

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

May 11, 2023

Christopher M. Wolpert
Clerk of Court

PEGGY COTTONHAM,
Plaintiff - Appellant,

v.

COMMISSIONER, SSA,
Defendant - Appellee.

No. 22-6101
(D.C. No. 5:21-CV-01013-P)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **TYMKOVICH, BALDOCK, and McHUGH**, Circuit Judges.

This is a Social Security benefits appeal brought under 42 U.S.C. § 405(g) and 28 U.S.C. § 1291. Peggy Cottonham, proceeding pro se, challenges the final decision of the Commissioner of Social Security, denying her application for disability insurance benefits. We affirm for the reasons explained below.

Cottonham filed for disability benefits in June 2019. At that time, she claimed disability due to hypertension and neuropathy. As her application worked its way

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

through the evaluation process, the agency considered the potentially disabling effect of numerous related conditions, as well as of depression and obesity. The administrative law judge (ALJ) who issued the decision currently under review concluded that, out of all these conditions, only obesity qualified as a severe impairment. The ALJ further concluded that Cottonham's obesity, combined with her non-severe conditions, left her with the residual functional capacity to perform medium-exertion work.

In the fifteen years preceding the alleged onset of her disability, Cottonham had worked as a certified nurse's assistant, a medical assistant, and a housekeeper. The ALJ received testimony from a vocational expert that each of these jobs is generally performed at no more than a medium exertion level. Given this, the ALJ found that Cottonham could return to her past relevant work, so she did not meet the definition of disability for purposes of the Social Security Act. The ALJ accordingly denied her application. The Social Security Appeals Council then denied review and the district court affirmed the ALJ's decision, leading to this appeal.

Because Cottonham is representing herself, we must construe her filings liberally. *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005). We will "make some allowances for . . . failure to cite proper legal authority, . . . confusion of various legal theories, . . . poor syntax and sentence construction, or . . . unfamiliarity with pleading requirements." *Id.* (internal quotation marks omitted). But we "cannot take on the responsibility of serving as the litigant's attorney in constructing arguments and searching the record." *Id.*

Cottonham’s brief essentially invites us to step over this line into advocacy.

She asserts four issues on appeal, each of which comprises a single sentence:

1. “The [ALJ] did not properly consider [her] severe impairment of obesity.” Aplt. Opening Br. at 3.
2. “The ALJ erred at Step Four [regarding ability to perform past relevant work] by failing to set forth explicit descriptions of [her] past relevant work.” *Id.*
3. “The ALJ erred by failing to apply the medical vocational guidelines (‘grids’) in determining whether she was disabled.” *Id.* at 3(A).
4. “The ALJ who presided over [her] case was not properly appointed.” *Id.* at 3(B).

After each of these assertions, Cottonham includes a string of citations to cases, statutes, or regulations, without explaining these authorities’ relevance. Although we have no obligation to do so, we have examined a sample of the cited authorities and we find them to be relevant, if at all, at a general level only (*e.g.*, stating the standard of review, or discussing a different kind of argument arising under the same step of the evaluation process). Thus, the only way we could evaluate her arguments would be to elaborate on them for her, and locate supporting authorities ourselves. That is not our role.

We recognize that Cottonham used this court’s standard form for pro se opening briefs (Form A-12), which does not contain a large amount of space to present issues and supporting arguments. But the front page of that form plainly

states, “If you need more space, additional pages may be attached.” *Id.* at 1.

Cottonham appears to have understood as much because she attached additional pages, on which she asserted her third and fourth arguments. But again, those arguments, like the first two, are a single sentence followed by a citation to authorities with no obvious relevance.

We deem Cottonham’s arguments inadequate to preserve any issue for appeal, and they are therefore waived. *See Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 679 (10th Cir. 1998).¹ For this reason, we affirm the district court’s judgment.

Entered for the Court

Bobby R. Baldock
Circuit Judge

¹ Cottonham’s fourth argument (an Appointments Clause objection) is not jurisdictional. *See Freytag v. Comm’r*, 501 U.S. 868, 878 (1991). Thus, we are not required to address it.