FILED
United States Court of Appeals
Tenth Circuit

April 29, 2024

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

JILL A. HARRISON,

Plaintiff - Appellant,

v.

COMMISSIONER, SSA,

Defendant - Appellee.

No. 22-4108
(D.C. No. 2:20-CV-00668-DBP)
(D. Utah)

ORDER AND JUDGMENT*

Before **EID**, **CARSON**, and **ROSSMAN**, Circuit Judges.

Jill A. Harrison appeals from the district court's judgment affirming the Commissioner's denial of Supplemental Security Income (SSI) benefits. Exercising jurisdiction under 42 U.S.C. § 405(g) and 28 U.S.C. § 1291, we affirm.

---

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

I. Background & Procedural History

Ms. Harrison applied for SSI on February 23, 2018.[1] The agency denied her application initially and on reconsideration. She requested and was given a hearing before an Administrative Law Judge (ALJ), who issued a written decision. Applying the agency's five-step sequential evaluation process, the ALJ found Ms. Harrison was not disabled within the meaning of the Social Security Act and denied benefits.[2]

At step one, the ALJ found Ms. Harrison had not engaged in substantial gainful activity since her application. At step two, the ALJ found she had multiple severe impairments, including—as relevant here—attention deficit hyperactivity disorder (ADHD), depressive disorder, anxiety disorder, and post-traumatic stress

---

[1] Ms. Harrison initially alleged a qualifying disability beginning December 31, 2017, and later amended the alleged onset to the date of her application.

[2] We have described the five-step evaluation process as follows:

> Step one requires the agency to determine whether a claimant is presently engaged in substantial gainful activity. If not, the agency proceeds to consider, at step two, whether a claimant has a medically severe impairment or impairments. An impairment is severe under the applicable regulations if it significantly limits a claimant's physical or mental ability to perform basic work activities. At step three, the ALJ considers whether a claimant's medically severe impairments are equivalent to a condition listed in the appendix of the relevant disability regulation. If a claimant's impairments are not equivalent to a listed impairment, the ALJ must consider, at step four, whether a claimant's impairments prevent her from performing her past relevant work. Even if a claimant is so impaired, the agency considers, at step five, whether she possesses the sufficient residual functional capability to perform other work in the national economy.

Wall v. Astrue, 561 F.3d 1048, 1052 (10th Cir. 2009) (citations and internal quotation marks omitted).

disorder (PTSD). At step three, the ALJ determined her impairments were not equivalent to a listed impairment.

The ALJ therefore evaluated Ms. Harrison's residual functional capacity (RFC), finding she could "perform light work as defined in 20 C.F.R. [§] 416.967(b)." R. vol. 1, at 39.[3] With respect to the social and mental impairments at issue in this appeal, the ALJ described the following limitations:

> Due to pain, side effects of medications, and mental impairments [Ms. Harrison] can only make simple work-related judgments and decisions; can understand, remember, and carry out only short and simple instructions; *can have no more than frequent interactive contact with the public, co-workers or supervisors*; and can perform goal-oriented work, but not fast-paced work.

Id. (emphasis added). At step four, Ms. Harrison had no past relevant work. At step five, based on the RFC determination and testimony of a vocational expert, the ALJ found Ms. Harrison could perform other work in the national economy and therefore denied her benefits. The Appeals Council denied review, the district court affirmed, and Ms. Harrison now appeals.

II. Legal Standards

Because the Appeals Council denied review, the ALJ's decision is the final agency decision. *See Doyal v. Barnhart*, 331 F.3d 758, 759 (10th Cir. 2003). We review the district court's ruling de novo, "independently determin[ing] whether the ALJ's decision is free from legal error and supported by substantial evidence." *Wall v. Astrue*, 561 F.3d 1048, 1052 (10th Cir. 2009) (internal quotation marks omitted).

[3] Record citations are to the page number at the bottom center of the page.

However, "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). This evidentiary requirement is "not high." *Id.* 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).

III. Discussion

Ms. Harrison's arguments on appeal are narrow, contesting only the ALJ's evaluation of the opinions of two state agency psychologists, and particularly their opinions regarding her social limitations. We do not find reversible error.

A. *The Record Before the ALJ and the ALJ's RFC Determination*[4]

In formulating Ms. Harrison's RFC, the ALJ reviewed a range of medical and nonmedical evidence related to her mental health and social limitations. He "accept[ed] [Ms. Harrison] has severe mental health conditions that cause some limitations in functioning," but concluded "the overall record does not show disabling conditions." Aplt. App. vol. 1, at 45.

[4] The record reviewed by the ALJ included a range of evidence related to both physical and mental impairments. Because only the latter are at issue here, we do not address the findings and evidence related to physical diagnoses and impairments.

Ms. Harrison's arguments all relate to the ALJ's treatment of the opinions of two state agency psychologists, Dr. Julia Jacobs, Psy.D. and Dr. Lynn Johnson, Ph.D. Dr. Jacobs provided an assessment in July 2018, finding Ms. Harrison was moderately limited in several areas, including: ability to interact appropriately with the general public; ability to accept instructions and respond appropriately to criticism from supervisors, and ability to get along with coworkers or peers without distracting them or exhibiting behavioral extremes. She opined, in part, that Ms. Harrison "appears to have a low threshold for sustaining attention for tasks outside her interest and for collaborating with others who disagree with her viewpoint." *Id.* at 123. As to social limitations, she stated Ms. Harrison "would likely do best in a work environment that has minimal demands for interpersonal interactions (e.g., occasional public contact and 2–3 h[ou]r daily contact with coworkers)." *Id.* Dr. Jacobs's evaluation was later reviewed and adopted by Dr. Johnson, in October 2018, during reconsideration of Ms. Harrison's claim.

The ALJ stated he was "somewhat persuaded" by these opinions. *Id.* at 47. He noted these sources specialize in psychology and that their opinions were based on their review of then-available medical records and supported by reference to objective medical evidence. But the ALJ also noted they "did not have the opportunity to review the longitud[in]al record. This shows the claimant had many normal mental status exams, and while she certainly has some social limitations, she presents without incident to the vast majority of exams, so it is not necessary to limit her to occasional interaction." *Id.* The ALJ also distinguished that while the

psychologists opined regarding work environments where Ms. Harrison would "do best," the RFC formulation must "consider[] the most she can do." *Id.* The ALJ's formulation of the RFC therefore incorporated social limitations less restrictive than those stated by Drs. Jacobs and Johnson.

The ALJ reviewed other evidence related to mental health and social limitations, including from therapy sessions Ms. Harrison attended during portions of the relevant time period. He noted she initially had "minimal mental health treatment," and that a treating therapist "thought she could work part time" in July 2018. *Id.* at 46. Reviewing later records, the ALJ noted she had increased symptoms after her daughter's death in April 2019, but also was not taking mental health medication prescribed to her.

The ALJ also reviewed two psychological consultative examinations. Ms. Harrison was examined by Dr. Alison Parsons, Psy.D. in July 2018, when she told Dr. Parsons that "about 95% of her issues were physical." *Id.* at 46; *see also* Aplt. App., vol. 4 at 92. Dr. Parsons diagnosed ADHD. *Id.* at 92, 95. She also noted Ms. Harrison "exhibited good social skills." *Id.* at 95. Her conclusions addressed limitations with Ms. Harrison's memory and concentration, and her abilities to sustain focus, divide attention, multitask, anticipate demands, sustain pace, and use independent judgment on the job, but Dr. Parsons did not state additional limitations on Ms. Harrison's ability to engage in social interactions. *See id.* The ALJ stated that he was "somewhat persuaded" by the opinions of Dr. Parsons. Aplt. App. vol. 1 at 48.

Dr. Justin Potts performed an additional examination and tests in July 2019. He diagnosed Major Depressive Disorder ("mild with anxious distress"), moderate ADHD, and PTSD. Aplt. App. vol. 6, at 124. He made observations about the tests performed and opined Ms. Harrison's "psychological symptoms likely pose a significant barrier and preclude her vocational success." *Id.* at 125. Reviewing Dr. Potts's record, the ALJ noted that "[w]hile test results were largely average," Ms. Harrison had "mildly to moderately elevated" mental health results in some tests, and "marked elevation in [the] antisocial features scale." Aplt. App. vol. 1 at 46. However, the ALJ explained he was "not very persuaded by the severity of the opinion[s] of Dr. Potts," finding them inconsistent with other evidence, including some of his own records. *Id.* at 51.

In summary, the ALJ stated Ms. Harrison "is certainly limited in functioning to some degree," but "not to the degree alleged," and that "[n]o further restrictions are warranted by the evidence than those set forth." *Id.* at 52.

B. *Compliance With 20 C.F.R. § 416.920c*

Ms. Harrison argues the ALJ failed to comply with 20 C.F.R. § 416.920c, which governs evaluation of medical opinions and establishes five factors the agency is to consider: supportability; consistency; relationship with the claimant; specialization; and "other factors," such as the source's "familiarity with the other evidence in the claim." § 416.920c; *see also Staheli v. Comm'r, SSA*, 84 F.4th 901,

905 (10th Cir. 2023).[5] The most important factors are supportability and consistency, *see* § 416.920c(a), and the ALJ was required to "explain how [he] considered the supportability and consistency factors," § 416.920c(b)(2). In evaluating consistency, "[t]he more consistent a medical opinion[] . . . is with the evidence from other medical sources and nonmedical sources . . . , the more persuasive [it] will be." § 416.920(c)(2).

Ms. Harrison argues this regulation required the ALJ to explain how the opinions of the state agency psychologists—Drs. Jacobs and Johnson—were (or were not) consistent with the psychological opinions provided by Drs. Potts and Parsons. We conclude the ALJ sufficiently complied with the regulation. The text of § 416.920c provides the agency "will explain how we considered the . . . consistency facto[r]," § 416.920c(b)(2), but it does not appear to more specifically require an explanation of whether any one source's opinion was consistent with that of another individual source. *Cf. Clifton v. Chater*, 79 F.3d 1007, 1009–10 (10th Cir. 1996) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence.").

Here, the ALJ noted the state agency psychologists "did not have the opportunity to review the longitud[in]al record," including normal mental status exams noted at other medical visits. Aplt. App. vol. 1, at 47. Although the ALJ did

[5] Because Ms. Harrison applied for SSI benefits, we cite to § 416.920c. *Staheli* discussed 20 C.F.R. § 404.1520c, which is applicable to Social Security disability benefits and substantially the same.

not directly compare the state agency psychologists' opinions to those of Drs. Potts and Parsons, he did explain how he found other evidence in the record inconsistent with the state agency psychologists' opinions—at least as related to social limitations. And the ALJ did not overlook or ignore the opinions of Drs. Potts and Parsons, which he addressed in detail, explaining why he was "somewhat persuaded" by Dr. Parsons's opinion, *id.* at 48, but "not very persuaded" by the opinion of Dr. Potts, *id.* at 51.[6] Given these explanations, we do not find the ALJ failed to address the consistency of the state agency psychologists' opinions with other evidence or failed to address and apply the consistency factor under § 416.920c.

No doubt, the ALJ could have included a more explicit statement that he found the state agency psychologists' opinions were "inconsistent" with other evidence; and his decision could have been more comprehensive if it had expressly compared the opinions of Drs. Jacobs and Johnson to those of Drs. Potts and Parsons. But we do not find the ALJ committed reversible error by not doing so. *See Keyes-Zachary v. Astrue*, 695 F.3d 1156, 1166 (10th Cir. 2012) ("Where . . . we can follow the adjudicator's reasoning . . . , merely technical omissions . . . do not dictate

[6] In her reply brief Ms. Harrison for the first time appears to argue the ALJ erred in his evaluation of Drs. Parsons's and Potts's opinions, including an argument that Dr. Potts found marked limitations that would have met a listing at step three, and arguments that the ALJ misunderstood or mischaracterized individual records in evaluating the persuasiveness of Dr. Potts's opinion. *See* Aplt. Reply Br. at 10–12. But any challenge to the ALJ's evaluation of the opinions of Drs. Parsons and Potts is waived. *Compania de Inversiones Mercantiles S.A. v. Grupo Cementos de Chihuahua S.A.B. de C.V.*, 58 F.4th 429, 475 (10th Cir. 2023) ("[A] failure to raise an issue in an opening brief waives that issue, and . . . we will not entertain issues raised for the first time on appeal in an appellant's reply brief.").

reversal. . . . The more comprehensive the ALJ's explanation, the easier our task; but we cannot insist on technical perfection.").

The cases cited by Ms. Harris are non-precedential and do not support reversal. She cites *Miller v. Kijakazi*, No. 22-60541, 2023 WL 234773 (5th Cir. Jan. 18, 2023); *Mileto v. Comm'r, SSA*, No. 21-1403, 2022 WL 17883809 (10th Cir. Dec. 23, 2022); *Fryer v. Kijakazi*, No. 21-36004, 2022 WL 17958630 (9th Cir. Dec. 27, 2022); and district court decisions. In *Miller*, the ALJ gave only a two-sentence statement regarding a medical opinion, with no explanation of either supportability or consistency. *See* 2023 WL 234773, at *3 & n.2 (finding ALJ failed to explain supportability and consistency, but error was harmless). Here, the ALJ explained how he found the opinions inconsistent with evidence in the record. In *Mileto*, the ALJ discredited a medical opinion as being inconsistent with other evidence. *See* 2022 WL 17883809, at *3. Likewise, in *Fryer*, the ALJ discredited the opinions of two physicians that were inconsistent with other evidence. *See* 2022 WL 17958630, at *1. Even if the explanations in *Mileto, Fryer*, or other cases were more detailed, that does not show the ALJ's explanation here was insufficient.

C. *Substantial Evidence Supporting RFC Determination*

Ms. Harrison also argues the ALJ erred by adopting lesser social limitations than indicated by the state agency psychologists. We conclude substantial evidence supported the RFC determination. "[T]he ALJ, not a physician, is charged with determining a claimant's RFC from the medical record." *Howard v. Barnhart*, 379 F.3d 945, 949 (10th Cir. 2004). In fact, ALJs are directed to "not defer or give

any specific evidentiary weight, including controlling weight, to any medical opinion(s) or prior administrative medical finding(s)." § 416.920c(a). The ALJ was therefore not required to adopt the opinions of the state agency psychologists, so long as he explained why they were not adopted. *See* SSR 96-8P, 1996 WL 374184, at *7 (July 2, 1996) ("If the RFC assessment conflicts with an opinion from a medical source, the adjudicator must explain why the opinion was not adopted.").[7]

Initially, it is unclear the ALJ's RFC formulation was actually inconsistent with the psychologists' opinions. As the ALJ observed, the state agency psychologists opined regarding work environments where Ms. Harrison would "likely do best." *See* Aplt. App. vol. 1, at 47. However, RFC means "the most you can still do despite your limitations." 20 C.F.R. § 416.945(a)(1). At least as presented in the record, it is unclear the RFC determination that Ms. Harrison "can have no more than frequent interactive contact," Aplt. App. vol.1 at 39, is in fact inconsistent with the state agency psychologists' opinion that she would "likely do best" with more limited contacts, *id.* at 147. Thus, even crediting these opinions, they do not clearly show the ALJ's RFC formulation was unsupported by substantial evidence.

We are also unpersuaded by Ms. Harrison's several arguments as to how the ALJ committed error when evaluating the state agency psychologists' opinions.

[7] Ms. Harrison's brief also suggests the ALJ erred by not including the limitations expressed by the state agency psychologists in posing a hypothetical question to the vocational expert. *See* Aplt. Opening Br. at 24–25. But the ALJ "did not need to ask about the effect of limitations that he didn't believe applied." *Smith v. Colvin*, 821 F.3d 1264, 1270 (10th Cir. 2016).

First, she argues the ALJ erred by including the statement that "[t]he opinions [of Drs. Johnson and Jacobs] support finding the claimant is not disabled," within his RFC evaluation. Aplt. Opening Br. at 22–28; Aplt. App. vol. 1, at 47. She argues the finding she was not disabled could only be made after presenting the RFC to a vocational expert at step five, and that the quoted statement is not supported by substantial evidence. But even if the sentence quoted by Ms. Harrison was somewhat misplaced within the RFC determination, we see no reversible error. This was not the basis of either the ALJ's RFC finding or the ultimate disability determination. The ALJ provided a detailed explanation of the record in formulating the RFC, then presented it to a vocational expert. Ms. Harrison does not argue the ALJ ultimately failed to follow the five-step sequential process. The single sentence she criticizes does not reflect reversible error. *See Keyes-Zachary*, 695 F.3d at 1170 (noting conclusory or "boilerplate" statements are "problematic only when [they] appea[r] in the absence of a more thorough analysis" (internal quotation marks omitted)).

Second, Ms. Harrison objects to the ALJ's statement that the state agency psychologists "did not have the opportunity to review the longitudinal record," and to the ALJ's conclusion that because Ms. Harrison "had many normal mental status exams" and "presents without incident to the vast majority of exams," the social limitations indicated by the state agency psychologists were unnecessary. *See* Aplt. Opening Br. at 28–34 (internal quotation marks omitted).

Ms. Harrison argues the records from other sources cited by the ALJ were not from mental health professionals, and that many were within the date range the state

agency psychologists reviewed, attacking the ALJ's reasoning that they did not have access to the longitudinal record post-dating their evaluations. Ms. Harrison also attacks the individual records cited by the ALJ, arguing they are too insubstantial to contradict the state agency psychologists' opinions.

We are unpersuaded that these criticisms require remand. The ALJ cited individual documents as representative examples from the broader record. Because the ALJ's decision was completed two years after the state agency psychologists' assessments, he indisputably reviewed records and evidence they did not. And his reasoning was not that routine mental status observations while seeking physical care contradict mental health diagnoses from specialists, but that these observations demonstrate the social limitations suggested by the state agency psychologists were more restrictive than necessary. *See* Aplt. App. vol. 1, at 47.

Nor do these arguments defeat the conclusion that substantial evidence supports the ALJ's RFC finding. The ALJ identified evidence to support his finding related to social limitations elsewhere in the RFC evaluation. *See, e.g.*, Aplt. App. vol. 1, at 48 (noting Ms. Harrison exhibited "good social skills" when examined by Dr. Parsons); *id.* at 51 (explaining reasons the ALJ found Dr. Potts's assessment of "marked limitations in social functioning" inconsistent with the evidence as a whole). To the extent Ms. Harrison attacks the ALJ's consideration of individual medical records, our role is not to reweigh that evidence. *See Vigil*, 805 F.3d at 1201.

Third, Ms. Harrison argues the ALJ did not provide a sufficient explanation for not adopting the opinions of the state agency psychologists, as required by SSR

96-8p. We conclude the ALJ adequately explained why he found these opinions only somewhat persuasive. Although Ms. Harrison disagrees with the ALJ's reasons and conclusion, we do not find either that the decision failed to provide an explanation or that it was unsupported by substantial evidence.

IV. Conclusion

For the foregoing reasons, we affirm the judgment of the district court.

Entered for the Court

Joel M. Carson III
Circuit Judge