NONPRECEDENTIAL DISPOSITION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 November 19, 2024
Decided January 3, 2025

Before

AMY J. ST. EVE, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 24-1587

VIRGIL L. KELLEY,
Plaintiff-Appellant,

v.

CAROLYN COLVIN, Commissioner of Social Security,
Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.

No. 1:23-cv-00285-MKK-RLY

M. Kendra Klump,
Magistrate Judge.

ORDER

Virgil Kelley suffers from anxiety, depression, and intermittent explosive disorder (IED) and applied for Disability Insurance Benefits and Supplemental Security Income. An administrative law judge (ALJ) denied his application after determining that none of his impairments were severe. Kelley appeals, arguing that the ALJ erroneously disregarded both his reports about his angry outbursts and the opinion from a neuropsychologist. But because any error in the ALJ's omission of the doctor's opinion was harmless, her assessment of Kelley's subjective symptoms was not patently wrong, and substantial evidence supports the decision, we affirm.

Background

Kelley's arguments relate only to his mental impairments, so we limit the medical summary to these issues where possible. This appeal concerns Kelley's second application for benefits. He filed the first one *pro se* in August 2019, alleging disability from various conditions including depression, anxiety, OCD, and IED. The application was denied upon initial review, and Kelley did not request reconsideration.

Kelley applied for benefits again in December 2020 based on the same mental health impairments as before—anxiety, depression, OCD, and IED. This time, he alleged an onset date of March 1, 2020. He also complained of chronic back pain, trouble sleeping, and memory loss.

Prior to filing his first application, Kelley saw Dr. Meghana Bhat for outpatient psychiatric treatment. In November 2018, they discussed his depression, anxiety, and IED. At the time, Kelley reported that he was "good" but that he would become angry at times. He said that his way of dealing with his anger issues was by walking away (if he was at work) or letting his family members know how he felt.

Furthermore, in October 2019, Kelley met with a neuropsychologist, Dr. Kenneth McCoy, for a consultative exam in connection with his first application for benefits. Kelley told Dr. McCoy that he experienced significant feelings of depression and anxiety and that "he used to have trouble with anger but ha[d] learned how to control [it]." Kelley also noted that he assisted with some household tasks and could take care of daily basic needs like showering, dressing, and grooming. Dr. McCoy observed that Kelley's mood was "anxious and mildly depressed," but his affect was "normal," he was "cooperative throughout the evaluation," and his thought processes were "intact." He further noted that Kelley exhibited "a mild level of difficulty with inattention and distractibility."

Dr. McCoy also conducted a mental status examination. He wrote that Kelley was cooperative, could work at a pace "[w]ithin normal limits" without supervision, and could manage funds without impairment. In response to the question, "Can this person attend to a simple, repetitive task continuously for a two-hour period?" Dr. McCoy wrote: "Based on mental status examination, [Kelley's] depression may interfere with this task." He did not elaborate.

Meanwhile, Kelley continued seeing Dr. Bhat. In November 2020, Dr. Bhat noted that Kelley's mood was "overwhelmed" but observed that Kelley's thought processes were coherent and organized, his insight and judgment were fair, and he was cooperative. Dr. Bhat prescribed new medication for anxiety, and in January 2021, Kelley reported that the medication was helping and his mood was "alright." Dr. Bhat found that Kelley's cooperation level, judgment, and thought processes had not changed since his last visit. Dr. Bhat arrived at the same conclusion after meeting with Kelley in June, September, and November 2021. Of note, during their June and September meetings, Kelley denied that he had any depression and reported looking forward to his part-time job as a stagehand at concerts.

Kelley also met with a licensed clinical therapist, Sharon Troxell, in February and March 2021 for talk therapy. During these sessions, Kelley reported that his medication helped his depression and anger, but he still experienced daily feelings of frustration, anger, and anxiety. He also had "difficulty controlling his anger" and would "blow up." Kelley eventually stopped seeing Troxell, and she noted that he was "good to go" on medication only. (According to Kelley's hearing testimony, he was "kicked out" of talk therapy because he had reacted strongly when his therapist "disrespected" his father.)

The agency conducted its first level of review of Kelley's second disability application in March 2021. Dr. Donna Unversaw, a reviewing state-agency psychologist, opined that Kelley's mental impairments were nonsevere. In so doing, she evaluated his impairments against the four broad areas of functioning specified in the federal regulations: understanding, remembering, and applying information; interacting with others; concentrating, persisting, or maintaining pace; and adapting or managing oneself. *See* 20 C.F.R. § 404.1520a(c)(2); Subpt. P, App'x 1 § 12.00(E). Dr. Unversaw noted that Kelley's anxiety was benefiting from medication, his mood was "alright," and he continued to drive, shop, pay bills, and leave home independently. She found Kelley's impairments to be "mild."

Kelley (with the assistance of counsel) requested reconsideration, and in August 2021, Dr. Ken Neville, another state-agency psychologist, reviewed the records. He agreed with Dr. Unversaw's conclusion that Kelley's psychological symptoms were nonsevere. Dr. Neville noted that Kelley alleged no new changes and that, at his last appointment in the record, he had reported having a "pretty good" mood, denied depression, and had mentioned that he was happy to be returning to work.

Kelley then requested a hearing before the ALJ, where he, his counsel, and a vocational expert all appeared. Kelley testified that he had a long history of behavioral issues that caused fights at work (resulting in repeated job loss) and in public (such as in a grocery store parking lot). He also experienced problems getting along with friends and family and had trouble motivating himself to leave the house. He further stated that he could not remember how to play a guitar part five minutes after learning it or recall a television show right after it ended. He, however, had little trouble answering the ALJ's questions about his daily activities, medical care, and work history.

After the hearing, the ALJ issued a decision denying Kelley's application for benefits, noting that the period relevant to Kelley's claim was March 1, 2020, when he alleged that he became disabled, through the date of her decision, May 2, 2022. She undertook the five-step sequential analysis for determining whether an individual is disabled. *See* 20 C.F.R. § 404.1520(a). At step one, the ALJ found that Kelley had not engaged in substantial gainful activity since the alleged onset of his disability. And in the first part of step two, the ALJ determined that Kelley had the medically determinable impairments of lumbar scoliosis, depression, anxiety, IED, and obesity.

In the second part of step two, however, the ALJ concluded that none of Kelley's impairments were severe. In arriving at this conclusion, the ALJ considered the four broad areas for evaluating mental disorders set out in the disability regulations—referred to as the "paragraph B" criteria—and accepted the opinions of the state-agency psychologists that Kelley had no more than mild impairments in each of them. The ALJ deemed these opinions "persuasive" based on the psychologists' detailed summaries and analyses of the evidence.

On the other hand, the ALJ found Kelley's hearing testimony about the severity of his symptoms less credible. The ALJ contrasted Kelley's complaints about his memory problems with his ability to answer detailed questions about his medical treatment, past work, and daily tasks. She acknowledged that Kelley had been formally diagnosed with depression, anxiety, and IED, but pointed out the findings from Kelley's own mental healthcare providers that his thought processes were coherent and organized, he was cooperative, and he exhibited normal speech. The ALJ further observed that Kelley's statements regarding the efficacy of his anxiety prescription medication indicated that his "symptoms were well-controlled with regular medication and treatment." (The ALJ also found that Kelley's allegations regarding the severity of the symptoms caused by his physical impairments, lumbar scoliosis and obesity, were inconsistent with the objective medical evidence in the record.)

The Appeals Council rejected Kelley's request for review, rendering the ALJ's determination final. Kelley next sought review in the district court, arguing among other things that the ALJ erroneously omitted any discussion of Dr. McCoy's medical opinion and Kelley's self-reports about his anger, both of which he contended supported findings of disability. The district court disagreed, concluding that Dr. McCoy's opinion was not so inconsistent with the ALJ's report that her failure to address it was erroneous, and that, regardless, any error was harmless. The district court also concluded that the ALJ's analysis of Kelley's symptoms was reasoned and that the decision was supported by substantial evidence.

Analysis

On appeal, Kelley maintains that the ALJ failed to address evidence that his mental health impairments are severe. (There is no dispute on appeal that Kelley has the medically determinable impairments of IED, depression, and anxiety.) He seeks a remand ordering the ALJ to further explain her decision.[1]

We review the district court's decision *de novo* and directly assess the ALJ's decision. *Butler v. Kijakazi*, 4 F.4th 498, 501 (7th Cir. 2021). In the process, we will reverse an ALJ's decision "only if it is the result of an error of law or it is not supported by substantial evidence." *Crowell v. Kijakazi*, 72 F.4th 810, 813 (7th Cir. 2023). At a minimum, however, an ALJ must still adequately support her decision and "provide a 'logical bridge' between the evidence and [her] conclusions." *Butler*, 4 F.4th at 501 (quoting *O'Connor-Spinner v. Astrue*, 627 F.3d 614, 618 (7th Cir. 2010)).

I. Dr. McCoy's Opinion

Kelley first argues that the ALJ erred by not discussing Dr. McCoy's opinion that Kelley's depression "may interfere" with his ability to manage a simple task continuously for a two-hour period. Kelley contends that this opinion could support a

[1] At the administrative hearing, counsel in the opening statement conceded—with respect to all impairments, physical and mental—that the evidence does not allow for a step-two finding in Kelley's favor. And the agency record contains no opinions relevant to a residual functional capacity (step four). So any remand would entail not only more explanation from the ALJ but, if the ALJ found any impairment "severe," further development of the record regarding the next steps of the inquiry.

finding that his depression was severe and the ALJ was required to address it. The Commissioner responds that the ALJ was not required to discuss Dr. McCoy's opinion because Dr. McCoy examined Kelley before the period in which Kelley claimed disability in his second application.

The Commissioner's argument is incorrect. The regulations require the ALJ to consider "all of the medical opinions … in [the] case record," and to explain the "supportability and consistency factors" for a medical source's medical opinions. *See* 20 C.F.R. § 404.1520c(b), (c). Certainly, in those instances when a prior medical opinion is too stale to move the needle one way or the other, the ALJ is not required to address it. *See, e.g., Stepp v. Colvin*, 795 F.3d 711, 719 (7th Cir. 2015) (observing that the value of a doctor's opinion was time-limited because it concerned a patient's recovery from surgery over a period of months); *Crowell*, 72 F.4th at 816 (opinion was mentioned, but discounted, for reasons including its age). But when a prior medical opinion—even one issued prior to the alleged onset of disability—is probative of contested issues, we have required it to be considered. *See Roddy v. Astrue*, 705 F.3d 631, 634, 636 (7th Cir. 2013). Here, Dr. McCoy gave his opinion only five months before the alleged onset date, and it pertained to a longstanding and ongoing condition, Kelley's depression.

The Commissioner also argues that the ALJ was not required to address Dr. McCoy's opinion because it was largely consistent with the ALJ's conclusion, and it is error only if the ALJ ignores evidence "contrary to" the conclusion. This might be true as a general matter, but not when the evidence is a medical opinion that is recent enough to be probative. The plain meaning of the regulation requires an ALJ to discuss the consistency and supportability of every medical opinion in the record. 20 C.F.R. § 404.1520c(b). Still, whether and to what degree Dr. McCoy's opinion is consistent with the other evidence in the record is pertinent to this appeal, for if "we are convinced that the ALJ [would] reach the same result," the ALJ's failure to consider it would be harmless. *Butler*, 4 F.4th at 504 (quotation omitted).

When read holistically, Dr. McCoy's report indicates that Kelley's impairments were mild. For example, he observed that Kelley's mood was "mildly depressed" and that Kelley exhibited a "mild level of difficulty with inattention and distractibility." Dr. McCoy further wrote that Kelley's affect was "normal," he was cooperative on exam, his thought processes were intact, and he could work at a pace within normal limits without supervision. To be sure, as Kelley points out, Dr. McCoy did note that Kelley's depression "*may* interfere" with his ability to attend to a task for a two-hour period, but such a tenuous conclusion cannot negate the numerous unqualified findings

noted above, especially when Dr. McCoy provided neither elaboration nor grounds to support it.

Furthermore, Dr. McCoy's findings were consistent with the totality of the record. Just like Dr. McCoy, the other medical professionals intimated that Kelley's impairments were mild and not severe. For example, Dr. Bhat, who treated Kelley for his depression, anxiety, and IED for over two years, observed that Kelley coherently processed and organized information, possessed fair insight and judgment, and cooperated on the exam. Troxell, his licensed clinical therapist, concluded that Kelley was fine with only medication after their two sessions. And both Dr. Unversaw and Dr. Neville found that Kelley's impairments were mild after reviewing the record and Kelley's own statements about his daily activities and summer employment. Indeed, Kelley can point to no objective evidence in the record "aligning with [or] reinforcing" the severity he believes Dr. McCoy's opinion suggests. *Karr v. Saul*, 989 F.3d 508, 513 (7th Cir. 2021).

Kelley's other arguments are similarly unconvincing. Citing *Curvin v. Colvin*, he contends that the step-two determination of severity is "merely a threshold requirement" and that the ALJ was required to find that Kelley had a severe impairment if he showed "more than a minimal effect" on his ability to do basic work activities. 778 F.3d 645, 648–49 (7th Cir. 2015) (quotations omitted). And he is correct to the extent that we have referred to the step-two requirement as a "'*de minimis* screening for groundless claims.'" *O'Connor-Spinner v. Colvin*, 832 F.3d 690, 697 (7th Cir. 2016) (quoting *Thomas v. Colvin*, 826 F.3d 953, 960 (7th Cir. 2016)). But Kelley nevertheless has the burden of proving that his impairments were more than minimal, *see Castile v. Astrue*, 617 F.3d 923, 926–27 (7th Cir. 2010), and for the reasons explained, Dr. McCoy's single unsupported statement does not satisfy that burden.

Kelley also argues that the ALJ's decision not to proceed to assessing his residual functional capacity—which can make a step-two error harmless, depending on the ALJ's determination, *see Curvin*, 778 F.3d at 649–50—was a prejudicial error. But the failure to apply a belt-and-suspenders approach does not cause reversible error if the ALJ's step-two decision finds substantial support in the record. Finally, Kelley argues that because the AJL ignored Dr. McCoy's opinion, we cannot be certain how the ALJ would have weighed it against the opinions of the state-agency psychologists whose opinions were rendered without examining Kelley and (he says) with little analysis. But, as already discussed, Dr. McCoy's opinion does not meaningfully differ from those

of the state-agency reviewers and, to the extent it does (which is debatable), Dr. McCoy provided no support for it.

II. The ALJ's Subjective-Symptom Analysis.

Kelley next argues that, in the ALJ's analysis of the intensity, persistence, and limiting effects of his symptoms, she erroneously failed to discuss his testimony and reports to his doctors about "blow[ing] up" and needing to walk away from situations. Although the ALJ did not need to accept his statements, Kelley asserts, she had to explain why she rejected them. *See* 20 C.F.R. § 404.1529(b), (c). And he submits that the only explanation the ALJ gave for disbelieving the intensity of his symptoms—that he appeared normal in exams—is illogical. The Commissioner responds that a holistic reading of the ALJ's decision shows that she did not find Kelley's self-reports fully credible and that she reasonably discounted his subjective assertions about his impairments based on the record evidence.

We agree that the ALJ could have provided a more complete explanation of the reasons she discounted Kelley's subjective statements about the intensity, persistence, and limiting effects of his symptoms. § 404.1529(c)(3), (4). But we will overturn the ALJ's evaluation of a claimant's subjective symptoms only if it is "patently wrong, which means that the decision lacks any explanation or support." *Hess v. O'Malley*, 92 F.4th 671, 679 (7th Cir. 2024) (quoting *Murphy v. Colvin*, 759 F.3d 811, 816 (7th Cir. 2014)). And here the ALJ made clear that she credited the psychologists' observations of Kelley's temperament over his own reports. *See id*; *see also Shramek v. Apfel*, 226 F.3d 809, 811 (7th Cir. 2000) (explaining that this court gives an ALJ's opinion "a commonsensical reading rather than nitpicking at it"). Indeed, when discussing these incidents with his providers, Kelley did not provide any details to suggest his anger was so frequent or uncontrollable that it would significantly interfere with basic work activities.

In any event, the ALJ's credibility determination was supported by substantial evidence. Substantial evidence is "more than a mere scintilla," and means only "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Biestek v. Berryhill*, 587 U.S. 97, 103 (2019) (citation omitted); *Butler*, 4 F.4th at 501. In making this determination, the ALJ adequately considered the factors laid out in S.S.R. 16-3p for determining the intensity and persistence of Kelley's symptoms. She noted that Kelley had reported having an "overwhelmed mood" in one exam but that doctors had otherwise consistently confirmed his abilities to process, speak, and cooperate. She also explained that Kelley was able to answer all of her questions, and

those of counsel, during the hearing. She observed that the agency psychologists, whose findings she deemed detailed and supported, agreed with her conclusions. And she made her determination after finding that the objective medical evidence also largely contradicted Kelley's statements about his physical limitations. In the end, the ALJ did not believe that Kelley's symptoms were as severe as he reported, and she adequately supported that conclusion.

AFFIRMED