

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-14721
Non-Argument Calendar

D.C. Docket No. 6:16-cv-00351-DCI

JUDY BURTON CATES,

Plaintiff-Appellant,

versus

COMMISSIONER OF SOCIAL SECURITY,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(November 2, 2018)

Before WILSON, JORDAN, and ANDERSON, Circuit Judges.

PER CURIAM:

Plaintiff-Appellant Judy Burton Cates (“Ms. Cates”) appeals the magistrate judge’s order affirming the Commissioner of the Social Security Administration’s denial of her application for disability insurance benefits and supplemental security income, pursuant to 42 U.S.C. §§ 405(g), 1383(c)(3).¹ On appeal, Ms. Cates argues that the Administrative Law Judge’s (“ALJ’s”) decision was not supported by substantial evidence. She also argues, for the first time, that the ALJ was biased against her. We address each argument in turn.

I.

In Social Security appeals, our review of the district court’s assessment of the ALJ’s decision is de novo, Falge v. Apfel, 150 F.3d 1320, 1322 (11th Cir. 1998), and we review whether the ALJ’s decision is supported by substantial evidence and whether the correct legal standards were applied, Winschel v. Comm’r of Soc. Sec., 631 F.3d 1176, 1178 (11th Cir. 2011). Substantial evidence is “more than a mere scintilla.” Falge, 150 F.3d at 1322. Under this standard of review, we will not decide the facts anew, make credibility determinations, or reweigh the evidence. Winschel, 631 F.3d at 1178.

The Social Security Regulations outline a five-step process used to determine whether a claimant is disabled. 20 C.F.R. § 404.1520(a)(4). Under the

¹ The parties consented to the magistrate judge’s jurisdiction over dispositive matters in this case.

first step, the claimant has the burden to show that she is not currently engaged in substantial gainful activity. Id. § 404.1520(b). Second, she must show that she has a severe impairment. Id. § 404.1520(c). Third, she then must attempt to show that the impairment meets or equals the criteria contained in one of the Listings of Impairments. Id. § 404.1520(d). Fourth, if the claimant cannot meet or equal the criteria, she must show that he has an impairment which prevents her from performing her past relevant work. Id. § 404.1520(e) and (f). Once a claimant establishes that she cannot perform her past relevant work due to some severe impairment, the burden shifts in the fifth step to the Commissioner to show that a significant number of jobs exist in the national economy which the claimant can perform. Id. § 404.1520(g); Phillips v. Barnhart, 357 F.3d 1232, 1239 (11th Cir. 2004).

In this case, the ALJ determined at step one of the analysis that Ms. Cates had not engaged in substantial gainful activity. At step two, the ALJ determined that Ms. Cates had severe impairments of joint pain and depression. At step three, the ALJ determined that Ms. Cates did not have an impairment or combination of impairments that met or medically equaled the criteria contained in any of the listed impairments in appendix 1, as described in 20 C.F.R. § 404.1520(d), Subpt. P, App. 1. These first three steps are not at issue on appeal.

At step four, the ALJ found that Ms. Cates retained the Residual Function Capacity (“RFC”) to perform light work, as defined in 20 C.F.R. §§ 404.1567(b) and 416.967(b), with the ability to sit, stand, and walk each for eight hours in an eight-hour day; no climbing of ropes, ladders, or scaffolds; occasional bending, balancing, stooping, squatting, crouching, crawling, kneeling, and climbing of ramps and stairs; no overhead lifting but full use of upper extremities otherwise; no heights or vibrations; and no production-based demands. In reaching this conclusion, the ALJ found that Ms. Cates’s medically determinable impairments could reasonably be expected to cause her alleged symptoms but that Ms. Cates’s statements concerning the intensity, persistence, and limiting effects of these symptoms were not entirely credible. Next considering the medical evidence before it, the ALJ found that there were not objective findings to provide strong support for Ms. Cates’s allegations of disabling symptoms and limitations. The ALJ further found that the medical findings did not support the existence of limitations greater than the RFC. As to opinion evidence, the ALJ considered but ultimately gave no weight to assessments offered by Ms. Cates’s treating physicians Drs. Saleh and Tikku. The ALJ concluded that these opinions were not supported by objective clinical findings and were inconsistent with other substantial evidence.

Relying on the vocational expert who testified at the hearing, the ALJ ultimately concluded that Ms. Cates was capable of performing her past relevant

work as an office manager and that she was thus not disabled. The ALJ accordingly did not reach step five. On appeal, Ms. Cates contends as an initial matter that the ALJ's decision is not supported by substantial evidence.

First, Ms. Cates argues that the ALJ improperly discredited her statements regarding the persistence, intensity, and limiting effects of her symptoms. If the ALJ discredits the claimant's subjective symptoms testimony, he "must clearly articulate explicit and adequate reasons" for doing so. Dyer v. Barnhart, 395 F.3d 1206, 1210 (11th Cir. 2005). An ALJ's credibility determination must be more than a broad rejection of the claimant's subjective complaints of pain. It must be explicit enough for a reviewing court to conclude that the ALJ considered the claimant's medical condition as a whole, but it does not need to be so specific as to cite particular phrases or formulations. Id. We will not disturb a clearly articulated credibility finding supported by substantial evidence in the record. Foote v. Chater, 67 F.3d 1553, 1562 (11th Cir. 1995).

In order to show a disability based on subjective pain testimony, "the claimant must satisfy two parts of a three-part test showing: (1) evidence of an underlying medical condition; and (2) either (a) objective medical evidence confirming the severity of the alleged pain; or (b) that the objectively determined medical condition can reasonably be expected to give rise" to the claimed symptoms. Wilson v. Barnhart, 284 F.3d 1219, 1225 (11th Cir. 2002). Under Social Security regulations,

the ALJ follows a two-step analysis in considering a claimant's complaints: first, determining whether there is an underlying medically determinable impairment that could reasonably be expected to cause the claimant's pain or other symptoms; and second, once a claimant has established an impairment that could reasonably produce her symptoms, the ALJ evaluates the intensity and persistence of the symptoms and their effect on the claimant's work. 20 C.F.R. § 416.929(a), (c).

In arguing that the ALJ improperly discredited her statements regarding the persistence, intensity, and limiting effects of her disability, Ms. Cates takes issue with the ALJ's following statement: "these records also note that the claimant was . . . able to leave town and care for her ailing elderly mother. I note that the claimant's ability to care for her ailing elderly mother appears vastly inconsistent with her allegations, and further substantiates her ability to perform work related activities." The record evidence establishes that Ms. Cates told her doctor that she would be traveling out of town to see her mother who had just been diagnosed with cancer. It does not explicitly state that Ms. Cates would be caring for her mother, but nonetheless supports a conclusion that Ms. Cates was capable of travel. To the extent that the ALJ's statement incorrectly characterizes Ms. Cates's trip as one to care for her mother instead of merely see her mother, we conclude that such error is harmless because, as explained infra, other substantial evidence otherwise supports the ALJ's credibility determination. See Diorio v. Heckler, 721 F.2d 726, 728 (11th

Cir. 1983) (finding an error to be harmless where it did not affect the ALJ's ultimate decision); see also Dyer, 395 F.3d at 1210 ("If the Commissioner's decision is supported by substantial evidence, this Court must affirm, even if the proof preponderates against it.").

Next, Ms. Cates contends that the ALJ improperly determined that her care for her grandson and use of public transportation discredited her statements about her symptoms. The ALJ may consider a claimant's daily activities when evaluating her complaints of pain. See 20 C.F.R. § 404.1529(c)(3). Ms. Cates argues that her testimony as to these daily activities should not have discredited her subjective pain testimony because her neighbors and friends from church assist in the care of her grandson and the public transportation referred to by the ALJ is a medical bussing system for the disabled. However, the ALJ acknowledged as much in her decision. The ALJ accordingly did not mischaracterize either of these items that she found relevant as to Ms. Cates's credibility.

Next, Ms. Cates asserts that the ALJ did not consider her substantial work history in evaluating her credibility. Ms. Cates argues that her prior income motivated her to return to work and that there is no evidence of her malingering. Ms. Cates contends that this is indicative of her credibility. As we have explained, "there is no rigid requirement that the ALJ specifically refer to every piece of evidence in his decision, so long as the ALJ's decision, as was not the case here, is not a broad

rejection which is ‘not enough to enable [the district court or this Court] to conclude that [the ALJ] considered her medical condition as a whole.’” Dyer, 395 F.3d at 1211 (citation omitted); see also Mitchell v. Comm’r of Soc. Sec., 771 F.3d 780, 782 (11th Cir. 2014). In this case, the ALJ was aware of Ms. Cates’s prior work history, as evidenced by the portions of her decision addressing Ms. Cates being let go from her job in 2008. The ALJ’s decision in this case was not a broad rejection of Ms. Cates’s subjective complaints of pain and was sufficient to enable us to conclude that the ALJ considered her medical conditions as a whole.

Next, Ms. Cates contends that the ALJ discredited and mischaracterized mental health treatment records from House Next Door (“HND”) in determining that the objective medical evidence failed to support her testimony of disabling symptoms and limitations. Specifically, the ALJ noted that Ms. Cates reported to HND that she had been experiencing mental health related symptoms for years but discredited this statement by noting that numerous examining physicians over the prior years have regularly documented Ms. Cates as being unremarkable. Ms. Cates contends that this is contradicted by her seeing a psychiatrist, Dr. Tikku, for years for depression and anxiety. That Ms. Cates saw Dr. Tikku—whose opinion the ALJ accorded no weight—for those symptoms does not change the fact that numerous other physicians documented her as unremarkable across prior years. Ms. Cates further takes issue with the ALJ noting that she reported a significant decrease in

symptoms after a few sessions at HND, contending that this statement is contradicted by notes from HND. There is evidence in the record, however, of Ms. Cates reporting feelings of relief and decreased panic attacks to HND. Ms. Cates also objects to the ALJ discrediting the Global Assessment of Functioning (“GAF”) rating of 44² assessed by HND. The ALJ noted that a GAF of 44 was vastly inconsistent with the findings during testing. This GAF, indicative of serious symptoms, is contradicted by both contemporaneous objective medical records and notes from the HND office visit at which the GAF was assessed. Accordingly, the ALJ sufficiently explained her reason for discrediting the GAF assigned by HND. Furthermore, to the extent that Ms. Cates contends that it was error for the ALJ to not consider the GAF score assigned to her by HND, we note that the Social Security Administration has indicated that the GAF “does not have a direct correlation to the severity requirements in our mental disorders listings.” 65 Fed. Reg. 50746, 50764–65 (Aug. 21, 2000).

Finally, Ms. Cates argues that the objective medical evidence supported her subjective pain testimony. Specifically, she disputes the ALJ discrediting Dr.

² The GAF is a standard measurement of an individual’s overall functioning “with respect only to psychological, social, and occupational functioning” using a 1 to 100 point scale. American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders 30–32 (4th ed. 2000). GAF ratings in the range of 41–50 indicate “serious symptoms (e.g., suicidal ideation, severe obsessive rituals, frequent shoplifting) OR any serious impairment in social, occupational, or school functioning (e.g., no friends, unable to keep a job.)” Id.

Saleh's diagnosis of arthritis, back pain, and neuropathy. The ALJ found the opinion of Dr. Saleh unsupported by clinical findings and inconsistent with other substantial evidence. "[T]he opinion of a treating physician may be rejected when it is so brief and conclusory that it lacks persuasive weight or where it is unsubstantiated by any clinical or laboratory findings. Further, the Secretary may reject the opinion of any physician when the evidence supports a contrary conclusion." Bloodsworth v. Heckler, 703 F.2d 1233, 1240 (11th Cir. 1983) (citations omitted); see 20 C.F.R. §§ 404.1527(c)(2), 416.927(c)(2). The ALJ is required, however, to state with particularity the weight he or she gives to different medical opinions and the reasons why. Sharfarz v. Bowen, 825 F.2d 278, 279 (11th Cir. 1987). In explaining why she assigned Dr. Saleh's opinion no weight, the ALJ referenced physicians regularly noting unremarkable findings such as no back or spine abnormalities, no joint abnormalities, normal ranges of motion, no motor or sensory deficits, and no tenderness. The ALJ further noted that objective imaging of Ms. Cates found only minimal abnormalities. Because the ALJ's decision to discredit Dr. Saleh's opinion was supported by substantial evidence, we must affirm the ALJ's determination even if the proof preponderates against it. See Dyer, 395 F.3d at 1210.

In conclusion, the ALJ applied the correct legal standards in finding Ms. Cates's subjective pain testimony not credible by articulating explicit and adequate reasons for doing so. Dyer, 395 F.3d at 1210. This decision was supported by

substantial evidence and the ALJ cited extensive support from the record. For example, the objective medical reports and imaging of Ms. Cates's spine and knees were unremarkable, and a 2008 MRI of her spine showed only minor changes from an earlier 2006 scan. Many physical exams showed no spine abnormalities or tenderness and Ms. Cates reported significant relief from anti-inflammatory injections into her knee. Dr. Cabeza questioned her earlier hemochromatosis history and blood tests showed no anomalies for hemochromatosis and no significant iron overload. The ALJ pointed to some contradictory and discredited evidence by her doctors in the medical record regarding her mental health, as well.

Despite her complaints of pain, the record shows Ms. Cates maintained at least some daily living activities. For example, in 2014, she told Dr. Steichen that she had recently been "very active" gardening and was still actively involved in her church. And it was in the record before the ALJ that Ms. Cates told Dr. Steichen that she was leaving town to visit her ailing mother. All of the evidence outlined above constitutes substantial evidence in support of the ALJ's credibility finding and decision to deny benefits. Accordingly, we affirm in this respect.

II.

We will not consider an issue not raised before the district court and raised for the first time on appeal. Access Now, Inc. v. Sw. Airlines Co., 385 F.3d 1324, 1331 (11th Cir. 2004) ("This Court has 'repeatedly held that "an issue not raised in the

district court and raised for the first time in an appeal will not be considered by this court.””).

A Social Security claimant is entitled to a hearing that is “full and fair.” Miles v. Chater, 84 F.3d 1397, 1400 (11th Cir. 1996). If a claimant fears that the ALJ will not provide a fair hearing, this should first be raised to the ALJ at the earliest opportunity, and if the ALJ declines to reconsider, the claimant may seek reconsideration before the Appeals Council. 20 C.F.R. § 416.1440. Where objectionable comments are made by an ALJ in a decision issued after the hearing, the earliest opportunity for a claimant to object will be before the Appeals Council. See Miles, 84 F.3d at 1400–01.

When such an issue is preserved, we will presume that an ALJ—like other judicial or quasi-judicial officers—is not biased, and it is the moving party’s burden to show bias or some other reason for disqualification. Schweiker v. McClure, 456 U.S. 188, 196, 102 S. Ct. 1665, 1669–70 (1982). “[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion,” Liteky v. United States, 510 U.S. 540, 555, 114 S. Ct. 1147, 1157 (1994), although a decision completely lacking any evidentiary support may suffice, see Miles, 84 F.3d at 1401.

Because Ms. Cates raised her claim that the ALJ was biased to neither the Appeals Council in the administrative review nor the magistrate judge, we decline to consider this argument for the first time on appeal. See Access Now, Inc., 385

F.3d at 1331. Considering, *arguendo*, the merits of her bias claim, Ms. Cates has not overcome the presumption that the ALJ was impartial because she has not shown a conflict of interest or other specific reason for disqualification, Schweiker, 456 U.S. at 196, 102 S. Ct. at 1669–70, and she has not shown that the ALJ’s decision lacked any evidentiary support, Miles, 84 F.3d at 1401. Accordingly, we affirm on these grounds as well.

AFFIRMED.