's obesity in its consideration of his symptoms, further guaranteeing that Bakke's obesity was not ignored. *See Pepper v. Colvin*, 712 F.3d 351, 364 (7th Cir. 2013). Accordingly, the ALJ did not err in its consideration of Bakke's obesity.

III. Conclusion

The ALJ's opinion is supported by substantial evidence and logically relates that evidence to his conclusion that Bakke can perform light work. The decisions of the district court and the ALJ are therefore

AFFIRMED.

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research and construct legal arguments for parties, especially when they are represented by counsel."). But the waiver question makes no difference, as Bakke fails on the merits.