NONPRECEDENTIAL DISPOSITION
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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued December 14, 2022
Decided January 13, 2023

Before

DIANE S. SYKES, *Chief Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-1638

DIANA L. MCCORKLE
Plaintiff-Appellant,

v.

KILOLO KIJAKAZI,
Acting Commissioner of Social Security
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Indiana, Fort Wayne Division.

No. 1:20-cv-00459-SLC

Susan Collins,
Magistrate Judge.

O R D E R

Diana McCorkle challenges the denial of her application for Social Security disability benefits. She argues that the administrative law judge ("ALJ") improperly played doctor when evaluating her migraines by not finding them to be a "severe" impairment and then by failing to adequately consider the migraines in assessing her residual functional capacity. Because substantial evidence supports the ALJ's decision to deny McCorkle's application, we affirm.

I. Background

In 2018 53-year-old McCorkle applied for Social Security Disability Insurance, asserting that she suffered from neurological brain damage, diabetes, bulging and degenerating spinal discs, severe arthritis, and daily migraines. The neurological problems stemmed from a car accident in 1989, and the migraine headaches began in 1998, with fainting episodes, dizziness, and loss of balance beginning in 2000. Before she was hospitalized after a fainting episode in May 2018, McCorkle worked as a payroll billing clerk.

Dr. Christopher Frazier, McCorkle's primary-care physician, reported fairly normal physical examinations between May 2018 and April 2019, though McCorkle consistently reported back pain, migraines or headaches, and dizziness. Images taken in 2017 confirmed moderate to severe degenerative disc disease, and images from 2018 show white matter lesions in McCorkle's brain. In his letters of support of her disability application, Dr. Frazier opined that McCorkle had "episodic migraines with vertigo, extensive nausea, vomiting and dizziness" that occur more than five days a month and may last the duration of an eight-hour workday; that she required the use of a cane due to her unsteady gait; and that she could stand and walk less than two hours and sit for about four hours.

McCorkle had a consultative exam in late 2018; the doctor found that she had reduced range of motion in her cervical and lumbar spine, an unstable gait, and decreased muscle strength in her hands and extremities. She was unable to bend forward or backward because of pain and lack of balance.

Two state-agency consulting physicians assessed McCorkle's residual functional capacity based on the medical records. The doctor at the initial determination level opined that she could perform light exertion work with limitations related to climbing, crouching, and bending, and had environmental restrictions for concentrated exposure to hazards. The doctor at the reconsideration stage gave the more restrictive opinion that McCorkle could perform only sedentary work (with similar postural and environmental restrictions).

In January 2020 McCorkle appeared at a hearing before an ALJ. McCorkle testified that she could not work because of back pain, dizziness, and neurological problems affecting her vision, memory, and balance. She said that balance issues, pain, and headaches made it difficult for her to complete chores, take a shower, and cook meals. McCorkle had worked since 1998, although her migraines returned three times

per day, requiring her to take four ibuprofen tablets each time. Each migraine lasted until about half an hour after taking ibuprofen. She had tried preventative migraine medications but they were ineffective, and she was now using Tylenol 3, which contains codeine. She further testified that her migraines prevented her from performing past work because she would have to shut off the light in her office and sit for half an hour at a time, and she could not take Tylenol 3 while working.

A vocational expert testified about jobs available to a hypothetical claimant able to do sedentary work with the limitations of: never climbing ladders; occasionally climbing ramps and stairs, balancing, crouching, and crawling; and avoiding unprotected heights and dangerous moving machinery. The expert opined that this person could work as a payroll and billing clerk but could not do any of McCorkle's other past work. And the vocational expert explained that the answer would stay the same if the claimant also needed a cane to move about. McCorkle's attorney asked about an employer's need for "on task behavior": The expert responded that a claimant would need to be able work at least "50 minutes out of every hour, which would equate to being off task no more than 15 percent of the work time," and that the claimant's "absenteeism should not exceed two days per month."

The ALJ denied McCorkle's application. At step one of the five-step analysis described in 20 C.F.R. § 416.920(a)(4), the ALJ found that McCorkle had not engaged in substantial gainful activity since May 14, 2018. At steps two and three, the ALJ determined that she had severe impairments—obesity, diabetes mellitus, degenerative disc disease, and vertigo—but that none was per se disabling. At step four the ALJ concluded that she could perform sedentary work with limitations that would still allow her to perform her past relevant work as a payroll billing clerk. Specifically, the ALJ determined that McCorkle's residual functional capacity ("RFC") included only the following limitations: "never climb ladders, ropes or scaffolds; occasionally climb ramps and stairs; occasionally balance, stoop, kneel, crouch, and crawl; avoid unprotected heights and dangerous moving machinery; and needs a cane for ambulation."

In support the ALJ explained that McCorkle's testimony about the intensity and limiting effects of her migraines were "not entirely consistent" with the medical evidence and her prior statements. The ALJ observed that McCorkle "had worked full time with those symptoms for many years," that her complaints about vertigo were more prevalent, and that she did not present "objective medical evidence or clinical

findings to establish a medically determinable physical or mental impairment that would result in any greater degree of limitation."

The ALJ further explained that she did not give controlling weight to any prior medical findings or medical opinions. The nonexamining agency physicians' assessments were only partially persuasive. The doctor at the initial stage did not acknowledge McCorkle's vertigo, diabetes, or obesity. The findings of the doctor at the reconsideration stage were more consistent with the record but did not acknowledge her use of a cane for dizziness and poor balance. The examining consultant merely summarized McCorkle's subjective reports and did not provide any medical opinion. The ALJ also found Dr. Frazier to be only partially persuasive. He was a treating source with specialization, but the ALJ perceived Dr. Frazier's opinions to be inconsistent with his own treatments: Dr. Frazier's recommended restrictions had "minimal support in the form of rather vague references to the claimant's complaints or diagnoses as they [were] documented in his records."

After the ALJ denied McCorkle's application, the Appeals Council declined further review. On judicial review the magistrate judge (presiding by consent under 28 U.S.C. § 636(c)) upheld the Commissioner's decision, rejecting the argument that the ALJ had "hyper-defined [her] impairment so that migraine headaches [could] be ignored and vertigo emphasized." The judge explained that the ALJ had discussed McCorkle's migraines in both the third-step and RFC analyses and that the ALJ had not "play[ed] doctor" in rejecting Dr. Frazier's opinions. Instead, the ALJ had permissibly declined to give it controlling weight. Ultimately, the magistrate judge concluded that McCorkle did not cite medical evidence in the record that supported the need for additional limitations to account for migraines in the RFC finding.

II. Analysis

On appeal McCorkle primarily argues that the ALJ erred by playing doctor and "hyper-defining" migraines to distinguish them from vertigo, thereby underplaying their severity and the need for more restrictions. In a disability-benefits appeal, we deferentially review the ALJ's decision to determine whether it is supported by substantial evidence. *L.D.R. v. Berryhill*, 920 F.3d 1146, 1151 (7th Cir. 2019). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (quotation marks omitted).

McCorkle first contests the ALJ's step-three finding that migraines were not a severe impairment. She argues that Dr. Frazier diagnosed her with migraine headaches but that the ALJ refused to accept the diagnosis and its effects on her ability to function. It is true that the ALJ found it unclear whether "migraines" were even a formal diagnosis, which is inconsistent with Dr. Frazier's treatment records. But even if it were error not to include migraines as a severe impairment, the error would be harmless because multiple other limitations were found to be severe. *See Ray v. Berryhill*, 915 F.3d 486, 492 (7th Cir. 2019). Thus, the analysis proceeded to the next step, at which all impairments—both severe and nonsevere—are considered in the RFC analysis. 20 C.F.R. § 404.1523; *see Ray*, 915 F.3d at 492. The ALJ did so here.

McCorkle also argues that the ALJ's decision to not incorporate migraine-related limitations into the RFC—especially excessive absenteeism and time off-task—is not supported by substantial evidence. Specifically, she points to the omission of her need to take unscheduled breaks to recover from episodes of nausea or vomiting. We consider the decision as a whole to determine whether the ALJ supplied a "logical bridge" connecting the RFC assessment to evidence in the record. *See Moore v. Colvin*, 743 F.3d 1118, 1121 (7th Cir. 2014).

That connection is present here. In assessing the RFC, the ALJ noted that McCorkle's more prevalent and objectively observed symptoms—dizziness and unsteady gait—were those of vertigo. These limitations are addressed in the RFC by the use of a cane for balance and limitations around certain postural maneuvers (bending, crouching, stooping, etc.). But McCorkle argues that these limitations were insufficient because they did not address other symptoms of her migraines, such as vomiting and nausea. She asserts that the ALJ improperly disregarded Dr. Frazier's diagnoses when excluding absences or off-task time from the RFC.

The ALJ adequately explained her treatment of Dr. Frazier's letters of support in light of other evidence. *See Burmester v. Berryhill*, 920 F.3d 507, 510 (7th Cir. 2019). She considered the support for and consistency of Dr. Frazier's opinion, *see Haynes v. Barnhart*, 416 F.3d 621, 630 (7th Cir. 2005), and found it just partially persuasive because Dr. Frazier only "minimal[ly]" supported his recommendations with "rather vague references to McCorkle's complaints or diagnoses as documented in [the] record." Although Dr. Frazier diagnosed migraines, his records do not show that McCorkle regularly complained of nausea or vomiting or that he provided any treatment for those symptoms. Further, McCorkle did not testify about either symptom at the administrative hearing. And most important, McCorkle does not point to evidence that

the ALJ improperly overlooked or failed to address in relation to a need for limitations related to nausea or vomiting.

To the extent that McCorkle's own testimony supported a need for migraine-related restrictions (for example, her use of Tylenol 3 rendering her unable to work), she does not engage with the ALJ's adverse credibility finding. The ALJ discounted her testimony regarding the frequency and intensity of the migraines because it was inconsistent with the medical record, which the ALJ found unclear about the extent to which McCorkle complained of or was treated for migraines. The ALJ noted that her complaints of headaches were often concurrent with reports of ear pain or inner ear infections and that doctors sometimes thought she had "tension-type" headaches. Moreover, McCorkle worked in her office job for a decade after she began to experience migraines, which the ALJ found inconsistent with both McCorkle's and Dr. Frasier's statements about their disabling effects. On appeal McCorkle does not demonstrate—or even argue—that the ALJ's adverse credibility determination was "patently wrong," so she cannot rely on her own testimony to persuade this court that the ALJ had to adopt more restrictions. *Wilder v. Kijakazi*, 22 F.4th 644, 653 (7th Cir. 2022). This also addresses the point that McCorkle's counsel made at oral argument (but not in the briefs) that the existence of migraines is often supported by self-reports and not objective tests.

The burden falls on McCorkle to provide evidence that migraines cause specific limitations affecting her capacity to work, *see id.* at 651; 20 C.F.R. § 404.1512(a), or that any errors affected the outcome of the proceedings, *Shramek v. Apfel,* 226 F.3d 809, 814 (7th Cir. 2000). The only evidence that supports McCorkle's position about the needed work restrictions came from her testimony and Dr. Frazier's opinion, and the ALJ gave sufficient reasons for discounting that evidence.

AFFIRMED