NONPRECEDENTIAL DISPOSITION
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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued April 19, 2023
Decided May 18, 2023

Before

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 22-2359

EDDIE J. HIGHTSHOE,
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-00031-bbc

Barbara B. Crabb,
Judge.

O R D E R

Plaintiff-appellant Eddie J. Hightshoe suffered serious injuries on February 15, 2017, when his car was hit by a logging truck. Before the accident, Hightshoe had a steady employment history, working first at a family restaurant, then as a police officer, and finally—at the time of the accident—as a business development associate, a job that required hours of driving and computer work. The accident left Hightshoe with an injured right shoulder and a concussion caused by traumatic brain injury. Hightshoe would not work again for more than two and a half years.

Surgery and physical therapy helped with the shoulder, but Hightshoe continued to experience post-concussive symptoms, including headaches, vertigo,

insomnia, poor concentration, tinnitus, depression, and fatigue. For eighteen months following the accident, Hightshoe sought help with these symptoms from a cadre of medical professionals. His providers prescribed several medications, as well as physical, rehabilitative, and occupational therapy. By all accounts, Hightshoe embraced his treatment and approached his challenges with admirable motivation and optimism.

In November 2019, Hightshoe was finally able to return to work, taking a job as a management trainee at a convenience store so that he could provide health insurance for his daughter. He worked in that job for about five months before leaving of his own accord.

In April 2018, Hightshoe applied for disability insurance benefits under the Social Security Act. He had a hearing before an administrative law judge in February 2020. The judge denied his claim, finding that Hightshoe suffered from severe impairments and would be unable to perform his previous jobs, but that he had the residual functional capacity to adjust successfully to other kinds of work. The Appeals Council denied Hightshoe's request for review, and the district court affirmed the judge's decision.

Hightshoe argues in this appeal that the judge improperly weighed the medical opinion evidence and conducted a "problematic" credibility assessment. In other words, he does not argue that the judge committed a discrete or specific legal error, but only more generally that the judge's decision was not based on substantial evidence. "Substantial evidence" means that the judge's decision is grounded in "such relevant evidence as a reasonable mind might accept as adequate to support" the decision. *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019), quoting *Consol. Edison Co. v. N.L.R.B.*, 305 U.S. 197, 229 (1938); 42 U.S.C. § 405(g) (statutory standard for judicial review). The judge need not "address every piece of evidence," but the judge "must build an accurate and logical bridge from the evidence to his conclusion" and "articulate some legitimate reason for his decision." *Clifford v. Apfel*, 227 F.3d 863, 872 (7th Cir. 2000).

First, Hightshoe argues that the judge improperly weighed the medical opinions of one of his treating physicians, Dr. Timothy Morton, who saw Hightshoe a number of times for treatment after the accident. In October 2018, Dr. Morton completed a "Report of Work Ability" in which he opined that Hightshoe should not work until reevaluated because his concussive symptoms were "not improving." It is not unusual for doctors to offer such bottom-line answers when they are asked to opine on a patient's ability to return to work, but the judge correctly observed that—in the technical world of Social Security disability claims—whether a claimant can work is a legal conclusion "reserved

to the Commissioner." 20 C.F.R. § 404.1527(d)(2); *Thomas v. Colvin*, 745 F.3d 802, 808 (7th Cir. 2014).

Hightshoe argues, however, that the judge improperly disregarded Dr. Morton's entire opinion simply because his report "mentions ability to work." We read the decision differently. The judge found Dr. Morton's pessimistic work assessment "not persuasive" because it was inconsistent with both Dr. Morton's most recent clinical impression that Hightshoe's functioning was "normal" and with other evidence in the record addressing Hightshoe's daily activities. The fact that Hightshoe had been successfully caring for his daughter, doing household chores, volunteering in the community, and working at the convenience store weighed against Dr. Morton's work assessment. The judge also observed that Dr. Morton's assessment was inconsistent with the "minimal" treatment Hightshoe was receiving.

Nor did the judge, as Hightshoe argues, rely "solely on a single examination" by Dr. Morton or ignore the fact that Hightshoe has "good days" and "bad days." The judge considered Dr. Morton's reports from multiple examinations, and the judge expressly recognized that Hightshoe's symptoms "wax and wane."

Hightshoe also criticizes the judge for failing to account for the difference between his "daily activities in his own home and at his own pace" and the activities of "a competitive work environment." It is true that the ability to perform daily activities does "not necessarily establish that a person is capable of engaging in substantial physical activity." *Stewart v. Astrue*, 561 F.3d 679, 684 (7th Cir. 2009) ("The ALJ should have explained any inconsistencies between [claimant's] activities of daily living and the medical evidence."). See also *Clifford*, 227 F.3d at 872 (performance of "minimal daily activities" insufficient to discount complaints of "disabling pain"). And an administrative law judge must be careful not to equate daily "activities with the challenges of daily employment in a competitive environment." *Beardsley v. Colvin*, 758 F.3d 834, 838 (7th Cir. 2014); see also *Mendez v. Barnhart*, 439 F.3d 360, 362 (7th Cir. 2006) ("The pressures, the nature of the work, flexibility in the use of time, and other aspects of the working environment as well, often differ dramatically between home" and work environments.). But a judge is nonetheless required to consider daily activities in assessing a claimant's residual functional capacity. 20 C.F.R. § 404.1529(c)(3)(i) (in "determining the extent to which your symptoms limit your capacity for work … Factors relevant to your symptoms, such as pain, which we will consider include … Your daily activities"); *Beardsley*, 758 F.3d at 838 ("[I]t is proper … to consider a claimant's daily activities in judging disability.").

In this case, the judge considered Hightshoe's daily activities together with his ability to work at the convenience store for five months. The judge did not make the sort of mistake we identified in *Stewart*, *Clifford*, *Beardsley*, and *Mendez* of giving undue weight to the daily activities of life, performed under circumstances so different from those of full-time work in the competitive economy.

Hightshoe also asserts that the judge "failed to develop the record" regarding why Hightshoe gave up his job at the convenience store. There was no error here. The judge contacted Hightshoe's employer for more information. The employer did not indicate any dissatisfaction with Hightshoe's work performance. Hightshoe's own letter of resignation said only that he was leaving his job due to "personal issues." We also reject Hightshoe's assertion that the judge erred by failing to treat the convenience-store job as an "unsuccessful work attempt" under 20 C.F.R. § 404.1574(c). That regulation requires that the claimant have stopped working because of either the claimant's impairment or "the removal of special conditions that took into account" the impairment. 20 C.F.R. § 404.1574(c)(3). "Personal issues" simply do not satisfy the regulations.

Hightshoe also criticizes the judge's credibility assessment, which found that Hightshoe's account of his work at the convenience store was inconsistent with the objective evidence and that Hightshoe's account of his symptoms was inconsistent with medical observations. We "will uphold an ALJ's credibility determination" regarding the claimant's subjective symptoms "unless that determination 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). Hightshoe argues that the judge wrongly ignored evidence that he (1) is not a malingerer, (2) took frequent breaks and moved slowly through his daily activities, and (3) avoided actually working much while at the convenience store. Hightshoe also thinks the judge overvalued his lack of symptoms during his medical appointments. None of these arguments is persuasive.

The administrative law judge recognized that Hightshoe's "solid work history" was a "positive and probative" factor. The judge also accounted for the pace at which Hightshoe approached his daily activities. The fact that the judge found that some of Hightshoe's activities—like hiking, watching movies, and going on excursions with his daughter—were inconsistent with his claim that he could not "sustain any concentration for tasks" does not mean that the judge ignored contrary evidence. It means only that the judge weighed conflicting evidence. Nor did the judge ignore Hightshoe's account of his work at the convenience store. The judge simply found that

other evidence, including the fact that Hightshoe "consistently worked approximately 90 hours every two weeks," ran contrary to his narrative of complete inability to do full-time work.

Finally, while the administrative law judge thought it significant that Hightshoe's doctors and therapists "often did not observe the severity" of symptoms he claims, the judge did not, as Hightshoe contends, discount his testimony solely on this basis. Rather, the judge found that the totality of the evidence—including Hightshoe's daily activities, his apparently successful work at the convenience store, his "minimal treatment," and the results of objective testing—was inconsistent with some of the more serious restrictions and symptoms Hightshoe claimed. In short, the judge did not make legal errors or ignore or overvalue any evidence. Hightshoe simply wishes that the judge had weighed that evidence differently and arrived at a different conclusion.

The Social Security Act defines "disability" as an "inability to engage in any substantial gainful activity by reason of any medically determinable" impairment that can be expected to last for twelve continuous months. 42 U.S.C. § 423(d)(1)(A). A claimant must show that his impairments are of such severity that he is unable to perform work that he has done previously and that, based on his age, education, and work experience, he could not engage in any other kind of substantial work existing in the national economy, regardless of whether such work is actually available to him. 42 U.S.C. § 423(d)(2)(A). This standard is a stringent one. These benefits are paid for with taxes, including taxes paid by many people who work despite serious physical or mental impairments and for whom working is quite difficult and painful, as it has been for Mr. Hightshoe **since** his accident. Before tax dollars are available to support someone applying for benefits, it must be clear that the claimant has a severe impairment and cannot perform virtually any kind of work. Unlike many private disability insurance plans, the Act does not contemplate degrees of disability or allow for an award based on partial disability. *Stephens v. Heckler*, 766 F.2d 284, 285 (7th Cir. 1985) ("A person is 'disabled' or not; there are no degrees."). Also, unlike with many private disability insurance plans, a person may not be disabled under the Act even if he is no longer able to perform his past work. Under this statutory standard, these benefits are available only as a matter of nearly last resort.

Hightshoe is not malingering. He has shown a strong work ethic and a positive approach to his difficulties. But substantial evidence supported the administrative law judge's finding that Hightshoe could adapt to new kinds of work. We therefore AFFIRM the judgment of the district court.