NONPRECEDENTIAL DISPOSITION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 April 13, 2023*
Decided April 18, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 22-2163

MARK R. SANDERS,
Plaintiff-Appellant,

v.

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

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 21 cv 4234

Susan E. Cox,
Magistrate Judge.

O R D E R

Mark Sanders applied for Social Security disability and supplemental security income benefits. An administrative law judge denied his application for benefits. The ALJ found that Sanders had earned a disqualifying income and that he could perform

* 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).

available light work. The district court affirmed the agency's decision. Because substantial evidence supports these rulings, we affirm.

Sanders contends that he became disabled in April 2019, when he injured his right shoulder while working as a nurse. He received surgery and physical therapy, which improved his shoulder's range of motion and decreased his pain. After he later complained of wrist pain, imaging of his wrists confirmed ligament tears, for which he received braces and more physical therapy that reduced pain and restored some motion. A few months later, he underwent a surgical hernia repair, which briefly restricted his lifting, pushing, and pulling. Soon after, his surgeon released him to work, and X-rays of his shoulder showed a normal appearance. During this recovery period, Sanders was diagnosed with bipolar disorder and anxiety.

Six months after the workplace injury, Sanders returned to work in October 2019 without any medical restrictions. During the next nine months, he earned a salary: In the last quarter of 2019, Sanders earned over $7,000; in the first quarter of 2020, he earned over $9,600; and in 2020's second quarter, he earned over $4,800. Near the end of that nine months, he contracted COVID-19 and was off work for two weeks in April. Shortly after, his psychiatrist opined in late May 2020 that Sanders's anxiety and depression worsened in the pandemic. The doctor recommended that Sanders should either move to a different floor at work (he worked in a COVID-isolation unit) or take leave until the pandemic ended. Sanders requested medical leave, but the record does not suggest that he received it. He left his job by June 2020.

At his hearing, Sanders testified about his work history and abilities. He confirmed that he had returned to work in October 2019 and could lift up to 20 pounds, alternate sitting or standing every 20 minutes, and walk without difficulty. He said that at work his wrists hurt when writing or typing, affecting his concentration, depression, and anxiety, which led to conflicts with co-workers.

Applying the familiar five-step analysis, 20 C.F.R. § 404.1520, the ALJ found that Sanders was not disabled for the full period, beginning in April 2019, when he claimed to be disabled. At step one, the ALJ ruled that from October 2019 until June 2020 Sanders worked and earned income at a level that disqualified him from benefits. The ALJ found at step two that Sanders had severe impairments (wrist and dexterity limitations, obesity, bipolar disorder, and anxiety). But they did not meet or equal a presumptively disabling impairment (step three). And, the ALJ ruled at step four, although Sanders could not return to his past work, he could handle light work, *id*. § 404.1567(b), that limited reaching overhead with his right shoulder, fine manipulation,

interacting with others, and other demands. Finally, the ALJ found that the national economy had a significant number of light-work jobs with those limitations that Sanders, with his education, could perform (step five).

Sanders sought judicial review in district court. *See* 42 U.S.C. § 405(g). He asked the court to recruit counsel for him and furnish a jury trial. A magistrate judge, presiding with the parties' consent, *see* 28 U.S.C. § 636(c); FED. R. CIV. P. 73, correctly rejected those requests. The judge ruled that Sanders was competent to litigate the case, and because his case sought review of agency decision-making, he did not have a right to a jury trial. Later, the magistrate judge affirmed the agency's ruling.

On appeal, Sanders first contests the ALJ's finding that he was gainfully employed from October 2019 to June 2020. We will uphold that finding if substantial evidence supports it. *Jeske v. Saul*, 955 F.3d 583, 587 (7th Cir. 2020). And it does. In the last quarter of 2019 and the first half of 2020, he earned over $20,000, nearly double the amount that the agency's regulations (which are not contested) deem evidence of substantial gainful activity. *See* https://www.ssa.gov/oact/cola/sga.html (listing the disqualifying amounts as earnings between $1,220 and $1,260 per month from 2019 to 2020) (last accessed April 6, 2023); *see also* 20 C.F.R. § 404.1574(b). Because his earnings were above this threshold level, the ALJ properly found that Sanders is not disabled for this period. *See id*. § 404.1520(a)(4)(i), (b).

Sanders responds that the ALJ should have disregarded these earnings because they reflect an "unsuccessful work attempt" under 20 C.F.R. § 404.1574(c). Under this regulation, a break in work of 30 days or more, or a work period that ends after only six months or less, may not qualify as gainful work despite the income received. But substantial evidence supports the ALJ's finding that Sanders worked nearly nine months between October 2019 until June 2020. True, Sanders asserts that he stopped working by April 2020—only five months after his first full month of returning to work in November 2019. But he points to no evidence, despite bearing the burden of doing so, *see id*. § 404.1512(a)(1), that he stopped working in April. To the contrary, his medical records state that he was off work for only two weeks in April (during his bout with COVID). And although his psychiatrist recommended in late May that his employer either assign him to another floor or put him on leave until the pandemic ended, no evidence suggests, let alone compels a finding, that he received leave in May 2020. Thus, Sanders's earnings and medical records between October 2019 and June 2020 are "relevant evidence [that] a reasonable mind might accept as adequate to support a

conclusion" that he worked gainfully for over six months in this period. *See Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (citations omitted).

Next, Sanders challenges the ALJ's finding that, for the remainder of his claimed period of disability, he could perform light work. He contends that ongoing wrist pain and the side effects from his medication keep him from working. But substantial evidence supports the ALJ's contrary determination: Sanders's surgeon released him to work without lifting restrictions six months after his injury, and Sanders admitted that he could lift up to 20 pounds and alternate between sitting, standing, and walking. These capabilities are consistent with light work. *See* 20 C.F.R. § 404.1567(b). And substantial evidence supports the ALJ's conclusion that Sanders's mental health restrictions, which the ALJ accepted, still allow him to perform jobs (which the record shows are available) limited by those restrictions, *See id*. § 404.1545(c), (e).

Finally, Sanders contends that the district court wrongly denied his request for counsel, but we disagree. Under 28 U.S.C. § 1915(e)(1), a district court "may" request an attorney to represent an indigent person. The court reasonably ruled that, considering Sanders's college education level, intellectual abilities, and familiarity with his record, he could adequately litigate the claim. We also note that, because of provisions such as 42 U.S.C. § 406(b)(1)(A), which award prevailing applicants in Social Security cases attorney's fees, Sanders might have hired an attorney if his case had visible merit. *See Pickett v. Chi. Transit Auth.*, 930 F.3d 869, 871–872 (7th Cir. 2019). But for the reasons already discussed, it does not.

We have considered Sanders's other arguments, but they have nothing to do with his Social Security claim, and this is the wrong case in which to raise them.

AFFIRMED