United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
January 11, 2022
Lyle W. Cayce
Clerk

No. 21-60545
Summary Calendar

CHRISTOPHER LEE OWEN,

Plaintiff—Appellant,

versus

KILOLO KIJAKAZI, *Acting Commissioner of Social Security*,

Defendant—Appellee.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 4:20-CV-51

Before HIGGINBOTHAM, HIGGINSON, and DUNCAN, *Circuit Judges*.

PER CURIAM:*

Plaintiff-Appellant Christopher Lee Owen appeals the district court's affirmance of the Commissioner's denial of disability insurance benefits from the Social Security Administration. We affirm.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

I.

Owen applied for disability insurance benefits ("DIB") under Title II of the Social Security Act. *See* 42 U.S.C. § 423. To be eligible for DIB, a claimant must prove he has a medically determinable physical or mental impairment, or combination thereof, lasting at least 12 months, which prevents him from engaging in substantial gainful activity. 42 U.S.C. § 423(d)(l)(A). Owen alleged a disability from September 1, 2014, to December 31, 2017, based on leg problems, severe depression, post-traumatic stress disorder, high blood pressure, deafness in his left ear, headaches, foot numbness, kidney and liver problems, anxiety, and panic attacks.

After an April 2019 hearing at which a vocational expert testified, an ALJ denied benefits. The Appeals Council denied review, at which point the ALJ's decision became a final decision of the Social Security Commissioner. Owen sought review in the Northern District of Mississippi and consented to judgment by the magistrate judge. The judge heard oral argument and entered judgment affirming the ALJ's decision. Owen filed a Rule 59(e) motion, which the court denied. Owen then appealed.

II.

Our review of the ALJ's determination is "highly deferential." *Perez v. Barnhart*, 415 F.3d 457, 464 (5th Cir. 2005). We ask only whether substantial evidence supports the decision and whether the correct legal standards were employed. 42 U.S.C § 405(g); *Copeland v. Colvin*, 771 F.3d 920, 923 (5th Cir. 2014). Substantial evidence is "more than a mere scintilla and less than a preponderance." *Garcia v. Berryhill*, 880 F.3d 700, 704 (5th Cir. 2018) (citation omitted). We will not "re-weigh the evidence" nor "substitute our judgment for the Commissioner's, even if we believe the evidence weighs against the Commissioner's decision." *Ibid.* (citation omitted).

A five-step framework determines whether a DIB claimant is disabled. For the first four steps, the claimant bears the burden of proof to show (1) he is *not* "working, engaging in a substantial gainful activity"; (2) he has a "severe impairment"; (3) the impairment meets or is equivalent to one listed in the regulations; and (4) he is not capable of performing work that he has done in the past. *Bowling v. Shalala*, 36 F.3d 431, 435 (5th Cir. 1994); *see also* 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). At step five, the burden shifts to the Commissioner to show that the claimant can do other work based on factors including his age, education, past work experience, and residual functional capacity. *Bowling*, 36 F.3d at 435. "[A] finding at any step that a claimant is or is not disabled ends the analysis." *Graves v. Colvin*, 837 F.3d 589, 592 (5th Cir. 2016) (citing *Bowling*, 36 F.3d at 435).

III.

The ALJ proceeded through all five steps and concluded that Owen was not disabled during the relevant period because he could work as a surveillance system monitor, cuff folder, and addresser based on his residual functional capacity ("RFC"). We understand Owen to argue the ALJ erred at steps two, four, and five. We disagree.

A.

At step two, the ALJ concluded Owen had two severe impairments—a disorder of the spine and hearing loss in the left ear. Owen contends that the ALJ erred in finding his mental impairments not severe by (1) failing to apply the correct standard for severity and (2) departing from the Veteran Affairs' 100% disability rating, even though the ALJ relied on the VA doctor's report. His arguments are unavailing.

The regulations define a severe impairment as "any impairment or combination of impairments which significantly limits [one's] physical or mental ability to do basic work activities." 20 C.F.R. § 404.1520(c). A "slight

abnormality" is non-severe when and where it has "such minimal effect on that individual that it would not be expected to interfere with the individual's ability to work." *Stone v. Heckler*, 752 F.2d 1099, 1101 (5th Cir. 1985) (citations omitted); *see Keel v. Saul*, 986 F.3d 551, 556 (5th Cir. 2021) (reaffirming *Stone*). Here, the ALJ found Owen's mental impairments "did not cause more than a minimal limitation in the claimant's ability to perform basic mental work activities and were therefore nonsevere." The ALJ considered that Owen had a history of anxiety and depression, evaluated each functional area for mental disorders according to the regulations, applied expressly *Stone*, and concluded Owen's anxiety and depression were only mild impairments. *See* 752 F.2d at 1106; 20 C.F.R. § 404.1520a(d)(1). In short, the ALJ applied the correct legal standard.

Though Owen maintains "there is no evidence by an examining physician or non-examining medical source" to support the ALJ's severity conclusion, central to the ALJ's decision was his analysis of Dr. Ted Bennet's opinion that Owen's depression and anxiety "resulted in only mild impairment" with his medication. The VA's 100% disability rating does not demand the opposite conclusion. *See Garcia*, 880 F.3d at 705. The rating is not binding on the Commissioner, so while the ALJ must consider the supporting evidence underlying the rating, he need not provide any analysis of the rating itself. 20 C.F.R. § 404.1504 (2018) (recognizing the differing standards of "disability" among agencies). That is precisely what the ALJ did here. He considered the underlying evidence (*i.e.* Dr. Bennet's opinion) but rejected the VA's ultimate rating because, under the Social Security Administration's different disability standard, the impairments caused only slight abnormalities with such minimal effect that they would not be expected to interfere with his ability to work. The timing of the VA rating *after* the relevant disability period likewise supports the ALJ's decision. *See Garcia*, 880 F.3d at 706 n.8. Though the ALJ did not weigh the evidence as Owen

would have preferred, the ALJ's step-two conclusion is supported by substantial evidence.

B.

At step four, Owen challenges the ALJ's RFC determination as failing (1) to include his non-exertional limitations and (2) to limit him to unskilled work. We disagree.

According to Owen, the ALJ limited him to sedentary work, so he failed to incorporate limitations into his RFC related to his mental health impairments or his medications' side effects. Not so. The ALJ determined that he retained the RFC to perform sedentary work *with limitations*. Those limitations included lifting or carrying up to 10 pounds only occasionally, lifting or carrying less than 10 pounds only frequently, standing or walking for only up to two hours, sitting for only up to six hours, working only eight hours a day, not performing frequent or complex oral communication, and not being in environments louder than an office. Even had Owen identified which side effects the ALJ did not consider (he did not), the RFC included two mental-impairment-based limitations.

Owen maintains the state agency medical consultants found he should be limited to unskilled work. But the ALJ concluded that, although Owen lacked the capacity to do his past work as a phlebotomist, lab worker, construction worker, or bartender, Owen could work as a surveillance system monitor, cuff folder, or addresser. *See* 20 C.F.R. § 404.1567(a). Each identified job is an unskilled job according to the *Dictionary of Occupational Titles* and the vocational expert's testimony. Owen thus faced no prejudice, and the ALJ's step-four conclusion is supported by substantial evidence.

C.

At step five, Owen challenges the ALJ's conclusion that the job of addressor is in the national economy because the job may not exist in significant numbers in the economy according to a decade-old Social Security Administration study. Even excluding that job, the roles of surveillance system monitor and cuff folder still account for 125,000 jobs in the national economy, sufficient to satisfy the Commissioner's step-five burden. *See, e.g.*, *Zimmerman v. Astrue*, 288 F. App'x 931, 938 (5th Cir. 2008). Controlling precedent likewise forecloses Owen's argument that we should categorically reject the vocational expert's testimony as unreliable based on his opinion that a job is in the national economy. *Biestek v. Berryhill*, 139 S. Ct. 1148, 1157 (2019). The ALJ's step-five conclusion is supported by substantial evidence.

IV.

The judgment is AFFIRMED.