NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted May 12, 2023*
Decided May 16, 2023

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 22-2919

TONYA E. TRZEBNY,
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. 21-cv-570-wmc

William M. Conley,
Judge.

O R D E R

Tonya Trzebny challenges the denial of her application for disability insurance benefits under the Social Security Act. She applied for benefits after struggling with anxiety and bipolar disorders. An administrative law judge found that Trzebny's

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

impairments did not equal a presumptive disability and that she could still perform a significant number of jobs available in the national economy during the time she was insured—a 39-month period between 2006 and 2010. *See* 20 C.F.R. § 404.1520(a)(4)(iii), (v). The district court upheld this decision. Because the ALJ's decision is supported by substantial evidence, we affirm.

I. Background

In 2019, Trzebny (then 45) applied for disability benefits, asserting that she had been disabled since December 2006, when she was diagnosed with anxiety and bipolar disorders. Since then, she says her mental health has rendered her unable to work. She has more than a high school education, and she previously worked as a fashion model. She was last insured by Social Security as of March 2010.

According to her medical records from the relevant time period, Trzebny saw various doctors and requested prescription refills but generally avoided consistent mental-health counseling. In June 2006, her primary-care physician documented anxiety symptoms, prescribed medications (most notably Clonazepam, a sedative that treats anxiety and panic attacks), and encouraged her to see a psychiatrist. Dissatisfied with this advice, Trzebny began seeking treatment at a private medical clinic. Dr. Libin Ho, an internist, saw her in October 2007 and noted her remark that she had illegally bought Clonazepam and Vicodin to manage her symptoms. Dr. Ho diagnosed Trzebny with panic attacks, narcotic and benzodiazepine addiction, and bipolar disorder. Trzebny continued to see different doctors affiliated with the clinic, and each generally noted her anxiety, mood swings, and complaints of poor sleep, but also observed that she was talkative, cooperative, and logical. Their notes suggested that Trzebny continued to seek refills of her Clonazepam prescription but failed to follow up with recommended psychiatric or therapy-treatment plans.

Although Trzebny's insurance ended in 2010, she supplemented the administrative record with more recent medical files that she believes support her application. According to these recent records, Trzebny saw a therapist in late 2020 and was assessed as being "moderately depressed" with "severe anxiety." To address her mood and depressive symptoms, Trzebny then completed four individual counseling sessions and one group counseling session. The records also confirm that she was hospitalized in 2019 four times—twice after falls related to alcohol consumption, and twice for psychiatric care.

In connection with Trzebny's application for benefits, two state-agency psychologists reviewed her medical records in the first half of 2020 and determined that from 2006–2010 her impairments did not severely affect her daily life. The psychologists determined that Trzebny's impairments caused only mild limitations in understanding or applying information, and moderate limitations in self-management, interactions with others, and concentration, persistence, and pace. They opined that she could perform simple tasks with routine and superficial interaction with others.

Trzebny then requested an administrative hearing, which was held telephonically before an administrative law judge in early 2021. Trzebny testified that during the relevant period she struggled with anxiety, panic attacks, and bipolar manic episodes, but she could not definitively say how long symptoms lasted nor could she describe her day-to-day experience in detail. She recalled that it was often difficult to get out of bed or leave her apartment but that she still managed some daily activities such as cooking, cleaning, and caring for her cats.

The ALJ applied the five-step analysis set forth in 20 C.F.R. § 404.1520(a)(4) and concluded that Trzebny was not disabled. He found that she had not worked within the claim period (step 1); that she had several severe impairments: anxiety disorder, mood disorder, depression, bipolar disorder, and a substance abuse disorder (step 2); that none of these mental impairments established a presumptive disability (step 3); that she could perform work at all exertional levels with nonexertional limitations like routine tasks, low-stress jobs, and superficial social interactions (step 4); and that, based on a vocational expert's testimony, she could still perform jobs that exist nationwide in significant numbers (step 5), such as working as a laboratory equipment cleaner, laundry worker, or router.

Trzebny appealed the decision to the Appeals Council, supplementing her appeal with a therapist's letter from April 2021 that listed her medications and described her experience with anxiety, depression, and bipolar disorder. The Appeals Council accepted the letter as evidence but denied review. Trzebny then sought judicial review, and the district court found that substantial evidence supported the ALJ's ruling.

II. Discussion

On appeal, Trzebny raises four arguments challenging the ALJ's determination. First, she argues that substantial evidence does not support the ALJ's finding that she has no presumptive disability. She contends that the ALJ wrongly discounted her 2006

clinical diagnosis of anxiety and bipolar disorders and ignored her testimony about the disabling nature of her symptoms.

The ALJ was right to conclude that the medical record lacked evidence that she had a per se disability under the Social Security Agency's list of impairments. To satisfy the Agency's listing for bipolar and related disorders (listing 12.04) or anxiety disorders (listing 12.06), Trzebny needed to show that she had "extreme" or "marked" limitations in one or more areas of mental functioning. 20 C.F.R. Part 404, Subpart P, App'x 1; *see Grotts v. Kijakazi*, 27 F.4th 1273, 1277–78 (7th Cir. 2022). But her medical records were consistent with the ALJ's finding that her mental-functioning limitations were only mild or moderate. Trzebny's doctors (her primary-care physician and her clinic doctors) documented her reports of mood swings and prescription dependency but also noted that her memory was grossly intact, her thinking logical, and her conversations cooperative. Further, Trzebny testified that, despite her symptoms, she could maintain her apartment, care for her pets, and complete other daily activities.

Second, Trzebny argues that the ALJ wrongly confined his review to contemporaneous records (from 2006–2010) and ignored her therapist's 2021 letter and her 2019 hospitalization records. According to Trzebny, these later records "represent[] the status of the severe disabilities she has had since about 2000."

As the district court pointed out, though, the ALJ properly evaluated whether Trzebny was disabled during the period between the 2006 onset date identified in her application and 2010, when her insurance expired. *See* 42 U.S.C. § 423(a)(1)(A); *Eichstadt v. Astrue*, 534 F.3d 663, 665–66 (7th Cir. 2008). The documents from 2019 and 2021 that she submitted do not suggest that she was disabled as of 2010. The ALJ could have considered these more recent documents if Trzebny's current providers offered a retrospective diagnosis that was corroborated by evidence produced between 2006–2010. *See Zoch v. Saul*, 981 F.3d 597, 602 (7th Cir. 2020) (chronic pain in back and legs). But the therapist who treated Trzebny in 2021 addressed only her present symptoms. Likewise, her 2019 hospitalization records do not shed light on the nature and extent of her condition before 2010. Trzebny's current psychiatric treatment would be relevant to a new application for disability benefits, but it does not support the application at issue now.

Third, Trzebny disputes the ALJ's characterization of her substance abuse, arguing that she has never been arrested, charged, convicted, or hospitalized for illegal drug use. We see nothing inappropriate about the ALJ's discussion. The ALJ identified substance abuse disorder as a severe impairment that significantly limited her ability to

perform basic work activities, 20 C.F.R. § 404.1520(c), a conclusion that is substantially supported by the record. For instance, the ALJ highlighted medical providers' notes that Trzebny bought Vicodin illegally, misused prescriptions, and relied on medications that exacerbated her mental health problems. As such, the ALJ's discussion of substance abuse provided context for Trzebny's symptoms and treatment history, which was not at all impermissible. *Cf. Boiles v. Barnhart*, 395 F.3d 421, 426–27 (7th Cir. 2005) (vacating judgment where ALJ did not properly support his conclusion that claimant's history of substance abuse was relevant to his determination).

Fourth, Trzebny challenges the ALJ's analysis at step 5 and argues that substantial evidence does not support his determination that she could perform a number of jobs in the national economy. She asserts that the "menial" jobs identified by the expert—and accepted by the ALJ—are not consistent with her education and work experience and would require relocation. She reiterates that she sought gainful employment but was unsuccessful because of her mental disorders.

We see no error with the ALJ's findings at step 5. The ALJ's determination of available work was based on the vocational expert's testimony, which can constitute substantial evidence when as here a claimant does not challenge the expert's credentials or methodology. *See Biestek v. Berryhill*, 139 S. Ct. 1148, 1155 (2019). Trzebny's dissatisfaction with the type of jobs identified by the expert does not change the analysis because disability benefits turn only on whether jobs are available in the broader economy and not whether a particular claimant is interested in those jobs or is able to be hired into them. *See* 42 U.S.C. 423(d)(2)(A); 20 C.F.R. § 404.1566(c)(8); *Herrmann v. Colvin*, 772 F.3d 1110, 1112–13 (7th Cir. 2014).

We have considered Trzebny's remaining arguments, and none has merit.

AFFIRMED