NONPRECEDENTIAL DISPOSITION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

Argued January 19, 2023
Decided June 23, 2023

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 22-1602

CINDY DESOTELLE,
Plaintiff-Appellant,

v.

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

Appeal from the United States District Court for the Eastern District of Wisconsin.

No. 1:20-cv-01283

Nancy Joseph,
Magistrate Judge.

O R D E R

An administrative law judge ruled that Cindy Desotelle was not eligible for Social Security disability benefits because, although she was unable to perform her prior relevant work, she could perform a significant number of other jobs in the national economy. On appeal, Desotelle argues that the ALJ improperly evaluated her pain-management physician's opinion and failed to establish the reliability of the vocational expert's estimates of the number of jobs available to her. Because we find substantial evidence supports the ALJ's decision, we affirm.

I

In March 2018, Cindy Desotelle applied for disability benefits due to several impairments, including back and neck pain, shoulder pain, degenerative disc disease, arthritis, bulging herniated disks, sciatica, plantar fasciitis, leg pain, edema, bursitis, migraines, depression, and social anxiety. She specified that these health problems affected her abilities to squat, bend, stand, reach, walk, sit, kneel, talk, hear, climb stairs, see, remember, complete tasks, concentrate, understand, follow instructions, use her hands, get along with others, and handle stress. The Social Security Administration denied Desotelle's application initially and on reconsideration, and Desotelle appeared before an ALJ at a hearing in August 2019. Desotelle and vocational expert Jacquelyn Wenkman testified at the hearing. The ALJ also considered the medical opinion of Dr. Michael Kolczynski, a pain-management physician who had an examining and treating relationship with Desotelle. The ALJ found his opinion "somewhat persuasive."

The ALJ concluded that Desotelle was not disabled under the Social Security Act from the alleged onset date in November 2016 through her date last insured in September 2018. The ALJ applied the five-step evaluation for disability claims. 20 C.F.R. § 404.1520(4). At step one, the ALJ found that Desotelle had not worked from the alleged onset date through her date last insured. At steps two and three, the ALJ found that Desotelle had several severe impairments, but none presumptively established disability. At step four, taking into consideration the medical opinions in the record, the ALJ found that Desotelle could not perform her past relevant work but could do light work with certain physical limitations. At step five, relying on Wenkman's testimony, the ALJ found that there were jobs that existed in significant numbers in the national economy that Desotelle could perform, including office helper, mail clerk, and hostess. The ALJ thus denied Desotelle's claim for disability benefits, and the Appeals Council denied Desotelle's request for review. The district court affirmed the ALJ's decision, and Desotelle appeals.

Desotelle raises two issues on appeal. First, Desotelle disagrees with the ALJ's treatment of Dr. Kolczynski's medical opinion. Second, Desotelle argues that the ALJ erred by failing to ensure the reliability of the vocational expert's estimates of the number of jobs available to her in the national economy, and thus could not rely on those estimates to meet the agency's burden of proof at step five.

We ask whether substantial evidence supports the ALJ's decision and review de novo the district court's decision. 42 U.S.C. § 405(g); *Stephens v. Berryhill*, 888 F.3d 323, 327 (7th Cir. 2018). Substantial evidence is only "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 omitted), and "the threshold for such evidentiary sufficiency is not high." *Id.*

II

Desotelle asserts the ALJ erred by discounting Dr. Kolczynski's assessment that she needs certain work limitations and by giving too little weight to his relationship with her. In weighing the persuasiveness of a medical opinion, the "most important factors" an ALJ considers are the opinion's "supportability" and "consistency" with the record. 20 C.F.R. § 404.1520c(b)(2). The ALJ "may," but is "not required," to explain her consideration of other factors, such as the source's relationship with the claimant. *Id*. An ALJ should generally give controlling weight to a treating physician's opinion unless it is unsupported by medical findings or inconsistent with the record. 20 C.F.R. § 404.1527(c)(2). An ALJ need only "minimally articulate[]" her reasoning for the persuasiveness of the medical opinion. *Elder v. Astrue*, 529 F.3d 408, 415 (7th Cir. 2008) (quotation omitted). The ALJ met that standard here.

A

Dr. Kolczynski opined that Desotelle could perform light work with certain limitations. The ALJ discounted some of his proposed work limitations, including that Desotelle needed unscheduled breaks, the option to change positions between sitting and standing, and limited twisting. Desotelle challenges the ALJ's rejection of these limitations. But the ALJ's decision is sound: these limitations are unsupported by objective medical evidence and inconsistent with other medical opinions in the record.

Unscheduled breaks and changing positions. The ALJ reasonably discounted Dr. Kolczynski's opinion that Desotelle needed unscheduled breaks and the option to change positions. As the ALJ emphasized, Dr. Kolczynski's opinion appeared to rely primarily upon Desotelle's subjective complaints that were unsupported by objective medical evidence. The record shows that Desotelle could manage her pain with treatment, exercised daily, exhibited alertness and full orientation, and demonstrated reasonably good functioning during physical examinations—including a normal gait

and strength, and intact balance and coordination. Additionally, as the ALJ noted, Dr. Kolczynski's assessments were inconsistent with other medical opinions. Notably, consulting physician Dr. Marcia Lipski found Desotelle could perform light work with less restrictive sitting limitations than those proposed by Dr. Kolczynski. Further, as the ALJ highlighted, there was an inconsistency within Dr. Kolczynski's written report between the questions he was willing to opine on and those he declined to answer. Thus, considering Dr. Kolczynski's opinion was inconsistent with objective medical evidence and other medical opinions, as well as internally inconsistent, the ALJ was entitled to discount it. See *Prill v. Kijakazi*, 23 F.4th 738, 750–52 (7th Cir. 2022).

Desotelle raises three arguments that are unavailing. First, Desotelle says the ALJ ignored objective evidence that supports Dr. Kolczynski's opinion as to the need for unscheduled breaks and changing positions. But the ALJ explicitly considered the evidence that Desotelle believes supports his opinion: her right hip replacement surgery, fibromyalgia diagnosis, difficulties standing and sitting, pain and numbness due to her impairments, fatigue, and low energy. Despite these impairments, the record also showed Desotelle had largely normal physical examination findings, as well as adequate concentration and attention. Accordingly, the ALJ did not simply cherry-pick facts that support a finding of non-disability. Even if there is some evidence that weighs in favor of Desotelle's interpretation, there is substantial evidence supporting the ALJ's finding here.

Second, Desotelle contends the ALJ gave too little weight to Dr. Kolczynski's opinion because he primarily relied upon her subjective complaints. But the opinion's reliance on subjective complaints was one of several factors the ALJ gave for discounting it, and the ALJ was not barred from considering and weighing subjective statements. See *Adaire v. Colvin*, 778 F.3d 685, 688 (7th Cir. 2015). Thus, the ALJ was permitted to credit other record evidence over Dr. Kolczynski's opinion upon a finding that it was inconsistent with and unsupported by the record. See *Prill*, 23 F.4th at 750–52.

Third, Desotelle contests the ALJ's identification of an inconsistency in Dr. Kolczynski's incomplete report: on the one hand, Dr. Kolczynski opined that Desotelle's pain required unscheduled breaks, but on the other, he expressed no opinion on whether her pain may require her absence from work. Desotelle says Dr. Kolczynski left the question related to her absences blank because, as he wrote on the page he declined to answer, he does "not treat cognitive disabilities/depression symptoms." But this does not clarify the discrepancy. The questions underlying the need for unscheduled breaks

and absences from work are not significantly different. Accordingly, the ALJ did not err in discounting part of the opinion for this reason.

Twisting limitation. Substantial evidence also supports the ALJ's rejection of Dr. Kolczynski's opinion that Desotelle required limited twisting. As the ALJ noted, the record indicates that Desotelle had mildly reduced ranges of motion in the spine and negative straight leg raise test results, undermining Dr. Kolczynski's opinion that she could only twist occasionally. Dr. Kolczynski's opinion as to this limitation was inconsistent with other evidence in the record, so the ALJ was entitled to give his opinion less weight.

Desotelle argues unpersuasively that the ALJ played doctor by interpreting the negative straight leg test results and finding that limitations in her ranges of motion were insignificant because of those test results. Desotelle misrepresents the ALJ's decision and reads in a causal relationship where none exists. As the ALJ noted, the record shows Desotelle had negative straight leg test results *and* mildly reduced ranges of motion in the spine. It was reasonable for the ALJ to find that the proposed twisting limitation was inconsistent with the record. The ALJ did not play doctor by substituting her own interpretation of the medical evidence in place of a medical expert.

B

Desotelle argues that the ALJ gave too little weight to Dr. Kolczynski's opinion, given that he was an examining and treating physician with a specialty in pain management. But the ALJ reasonably discounted Dr. Kolczynski's opinion for three reasons. First, it conflicted with the objective medical evidence. See *Albert v. Kijakazi*, 34 F.4th 611, 614 (7th Cir. 2022). As presented above, the record does not support Dr. Kolczynski's assessment that Desotelle required unscheduled breaks, changing positions, and limited twisting. The record is also inconsistent with another work limitation proposed by Dr. Kolczynski: he opined Desotelle could never engage in frequent lifting, whereas the record documented normal strength in Desotelle's arms and legs.

Second, the ALJ reasonably rejected Dr. Kolczynski's opinion because it conflicted with other medical opinions in the record—such as Dr. Lipski's assessment that Desotelle could frequently lift 10 pounds, while Dr. Kolczynski found Desotelle could never engage in frequent lifting. The ALJ faced competing opinions, and we cannot say, as a matter of law, that the ALJ made the wrong choice where

Dr. Kolczynski's opinion was inconsistent with medical evidence from the relevant period. See *Liskowitz v. Astrue*, 559 F.3d 736, 742 (7th Cir. 2009).

Third, after addressing the supportability and consistency of Dr. Kolczynski's opinion with the record, the ALJ noted that Dr. Kolczynski primarily treated Desotelle after her insured status expired and issued the report after that date. He also left much of the report blank, including no opinion about the earliest date when the work limitations applied. "We typically expect an ALJ to consider an opinion by a doctor who treated the claimant after the relevant period if it offers a retrospective diagnosis that is corroborated by evidence produced during the relevant period." *Zoch v. Saul*, 981 F.3d 597, 602 (7th Cir. 2020); see also *Liskowitz*, 559 F.3d at 742. That's not the case here. Dr. Kolczynski primarily treated Desotelle after the relevant period, declined to answer part of the report concerning the relevant period, and proposed work limitations that conflicted with evidence produced during the relevant period, as detailed above. Thus, although Dr. Kolczynski had an examining and treating relationship with Desotelle, the regulations permitted the ALJ to discount part of his opinion that was unsupported and inconsistent with the record and other medical opinions.

III

Next, Desotelle argues that the ALJ erred at the final step of the disability analysis, where the agency bears the burden of demonstrating that there are jobs in the national economy that the claimant could perform. 20 C.F.R. § 416.960(c)(2); *Ruenger v. Kijakazi*, 23 F.4th 760, 761 (7th Cir. 2022). ALJs typically rely on the testimony of a vocational expert, who has experience with job placement and consults various sources to estimate the availability of the jobs a claimant can still perform. *Ruenger*, 23 F.4th at 761–62; *Chavez v. Berryhill*, 895 F.3d 962, 964–66 (7th Cir. 2018).

During the hearing, Desotelle's counsel asked vocational expert Wenkman two questions relevant here: "What is the source of the numbers that you've listed for these jobs?" and, "[W]hat's the methodology that you use?" Wenkman said she relied on two sources: Occupational Employment Quarterly and the Department of Labor's Wage Earnings and Benefits. As to methodology, Wenkman explained: "Well, I don't do any extrapolation or anything. I get the numbers, so if they're pretty grossly overweighted in the resources, then I don't use those examples. If they're not, I can still use these numbers."

Desotelle argues that her counsel's questions at the hearing constituted an objection to the vocational expert's methodology, thereby triggering the ALJ's duty to confirm the reliability of the methodology. Desotelle says that requiring more would shift the burden of proof from the agency to claimants like her.

Desotelle is correct that the substantial evidence standard requires an "ALJ to ensure that the vocational expert's estimate is the product of a reliable methodology[.]" *Ruenger*, 23 F.4th at 763. But when the claimant does not put the methodology at issue and the vocational expert's testimony is otherwise uncontradicted, the ALJ is entitled to credit the vocational expert's testimony. *Liskowitz*, 559 F.3d at 744. That's what happened here. Desotelle did not challenge Wenkman's estimates at the hearing (which for the jobs at issue, appear to be quite conservative), and the two questions about the expert's sources and methods did not "reveal any shortcomings in the vocational expert's data or reasoning" that need be addressed by the ALJ. *Donahue v. Barnhart*, 279 F.3d 441, 447 (7th Cir. 2002). Although the vocational expert could have more clearly explained her methods, see generally *Ruenger*, 23 F.4th at 764–66 (Scudder, J., concurring), "the ALJ was entitled to reach the conclusion she did." *Donahue*, 279 F.3d at 447.

Desotelle further contends that Wenkman's reliance on a publication that employs the equal distribution method is without foundation, suggesting that the mere use of the equal distribution method triggers the ALJ's duty to inquire. But even assuming counsel did not need to expressly object to the equal distribution method during the hearing, we have not "enjoin[ed] [the] use of the equal distribution method" and "intend no new obligations" at step five. *Chavez*, 895 F.3d at 970.

AFFIRMED