IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge R. Brooke Jackson

Civil Action No 16-cv-00820-RBJ

BRENT ALLEN WARD,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting Commissioner of Social Security,

Defendant.

ORDER

This matter is before the Court on review of the Social Security Administration ("SSA") Commissioner's decision denying claimant Brent Allen Ward's applications for Disability Insurance Benefits ("DIB") under Title II of the Social Security Act. Jurisdiction is proper under 42 U.S.C. § 405(g). For the reasons below, the Court AFFIRMS the Commissioner's decision.

I. STANDARD OF REVIEW

This appeal is based upon the administrative record and the parties' briefs. In reviewing a final decision by the Commissioner, the District Court examines the record and determines whether it contains substantial evidence to support the Commissioner's decision and whether the Commissioner applied the correct legal standards. *Winfrey v. Chater*, 92 F.3d 1017, 1019 (10th Cir. 1996). A decision is not based on substantial evidence if it is "overwhelmed by other evidence in the record." *Bernal v. Bowen*, 851 F.2d 297, 299 (10th Cir. 1988). Substantial evidence requires "more than a scintilla, but less than a preponderance." *Wall v. Astrue*, 561 F.3d 1048, 1052 (10th Cir. 2009). Evidence is not substantial if it "constitutes mere conclusion."

Musgrave v. Sullivan, 966 F.2d 1371, 1374 (10th Cir. 1992). In addition, reversal may be appropriate if the Commissioner applies an incorrect legal standard or fails to demonstrate that the correct legal standards have been followed. *Winfrey*, 92 F.3d at 1019.

II. BACKGROUND

Mr. Ward was born on January 31, 1965. R. 37. He has at least a high school education and speaks English. *Id*. In the past, Mr. Ward worked as a truck driver, an automotive technician, and a cable installer/maintainer and supervisor in the United States Army. *Id*. However, since his alleged disability onset date of October 5, 2011, Mr. Ward has not held substantial gainful employment. R. 12.

A. Procedural History.

On March 20, 2015, Mr. Ward filed an application for DIB, alleging disability beginning on October 5, 2011. *See* R. 10. His claim was initially denied on July 9, 2015. *Id.* Mr. Ward subsequently requested a hearing, which was held in Pueblo, Colorado before Administrative Law Judge ("ALJ") Matthew C. Kawalek on October 28, 2015. R. 71–120. The ALJ denied Mr. Ward's application on December 10, 2015. R. 10–39. Mr. Ward then filed a request for review with the Appeals Council, which that body rejected on March 3, 2016. R. 1–5. Mr. Ward then filed his case in this Court on April 11, 2016. ECF No. 1.

B. The ALJ's Decision.

The ALJ issued an unfavorable decision after evaluating the evidence according to the SSA's standard five-step process. R. 10–39. First, the ALJ found that Mr. Ward had not engaged in substantial gainful activity since his alleged onset date of October 5, 2011. R. 12. At step two, the ALJ found that Mr. Ward had the severe impairments of "degenerative joint disease of the bilateral hips, and status post right hip total hip replacement and mild degenerative joint

disease; degenerative disc disease of the cervical spine and lumbar spine; obesity; obstructive sleep apnea; post-traumatic stress disorder (PTSD)/anxiety; and depression." *Id*. At step three, the ALJ concluded that Mr. Ward did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1. R. 18.

The ALJ then found that Mr. Ward retained the residual functional capacity ("RFC") to perform "light work" as defined in 20 C.F.R. § 404.1567(b) with the following limitations:

> [T]he claimant can lift and carry 20 pounds occasionally and 10 pounds frequently. He can stand and/or walk for six hours in an 8-hour workday, and can sit for six hours in an 8-hour workday. He can never climb ladders, ropes, and scaffolds. He occasionally can kneel, crawl, and climb ramps and stairs. He frequently can balance, stoop, and crouch. He occasionally can reach overhead bilaterally and frequently can reach in all other directions bilaterally. He should have no more than occasional exposure to hazards. He cannot perform any commercial driving. The claimant can understand, remember, and carry out detailed but not complex tasks and instructions. He can have no more than frequent interaction with co-workers and supervisors, and no more than occasional interaction with the general public.

R. 21.

At step four, the ALJ concluded that Mr. Ward was not capable of performing any of his past relevant work. R. 37. Nevertheless, at step five, the ALJ determined that there were other jobs in the national economy that Mr. Ward could perform, such as a dry cleaning or laundry worker, an assembler of small products, and a housekeeper cleaner. R. 38. Accordingly, the ALJ found that Mr. Ward was not disabled. *Id*.

III. ANALYSIS

Mr. Ward raises three interrelated issues on appeal. ECF No. 13 at 15–16. First, he argues that the ALJ did not provide valid reasons for assigning "little weight" to the medical opinion of Dr. Mary E. Delaney. *Id.* at 19–21. Second, he argues that despite giving "some weight" to the opinions about plaintiff's psychological impartments by both State agency

consultant Dr. Gayle Frommelt and consultative physician Dr. David Benson, the ALJ did not provide valid reasons for ignoring certain limitations contained within those opinions. *Id.* at 21–23. Lastly, Mr. Ward argues that the ALJ improperly assessed his social limitations in crafting an RFC. *Id.* at 23–29. Finding none of these arguments warrant reversal, the Court AFFIRMS the ALJ's decision.

A. The ALJ Properly Assessed Dr. Mary Delaney's Opinion.

First, I find that the ALJ did not commit any errors when he evaluated the medical opinion of Dr. Mary Delaney. As the Tenth Circuit has explained, when evaluating medical opinions contained in the record, the ALJ must give each opinion "weight" by assessing the six factors laid out in 20 C.F.R. § 404.1527(c). Those factors are:

> (1) the examining relationship between the physician and the applicant;
> (2) the length, nature, and extent of their treatment relationship;
> (3) the strength of the evidence supporting the opinion;
> (4) the consistency of the opinion with the record as a whole;
> (5) the physician's specialty; and
> (6) any other factors, such as the physician's familiarity with disability programs and the extent of his familiarity with other information in the record, that tend to support or contradict the opinion.

See Rivera v. Colvin, 629 F. App'x 842, 844 (10th Cir. 2015) (unpublished) (distilling 20 C.F.R. §§ 404.1527(c), 416.927(c)).

While the ALJ must consider these factors to the extent they are relevant in the case, the ALJ does not need to explicitly discuss them all with respect to each medical opinion in the record. *See Oldham v. Astrue*, 509 F.3d 1254, 1258 (10th Cir. 2007). Rather, so long as the ALJ's decision is "sufficiently specific to make clear to any subsequent reviewers the weight [the ALJ] gave to the . . . medical opinion and the reasons for what weight[,]" the ALJ's assessment of the medical opinion does not by itself warrant reversal. *Id*. (internal quotation marks omitted) (quoting *Watkins v. Barnhart*, 350 F.3d 1297, 1300 (10th Cir. 2003)).

Here, I find that the ALJ's evaluation of Dr. Delaney's opinion complied with those requirements. *See id.* As the ALJ's decision made clear, the ALJ gave Dr. Delaney's opinion about Mr. Ward's psychological condition "little weight" after finding that Dr. Delaney's opinion was based on "a one-time evaluation of the claimant," and that "her findings [did] not accurately reflect the severity of [plaintiff's] condition, or its limitations." R. 33. The ALJ's evaluation was thus "sufficiently specific," and the reasons he gave for discounting it were clearly spelled out and legitimate. *See Watkins*, 350 F.3d at 1300; 20 C.F.R. § 404.1527(c)(2)(i) (length of treatment relationship is one factor to consider); *id.* § 404.1527(c)(4) (an opinion's consistency with the record matters as well); R. 26–36 (discussing evidence in the record that the ALJ reasonably interpreted showed that plaintiff's symptoms were not merely transient or mild). For that reason alone, I find that the ALJ did not commit reversible error when evaluating Dr. Delaney's opinion.

However, for an additional reason I find that plaintiff's arguments on this point are unavailing: the ALJ's treatment of Dr. Delaney's opinion was *in plaintiff's favor*. *See* R. 33. That is, the ALJ rejected Dr. Delaney's opinion that plaintiff's psychological symptoms were only "mild or transient" and that they only really affected his work "during periods of significant stress[,]" finding instead that the record revealed that plaintiff's condition was more severe and more limiting. *Id*. Thus, even if the ALJ erred in evaluating Dr. Delaney's opinion, any error the ALJ might have committed was harmless from plaintiff's perspective. *C.f. Keyes-Zachary v. Astrue*, 695 F.3d 1156, 1163 (10th Cir. 2012) (holding that because there was "no reason to believe that a further analysis or weighing of [a medical opinion in the record] could advance [the plaintiff's] claim of disability[,]" the ALJ's treatment of the medical opinion was "harmless"). For either reason, I find plaintiff's first argument unpersuasive.

B. The ALJ did not Commit Any Errors in Evaluating Dr. Frommelt's and Dr. Benson's Opinions.

Next, I find that the ALJ did not commit any errors when he assessed the opinions of both Dr. Frommelt and Dr. Benson. The findings of these doctors were similar in some respects. For instance, Dr. Frommelt concluded that plaintiff had "moderate impairments" in: (1) his ability to complete a normal workday or workweek without interruption; (2) his ability to perform at a consistent pace without unreasonable rest periods; and (3) his ability to respond appropriately to typical work situations and changes in setting. R. 132–33. Dr. Benson found, among other things, that plaintiff had "moderate impairment" in his ability to respond appropriately to typical work situations and changes in his work setting. R. 954.

Plaintiff argues that despite giving "some weight" to both doctors' opinions in his decision, the ALJ ignored certain of the doctors' RFC findings. ECF No. 13 at 21–23. Specifically, Mr. Ward argues that the ALJ failed to account for the findings that he had a moderately impaired ability to (1) respond to changes in the workplace and (2) complete a normal workday/workweek, and that the ALJ's treatment of these opinions was therefore erroneous. *Id.* at 22. However, finding that the ALJ did not necessarily have to comment on certain of these findings and that he did not ignore the ones he was required to evaluate, I disagree.

Take Dr. Frommelt's opinion first. As Dr. Frommelt's opinion form explained, the doctor's "actual" RFC determination had to be contained within the narrative portions of that report. *See* R. 131 ("The questions below help determine the individual's ability to perform sustained work activities. However, the *actual* mental [RFC] assessment is recorded in the narrative discussion(s), which describes how the evidence supports each conclusion.") (emphasis added). Thus, the doctors' "findings" that plaintiff had a moderate impairment in his ability to

respond to changes and complete a normal workday/workweek, which were answers to preformatted questions to aid Dr. Frommelt in *formulating* his RFC, were not the "opinion" of Dr. Frommelt that the ALJ was required to evaluate. *See id.* Instead, the narrative portion of Dr. Frommelt opinion, which was his "actual" RFC, included the following:

> [Mr. Ward] [r]etains [the] mental ability to do work not involving significant complexity or judgment; [he] can do work requiring up to 6 months['] time to learn techniques, acquire information and develop facility needed for an average job performance. Cannot work closely with supervisors or coworkers; can accept supervision and relate to coworkers if contact is not frequent or prolonged, avoid public.

R. 132–33.

As the record shows, this RFC was substantially similar to one the ALJ ultimately adopted, except that the ALJ explicitly rejected Dr. Frommelt's "social limitations" findings.[1] *Compare* R. 132–33 *with* R. 21. Thus, I find that the ALJ did not err by choosing not to comment on portions of Dr. Frommelt's worksheet that were not ultimately included in the narrative RFC portion of the doctor's opinion. *C.f. Sullivan v. Colvin*, 519 Fed. Appx. 985, 989 (10th Cir. 2013) (unpublished) (finding "no error" where the ALJ's RFC assessment did not mention certain "moderate limitations on performance" contained within the "checkbox" worksheet portion of the doctors' Mental RFC form and where the ALJ nevertheless gave weight to the ALJ's ultimate opinion that the claimant "could perform unskilled work").

Similarly, I find that the ALJ's assessment of Dr. Benson's opinion was also not erroneous. Unlike Dr. Frommelt's "actual" RFC, Dr. Benson's RFC explicitly included the finding that plaintiff had a "moderate impairment" in his "[a]bility to respond appropriately . . . to changes in routine work settings[.]" R. 954. However, while it is true that the ALJ did not mention that finding *specifically* when evaluating Dr. Benson's opinion, the ALJ nonetheless

[1] I address the ALJ's valid reasons for rejecting these social limitations *infra* Part III.C.

grouped Dr. Benson's "social interactions" findings (of which this was one) and explained that he found that plaintiff's social abilities and capacity for interactions were "greater" than either Dr. Frommelt or Dr. Benson had found. R. 33.

Thus, the ALJ did not ignore this finding within Dr. Frommelt's RFC as plaintiff contends. Nor did he improperly reject it. *See infra* Part III.C. After all, referencing plaintiff's apparent ability to travel to different states to train and work as a truck driver in the past, the ALJ explained that Dr. Benson's more serious "social interactions findings," which included his finding that plaintiff was moderately impaired in his ability to respond to changes at work, were not entirely persuasive. I find that that consists of a "good reason" for rejecting this limitation. *See Oldham v. Astrue*, 509 F.3d 1254, 1258 (10th Cir. 2007); 20 C.F.R. § 404.1527(c)(4) (consistency with the record is one factor to consider). The ALJ therefore adequately addressed Dr. Frommelt's and Dr. Benson's respective RFCs and properly rejected portions of them.[2]

C. The ALJ Properly Assessed Plaintiff's Social Limitations.

Finally, I find plaintiff's third argument that the ALJ did not properly assess plaintiff's social limitations unpersuasive as well. Plaintiff's main arguments on this point are twofold. *See* ECF No. 13 at 23–29. First, he argues that the ALJ's reasons for rejecting the social limitations contained within medical opinions in the record—i.e., that Dr. Benson was not fully aware of plaintiff's activities, that plaintiff's application for Veterans Affairs benefits reflected greater social abilities, and that plaintiff's past military experience showed adequate social

[2] Plaintiff also argues that the ALJ's rejection of these limitations is erroneous because Mr. Altan Hardcastle's findings "corroborate" the other opinions in the record and that the ALJ therefore "ignored the consistency weighing factor." ECF No. 13 at 23 (citing the findings of Mr. Hardcastle, who is a licensed clinical social worker plaintiff started counseling with in January of 2013). The Court, however, cannot re-weigh the evidence for the ALJ. *See Oldham*, 509 F.3d at 1257. Moreover, the ALJ did not ignore the "consistency" weighing factor, since he found that Dr. Frommelt's and Dr. Benson's limitations were inconsistent with the record as a whole. *See* R. 33. Finding that this was a "good reason" for rejecting those limitations, see *supra*, plaintiff's argument on this point is unavailing.

capabilities—are either invalid or unsupported in the record. *See id.* Second, he argues that substantial evidence does not support the more mild social limitations the ALJ ended up including in his RFC. *Id.*

On plaintiff's first point, I note that the role of this Court is not to "re-weigh" the evidence before the ALJ. *See Oldham*, 509 F.3d at 1257. Thus, to the extent plaintiff wants this Court to reject the ALJ's assessment of plaintiff's social limitations because the decision could have come out the other way, I am afraid I cannot do so. *See id.*

In any event, I also disagree with plaintiff's first argument because the reasons the ALJ gave for rejecting the social limitations contained within the record are valid. For instance, as the ALJ explains, the record shows that plaintiff engaged in social interactions that Dr. Benson apparently did not know about when he formulated his report.[3] R. 33; *compare* R. 952 (merely stating that plaintiff has college credits and that he is currently pursuing the x-ray program at Pueblo Community College) *with* R. 102–04 (testimony by plaintiff after Dr. Benson completed his report that describes the full extent of plaintiff's clinical training at school, where plaintiff apparently works closely, frequently, and cooperatively "one-on-one" with an instructor or supervisor). Thus, the ALJ properly found that Dr. Benson's social limitations (e.g., that plaintiff has a "moderate impairment" in his ability to interact with supervisors) could legitimately be rejected in favor of a finding that plaintiff had only milder social limitations (e.g., that plaintiff can have no more than "frequent" interactions with his supervisors). *See* R. 33.

[3] Plaintiff argues that it is unclear what Dr. Benson knew when he formulated his report and therefore that the ALJ's first reason for rejecting portions of Dr. Benson's opinion is invalid. ECF No. 13 at 27. However, the Court finds that the ALJ could have been relatively certain that the evidence plaintiff provided directly to him during his questioning of plaintiff at plaintiff's hearing, which was *after* Dr. Benson submitted his report, was specific information in the record that Dr. Benson did not and could not have had. *See* R. 33.

Regarding plaintiff's second argument, I find that substantial evidence supports all of the ALJ's "social interaction" findings—i.e., that plaintiff could "have no more than frequent interaction with co-workers and supervisors, and no more than occasional interaction with the general public." *See, e.g.*, R. 102–04 (describing plaintiff's clinical work at college); R. 241, 566 (describing plaintiff's public social activities, including movies with his spouse, weekly church, dinner out with his family, and a square dancing fundraiser). Accordingly, I find that the ALJ did not commit any errors in crafting the social limitations within plaintiff's RFC and that the ALJ's decision must therefore be upheld.

ORDER

The Court thanks Mr. Ward for his service to this country. Nevertheless, after reviewing the record and the parties' briefs, I do not find that any of Mr. Ward's arguments on appeal warrant a reversal of the ALJ's decision in this case. Accordingly, for the reasons described above, the Court AFFIRMS the Commissioner's decision denying Mr. Roy's application for Disability Insurance Benefits.

DATED this 7th day of April, 2017.

BY THE COURT:

R. Brooke Jackson
United States District Judge