

In the  
United States Court of Appeals  
For the Seventh Circuit

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No. 22-1442

GEORGANN KATHLEEN SEVEC,

*Plaintiff-Appellant,*

*v.*

KILOLO KIJAKAZI,

Acting Commissioner of Social Security,

*Defendant-Appellee.*

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Appeal from the United States District Court for the  
Northern District of Illinois, Eastern Division.  
No. 1:19-cv-07278 — **Young B. Kim**, *Magistrate Judge*.

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ARGUED OCTOBER 27, 2022 — DECIDED FEBRUARY 1, 2023

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Before EASTERBROOK, RIPPLE and WOOD, *Circuit Judges*.

RIPPLE, *Circuit Judge*. Georgann Kathleen Sevec filed for disability and social security benefits in December 2017 and February 2018, respectively, alleging an onset of disability of May 1, 2014. Her application was denied initially and upon reconsideration. An administrative law judge (“ALJ”) conducted a hearing, at which Ms. Sevec and a vocational expert (“VE”) testified. Relying on the VE’s testimony that Ms. Sevec

was able to perform the job of home health nurse in the manner in which she had performed it in the past, the ALJ determined that Ms. Sevec was not disabled. The Appeals Council denied review. When Ms. Sevec sought further review in the district court, it concluded that substantial evidence supported the ALJ's determination.

We now reverse. Although generally an ALJ may rely on the testimony of a VE, here the VE's testimony is not well grounded in the record, and it is not sufficient, standing alone, to support the ALJ's determination. For this reason, we reverse the district court's judgment and remand for further proceedings.

## I.

### BACKGROUND

At the time of her hearing before the ALJ, Ms. Sevec was sixty years old and suffered from knee pain caused by osteoarthritis. She testified as to the extent of her physical limitations as well as her past work experience. Because our decision turns in large part on the record evidence and the testimony at the administrative hearing, we recount it here in some detail.

#### A.

In her application for unemployment benefits, Ms. Sevec stated that she was employed as a "registered nurse" at Pro Med Staffing from 1999 to 2009.<sup>1</sup> At the hearing, she further

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<sup>1</sup> A.R. 243.

testified that she was “basically” working in “nursing homes.”<sup>2</sup> Her duties included: “[D]o[ing] a narcotics count”;

[a]nswering call lights[;] [a]ssisting patients to and from the bathroom, if needed[;] [t]ak[ing] care of the IV meds[;] [d]o[ing] some breathing treatments as well as tak[ing] care of any kind of feeding tubes[;] [g]enerally lifting – ... 10 pounds or less, but ... of course, occasionally ... hav[ing] to lift the patients if they fell on the floor.<sup>3</sup>

These duties matched those Ms. Sevec described in her application for disability benefits.

She later worked at ATC Healthcare Services, Inc. (“ATC Healthcare”) from 2009 to 2014, also as a “registered nurse.”<sup>4</sup> In her application for benefits, she described her duties as being very similar to those at Pro Med Staffing; they included doing narcotics counts; answering call lights and bed alarms; assisting patients to the bathroom; administering IV medications; doing breathing treatments; and taking care of feeding tubes.

At the hearing, the ALJ inquired about her duties at both facilities. Beginning with Pro Med Staffing, Ms. Sevec stated that she did a narcotics count, answered call lights, assisted patients to the bathroom, took care of IV medications, and so forth. The ALJ then asked her about her work at ATC

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<sup>2</sup> *Id.* at 38.

<sup>3</sup> *Id.* at 38–39.

<sup>4</sup> *Id.* at 243.

Healthcare. She described ATC Healthcare as “a staffing agency” that “went to long-term care facilities ... for the developmentally disabled,” some of which “were located in houses.”<sup>5</sup> Work at these homes involved “total care” of the residents.<sup>6</sup> When asked to clarify whether her duties at the “developmental homes” were the same as those she previously had described, she stated that “there was a lot more seizure medications to be given. Things of that nature.”<sup>7</sup> She did not state that there were any further distinctions in her responsibilities. At that point, the ALJ advised Ms. Sevec’s counsel and the VE that “[t]hese two jobs” — at Pro Med Staffing and ATC Healthcare—“would both be considered past work. The job with the neighbor is not past work, so I don’t need that described.”<sup>8</sup>

Ms. Sevec then testified that she left her job at ATC Healthcare to care for her neighbor because she had “difficulty being on [her] legs that long, passing the medicine.”<sup>9</sup> She thought that “caring for one person would be better than trying to take care of 42.”<sup>10</sup>

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<sup>5</sup> *Id.* at 39.

<sup>6</sup> *Id.* at 40.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 41.

<sup>10</sup> *Id.*

After Ms. Sevec, the VE testified that he had “had a chance to review the evidence and listen to the testimony.”<sup>11</sup> Based on the evidence, the VE stated, Ms. Sevec had past work as a “registered nurse at 075.364-010. And that’s skilled work. That’s level 7, medium in its physical demand, medium as performed. And then we also have home health nurse.”<sup>12</sup> The ALJ interrupted and inquired whether the VE was referring to the work “for the neighbor.”<sup>13</sup> The VE responded: “I thought there was also, she also had some home health assignments when she was with the nursing home or something like that.”<sup>14</sup>

At this point, Ms. Sevec interjected that her work had been in homes for “people who are developmentally disabled.”<sup>15</sup> The ALJ then followed up to determine how frequently Ms. Sevec was assigned to homes for the developmentally disabled, as opposed to other care facilities. She stated that she could not remember “in a typical month or a typical year” how frequently she would go “to a developmental home versus a nursing home.”<sup>16</sup> However, she stated that it happened “very regular[ly]” because ATC Healthcare serviced two such

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<sup>11</sup> *Id.* at 52.

<sup>12</sup> *Id.* at 53.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 54.

homes.<sup>17</sup> After this exchange, the VE declared, without elaboration: “A home health nurse is 079.374-014. That’s a skilled job also, level 6. Medium in its physical demand; light as performed.”<sup>18</sup>

The ALJ then posed a hypothetical question to the VE in which she incorporated all of Ms. Sevec’s limitations and asked whether “any of the past work [would] be available?”<sup>19</sup> The VE replied, “Possibly the home health being as performed at a light level, not per the [Dictionary of Occupational Titles], though, but as performed.”<sup>20</sup> Ms. Sevec’s counsel followed up with a few questions for the VE about “absenteeism and [being] off task”; however, counsel did not pose any questions to the VE regarding his conclusion that Ms. Sevec had past work as a home health nurse.<sup>21</sup>

## B.

In a written opinion, the ALJ concluded that Ms. Sevec was not disabled. The ALJ engaged in the required five-step process described in 20 C.F.R. § 404.1520(a)(4) in reaching her determination. At step one, the ALJ concluded that Ms. Sevec was not currently engaged in substantial gainful employment. At step two, the ALJ determined that Ms. Sevec had two severe impairments: osteoarthritis of her knees and obesity.

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 55.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 56.

At step three, the ALJ concluded that Ms. Sevec's impairment(s) did not meet the requirements for any of the specific disability listings. At step four, the ALJ found that, even considering Ms. Sevec's limitations, she was capable of performing past relevant work as a home health nurse. According to the ALJ, "[t]his work does not require the performance of work-related activities precluded by the claimant's residual functional capacity."<sup>22</sup> Specifically, the ALJ stated:

The record reflects the claimant worked as a home health nurse from 2009 to 2014 (Hearing Testimony & Exhibit 3E). Her earnings records indicated that she worked at or above substantial gainful activity during the time (Exhibit 8D). The vocational expert testified and defined the job of home health nurse as a medium, skilled job with a specific vocational preparation (SVP) of six, meaning it takes anywhere from one to two years to learn. The vocational expert testified that the claimant performed the job of home health nurse at the light exertional level. I find that the claimant worked at substantial gainful activity and worked as a home health nurse for a sufficient amount of time to learn the skills to return to this job. Therefore, I find that the claimant's past work as a home health nurse qualifies as past relevant work.

In comparing the claimant's residual functional capacity with the physical and mental demands of a home health nurse, I find the claimant is

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<sup>22</sup> *Id.* at 22–23 (emphasis removed).

able to perform this work as actually performed. At the hearing, the vocational expert testified that the claimant, subject to the limitations identified in the residual functional capacity finding, could perform the past relevant work as a home health nurse as actually performed. Pursuant to SSR 00-4p, the vocational expert's testimony is consistent with the information contained in the Dictionary of Occupational Titles.<sup>23</sup>

Because the ALJ found that Ms. Sevec could perform past work, she did not proceed to step five of the analysis (whether, given her limitations, there are jobs in the national economy that Ms. Sevec could perform).

### C.

Ms. Sevec filed this action in district court challenging the ALJ's determination. The district court, however, held that the ALJ's conclusion was supported by substantial evidence. The district court first noted that "past work" did not depend on the title of the position that the individual had, but instead on "the mental and physical responsibilities associated with that work."<sup>24</sup> The district court further observed that "the VE provided objective and impartial testimony" that Ms. Sevec had past work as a home health nurse:

[T]he VE considered Georgann's own testimony that during her employment with a nurse

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<sup>23</sup> *Id.* at 23.

<sup>24</sup> R.42 at 10.



staffing agency from 2009 to 2014, she worked in developmental homes “quite a few times” and “very regular[ly].” The ALJ relied on the VE’s characterization in determining that Georgann’s past work included home health nurse from 2009 to 2014. The court finds no error in the ALJ’s factual statement.<sup>25</sup>

## II.

We review de novo the district court’s judgment affirming the agency’s decision but apply the deferential “substantial evidence” standard when reviewing the ALJ’s decision. *See, e.g., Skinner v. Astrue*, 478 F.3d 836, 841 (7th Cir. 2007). “[S]ubstantial evidence ... is ‘such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’” *Simila v. Astrue*, 573 F.3d 503, 513 (7th Cir. 2009) (quoting *Craft v. Astrue*, 539 F.3d 668, 673 (7th Cir. 2008)). “[W]hatever the meaning of ‘substantial’ in other contexts,” the Supreme Court has made clear that in the disability context, “the threshold for such evidentiary sufficiency is not high.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019).

In determining whether a claimant is disabled, the ALJ must undertake a five-step process. “If at any step a finding of disability or nondisability can be made, the [Social Security Administration] will not review the claim further.” *Barnhart v. Thomas*, 540 U.S. 20, 24 (2003). The Supreme Court has set forth these steps accordingly:

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<sup>25</sup> *Id.* (citations omitted).

At the first step, the agency will find nondisability unless the claimant shows that he is not working at a “substantial gainful activity.” §§ 404.1520(b), 416.920(b). At step two, the SSA will find nondisability unless the claimant shows that he has a “severe impairment,” defined as “any impairment or combination of impairments which significantly limits [the claimant’s] physical or mental ability to do basic work activities.” §§ 404.1520(c), 416.920(c). At step three, the agency determines whether the impairment which enabled the claimant to survive step two is on the list of impairments presumed severe enough to render one disabled; if so, the claimant qualifies. §§ 404.1520(d), 416.920(d). If the claimant’s impairment is not on the list, the inquiry proceeds to step four, at which the SSA assesses whether the claimant can do his previous work; unless he shows that he cannot, he is determined not to be disabled. If the claimant survives the fourth stage, the fifth, and final, step requires the SSA to consider so-called “vocational factors” (the claimant’s age, education, and past work experience), and to determine whether the claimant is capable of performing other jobs existing in significant numbers in the national economy. §§ 404.1520(f), 404.1560(c), 416.920(f), 416.960(c).

*Id.* at 24–25 (footnotes omitted).

Ms. Sevec's arguments center around step four of the analysis. She claims that the ALJ's conclusion that she could perform past work as a home health nurse is not supported by substantial evidence. We agree. The ALJ reached her conclusion solely on the basis of the VE's testimony. But a review of the record convinces us that it simply will not support the VE's conclusion as to the nature of Ms. Sevec's past work.

A.

Our first concern stems from the quality of the VE's testimony, which forms the basis for the ALJ's ultimate decision. There is reason to question whether, in forming his opinions, the VE actually had reviewed the record and had paid attention to the testimony. Specifically, although the ALJ had instructed the VE not to consider Ms. Sevec's work for her neighbor as past work, the VE seemed somewhat pressed to come up with other evidence that Ms. Sevec ever had worked as a home health nurse; he stated that he "*thought*" that Ms. Sevec "*also had some home health assignments when she was with the nursing home or something like that.*"<sup>26</sup>

Following the ALJ's inquiries concerning how frequently Ms. Sevec was assigned to homes for the developmentally disabled, the VE reiterated: "A home health nurse is 079.374-014. That's a skilled job also, level 6. Medium in its physical demand; light as performed."<sup>27</sup> However, given that Ms. Sevec's duties when working for ATC Healthcare were so similar to those she performed while at Pro Med Staffing, it is difficult to see how caring for patients in two homes, among

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<sup>26</sup> A.R. 53 (emphasis added).

<sup>27</sup> *Id.* at 54.

her other assignments, transformed her job from a general duty nurse<sup>28</sup> to that of a home health nurse. The only difference that Ms. Sevec noted between her responsibilities at the other long-term care facilities and the group homes was that “a lot more seizure medications [were] given. Things of that nature.”<sup>29</sup> The DOT listings referenced by the VE make no mention of the administration of specific drugs. *See* DOT 075.364-010 (Nurse, General Duty); DOT 079.374-014 (Nurse, Licensed Practical). Additionally, absent from Ms. Sevec’s testimony is any evidence from which the VE could conclude that Ms. Sevec’s duties were “light as performed.” Indeed, DOT 079.374-014 is designated as requiring a medium level of exertion.<sup>30</sup>

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<sup>28</sup> “Registered Nurses” is actually a category of DOT listings (075-Registered Nurses). When the VE testified that Ms. Sevec had past work as a “registered nurse,” he referenced a specific listing within that category: DOT 075.364-010 (Nurse, General Duty).

<sup>29</sup> A.R. 40.

<sup>30</sup> The Acting Commissioner maintains that “[t]he vocational expert’s testimony—and, in turn, the ALJ’s finding—was firmly supported by Sevec’s own testimony.” Appellee’s Br. 16. According to the Acting Commissioner, Ms. Sevec “testified that her duties at the developmental homes involved more dispensing of medications and ‘[t]hings of that nature’ than at the nursing homes and did not require her to bring or carry any equipment.” *Id.* However, Ms. Sevec did not testify that her work at the group homes involved “more dispensing of medications” generally but stated that “there was more *seizure* medications to be given. Things of that nature.” A.R. 40. Ms. Sevec’s testimony described the particular medicinal needs of the patients, not a qualitative difference in the type of care being administered. The Acting Commissioner also states that Ms. Sevec’s work at the group homes “did not require her to bring or carry any equipment.” Appellee’s Br. 16. However, there is no evidence in the record that

Finally, when asked to assess whether, given Ms. Sevec's physical limitations, any of her "past work would be available," the VE was equivocal at best: "*Possibly the home health being as performed at a light level, not per the DOT, though, but as performed.*"<sup>31</sup> The VE offered no further testimony that solidified his opinion; his opinion remained that Ms. Sevec only could "possibly" perform her past work.

In sum, the ALJ's decision that Ms. Sevec could perform past "light" work as a "home health nurse" rested entirely on the vague, ill-explained, and equivocal testimony of the VE. This is too thin an evidentiary reed on which to base a disability determination; it certainly is not such evidence that "a reasonable mind might accept as adequate to support a

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Ms. Sevec was required to bring her own equipment with *any* of her assignments—nursing home, other long-term care facility, or group home. Additionally, there is no evidence in the record that Ms. Sevec was not required to *carry* equipment while at the group homes. Rather the question and answer on which the Acting Commissioner relies for this conclusion only addresses what Ms. Sevec was required to bring with her to particular job sites:

Q        Would you have to, like, bring your own equipment and things like that with you and drive there, or how did that work?

A        Well, they would give you directions to whatever house it was, and I would drive there but no, they pretty much had their own medications. Everybody had their own medications.

A.R. 40.

<sup>31</sup> *Id.* at 55 (emphasis added).

conclusion.” *Simila*, 573 F.3d at 513 (internal quotation marks omitted).<sup>32</sup>

## B.

The ALJ’s opinion also fails to adhere to the standards in Social Security Ruling 82-62, which sets forth “the policy and explain[s] the procedures for determining a disability claimant’s capacity to do past relevant work (PRW).” It notes that the determination of whether the claimant can perform past work “has far-reaching implications and must be developed and explained fully in the disability decision. Since this is an important and, in some instances, a controlling issue, every effort must be made to secure evidence that resolves the issue as clearly and explicitly as circumstances permit.” *Id.* With respect to the ALJ’s explanation, the Ruling further states that “[t]he explanation of the decision must describe the weight attributed to pertinent medical and nonmedical factors in the case and reconcile any significant inconsistencies. Reasonable inferences may be drawn, but presumptions, speculations and suppositions must not be used.” *Id.*

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<sup>32</sup> The Acting Commissioner notes that Ms. Sevec’s counsel failed to cross-examine the VE during the hearing, and, therefore, she cannot now complain that the VE’s testimony is insufficient to support the ALJ’s disability determination. *See* Appellee’s Br. 15. Ms. Sevec’s counsel certainly could have taken a more active role in dismantling the VE’s testimony. This is especially true with respect to the VE’s conclusion that the home health care work was “light” as performed. However, as noted above, the VE could not testify, with any degree of certainty, that Ms. Sevec could perform her past work as a home health nurse. Counsel may have concluded, as we have, that such a statement could not support an adverse disability determination.

Here, as we already have described, the evidence on which the ALJ relied does not allow for a “clear[] and explicit[]” comparison of Ms. Sevec’s current limitations to the duties of her prior employment. Rather, it rests wholly on the terse, breezy conclusions of the VE. Put bluntly, the ALJ’s conclusion that Ms. Sevec is capable of performing past work as a home health nurse impermissibly relies on “presumptions, speculations and suppositions.” SSR 82-62. The ALJ notes that, “[a]t the hearing, the vocational expert testified that the claimant, subject to the limitations identified in the residual functional capacity finding, could perform the past relevant work as a home health nurse as actually performed.”<sup>33</sup> Not so. The VE did not testify that the claimant “could perform ... past relevant work”; rather the VE testified that Ms. Sevec could “[p]ossibly” perform “the home health being as performed at a light level.”<sup>34</sup> The ALJ’s determination adds a gloss of certainty to the VE’s testimony that the record does support. The ALJ’s disability determination rests only on the *possibility* that Ms. Sevec can perform past work. This simply is not sufficient.

Because the record does not contain evidence from which the ALJ could determine, with any degree of confidence, that Ms. Sevec is capable of performing her past work, we must conclude that the ALJ’s finding was not supported by substantial evidence.<sup>35</sup>

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<sup>33</sup> A.R. 23.

<sup>34</sup> *Id.* at 55 (emphasis added).

<sup>35</sup> We acknowledge that the burden of proof rests on the claimant to establish that she is not capable of performing her past work. *See, e.g., Moore*

### Conclusion

For the foregoing reasons, the judgment of the district court is reversed, and the case is remanded for proceedings consistent with this opinion.

REVERSED and REMANDED

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*v. Colvin*, 743 F.3d 1118, 1121 (7th Cir. 2014) (noting that, at step four, “the claimant has the burden to demonstrate whether she is capable of performing her past relevant work”); *Bowen v. Yuckert*, 482 U.S. 137, 146 n.5 (1987) (“The claimant first must bear the burden at step one of showing that he is not working, at step two that he has a medically severe impairment or combination of impairments, and at step four that the impairment prevents him from performing his past work.”). Here, however, the VE’s testimony is both the only support for the ALJ’s decision and is substantively inadequate. Consequently, the ALJ’s decision is without any support in the record.