FILED
United States Court of Appeals
Tenth Circuit

September 28, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

NATALIE LAGER,

Plaintiff - Appellant,

v.

COMMISSIONER, SSA,

Defendant - Appellee.

No. 22-4116
(D.C. No. 2:20-CV-00180-DBB)
(D. Utah)

ORDER AND JUDGMENT*

Before **HOLMES**, Chief Judge, **HARTZ** and **PHILLIPS**, Circuit Judges.

Natalie Lager appeals from the district court's decision upholding the agency's denial of her application for a period of disability and disability benefits. Exercising jurisdiction under 28 U.S.C. § 1291 and 42 U.S.C. § 405(g), we affirm.

BACKGROUND

In September 2015, Ms. Lager unsuccessfully applied for benefits. Identifying several physical and mental impairments, she applied again in June 2017. After the

---

* 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

second application was denied initially and upon reconsideration, she had a hearing before an administrative law judge (ALJ). The ALJ considered her application under the agency's five-step process for considering disability claims. *See Wall v. Astrue*, 561 F.3d 1048, 1052 (10th Cir. 2009); *see also* 20 C.F.R. § 404.1520(a)(4) (describing five-step process).

At Step 1, the ALJ found that Ms. Lager had not engaged in substantial gainful activity since her alleged onset date of August 18, 2014. At Step 2, the ALJ found that she suffers from the severe impairments of multiple sclerosis, degenerative disc disease of the cervical spine, migraines, depressive disorder, anxiety disorder, and sleep disorder. But at Step 3, he concluded that she did not have an impairment or combination of impairments that met or medically equaled the listed impairments in the Code of Federal Regulations. Next, the ALJ assessed Ms. Lager with the residual functional capacity (RFC) to perform a range of light work with certain restrictions. As relevant to this appeal, the RFC provided, "Mentally, [Ms. Lager] can only make simple work-related judgments and decisions and understand, remember, and carry out only short and simple instructions." Aplt. App. Vol. 1 at 42 (bolding omitted). The ALJ then found at Step 4 that she could not perform her past relevant work. Finally, at Step 5, he found that there were other jobs in the national economy she could perform. The ALJ therefore found Ms. Lager not disabled.

The Appeals Council denied review, making the ALJ's decision the agency's final decision. When Ms. Lager appealed to the district court, the magistrate judge recommended that the district court affirm. Over Ms. Lager's objections, the district

court accepted the magistrate judge's report and recommendation and affirmed the denial of benefits. Ms. Lager now appeals to this court.

DISCUSSION

"Our review of the district court's ruling in a social security case is de novo." *Wall*, 561 F.3d at 1052. "Thus, we independently determine whether the ALJ's decision is free from legal error and supported by substantial evidence." *Id.* (internal quotation marks omitted). "In reviewing the ALJ's decision, we neither reweigh the evidence nor substitute our judgment for that of the agency." *Vigil v. Colvin*, 805 F.3d 1199, 1201 (10th Cir. 2015) (internal quotation marks omitted).

"Under the substantial-evidence standard, a court looks to an existing administrative record and asks whether it contains sufficient evidence to support the agency's factual determinations." *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (brackets and internal quotation marks omitted). "Substantial evidence . . . means—and means only—such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* (internal quotation marks omitted).

At Step 3, the ALJ found persuasive the opinions of state agency reviewers and a consulting examiner and assessed moderate limitations in concentration, persistence, and pace. Ms. Lager argues that in formulating her RFC, the ALJ did not adequately account for those limitations because the restrictions to "simple work-related judgments and decisions" and "only short and simple instructions" do not address moderate limitations in concentration, persistence, and pace. She further argues that the ALJ impermissibly ignored the medical evidence without explanation.

We have held, however, that "[t]he ALJ's finding of a moderate limitation in concentration, persistence, or pace at step three does not necessarily translate to a work-related functional limitation for purposes of the RFC assessment." *Vigil*, 805 F.3d at 1203. *Vigil* held that "the ALJ accounted for [the claimant's] moderate concentration, persistence, and pace problems in his RFC assessment by limiting him to unskilled work." 805 F.3d at 1204. Although we recognized "[t]here may be cases in which an ALJ's limitation to 'unskilled' work does not adequately address a claimant's mental limitations," in *Vigil* we were persuaded that "limiting the plaintiff to an SVP [(Specific Vocational Preparation)] of only one or two[] adequately took into account his moderate limitations in concentration, persistence, and pace." *Id.*

Citing *Vigil*, we later recognized that an ALJ "can account for moderate limitations by limiting the claimant to particular kinds of work activity." *Smith v. Colvin*, 821 F.3d 1264, 1269 (10th Cir. 2016). *Smith* rejected a challenge that the ALJ did not account for non-exertional impairments, including moderate limitations in concentration, persistence, and pace, in restricting the claimant to "only simple, repetitive, and routine tasks" with no face-to-face contact with the public. *Id.* at 1268, 1269. We stated the ALJ had incorporated the limitations "by stating how the claimant was limited in the ability to perform work-related activities." *Id.* at 1269.

In accordance with *Vigil* and *Smith*, we conclude that in making his RFC assessment, the ALJ did not ignore the medical evidence and instead stated how Ms. Lager was limited in the ability to perform work-related activities. The restrictions in the RFC adequately accounted for the limitations the ALJ found.

Ms. Lager's speculation that her moderate limitations *may* have involved off-task behavior and unscheduled breaks does not reflect the ALJ's findings.

Ms. Lager also argues that the ALJ's findings at Steps 4 and 5 were not supported by substantial evidence. We disagree. Despite assessing Ms. Lager with the moderate limitations, a state agency reviewer concluded that "[s]he is appropriate for low stress work that can be learned in 1 [to] 3 months." Aplt. App. Vol. 1 at 162.[1] On reconsideration, a second agency reviewer agreed.[2] In records from 2014 to 2017, Ms. Lager's treating physician consistently marked her orientation, memory, and concentration as normal. A consultative evaluator noted in 2016 and again in 2017 that she was able to remember three of three unrelated items both immediately

[1] Jobs that take from one month to three months to learn are considered semiskilled. *See Jensen v. Barnhart*, 436 F.3d 1163, 1168 (10th Cir. 2005). In concluding that Ms. Lager "can only make simple work related judgments and decisions and understand, remember, and carry out only short and simple instructions," Aplt. App. Vol. 1 at 42 (bolding omitted), the ALJ limited her to unskilled work, *see Vigil*, 805 F.3d at 1204 (noting that "understanding, remembering, and carrying out simple instructions" and making "simple work-related decisions" are functions of unskilled work (brackets and internal quotation marks omitted)). But an ALJ is not precluded from tempering an assessment for the claimant's benefit. *See Chapo v. Astrue*, 682 F.3d 1285, 1288 (10th Cir. 2012).

[2] Ms. Lager argues that "[t]he ALJ may reasonably rely on the examiner's narrative in Section III [of the Mental Residual Functional Capacity Assessment (MRFCA) form] only to the extent that the findings in the Section I worksheet are adequately addressed in the narrative." Aplt. Opening Br. at 33. We agree with the district court, however, that the narrative section of the MRFCA forms adequately addressed the moderate limitations the reviewers found. We therefore need not address Ms. Lager's argument that the ALJ was required to further address the Section I limitations in formulating the RFC. *See Smith*, 821 F.3d at 1269 n.2 ("We compare the administrative law judge's findings to [the reviewer's] opinion on residual functional capacity, not [the reviewer's] notations of moderate limitations.").

and with some delay, and that she was able to remember and recite three steps of a four-step task presented orally. During both visits with that evaluator, Ms. Lager reported being able to focus on reading, stating in 2016, "I could read all day," *id.* Vol. 5 at 112 (internal quotation marks omitted), and in 2017 that she could read for "hours," *id.* Vol. 6 at 49 (internal quotation marks omitted). Another consultative evaluator in 2017 opined her memory and concentration were normal. Substantial evidence therefore supports the restrictions the ALJ assessed.

Consulting a vocational expert (VE), the ALJ posed a hypothetical question that included the restrictions in the RFC. The VE opined that Ms. Lager could not perform her past relevant work, but that there were jobs in the national economy that she could perform. The VE's testimony constitutes substantial evidence supporting the conclusion that Ms. Lager was not disabled. *See Jensen v. Barnhart*, 436 F.3d 1163, 1168 (10th Cir. 2005); *Goatcher v. U.S. Dep't of Health & Human Servs.*, 52 F.3d 288, 289 (10th Cir. 1995).

CONCLUSION

We affirm the district court's judgment.

Entered for the Court

Gregory A. Phillips
Circuit Judge